



WHY YOUR STATE SHOULD ADOPT UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHOD ACT (2002)

The Uniform Child Witness Testimony by Alternative Method Act (UCWTAMA) was promulgated by the National Conference of Commissioners on Uniform State Laws in 2002 to address the complicated issues involved in child witness testimony. The Act provides a clear and effective method of protecting children from the emotional trauma associated with giving testimony, while continuing to protect the 6th Amendment rights of defendants and respondents. Presiding officers are given clear authority to allow children to testify using alternative methods in criminal, civil, and administrative matters, without displacing the existing practices of a state.

The Act creates a framework that integrates current state practice with alternative methods of taking testimony. This allows judges, presiding officers, and attorneys to apply fair and predictable standards to the process. The Uniform Child Witness Testimony by Alternative Method Act is effective because:

- ***UCWTAMA is “an applicable state procedure” for URE.*** Rule 807(a)(2) of the 1999 URE provides that a child witness must either testify at the proceeding “[or pursuant to an applicable state procedure for the giving of testimony by a child]”. The rule allows a statement of a child to be introduced through an alternative method recognized under applicable state law without complicating the Rule 807 exception to the hearsay rule. The UCWTAMA provides “an applicable state procedure”, giving a presiding officer clear authority to allow children to testify using alternative methods in criminal, civil, and administrative matters.
- ***Hearings to determine need for an alternative method.*** A presiding officer may order a hearing to determine whether to allow a child to testify by an alternative method. Clear standards are established for making the determination in both criminal and non-criminal cases.
 - In a criminal proceeding, a presiding officer must determine upon clear and convincing evidence that a child would suffer serious emotional trauma which would substantially impair the child’s ability to communicate with the finder of fact.
 - In a non-criminal proceeding, the presiding officer must find upon a preponderance of the evidence that allowing the child to testify by an alternative means is necessary to serve the best interests of the child or to enable the child to communicate with the trier of fact. The officer is directed to consider the nature of

the proceeding, age and maturity of the child, relationship of the child to the parties, nature and degree of possible emotional trauma, and any other relevant factors.

- If the proper standard is met, the Act specifies additional factors to be considered by the presiding officer in deciding whether to allow presentation by an alternative method.

- ***Protection of the rights of defendants and respondents.*** The Act directs the presiding officer to employ an alternative method that is no more restrictive of the rights of the parties than is necessary under the circumstances. It requires that the chosen method must permit full and fair opportunity for cross-examination of the child witness by each party.

UNIFORMITY

The UCWTAMA was promulgated to provide uniformity in an area of law where there was extreme diversity among state jurisdictions. Uniform laws are necessary when addressing alternative methods for taking the testimony of a child in order to protect children, guard the rights of parties, and provide predictability and clarity for attorneys and judges. The Uniform Child Witness Testimony by Alternative Methods Act is an important complement to the Uniform Rules of Evidence and should be adopted by every state.

For further information about the Uniform Child Witness Testimony by Alternative Methods Act, please contact ULC Legislative Counsel Lindsay Beaver at 312-450-6618 or lbeaver@uniformlaws.org.