

STATE OF NEW YORK

9564

IN SENATE

May 16, 2024

Introduced by Sen. MAY -- 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 television for vulnerable sexual assault witnesses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The criminal procedure law is amended by adding a new arti-
2 cle 67 to read as follows:

ARTICLE 67

USE OF CLOSED-CIRCUIT TELEVISION FOR CERTAIN SEXUAL ASSAULT WITNESSES

Section 67.00 Definitions.

7 67.10 Closed-circuit television; general rule; declaration of
8 vulnerability.

9 67.20 Closed-circuit television; procedure for application and
10 grounds for determination.

11 67.30 Closed-circuit television; special testimonial procedure.

§ 67.00 Definitions.

13 As used in this article:

14 1. "Sexual assault witness" means a person fifteen years or older who
15 is or will be called to testify in a criminal proceeding, other than a
16 grand jury proceeding, concerning an offense defined in article one
17 hundred thirty of the penal law or section 255.25, 255.26 or 255.27 of
18 such law which is the subject of such criminal proceeding.

19 2. "Vulnerable sexual assault witness" means a sexual assault witness
20 whom a court has declared to be vulnerable.

21 3. "Testimonial room" means any room, separate and apart from the
22 courtroom, which is furnished comfortably and less formally than a
23 courtroom and from which the testimony of a vulnerable sexual assault
24 witness can be transmitted to the courtroom by means of live, two-way
25 closed-circuit television.

26 4. "Live, two-way closed-circuit television" means a simultaneous
27 transmission, by closed-circuit television, or other electronic means,

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

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1 between the courtroom and the testimonial room in accordance with the
2 provisions of section 67.30 of this article.

3 5. "Operator" means the individual authorized by the court to operate
4 the closed-circuit television equipment used in accordance with the
5 provisions of this article.

6 6. "A position of authority with respect to a witness" means when such
7 person is a parent, guardian or other person responsible for the custody
8 or care of such witness at the relevant time.

9 7. "Support person" means a parent, guardian, spouse, or family member
10 who is not the defendant in the pending criminal action. A support
11 person shall also include a sexual assault witness's therapist, attor-
12 ney, or an advocate associated with programs enrolled in the state's
13 victim advocacy program.

14 § 67.10 Closed-circuit television; general rule; declaration of vulner-
15 ability.

16 1. A sexual assault witness shall be declared vulnerable when the
17 court, in accordance with the provisions of section 67.20 of this arti-
18 cle, determines by clear and convincing evidence that it is likely that
19 such sexual assault witness will suffer serious mental or emotional harm
20 if required to testify at a criminal proceeding without the use of live,
21 two-way closed-circuit television and that the use of such live, two-way
22 closed-circuit television will diminish the likelihood or extent of such
23 harm.

24 2. When the court declares a sexual assault witness to be vulnerable,
25 it shall, except as provided in subdivision four of section 67.30 of
26 this article, authorize the taking of the testimony of the vulnerable
27 sexual assault witness from the testimonial room by means of live, two-
28 way closed-circuit television. Under no circumstances shall the
29 provisions of this article be construed to authorize a closed-circuit
30 television system by which events in the courtroom are not transmitted
31 to the testimonial room during the testimony of the vulnerable sexual
32 assault witness.

33 3. When a court declares a sexual assault witness to be vulnerable, it
34 shall allow such sexual assault witness to have a support person avail-
35 able to them in the testimonial room. If such sexual assault witness
36 does not have a support person readily available to them, the court
37 shall provide a victim advocate for the sexual assault witness.

38 4. Nothing herein shall be construed to preclude the court from exer-
39 cising its power to close the courtroom or from exercising any authority
40 it otherwise may have to protect the well-being of a witness and the
41 rights of the defendant.

42 § 67.20 Closed-circuit television; procedure for application and grounds
43 for determination.

44 1. Prior to the commencement of a criminal proceeding, other than a
45 grand jury proceeding, either party may apply to the court for an order
46 declaring that a sexual assault witness is vulnerable.

47 2. A sexual assault witness should be declared vulnerable when the
48 court, in accordance with the provisions of this section, determines by
49 clear and convincing evidence that the sexual assault witness would
50 suffer serious mental or emotional harm that would substantially impair
51 the sexual assault witness' ability to communicate with the finder of
52 fact without the use of live, two-way closed-circuit television.

53 3. A motion pursuant to subdivision one of this section must be made
54 in writing at least eight days before the commencement of trial or other
55 criminal proceeding upon reasonable notice to the other party and with
56 an opportunity to be heard.

1 4. The motion papers must state the basis for the motion and must
2 contain sworn allegations of fact which, if true, would support a deter-
3 mination by the court that the sexual assault witness is vulnerable.
4 Such allegations may be based upon the personal knowledge of the depo-
5 nent or upon information and belief, provided that, in the latter event,
6 the sources of such information and the grounds for such belief are
7 stated.

8 5. The answering papers may admit or deny any of the alleged facts and
9 may, in addition, contain sworn allegations of fact relevant to the
10 motion, including the rights of the defendant, the need to protect the
11 sexual assault witness and the integrity of the truth-finding function
12 of the trier of fact.

13 6. Unless all material facts alleged in support of the motion made
14 pursuant to subdivision one of this section are conceded, the court
15 shall, in addition to examining the papers and hearing oral argument,
16 conduct an appropriate hearing for the purpose of making findings of
17 fact essential to the determination of the motion. Except as provided in
18 this subdivision, it may subpoena or call and examine witnesses, who
19 must either testify under oath or be permitted to give unsworn testimony
20 pursuant to subdivision two of this section and must authorize the
21 attorneys for the parties to do the same.

22 7. Notwithstanding any other provision of law, the sexual assault
23 witness who is alleged to be vulnerable may not be compelled to testify
24 at such hearing or to submit to any psychological or psychiatric exam-
25 ination. The failure of the sexual assault witness to testify at such
26 hearing shall not be a ground for denying a motion made pursuant to
27 subdivision one of this section. Prior statements made by the sexual
28 assault witness relating to any allegations of conduct constituting an
29 offense defined in article one hundred thirty of the penal law or incest
30 as defined in section 255.25, 255.26 or 255.27 of such law or to any
31 allegation of words or conduct constituting an attempt to prevent,
32 impede or deter the sexual assault witness from cooperating in the
33 investigation or prosecution of the offense shall be admissible at such
34 hearing, provided, however, that a declaration that a sexual assault
35 witness is vulnerable may not be based solely upon such prior state-
36 ments.

37 8. (a) Notwithstanding any of the provisions of article forty-five of
38 the civil practice law and rules, any physician, psychologist, nurse or
39 social worker who has treated a sexual assault witness may testify at a
40 hearing conducted pursuant to subdivision five of this section concern-
41 ing the treatment of such sexual assault witness as such treatment
42 relates to the issue presented at the hearing, provided that any other-
43 wise applicable statutory privileges concerning communications between
44 the sexual assault witness and such physician, psychologist, nurse or
45 social worker in connection with such treatment shall not be deemed
46 waived by such testimony alone, except to the limited extent of permit-
47 ting the court alone to examine in camera reports, records or documents,
48 if any, prepared by such physician, psychologist, nurse or social work-
49 er. If upon such examination the court determines that such reports,
50 records or documents, or any one or portion thereof, contain information
51 material and relevant to the issue of whether the sexual assault witness
52 is a sexual assault witness, the court shall disclose such information
53 to both the attorney for the defendant and the district attorney.

54 (b) At any time after a motion has been made pursuant to subdivision
55 one of this section, upon the demand of the other party the moving party
56 must furnish the demanding party with a copy of any and all of such

1 records, reports or other documents in the possession of such other
2 party and must, in addition, supply the court with a copy of all such
3 reports, records or other documents which are the subject of the demand.
4 At any time after a demand has been made pursuant to this paragraph, the
5 moving party may demand that property of the same kind or character in
6 possession of the party that originally made such demand be furnished to
7 the moving party and, if so furnished, be supplied, in addition, to the
8 court.

9 9. (a) Prior to the commencement of the hearing conducted pursuant to
10 subdivision six of this section, the district attorney shall, subject to
11 a protective order, comply with the provisions of subdivision one of
12 section 245.20 of this chapter as they concern any witness whom the
13 district attorney intends to call at the hearing and the sexual assault
14 witness.

15 (b) Before a defendant calls a witness at such hearing, such defendant
16 must, subject to a protective order, comply with the provisions of
17 subdivision four of section 245.20 of this chapter as they concern all
18 the witnesses the defendant intends to call at such hearing.

19 10. The court may consider, in determining whether there are factors
20 which would cause the sexual assault witness to suffer serious mental or
21 emotional harm, a finding that any one or more of the following circum-
22 stances have been established by clear and convincing evidence:

23 (a) The manner of the commission of the offense of which the defendant
24 is accused was particularly heinous or was characterized by aggravating
25 circumstances.

26 (b) The sexual assault witness is particularly young or otherwise
27 particularly subject to psychological harm on account of a physical or
28 mental condition which existed before the alleged commission of the
29 offense.

30 (c) At the time of the alleged offense, the defendant occupied a posi-
31 tion of authority with respect to the sexual assault witness.

32 (d) The offense or offenses charged were part of an ongoing course of
33 conduct committed by the defendant against the sexual assault witness
34 over an extended period of time.

35 (e) A deadly weapon or dangerous instrument was allegedly used during
36 the commission of the crime.

37 (f) The defendant has inflicted serious physical injury upon the sexu-
38 al assault witness.

39 (g) A threat, express or implied, of physical violence to the sexual
40 assault witness or a third person if the sexual assault witness were to
41 report the incident to any person or communicate information to or coop-
42 erate with a court, grand jury, prosecutor, police officer or peace
43 officer concerning the incident has been made by or on behalf of the
44 defendant.

45 (h) A threat, express or implied, of the incarceration of a parent or
46 guardian of the sexual assault witness, the removal of the sexual
47 assault witness from the family or the dissolution of the family of the
48 sexual assault witness if the sexual assault witness were to report the
49 incident to any person or communicate information to or cooperate with a
50 court, grand jury, prosecutor, police officer or peace officer concern-
51 ing the incident has been made by or on behalf of the defendant.

52 (i) A witness other than the sexual assault witness has received a
53 threat of physical violence directed at such witness or to a third
54 person by or on behalf of the defendant.

55 (j) The defendant, at the time of the inquiry, (i) is living in the
56 same household with the sexual assault witness, (ii) has ready access to

1 the sexual assault witness or (iii) is providing substantial financial
2 support for the sexual assault witness.

3 (k) The sexual assault witness has previously been the victim of an
4 offense defined in article one hundred thirty of the penal law or incest
5 as defined in section 255.25, 255.26 or 255.27 of such law.

6 (l) According to expert testimony, the sexual assault witness would be
7 particularly susceptible to psychological harm if required to testify in
8 open court or in the physical presence of the defendant.

9 11. Irrespective of whether a motion was made pursuant to subdivision
10 one of this section, the court, at the request of either party or on its
11 own motion, may decide that a sexual assault witness may be vulnerable
12 based on its own observations that a sexual assault witness who has been
13 called to testify at a criminal proceeding is suffering severe mental or
14 emotional harm and therefore is physically or mentally unable to testify
15 or to continue to testify in open court or in the physical presence of
16 the defendant and that the use of live, two-way closed-circuit tele-
17 vision is necessary to enable the sexual assault witness to testify. If
18 the court so decides, it must conduct the same hearing that subdivision
19 six of this section requires when a motion is made pursuant to subdivi-
20 sion one of this section, and it must make findings of fact pursuant to
21 subdivision ten of this section, before determining that the sexual
22 assault witness is vulnerable.

23 12. In deciding whether a sexual assault witness is vulnerable, the
24 court shall make findings of fact which reflect the causal relationship
25 between the existence of any one or more of the factors set forth in
26 subdivision ten of this section or other relevant factors which the
27 court finds are established and the determination that the sexual
28 assault witness is vulnerable. If the court is satisfied that the sexual
29 assault witness is vulnerable and that, under the facts and circum-
30 stances of the particular case, the defendant's constitutional rights to
31 an impartial jury or of confrontation will not be impaired, it may enter
32 an order granting the application for the use of live, two-way closed-
33 circuit television.

34 13. When the court has determined that a sexual assault witness is a
35 vulnerable sexual assault witness, it shall make a specific finding as
36 to whether placing the defendant and the sexual assault witness in the
37 same room during the testimony of the sexual assault witness will
38 contribute to the likelihood that the sexual assault witness will suffer
39 severe mental or emotional harm. If the court finds that placing the
40 defendant and the sexual assault witness in the same room during the
41 testimony of the sexual assault witness will contribute to the likeli-
42 hood that the sexual assault witness will suffer severe mental or
43 emotional harm, the order entered pursuant to subdivision twelve of this
44 section shall direct that the defendant remain in the courtroom during
45 the testimony of the vulnerable sexual assault witness.

46 § 67.30 Closed-circuit television; special testimonial procedure.

47 1. When the court has entered an order pursuant to section 67.20 of
48 this article, the testimony of the vulnerable sexual assault witness
49 shall be taken in the testimonial room and the image and voice of the
50 vulnerable sexual assault witness, as well as the image of all other
51 persons other than the operator present in the testimonial room, shall
52 be transmitted live by means of closed-circuit television to the court-
53 room. The courtroom shall be equipped with monitors sufficient to permit
54 the judge, jury, defendant and attorneys to observe the demeanor of the
55 vulnerable sexual assault witness during such witnesses' testimony.
56 Unless the courtroom has been closed pursuant to court order, the public

1 shall also be permitted to hear the testimony and view the image of the
2 vulnerable sexual assault witness.

3 2. In all instances, the image of the jury shall be simultaneously
4 transmitted to the vulnerable sexual assault witness in the testimonial
5 room. If the court order issued pursuant to section 67.20 of this arti-
6 cle specifies that the vulnerable sexual assault witness shall testify
7 outside the physical presence of the defendant, the image of the defend-
8 ant and the image and voice of the person examining the vulnerable sexu-
9 al assault witness shall also be simultaneously transmitted to the
10 vulnerable sexual assault witness in the testimonial room.

11 3. The operator shall place such operator and the closed-circuit tele-
12 vision equipment in a position that permits the entire testimony of the
13 vulnerable sexual assault witness to be transmitted to the courtroom but
14 limits the ability of the vulnerable sexual assault witness to see or
15 hear the operator or the equipment.

16 4. Notwithstanding any provision of this article, if the court in a
17 particular case involving a vulnerable sexual assault witness determines
18 that there is no live, two-way closed-circuit television equipment
19 available in the court or another court in the county or which can be
20 transported to the court from another county or that such equipment, if
21 available, is technologically inadequate to protect the constitutional
22 rights of the defendant, it shall not permit the use of the closed-cir-
23 cuit television procedures authorized by this article.

24 5. If the order of the court entered pursuant to section 67.20 of this
25 article requires that the defendant remain in the courtroom, the attor-
26 ney for the defendant and the district attorney shall also remain in the
27 courtroom unless the court is satisfied that their presence in the
28 testimonial room will not impede full and private communication between
29 the defendant and such defendant's attorney and will not encourage the
30 jury to draw an inference adverse to the interest of the defendant.

31 6. Upon request of the defendant, the court shall instruct the jury
32 that they are to draw no inference from the use of live, two-way closed-
33 circuit television in the examination of the vulnerable sexual assault
34 witness.

35 7. The vulnerable sexual assault witness shall testify under oath
36 except as specified in subdivision two of section 60.20 of this title.
37 The examination and cross-examination of the vulnerable sexual assault
38 witness shall, in all other respects, be conducted in the same manner as
39 if the vulnerable sexual assault witness had testified in the courtroom.

40 8. When the testimony of the vulnerable sexual assault witness is
41 transmitted from the testimonial room into the courtroom, the court
42 stenographer shall record the testimony in the same manner as if the
43 vulnerable sexual assault witness had testified in the courtroom.

44 § 2. This act shall take effect immediately.