



Sample Cases: Securing Testimonial Accommodations for Crime Victims and Non-Victim Witnesses¹

❖ Testimony via Live Video Conference or Closed Circuit TV (CCTV)

Child-witnesses

- *Maryland v. Craig*, 497 U.S. 836 (1990) (concluding that the Confrontation Clause does not prohibit use of one-way CCTV at trial where the trial court makes a case-specific finding that the procedure is necessary to protect the child-victim from trauma caused by testifying in defendant's presence).
- *Hicks-Bey v. United States*, 649 A.2d 569 (D.C. 1994) (concluding that the trial court has inherent authority to allow the child-victim to testify via CCTV in the absence of an authorizing statute, and finding the procedure used in this case satisfied the *Craig* standard).
- *In re Robert D.*, 530 S.E.2d 137 (S.C. Ct. App. 2000) (concluding that the trial court did not violate the Confrontation Clause by allowing a child-victim who suffers a mental and physical impairment to testify by CCTV), *overruled on other ground by State v. Liverman*, 727 S.E.2d 422 (S.C. 2012).
- *Lomholt v. Iowa*, 327 F.3d 748, 754-55 (8th Cir. 2003) (concluding that the state court's findings to support the use of CCTV for the child-victim satisfied the *Craig* standard and observing, *inter alia*, that *Craig* "requires a showing of trauma, not necessarily a showing of fear" of defendant).
- *Roadcap v. Com.*, 653 S.E.2d 620 (Va. Ct. App. 2007) (concluding that since *Craig* allowed one-way CCTV where the child-victim could not see anyone in the courtroom, two-way CCTV is also constitutional when the witness cannot see defendant because the courtroom camera was not trained on him).
- *People v. Lujan*, 150 Cal. Rptr. 3d 727 (Cal. Ct. App. 2012), *as modified on denial of reh'g* (2013) (concluding that *Craig* applies to non-victim child witnesses, and holding that the trial court has inherent authority to allow the use of two-way CCTV even though state statute only addresses CCTV testimony for child-victims).

For more resources to help protect crime victims' rights, visit www.ncvli.org to access the *Victim Law Library*



and additional tools in the Rights Enforcement Toolkit.



¹ This handout focuses on testimonial accommodations; other types of courtroom accommodations may be available to address the needs of non-testifying victims, *e.g.*, ordering live broadcast of courtroom proceedings into another room to allow victims to exercise their rights to be present in situations where their physical presence in the courtroom is not feasible or possible. Also, the sample cases identified in this handout should not limit the consideration of other testimonial accommodations that may be available through your jurisdiction's victims' rights statutes (such as the right to protection), other statutes, or the trial court's inherent authority to implement alternate procedures for witness testimony. Additional types of testimonial accommodations may include, among others, permitting the use of screens and allowing the victim to testify in a less intimidating environment. Please contact NCVLI, www.ncvli.org, for technical assistance with seeking any of these accommodations.

Adult-witnesses

- *People v. Burton*, 556 N.W.2d 201 (Mich. Ct. App. 1996) (holding that the trial court erred in relying on a state statute that allows adult witnesses with a “developmental disability” to testify via CCTV because the victim, while mentally and psychologically challenged, was not developmentally disabled within the meaning of the statute, but affirming the use of the CCTV on the alternative ground that it satisfied the *Craig* standard).
- *Horn v. Quarterman*, 508 F.3d 306 (5th Cir. 2007) (concluding, on review of a habeas petition, that it was not an unreasonable application of federal law for the state court to extend *Craig* to allow an ill, non-victim adult witness to testify via two-way CCTV).
- *Bush v. State*, 193 P.3d 203 (Wyo. 2008) (concluding that the trial court’s decision to allow an ill, non-victim adult witness to testify via live video conference did not violate the Confrontation Clause).
- *People v. Wrotten*, 923 N.E.2d 1099, 1103 (N.Y. 2009) (concluding that the trial court did not err in allowing an elderly, ill victim who lived out of state to testify via two-way video conference pursuant to the court’s inherent powers, and observing that “[n]owhere does *Craig* suggest that it is limited to child witnesses or that a ‘public policy’ basis for finding necessity must be codified”).
- *State v. Johnson*, 958 N.E.2d 977 (Ohio Ct. App. 2011) (applying *Craig* and concluding that the trial court has authority to allow intimidated adult non-victim witnesses to testify via two-way CCTV).
- *State v. Seelig*, 738 S.E.2d 427 (N.C. Ct. App. 2013) (concluding that defendant’s confrontation rights were not violated by allowing an out-of-state non-victim witness who suffered from panic attacks to testify via two-way closed circuit web broadcast).

❖ Presence of a Support Person

- *State v. Torres*, 761 A.2d 766 (Conn. Ct. App. 2000) (concluding that the trial court neither violated defendant’s right to confrontation nor impermissibly bolstered a witness’s testimony when it allowed an adult victim to testify while her fiancé sat outside the witness box next to her).
- *State v. Letendre*, 13 A.3d 249 (N.H. 2011) (concluding that the trial court did not abuse its discretion when it allowed the guardian ad litem to sit beside the child-victim during her testimony).
- *State v. Rochelle*, 298 P.3d 293 (Kan. 2013) (finding that the trial court did not abuse its discretion in allowing the child-victim’s counselor to sit next to her during her testimony).
- *U.S. v. Brown*, 72 M.J. 359 (C.A.A.F. 2013) (concluding that the military judge did not abuse his discretion in allowing a victim advocate to sit next to the 17-year old victim during her testimony).

For technical assistance, submit an online technical assistance request form at www.ncvli.org.



❖ Presence of a Comfort/Facility/Therapy Dog

- *People v. Spence*, 151 Cal. Rptr. 3d 374 (Cal. Ct. App. 2012) (concluding that the trial court acted appropriately in allowing a child-victim to testify with the assistance of a dog and while accompanied by a support person).
- *People v. Tohom*, 109 A.D.3d 253 (N.Y. App. Div. 2013) (concluding that the trial court neither exceeded its authority nor violated defendant's rights to confrontation and a fair trial when it permitted a therapeutic comfort dog to accompany the child-victim during her testimony).
- *State v. Dye*, 309 P.3d 1192 (Wash. 2013) (concluding that the trial court did not abuse its discretion by allowing a facility dog to accompany the adult, developmentally disabled victim during his trial testimony).

❖ Presence of a Comfort Object

- *State v. Marquez*, 951 P.2d 1070 (N.M. Ct. App. 1997) (concluding that the trial court did not abuse its discretion in allowing a child-victim to testify while holding a teddy bear and observing that while some victims may not need to use comfort items, they can provide security for others).
- *State v. Hakimi*, 98 P.3d 809 (Wash. Ct. App. 2004) (concluding that the trial court did not abuse its discretion by allowing each of the child-victims to hold a doll while testifying).

❖ Use of a Disguise

- *United States v. de Jesus-Casteneda*, 705 F.3d 1117 (9th Cir. 2013) (concluding that the trial court's decision to allow a confidential informant witness to testify at trial while wearing a wig and a fake mustache did not violate the Confrontation Clause where allowing the disguise was necessary to protect the witness's safety and reliability of the witness's testimony was otherwise assured).

For sample pleadings or a searchable database of cases, join the National Alliance of Victims' Rights Attorneys at www.navra.org.



This project was supported by Grant No. 2012-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.