

SENATE No. 2525

The Commonwealth of Massachusetts

SENATE, OCTOBER 10, 1985.

The committee on Ways and Means, to whom was committed the Senate Bill authorizing the videotaping of certain testimony (Senate, No. 2358), reports recommending that the same ought to pass, with an amendment substituting a new draft with the same title (Senate, No. 2525).

For the Committee

FREDERICK E. BERRY

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-five.

AN ACT AUTHORIZING THE VIDEOTAPING OF CERTAIN TESTIMONY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Court finds that there are a signifi-
2 cant and growing number of criminal cases in the Com-
3 monwealth's courts involving sexual assaults and other related
4 sexual offenses in which children are alleged victims or
5 witnesses. Experience and studies have shown that traditional
6 methods of eliciting testimony from adult witnesses in
7 criminal prosecutions do not adequately protect the health and
8 well-being of certain child victims or witnesses when they are
9 called upon to testify: requiring that a child victim of or
10 witness to an alleged sexual offense recount the details of the
11 offense in an official, formal and public courtroom setting, or
12 in the presence of the accused, or both, often results in serious
13 and long-lasting psychological or emotional trauma to the
14 child; in some cases these factors may also cause the child
15 to be unable to give accurate testimony or to testify at all.
16 Moreover, the General Court believes that the actual or poten-
17 tial injuries and disabilities experienced by certain child
18 witnesses in connection with testifying in sexual offense cases
19 have precluded or impeded the ability of the Commonwealth
20 to try a number of these cases which have warranted
21 prosecution.

22 It is the policy of the Commonwealth to protect the physical,
23 mental and emotional health and the best interests of every
24 child residing or present therein; it is also the Com-
25 monwealth's policy and obligation to guarantee all criminal
26 defendants the full protection of their rights under the Con-
27 stitution of the United States and the Massachusetts Constitu-
28 tion. In light of these policies, it is the purpose of this Act to
29 establish procedures that will enable courts to provide, on a
30 case-by-case basis, when necessary, alternative means for tak-
31 ing the testimony of child witnesses in connection with the pro-

32 secution of certain sexual offenses, while continuing to pro-
33 tect defendants' constitutional rights of confrontation and the
34 right to an open trial by jury.

1 SECTION 2. Chapter 278 of the General Laws is hereby
2 amended by adding after Section 16C the following sections: —

3 *Section 16D.* For the purposes of section sixteen E, the follow-
4 ing words shall have the following meanings:

5 "Child witness" — a person who is under the age of fifteen
6 years and who is alleged to have been a victim of, or a witness
7 to an alleged violation of section thirteen B, thirteen F, thir-
8 teen H, twenty-two, twenty-two A, twenty-three, twenty-four
9 or twenty-four B of chapter two hundred sixty-five, or section
10 two, three, four, four A, four B, five, six, seven, eight, twelve,
11 thirteen, sixteen, seventeen, twenty-four, twenty-eight, twenty-
12 nine, twenty-nine A, twenty-nine B, thirty-three, thirty-four or
13 thirty-four A of chapter two hundred seventy-two.

14 "Simultaneous electronic means" — Any device capable of
15 projecting a live visual and aural transmission such as closed-
16 circuit television.

17 *Section 16E.* (1) At any time after the issuance of a complaint
18 or indictment alleging an offense punished by any of the
19 statutes listed in section sixteen D, the court on its own mo-
20 tion or on motion of the proponent of a child witness, and after
21 a hearing, may order the use of a suitable alternative pro-
22 cedure for taking the testimony of the child witness, in pro-
23 ceedings pursuant to said complaint or indictment, provided
24 that the court finds by a preponderance of the evidence at the
25 time of the order that the child witness is likely to suffer
26 psychological or emotional trauma as a result of testifying in
27 open court, as a result of testifying in the presence of the defen-
28 dant, or as a result of both of testifying in open court and of
29 testifying in the presence of the defendant. If the court orders
30 the use of a suitable alternative for taking the testimony of
31 a child witness pursuant to this section, the court shall make
32 and enter specific findings upon the record describing with
33 particularity the reasons for such order.

34 (2) An order issued under paragraph (1) shall provide that
35 the testimony of the child witness be recorded on videotape
36 or film to be shown in court at a later time or that the testimony

37 be transmitted to the courtroom by simultaneous electronic
38 means.

39 (3) Testimony taken by an alternative procedure pursuant
40 to an order issued under paragraph (1) shall be taken in the
41 presence of the judge, the prosecutor, defense counsel and such
42 other persons as the court may allow. The defendant shall also
43 have the right to be present unless the court's order under
44 paragraph (1) is based wholly or in part upon a finding that
45 the child witness is likely to suffer trauma as a result of testi-
46 fying in the presence of the defendant. If the order is based
47 on such a finding, the testimony of the child witness shall not
48 be taken in the presence of the defendant except as provided
49 in paragraph (4).

50 (4) Testimony taken by an alternative procedure pursuant
51 to an order issued under paragraph (1) shall be taken in a
52 suitable setting outside the courtroom, except that an order
53 based only on a finding that the child witness is likely to suf-
54 fer trauma as a result of testifying in the presence of the defen-
55 dant may provide that the testimony be taken in a suitable set-
56 ting inside the courtroom in a manner so that the child witness
57 is not able to see or hear the defendant.

58 (5) When testimony is taken by an alternative procedure
59 pursuant to an order issued under paragraph (1), counsel shall
60 be given the opportunity to examine or cross-examine the child
61 witness to the same extent as would be permitted at trial, and
62 the defendant shall be able to see and hear the child witness
63 and to have constant private communication with defense
64 counsel.

65 (6) The film, videotape or transmission of testimony taken
66 by an alternative procedure pursuant to an order issued under
67 paragraph (1) shall be admissible as substantive evidence to
68 the same extent as and in lieu of live testimony by the child
69 witness in any proceeding for which the order is issued or in
70 any related criminal proceeding against the same defendant
71 when consistent with the interests of justice, provided that
72 such an order is entered or re-entered based on current find-
73 ings at the time when or within a reasonable time before the
74 film, videotape or transmission is offered into evidence. Subse-
75 quent testimony of a child witness in any such proceeding shall
76 also be taken by a suitable alternative procedure pursuant to
77 this section.

78 (7) Whenever pursuant to an order issued under paragraph
79 (1), testimony is recorded on videotape or film or is transmit-
80 ted to the courtroom by simultaneous electronic means, the
81 court shall ensure that:

82 (a) The recording or transmitting equipment is capable of
83 making an accurate recording or transmission and is operated
84 by a competent operator;

85 (b) The recording or transmission is in color and the witness
86 is visible at all times;

87 (c) Every voice on the recording or transmission is audi-
88 ble and identified;

89 (d) The courtroom is equipped with monitors which permit
90 the jury and others present in the courtroom to see and hear
91 the recording or transmission;

92 (e) In the case of recorded testimony, the recording is ac-
93 curate and has not been altered;

94 (f) In the case of recorded testimony, each party is afford-
95 ed the opportunity to view the recording before it is shown in
96 the courtroom.

97 (8) Nothing in this section shall be construed to prohibit the
98 court from using other appropriate means, consistent with this
99 section and other laws and with the defendant's rights, to pro-
100 tect a child witness from trauma during a court proceeding.

101 (9) If any of the provisions of this section or application
102 thereof to any person or circumstances is held invalid, such
103 invalidity shall not affect other provisions or applications of
104 this section which can be given effect without the invalid pro-
105 visions or applications, and to this end the provisions of this
106 section are declared severable.

