

1276

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. PERKINS, DIAZ, HASSELL-THOMPSON, KRUEGER, SAVINO,
SERRANO -- read twice and ordered printed, and when printed to be
committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to authorizing
the use of closed-circuit televisions for witnesses who are determined
to be adverse due to domestic violence disputes

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The criminal procedure law is amended by adding a new arti-
2 cle 66 to read as follows:

3 ARTICLE 66
4 USE OF CLOSED-CIRCUIT TELEVISION FOR
5 CERTAIN DOMESTIC VIOLENCE CASES

6 SECTION 66.00 DEFINITIONS.

7 66.10 CLOSED-CIRCUIT TELEVISION; GENERAL RULE; DECLARATION OF
8 ADVERSITY.

9 66.20 CLOSED-CIRCUIT TELEVISION; PROCEDURE FOR APPLICATION AND
10 GROUNDS FOR DETERMINATION.

11 66.30 CLOSED-CIRCUIT TELEVISION; SPECIAL TESTIMONIAL PROCEDURES.

12 S 66.00 DEFINITIONS.

13 AS USED IN THIS ARTICLE:

14 1. "ADVERSE WITNESS" MEANS A PERSON WHO WILL BE CALLED TO TESTIFY IN A
15 CRIMINAL PROCEEDING, OTHER THAN A GRAND JURY PROCEEDING, CONCERNING AN
16 OFFENSE DEFINED IN TITLE G, H, I OR J OF THE PENAL LAW WHICH IS THE
17 SUBJECT OF SUCH CRIMINAL PROCEEDING WHERE SUCH WITNESS HAS HAD A
18 RESTRAINING ORDER ISSUED AGAINST THE ALLEGED DEFENDANT.

19 2. "TESTIMONIAL ROOM" MEANS ANY ROOM, SEPARATE AND APART FROM THE
20 COURTROOM, WHICH IS FURNISHED COMFORTABLY AND LESS FORMALLY THAN A

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 COURTROOM AND FROM WHICH THE TESTIMONY OF AN ADVERSE WITNESS CAN BE
2 TRANSMITTED TO THE COURTROOM BY MEANS OF LIVE, TWO-WAY CLOSED-CIRCUIT
3 TELEVISION.

4 3. "LIVE, TWO-WAY CLOSED-CIRCUIT TELEVISION" MEANS A SIMULTANEOUS
5 TRANSMISSION, BY CLOSED-CIRCUIT TELEVISION, OR OTHER ELECTRONIC MEANS,
6 BETWEEN THE COURTROOM AND THE TESTIMONIAL ROOM IN ACCORDANCE WITH THE
7 PROVISIONS OF SECTION 66.30 OF THIS ARTICLE.

8 4. "OPERATOR" MEANS THE INDIVIDUAL AUTHORIZED BY THE COURT TO OPERATE
9 THE CLOSED-CIRCUIT TELEVISION EQUIPMENT USED IN ACCORDANCE WITH THE
10 PROVISIONS OF THIS ARTICLE.

11 S 66.10 CLOSED-CIRCUIT TELEVISION; GENERAL RULE; DECLARATION OF ADVER-
12 SITY.

13 1. A WITNESS SHALL BE DECLARED ADVERSE WHEN THE COURT, IN ACCORDANCE
14 WITH THE PROVISIONS OF SECTION 66.20 OF THIS ARTICLE, DETERMINES BY
15 CLEAR AND CONVINCING EVIDENCE THAT IT IS LIKELY, AS A RESULT OF EXTRAOR-
16 DINARY CIRCUMSTANCES, THAT:

17 (A) SUCH WITNESS WILL SUFFER SEVERE MENTAL OR EMOTIONAL HARM IF
18 REQUIRED TO TESTIFY AT A CRIMINAL PROCEEDING WITHOUT THE USE OF LIVE,
19 TWO-WAY CLOSED-CIRCUIT TELEVISION AND THAT THE USE OF SUCH LIVE, TWO-WAY
20 CLOSED-CIRCUIT TELEVISION WILL HELP PREVENT, OR DIMINISH THE LIKELIHOOD
21 OR EXTENT OF, SUCH HARM; OR

22 (B) THE PRESENCE OF SUCH WITNESS IN THE COURT WILL CAUSE ONE OR MORE
23 OF THE PARTIES INVOLVED TO BECOME UNRULY AND UNMANAGEABLE.

24 2. WHEN THE COURT DECLARES A WITNESS TO BE ADVERSE, IT SHALL, EXCEPT
25 AS PROVIDED IN SUBDIVISION FOUR OF SECTION 66.30 OF THIS ARTICLE,
26 AUTHORIZE THE TAKING OF THE TESTIMONY OF THE ADVERSE WITNESS FROM THE
27 TESTIMONIAL ROOM BY MEANS OF LIVE, TWO-WAY CLOSED-CIRCUIT TELEVISION.
28 UNDER NO CIRCUMSTANCES SHALL THE PROVISIONS OF THIS ARTICLE BE CONSTRUED
29 TO AUTHORIZE A CLOSED-CIRCUIT TELEVISION SYSTEM BY WHICH EVENTS IN THE
30 COURTROOM ARE NOT TRANSMITTED TO THE TESTIMONIAL ROOM DURING THE TESTI-
31 MONY OF THE ADVERSE WITNESS.

32 3. NOTHING HEREIN SHALL BE CONSTRUED TO PRECLUDE THE COURT FROM EXER-
33 CISING ITS POWER TO CLOSE THE COURTROOM OR FROM EXERCISING ANY AUTHORITY
34 IT OTHERWISE MAY HAVE TO PROTECT THE WELL-BEING OF A WITNESS AND THE
35 RIGHTS OF THE DEFENDANT.

36 S 66.20 CLOSED-CIRCUIT TELEVISION; PROCEDURE FOR APPLICATION AND GROUNDS
37 FOR DETERMINATION.

38 1. PRIOR TO THE COMMENCEMENT OF A CRIMINAL PROCEEDING; OTHER THAN A
39 GRAND JURY PROCEEDING, EITHER PARTY MAY APPLY TO THE COURT FOR AN ORDER
40 DECLARING THAT A WITNESS IS ADVERSE.

41 2. A MOTION PURSUANT TO SUBDIVISION ONE OF THIS SECTION MUST BE MADE
42 IN WRITING AT LEAST EIGHT DAYS BEFORE THE COMMENCEMENT OF TRIAL OR OTHER
43 CRIMINAL PROCEEDING UPON REASONABLE NOTICE TO THE OTHER PARTY AND WITH
44 AN OPPORTUNITY TO BE HEARD.

45 3. THE MOTION PAPERS MUST STATE THE BASIS FOR THE MOTION AND MUST
46 CONTAIN SWORN ALLEGATIONS OF FACT WHICH, IF TRUE, WOULD SUPPORT A DETER-
47 MINATION BY THE COURT THAT THE WITNESS IS ADVERSE. SUCH ALLEGATIONS MAY
48 BE BASED UPON THE PERSONAL KNOWLEDGE OF THE DEPONENT OR UPON INFORMATION
49 AND BELIEF, PROVIDED THAT, IN THE LATTER EVENT, THE SOURCES OF SUCH
50 INFORMATION AND THE GROUNDS FOR SUCH BELIEF ARE STATED.

51 4. THE ANSWERING PAPERS MAY ADMIT OR DENY ANY OF THE ALLEGED FACTS AND
52 MAY, IN ADDITION, CONTAIN SWORN ALLEGATIONS OF FACT RELEVANT TO THE
53 MOTION, INCLUDING THE RIGHTS OF THE DEFENDANT, THE NEED TO PROTECT THE
54 WITNESS AND THE INTEGRITY OF THE TRUTH-FINDING FUNCTION OF THE TRIER OF
55 FACT.

1 5. UNLESS ALL MATERIAL FACTS ALLEGED IN SUPPORT OF THE MOTION MADE
2 PURSUANT TO SUBDIVISION ONE OF THIS SECTION ARE CONCEDED, THE COURT
3 SHALL, IN ADDITION TO EXAMINING THE PAPERS AND HEARING ORAL ARGUMENT,
4 CONDUCT AN APPROPRIATE HEARING FOR THE PURPOSE OF MAKING FINDINGS OF
5 FACT ESSENTIAL TO THE DETERMINATION OF THE MOTION. EXCEPT AS PROVIDED IN
6 SUBDIVISION SIX OF THIS SECTION, IT MAY SUBPOENA OR CALL AND EXAMINE
7 WITNESSES, WHO MUST TESTIFY UNDER OATH.

8 6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE WITNESS WHO IS
9 ALLEGED TO BE ADVERSE MAY NOT BE COMPELLED TO TESTIFY AT SUCH HEARING OR
10 TO SUBMIT TO ANY PSYCHOLOGICAL OR PSYCHIATRIC EXAMINATION. THE FAILURE
11 OF THE WITNESS TO TESTIFY AT SUCH HEARING SHALL NOT BE A GROUND FOR
12 DENYING A MOTION MADE PURSUANT TO SUBDIVISION ONE OF THIS SECTION. PRIOR
13 STATEMENTS MADE BY THE WITNESS RELATING TO ANY ALLEGATIONS OF CONDUCT
14 CONSTITUTING AN OFFENSE DEFINED IN TITLE G, H, I OR J OF THE PENAL LAW
15 OR TO ANY ALLEGATION OF WORDS OR CONDUCT CONSTITUTING AN ATTEMPT TO
16 PREVENT, IMPEDE OR DETER THE WITNESS FROM COOPERATING IN THE INVESTI-
17 GATION OR PROSECUTION OF THE OFFENSE SHALL BE ADMISSIBLE AT SUCH HEAR-
18 ING, PROVIDED, HOWEVER, THAT A DECLARATION THAT A WITNESS IS ADVERSE MAY
19 NOT BE BASED SOLELY UPON SUCH PRIOR STATEMENTS.

20 7. (A) NOTWITHSTANDING ANY OF THE PROVISIONS OF ARTICLE FORTY-FIVE OF
21 THE CIVIL PRACTICE LAW AND RULES, ANY PHYSICIAN, PSYCHOLOGIST, NURSE, OR
22 POLICE OFFICER WHO HAS HAD AN ENCOUNTER WITH THE WITNESS MAY TESTIFY AT
23 A HEARING CONDUCTED PURSUANT TO SUBDIVISION FIVE OF THIS SECTION
24 CONCERNING THE EVENTS SURROUNDING THE ENCOUNTER WITH SUCH WITNESS AS
25 SUCH ENCOUNTER RELATES TO THE ISSUE PRESENTED AT THE HEARING, PROVIDED
26 THAT ANY OTHERWISE APPLICABLE STATUTORY PRIVILEGES CONCERNING COMMUNI-
27 CATIONS BETWEEN THE WITNESS AND SUCH PHYSICIAN, PSYCHOLOGIST, NURSE OR
28 POLICE OFFICER IN CONNECTION WITH SUCH ENCOUNTER SHALL NOT BE DEEMED
29 WAIVED BY SUCH TESTIMONY ALONE, EXCEPT TO THE LIMITED EXTENT OF PERMIT-
30 TING THE COURT ALONE TO EXAMINE IN CAMERA REPORTS, RECORDS OR DOCUMENTS,
31 IF ANY, PREPARED BY SUCH PHYSICIAN, PSYCHOLOGIST, NURSE OR POLICE OFFI-
32 CER. IF UPON SUCH EXAMINATION THE COURT DETERMINES THAT SUCH REPORTS,
33 RECORDS OR DOCUMENTS, OR ANY ONE OR PORTION THEREOF, CONTAIN INFORMATION
34 MATERIAL AND RELEVANT TO THE ISSUE OF WHETHER THE WITNESS IS AN ADVERSE
35 WITNESS, THE COURT SHALL DISCLOSE SUCH INFORMATION TO BOTH THE ATTORNEY
36 FOR THE DEFENDANT AND THE DISTRICT ATTORNEY.

37 (B) AT ANY TIME AFTER A MOTION HAS BEEN MADE PURSUANT TO SUBDIVISION
38 ONE OF THIS SECTION, UPON THE DEMAND OF THE OTHER PARTY THE MOVING PARTY
39 MUST FURNISH THE DEMANDING PARTY WITH A COPY OF ANY AND ALL OF SUCH
40 RECORDS, REPORTS OR OTHER DOCUMENTS IN THE POSSESSION OF SUCH OTHER
41 PARTY AND MUST, IN ADDITION, SUPPLY THE COURT WITH A COPY OF ALL SUCH
42 REPORTS, RECORDS OR OTHER DOCUMENTS WHICH ARE THE SUBJECT OF THE DEMAND.
43 AT ANY TIME AFTER A DEMAND HAS BEEN MADE PURSUANT TO THIS PARAGRAPH, THE
44 MOVING PARTY MAY DEMAND THAT PROPERTY OF THE SAME KIND OR CHARACTER IN
45 POSSESSION OF THE PARTY THAT ORIGINALLY MADE SUCH DEMAND BE FURNISHED TO
46 THE MOVING PARTY AND, IF SO FURNISHED, BE SUPPLIED, IN ADDITION, TO THE
47 COURT.

48 8. (A) PRIOR TO THE COMMENCEMENT OF THE HEARING CONDUCTED PURSUANT TO
49 SUBDIVISION FIVE OF THIS SECTION, THE DISTRICT ATTORNEY SHALL, SUBJECT
50 TO A PROTECTIVE ORDER, COMPLY WITH THE PROVISIONS OF SUBDIVISION ONE OF
51 SECTION 240.45 OF THIS CHAPTER AS THEY CONCERN ANY WITNESS WHOM THE
52 DISTRICT ATTORNEY INTENDS TO CALL AT THE HEARING AND THE ADVERSE
53 WITNESS.

54 (B) BEFORE A DEFENDANT CALLS A WITNESS AT SUCH HEARING, HE OR SHE
55 MUST, SUBJECT TO A PROTECTIVE ORDER, COMPLY WITH THE PROVISIONS OF

SUBDIVISION TWO OF SECTION 240.45 OF THIS CHAPTER AS THEY CONCERN ALL THE WITNESSES THE DEFENDANT INTENDS TO CALL AT SUCH HEARING.

9. THE COURT MAY CONSIDER, IN DETERMINING WHETHER THERE ARE SUCH EXTRAORDINARY CIRCUMSTANCES AS WOULD CAUSE THE WITNESS TO SUFFER SEVERE MENTAL OR EMOTIONAL HARM, A FINDING THAT ANY ONE OR MORE OF THE FOLLOWING FACTORS HAVE BEEN ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE:

(A) THE MANNER OF THE COMMISSION OF THE OFFENSE OF WHICH THE DEFENDANT IS ACCUSED WAS PARTICULARLY HEINOUS OR WAS CHARACTERIZED BY AGGRAVATING CIRCUMSTANCES.

(B) THE WITNESS IS PARTICULARLY SUBJECT TO PSYCHOLOGICAL HARM ON ACCOUNT OF A PHYSICAL OR MENTAL CONDITION WHICH EXISTED BEFORE THE ALLEGED COMMISSION OF THE OFFENSE.

(C) AT THE TIME OF THE ALLEGED OFFENSE, THE DEFENDANT OCCUPIED A POSITION OF AUTHORITY WITH RESPECT TO THE WITNESS.

(D) THE OFFENSE OR OFFENSES CHARGED WERE PART OF AN ONGOING COURSE OF CONDUCT COMMITTED BY THE DEFENDANT AGAINST THE WITNESS OVER AN EXTENDED PERIOD OF TIME.

(E) A DEADLY WEAPON OR DANGEROUS INSTRUMENT WAS ALLEGEDLY USED DURING THE COMMISSION OF THE CRIME.

(F) THE DEFENDANT HAS INFLICTED SERIOUS PHYSICAL INJURY UPON THE WITNESS.

(G) A THREAT, EXPRESS OR IMPLIED, OF PHYSICAL VIOLENCE TO THE CHILD WITNESS OR A THIRD PERSON IF THE WITNESS WERE TO REPORT THE INCIDENT TO ANY PERSON OR COMMUNICATE INFORMATION TO OR COOPERATE WITH A COURT, GRAND JURY, PROSECUTOR, POLICE OFFICER OR PEACE OFFICER CONCERNING THE INCIDENT HAS BEEN MADE BY OR ON BEHALF OF THE DEFENDANT.

(H) A WITNESS OTHER THAN THE WITNESS HAS RECEIVED A THREAT OF PHYSICAL VIOLENCE DIRECTED AT SUCH WITNESS OR TO A THIRD PERSON BY OR ON BEHALF OF THE DEFENDANT.

(I) THE DEFENDANT, AT THE TIME OF THE INQUIRY, (I) IS LIVING IN THE SAME HOUSEHOLD WITH THE WITNESS, (II) HAS READY ACCESS TO THE WITNESS OR (III) IS PROVIDING SUBSTANTIAL FINANCIAL SUPPORT FOR THE WITNESS.

(J) ACCORDING TO EXPERT TESTIMONY, THE WITNESS WOULD BE PARTICULARLY SUSCEPTIBLE TO PSYCHOLOGICAL HARM IF REQUIRED TO TESTIFY IN OPEN COURT OR IN THE PHYSICAL PRESENCE OF THE DEFENDANT.

10. IRRESPECTIVE OF WHETHER A MOTION WAS MADE PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE COURT, AT THE REQUEST OF EITHER PARTY OR ON ITS OWN MOTION, MAY DECIDE THAT A WITNESS MAY BE ADVERSE BASED ON ITS OWN OBSERVATIONS THAT A WITNESS WHO HAS BEEN CALLED TO TESTIFY AT A CRIMINAL PROCEEDING IS SUFFERING SEVERE MENTAL OR EMOTIONAL HARM AND THEREFORE IS PHYSICALLY OR MENTALLY UNABLE TO TESTIFY OR TO CONTINUE TO TESTIFY IN OPEN COURT OR IN THE PHYSICAL PRESENCE OF THE DEFENDANT AND THAT THE USE OF LIVE, TWO-WAY CLOSED-CIRCUIT TELEVISION IS NECESSARY TO ENABLE THE WITNESS TO TESTIFY. IF THE COURT SO DECIDES, IT MUST CONDUCT THE SAME HEARING THAT SUBDIVISION FIVE OF THIS SECTION REQUIRES WHEN A MOTION IS MADE PURSUANT TO SUBDIVISION ONE OF THIS SECTION, AND IT MUST MAKE FINDINGS OF FACT PURSUANT TO SUBDIVISIONS NINE AND ELEVEN OF THIS SECTION, BEFORE DETERMINING THAT THE WITNESS IS ADVERSE.

11. IN DECIDING WHETHER A WITNESS IS ADVERSE, THE COURT SHALL MAKE FINDINGS OF FACT WHICH REFLECT THE CAUSAL RELATIONSHIP BETWEEN THE EXISTENCE OF ANY ONE OR MORE OF THE FACTORS SET FORTH IN SUBDIVISION NINE OF THIS SECTION OR OTHER RELEVANT FACTORS WHICH THE COURT FINDS ARE ESTABLISHED AND THE DETERMINATION THAT THE WITNESS IS ADVERSE. IF THE COURT IS SATISFIED THAT THE WITNESS IS ADVERSE AND THAT, UNDER THE FACTS AND CIRCUMSTANCES OF THE PARTICULAR CASE, THE DEFENDANT'S CONSTITUTIONAL RIGHTS TO AN IMPARTIAL JURY OR OF CONFRONTATION WILL NOT BE IMPAIRED, IT

1 MAY ENTER AN ORDER GRANTING THE APPLICATION FOR THE USE OF LIVE, TWO-WAY
2 CLOSED-CIRCUIT TELEVISION.

3 12. WHEN THE COURT HAS DETERMINED THAT A WITNESS IS AN ADVERSE
4 WITNESS, IT SHALL MAKE A SPECIFIC FINDING AS TO WHETHER PLACING THE
5 DEFENDANT AND THE WITNESS IN THE SAME ROOM DURING THE TESTIMONY OF THE
6 WITNESS WILL CONTRIBUTE TO THE LIKELIHOOD THAT THE WITNESS WILL SUFFER
7 SEVERE MENTAL OR EMOTIONAL HARM. IF THE COURT FINDS THAT PLACING THE
8 DEFENDANT AND THE WITNESS IN THE SAME ROOM DURING THE TESTIMONY OF THE
9 WITNESS WILL CONTRIBUTE TO THE LIKELIHOOD THAT THE WITNESS WILL SUFFER
10 SEVERE MENTAL OR EMOTIONAL HARM, THE ORDER ENTERED PURSUANT TO SUBDIVI-
11 SION ELEVEN OF THIS SECTION SHALL DIRECT THAT THE DEFENDANT REMAIN IN
12 THE COURTROOM DURING THE TESTIMONY OF THE ADVERSE WITNESS.

13 S 66.30 CLOSED-CIRCUIT TELEVISION; SPECIAL TESTIMONIAL PROCEDURES.

14 1. WHEN THE COURT HAS ENTERED AN ORDER PURSUANT TO SECTION 66.20 OF
15 THIS ARTICLE, THE TESTIMONY OF THE ADVERSE WITNESS SHALL BE TAKEN IN THE
16 TESTIMONIAL ROOM AND THE IMAGE AND VOICE OF THE ADVERSE WITNESS, AS WELL
17 AS THE IMAGE OF ALL OTHER PERSONS OTHER THAN THE OPERATOR PRESENT IN THE
18 TESTIMONIAL ROOM, SHALL BE TRANSMITTED LIVE BY MEANS OF CLOSED-CIRCUIT
19 TELEVISION TO THE COURTROOM. THE COURTROOM SHALL BE EQUIPPED WITH MONI-
20 TORS SUFFICIENT TO PERMIT THE JUDGE, JURY, DEFENDANT AND ATTORNEYS TO
21 OBSERVE THE DEMEANOR OF THE ADVERSE WITNESS DURING HIS OR HER TESTIMONY.
22 UNLESS THE COURTROOM HAS BEEN CLOSED PURSUANT TO COURT ORDER, THE PUBLIC
23 SHALL ALSO BE PERMITTED TO HEAR THE TESTIMONY AND VIEW THE IMAGE OF THE
24 ADVERSE WITNESS.

25 2. IN ALL INSTANCES, THE IMAGE OF THE JURY SHALL BE SIMULTANEOUSLY
26 TRANSMITTED TO THE ADVERSE WITNESS IN THE TESTIMONIAL ROOM. IF THE COURT
27 ORDER ISSUED PURSUANT TO SECTION 66.20 OF THIS ARTICLE SPECIFIES THAT
28 THE ADVERSE WITNESS SHALL TESTIFY OUTSIDE THE PHYSICAL PRESENCE OF THE
29 DEFENDANT, THE IMAGE OF THE DEFENDANT AND THE IMAGE AND VOICE OF THE
30 PERSON EXAMINING THE ADVERSE WITNESS SHALL ALSO BE SIMULTANEOUSLY TRANS-
31 MITTED TO THE ADVERSE WITNESS IN THE TESTIMONIAL ROOM.

32 3. THE OPERATOR SHALL PLACE HERSELF OR HIMSELF AND THE CLOSED-CIRCUIT
33 TELEVISION EQUIPMENT IN A POSITION THAT PERMITS THE ENTIRE TESTIMONY OF
34 THE ADVERSE WITNESS TO BE TRANSMITTED TO THE COURTROOM BUT LIMITS THE
35 ABILITY OF THE ADVERSE WITNESS TO SEE OR HEAR THE OPERATOR OR THE EQUIP-
36 MENT.

37 4. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE, IF THE COURT IN A
38 PARTICULAR CASE INVOLVING AN ADVERSE WITNESS DETERMINES THAT THERE IS NO
39 LIVE, TWO-WAY CLOSED-CIRCUIT TELEVISION EQUIPMENT AVAILABLE IN THE COURT
40 OR ANOTHER COURT IN THE COUNTY OR WHICH CAN BE TRANSPORTED TO THE COURT
41 FROM ANOTHER COUNTY OR THAT SUCH EQUIPMENT, IF AVAILABLE, IS TECHNOLOG-
42 ICALLY INADEQUATE TO PROTECT THE CONSTITUTIONAL RIGHTS OF THE DEFENDANT,
43 IT SHALL NOT PERMIT THE USE OF THE CLOSED-CIRCUIT TELEVISION PROCEDURES
44 AUTHORIZED BY THIS ARTICLE.

45 5. IF THE ORDER OF THE COURT ENTERED PURSUANT TO SECTION 66.20 OF THIS
46 ARTICLE REQUIRES THAT THE DEFENDANT REMAIN IN THE COURTROOM, THE ATTOR-
47 NEY FOR THE DEFENDANT AND THE DISTRICT ATTORNEY SHALL ALSO REMAIN IN THE
48 COURTROOM UNLESS THE COURT IS SATISFIED THAT THEIR PRESENCE IN THE
49 TESTIMONIAL ROOM WILL NOT IMPEDE FULL AND PRIVATE COMMUNICATION BETWEEN
50 THE DEFENDANT AND HIS OR HER ATTORNEY AND WILL NOT ENCOURAGE THE JURY TO
51 DRAW AN INFERENCE ADVERSE TO THE INTEREST OF THE DEFENDANT.

52 6. UPON REQUEST OF THE DEFENDANT, THE COURT SHALL INSTRUCT THE JURY
53 THAT THEY ARE TO DRAW NO INFERENCE FROM THE USE OF LIVE, TWO-WAY
54 CLOSED-CIRCUIT TELEVISION IN THE EXAMINATION OF THE ADVERSE WITNESS.

55 7. THE ADVERSE WITNESS SHALL TESTIFY UNDER OATH. THE EXAMINATION AND
56 CROSS-EXAMINATION OF THE ADVERSE WITNESS SHALL, IN ALL OTHER RESPECTS,

1 BE CONDUCTED IN THE SAME MANNER AS IF THE ADVERSE WITNESS HAD TESTIFIED
2 IN THE COURTROOM.

3 8. WHEN THE TESTIMONY OF THE ADVERSE WITNESS IS TRANSMITTED FROM THE
4 TESTIMONIAL ROOM INTO THE COURTROOM, THE COURT STENOGRAPHER SHALL RECORD
5 THE TESTIMONY IN THE SAME MANNER AS IF THE ADVERSE WITNESS HAD TESTIFIED
6 IN THE COURTROOM.

7 S 2. This act shall take effect immediately.