

# Comfort Items

Last Updated **October 2014**



## *A Child Fair Court Room – Comfort Items*

For child victim witnesses the court process is daunting, since the courtroom and the criminal justice system is designed for adults.<sup>1</sup> The process can be terrifying, intimidating, and even cause short-term emotional disturbances.<sup>2</sup> The following circumstances lead to stress for the child victim witness:

- multiple interviews and not using developmentally appropriate language;
- delays and continuances;
- testifying more than once;
- lack of communication between child protection professionals;
- fear of public exposure;
- lack of understanding of complex legal procedures;
- face-to-face contact with the defendant;
- practices that are insensitive to developmental needs;
- harsh cross-examination calculated to confuse;
- lack of adequate support and victims services;
- sequestration of witnesses who may be supportive to the child;
- placement that exposes the child to intimidation, pressure, or continued abuse;
- inadequate preparation for testifying; and
- the prosecution presenting little evidence to corroborate testimony of the child.<sup>3</sup>

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<sup>1</sup> Office for Victim of Crime, U.S. Dep't of Justice, *Breaking the Cycle of Violence: Recommendations to Improve the Criminal Justice Response to Child Victims and Witnesses* 5 (1999), available at <http://www.ovc.gov/publications/factshts/monograph.htm>

<sup>2</sup> See. GS Goodman et al., *Testifying In Criminal Court: Emotional Effects on Child Sexual Assault Victims*, 57(5) *Monographs of the Soc'y for Research in Child Dev.* (1992); *Maryland v. Craig*, 497 U.S. 836, 851 (1990) (The U.S. Supreme Court recognizes limiting emotional stress of child victim witnesses on the stand as an important public policy especially when the child exhibits significant emotional distress).

<sup>3</sup> Office for Victim of Crime, *supra* note 1, at 5.

These stressors may cause children to be ineffective witnesses, who provide weak testimony and contribute less information due to fear.<sup>4</sup> Courts “possess the inherent powers to do all things that are reasonable and necessary for the administration of justice within the scope of their jurisdiction, subject to valid existing laws and constitutional provisions.”<sup>5</sup> In fact, the American Bar Association’s Standards for Criminal Justice, further states: the trial judge “*should* aim to establish such physical surroundings as are appropriate to the administration of justice.”<sup>6</sup> Rule 611 of the Federal Rules of Evidence and similar state rules provides the means.

According to the rule 611, the judge is not only allowed but “*should* exercise reasonable control mode and order of examining witnesses and presenting evidence so as to make those procedures effective for determining the truth, avoid wasting time, and protect witnesses from harassment or undue embarrassment.”<sup>7</sup>

Special accommodations diminish the circumstances that lead children to be ineffective witnesses, and thus allows for effective determination of truth, and avoids wasting the court’s time. These accommodations are called the Children’s Bill of Rights. They include the court (1) using a child-fair oath, (2) using developmentally appropriate questioning, (3) the allowing the use of a comfort item and/or presence of a support person or therapy animal during testimony, (4) issuing a prohibition on intimidating/developmentally inappropriate questions, (5) allowing small courtroom modifications such as allowing the child to sit on a pillow if he/she cannot see over the witness box, and (6) allowing the child to testify at a time of day when the child is most alert and best able to understand questions.<sup>8</sup> Originally filed by prosecutors as pre-trial motions, legislators have codified many of these accommodations in statutes.<sup>9</sup>

### Comfort Items

This document is a survey of laws across the country regarding one of the courtroom accommodations mentioned above – comfort items. D. W. Winnicot first documented the connection between children and comfort items in the *International Journal of Psychoanalysis* in 1953.<sup>10</sup> A comfort item or using the scientific term: transitional item can serve as a bridge between the mother and the external world.<sup>11</sup> Transitional items are objects that a child can

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<sup>4</sup> See *Id.*

<sup>5</sup> *Hicks-Bey v. U.S.*, 649 A.2d 569,578 (D.C. 1994) citing *State v. Ford*, 626 So.2d 1338, 1345 (Fla.1993).

<sup>6</sup> Am. Bar. Ass’n, Standard 6-1.1. General Responsibility Of The Trial Judge in *ABA Standards for Criminal Justice: Special Functions Of The Trial Judge* 13 (3d. ed. 2000) (emphasis added), available at, [http://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_standards/trial\\_judge.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/trial_judge.authcheckdam.pdf).

<sup>7</sup> Fed. R. Evid. 611 (emphasis added), available at [http://www.law.cornell.edu/rules/fre/rule\\_611](http://www.law.cornell.edu/rules/fre/rule_611)

<sup>8</sup> See Victor Vieth, *A Children’s Courtroom Bill of Rights: Seven Pre-Trial Motions Prosecutors Should Routinely File in Cases of Child Maltreatment Cases*, Cent. Piece Newsletter ( Nat’l Child Protect. Training Ctr, Winona, MN) 2008.

<sup>9</sup> *Id.*

<sup>10</sup> D. W Winnicot, *Transitional Objects And Transitional Phenomena*, 34 Int’l J. of Psychoanalysis 89,89 (1953).

<sup>11</sup> See. *Id.*; Perri Klass, MD, *A Firm Grasp on Comfort*, N.Y. Times, March 11, 2013; See. Carole J. Litt *Theories of Transitional Object Attachment: An Overview*, 9 Int’l J. of Behav. Dev. 383, 383 (1986).

hang on to retain that comforted feeling the child receives from the parent.<sup>12</sup> Beloved blankets, tattered stuffed animals and irreplaceable toys can represent a mother's ability to soothe the child when frightened or nervous.<sup>13</sup> Linus the little boy always carrying the dirty blue blanket from the Peanuts cartoon is the animated representation of this phenomenon.<sup>14</sup> In situations, where the child is frightened such as a pediatric medical exam or even extreme cases where the child is in court, these items can help calm a child and allow them to communicate more effectively.<sup>15</sup> In fact, legislators have gone so far as to codify the use of comfort items into law.

### *Scope of Compilation*<sup>16</sup>

This document is a survey of **comfort item** statutes or statutes with similar intent from all U.S. jurisdictions including states, territories, and the Federal government. Gray highlighting within the statutes indicates favorable language. Red highlighting indicates direct case law or statutory language. It is up-to-date as of October 2014. Please note that we recommend checking both case law and current legislation for later modifications to the statutes listed below. NDAA has separate support person, and remote child witnesses testimony compilations. Please see the **support person and cctv compilations** for those statutes at [www.ndaa.org](http://www.ndaa.org). The dates on the citation of the statutes indicate they are up-to-date as of the year listed. 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>12</sup> Perri Klass, MD, A Firm Grasp on Comfort, N.Y. Times, March 11, 2013.

<sup>13</sup> John E.B. Myers et al., *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 28 Pacific Law Journal 3, 63, at 71, citing Ellen Mathews & Karen J. Saywitz, *Child Victim Witness Manual*, 12 Center For Jud. Educ. & Res. J. 5, 34 (1992).

<sup>14</sup> Klass, *supra* note 14.

<sup>15</sup> See. *State v. Powell*, 318 S.W.3d 297 (Mo. Ct. App. 2010); *Sperling v. State*, 924 S.W.2d 722 (Tex.App.-Amarillo 1996); *State v. Cliff*, 782 P.2d 44 (Idaho App. 1989); *People v. Pesquera*, 625 N.W.2d 407 (Mich.App. 2001); *State v. Hakimi*, 98 P.3d 809 (Wash. App.-Div. 1 2004); *State v. Dickson*, 337 S.W.3d 733, (Mo. App. S.D. 2011).

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## **ALABAMA**

### **ALA. CODE § 15-25-6 (2014). Actions to minimize length of proceedings stressful to child; considerations in ruling on motion for delay or continuance.**

In all criminal cases and juvenile proceedings involving offenses set out in Section 15-25-1, wherein the victim hereof or a witness to the offense is under the age of 16 years, the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

CREDIT(S)

(Acts 1985, No. 85-743, p. 1143, § 6.)

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

## **ALASKA**

### **ALASKA STAT. § § 12.45.046 (2014). Testimony of children in criminal proceedings**

(a) In a criminal proceeding under AS 11.41 involving the prosecution of an offense committed against a child under the age of 16, or witnessed by a child under the age of 16, the court

(1) may appoint a guardian ad litem for the child;  
(2) on its own motion or on the motion of the party presenting the witness or the guardian ad litem of the child, may order that the testimony of the child be taken by closed circuit television or through one-way mirrors if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate.

(b) In making a determination under (a)(2) of this section, the court shall consider factors it considers relevant, including

(1) the child's chronological age;  
(2) the child's level of development;  
(3) the child's general physical health;  
(4) any physical, emotional, or psychological injury experienced by the child; and



(5) the mental or emotional strain that will be caused by requiring the child to testify under normal courtroom procedures.

(c) If the court determines under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, 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 defendant, the court, and the finder of fact in the proceeding. If the court authorizes use of closed circuit televised testimony under this subsection,

(1) each of the following may be in the room with the child when the child testifies:

(A) the prosecuting attorney;

(B) the attorney for the defendant; and

(C) operators of the closed circuit television equipment;

(2) the court may, in addition to persons specified in (1) of this subsection, admit a person whose presence, in the opinion of the court, contributes to the well-being of the child.

(d) When a child is to testify under (c) of this section, only the court and counsel may question the child. The persons operating the equipment shall do so in as unobtrusive a manner as possible. If the defendant requests, the court shall excuse the defendant from the courtroom, shall permit the defendant to attend in another location, and shall afford the defendant a means of viewing the child's testimony and of communicating with the defendant's attorney throughout the proceedings. Upon request of the defendant or the defendant's attorney, the court shall permit a recess to allow them to confer. The court shall provide a means of communicating with the attorneys during the questioning of the child. Objections made by the attorneys to questions of a child witness may be resolved in the courtroom if the court finds it necessary.

(e) If the court determines under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, the court may authorize the use of one-way mirrors in conjunction with the taking of the child's testimony. The attorneys may pose questions to the child and have visual contact with the child during questioning, but the mirrors shall be placed to provide a physical shield so that the child does not have visual contact with the defendant and jurors.

(f) If the court does not find under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures will result in the child's inability to effectively communicate, the court may, after taking into consideration the factors specified in (b) of this section, supervise the spatial arrangements of the courtroom and the location, movement, and deportment of all persons in attendance so as to safeguard the child from emotional harm or stress. In addition to other procedures it finds appropriate, the court may

(1) allow the child to testify while sitting on the floor or on an appropriately sized chair;

(2) schedule the procedure in a room that provides adequate privacy, freedom from distractions, informality, and comfort appropriate to the child's developmental age; and  
(3) order a recess when the energy, comfort, or attention span of the child warrants.

CREDIT(S)

SLA 1988, ch. 92, § 2; SLA 1994, ch. 78, § 1.

Current through legislation effective June 24, 2014, passed during the 2014 2nd Reg. Sess. of the

## **ARKANSAS**

### **ARK. CODE ANN. § § 16-43-1202 (2014). Safeguards for child victims testifying in judicial and administrative proceedings**

In order to facilitate testimony that is fair and accurate, the following safeguards should be followed:

- (1) The prosecuting attorney, victim-witness coordinator, attorney ad litem, or Office of Chief Counsel attorney shall inform the child about the nature of the judicial proceeding or administrative proceeding;
- (2) The prosecuting attorney, victim-witness coordinator, attorney ad litem, or Office of Chief Counsel attorney shall explain:
  - (A) The oath that will be administered to the child; and
  - (B) That the judge will determine whether the child is competent to testify;
- (3) The prosecuting attorney, victim-witness coordinator, attorney ad litem, or Office of Chief Counsel attorney shall explain to the child that if the child does not understand a question while testifying in the judicial proceeding or administrative proceeding, the child has a right to say that he or she does not understand the question;
- (4) The prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney may file a motion to have the child testify at a time of day when the child is most alert and best able to understand questions posed in court;
- (5) If it is in the child's best interests, the prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney may file a motion for the child to have a **comfort item when testifying in a judicial or administrative proceeding;**
- (6) If it is in the child's best interests, the prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney may file a motion for the child to have a support person present when the child testifies in a judicial proceeding or an administrative proceeding; and
- (7) The prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney shall consider the effect upon the child when the child is subjected to argumentative or harassing questions and shall make the proper objections when appropriate to ensure that the child is not subjected to argumentative or harassing questioning.

CREDIT(S)

Acts of 2007, Act 703, § 15, eff. July 31, 2007.

## **ARIZONA**

### **State v. Gevrez, 148 P.2d 829 (Ariz. 1944).**

In prosecution of defendant for murder of wife, permitting defendant's daughter to take stand while carrying a doll which she testified was her mother's doll, together with permitting deceased's mother to sit near jury and weep, deprived defendant of fair and impartial trial.

## **CALIFORNIA**

### **CAL. PENAL CODE § § 868.8 (2014). Witnesses who are minors or persons with a disability in criminal proceedings involving certain violations or attempted violations committed with or upon a person with a disability or a minor under the age of 11; precautions and protection**

Notwithstanding any other provision of law, in any criminal proceeding in which the defendant is charged with a violation or attempted violation of subdivision (b) of Section 209, Section 220, 236.1, 243.4, 261, 269, 273a, 273d, 285, 286, 288, 288a, 288.5, 288.7, or 289, subdivision (1) of Section 314, Section 422, 646.9, 647.6, or former Section 647a, or any crime that constitutes domestic violence defined in Section 13700, committed with or upon a person with a disability or a minor under 11 years of age, the court shall take special precautions to provide for the comfort and support of the person with a disability or minor and to protect him or her from coercion, intimidation, or undue influence as a witness, including, but not limited to, any of the following:

(a) In the court's discretion, the witness may be allowed reasonable periods of relief from examination and cross-examination during which he or she may retire from the courtroom. The judge may also allow other witnesses in the proceeding to be examined when the person with a disability or child witness retires from the courtroom.

(b) Notwithstanding Section 68110 of the Government Code, in his or her discretion, the judge may remove his or her robe if the judge believes that this formal attire intimidates the person with a disability or the minor.

(c) In the court's discretion the judge, parties, witnesses, support persons, and court personnel may be relocated within the courtroom to facilitate a more comfortable and personal environment for the person with a disability or the child witness.

(d) In the court's discretion, the taking of the testimony of the person with a disability or the minor may be limited to normal school hours if there is no good cause to take the testimony of the person with a disability or the minor during other hours.

(e) For the purposes of this section, the term "disability" is defined in subdivision (j) of Section 12926 of the Government Code.

CREDIT(S)

(Added by Stats.1985, c. 1174, § 2. Amended by Stats.1986, c. 273, § 1; Stats.1986, c. 1051, § 2; Stats.1987, c. 1418, § 7; Stats.1989, c. 1402, § 9; Stats.2001, c. 62 (A.B.77), § 1; Stats.2011, c. 261 (S.B.559), § 21; Stats.2013, c. 44 (S.B.130), § 2.)

## **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.)

## **DELAWARE**

### **DEL. CODE ANN. TIT. 11, §§ 5131 (2014). LEGISLATIVE INTENT**

The General Assembly finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually required for adults. It is therefore the intent of the General Assembly to provide each child who is involved in a criminal proceeding within the Superior Court with certain fundamental rights and protections.

CREDIT(S)

65 Laws 1985, ch. 158, § 1.

11 Del.C. § 5131, DE ST TI 11 § 5131

Current through 79 Laws 2014, ch. 441. Revisions to 2014 Acts by the Delaware Code Revisors were unavailable at the time of publication.

### **DEL. CODE ANN. TIT. 11, §§ 5132 (2014). DEFINITIONS**

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Child" shall mean a person who has not yet reached their 18th birthday.

(2) "Victim" or "witness" shall not include any child accused of committing a felony; provided, however, that the word "victim" or "witness" may, in the Court's discretion, include:

a. A child where such child's participation in a felony appears to have been induced, coerced or unwilling; or

b. A child who has participated in the felony, but who has subsequently and voluntarily agreed to testify on behalf of the State.

CREDIT(S)

65 Laws 1985, ch. 158, § 1.

11 Del.C. § 5131, DE ST TI 11 § 5131

Current through 79 Laws 2014, ch. 441. Revisions to 2014 Acts by the Delaware Code Revisors were unavailable at the time of publication.

### **DEL. CODE ANN. TIT. 11, §§ 5133 (2014). Expedited proceedings**

National Center for Prosecution of Child Abuse

National District Attorney Association

[www.ndaa.org](http://www.ndaa.org)

In all criminal proceedings in the Superior Court involving a child victim or witness, the Court and the prosecution shall take appropriate action to ensure a prompt trial in order to minimize the length of time a child victim or witness must endure the stress of the victim's or witness' involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the Court shall consider and give weight to any adverse impact such delay or continuance might have on the well-being of any child victim or witness.

CREDIT(S)

65 Laws 1985, ch. 158, § 1.

11 Del.C. § 5131, DE ST TI 11 § 5131

Current through 79 Laws 2014, ch. 441. Revisions to 2014 Acts by the Delaware Code Revisors were unavailable at the time of publication.

### **DEL. CODE ANN. TIT. 11, §§ 5134 (2014). Additional rights and services**

(a) A child victim or witness is entitled to an explanation, in language understood by the child, of all legal proceedings in which the child is to be involved.

(b) A child victim or witness is entitled to be accompanied, in all proceedings, by a "friend" or other person in whom the child trusts, which person shall be permitted to advise the judge, when appropriate and as a friend of the Court, regarding the child's ability to understand proceedings and questions.

(c) A child victim or witness is entitled to information about, and referrals to, appropriate social services and programs to assist such child, and the child's family, in coping with the emotional impact of the crime, and the subsequent Court proceedings in which the child is to become involved.

CREDIT(S)

65 Laws 1985, ch. 158, § 1.

11 Del.C. § 5131, DE ST TI 11 § 5131

Current through 79 Laws 2014, ch. 441. Revisions to 2014 Acts by the Delaware Code Revisors were unavailable at the time of publication.

## **DISTRICT OF COLUMBIA**

N/A

## **FLORIDA**

### **FLA. STAT. ANN. § 92.55 (2014).Judicial or other proceedings involving victim or witness under the age of 16, a person who has an intellectual disability, or a sexual offense victim or witness; special protections; use of registered service or therapy animals**

(1) For purposes of this section, the term:

(a) "Sexual offense victim or witness" means a person who was under the age of 16 when he or she was the victim of or a witness to a sexual offense.

(b) "Sexual offense" means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

(2) Upon motion of any party, upon motion of a parent, guardian, attorney, or guardian ad litem for a victim or witness under the age of 16, a person who has an intellectual disability, or a sexual offense victim or witness, or upon its own motion, the court may enter any order necessary to protect the victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the victim or witness is required to testify in open court. Such orders must relate to the taking of testimony and include, but are not limited to:

(a) Interviewing or the taking of depositions as part of a civil or criminal proceeding.

(b) Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding.

(c) The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53 and 92.54.

(3) In ruling upon the motion, the court shall consider:

(a) The age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant's presence, and any other fact that the court deems relevant;

(b) The age of the person who has an intellectual disability, the functional capacity of such person, the nature of the offenses or act, the relationship of the person to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to

the person as a consequence of the defendant's presence, and any other fact that the court deems relevant; or

(c) The age of the sexual offense victim or witness when the sexual offense occurred, the relationship of the sexual offense victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the sexual offense victim or witness as a consequence of the defendant's presence, and any other fact that the court deems relevant.

(4) In addition to such other relief provided by law, the court may enter orders limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness may be interviewed, prohibiting depositions of the victim or witness, requiring the submission of questions before the examination of the victim or witness, setting the place and conditions for interviewing the victim or witness or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.

(5) The court may set any other conditions it finds just and appropriate when taking the testimony of a child victim or witness or a sexual offense victim or witness, including the use of a service or therapy animal that has been evaluated and registered according to national standards, in any proceeding involving a sexual offense. When deciding whether to permit a child victim or witness or sexual offense victim or witness to testify with the assistance of a registered service or therapy animal, the court shall consider the age of the child victim or witness, the age of the sexual offense victim or witness at the time the sexual offense occurred, the interests of the child victim or witness or sexual offense victim or witness, the rights of the parties to the litigation, and any other relevant factor that would facilitate the testimony by the child victim or witness or sexual offense victim or witness.

CREDIT(S)

Added by Laws 1985, c. 85-53, § 7, eff. July 1, 1985. Amended by Laws 1993, c. 93-131, § 3, eff. April 29, 1993; Laws 1994, c. 94-154, § 23, eff. Oct. 1, 1994; Laws 2000, c. 2000-336, § 8, eff. June 20, 2000; Laws 2011, c. 2011-220, § 3, eff. July 1, 2011; Laws 2013, c. 2013-162, § 6, eff. July 1, 2013; Laws 2014, c. 2014-4, § 1, eff. Oct. 1, 2014.  
Current through Ch. 255 (End) of the 2014 Sp. 'A' Sess. of the Twenty-Third Legislature

## **GEORGIA**

N/A



## **HAWAII**

### ***State v. Palaby, 844 P.2d 1 (Haw. Ct. App. 1992).***

Defendant-Appellant Anthony M. Palabay (Defendant) appeals his jury conviction of seven counts of varying degrees of Sexual Assault, contending that the trial court reversibly erred in four respects. First, Defendant argues that the trial court abused its discretion when it allowed the child victim (Complainant), who at the time of trial was 12 years old, to hold a teddy bear while testifying. Second, **We agree that it was error for Complainant to have testified while holding a teddy bear, absent a finding of compelling necessity.** <sup>4</sup> If the State knowingly permitted Complainant to hold a teddy bear while testifying, moreover, a reasonable argument can be made that such action evidenced bad faith and amounted to misconduct since the State had earlier agreed, in response to Defendant's motion in limine, not to introduce photos of Complainant's bedroom depicting teddy bears. However, based on our review of the record, we conclude that these errors, in view of the overwhelming evidence of Defendant's guilt, had little effect on the outcome of the trial, did not cumulatively prejudice Defendant so as to deny him a fair and impartial trial, and were thus harmless. We accordingly affirm the judgment below.

## **IDAHO**

### ***State v. Cliff, 782 P.2d 44 (Idaho App. 1989).***

Defendant accused of lewd and lascivious conduct with eight-year-old stepdaughter was not denied fair trial, even though jury's natural sympathy toward complaining witness may have been heightened by **permitting witness to testify while holding doll, where purpose of doll was to provide calming influence on witness, event was not staged by prosecution as trial tactic, and benefit of having coherent testimony from witness** outweighed any possible prejudice to defendant.

## **ILLINOIS**

### **705 ILL. COMP. STAT. 80/1 (2010). [Child witness trauma reduction].**

Sec. 1. The Illinois Supreme Court is hereby authorized to establish programs to educate Illinois circuit and associate circuit judges on the techniques and methods of reducing or eliminating the trauma of testifying at trial for children who are witnesses or victims in criminal sexual offense cases. The cost of conducting such programs shall be paid from funds appropriated for that purpose.

## **INDIANA**

N/A

## **IOWA**

N/A

## **KANSAS**

N/A

## **KENTUCKY**

### **KY. REV. STAT. ANN. § 26A.140 (2014).Accommodation of special needs of children**

- (1) Courts shall implement measures to accommodate the special needs of children which are not unduly burdensome to the rights of the defendant, including, but not limited to:
- (a) Trained guardians ad litem or special advocates, if available, shall be appointed for all child victims and shall serve in Circuit and District Courts to offer consistency and support to the child and to represent the child's interests where needed.
  - (b) During trials involving child victims or child witnesses, the environment of the courtroom shall be modified to accommodate children through the use of small chairs, frequent breaks, and the use of age appropriate language.
  - (c) Children expected to testify shall be prepared for the courtroom experience by the Commonwealth's or county attorney handling the case with the assistance of the guardian ad litem or special advocate.
  - (d) In appropriate cases, procedures shall be used to shield children from visual contact with alleged perpetrator.

- (2) The Supreme Court is encouraged to issue rules for the conduct of criminal and civil trials involving child abuse in which a child victim or child witness may testify at the trial.

CREDIT(S)

HISTORY: 1992 c 351, § 9, eff. 7-14-92

Current through the end of the 2014 legislation

## **LOUISIANA**

N/A

## **MAINE**

N/A

## **MARYLAND**

N/A

## **MASSACHUSETTS**

N/A

## **MICHIGAN**

### ***People v. Pesquera*, 625 N.W.2d 407 (Mich. App. 2001).**

Trial court determining whether videotaped testimony may be substituted for live testimony in a criminal trial must find that the witness would be unable to testify even if the procedures established in the applicable statute are employed, including the use of dolls or mannequins, the presence of a support person, the exclusion from the courtroom of all unnecessary persons, and the placement of the defendant as far from the witness stand as is reasonable under the circumstances

### **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. 323, of the 2014 Regular Session of the 97th Legislature.

# **MINNESOTA**

## **MINN. STAT. § 595.02 (2014). Testimony of witnesses**

Subdivision 1. Competency of witnesses. Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either or against a child under the care of either spouse, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for nonsupport, neglect, dependency, or termination of parental rights.

(b) An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by the client to the attorney or the attorney's advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

(c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity, and which was necessary to enable the professional to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege

shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

(e) A public officer shall not be allowed to disclose communications made to the officer in official confidence when the public interest would suffer by the disclosure.

(f) Persons of unsound mind and persons intoxicated at the time of their production for examination are not competent witnesses if they lack capacity to remember or to relate truthfully facts respecting which they are examined.

(g) A registered nurse, psychologist, consulting psychologist, or licensed social worker engaged in a psychological or social assessment or treatment of an individual at the individual's request shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity. Nothing in this clause exempts licensed social workers from compliance with the provisions of sections 626.556 and 626.557.

(h) An interpreter for a person disabled in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person disabled in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which the person is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

(i) Licensed chemical dependency counselors shall not disclose information or an opinion based on the information which they acquire from persons consulting them in their professional capacities, and which was necessary to enable them to act in that capacity, except that they may do so:

(1) when informed consent has been obtained in writing, except in those circumstances in which not to do so would violate the law or would result in clear and imminent danger to the client or others;

(2) when the communications reveal the contemplation or ongoing commission of a crime; or

(3) when the consulting person waives the privilege by bringing suit or filing charges against the licensed professional whom that person consulted.

(j) A parent or the parent's minor child may not be examined as to any communication made in confidence by the minor to the minor's parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of an alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.

(k) Sexual assault counselors may not be allowed to disclose any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

"Sexual assault counselor" for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

(l) A domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs. Nothing in this paragraph exempts domestic abuse advocates from compliance with the provisions of sections 626.556 and 626.557.

For the purposes of this section, "domestic abuse advocate" means an employee or supervised volunteer from a community-based battered women's shelter and domestic abuse program eligible to receive grants under section 611A.32; that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor's office, or by a city, county, or state agency.

(m) A person cannot be examined as to any communication or document, including work notes, made or used in the course of or because of mediation pursuant to an agreement to mediate or a collaborative law process pursuant to an agreement to participate in collaborative law. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement or a stipulated agreement resulting from the collaborative law process set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation or collaborative law by the common law.

(n) A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.

(o) A communication assistant for a telecommunications relay system for persons who have communication disabilities shall not, without the consent of the person making the communication, be allowed to disclose communications made to the communication assistant for the purpose of relaying.

Subd. 1a. Alternative dispute resolution privilege. No person presiding at any alternative dispute resolution proceeding established pursuant to law, court rule, or by an agreement to mediate, shall be competent to testify, in any subsequent civil proceeding or administrative hearing, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to any statement or conduct that could:

(1) constitute a crime;

(2) give rise to disqualification proceedings under the Rules of Professional Conduct for attorneys; or



(3) constitute professional misconduct.

Subd. 2. Exceptions. (a) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to any testimony, records, or other evidence relating to the abuse or neglect of a minor in any proceeding under chapter 260 or any proceeding under section 245A.08, to revoke a day care or foster care license, arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2.

(b) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to criminal proceedings arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2, if the court finds that:

(1) there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; and

(2) there is no other practicable way of obtaining the information or evidence. This clause shall not be construed to prohibit disclosure of the patient record when it supports the otherwise uncorroborated statements of any material fact by a minor alleged to have been abused or neglected by the patient; and

(3) the actual or potential injury to the patient-health professional relationship in the treatment program affected, and the actual or potential harm to the ability of the program to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought.

No records may be disclosed under this paragraph other than the records of the specific patient suspected of the neglect or abuse of a minor. Disclosure and dissemination of any information from a patient record shall be limited under the terms of the order to assure that no information will be disclosed unnecessarily and that dissemination will be no wider than necessary for purposes of the investigation or prosecution.

Subd. 3. Certain out-of-court statements admissible. An out-of-court statement made by a child under the age of ten years or a person who is mentally impaired as defined in section 609.341, subdivision 6, alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:

(a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(b) the child or person mentally impaired as defined in section 609.341, subdivision 6, either:

(i) testifies at the proceedings; or

(ii) is unavailable as a witness and there is corroborative evidence of the act; and

(c) 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.

For purposes of this subdivision, an out-of-court statement includes video, audio, or other recorded statements. An unavailable witness includes an incompetent witness.

Subd. 4. Court order. (a) In a proceeding in which a child less than 12 years of age is alleging, denying, or describing:

(1) an act of physical abuse or an act of sexual contact or penetration performed with or on the child or any other person by another; or

(2) an act that constitutes a crime of violence committed against the child or any other person,

the court may, upon its own motion or upon the motion of any party, order that the testimony of the child be taken in a room other than the courtroom or in the courtroom and televised at the same time by closed-circuit equipment, or recorded for later showing to be viewed by the jury in the proceeding, to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

(b) At the taking of testimony under this subdivision, only the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 or a dissolution or custody proceeding under chapter 518, the attorneys for those parties with a right to participate may be present with the child during the child's testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, finds in a hearing conducted outside the presence of the jury, that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

(1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or

(2) the defendant can see and hear the testimony of the child by video or television monitor from a separate room and communicate with counsel, but the child cannot see or hear the defendant.

(d) As used in this subdivision, "crime of violence" has the meaning given it in section 624.712, subdivision 5, and includes violations of section 609.26.

Subd. 5. Waiver of privilege for health care providers. A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider on the person's own behalf or in a representative capacity, waives in that action any privilege existing under subdivision 1, paragraphs (d) and (g), as to any information or opinion in the possession of a health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. This waiver must permit all parties to the action, and their attorneys or authorized representatives, to informally discuss the information or opinion with the health care provider if the provider consents. Prior to an informal discussion with a health care provider, the defendant must mail written notice to the other party at least 15 days before the discussion. The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. Appropriate medical authorizations permitting discussion must be provided by the party commencing the action upon request from any other party.

A health care provider may refuse to consent to the discussion but, in that event, the party seeking the information or opinion may take the deposition of the health care provider with respect to that information and opinion, without obtaining a prior court order.

For purposes of this subdivision, "health care provider" means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

**CREDIT(S)**

Amended by Laws 1967, c. 640, § 1, eff. May 23, 1967; Laws 1969, c. 1010, § 1, eff. June 7, 1969; Laws 1973, c. 79, § 1; Laws 1973, c. 685, § 13, eff. July 1, 1973; Laws 1978, c. 519, § 1; Laws 1981, c. 131, § 3; Laws 1981, c. 262, § 1; Laws 1981, c. 273, § 3, eff. May 29, 1981; Laws 1981, 1st Sp., c. 4, art. 4, § 8, eff. June 7, 1981; Laws 1982, c. 558, § 3, eff. Aug. 1, 1982; Laws 1984, c. 588, § 4, eff. April 27, 1984; Laws 1984, c. 646, § 8; Laws 1985, c. 24, § 2, eff. Aug. 1, 1985; Laws 1985, c. 286, § 13; Laws 1986, c. 361, §§ 3, 4; Laws 1986, c. 444; Laws 1986, c. 455, § 84; Laws 1987, c. 120, § 1, eff. Aug. 1, 1987; Laws 1987, c. 134, § 1; Laws 1987, c. 331, § 7; Laws 1987, c. 333, § 22; Laws 1992, c. 559, art. 2, § 13, eff. July 1, 1993; Laws 1992, c. 571, art. 5, § 3; Laws 1993, c. 272, § 16; Laws 1994, c. 618, art. 1, § 40; Laws 1996, c. 388, § 1; Laws 2005, c. 56, § 1; Laws 2007, c. 54, art. 4, § 4, eff. July 1, 2007; Laws 2008, c. 302, § 1, eff. Aug. 1, 2008; Laws 2013, c. 28, § 1, eff. Aug. 1, 2013; Laws 2013, c. 62, § 27, eff. Aug. 1, 2013.

Current with legislation through the end of the 2014 Regular Session. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year).

## **MISSISSIPPI**

### **MISS. CODE § 13-1-411 (2014). Specific behavioral indicators**

The phrase "specific behavioral indicators" when used herein to refer to evidence (regardless of admissibility) that a child has suffered physical or sexual abuse or might suffer traumatic emotional or mental distress if required to testify in court, shall include, by way of illustration and not of limitation, indications of physical or psychological trauma which are (a) well defined, (b) positively correlated or causally linked with the likelihood of traumatic emotional or mental distress on testifying, and (c) rarely, if at all, present in children who have not suffered child abuse, considering the combination or intensity present in the child at issue.

The evidence described in this section shall be provided by competent witnesses, including but not limited to child psychologists, child psychiatrists and other qualified witnesses.

**CREDIT(S)**

Laws 1986, Ch. 345, § 6, eff. July 1, 1986.

Current through 2014 Regular and First and Second Extraordinary Sessions.

### **MISS. CODE § 13-1-407 (2014). Use of child's videotaped testimony**

(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.

CREDIT(S)

Laws 1986, Ch. 345, § 4, eff. July 1, 1986.

## **MISSOURI**

### **MO. REV. STAT. § 491.675 (2014). Citation of sections 491.675 to 491.705 "Child Victim Witness Protection Law".**

The provisions of sections 491.675 to 491.705 shall be known and may be cited as the "Child Victim Witness Protection Law".

### **MO. REV. STAT. § 491.678 (2014). Child defined**

For purposes of sections 491.675 to 491.693, the term "child" means a person under seventeen years of age who is the alleged victim in any criminal prosecution under chapter 565, 566 or 568.

### **MO. REV. STAT. 491.680 (2014). 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 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 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. § 491.685 (2014). Defendant may be excluded from child victim deposition proceedings, when**

1. On motion of the prosecuting attorney, the court may exclude the defendant from any or all deposition proceedings at which the child is to testify. However, 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 recording 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.

2. The court may also order, on motion of the prosecuting attorney, during all predeposition procedures, recesses, and post-deposition matters that the child be sequestered from the view and presence of the defendant.



3. In no event shall the child's videotaped testimony be admitted into evidence until the defendant and his attorney have been afforded a reasonable opportunity to review the videotape in private in the presence of each other.

**MO. REV. STAT. § 491.687 (2014). Court may order videotaped reexamination, when**

At any time prior to trial, and for good cause shown, the court may, upon motion of any party, order a videotaped reexamination of the child where the interests of justice so require.

**MO. REV. STAT. § 491.690. (2014). Provisions of sections 491.675 to 491.693 not to apply where defendant has waived right to counsel-- exceptions**

Where a defendant has waived the right to counsel and elected to represent himself, the provisions of sections 491.675 to 491.693 shall not apply, except in the discretion of the court, under such rules, procedures and restrictions as the court may, in the interests of justice, impose.

**MO. REV. STAT. § 491.693 (2014). Testimony to be under oath**

All testimony taken under sections 491.675 to 491.693 shall be under oath.

## **MONTANA**

***State v. Dickson*, 337 S.W.3d 733, (Mo. Ct. App. 2011).**

The trial court's decision to allow child victim to testify during trial while holding a stuffed animal was not an abuse of discretion, in prosecution for child kidnapping, forcible rape, and forcible sodomy; the victim was eight years old at the time of trial, the trial court found that allowing the victim to hold the stuffed animal would enable her to testify more comfortably and completely, thereby assisting the jury in determining the facts of the case, and allowing the victim to hold the comfort item did not affect defendant's trial strategy, which did not contest that the sexual assault occurred, but instead argued that someone else had been the perpetrator.

***State v. Powell*, 318 S.W.3d 297 (Mo. Ct. App. 2010).**

Eleven-year-old and sixteen-year-old victims could hold teddy bears during their trial testimony in child molestation case, even though victims' ages might have counseled against the need for such accessories; victims carried the teddy bears as a source of familiarity and comfort while testifying about very traumatic

events in their lives, there was nothing to suggest that the stuffed animals were merely an attempt to cater to the emotional sympathy of the jurors, and no reference was made to the teddy bears by any of the witnesses or counsel in the presence of the jury.

## **NEBRASKA**

### **NEB. REV. STAT. ANN. § 29-1925 (2014). Child victim or child witness; testimony; legislative intent**

The Legislature recognizes that obtaining testimony in a criminal prosecution from a child victim or a child witness to a felony offense may be a delicate matter and may require some special considerations. It is the intent of the Legislature to promote, facilitate, and preserve the testimony of such child victim or child witness in a criminal prosecution to the fullest extent possible consistent with the constitutional right to confrontation guaranteed by the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution.

## **NEVADA**

N/A

## **NEW HAMPSHIRE**

N/A

## **NEW JERSEY**

### **N.J. STAT. ANN. § 2A:163-4 (2014). Child and victim defined**

As used in this act:

a. "Child" means a person 13 years of age or younger at the time a crime was committed against the child.

b. "Victim" means a child who suffers personal, physical, or psychological injury as a result of a crime committed against that child.

CREDIT(S)

L.1987, c. 148, § 1, eff. June 24, 1987.

#### **ASSEMBLY LAW, PUBLIC SAFETY, DEFENSE AND CORRECTIONS COMMITTEE STATEMENT**

Assembly, No. 1940--L.1987, c. 148

The Assembly Law, Public Safety, Defense and Corrections Committee favorably reports Assembly Bill No. 1940 with amendments.

As amended, Assembly Bill No. 1940 requires a court to take any appropriate action necessary to provide a speedy trial in a matter in which a child 13 years of age or younger is a victim. The bill provides that in a ruling on a motion or a request for a delay or continuance, the court shall consider and give weight to any adverse impact the delay may have on the well-being of the child.

According to the sponsor, this practice will lessen the stress for a child involved in court proceedings and also ensure that the child's memory of the details will not fade over a lengthy period of time.

The committee amended the bill to lower the age of the child to whom the bill would apply; to place the responsibility of ensuring a speedy trial solely on the court; and to omit any reference to child witnesses so that the bill would apply only to child victims.

#### **HISTORICAL AND STATUTORY NOTES**

An Act concerning the expediting of criminal matters involving children and supplementing Title 2A of the New Jersey Statutes. L.1987, c. 148. Current with laws effective through L.2014, c. 61 and J.R. No. 3.

## **NEW MEXICO**

N/A

## **NEW YORK**

### **N.Y. EXEC. LAWS § 642-a (2014). 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.) McKinney's Executive Law § 642-a, NY EXEC § 642-a Current through L.2014, chapters 1 to 400.

## **NORTH CAROLINA**

N/A

## **NORTH DAKOTA**

### **N.D. CENT. CODE § 12.1-35-01 (2014). Definitions. Child Victim and Witness Fair Treatment Standards**

In this chapter, unless the context or subject matter otherwise requires:

1. "Child" means an individual under the age of eighteen years.
2. "Child development specialist" means an individual who demonstrates educational and work experience exhibiting an understanding of child development and behavior.
3. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
4. "Family member" means a spouse, child, sibling, parent, legal guardian, or custodian of a victim.
5. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
6. "Sex offense" includes all sex offenses defined as such in chapter 12.1-20.
7. "Victim" means a living child who has suffered direct or threatened physical, financial, or emotional harm as a result of the commission or attempted commission of a crime.
8. "Witness" means any living child who has been or is expected to be summoned to testify in a criminal case whether or not any action or proceeding has been commenced.

CREDIT(S)

S.L. 1987, ch. 175, § 6.

Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly

### **N.D. CENT. CODE § 12.1-35-02 (2014). Additional services**

In addition to all rights afforded to victims and witnesses by law, state's attorneys are encouraged to provide the following additional services to children who are involved in criminal proceedings as victims or witnesses:

1. Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.
2. Advice to the court concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.
3. Information about, and referrals to, appropriate social services programs to assist the child and the child's family members in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.
4. Information about the availability of a child development specialist to ensure questions asked of the witness are chronologically and developmentally appropriate.

CREDIT(S)

S.L. 1987, ch. 175, § 6.

Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly

### **N.D. CENT. CODE § 12.1-35-03 (2014). Information about child victims or witnesses of crimes generally may not appear in public record**

1. In order to protect the child from possible trauma resulting from publicity, the name of the child victim or witness of a crime, except as specified in subsection 2, and identifying biographical information may not appear on the indictment or any other public record. Instead, a Jane Doe or Joe Doe designation must appear in all public records. Sealed confidential records containing the child's name and necessary biographical information must be kept in order to ensure that no defendant is charged twice.

2. Subsection 1 does not apply to the name and identifying biographical information of:

a. A child victim or witness of a criminal offense under title 39 or equivalent ordinance; and

b. A child victim of a fire.

CREDIT(S)

S.L. 1987, ch. 175, § 6.

Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly

## **N.D. CENT. CODE § 12.1-35-04 (2014). Limits on interviews and testimony**

The prosecuting attorney, the court, and appropriate law enforcement personnel, to the extent possible, shall protect the victim or witness from the psychological damage of repeated or lengthy interview, testimony, or discovery proceedings while preserving the rights of the public, the victim, and the person charged with the violation.

CREDIT(S)

S.L. 1987, ch. 175, § 6.

Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly

## **N.D. CENT. CODE §§ 12.1-35-05 (2014). Prompt disposition**

In all criminal cases and juvenile proceedings involving a child victim or witness, the court and the state's attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

CREDIT(S)

S.L. 1987, ch. 175, § 6.

Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly

## **N.D. CENT. CODE § 12.1-35-05.1 (2014). Assistance during proceedings**

Upon request of a witness who is under the age of fourteen, the court shall permit an individual selected by the court to sit with, accompany, or be in close proximity to the witness in order to provide support to the witness while that witness is giving testimony. In order to provide

support to a witness who is fourteen years of age or older, while that witness is giving testimony, the court may permit an individual selected by the court to sit with, accompany, or be in close proximity to that witness.

CREDIT(S)

S.L. 1987, ch. 175, § 6.

Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly

### **N.D. CENT. CODE § 12.1-35-05.2 (2014). Confidentiality of testimony**

In any criminal proceeding in which the defendant is charged with a violation of chapter 12.1-20 involving a child, the court, upon the motion of the prosecuting attorney, shall conduct a hearing to determine whether the testimony of and relating to a child may be closed to the public in order to protect the child's reputation. In making the determination to close the proceedings, the court shall consider:

1. The nature and seriousness of the offense;
2. The age of the child;
3. The extent to which the size of the community would preclude the anonymity of the victim;
4. The likelihood of public opprobrium due to the status of the victim;
5. Whether the prosecution has demonstrated a substantial probability that the identity of the witness would otherwise be disclosed to the public during the proceeding and that the disclosure would cause serious harm to the witness;
6. Whether the witness has disclosed information concerning the case to the public through press conferences, public meetings, or other means; and
7. Any other factor the court may find necessary to protect the interests of justice.

CREDIT(S)

S.L. 1987, ch. 175, § 6.

Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly

### **N.D. CENT. CODE § 12.1-35-05.3 (2014). Application to discovery proceedings**



This chapter applies to any criminal proceeding, including a deposition or other discovery proceeding.

CREDIT(S)

S.L. 1987, ch. 175, § 6.

Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly

## **N.D. CENT. CODE § 12.1-35-06 (2014). Cause of action for damages and injunctive relief**

Nothing in this chapter may be construed as creating a cause of action for money damages or injunctive relief against the state, county, municipality, or any of their agencies, instrumentalities, or employees. Furthermore, the failure to provide a right, privilege, or notice to a child victim or witness under this chapter is not grounds for the defendant to seek to have the conviction or sentence set aside. This chapter does not limit any rights to which child victims and witnesses of crime are otherwise entitled.

CREDIT(S)

S.L. 1987, ch. 175, § 6.

Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly

## **OHIO**

N/A

## **OKLAHOMA**

N/A

## **OREGON**

N/A

## **PENNSYLVANIA**

N/A

## **RHODE ISLAND**

N/A

## **SOUTH CAROLINA**

N/A

## **SOUTH DAKOTA**

N/A

## **TENNESSEE**

N/A

## **TEXAS**

### ***Sperling v. State*, 924 S.W.2d 722 (Tex.App.-Amarillo 1996)**

Teddy bear held by child-victim during her testimony in trial of defendant on charge of aggravated sexual assault of child was not demonstrative evidence which engendered sympathy in minds and hearts of jurors, validated child's unimpeached credibility, or deprived defendant of his constitutional right of confrontation; trial court, when faced with defendant's general objection to having child hold animal, rationally permitted child to retain stuffed animal as one of the discretionary, reasonable steps authorized by the Code of Criminal Procedure to minimize psychological trauma to child caused by her participation in prosecution, including her face to face confrontation with defendant. Vernon's Ann.Texas C.C.P. art. 38.071.

### **TEX. PENAL CODE ANN. § 38.074 (2014). Testimony of child in prosecution of offense**

Sec. 1. In this article:

(1) "Child" has the meaning assigned by Section 22.011(c), Penal Code.

(2) "Support person" means any person whose presence would contribute to the welfare and well-being of a child.

Sec. 2. This article applies to the testimony of a child in any hearing or proceeding in the prosecution of any offense, other than the testimony of a child in a hearing or proceeding in a criminal case in which that child is the defendant.

Sec. 3. (a) A court shall:

(1) administer an oath to a child in a manner that allows the child to fully understand the child's duty to tell the truth;

(2) ensure that questions asked of the child are stated in language appropriate to the child's age;

(3) explain to the child that the child has the right to have the court notified if the child is unable to understand any question and to have a question restated in a form that the child does understand;

(4) ensure that a child testifies only at a time of day when the child is best able to understand the questions and to undergo the proceedings without being traumatized, including:

(A) limiting the duration of the child's testimony;

(B) limiting the timing of the child's testimony to the child's normal school hours; or

(C) ordering a recess during the child's testimony when necessary for the energy, comfort, or attention span of the child; and

(5) prevent intimidation or harassment of the child by any party and, for that purpose, rephrase as appropriate any question asked of the child.

(b) On the motion of any party, or a parent, managing conservator, guardian, or guardian ad litem of a child or special advocate for a child, the court shall allow the child to have a toy, blanket, or similar comforting item in the child's possession while testifying or allow a support person to be present in close proximity to the child during the child's testimony if the court finds by a preponderance of the evidence that:

(1) the child cannot reliably testify without the possession of the item or presence of the support person, as applicable; and

(2) granting the motion is not likely to prejudice the trier of fact in evaluating the child's testimony.

(c) A support person who is present during a child's testimony may not:

(1) obscure the child from the view of the defendant or the trier of fact;

(2) provide the child with an answer to any question asked of the child; or

(3) assist or influence the testimony of the child.

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

CREDIT(S)

Added by Acts 2011, 82nd Leg., ch. 1227 (S.B. 578), § 1, eff. Sept. 1, 2011.

## **UTAH**

### **UTAH CODE ANN. § 77-37-3 (2014). Bill of rights**

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, and Sections 62A-7-109.5, 77-38a-302, and 77-27-6. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24a-1 through 77-24a-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have the following rights:

(i) the right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the alleged sexual offender for HIV infection as provided in Section 76-5-502;

(ii) the right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence;

(iii) the right to be informed whether a DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System;

(iv) the right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and

(v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection (1)(j) and under Subsections (2) and (3).

(k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing, absent a specific request received from the victim or the victim's designee.

(2) The law enforcement agency investigating a sexual offense may:

(a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the request of a victim or the victim's designee and is the designated agency to provide that information to the victim or the victim's designee;

(b) require that the victim's request be in writing; and

(c) respond to the victim's request with verbal communication, written communication, or by email, if an email address is available.

(3) The law enforcement agency investigating a sexual offense has the following authority and responsibilities:

(a) If the law enforcement agency determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator has not been confirmed, the law enforcement agency shall notify the victim or the victim's designee.

(b)(i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the law enforcement agency shall provide written notification of that intention and information on how to appeal the decision to the victim or the victim's designee of that intention.

(ii) Written notification under this Subsection (3) shall be made not fewer than 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

(c) A law enforcement agency responsible for providing information under Subsections (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the victim or the victim's designee, shall advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware.

(d) The law enforcement agency investigating the sexual offense is responsible for informing the victim or the victim's designee of the rights established under Subsections (1)(j)(ii) through (iv) and (2), and this Subsection (3).

(4) Informational rights of the victim under this chapter are based upon the victim providing the current name, address, telephone number, and email address, if an email address is available, of the person to whom the information should be provided to the criminal justice agencies involved in the case.

CREDIT(S)

Laws 1987, c. 194, § 3; Laws 1988, c. 1, § 400; Laws 1993, c. 40, § 7; Laws 2000, c. 1, § 124, eff. May 1, 2000; Laws 2002, c. 35, § 12, eff. May 6, 2002; Laws 2005, c. 13, § 29, eff. March 1, 2005; Laws 2008, c. 339, § 28, eff. July 1, 2008; Laws 2008, c. 382, § 2205, eff. May 5, 2008; Laws 2011, c. 177, § 6, eff. May 10, 2011; Laws 2014, c. 232, § 1, eff. May 13, 2014.

## **VERMONT**

### **VT R. FAM P. RULE 7.1 (2014).. REPRESENTATION BY GUARDIANS AD LITEM AND ATTORNEYS OF CHILD WITNESSES WHO ARE NOT SUBJECTS OF PROCEEDINGS UNDER RULES 4 AND 9**

(a) Applicability. This rule applies to all proceedings under Rules 4 and 9.

(b) Child Witnesses. A party seeking to call as a witness a minor child who is not a subject of the proceeding must request permission of the court. If the court finds that the testimony of the child is necessary to assist the court in determining the issue before it and that the evidence sought is not reasonably available by any other means and is otherwise admissible, the court may allow the testimony under such conditions, including appointment of a guardian ad litem or an attorney to represent the child, as it deems appropriate to protect the child.

(c) Order of Appointment. In appointing a guardian ad litem under this rule, the court shall issue an order containing any directions to the guardian that the court deems necessary for the protection of the child.

(d) Role of Guardian ad Litem.

(1) In Pretrial Proceedings. At any conference or pretrial proceeding, if a guardian ad litem has been appointed, the guardian ad litem shall, prior to the proceeding, submit to the court and the parties a list of all of his or her activities carried out pursuant to the court's order issued under (c) and, if requested by the court, may make a brief oral statement on the record as to matters that will help the court formulate issues for further pretrial procedure and trial. The guardian ad litem's oral statement will not be considered evidence.

(2) In Evidentiary Hearings. If a guardian ad litem has been appointed, the guardian ad litem shall be present at any evidentiary hearing at which the child is to testify to provide assistance and support for the child as directed by the court in the order of appointment issued under (c). The guardian ad litem may not be called as a witness unless an attorney for the child has been appointed and the testimony of the guardian ad litem would be directly probative of a contested fact as to which no other person could be employed or subpoenaed to testify. The court may appoint a replacement for a guardian ad litem who is called as a witness.

CREDIT(S)

[Adopted Jan. 22, 2014, eff. March 24, 2014.]

Current with amendments received through 2/15/14

## **VIRGINIA**

N/A

## **WASHINGTON**

***State v. Hakimi*, 98 P.3d 809 (Wash. App.-Div. 1 2004).**

In prosecution for child molestation of two seven-year-old girls, the trial court did not abuse its discretion by permitting the girls to carry a doll to the witness stand, when they did not carry them while being interviewed by child interview specialist; those interviews presented an entirely different environment than a public courtroom, and trial judge weighed the interests of the two victims and any potential prejudice to defendant in allowing the girls to testify while holding a doll. ER 611.

**WASH. REV. CODE ANN. § 7.69A.030 (2014). Rights of child victims and witnesses**

In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. Except as provided in RCW 7.69A.050 regarding child victims or child witnesses of violent crimes, sex crimes, or child abuse, the enumeration of rights shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to



the discretion of the law enforcement agency, prosecutor, or judge. Child victims and witnesses have the following rights, which apply to any criminal court and/or juvenile court proceeding:

- (1) To have explained in language easily understood by the child, all legal proceedings and/or police investigations in which the child may be involved.
- (2) With respect to child victims of sex or violent crimes or child abuse, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the child victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the child victim and to promote the child's feelings of security and safety.
- (3) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.
- (4) To not have the names, addresses, nor photographs of the living child victim or witness disclosed by any law enforcement agency, prosecutor's office, or state agency without the permission of the child victim, child witness, parents, or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victim or witness.
- (5) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.
- (6) To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.
- (7) To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the child is involved.
- (8) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.

(9) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the child testifies in order to promote the child's feelings of security and safety.

(10) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of the child victim.

(11) With respect to child victims of violent or sex crimes or child abuse, to receive either directly or through the child's parent or guardian if appropriate, at the time of reporting the crime to law enforcement officials, a written statement of the rights of child victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county.

CREDIT(S)

[2004 c 120 § 9, eff. July 1, 2004; 1997 c 283 § 2; 1993 c 350 § 8; 1985 c 394 § 3.]  
Current with all 2014 Legislation

## **WEST VIRGINIA**

N/A

## **WISCONSIN**

### **WIS. STAT. ANN. § 950.055 (2014). Child victims and witnesses; rights and services**

(1) Legislative intent. The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually afforded to adults. The legislature intends, in this section, to provide these children with additional rights and protections during their involvement with the criminal justice or juvenile justice system. The legislature urges the news media to use restraint in revealing the identity of child victims or witnesses, especially in sensitive cases.

(2) Additional services. In addition to all rights afforded to victims and witnesses under s. 950.04 and services provided under s. 950.06 (1m), counties are encouraged to provide the following

additional services on behalf of children who are involved in criminal or delinquency proceedings as victims or witnesses:

(a) Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.

(b) Advice to the judge, when appropriate and as a friend of the court, regarding the child's ability to understand proceedings and questions. The services may include providing assistance in determinations concerning the taking of depositions by audiovisual means under s. 908.08 or 967.04(7) and (8) and the duty to expedite proceedings under s. 971.105.

(c) Advice to the district attorney concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.

(d) Information about and referrals to appropriate social services programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

(3) Program responsibility. In each county, the county board is responsible for the provision of services under this section. A county may seek reimbursement for services provided under this section as part of its program plan submitted to the department under s. 950.06. To the extent possible, counties shall utilize volunteers and existing public resources for the provision of these services.

<<For credits, see Historical Note field.>>

Current through 2013 Act 380, published 4/25/2014

## **WYOMING**

N/A

# FEDERAL LEGISLATION/U.S.TERRITORIES

## FEDERAL LEGISLATION

### **18 U.S.C.S. § 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 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) 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

## **AMERICAN SAMOA**

N/A

## **GUAM**

### **GUAM CODE ANN. TIT. 8, § 75.85 (2014). Child Witness Comfort, and Protection.**

Notwithstanding any other provision of law, at any criminal proceeding in which a minor under the age of 18 is a prosecuting witness, the court shall take special precautions to provide for the comfort and support of the minor and to protect the minor from coercion, intimidation or undue influence as a witness.

SOURCE: P.L. 20-209:3.

8 G.C.A. § 75.85, GU ST T. 8, § 75.85

## **PUERTO RICO**

N/A

## **VIRGIN ISLANDS**

N/A