



## **THE UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT (2002)**

*- A Summary -*

Increasingly, children are called to testify in court proceedings. Trauma resulting from exposure to an open courtroom or confrontation with a defendant can lead to emotional distress and inaccurate testimony. The Uniform Child Witness Testimony by Alternative Method Act (UCWTBAMA) addresses the complicated issues of child witness testimony.

In the process of revising the Uniform Rules of Evidence (URE), a project completed in 1999, the Drafting Committee eliminated what was then Rule 807(d). Rule 807 provides an exception to the hearsay rule for statements of a child victim and the deleted subdivision provided alternative methods for taking the testimony of a child victim. The provisions were removed from the URE because the Committee: (1) believed the provisions were incompatible with a child victim or witness exception to the hearsay rule and would be better dealt with in a separate rule or statute, (2) noted wide divergence among the states with respect to the use of alternative means of taking child witness testimony, supporting the argument for a uniform state law on this subject, and (3) felt that a separate uniform law on the subject would better allow states to fashion procedures based on local decisional law. Accordingly, Rule 807(a)(2) of the URE, as modified in 1999, more generally provides that the child must either testify at the proceeding “[or pursuant to an applicable state procedure for the giving of testimony by a child]” and 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 UCWTBAMA fills the gap created in the 1999 URE by providing an “applicable state procedure” that gives presiding officers clear authority to allow children to testify using alternative methods in criminal, civil, and administrative matters. The Act does not displace existing practices, such as closed circuit television and identity screens, nor does it seek to change a state’s defined age under which such procedures are available. Instead, the Act creates a common framework that integrates a state’s existing practices and alternative means of taking testimony and applies fair and predictable standards to that process. The Act does not apply to the taking or use of evidence obtained through discovery depositions or other discovery mechanisms authorized and regulated by the Rules of Civil or Criminal Procedure of the enacting jurisdiction.

First, the Act gives the presiding officer of a criminal or noncriminal proceeding the power to order a hearing, upon a motion by a party, child witness, or other individual determined to have standing, and with good cause shown, to determine whether to allow a child to testify by an alternative method. While this hearing must be conducted on the record after reasonable notice to all parties, the child’s presence is not required. The presiding officer is bound only by the rules of privilege and not by the other normal rules of evidence.

In a criminal proceeding, if the presiding officer finds, upon clear and convincing evidence, that

the child would suffer serious emotional trauma which would substantially impair the child's ability to communicate with the finder of fact, the officer may allow the child to testify other than: (1) in an open forum in the presence and full view of the finder of fact or (2) face-to-face with the defendant. This standard follows the holding of *Maryland v. Craig* (497 U.S. 836, 1990) and adopts the standard of proof set by a number of states and the persuasive holding of *Reutter v. State*, 886 P.2d 1298 (Alaska Ct. App. 1994).

In a noncriminal proceeding, if the presiding officer finds, upon a preponderance of the evidence, that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or to enable the child to communicate with the trier of fact, the officer may allow the child to testify by an alternative method. The presiding officer is directed in this circumstance to consider the nature of the proceeding, age and maturity of the child, relationship of the child to the parties in the proceeding, nature and degree of emotional trauma the child may suffer in testifying, and any other relevant factor(s).

If either of the above standards are met, the Act directs the presiding officer to consider a number of additional factors, including the nature of the alternative means of testimony reasonably available, other alternatives for reducing emotional trauma to the child, nature of the case, relative rights of the parties, importance of the proposed testimony, nature and degree of emotional trauma the child may suffer if an alternative method is not used, and other related factor(s). After considering these factors, the court may issue an order which states the method(s) to be used, the parties allowed in or excluded from the child's presence, any special conditions relative to a party's right to examine or cross-examine the child, and conditions or limitations upon the participation of individuals present during the child's testimony. 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 to serve the purposes of the order and requires that the method chosen must permit a full and fair opportunity for cross-examination of the child witness by each party.

The Uniform Child Witness Testimony by Alternative Methods Act provides judges, administrative officers, and other presiding officers with a clear and legally sound means of protecting child witnesses from the emotional trauma associated with giving testimony, while at the same time protecting the 6<sup>th</sup> Amendment rights of defendants and respondents. It creates a sound procedural basis for the use of alternative methods of testimony, and clear standards for the use of these methods, without displacing an enacting state's existing mechanisms and means of addressing this issue.

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](mailto:lbeaver@uniformlaws.org).