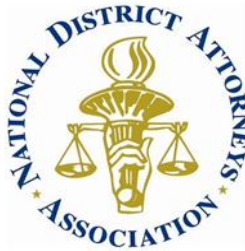


# Anatomical Dolls and Diagrams

Last Updated November 2014



## *Summary of Content*

Sexual predators tend to commit acts of violence against young children in isolated places to lower the probability of facing jail or other consequences. Since the child victim is often the only witness to the crime, the child's account of the abuse is indispensable evidence.

Although a young child's free recall is usually accurate, it is also usually fragmentary.<sup>1</sup> Behavioral research supports the use of interview instructions, narrative practice building a rapport with the child, and using open-ended questions to prompt the child's report of events without unduly influencing the child.<sup>2</sup> Forensic interviews are structured discussions with a child conducted by adults trained in using protocols, which incorporate these scientifically validated techniques. Forensic interviews are best practice for interviewing children possibly exposed to violence or abuse, and often elicit evidence that leads to sound a conviction against an offender.<sup>3</sup>

Anatomically correct dolls and diagrams were developed in the last quarter of the 20<sup>th</sup> century under the theory that a young child might better overcome developmental and motivational difficulties discussing their abuse with the use of these aids.<sup>4</sup> Although not without controversy, they are widely used certain forensic interview protocols.<sup>5</sup> In a recent survey, forensic interviewers "perceived anatomical dolls as valuable during forensic interviews to (a) clarify children's verbal statements; (b) provide internal consistency and corroboration between

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<sup>1</sup> Lorinda B. Camparo Ph.D. et al., *Interviewing Children about Real and Fictitious Events: Revisiting the Narrative Elaboration Procedure*, 25 Law & Hum. Behav. 63,63 (2001).

<sup>2</sup> Thomas D. Lyon, JD, Ph.D, *Twenty-five Years of Interviewing Research and Practice: Dolls, Diagrams and the Dynamics of Abuse Disclosure*, 24 APSAC Advisor, 14, 14 (2012).

<sup>3</sup> E. Morgan Kendrick, *The Diagram Debate: The Use Of Anatomical Diagrams In Child Sexual Abuse Cases*, 8 Liberty U. L. Rev. 125, 127 (2013).

<sup>4</sup> Lyon, *supra* note 2, at 14.

<sup>5</sup> See generally Lyon, *supra* note 2; Kendrick, *supra* note 3 at 129.

children’s verbal statements and doll demonstrations; (c) help children distance from their own bodies; and (d) help children communicate with interviewers when they cannot or will not fully verbalize their sexual abuse experiences.”<sup>6</sup>

The American Psychological Association states, “in general, such dolls may be useful in helping children to communicate when their language skills or emotional concerns preclude direct verbal responses. These dolls may also be useful communication props to help older children who may have difficulty expressing themselves verbally on sexual topic,” when evaluated and interpreted by experienced and competent examiners.<sup>7</sup>

### *Scope of Compilation<sup>8</sup>*

This document is a survey of U.S. state, federal, and territorial statutes codifying the use of anatomical dolls and diagrams. Please note that we recommend checking both case law and current legislation for later modifications to the statutes listed below. Please see the credit(s) below for the date of enactment and history.

For further assistance, consult the National District Attorneys Association’s National Center for Prosecution of Child Abuse at 703.549.9222, or via the free online prosecution assistance service [http://www.ndaa.org/ta\\_form.php](http://www.ndaa.org/ta_form.php)



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<sup>6</sup> Heather R. Hlavka, et al., *The Use of Anatomical Dolls as a Demonstration Aid in Child Sexual Abuse Interviews: A Study of Forensic Interviewers’ Perceptions*, 19 J. Of Child Sexual Abuse 519, 552 (2010) available at [https://www.cornerhousemn.org/images/Use\\_of\\_Anatomical\\_Dolls\\_In\\_CSA\\_Interview.pdf](https://www.cornerhousemn.org/images/Use_of_Anatomical_Dolls_In_CSA_Interview.pdf).

<sup>7</sup> American Psychological Ass’n, *The Use of Anatomically Detailed Dolls in Forensic Evaluations* in Council Policy Manual (Oct. 28, 2014m 4:11 pm), <http://www.apa.org/about/policy/dolls.aspx>.

<sup>8</sup> Search term used: (doll)

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## **ALABAMA**

### **ALA. CODE § 15-25-5 (2014). Use of anatomically correct dolls or mannequins during testimony or deposition of victim or witness under age 10.**

In any criminal proceeding and juvenile cases wherein the defendant is alleged to have had unlawful sexual contact or penetration with or on a child, the court shall permit the use of anatomically correct dolls or mannequins to assist an alleged victim or witness who is under the age of 10 in testifying on direct and cross-examination at trial, or in a videotaped deposition as provided in this article.

CREDIT(S)

(Acts 1985, No. 85-743, p. 1143, § 5.)

Current through Act 2014-457 of the 2014 Regular Session.

## **ALASKA**

N/A

## **ARKANSAS**

N/A

## **CALIFORNIA**

N/A

## **COLORADO**

N/A

## **CONNECTICUT**

### **CONN. GEN. STAT. § 54-86g (2014). Testimony of victim of child abuse. Court may order testimony taken outside courtroom. Procedure**

(a) In any criminal prosecution of an offense involving assault, sexual assault or abuse of a child twelve years of age or younger, the court may, upon motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom in the presence and under the supervision of the trial judge hearing the matter and be televised by closed circuit equipment in the courtroom or recorded for later showing before the court. Only the judge, the defendant, the attorneys for the defendant and for the state, persons necessary to operate the equipment and any person who would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony, except that the court may order the defendant excluded from the room or screened from the sight and hearing of the child only if the state proves, by clear and convincing evidence, that the child would be so intimidated, or otherwise inhibited, by the physical presence of the defendant that a compelling need exists to take the testimony of the child outside the physical presence of the defendant in order to insure the reliability of such testimony. If the defendant is excluded from the room or screened from the sight and hearing of the child, the court shall ensure that the defendant is able to observe and hear the testimony of the child, but that the child cannot see or hear the defendant. The defendant shall be able to consult privately with his attorney at all times during the taking of the testimony. The attorneys and the judge may question the child. If the court orders the testimony of a child to be taken under this subsection, the child shall not be required to testify in court at the proceeding for which the testimony was taken.

(b) In any criminal prosecution of an offense involving assault, sexual assault or abuse of a child twelve years of age or younger, the court may, upon motion of the attorney for any party, order that the following procedures be used when the testimony of the child is taken: (1) Persons shall be prohibited from entering and leaving the courtroom during the child's testimony; (2) an adult who is known to the child and with whom the child feels comfortable shall be permitted to sit in close proximity to the child during the child's testimony, provided such person shall not obscure the child from the view of the defendant or the trier of fact; (3) the use of anatomically correct dolls by the child shall be permitted; and (4) the attorneys for the defendant and for the state shall question the child while seated at a table positioned in front of the child, shall remain seated while posing objections and shall ask questions and pose objections in a manner which is not intimidating to the child.

CREDIT(S)

(1985, P.A. 85-587, § 1; 1989, P.A. 89-177, § 1; 1990, P.A. 90- 230, § 94, eff. June 8, 1990.)

Current with enactments of Public Acts of the 2014 February

**DELAWARE**

N/A

**DISTRICT OF COLUMBIA**

N/A

**FLORIDA**

N/A

**GEORGIA**

N/A

**HAWAII**

N/A

**IDAHO**

N/A

**ILLINOIS**

N/A

**INDIANA**

N/A

**IOWA**

N/A

**KANSAS**

N/A



## **KENTUCKY**

N/A

## **LOUISIANA**

N/A

## **MAINE**

N/A

## **MARYLAND**

N/A

## **MASSACHUSETTS**

N/A

## **MICHIGAN**

### **MICH. COMP. LAWS § 24.275a (2014). Child or developmentally disabled witnesses in contested cases; testimony of sexual, physical, or psychological abuse**

Sec. 75a. (1) As used in this section:

(a) "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.

(b) "Witness" means an alleged victim 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 a contested case in which a witness testifies as an alleged victim of sexual, physical, or psychological abuse. As used in this subsection, "psychological abuse" means an injury to the witness's mental condition or welfare that is not necessarily permanent but results in substantial and protracted, visibly demonstrable manifestations of mental distress.

(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 served upon all parties to the proceeding. The agency shall rule on any objection to the use of a named support person prior to the date at which the witness desires to use the support person.

(5) In a hearing under this section, all persons not necessary to the proceeding shall be excluded during the witness's testimony.

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

#### CREDIT(S)

P.A.1969, No. 306, § 75a, added by P.A.1987, No. 46, § 1, Eff. Jan. 1, 1988. Amended by P.A.1998, No. 327, Imd. Eff. Aug. 3, 1998. The statutes are current through P.A.2014, No. 355, of the 2014 Regular Session, 97th Legislature.

Current with amendments received through 6/15/14

### **MICH. COMP. LAWS § 38.104a (2014). Testimony at hearing by victim of sexual, physical, or psychological abuse**

Sec. 4a. (1) As used in this section:

(a) "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.

(b) "Witness" means an alleged victim 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 a hearing held under this article in which a witness testifies as an alleged victim of sexual, physical, or psychological abuse. As used in this subsection, "psychological abuse" means an injury to the witness's mental condition or welfare that is not necessarily permanent but results in substantial and protracted, visibly demonstrable manifestations of mental distress.

(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 served upon all parties to the proceeding. The controlling board shall rule on any objection to the use of a named support person prior to the date at which the witness desires to use the support person.

(5) In a hearing under this section, all persons not necessary to the proceeding shall be excluded during the witness's testimony.

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

CREDIT(S)

P.A.1937, Ex.Sess., No. 4, Art. IV, § 4a, added by P.A.1987, No. 47, § 1, Eff. Jan. 1, 1988.  
Amended by P.A.1998, No. 326, Imd. Eff. Aug. 3, 1998.  
Current with amendments received through 6/15/14

**MICH. COMP. LAWS § 600.2163a (2014). Prosecutions and proceedings to which section applicable; children, developmentally disabled, and vulnerable adult alleged victims as witness; use of dolls or mannequins; support person; notice; videorecorded statement; special arrangements to protect welfare of witness; videorecorded 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 department of human services, 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 (18) and (19).

(d) "Vulnerable adult" means that term as defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

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

(i) A person under 16 years of age.

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

(iii) A vulnerable adult.

(2) This section only applies to the following:

(a) For purposes of subsection (1)(e)(i) and (ii), 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.

(b) For purposes of subsection (1)(e)(iii), 1 or more of the following:

(i) Prosecutions and proceedings under section 110a, 145n, 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328, MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

(ii) Prosecutions and proceedings for an assaultive crime as that term is defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(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) A videorecorded deposition may be considered in court proceedings only as provided by law.

(8) 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, or as otherwise provided by law; and, if appropriate for the witness's developmental level or mental acuity, 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.

(9) 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, or as otherwise provided by law. 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.

(10) 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, or as otherwise provided by law.

(11) 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.

(12) 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.

(13) 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.

(14) 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 (15) 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.

(d) The physical condition of the witness.

(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 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.

(16) If upon the motion of a party made before trial the court finds on the record that the special arrangements specified in subsection (17) 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.

(d) The physical condition of the witness.

(17) 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 (16), 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.

(18) 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), (15), and (17), the court shall order that the witness may testify outside the physical presence of the defendant by closed circuit television or other electronic means that allows the witness to be observed by the trier of fact and the defendant when questioned by the parties.

(19) For purposes of the videorecorded deposition under subsection (18), 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. The court shall

permit the defendant to hear the testimony of the witness and to consult with his or her attorney.

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

(21) 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.

CREDIT(S)

P.A.1961, No. 236, § 2163a, added by P.A.1987, No. 44, § 1, Eff. Jan. 1, 1988. Amended by P.A.1989, No. 253, § 1, Eff. March 29, 1990; P.A.1998, No. 324, Imd. Eff. Aug. 3, 1998; P.A.2002, No. 604, Eff. Mar. 31, 2003; P.A.2012, No. 170, Imd. Eff. June 19, 2012.  
Current with amendments received through 6/15/14

**MICH. COMP. LAWS § 712A.17b (2014). Testimony of child or developmentally disabled alleged victim of particular offense; videorecording of testimony; release or disclosure of videorecorded statement; penalties**

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) [FN1] 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.

CREDIT(S)

P.A.1939, No. 288, c. XIIA, § 17b, added by P.A.1987, No. 45, § 1, Eff. Jan. 1, 1988. Amended by P.A.1989, No. 254, § 1, Eff. March 29, 1990; P.A.1998, No. 325, Imd. Eff. Aug. 3, 1998; P.A.2002, No. 625, Eff. March 31, 2003.

Current with amendments received through 6/15/14

### **Mich. RULE 3.923 MISCELLANEOUS PROCEDURES**

(A) Additional Evidence. If at any time the court believes that the evidence has not been fully developed, it may:

(1) examine a witness,

(2) call a witness, or

(3) adjourn the matter before the court, and

(a) cause service of process on additional witnesses, or

(b) order production of other evidence.

(B) Examination or Evaluation. The court may order that a minor or a parent, guardian, or legal custodian be examined or evaluated by a physician, dentist, psychologist, or psychiatrist.

(C) Fingerprinting and Photographing. A juvenile must be fingerprinted when required by law. The court may permit fingerprinting or photographing, or both, of a minor concerning whom a petition has been filed. Fingerprints and photographs must be placed in the confidential files, capable of being located and destroyed on court order.

(D) Lineup. If a complaint or petition is filed against a juvenile alleging violation of a criminal law or ordinance, the court may, at the request of the prosecuting attorney, order the juvenile to appear at a place and time designated by the court for identification by another person,

including a corporeal lineup pursuant to MCL 712A.32. If the court orders the juvenile to appear for such an identification procedure, the court must notify the juvenile and the juvenile's parent, guardian or legal custodian that the juvenile has the right to consult with an attorney and have an attorney present during the identification procedure and that if the juvenile and the juvenile's parent, guardian or legal custodian cannot afford an attorney, the court will appoint an attorney for the juvenile if requested on the record or in writing by the juvenile or the juvenile's parent, guardian or legal custodian.

(E) Electronic Equipment; Support Person. The court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of videotaped statements and depositions, anatomical dolls, or support persons, and may take other measures to protect the child witness as authorized by MCL 712A.17b.

(F) Impartial Questioner. The court may appoint an impartial person to address questions to a child witness at a hearing as the court directs.

(G) Adjournments. Adjournments of trials or hearings in child protective proceedings should be granted only

(1) for good cause,

(2) after taking into consideration the best interests of the child, and

(3) for as short a period of time as necessary.

CREDIT(S)

Adopted February 4, 2003, effective May 1, 2003, 467 Mich.

Current with amendments received through 6/15/14

## **MINNESOTA**

N/A

## **MISSISSIPPI**

N/A



## **MISSOURI**

### **MO. REV. STAT. § 492.304 (2014). 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 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, 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.

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.

CREDIT(S)

(L.1985, H.B. Nos. 366, 248, 372 & 393, § B, eff. July 19, 1985. Amended by L.1992, S.B. No. 638, § A; L.2004, H.B. No. 1453, § A.) Statutes are current through the end of the 2014 Second Regular Session of the 97th General Assembly, pending corrections received from the Missouri Revisor of Statutes. Constitution is current through the November 6, 2012 General Election.

## **MONTANA**

N/A

## **NEBRASKA**

N/A

## **NEVADA**

N/A

## **NEW HAMPSHIRE**

### **N.H. Court Rule 93-A (2014). Minor Victims or Witnesses--Sex-Related Cases**

In any criminal case alleging a sex-related offense in which a minor child was a victim, the Court shall allow the use of anatomically correct drawings and/or anatomically correct dolls as demonstrative evidence to assist the alleged victim or minor witness in testifying, unless otherwise ordered by the Court for good cause shown.

In the event that the alleged victim or minor witness is nervous, afraid, timid, or otherwise reluctant to testify, the Court may allow the use of leading questions during the initial testimony but shall not allow the use of such questions relating to any essential element of the criminal offense.

The Clerk shall schedule a pretrial conference, to be held within forty-five (45) days of the filing of an indictment, for the purpose of establishing a discovery schedule and trial date. At such conference, the Court shall consider the advisability and need for the appointment of a guardian ad litem to represent the interests of the alleged victim.

In the event that a guardian ad litem is appointed to represent the interests of a minor victim or witness, the role and scope of services of the guardian ad litem shall be explicitly outlined by the trial judge prior to trial.

The guardian ad litem appointed under this rule shall be compensated at the same hourly rate, and shall be subject to the same case maximums, as set forth for defense counsel in misdemeanor cases under the provisions of Supreme Court Rule 47. The guardian ad litem shall also be reimbursed for his or her investigative and related expenses, as allowed under Rule 47, upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to the said expenses being incurred.

CREDIT(S)

Amended April 25, 2006, effective July 1, 2006. Current with amendments received through June 1, 2014.

## **N.H. Family Division Rule 3.9 (2014). Protection of Children in Sex-Related Cases**

In any proceeding under RSA 169-B alleging a sex-related offense in which a minor child is an alleged victim or a witness, the Court shall allow the use of anatomically correct drawings and/or anatomically correct dolls as demonstrative evidence to assist the alleged victim or witness in testifying unless otherwise ordered by the Court for good cause shown.

In the event that the alleged victim or witness is nervous, afraid, timid, or otherwise reluctant to testify, the Court may allow the use of leading questions during the initial testimony but shall not allow the use of such questions relating to any essential element of the offense.

CREDIT(S)

[Effective October 15, 2007. Permanent adoption October 16, 2009, effective January 1, 2010.]  
Current with amendments received through June 1, 2014.

## **NEW JERSEY**

### **N.J. STAT. ANN. § 2A:84A-16.1 (2014).Anatomically correct dolls or models; use in testimony of children**

In prosecutions for those crimes described in sections 2C:14-2, 2C:14-3 and 2C:24-4 of the New Jersey Statutes, where the complaining witness is a child under the age of 16, the court shall permit the use of anatomically correct dolls, models or similar items of either or both sexes to assist the child's testimony.

CREDIT(S)

L.1985, c. 205, § 1, eff. June 27, 1985.

Current with laws effective through L.2014, c. 62 and J.R. No. 3

## **NEW MEXICO**

N/A

## **NEW YORK**

### **N.Y. CRIM. PROC. LAW § 60.44 (2014). Use of anatomically correct dolls**

Any person who is less than sixteen years old may in the discretion of the court and where helpful and appropriate, use an anatomically correct doll in testifying in a criminal proceeding based upon conduct prohibited by article one hundred thirty, article two hundred sixty or section 255.25, 255.26 or 255.27 of the penal law.

CREDIT(S)

(Added L.1986, c. 358, § 1. Amended L.2006, c. 320, § 11, eff. Nov. 1, 2006.) Current through L.2014, chapters 1 to 402.

### **N.Y. Exec. Law § 642-a (2014). § 642-a. Fair treatment of child victims as witnesses**

To the extent permitted by law, criminal justice agencies, crime victim-related agencies, social services agencies and the courts shall comply with the following guidelines in their treatment of child victims:

1. To minimize the number of times a child victim is called upon to recite the events of the case and to foster a feeling of trust and confidence in the child victim, whenever practicable and where one exists, a multi-disciplinary team as established pursuant to subdivision six of section four hundred twenty-three of the social services law and/or a child advocacy center shall be used for the investigation and prosecution of child abuse cases involving abuse of a child, as described in paragraph (i), (ii) or (iii) of subdivision (e) of section one thousand twelve of the family court act, sexual abuse of a child or the death of a child.
2. Whenever practicable, the same prosecutor should handle all aspects of a case involving an alleged child victim.
3. To minimize the time during which a child victim must endure the stress of his involvement in the proceedings, the court should take appropriate action to ensure a speedy trial in all proceedings involving an alleged child victim. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of the child.
4. The judge presiding should be sensitive to the psychological and emotional stress a child witness may undergo when testifying.

5. In accordance with the provisions of article sixty-five of the criminal procedure law, when appropriate, a child witness as defined in subdivision one of section 65.00 of such law should be permitted to testify via live, two-way closed-circuit television.

6. In accordance with the provisions of section 190.32 of the criminal procedure law, a person supportive of the "child witness" or "special witness" as defined in such section should be permitted to be present and accessible to a child witness at all times during his testimony, although the person supportive of the child witness should not be permitted to influence the child's testimony.

7. A child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings during his testimony.

CREDIT(S)

(Added L.1986, c. 263, § 8. Amended L.2006, c. 517, § 3, eff. Feb. 12, 2007; L.2008, c. 574, § 3, eff. March 24, 2009.)Current through L.2014, chapters 1 to 402.

## **NORTH CAROLINA**

N/A

## **NORTH DAKOTA**

N/A

## **OHIO**

N/A

## **OKLAHOMA**

N/A

## **OREGON**

N/A

## **PENNSYLVANIA**

### **42 PA. CONS. STAT. § 5987 (2014). Use of dolls**

In any criminal proceeding charging physical abuse, indecent contact or any of the offenses enumerated in 18 Pa.C.S. Ch. 31 (relating to sexual offenses), the court shall permit the use of anatomically correct dolls or mannequins to assist a child in testifying on direct examination and cross-examination.

CREDIT(S) 1986, Feb. 21, P.L. 41, No. 14, § 1, effective in 60 days. Amended 1996, Dec. 18, P.L. 1077, No. 161, § 5, effective in 60 days; 2004, July 15, P.L. 736, No. 87, § 4, imd. effective. Current through 2014 Regular Session Acts 1 to 131

## **RHODE ISLAND**

N/A

## **SOUTH CAROLINA**

N/A

## **SOUTH DAKOTA**

N/A

## **TENNESSEE**

N/A

## **TEXAS**

N/A

## **UTAH**

N/A

## **VERMONT**

N/A

## **VIRGINIA**

N/A

## **WASHINGTON**

N/A

## **WEST VIRGINIA**

### **W. VA. CODE ANN. § 61-8-13 (2014). Incest; limits on interviews of children eleven years old or less; evidence**

(a) In any prosecution under the provisions of section twelve of this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is eleven years old or less must submit for law-enforcement or discovery purposes. To the extent possible the rule shall protect the mental and emotional health of the child from the psychological damage of repeated interrogation and at the same time preserve the rights of the public and the defendant.

(b) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.

(c) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: Provided, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(d) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible: Provided, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.



(e) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.

CREDIT(S)

Acts 1986, 1st Ex. Sess., c. 11; Acts 1992, c. 52; Acts 1994, 1st Ex. Sess., c. 23. Current with laws of the 2014 Second Extraordinary Session

### **W. VA. CODE ANN. § 61-8B-11 (2014). Sexual offenses; evidence**

(a) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: Provided, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(b) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible: Provided, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(c) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.

(d) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.

CREDIT(S)

Acts 1976, c. 43; Acts 1984, c. 56; Acts 1986, 1st Ex. Sess., c. 11. W. Va. Code, § 61-8B-11, WV ST Current with laws of the 2014 Second Extraordinary Session

### **W. VA. CODE ANN. § 61-8C-5 (2014). Limits on interviews of children eleven years old or less; evidence**

(a) In any prosecution under this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is eleven years old or less must submit for law enforcement or discovery purposes. The rule shall to the extent possible protect the mental and emotional health of the child from the psychological damage of repeated interrogation and at the same time preserve the rights of the public and the defendant.

(b) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.

CREDIT(S)

Acts 1986, 1st Ex. Sess., c. 11. Current with laws of the 2014 Second Extraordinary Session

## **WISCONSIN**

N/A

## **WYOMING**

### **WYO. STAT. § 7-11-408 (2014). 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.

CREDIT(S)

Laws 1987, ch. 149, § 1; Laws 2009, ch. 68, § 1, eff. July 1, 2009. Current through the 2014 Budget Session

# FEDERAL LEGISLATION/U.S. TERRITORIES

## **FEDERAL LEGISLATION**

### **18. USC. § 3509 (2014). 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.

(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 on 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) 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), 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.

## CREDIT(S)

(Added Pub.L. 101-647, Title II, § 225(a), Nov. 29, 1990, 104 Stat. 4798; amended Pub.L. 103-322, Title XXXIII, §§ 330010(6), (7), 330011(e), 330018(b), Sept. 13, 1994, 108 Stat. 2143, 2145, 2149; Pub.L. 104-294, Title VI, § 605(h), Oct. 11, 1996, 110 Stat. 3510; Pub.L. 109-248, Title V, §§ 504, 507, July 27, 2006, 120 Stat. 629, 631; Pub.L. 111-16, § 3(11), May 7, 2009, 123 Stat. 1608.) Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

## **AMERICAN SAMOA**

N/A

## **GUAM**

N/A

## **PUERTO RICO**

### **P.R. LAWS TIT. 34, APP. II § 131.3 (2014). WITNESSES WHO ARE MINORS; ASSISTANCE DURING TESTIMONY**

In any proceeding under these rules, and specifically, Rules 131.1 and 131.2 of this appendix, the court, on its own initiative or by petition of the Prosecutor, guardian ad litem, or the parents, tutor or guardian of a minor who is a witness in a criminal procedure, may authorize that assistance be given to the minor pursuant to the following:

(1) Support personnel.-- The minor shall have the right to be escorted by support personnel, which may be a relative or an acquaintance of the minor, or the professional or technical personnel who has intervened or offered assistance to the minor throughout the different stages of the process. The court may authorize the support personnel to remain next to the minor, including actions such as holding him/her on his/her lap, or holding his/her hands. While the minor is testifying, the support personnel shall not address the minor, nor make any suggestive movement whatsoever, nor communicate with the jury by making gestures nor through any other means.

In the cases of trial by jury, the court shall give special instructions to clarify the function of the support personnel, emphasizing the fact that his/her presence has the purpose of facilitating the testimony of the minor and not of physically protecting him/her from the defendant nor to influence in favor of his/her credibility.

(2) Means to facilitate the rendering of testimony.-- The court may authorize the use in court of anatomically correct dolls, mannequins, common toys, drawings or other demonstrative means that it deems pertinent in order to help the minor to give his/her testimony.

By petition of the Prosecutor, of any of the persons listed in subsection (1) of this rule, or on its own initiative, the court shall give priority to the case in which a minor is called to testify, on its calendar as well as on the order of the day, to reduce the time that the minor shall be exposed to the process. If the court has to continue the proceedings on a subsequent date, it shall take into consideration the age of the minor and any adverse effect that such postponement could entail. The court shall make findings of fact and conclusions of law, in writing, when it opts to postpone the hearing of the case.-- Added on Aug. 15, 1998, No. 247, § 3, eff. 30 days after Aug. 15, 1998.

T. 34 L.P.R.A. App. II, Rule 131.3, PR ST T. 34 Ap. II, Rule 131.3  
The statutes and Constitution are current through December 2011,  
except for Act No. 136 of the 2010 Regular Session.

## **VIRGIN ISLANDS**

N/A