

**Legislation and Case Law Regarding the Competency  
Of Child Witnesses to Testify in Criminal Proceedings**  
(Current through March 2011)

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

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## **ALABAMA**

### **ALA. R. EVID. 601 (2010). General Rule of Competency**

Every person is competent to be a witness except as otherwise provided in these rules.

### **ALA. CODE § 15-25-3(e) (2010). Closed circuit examination of victim**

Notwithstanding any other provision of law or rule of evidence, a child victim of a physical offense, sexual offense, or sexual exploitation shall be considered a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding. The trier of fact shall be permitted to determine the weight and credibility to be given of the testimony. The court may also allow leading questions of child witnesses in the interest of justice.

## **ALASKA**

### **ALASKA. R. EVID. 601 (2010). General Rule of Competency**

A person is competent to be a witness unless the court finds that (1) the proposed witness is incapable of communicating concerning the matter so as to be understood by the court and jury either directly or through interpretation by one who can understand the proposed witness, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth.

## **ARIZONA**

### **ARIZ. R. EVID. 601 (2011). General Rule of Competency**

Every person is competent to be a witness except as otherwise provided in the rules or by statute.

### **ARIZ. REV. STAT. § 13-4061 (2011). Competency of Witness**

In any criminal trial every person is competent to be a witness.

## **ARKANSAS**

### **ARK. R. EVID. 601 (2010). General Rule of Competency**

Every person is competent to be a witness except as otherwise provided in the rules.

## **CALIFORNIA**

### **CAL. EVID. CODE § 700 (2011). General Rule as to Competency**

Except as otherwise provided by statute, every person, irrespective of age, is qualified to be a witness and no person is disqualified to testify to any matter.

### **CAL. EVID. CODE § 701 (2011). Disqualification of Witness**

(a) A person is disqualified to be a witness if he or she is:

(1) Incapable of expressing himself or herself concerning the matter so as to be understood, either directly or through interpretation by one who can understand him; or

(2) Incapable of understanding the duty of a witness to tell the truth.

(b) In any proceeding held outside the presence of a jury, the court may reserve challenges to the competency of a witness until the conclusion of the direct examination of that witness.

### **CAL. EVID. CODE § 710 (2011). Oath required; Exception for child or dependent person with cognitive impairment**

Every witness before testifying shall take an oath or affirmation or declaration in the form provided by law, except that a child under the age of 10 or a dependent person with a substantial cognitive impairment, in the court's discretion, may be required only to promise to tell the truth.

### **CAL. PENAL CODE § 1321 (2011). Competency; applicability of civil rules; exceptions**

WHO ARE COMPETENT WITNESSES. The rules for determining the competency of witnesses in civil actions are applicable also to criminal proceedings, except as otherwise provided in this code.

## **COLORADO**

### **COLO. CODE OF EVID. 601 (2011). General Rule of Competency**

Every person is competent to be a witness except as otherwise provided in these rules, or in any statute of the State of Colorado.

### **COLO. REV. STAT. § 13-90-106 (2011). Who may not testify**

(1) The following persons shall not be witnesses:

(a) Persons who are of unsound mind at the time of their production for examination;

(b) (I) Children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly.

(II) This proscription does not apply to a child under ten years of age, in any civil or criminal proceeding for child abuse, sexual abuse, a sexual offense pursuant to part 4 of article 3 of title 18, C.R.S., or incest, when the child is able to describe or relate in language appropriate for a child of that age the events or facts respecting which the child is examined.

### **COLO. REV. STAT. § 13-90-117.5 (2011). Oath or affirmation taken by a child**

In lieu of an oath or affirmation, any child who testifies in any proceeding pursuant to section 13-90-106 (1) (b) (II) shall be asked the following: "Do you promise to tell the truth?". The court, in its discretion, may accept any indication of assent to this question by the child.

## **CONNECTICUT**

### **CONN. CODE OF EVID. 6-1 (2011). General Rule of Competency**

Except as otherwise provided by the Code, every person is competent to be a witness.

### **CONN. GEN. STAT. § 54-86G (2011). 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.

### **CONN. GEN. STAT. § 54-86h (2011). Competency of child as witness**

No witness shall be automatically adjudged incompetent to testify because of age and any child who is a victim of assault, sexual assault or abuse shall be competent to testify without prior qualification. The weight to be given the evidence and the credibility of the witness shall be for the determination of the trier of fact.



## **DELAWARE**

### **DEL. R. EVID. 601 (2011). General Rule of Competency**

Every person is competent to be a witness except as otherwise provided in these rules.

### **DEL. CODE ANN. tit. 10, § 4302 (2010). Competency to testify**

No child under the age of 10 years may be excluded from giving testimony for the sole reason that such child does not understand the obligation of an oath. Such child's age and degree of understanding of the obligation of an oath may be considered by the trier of fact in judging the child's credibility.

## **DISTRICT OF COLUMBIA**

## **FLORIDA**

### **FLA. EVID. CODE § 5.11 (2002). Competency of Children**

At common law, a child under the age of 14 was presumed incompetent to testify. See *Radiant Oil Co. v. Herring*, 146 Fla. 154, 200 So. 376 (1941); *Clinton v. State*, 53 Fla. 98, 43 So. 312 (1907) (court cited common-law principle that infant under 14 years presumptively incompetent to testify). The presumption of competency created by *F.S.* 90.601, however, reaffirms the elimination of this common-law rule. See *Lloyd v. State*, 524 So.2d 396 (Fla. 1988); *Bowman v. State*, 760 So.2d 1053 (Fla. 4th DCA 2000).

Under *F.S.* 90.601, before a child may be declared incompetent and be excluded as a witness, there must be substantial evidence in the record to support the adjudication. *State v. McIntosh*, 475 So.2d 973 (Fla. 4th DCA 1985), rev'd on other grounds 496 So.2d 120 (trial court improperly excluded child witness when there was no substantial evidence concerning intellectual inability). Even a young child is presumed competent until incompetency is otherwise affirmatively established by substantial evidence.

Although the presumption of competency has replaced the presumption of incompetency, it has long been held that intelligence and the ability to understand is the proper test to determine a child's competency. See *Fuller v. State*, 540 So.2d 182 (Fla. 5th DCA 1989); *Griffin v. State*, 526 So.2d 752 (Fla. 1st DCA 1988). Children are competent if they have sufficient minimal intelligence, regardless of age, to accurately perceive, remember, and relate, and when they have

a minimal appreciation of the nature and the obligation of an oath. *Cross v. State*, 89 Fla. 212, 103 So. 636 (1925); *Griffin*. As noted in § 5.6 , if the child understands the duty to tell the truth or not to lie, it is not necessary to administer the prescribed oath. *F.S.* 90.605(2); *Dean v. State*, 355 So.2d 130 (Fla. 1st DCA 1978).

A child's competency is fixed as of the date the child will testify rather than the date on which the facts occurred. *Rivet v. State*, 556 So.2d 521 (Fla. 5th DCA 1990). In some cases, the court must consider the child's intellectual development in relation to the matters about which the child will testify. Through experience and social conditioning, for example, a very young child may be competent to testify accurately about the Saturday morning cartoon line-up on television, but incapable of testifying accurately about a complex sequence of events or relationships. See also *Rutledge v. State*, 374 So.2d 975 (Fla. 1979) (nine-year-old murder eyewitness and assault victim properly allowed to testify); *Begley v. State*, 483 So.2d 70 (Fla. 4th DCA 1986) (five- year-old sexual abuse victim of above-average intelligence was competent to testify); *Fernandez v. State*, 328 So.2d 508 (Fla. 3d DCA 1976) (six-year-old allowed to testify).

**FLA. STAT. § 92.54 (2010). Use of closed circuit television in proceedings involving victims or witnesses under the age of 16 or persons with mental retardation**

(1) Upon motion and hearing in camera and upon a finding that there is a substantial likelihood that the child or person with mental retardation will suffer at least moderate emotional or mental harm due to the presence of the defendant if the child or person with mental retardation is required to testify in open court, or that such victim or witness is unavailable as defined in s. 90.804(1), the trial court may order that the testimony of a child under the age of 16 or person with mental retardation who is a victim or witness be taken outside of the courtroom and shown by means of closed circuit television.

(2) The motion may be filed by the victim or witness; the attorney, parent, legal guardian, or guardian ad litem of the victim or witness; the prosecutor; the defendant or the defendant's counsel; or the trial judge on his or her own motion.

(3) Only the judge, the prosecutor, the defendant, the attorney for the defendant, the operators of the videotape equipment, an interpreter, and some other person who, in the opinion of the court, contributes to the well-being of the child or person with mental retardation and who will not be a witness in the case may be in the room during the recording of the testimony.

(4) During the child's or person's with mental retardation testimony by closed circuit television, the court may require the defendant to view the testimony from the courtroom. In such a case, the court shall permit the defendant to observe and hear the testimony of the child or person with mental retardation, but shall ensure that the child or person with mental retardation cannot hear or see the defendant. The defendant's right to assistance of counsel, which includes the right to immediate and direct communication with counsel conducting cross-examination, must be protected and, upon the defendant's request, such communication shall be provided by any

appropriate electronic method.

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

**FLA. STAT. § 92.55 (2010). Judicial or other proceedings involving victim or witness under the age of 16 or person with mental retardation; special protections**

(1) Upon motion of any party, upon motion of a parent, guardian, attorney, or guardian ad litem for a child under the age of 16 or person with mental retardation, or upon its own motion, the court may enter any order necessary to protect a child under the age of 16 or person with mental retardation who is a 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 child or person with mental retardation is required to testify in open court. Such orders shall relate to the taking of testimony and shall include, but not be 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.

(2) In ruling upon the motion, the court shall take into consideration:

(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; or

(b) The age of the person with mental retardation, the functional capacity of the person with mental retardation, the nature of the offenses or act, the relationship of the person with mental retardation 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 with mental retardation as a consequence of the defendant's presence, and any other fact that the court deems relevant.

(3) In addition to such other relief as is provided by law, the court may enter orders limiting the number of times that a child or person with mental retardation may be interviewed, prohibiting

depositions of a child or person with mental retardation, requiring the submission of questions prior to examination of a child or person with mental retardation, setting the place and conditions for interviewing a child or person with mental retardation 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.

## **GEORGIA**

### **GA. CODE ANN. § 24-3-16 (2010). Statements made by child under age of 14 years describing acts of sexual contact or physical abuse**

A statement made by a child under the age of 14 years describing any act of sexual contact or physical abuse performed with or on the child by another or performed with or on another in the presence of the child is admissible in evidence by the testimony of the person or persons to whom made if the child is available to testify in the proceedings and the court finds that the circumstances of the statement provide sufficient indicia of reliability.

### **GA. CODE ANN. § 24-9-1 (2010). Competency of witnesses to testify**

(a) No person offered as a witness shall be excluded by reason of incapacity, for crime or interest or from being a party, from giving evidence, either in person or by deposition, according to the practice of the court, on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or proceeding, civil or criminal, in any court or before any judge, jury, sheriff, coroner, magistrate, officer, or party having by law or consent of parties authority to hear, receive, and examine evidence; but every person so offered shall be competent and compellable to give evidence on behalf of either or any of the parties to the suit, action, or other proceeding.

### **GA. CODE ANN. § 24-9-5 (2010). Persons who do not have the use of reason**

(a) Except as provided in subsection (b) of this Code section, persons who do not have the use of reason, such as idiots, lunatics during lunacy, and children who do not understand the nature of an oath, shall be incompetent witnesses.

(b) Notwithstanding the provisions of subsection (a) of this Code section, in all cases involving deprivation as defined by Code Section 15-11-2, or in criminal cases involving child molestation, and in all other criminal cases in which a child was a victim of or a witness to any crime, any such child shall be competent to testify, and his credibility shall be determined as provided in Article 4 of this chapter.

**GA. CODE ANN. § 24-9-7 (2010). Court decides competency; objections to competency; restoration to competency**

(a) The competency of a witness shall be decided by the court. The court shall by examination decide upon the capacity of one alleged to be incompetent from idiocy, lunacy, insanity, drunkenness, or infancy.

(b) If an objection to competency is known, it shall be taken before the witness is examined at all. It may be proved by the witness himself or by other testimony. If proved by other testimony, the witness shall be incompetent to explain it away.

(c) Any fact which in the judgment of the court removes the ground of incompetency shall restore the competency of the witness.

**HAWAII**

**HAW. R. EVID. 601 (2010). General Rule of Competency**

Every person is competent to be a witness except as otherwise provided in these rules.

**HAW. R. EVID. 603.1 (2010). Disqualifications**

A person is disqualified to be a witness if the person is (1) incapable of expressing oneself so as to be understood, either directly or through interpretation by one who can understand the person, or (2) incapable of understanding the duty of a witness to tell the truth.

**IDAHO**

**IDAHO CT. RULES 601 (2010). General Rule of Competency**

Every person is competent to be a witness except:

**(a) Incompetency Determined by Court.** Persons whom the court finds to be incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

**(b) Claim Against Estate.** Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted against an executor or administrator, upon

a claim or demand against the estate of a deceased person as to any communication or agreement, not in writing, occurring before the death of such deceased person.

**(c) Other Exceptions.** As otherwise provided in these rules.

### **IDAHO CODE ANN. § 9-201 (2011). Who may be witnesses -- Credibility of witnesses**

All persons, without exception, otherwise than is specified in the next two (2) sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witness may be drawn in question, by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

### **IDAHO CODE ANN. § 9-202 (2011). Who may not testify**

The following persons cannot be witnesses:

1. Those who are of unsound mind at the time of their production for examination.
2. Children under ten (10) years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. At the time a child under the age of ten (10) years of age is called to testify in any court proceeding, the court shall conduct a hearing in chambers to determine whether the child qualifies as a witness under this section. In conducting such hearing the court shall take every reasonable means necessary to prevent intimidation or harassment of the child by the parties or their attorneys. The judge, rather than the parties, shall examine the child but he shall do so in the presence of the parties and he shall pose to the child any reasonable questions requested by the parties and previously submitted to the court. The judge may rephrase any questions so that the child is not intimidated.
3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted against an executor or administrator, upon a claim or demand against the estate of a deceased person, as to any communication or agreement, not in writing, occurring before the death of such deceased person.

## **IDAHO CODE ANN. § 19-2110 (2011). Rules of evidence**

The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code.

## **ILLINOIS**

### **705 ILL. COMP. STAT. 80/1 (2010). Child Witness Trauma Reduction**

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.

### **725 ILL. COMP. STAT. 5/115-10 (2010). Certain Hearsay Exceptions**

(a) In a prosecution for a physical or sexual act perpetrated upon or against a child under the age of 13, or a person who was a moderately, severely, or profoundly mentally retarded person as defined in this Code and in Section 2-10.1 of the Criminal Code of 1961 [720 ILCS 5/2-10.1] at the time the act was committed, including but not limited to prosecutions for violations of Sections 12-13 through 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13 through 720 ILCS 5/12-16] and prosecutions for violations of Sections 10-1 (kidnapping), 10-2 (aggravated kidnapping), 10-3 (unlawful restraint), 10-3.1 (aggravated unlawful restraint), 10-4 (forcible detention), 10-5 (child abduction), 10-6 (harboring a runaway), 10-7 (aiding and abetting child abduction), 11-9 (public indecency), 11-11 (sexual relations within families), 11-21 (harmful material), 12-1 (assault), 12-2 (aggravated assault), 12-3 (battery), 12-3.2 (domestic battery), 12-4 (aggravated battery), 12-4.1 (heinous battery), 12-4.2 (aggravated battery with a firearm), 12-4.3 (aggravated battery of a child), 12-4.7 (drug induced infliction of great bodily harm), 12-5 (reckless conduct), 12-6 (intimidation), 12-6.1 (compelling organization membership of persons), 12-7.1 (hate crime), 12-7.3 (stalking), 12-7.4 (aggravated stalking), 12-10 (tattooing body of minor), 12-11 (home invasion), 12-21.5 (child abandonment), 12-21.6 (endangering the life or health of a child) or 12-32 (ritual mutilation) of the Criminal Code of 1961 [720 ILCS 5/10-1, 720 ILCS 5/10-2, 720 ILCS 5/10-3, 720 ILCS 5/10-3.1, 720 ILCS 5/10-4, 720 ILCS 5/10-5, 720 ILCS 5/10-6, 720 ILCS 5/10-7, 720 ILCS 5/11-9, 720 ILCS 5/11-11, 720 ILCS 5/11-21, 720 ILCS 5/12-1, 720 ILCS 5/12-2, 720 ILCS 5/12-3, 720 ILCS 5/12-3.2, 720 ILCS 5/12-4, 720 ILCS 5/12-4.1, 720 ILCS 5/12-4.2, 720 ILCS 5/12-4.3, 720 ILCS 5/12-4.7, 720 ILCS 5/12-5, 720 ILCS 5/12-6, 720 ILCS 5/12-6.1, 720 ILCS 5/12-7.1, 720 ILCS 5/12-7.3, 720 ILCS 5/12-7.4, 720 ILCS 5/12-10, 720 ILCS 5/12-11, 720 ILCS 5/12-21.5, 720 ILCS 5/12-21.6 or 720 ILCS 5/12-32] or any sex offense as defined in subsection (B) of Section 2 of the Sex Offender Registration Act [730 ILCS 150/2], the following evidence shall be admitted as an exception to the hearsay rule:

(1) testimony by the victim of an out of court statement made by the victim that he or she complained of such act to another; and

(2) testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim.

(b) Such testimony shall only be admitted if:

(1) The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and

(2) The child or moderately, severely, or profoundly mentally retarded person either:

(A) testifies at the proceeding; or

(B) is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement; and

(3) In a case involving an offense perpetrated against a child under the age of 13, the out of court statement was made before the victim attained 13 years of age or within 3 months after the commission of the offense, whichever occurs later, but the statement may be admitted regardless of the age of the victim at the time of the proceeding.

(c) If a statement is admitted pursuant to this Section, the court shall instruct the jury that it is for the jury to determine the weight and credibility to be given the statement and that, in making the determination, it shall consider the age and maturity of the child, or the intellectual capabilities of the moderately, severely, or profoundly mentally retarded person, the nature of the statement, the circumstances under which the statement was made, and any other relevant factor.

(d) The proponent of the statement shall give the adverse party reasonable notice of his intention to offer the statement and the particulars of the statement.

(e) Statements described in paragraphs (1) and (2) of subsection (a) shall not be excluded on the basis that they were obtained as a result of interviews conducted pursuant to a protocol adopted by a Child Advocacy Advisory Board as set forth in subsections (c), (d), and (e) of Section 3 of the Children's Advocacy Center Act [55 ILCS 80/3] or that an interviewer or witness to the interview was or is an employee, agent, or investigator of a State's Attorney's office.

## **725 ILL. COMP. STAT. 5/115-14 (2010). Witness Competency**

§ 115-14. Witness Competency. (a) Every person, irrespective of age, is qualified to be a witness and no person is disqualified to testify to any matter, except as provided in subsection (b).

(b) A person is disqualified to be a witness if he or she is:



(1) Incapable of expressing himself or herself concerning the matter so as to be understood, either directly or through interpretation by one who can understand him or her; or

(2) Incapable of understanding the duty of a witness to tell the truth.

(c) A party may move the court prior to a witness' testimony being received in evidence, requesting that the court make a determination if a witness is competent to testify. The hearing shall be conducted outside the presence of the jury and the burden of proof shall be on the moving party.

## **INDIANA**

### **IND. CODE. 601 (2011). Witness Competency**

Every person is competent to be a witness except as otherwise provided in these rules or by act of the Indiana General Assembly.

### **IND. CODE § 34-45-2-1 (2011). Witnesses competent unless excluded**

All persons, whether parties to or interested in the suit, shall be competent witnesses in a civil action or proceeding, except as otherwise provided.

### **IND. CODE § 35-37-4-1 (2011). Competency of Witnesses**

A person who is competent to testify in civil action is also competent to testify in criminal proceedings.

## **IOWA**

### **IOWA R. EVID. 5. 601 (2011). General Rule of Competency**

Unless otherwise provided by statute or rule, every person is competent to be a witness.

## **KANSAS**

### **KAN. STAT. ANN. § 60-407 (2010). General abolition of disqualifications and privileges of witnesses, and of exclusionary rules**

Except as otherwise provided by statute (a) every person is qualified to be a witness, and (b) no person has a privilege to refuse to be a witness, and (c) no person is disqualified to testify to any matter, and (d) no person has a privilege to refuse to disclose any matter or to produce any object or writing, and (e) no person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any object or writing, and (f) all relevant evidence is admissible.

### **KAN. STAT. ANN. § 60-417 (2010). Disqualification of witness; interpreters**

A person is disqualified to be a witness if the judge finds that (a) the proposed witness is incapable of expressing himself or herself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him or her, or (b) the proposed witness is incapable of understanding the duty of a witness to tell the truth. An interpreter is subject to all the provisions of this article relating to witnesses.

## **KENTUCKY**

### **KY. R. EVID. 601 (2011). Competency**

(a) General. Every person is competent to be a witness except as otherwise provided in these rules or by statute.

(b) Minimal qualifications. A person is disqualified to testify as a witness if the trial court determines that he:

- (1) Lacked the capacity to perceive accurately the matters about which he proposes to testify;
- (2) Lacks the capacity to recollect facts;
- (3) Lacks the capacity to express himself so as to be understood, either directly or through an interpreter; or

(4) Lacks the capacity to understand the obligation of a witness to tell the truth.

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

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

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

(3) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (3) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by subsection (3) of this section. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:

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

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

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

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

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

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

## **LOUISIANA**

### **LA. CODE EVID. ANN. art. 601 (2010). General Rule of competency**

Every person of proper understanding is competent to be a witness except as otherwise provided by legislation.

### **LA. CODE EVID. ANN. art. 603 (2010). Oath or affirmation**

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

### **LA. REV. STAT. ANN. § 13:3665 (2010). Competency of witnesses**

The competent witness in any civil proceeding in court or before a person having authority to receive evidence shall be a person of proper understanding.

### **LA. REV. STAT. ANN. § 15:469.1 (2010). Receipt of testimony from victims of certain crimes who are fifteen years of age or younger; closed session of court or in chambers; procedure**

In cases of simple rape, attempted simple rape, aggravated rape, attempted aggravated rape, forcible rape, attempted forcible rape, or carnal knowledge of a juvenile in which the victim is a child of fifteen years of age or younger, the court, upon its own motion or that of the defendant or state, may order that the testimony of such victim be heard either in closed session of court or in the judge's chambers, in the presence of the judge or jury, the defendant, counsel for the

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defendant, the family of the defendant, the parents or parent of the victim, the attorney for the state, a reasonable but limited number of members of the public which the court may allow in its discretion under these circumstances, and any other party which the court determines has a valid interest in the proceedings.

## **MAINE**

### **ME. R. EVID. 601 (2010). Competency in General; Disqualification**

(a) General Rule of Competency. Every person is competent to be a witness except as otherwise provided in these rules.

(b) Disqualification of Witness. A person is disqualified to be a witness if the court finds that (1) the proposed witness is incapable of communicating concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand the proposed witness, (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth, (3) the proposed witness lacked any reasonable ability to perceive the matter or (4) the proposed witness lacks any reasonable ability to remember the matter. An interpreter is subject to all the provisions of these rules relating to witnesses.

## **MARYLAND**

### **MD. R. EVID. § 5-601 (2011). General Rule of Competency**

Except as otherwise provided by law, every person is competent to be a witness.

### **MD. CODE ANN., CTS. & JUD. PROC. § 9-103 (2010). Testimony from child**

In a criminal trial, the age of a child may not be the reason for precluding a child from testifying.

## **MASSACHUSETTS**

### **MASS. GEN. LAWS ch. 233, § 20 (2010). Competency of Witnesses; husband and wife; criminal defendant; parent and child**

Any person of sufficient understanding, although a party, may testify in any proceeding, civil or criminal, in court or before a person who has authority to receive evidence, except as follows:

First, Except in a proceeding arising out of or involving a contract made by a married woman with her husband, a proceeding under chapter two hundred and nine D and in a prosecution begun under sections one to ten, inclusive, of chapter two hundred and seventy-three, any criminal proceeding in which one spouse is a defendant alleged to have committed a crime against the other spouse or to have violated a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, three B, three C, four, or five of chapter two hundred and nine A, or sections fifteen or twenty of chapter two hundred and nine C, or a similar protection order issued by another jurisdiction, obtained by the other spouse, and except in a proceeding involving abuse of a person under the age of eighteen, including incest, neither husband nor wife shall testify as to private conversations with the other.

Second, Except as otherwise provided in section seven of chapter two hundred and seventy-three and except in any proceeding relating to child abuse, including incest, neither husband nor wife shall be compelled to testify in the trial of an indictment, complaint or other criminal proceeding against the other;

Third, The defendant in the trial of an indictment, complaint or other criminal proceeding shall, at his own request, but not otherwise, be allowed to testify; but his neglect or refusal to testify shall not create any presumption against him.

Fourth, An unemancipated, minor child, living with a parent, shall not testify before a grand jury, trial of an indictment, complaint or other criminal proceeding, against said parent, where the victim in such proceeding is not a member of said parent's family and who does not reside in the said parent's household. For the purposes of this clause the term "parent" shall mean the natural or adoptive mother or father of said child.

## **MICHIGAN**

### **MICH. R. EVID. 601 (2011). Witnesses; General Rule of Competency**

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

## **MINNESOTA**

### **MINN. R. EVID. 601 (2010). Competency**

Except as provided by the rules, the competency of a witness to give testimony shall be determined in accordance with law.

### **MINN. STAT. § 595.02 (2011). 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 worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate. 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 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 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 communication-impaired persons 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.

### **MINN. STAT. § 595.06 (2011). Capacity of witness**

When an infant, or a person apparently of weak intellect, is produced as a witness, the court may examine the infant or witness to ascertain capacity, and whether the person understands the nature and obligations of an oath, and the court may inquire of any person what peculiar ceremonies the person deems most obligatory in taking an oath.

## **MISSISSIPPI**

### **MISS. R. EVID. 601 (2010). General Rule of Competency**

Every person is competent to be a witness except as restricted by the following:

(a) In all instances where one spouse is a party litigant the other spouse shall not be competent as a witness without the consent of both, except as provided in Rule 601(a)(1) or Rule 601(a)(2):

(1) Husbands and wives may be introduced by each other in all cases, civil or criminal, and shall be competent witnesses in their own behalf, as against each other, in all controversies between them;

(2) Either spouse is a competent witness and may be compelled to testify against the other in any criminal prosecution of either husband or wife for a criminal act against any child, for contributing to the neglect or delinquency of a child, or desertion or nonsupport of children under

the age of sixteen (16) years, or abandonment of children.

(b) A person appointed by a court as required by state law to make an appraisal in an eminent domain proceeding for the immediate possession of land shall not be eligible to testify in the trial of such case, and the report of such court appointed appraiser shall not be admissible in evidence during such trial.

**MISS. CODE ANN. § 13-1-403 (2010). Child's statements made out-of-court; admissibility**

(1) An out-of-court statement made by a child under the age of twelve (12) describing any act of child abuse, sexual abuse or any other offense involving an unlawful sexual act, contact, intrusion or penetration performed in the presence of, with, by or on the declarant child, not otherwise admissible, is admissible in evidence to prove the contents thereof, if:

(a) Such statement is made for the purpose of receiving assistance or advice in order to prevent or mitigate the recurrence of the offenses, or in order to obtain advice about the psychological, social or familial consequences associated with the offenses; and

(b) Such statement is made to a person on whom the child should reasonably be able to rely for assistance, counseling or advice; and

(c) The child either:

(i) Is available to testify; or

(ii) Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. A finding of unavailability, except in those situations specified by Rule 804 of the Mississippi Rules of Evidence, shall require a finding by the court, based on the specific behavioral indicators described in § 13-1-411, that the child's participation in the trial would result in a substantial likelihood of traumatic emotional or mental distress; and

(d) The court finds in a hearing conducted outside the presence of the jury that the time, content and circumstances of the statement provide sufficient guarantees of trustworthiness. In determining the trustworthiness of the statement, the court may consider the age and maturity of the child, the nature and duration of the abuse or offense alleged, factors which may detract from the declarant's credibility, information provided about the child's reliability based on the specific

behavioral indicators described in § 13-1-411, or any other factor deemed appropriate.

(2) The defendant shall be notified no later than ten (10) days before trial that an out-of-court statement as described in this section shall be offered in evidence at trial. The notice shall include a written statement of the content of the child's statement, the time the statement was made, the circumstances surrounding the statement which indicate its reliability and such other particulars as necessary to provide full disclosure of the statement.

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

**MISS. CODE ANN. § 13-1-405 (2010). Use of closed circuit television**

(1) Upon motion and hearing in camera, the trial court may order that the testimony of a child under the age of sixteen (16) that an unlawful sexual act, contact, intrusion, penetration or other sexual offense was committed upon him or her, or that he or she witnessed its perpetration upon another child, be taken outside of the courtroom and shown in the courtroom by means of closed circuit television, upon a finding based on specific behavioral indicators described in § 13-1-411, that there is a substantial likelihood that the child will suffer traumatic emotional or mental distress if compelled to testify in open court.

(2) The motion may be filed by the child, his attorney, parent, legal guardian or guardian ad litem, or any party to the case. The court may also raise the matter on its own motion.

(3) Upon stipulation of the 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 in formulating methods of questioning the child and to assist the court in interpreting the answers of the child.

(4) Closed circuit television testimony may be taken by any method not inconsistent with the Mississippi Rules of Civil Procedure and the Mississippi Uniform Criminal Rules of Circuit Court Practice. After a determination that the defendant's presence would cause a substantial likelihood of traumatic emotional or mental distress to the child, the judge may exclude the defendant from the room where the testimony is taken. In any case in which the defendant is so excluded, arrangements must be made for the defense attorney to be in continual contact with the defendant by any appropriate private electronic or telephonic method throughout the questioning. The defendant and the jury must be able to observe the demeanor of the child witness at all times during the questioning.

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

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

## **MISSOURI**

### **MO. REV. STAT. § 491.060 (2010). Persons incompetent to testify -- exceptions, children in certain cases**

The following persons shall be incompetent to testify:

(1) A person who is mentally incapacitated at the time of his or her production for examination;

(2) A child under ten years of age, who appears incapable of receiving just impressions of the facts respecting which the child is examined, or of relating them truly; provided, however, that except as provided in subdivision (1) of this section, a child under the age of ten who is alleged to be a victim of an offense pursuant to chapter 565, 566 or 568, RSMo, shall be considered a competent witness and shall be allowed to testify without qualification in any judicial proceeding involving such alleged offense. The trier of fact shall be permitted to determine the weight and credibility to be given to the testimony;

(3) An attorney, concerning any communication made to the attorney by such attorney's client in that relation, or such attorney's advice thereon, without the consent of such client;

(4) Any person practicing as a minister of the gospel, priest, rabbi or other person serving in a similar capacity for any organized religion, concerning a communication made to him or her in his or her professional capacity as a spiritual advisor, confessor, counselor or comforter;

(5) A physician licensed pursuant to chapter 334, RSMo, a chiropractor licensed pursuant to chapter 331, RSMo, a licensed psychologist or a dentist licensed pursuant to chapter 332, RSMo, concerning any information which he or she may have acquired from any patient while attending the patient in a professional character, and which information was necessary to enable him or her to prescribe and provide treatment for such patient as a physician, chiropractor, psychologist or dentist.

### **MO. REV. STAT. § 491.075 (2010). Statement of child under fourteen admissible, when**

1. A statement made by a child under the age of fourteen relating to an offense under chapter 565, 566, 568 or 573, RSMo, performed with or on a child by another, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings in the courts of this state as substantive evidence to prove the truth of the matter asserted if:



(1) The court finds, in a hearing conducted outside the presence of the jury that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(2)(a) The child testifies at the proceedings; or

(b) The child is unavailable as a witness; or

(c) The child is otherwise physically available as a witness but the court finds that the significant emotional or psychological trauma which would result from testifying in the personal presence of the defendant makes the child unavailable as a witness at the time of the criminal proceeding.

2. Notwithstanding subsection 1 of this section or any provision of law or rule of evidence requiring corroboration of statements, admissions or confessions of the defendant, and notwithstanding any prohibition of hearsay evidence, a statement by a child when under the age of fourteen who is alleged to be victim of an offense under chapter 565, 566, 568 or 573, RSMo, is sufficient corroboration of a statement, admission or confession regardless of whether or not the child is available to testify regarding the offense.

3. A statement may not be admitted under this section unless the prosecuting attorney makes known to the accused or the accused's counsel his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the accused or the accused's counsel with a fair opportunity to prepare to meet the statement.

4. Nothing in this section shall be construed to limit the admissibility of statements, admissions or confessions otherwise admissible by law.

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

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

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

as possible after the completion of such deposition and shall be provided to the defendant together with all other discoverable materials.

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

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

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

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

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

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

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

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

- (2) The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- (3) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;
- (4) The statement was not made in response to questioning calculated to lead the child to make a particular statement or to act in a particular way;
- (5) Every voice on the recording is identified;
- (6) The person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party; and
- (7) The defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence.

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

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

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

## **MONTANA**

### **MONT. CODE ANN. ch. 10, RULE 601 (2009). Competency in General; disqualification**

- (a) General rule competency. Every person is competent to be a witness except as otherwise provided in these rules.
- (b) Disqualification of witnesses. A person is disqualified to be a witness if the court finds that
  - (1) the witness is incapable of expression concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand the witness or

(2) the witness is incapable of understanding the duty of a witness to tell the truth.

**MONT. CODE ANN. § 46-16-211 (2009). Who are competent witnesses**

The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

**NEBRASKA**

**NEB. REV. STAT. § 27-601 (2010). General rule of competency**

Every person is competent to be a witness except as otherwise provided in these rules. Common law rule applied in *State v. M.L.S.*, 452 N.W. 2d 39 (Neb. 1990) (there is no age below which a child is incompetent to testify).

**NEB. REV. STAT. § 29-1925 (2010). Child victim or child witness; testimony; legislative intent**

The Legislature recognizes that obtaining testimony in a criminal prosecution from a child victim of 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**

**NEV. REV. STAT. § 50.015 (2010). General rule of competency**

Every person is competent to be a witness except as otherwise provided in this Title.

**NEV. REV. STAT. § 51.385 (2010). Admissibility; notice of unavailability or inability of child to testify**

1. In addition to any other provision for admissibility made by statute or rule of court, a statement made by a child under the age of 10 years describing any act of sexual conduct performed with or on the child or any act of physical abuse of the child is admissible in a criminal proceeding regarding that act of sexual conduct or physical abuse if:

(a) The court finds, in a hearing out of the presence of the jury, that the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness; and

(b) The child testifies at the proceeding or is unavailable or unable to testify.

2. In determining the trustworthiness of a statement, the court shall consider, without limitation, whether:

(a) The statement was spontaneous;

(b) The child was subjected to repetitive questioning;

(c) The child had a motive to fabricate;

(d) The child used terminology unexpected of a child of similar age; and

(e) The child was in a stable mental state.

3. If the child is unavailable or unable to testify, written notice must be given to the defendant at least 10 days before the trial of the prosecution's intention to offer the statement in evidence.

## **NEW HAMPSHIRE**

### **N.H. R. EVID. 601 (2010). General rule of competency**

**(a) General Rule of Competency.** Every person is competent to be a witness except as otherwise provided by statute or in these rules.

**(b) Incompetence of a Witness.** A person is not competent to testify as a witness if the court finds that the witness lacks sufficient capacity to observe, remember and narrate as well as understand the duty to tell the truth.

## **NEW JERSEY**

### **N.J. R. EVID. 601 (2009). General rule of competency**

Every person is competent to be a witness unless (a) the judge finds that the proposed witness is incapable of expression concerning the matter so as to be understood by the judge and jury either directly or through interpretation, or (b) the proposed witness is incapable of understanding the duty of a witness to tell the truth, or (c) except as otherwise provided by these rules or by law.

### **N.J. REV. STAT. § 2A:84A-32.4 (2011). Prosecutions or actions for sexual assault, criminal sexual conduct, or child abuse or neglect; closed circuit testimony by minor**

a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, or child abuse, or in any action alleging an abused or neglected child under P.L.1974, c. 119 (C.9:6-8.21 et seq.), the court may, on motion and after conducting a hearing in camera, order the taking of the testimony of a witness on closed circuit television at the trial, out of the view of the jury, defendant, or spectators upon making findings as provided in subsection b. of this section.

b. An order under this section may be made only if the court finds that the witness is 16 years of age or younger and that there is a substantial likelihood that the witness would suffer severe emotional or mental distress if required to testify in open court. The order shall be specific as to whether the witness will testify outside the presence of spectators, the defendant, the jury, or all of them and shall be based on specific findings relating to the impact of the presence of each.

c. A motion seeking closed circuit testimony under subsection a. of this section may be filed by:

- (1) The victim or witness or the victim's or witness's attorney, parent or legal guardian;
- (2) The prosecutor;
- (3) The defendant or the defendant's counsel; or
- (4) The trial judge on the judge's own motion.

d. The defendant's counsel shall be present at the taking of testimony in camera. If the defendant is not present, he and his attorney shall be able to confer privately with each other during the testimony by a separate audio system.

e. If testimony is taken on closed circuit television pursuant to the provisions of this act, a stenographic recording of that testimony shall also be required. A typewritten transcript of that testimony shall be included in the record on appeal. The closed circuit testimony itself shall not constitute part of the record on appeal except on motion for good cause shown.

## **NEW MEXICO**

### **N.M. R. EVID. 11-601 (2010). General rule of competency**

Every person is competent to be a witness except as otherwise provided in these rules.

### **N.M. STAT. § 30-9-18 (2010). Alleged victims who are under thirteen years of age; psychological evaluation**

In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, if the alleged victim is under thirteen years of age, the court may hold an evidentiary hearing to determine whether to order a psychological evaluation of the alleged victim on the issue of competency as a witness. If the court determines that the issue of competency is in sufficient doubt that the court requires expert assistance, then the court may order a psychological evaluation of the alleged victim, provided however, that if a psychological evaluation is ordered it shall be conducted by only one psychologist or psychiatrist selected by the court who may be utilized by either or both parties; further provided that if the alleged victim has been evaluated on the issue of competency during the course of investigation by a psychologist or psychiatrist selected in whole or in part by law enforcement officials, the psychological evaluation, if any, shall be conducted by a psychologist or psychiatrist selected by the court upon the recommendation of the defense.

### **N.M. STAT. § 32A-6A-5 (2010). Competence**

The fact that a child has received treatment or habilitation services or has been accepted at or admitted to a hospital or institutional facility shall not constitute a sufficient basis for a finding of incompetence or the denial of a right or benefit of any nature that the child would otherwise have.

## **NEW YORK**

### **N.Y. CRIM. PROC. LAW § 60.20 (2010). General rule of competency**

1. Any person may be a witness in a criminal proceeding unless the court finds that, by reason of infancy or mental disease or defect, he does not possess sufficient intelligence or capacity to justify the reception of his evidence.
2. Every witness more than nine years old may testify only under oath unless the court is satisfied that such witness cannot, as a result of mental disease or defect, understand the nature of an oath. A witness less than nine years old may not testify under oath unless the court is satisfied that he or she understands the nature of an oath. If [fig 1] under either of the above provisions, a witness is deemed to be ineligible to testify under oath, the witness may nevertheless be permitted to give unsworn evidence if the court is satisfied that the witness possesses sufficient intelligence and capacity to justify the reception thereof. A witness understands the nature of an oath if he or she appreciates the difference between truth and falsehood, the necessity for telling the truth, and the fact that a witness who testifies falsely may be punished.
3. A defendant may not be convicted of an offense solely upon unsworn evidence given pursuant to subdivision two.

### **N.Y. CRIM. PROC. LAW § 65.10 (2010). Closed-circuit television; general rule; declaration of vulnerability**

[Expires and deemed repealed Sept. 1, 2011, pursuant to L.1985, c. 505, § 5]

1. A child witness shall be declared vulnerable when the court, in accordance with the provisions of section 65.20, determines by clear and convincing evidence that it is likely that such child witness will suffer serious mental or emotional harm if required to testify at a criminal proceeding without the use of live, two-way closed-circuit television and that the use of such live, two-way closed-circuit television will diminish the likelihood or extent of, such harm.
2. When the court declares a child witness to be vulnerable, it shall, except as provided in subdivision four of section 65.30, authorize the taking of the testimony of the vulnerable child witness from the testimonial room by means of live, two-way closed-circuit television. Under no circumstances shall the provisions of this article be construed to authorize a closed-circuit television system by which events in the courtroom are not transmitted to the testimonial room during the testimony of the vulnerable child witness.



3. Nothing herein shall be construed to preclude the court from exercising its power to close the courtroom or from exercising any authority it otherwise may have to protect the well-being of a witness and the rights of the defendant.

## **NORTH CAROLINA**

### **N.C. GEN. STAT. § 8C-1, RULE 601 (2009). General rule of competency; disqualification of witness**

Every person is competent to be a witness unless otherwise provided in the rules of evidence. A person is disqualified to testify as a witness when the court determines that he or she is; (1) incapable of expressing himself concerning the matter as to be understood, either directly or through interpretation by one who can understand him; or (2) incapable of understanding the duty of a witness to tell the truth.

Interpreted in *State v. Fearing*, 337 S.E.2d 551 (N.C. 1985) (defining competency as "the capacity of the proposed witness to understand and to relate under the obligation of an oath facts which will assist the jury in determining the truth of the matters as to which it is called upon to decide").

## **NORTH DAKOTA**

### **N.D. R. EVID. 601 (2011). General rule of competency**

Every person is competent to be a witness except as otherwise provided in these rules.

## **OHIO**

### **OHIO R. EVID. 601 (2011). General rule of competency**

Every person is competent to be a witness except:

(A) Those of unsound mind, and children under ten years of age, who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.

(B) A spouse testifying against the other spouse charged with a crime except when either of the following applies:

(1) a crime against the testifying spouse or a child of either spouse is charged;

(2) the testifying spouse elects to testify.

(C) An officer, while on duty for the exclusive or main purpose of enforcing traffic laws, arresting or assisting in the arrest of a person charged with a traffic violation punishable as a misdemeanor where the officer at the time of the arrest was not using a properly marked motor vehicle as defined by statute or was not wearing a legally distinctive uniform as defined by statute.

(D) A person giving expert testimony on the issue of liability in any claim asserted in any civil action against a physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist, unless the person testifying is licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery by the state medical board or by the licensing authority of any state, and unless the person devotes at least one-half of his or her professional time to the active clinical practice in his or her field of licensure, or to its instruction in an accredited school. This division shall not prohibit other medical professionals who otherwise are competent to testify under these rules from giving expert testimony on the appropriate standard of care in their own profession in any claim asserted in any civil action against a physician, podiatrist, medical professional, or hospital arising out of the diagnosis, care, or treatment of any person.

(E) As otherwise provided in these rules.

### **OHIO REV. CODE ANN. § 2317.01 (2011). Competent witnesses**

All persons are competent witnesses except those of unsound mind and children under ten years of age who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.

In a hearing in an abuse, neglect, or dependency case, any examination made by the court to determine whether a child is a competent witness shall be conducted by the court in an office or room other than a courtroom or hearing room, shall be conducted in the presence of only those individuals considered necessary by the court for the conduct of the examination or the well-being of the child, and shall be conducted with a court reporter present. The court may allow the prosecutor, guardian ad litem, or attorney for any party to submit questions for use by the court in determining whether the child is a competent witness.

## **OKLAHOMA**

### **OKLA. STAT. tit. 12, § 2601 (2010). General Rule of Competency**

Every person is competent to be a witness except as otherwise provided in this Code.

## **OREGON**

### **OR. EVID. CODE 601 (2011). General rule of competency**

Except as provided in ORS 40.310 to 40.335, any person who, having organs of sense can perceive, and perceiving can make known the perception to others, may be a witness.

### **OR. S. § 44.545 (2011). Children or Persons with Developmental Disabilities as Witnesses; Expediting proceedings**

(1) Except as otherwise provided in subsection (2) of this section or except for good cause shown by either party, in any case where a child or a member of the family of the child is a victim of a crime and where a child under 18 years of age is called to give testimony, the court, consistent with the rules of civil or criminal procedure, shall expedite the action and insure that it takes precedence over any other. When determining whether or not to grant a continuance, the judge shall take into consideration the age of the child and the potential adverse impact the delay may have on the well-being of the child. The court shall make written findings of fact and conclusions of law when granting a continuance.

(2) The provisions of subsection (1) of this section do not apply to any juvenile proceeding other than the termination of parental rights.

## **PENNSYLVANIA**

### **PA. R. EVID. 601 (2011). Competency**

(a) **General Rule.** Every person is competent to be a witness except as otherwise provided by statute or in these Rules.

**(b) Disqualification for Specific Defects.** A person is incompetent to testify if the Court finds that because of a mental condition or immaturity the person:

(1) is, or was, at any relevant time, incapable of perceiving accurately;

(2) is unable to express himself or herself so as to be understood either directly or through an interpreter;

(3) has an impaired memory; or

(4) does not sufficiently understand the duty to tell the truth.

### **42 PA. CONS. STAT. § 5911 (2008). Competency of witnesses generally**

Except as otherwise provided in this subchapter, all persons shall be fully competent witnesses in any criminal proceeding before any tribunal.

## **RHODE ISLAND**

### **R.I. R. EVID. 601 (2010). General rule of competency**

Every person is competent to be a witness except as otherwise provided in these rules or by statute.

## **SOUTH CAROLINA**

### **S.C. R. EVID. 601 (2010). Competency**

**(a) General Rule.** Every person is competent to be a witness except as otherwise provided by statute or these rules.

**(b) Disqualification of a Witness.** A person is disqualified to be a witness if the court determines that (1) the proposed witness is incapable of expressing himself concerning the matter as to be understood by the judge and jury either directly or through interpretation by one who can understand him, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth.

**S.C. CODE ANN. § 16-3-1550(E) (2010). Restriction on employers of victims and witnesses; protection of rights of victims and witnesses**

The circuit or family court must treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate. The prosecuting agency or defense attorney must notify the court when a victim or witness deserves special consideration.

**SOUTH DAKOTA**

**S.D. CODIFIED LAWS § 19-14-1 (Rule 601) (2010). General Rule of Competency**

Every person is competent to be a witness except as otherwise provided in chapters 19-9 to 19-18, inclusive.

**S.D. CODIFIED LAWS § 19-16-38 (2010). Statement of sex crime, physical abuse, or neglect by victim under age thirteen or developmentally disabled**

A statement made by a child under the age of thirteen, or by a child thirteen years of age or older who is developmentally disabled as defined in § 27B-1-18, describing any act of sexual contact or rape performed with or on the child by another, or describing any act of physical abuse or neglect of the child by another, or any act of physical abuse or neglect of another child observed by the child making the statement, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings against the defendant or in any proceeding under chapters 26- 7A, 26-8A, 26-8B, and 26-8C in the courts of this state if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

(2) The child either:

(a) Testifies at the proceedings; or

(b) Is unavailable as a witness.

However, if the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

No statement may be admitted under this section unless the proponent of the statement makes known the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the statement.

## TENNESSEE

### TENN. R. EVID. 601 (2010). General rule of competency

Every person is presumed competent to be a witness except as otherwise provided in these rules or by statute.

## TEXAS

### TEXAS R. EVID. 601 (2010). Competency and Incompetency of Witnesses

**(a) General Rule.** Every person is competent to be a witness except as otherwise provided in these rules. The following witnesses shall be incompetent to testify in any proceeding subject to these rules:

(1) *Insane persons.* Insane persons who, in the opinion of the court, are in an insane condition of mind at the time when they are offered as a witness, or who, in the opinion of the court, were in that condition when the events happened of which they are called to testify.

(2) *Children.* Children or other persons who, after being examined by the court, appear not to possess sufficient intellect to relate transactions with respect to which they are interrogated.

**(b) “Dead Man's Rule” in Civil Actions.** In civil actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any oral statement by the testator, intestate or ward, unless that testimony to the oral statement is corroborated or unless the witness is called at the trial to testify thereto by the opposite party; and, the provisions of this article shall extend to and include all actions by or against the heirs or legal representatives of a decedent based in whole or in part on such oral statement. Except for the foregoing, a witness is not precluded from giving evidence of or concerning any transaction with, any conversations with, any admissions of, or statement by, a deceased or insane party or person merely because the witness is a party to the action or a person interested in the event thereof. The trial court shall, in a proper case, where this rule prohibits an interested party or witness from testifying, instruct the jury that such person is not permitted by the law to give evidence relating to any oral statement by the deceased or ward unless the oral statement is corroborated or unless the party or witness is called at the trial by the opposite party.

## UTAH

### **UTAH CODE ANN. § 76-5-410 (2010). Child victim of sexual abuse as competent witness**

A child victim of sexual abuse under the age of 10 is a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding. The trier of fact shall determine the weight and credibility of the testimony.

## VERMONT

### **VT. R. EVID. 601 (2011). Competency in general; Disqualification**

**(a) General Rule of Competency.** Every person is competent to be a witness except as otherwise provided by statute or in these rules.

**(b) Disqualification of Witness.** A person is disqualified to be a witness if the court determines that (1) the proposed witness is incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth.

## VIRGINIA

### **VA. CODE ANN. § 8.01-396.1 (2010). Competency of witness**

No child shall be deemed incompetent to testify solely because of age.

### **VA. CODE ANN. § 18.2-67.9 (2010). Testimony by child victims and witnesses using two-way closed-circuit television**

A. The provisions of this section shall apply to an alleged victim who was fourteen years of age or under at the time of the alleged offense and is sixteen or under at the time of the trial and to a witness who is fourteen years of age or under at the time of the trial.

In any criminal proceeding, including preliminary hearings, involving an alleged offense against a child, relating to a violation of the laws pertaining to kidnapping (§ 18.2-47 et seq.), criminal

sexual assault (§ 18.2-61 et seq.) or family offenses pursuant to Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, or involving an alleged murder of a person of any age, the attorney for the Commonwealth or the defendant may apply for an order from the court that the testimony of the alleged victim or a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The party seeking such order shall apply for the order at least seven days before the trial date or at least seven days before such other preliminary proceeding to which the order is to apply.

B. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsection A if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;
2. The child's substantial inability to communicate about the offense; or
3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child's unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the Commonwealth and the defendant's attorney shall be present in the room with the child, and the child shall be subject to direct and cross-examination. The only other persons allowed to be present in the room with the child during his testimony shall be those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

E. Notwithstanding any other provision of law, none of the cost of the two-way closed-circuit television shall be assessed against the defendant.



## **WASHINGTON**

### **WASH. R. EVID. 601 (2010). General rule of competency**

Every person is competent to be a witness except as otherwise provided by statute or by court rule.

### **WASH. REV. CODE § 5.60.020 (2011). Who may testify**

Every person of sound mind and discretion, except as hereinafter provided, may be a witness in any action, or proceeding.

### **WASH. REV. CODE § 5.60.050 (2011). Who are incompetent**

The following persons shall not be competent to testify:

- (1) Those who are of unsound mind, or intoxicated at the time of their production for examination, and
- (2) Those who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly.

## **WEST VIRGINIA**

### **W. VA. R. EVID. 601 (2009). General rule of competency**

Every person is competent to be a witness except as otherwise provided for by statute or these rules.

### **W. VA. CHILD ABUSE AND NEGLECT PROC., Rule 8 (2009). Testimony of Children**

**(a) Restrictions on the Testimony of Children.** Notwithstanding any limitation on the ability to testify imposed by this rule, all children remain competent to testify in any proceeding before the presiding judicial officer as determined by the Rules of Evidence and the Rules of Civil Procedure. However, there shall be a rebuttable presumption that the potential psychological harm to the child outweighs the necessity of the child's testimony and the presiding judicial officer shall exclude this testimony if the potential psychological harm to the child outweighs the necessity of the child's testimony. Further, the judicial officer may exclude the child's testimony

if (A) the equivalent evidence can be procured through other reasonable efforts; (B) the child's testimony is not more probative on the issue than the other forms of evidence presented; and (C) the general purposes of these rules and the interest of justice will best be served by the exclusion of the child's testimony.

**(b) Procedure for Taking Testimony From Children.** The presiding judicial officer may conduct in camera interviews of a minor child, outside the presence of the parent(s). The parties' attorneys shall be allowed to attend such interviews, except when the presiding judicial officer determines that the presence of attorneys will be especially intimidating to the child witness. When attorneys are not allowed to be present for in camera interviews of a child, the presiding judicial officer shall, unless otherwise agreed by the parties, have the interview electronically or stenographically recorded and make the recording available to the attorneys before the evidentiary hearing resumes. Under exceptional circumstances, the presiding judicial officer may elect not to make the recording available to the attorneys but must place the basis for a finding of exceptional circumstances on the record. Under these exceptional circumstances, the recording only will be available for review by the Supreme Court of Appeals. When attorneys are present for an in camera interview of a child, the presiding judicial officer may, before the interview, require the attorneys to submit questions for the presiding judicial officer to ask the child witness rather than allow the attorneys to question the child directly, and the presiding judicial officer may require the attorney to sit in an unobtrusive manner during the in camera interview.

**(c) Sealing of Child's Testimony.** If an interview was recorded and disclosed to the attorneys, the record of the child's testimony thereafter shall be sealed and shall not be opened unless:

- (1) Ordered by the presiding judicial officer for good cause shown; or
- (2) For purposes of appeal.

## **WISCONSIN**

### **WIS. STAT. § 906.01 (2011). General rule of competency**

Every person is competent to be a witness except as provided by ss. 885.16 and 885.17 or as otherwise provided in these rules.

## **WYOMING**

### **WYO. R. EVID. 601 (2010). General rule of competency**

Every person is competent to be a witness except as otherwise provided in the rules.

## **American Territories**

### **AMERICAN SAMOA**

### **GUAM**

### **PUERTO RICO**

#### **P.R. LAWS ANN. tit. 24, § 6158b (2008). Presumption of rehabilitative potential; obligation to provide mental healthcare services to minors who so require**

It is presumed that all minors are mentally competent, except when otherwise found by the court. The judicial finding of disability under § 2342 of Title 31, shall be distinct and separate from the judicial proceeding to determine whether a minor should be subject to involuntary placement. It shall be presumed that all minors with mental disorders have the potential to recover and be rehabilitated by receiving mental healthcare services befitting their diagnosis and severity of their symptoms and signs. In order to accomplish the foregoing, all direct or indirect mental healthcare service providers are hereby placed under the obligation to promptly address any claim for services regarding this population.

#### **P.R. LAWS ANN. tit. 32, Rule 36 (2008). Competency**

Every person is competent to be a witness, except as otherwise provided by these rules or by statute.

## **VIRGIN ISLANDS**

### **V.I. CODE ANN. tit. 5, § 3510 (2009). Videotaped testimony of minors who are the victims of sexual and child abuse**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participated in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and his attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If

an appeal is filed, the videotape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

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

(g) When the court orders that the testimony of a minor may be taken in the testimonial room, nothing in this section shall prohibit the court from ordering the minor to be brought into the courtroom for a limited purpose, including the identification of the defendant or defendants, as the court deems necessary.

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

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

## **FEDERAL LEGISLATION**

### **FED. R. EVID. 601 (2010). General rule of competency**

Every person is competent to be a witness except as otherwise provided in these rules. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.

### **18 U.S.C.S. § 3509 (2009). Child victims' and child witnesses' rights**

**(a) Definitions.**--For purposes of this section--

**(1)** the term “adult attendant” means an adult described in subsection (i) who accompanies a child throughout the judicial process for the purpose of providing emotional support;

**(2)** the term “child” means a person who is under the age of 18, who is or is alleged to be--

**(A)** a victim of a crime of physical abuse, sexual abuse, or exploitation; or

**(B)** a witness to a crime committed against another person;

**(3)** the term “child abuse” means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

**(4)** the term “physical injury” includes lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

**(5)** the term “mental injury” means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

**(6)** the term “exploitation” means child pornography or child prostitution;

**(7)** the term “multidisciplinary child abuse team” means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse;

**(8)** the term “sexual abuse” includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

**(9)** the term “sexually explicit conduct” means actual or simulated--

**(A)** sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

**(B)** bestiality;

**(C)** masturbation;

**(D)** lascivious exhibition of the genitals or pubic area of a person or animal; or

**(E)** sadistic or masochistic abuse;



**(10)** the term “sex crime” means an act of sexual abuse that is a criminal act;

**(11)** the term “negligent treatment” means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

**(12)** the term “child abuse” does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

**(b) Alternatives to live in-court testimony.--**

**(1) Child's live testimony by 2-way closed circuit television.--**

**(A)** In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, or a guardian ad litem appointed under subsection (h) may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed circuit television. The person seeking such an order shall apply for such an order at least 7 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

**(B)** The court may order that the testimony of the child be taken by closed-circuit television as provided in subparagraph (A) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

**(i)** The child is unable to testify because of fear.

**(ii)** There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.

**(iii)** The child suffers a mental or other infirmity.

**(iv)** Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

**(C)** The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child of one or more of the factors described in subparagraph (B) is so substantial as to justify an order under subparagraph (A), the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

**(D)** If the court orders the taking of testimony by television, the attorney for the Government and the attorney for the defendant not including an attorney pro se for a party shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are--

**(i)** the child's attorney or guardian ad litem appointed under subsection (h);

**(ii)** Persons necessary to operate the closed-circuit television equipment;

**(iii)** A judicial officer, appointed by the court; and

**(iv)** Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

**(2) Videotaped deposition of child.--(A)** In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under subsection (h) may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.

**(B)(i)** Upon timely receipt of an application described in subparagraph (A), the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

**(I)** The child will be unable to testify because of fear.

**(II)** There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

**(III)** The child suffers a mental or other infirmity.

**(IV)** Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(ii) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the court shall order that the child's deposition be taken and preserved by videotape.

(iii) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are--

(I) the attorney for the Government;

(II) the attorney for the defendant;

(III) the child's attorney or guardian ad litem appointed under subsection (h);

(IV) persons necessary to operate the videotape equipment;

(V) subject to clause (iv), the defendant; and

(VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

(iv) If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

(v) **Handling of videotape.**--The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(C) If at the time of trial the court finds that the child is unable to testify as for a reason described in subparagraph (B)(i), the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

(D) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(E) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

(F) The videotape of a deposition taken under this paragraph shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

**(c) Competency examinations.--**

**(1) Effect on Federal Rules of Evidence.--**Nothing in this subsection shall be construed to abrogate rule 601 of the Federal Rules of Evidence.

**(2) Presumption.--**A child is presumed to be competent.

**(3) Requirement of written motion.--**A competency examination regarding a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.

**(4) Requirement of compelling reasons.--**A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason.

**(5) Persons permitted to be present.--**The only persons who may be permitted to be present at a competency examination are--

(A) the judge;

(B) the attorney for the Government;

(C) the attorney for the defendant;

(D) a court reporter; and

(E) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

**(6) Not before jury.**--A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.

**(7) Direct examination of child.**--Examination of a child related to competency shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant including a party acting as an attorney pro se. The court may permit an attorney but not a party acting as an attorney pro se to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

**(8) Appropriate questions.**--The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

**(9) Psychological and psychiatric examinations.**--Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

**(d) Privacy protection.**--

**(1) Confidentiality of information.**--(A) A person acting in a capacity described in subparagraph (B) in connection with a criminal proceeding shall--

(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

(ii) disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

(B) Subparagraph (A) applies to--

(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the Government to provide assistance in the proceeding;

(ii) employees of the court;

(iii) the defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

(iv) members of the jury.

**(2) Filing under seal.**--All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court--

(A) the complete paper to be kept under seal; and

(B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

**(3) Protective orders.**--(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may--

(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

(ii) provide for any other measures that may be necessary to protect the privacy of the child.

**(4) Disclosure of information.**--This subsection does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

**(e) Closing the courtroom.**--When a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate. Such an order shall be narrowly tailored to serve

the Government's specific compelling interest.

**(f) Victim impact statement.**--In preparing the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. A guardian ad litem appointed under subsection (h) shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. A guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

**(g) Use of multidisciplinary child abuse teams.--**

**(1) In general.**--A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the Government shall consult with the multidisciplinary child abuse team as appropriate.

**(2) Role of multidisciplinary child abuse teams.**--The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including--

**(A)** medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

**(B)** telephone consultation services in emergencies and in other situations;

**(C)** medical evaluations related to abuse or neglect;

**(D)** psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;

**(E)** expert medical, psychological, and related professional testimony;

**(F)** case service coordination and assistance, including the location of services available from public and private agencies in the community; and

(G) training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

**(h) Guardian ad litem.--**

**(1) In general.--**The court may appoint, and provide reasonable compensation and payment of expenses for, a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the court shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

**(2) Duties of guardian ad litem.--**A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. (The extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives.) A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

**(3) Immunities.--**A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties described in paragraph (2).

**(i) Adult attendant.--**A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

**(j) Speedy trial.--**In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of



fact and conclusions of law when granting a continuance in cases involving a child.

**(k) Stay of civil action.**--If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

**(l) Testimonial aids.**--The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

**(m) Prohibition on reproduction of child pornography.**--

**(1)** In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title) shall remain in the care, custody, and control of either the Government or the court.

**(2)(A)** Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title), so long as the Government makes the property or material reasonably available to the defendant.

**(B)** For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.