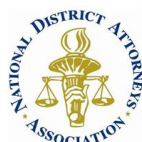


Case law & Statutory Compilation Regarding the Presence of Support Person for Child Witnesses

January 2013



Summary of Content

Testifying in court can be extremely traumatic for child victims of sexual assault.¹ Advocates for child abuse victims have attempted to make the experience less traumatic for children. One method used to reduce trauma is allowing a trusted person “support person” to accompany the child while testifying.

Only nine states do not have some form of precedent on the issue.² The vast majority of case law starting from 1904 to the present, have upheld the practice.³ Only in Hawaii have courts overturned convictions due to the potential of the practice to prejudice the jury against the defendant.⁴ In fact, many state legislators and the federal government have codified the practice in statutory form.⁵

Scope

This document is a comprehensive compilation of support person statutes and relevant case law from U.S. state, territorial, and the federal jurisdictions. It is up-to-date as of January 2013. The author purposefully excluded statutes only allowing support persons in the context of a child abuse victim testifying through an alternative method such as closed circuit television (CCTV). For those statutes please see the NDAA Closed-Circuit Television Statutory compilation.⁶

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

¹ Debra Whitcomb et al., *The Emotional Effect of Testifying on Sexually Abused Children*, Nat’l Institute of Justice: Research in Brief (U.S. Dep’t of Justice, Washington D.C.), Apr. 1994, available at <https://www.ncjrs.gov/pdffiles1/Digitization/146414NCJRS.pdf>.

² See Alaska, Louisiana, Maine, Massachusetts, Maryland, Mississippi, New Mexico, South Carolina, and Tennessee

³ See Carol A. Crocca, *Propriety and Prejudicial Effect of Third Party Accompany or Rendering Support for Witness During Testimony*, 82 A.L.R. 4th 1038 (2013).

⁴ *State v. Suka*, 777 P.2d 240 (Haw. 1989); *State v. Rulona*, 785 P.2d 615 (Haw. 1990).

⁵ See Eg., Ark. Code Ann. § 16-43-1202 (*Safeguards for Child Victims Testifying in Judicial and Administrative Proceedings Act*); 18 U.S.C. § 3509(f) (*Child Victims’ and Child Witnesses’ Right Act*).

⁶ [http://www.ndaa.org/pdf/CCTV%20\(2012\).pdf](http://www.ndaa.org/pdf/CCTV%20(2012).pdf)

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ALABAMA

Sexton v. State, 529 So. 2d 1041 (Ala. Crim. App. 1988).

Defendant was convicted in the Circuit Court, Montgomery County, H. Mark Kennedy, J., of first-degree rape and first-degree sodomy, and he appealed. The Court of Criminal Appeals, Bowen, P.J., held that: (1) trial court's overruling of defendant's objection to prosecutor's sitting with five-year-old sex offense victim during victim's testimony did not require reversal of convictions

While ruling that the prosecutor was not an appropriate choice of person, the court in *Sexton v State* (1988, Ala App) 529 So 2d 1041, found that no significant prejudice to defendant resulted when the trial court allowed the female assistant district attorney to sit in the witness chair with the 5-year-old victim-witness during her testimony. The defendant charged that this improperly bolstered the witness' testimony. The appellate court conceded the risk, stating that because of the possibility that a jury might interpret the prosecutor's action as indicating a personal belief in the credibility of the witness or the guilt of the accused, it is generally improper for the prosecutor to sit with a witness during her testimony. If, the court continued, because of age, timidity, or frailty, a witness requires aid in order to testify, that aid should be rendered by someone other than the prosecuting attorney. However, the court found no reversible error under the circumstances of the case. The 5-year-old witness was reluctant to testify and the defendant had interposed only a general objection. The court deferred to the

ALASKA

ARIZONA

Ariz. R. Crim. P. 39(b)(9) (2013). Rule 39. 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 subsection 8 or subsection 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

Gadberry v. State, 46 Ark. App. 121, 877 S.W.2d 941 (1994).

Defendant was convicted in the Circuit Court, Marion County, Robert McCorkindale, J., of sexual abuse in the first degree. Defendant appealed. The Court of Appeals, Robbins, J., held that: (3) trial court did not err in allowing Department of Human Services social worker to stand next to victim while she testified;

ARK. CODE ANN. § 16-43-1202 (2012). Safeguards for child victims testifying in judicial and administrative proceedings

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

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

(6) If it is in the child's best interests, the prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney may file a motion for the child to have a support person present when the child testifies in a judicial proceeding or an administrative proceeding; and

(7) The prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney shall consider the effect upon the child when the child is subjected to argumentative or harassing questions and shall make the proper objections when appropriate to ensure that the child is not subjected to argumentative or harassing questioning.

CALIFORNIA

People v Adams , 19 Cal App 4th 412, 23 Cal Rptr 2d 512, (6th Dist 1993).

Defendant was convicted in the Santa Clara County Superior Court, No. 147219, Robert M. Foley, J., of multiple counts of sexual assault. Defendant appealed. The Court of Appeal, Premo, Acting P.J., held that: (2) presence of support person during prosecuting witness's testimony as provided by statute did not violate defendant's due process rights.

People v. Kabonic, 177 Cal. App. 3d 487, 223 Cal. Rptr. 41 (5th Dist. 1986).

Defendant was convicted in the Superior Court, Kern County, John D. Jelletich, J., of lewd and lascivious act upon a child under the age of 14 years and oral copulation of a child under 14 years of age and more than 10 years younger than defendant, and he appealed. The Court of Appeal, Castellucci, J., assigned, held that: (1) term "prosecuting witness" in statute providing procedural requirements for presence of another "prosecuting witness" as support person for prosecuting witness 16 years of age or under in prosecutions for specified offenses included all witnesses for the prosecution. The lower court did not error in permitting victim's mother to accompany witness to the stand.

People v Patten, 9 Cal App 4th 1718, 12 Cal Rptr 2d 284 (5th Dist 1992).

Defendant was convicted in the Superior Court, Tulare County, No. 29388, David L. Allen, J., of six counts of forcible rape and two counts of oral copulation by force, and he appealed. The Court of Appeal, Vartabedian, J., held that: (1) absence of requirement of case-specific showing of necessity did not make statute providing for presence of "support persons" during victim's testimony unconstitutional per se,

CAL. PENAL CODE § 868.5 (2013). Supporting person; attendance during testimony of prosecuting witness; specified offenses

(a) Notwithstanding any other law, a prosecuting witness in a case involving a violation of Section 187, 203, 205, 207, 211, 215, 220, 236.1, 240, 242, 243.4, 245, 261, 262, 266, 266a,

266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 266k, 267, 269, 273a, 273d, 273.5, 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, 311.11, or 647.6, former Section 277 or 647a, subdivision (1) of Section 314, or subdivision (b), (d), or (e) of Section 368 when the prosecuting witness is the elder or dependent adult, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

COLORADO

Colo. Rev. Stat. § 16-10-401(2013) . Trials--authority to exclude victim's advocate from sequestration orders

Notwithstanding any sequestration order entered by the court that excludes members of the general public from a jury trial or a trial before the court, the court may allow a victim's advocate to remain in the courtroom during such trial. For the purposes of this section, "victim's advocate" means any person whose regular or volunteer duties include the support of an alleged victim of physical or sexual abuse or assault.

CONNECTICUT

State v. Menzies, 26 Conn. App. 674, 603 A.2d 419 (1992).

Court held allowing the special procedures below did not unduly prejudice the defendant and violate his rights: (1) closing the courtroom to the public and press, except those persons who would contribute to the welfare and well-being of the child; (2) permitting the guardian ad litem to sit with the child; (3) permitting the use of anatomically correct dolls or diagrams; (4) permitting the use of leading questions when necessary on direct examination of the child; and (5) requiring counsel to question the child in a lowered voice while seated at a table positioned in front of the witness box.

State v. Torres, 60 Conn. App. 562, 761 A.2d 766 (2000).

Defendant was convicted in a jury trial in the Superior Court, Judicial District of Waterbury, Carroll, J., of first-degree sexual assault and risk of injury to a child, in connection with six years of abuse of daughters of defendant's live-in girlfriend. Defendant appealed. The Appellate Court, Zarella, J., held that: (1) allowing one victim's fiancé to sit next to her during her testimony did not violate confrontation clause or impermissibly bolster her credibility, and (2) constancy of accusation evidence was admissible.

DELAWARE

Czech v. State, 945 A.2d 1088 (2008).

When support person is provided as special accommodation for child witness, an appropriate instruction should advise jurors that purpose of support person is to attempt to place witness at ease while testifying and that presence of support person should not affect jurors' assessment of credibility of child's testimony, and the standard "passion, prejudice or sympathy" charge should also be given.

DISTRICT OF COLUMBIA

Holmes v United States, 84 App DC 168 (1948).

The first point of appellant's appeal is that the court erred in on its own motion permitting the child complainant to sit on her mother's lap while she testified. This it was asserted might tend to inflame the jury. The child was a little girl of nine who had been subjected to a most terrible and horrifying experience to a degree which might well influence the balance of her life. She was at the moment on crutches and with her leg in a cast. What might have inflamed the jury was the pitiable condition of the little girl herself and it would doubtless have inflamed them more if she had been unable to sit in the witness stand comfortably by herself or had been compelled to stand on her crutches with her leg

in a cast while testifying. The action of the trial court sua sponte in permitting the child to sit on her mother's lap to put the child at ease as much at least as was possible under the trying circumstances was not only proper as a humanitarian act but was praiseworthy as being in the interest of justice.

FLORIDA

Duncan v. State, 583 So. 2d 439 (Fla. Dist. Ct. App. 4th Dist. 1991).

Guardian ad litem for defendant's nine-year-old daughter could be allowed to sit with her during her testimony in prosecution for sexual battery of daughter; trial court took precautions to ensure that guardian would not influence the testimony.

FLA. STAT. ANN. § 960.001 (2013). Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Parole Commission, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement the provisions of s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(a) Information concerning services available to victims of adult and juvenile crime.--As provided in s. 27.0065, state attorneys and public defenders shall gather information regarding the following services in the geographic boundaries of their respective circuits and shall provide such information to each law enforcement agency with jurisdiction within such geographic boundaries. Law enforcement personnel shall ensure, through distribution of a victim's rights information card or brochure at the crime scene, during the criminal investigation, and in any other appropriate manner, that victims are given, as a matter of course at the earliest possible time, information about:

1. The availability of crime victim compensation, when applicable;
2. Crisis intervention services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs;

3. The role of the victim in the criminal or juvenile justice process, including what the victim may expect from the system as well as what the system expects from the victim;

4. The stages in the criminal or juvenile justice process which are of significance to the victim and the manner in which information about such stages can be obtained;

5. The right of a victim, who is not incarcerated, including the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, and the next of kin of a homicide victim, to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused, as provided by s. 16(b), Art. I of the State Constitution;

6. In the case of incarcerated victims, the right to be informed and to submit written statements at all crucial stages of the criminal proceedings, parole proceedings, or juvenile proceedings; and

7. The right of a victim to a prompt and timely disposition of the case in order to minimize the period during which the victim must endure the responsibilities and stress involved to the extent that this right does not interfere with the constitutional rights of the accused.

(b) Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim.--In the case of a homicide, pursuant to chapter 782; or a sexual offense, pursuant to chapter 794; or an attempted murder or sexual offense, pursuant to chapter 777; or stalking, pursuant to s. 784.048; or domestic violence, pursuant to s. 25.385:

1. The arresting law enforcement officer or personnel of an organization that provides assistance to a victim or to the appropriate next of kin of the victim or other designated contact must request that the victim or appropriate next of kin of the victim or other designated contact complete a victim notification card. However, the victim or appropriate next of kin of the victim or other designated contact may choose not to complete the victim notification card.

2. Unless the victim or the appropriate next of kin of the victim or other designated contact waives the option to complete the victim notification card, a copy of the victim notification card must be filed with the incident report or warrant in the sheriff's office of the jurisdiction in which the incident report or warrant originated. The notification card shall, at a minimum, consist of:

a. The name, address, and phone number of the victim; or

- b. The name, address, and phone number of the appropriate next of kin of the victim; or
- c. The name, address, and phone number of a designated contact other than the victim or appropriate next of kin of the victim; and

d. Any relevant identification or case numbers assigned to the case.

3. The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact within 4 hours following the release of the defendant on bail or, in the case of a juvenile offender, upon the release from residential detention or commitment. If the chief administrator, or designee, is unable to contact the alleged victim or appropriate next of kin of the alleged victim or other designated contact by telephone, the chief administrator, or designee, must send to the alleged victim or appropriate next of kin of the alleged victim or other designated contact a written notification of the defendant's release.

4. Unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, the information contained on the victim notification card must be sent by the chief administrator, or designee, of the appropriate facility to the subsequent correctional or residential commitment facility following the sentencing and incarceration of the defendant, and unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, he or she must be notified of the release of the defendant from incarceration as provided by law.

5. If the defendant was arrested pursuant to a warrant issued or taken into custody pursuant to s. 985.101 in a jurisdiction other than the jurisdiction in which the defendant is being released, and the alleged victim or appropriate next of kin of the alleged victim or other designated contact does not waive the option for notification of release, the chief correctional officer or chief administrator of the facility releasing the defendant shall make a reasonable attempt to immediately notify the chief correctional officer of the jurisdiction in which the warrant was issued or the juvenile was taken into custody pursuant to s. 985.101, and the chief correctional officer of that jurisdiction shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact, as provided in this paragraph, that the defendant has been or will be released.

(c) Information concerning protection available to victim or witness.--A victim or witness shall be furnished, as a matter of course, with information on steps that are available to law

enforcement officers and state attorneys to protect victims and witnesses from intimidation. Victims of domestic violence shall also be given information about the address confidentiality program provided under s. 741.403.

(d) Notification of scheduling changes.--Each victim or witness who has been scheduled to attend a criminal or juvenile justice proceeding shall be notified as soon as possible by the agency scheduling his or her appearance of any change in scheduling which will affect his or her appearance.

(e) Advance notification to victim or relative of victim concerning judicial proceedings; right to be present.--Any victim, parent, guardian, or lawful representative of a minor who is a victim, or relative of a homicide victim shall receive from the appropriate agency, at the address found in the police report or the victim notification card if such has been provided to the agency, prompt advance notification, unless the agency itself does not have advance notification, of judicial and postjudicial proceedings relating to his or her case, including all proceedings or hearings relating to:

1. The arrest of an accused;
2. The release of the accused pending judicial proceedings or any modification of release conditions; and
3. Proceedings in the prosecution or petition for delinquency of the accused, including the filing of the accusatory instrument, the arraignment, disposition of the accusatory instrument, trial or adjudicatory hearing, sentencing or disposition hearing, appellate review, subsequent modification of sentence, collateral attack of a judgment, and, when a term of imprisonment, detention, or residential commitment is imposed, the release of the defendant or juvenile offender from such imprisonment, detention, or residential commitment by expiration of sentence or parole and any meeting held to consider such release.

A victim, a victim's parent or guardian if the victim is a minor, a lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or a victim's next of kin may not be excluded from any portion of any hearing, trial, or proceeding pertaining to the offense based solely on the fact that such person is subpoenaed to testify, unless, upon motion, the court determines such person's presence to be prejudicial. The appropriate agency with respect to notification under subparagraph 1. is the arresting law enforcement agency, and the appropriate agency with respect to notification under subparagraphs 2. and 3. is the Attorney General or state attorney, unless the notification relates to a hearing concerning parole, in which case the appropriate agency is the Parole Commission. The Department of Corrections, the Department of Juvenile Justice, or the sheriff is the appropriate agency with respect to

release by expiration of sentence or any other release program provided by law. Any victim may waive notification at any time, and such waiver shall be noted in the agency's files.

(f) Information concerning release from incarceration from a county jail, municipal jail, juvenile detention facility, or residential commitment facility.--The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility shall, upon the request of the victim or the appropriate next of kin of a victim or other designated contact of the victim of any of the crimes specified in paragraph (b), make a reasonable attempt to notify the victim or appropriate next of kin of the victim or other designated contact prior to the defendant's or offender's release from incarceration, detention, or residential commitment if the victim notification card has been provided pursuant to paragraph (b). If prior notification is not successful, a reasonable attempt must be made to notify the victim or appropriate next of kin of the victim or other designated contact within 4 hours following the release of the defendant or offender from incarceration, detention, or residential commitment. If the defendant is released following sentencing, disposition, or furlough, the chief administrator or designee shall make a reasonable attempt to notify the victim or the appropriate next of kin of the victim or other designated contact within 4 hours following the release of the defendant. If the chief administrator or designee is unable to contact the victim or appropriate next of kin of the victim or other designated contact by telephone, the chief administrator or designee must send to the victim or appropriate next of kin of the victim or other designated contact a written notification of the defendant's or offender's release.

(g) Consultation with victim or guardian or family of victim.--

1. In addition to being notified of the provisions of s. 921.143, the victim of a felony involving physical or emotional injury or trauma or, in a case in which the victim is a minor child or in a homicide, the guardian or family of the victim shall be consulted by the state attorney in order to obtain the views of the victim or family about the disposition of any criminal or juvenile case brought as a result of such crime, including the views of the victim or family about:

- a. The release of the accused pending judicial proceedings;
- b. Plea agreements;
- c. Participation in pretrial diversion programs; and
- d. Sentencing of the accused.

2. Upon request, the state attorney shall permit the victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or the victim's next of kin in the case of a homicide to review a copy of the presentence investigation report prior to the sentencing hearing if one was completed. Any confidential information that pertains to medical history, mental health, or substance abuse and any information that pertains to any other victim shall be redacted from the copy of the report. Any person who reviews the report pursuant to this paragraph must maintain the confidentiality of the report and shall not disclose its contents to any person except statements made to the state attorney or the court.

3. When an inmate has been approved for community work release, the Department of Corrections shall, upon request and as provided in s. 944.605, notify the victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or the victim's next of kin if the victim is a homicide victim.

(h) Return of property to victim.--Law enforcement agencies and the state attorney shall promptly return a victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it. The trial or juvenile court exercising jurisdiction over the criminal or juvenile proceeding may enter appropriate orders to implement the provisions of this subsection, including allowing photographs of the victim's property to be used as evidence at the criminal trial or the juvenile proceeding in place of the victim's property when no substantial evidentiary issue related thereto is in dispute.

(i) Notification to employer and explanation to creditors of victim or witness.--A victim or witness who so requests shall be assisted by law enforcement agencies and the state attorney in informing his or her employer that the need for victim and witness cooperation in the prosecution of the case may necessitate the absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of his or her cooperation with law enforcement agencies or a state attorney, is subjected to serious financial strain shall be assisted by such agencies and state attorney in explaining to the creditors of such victim or witness the reason for such serious financial strain.

(j) Notification of right to request restitution.--Law enforcement agencies and the state attorney shall inform the victim of the victim's right to request and receive restitution pursuant to s. 775.089 or s. 985.437, and of the victim's rights of enforcement under ss. 775.089(6) and 985.0301 in the event an offender does not comply with a restitution order. The state attorney shall seek the assistance of the victim in the documentation of the victim's losses for the purpose of requesting and receiving restitution. In addition, the state attorney shall inform the victim if and when restitution is ordered. If an order of restitution is converted to a civil lien or civil judgment against the defendant, the clerks shall make available at their office, as well as on

their website, information provided by the Secretary of State, the court, or The Florida Bar on enforcing the civil lien or judgment.

(k) Notification of right to submit impact statement.--The state attorney shall inform the victim of the victim's right to submit an oral or written impact statement pursuant to s. 921.143 and shall assist in the preparation of such statement if necessary.

(l) Local witness coordination services.--The requirements for notification provided for in paragraphs (c), (d), and (i) may be performed by the state attorney or public defender for their own witnesses.

(m) Victim assistance education and training.--Victim assistance education and training shall be offered to persons taking courses at law enforcement training facilities and to state attorneys and assistant state attorneys so that victims may be promptly, properly, and completely assisted.

(n) General victim assistance.--Victims and witnesses shall be provided with such other assistance, such as transportation, parking, separate pretrial waiting areas, and translator services in attending court, as is practicable.

(o) Victim's rights information card or brochure.--A victim of a crime shall be provided with a victim's rights information card or brochure containing essential information concerning the rights of a victim and services available to a victim as required by state law.

(p) Information concerning escape from a state correctional institution, county jail, juvenile detention facility, or residential commitment facility.--In any case where an offender escapes from a state correctional institution, private correctional facility, county jail, juvenile detention facility, or residential commitment facility, the institution of confinement shall immediately notify the state attorney of the jurisdiction where the criminal charge or petition for delinquency arose and the judge who imposed the sentence of incarceration. The state attorney shall thereupon make every effort to notify the victim, material witness, parents or legal guardian of a minor who is a victim or witness, or immediate relatives of a homicide victim of the escapee. The state attorney shall also notify the sheriff of the county where the criminal charge or petition for delinquency arose. The sheriff shall offer assistance upon request. When an escaped offender is subsequently captured or is captured and returned to the institution of confinement, the institution of confinement shall again immediately notify the appropriate state attorney and sentencing judge pursuant to this section.

(q) Presence of victim advocate during discovery deposition; testimony of victim of a sexual offense.--At the request of the victim or the victim's parent, guardian, or lawful representative, the victim advocate designated by state attorney's office, sheriff's office, or municipal police department, or one representative from a not-for-profit victim services organization, including, but not limited to, rape crisis centers, domestic violence advocacy groups, and alcohol abuse or substance abuse groups shall be permitted to attend and be present during any deposition of the victim. The victim of a sexual offense shall be informed of the right to have the courtroom cleared of certain persons as provided in s. 918.16 when the victim is testifying concerning that offense.

(r) Implementing crime prevention in order to protect the safety of persons and property, as prescribed in the State Comprehensive Plan.--By preventing crimes that create victims or further harm former victims, crime prevention efforts are an essential part of providing effective service for victims and witnesses. Therefore, the agencies identified in this subsection may participate in and expend funds for crime prevention, public awareness, public participation, and educational activities directly relating to, and in furtherance of, existing public safety statutes. Furthermore, funds may not be expended for the purpose of influencing public opinion on public policy issues that have not been resolved by the Legislature or the electorate.

(s) Attendance of victim at same school as defendant.--When the victim of an offense committed by a juvenile is a minor, the Department of Juvenile Justice shall request information to determine if the victim, or any sibling of the victim, attends or is eligible to attend the same school as the offender. However, if the offender is subject to a presentence investigation by the Department of Corrections, the Department of Corrections shall make such request. If the victim or any sibling of the victim attends or is eligible to attend the same school as that of the offender, the appropriate agency shall notify the victim's parent or legal guardian of the right to attend the sentencing or disposition of the offender and request that the offender be required to attend a different school.

(t) Use of a polygraph examination or other truth-telling device with victim.-- No law enforcement officer, prosecuting attorney, or other government official shall ask or require an adult, youth, or child victim of an alleged sexual battery as defined in chapter 794 or other sexual offense to submit to a polygraph examination or other truth-telling device as a condition of proceeding with the investigation of such an offense. The refusal of a victim to submit to such an examination shall not prevent the investigation, charging, or prosecution of the offense.

(u) Presence of victim advocates during forensic medical examination.--At the request of the victim or the victim's parent, guardian, or lawful representative, a victim advocate from a certified rape crisis center shall be permitted to attend any forensic medical examination.

(2) The secretary of the Department of Juvenile Justice, and sheriff, chief administrator, or any of their respective designees, who acts in good faith in making a reasonable attempt to comply with the provisions of this section with respect to timely victim notification, shall be immune from civil or criminal liability for an inability to timely notify the victim or appropriate next of kin of the victim or other designated contact of such information. A good faith effort shall be evidenced by a log entry noting that an attempt was made to notify the victim within the time period specified by this section.

(3)(a) A copy of the guidelines and an implementation plan adopted by each agency shall be filed with the Governor, and subsequent changes or amendments thereto shall be likewise filed when adopted.

(b) A copy of a budget request prepared pursuant to chapter 216 shall also be filed for the sole purpose of carrying out the activities and services outlined in the guidelines.

(c) The Governor shall advise state agencies of any statutory changes which require an amendment to their guidelines.

(d) The Executive Office of the Governor shall review the guidelines submitted pursuant to this section:

1. To determine whether all affected agencies have developed guidelines which address all appropriate aspects of this section;
2. To encourage consistency in the guidelines and plans in their implementation in each judicial circuit and throughout the state; and
3. To determine when an agency needs to amend or modify its existing guidelines.

(e) The Executive Office of the Governor shall issue an annual report detailing each agency's compliance or noncompliance with its duties as provided under this section. In addition, the Governor may apply to the circuit court of the county where the headquarters of such agency is located for injunctive relief against any agency which has failed to comply with any of the requirements of this section, which has failed to file the guidelines, or which has filed guidelines in violation of this section, to compel compliance with this section.

(4) The state attorney and one or more of the law enforcement agencies within each judicial circuit may develop and file joint agency guidelines, as required by this section, which allocate the statutory duties among the participating agencies. Responsibility for successful execution of the entire guidelines lies with all parties.

(5) Nothing in this section or in the guidelines adopted pursuant to this section shall be construed as creating a cause of action against the state or any of its agencies or political subdivisions.

(6) Victims and witnesses who are not incarcerated shall not be required to attend discovery depositions in any correctional facility.

(7) The victim of a crime, the victim's parent or guardian if the victim is a minor, and the state attorney, with the consent of the victim or the victim's parent or guardian if the victim is a minor, have standing to assert the rights of a crime victim which are provided by law or s. 16(b), Art. I of the State Constitution.

(8) For the purposes of this section, a law enforcement agency or the office of the state attorney may release any information deemed relevant to adequately inform the victim if the offense was committed by a juvenile. Information gained by the victim pursuant to this chapter, including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.

(9) As used in this section, the term "chief administrator" includes the appropriate chief correctional officers of a county jail or municipal jail, and the appropriate chief administrator of a juvenile detention facility or residential commitment facility.

GEORGIA

Boatright v. State, 192 Ga. App. 112, 385 S.E.2d 298 (1989).

Defendant convicted of two counts of aggravated child molestation, together with codefendants who were each convicted in the Pierce Superior Court, Newton Joseph, J., of two counts of enticing child for indecent purposes in connection with their eight and nine-year-old children, appealed. The Court of Appeals, Birdsong, J., held that: (3) parent defendants' rights were not violated when foster parent of children was allowed to stand behind children during testimony.

Gonzalez v. State, 310 Ga. App. 348, 714 S.E.2d 13 (2011).

Defendant was convicted in the Superior Court, Gwinnett County, Bishop, Senior Judge, of rape, two counts of aggravated child molestation, aggravated sexual battery, and four counts of child molestation. Defendant appealed. The Court of Appeals, Adams, J., held that: (2) trial court ruling allowing a victim-witness advocate employed by the district attorney's office to sit with the victim during her testimony was not an abuse of discretion.

Miles v. State, 201 Ga. App. 568, 411 S.E.2d 566 (1991).

Defendant was convicted in the Douglas Superior Court, Messinger, pro hac vice, of aggravated sodomy and child molestation, and he appealed. The Court of Appeals, Sognier, C.J., held that: (4) defendant was not denied right to fair trial by trial court's allowing county victim-witness coordinator to sit near victim while she testified.

Murchison v. State, 231 Ga. App. 769, 500 S.E.2d 651 (1998).

In child molestation prosecution, court did not express opinion about case by allowing seven-year-old victim to sit in her mother's lap while she testified, where on direct response child often gave nonverbal responses, one-word responses or no response at all and at end of direct, judge asked child if she wanted her mother to sit with her, but instructed mother not to answer for child. The Court of Appeals, Johnson, J., held that court did not express opinion about case by allowing seven-year-old victim to sit in her mother's lap while she testified.

Pressley v. State, 197 Ga. App. 270, 398 S.E.2d 268 (1990).

Defendant was convicted in the Superior Court, Gwinnett County, Winegarden, J., of kidnapping with bodily injury, child molestation, and aggravated sodomy. Defendant appealed. The Court of Appeals, Sognier, J., held that: (2) mother of victim could be permitted to remain on witness stand during victim's testimony.

Williamson v. State, 234 Ga. App. 658, 507 S.E.2d 765 (1998).

Defendant was convicted in the Superior Court, McIntosh County, Rahn, J., of four counts of child molestation, and he appealed. The Court of Appeals, McMurray, P.J., held that: (2) permitting grandmother to stand near nine-year-old victim as victim testified was not abuse of discretion. HAWAII

HAWAII

State v. Suka, 70 Haw. 472, 777 P.2d 240, 82 A.L.R.4th 1029 (1989). *Negative Treatment

Defendant was convicted in the First Circuit Court, City and County of Honolulu, Wendell K. Huddy, Wilfred K. Watanabe, Daniel G. Heely, Marie N. Milks, Robert Won Bae Chang, JJ., of rape, kidnapping, sexual abuse and sodomy. On appeal, the Supreme Court, Wakatsuki, J., held that: (1) counselor's accompaniment of victim during her testimony violated defendant's right to fair and impartial trial, and (2) defendant was entitled to instruction on consent.

State v. Rulona, 71 Haw. 127, 785 P.2d 615 (1990). *Negative Treatment*

Defendant was convicted in the First Circuit Court, City and County of Honolulu, Wendell K. Huddy, Wilfred K. Watanabe, Daniel G. Heely, Marie N. Milks, Robert Won Bae Chang, JJ., of rape, kidnapping, sexual abuse and sodomy. On appeal, the Supreme Court, Wakatsuki, J., held that: (1) counselor's accompaniment of victim during her testimony violated defendant's right to fair and impartial trial.

HAW. REV. STAT. ANN. § 621-28(2013). Accompaniment of children at judicial proceedings

A child less than fourteen years of age, involved in a judicial proceeding, including a grand jury proceeding, shall have the right to be accompanied by a parent, a victim-witness counselor, or other adult designated by the court. The accompanying person may be placed side by side with the child at the discretion of the presiding judge or court officer; provided that this position does not interfere with the proceedings of the court. The accompanying person shall not communicate in any manner with the child unless directed by the presiding judge or court officer.

IDAHO

Idaho Code § 19-3023 (2013). Child summoned as witness

When a child is summoned as a witness in any hearing in any criminal matter, including any preliminary hearing, notwithstanding any other statutory provision, parents, a counselor, friend or other person having a supportive relationship with the child shall be allowed to remain in the courtroom at the witness stand with the child during the child's testimony unless in written findings made and entered, the court finds that the defendant's constitutional right to a fair trial will be unduly prejudiced.

ILLINOIS

725 ILL. COMP. STAT. 120/4 (2013). Rights of crime victims

<Text of section effective Jan. 1, 2013. See, also, section effective until Jan. 1, 2013.>

(a) Crime victims shall have the following rights:

(1) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

- (2) The right to notification of court proceedings.
- (3) The right to communicate with the prosecution.
- (4) The right to make a statement to the court at sentencing.
- (5) The right to information about the conviction, sentence, imprisonment and release of the accused.
- (6) The right to the timely disposition of the case following the arrest of the accused.
- (7) The right to be reasonably protected from the accused through the criminal justice process.
- (8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.
- (9) the right to have present at all court proceedings, including proceedings under the Juvenile Court Act of 1987, subject to the admonition of the rules of confidentiality and subject to the rules of evidence, a victim-witness specialist, an advocate or other support person of the victim's choice.
- (10) The right to restitution.

(b) Any law enforcement agency that investigates an offense committed in this State shall provide a crime victim with a written statement and explanation of the rights of crime victims within 48 hours of law enforcement's initial contact with a victim. The statement shall include information about crime victim compensation, including how to contact the Office of the Illinois Attorney General to file a claim, and appropriate referrals to local and State programs that provide victim services. The content of the statement shall be provided to law enforcement by the Attorney General. Law enforcement shall also provide a crime victim with a sign-off sheet that the victim shall sign and date as an acknowledgement that he or she has been furnished with information and an explanation of the rights of crime victims and compensation set forth in this Act.

(c) The Clerk of the Circuit Court shall post the rights of crime victims set forth in Article I, Section 8.1(a) of the Illinois Constitution and subsection (a) of this Section within 3 feet of the door to any courtroom where criminal proceedings are conducted. The clerk may also post the rights in other locations in the courthouse.

(d) A statement and explanation of the rights of crime victims set forth in paragraph (a) of this Section shall be given to a crime victim at the initial contact with the criminal justice system by the appropriate authorities and shall be conspicuously posted in all court facilities.

INDIANA

Stanger v. State, 545 N.E.2d 1105 (Ind. Ct. App. 1989).

Presence of support person in chair two to three feet behind child witness testifying against defendant accused of child molesting did not deny defendant due process; there was nothing about person sitting quietly to side of witness which was particularly distracting or likely to arouse intense feeling among jurors for witness or against defendant. ** This case has been overruled on another point.

Baxter v. State, 522 N.E.2d 362 (Ind. 1988).

Permitting victim's mother to hold victim's hand throughout victim's testimony did not unduly prejudice defendant in sexual abuse prosecution; trial court had discretion to allow special measures aimed at putting young victim at ease on witness stand, and mother testified and denied the sexual abuse.

Hall v. State, 634 N.E.2d 837 (Ind. Ct. App. 1994) .

Defendant was convicted in the Dearborn Circuit Court, Anthony C. Meyer, J., of child molesting, and he appealed. The Court of Appeals, Baker, J., held that: (1) instructions on child molesting by touching and fondling or battery as lesser-included offenses were not warranted; (2) defendant's right to cross-examine victim was not violated as result of trial court's allowing adult to sit near victim as surrogate guardian.

IND. CODE ANN. § 35-37-6-3.5 (2013). “Victim advocate” defined

Sec. 3.5. (a) As used in this chapter, “victim advocate” means an individual employed or appointed by or who volunteers for a victim services provider.

(b) The term does not include:

- (1) a law enforcement officer;
- (2) an employee or agent of a law enforcement officer;
- (3) a prosecuting attorney; or
- (4) an employee or agent of a prosecuting attorney's office.

(c) The term includes an employee, an appointee, or a volunteer of a:

- (1) victim services provider;
- (2) domestic violence program;

- (3) sexual assault program;
- (4) rape crisis center;
- (5) battered women's shelter;
- (6) transitional housing program for victims of domestic violence; or
- (7) program that has as one (1) of its primary purposes to provide services to an individual:
 - (A) against whom an act of:
 - (i) domestic or family violence;
 - (ii) dating violence;
 - (iii) sexual assault (as defined in IC 5-26.5-1-8);
 - (iv) human and sexual trafficking (IC 35-42-3.5); or
 - (v) stalking (IC 35-45-10-5);
 - is committed; or
 - (B) who:
 - (i) is not accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and
 - (ii) is a member of the family of an individual described in clause (A) other than a family member who is accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5).

IOWA

Iowa Code § 15.20 (2013). Presence of victim counselors

1. As used in this section, unless the context otherwise requires:
 - a. "Proceedings related to the offense" means any activities engaged in or proceedings commenced by a law enforcement agency, judicial district department of correctional services, or a court pertaining to the commission of a public offense against the victim, in which the

victim is present, as well as examinations of the victim in an emergency medical facility due to injuries from the public offense which do not require surgical procedures. "Proceedings related to the offense" includes, but is not limited to, law enforcement investigations, pretrial court hearings, trial and sentencing proceedings, and proceedings relating to the preparation of a presentence investigation report in which the victim is present.

b. "Victim counselor" means a victim counselor as defined in section 915.20A.

2. A victim counselor who is present as a result of a request by a victim shall not be denied access to any proceedings related to the offense.

3. This section does not affect the inherent power of the court to regulate the conduct of discovery pursuant to the Iowa rules of criminal or civil procedure or to preside over and control the conduct of criminal or civil hearings or trials.

KANSAS

State v. Rowray, 18 Kan. App. 2d 772, 860 P.2d 40 (1993).

When minor child victim testifies in criminal trial, judicial discretion is not abused in permitting child's mother or other accompanying adult support figure to be in close proximity to child when accompanying party does not speak, prompt victim, or in any manner attempt to disrupt or influence trial.

KENTUCKY

KY. REV. STAT. ANN. § 26A.140 (2013). Accommodation of special needs of children

(1) Courts shall implement measures to accommodate the special needs of children which are not unduly burdensome to the rights of the defendant, including, but not limited to:

(a) Trained guardians ad litem or special advocates, if available, shall be appointed for all child victims and shall serve in Circuit and District Courts to offer consistency and support to the child and to represent the child's interests where needed.

(b) During trials involving child victims or child witnesses, the environment of the courtroom shall be modified to accommodate children through the use of small chairs, frequent breaks, and the use of age appropriate language.

(c) Children expected to testify shall be prepared for the courtroom experience by the Commonwealth's or county attorney handling the case with the assistance of the guardian ad litem or special advocate.

(d) In appropriate cases, procedures shall be used to shield children from visual contact with alleged perpetrator.

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

LOUISIANA

MAINE

MARYLAND

Brooks v. State, 24 Md. App. 334, 330 A.2d 670 (1975).

In prosecution for rape, error, if any, was harmless, with respect to permission granted clergy to sit near prosecuting witness, where necessary ordeal of testifying publicly and repeatedly in detail of indignities to which victim had been subjected, especially the perversions and ravishment endured by prosecuting witness, could not be regarded callously, and denial of mistrial for such action was not abuse of discretion, where defendant's defense was not consent but rather that he was elsewhere when crime was committed.

MASSACHUSETTS

MICHIGAN

MICH. COMP. LAWS § 600.2163a (2013). Prosecutions and proceedings to which section applicable; children, developmentally disabled, and vulnerable adult alleged victims as witness; use of dolls or mannequins; support person; notice; videorecorded statement; special arrangements to protect welfare of witness; videorecorded deposition; section additional to other protections or procedures; violation as misdemeanor; penalty

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

(a) "Custodian of the videorecorded statement" means the department of human services, investigating law enforcement agency, prosecuting attorney, or department of attorney general

or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

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

(c) “Videorecorded statement” means a witness's statement taken by a custodian of the videorecorded statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (18) and (19).

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

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

- (i) A person under 16 years of age.
- (ii) A person 16 years of age or older with a developmental disability.
- (iii) A vulnerable adult.

(2) This section only applies to the following:

(a) For purposes of subsection (1)(e)(i) and (ii), prosecutions and proceedings under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

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

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

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

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

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

(5) A custodian of the videorecorded statement may take a witness's videorecorded statement before the normally scheduled date for the defendant's preliminary examination. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the videorecorded statement.

(6) A videorecorded statement may be considered in court proceedings only for 1 or more of the following:

(a) It may be admitted as evidence at all pretrial proceedings, except that it may not be introduced at the preliminary examination instead of the live testimony of the witness.

(b) It may be admitted for impeachment purposes.

(c) It may be considered by the court in determining the sentence.

(d) It may be used as a factual basis for a no contest plea or to supplement a guilty plea.

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

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

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

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

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

(d) The details of the offense or offenses.

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

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

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

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

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

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

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

(a) The age of the witness.

(b) The nature of the offense or offenses.

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

(d) The physical condition of the witness.

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

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

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

(16) If upon the motion of a party made before trial the court finds on the record that the special arrangements specified in subsection (17) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

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

(d) The physical condition of the witness.

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

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

(b) In order to protect the witness from directly viewing the defendant, the courtroom shall be arranged so that the defendant is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The defendant's position shall be the same for all

witnesses and shall be located so as to allow the defendant to hear and see all witnesses and be able to communicate with his or her attorney.

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

(18) If, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), (15), and (17), the court shall order that the witness may testify outside the physical presence of the defendant by closed circuit television or other electronic means that allows the witness to be observed by the trier of fact and the defendant when questioned by the parties.

(19) For purposes of the videorecorded deposition under subsection (18), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the court proceeding for which the videorecorded deposition is to be used. The court shall permit the defendant to hear the testimony of the witness and to consult with his or her attorney.

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

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

MINNESOTA

MINN. STAT. § 631.046 (2013). Authorizing presence of support person for minor prosecuting witness

Subdivision 1. Child abuse and violent crime cases. Notwithstanding any other law, a prosecuting witness under 18 years of age in a case involving child abuse as defined in section 630.36, subdivision 2, a crime of violence, as defined in section 624.712, subdivision 5, or an assault under section 609.224 or 609.2242, may choose to have in attendance or be accompanied by a parent, guardian, or other supportive person, whether or not a witness, at the omnibus hearing or at the trial, during testimony of the prosecuting witness. If the person so chosen is also a prosecuting witness, the prosecution shall present on noticed motion, evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's

attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony.

Subd. 2. Other cases. Notwithstanding any other law, a prosecuting witness in any case involving criminal sexual conduct as defined in sections 609.342, 609.343, 609.344, and 609.345 may choose to be accompanied by a supportive person, whether or not a witness, at the omnibus or other pretrial hearing. If the supportive person is also a witness, the prosecution and the court shall follow the motion procedure outlined in subdivision 1 to determine whether or not the supportive person's presence will be permitted.

MISSISSIPPI

MISSOURI

Mo. REV. STAT. § 491.725 (2013). Child Witness Protection Act".--definitions--applicability

1. This section shall be known and may be cited as the "Child Witness Protection Act".

2. As used in this section, the following terms shall mean:

(1) "Child", a person fourteen years of age or under, or at the discretion of the court, a person fifteen to seventeen years of age, who is a witness in any judicial proceeding under chapter 452 or 453, RSMo, or the alleged victim or witness in any judicial proceeding under chapter 455, 565, 566, or 568, RSMo. The court shall make written findings on the record when a child fifteen to seventeen years of age is included under this subdivision. "Victim" or "witness" shall not include any child accused of committing a felony; however, these terms may, in the court's discretion, include:

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

(b) A child who has participated in the felony, but who has subsequently and voluntarily agreed to testify on behalf of the state;

(2) "Support person", an adult, designated by the court to serve as a support person, who is known to the child victim or witness and who has no direct legal or pecuniary interest in the outcome of the judicial proceeding.

3. In order to facilitate testimony that is fair and accurate, for the benefit of all parties, and in order to protect all parties from the risks of a child becoming confused while testifying in a judicial proceeding, the following child witness protection act shall apply to all children testifying in court:

(1) Whether at a competency hearing or trial itself, the judge shall ensure that any oath that is required of a child shall be administered in such a manner that the child may fully understand his or her duty to tell the truth;

(2) The court shall take care to ensure that questions are stated in a form which is appropriate to the age of the child. The court shall explain to the child that if he or she does not understand a question, the child has the right to say that he or she does not understand the question and to have the question restated in a form that the child does understand;

(3) In the court's discretion, the taking of testimony from a child victim or witness may be limited in duration or limited to normal school hours. The court may order a recess when the energy, comfort, or attention span of the child warrants;

(4) Upon motion made by the child, his or her representative, or any party to the judicial proceeding, at least thirty days in advance of the judicial proceeding, the court may allow the child to have a toy, blanket, or similar item in his or her possession while testifying, but such item shall only be allowed if:

(a) All parties agree; or

(b) If the movant shows the court by a preponderance of evidence that:

a. The child in question cannot reliably testify without the item in his or her possession; and

b. Allowing the item is not likely to prejudice the trier of fact in hearing and evaluating the child's testimony;

(5) Upon motion made by the child, his or her representative, or any party to the judicial proceeding, at least thirty days in advance of the judicial proceeding, the court may designate a support person, who shall be present in the courtroom, in view of the child witness. The court may allow the support person to remain in close proximity to the child during the child's testimony, but such action shall only be allowed if:

(a) All parties agree; or

(b) If the movant shows the court by a preponderance of the evidence that:

a. The child in question cannot reliably testify without the support person in close proximity during the testimony; and

b. Allowing the support person to be in close proximity to the child during testimony is not likely to prejudice the trier of fact in hearing and evaluating the child's testimony.

The support person shall not obscure the child from the view of the defendant or the trier of fact. A support person 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 or otherwise influence the testimony of the child. If the support person attempts to influence or affect in any manner the testimony of the child victim or witness during the giving of testimony or at any other time, the court shall exclude that support person, refer the matter of misconduct of the support person to the prosecuting attorney, and designate an alternative support person;

(6) The court shall prevent intimidation or harassment of the child witness by the parties or their attorneys. Insofar as it is consistent with the constitutional rights of the parties to confront and cross-examine adverse witnesses, the judge may rephrase any questions in order to prevent any such intimidation or harassment; and

(7) Upon its own motion or the motion of any party to the judicial proceeding, at least thirty days in advance of the judicial proceeding, the court may order such accommodations as are appropriate under the circumstances to ensure the comfort of the child victim or witness, including the following measures:

(a) Adjusting the layout of the courtroom;

(b) Conducting the proceedings outside the normal courtroom; or

(c) Relaxing the formalities of the proceedings; provided that, such measures are consistent with the rights of all parties under the constitution and laws of the United States and the State of Missouri.

MONTANA

State v. Rogers, 213 Mont. 302, 692 P.2d 2 (1984).

Defendant was convicted in the District Court, Thirteenth Judicial District, Yellowstone County, Charles Luedke, J., of felony assault and sexual intercourse without consent, and he appealed. The Supreme Court, Morrison, J., held that: (1) trial court did not abuse its discretion in declaring child victim competent to testify; (2) allowing child victim to sit on prosecuting attorney's lap while testifying was not prejudicial.

State v. Olson, 951 P.2d 571 (Mont. Dec 23, 1997) overrules this case on the separate grounds that « a child victim's testimony does not need to be corroborated to support a conviction of sexual assault»; overruling State v. Rogers, 213 Mont. 302, 692 P.2d 2;

NEBRASKA

Gould v. State, 71 Neb. 651, 99 N.W. 541 (1904).

The court found no impropriety where the father of a 15-year-old girl was allowed to sit near to and facing her while she testified. The defendant claimed that the seating arrangement was prejudicial to his rights, the court observed, but provided no reasons in support of this argument. A careful examination of the record, noted the court, disclosed no improper conduct on the part of the father and no indication that the testimony of the witness was affected.

NEVADA

Nev. Rev. Stat. Ann. § 178.571 (2013). Applicability to certain cases; persons permitted to be attendant; permissible conduct by attendant; exclusion for good cause

1. Except as otherwise provided in subsection 2, in a case involving any act of domestic violence pursuant to NRS 33.018, a violation of NRS 200.366, 200.368 or 200.373, a battery with intent to commit a sexual assault pursuant to NRS 200.400, a violation of any provision of NRS 200.5091 to 200.5099, inclusive, a violation of NRS 201.180, 201.210, 201.220 or 201.230 or an attempt or

a conspiracy to commit any of these offenses, a witness may designate an attendant who must be allowed to attend the preliminary hearing and the trial during the witness's testimony to provide support.

2. In a case involving an offense in which a minor is a witness, the witness who is a minor may designate an attendant who must be allowed to attend the preliminary hearing and the trial during the witness's testimony to provide support.

3. The attendant may be designated by a party as a witness and, except as otherwise provided in this section, must not be excluded from the proceedings. If a party designates the attendant as a witness, the attendant must be examined and cross-examined before any other witness testifies.

4. Except as otherwise provided in this subsection and subsection 5, the attendant must not be a reporter or editorial employee of any newspaper, periodical or press association or an employee of any radio or television station. The provisions of this subsection do not apply to an attendant to a witness in a case involving a violation of any provision of NRS 200.5091 to 200.50995, inclusive.

5. The parent, child, brother or sister of the witness may serve as the attendant of the witness whether or not the attendant is a reporter or an editorial employee of any newspaper, periodical or press association or an employee of any radio or television station, but the attendant shall not make notes during the hearing or trial.

6. The court:

(a) Shall, if the witness requests, allow the attendant to sit next to the witness while the witness is testifying; or

(b) May, if the witness requests that the attendant be in another location in the courtroom while the witness is testifying, allow the attendant to be in that location while the witness is testifying.

7. Except as otherwise provided in this subsection, the court shall allow the attendant to have physical contact with the witness while the witness is testifying, if the court determines that such contact is reasonably appropriate or necessary to provide support to the witness. If the attendant attempts to influence or affect in any manner the testimony of the witness during the giving of testimony or at any other time, the court shall exclude that attendant and allow the witness to designate another attendant.

8. A party may move to exclude a particular attendant for good cause, and the court shall hear the motion out of the presence of the jury, if any. If the court grants the motion, the witness may designate another attendant.

NEW HAMPSHIRE

State v. Letendre, 13 A.3d 249, 255 (N.H. 2011).

The defendant argued that the trial court erred in permitting the guardian ad litem to sit beside E.M. during her testimony. Specifically, he argues that “there was an insufficient basis upon which to find that such an extraordinary accommodation was necessary.” He contends that “the accommodation unfairly and improperly appealed to the emotions of the jury and bolstered E.M.’s credibility.” Before the State called E.M. to the stand, the guardian ad litem requested to sit beside E.M. during her testimony. The guardian ad litem indicated that her request was “based on what the victim ha[d] said to [her].”

The court stated “law and evidentiary rules make clear that the trial court enjoys broad discretion in regulating the proceedings before it. See, e.g., *Sabinson v. Trustees of Dartmouth College*, 160 N.H. 452, 461, 999 A.2d 380 (2010); N.H. R. Ev. 611(a). We have also recognized that there is a legitimate state interest in “reduc[ing] the trauma experienced by child victims during the judicial process.” *State v. LaPorte*, 134 N.H. 73, 77, 587 A.2d 1237 (1991). While we have never addressed the specific issue of allowing support persons to accompany child witnesses while testifying, numerous other jurisdictions have permitted such involvement. See, e.g., *State v. Menzies*, 26 Conn.App. 674, 603 A.2d 419 (guardian ad litem sat with six-year-old witness), cert. denied, 221 Conn. 924, 608 A.2d 690 (1992); *Baxter v. State*, 522 N.E.2d 362 (Ind.1988) (mother held the hand of her nine-year-old during testimony); *State v. Johnson*, 38 Ohio App.3d 152, 528 N.E.2d 567 (1986) (eight-year-old sat on aunt’s lap); *Com. v. Pankraz*, 382 Pa.Super. 116, 554 A.2d 974 (four-year-old sat on grandmother’s lap), appeal denied, 522 Pa. 618, 563 A.2d 887 (1989); *Mosby v. State*, 703 S.W.2d 714 (Tex.Ct.App.1985) (guardian ad litem sat 15–20 feet behind eleven-year-old witness). Additionally, a federal statute sanctions the practice: “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 *377 child.” 18 U.S.C. § 3509(f) (2006); see also Cal.Penal Code § 868. 5 (Deering Supp.2010); Idaho Code § 19–3023 (Michie 2004); Mich. Comp. Laws Ann. § 600.2163a(4) (West 2010)...

The trial judge is in the best **256 position to make a determination as to whether a third party should accompany or support a child witness during testimony, and as such we will not disturb the trial court’s ruling absent an unsustainable exercise of discretion.” *State v. Letendre*, 13 A.3d 249, 255 (N.H. 2011).

NEW JERSEY

State v. T.E., 775 A.2d 686 (App.Div.), cert. denied, 170 N.J. 86, 784 A.2d 719 (2001).

Superior Court, Appellate Division, Lisa, J.A.D., held that: adult support person could sit next to victim while victim testified live in front of jury.

NEW MEXICO

NEW YORK

N.Y. EXECUTIVE LAW § 642-a (2013). Fair treatment of child victims as witnesses

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

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

4. The judge presiding should be sensitive to the psychological and emotional stress a child witness may undergo when testifying.

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

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

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

N.Y. Crim. Proc. Law § 190.25 (2013). Grand jury; proceedings and operation in general

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

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

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

(a) The district attorney;

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

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

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

(e) A public servant holding a witness in custody. When a person held in official custody is a witness before a grand jury, a public servant assigned to guard him during his grand jury appearance may accompany him in the grand jury room. Such public servant must, if he has not previously taken the constitutional oath of office, first take an oath before the grand jury that he will keep secret all matters before it within his knowledge.

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

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

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

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

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

(b) When a district attorney obtains evidence during a grand jury proceeding which provides reasonable cause to suspect that a child has been abused or maltreated, as those terms are defined by section ten hundred twelve of the family court act [FN1], he must apply to the court supervising the grand jury for an order permitting disclosure of such evidence to the state central register of child abuse and maltreatment. A district attorney need not apply to the court for such order if he has previously made or caused a report to be made to the state central register of child abuse and maltreatment pursuant to section four hundred thirteen of the social services law and the evidence obtained during the grand jury proceeding, or substantially similar information, was included in such report. The district attorney's application to the court shall be made ex parte and in camera. The court must grant the application and permit the district attorney to disclose the evidence to the state central register of child abuse and maltreatment unless the court finds that such disclosure would jeopardize the life or safety of any person or interfere with a continuing grand jury proceeding.

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

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

NORTH CAROLINA

State v. Reeves, 337 N.C. 700, 448 S.E.2d 802 (1994).

After he pleaded guilty to first-degree murder, defendant was sentenced to death by the Superior Court, Carteret County, Phillips, J., and he appealed. The Supreme Court, Webb, J., held that: (2) victim's child was properly permitted to testify while sitting on her stepmother's lap.

NORTH DAKOTA

N.D. CENT. CODE § 12.1-35-05.1 (2013). Assistance during proceedings

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

OHIO

State v. Johnson, 528 N.E.2d 567 (5th Dist. Stark County 1986).

Defendant was convicted in the Court of Common Pleas, Stark County, of raping his seven-year-old stepdaughter, and he appealed. The Court of Appeals, Milligan, J., held that: (1) trial judge was entitled to permit victim to testify while sitting on her aunt's lap, and (2) prosecutor was entitled to repeat questions to victim and ask leading questions on direct examination.

OKLAHOMA

Okla. Stat. Ann. tit. 22 § 60.4 (2013). Service of emergency ex parte order, petition for protective order and notice of hearing--Full hearing--Final protective order

A. 1. A copy of a petition for a protective order, notice of hearing and a copy of any emergency ex parte order issued by the court shall be served upon the defendant in the same manner as a bench warrant. In addition, if the service is to be in another county, the court clerk may issue service to the sheriff by facsimile or other electronic transmission for service by the sheriff. Any fee for service of a petition for protective order, notice of hearing, and emergency ex parte order shall only be charged pursuant to subsection C of Section 60.2 of this title and, if charged, shall be the same as the sheriff's service fee plus mileage expenses.

2. Emergency ex parte orders shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. When service cannot be made

upon the defendant by the sheriff, the sheriff may contact another law enforcement officer or a private investigator or private process server to serve the defendant.

3. An emergency ex parte order, a petition for protective order, and a notice of hearing shall have statewide validity and may be transferred to any law enforcement jurisdiction to effect service upon the defendant.

4. The return of service shall be submitted to the sheriff's office in the court where the petition, notice of hearing or order was issued.

5. When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken pursuant to Section 2-2-101 of Title 10A of the Oklahoma Statutes.

B. 1. Within twenty (20) days of the filing of the petition for a protective order, the court shall schedule a full hearing on the petition, if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act stated in the petition to hold such a hearing, regardless of whether an emergency ex parte order has been previously issued, requested or denied. Provided, however, when the defendant is a minor child who has been removed from the residence pursuant to Section 2-2-101 of Title 10A of the Oklahoma Statutes, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

2. The court may schedule a full hearing on the petition for a protective order within seventy-two (72) hours when the court issues an emergency ex parte order suspending child visitation rights due to physical violence or threat of abuse.

3. If service has not been made on the defendant at the time of the hearing, the court shall, at the request of the petitioner, issue a new emergency order reflecting a new hearing date and direct service to issue.

4. A petition for a protective order shall, upon the request of the petitioner, renew every twenty (20) days with a new hearing date assigned until the defendant is served. A petition for a protective order shall not expire unless the petitioner fails to appear at the hearing or fails to request a new order. A petitioner may move to dismiss the petition and emergency or final order at any time, however, a protective order must be dismissed by court order.

5. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests dismissal or fails to appear for the hearing thereon.

C. 1. At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the immediate family of the victim and may order the defendant to obtain domestic abuse counseling or treatment in a program certified by the Attorney General at the expense of the defendant pursuant to Section 644 of Title 21 of the Oklahoma Statutes.

2. If the court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action pursuant to the Oklahoma Juvenile Code should be taken against a juvenile defendant.

D. Final protective orders authorized by this section shall be on a standard form developed by the Administrative Office of the Courts.

E. 1. After notice and hearing, protective orders authorized by this section may require the plaintiff or the defendant or both to undergo treatment or participate in the court-approved counseling services necessary to bring about cessation of domestic abuse against the victim pursuant to Section 644 of Title 21 of the Oklahoma Statutes.

2. Either party or both may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.

F. When necessary to protect the victim and when authorized by the court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by Section 99 of Title 21 of the Oklahoma Statutes.

G. 1. Any protective order issued on or after November 1, 2012, pursuant to subsection C of this section shall be:

a. for a fixed period not to exceed a period of five (5) years unless extended, modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant; provided, if the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration. The

period of incarceration, in any jurisdiction, shall not be included in the calculation of the five-year time limitation, or

b. continuous upon a specific finding by the court of one of the following:

(1) the person has a history of violating the orders of any court or governmental entity,

(2) the person has previously been convicted of a violent felony offense, or

(3) the person has a previous felony conviction for stalking as provided in Section 1173 of Title 21 of the Oklahoma Statutes and a court order for a final Victim Protection Order has previously been issued against the person in this state or another state.

Further, the court may take into consideration whether the person has a history of domestic violence or a history of other violent acts. The protective order shall remain in effect until modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant. If the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration.

2. The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.

3. Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances.

4. If a child has been removed from the residence of a parent or custodial adult because of domestic abuse committed by the child, the parent or custodial adult may refuse the return of such child to the residence unless, upon further consideration by the court in a juvenile proceeding, it is determined that the child is no longer a threat and should be allowed to return to the residence.

H. 1. It shall be unlawful for any person to knowingly and willfully seek a protective order against a spouse or ex-spouse pursuant to the Protection from Domestic Abuse Act for purposes of harassment, undue advantage, intimidation, or limitation of child visitation rights in any divorce proceeding or separation action without justifiable cause.

2. The violator shall, upon conviction thereof, be guilty of a misdemeanor punishable by imprisonment in the county jail for a period not exceeding one (1) year or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

3. A second or subsequent conviction under this subsection shall be a felony punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed two (2) years, or by a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

I. 1. A protective order issued under the Protection from Domestic Abuse Act shall not in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation or visitation schedules, child support or division of property or any other like relief obtainable pursuant to Title 43 of the Oklahoma Statutes, except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order. Orders not affecting title may be entered for good cause found to protect an animal owned by either of the parties or any child living in the household.

2. When granting any protective order for the protection of a minor child from violence or threats of abuse, the court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a divorce decree or temporary order.

J. 1. A court shall not issue any mutual protective orders.

2. If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.

3. The court may only consolidate a hearing if:

a. the court makes specific findings that:

(1) sufficient evidence exists of domestic abuse, stalking, harassment or rape against each party, and

(2) each party acted primarily as aggressors, and

b. the defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

c. the defendant had no less than forty-eight (48) hours' notice prior to the full hearing on the petition filed by the plaintiff.

K. The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings. A victim support person shall not make legal arguments; however, a victim support person who is not a licensed attorney may offer the plaintiff or victim comfort or support and may remain in close proximity to the plaintiff or victim.

OREGON

State v. Dompier, 94 Or. App. 258, 764 P.2d 979 (1988) .

trial court was entitled to permit child, who was seven years old at time of trial, to testify while sitting on her foster mother's lap; child began to cry and was unable to answer questions relating to specific instances of sexual abuse while testifying alone from the witness stand

Or. Rev. Stat. § 147.425 (2013). Victim's personal representative

<Text of section operative until July 1, 2015. See, also, section operative July 1, 2015.>

(1) As used in this section:

(a) "Health care provider" has the meaning given that term in ORS 192.556.

(b) "Law enforcement agency" means:

(A) A city or municipal police department.

(B) A county sheriff's office.

(C) The Oregon State Police.

(D) A district attorney.

(E) A police department established by a university under ORS 352.383.

(F) A special campus security officer commissioned under ORS 352.385 or 353.050.

(G) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011.

(c) "Person crime" means a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission.

(d) "Personal representative" means a person selected under subsection (2) of this section to accompany the victim of a crime to certain phases of an investigation and prosecution.

(e) "Protective service worker" means an employee or contractor of a local or state agency whose role it is to protect children or vulnerable adults from abuse or neglect.

(2) A victim of a person crime, who is at least 15 years of age at the time the crime is committed, may select a person who is at least 18 years of age as the victim's personal representative for purposes of this section. The victim may not select a person who is a suspect in, or a party or witness to, the crime as a personal representative.

(3) Except for grand jury proceedings and child abuse assessments occurring at a child advocacy center recognized by the Department of Justice, a personal representative may accompany the victim to those phases of the investigation, including medical examinations, and prosecution of the crime at which the victim is entitled or required to be present.

(4) A health care provider, law enforcement agency, protective service worker or court may not prohibit a personal representative from accompanying a victim as authorized by subsection (3) of this section unless the health care provider, law enforcement agency, protective service worker or court believes that the personal representative would compromise the process.

(5) A health care provider, law enforcement agency, protective service worker or court is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to a decision under subsection (4) of this section to prohibit a personal representative from accompanying a victim.

(6) The fact that a personal representative was allowed or was not allowed to accompany a victim may not be used as a basis for excluding otherwise admissible evidence.

(7) The fact that a victim has or has not selected a personal representative under this section may not be used as evidence in the criminal case.

PENNSYLVANIA

Com. v. Pankraz, 382 Pa. Super. 116, 554 A.2d 974 (1989).

Defendant was convicted of simple assault, indecent assault, corruption of minor, recklessly endangering another person, and endangering welfare of child, in the Court of Common Pleas, Bucks County, Criminal Division, No. 5720-87, Kane, J., and defendant appealed. The Superior Court, No. 2235 Philadelphia 1988, Wieand, J., held that (4) trial court did not abuse its discretion by permitting child to sit in grandmother's lap while giving testimony.

RHODE ISLAND

R.I. Gen. Laws § 12-28-8 (2013). Child victims

(a) The general assembly finds that it is necessary to provide child victims and witnesses in family, district or superior court with special consideration and treatment beyond that usually afforded to adults. It is the intent of this section to provide these children with additional rights and protection during their involvement with the criminal justice system.

(b) As used in this section, "child" is anyone who is less than fifteen (15) years of age.

(c) Child victims of felony offenses, or offenses which would be considered felony offenses if committed by adults, shall have the following rights in addition to those set forth elsewhere in this chapter:

(1) To have explanations, in language understandable to a child of the victim's age, of all investigative and judicial proceedings in which the child will be involved;

(2) To be accompanied at all investigative and judicial proceedings by a relative, guardian, or other person who will contribute to the child's sense of well being, unless it is determined by the party conducting the proceeding that the presence of the particular person would substantially impede the investigation or prosecution of the case;

(3) To have all investigative and judicial proceedings in which the child's participation is required arranged so as to minimize the time when the child must be present;

(4) To be permitted to testify at all judicial proceedings in the manner which will be least traumatic to the child, consistent with the rights of the defendant;

(5) To be provided information about and referrals to appropriate social service programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

SOUTH CAROLINA

SOUTH DAKOTA

S.D. CODIFIED LAWS § 23A-28C-8 (2013). Victim or witness assistant--Duties

The victim or witness assistant shall:

(1) Advise the victim about the legal proceedings in which the victim will be involved;

(2) Advise the victim concerning any required appearance at any proceeding and if the proceeding is continued or postponed;

(3) Assist the state's attorney, court services officer, and the victim to determine the amount of monetary damages suffered by the victim and advise the victim about restitution;

(4) Advise, if the victim is less than sixteen years of age and the victim of certain crimes, the victim and one of the victim's immediate family that the preliminary hearing or deposition testimony of the victim may be videotaped pursuant to § 23A-12-9;

(5) Advise the victim or one of the victim's immediate family if the defendant is released from custody and the defendant's bail conditions.

(6) The victim or witness assistant may accompany the victim in any criminal proceeding.

TENNESSEE

TEXAS

D.T.C., In re, 30 S.W.3d 43 (Tex. App. Houston 14th Dist. 2000).

Juvenile was adjudicated delinquent in the 314th District Court, Harris County, Mary Craft, J., upon finding that he committed acts which, if committed by adult, would have constituted aggravated sexual assault. Juvenile appealed. The Court of Appeals, Yates, J., held that: (2) volunteer's presence was discretionary, reasonable step necessary to minimize trauma facing victim during her testimony.

Mosby v. State, 703 S.W.2d 714 (Tex. App. Corpus Christi 1985).

Defendant was convicted in 117th District Court, Nueces County, Jack R. Blackmon, J., of sexual abuse of child. Defendant appealed. The Court of Appeals, Seerden, J., held that: (2) defendant failed to show that position of witness' guardian ad litem in courtroom affected jury's assessment of credibility;

Rodgers v. State, 30 Tex. App. 510, 17 S.W. 1077 (Ct. App. 1891).

On a trial for rape, the judge permitted an aunt of the prosecutrix, a girl under 10 years of age, to sit by her during her examination as a witness, warning the aunt not to speak to or prompt her, which warning was in no manner violated. *Held*, no error.

UTAH

State v. Cardall, 1999 UT 51, 982 P.2d 79 (Utah 1999).

Defendant was convicted in the Second District Court, W. Brent West, J., of rape of a child, and was sentenced to a prison term of six years to life. Defendant appealed. The Supreme Court, Howe, C.J., held that: (1) incident in which victim's mother comforted victim on the witness stand in front of the jury did not warrant mistrial.

State v. Harrison, 2001 UT 33, 24 P.3d 936 (Utah 2001).

Defendant was convicted in the Second District Court, Farmington, Thomas L. Kay, J., of first-degree rape and second-degree forcible sexual abuse. Defendant appealed. The Supreme Court, Wilkins, J., held that: (1) grant of permission to victim's advocate to sit near minor complainant during her testimony was within trial court's discretion;

State v. Keeley, 8 Utah 2d 70, 328 P.2d 724 (1958).

As to the first assignment of error, we are of the opinion that it was within the discretion of the trial court to permit Mr. Egginton, the first person to whom she reported the assault, to sit near her while she was testifying. The court probably felt and we think properly that the presence of the school officer might help her to feel *72 less alone and remove to some degree the strangeness of the witness seat. The record fails to disclose that the child was influenced or coached in any way by Mr. Egginton; in fact, the court admonished Mr. Egginton to neither talk to her nor make any indication as to answers to be given.

VERMONT

State v. Dunbar, 566 A.2d 970 (Vt. 1989).

The Court upheld the trial court's allowing the child to sit at floor level, facing the jury with two "support persons" sitting with her.

V.R.Cr.P. 15 (2013). RULE 15. DEPOSITIONS

(a) When Taken. A defendant or the state, at any time after the filing of an indictment or information charging a felony, or charging a misdemeanor if authorized under subdivision (e)(4), may take the deposition of a witness subject to such protective orders and deposition schedule as the court may impose. No deposition may be taken after the date set by the court at arraignment or, if no date is set, more than 90 days after arraignment, except by leave of court granted for good cause shown.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, any Superior or District Judge may, for good cause shown, extend or shorten the time and may change the place of taking. The defendant shall not be physically present at the deposition except by agreement of the parties or upon court order for good cause shown. It shall be good cause if the court determines that it is reasonably likely that the deposition will be used as substantive evidence pursuant to subdivision (h). For the protection of the deponent, the court may impose conditions under which the defendant may be present

including, but not limited to, use of screening or alternative methods of taping or recording which allow defendant limited observation of the deponent and the ability to confer with counsel. When a deposition is taken to preserve the testimony of a witness for use at a hearing or trial, a defendant shall have the right to be present subject to such protective orders as would be available at trial, including holding the deposition before a judge. Whenever a defendant in custody is to be present at a deposition, the court shall issue such transportation orders as may be required, and the officer having custody of the defendant shall be notified of the time and place set for the examination and shall produce the defendant pursuant to the provisions of the order.

(c) Payment of Expenses. Whenever a deposition is taken at the instance of the state, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expense of the taking of the deposition, the court may direct that the expenses of travel of the defendant and his attorney for attendance at the examination shall be paid by the state.

(d) How Taken.

(1) General. A deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that (i) in no event shall a deposition be taken of a party defendant without his consent and (ii) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The state shall make available to the defendant or his counsel for examination and use at the taking of the deposition any relevant written or recorded statement of the witness being deposed which is in the possession or control of the state and to which the defendant would be entitled at trial. Attorneys shall avoid discourteous, disrespectful, argumentative, repetitive, and irrelevant questioning and shall not harass or intimidate a deponent.

(2) Manner of Recording. A deposition shall be recorded stenographically unless the notice of taking states that it is to be recorded by other than stenographic means. A deposition recorded stenographically shall be transcribed only if a party or witness so requests. If a deposition is to be recorded nonstenographically, the notice of taking shall specify the method of recording; the equipment to be used; and the name, address, and employer of the operator of the equipment.

(3) Concurrent Recording. Any party or witness may at his own expense concurrently record a deposition by a method other than that being used by the party taking the deposition. All parties present and the witness shall be advised that the concurrent recording is being made. A person making a concurrent recording shall permit the parties and the witness to review the recording and shall furnish a duplicate to the witness or any party upon request and tender of the actual cost of the duplicate.

(4) Additional Conditions. Upon motion of a party or upon its own motion the court may impose such additional conditions upon the taking of a deposition as are necessary to assure that testimony to be recorded by nonstenographic means will be accurate and trustworthy and to protect the interests of the parties and the witness.

(e) Limitations.

(1) Repeat Depositions. No witness may be deposed more than once regarding the same offense, or multiple offenses arising out of the same incident, regardless of the stage of the case, without approval of the court for good cause shown and a showing that other means are not available to obtain the information sought. Such permission shall include limitations on the subject matter of further questioning.

(2) Multiple Defendants. No witness may be deposed more than once regarding different or multiple offenses arising out of the same incident and involving two or more different defendants, without approval of the court for good cause shown and a showing that other means are not available to obtain the information sought. In cases involving co-defendants, questioning shall be conducted in the alphabetical order of the defendants' last names unless otherwise agreed by the defendants. Repetitive questioning shall be avoided.

(3) Depositions of Law Enforcement Officers. Absent agreement of the parties or approval of the court for good cause shown, no deposition shall be taken of a law enforcement officer:

(A) who has been designated by the state as a person who performed only a ministerial function with respect to the case or whom the prosecutor does not intend to call at trial; and

(B) whose involvement with the case is fully set out in a police report or other statement prepared by the law enforcement officer and furnished to the defense; and

(C) who has been made available for a recorded in-person or telephonic interview.

(4) Misdemeanors. No depositions shall be taken in misdemeanor cases except by agreement of the parties or after approval of the court for good cause shown. In determining whether to allow a deposition in misdemeanor cases, the court may consider, among other things, the consequences to the defendant, the importance of the witness's testimony, the complexity of the issues involved, the complexity of the witness's expected testimony (e.g., experts), and any other opportunities available to the defendant to discover the information sought by the deposition.

(5) Depositions of Minors in Sexual Assault Cases.

(A) No deposition of a victim under the age of 16 shall be taken in a prosecution under 13 V.S.A. §§ 2601 (lewd and lascivious conduct), 2602 (lewd and lascivious conduct with a child), 3252 (sexual assault), 3253 (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) except by agreement of the parties or after approval of the court pursuant to subparagraph (B) of this paragraph (5).

(B) The court shall not approve a deposition under this subdivision unless the court finds that the testimony of the child is necessary to assist the trial, that the evidence sought is not reasonably available by any other means, and that the probative value of the testimony outweighs the potential detriment to the child of being deposed. In determining whether to approve a deposition under this subdivision, the court shall consider the availability of recorded statements of the victim and the complexity of the issues involved.

(C)(i) If a deposition is taken pursuant to this paragraph (5), the court shall issue a protective order to protect the deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. The protective order may include, among other remedies, the following: (I) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (II) that the deposition may be taken only by written questions; (III) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (IV) that the deposition be conducted with only such persons present as the court may designate; or (V) that after the deposition has been taken, the tape or transcription be sealed until further order of the court. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions taken pursuant to this paragraph (5).

(ii) If a deposition is taken pursuant to this paragraph (5), the court shall appoint an attorney to represent the child for the purposes of the deposition.

(f) Protection of Deponents.

(1) Deponent's Counsel and Victim Advocate. A deponent may have counsel present at the deposition and may make legal objections to questions. The deponent shall be treated as a party at hearings on motions pertaining to the deposition. A victim of an alleged crime may have a victim advocate present during the deposition. The deponent may apply to the court for a protective order if the deponent believes that he or she is being subjected to harassment or intimidation. A subpoena issued pursuant to V.R.Cr.P. 17, or other notice of the deposition given to the deponent, shall include notice that the deponent may have the assistance of counsel and the victim advocate as provided herein and seek a protective order as provided in paragraph [FN1] (3).

(2) Depositions of Sensitive Witnesses. A person under the age of 16 who is a victim in a prosecution for an offense other than one listed in paragraph (e)(5), or any person aged 16 or older who is a victim in a prosecution under 13 V.S.A. § 2601 (lewd and lascivious conduct), 3252 (sexual assault), or 3253 (aggravated sexual assault) shall be considered a sensitive witness. Prior to taking the deposition of a sensitive witness, the party seeking to take the deposition shall consult with the other parties and the deponent in an effort to reach an agreement on the time, place, manner and scope of the taking of the deposition. If an agreement cannot be reached, the party seeking to take the deposition shall so advise the court and specify the matters which are in dispute. The court shall then issue an order regulating the taking of the deposition including, in its discretion, a requirement that the deposition be taken in the presence of a judge or special master. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions. If a party taking a deposition proposes to ask about information that falls within 13 V. S.A. § 3255(a)(3)(A)-(C), the party shall notify the other parties and the deponent of this intent prior to seeking agreement on the scope of the deposition.

(3) Protective Orders. At the request of a party or deponent, and for good cause shown, the court may make any protective order which justice requires to protect a party or deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. Such orders may include, among other remedies, the following: (1) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (2) that the deposition may be taken only by written questions; (3) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (4) that the deposition be conducted with only such persons present as the court may designate; (5) that after the deposition has been taken, the tape or transcription be sealed until further order of the court; (6) that the deposition not be taken. In ruling on such request, the court may consider, among other things, the age, health, level of intellectual functioning and emotional condition of the witness, whether the witness has knowledge material to the proof of or defense to any essential element of the crime, whether the witness has provided a full written, taped or transcribed account of his or her proposed testimony at trial, whether the witness's testimony will relate only to peripheral issue in the case, or whether an informal interview or telephone conference with the witness will suffice for the purposes of discovery in the case.

(4) Pro Se Defendants. A pro se defendant in a prosecution for an offense listed in paragraph (e)(5) or (f)(2) shall not be permitted to depose the victim directly. In such a case, the court shall appoint counsel for the defendant for purposes of the deposition.

(g) Medical and Social Service Agency Workers. Medical personnel, mental health professionals, social workers, counselors, therapists and workers from organizations assisting battered men and women and sexual offense victims who have provided aid or service to the victim of the alleged crime only subsequent to the initial interview of the alleged victim by law enforcement officers, who have not participated in the criminal investigation, and who will not testify at trial or other hearing, may be deposed only by order of the court upon good cause shown or by

agreement of the parties, the alleged victim and the proposed deponent. Such persons who have participated in the criminal investigation or will testify at trial shall be made available for deposition by the defense and their records, as relevant to their testimony or to the investigation, shall be produced.

(h) Use. Any deposition may be used by any party as substantive evidence in the case if (1) the deponent is unavailable for trial, as defined in subdivision (j) of this rule, or the witness gives testimony at the trial or hearing inconsistent with his deposition; and (2) either by court order or agreement of the parties the defendant could have been physically present at the deposition, whether or not the defendant was actually present. Any deposition may also be used for the purpose of contradicting or impeaching the testimony of the deponent as a witness. The court may allow a deposition based on a concurrent recording to be used at trial provided that the deposition meets all requirements of this rule. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all parts of it which are relevant to the part offered, and any party may offer other parts.

(i) Objections to Admissibility. Objections to receiving in evidence any deposition or part thereof may be made as provided in civil actions.

(j) Unavailability. "Unavailable" as a witness includes situations in which the deponent: (1) is exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of his statement; or (2) persists in refusing to testify despite an order of the judge to do so; or (3) testifies to a lack of memory of the subject matter of his deposition; or (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or (5) is absent from the hearing and the proponent of his deposition has been unable to procure his attendance by process or other reasonable means. A deponent is not unavailable as a witness if his asserted unavailability is due to the procurement or wrong doing of the proponent of his deposition for the purpose of preventing the witness from attending or testifying.

(k) Commission to Examine Witness Out of State. When an issue of fact is joined upon an information or indictment, on application of the defendant or prosecuting attorney the court may grant a commission to depose material witnesses residing out of the state as provided in this rule, and the prosecuting attorney may join in such commission and name material witnesses to be examined on the part of the state.

(l) Deposition by Agreement Not Precluded. Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties, including the agreement of the deponent as provided in subdivision (f)(2) and the agreement of the victim of the alleged crime and care provider as provided in subdivision (g).

VIRGINIA

VA. CODE ANN. § 19.2-265.01 (2013). Victims, certain members of the family and support persons not to be excluded

During the trial of every criminal case and in all court proceedings attendant to trial, whether before, during or after trial, including any proceedings occurring after an appeal by the defendant or the Commonwealth, at which attendance by the defendant is permitted, whether in a circuit or district court, any victim as defined in § 19.2-11.01 may remain in the courtroom and shall not be excluded unless the court determines, in its discretion, the presence of the victim would impair the conduct of a fair trial. In any case involving a minor victim, the court may permit an adult chosen by the minor to be present in the courtroom during any proceedings in addition to or in lieu of the minor's parent or guardian.

The attorney for the Commonwealth shall give prior notice when practicable of such trial and attendant proceedings and changes in the scheduling thereof to any known victim and to any known adult chosen in accordance with this section by a minor victim, at the address or telephone number, or both, provided in writing by such person.

WASHINGTON

State v. Carol M.D., 89 Wash. App. 77, 948 P.2d 837 (Div. 3 1997).

Due process rights of mother charged with sexually abusing children was not violated when social worker sat next to child while she testified

Wash. Rev. Code Ann. § 7.69A.030 (2013). Rights of child victims and witnesses

In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. Except as provided in RCW 7.69A.050 regarding child victims or child witnesses of violent crimes, sex crimes, or child abuse, the enumeration of rights shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Child victims and witnesses have the following rights, which apply to any criminal court and/or juvenile court proceeding:

(1) To have explained in language easily understood by the child, all legal proceedings and/or police investigations in which the child may be involved.

(2) With respect to child victims of sex or violent crimes or child abuse, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the child victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the child victim and to promote the child's feelings of security and safety.

(3) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.

(4) To not have the names, addresses, nor photographs of the living child victim or witness disclosed by any law enforcement agency, prosecutor's office, or state agency without the permission of the child victim, child witness, parents, or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victim or witness.

(5) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.

(6) To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.

(7) To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the child is involved.

(8) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.

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

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

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

WEST VIRGINIA

State v. Jones, 178 W. Va. 519, 362 S.E.2d 330 (1987).

Defendant was convicted by jury of first-degree sexual abuse before the Circuit Court, Greenbrier County, Lobban, J., and defendant appealed. The Supreme Court of Appeals, Neely, J., held that: (2) child's testimony from foster mother's lap was not prejudicial

WISCONSIN

State v. Shanks, 253 Wis. 2d 600, 2002 WI App 93, 644 N.W.2d 275 (Ct. App. 2002) .

Defendant was convicted in the Circuit Court, Walworth County, James L. Carlson, J., of first-degree sexual assault of a child, and his motion for post-conviction relief was denied. Defendant appealed. The Court of Appeals, Snyder, J., held that: (1) victim was properly allowed to sit on grandmother's lap while testifying;

WYOMING

WYO. STAT. ANN. § 813.122 (2013). Child abuse restraining orders and injunctions

(1) Definitions. In this section:

(a) "Abuse" has the meaning given in s. 48.02(1) (a) and (b) to (gm) and, in addition, includes a threat to engage in any conduct under s. 48.02 (1), other than conduct under s. 48.02 (1) (am).

(b) "Child" means any person under 18 years of age.

(c) "Child victim" means the child who is the victim or the alleged victim of abuse.

(d) "Child victim advocate" means any person who counsels child victims, assists child victims in coping with the impact of the crime or otherwise acts in support of child victims.

(2) Commencement of action and response. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6)(a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. Notwithstanding s. 803.01(3)(a), the child victim or a parent, stepparent or legal guardian of the child victim may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.

(3) General procedure. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(b) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order one or more of the following:

1. That a guardian ad litem be appointed for the child victim in accordance with s. 48.235.

2. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. 895.45(1)(c), court personnel and any guardian ad litem, be excluded from any hearing under this section.

3. That access to any record of an action under this section be available only to the parties, their attorneys, any guardian ad litem, court personnel and any applicable court upon appeal.

(bm) The court or circuit court commissioner shall appoint a guardian ad litem if the respondent is a parent of the child.

(c) An action under this section may pertain to more than one child victim.

(4) Temporary restraining order. (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6)(a).

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(5) Injunction. (a) A judge may grant an injunction ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents to that contact in writing and the judge agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6)(a).
2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.
3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim.
 - (b) If the respondent is the parent of the child victim, the judge shall modify the order under par. (a) to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any authorized visitation be supervised.
 - (c) The injunction may be entered only against the respondent named in the petition.
 - (d)
 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years or until the child victim attains 18 years of age, whichever occurs first.
 2. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first.
 3. If the petitioner states that an extension is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, whichever occurs first.
 4. Notice need not be given to the respondent before extending an injunction under subd. 2 or 3.
- (e) An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.511.

(5m) Notice of restriction on firearm possession; surrender of firearms. (a) An injunction issued under sub. (5) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.

2. Except as provided in par. (ag), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner. The judge or circuit court commissioner shall approve the person designated by the respondent unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29(4).

(ag) If the respondent is a peace officer, an injunction issued under sub. (5) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(am)1. When a respondent surrenders a firearm under par. (a)2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (b), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (b).

4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(aw) A sheriff may store a firearm surrendered to him or her under par. (a)2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.

(b) A firearm surrendered under par. (a)2. may not be returned to the respondent until a judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (5) has been vacated or has expired and not been extended.

2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief.

(c) If a respondent surrenders a firearm under par. (a)2. that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29(4).

(6) Petition. (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and the child victim.

2. The name of the respondent.

3. That the respondent engaged in, or based on prior conduct of the respondent and the child victim may engage in, abuse of the child victim.

4. If the payment of child support is requested, that the payment of child support is reasonable or necessary based on criteria provided under s. 767.511.

5. If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

a. The name or type of the court proceeding.

b. The date of the court proceeding.

c. The types of provisions regarding contact between the petitioner and respondent.

(b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 48.47(7)(d) to a petitioner.

(7) Contact. Any order under this section directing a person to avoid contact with a child victim prohibits the person from knowingly touching, meeting, communicating or being in visual or audio contact with the child victim, except as provided in any modifications of the order under sub. (5)(b).

(9) Enforcement assistance. (a) If an order is issued under this section, upon request by the petitioner, the court or circuit court commissioner, as applicable, shall order the sheriff to assist in executing or serving the temporary restraining order or injunction.

(am)1. If an injunction is issued or extended under sub. (5), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of a firearms restrictions record search under s. 175.35(2g)(c) or a background check under s. 175.60(9g)(a).

2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only as part of a firearms restrictions record search under s. 175.35(2g)(c).

3. The department of justice shall disclose any information that it receives under subd. 1. to a law enforcement agency when the information is needed for law enforcement purposes.

(b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the child victim's premises.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information received under par. (b) concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system no later than 24 hours after receiving the information and shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(10) Arrest. (am) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A petitioner under sub. (6)(a) presents the law enforcement officer with a copy of an order issued under sub. (4) or (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

2. The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or (5).

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (5) but who has been served with a copy of the petition and notice of the time for hearing under sub. (5)(a)2. has constructive knowledge of the existence of the injunction and shall be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

(11) Penalty. Whoever knowingly violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

(12) Notice of full faith and credit. An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

FEDERAL LEGISLATION

Eighth Circuit: U.S. v. Grooms, 978 F.2d 425, 36 Fed. R. Evid. Serv. 1052 (8th Cir. 1992).

Defendant was convicted of abusive sexual contact with three nine-year-old girls after jury trial in the United States District Court for the District of South Dakota, Donald J. Porter, Senior District Judge. Defendant appealed. The Court of Appeals, Bowman, Circuit Judge, held that: (3) allowing witness to serve as girls' adult attendant during girls' testimony at trial was proper.

Eleventh Circuit: Sexton v. Howard, 55 F.3d 1557 (11th Cir. 1995).

Defendant was convicted in the Circuit Court, Montgomery County, H. Mark Kennedy, J., of first-degree rape and first-degree sodomy of his four-year-old daughter, and he appealed. The Court of Criminal Appeals, Bowen, P.J., 529 So.2d 1041, affirmed. Following denial of defendant's petition for postconviction relief, defendant filed petition in federal court for writ of habeas corpus based on trial court's alleged error in allowing prosecutor to sit with child victim during her testimony. The Court of Appeals held that state trial court's alleged error in allowing prosecutor to sit with defendant's daughter during her testimony did not prejudicially affect defendant's substantial rights, and did not provide ground for federal habeas relief.

18 U.S.C. § 3509(f) (2013). 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.

AMERICAN SAMOA

GUAM

Guam Code Ann. tit. 8, § 75.80 (2013). Sex Offense Case, Attendance of Supporting Persons at Testimony of Prosecuting Witness 17 Years of Age or Under.

(a) Notwithstanding any other provision of law, a prosecuting witness 17 years of age or under a case involving violation of any sexual offense defined in Chapter 25 of Title 9, Guam Code Annotated, or a violation of § 31.30 of said title shall be entitled for support to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the Grand Jury proceeding, preliminary hearing and at the trial, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand although the other person may remain in the courtroom during the witness' testimony. The support persons shall not make notes during the hearing or proceeding. In the case of a Grand Jury proceeding, the prosecuting attorney shall inform the support person or persons that Grand Jury proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings.

(b) If the person or persons so chosen are also prosecuting witness, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant

the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In all cases, the judge shall admonish the support person or persons to not prompt, sway or influence the minor witness in any way.

For purposes of this section, members of a prosecuting witness" family shall include the prosecuting witness" parents, legal guardian, grandparents, uncles, aunts or siblings.

PUERTO RICO

VIRGIN ISLANDS