

Speedy Trial Statutes in Cases Involving Child Victims and Witnesses

Updated May 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 Westlaw. 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. CODE § 15-25-6 (2010). Actions to minimize length of proceedings stressful to child; considerations in ruling on motion for delay or continuance.

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

ALASKA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute may be found at: Alaska. R. Crim. Pro. Rule 45 (2010)

ARIZONA

ARIZ. REV. STAT. § 13-4435 (2011). Speedy trial; continuance; notice

A. In any criminal proceeding, the court, prosecutor and law enforcement officials shall take appropriate action to ensure a speedy trial for the victim.

B. The prosecutor shall make reasonable efforts to notify a victim of any request for a continuance, except that if the victim is represented by counsel who has filed a notice of appearance, the court, if the request for a continuance is in writing, shall make reasonable efforts to notify the victim's counsel in the same manner in which a party is notified.

C. A motion to continue shall be in writing unless the court makes a finding on the record that exigent circumstances exist to permit an oral motion.

D. The court shall grant a continuance only if extraordinary circumstances exist and the delay is indispensable to the interests of justice. A continuance may be granted only for the time necessary to serve the interests of justice.

E. Subsections B, C and D do not apply to justice of the peace and municipal courts.

F. Before ruling on a motion for a continuance, the court shall consider the victim's views and the victim's right to a speedy trial. If a continuance is granted, the court shall state on the record the specific reason for the continuance.

16A A. R. S. RULES CRIM. PROC., RULE 8.1 (2011). Priorities in scheduling criminal cases

a. Priority of Criminal Trials. The trial of criminal cases shall have priority over the trial of civil cases. Any scheduling conflicts will be resolved in accordance with Rule 5(j), Uniform Rules of Practice.

b. Preferences. The trial of defendants in custody and defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.

c. Duty of Prosecutor. The prosecutor shall advise the court of facts relevant to determining the order of cases on the calendar.

d. Duty of Defense Counsel. The defendant's counsel shall advise the court of the impending expiration of time limits in the defendant's case. Failure to do so may result in sanctions and should be considered by the court in determining whether to dismiss an action with prejudice pursuant to Rule 8.6.

e. Extraordinary Cases. Within twenty-five days after the arraignment in Superior Court either party may apply in writing to the court for a hearing to establish extraordinary circumstances requiring the suspension of Rule 8 in a particular case. Within five days of the receipt of the application the court shall hold the hearing and make findings of fact. The findings shall be immediately transmitted to the Chief Justice who may approve or decline to approve them. Upon approval of the findings by the Chief Justice, they shall be returned to the trial court where upon motion of either party the trial court may suspend the provisions of Rule 8 and reset the trial date for a time certain.

16A A. R. S. RULES CRIM. PROC., RULE 8.7 (2011). Acceleration of trial

Where special circumstances relating to the victim so warrant, the court may accelerate

the trial to the earliest possible date that is consistent with the defendant's right to a fair trial. If necessary, the presiding judge shall assign another judge of the court to preside at trial in order to insure that the trial commences as scheduled.

16A A. R. S. RULES CRIM. PROC., RULE 39 (2011). Victims' Rights

a. Definitions.

1. *Victim.* As used in this rule, a “victim” is defined in accordance with the definition provided in the Arizona Revised Statutes. With regard to the rights to be notified and to be heard pursuant to this rule, a person ceases to be a victim upon the acquittal of the defendant or upon the dismissal of the charges against the defendant as a final disposition. If a victim is in custody for an offense, the victim's right to be heard pursuant to this rule is satisfied through affording the victim the opportunity to submit a written statement, where legally permissible and in the discretion of the court. A victim not in custody may exercise his or her right to be heard pursuant to this rule by appearing personally, or where legally permissible and in the discretion of the court, by submitting a written statement, an audiotape or videotape. The victims' rights of any corporation, partnership, association, or other similar legal entity shall be limited as provided by statute.

2. *Criminal Proceeding.* As used in this rule, a “criminal proceeding” is defined as a trial, hearing, (including hearing before trial), oral argument, or other matter scheduled and held before a trial court at which the defendant has the right to be present, or any post-conviction proceeding.

b. Victims' Rights. These rules shall be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other rule in these Rules of Criminal Procedure, a victim shall have and be entitled to assert each of the following rights:

1. The right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
2. The right to be provided with written notice regarding those rights available to the victim under this rule and under any other provision of law.
3. Upon request, the right to be given reasonable notice of the date, time and place of any criminal proceeding.
4. The right to be present at all criminal proceedings.
5. The right to be notified of any escape of the defendant.
6. Upon request, the right to be informed of any release or proposed release of the defendant, whether that release be before expiration of the sentence or by expiration of

the sentence, and whether it be permanent or temporary in nature.

7. Upon request, the right to confer with the prosecution, prior to trial when applicable, in connection with any decision involving the preconviction release of the defendant, a plea bargain, a decision not to proceed with a criminal prosecution, dismissal of charges, plea or sentence negotiation, a pretrial diversion program, or other disposition prior to trial; the rights to be heard at any such proceeding and at sentencing.

8. The right to be accompanied at any interview, deposition, or judicial proceeding by a parent or other relative, except persons whose testimony is required in the case. If the court finds, under this sub§ 8 or sub§ 9 below, that a party's claim that a person is a prospective witness is not made in good faith, it may impose any sanction it finds just, including holding counsel in contempt.

9. The right to name an appropriate support person, including a victim's caseworker, to accompany the victim at any interview, deposition, or court proceeding, except where such support person's testimony is required in the case.

10. The right to require the prosecutor to withhold, during discovery and other proceedings, the home address and telephone number of the victim, the address and telephone number of the victim's place of employment, and the name of the victim's employer, providing, however, that for good cause shown by the defendant, the court may order that such information be disclosed to defense counsel and may impose such further restrictions as are appropriate, including a provision that the information shall not be disclosed by counsel to any person other than counsel's staff and designated investigator and shall not be conveyed to the defendant.

11. The right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant. After charges are filed, defense initiated requests to interview the victim shall be communicated to the victim through the prosecutor. The victim's response to such requests shall also be communicated through the prosecutor. If there is any comment or evidence at trial regarding the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview under the Arizona Constitution. For purposes of a pretrial interview, a peace officer shall not be considered a victim if the act that would have made him or her a victim occurs while the peace officer is acting in the scope of his or her official duties.

12. At any interview or deposition to be conducted by defense counsel, the right to condition the interview or deposition on any of the following:

(i) Specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that the interview or deposition be held at the victim's home, at the prosecutor's office, or in an appropriate location in the courthouse.

(ii) The right to terminate the interview or deposition if it is not conducted in a dignified and professional matter.

13. The right to a copy of any pre-sentence report provided the defendant except those parts excised by the court or made confidential by the law.

14. The right to be informed of the disposition of the case.

15. The right to a speedy trial or disposition and prompt and final conclusion of the case after conviction and sentence.

16. The right to be informed of a victim's right to restitution upon conviction of the defendant, of the items of loss included thereunder, and of the procedures for invoking the right.

c. Assistance and Representation.

1. The victim shall also have the right to the assistance of the prosecutor in the assertion of the rights enumerated in this rule or otherwise provided for by law. The prosecutor shall have the responsibility to inform the victim, as defined by these rules, of the rights provided by these rules and by law, and to provide the victim with notices and information which the victim is entitled by these rules and by law to receive from the prosecutor.

2. The prosecutor shall have standing in any judicial proceeding, upon the victim's request, to assert any of the rights to which the victim is entitled by this rule or by any other provision of law.

3. In any event of any conflict of interest between the state or any other prosecutorial entity and the wishes of the victim, the prosecutor shall have the responsibility to direct the victim to the appropriate legal referral, legal assistance, or legal aid agency.

4. In asserting any of the rights enumerated in this rule or provided for in any other provision of the law, the victim shall also have the right to engage and be represented by personal counsel of his or her choice.

d. Victims Duty to Implement Rights. Any victim desiring to claim the notification rights and privileges provided by this rule must provide his or her full name, address and telephone number to the entity prosecuting the case and to any other entity from which notice is requested by the victim. If the victim is a corporation, partnership, association or other legal entity and has requested notice of the hearings to which it is entitled by law, that legal entity shall promptly designate a representative by giving notice thereof, including such representative's address and telephone number, to the prosecutor and to any other entity from which notice is requested by the victim. Upon receipt of such notice, the prosecutor shall notify the defendant and the court thereof. Thereafter, only such a designated representative shall be entitled to assert a claim to victims' rights on

behalf of that legal entity. Any change in designation must be provided in writing to the prosecutor and to any other entity from which notice is requested by the victim.

e. Waiver. The rights and privileges enumerated in this rule may be waived by any victim. Failure to keep the address and telephone number current or to designate such representative of a legal entity shall be considered as a waiver of notification rights under this rule.

f. Court Enforcement of Victim Notice Requirements

1. At the commencement of any proceeding which takes place more than seven days after the filing of charges by the prosecutor and at which the victim has a right to be heard, the court shall inquire of the prosecutor or otherwise ascertain whether the victim has requested notice and been notified of the proceeding.

2. If the victim has been notified as requested, the court shall further inquire of the prosecutor whether the victim is present. If the victim is present and the prosecutor advises the court that the victim wishes to be addressed by the court, the court shall inquire whether the victim has been advised by the prosecutor of the rights conferred by this rule. If the victim has not been so advised, the court shall recess the hearing and the prosecutor shall immediately comply with subsection (c)(1) of this rule. The court shall also provide the victim with a written list of the victims' rights enumerated in subsection (b) of this rule.

3. If the victim has not been notified as requested, the court should not proceed unless public policy, the specific provisions of a statute, or the interests of due process otherwise require. In the absence of such considerations the court shall have discretion to reconsider any ruling made at a proceeding of which the victim did not receive notice as requested.

g. Appointment of Victim's Representative. Upon request, the court shall appoint a representative for a minor victim or a representative for an incapacitated victim, as provided by ARS § 13-4403. Notice of appointment of such representative shall be given by the court to the parties.

ARKANSAS

ARK. CODE ANN. § 16-10-130 (2010). Criminal victim under fourteen

Notwithstanding any rule of court to the contrary and in furtherance of the purposes of Arkansas Rule of Criminal Procedure 27.1, all courts of this state having jurisdiction of criminal offenses, except for extraordinary circumstances, shall give precedence to the trials of criminal offenses over other matters before the court, civil or criminal, when the alleged victim is a person under the age of fourteen (14).

ARK. CODE ANN. § 16-80-102 (2010). Precedence given to criminal trials when victim under age of 14

Notwithstanding any rule of court to the contrary and in furtherance of the purposes of the Arkansas Rules of Criminal Procedure, Rule 27.1, all courts of this state having jurisdiction of criminal offenses, except for extraordinary circumstances, shall give precedence to the trials of criminal offenses over other matters before the court, civil or criminal, when the alleged victim is a person under the age of fourteen (14) years.

CALIFORNIA

CAL. PENAL CODE § 1048 (2011). Calendar; priorities; minors, persons over 70, or disabled adults as victims or witnesses to crimes; sex offenses committed by use of force, violence, or threats; continuances

(a) The issues on the calendar shall be disposed of in the following order, unless for good cause the court directs an action to be tried out of its order:

- (1) Prosecutions for felony, when the defendant is in custody.
- (2) Prosecutions for misdemeanor, when the defendant is in custody.
- (3) Prosecutions for felony, when the defendant is on bail.
- (4) Prosecutions for misdemeanor, when the defendant is on bail.

(b) Notwithstanding subdivision (a), all criminal actions in which (1) a minor is detained as a material witness or is the victim of the alleged offense, (2) a person who was 70 years of age or older at the time of the alleged offense or is a dependent adult, as defined in subdivision (d) of Section 368, was a witness to, or is the victim of, the alleged offense or (3) any person is a victim of an alleged violation of Section 261, 262, 264.1, 273a, 273d, 285, 286, 288, 288a, or 289, committed by the use of force, violence, or the threat thereof, shall be given precedence over all other criminal actions in the order of trial. In those actions, continuations shall be granted by the court only after a hearing and determination of the necessity thereof, and in any event, the trial shall be commenced within 30 days after arraignment, unless for good cause the court shall direct the action to be continued, after a hearing and determination of the necessity of the continuance, and states the findings for a determination of good cause on the record.

(c) Nothing in this section shall be deemed to provide a statutory right to a trial within 30 days.

COLORADO

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute may be found at: Colo. Rev. Stat. Ann. 18-1-405 (2011)

CONNECTICUT

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute may be found at: Conn. Gen. Stat. Ann. 54-82c (2011)

DELAWARE

DEL. CODE ANN. TIT. 11, § 5133 (2011). Expedited proceedings

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

DEL. CODE ANN. TIT. 11, § 9404 (2011). Victim's interest in speedy prosecution; child victim or witness

(a) The court shall consider the interest of the victim in a speedy prosecution.

(b) Proceedings shall be expedited in cases involving a child victim or witness particularly in child abuse and sexual abuse cases.

DISTRICT OF COLUMBIA

D.C. CODE § 23-1903 (2011). Crime victim privacy and security

(a) Before, during, and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that may occur between the victim and the victim's family with the accused or the accused's or respondent's family, and defense witnesses.

(b) The accused or defendant, the accused's or defendant's attorney or another person acting on behalf of the accused or defendant shall clearly identify himself or herself as being, representing or acting on behalf of the accused, defendant, or respondent in any contact with the victim.

(c) A responsible official shall arrange for any crime victim's property being held for evidentiary purposes to be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(d) In a proceeding in which a child is called to give testimony, on motion by the attorney for the government or the victim's legal or court-appointed representative, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall 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 be involved with the criminal justice system. 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 witness.

FLORDIA

FLORIDA STAT. ANN. 918.0155 (2011). Expeditious disposition of particular criminal cases involving a child under age 16

Every criminal case prosecuted under chapter 782, chapter 784, chapter 787, chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847 which involves the abuse of a child or unlawful sexual contact or acts performed in the presence of, with, or upon a child under the age of 16 shall be heard and disposed of as expeditiously as possible.

GEORGIA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” statute can be found at: Ga. Code Ann. 17-8-33 (2010)

HAWAII

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statutes can be found at Hi. Const. Art. 1 § 14 (2010) & Hi. R. Penal P. R. 50 (2011)

IDAHO

IDAHO CODE ANN. § 19-110 (2011). Expedition of court proceedings

In all criminal cases and juvenile fact finding hearings that involve a child victim or witness, the court and the prosecuting attorney shall take all appropriate actions to ensure a speedy trial in order to minimize the length of time the child must endure the stress of his or her involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of any proceeding, the court shall consider and give weight to any adverse impact that the requested delay or continuance may have on the well-being of a child victim or witness, and findings of fact shall be made on this issue.

ILLINOIS

725 I.L.C.S. 5/114-4 (2010). Motion for continuance

§ 114-4. Motion for continuance. (a) The defendant or the State may move for a continuance. If the motion is made more than 30 days after arraignment the court shall require that it be in writing and supported by affidavit.

(b) A written motion for continuance made by defendant more than 30 days after arraignment may be granted when:

- (1) Counsel for the defendant is ill, has died, or is held to trial in another cause; or
- (2) Counsel for the defendant has been unable to prepare for trial because of illness or because he has been held to trial in another cause; or
- (3) A material witness is unavailable and the defense will be prejudiced by the absence of his testimony; however, this shall not be a ground for continuance if the State will stipulate that the testimony of the witness would be as alleged; or
- (4) The defendant cannot stand trial because of physical or mental incompetency; or
- (5) Pre-trial publicity concerning the case has caused a prejudice against defendant on the part of the community; or
- (6) The amendment of a charge or a bill of particulars has taken the defendant by surprise and he cannot fairly defend against such an amendment without a continuance.

(c) A written motion for continuance made by the State more than 30 days after arraignment may be granted when:

- (1) The prosecutor assigned to the case is ill, has died, or is held to trial in another cause; or
 - (2) A material witness is unavailable and the prosecution will be prejudiced by the absence of his testimony; however this shall not be a ground for continuance if the defendant will stipulate that the testimony of the witness would be as alleged; or
 - (3) Pre-trial publicity concerning the case has caused a prejudice against the prosecution on the part of the community.
- (d) The court may upon the written motion of either party or upon the court's own motion order a continuance for grounds not stated in subsections (b) and (c) of this Section if he finds that the interests of justice so require.

(e) All motions for continuance are addressed to the discretion of the trial court and shall be considered in the light of the diligence shown on the part of the movant. Where 1 year has expired since the filing of an information or indictments, filed after January 1, 1980, if the court finds that the State has failed to use due diligence in bringing the case to trial, the court may, after a hearing had on the cause, on its own motion, dismiss the information or indictment. Any demand that the defendant had made for a speedy trial under Section 103-5 of this code shall not abate if the State files a new information or the grand jury reindicts in the cause.

After a hearing has been held upon the issue of the State's diligence and the court has found that the State has failed to use due diligence in pursuing the prosecution, the court may not dismiss the indictment or information without granting the State one more court date upon which to proceed. Such date shall be not less than 14 nor more than 30 days from the date of the court's finding. If the State is not prepared to proceed upon that date, the court shall dismiss the indictment or information, as provided in this Section.

(f) After trial has begun a reasonably brief continuance may be granted to either side in the interests of justice.

(g) During the time the General Assembly is in session, the court shall, on motion of either party or on its own motion, grant a continuance where the party or his attorney is a member of either house of the General Assembly whose presence is necessary for the full, fair trial of the cause and, in the case of an attorney, where the attorney was retained by the party before the cause was set for trial.

(h) This Section shall be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the State to a speedy, fair and impartial trial.

(i) Physical incapacity of a defendant may be grounds for a continuance at any time. If, upon written motion of the defendant or the State or upon the court's own motion, and after presentation of affidavits or evidence, the court determines that the defendant is physically unable to appear in court or to assist in his defense, or that such appearance would endanger his health or result in substantial prejudice, a continuance shall be granted. If such continuance precedes the appearance of counsel for such defendant the court shall simultaneously appoint counsel in the manner prescribed by Section 113-3 of this Act. Such continuance shall suspend the provisions of Section 103-5 of this Act, which periods of time limitation shall commence anew when the court, after presentation of additional affidavits or evidence, has determined that such physical incapacity has been substantially removed.

(j) In actions arising out of building code violations or violations of municipal ordinances caused by the failure of a building or structure to conform to the minimum standards of health and safety, the court shall grant a continuance only upon a written motion by the party seeking the continuance specifying the reason why such continuance should be granted.

(k) In prosecutions for violations of Section 10-1, 10-2, 12-13, 12-14, 12-14.1, 12-15 or 12-16 of the "Criminal Code of 1961" [FN1] involving a victim or witness who is a minor under 18 years of age, the court shall, in ruling on any motion or other request for a delay or continuance of proceedings, consider and give weight to the adverse impact the delay or continuance may have on the well-being of a child or witness.

(l) The court shall consider the age of the victim and the condition of the victim's health when ruling on a motion for a continuance.

INDIANA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: Ind. Const. Art. 1 § 12 (2011)

IOWA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: IA R 2.33 (2011).

KANSAS

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: Kan. Stat. Ann. § 22-3401 (2010).

KENTUCKY

KY. REV. STAT. ANN. § 421.510 (2010). Speedy trial where child victim is involved

(1) Where the victim is less than sixteen (16) years old and the crime is a sexual offense including violations of KRS 510.040 to 510.150, 530.020, 530.064(1)(a), 530.070, 531.310, 531.320, and 531.370, a speedy trial may be scheduled as provided in subsection (2) of this section.

(2) The court, upon motion by the attorney for the Commonwealth for a speedy trial, shall set a hearing date on the motion within ten (10) days of the date of the motion. If the motion is granted, the trial shall be scheduled within ninety (90) days from the hearing

date.

(3) In ruling on any motion or other request for a delay or continuance of the proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

LOUISIANA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: LA C.Cr.P. Art. 701

MAINE

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: Me. Const. Art. 1 § 6 (2011)

MARYLAND

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: Md. Crim. Proc. § 6-103 (2011)

MASSACHUSETTS

MASS. GEN. LAWS ANN. 278, § 16F (2011). Expedited Trial for Sex Crimes Involving Minor Victims or Witnesses

In any criminal proceeding involving an alleged sex crime perpetrated upon a minor child, or in which a minor child is expected to testify as a witness to a sex crime, the court shall, in order to minimize stress on such child, take action to expedite trial and give precedence to the case over any other case; provided, however, that nothing in this

section shall be construed to mean that trial shall be expedited if it is not in the best interests of the child.

When a motion or a request for a continuance is made the prosecutor shall file an impact statement which specifies whether the commonwealth agrees to the request for continuance, whether the child or the child's representative agrees to such request, and the effect, if any, the granting of the continuance will have on the child. In ruling on any motion or request for continuance or other delay, the court shall consider and give weight to any possible adverse impact that a delay or continuance may have on the child. Prior to issuing an order on a motion for continuance or delay, the court shall make written findings of fact concerning the impact on the child of continuing or delaying the case.

MICHIGAN

MICH. COMP. LAWS § 780.759 (2011). Speedy trial; requirements; hearing; notice; time of trial

Sec. 9. (1) As provided in subsection (2), a speedy trial may be scheduled for any case in which the victim is declared by the prosecuting attorney to be any of the following:

- (a) A victim of child abuse, including sexual abuse or any other assaultive crime.
- (b) A victim of criminal sexual conduct in the first, second, or third degree or of an assault with intent to commit criminal sexual conduct involving penetration or to commit criminal sexual conduct in the second degree.
- (c) Sixty-five years of age or older.
- (d) An individual with a disability that inhibits the individual's ability to attend court or participate in the proceedings.

(2) The chief judge, upon motion of the prosecuting attorney for a speedy trial for a case described in subsection (1), shall set a hearing date within 14 days of the date of the filing of the motion. Notice shall be made pursuant to the Michigan court rules. If the motion is granted, the trial shall not be scheduled earlier than 21 days from the date of the hearing.

MINNESOTA

51 MINN. STAT. ANN., CT. APP. R. 1 (2010): Scheduling cases (Court of Appeals Specific)

Placement on the calendar is in order of filing, except that cases involving child custody or juvenile protection will be given priority. Other cases may be expedited by rule, by statute, or by motion, based on a showing of good cause. Cases may be scheduled as soon as one responsive brief is filed.

If a case pending in the Supreme Court will be dispositive of a case pending before the Court of Appeals, the Chief Judge may order that scheduling be deferred until the Supreme Court has acted. Counsel should inform the court if they believe a case may be controlled by a case pending in the Supreme Court.

Counsel must advise the clerk, in writing before the case is scheduled, of any conflicts which will limit their availability for argument, and counsel must continue to file updated notices until the case has been scheduled. The Clerk of the Appellate Courts will notify counsel approximately one month in advance of the conference or hearing date, specifying the location of oral argument, if any, and the identity of the panel members assigned to the case.

MINN. CONST. ART. 1 § 6: Rights of accused in criminal prosecutions

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law. In all prosecutions of crimes defined by law as felonies, the accused has the right to a jury of 12 members. In all other criminal prosecutions, the legislature may provide for the number of jurors, provided that a jury have at least six members. The accused shall enjoy the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel in his defense.

MISSISSIPPI

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: Miss. Code Ann. § 99-17-1 (2010) & Miss. Code Ann. § 99-43-19 (2010)

MISSOURI

MO. REV. STAT. § 491.710 (2011). Hearings involving child witnesses given docket priority--delays or continuances granted, when

In all criminal cases and juvenile court hearings under chapter 211, RSMo, involving a child victim or witness, as defined in section 491.678 or 491.696, the court shall give docket priority. The court and the prosecuting or circuit attorney shall take appropriate action to insure a speedy trial in order to minimize the length of time the child must endure the stress of his or her involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

MONTANA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: Mt. Const. Art. 2 § 24 (2008)

NEBRASKA

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. § 62D.300 (2010). Power of juvenile court to expedite proceeding involving act committed against or witnessed by person less than 16 years of age

1. Upon the request of the district attorney, the juvenile court may expedite any proceeding conducted pursuant to the provisions of this title that involves an act committed against a person who is less than 16 years of age or an act witnessed by a person who is less than 16 years of age.
2. In determining whether to expedite a proceeding, the juvenile court may consider the effect that a delay in the proceeding may have on the mental or emotional health or well-being of the person who is less than 16 years of age.

NEV. REV. STAT. § 62D.320 (2010). Continuances

1. The juvenile court may continue any proceeding conducted pursuant to the provisions of this title for a reasonable period to receive oral and written reports or other competent, material and relevant evidence that may be helpful in determining the issues presented.
2. If a proceeding involves an act committed against a person who is less than 16 years of age or an act witnessed by a person who is less than 16 years of age, the juvenile court:
 - (a) May consider any adverse effects that a continuance of the proceeding may have on the mental or emotional health or well-being of the person who is less than 16 years of age; and
 - (b) May deny a continuance of the proceeding if the delay will adversely affect the mental or emotional health or well-being of the person who is less than 16 years of age.
3. If the juvenile court orders a continuance of a proceeding, the juvenile court shall make an appropriate order for the detention or temporary care of the child who is the subject of the proceeding during the period of the continuance.

NEV. REV. STAT. § 174.515 (2010). Postponement: When and how ordered; court may require depositions of and undertakings by witnesses; court may consider adverse effect upon child who is victim or witness

1. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party by affidavit, direct the trial to be postponed to another day. In all cases where a continuance is granted upon the application of either party the court may require, as a condition of granting such continuance, that the party applying therefor consent to taking, forthwith, or at any time to be fixed by the court, of the deposition of any witness summoned by the opposite party whose deposition has not previously been taken.

2. The court also may require all witnesses to enter into undertakings in such sum as the court may order, with or without sureties, to appear and testify on the day to which the case may be continued, but any witness who is unable to procure sureties for the witness's attendance may be discharged on the witness's own recognizance, upon giving the witness's deposition in the manner prescribed in NRS 174.175 and 174.205.

3. If the trial involves acts committed against a child less than 16 years of age or involving acts witnessed by a child less than 16 years of age, the court may consider any adverse effect a continuance or other postponement might have upon the mental or emotional health or well-being of the child. The court may deny a continuance or other postponement if the delay will adversely affect the mental or emotional health or well-being of the child.

NEV. REV. STAT. § 174.519 (2010). Request for preference in setting date for trial where child is victim or witness; court may consider effect on child of delay in commencement of trial

If the trial involves acts committed against a child less than 16 years of age or involving acts witnessed by a child less than 16 years of age, the prosecuting attorney shall request the court, in its discretion, to give preference in setting a date for the trial of the defendant. In making a ruling, the court may consider the effect a delay in the commencement of the trial might have on the mental or emotional health or well-being of the child.

NEW HAMPSHIRE

N.H. REV. STAT. ANN. § 632-A:9 (2011). Speedy trial

In any action under this chapter involving a victim 16 years of age or under or a victim 65 years of age or older, the court and the department of justice shall take appropriate action to ensure a speedy trial to minimize the length of time the victim must endure the stress of involvement in the proceeding. In ruling on any motion or request for a delay or continuance of proceedings, the court shall consider any adverse impact the delay or continuance may have on the well-being of the victim or any witness who is 16 years of age or under or 65 years of age or older. This provision establishes a right to a speedy

trial for the victim and shall not be construed as creating any additional rights for the defendant.

NEW JERSEY

N.J. REV. STAT. ANN. § 2A:163-5 (2011). Criminal cases involving child victim; speedy trials

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

NEW MEXICO

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: N.M. Const. Art. 2 § 14 (2010)

NEW YORK

N.Y. EXEC. LAW § 642-a (2011). Fair treatment as child victims as witnesses

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

1. To minimize the number of times a child victim is called upon to recite the events of the case and to foster a feeling of trust and confidence in the child victim, whenever practicable and where one exists, a multi-disciplinary team as established pursuant to subdivision six of section four hundred twenty-three of the social services law and/or a child advocacy center shall be used for the investigation and prosecution of child abuse cases involving abuse of a child, as described in paragraph (i), (ii) or (iii) of subdivision (e) of section one thousand twelve of the family court act, sexual abuse of a child or the

death of a child.

2. Whenever practicable, the same prosecutor should handle all aspects of a case involving an alleged child victim.
3. To minimize the time during which a child victim must endure the stress of his involvement in the proceedings, the court should take appropriate action to ensure a speedy trial in all proceedings involving an alleged child victim. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of the child.
4. The judge presiding should be sensitive to the psychological and emotional stress a child witness may undergo when testifying.
5. In accordance with the provisions of article sixty-five of the criminal procedure law, when appropriate, a child witness as defined in subdivision one of section 65.00 of such law should be permitted to testify via live, two-way closed-circuit television.
6. In accordance with the provisions of section 190.32 of the criminal procedure law, a person supportive of the “child witness” or “special witness” as defined in such section should be permitted to be present and accessible to a child witness at all times during his testimony, although the person supportive of the child witness should not be permitted to influence the child's testimony.
7. A child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings during his testimony.

NORTH CAROLINA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: N.C. Gen. Stat. Ann. § 15-10 (2011)

NORTH DAKOTA

N.D. CENT. CODE § 12.1-35-05 (2009). Prompt disposition

In all criminal cases and juvenile proceedings involving a child victim or witness, the court and the state's attorney shall take appropriate action to ensure a speedy trial in order

to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

OHIO

Lacks child victim / witness specific “Speedy Trial” statute

*General “Speedy Trial” Statute can be found at: **Ohio Rev. Code Ann. § 2945.71 (2011)***

OKLAHOMA

Lacks child victim / witness specific “Speedy Trial” statute

*General “Speedy Trial” Statute can be found at: **22 Okla. Stat. Ann. § 13 (2011)***

OREGON

OR. REV. STAT. § 44.545 (2011). 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

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: Pa. R. Crim. Pro. 600 (2011)

RHODE ISLAND

R.I. GEN. LAWS § 11-37-11.2 (2010). Speedy trial

In any action under this chapter involving a child victim age fourteen (14) years or under or a victim sixty-five (65) years or older, the court and the attorney general's office shall take appropriate action to ensure a speedy trial to minimize the length of time the victim must endure the stress of involvement in the proceeding. In ruling on any motion or request for a delay or continuance of proceedings, the court shall consider any adverse impact the delay or continuance may have on the well-being of the victim or witness. This provision establishes a right to a speedy trial to the victim and shall not be construed as creating any additional rights to the defendant.

SOUTH CAROLINA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: S.C. Const. Art. 1 § 14 (2010)

SOUTH DAKOTA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: S.D. Const. Art. 6 § 7 (2010)

TENNESSEE

TENN. CODE ANN. § 40-38-116 (2010). Victim's right to a speedy trial

(a) In any criminal proceeding in which a continuance is requested, the court shall consider the victim's views and the victim's right to a speedy trial. If the continuance is granted over the victim's objection, the court shall state on the record the reason for the continuance and the procedures that have been taken to avoid further delays.

(b) In determining a date for any criminal trial or other important criminal hearing, the court shall consider the interests of the victim's right to a speedy trial

TEXAS

VERNON'S ANN. TEXAS C. C. P. ART. 32A.01 (2009). Trial Priorities

Insofar as is practicable, the trial of a criminal action shall be given preference over trials of civil cases, and the trial of a criminal action against a defendant who is detained in jail pending trial of the action shall be given preference over trials of other criminal actions.

[Note: Appeals Court has held that child victims MAY take precedence over defendants currently in custody, Cain v. State, 747 S.W.2d 514 (Tex. App. Fort Worth 1988)]

TX R WEBB CTY RULE 6.22 (2011). Speedy Trial (Webb County Only)

A. Justice demands the speedy disposition of all criminal cases.

1. *Felony*. All felony cases should be set for trial within twelve (12) months of arrest or service and return of indictment, whichever is earlier.

2. *Misdemeanors*. Misdemeanor cases shall be set for trial within six (6) months of arrest of filing of complaint, whichever is earlier. See the local practices adopted by the Webb County Court at Law.

3. *Order of Trial*. The trial preference for docketed cases shall be as follows:

a. The Defendant is incarcerated in the Webb County Jail;

- b. A child is the victim;
- c. A crime of violence is alleged;
- d. All other cases will be tried in order of their age, the oldest being tried first.

4. *Revocations.* Probation revocation cases shall be tried or pled within ninety (90) days from filing after service.

B. It is the policy of the District Courts of Webb County to dispose of cases as quickly as possible consistent with justice.

- 1. The courts of record in Webb County will work with the justice of the peace courts to encourage a monthly call of the docket for all defendants in jail awaiting trial who have not been charged by indictment or by information.
- 2. The courts of record in Webb County will work with the Personal Bond Program Coordinator and the Webb County Public Defender's Office to encourage them to interview defendants in jail within 2 days of arrest.

UTAH

UTAH CODE ANN. § 77-37-1 (2010). Legislative Intent

(1) The Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In this chapter, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.

(2) The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children's participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

UTAH CODE ANN. § 77-37-3 (2010). Bill of Rights

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

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

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

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

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

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

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

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

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

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

(j) Victims of sexual offenses have a right to be informed of their right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the convicted sexual offender for HIV infection as provided in Section 76-5-502. The law enforcement office where the sexual offense is reported shall have the responsibility to inform victims of this right.

(2) Informational rights of the victim under this chapter are based upon the victim providing the victim's current address and telephone number to the criminal justice agencies involved in the case.

VERMONT

VT. STAT. ANN. tit. 13, § 5312 (2011). Victim's interest in speedy prosecution

(a) The prosecutor's office shall make every effort to inform a victim of a listed crime of any pending motion that may substantially delay any deposition, change of plea, trial, sentencing hearing, or restitution hearing. The prosecutor shall inform the court of how the victim was notified and the victim's position on the motion, if any. In the event the victim was not notified, the prosecutor shall inform the court why notification did not take place.

(b) If a victim of a listed crime objects to a delay, the court shall consider the victim's objection.

VIRGINIA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: Va. Const. Art. 1 § 8 (2011)

WASHINGTON

WASH. REV. CODE § 10.46.085 (2011). Continuances not permitted in certain cases

When a defendant is charged with a crime which constitutes a violation of RCW 9A.64.020 or chapter 9.68, 9.68A, or 9A.44 RCW, and the alleged victim of the crime is a person under the age of eighteen years, neither the defendant nor the prosecuting attorney may agree to extend the originally scheduled trial date unless the court within its discretion finds that there are substantial and compelling reasons for a continuance of the trial date and that the benefit of the postponement outweighs the detriment to the victim. The court may consider the testimony of lay witnesses and of expert witnesses, if available, regarding the impact of the continuance on the victim.

WEST VIRGINIA

W.V. R. CHILD ABUSE AND NEGLECT P. RULE 7 (2011) Extensions of time and continuances

Except as provided for in Rule 5, extensions of time and continuances beyond the times specified in these rules or by other applicable law shall be granted only for good cause, regardless of whether the parties are in agreement. If a continuance is granted in accordance with this rule, the court shall set forth in a written order its reasons for finding good cause.

WISCONSIN

WIS. STAT. § 971.105 (2011). Child victims and witnesses; duty to expedite proceedings

In all criminal and delinquency cases, juvenile fact-finding hearings under s. 48.31 and juvenile dispositional hearings involving a child victim or witness, as defined in s. 950.02, the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of the child's involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

WYOMING

WYO. STAT. ANN. § 1-40-207 (2010). Victims; timing of trial of accused

(a) The court shall consider the victim's interest and circumstances when setting any date for trial or in granting or denying continuances.

(b) Nothing in this section shall infringe upon any rights of the accused in a criminal case or inhibit the ability of the prosecution and defense from entering into any agreement as to trial setting or negotiated disposition of any charge or charges pending against the defendant.

American Territories

AMERICAN SAMOA

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: A.S. Const. Art. 1 § 6 (2010)

GUAM

8 GUAM CODE ANN. CRIM. PROC. § 80.65 (2008). Expedited Trials of Sex Crimes Involving Minor Children as Victims or Witnesses; Continuance; Impact Statement.

In any criminal proceeding involving an alleged sex crime perpetrated upon a minor child, or in which a minor child is expected to testify as a witness to a sex crime, the court shall, in order to minimize stress on such child, take action to expedite trial and give precedence to the case over any other case; provided, however, that nothing in this Section shall be construed to mean that trial shall be expedited if it is not in the best interests of the child.

When a motion or a request for a continuance is made the prosecutor shall file an impact statement which specifies whether the prosecution agrees to the request for continuance, whether the child or the child's representative agrees to such request, and the effect, if any, the granting of the continuance will have on the child. In ruling on any motion or request for continuance or other delay, the court shall consider and give weight to any possible adverse impact that a delay or continuance may have on the child. Prior to issuing an order on a motion for continuance or delay, the court shall make written findings of fact concerning the impact on the child of continuing or delaying the case.

PUERTO RICO

PR ST T. 34 Ap. II. Rule 131.3 (2008). Witnesses who are minors; assistance during testimony

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

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

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

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

By petition of the Prosecutor, of any of the persons listed in subsection (1) of this rule, or on its own initiative, the court shall give priority to the case in which a minor is called to testify, on its calendar as well as on the order of the day, to reduce the time that the minor shall be exposed to the process. If the court has to continue the proceedings on a

subsequent date, it shall take into consideration the age of the minor and any adverse effect that such postponement could entail. The court shall make findings of fact and conclusions of law, in writing, when it opts to postpone the hearing of the case.—

VIRGIN ISLANDS

Lacks child victim / witness specific “Speedy Trial” statute

General “Speedy Trial” Statute can be found at: V.I. Organic Act § 3 (2010)

FEDERAL LEGISLATION

18 USCS § 3509 (2011). 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.