

NEW SECTION. Sec. 2. In recognition of the importance of the process of defining district purposes and systematically working to achieve the desired results using research and practices that work, the legislature creates the all kids can learn incentive grants.

NEW SECTION. Sec. 3. The superintendent of public instruction may grant funds to school districts for schools to plan and implement outcome-based education programs. Such grants shall carry out the purposes of the basic education act. Grants shall be of sufficient size and scope, shall be granted for a five-year period, shall be subject to appropriations, and shall conform to the principles underlying the outcomes-driven education process.

NEW SECTION. Sec. 4. Sections 2 and 3 of this act are each added to Title 28A RCW.

Passed the House March 3, 1990.

Passed the Senate February 28, 1990.

Approved by the Governor March 23, 1990.

Filed in Office of Secretary of State March 23, 1990.

CHAPTER 149

[House Bill No. 2253]

MINIMUM WAGE—STUDENTS AT STATE COLLEGES AND UNIVERSITIES

AN ACT Relating to the state minimum wage for students at institutions of higher education; and repealing RCW 49.46.025.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Section 5, chapter 18, Laws of 1961 ex. sess. and RCW 49.46.025 are each repealed.

Passed the House February 6, 1990.

Passed the Senate March 1, 1990.

Approved by the Governor March 23, 1990.

Filed in Office of Secretary of State March 23, 1990.

CHAPTER 150

[Substitute House Bill No. 2809]

CHILD WITNESSES—CLOSED-CIRCUIT TELEVISION TESTIMONY

AN ACT Relating to closed-circuit transmission of testimony of child witnesses in sexual and physical abuse cases; adding a new section to chapter 9A.44 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature declares that protection of child witnesses in sexual assault and physical abuse cases is a substantial and compelling interest of the state. Sexual and physical abuse cases are some of the most difficult cases to prosecute, in part because frequently no

witnesses exist except the child victim. When abuse is prosecuted, a child victim may suffer serious emotional and mental trauma from exposure to the abuser or from testifying in open court. In rare cases, the child is so traumatized that the child is unable to testify at trial and is unavailable as a witness or the child's ability to communicate in front of the jury or defendant is so reduced that the truth-seeking function of trial is impaired. In other rare cases, the child is able to proceed to trial but suffers long-lasting trauma as a result of testifying in court or in front of the defendant. The creation of procedural devices designed to enhance the truth-seeking process and to shield child victims from the trauma of exposure to the abuser and the courtroom is a compelling state interest.

**NEW SECTION.** Sec. 2. A new section is added to chapter 9A.44 RCW to read as follows:

(1) On motion of the prosecuting attorney in a criminal proceeding, the court may order that a child under the age of ten may testify in a room outside the presence of the defendant and the jury while one-way closed circuit television equipment simultaneously projects the child's testimony into another room so the defendant and the jury can watch and hear the child testify if:

(a) The testimony will describe an act or attempted act of sexual contact performed with or on the child by another or describe an act or attempted act of physical abuse against the child by another;

(b) The testimony is taken during the criminal proceeding;

(c) The court finds by substantial evidence, in a hearing conducted outside the presence of the jury, that requiring the child to testify in the presence of the defendant will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at the trial. If the defendant is excluded from the presence of the child, the jury must also be excluded;

(d) As provided in subsection (1) (a) and (b) of this section, the court may allow a child to testify in the presence of the defendant but outside the presence of the jury, via closed circuit television, if the court finds, upon motion and hearing outside the presence of the jury, that the child will suffer serious emotional distress that will prevent the child from reasonably communicating at the trial in front of the jury, or, that although the child may be able to reasonably communicate at trial in front of the jury, the child will suffer serious emotional or mental distress from testifying in front of the jury. If the child is able to communicate in front of the defendant but not the jury the defendant will remain in the room with the child while the jury is excluded from the room;

(e) The court finds that the prosecutor has made all reasonable efforts to prepare the child for testifying, including informing the child or the child's parent or guardian about community counseling services, giving

court tours, and explaining the trial process. If the prosecutor fails to demonstrate that preparations were implemented or the prosecutor in good faith attempted to implement them, the court shall deny the motion;

(f) The court balances the strength of the state's case without the testimony of the child against the defendant's constitutional rights and the degree of infringement of the closed-circuit television procedure on those rights;

(g) The court finds that no less restrictive method of obtaining the testimony exists that can adequately protect the child from the serious emotional or mental distress;

(h) When the court allows the child to testify outside the presence of the defendant, the defendant can communicate constantly with the defense attorney by electronic transmission and be granted reasonable court recesses during the child's testimony for person-to-person consultation with the defense attorney;

(i) The court can communicate with the attorneys by an audio system so that the court can rule on objections and otherwise control the proceedings;

(j) All parties in the room with the child are on camera and can be viewed by all other parties. If viewing all participants is not possible, the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child;

(k) The court finds that the television equipment is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment; and

(l) The court imposes reasonable guidelines upon the parties for conducting the filming to avoid trauma to the child or abuse of the procedure for tactical advantage.

The prosecutor, defense attorney, and a neutral and trained victim's advocate, if any, shall always be in the room where the child is testifying. The court in the court's discretion depending on the circumstances and whether the jury or defendant or both are excluded from the room where the child is testifying, may remain or may not remain in the room with the child.

(2) During the hearing conducted under subsection (1) of this section to determine whether the child may testify outside the presence of the defendant and/or the jury, the court may conduct the observation and examination of the child outside the presence of the defendant if:

(a) The prosecutor alleges and the court concurs that the child will be unable to testify in front of the defendant or will suffer severe emotional or mental distress if forced to testify in front of the defendant;

(b) The defendant can observe and hear the child by closed-circuit television;

(c) The defendant can communicate constantly with the defense attorney during the examination of the child by electronic transmission and be granted reasonable court recesses during the child's examination for person to person consultation with the defense attorney; and

(d) The court finds the closed-circuit television is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment. Whenever possible, all the parties in the room with the child shall be on camera so that the viewers can see all the parties. If viewing all participants is not possible, then the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child.

(3) The court shall make particularized findings on the record articulating the factors upon which the court based its decision to allow the child to testify via closed-circuit television pursuant to this section. The factors the court may consider include, but are not limited to, a consideration of the child's age, physical health, emotional stability, expressions by the child of fear of testifying in open court or in front of the defendant, the relationship of the defendant to the child, and the court's observations of the child's inability to reasonably communicate in front of the defendant or in open court. The court's findings shall identify the impact the factors have upon the child's ability to testify in front of the jury or the defendant or both and the specific nature of the emotional or mental trauma the child would suffer. The court shall determine whether the source of the trauma is the presence of the defendant, the jury, or both, and shall limit the use of the closed-circuit television accordingly.

(4) This section does not apply if the defendant is an attorney pro se unless the defendant has a court-appointed attorney assisting the defendant in the defense.

(5) This section may not preclude the presence of both the victim and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

(6) The Washington supreme court may adopt rules of procedure regarding closed-circuit television procedures.

(7) All recorded tapes of testimony produced by closed-circuit television equipment shall be subject to any protective order of the court for the purpose of protecting the privacy of the child.

(8) Nothing in this section creates a right of the child witness to a closed-circuit television procedure in lieu of testifying in open court.

(9) The state shall bear the costs of the closed-circuit television procedure.

**NEW SECTION.** Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 3, 1990.

Passed the Senate March 1, 1990.

Approved by the Governor March 23, 1990.

Filed in Office of Secretary of State March 23, 1990.

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## CHAPTER 151

[Substitute House Bill No. 2385]

### CHEMICAL DEPENDENCY TREATMENT

AN ACT Relating to clarification of existing laws regarding chemical dependency; amending RCW 70.96A.150, 70.96A.140, 74.09.790, 70.96A.180, 70.96A.110, 70.96A.120, and 70.96A.320; reenacting and amending RCW 70.96A.020 and 70.96A.090; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 15, chapter 122, Laws of 1972 ex. sess. as amended by section 1, chapter 162, Laws of 1989 and RCW 70.96A.150 are each amended to read as follows:

(1) The registration and other records of treatment (~~(facilities))~~ programs shall remain confidential. Records may be disclosed (a) in accordance with the prior written consent of the patient with respect to whom such record is maintained, (b) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, (c) to comply with state laws mandating the reporting of suspected child abuse or neglect, or (d) when a patient commits a crime on program premises or against program personnel, or threatens to do so.

(2) Notwithstanding subsection (1) of this section, the secretary may receive information from patients' records for purposes of research into the causes and treatment of alcoholism and other drug addiction, verification of eligibility and appropriateness of reimbursement, and the evaluation of alcoholism and other drug treatment programs. Information under this subsection shall not be published in a way that discloses patients' names or otherwise discloses their identities.

(3) Nothing contained in this chapter relieves a person or firm from the requirements under federal regulations for the confidentiality of alcohol and drug abuse patient records. Obligations imposed on drug and alcohol treatment programs and protections afforded alcohol and drug abuse patients under federal regulations apply to all programs approved by the department under RCW 70.96A.090.