

1 **DRAFT OF PROPOSED**
2
3 **UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS**
4 **ACT**
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7 **SECTION 1. SHORT TITLE.**

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9 **SECTION 2. DEFINITIONS.** In this [Act]:

10 (1) “Alternative method” means a method of presenting the testimony of a
11 witness other than having the witness appear live, in person, in an open forum, in the
12 presence of the finder of fact and the presiding officer, with all the parties allowed to be
13 present, to participate and to view and be viewed by the witness.

14 (2) “Child witness” means an individual, whether or not a party, under the age of
15 [13], who is competent to testify and either has been or will be called to testify in a
16 proceeding.

17 (3) “Criminal proceeding” means a trial or hearing before a court in a
18 prosecution of a person charged with violating a criminal law of this state.

19 (4) “Non-criminal proceeding” means a trial or hearing in a court of this state
20 other than a criminal proceeding.

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22 **SECTION 3. SCOPE.** This Act shall apply to all criminal and non-criminal
23 proceedings except [those non-criminal proceedings convened to receive the testimony of
24 a child witness concerning the custody or visitation of the witness]. [insert provision that
25 this Act does not limit other applicable law].
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1 **SECTION 4. HEARING TO DETERMINE METHOD OF TAKING**
2 **TESTIMONY.**

3 (a) The Court, upon its own motion, the motion of a party or the motion of an
4 individual determined by the Court to have sufficient interest to move on behalf of the
5 child witness shall, upon good cause shown, conduct a hearing to determine whether it is
6 necessary to take the testimony of the child witness by an alternative method.

7 (b) A hearing to determine whether to take the testimony of a child witness by an
8 alternative method must be conducted on the record after reasonable notice to all parties,
9 the child witness and a person responsible for protecting the interests of the child witness.
10 All parties to the proceeding have the right to be present and participate.

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12 **SECTION 5. GROUNDS FOR TAKING TESTIMONY OF CHILD WITNESS**
13 **BY ALTERNATIVE METHOD.**

14 (a) The Court in a criminal proceeding may order the taking of the testimony of a
15 child witness by an alternative method by which the child is not in the courtroom during
16 the presentation of the child's testimony only if the Court finds by clear and convincing
17 evidence that the child witness would suffer emotional trauma by testifying in the
18 courtroom which would substantially impair the child witness's ability to communicate.

19 (b) The Court in a criminal proceeding may order the taking of the testimony of a
20 child witness by an alternative method that does not permit a face-to-face confrontation
21 between the child and a defendant against whom the child's testimony is or is to be
22 offered only if the Court finds by clear and convincing evidence that the child witness

1 would suffer emotional trauma by testifying in the physical presence of the defendant
2 which would substantially impair the child witness's ability to communicate.

3 (c) The Court in a non-criminal proceeding may order the taking of the testimony
4 of a child witness by an alternative method only if the Court finds by a preponderance of
5 the evidence that taking the testimony of the child witness by an alternative method is
6 necessary to (1) protect the best interests of the child witness; or (2) enable the child
7 witness to communicate.

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9 **SECTION 6. FACTORS FOR DETERMINING NECESSITY FOR TAKING**
10 **TESTIMONY OF CHILD WITNESS BY ALTERNATIVE METHOD.** In
11 determining whether grounds exist under Section 5 for the taking of testimony of a child
12 witness by an alternative method, or whether, in the interest of justice, to allow the taking
13 of the testimony of the child witness by an alternative method, the Court may consider
14 any relevant factor and shall consider the following factors, if applicable:

- 15 (1) the nature of the proceeding;
- 16 (2) the age, maturity, and testimonial capacity of the child witness;
- 17 (3) the rights of the parties;
- 18 (4) the relationship of the child witness to the parties in the proceeding;
- 19 (5) the public interest in open courts;
- 20 (6) the availability of the child witness for the proceeding;
- 21 (7) available means for protecting the interest of or reducing the trauma to the
22 child without resort to an alternative method;
- 23 (8) the importance of the proposed testimony of the child witness;

1 (9) the necessity of protecting the child witness; and

2 (10) the nature and degree of the trauma which the child witness may suffer.

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4 **SECTION 7. RIGHTS OF PARTIES TO EXAMINE WITNESS.** All parties to a
5 proceeding in which testimony of a child witness is taken by an alternative method must
6 be given a full and fair opportunity to examine or cross-examine the child witness.

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8 **SECTION 8. ORDER REGARDING TAKING TESTIMONY BY**
9 **ALTERNATIVE METHOD.**

10 (a) Based upon evidence presented at a hearing pursuant to Section 4, the Court
11 shall make findings of facts and issue an order allowing or disallowing the taking of the
12 testimony of the child witness by an alternative method.

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14 (b) An order that allows the taking of the testimony of a child witness by an
15 alternative method must specify or contain:

16 (1) the grounds for allowing the taking of the testimony by an alternative
17 method;

18 (2) [a finding that the interests of justice require the use of an alternative
19 method];

20 (3) the method by which the testimony is to be taken;

21 (4) a list, individually or by category, of the persons either allowed to be
22 present, including, if appropriate, counsel for the child witness, or required to be
23 excluded during the taking of the testimony of the child witness;

