

**ADMISSABILITY OF VIDEOTAPED INTERVIEWS/STATEMENTS  
IN CRIMINAL CHILD ABUSE PROCEEDINGS  
(updated September 2010)**

This compilation contains legislation, session laws, and codified statutes. All statutes, laws, and bills listed in this compilation have been signed by the pertinent governor and enacted into law. This report was compiled using State Net, and Lexis Search Services. This compilation is up-to-date as of the month it was created. However, please note we recommend checking both case law and current legislation for any possible modifications to the statutes listed below.

Please also note that the National Center for Prosecution of Child Abuse has separate statutory compilations on the use of closed circuit television in criminal child abuse proceedings as well as hearsay exceptions affecting children’s out of court statements. Please refer to these also for a comprehensive understanding affecting the laws regulating child victims.

ALABAMA..... 4  
    ALA. CODE § 15-25-2 (2010). Videotaped deposition..... 4  
    ALA. CODE § 15-25-31 (2010). Out-of-court statements; admissibility..... 5  
    ALA. CODE § 15-25-32 (2010). Out-of-court statements; requirements for admissibility..... 5  
    ALA. CODE § 15-25-35 (2010). Notice of use of statement..... 6  
    ALA. CODE § 15-25-37 (2010). Determination of particularized guarantees of trustworthiness..... 6  
ALASKA..... 7  
    ALASKA STAT. § 47.17.033 (2010). Investigations and Interviews..... 7  
ARIZONA..... 9  
    ARIZ. REV. STAT. ANN. § 13-4251 (2010). Applicability; definition..... 9  
    ARIZ. REV. STAT. ANN. § 13-4252 (2010). Recording of testimony..... 9  
ARKANSAS..... 10  
    ARK. CODE ANN. § 16-44-203 (2010). Videotaped deposition of alleged victim under 17 years of age in sexual offense prosecution..... 10  
CALIFORNIA..... 10  
    CAL. PENAL CODE § 1346 (2009). Videotaping of victim’s preliminary hearing testimony; Admission of videotape at trial..... 10  
COLORADO..... 11  
    COLO. REV. STAT. ANN § 18-3-413 (2010). Video tape depositions - children - victims of sexual offenses..... 11  
    COLO. REV. STAT. ANN § 18-6-401.3 (2010). Video tape depositions - children - victims of child abuse..... 12  
    COLO. REV. STAT. ANN § 19-3-308.5 (2010). Recorded interviews of child..... 13  
HAWAII..... 14  
    HAW. REV. STAT. ANN § 587-43 (2008). Recording a statement or the testimony of a child. [Repealed effective September 1, 2010.]..... 14  
INDIANA..... 14  
    IND. CODE ANN. § 35-37-4-6 (2010). Admissibility of statement or videotape of a child of fourteen or under in certain criminal actions..... 14  
    IND. CODE ANN. § 31-34-13-2 (2010). Admissibility of statement or videotape..... 18  
    IND. CODE ANN. § 31-34-13-4 (2010). Notice of intention to introduce statement or videotape and contents..... 19  
    IND. CODE ANN. § 31-35-4-2 (2010). Admissibility..... 19  
    IND. CODE ANN. § 31-35-4-3 (2010). Conditions for admissibility..... 20  
IOWA..... 20

IOWA CODE § 915.38 (2010). Televised, videotaped, and recorded evidence -- limited court testimony -- minors and others.....	20
KANSAS.....	21
KAN. STAT. ANN. § 22-2902 (2009). Preliminary examination.....	22
KAN. STAT. ANN. § 22-3434 (2009). Videotape of testimony of child victim admissible in certain cases; limitations; standard of proof; objections, restrictions.....	22
KENTUCKY.....	24
KY. REV. STAT. ANN. § 421.350 (2010). Testimony of child allegedly victim of illegal sexual activity.....	24
LOUISIANA.....	25
LA. REV. STAT. ANN. § 15:440.2 (2010). Authorization.....	25
LA. REV. STAT. ANN. § 15:440.3 (2010). Videotape; admissibility; exception to hearsay rule.....	26
LA. REV. STAT. ANN. § 15:440.4 (2010). Method of recording videotape; competency.....	26
LA. REV. STAT. ANN. § 15:440.5 (2010). Admissibility of videotaped statements; discovery by defendant.....	27
LA. REV. STAT. ANN. § 15:440.6 (2010). Confidentiality.....	28
MICHIGAN.....	28
MICH. COMP. LAWS SERV. § 600.2163a (2010). Definitions; prosecutions and proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; special arrangements to protect welfare of witness; videotape deposition; section additional to other protections or procedures; violation as misdemeanor; penalty.....	28
MICH. COMP. LAWS SERV. § 712A.17b (2010). Definitions; proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; shielding of witness; videorecorded deposition; special arrangements to protect welfare of witness; section additional to other protections or procedures.....	32
MISSOURI.....	35
MO. REV. STAT. § 491.699 (2010). Juvenile court hearings--court may order video recording of alleged child victim, when--procedure--cross-examination--counsel appointed for perpetrator, when.....	35
MO. REV. STAT. § 492.304 (2010). Visual and aural recordings of child under fourteen admissible, when.....	36
MINNESOTA.....	37
MINN. STAT. § 634.35 (2009). Videotapes of child victims; conditions of disclosure.....	37
MISSISSIPPI.....	38
MISS. CODE ANN. § 13-1-401 (2010). Applicability of special evidentiary provisions.....	38
MISS. CODE ANN. § 13-1-407 (2010). Use of child's videotaped testimony; protective orders; destruction of videotape.....	38
MISSOURI.....	40
MO. REV. STAT. § 491.680 (2010). Court may order video recording of alleged child victim, when -- procedure -- transcript -- exclusion -- of defendant from proceedings, opportunity to review -- cross -- examination.....	40
MO. REV. STAT. § 491.696 (2010). Child defined -- videotaped testimony for juvenile court hearings ...	41
MO. REV. STAT. § 491.699 (2010). Juvenile court hearings -- court may order video recording of alleged child victim, when -- procedure -- cross-examination -- counsel appointed for perpetrator, when.....	41
NEW MEXICO.....	42
N.M. STAT. § 30-9-17 (2010). Videotaped depositions of alleged victims who are under sixteen-years of age; procedure; use in lieu of direct testimony.....	42
NEW YORK.....	43
N.Y. CRIM. PROC. LAW § 190.25 (2010). Grand jury; proceedings and operation in general.....	43
N.Y. CRIM. PROC. LAW § 190.30 (2010). Grand jury; rules of evidence.....	45
N.Y. CRIM. PROC. LAW § 190.32 (2010). Videotaped examination; definitions, application, order and procedure.....	48
NORTH DAKOTA.....	50
N.D. CENT. CODE § 31-04-04.1 (2010). Videotaped statement of child sexual offense victim -- Criteria for admission as evidence.....	50
OHIO.....	51

OHIO REV. CODE ANN. § 2152.81 (2010). Deposition of child victim; videotaping; testimony taken outside courtroom and televised into it or replayed in courtroom. ....	51
OHIO REV. CODE ANN. § 2945.481 (2010). Deposition of child victim; videotaping; testimony taken outside courtroom and televised into it or replayed in courtroom. ....	57
OHIO REV. CODE ANN. § 2945.49 (2010). Testimony of deceased or absent witness; videotaped preliminary hearing testimony of child victim.....	61
OKLAHOMA.....	64
OKLA. STAT. ANN. tit. 10, § 7003-4.2 (2010). Admissibility of prerecorded statements of child age 12 or under who is victim of abuse. ....	64
PENNSYLVANIA .....	65
42 PA. CONS. STAT. § 5985.1 (2010). Admissibility of certain statements. ....	65
PUERTO RICO .....	66
P.R. LAWS ANN. TIT. 34, § 131.2 (2009). Recording of deposition on video tape.....	66
RHODE ISLAND.....	68
R.I. GEN. LAWS § 11-37-13.1 (2010). Recording -- Grand jury testimony -- Child assault.....	68
R.I. GEN. LAWS § 11-37-13.2 (2010). Alternative methods of victim testimony -- Child victim. ....	69
R.I. GEN. LAWS § 14-1-68 (2010). Child witness. ....	70
SOUTH CAROLINA .....	71
S.C. CODE ANN. § 17-23-175 (2009). Admissibility of out-of-court statement of child under twelve; determination of trustworthiness; notice to adverse party. ....	71
SOUTH DAKOTA.....	73
S.D. CODIFIED LAWS § 23A-12-9 (2010). Videotape of young sex crime victim’s testimony at preliminary hearing or deposition – Use at trial .....	73
S.D. CODIFIED LAWS § 26-8A-16 (2010). Photographs, videotapes, and images of trauma – Collection, maintenance, and destruction.....	73
TENNESSEE.....	74
TENN. CODE ANN. § 24-7-117 (2010). Audio-visually recorded testimony in child sexual abuse proceedings.....	74
TENN. CODE ANN. § 24-7-123 (2010). Admission of video recording of interview of child describing sexual conduct. ....	75
TENN. CODE ANN. § 37-1-609 (2010). Photographs and examinations of suspected abuse – Video recordings. ....	77
TEXAS .....	78
TEX. FAM. CODE § 104.002 (2010). Prerecorded Statement of Child.....	78
TEX. FAM. CODE § 104.003 (2010). Prerecorded Videotaped Testimony of Child .....	78
TEX. FAM. CODE § 104.005 (2010). Substitution for In-Court Testimony of Child .....	79
TEX. FAM. CODE § 261.302 (2010). Conduct of Investigation .....	79
TEX. CODE CRIM. PROC. ANN. ART. 38.071 (2010). Testimony of Child Who is Victim of Offense .....	80
UTAH.....	86
UTAH CODE ANN. § 62A-4a-414 (2010). Interviews of children -- Recording required – Exceptions... ..	86
VIRGIN ISLANDS .....	88
V.I. CODE ANN. tit. 5, § 3510 (2010). Videotaped testimony of minors who are the victims of sexual and child abuse. ....	88
VIRGINIA.....	92
VA. CODE ANN. § 63.2-1522 (2010). Admission of evidence of sexual acts with children.....	92
VA. CODE ANN. § 63.2-1523 (2010). Use of videotaped statements of complaining witnesses as evidence .....	94
WEST VIRGINIA.....	96
W. VA. CODE § 62-6B-5 (2010). Memorialization of statements of certain child witnesses; admissibility, hearing. ....	96
WISCONSIN.....	97
WIS. STAT. ANN. § 967.04 (2010). Depositions in criminal proceedings. ....	97
WIS. STAT. ANN. § 908.08 (2010). Audiovisual recordings of statements of children. ....	101
WYOMING.....	103
WYO. STAT. ANN. § 7-11-408 (2010). Videotape depositions.....	103

Federal Legislation .....	105
18 U.S.C.S. § 3509 (2010). Child victims' and child witnesses' rights.....	105

## **ALABAMA**

### **ALA. CODE § 15-25-2 (2010). Videotaped deposition.**

(a) In any criminal prosecution referred to in Section 15-25-1, the court, upon motion of the district attorney or Attorney General, for good cause shown and after notice to the defendant, may order the taking of a videotaped deposition of an alleged victim of or witness to the crime who is under the age of 16 at the time of the order.

(b) On any motion for a videotaped deposition of the victim or a witness, the court shall consider the age and maturity of the child, the nature of the offense, the nature of testimony that may be expected, and the possible effect that the testimony in person at trial may have on the victim or witness, along with any other relevant matters that may be required by Supreme Court rule.

(c) During the taping of a videotaped deposition authorized pursuant to this section, the following persons shall be in the room with the child: the prosecuting attorney, the attorney for the defendant, and a person whose presence, in the judgment of the court, contributes to the well-being of the child and who has dealt with the child in a therapeutic setting regarding the abuse. Additional persons, such as the parent or parents or legal guardian, other than the defendant, may be admitted into the room in the discretion of the court.

(d) Examination and cross-examination of the alleged victim or witness shall proceed at the taking of the videotaped deposition as though the alleged victim or witness were testifying personally in the trial of the case. The state shall provide the attorney for the defendant with reasonable access and means to view and hear the videotaped deposition at a suitable and reasonable time prior to the trial of the case. Objections to the introduction into the record of such deposition shall be heard by the judge in whose presence the deposition was taken, and unless the court determines that its introduction in lieu of the victim's or witness's actual appearance as a witness at the trial will unfairly prejudice the defendant, such videotaped deposition shall be entered into the record by the state in lieu of the direct testimony of the alleged victim or witness and shall be viewed and heard at the trial of the case.

(e) For the purposes of this section, "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound of a witness testifying under oath to be entered in the record in a judicial proceeding.

(f) The Supreme Court may adopt rules of procedure regarding the taking and use of videotaped depositions in criminal proceedings and juvenile cases, as well as for the transcribing of such in the event the case is thereafter appealed.

(g) All costs associated with the videotaping of a deposition ordered pursuant to this article shall be paid by the state. The district attorney shall submit all such cost bills to the State Comptroller for approval and payment from the fund entitled "Court Costs Not Otherwise Provided For."

(h) All videotapes ordered pursuant to this article shall be subject to any protective order of the court for the purpose of protecting the privacy of the victim of the offense.

(i) When necessary, the operator of the videotaping equipment may also be in the room and the operator shall make every effort to be unobtrusive.

(j) Only the court, the prosecuting attorney, and the attorney for the defendant may question the child victim or witness. During the testimony of the child, the defendant shall be provided access to view the testimony out of the presence of the child and shall be allowed to communicate with his or her attorney by any appropriate election method.

(k) This section shall not apply when the defendant is an attorney pro se.

**ALA. CODE § 15-25-31 (2010). Out-of-court statements; admissibility.**

An out-of-court statement made by a child under 12 years of age at the time of the proceeding concerning an act that is a material element of any crime involving child physical offense, sexual offense, and exploitation, as defined in [Section 15-25-39](#), which statement is not otherwise admissible in evidence, is admissible in evidence in criminal proceedings, if the requirements of [Section 15-25-32](#) are met.

**ALA. CODE § 15-25-32 (2010). Out-of-court statements; requirements for admissibility.**

An out-of-court statement may be admitted as provided in [Section 15-25-31](#), if:

(1) The child testifies at the proceeding, or testifies by means of video tape deposition as provided by [Section 15-25-2](#), or testifies by means of closed circuit television as is provided in [Section 15-25-3](#), and at the time of such testimony is subject to cross-examination about the out-of-court statements; or

(2) **a.** The child is found by the court to be unavailable to testify on any of these grounds:

1. The child's death;

2. The court finds that there are reasonable grounds to believe that the defendant or someone acting on behalf of the defendant has intentionally removed the child from the jurisdiction of the court;

3. The child's total failure of memory;

4. The child's physical or mental disability;

5. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; or

6. Substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of closed circuit television; and

b. The child's out-of-court statement is shown to the reasonable satisfaction of the court to possess particularized guarantees of trustworthiness.

**ALA. CODE § 15-25-35 (2010). Notice of use of statement.**

The proponent of the statement must inform the adverse party of the opponent's intention to offer the statement and the content of the statement sufficiently in advance of the proceeding to provide the defendant with a fair opportunity to prepare a response to the statement before the proceeding at which it is offered.

**ALA. CODE § 15-25-37 (2010). Determination of particularized guarantees of trustworthiness.**

In determining whether a statement possesses particularized guarantees of trustworthiness under [Section 15-25-32\(2\)b](#), the court shall consider any one, but is not limited to, the following factors:

(1) The child's personal knowledge of the event;

(2) The age and maturity of the child;

(3) Certainty that the statement was made, including the credibility of the person testifying about the statement;

(4) Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

(5) The timing of the child's statement;

(6) Whether more than one person heard the statement;

(7) Whether the child was suffering from pain or distress when making the statement;

- (8) The nature and duration of any alleged abuse;
- (9) Whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;
- (10) Whether the statement has a "ring of verity," has an internal consistency or coherence, and uses terminology appropriate to the child's age;
- (11) Whether the statement is spontaneous or directly responsive to questions;
- (12) Whether the statement is suggestive due to improperly leading questions;
- (13) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

## **ALASKA**

### **ALASKA STAT. § 47.17.033 (2010). Investigations and Interviews.**

- (a) In investigating child abuse and neglect reports under this chapter, the department may make necessary inquiries about the criminal records of the parents or of the alleged abusive or neglectful person, including inquiries about the existence of a criminal history record involving a serious offense as defined in AS 12.62.900.
- (b) For purposes of obtaining access to information needed to conduct the inquiries required by (a) of this section, the department is a criminal justice agency conducting a criminal justice activity.
- (c) An investigation by the department of child abuse or neglect reported under this chapter shall be conducted by a person trained to conduct a child abuse and neglect investigation and without subjecting a child to more than one interview about the abuse or neglect except when new information is obtained that requires further information from the child.
- (d) An interview of a child conducted as a result of a report of harm may be audiotaped or videotaped. If an interview of a child concerns a report of sexual abuse of the child by a parent or caretaker of the child, the interview shall be videotaped, unless videotaping the interview is not feasible or will, in the opinion of the investigating agency, result in trauma to the child.

(e) An interview of a child that is audiotaped or videotaped under (d) of this section shall be conducted

(1) by a person trained and competent to conduct the interview;

(2) if available, at a child advocacy center; and

(3) by a person who is a party to a memorandum of understanding with the department to conduct the interview or who is employed by an agency that is authorized to conduct investigations.

(f) An interview of a child may not be videotaped more than one time unless the interviewer or the investigating agency determines that one or more additional interviews are necessary to complete an investigation. If additional interviews are necessary, the additional interviews shall be conducted, to the extent possible, by the same interviewer who conducted the initial interview of the child.

(g) A recorded interview of a child shall be preserved in the manner and for a period provided by law for maintaining evidence and records of a public agency.

(h) A recorded interview of a child is subject to disclosure under the applicable court rules for discovery in a civil or criminal case.

(i) The training required under (c) of this section must address the constitutional and statutory rights of children and families that apply throughout the investigation and department intervention. The training must inform department representatives of the applicable legal duties to protect the rights and safety of a child and the child's family.

(j) During a joint investigation by the department and a law enforcement agency, the department shall coordinate an investigation of child abuse or neglect with the law enforcement agency to ensure that the possibility of a criminal charge is not compromised.

(k) Unless a law enforcement official prohibits or restricts notification under (j) of this section, at the time of initial contact with a person alleged to have committed child abuse or neglect, the department shall notify the person of the specific complaint or allegation made against the person, except that the identity of the complainant may not be revealed.

(l) In this section, "child advocacy center" means a facility operated with a child-focused, community partnership committed to a multidisciplinary team approach that includes representatives from law enforcement, child protection, criminal prosecution, victim advocacy, and the medical and mental health fields who collaborate and assist in investigating allegations of sexual or other abuse and neglect of children.



## ARIZONA

### **ARIZ. REV. STAT. ANN. § 13-4251 (2010). Applicability; definition.**

A. This article applies to the testimony or statements of a minor in criminal proceedings involving acts committed against the minor or involving acts witnessed by the minor whether or not those acts are charged and in civil proceedings including proceedings involving a dependency or a termination of parental rights.

B. In this article, "minor" means a person under fifteen years of age or a person who has a developmental disability as defined in [section 41-2451](#) and who has a tested intelligence quotient score below seventy-five.

### **ARIZ. REV. STAT. ANN. § 13-4252 (2010). Recording of testimony.**

A. The recording of an oral statement of a minor made before a proceeding begins is admissible into evidence if all of the following are true:

1. No attorney for either party was present when the statement was made.
2. The recording is both visual and aural and is recorded on film or videotape or by other electronic means.
3. Every voice on the recording is identified.
4. The person conducting the interview of the minor in the recording is present at the proceeding and available to testify or be cross-examined by either party.
5. The defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence.
6. The minor is available to testify.
7. The recording equipment was capable of making an accurate recording, the operator of the equipment was competent and the recording is accurate and has not been altered.
8. The statement was not made in response to questioning calculated to lead the minor to make a particular statement.

B. If the electronic recording of the oral statement of a minor is admitted into evidence under this section, either party may call the minor to testify and the opposing party may cross-examine the minor.

## ARKANSAS

### **ARK. CODE ANN. § 16-44-203 (2010). Videotaped deposition of alleged victim under 17 years of age in sexual offense prosecution.**

(a) As used in this section, the term "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.

(b) In any prosecution for a sexual offense or criminal attempt to commit a sexual offense against a minor, upon motion of the prosecuting attorney and after notice to the opposing counsel, the court may, for good cause shown, order the taking of a videotaped deposition of any alleged victim under the age of seventeen (17) years. The videotaped deposition shall be taken before the judge in chambers in the presence of the prosecuting attorney, the defendant, and the defendant's attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the videotaped deposition in the same manner as permitted at trial under the provisions of the Arkansas Uniform Rules of Evidence.

(c) Any videotaped deposition taken under the provisions of this section shall be admissible at trial and received into evidence in lieu of the direct testimony of the alleged victim. However, neither the presentation nor the preparation of such videotaped deposition shall preclude the prosecutor's calling the alleged victim to testify at trial if that is necessary to serve the interests of justice.

(d) Videotapes which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the alleged victim.

## CALIFORNIA

### **CAL. PENAL CODE § 1346 (2009). Videotaping of victim's preliminary hearing testimony; Admission of videotape at trial**

(a) When a defendant has been charged with a violation of Section 220, 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, 289, or 647.6, where the victim either is a person 15 years of age or less or is developmentally disabled as a result of mental retardation, as specified in subdivision (a) of Section 4512 of the Welfare and Institutions Code, the people may apply for an order that the victim's testimony at the

preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(b) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(c) Upon timely receipt of the application, the magistrate shall order that the testimony of the victim given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(d) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the videotape of the victim's testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(e) Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) Any videotape made pursuant to this section shall be made available to the prosecuting attorney, the defendant, and his or her attorney for viewing during ordinary business hours. Any videotape which is made available pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim.

(g) The tape shall be destroyed after five years have elapsed from the date of entry of judgment; provided, however, that if an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been rendered.

## **COLORADO**

### **COLO. REV. STAT. ANN § 18-3-413 (2010). Video tape depositions - children - victims of sexual offenses.**

(1) When a defendant has been charged with an unlawful sexual offense, as defined in [section 18-3-411 \(1\)](#), or incest, as defined in [section 18-6-301](#), and when the victim at the time of the commission of the act is a child less than fifteen years of age, the prosecution may apply to the court for an order that a deposition be taken of the victim's testimony and that the deposition be recorded and preserved on video tape.

(2) The prosecution shall apply for the order in writing at least three days prior to the taking of the deposition. The defendant shall receive reasonable notice of the taking of the deposition.

(3) Upon timely receipt of the application, the court shall make a preliminary finding regarding whether, at the time of trial, the victim is likely to be medically unavailable or otherwise unavailable within the meaning of rule 804 (a) of the Colorado rules of evidence. Such finding shall be based on, but not be limited to, recommendations from the child's therapist or any other person having direct contact with the child, whose recommendations are based on specific behavioral indicators exhibited by the child. If the court so finds, it shall order that the deposition be taken, pursuant to rule 15 (d) of the Colorado rules of criminal procedure, and preserved on video tape. The prosecution shall transmit the video tape to the clerk of the court in which the action is pending.

(4) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of rule 804 (a) of the Colorado rules of evidence, the court may admit the video tape of the victim's deposition as former testimony under rule 804 (b) (1) of the Colorado rules of evidence.

(5) Nothing in this section shall prevent the admission into evidence of any videotaped statements of children which would qualify for admission pursuant to [section 13-25-129, C.R.S.](#), or any other statute or rule of evidence.

**COLO. REV. STAT. ANN § 18-6-401.3 (2010). Video tape depositions - children - victims of child abuse.**

(1) When a defendant has been charged with an act of child abuse, as defined in [section 18-6-401 \(1\)](#), and when the victim at the time of the commission of the act is a child less than fifteen years of age, the prosecution may apply to the court for an order that a deposition be taken of the victim's testimony and that the deposition be recorded and preserved on video tape.

(2) The prosecution shall apply for the order in writing at least three days prior to the taking of the deposition. The defendant shall receive reasonable notice of the taking of the deposition.

(3) Upon timely receipt of the application, the court shall make a preliminary finding regarding whether, at the time of trial, the victim is likely to be medically unavailable or otherwise unavailable within the meaning of rule 804 (a) of the Colorado rules of evidence. Such finding shall be based on, but not be limited to, recommendations from the child's therapist or any other person having direct contact with the child, whose recommendations are based on specific behavioral indicators exhibited by the child. If the court so finds, it shall order that the deposition be taken, pursuant to rule 15 (d) of the Colorado rules of criminal procedure, and preserved on video tape. The prosecution shall transmit the video tape to the clerk of the court in which the action is pending.

(4) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of rule 804 (a) of the Colorado rules of evidence, the court may admit the video tape of the victim's deposition as former testimony under rule 804 (b) (1) of the Colorado rules of evidence.

(5) Nothing in this section shall prevent the admission into evidence of any videotaped statements of children that would qualify for admission pursuant to [section 13-25-129, C.R.S.](#), or any other statute or rule of evidence.

**COLO. REV. STAT. ANN § 19-3-308.5 (2010). Recorded interviews of child.**

(1) (a) Any interview of a child conducted pursuant to [section 19-3-308](#), concerning a report of child abuse, may be audiotaped or videotaped. However, interviews concerning reports of sexual child abuse are strongly encouraged to be videotaped. Any audiotaped or videotaped interview shall be conducted by a competent interviewer at a child advocacy center, as that term is defined in [section 19-1-103 \(19.5\)](#), that has a memorandum of understanding with the agency responsible for the investigation or by a competent interviewer for the agency responsible for the investigation in accordance with such section; except that an interview shall not be videotaped when doing so is impracticable under the circumstances or will result in trauma to the child, as determined by the investigating agency. No more than one videotaped interview shall be required unless the interviewer or the investigating agency determines that additional interviews are necessary to complete an investigation. Additional interviews shall be conducted, to the extent possible, by the same interviewer. Such recordings shall be preserved as evidence in the manner and for a period provided by law for maintaining such evidence. In addition, access to such recordings shall be subject to the rules of discovery under the Colorado rules of criminal and civil procedure.

(b) (Deleted by amendment, L. 93, p. 1169, § 2, effective January 1, 1994.)

(c) The provisions of this subsection (1) shall not apply to a videotaped deposition taken in accordance with and governed by [section 18-3-413, C.R.S.](#), or [section 13-25-132, C.R.S.](#), and rule 15 (d) of the Colorado rules of criminal procedure. In addition, this section shall not apply to interviews of the child conducted after a dependency and neglect action or a criminal action has been filed with the court.

(d) (Deleted by amendment, L. 93, p. 1169, § 2, effective January 1, 1994.)

(e) (I) Any agency subject to the provisions of this section shall provide equipment necessary to videotape or audiotape the interviews or shall enter into a memorandum of understanding with a child advocacy center authorizing the use of such equipment. The investigating agency shall train persons responsible for conducting videotaped interviews in accordance with this section; except that the agency shall not be responsible for

training interviewers employed by a child advocacy center. The agency shall adopt standards for persons conducting such interviews.

(II) Repealed.

(f) An agency that enters into a memorandum of understanding with a child advocacy center that employs interviewers shall assure that such interviewers meet the training standards for persons conducting interviews adopted by the agency pursuant to paragraph (e) of this subsection (1). In addition, an agency that enters into a memorandum of understanding with a child advocacy center that provides technical assistance for forensic interviews, forensic medical examinations, or evidence collection or preservation may require that the child advocacy center meets the national performance standards for children's advocacy centers as established by the national accrediting body. These standards include, but are not limited to, standards for forensic interviews to be conducted in a manner which is of a neutral, fact-finding nature and coordinated to avoid duplicative interviewing.

## **HAWAII**

### **HAW. REV. STAT. ANN § 587-43 (2008). Recording a statement or the testimony of a child. [Repealed effective September 1, 2010.]**

The recording of a statement of a child is admissible into evidence in any proceeding under this chapter if:

- (1) The recording is visual, or oral, or both and is recorded on film, tape, or videotape or by other electronic means;
- (2) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered; and
- (3) Every person on the recording is identified.

## **INDIANA**

### **IND. CODE ANN. § 35-37-4-6 (2010). Admissibility of statement or videotape of a child of fourteen or under in certain criminal actions.**

(a) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(1) or (c)(2):

- (1) Sex crimes (IC 35-42-4).
- (2) Battery upon a child (IC 35-42-2-1(a)(2)(B)).
- (3) Kidnapping and confinement (IC 35-42-3).
- (4) Incest (IC 35-46-1-3).
- (5) Neglect of a dependent (IC 35-46-1-4).
- (6) Human and sexual trafficking crimes (IC 35-42-3.5).
- (7) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through (6).

(b) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(3):

- (1) Exploitation of a dependent or endangered adult (IC 35-46-1-12).
- (2) A sex crime (IC 35-42-4).
- (3) Battery (IC 35-42-2-1).
- (4) Kidnapping, confinement, or interference with custody (IC 35-42-3).
- (5) Home improvement fraud (IC 35-43-6).
- (6) Fraud (IC 35-43-5).
- (7) Identity deception (IC 35-43-5-3.5).
- (8) Synthetic identity deception (IC 35-43-5-3.8).
- (9) Theft (IC 35-43-4-2).
- (10) Conversion (IC 35-43-4-3).
- (11) Neglect of a dependent (IC 35-46-1-4).
- (12) Human and sexual trafficking crimes (IC 35-42-3.5).

(c) As used in this section, "protected person" means:

- (1) a child who is less than fourteen (14) years of age;
- (2) an individual with a mental disability who has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:
  - (A) is manifested before the individual is eighteen (18) years of age;
  - (B) is likely to continue indefinitely;
  - (C) constitutes a substantial impairment of the individual's ability to function normally in society; and
  - (D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; or
- (3) an individual who is:
  - (A) at least eighteen (18) years of age; and
  - (B) incapable by reason of mental illness, mental retardation, dementia, or other physical or mental incapacity of:
    - (i) managing or directing the management of the individual's property; or
    - (ii) providing or directing the provision of self-care.
- (d) A statement or videotape that:
  - (1) is made by a person who at the time of trial is a protected person;
  - (2) concerns an act that is a material element of an offense listed in subsection (a) or (b) that was allegedly committed against the person; and
  - (3) is not otherwise admissible in evidence;is admissible in evidence in a criminal action for an offense listed in subsection (a) or (b) if the requirements of subsection (e) are met.
- (e) A statement or videotape described in subsection (d) is admissible in evidence in a criminal action listed in subsection (a) or (b) if, after notice to the defendant of a hearing and of the defendant's right to be present, all of the following conditions are met:
  - (1) The court finds, in a hearing:
    - (A) conducted outside the presence of the jury; and



(B) attended by the protected person;

that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability.

(2) The protected person:

(A) testifies at the trial; or

(B) is found by the court to be unavailable as a witness for one (1) of the following reasons:

(i) From the testimony of a psychiatrist, physician, or psychologist, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate.

(ii) The protected person cannot participate in the trial for medical reasons.

(iii) The court has determined that the protected person is incapable of understanding the nature and obligation of an oath.

(f) If a protected person is unavailable to testify at the trial for a reason listed in subsection (e)(2)(B), a statement or videotape may be admitted in evidence under this section only if the protected person was available for cross-examination:

(1) at the hearing described in subsection (e)(1); or

(2) when the statement or videotape was made.

(g) A statement or videotape may not be admitted in evidence under this section unless the prosecuting attorney informs the defendant and the defendant's attorney at least ten (10) days before the trial of:

(1) the prosecuting attorney's intention to introduce the statement or videotape in evidence; and

(2) the content of the statement or videotape.

(h) If a statement or videotape is admitted in evidence under this section, the court shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement or videotape and that, in making that determination, the jury shall consider the following:

(1) The mental and physical age of the person making the statement or videotape.

(2) The nature of the statement or videotape.

(3) The circumstances under which the statement or videotape was made.

(4) Other relevant factors.

(i) If a statement or videotape described in subsection (d) is admitted into evidence under this section, a defendant may introduce a:

(1) transcript; or

(2) videotape;

of the hearing held under subsection (e)(1) into evidence at trial.

**IND. CODE ANN. § 31-34-13-2 (2010). Admissibility of statement or videotape.**

A statement or videotape that:

(1) is made by a child who at the time of the statement or videotape:

(A) is less than fourteen (14) years of age; or

(B) is at least fourteen (14) years of age but less than eighteen (18) years of age and has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:

(i) is likely to continue indefinitely;

(ii) constitutes a substantial disability to the child's ability to function normally in society; and

(iii) reflects the child's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated;

(2) concerns an act that is a material element in determining whether a child is a child in need of services; and

(3) is not otherwise admissible in evidence under statute or court rule;

is admissible in evidence in an action described in section 1 [IC 31-34-13-1] of this chapter if the requirements of section 3 [IC 31-34-13-3] of this chapter are met.

**IND. CODE ANN. § 31-34-13-4 (2010). Notice of intention to introduce statement or videotape and contents.**

A statement or videotape may not be admitted in evidence under this chapter unless the attorney for the department informs the parties of:

- (1) an intention to introduce the statement or videotape in evidence; and
- (2) the content of the statement or videotape;

at least seven (7) days before the proceedings to give the parties a fair opportunity to prepare a response to the statement or videotape before the proceeding.

**IND. CODE ANN. § 31-35-4-2 (2010). Admissibility.**

A statement or videotape that:

- (1) is made by a child who at the time of the statement or videotape:

(A) is less than fourteen (14) years of age; or

(B) is at least fourteen (14) years of age but less than eighteen (18) years of age and has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:

(i) is likely to continue indefinitely;

(ii) constitutes a substantial disability to the child's ability to function normally in society; and

(iii) reflects the child's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated;

(2) concerns an act that is a material element in determining whether a parent-child relationship should be terminated; and

(3) is not otherwise admissible in evidence under statute or court rule;

is admissible in evidence in an action described in section 1 [IC 31-35-4-1] of this chapter if the requirements of section 3 [IC 31-35-4-3] of this chapter are met.

**IND. CODE ANN. § 31-35-4-3 (2010). Conditions for admissibility.**

A statement or videotape described in section 2 [IC 31-35-4-2] of this chapter is admissible in evidence in an action to determine whether the parent-child relationship should be terminated if, after notice to the parties of a hearing and of their right to be present:

(1) the court finds that the time, content, and circumstances of the statement or videotape and any other evidence provide sufficient indications of reliability; and

(2) the child:

(A) testifies at the proceeding to determine whether the parent-child relationship should be terminated;

(B) was available for face-to-face cross-examination when the statement or videotape was made; or

(C) is found by the court to be unavailable as a witness because:

(i) a psychiatrist, physician, or psychologist has certified that the child's participation in the proceeding creates a substantial likelihood of emotional or mental harm to the child;

(ii) a physician has certified that the child cannot participate in the proceeding for medical reasons; or

(iii) the court has determined that the child is incapable of understanding the nature and obligation of an oath.

## **IOWA**

**IOWA CODE § 915.38 (2010). Televised, videotaped, and recorded evidence -- limited court testimony -- minors and others.**

1. Upon its own motion or upon motion of any party, a court may protect a minor, as defined in section 599.1, from trauma caused by testifying in the physical presence of the defendant where it would impair the minor's ability to communicate, by ordering that the testimony of the minor be taken in a room other than the courtroom and be televised by closed-circuit equipment for viewing in the courtroom. However, such an order shall be entered only upon a specific finding by the court that such measures are necessary to protect the minor from trauma. Only the judge, prosecuting attorney, defendant's attorney, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the minor may

be present in the room with the minor during the minor's testimony. The judge shall inform the minor that the defendant will not be present in the room in which the minor will be testifying but that the defendant will be viewing the minor's testimony through closed-circuit television.

During the minor's testimony the defendant shall remain in the courtroom and shall be allowed to communicate with the defendant's counsel in the room where the minor is testifying by an appropriate electronic method.

In addition, upon a finding of necessity, the court may allow the testimony of a victim or witness with a mental illness, mental retardation, or other developmental disability to be taken as provided in this subsection, regardless of the age of the victim or witness.

2. The court may, upon its own motion or upon motion of a party, order that the testimony of a minor, as defined in section 599.1, be taken by recorded deposition for use at trial, pursuant to rule of criminal procedure 2.13(2)(b). In addition to requiring that such testimony be recorded by stenographic means, the court may on motion and hearing, and upon a finding that the minor is unavailable as provided in rule of evidence 5.804(a), order the videotaping of the minor's testimony for viewing in the courtroom by the court. The videotaping shall comply with the provisions of rule of criminal procedure 2.13(2)(b), and shall be admissible as evidence in the trial. In addition, upon a finding of necessity, the court may allow the testimony of a victim or witness with a mental illness, mental retardation, or other developmental disability to be taken as provided in this subsection, regardless of the age of the victim or witness.

3. The court may upon motion of a party admit into evidence the recorded statements of a child, as defined in section 702.5, describing sexual contact performed with or on the child, not otherwise admissible in evidence by statute or court rule if the court determines that the recorded statements substantially comport with the requirements for admission under rule of evidence 5.803(24) or 5.804(b)(5).

4. A court may, upon its own motion or upon the motion of a party, order the court testimony of a child to be limited in duration in accordance with the developmental maturity of the child. The court may consider or hear expert testimony in order to determine the appropriate limitation on the duration of a child's testimony. However, the court shall, upon motion, limit the duration of a child's uninterrupted testimony to one hour, at which time the court shall allow the child to rest before continuing to testify.

## **KANSAS**

**KAN. STAT. ANN. § 22-2902 (2009). Preliminary examination.**

(1) The state and every person charged with a felony shall have a right to a preliminary examination before a magistrate, unless such charge has been issued as a result of an indictment by a grand jury.

(2) The preliminary examination shall be held before a magistrate of a county in which venue for the prosecution lies within 14 days after the arrest or personal appearance of the defendant. Continuances may be granted only for good cause shown.

(3) The defendant shall not enter a plea at the preliminary examination. The defendant shall be personally present and except for witnesses who are children less than 13 years of age, the witnesses shall be examined in the defendant's presence. The defendant's voluntary absence after the preliminary examination has been begun in the defendant's presence shall not prevent the continuation of the examination. Except for witnesses who are children less than 13 years of age, the defendant shall have the right to cross-examine witnesses against the defendant and introduce evidence in the defendant's own behalf. If from the evidence it appears that a felony has been committed and there is probable cause to believe that a felony has been committed by the defendant, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case; otherwise, the magistrate shall discharge the defendant. When the victim of the felony is a child less than 13 years of age, the finding of probable cause as provided in this subsection may be based upon hearsay evidence in whole or in part presented at the preliminary examination by means of statements made by a child less than 13 years of age on a videotape recording or by other means.

(4) If the defendant and the state waive preliminary examination, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case.

(5) Any judge of the district court may conduct a preliminary examination, and a district judge may preside at the trial of any defendant even though such judge presided at the preliminary examination of such defendant.

(6) The complaint or information, as filed by the prosecuting attorney pursuant to [K.S.A. 22-2905](#), and amendments thereto, shall serve as the formal charging document at trial. When a defendant and prosecuting attorney reach agreement on a plea of guilty or nolo contendere, the defendant and the prosecuting attorney shall notify the district court of such agreement and arrange for a time to plead, pursuant to [K.S.A. 22-3210](#), and amendments thereto.

(7) The judge of the district court, when conducting the preliminary examination, shall have the discretion to conduct arraignment, subject to assignment pursuant to [K.S.A. 20-329](#), and amendments thereto, at the conclusion of the preliminary examination.

**KAN. STAT. ANN. § 22-3434 (2009). Videotape of testimony of child**

**victim admissible in certain cases; limitations; standard of proof; objections, restrictions.**

(a) On motion of the attorney for any party to a criminal proceeding in which a child less than 13 years of age is alleged to be a victim of the crime, subject to the conditions of subsection (b), the court may order that the testimony of the child be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding if: (A) The recording is both visual and aural and is recorded on film or videotape or by other electronic means; (B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered; (C) every voice on the recording is identified; and (D) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript is provided to the parties.

(b) The state must establish by clear and convincing evidence that to require the child who is the alleged victim to testify in open court will so traumatize the child as to prevent the child from reasonably communicating to the jury or render the child unavailable to testify. The court shall make such an individualized finding before the state is permitted to proceed under this section.

(c) At the taking of testimony under this section:

(1) Only the attorneys for the defendant, the state and the child, any person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;

(2) only the attorneys may question the child;

(3) the persons operating the recording or closed-circuit equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony but does not permit the child to see or hear them; and

(4) the court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

(d) If the testimony of a child is taken as provided by this section, the child shall not be compelled to testify in court during the proceeding.

(e) (1) Any objection by any party to the proceeding to a recording under subsection (a)(2) is inadmissible must be made by written motion filed with the court at least seven days before the commencement of the trial. An objection under this subsection shall

specify the portion of the recording which is objectionable and the reasons for the objection. Failure to file an objection within the time provided by this subsection shall constitute waiver of the right to object to the admissibility of the recording unless the court, in its discretion, determines otherwise.

(2) The provisions of this subsection (d) shall not apply to any objection to admissibility for the reason that the recording has been materially altered.

## **KENTUCKY**

### **KY. REV. STAT. ANN. § 421.350 (2010). Testimony of child allegedly victim of illegal sexual activity.**

(1) This section applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under KRS 510.040 to 510.155, 529.030 to 529.050, 529.070, 530.020, 530.060, 530.064(1)(a), 531.310, 531.320, 531.370, or any specified in KRS 439.3401 and all dependency proceedings pursuant to KRS Chapter 620, when the act is alleged to have been committed against a child twelve (12) years of age or younger, and applies to the statements or testimony of that child or another child who is twelve (12) years of age or younger who witnesses one of the offenses included in this subsection.

(2) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence the court finds would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

(3) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (3) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by subsection (3) of this section. The court shall permit the defendant



to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:

(a) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;

(b) The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(c) Each voice on the recording is identified; and

(d) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

(4) If the court orders the testimony of a child to be taken under subsection (2) or (3) of this section, the child may not be required to testify in court at the proceeding for which the testimony was taken, but shall be subject to being recalled during the course of the trial to give additional testimony under the same circumstances as with any other recalled witness, provided that the additional testimony is given utilizing the provisions of subsection (2) or (3) of this section.

(5) For the purpose of subsections (2) and (3) of this section, "compelling need" is defined as the substantial probability that the child would be unable to reasonably communicate because of serious emotional distress produced by the defendant's presence.

## **LOUISIANA**

### **LA. REV. STAT. ANN. § 15:440.2 (2010). Authorization.**

A. (1) A court with original criminal jurisdiction or juvenile jurisdiction may, on its own motion or on motion of the district attorney, a parish welfare unit or agency, or the Department of Social Services, require that a statement of a protected person who may have been a witness to or victim of a crime be recorded on videotape.

(2) Further, the coroner may, in conjunction with the district attorney and appropriate hospital personnel and pursuant to their duties in R.S. 40:2109.1 and 40:2113.4, provide for the videotaping of protected persons who are rape victims or who have been otherwise physically or sexually abused.

(3) Such a videotape shall be available for introduction as evidence in a juvenile proceeding or adult criminal proceeding.

B. For purposes of this Part, "videotape" means the visual recording on a magnetic tape, film, videotape, compact disc, digital versatile disc, digital video disc, or by other electronic means together with the associated oral record.

C. For purposes of this Part "protected person" means any person who is a victim of a crime or a witness in a criminal proceeding and who is either of the following:

- (1) Under the age of seventeen years.
- (2) Has a developmental disability as defined in R.S. 28:451.2(12).

**LA. REV. STAT. ANN. § 15:440.3 (2010). Videotape; admissibility; exception to hearsay rule.**

The videotape authorized by this Subpart is hereby admissible in evidence as an exception to the hearsay rule.

**LA. REV. STAT. ANN. § 15:440.4 (2010). Method of recording videotape; competency.**

A. A videotape of a protected person may be offered in evidence either for or against a defendant. To render such a videotape competent evidence, it must be satisfactorily proved:

- (1) That such electronic recording was voluntarily made by protected person.
- (2) That no relative of the protected person was present in the room where the recording was made.
- (3) That such recording was not made of answers to interrogatories calculated to lead the protected person to make any particular statement.
- (4) That the recording is accurate, has not been altered, and reflects what the protected person said.
- (5) That the taking of the protected person's statement was supervised by a physician, a social worker, a law enforcement officer, a licensed psychologist, a medical psychologist, a licensed professional counselor, or an authorized representative of the Department of Social Services.

B. The department shall develop and promulgate regulations on or before September 12, 1984, regarding training requirements and certification for department personnel designated in Paragraph (A)(5) of this Section who supervise the taking of the protected person's statement.

**LA. REV. STAT. ANN. § 15:440.5 (2010). Admissibility of videotaped statements; discovery by defendant.**

A. The videotape of an oral statement of the protected person made before the proceeding begins may be admissible into evidence if:

- (1) No attorney for either party was present when the statement was made;
- (2) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;
- (3) The recording is accurate, has not been altered, and reflects what the witness or victim said;
- (4) The statement was not made in response to questioning calculated to lead the protected person to make a particular statement;
- (5) Every voice on the recording is identified;
- (6) The person conducting or supervising the interview of the protected person in the recording is present at the proceeding and available to testify or be cross-examined by either party;
- (7) The defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence; and
- (8) The protected person is available to testify.

B. The admission into evidence of the videotape of a protected person as authorized herein shall not preclude the prosecution from calling the protected person as a witness or from taking the protected person's testimony outside of the courtroom as authorized in R.S. 15:283. Nothing in this Section shall be construed to prohibit the defendant's right of confrontation.

C. In a criminal prosecution, when the state intends to offer as evidence a copy of a videotaped oral statement of a protected person made pursuant to the provisions of this Subpart, the defendant, through his attorney only, may be provided a copy of the videotape if the court determines it necessary to prepare a proper defense. If the defendant's attorney is provided a copy of the videotaped statement by court order or by permission of the district attorney, only the attorney and the defendant shall be permitted to view the tape, and no copies shall be made by any person. The copy shall be securely retained by the defendant's attorney at all times and shall not be possessed, transferred, distributed, copied, or viewed by any unauthorized party. It shall be the affirmative duty of the defendant's attorney to return the videotape to the court immediately upon conclusion of the case but in all cases prior to sentencing. A defendant who appears pro se in a criminal proceeding shall be allowed reasonable access to the videotape of a

protected person only with an order of the court and under court-directed supervision. The tape shall be filed as part of the record under seal by the clerk of court for use in subsequent legal proceedings or appeals and shall only be released upon motion of the state or counsel of record with an order of court and in compliance with this Section. Any violation of this Subsection shall be punished as contempt of court. Any person who makes an unauthorized disclosure of the videotape or its contents may also be subject to liability for civil damages, including punitive damages.

**LA. REV. STAT. ANN. § 15:440.6 (2010). Confidentiality.**

Videotapes which are a part of the court record shall be preserved under a protective order of the court in order to protect the privacy of the protected person. The court shall order the destruction of the videotapes after five years have elapsed from the date of entry of judgment. However, if an appeal is filed, the videotapes shall not be destroyed until a final judgment on appeal has been rendered.

**MICHIGAN**

**MICH. COMP. LAWS SERV. § 600.2163a (2010). Definitions; prosecutions and proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; special arrangements to protect welfare of witness; videotape deposition; section additional to other protections or procedures; violation as misdemeanor; penalty.**

Sec. 2163a. (1) As used in this section:

(a) "Custodian of the videorecorded statement" means the family independence agency, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(b) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(c) "Videorecorded statement" means a witness's statement taken by a custodian of the videorecorded statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (17) and (18).

(d) "Witness" means an alleged victim of an offense listed under subsection (2) who is either of the following:

- (i) A person under 16 years of age.
  - (ii) A person 16 years of age or older with a developmental disability.
- (2) This section only applies to prosecutions and proceedings under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.
- (3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.
- (4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and shall be served upon all parties to the proceeding. The court shall rule on a motion objecting to the use of a named support person before the date at which the witness desires to use the support person.
- (5) A custodian of the videorecorded statement may take a witness's videorecorded statement before the normally scheduled date for the defendant's preliminary examination. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the videorecorded statement.
- (6) A videorecorded statement may be considered in court proceedings only for 1 or more of the following:
- (a) It may be admitted as evidence at all pretrial proceedings, except that it may not be introduced at the preliminary examination instead of the live testimony of the witness.
  - (b) It may be admitted for impeachment purposes.
  - (c) It may be considered by the court in determining the sentence.
  - (d) It may be used as a factual basis for a no contest plea or to supplement a guilty plea.
- (7) In a videorecorded statement, the questioning of the witness should be full and complete; shall be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if appropriate for the witness's developmental level, shall include, but is not limited to, all of the following areas:
- (a) The time and date of the alleged offense or offenses.
  - (b) The location and area of the alleged offense or offenses.
  - (c) The relationship, if any, between the witness and the accused.
  - (d) The details of the offense or offenses.
  - (e) The names of any other persons known to the witness who may have personal knowledge of the alleged offense or offenses.
- (8) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the

videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628. The defendant and, if represented, his or her attorney has the right to view and hear a videorecorded statement before the defendant's preliminary examination. Upon request, the prosecuting attorney shall provide the defendant and, if represented, his or her attorney with reasonable access and means to view and hear the videorecorded statement at a reasonable time before the defendant's pretrial or trial of the case. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense.

(9) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(10) Except as provided in this section, an individual, including, but not limited to, a custodian of the videorecorded statement, the witness, or the witness's parent, guardian, guardian ad litem, or attorney, shall not release or consent to release a videorecorded statement or a copy of a videorecorded statement.

(11) A videorecorded statement that becomes part of the court record is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(12) A videorecorded statement shall not be copied or reproduced in any manner except as provided in this section. A videorecorded statement is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to release under another statute, and is not subject to disclosure under the Michigan court rules governing discovery. This section does not prohibit the production or release of a transcript of a videorecorded statement.

(13) If, upon the motion of a party made before the preliminary examination, the court finds on the record that the special arrangements specified in subsection (14) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(c) The desire of the witness or the witness's family or guardian to have the testimony taken in a room closed to the public.

(14) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (13), the court shall order both of the following:

(a) All persons not necessary to the proceeding shall be excluded during the witness's testimony from the courtroom where the preliminary examination is held. Upon request by any person and the payment of the appropriate fees, a transcript of the witness's testimony shall be made available.

(b) In order to protect the witness from directly viewing the defendant, the courtroom shall be arranged so that the defendant is seated as far from the witness stand as is

reasonable and not directly in front of the witness stand. The defendant's position shall be located so as to allow the defendant to hear and see the witness and be able to communicate with his or her attorney.

(15) If upon the motion of a party made before trial the court finds on the record that the special arrangements specified in subsection (16) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

- (a) The age of the witness.
- (b) The nature of the offense or offenses.
- (c) The desire of the witness or the witness's family or guardian to have the testimony taken in a room closed to the public.

(16) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (15), the court shall order 1 or more of the following:

(a) All persons not necessary to the proceeding shall be excluded during the witness's testimony from the courtroom where the trial is held. The witness's testimony shall be broadcast by closed-circuit television to the public in another location out of sight of the witness.

(b) In order to protect the witness from directly viewing the defendant, the courtroom shall be arranged so that the defendant is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The defendant's position shall be the same for all witnesses and shall be located so as to allow the defendant to hear and see all witnesses and be able to communicate with his or her attorney.

(c) A questioner's stand or podium shall be used for all questioning of all witnesses by all parties and shall be located in front of the witness stand.

(17) If, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), (14), and (16), the court shall order that a videorecorded deposition of a witness shall be taken to be admitted at a court proceeding instead of the witness's live testimony.

(18) For purposes of the videorecorded deposition under subsection (17), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the court proceeding for which the videorecorded deposition is to be used, and the court shall order that the witness, during his or her testimony, shall not be confronted by the defendant but shall permit the defendant to hear the testimony of the witness and to consult with his or her attorney.

(19) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

(20) A person who intentionally releases a videorecorded statement in violation of this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

**MICH. COMP. LAWS SERV. § 712A.17b (2010). Definitions; proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; shielding of witness; videorecorded deposition; special arrangements to protect welfare of witness; section additional to other protections or procedures.**

Sec. 17b. (1) As used in this section:

(a) "Custodian of the videorecorded statement" means the family independence agency, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(b) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(c) "Videorecorded statement" means a witness's statement taken by a custodian of the videorecorded statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (16) and (17).

(d) "Witness" means an alleged victim of an offense listed under subsection (2) who is either of the following:

(i) A person under 16 years of age.

(ii) A person 16 years of age or older with a developmental disability.

(2) This section only applies to either of the following:

(a) A proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

(b) A proceeding brought under section 2(b) of this chapter.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and shall be served upon all parties to the proceeding. The court shall rule on a motion objecting to the use of a named support person before the date at which the witness desires to use the support person.

(5) A custodian of the videorecorded statement may take a witness's videorecorded statement. The videorecorded statement shall be admitted at all proceedings except the



adjudication stage instead of the live testimony of the witness. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the statement.

(6) In a videorecorded statement, the questioning of the witness should be full and complete; shall be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if appropriate for the witness's developmental level, shall include, but need not be limited to, all of the following areas:

(a) The time and date of the alleged offense or offenses.

(b) The location and area of the alleged offense or offenses.

(c) The relationship, if any, between the witness and the respondent.

(d) The details of the offense or offenses.

(e) The names of other persons known to the witness who may have personal knowledge of the offense or offenses.

(7) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628. Each respondent and, if represented, his or her attorney has the right to view and hear the videorecorded statement at a reasonable time before it is offered into evidence. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense.

(8) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(9) Except as provided in this section, an individual, including, but not limited to, a custodian of the videorecorded statement, the witness, or the witness's parent, guardian, guardian ad litem, or attorney, shall not release or consent to release a videorecorded statement or a copy of a videorecorded statement.

(10) A videorecorded statement that becomes part of the court record is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(11) A videorecorded statement shall not be copied or reproduced in any manner except as provided in this section. A videorecorded statement is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to release under another statute, and is not subject to disclosure under the Michigan court rules governing discovery. This section does not prohibit the production or release of a transcript of a videorecorded statement.

(12) Except as otherwise provided in subsection (15), if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify in the presence of the respondent at a

court proceeding or in a videorecorded deposition taken as provided in subsection (13), the court shall order that the witness during his or her testimony be shielded from viewing the respondent in such a manner as to enable the respondent to consult with his or her attorney and to see and hear the testimony of the witness without the witness being able to see the respondent.

(13) In a proceeding brought under section 2(b) of this chapter, if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify at the adjudication stage, the court shall order to be taken a videorecorded deposition of a witness that shall be admitted into evidence at the adjudication stage instead of the live testimony of the witness. The examination and cross-examination of the witness in the videorecorded deposition shall proceed in the same manner as permitted at the adjudication stage.

(14) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party made before the adjudication stage, the court finds on the record that the special arrangements specified in subsection (15) are necessary to protect the welfare of the witness, the court shall order 1 or both of those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider both of the following:

- (a) The age of the witness.
- (b) The nature of the offense or offenses.

(15) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (14), the court shall order 1 or both of the following:

(a) In order to protect the witness from directly viewing the respondent, the courtroom shall be arranged so that the respondent is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The respondent's position shall be located so as to allow the respondent to hear and see all witnesses and be able to communicate with his or her attorney.

(b) A questioner's stand or podium shall be used for all questioning of all witnesses by all parties, and shall be located in front of the witness stand.

(16) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), and (15), the court shall order that a videorecorded deposition of a witness shall be taken to be admitted at the adjudication stage instead of the witness's live testimony.

(17) For purposes of the videorecorded deposition under subsection (16), the witness's examination and cross-examination shall proceed in the same manner as if the witness

testified at the adjudication stage, and the court shall order that the witness, during his or her testimony, shall not be confronted by the respondent but shall permit the respondent to hear the testimony of the witness and to consult with his or her attorney.

(18) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

(19) A person who intentionally releases a videorecorded statement in violation of this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

## **MISSOURI**

### **MO. REV. STAT. § 491.699 (2010). Juvenile court hearings--court may order video recording of alleged child victim, when--procedure--cross-examination--counsel appointed for perpetrator, when**

1. Upon the motion of the juvenile officer, the court may order that an in-camera videotaped recording of the testimony of the alleged child victim be made for use as substantive evidence at a juvenile court hearing held pursuant to the provisions of chapter 211, RSMo. The provisions of section 491.075 relating to the admissibility of statements made by a child under the age of twelve shall apply to proceedings in juvenile court.

2. In determining whether or not to allow such motion, the court shall consider the elements of the offense charged and the emotional or psychological trauma to the child if required to testify in open court or to be brought into the personal presence of the alleged perpetrator. Such recording shall be retained by the juvenile officer and shall be admissible in lieu of the child's personal appearance and testimony at juvenile court hearings. A transcript of such testimony shall be made as soon as possible after the completion of such deposition and shall be provided to all parties to the action.

3. The court shall preside over the depositions, which shall be conducted in accordance with the rules of evidence applicable to civil cases.

4. In any prosecution under either subdivision (2) or (3) of subsection 1 of section 211.031, RSMo, the attorney for the alleged perpetrator shall have at least two opportunities to cross-examine the deposed alleged child victim.

5. Prior to the taking of the deposition which is to be used as substantive evidence at the hearing pursuant to sections 491.696 to 491.705, the attorney for any party to the action shall be provided with such discoverable materials and information as the court may, on motion, direct; shall be afforded a reasonable time to examine such materials; and shall be permitted to cross-examine the child during the deposition.

6. In any prosecution under either subdivision (2) or (3) of subsection 1 of section 211.031, RSMo, if the alleged perpetrator is not represented by counsel and if, upon inquiry, it appears to the court that he or she will be unable to obtain counsel within a reasonable period of time, the court shall appoint the public defender or other counsel to represent the alleged perpetrator at the deposition.

**MO. REV. STAT. § 492.304 (2010). Visual and aural recordings of child under fourteen admissible, when**

1. In addition to the admissibility of a statement under the provisions of section 492.303, the visual and aural recording of a verbal or nonverbal statement of a child when under the age of fourteen who is alleged to be a victim of an offense under the provisions of chapter 565, 566 or 568, RSMo, is admissible into evidence if:

(1) No attorney for either party was present when the statement was made; except that, for any statement taken at a state-funded child assessment center as provided for in subsection 2 of section 210.001, RSMo, an attorney representing the state of Missouri in a criminal investigation may, as a member of a multidisciplinary investigation team, observe the taking of such statement, but such attorney shall not be present in the room where the interview is being conducted;

(2) The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;

(4) The statement was not made in response to questioning calculated to lead the child to make a particular statement or to act in a particular way;

(5) Every voice on the recording is identified;

(6) The person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party; and

(7) The defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence.

2. If the child does not testify at the proceeding, the visual and aural recording of a verbal or nonverbal statement of the child shall not be admissible under this section unless the recording qualifies for admission under section 491.075, RSMo.

3. If the visual and aural recording of a verbal or nonverbal statement of a child is admissible under this section and the child testifies at the proceeding, it shall be admissible in addition to the testimony of the child at the proceeding whether or not it repeats or duplicates the child's testimony.

4. As used in this section, a nonverbal statement shall be defined as any demonstration of the child by his or her actions, facial expressions, demonstrations with a doll or other visual aid whether or not this demonstration is accompanied by words.

## **MINNESOTA**

### **MINN. STAT. § 634.35 (2009). Videotapes of child victims; conditions of disclosure**

(a) If a videotaped interview of a child victim of physical or sexual abuse is disclosed by a prosecuting attorney to a defendant or the defendant's attorney, the following applies:

(1) no more than two copies of the tape or any portion of the tape may be made by the defendant or the defendant's attorney, investigator, expert, or any other representative or agent of the defendant;

(2) the tapes may not be used for any purpose other than to prepare for the defense in the criminal action against the defendant;

(3) the tapes may not be publicly exhibited, shown, displayed, used for educational, research, or demonstrative purposes, or used in any other fashion, except in judicial proceedings in the criminal action against the defendant;

(4) the tapes may be viewed only by the defendant, the defendant's attorney, and the attorney's employees, investigators, and experts;

(5) no transcript of the tapes, nor the substance of any portion of the tapes, may be divulged to any person not authorized to view the tapes;

(6) no person may be granted access to the tapes, any transcription of the tapes, or the substance of any portion of the tapes unless the person has first signed a written agreement that the person is aware of this statute and acknowledges that the person is subject to the court's contempt powers for any violation of it; and

(7) upon final disposition of the criminal case against the defendant, the tapes and any transcripts of the tapes must be returned to the prosecuting attorney.

(b) The court may hold a person who violates this section in contempt.

# MISSISSIPPI

## **MISS. CODE ANN. § 13-1-401 (2010). Applicability of special evidentiary provisions**

The rules of evidence prescribed in Sections 13-1-401 through 13-1-415 shall be applicable in any youth court proceeding and in any criminal prosecution under the following sections of the Mississippi Code of 1972:

- (a) Section 97-5-21, Mississippi Code of 1972, relating to seduction of a child under age eighteen (18);
- (b) Section 97-5-23, Mississippi Code of 1972, relating to the touching of a child for lustful purposes;
- (c) Section 97-5-35, Mississippi Code of 1972, relating to the exploitation of children;
- (d) Section 97-5-39, Mississippi Code of 1972, relating to contributing to the neglect or delinquency of a child and felonious battery of a child;
- (e) Section 97-5-41, Mississippi Code of 1972, relating to the carnal knowledge of a stepchild, adopted child or child of a cohabitating partner;
- (f) Section 97-3-95, Mississippi Code of 1972, relating to sexual battery; or
- (g) Section 97-29-59, Mississippi Code of 1972, relating to unnatural intercourse.

## **MISS. CODE ANN. § 13-1-407 (2010). Use of child's videotaped testimony; protective orders; destruction of videotape**

(1) On motion and hearing in camera and a finding based on information placed on the record which was subject to cross-examination:

- (a) That there is a substantial likelihood, based on specific behavioral indicators described in Section 13-1-411 exhibited by the child, that a child who is under the age of sixteen (16) would suffer traumatic emotional or mental distress if he were required to testify in open court; or
- (b) That such child is otherwise unavailable; a trial court may order the videotaping of the testimony of the victim or witness in a case in which the occurrence or non-occurrence of sexual abuse or child abuse is a material fact, which videotaped testimony is to be utilized at trial in lieu of testimony in open court.

(2) The motion may be made by:

- (a) The child, or the attorney, parent, legal guardian or guardian ad litem of the child;

(b) The trial judge acting at his own discretion; or

(c) Any party to the case.

(3) The judge shall preside, or shall appoint a special master to preside, at the videotaping unless the following conditions are met:

(a) The child is represented by a guardian ad litem or counsel;

(b) The child's representative and the counsel for each party stipulate that the requirement for the presence of the judge or special master may be waived; and

(c) The court finds, after a hearing, that the presence of a judge or special master is not necessary to protect the child.

(4) The defendant and the defendant's counsel shall be present at the videotaping, unless the defendant has waived this right. Provided, however, that on motion of a party, or of the child's representative and hearing in camera and a finding based on information placed on the record which was subject to cross-examination that there is a substantial likelihood, based on specific behavioral indicators exhibited by the child, as described in Section 13-1-411, that the child would suffer traumatic emotional or mental distress if he or she were required to testify in the presence of an adult who is alleged to have abused the child, or to have participated in, or concealed such abuse, the court may require that adult, including without limitation a defendant, to view the testimony from outside the presence of the child by means of a two-way mirror or another similar method that will ensure that the defendant can directly observe and hear the testimony of the child, but that the child cannot hear or see the adult. If the defendant is excluded from the room in which testimony is being taken, the defendant and the attorney for the defendant may communicate by any appropriate private electronic or telephonic method.

(5) All questioning shall be done by attorneys for the prosecution and the defense; however, upon stipulation of all parties, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting concerning the offense to aid the court throughout proceedings conducted under this section.

(6) The motion for the taking of videotaped testimony may be made at any time with three (3) days' written notice of the time and place of the taking of the testimony provided to all parties to the proceeding, to the child and to the child's representative or guardian.

(7) Any videotape which is made pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the child. The court shall order the destruction of a videotape made pursuant to this section after five (5) years have elapsed since the entry of the judgment in the case in which the videotape was made. However, such order may be made before the expiration of five (5) years upon motion filed by the child, his attorney, parent, legal guardian or guardian ad litem after notice to

the defendant. In no event shall such a videotape be destroyed before a final judgment has been rendered on an appeal.

(8) The court shall make specific findings of fact, on the record, as to the basis for its rulings under this section.

(9) All parties must be represented by counsel at any taking of any testimony under this section.

## **MISSOURI**

### **MO. REV. STAT. § 491.680 (2010). Court may order video recording of alleged child victim, when -- procedure – transcript – exclusion – of defendant from proceedings, opportunity to review – cross – examination**

1. In any criminal prosecution under the provisions of chapter 565, 566 or 568, RSMo, involving an alleged child victim, upon the motion of the prosecuting attorney, the court may order that an in-camera videotaped deposition of the testimony of the alleged child victim be made for use as substantive evidence at preliminary hearings and at trial.

2. If the court finds, at a hearing, that significant emotional or psychological trauma to the child which would result from testifying in the personal presence of the defendant exists, which makes the child unavailable as a witness at the time of the preliminary hearing or trial, the court shall order that an in-camera videotaped deposition of the testimony of the alleged child victim be made for use as substantive evidence at the preliminary hearings and at trial. Such recording shall be retained by the prosecuting attorney and shall be admissible in lieu of the child's personal appearance and testimony at preliminary hearings and at trial, conflicting provisions of section 544.270, RSMo, notwithstanding. A transcript of such testimony shall be made as soon as possible after the completion of such deposition and shall be provided to the defendant together with all other discoverable materials.

3. Upon a finding of trauma as provided for in subsection 2 of this statute, the court may also exclude the defendant from the videotape deposition proceedings in which the child is to testify. Where any such order of exclusion is entered, the child shall not be excused as a witness until the defendant has had a reasonable opportunity to review the videotape deposition in private with his counsel and to consult with his counsel; and until his counsel has been afforded the opportunity to cross-examine the child following such review and consultation.

4. The court shall preside over the depositions, which shall be conducted in accordance with the rules of evidence applicable to criminal cases.



5. The attorney for the defendant shall have at least two opportunities to cross-examine the deposed alleged child victim: once prior to the preliminary hearing and at least one additional time prior to the trial.

6. Prior to the taking of the deposition which is to be used as substantive evidence at the trial pursuant to sections 491.675 to 491.693, the defendant's attorney shall be provided with such discoverable materials and information as the court may, on motion, direct; shall be afforded a reasonable time to examine such materials; and shall be permitted to cross-examine the child during the deposition.

7. If the defendant is not represented by counsel and if, upon inquiry, it appears to the court that the defendant will be unable to obtain counsel within a reasonable period of time, the court shall appoint the public defender or other counsel to represent the defendant at the deposition.

**MO. REV. STAT. § 491.696 (2010). Child defined – videotaped testimony for juvenile court hearings**

For purposes of sections 491.696 to 491.705, the term "child" means a person seventeen years of age or under who is the alleged victim of sexual abuse, physical abuse, or neglect as such terms are defined in section 210.110, RSMo.

**MO. REV. STAT. § 491.699 (2010). Juvenile court hearings – court may order video recording of alleged child victim, when – procedure – cross-examination – counsel appointed for perpetrator, when**

1. Upon the motion of the juvenile officer, the court may order that an in-camera videotaped recording of the testimony of the alleged child victim be made for use as substantive evidence at a juvenile court hearing held pursuant to the provisions of chapter 211, RSMo. The provisions of section 491.075 relating to the admissibility of statements made by a child under the age of twelve shall apply to proceedings in juvenile court.

2. In determining whether or not to allow such motion, the court shall consider the elements of the offense charged and the emotional or psychological trauma to the child if required to testify in open court or to be brought into the personal presence of the alleged perpetrator. Such recording shall be retained by the juvenile officer and shall be admissible in lieu of the child's personal appearance and testimony at juvenile court hearings. A transcript of such testimony shall be made as soon as possible after the completion of such deposition and shall be provided to all parties to the action.

3. The court shall preside over the depositions, which shall be conducted in accordance with the rules of evidence applicable to civil cases.

4. In any prosecution under either subdivision (2) or (3) of subsection 1 of section 211.031, RSMo, the attorney for the alleged perpetrator shall have at least two opportunities to cross-examine the deposed alleged child victim.

5. Prior to the taking of the deposition which is to be used as substantive evidence at the hearing pursuant to sections 491.696 to 491.705, the attorney for any party to the action shall be provided with such discoverable materials and information as the court may, on motion, direct; shall be afforded a reasonable time to examine such materials; and shall be permitted to cross-examine the child during the deposition.

6. In any prosecution under either subdivision (2) or (3) of subsection 1 of section 211.031, RSMo, if the alleged perpetrator is not represented by counsel and if, upon inquiry, it appears to the court that he or she will be unable to obtain counsel within a reasonable period of time, the court shall appoint the public defender or other counsel to represent the alleged perpetrator at the deposition.

## **NEW MEXICO**

### **N.M. STAT. § 30-9-17 (2010). Videotaped depositions of alleged victims who are under sixteen-years of age; procedure; use in lieu of direct testimony**

A. In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, upon motion of the district attorney and after notice to the opposing counsel, the district court may, for a good cause shown, order the taking of a videotaped deposition of any alleged victim under the age of sixteen years. The videotaped deposition shall be taken before the judge in chambers in the presence of the district attorney, the defendant and his attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the videotaped deposition in the same manner as permitted at trial under the provisions of Rule 611 of the New Mexico Rules of Evidence [Rule 11-611 NMRA]. Any videotaped deposition taken under the provisions of this act [this section] shall be viewed and heard at the trial and entered into the record in lieu of the direct testimony of the alleged victim.

B. For the purposes of this section, "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.

C. The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of this act.

D. The cost of such videotaping shall be paid by the state.

E. Videotapes which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

## **NEW YORK**

### **N.Y. CRIM. PROC. LAW § 190.25 (2010). Grand jury; proceedings and operation in general.**

1. Proceedings of a grand jury are not valid unless at least sixteen of its members are present. The finding of an indictment, a direction to file a prosecutor's information, a decision to submit a grand jury report and every other affirmative official action or decision requires the concurrence of at least twelve members thereof.

2. The foreman or any other grand juror may administer an oath to any witness appearing before the grand jury.

3. Except as provided in subdivision three-a of this section, during the deliberations and voting of a grand jury, only the grand jurors may be present in the grand jury room. During its other proceedings, the following persons, in addition to witnesses, may, as the occasion requires, also be present:

(a) The district attorney;

(b) A clerk or other public servant authorized to assist the grand jury in the administrative conduct of its proceedings;

(c) A stenographer authorized to record the proceedings of the grand jury;

(d) An interpreter. Upon request of the grand jury, the prosecutor must provide an interpreter to interpret the testimony of any witness who does not speak the English language well enough to be readily understood. Such interpreter must, if he has not previously taken the constitutional oath of office, first take an oath before the grand jury that he will faithfully interpret the testimony of the witness and that he will keep secret all matters before such grand jury within his knowledge;

(e) A public servant holding a witness in custody. When a person held in official custody is a witness before a grand jury, a public servant assigned to guard him during his grand jury appearance may accompany him in the grand jury room. Such public servant must, if

he has not previously taken the constitutional oath of office, first take an oath before the grand jury that he will keep secret all matters before it within his knowledge.

(f) An attorney representing a witness pursuant to section 190.52 of this chapter while that witness is present.

(g) An operator, as that term is defined in section 190.32 of this chapter, while the videotaped examination of either a special witness or a child witness is being played.

(h) [As amended by L 2006, ch 93, § 5 and ch 320, § 16] A social worker, rape crisis counselor, psychologist or other professional providing emotional support to a child witness twelve years old or younger who is called to give evidence in a grand jury proceeding concerning a crime defined in article one hundred thirty, article two hundred sixty, section 120.10, 125.10, 125.15, 125.20, 125.25 [fig 1] , 125.26 [fig 2] , 125.27 [fig 3] , 255.25, 255.26 or 255.27 of the penal law provided that the district attorney consents. Such support person shall not provide the witness with an answer to any question or otherwise participate in such proceeding and shall first take an oath before the grand jury that he or she will keep secret all matters before such grand jury within his or her knowledge.

3-a. Upon the request of a deaf or hearing-impaired grand juror, the prosecutor shall provide a sign language interpreter for such juror. Such interpreter shall be present during all proceedings of the grand jury which the deaf or hearing-impaired grand juror attends, including deliberation and voting. The interpreter shall, if he or she has not previously taken the constitutional oath of office, first take an oath before the grand jury that he or she will faithfully interpret the testimony of the witnesses and the statements of the prosecutor, judge and grand jurors; keep secret all matters before such grand jury within his or her knowledge; and not seek to influence the deliberations and voting of such grand jury.

4. (a) Grand jury proceedings are secret, and no grand juror, or other person specified in subdivision three of this section or section 215.70 of the penal law, may, except in the lawful discharge of his duties or upon written order of the court, disclose the nature or substance of any grand jury testimony, evidence, or any decision, result or other matter attending a grand jury proceeding. For the purpose of assisting the grand jury in conducting its investigation, evidence obtained by a grand jury may be independently examined by the district attorney, members of his staff, police officers specifically assigned to the investigation, and such other persons as the court may specifically authorize. Such evidence may not be disclosed to other persons without a court order. Nothing contained herein shall prohibit a witness from disclosing his own testimony.

(b) When a district attorney obtains evidence during a grand jury proceeding which provides reasonable cause to suspect that a child has been abused or maltreated, as those terms are defined by section ten hundred twelve of the family court act, he must apply to the court supervising the grand jury for an order permitting disclosure of such evidence to the state central register of child abuse and maltreatment. A district attorney need not

apply to the court for such order if he has previously made or caused a report to be made to the state central register of child abuse and maltreatment pursuant to section four hundred thirteen of the social services law and the evidence obtained during the grand jury proceeding, or substantially similar information, was included in such report. The district attorney's application to the court shall be made ex parte and in camera. The court must grant the application and permit the district attorney to disclose the evidence to the state central register of child abuse and maltreatment unless the court finds that such disclosure would jeopardize the life or safety of any person or interfere with a continuing grand jury proceeding.

5. The grand jury is the exclusive judge of the facts with respect to any matter before it.

6. The legal advisors of the grand jury are the court and the district attorney, and the grand jury may not seek or receive legal advice from any other source. Where necessary or appropriate, the court or the district attorney, or both, must instruct the grand jury concerning the law with respect to its duties or any matter before it, and such instructions must be recorded in the minutes.

**N.Y. CRIM. PROC. LAW § 190.30 (2010). Grand jury; rules of evidence.**

1. Except as otherwise provided in this section, the provisions of article sixty, governing rules of evidence and related matters with respect to criminal proceedings in general, are, where appropriate, applicable to grand jury proceedings.

2. A report or a copy of a report made by a public servant or by a person employed by a public servant or agency who is a physicist, chemist, coroner or medical examiner, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison or test performed by him in connection with a case which is the subject of a grand jury proceeding, may, when certified by such person as a report made by him or as a true copy thereof, be received in such grand jury proceeding as evidence of the facts stated therein.

2-a. When the electronic transmission of a certified report, or certified copy thereof, of the kind described in subdivision two or three-a of this section or a sworn statement or copy thereof, of the kind described in subdivision three of this section results in a written document, such written document may be received in such grand jury proceeding provided that: (a) a transmittal memorandum completed by the person sending the report contains a certification that the report has not been altered and a description of the report specifying the number of pages; and (b) the person who receives the electronically transmitted document certifies that such document and transmittal memorandum were so received; and (c) a certified report or a certified copy or sworn statement or sworn copy thereof is filed with the court within twenty days following arraignment upon the indictment; and (d) where such written document is a sworn statement or sworn copy thereof of the kind described in subdivision three of this section, such sworn statement or

sworn copy thereof is also provided to the defendant or his counsel within twenty days following arraignment upon the indictment.

3. A written or oral statement, under oath, by a person attesting to one or more of the following matters may be received in such grand jury proceeding as evidence of the facts stated therein:

(a) that person's ownership or lawful custody of, or license to occupy, premises, as defined in section 140.00 of the penal law, and of the defendant's lack of license or privilege to enter or remain thereupon;

(b) that person's ownership of, or possessory right in, property, the nature and monetary amount of any damage thereto and the defendant's lack of right to damage or tamper with the property;

(c) that person's ownership or lawful custody of, or license to possess property, as defined in section 155.00 of the penal law, including an automobile or other vehicle, its value and the defendant's lack of superior or equal right to possession thereof;

(d) that person's ownership of a vehicle and the absence of his consent to the defendant's taking, operating, exercising control over or using it;

(e) that person's qualifications as a dealer or other expert in appraising or evaluating a particular type of property, his expert opinion as to the value of a certain item or items of property of that type, and the basis for his opinion;

(f) that person's identity as an ostensible maker, drafter, drawer, endorser or other signator of a written instrument and its falsity within the meaning of section 170.00 of the penal law [fig 1] ;

(g) that person's ownership of, or possessory right in, a credit card account number or debit card account number, and the defendant's lack of superior or equal right to use or possession thereof.

Provided, however, that no such statement shall be admitted when an adversarial examination of such person has been previously ordered pursuant to subdivision 8 of section 180.60, unless a transcript of such examination is admitted.

3-a. A sex offender registration form, sex offender registration continuation/supplemental form, sex offender registry address verification form, sex offender change of address form or a copy of such form maintained by the division of criminal justice services concerning an individual who is the subject of a grand jury proceeding, may, when certified by a person designated by the commissioner of the division of criminal justice services as the person to certify such records, as a true copy thereof, be received in such grand jury proceeding as evidence of the facts stated therein.

4. An examination of a child witness or a special witness by the district attorney videotaped pursuant to section 190.32 of this chapter may be received in evidence in such grand jury proceeding as the testimony of such witness.

5. Nothing in subdivisions two, three or four of this section shall be construed to limit the power of the grand jury to cause any person to be called as a witness pursuant to subdivision three of section 190.50.

6. Wherever it is provided in article sixty that the court in a criminal proceeding must rule upon the competency of a witness to testify or upon the admissibility of evidence, such ruling may in an equivalent situation in a grand jury proceeding, be made by the district attorney.

7. Wherever it is provided in article sixty that a court presiding at a jury trial must instruct the jury with respect to the significance, legal effect or evaluation of evidence, the district attorney, in an equivalent situation in a grand jury proceeding, may so instruct the grand jury.

8. (a) A business record may be received in such grand jury proceedings as evidence of the following facts and similar facts stated therein:

(i) a person's use of, subscription to and charges and payments for communication equipment and services including but not limited to equipment or services provided by telephone companies and internet service providers, but not including recorded conversations or images communicated thereby; and

(ii) financial transactions, and a person's ownership or possessory interest in any account, at a bank, insurance company, brokerage, exchange or banking organization as defined in section two of the banking law.

(b) Any business record offered for consideration by a grand jury pursuant to paragraph (a) of this subdivision must be accompanied by a written statement, under oath, that (i) contains a list or description of the records it accompanies, (ii) attests in substance that the person making the statement is a duly authorized custodian of the records or other employee or agent of the business who is familiar with such records, and (iii) attests in substance that such records were made in the regular course of business and that it was the regular course of such business to make such records at the time of the recorded act, transaction, occurrence or event, or within a reasonable time thereafter. Such written statement may also include a statement identifying the name and job description of the person making the statement, specifying the matters set forth in subparagraph (ii) of this paragraph and attesting that the business has made a diligent search and does not possess a particular record or records addressing a matter set forth in paragraph (a) of this subdivision, and such statement may be received at grand jury proceedings as evidence of the fact that the business does not possess such record or records. When records of a business are accompanied by more than one sworn written statement of its employees or agents, such statements may be considered together in determining the admissibility of the records under this subdivision. For the purpose of this subdivision, the term "business

records" does not include any records prepared by law enforcement agencies or prepared by any entity in anticipation of litigation.

(c) Any business record offered to a grand jury pursuant to paragraph (a) of this subdivision that includes material beyond that described in such paragraph (a) shall be redacted to exclude such additional material, or received subject to a limiting instruction that the grand jury shall not consider such additional material in support of any criminal charge.

(d) No such records shall be admitted when an adversarial examination of such a records custodian or other employee of such business who was familiar with such records has been previously ordered pursuant to subdivision eight of section 180.60 of this chapter, unless a transcript of such examination is admitted.

(e) Nothing in this subdivision shall affect the admissibility of business records in the grand jury on any basis other than that set forth in this subdivision.

**N.Y. CRIM. PROC. LAW § 190.32 (2010). Videotaped examination; definitions, application, order and procedure.**

(1) Definitions. As used in this section:

(a) "Child witness" means a person twelve years old or less whom the people intend to call as witness in a grand jury proceeding to give evidence concerning any crime defined in article one hundred thirty or two hundred sixty or section 255.25, 255.26 or 255.27 of the penal law of which the person was a victim.

(b) "Special witness" means a person whom the people intend to call as a witness in a grand jury proceeding and who is either:

(i) Unable to attend and testify in person in the grand jury proceeding because the person is either physically ill or incapacitated; or

(ii) More than twelve years old and who is likely to suffer very severe emotional or mental stress if required to testify in person concerning any crime defined in article one hundred thirty or two hundred sixty or section 255.25, 255.26 or 255.27 of the penal law to which the person was a witness or of which the person was a victim.

(c) "Operator" means a person employed by the district attorney who operates the video camera to record the examination of a child witness or a special witness.

2. In lieu of requiring a witness who is a child witness to appear in person and give evidence in a grand jury proceeding, the district attorney may cause the examination of such witness to be videotaped in accordance with the provisions of subdivision five of this section.

3. Whenever the district attorney has reason to believe that a witness is a special witness, he may make an ex parte application to the court for an order authorizing the videotaping



of an examination of such special witness and the subsequent introduction in evidence in a grand jury proceeding of that videotape in lieu of the live testimony of such special witness. The application must be in writing, must state the grounds of the application and must contain sworn allegations of fact, whether of the district attorney or another person or persons, supporting such grounds. Such allegations may be based upon personal knowledge of the deponent or upon information and belief, provided, that in the latter event, the sources of such information and the grounds for such belief are stated.

4. If the court is satisfied that a witness is a special witness, it shall issue an order authorizing the videotaping of such special witness in accordance with the provisions of subdivision five of this section. The court order and the application and all supporting papers shall not be disclosed to any person except upon further court order.

5. The videotaping of an examination either of a child witness or a special witness shall proceed as follows:

(a) An examination of a child witness or a special witness which is to be videotaped pursuant to this section may be conducted anywhere and at any time provided that the operator begins the videotape by recording a statement by the district attorney of the date, time and place of the examination. In addition, the district attorney shall identify himself, the operator and all other persons present.

(b) An accurate clock with a sweep second hand shall be placed next to or behind the witness in such position as to enable the operator to videotape the clock and the witness together during the entire examination. In the alternative, a date and time generator shall be used to superimpose the day, hour, minute and second over the video portion of the recording during the entire examination.

(c) A social worker, rape crisis counselor, psychologist or other professional providing emotional support to a child witness or to a special witness, as defined in subparagraph (ii) of paragraph (b) of subdivision one of this section, or any of those persons enumerated in paragraphs (a), (b), (c), (d), (e), (f) and (g) of subdivision three of section 190.25 may be present during the videotaping except that a doctor, nurse or other medical assistant also may be present if required by the attendant circumstances. Each person present, except the witness, must, if he has not previously taken a constitutional oath of office or an oath that he will keep secret all matters before a grand jury, must take an oath on the record that he will keep secret the videotaped examination.

(d) The district attorney shall state for the record the name of the witness, and the caption and the grand jury number, if any, of the case. If the witness to be examined is a child witness, the date of the witness' birth must be recorded. If the witness to be examined is a special witness, the date of the order authorizing the videotaped examination and the name of the justice who issued the order shall be recorded.

(e) If the witness will give sworn testimony, the administration of the oath must be recorded. If the witness will give unsworn testimony, a statement that the testimony is not under oath must be recorded.

(f) If the examination requires the use of more than one tape, the operator shall record a statement of the district attorney at the end of each tape declaring that such tape has ended and referring to the succeeding tape. At the beginning of such succeeding tape, the operator shall record a statement of the district attorney identifying himself, the witness being examined and the number of tapes which have been used to record the examination of such witness. At the conclusion of the examination the operator shall record a statement of the district attorney certifying that the recording has been completed, the number of tapes on which the recording has been made and that such tapes constitute a complete and accurate record of the examination of the witness.

(g) A videotape of an examination conducted pursuant to this section shall not be edited unless upon further order of the court.

6. When the videotape is introduced in evidence and played in the grand jury, the grand jury stenographer shall record the examination in the same manner as if the witness had testified in person.

7. Custody of the videotape shall be maintained in the same manner as custody of the grand jury minutes.

## **NORTH DAKOTA**

### **N.D. CENT. CODE § 31-04-04.1 (2010). Videotaped statement of child sexual offense victim -- Criteria for admission as evidence.**

1. In any prosecution for a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11 in which the victim is less than fifteen years of age, the oral statement of the child victim may be recorded before trial and, subject to subsection 2, is admissible as evidence in any court proceeding regarding the offense if the following conditions are satisfied:

a. The court determines there is reasonable cause to believe that the child victim would experience serious emotional trauma as a result of in-court participation in the proceeding;

b. The accused must be given reasonable written notice of the time and place for taking the videotaped statement;

c. The accused must be afforded the opportunity to hear and view the testimony from outside the presence of the child by means of a two-way mirror or other similar method that will ensure that the child cannot hear or see the accused;

d. The accused must have the opportunity to communicate orally with counsel by electronic means while the videotaped statement is being made; and

e. All questioning must be done by the prosecutor or counsel for the defendant unless the defendant is an attorney pro se. An attorney pro se must conduct all questioning from outside the presence of the child. Upon request of any of the parties or upon the determination of the court that it would be appropriate, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting to aid the court throughout proceedings conducted under this section and the court may appoint a guardian ad litem to protect the interests of the child.

2. A child victim's videotaped statement is admissible pursuant to subsection 1 if the court finds that the child is unavailable as a witness to testify at trial and, upon viewing the videotape recording before it is shown to the jury, determines that it is sufficiently reliable and trustworthy and that the interests of justice will best be served by admission of the statement into evidence. For purposes of this subsection, "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or psychological strain if required to testify at trial. The court, in making its findings and determinations under this subsection, shall consider at least the following:

a. The nature of the offense;

b. The significance of the child's testimony to the case;

c. The child's age;

d. The child's psychological maturity and understanding; and

e. The nature, degree, and duration of potential injury to the child from testifying.

## **OHIO**

**OHIO REV. CODE ANN. § 2152.81 (2010). Deposition of child victim; videotaping; testimony taken outside courtroom and televised into it or**

**replayed in courtroom.**

(A) (1) As used in this section, "victim" includes any of the following persons:

(a) A person who was a victim of a violation identified in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult;

(b) A person against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult.

(2) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation of section 2905.03, 2905.05, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2919.22 of the Revised Code or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or act was a child who was less than thirteen years of age when the complaint or information was filed or the indictment was returned, the juvenile judge, upon motion of an attorney for the prosecution, shall order that the testimony of the child victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (A)(3) of this section. The judge shall notify the child victim whose deposition is to be taken, the prosecution, and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The notice shall identify the child victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall have the right, as at an adjudication hearing, to full examination and cross-examination of the child victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the juvenile court in which the action is pending and is admissible in the manner described in division (B) of this section. If a deposition of a child victim taken under this division is admitted as evidence at the proceeding under division (B) of this section, the child victim shall not be required to testify in person at the proceeding. However, at any time before the conclusion of the proceeding, the attorney for the child charged with the violation or act may file a motion with the judge requesting that another deposition of the child victim be taken because new evidence material to the defense of the child charged has been discovered that the attorney for the child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Any motion requesting another deposition shall be accompanied by supporting affidavits. Upon the filing of the motion and affidavits, the court may order that additional testimony of the child victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken

in accordance with this division; if the admitted deposition was a videotaped deposition taken in accordance with division (A)(3) of this section, the new deposition also shall be videotaped in accordance with that division, and, in other cases, the new deposition may be videotaped in accordance with that division.

(3) If the prosecution requests that a deposition to be taken under division (A)(2) of this section be videotaped, the juvenile judge shall order that the deposition be videotaped in accordance with this division. If a juvenile judge issues an order to video tape\* the deposition, the judge shall exclude from the room in which the deposition is to be taken every person except the child victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the child who is charged with the violation or act, any person needed to operate the equipment to be used, one person chosen by the child victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the child victim giving the deposition. The person chosen by the child victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the child victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the child victim giving the deposition during the deposition. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the deposition, except on a monitor provided for that purpose. The child victim giving the deposition shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person in that room, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (A)(2) of this section and is admissible in the manner described in this division and division (B) of this section, and, if a deposition that is videotaped under this division is admitted as evidence at the proceeding, the child victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (B) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the child who is charged with the violation or act are afforded an opportunity to view the recording before it is shown in the proceeding.

(B) (1) At any proceeding in relation to which a deposition was taken under division (A) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; if the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; if the child victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or if both of the following apply:

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the child victim who gave the testimony in the deposition were to testify in person at the proceeding, the child victim would experience serious emotional trauma as a result of the child victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (B) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (A) and (B) of this section are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (A) of this section or otherwise taken.

(C) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age

when the complaint or information was filed or indictment was returned, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the child victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (E) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (A)(3) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act.

(D) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint or information was filed or the indictment was returned, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the child victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the child who is charged with the violation or act, and any other persons who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in

the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (E) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (A)(3)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(E) For purposes of divisions (C) and (D) of this section, a juvenile judge may order the testimony of a child victim to be taken outside of the room in which a proceeding is being conducted if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following circumstances:

- (1) The persistent refusal of the child victim to testify despite judicial requests to do so;
- (2) The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;
- (3) The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

(F) (1) If a juvenile judge issues an order pursuant to division (C) or (D) of this section that requires the testimony of a child victim in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the child victim to whose testimony it applies, the order applies only during the testimony of the specified child victim, and the child victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (A)(3) of this section or a proceeding under division (C) or (D) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code.

(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under divisions (A) and (B) of this section, the videotaping of a deposition under division (A)(3) of this section, or the taking of testimony outside of the room in



which a proceeding is being conducted under division (C) or (D) of this section, shall enter the determination and findings on the record in the proceeding.

**OHIO REV. CODE ANN. § 2945.481 (2010). Deposition of child victim; videotaping; testimony taken outside courtroom and televised into it or replayed in courtroom.**

(A) (1) As used in this section, "victim" includes any person who was a victim of a violation identified in division (A)(2) of this section or an offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (A)(2) of this section or an offense of violence.

(2) In any proceeding in the prosecution of a charge of a violation of section 2905.03, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2919.22 of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the judge of the court in which the prosecution is being conducted, upon motion of an attorney for the prosecution, shall order that the testimony of the child victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (A)(3) of this section. The judge shall notify the child victim whose deposition is to be taken, the prosecution, and the defense of the date, time, and place for taking the deposition. The notice shall identify the child victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The defendant shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the defense. The prosecution and the attorney for the defense shall have the right, as at trial, to full examination and cross-examination of the child victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the court in which the action is pending and is admissible in the manner described in division (B) of this section. If a deposition of a child victim taken under this division is admitted as evidence at the proceeding under division (B) of this section, the child victim shall not be required to testify in person at the proceeding. However, at any time before the conclusion of the proceeding, the attorney for the defense may file a motion with the judge requesting that another deposition of the child victim be taken because new evidence material to the defense has been discovered that the attorney for the defense could not with reasonable diligence have discovered prior to the taking of the admitted deposition. A motion for another deposition shall be accompanied by supporting affidavits. Upon the filing of a motion for another deposition and affidavits, the court may order that additional testimony of the child victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division; if the admitted deposition was a videotaped deposition taken in accordance with division (A)(3) of this

section, the new deposition also shall be videotaped in accordance with that division and in other cases, the new deposition may be videotaped in accordance with that division.

(3) If the prosecution requests that a deposition to be taken under division (A)(2) of this section be videotaped, the judge shall order that the deposition be videotaped in accordance with this division. If a judge issues an order that the deposition be videotaped, the judge shall exclude from the room in which the deposition is to be taken every person except the child victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the defense, any person needed to operate the equipment to be used, one person chosen by the child victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the child victim giving the deposition. The person chosen by the child victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the child victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror, so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the child victim giving the deposition during the deposition. The defendant shall be permitted to observe and hear the testimony of the child victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the child victim giving the deposition, except on a monitor provided for that purpose. The child victim giving the deposition shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (A)(2) of this section and is admissible in the manner described in this division and division (B) of this section, and, if a deposition that is videotaped under this division is admitted as evidence at the proceeding, the child victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (B) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the

recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the defendant are afforded an opportunity to view the recording before it is shown in the proceeding.

(B) (1) At any proceeding in a prosecution in relation to which a deposition was taken under division (A) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; if the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; if the child victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or if both of the following apply:

(a) The defendant had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the child victim who gave the testimony in the deposition were to testify in person at the proceeding, the child victim would experience serious emotional trauma as a result of the child victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (B) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (A) and (B) of this section are in addition to any other provisions of the Revised Code, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a criminal proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (A) of this section or otherwise taken.

(C) In any proceeding in the prosecution of any charge of a violation listed in division (A)(2) of this section or an offense of violence and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the prosecution may file a motion with the judge requesting the judge to order the testimony of the child victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the jury, if applicable, the defendant, and any other persons who are not permitted in the room in which the testimony is to be taken

but who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this section, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant, for one or more of the reasons set forth in division (E) of this section. If a judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (A)(3) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The defendant shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant.

(D) In any proceeding in the prosecution of any charge of a violation listed in division (A)(2) of this section or an offense of violence and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the prosecution may file a motion with the judge requesting the judge to order the testimony of the child victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the jury, if applicable, the defendant, and any other persons who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant, for one or more of the reasons set forth in division (E) of this section. If a judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The defendant shall be permitted to observe and hear the testimony of the child victim who is giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted

to a location from which the defendant cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (A)(3)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(E) For purposes of divisions (C) and (D) of this section, a judge may order the testimony of a child victim to be taken outside the room in which the proceeding is being conducted if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the defendant due to one or more of the following:

- (1) The persistent refusal of the child victim to testify despite judicial requests to do so;
- (2) The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;
- (3) The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

(F) (1) If a judge issues an order pursuant to division (C) or (D) of this section that requires the testimony of a child victim in a criminal proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the child victim to whose testimony it applies, the order applies only during the testimony of the specified child victim, and the child victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order.

(2) A judge who makes any determination regarding the admissibility of a deposition under divisions (A) and (B) of this section, the videotaping of a deposition under division (A)(3) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (C) or (D) of this section, shall enter the determination and findings on the record in the proceeding.

**OHIO REV. CODE ANN. § 2945.49 (2010). Testimony of deceased or absent witness; videotaped preliminary hearing testimony of child victim.**

(A) (1) As used in this section, "victim" includes any person who was a victim of a felony violation identified in division (B)(1) of this section or a felony offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a felony violation identified in division (B)(1) of this section or a felony offense of violence.

(2) Testimony taken at an examination or a preliminary hearing at which the defendant is present, or at a former trial of the cause, or taken by deposition at the instance of the defendant or the state, may be used whenever the witness giving the testimony dies or

cannot for any reason be produced at the trial or whenever the witness has, since giving that testimony, become incapacitated to testify. If the former testimony is contained within an authenticated transcript of the testimony, it shall be proven by the transcript, otherwise by other testimony.

(B) (1) At a trial on a charge of a felony violation of section 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2907.24, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2919.22 of the Revised Code or a felony offense of violence and in which an alleged victim of the alleged violation or offense was less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, the court, upon motion of the prosecutor in the case, may admit videotaped preliminary hearing testimony of the child victim as evidence at the trial, in lieu of the child victim appearing as a witness and testifying at the trial, if all of the following apply:

(a) The videotape of the testimony was made at the preliminary hearing at which probable cause of the violation charged was found;

(b) The videotape of the testimony was made in accordance with division (C) of section 2937.11 of the Revised Code;

(c) The testimony in the videotape is not excluded by the hearsay rule and otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801, if the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803, if the child victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule, or if both of the following apply:

(i) The accused had an opportunity and similar motive at the preliminary hearing to develop the testimony of the child victim by direct, cross, or redirect examination;

(ii) The court determines that there is reasonable cause to believe that if the child victim who gave the testimony at the preliminary hearing were to testify in person at the trial, the child victim would experience serious emotional trauma as a result of the child victim's participation at the trial.

(2) If a child victim of an alleged felony violation of section 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2907.24, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2919.22 of the Revised Code or an alleged felony offense of violence testifies at the preliminary hearing in the case, if the testimony of the child victim at the preliminary hearing was videotaped pursuant to division (C) of section 2937.11 of the Revised Code, and if the defendant in the case files a written objection to the use, pursuant to division (B)(1) of this section, of the videotaped testimony at the trial, the court, immediately after the filing of the objection, shall hold a hearing to determine whether the videotaped testimony of the child victim should be admissible at trial under division (B)(1) of this section and, if it is admissible,

whether the child victim should be required to provide limited additional testimony of the type described in this division. At the hearing held pursuant to this division, the defendant and the prosecutor in the case may present any evidence that is relevant to the issues to be determined at the hearing, but the child victim shall not be required to testify at the hearing.

After the hearing, the court shall not require the child victim to testify at the trial, unless it determines that both of the following apply:

(a) That the testimony of the child victim at trial is necessary for one or more of the following reasons:

(i) Evidence that was not available at the time of the testimony of the child victim at the preliminary hearing has been discovered;

(ii) The circumstances surrounding the case have changed sufficiently to necessitate that the child victim testify at the trial.

(b) That the testimony of the child victim at the trial is necessary to protect the right of the defendant to a fair trial.

The court shall enter its finding and the reasons for it in the journal. If the court requires the child victim to testify at the trial, the testimony of the victim shall be limited to the new evidence and changed circumstances, and the child victim shall not otherwise be required to testify at the trial. The required testimony of the child victim may be given in person or, upon motion of the prosecution, may be taken by deposition in accordance with division (A) of section 2945.481 [2945.48.1] of the Revised Code provided the deposition is admitted as evidence under division (B) of that section, may be taken outside of the courtroom and televised into the courtroom in accordance with division (C) of that section, or may be taken outside of the courtroom and recorded for showing in the courtroom in accordance with division (D) of that section.

(3) If videotaped testimony of a child victim is admitted at trial in accordance with division (B)(1) of this section, the child victim shall not be compelled in any way to appear as a witness at the trial, except as provided in division (B)(2) of this section.

(C) An order issued pursuant to division (B) of this section shall specifically identify the child victim concerning whose testimony it pertains. The order shall apply only during the testimony of the child victim it specifically identifies.

(D) As used in this section, "prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

## OKLAHOMA

### **OKLA. STAT. ANN. tit. 10, § 7003-4.2 (2010). Admissibility of prerecorded statements of child age 12 or under who is victim of abuse.**

A. This section shall apply only to a proceeding brought within the purview of the Oklahoma Children's Code in which a child twelve (12) years of age or younger is alleged to be deprived, and shall apply only to the statement of that child or another child witness.

B. The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:

1. The court determines in a hearing conducted outside the presence of the jury that the time, content and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining trustworthiness, the court may consider, among other things, the following factors: the spontaneity and consistent repetition of the statement, the mental state of the declarant, whether the terminology used is unexpected of a child of similar age or of an incapacitated person, and whether a lack of motive to fabricate exists; and the child either:

a. testifies or is available to testify at the proceedings in open court or through an alternative method pursuant to the provisions of the Uniform Child Witness Testimony by Alternative Methods Act or Section 2611.2 of Title 12 of the Oklahoma Statutes, or

b. is unavailable as a witness as defined in Section 2804 of Title 12 of the Oklahoma Statutes. When the child is unavailable, such statement may be admitted only if there is corroborative evidence of the act;

2. No attorney for any party is present when the statement is made. However, if appropriate facilities are utilized that allow observation of the child without the child's knowledge or awareness in any way, any such attorney may be present as an observer, but not as a participant, and no such attorney shall have any right to intervene, object, or otherwise make his or her presence known to the child before, after, or during the making of the statement of the child;

3. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;



5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is otherwise clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

6. Every voice on the recording is identified;

7. The person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;

8. Each party to the proceeding is afforded an opportunity to view the recording before the recording is offered into evidence; and

9. A copy of a written transcript of the recording transcribed by a licensed or certified court reporter is available to the parties.

A statement may not be admitted under this subsection unless the proponent of the statement makes known to the parties an intention to offer the statement and the particulars of the statement at least ten (10) days in advance of the proceedings to provide the parties with an opportunity to prepare to answer the statement.

## **PENNSYLVANIA**

### **42 PA. CONS. STAT. § 5985.1 (2010). Admissibility of certain statements.**

(a) GENERAL RULE.-- An out-of-court statement made by a child victim or witness, who at the time the statement was made was 12 years of age or younger, describing any of the offenses enumerated in 18 Pa.C.S. Chs. 25 (relating to criminal homicide), 27 (relating to assault), 29 (relating to kidnapping), 31 (relating to sexual offenses), 35 (relating to burglary and other criminal intrusion) and 37 (relating to robbery), not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:

(1) the court finds, in an in camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(2) the child either:

(i) testifies at the proceeding; or

(ii) is unavailable as a witness.

(A.1) EMOTIONAL DISTRESS.-- In order to make a finding under subsection (a)(2)(ii) that the child is unavailable as a witness, the court must determine, based on evidence presented to it, that testimony by the child as a witness will result in the child suffering serious emotional distress that would substantially impair the child's ability to reasonably communicate. In making this determination, the court may do all of the following:

- (1) Observe and question the child, either inside or outside the courtroom.
- (2) Hear testimony of a parent or custodian or any other person, such as a person who has dealt with the child in a medical or therapeutic setting.

(A.2) COUNSEL AND CONFRONTATION.-- If the court hears testimony in connection with making a finding under subsection (a)(2)(ii), all of the following apply:

- (1) Except as provided in paragraph (2), the defendant, the attorney for the defendant and the attorney for the Commonwealth or, in the case of a civil proceeding, the attorney for the plaintiff has the right to be present.
- (2) If the court observes or questions the child, the court shall not permit the defendant to be present.

(b) NOTICE REQUIRED.-- A statement otherwise admissible under subsection (a) shall not be received into evidence unless the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

## **PUERTO RICO**

### **P.R. LAWS ANN. TIT. 34, § 131.2 (2009). Recording of deposition on video tape**

In every procedure involving a crime committed against a minor or in which the minor is a witness, the Prosecutor, the guardian ad litem of the minor, parents, legal tutor or custodian of the minor may request the court, before the trial, to order that the testimony of the minor be given through a deposition and that the same is recorded and preserved in any reliable recording system according to the following rules:

(1) The court shall evaluate the petition and shall make a preliminary determination regarding the availability of the minor to testify in open court and in the presence of the defendant, the judge and the jury, taking into consideration the following circumstances:

(a) That the minor feels fearful or intimidated.

(b) That through an expert testimony, it has been established that his/her testimony in open court would cause an emotional trauma to the minor.

(c) That the minor suffers a mental disability or disease or impairment. In the case of persons over eighteen (18) years of age, the disability or impairment must be previously determined judicially, or shall be established through expert testimony or by stipulation between the parties.

(d) That it has been proven that the defendant or his/her lawyer have incurred in a conduct that prevents the minor from continuing his testimony.

When the court finds that it is impossible for the minor to continue testifying in open court for any of the circumstances listed, it shall order that the deposition of the testimony of the minor be taken and recorded on a video tape. If the preliminary determination of the inability to testify is based on the provisions of clause (a) of this subsection and the evidence shows that the minor is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant who has assumed his own defense (*pro se*), shall be removed from the place where the deposition is being taken. In this case, provisions shall be made for the installation of a one or two-way closed circuit television system, which allows the defendant to observe the minor and communicate with his/her legal representative in private and while the deposition is being taken.

(2) The judge shall preside over the deposition of the minor, who shall declare under oath or affirmation after due admonishments, and shall adjudicate any questions set forth or objections raised during the taking thereof. Only the following persons shall be present during the deposition:

(a) The prosecutor.

(b) The defense attorney.

(c) The minor's attorney or his/her legal guardian.

(d) The operators of the recording equipment.

(e) The defendant, except when disqualified under the provisions of subsection (1)(d) of this rule.

(f) Any other support personnel, as the term is defined in Rule 131.3 of this appendix, whose presence contributes to the welfare of the minor, as determined by the court.

(g) Officers of the court responsible for security.

The constitutional rights of the defendant shall be guaranteed, including the right to legal counsel, to cross examine the witnesses for the prosecution and the right to cross examine the minor.

(3) A complete record of the examination of the minor shall be kept, including the images and voices of all persons who participated in the examination, which shall be preserved on any reliable recording system, in addition to being reproduced on a double video tape sound recorder or other digital recording means. The recording shall be delivered to the Clerk of the Court in which the case is being seen and shall be available for examination by the parties during working hours.

(4) If when the trial begins, the court determines that the minor is unable to testify for any of the circumstances established in this rule, the court shall admit as evidence the recording of the deposition of the minor, in substitution of his/her testimony in open court. The court shall base its determination on this rule and on the findings that it establishes for the record.

(5) Any of the parties, when notified of the discovery of new evidence once the deposition has been recorded, and before or during the trial, may request the court, upon determination of just cause, to take an additional deposition to be recorded by any reliable recording system. The testimony of the minor shall be limited to the matters authorized by the Judge in the order.

(6) In everything that is related to the taking of a deposition recorded on video tape or other digital recording means under this rule, the court may issue a protecting order that guarantees the right to privacy of the minor.

(7) The video tape or other digital recording means used for the taking of the deposition under this rule shall be destroyed five (5) years after the sentence in the case has been issued, unless an appeal of the sentence is pending. The tape shall be part of the record and shall remain in the custody of the court until the time of its destruction.

## **RHODE ISLAND**

### **R.I. GEN. LAWS § 11-37-13.1 (2010). Recording -- Grand jury testimony -- Child assault.**

(a) In any grand jury proceeding investigating a sexual assault alleged to have been committed against a child, a recording of a statement from the alleged victim who is fourteen (14) years of age or younger at the time of the proceeding shall be admissible into evidence at the proceeding if:

(1) The statement is sworn to under oath by the child, and the significance of the oath is explained to the child;

(2) The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;

(4) Every voice on the recording is identified;

(5) The statement was not made in response to questioning calculated to lead the child to make a particular statement;

(6) The person conducting the interview is an attorney in the department of the attorney general or another person chosen by the attorney general to make the proceeding less intimidating to the child, and the interviewer is available to testify at the proceeding;

(7) The child is available to testify if requested by the grand jurors; and

(8) The recording is made a part of the record of the grand jury.

(b) In any grand jury proceeding investigating a sexual assault alleged to have been committed against a child, a recording of a statement from the alleged victim who is more than fourteen (14) years of age and less than eighteen (18) years of age at the time of the proceeding shall be admissible into evidence at the proceeding if:

(1) The attorney general petitions the court for permission to introduce the recording at the proceeding; and

(2) The court grants the petition upon a finding that the child would suffer unreasonable and unnecessary mental or emotional harm if required to appear personally before the grand jury in order to testify; and

(3) All of the conditions as set forth in subsection (a) of this section are followed.

**R.I. GEN. LAWS § 11-37-13.2 (2010). Alternative methods of victim testimony -- Child victim.**

(a) In any judicial proceeding in which a person has been charged with sexual assault of a child who at the time of trial is seventeen (17) years of age or less, the court may order, upon a showing that the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm, that the testimony of the child be taken in a room other than the courtroom and either be recorded for later showing before the court and/or the finder of fact in the proceeding or be broadcast simultaneously by closed circuit television to the court and/or finder of fact in the proceeding. When the child is fourteen (14) years of age or younger at the time of trial, there shall be a rebuttable presumption that the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm. Only the judge, attorneys for the parties, persons necessary to operate the recording or broadcasting equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his or her testimony. Examination and cross-examination shall proceed in the same manner as permitted at the trial or hearing.

(b) The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror which permits them to see and hear the child during his or her testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but ensure that the child cannot hear or see the person alleged to have committed the assault. The defendant

shall be afforded a means of communicating with his or her attorney throughout the proceedings, and, upon request of the defendant or his or her attorney, recesses shall be permitted to allow them to confer. The court shall ensure that:

- (1) The recording or broadcast is both visual and aural and is recorded on film or videotape or by other electronic means;
  - (2) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;
  - (3) Each voice on the recording is identified;
  - (4) Each party is afforded an opportunity to view any recording made prior to trial before it is shown in the courtroom; and
  - (5) The statement is sworn to under oath by the child.
- (c) If the court orders the testimony of a child to be so recorded or broadcast, the child shall not be required to testify at the proceeding for which the testimony was taken, and the testimony shall be used in lieu of the live testimony of the child.

**R.I. GEN. LAWS § 14-1-68 (2010). Child witness.**

(a) A videotape recording made by the department of children, youth, and families, a law enforcement officer, or a hospital, of an interview of or statement made by a child who is the subject of any petition filed by the department pursuant to §§ 40-11-7, 14-1-11, and/or 15-7-7, is admissible in any court proceeding under those sections notwithstanding any objection to hearsay statements contained in the videotape, provided it is relevant and material, and provided its probative value substantially outweighs the danger of unfair prejudice to the child's parent, guardian, or other person responsible for the child's welfare. The circumstances of the making of the videotape recording, including the maker's lack of personal knowledge, may be proved to affect its weight.

(b) Prior to the videotaped recording being introduced into evidence the court shall first determine that:

- (1) The statement is sworn to under oath by the child and the significance of the oath is explained to the child;
- (2) The recording is both visual and aural, and is recorded on film or videotaped or by other electronic means;
- (3) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;
- (4) Every voice on the recording is identified;

(5) The statement was not made in response to questioning calculated to lead the child to make a particular statement;

(6) The person conducting the interview of the child is available to testify at any court proceeding pursuant to this chapter; and

(7) The child shall be available to testify at any court proceeding pursuant to this chapter.

## **SOUTH CAROLINA**

### **S.C. CODE ANN. § 17-23-175 (2009). Admissibility of out-of-court statement of child under twelve; determination of trustworthiness; notice to adverse party.**

(A) In a general sessions court proceeding or a delinquency proceeding in family court, an out-of-court statement of a child is admissible if:

(1) the statement was given in response to questioning conducted during an investigative interview of the child;

(2) an audio and visual recording of the statement is preserved on film, videotape, or other electronic means, except as provided in subsection (F);

(3) the child testifies at the proceeding and is subject to cross-examination on the elements of the offense and the making of the out-of-court statement; and

(4) the court finds, in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness.

(B) In determining whether a statement possesses particularized guarantees of trustworthiness, the court may consider, but is not limited to, the following factors:

(1) whether the statement was elicited by leading questions;

(2) whether the interviewer has been trained in conducting investigative interviews of children;

(3) whether the statement represents a detailed account of the alleged offense;

(4) whether the statement has internal coherence; and

(5) sworn testimony of any participant which may be determined as necessary by the court.

(C) For purposes of this section, a child is:

(1) a person who is under the age of twelve years at the time of the making of the statement or who functions cognitively, adaptively, or developmentally under the age of twelve at the time of making the statement; and

(2) a person who is the alleged victim of, or witness to, a criminal act for which the defendant, upon conviction, would be required to register pursuant to the provisions of Article 7, Chapter 3, Title 23.

(D) For purposes of this section an investigative interview is the questioning of a child by a law enforcement officer, a Department of Social Services case worker, or other professional interviewing the child on behalf of one of these agencies, or in response to a suspected case of child abuse.

(E)(1) The contents of a statement offered pursuant to this section are subject to discovery pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.

(2) If the child is twelve years of age or older, an adverse party may challenge the finding that the child functions cognitively, adaptively, or developmentally under the age of twelve.

(F) Out-of-court statements made by a child in response to questioning during an investigative interview that is visually and auditorily recorded will always be given preference. If, however, an electronically unrecorded statement is made to a professional in his professional capacity by a child victim or witness regarding an act of sexual assault or physical abuse, the court may consider the statement in a hearing outside the presence of the jury to determine:

(1) the necessary visual and audio recording equipment was unavailable;

(2) the circumstances surrounding the making of the statement;

(3) the relationship of the professional and the child; and

(4) if the statement possesses particularized guarantees of trustworthiness.

After considering these factors and additional factors the court deems important, the court will make a determination as to whether the statement is admissible pursuant to the provisions of this section.



## **SOUTH DAKOTA**

### **S.D. CODIFIED LAWS § 23A-12-9 (2010). Videotape of young sex crime victim's testimony at preliminary hearing or deposition – Use at trial**

If a defendant has been charged with a violation of subdivision 22-22-1(1), (5), or (6) or § 22-22-7, where the victim is less than sixteen years of age, the prosecuting attorney or defense attorney may apply for an order that the victim's testimony at the preliminary hearing or at a deposition, in addition to being stenographically recorded, be recorded and preserved on videotape. The scope and manner of the examination and cross-examination shall be such as would be allowed at the trial. Notice of any such deposition pursuant to this section shall conform in all respects to the notice requirements contained in § 23A-12-2.

The application for the order shall be in writing and made at least three days before the preliminary hearing or deposition.

Upon timely receipt of the application, the court may order that the testimony of the victim given at the preliminary hearing or deposition be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

If at the time of trial the court finds that the victim is otherwise unavailable within the meaning of § 19-16-29, or that such testimony would in the opinion of the court be substantially detrimental to the well-being of the victim, the court may admit the videotape of the victim's testimony at the preliminary hearing or deposition as former testimony under § 19-16-30.

### **S.D. CODIFIED LAWS § 26-8A-16 (2010). Photographs, videotapes, and images of trauma – Collection, maintenance, and destruction**

Any person who receives a report under § 26-8A-3 may take or cause to be taken color photographs, videotapes, or other images of the areas of trauma visible on a child who is the subject of the report and may require a radiological or other medical examination or testing of the child without the consent of the child's parents, guardian, or custodian. All photographs, videotapes, or other images taken pursuant to this section shall be taken by a law enforcement official, the Department of Social Services, or a person authorized by a law enforcement official or the department. All photographs, videotapes, other images, X rays, and test results, or copies of them, shall be sent to the appropriate law enforcement agency or state's attorney or to the Department of Social Services. These photographs, videotapes, and other images need not be made a part of the child's medical or hospital records. Any photograph, videotapes, or other image in the possession of the Department of Social Services shall be destroyed by the Department of Social Services if

no criminal prosecution or civil action is initiated within three years of the date that such material was received by the Department of Social Services.

## **TENNESSEE**

### **TENN. CODE ANN. § 24-7-117 (2010). Audio-visually recorded testimony in child sexual abuse proceedings.**

(a) This section shall apply to proceedings in the prosecution of offenses defined in § 37-1-602 as "child sexual abuse" and to any civil proceeding in which child sexual abuse as defined in § 37-1-602 is an issue, and it shall apply only to the statements of a child or children under the age of thirteen (13) years of age who are victims of such abuse.

(b) The court may, on the motion of any party, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact. Only the court, the attorneys for the parties, the defendant, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during the child's testimony. Only the attorneys or the court may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits such persons to see and hear the child during the child's testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person. The court shall also ensure that:

(1) The recording is both visual and oral and is recorded on film or videotape or by other similar audio-visual means;

(2) The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(3) Each voice on the recording is identified; and

(4) The attorney for the defendant is afforded an opportunity to view the recording before it is shown in the courtroom.

(c) The court may, on the motion of either party upon showing of good cause, order that additional testimony of the child be taken, if time and circumstances permit, outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding in accordance with subsection (b). If time and circumstances do not permit such additional out of court recording, the court may order the child to testify in court. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting such order.

(d) If the court orders the testimony of a child to be taken under subsection (b) or (c), the child shall not be required to testify in court at the proceeding for which the testimony was taken, unless so ordered pursuant to subsection (c).

**TENN. CODE ANN. § 24-7-123 (2010). Admission of video recording of interview of child describing sexual conduct.**

(a) Notwithstanding any provision of this part to the contrary, a video recording of an interview of a child by a forensic interviewer containing a statement made by the child under thirteen (13) years of age describing any act of sexual contact performed with or on the child by another is admissible and may be considered for its bearing on any matter to which it is relevant in evidence at the trial of the person for any offense arising from the sexual contact if the requirements of this section are met.

(b) A video recording may be admitted as provided in subsection (a) if:

(1) The child testifies, under oath, that the offered video recording is a true and correct recording of the events contained in the video recording and the child is available for cross examination;

(2) The video recording is shown to the reasonable satisfaction of the court, in a hearing conducted pre-trial, to possess particularized guarantees of trustworthiness. In determining whether a statement possesses particularized guarantees of trustworthiness, the court shall consider the following factors:

(A) The mental and physical age and maturity of the child;

(B) Any apparent motive the child may have to falsify or distort the event, including, but not limited to, bias or coercion;

(C) The timing of the child's statement;

(D) The nature and duration of the alleged abuse;

(E) Whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

(F) Whether the statement is spontaneous or directly responsive to questions;

(G) Whether the manner in which the interview was conducted was reliable, including, but not limited to, the absence of any leading questions;

(H) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement;

(I) The relationship of the child to the offender;

(J) Whether the equipment that was used to make the video recording was capable of making an accurate recording; and

(K) Any other factor deemed appropriate by the court;

(3) The interview was conducted by a forensic interviewer who met the following qualifications at the time the video recording was made, as determined by the court:

(A) Was employed by a child advocacy center that meets the requirements of § 9-4-213(a) or (b);

(B) Had graduated from an accredited college or university with a bachelor's degree in a field related to social service, education, criminal justice, nursing, psychology or other similar profession;

(C) Had experience equivalent to three (3) years of fulltime professional work in one (1) or a combination of the following areas:

(i) Child protective services;

(ii) Criminal justice;

(iii) Clinical evaluation;

(iv) Counseling; or

(v) Forensic interviewing or other comparable work with children;

(D) Had completed a minimum of forty (40) hours of forensic training in interviewing traumatized children and fifteen (15) hours of continuing education annually;

(E) Had completed a minimum of eight (8) hours of interviewing under the supervision of a qualified forensic interviewer of children;

(F) Had knowledge of child development through coursework, professional training or experience;

(G) Had no criminal history as determined through a criminal records background check; and

(H) Had actively participated in peer review;

(4) The recording is both visual and oral and is recorded on film or videotape or by other similar audio-visual means;

(5) The entire interview of the child was recorded on the video recording and the video recording is unaltered and accurately reflects the interview of the child; and

(6) Every voice heard on the video recording is properly identified as determined by the court.

(c) The video recording admitted pursuant to this section shall be discoverable pursuant to the Tennessee rules of criminal procedure.

(d) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.

(e) The court shall enter a protective order to restrict the video recording used pursuant to this section from further disclosure or dissemination. The video recording shall not become a public record in any legal proceeding. The court shall order the video recording be sealed and preserved following the conclusion of the criminal proceeding.

**TENN. CODE ANN. § 37-1-609 (2010). Photographs and examinations of suspected abuse – Video recordings.**

(a) Any person required to investigate cases of suspected child sexual abuse may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report and, if the condition of the child indicates a need for a medical examination, may cause the child to be referred for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents, legal guardian or legal custodian. Any licensed physician who, based on information furnished by the investigator, the parents or other persons having knowledge of the situation, or the child, or on personal observation of the child, suspects that a child has been sexually abused may authorize appropriate examinations to be performed on the child without the consent of the child's parents, legal guardian or legal custodian.

(b) Any photograph or report on examinations made or x-rays taken pursuant to this section, or copies thereof, shall be sent to the department as soon as possible, at which point such records shall be available to the members of the team. All state, county and local agencies shall give the team or the department access to records in their custody and shall otherwise cooperate fully with the investigation.

(c) At the initial investigation of child sexual abuse by the child protection team, and at any subsequent investigations as deemed appropriate by the team, when a justifiable suspicion of sexual abuse exists, a videotape recording that meets the standards as established by § 24-7-117 may be taken of the traumatized victim. The video recording shall be taken for the purpose of indicating the child's physical or mental condition at the time the report is investigated and shall be made available for future reference and for utilization as provided in this part.

## **TEXAS**

### **TEX. FAM. CODE § 104.002 (2010). Prerecorded Statement of Child**

If a child 12 years of age or younger is alleged in a suit under this title to have been abused, the recording of an oral statement of the child recorded prior to the proceeding is admissible into evidence if:

- (1) no attorney for a party was present when the statement was made;
- (2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- (3) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;
- (4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;
- (5) each voice on the recording is identified;
- (6) the person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party; and
- (7) each party is afforded an opportunity to view the recording before it is offered into evidence.

### **TEX. FAM. CODE § 104.003 (2010). Prerecorded Videotaped Testimony of Child**

(a) The court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact, and the parties to the proceeding.

(b) Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child, and persons necessary to operate the equipment may be present in the room with the child during the child's testimony.

(c) Only the attorneys for the parties may question the child.

(d) The persons operating the equipment shall be placed in a manner that prevents the child from seeing or hearing them.

(e) The court shall ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(3) each voice on the recording is identified; and

(4) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.

**TEX. FAM. CODE § 104.005 (2010). Substitution for In-Court Testimony of Child**

(a) If the testimony of a child is taken as provided by this chapter, the child may not be compelled to testify in court during the proceeding.

(b) The court may allow the testimony of a child of any age to be taken in any manner provided by this chapter if the child, because of a medical condition, is incapable of testifying in open court.

**TEX. FAM. CODE § 261.302 (2010). Conduct of Investigation**

(a) The investigation may include:

(1) a visit to the child's home, unless the alleged abuse or neglect can be confirmed or clearly ruled out without a home visit; and

(2) an interview with and examination of the subject child, which may include a medical, psychological, or psychiatric examination.

(b) The interview with and examination of the child may:

(1) be conducted at any reasonable time and place, including the child's home or the child's school;

(2) include the presence of persons the department or designated agency determines are necessary; and

(3) include transporting the child for purposes relating to the interview or investigation.

(b-1) Before the department may transport a child as provided by Subsection (b)(3), the department shall attempt to notify the parent or other person having custody of the child of the transport.

(c) The investigation may include an interview with the child's parents and an interview with and medical, psychological, or psychiatric examination of any child in the home.

(d) If, before an investigation is completed, the investigating agency believes that the immediate removal of a child from the child's home is necessary to protect the child from further abuse or neglect, the investigating agency shall file a petition or take other action under Chapter 262 to provide for the temporary care and protection of the child.

(e) An interview with a child conducted by the department during the investigation stage shall be audiotaped or videotaped. An interview with a child alleged to be a victim of physical abuse or sexual abuse conducted by an investigating agency other than the department shall be audiotaped or videotaped unless the investigating agency determines that good cause exists for not audiotaping or videotaping the interview in accordance with rules of the agency. Good cause may include, but is not limited to, such considerations as the age of the child and the nature and seriousness of the allegations under investigation. Nothing in this subsection shall be construed as prohibiting the investigating agency from audiotaping or videotaping an interview of a child on any case for which such audiotaping or videotaping is not required under this subsection. The fact that the investigating agency failed to audiotape or videotape an interview is admissible at the trial of the offense that is the subject of the interview.

(f) A person commits an offense if the person is notified of the time of the transport of a child by the department and the location from which the transport is initiated and the person is present at the location when the transport is initiated and attempts to interfere with the department's investigation. An offense under this subsection is a Class B misdemeanor. It is an exception to the application of this subsection that the department requested the person to be present at the site of the transport.

### **TEX. CODE CRIM. PROC. ANN. ART. 38.071 (2010). Testimony of Child Who is Victim of Offense**

Sec. 1. This article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant about an offense defined by any of the following sections of the Penal Code:

- (1) Section 19.02 (Murder);
- (2) Section 19.03 (Capital Murder);
- (3) Section 19.04 (Manslaughter);
- (4) Section 20.04 (Aggravated Kidnapping);



- (5) Section 21.11 (Indecency with a Child);
- (6) Section 22.011 (Sexual Assault);
- (7) Section 22.02 (Aggravated Assault);
- (8) Section 22.021 (Aggravated Sexual Assault);
- (9) Section 22.04(e) (Injury to a Child, Elderly Individual, or Disabled Individual);
- (10) Section 22.04(f) (Injury to a Child, Elderly Individual, or Disabled Individual), if the conduct is committed intentionally or knowingly;
- (11) Section 25.02 (Prohibited Sexual Conduct);
- (12) Section 29.03 (Aggravated Robbery);
- (13) Section 43.25 (Sexual Performance by a Child); or
- (14) Section 21.02 (Continuous Sexual Abuse of Young Child or Children).

Sec. 2. (a) The recording of an oral statement of the child made before the indictment is returned or the complaint has been filed is admissible into evidence if the court makes a determination that the factual issues of identity or actual occurrence were fully and fairly inquired into in a detached manner by a neutral individual experienced in child abuse cases that seeks to find the truth of the matter.

(b) If a recording is made under Subsection (a) of this section and after an indictment is returned or a complaint has been filed, by motion of the attorney representing the state or the attorney representing the defendant and on the approval of the court, both attorneys may propound written interrogatories that shall be presented by the same neutral individual who made the initial inquiries, if possible, and recorded under the same or similar circumstances of the original recording with the time and date of the inquiry clearly indicated in the recording.

(c) A recording made under Subsection (a) of this section is not admissible into evidence unless a recording made under Subsection (b) is admitted at the same time if a recording under Subsection (b) was requested prior to the time of the hearing or proceeding.

Sec. 3. (a) On its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact. To the extent practicable, only the judge, the court reporter, the attorneys for the defendant and for the

state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the persons necessary to operate the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact, but the court shall attempt to ensure that the child cannot hear or see the defendant. The court shall permit the attorney for the defendant adequate opportunity to confer with the defendant during cross-examination of the child. On application of the attorney for the defendant, the court may recess the proceeding before or during cross-examination of the child for a reasonable time to allow the attorney for the defendant to confer with defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors.

Sec. 4. (a) After an indictment has been returned or a complaint filed, on its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, the court may order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact. To the extent practicable, only those persons permitted to be present at the taking of testimony under Section 3 of this article may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Section 3. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact but shall attempt to ensure that the child cannot hear or see the defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors. The court shall also ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and is not altered;

(3) each voice on the recording is identified;

(4) the defendant, the attorneys for each party, and the expert witnesses for each party are afforded an opportunity to view the recording before it is shown in the courtroom;

(5) before giving his testimony, the child was placed under oath or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully;

(6) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time the recording was made; and

(7) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings is established at the hearing or proceeding.

(c) After a complaint has been filed or an indictment returned charging the defendant, on the motion of the attorney representing the state, the court may order that the deposition of the child be taken outside of the courtroom in the same manner as a deposition may be taken in a civil matter. A deposition taken under this subsection is admissible into evidence.

Sec. 5. (a) On the motion of the attorney representing the state or the attorney representing the defendant and on a finding by the court that the following requirements have been substantially satisfied, the recording of an oral statement of the child made before a complaint has been filed or an indictment returned is admissible into evidence if:

(1) no attorney or peace officer was present when the statement was made;

(2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and has not been altered;

(4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;

(5) every voice on the recording is identified;

(6) the person conducting the interview of the child in the recording is expert in the handling, treatment, and investigation of child abuse cases, present at the hearing or proceeding, called by the state, and subject to cross-examination;

(7) immediately after a complaint was filed or an indictment returned, the attorney representing the state notified the court, the defendant, and the attorney representing the defendant of the existence of the recording;

(8) the defendant, the attorney for the defendant, and the expert witnesses for the defendant were afforded an opportunity to view the recording before it is offered into evidence and, if a proceeding was requested as provided by Subsection (b) of this section, in a proceeding conducted before a district court judge but outside the presence of the jury were afforded an opportunity to cross-examine the child as provided by Subsection (b) of this section from any time immediately following the filing of the complaint or the returning of an indictment charging the defendant until the date the hearing or proceeding begins;

(9) the recording of the cross-examination, if there is one, is admissible under Subsection (b) of this section;

(10) before giving his testimony, the child was placed under oath or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully;

(11) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time that the recording was made; and

(12) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings has been established at the hearing or proceeding.

(b) On the motion of the attorney representing the defendant, a district court may order that the cross-examination of the child be taken and be recorded before the judge of that court at any time until a recording made in accordance with Subsection (a) of this section has been introduced into evidence at the hearing or proceeding. On a finding by the court that the following requirements were satisfied, the recording of the cross-examination of the child is admissible into evidence and shall be viewed by the finder of fact only after the finder of fact has viewed the recording authorized by Subsection (a) of this section if:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the attorney representing the defendant, and the recording is accurate and has not been altered;

(3) every voice on the recording is identified;

(4) the defendant, the attorney representing the defendant, the attorney representing the state, and the expert witnesses for the defendant and the state were afforded an opportunity to view the recording before the hearing or proceeding began;

(5) the child was placed under oath before the cross-examination began or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully; and

(6) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings was established at the hearing or proceeding.

(c) During cross-examination under Subsection (b) of this section, to the extent practicable, only a district court judge, the attorney representing the defendant, the attorney representing the state, persons necessary to operate the equipment, and any other person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact, but shall attempt to ensure that the child cannot hear or see the defendant.

(d) Under Subsection (b) of this section the district court may set any other conditions and limitations on the taking of the cross-examination of a child that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors.

Sec. 6. If the court orders the testimony of a child to be taken under Section 3 or 4 of this article or if the court finds the testimony of the child taken under Section 2 or 5 of this article is admissible into evidence, the child may not be required to testify in court at the proceeding for which the testimony was taken, unless the court finds there is good cause.

Sec. 7. In making any determination of good cause under this article, the court shall consider the rights of the defendant, the interests of the child, the relationship of the defendant to the child, the character and duration of the alleged offense, any court finding related to the availability of the child to testify, the age, maturity, and emotional stability of the child, the time elapsed since the alleged offense, and any other relevant factors.

Sec. 8. (a) In making a determination of unavailability under this article, the court shall consider relevant factors including the relationship of the defendant to the child, the character and duration of the alleged offense, the age, maturity, and emotional stability of the child, and the time elapsed since the alleged offense, and whether the child is more likely than not to be unavailable to testify because:

(1) of emotional or physical causes, including the confrontation with the defendant; or

(2) the child would suffer undue psychological or physical harm through his involvement at the hearing or proceeding.

(b) A determination of unavailability under this article can be made after an earlier determination of availability. A determination of availability under this article can be made after an earlier determination of unavailability.

Sec. 9. If the court finds the testimony taken under Section 2 or 5 of this article is admissible into evidence or if the court orders the testimony to be taken under Section 3 or 4 of this article and if the identity of the perpetrator is a contested issue, the child additionally must make an in-person identification of the defendant either at or before the hearing or proceeding.

Sec. 10. In ordering a child to testify under this article, the court shall take all reasonable steps necessary and available to minimize undue psychological trauma to the child and to minimize the emotional and physical stress to the child caused by relevant factors, including the confrontation with the defendant and the ordinary participation of the witness in the courtroom.

Sec. 11. In a proceeding under Section 2, 3, or 4 or Subsection (b) of Section 5 of this article, if the defendant is not represented by counsel and the court finds that the defendant is not able to obtain counsel for the purposes of the proceeding, the court shall appoint counsel to represent the defendant at the proceeding.

Sec. 12. In this article, "cross-examination" has the same meaning as in other legal proceedings in the state.

Sec. 13. The attorney representing the state shall determine whether to use the procedure provided in Section 2 of this article or the procedure provided in Section 5 of this article.

## **UTAH**

### **UTAH CODE ANN. § 62A-4a-414 (2010). Interviews of children -- Recording required – Exceptions.**

(1) (a) Except as provided in Subsection (4), interviews of children during an investigation in accordance with Section 62A-4a-409, and involving allegations of sexual abuse, sexual exploitation, severe abuse, or severe neglect of a child, shall be conducted only under the following conditions:

(i) the interview shall be recorded visually and aurally on film, videotape, or by other electronic means;

(ii) both the interviewer and the child shall be simultaneously recorded and visible on the final product;

(iii) the time and date of the interview shall be continuously and clearly visible to any subsequent viewer of the recording; and

(iv) the recording equipment shall run continuously for the duration of the interview.

(b) This Subsection (1) does not apply to initial or minimal interviews conducted in accordance with Subsection 62A-4a-409(8)(b) or (c).

(2) Interviews conducted in accordance with Subsection (1) shall be carried out in an existing Children's Justice Center or in a soft interview room, when available.

(a) If the Children's Justice Center or a soft interview room is not available, the interviewer shall use the best setting available under the circumstances.

(b) Except as provided in Subsection (4), if the equipment required under Subsection (1) is not available, the interview shall be audiotaped, provided that the interviewer shall clearly state at the beginning of the tape:

(i) the time, date, and place of the interview;

(ii) the full name and age of the child being interviewed; and

(iii) that the equipment required under Subsection (1) is not available and why.

(3) Except as provided in Subsection (4), all other investigative interviews shall be audiotaped using electronic means. At the beginning of the tape, the worker shall state clearly the time, date, and place of the meeting, and the full name and age of the child in attendance.

(4) (a) Subject to Subsection (4)(b), an interview described in this section may be conducted without being taped if the child:

(i) is at least nine years old;

(ii) refuses to have the interview audio taped; and

(iii) refuses to have the interview video taped.

(b) If, pursuant to Subsection (4)(a), an interview is conducted without being taped, the child's refusal shall be documented as follows:

(i) the interviewer shall attempt to get the child's refusal on tape, including the reasons for the refusal; or

(ii) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the interviewer shall:

(A) state on the tape that the child is present, but has refused to have the interview, refusal, or the reasons for the refusal taped; or

(B) if complying with Subsection (4)(b)(ii)(A) will result in the child, who would otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall document, in writing, that the child refused to allow the interview to be taped and the reasons for that refusal.

(c) The division shall track the number of interviews under this section that are not taped, and the number of refusals that are not taped, for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals, or taped refusals, than other interviewers.

## **VIRGIN ISLANDS**

### **V.I. CODE ANN. tit. 5, § 3510 (2010). Videotaped testimony of minors who are the victims of sexual and child abuse.**

(a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a minor victim, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant against the need to protect a minor witness and to preserve the integrity of the court's fact finding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other provision of law to the contrary, the court in an adjudicatory or disposition hearing pursuant to section 2548 or 2549 of this title or, in a criminal proceeding involving sexual and child abuse, or in a criminal case involving a crime of violence, as defined in Title 23, section 451(e), Virgin Islands Code, or a violation of the controlled substances law as codified in Title 19, chapter 29 of this code, and where a minor is to testify as a witness, upon written notice of the prosecutor made at least three days prior to the date of the hearing or trial on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor, who is 16 years of age or younger, be taken by contemporaneous examination and cross-examination in a room near the courtroom and out of the presence of the jury, defendant and public, and communicated



contemporaneously to the courtroom by means of two-way closed-circuit television, if the court makes any of the following findings:

(1) The minor's testimony will involve a recitation of the facts of an alleged sexual or physical offense committed on, with, or in the presence of the minor.

(2) The impact on the minor of one or more factors enumerated in subparagraphs (A) to (D) of this paragraph, inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used:

(A) Threats of serious bodily injury to be inflicted on the minor or a family member, of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding or to prevent the minor from reporting the alleged sexual or physical offense or from assisting in criminal prosecution;

(B) Use of a firearm or any other deadly weapon during the commission of the crime;

(C) Infliction of great bodily injury upon the victim during the commission of the crime;

(D) Conduct on the part of the defendant or defense counsel during the hearings or trial which causes the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary in order to obtain the minor's testimony.

(c) The conditions imposed on the use of the closed circuit video-taped presentation shall be as follows:

(1) In addition to the minor, the persons present in the room from which the minor will testify, (hereinafter referred to as the "testimonial room") shall consist of the prosecutor, the defense attorney, the guardian ad litem as provided by section 2542 of this title, the therapist, counselor, or other professional who has worked most closely with the minor concerning the alleged sexual or child abuse, and the judge if he determines that his presence is necessary.

(2) The videocamera and cameraman shall be separated from the testimonial room by means of a one-way mirror which would allow the videotaping of the minor's testimony.

(3) The courtroom shall be equipped with monitors having the capacity to present images and sound with clarity, in order that the jury, defendant, and judge shall be able to see and hear the testimony of the minor.

(4) No bright lights shall be employed in the testimonial room.

(5) Color images may be projected to the courtroom by the videocamera.

(6) The videocamera may be equipped with zoom lens to be used only on notice to counsel who may have an opportunity to object.

(7) The videocamera, the witness and counsel shall be so arranged that the witness and counsel in the testimonial room can be seen on the courtroom monitors simultaneously. The face of the witness shall be visible on the monitors at all times, except on agreement by counsel or direction by the court for some other arrangement. The placement of counsel in the testimonial room shall be at the discretion of each counsel.

(8) The defendant and his attorney shall be provided by the Government with a video system which will permit constant private communication between them during the testimony of the minor.

(9) If the judge determines that his presence is not necessary in the testimonial room, an audio system may be provided connecting the judge with the testimonial room in order that he may be able to rule on objections and otherwise control the proceedings from the bench.

(10) The testimony of the minor may be interrupted at reasonable intervals to provide the defendant with an opportunity for consultation with his counsel.

(d) (1) The hearing on a motion to videotape the minor witness, pursuant to this section, shall be conducted out of the presence of the jury.

(2) Notwithstanding any other provision of law to the contrary, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the four factors enumerated in subsection (b)(2) of this section, is so substantial that the minor is unavailable as a witness unless closed-circuit television is used, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the guardian ad litem, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and the defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense

counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in the testimonial room, the court shall:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order and the reasons in support of the exclusion of the defendant from the testimonial room. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of two-way closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the hearing or trial on the use of two-way closed-circuit television procedures.

(4) Instruct the guardian ad litem, outside of the presence of the jury, that he is not to coach, cue, or in any way, influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participated in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and his attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the videotape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(f) When the court orders the testimony of a minor to be taken in a room near the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his testimony to meet for a reasonable period of time with the judge, the prosecutor, defense counsel and the guardian ad litem. The purpose of the meeting shall be to explain the court process to the child and to allow the attorneys an opportunity to establish a rapport with the minor to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or any of the facts of the case with the minor during the meeting.

(g) When the court orders that the testimony of a minor may be taken in the testimonial room, nothing in this section shall prohibit the court from ordering the minor to be

brought into the courtroom for a limited purpose, including the identification of the defendant or defendants, as the court deems necessary.

(h) The examination of the minor shall be under oath.

(i) Nothing in this section shall affect the requirements of section 831 of this title.

## **VIRGINIA**

### **VA. CODE ANN. § 63.2-1522 (2010). Admission of evidence of sexual acts with children**

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, an out-of-court statement made by a child the age of twelve or under at the time the statement is offered into evidence, describing any act of a sexual nature performed with or on the child by another, not otherwise admissible by statute or rule, may be admissible in evidence if the requirements of subsection B are met.

B. An out-of-court statement may be admitted into evidence as provided in subsection A if:

1. The child testifies at the proceeding, or testifies by means of a videotaped deposition or closed-circuit television, and at the time of such testimony is subject to cross examination concerning the out-of-court statement or the child is found by the court to be unavailable to testify on any of these grounds:

a. The child's death;

b. The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify;

c. The child's total failure of memory;

d. The child's physical or mental disability;

e. The existence of a privilege involving the child;

f. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; and

g. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television.

2. The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness and reliability.

C. A statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.

D. In determining whether a statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2, the court shall consider, but is not limited to, the following factors:

1. The child's personal knowledge of the event;
2. The age and maturity of the child;
3. Certainty that the statement was made, including the credibility of the person testifying about the statement and any apparent motive such person may have to falsify or distort the event including bias, corruption or coercion;
4. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;
5. The timing of the child's statement;
6. Whether more than one person heard the statement;
7. Whether the child was suffering pain or distress when making the statement;
8. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;
9. Whether the statement has internal consistency or coherence, and uses terminology appropriate to the child's age;
10. Whether the statement is spontaneous or directly responsive to questions;
11. Whether the statement is responsive to suggestive or leading questions; and
12. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

E. The court shall support with findings on the record, or with written findings in a court not of record, any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the out-of-court statement.

**VA. CODE ANN. § 63.2-1523 (2010). Use of videotaped statements of complaining witnesses as evidence**

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, a recording of a statement of the alleged victim of the offense, made prior to the proceeding, may be admissible as evidence if the requirements of subsection B are met and the court determines that:

1. The alleged victim is the age of twelve or under at the time the statement is offered into evidence;
2. The recording is both visual and oral, and every person appearing in, and every voice recorded on, the tape is identified;
3. The recording is on videotape or was recorded by other electronic means capable of making an accurate recording;
4. The recording has not been altered;
5. No attorney for any party to the proceeding was present when the statement was made;
6. The person conducting the interview of the alleged victim was authorized to do so by the child-protective services coordinator of the local department;
7. All persons present at the time the statement was taken, including the alleged victim, are present and available to testify or be cross examined at the proceeding when the recording is offered; and
8. The parties or their attorneys were provided with a list of all persons present at the recording and were afforded an opportunity to view the recording at least ten days prior to the scheduled proceedings.

B. A recorded statement may be admitted into evidence as provided in subsection A if:

1. The child testifies at the proceeding, or testifies by means of closed-circuit television, and at the time of such testimony is subject to cross examination concerning the recorded statement or the child is found by the court to be unavailable to testify on any of these grounds:

- a. The child's death;

b. The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify;

c. The child's total failure of memory;

d. The child's physical or mental disability;

e. The existence of a privilege involving the child;

f. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason;

g. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of closed-circuit television; and

2. The child's recorded statement is shown to possess particularized guarantees of trustworthiness and reliability.

C. A recorded statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.

D. In determining whether a recorded statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2, the court shall consider, but is not limited to, the following factors:

1. The child's personal knowledge of the event;

2. The age and maturity of the child;

3. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

4. The timing of the child's statement;

5. Whether the child was suffering pain or distress when making the statement;

6. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

7. Whether the statement has a "ring of verity," has internal consistency or coherence, and uses terminology appropriate to the child's age;

8. Whether the statement is spontaneous or directly responsive to questions;
  9. Whether the statement is responsive to suggestive or leading questions; and
  10. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.
- E. The court shall support with findings on the record, or with written findings in a court not of record, any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the recorded statement.

## **WEST VIRGINIA**

### **W. VA. CODE § 62-6B-5 (2010). Memorialization of statements of certain child witnesses; admissibility, hearing.**

(a) After the effective date of this section, whenever any law-enforcement officer, physician, psychologist, social worker or investigator, in the course of his or her employment or profession or while engaged in an active criminal investigation as a law-enforcement officer or an agent of a prosecuting attorney, obtains a statement from a child thirteen years of age or younger who is an alleged victim in an investigation or prosecution alleging a violation of the provisions of section three [§ 61-8B-3], four [§ 61-8B-4], five [§ 61-8B-5] or seven [§ 61-8B-7], article eight-b, chapter sixty-one of this code, he or she shall forthwith make a contemporaneous written notation and recitation of the statement received or obtained. An audio recording or video recording with sound capability of the statement may be used in lieu of the written recitation required by the provisions of this section. Failure to comply with the provisions of this section creates a presumption that the statement is inadmissible. The statement may be admitted if, after a hearing on the matter, the court finds by clear and convincing evidence that the failure to comply with the provisions of this section was a good faith omission and that the content of the proffered statement is an accurate recital of the information provided by the child and is otherwise admissible.

(b) The provisions of this section shall not apply to:

(1) Persons engaged in investigation pursuant to the provisions of article six [ §§ 49-6-1 et seq.] or seven [ §§ 49-7-1 et seq.], chapter forty-nine of this code;

(2) Medical personnel and other persons performing a forensic medical examination of a child who is an alleged victim; and



(3) Prosecuting attorneys when counseling with a child in preparation for eliciting the child's testimony in court.

## WISCONSIN

### **WIS. STAT. ANN. § 967.04 (2010). Depositions in criminal proceedings.**

(1) If it appears that a prospective witness may be unable to attend or prevented from attending a criminal trial or hearing, that the prospective witness's testimony is material and that it is necessary to take the prospective witness's deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion and notice to the parties order that the prospective witness's testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed pursuant to s. 969.01 (3), the court shall direct that the witness's deposition be taken upon notice to the parties. After the deposition has been subscribed, the court shall discharge the witness.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time. Upon request of all defendants, unless good cause to the contrary is shown, the court may order that a deposition under this section be taken on the record by telephone or live audiovisual means.

(3) A deposition shall be taken as provided in civil actions. At the request of a party, the court may direct that a deposition be taken on written interrogatories as provided in civil actions.

(4) (a) If the state or a witness procures such an order, the notice shall inform the defendant that the defendant is required to personally attend at the taking of the deposition and that the defendant's failure so to do is a waiver of the defendant's right to face the witness whose deposition is to be taken. Failure to attend shall constitute a waiver unless the defendant was physically unable to attend.

(b) If the defendant is not in custody, the defendant shall be paid witness fees for travel and attendance. If the defendant is in custody, the defendant's custodian shall, at county expense, produce the defendant at the taking of the deposition. If the defendant is in custody, leave to take a deposition on motion of the state shall not be granted unless all states which the custodian will enter with the defendant in going to the place the

deposition is to be taken have conferred upon the officers of this state the right to convey prisoners in and through them.

(5) (a) At the trial or upon any hearing, a part or all of a deposition, so far as it is otherwise admissible under the rules of evidence, may be used if any of the following conditions appears to have been met:

1. The witness is dead.
2. The witness is out of state, unless it appears that the absence of the witness was procured by the party offering the deposition.
3. The witness is unable to attend or testify because of sickness or infirmity.
4. The party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(b) Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to offer all of it which is relevant to the part offered and any party may offer other parts.

(6) Objections to receiving in evidence a deposition may be made as in civil actions.

(7) (a) In any criminal prosecution or any proceeding under ch. 48 or 938, any party may move the court to order that a deposition of a child who has been or is likely to be called as a witness be taken by audiovisual means. Upon notice and hearing, the court may issue an order for such a deposition if the trial or hearing in which the child may be called will commence:

1. Prior to the child's 12th birthday; or
2. Prior to the child's 16th birthday and the court finds that the interests of justice warrant that the child's testimony be prerecorded for use at the trial or hearing under par. (b) (b) Among the factors which the court may consider in determining the interests of justice are any of the following:

1. The child's chronological age, level of development and capacity to comprehend the significance of the events and to verbalize about them.
2. The child's general physical and mental health.
3. Whether the events about which the child will testify constituted criminal or antisocial conduct against the child or a person with whom the child had a close emotional relationship and, if the conduct constituted a battery or a sexual assault, its duration and the extent of physical or emotional injury thereby caused.

4. The child's custodial situation and the attitude of other household members to the events about which the child will testify and to the underlying proceeding.
5. The child's familial or emotional relationship to those involved in the underlying proceeding.
6. The child's behavior at or reaction to previous interviews concerning the events involved.
7. Whether the child blames himself or herself for the events involved or has ever been told by any person not to disclose them; whether the child's prior reports to associates or authorities of the events have been disbelieved or not acted upon; and the child's subjective belief regarding what consequences to himself or herself, or persons with whom the child has a close emotional relationship, will ensue from providing testimony.
8. Whether the child manifests or has manifested symptoms associated with posttraumatic stress disorder or other mental disorders, including, without limitation, reexperiencing the events, fear of their repetition, withdrawal, regression, guilt, anxiety, stress, nightmares, enuresis, lack of self-esteem, mood changes, compulsive behaviors, school problems, delinquent or antisocial behavior, phobias or changes in interpersonal relationships.
9. The number of separate investigative, administrative and judicial proceedings at which the child's testimony may be required, the likely length of time until the last such proceeding, and the mental or emotional strain associated with keeping the child's recollection of the events witnessed fresh for that period of time.
10. Whether the use of a recorded deposition would reduce the mental or emotional strain of testifying and whether the deposition could be used to reduce the number of times the child will be required to testify.

(8) (a) If the court orders a deposition under sub. (7), the judge shall preside at the taking of the deposition and enforce compliance with the applicable provisions of ss. 885.44 to 885.47. Notwithstanding s. 885.44 (5), counsel may make objections and the judge shall make rulings thereon as at trial. The clerk of court shall keep the certified original recording of a deposition taken under sub. (7) in a secure place. No person may inspect or copy the deposition except by order of the court upon a showing that inspection or copying is required for editing under s. 885.44 (12) or for the investigation, prosecution or defense of the action in which it was authorized or the provision of services to the child.

(b) If the court orders that a deposition be taken by audiovisual means under sub. (7), the court shall do all of the following:

1. Schedule the deposition on a date when the child's recollection is likely to be fresh and at a time of day when the child's energy and attention span are likely to be greatest.

2. Schedule the deposition in a room which provides adequate privacy, freedom from distractions, informality and comfort appropriate to the child's developmental level.
3. Order a recess whenever the energy, comfort or attention span of the child or other circumstances so warrant.
4. Determine that the child understands that it is wrong to tell a lie and will testify truthfully if the child's developmental level or verbal skills are such that administration of an oath or affirmation in the usual form would be inappropriate.
5. Before questioning by the parties begins, attempt to place the child at ease, explain to the child the purpose of the deposition and identify all persons attending.
6. Allow any questioner to have an adviser to assist the questioner, and upon permission of the judge, to conduct the questioning.
7. Supervise the spatial arrangements of the room and the location, movement, and deportment of all persons in attendance.
8. Allow the child to testify while sitting on the floor, on a platform, on an appropriately sized chair, or on the lap of a trusted adult, or while moving about the room within range of the visual and audio recording equipment.
9. Permit the defendant to be in a position from which the defendant can communicate privately and conveniently with counsel.
10. Upon request, make appropriate orders for the discovery and examination by the defendant of documents and other evidence in the possession of the state which are relevant to the issues to be covered at the deposition at a reasonable time prior thereto.
11. Bar or terminate the attendance of any person whose presence is not necessary to the taking of the deposition, or whose behavior is disruptive of the deposition or unduly stressful to the child. A reasonable number of persons deemed by the court supportive of the child or any defendant may be considered necessary to the taking of the deposition under this paragraph.

(9) In any criminal prosecution or juvenile fact-finding hearing under s. 48.31 or 938.31, the court may admit into evidence a recorded deposition taken under subs. (7) and (8) without an additional hearing under s. 908.08 In any proceeding under s. 302.113 (9) (am), 302.114 (9) (am), 304.06 (3), or 973.10 (2), the hearing examiner may order that a deposition be taken by audiovisual means and preside at the taking of the deposition using the procedure provided in subs. (7) and (8) and may admit the recorded deposition into evidence without an additional hearing under s. 908.08

(10) If a court or hearing examiner admits a recorded deposition into evidence under sub. (9), the child may not be called as a witness at the proceeding in which it was admitted unless the court or hearing examiner so orders upon a showing that additional testimony by the child is required in the interest of fairness for reasons neither known nor with reasonable diligence discoverable at the time of the deposition by the party seeking to call the child. The testimony of a child who is required to testify under this subsection may be taken in accordance with s. 972.11 (2m), if applicable.

**WIS. STAT. ANN. § 908.08 (2010). Audiovisual recordings of statements of children.**

(1) In any criminal trial or hearing, juvenile fact-finding hearing under s. 48.31 or 938.31 or revocation hearing under s. 302.113 (9) (am), 302.114 (9) (am), 304.06 (3), or 973.10 (2), the court or hearing examiner may admit into evidence the audiovisual recording of an oral statement of a child who is available to testify, as provided in this section.

(2) (a) Not less than 10 days before the trial or hearing, or such later time as the court or hearing examiner permits upon cause shown, the party offering the statement shall file with the court or hearing officer an offer of proof showing the caption of the case, the name and present age of the child who has given the statement, the date, time and place of the statement and the name and business address of the camera operator. That party shall give notice of the offer of proof to all other parties, including notice of reasonable opportunity for them to view the statement before the hearing under par. (b) (b) Before the trial or hearing in which the statement is offered and upon notice to all parties, the court or hearing examiner shall conduct a hearing on the statements admissibility. At or before the hearing, the court shall view the statement. At the hearing, the court or hearing examiner shall rule on objections to the statements admissibility in whole or in part. If the trial is to be tried by a jury, the court shall enter an order for editing as provided in s. 885.44 (12)

(3) The court or hearing examiner shall admit the recording upon finding all of the following:

(a) That the trial or hearing in which the recording is offered will commence:

1. Before the child's 12th birthday; or
2. Before the child's 16th birthday and the interests of justice warrant its admission under sub. (4) (b) That the recording is accurate and free from excision, alteration and visual or audio distortion.

(c) That the child's statement was made upon oath or affirmation or, if the child's developmental level is inappropriate for the administration of an oath or affirmation in the usual form, upon the child's understanding that false statements are punishable and of the importance of telling the truth.

- (d) That the time, content and circumstances of the statement provide indicia of its trustworthiness.
- (e) That admission of the statement will not unfairly surprise any party or deprive any party of a fair opportunity to meet allegations made in the statement.
- (4) In determining whether the interests of justice warrant the admission of an audiovisual recording of a statement of a child who is at least 12 years of age but younger than 16 years of age, among the factors which the court or hearing examiner may consider are any of the following:
- (a) The child's chronological age, level of development and capacity to comprehend the significance of the events and to verbalize about them.
- (b) The child's general physical and mental health.
- (c) Whether the events about which the child's statement is made constituted criminal or antisocial conduct against the child or a person with whom the child had a close emotional relationship and, if the conduct constituted a battery or a sexual assault, its duration and the extent of physical or emotional injury thereby caused.
- (d) The child's custodial situation and the attitude of other household members to the events about which the child's statement is made and to the underlying proceeding.
- (e) The child's familial or emotional relationship to those involved in the underlying proceeding.
- (f) The child's behavior at or reaction to previous interviews concerning the events involved.
- (g) Whether the child blames himself or herself for the events involved or has ever been told by any person not to disclose them; whether the child's prior reports to associates or authorities of the events have been disbelieved or not acted upon; and the child's subjective belief regarding what consequences to himself or herself, or persons with whom the child has a close emotional relationship, will ensue from providing testimony.
- (h) Whether the child manifests or has manifested symptoms associated with posttraumatic stress disorder or other mental disorders, including, without limitation, reexperiencing the events, fear of their repetition, withdrawal, regression, guilt, anxiety, stress, nightmares, enuresis, lack of self-esteem, mood changes, compulsive behaviors, school problems, delinquent or antisocial behavior, phobias or changes in interpersonal relationships.
- (i) Whether admission of the recording would reduce the mental or emotional strain of testifying or reduce the number of times the child will be required to testify.

(5) (a) If the court or hearing examiner admits a recorded statement under this section, the party who has offered the statement into evidence may nonetheless call the child to testify immediately after the statement is shown to the trier of fact. Except as provided in par. (b), if that party does not call the child, the court or hearing examiner, upon request by any other party, shall order that the child be produced immediately following the showing of the statement to the trier of fact for cross-examination.

(am) The testimony of a child under par. (a) may be taken in accordance with s. 972.11 (2m), if applicable.

(b) If a recorded statement under this section is shown at a preliminary examination under s. 970.03 and the party who offers the statement does not call the child to testify, the court may not order under par. (a) that the child be produced for cross-examination at the preliminary examination.

(6) Recorded oral statements of children under this section in the possession, custody or control of the state are discoverable under ss. 48.293 (3), 304.06 (3d), 971.23 (1) (e) and 973.10 (2g)

(7) At a trial or hearing under sub. (1), a court or a hearing examiner may also admit into evidence an audiovisual recording of an oral statement of a child that is hearsay and is admissible under this chapter as an exception to the hearsay rule.

## **WYOMING**

### **WYO. STAT. ANN. § 7-11-408 (2010). Videotape depositions.**

(a) In any case in which the defendant is charged with incest as defined in W.S. 6-4-402(a) or sexual assault as defined in W.S. 6-2-302 through 6-2-304 and 6-2-314 through 6-2-317 and a child less than twelve (12) years of age is the victim, the judge may order the taking of a videotape deposition of the child. The videotaping shall be done under the supervision of the court.

(b) Persons allowed to be present at the videotaping of the deposition are the child, the judge, prosecutor, defendant and defense counsel, a family member who was not a witness to the offense or a support person for the child and any technicians required to operate the equipment.

(c) Before ordering the deposition, the judge shall find that:

(i) The child's testimony would be relevant and material;

(ii) The best interests of the child would be served by permitting the videotape deposition;

(iii) A potential physical or psychological harm to the child is likely to occur if the child is required to testify which would effectively render the child incapable to testify at the trial; and

(iv) The defendant or his legal counsel has the opportunity to be present and to cross-examine the child at the videotape deposition.

(d) The judge may deny the defendant's face-to-face confrontation of the child at the videotape deposition if:

(i) The defendant is alleged to have inflicted physical harm or is alleged to have threatened to inflict physical harm upon the child, and physical or psychological harm to the child is likely to occur if there is a face-to-face confrontation of the child by defendant;

(ii) The defendant's legal counsel will have reasonable opportunity to confer with his client before and at any time during the videotape deposition; and

(iii) The defendant will have opportunity to view and hear the proceedings while being taken.

(e) A videotape deposition may be admitted at trial in lieu of the direct testimony of the child, if the judge finds, after hearing, that:

(i) The visual and sound qualities of the videotape are satisfactory;

(ii) The videotape is not misleading;

(iii) All portions of the videotape that have been ruled inadmissible have been deleted; and

(iv) A potential physical or psychological harm to the child is likely to occur if the child is required to testify which would effectively render the child incapable to testify at the trial.

(f) Children unable to articulate what was done to them will be permitted to demonstrate the sexual act or acts committed against them with the aid of anatomically correct dolls. Such demonstrations will be under the supervision of the court and shall be videotaped to be viewed at trial, and shall be received into evidence as demonstrative evidence.

(g) Videotapes which are part of the court record are subject to a protective order to preserve the privacy of the child.



(h) If the prosecutor elects to utilize a videotaped deposition pursuant to this section and the videotape has been taken and is admissible, the child may not testify in court without the consent of the defendant.

## **Federal Legislation**

### **18 U.S.C.S. § 3509 (2010). Child victims' and child witnesses' rights**

(a) Definitions. For purposes of this section--

(1) the term "adult attendant" means an adult described in subsection (i) who accompanies a child throughout the judicial process for the purpose of providing emotional support;

(2) the term "child" means a person who is under the age of 18, who is or is alleged to be--

(A) a victim of a crime of physical abuse, sexual abuse, or exploitation; or

(B) a witness to a crime committed against another person;

(3) the term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(4) the term "physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(5) the term "mental injury" means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

(6) the term "exploitation" means child pornography or child prostitution;

(7) the term "multidisciplinary child abuse team" means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse;

(8) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(9) the term "sexually explicit conduct" means actual or simulated--

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

- (D) lascivious exhibition of the genitals or pubic area of a person or animal; or
- (E) sadistic or masochistic abuse;
- (10) the term "sex crime" means an act of sexual abuse that is a criminal act;
- (11) the term "negligent treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and
- (12) the term "child abuse" does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.
- (13) [Redesignated]

(b) Alternatives to live in-court testimony.

(1) Child's live testimony by 2-way closed circuit television.

(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, or a guardian ad litem appointed under subsection (h) may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed circuit television. The person seeking such an order shall apply for such an order at least 7 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(B) The court may order that the testimony of the child be taken by closed-circuit television as provided in subparagraph (A) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

- (i) The child is unable to testify because of fear.
- (ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.
- (iii) The child suffers a mental or other infirmity.
- (iv) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(C) The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child of one or more of the factors described in subparagraph (B) is so substantial as to justify an order under subparagraph (A), the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

(D) If the court orders the taking of testimony by television, the attorney for the Government and the attorney for the defendant not including an attorney pro se for a party shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are--

- (i) the child's attorney or guardian ad litem appointed under subsection (h);
- (ii) persons necessary to operate the closed-circuit television equipment;
- (iii) a judicial officer, appointed by the court; and
- (iv) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

(2) Videotaped deposition of child.

(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under subsection (h) may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.

(B) (i) Upon timely receipt of an application described in subparagraph (A), the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

(I) The child will be unable to testify because of fear.

(II) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

(III) The child suffers a mental or other infirmity.

(IV) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(ii) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the court shall order that the child's deposition be taken and preserved by videotape.

(iii) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are--

(I) the attorney for the Government;

(II) the attorney for the defendant;

(III) the child's attorney or guardian ad litem appointed under subsection (h);

(IV) persons necessary to operate the videotape equipment;

(V) subject to clause (iv), the defendant; and

(VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

(iv) If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

(v) Handling of videotape. The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(C) If at the time of trial the court finds that the child is unable to testify as for a reason described in subparagraph (B)(i), the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

(D) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(E) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

(F) The videotape of a deposition taken under this paragraph shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

(c) Competency examinations.

(1) Effect of Federal Rules of Evidence. Nothing in this subsection shall be construed to abrogate rule 601 of the Federal Rules of Evidence.

(2) Presumption. A child is presumed to be competent.

(3) Requirement of written motion. A competency examination regarding a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.

(4) Requirement of compelling reasons. A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason.

(5) Persons permitted to be present. The only persons who may be permitted to be present at a competency examination are--

(A) the judge;

(B) the attorney for the Government;

(C) the attorney for the defendant;

(D) a court reporter; and

(E) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

(6) Not before jury. A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.

(7) Direct examination of child. Examination of a child related to competency shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant including a party acting as an attorney pro se. The court may permit an attorney but not a party acting as an attorney pro

se to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

(8) Appropriate questions. The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

(9) Psychological and psychiatric examinations. Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

(d) Privacy protection.

(1) Confidentiality of information.

(A) A person acting in a capacity described in subparagraph (B) in connection with a criminal proceeding shall--

(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

(ii) disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

(B) Subparagraph (A) applies to--

(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the Government to provide assistance in the proceeding;

(ii) employees of the court;

(iii) the defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

(iv) members of the jury.

(2) Filing under seal. All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court--

(A) the complete paper to be kept under seal; and

(B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

(3) Protective orders.

(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may--

(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

(ii) provide for any other measures that may be necessary to protect the privacy of the child.

(4) Disclosure of information. This subsection does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

(e) Closing the courtroom. When a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate. Such an order shall be narrowly tailored to serve the Government's specific compelling interest.

(f) Victim impact statement. In preparing the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. A guardian ad litem appointed under subsection (h) shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. A guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

(g) Use of multidisciplinary child abuse teams.

(1) In general. A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the Government shall consult with the multidisciplinary child abuse team as appropriate.

(2) Role of multidisciplinary child abuse teams. The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including--

(A) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

(B) telephone consultation services in emergencies and in other situations;

(C) medical evaluations related to abuse or neglect;

(D) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;

(E) expert medical, psychological, and related professional testimony;

(F) case service coordination and assistance, including the location of services available from public and private agencies in the community; and

(G) training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

(h) Guardian ad litem.

(1) In general. The court may appoint, and provide reasonable compensation and payment of expenses for, a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the court shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

(2) Duties of guardian ad litem. A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. (The extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives.) A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

(3) Immunities. A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties described in paragraph (2).

(i) Adult attendant. A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

(j) Speedy trial. In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

(k) Stay of civil action. If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

(l) Testimonial aids. The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

(m) Prohibition on reproduction of child pornography.

(1) In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title [18 USCS § 2256]) shall remain in the care, custody, and control of either the Government or the court.

(2) (A) Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title [18 USCS § 2256]), so long as the Government makes the property or material reasonably available to the defendant.

(B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.