

2779

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. SCHIMMINGER, MOLINARO -- Multi-Sponsored by -- M.
of A. DeLMONTE, GALEF, KOON, PHEFFER -- read once and referred to the
Committee on Codes

AN ACT to amend the criminal procedure law, in relation to expanding the
offenses concerning which a child witness may testify by use of
closed-circuit television to include murder therein

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

1 Section 1. Subdivision 1 of section 65.00 of the criminal procedure
2 law, as amended by chapter 320 of the laws of 2006, is amended to read
3 as follows:
4 1. "Child witness" means a person fourteen years old or [less] YOUNGER
5 who is or will be called to testify in a criminal proceeding, other than
6 a grand jury proceeding, concerning an offense defined in [article one
7 hundred thirty] ONE OF THE FOLLOWING PROVISIONS of the penal law [or
8 section 255.25, 255.26 or 255.27 of such law], which is the subject of
9 such criminal proceeding:
10 (A) ARTICLE ONE HUNDRED THIRTY; OR
11 (B) SECTION 255.25, 255.26, 255.27 (INCEST); OR
12 (C) SECTION 125.27 (MURDER IN THE FIRST DEGREE), EXCEPT WHERE THE
13 PEOPLE HAVE FILED WITH THE COURT A NOTICE PURSUANT TO SECTION 250.40 OF
14 THIS CHAPTER; OR
15 (D) SECTION 125.25 (MURDER IN THE SECOND DEGREE).
16 S 2. Subdivision 7 of section 65.20 of the criminal procedure law, as
17 amended by chapter 320 of the laws of 2006 and as renumbered by chapter
18 548 of the laws of 2007, is amended to read as follows:
19 7. Notwithstanding any other provision of law, the child witness who
20 is alleged to be vulnerable may not be compelled to testify at such
21 hearing or to submit to any psychological or psychiatric examination.
22 The failure of the child witness to testify at such hearing shall not be
23 a ground for denying a motion made pursuant to subdivision one of this

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

LBD03799-01-9

1 section. Prior statements made by the child witness relating to any
2 allegations of conduct constituting an offense [defined in article one
3 hundred thirty of the penal law or incest as defined in section 255.25,
4 255.26 or 255.27 of such law] ENUMERATED IN SUBDIVISION ONE OF SECTION
5 65.00 OF THIS ARTICLE or to any allegation of words or conduct consti-
6 tuting an attempt to prevent, impede or deter the child witness from
7 cooperating in the investigation or prosecution of the offense shall be
8 admissible at such hearing, provided, however, that a declaration that a
9 child witness is vulnerable may not be based solely upon such prior
10 statements.

11 S 3. This act shall take effect on the first day of the calendar month
12 next succeeding the thirtieth day after it shall have become a law;
13 provided, however, that the amendments to sections 65.00 and 65.20 of
14 the criminal procedure law, made by sections one and two of this act,
15 shall not affect the expiration and repeal of such sections pursuant to
16 chapter 505 of the laws of 1985, as amended, and shall expire and be
17 deemed repealed therewith.