

**CHAIR BEAM'S AND REPORTER WHINERY'S REVISION
OF COMMITTEE DRAFT**

OF

**PROPOSED UNIFORM CHILD WITNESS TESTIMONY
BY ALTERNATIVE METHODS ACT**

SECTION 1. SHORT TITLE.

SECTION 2. DEFINITIONS. In this [Act]:

- (1) "Alternative method" means a method of taking and presenting the testimony of a child witness other than by the witness appearing in person in an open forum in the physical presence and full view of the finder of fact, the presiding officer and those parties to the litigation required or permitted to be present.
- (2) "Child witness" means an individual, whether or not a party, under the age of [13] who is competent to testify and either has been or will be called to testify in a proceeding.
- (3) "Criminal proceeding" means a proceeding before a criminal court of this state convened to further the prosecution of a person charged with a violation of the [state] criminal code.
- (4) "Non-criminal proceeding" means a proceeding other than a criminal proceeding, before a court of this state or before an administrative agency of this state with judicial or quasi-judicial powers.

SECTION 3. SCOPE.

This Act applies to all criminal and non-criminal proceedings except those non-criminal proceedings specifically convened to determine the parental custody or visitation status of the child witness or those non-criminal proceedings governed by [state constitutional and statutory law].

SECTION 4. HEARING TO DETERMINE METHOD OF TAKING TESTIMONY.

- (1) Upon the motion of a party or upon a presiding officer's own motion, with or without a request by a parent, guardian, advocate, or next friend of the child witness, the presiding officer shall, upon good cause shown, hold a hearing to determine the need to receive the testimony of the child witness by an alternative method.
- (2) After notice to the parties, the child witness and the parent, guardian, advocate, or

next friend of the witness, the presiding officer shall conduct a hearing on the record and, unless waived, in the presence of and the participation by all parties. In conducting the hearing, the presiding officer is not bound by Rules of Evidence and the child witness is not required to be present.

SECTION 5. GROUNDS FOR TAKING TESTIMONY OF A CHILD WITNESS BY AN ALTERNATIVE METHOD.

- (1) In a criminal proceeding, the presiding officer may order the taking and presentation of the testimony of a child witness by an alternative method which permits the witness to testify outside of the designated hearing room or outside the immediate presence of a criminal defendant if the presiding officer finds by clear and convincing evidence that the child witness will suffer significant emotional trauma which will substantially impair the witness's ability to communicate with the finder of fact if required to testify inside the hearing room or through a face-to-face confrontation between the witness and a criminal defendant.
- (2) In a non-criminal proceeding, the presiding officer may order the taking and presentation of the testimony of a child witness by an alternative method if the presiding officer finds by a preponderance of the evidence that an alternative method is needed to protect the best interests of the child witness or enable the child to communicate with the finder of fact.

SECTION 6. FACTORS FOR DETERMINING THE NECESSITY FOR TAKING THE TESTIMONY OF A CHILD WITNESS BY AN ALTERNATIVE METHOD.

In making its determination under Section 5, the presiding officer may consider any relevant factor, but shall, if applicable, consider the following factors:

- (1) the nature of the proceeding;
- (2) the age, maturity, and testimonial capacity of the child witness;
- (3) the rights of the parties;
- (4) the relationship of the child witness to the parties in the proceeding;
- (5) the public interest in open hearings;
- (6) the availability of the child witness for the proceeding;
- (7) the available means for protecting the interest of or reducing the trauma to the child witness without resort to an alternative method;
- (8) the importance of the proposed testimony of the child witness;
- (9) the necessity of protecting the child witness; and
- (10) the nature and degree of the trauma which the child witness may suffer in testifying in the hearing room or face-to-face confrontation with a criminal defendant.

SECTION 7. ORDER REGARDING TAKING OF TESTIMONY BY AN ALTERNATIVE METHOD.

- (1) An order allowing or disallowing the taking and presentation of the testimony of a child witness by an alternative method shall state the reasons for the presiding officer's determination.
- (2) An order allowing the taking and presentation of the testimony of a child witness by an alternative method shall set forth:
 - (a) a finding that the interests of justice require the use of an alternative method;
 - (b) the factual grounds for allowing the taking of the testimony by an alternative method;
 - (c) the method by which the testimony is to be taken;
 - (d) a list, individually or by category, of the persons either allowed to be present, including, if appropriate, counsel for the witness, or required to be excluded during the taking of the testimony of the witness;
 - (e) any special conditions necessary to facilitate a party's right to examine or cross-examine the witness;
 - (f) any conditions or limitations upon the participation of persons present during the taking of the testimony of the witness; and
 - (g) any other conditions deemed necessary for the taking or presentation of the testimony.
- (3) In addition to the requirements of subsection (2), an order permitting the taking of the testimony of a child witness by an alternative method in a criminal proceeding shall contain a specific finding that the method designated is no more restrictive of the rights of the criminal defendant than is necessary to serve the interests of justice.

SECTION 8. PROCEEDING FOR TAKING TESTIMONY BY AN ALTERNATIVE METHOD.

- (1) Only the presiding officer, personnel necessary for taking the testimony, individuals necessary to operate any required equipment, members of the jury, if applicable, attorneys for the parties, a parent, guardian, advocate or next friend of the child witness authorized by the presiding officer, and a party or such other persons whose presence, in the discretion of the presiding officer, is required due to the nature of the proceeding may be present during the taking of the child witness's testimony.
- (2) In a proceeding in which the testimony of a child witness is taken by an alternative method, all parties, or their attorneys, or other designated representatives authorized by the presiding officer, must be given a full and fair opportunity to examine or cross-examine the child witness.