

## Closed-Circuit Television Statutes

Updated August 2012

Closed Circuit Television (CCTV) is a secured video system in which signals are transmitted from a video camera to specific television monitors.<sup>1</sup> In the context of a criminal child abuse prosecution, CCTV can be used as an accommodation for a child witness who would otherwise be traumatized by testifying in front of his or her alleged sexual abuser.<sup>2</sup> CCTV allows the child witness to testify in a separate room, and contemporaneously transmit his or her testimony to the courtroom.

Several CCTV configurations exist. One-way and two-way CCTV are traditionally used in child abuse cases. One-way CCTV has one camera and one monitor. The defendant and the jury are in the courtroom with the monitor. The child, the defense attorney, the prosecutor, and the judge are in a separate room. The child faces the camera, testifies, and is subject to cross examination. The defendant and jury must be able to see and hear the child's testimony. The defendant must also have the ability to communicate with his attorney at all times. The two-way CCTV configuration has two cameras and two monitors. The additional camera records the defendant in the courtroom and transmits the signal to a monitor in the room where the child is testifying. Two-way CCTV which more readily mimics face-to-face confrontation is preferred.

The Supreme Court in *Maryland v. Craig* upheld the use of one-way CCTV in child abuse cases. The Supreme Court stated "the Confrontation Clause does not guarantee criminal defendants an *absolute* right to a face-to-face meeting with the witnesses against them at trial."<sup>3</sup> "The defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy and only where the testimony's reliability is otherwise assured."<sup>4</sup> The government's interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of its special procedure, provided that the State makes an adequate showing of necessity in an individual case.<sup>5</sup> As a side note, the Confrontation issue addressed in *Craig* is distinct from the issue addressed in *Crawford v. Washington*, 541 U.S. 36 (2004), and survives the *Crawford* analysis.<sup>6</sup>

The compilation consists of state and federal criminal statutes which have codified the standards articulated in *Craig*. State statutes which allow a child to testify via CCTV in juvenile, family, and administrative courts are not included in the scope of this compilation.

*Please note there may have been changes to this area of law since our last update. Contact us at 703-549-9222 to discuss information included in this document.*

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<sup>1</sup> Allison Cunningham & Pamela Hurley, *A Full and Candid Account: Using Special Accommodations and Testimonial Aids to Facilitate Testimony of Children*, (Cent. for Children and Families in the Justice Sys. 2007)

<sup>2</sup> *Maryland v. Craig*, 497 U.S. 836 (1990).

<sup>3</sup> *Id.* at 844.

<sup>4</sup> *Id.* at 850.

<sup>5</sup> *Id.* at 855.

<sup>6</sup> *Horn v. Quarterman*, 508 F.3d 306, 318-19 (5th Cir. 2007); *State v. Arroyo*, 935 A.2d 975, 992 n.18 (Conn. 2007); *Blanchette*, 35 134 P.3d at 29; *State v. Griffin*, 202 S.W.3d 670, 680-81 (Mo. Ct. App. 2006); *State v. Henriod*, 131 P.3d 232, 237-38 (Utah 2006); *State v. Vogelsberg*, 724 N.W.2d 649, 651-55 (Wis. 2006). *State v. Stock*, 256 P.3d 899 (2011) (finding no court that has "concluded *Crawford* overruled *Craig*."); *Roadcap v. Commonwealth*, 50 V. App. 732, 743, 653 S.E.2d 620, 625 (2007) ("As nearly all courts and commentators have agreed, *Crawford* did not overrule *Craig*").

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## ALABAMA

### **Ala. Code § 15-25-3 (2012). Closed circuit examination of victim**

(a) In those criminal prosecutions set out in Section 15-25-1, the court, on motion of the state or the defendant prior to the trial of the case, may order that the testimony of any alleged victim of the crime or witness thereto who is under the age of 16 at the time of the order shall be viewed and heard at trial by the court and the finder of fact by closed circuit equipment. In ruling on the motion the court shall take into consideration those matters set out in Section 15-25-2.

(b) If the court orders that the victim's or witness's testimony in court shall be by closed circuit equipment, the testimony shall be taken outside the courtroom in the judge's chambers or in another suitable location designated by the judge.

(c) Examination and cross-examination of the alleged child victim or witness shall proceed as though he or she were testifying in the courtroom. Present in the room with the child during his or her testimony shall be the prosecuting attorney, the attorney of the defendant, and a person whose presence, in the judgment of the court, contributes to the well-being of the child and who has dealt with the child in a therapeutic setting regarding the abuse. Additional persons, such as the parent or parents or legal guardian except the defendant, may be admitted into the room in the discretion of the court.

(d) All costs incurred by the district attorney to make it possible for the court and the trier of the fact to view the testimony of the victim by closed circuit equipment as provided in this article shall be paid by the state. The district attorney shall submit all bills for costs to the State Comptroller for approval and payment from the fund entitled "Court Costs Not Otherwise Provided For."

(e) Notwithstanding any other provision of law or rule of evidence, a child victim of a physical offense, sexual offense, or sexual exploitation, shall be considered a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding. The trier of fact shall be permitted to determine the weight and credibility to be given to the testimony. The court may also allow leading questions of the child witnesses in the interest of justice.

(f) The operators of the closed circuit equipment may also be in the room and shall make every effort to be unobtrusive.

(g) Only the court, the prosecuting attorney, and the attorney for the defendant may question the child. During the child's testimony by closed circuit equipment, the defendant, the judge, and the jury shall remain in the courtroom. The video feed showing the child shall remain visible to the defendant, the judge, and the jury at all times during the testimony and cross-examination of the child victim or witness.

(h) The judge and the defendant shall be allowed to communicate with the attorneys in the room where the child is testifying by any appropriate electronic method. The party making the motion that the testimony shall be by closed circuit equipment shall make all necessary arrangements regarding the equipment and the operation thereof during the course of the proceeding.

(i) This section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time. The testimony shall be

limited to purposes of identification only.

(j) The provisions of this section shall not apply if the defendant is not represented by an attorney.

## **ALASKA**

### **Alaska Stat. § 12.45.046 (2012). Testimony of children in criminal proceedings**

(a) In a criminal proceeding under AS 11.41 involving the prosecution of an offense committed against a child under the age of 16, or witnessed by a child under the age of 16, the court

(1) may appoint a guardian ad litem for the child;

(2) on its own motion or on the motion of the party presenting the witness or the guardian ad litem of the child, may order that the testimony of the child be taken by closed circuit television or through one-way mirrors if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate.

(b) In making a determination under (a)(2) of this section, the court shall consider factors it considers relevant, including

(1) the child's chronological age;

(2) the child's level of development;

(3) the child's general physical health;

(4) any physical, emotional, or psychological injury experienced by the child; and

(5) the mental or emotional strain that will be caused by requiring the child to testify under normal courtroom procedures.

(c) If the court determines under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the defendant, the court, and the finder of fact in the proceeding. If the court authorizes use of closed circuit televised testimony under this subsection,

(1) each of the following may be in the room with the child when the child testifies:

(A) the prosecuting attorney;

(B) the attorney for the defendant; and

(C) operators of the closed circuit television equipment;

(2) the court may, in addition to persons specified in (1) of this subsection, admit a person whose



presence, in the opinion of the court, contributes to the well-being of the child.

(d) When a child is to testify under (c) of this section, only the court and counsel may question the child. The persons operating the equipment shall do so in as unobtrusive a manner as possible. If the defendant requests, the court shall excuse the defendant from the courtroom, shall permit the defendant to attend in another location, and shall afford the defendant a means of viewing the child's testimony and of communicating with the defendant's attorney throughout the proceedings. Upon request of the defendant or the defendant's attorney, the court shall permit a recess to allow them to confer. The court shall provide a means of communicating with the attorneys during the questioning of the child. Objections made by the attorneys to questions of a child witness may be resolved in the courtroom if the court finds it necessary.

(e) If the court determines under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, the court may authorize the use of one-way mirrors in conjunction with the taking of the child's testimony. The attorneys may pose questions to the child and have visual contact with the child during questioning, but the mirrors shall be placed to provide a physical shield so that the child does not have visual contact with the defendant and jurors.

(f) If the court does not find under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures will result in the child's inability to effectively communicate, the court may, after taking into consideration the factors specified in (b) of this section, supervise the spatial arrangements of the courtroom and the location, movement, and deportment of all persons in attendance so as to safeguard the child from emotional harm or stress. In addition to other procedures it finds appropriate, the court may

(1) allow the child to testify while sitting on the floor or on an appropriately sized chair;

(2) schedule the procedure in a room that provides adequate privacy, freedom from distractions, informality, and comfort appropriate to the child's developmental age; and

(3) order a recess when the energy, comfort, or attention span of the child warrants.

## **ARIZONA**

### **ARIZ. REV. STAT. § 13-4251 (2012). APPLICABILITY;DEFINITION**

A. This article applies to the testimony or statements of a minor in criminal proceedings involving acts committed against the minor or involving acts witnessed by the minor whether or not those acts are charged and in civil proceedings including proceedings involving a dependency or a termination of parental rights.

B. In this article, "minor" means a person under fifteen years of age or a person who has a developmental disability as defined in section 41-2451 and who has a tested intelligence quotient score below seventy-five.

### **ARIZ. REV. STAT. § 13-4252 (2012). RECORDING OF TESTIMONY**

A. The recording of an oral statement of a minor made before a proceeding begins is admissible into evidence if all of the following are true:

1. No attorney for either party was present when the statement was made.
2. The recording is both visual and aural and is recorded on film or videotape or by other electronic means.
3. Every voice on the recording is identified.
4. The person conducting the interview of the minor in the recording is present at the proceeding and available to testify or be cross-examined by either party.
5. The defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence.
6. The minor is available to testify.
7. The recording equipment was capable of making an accurate recording, the operator of the equipment was competent and the recording is accurate and has not been altered.
8. The statement was not made in response to questioning calculated to lead the minor to make a particular statement.

B. If the electronic recording of the oral statement of a minor is admitted into evidence under this section, either party may call the minor to testify and the opposing party may cross-examine the minor.

**ARIZ. REV. STAT. § 13-4253 (2012). OUT OF COURT TESTIMONY; TELEVISED; RECORDED**

A. The court, on motion of the prosecution, may order that the testimony of the minor be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the minor may be present in the room with the minor during his testimony. Only the attorneys may question the minor. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the minor during his testimony but does not permit the minor to see or hear them. The court shall permit the defendant to observe and hear the testimony of the minor in person but shall ensure that the minor cannot hear or see the defendant.

B. The court, on motion of the prosecution, may order that the testimony of the minor be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection A may be present during the taking of the minor's testimony, and the persons operating the equipment shall be confined from the minor's sight and hearing as provided by subsection A. The court shall permit the defendant to observe and hear the testimony of the minor in person but shall ensure that the minor cannot hear or see the defendant. The court shall also ensure that:

1. The recording is both visual and aural and is recorded on film or videotape or by other electronic means.
2. The recording equipment was capable of making an accurate recording, the operator was competent and the recording is accurate and is not altered.

3. Each voice on the recording is identified.

4. Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

C. If the court orders the testimony of a minor to be taken pursuant to this section, the minor shall not be required to testify in court at the proceeding for which the testimony was taken.

## **ARKANSAS**

### **ARK. CODE ANN. § 16-43-1001 (2012). CLOSED-CIRCUIT TELEVISION**

(a) (1) In any criminal proceeding, on motion of the prosecutor after notice to the defendant or on motion of the defense attorney, the court may, upon a showing of clear and convincing evidence that testifying in open court would be harmful or detrimental to the child, order that the testimony of a victim or witness who is a child twelve (12) years of age or under be taken outside the courtroom and the presence of the defendant and communicated to the courtroom by closed-circuit television.

(2) Any such motion shall only apply to the witnesses of the moving party and shall be filed no later than five (5) days before the trial is scheduled to begin, except in cases where, while testifying, it becomes apparent that the child cannot continue with his or her testimony.

(b) In ruling on the motion, the court shall consider the following factors:

(1) The age and maturity of the child;

(2) The possible effect that testimony in person may have on the child;

(3) The extent of the trauma the child has already suffered;

(4) The nature of the testimony to be given by the child;

(5) The nature of the offense, including, but not limited to, the use of a firearm or any other deadly weapon during the commission of the crime or the infliction of serious bodily injury upon the victim during the commission of the crime;

(6) (A) Threats made to the child or the child's family in order to prevent or dissuade the child from attending or giving testimony at any trial or court proceeding or to prevent the child from reporting the alleged offense or from assisting in criminal prosecution.

(B) Threats under this subdivision (b)(6) may include, but not be limited to, threats of serious bodily injury to be inflicted on the child or a family member, threats of incarceration or deportation of the child or a family member, or threats of removal of the child from the family or dissolution of the family;

(7) Conduct on the part of the defendant or the defendant's attorney which causes the child to be unable to continue his testimony; and

(8) Any other matter which the court considers relevant.

(c) (1) (A) If the court orders that the child's testimony be taken by closed-circuit television, the

testimony shall be taken outside the courtroom in the judge's chambers or in another suitable location designated by the judge.

(B) Examination and cross-examination of the child shall proceed as though he or she were testifying in the courtroom.

(C) The only persons who may be permitted in the room with the child during the child's testimony are:

(i) The judge or a judicial officer appointed by the court;

(ii) The prosecutor;

(iii) The defense attorney, except a pro se defendant;

(iv) The child's attorney;

(v) Persons necessary to operate the closed-circuit television equipment; and

(vi) Any person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

(2) The defendant shall be afforded a means of private, contemporaneous communication with the defendant's attorney during the testimony.

(d) This section does not preclude the presence of both the victim and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

(e) This section does not apply if the defendant is an attorney pro se unless the defendant has a court-appointed attorney assisting the defendant in the defense, in which case only the court-appointed attorney shall be permitted in the room with the child during the child's testimony.

(f) Nothing in this section creates a right of a child witness to a closed-circuit television procedure in lieu of testifying in open court and the intent of this section is that testimony by closed-circuit television be used in limited circumstances.

(g) Videotapes of closed-circuit testimony which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the alleged victim.

### **A.R.E. Rule 803 (2012). Hearsay Exceptions – Availability of Declarant Immaterial**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(25) Child Hearsay When Declarant Is Available at Trial and Subject to Cross-Examination. A statement made by a child under the age of ten (10) years concerning any type of sexual offense, or attempted sexual offense, with, on, or against that child, which is inconsistent with the child's testimony and offered in a criminal proceeding, provided:

(A) The trial court conducts a hearing outside the presence of the jury and finds that the statement offered possesses a reasonable guarantee of trustworthiness considering the competency of the child both at the time of the out of court statement and at the time of the testimony.

(B) The proponent of the statement gives the adverse party reasonable notice of his intention to offer the statement and the particulars of the statement.

(C) This section shall not be construed to limit the admission of an offered statement under any other hearsay exception or applicable rule of evidence.

## **CALIFORNIA**

### **Cal. Penal Code § 1347 (2012). Testimony of minor witness by closed circuit television**

(a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ alternative court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these alternative procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice by the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of any of the following:

(A) An alleged sexual offense committed on or with the minor.

(B) An alleged violent felony, as defined in subdivision (c) of Section 667.5, of which the minor is a victim.

(C) An alleged felony offense specified in Section 273a or 273d of which the minor is a victim.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (E), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit testimony is used.

(A) Testimony by the minor in the presence of the defendant would result in the child suffering serious emotional distress so that the child would be unavailable as a witness.

(B) The defendant used a deadly weapon in the commission of the offense.

(C) The defendant threatened serious bodily injury to the child or the child's family, threatened incarceration or deportation of the child or a member of the child's family, threatened removal of the child from the child's family, or threatened the dissolution of the child's family in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding, or to prevent the minor from reporting the alleged sexual offense, or from assisting in criminal prosecution.

(D) The defendant inflicted great bodily injury upon the child in the commission of the offense.

(E) The defendant or his or her counsel behaved during the hearing or trial in a way that caused the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary to obtain the minor's testimony.

(3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

(c) If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision (b), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used. The prosecution shall give the defendant or defendants at least 30 days' written notice of the prosecution's intent to seek the use of one-way closed-circuit television, unless good cause is shown to the court why this 30-day notice requirement should not apply.

(d)

(1) The hearing on a motion brought pursuant to this section shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing; nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the five factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless two-way or one-way closed-circuit television is used, 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 support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape 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 or defendants, and his or her attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape that is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a nonuniformed bailiff any technicians necessary to operate the closed-circuit equipment, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A videotape shall record the image of the minor and his or her testimony, and a separate videotape shall record the image of the support person.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or defendants or any of the facts of the case with the minor during this meeting.

(h) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section prohibits the court from ordering the minor to be brought into the courtroom for a limited purpose, including the identification of the defendant or defendants as the court deems necessary.

(i) The examination shall be under oath, and the defendant or defendants shall be able to see and hear the minor witness, and if two-way closed-circuit television is used, the defendant's image shall be transmitted live to the witness.

(j) Nothing in this section affects the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(l) Nothing in this section shall be construed to prohibit a defendant from being represented by counsel during any closed-circuit testimony.

## **COLORADO**

### **Colo. Rev. Stat. § 16-10-402 (2012). Use of closed-circuit television - child or developmentally disabled witnesses**

(1) (a) When a witness at the time of a trial is a child less than twelve years of age, or is a person who has a developmental disability as defined in section 27-10.5-102 (11) (a), C.R.S., the court may, upon motion of a party or upon its own motion, order that the witness's testimony be taken in a room other than the courtroom and be televised by closed-circuit television in the courtroom if:

(I) The testimony is taken during the proceeding;

(II) The judge determines that testimony by the witness in the courtroom and in the presence of the defendant would result in the witness suffering serious emotional distress or trauma such that the witness would not be able to reasonably communicate; and

(III) Closed-circuit television equipment is available for such use.

(b) To obtain an order authorizing the use of closed-circuit television for testimony by a child or developmentally disabled witness, the party shall file a written motion with the court no less than ten days prior to the trial.

(c) Only the prosecuting attorney, the attorney for the defendant, the guardian ad litem, if any, and the judge may question the witness when he or she testifies by closed-circuit television.

(d) The operators of the closed-circuit television equipment shall make every effort to be unobtrusive while the witness is testifying.

(2) (a) Only the following persons may be in the room with the witness when the child or developmentally disabled person testifies by closed-circuit television:

(I) The prosecuting attorney;

(II) The attorney for the defendant;

(III) The guardian ad litem, if any;

(IV) The operators of the closed-circuit television equipment;



(V) A person whose presence, in the opinion of the court, contributes to the welfare and well-being of the witness, including a person who has dealt with the witness in a therapeutic setting; and

(VI) The jury.

(b) During the witness's testimony by closed-circuit television, the judge and the defendant, if present, shall remain in the courtroom.

(c) The judge and the defendant shall be allowed to communicate with the persons in the room where the witness is testifying by an appropriate electronic method.

(3) The provisions of this section shall not apply if the defendant is appearing pro se.

(4) This section shall not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the witness and the defendant in the courtroom at the same time.

(5) Nothing in this section shall be interpreted to preclude the removal of the defendant, rather than the witness, from the courtroom upon the stipulation of both parties and the approval of the court.

## CONNECTICUT

### **Conn. Gen. Stat. § 54-86g (2012). Testimony of victim of child abuse. Court may order testimony taken outside courtroom. Procedure**

(a) In any criminal prosecution of an offense involving assault, sexual assault or abuse of a child twelve years of age or younger, the court may, upon motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom in the presence and under the supervision of the trial judge hearing the matter and be televised by closed circuit equipment in the courtroom or recorded for later showing before the court. Only the judge, the defendant, the attorneys for the defendant and for the state, persons necessary to operate the equipment and any person who would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony, except that the court may order the defendant excluded from the room or screened from the sight and hearing of the child only if the state proves, by clear and convincing evidence, that the child would be so intimidated, or otherwise inhibited, by the physical presence of the defendant that a compelling need exists to take the testimony of the child outside the physical presence of the defendant in order to insure the reliability of such testimony. If the defendant is excluded from the room or screened from the sight and hearing of the child, the court shall ensure that the defendant is able to observe and hear the testimony of the child, but that the child cannot see or hear the defendant. The defendant shall be able to consult privately with his attorney at all times during the taking of the testimony. The attorneys and the judge may question the child. If the court orders the testimony of a child to be taken under this subsection, the child shall not be required to testify in court at the proceeding for which the testimony was taken.

(b) In any criminal prosecution of an offense involving assault, sexual assault or abuse of a child twelve years of age or younger, the court may, upon motion of the attorney for any party, order that the following procedures be used when the testimony of the child is taken: (1) Persons shall be prohibited

from entering and leaving the courtroom during the child's testimony; (2) an adult who is known to the child and with whom the child feels comfortable shall be permitted to sit in close proximity to the child during the child's testimony, provided such person shall not obscure the child from the view of the defendant or the trier of fact; (3) the use of anatomically correct dolls by the child shall be permitted; and (4) the attorneys for the defendant and for the state shall question the child while seated at a table positioned in front of the child, shall remain seated while posing objections and shall ask questions and pose objections in a manner which is not intimidating to the child.

## **DELAWARE**

### **Del. Code Ann. tit. 11, § 3514 (2012). Testimony of victim or witness in child abuse case by means of closed circuit television**

(a) (1) In any prosecution involving any offense set forth in § 3513(a) of this title, a court may order that the testimony of a child victim or witness less than 11 years of age be taken outside the courtroom and shown in the courtroom by means of closed circuit television if:

a. The testimony is taken during the proceeding; and

b. The judge determines that testimony by the child victim or witness in the courtroom will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.

(2) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child.

(3) The operators of the closed circuit television shall make every effort to be unobtrusive.

(b) (1) Only the following persons may be in the room with the child when the child testifies by closed circuit television:

a. The prosecuting attorney;

b. The attorney for the defendant;

c. The operators of the closed circuit television equipment; and

d. Any person whose presence, in the opinion of the court, contributes to the well-being of the child, including a person who has dealt with the child in a therapeutic setting concerning the abuse.

(2) During the child's testimony by closed circuit television, the judge and the defendant shall be in the courtroom.

(3) The judge and the defendant shall be allowed to communicate with the persons in the room where the child is testifying by any appropriate electronic method.

(c) The provisions of this section do not apply if the defendant is an attorney pro se.

(d) This section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time.

## **DISTRICT OF COLUMBIA**

- ***Hicks-Bey v. United States*, 649 A.2d 569, 574-576 (D.C. Cir. 1994)**

In prosecution for carnal knowledge, trial court properly permitted minor victim to testify at trial over closed-circuit television, out of presence of defendant and judge, despite lack of enabling legislation in jurisdiction to permit such a procedure; presence of a statute was not a prerequisite to constitutionality of proposed procedure, and trial court made findings that use of procedure was necessary to protect welfare of victim, that victim would be traumatized by presence of defendant, and that emotional distress suffered by victim was more than de minimis.

## **FLORIDA**

### **Fla. Stat. Ann. § 92.54 (2012). Use of closed circuit television in proceedings involving victims or witnesses under the age of 16 or persons with mental retardation**

(1) Upon motion and hearing in camera and upon a finding that there is a substantial likelihood that the child or person with mental retardation will suffer at least moderate emotional or mental harm due to the presence of the defendant if the child or person with mental retardation is required to testify in open court, or that such victim or witness is unavailable as defined in s. 90.804(1), the trial court may order that the testimony of a child under the age of 16 or person with mental retardation who is a victim or witness be taken outside of the courtroom and shown by means of closed circuit television.

(2) The motion may be filed by the victim or witness; the attorney, parent, legal guardian, or guardian ad litem of the victim or witness; the prosecutor; the defendant or the defendant's counsel; or the trial judge on his or her own motion.

(3) Only the judge, the prosecutor, the defendant, the attorney for the defendant, the operators of the videotape equipment, an interpreter, and some other person who, in the opinion of the court, contributes to the well-being of the child or person with mental retardation and who will not be a witness in the case may be in the room during the recording of the testimony.

(4) During the child's or person's with mental retardation testimony by closed circuit television, the court may require the defendant to view the testimony from the courtroom. In such a case, the court shall permit the defendant to observe and hear the testimony of the child or person with mental retardation, but shall ensure that the child or person with mental retardation cannot hear or see the defendant. The defendant's right to assistance of counsel, which includes the right to immediate and direct communication with counsel conducting cross-examination, must be protected and, upon the defendant's request, such communication shall be provided by any appropriate electronic method.

(5) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.

## GEORGIA

### **GA. CODE ANN. § 17-8-55 (2012). Testimony of child ten years old or younger by closed circuit television; persons entitled to be present**

(a) In all proceedings involving the criminal charges specified in this Code section, the court may order that the testimony of a child ten years of age or younger who has been the victim of any violation of Code Section 16-5-70, Code Section 16-6-1, Code Section 16-6-2, Code Section 16-6-4, or Code Section 16-6-5.1 be taken outside the courtroom and shown in the courtroom by means of a two-way closed circuit television. An order may be granted in such cases only if:

(1) The testimony is taken during the criminal trial proceeding for such violation; and

(2) The judge determines that testimony by the child victim in the courtroom will result in the child's suffering serious emotional distress such that the child cannot reasonably communicate.

(b) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child who testifies by two-way closed circuit television.

(c) The operators of the two-way closed circuit television shall make every effort to be unobtrusive.

(d) Only the following persons may be in the room with the child when the child testifies by two-way closed circuit television:

(1) The prosecuting attorney;

(2) The attorney for the defendant;

(3) The operators of the two-way closed circuit television equipment;

(4) The judge; and

(5) In the court's discretion, any person whose presence, in the opinion of the court, contributes to the well-being of the child, including a person who has dealt with the child in a therapeutic setting concerning the crime. The defendant and defendant's counsel shall be notified at least 24 hours before the closed circuit testimony as to the prosecution's representatives and any other persons who shall be present in the room with the child victim during the child's testimony.

(e) During the child's testimony by two-way closed circuit television, the defendant shall be in the courtroom.

(f) The defendant shall be allowed to communicate with the persons in the room where the child is testifying by any appropriate electronic method.

(g) The provisions of this Code section do not apply if the defendant is an attorney pro se.

(h) This Code section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the child victim and the defendant in the courtroom at the same time.

## **HAWAII**

### **Haw. Rev. Stat. § 616-1 (2012). Televised testimony of child**

In any prosecution of an abuse offense or sexual offense alleged to have been committed against a child less than eighteen years of age at the time of the testimony, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by two-way closed circuit video equipment to be viewed by the court, the accused, and the trier of fact, if the court finds that requiring the child to testify in the physical presence of the accused would likely result in serious emotional distress to the child and substantial impairment of the child's ability to communicate. During the entire course of such a procedure, the attorneys for the defendant and for the State shall have the right to be present with the child, and full direct and cross-examination shall be available as a matter of right.

## **IDAHO**

### **IDAHO CODE ANN. § 9-1801 (2012). Uniform Child Witness Testimony by Alternative Methods**

This chapter may be cited as the "Uniform Child Witness Testimony by Alternative Methods Act."

### **Idaho Code Ann. § 9-1802 (2012). Definitions**

In this chapter:

(1) "Alternative method" means a method by which a child witness testifies which does not include all of the following:

- (a) Having the child present in person in an open forum;
- (b) Having the child testify in the presence and full view of the finder of fact and presiding officer; and
- (c) Allowing all of the parties to be present, to participate and to view and be viewed by the child.

(2) "Child witness" means an individual under the age of thirteen (13) years who has been or will be called to testify in a proceeding.

(3) "Criminal proceeding" means a trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state and a juvenile delinquency proceeding involving conduct that if engaged in by an adult would constitute a violation of the criminal law of this state.

(4) "Noncriminal proceeding" means a trial or hearing before a court or an administrative agency of this state having judicial or quasi-judicial powers, other than a criminal proceeding.

### **Idaho Code Ann. § 9-1803 (2012). Applicability**

This chapter applies to the testimony of child witnesses in all criminal or noncriminal proceedings. However, this chapter does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness to testify, or in a juvenile courtroom proceeding involving conduct that if engaged in by an adult would constitute a violation of a criminal law of this state, testimony by a child witness in a closed forum as may be authorized or required by law.

### **Idaho Code Ann. § 9-1804 (2012). Hearing Whether to Allow Testimony by Alternative Method**

(1) The presiding officer of a criminal or noncriminal proceeding may order a hearing to determine whether to allow presentation of the testimony of a child witness by an alternative method. The presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the presiding officer to have sufficient standing to act on behalf of the child.

(2) A hearing to determine whether to allow presentation of the testimony of a child witness by an alternative method must be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer. In conducting the hearing, the presiding officer is not bound by rules of evidence, except for the rules of privilege.

### **Idaho Code Ann. § 9-1805 (2012). Standards for Determining Whether Child Witness' Testimony may be Presented by Alternative Method**

(1) In a criminal proceeding, the presiding officer may order the presentation of the testimony of a child witness by an alternative method only in the following situations:

(a) A child witness' testimony may be taken otherwise than in an open forum in the presence and full view of the finder of fact if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum.

(b) A child witness' testimony may be taken other than in a face-to-face confrontation between the child and a defendant if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

(2) In a noncriminal proceeding, the presiding officer may order the presentation of the testimony of a child witness by an alternative method if the presiding officer finds by a preponderance of the evidence that presenting the testimony of the child by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

(a) The nature of the proceeding;

(b) The age and maturity of the child;

- (c) The relationship of the child to the parties in the proceeding;
- (d) The nature and degree of emotional trauma that the child may suffer in testifying; and
- (e) Any other relevant factor.

**IDAHO CODE ANN. § 9-1806 (2008). FACTORS FOR DETERMINING WHETHER TO PERMIT ALTERNATIVE METHOD**

If the presiding officer determines that a standard under section 9-1805, Idaho Code, has been met, the presiding officer shall determine whether to allow the presentation of the testimony of a child witness by an alternative method and in doing so shall consider:

- (1) Alternative methods reasonably available;
- (2) Available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;
- (3) The nature of the case;
- (4) The relative rights of the parties;
- (5) The importance of the proposed testimony of the child;
- (6) The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
- (7) Any other relevant factor.

**IDAHO CODE ANN. § 9-1807 (2012). Order Regarding Testimony By Alternative Method**

- (1) An order allowing or disallowing the presentation of the testimony of a child witness by an alternative method must state the findings of fact and conclusions of law that support the presiding officer's determination.
- (2) An order allowing the presentation of the testimony of a child witness by an alternative method must state:
  - (a) The method by which the testimony is to be presented;
  - (b) A list, individually or by category, of the persons either allowed to be present or required to be excluded during the taking of the testimony of the child;
  - (c) Any special conditions necessary to facilitate a party's right to examine or cross-examine the child;
  - (d) Any condition or limitation upon the participation of persons present during the taking of the testimony of the child; and

(e) Any other condition necessary for taking or presenting the testimony.

(3) The alternative method ordered by the presiding officer must be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order.

### **Idaho Code Ann. § 9-1808 (2008). Right of Parties to Examine Child Witness**

An alternative method ordered by the presiding officer must permit a full and fair opportunity for examination and cross-examination of the child witness.

## **ILLINOIS**

### **725 Ill. Comp. Stat. Ann. 5/106B-5 (2012). Testimony by a victim who is a child or a moderately, severely, or profoundly mentally retarded person or a person affected by a developmental disability**

Sec. 106B-5. Testimony by a victim who is a child or a moderately, severely, or profoundly mentally retarded person or a person affected by a developmental disability. (a) In a proceeding in the prosecution of an offense of criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual abuse, or aggravated criminal sexual abuse, a court may order that the testimony of a victim who is a child under the age of years or a moderately, severely, or profoundly mentally retarded person or a person affected by a developmental disability be taken outside the courtroom and shown in the courtroom by means of a closed circuit television if:

(1) the testimony is taken during the proceeding; and

(2) the judge determines that testimony by the child victim or moderately, severely, or profoundly mentally retarded victim or victim affected by a developmental disability in the courtroom will result in the child or moderately, severely, or profoundly mentally retarded person or person affected by a developmental disability suffering serious emotional distress such that the child or moderately, severely, or profoundly mentally retarded person or person affected by a developmental disability cannot reasonably communicate or that the child or moderately, severely, or profoundly mentally retarded person or person affected by a developmental disability will suffer severe emotional distress that is likely to cause the child or moderately, severely, or profoundly mentally retarded person or person affected by a developmental disability to suffer severe adverse effects.

(b) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child or moderately, severely, or profoundly mentally retarded person or person affected by a developmental disability.

(c) The operators of the closed circuit television shall make every effort to be unobtrusive.

(d) Only the following persons may be in the room with the child or moderately, severely, or profoundly



mentally retarded person or person affected by a developmental disability when the child or moderately, severely, or profoundly mentally retarded person or person affected by a developmental disability testifies by closed circuit television:

(1) the prosecuting attorney;

(2) the attorney for the defendant;

(3) the judge;

(4) the operators of the closed circuit television equipment; and

(5) any person or persons whose presence, in the opinion of the court, contributes to the well-being of the child or moderately, severely, or profoundly mentally retarded person or person affected by a developmental disability, including a person who has dealt with the child in a therapeutic setting concerning the abuse, a parent or guardian of the child or moderately, severely, or profoundly mentally retarded person or person affected by a developmental disability, and court security personnel.

(e) During the child's or moderately, severely, or profoundly mentally retarded person's or person affected by a developmental disability's testimony by closed circuit television, the defendant shall be in the courtroom and shall not communicate with the jury if the cause is being heard before a jury.

(f) The defendant shall be allowed to communicate with the persons in the room where the child or moderately, severely, or profoundly mentally retarded person or person affected by a developmental disability is testifying by any appropriate electronic method.

(g) The provisions of this Section do not apply if the defendant represents himself pro se.

(h) This Section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time.

(i) This Section applies to prosecutions pending on or commenced on or after the effective date of this amendatory Act of 1994.

(j) For the purposes of this Section, "developmental disability" includes, but is not limited to, cerebral palsy, epilepsy, and autism.

## INDIANA

### **Ind. Code. § 35-37-4-6 (2012). Application of section; "protected person" defined; applicable offenses; admissibility of statement or videotape; notice to defendant; jury instructions; hearing as evidence**

Sec. 6. (a) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(1) or (c)(2):

(1) Sex crimes (IC 35-42-4).

(2) Battery upon a child (IC 35-42-2-1(a)(2)(B)).

- (3) Kidnapping and confinement (IC 35-42-3).
- (4) Incest (IC 35-46-1-3).
- (5) Neglect of a dependent (IC 35-46-1-4).
- (6) Human and sexual trafficking crimes (IC 35-42-3.5).
- (7) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through (6).

(b) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(3):

- (1) Exploitation of a dependent or endangered adult (IC 35-46-1-12).
- (2) A sex crime (IC 35-42-4).
- (3) Battery (IC 35-42-2-1).
- (4) Kidnapping, confinement, or interference with custody (IC 35-42-3).
- (5) Home improvement fraud (IC 35-43-6).
- (6) Fraud (IC 35-43-5).
- (7) Identity deception (IC 35-43-5-3.5).
- (8) Synthetic identity deception (IC 35-43-5-3.8).
- (9) Theft (IC 35-43-4-2).
- (10) Conversion (IC 35-43-4-3).
- (11) Neglect of a dependent (IC 35-46-1-4).
- (12) Human and sexual trafficking crimes (IC 35-42-3.5).

(c) As used in this section, "protected person" means:

- (1) a child who is less than fourteen (14) years of age;
- (2) an individual with a mental disability who has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:
  - (A) is manifested before the individual is eighteen (18) years of age;
  - (B) is likely to continue indefinitely;
  - (C) constitutes a substantial impairment of the individual's ability to function normally in society; and
  - (D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; or
- (3) an individual who is:
  - (A) at least eighteen (18) years of age; and
  - (B) incapable by reason of mental illness, mental retardation, dementia, or other physical or mental incapacity of:
    - (i) managing or directing the management of the individual's property; or
    - (ii) providing or directing the provision of self-care.

(d) A statement or videotape that:

- (1) is made by a person who at the time of trial is a protected person;
- (2) concerns an act that is a material element of an offense listed in subsection (a) or (b) that was allegedly committed against the person; and
- (3) is not otherwise admissible in evidence;

is admissible in evidence in a criminal action for an offense listed in subsection (a) or (b) if the requirements of subsection (e) are met.

(e) A statement or videotape described in subsection (d) is admissible in evidence in a criminal action listed in subsection (a) or (b) if, after notice to the defendant of a hearing and of the defendant's right to be present, all of the following conditions are met:

(1) The court finds, in a hearing:  
(A) conducted outside the presence of the jury; and  
(B) attended by the protected person in person or by using closed circuit testimony as described in section 8(f) and 8(g) of this chapter;  
that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability.

(2) The protected person:  
(A) testifies at the trial; or  
(B) is found by the court to be unavailable as a witness for one (1) of the following reasons:  
(i) From the testimony of a psychiatrist, physician, or psychologist, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate.  
(ii) The protected person cannot participate in the trial for medical reasons.  
(iii) The court has determined that the protected person is incapable of understanding the nature and obligation of an oath.

(f) If a protected person is unavailable to testify at the trial for a reason listed in subsection (e)(2)(B), a statement or videotape may be admitted in evidence under this section only if the protected person was available for cross-examination:

(1) at the hearing described in subsection (e)(1); or  
(2) when the statement or videotape was made.

(g) A statement or videotape may not be admitted in evidence under this section unless the prosecuting attorney informs the defendant and the defendant's attorney at least ten (10) days before the trial of:

(1) the prosecuting attorney's intention to introduce the statement or videotape in evidence; and  
(2) the content of the statement or videotape.

(h) If a statement or videotape is admitted in evidence under this section, the court shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement or videotape and that, in making that determination, the jury shall consider the following:

(1) The mental and physical age of the person making the statement or videotape.  
(2) The nature of the statement or videotape.  
(3) The circumstances under which the statement or videotape was made.  
(4) Other relevant factors.

(i) If a statement or videotape described in subsection (d) is admitted into evidence under this section, a defendant may introduce a:

(1) transcript; or  
(2) videotape;

of the hearing held under subsection (e)(1) into evidence at trial.

## **IOWA**

## **Iowa Code § 915.38 (2012). Televised, videotaped, and recorded evidence -- limited court testimony -- minors and others**

1. Upon its own motion or upon motion of any party, a court may protect a minor, as defined in section 599.1, from trauma caused by testifying in the physical presence of the defendant where it would impair the minor's ability to communicate, by ordering that the testimony of the minor be taken in a room other than the courtroom and be televised by closed-circuit equipment for viewing in the courtroom. However, such an order shall be entered only upon a specific finding by the court that such measures are necessary to protect the minor from trauma. Only the judge, prosecuting attorney, defendant's attorney, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the minor may be present in the room with the minor during the minor's testimony. The judge shall inform the minor that the defendant will not be present in the room in which the minor will be testifying but that the defendant will be viewing the minor's testimony through closed-circuit television.

During the minor's testimony the defendant shall remain in the courtroom and shall be allowed to communicate with the defendant's counsel in the room where the minor is testifying by an appropriate electronic method.

In addition, upon a finding of necessity, the court may allow the testimony of a victim or witness with a mental illness, mental retardation, or other developmental disability to be taken as provided in this subsection, regardless of the age of the victim or witness.

2. The court may, upon its own motion or upon motion of a party, order that the testimony of a minor, as defined in section 599.1, be taken by recorded deposition for use at trial, pursuant to rule of criminal procedure 2.13(2)(b). In addition to requiring that such testimony be recorded by stenographic means, the court may on motion and hearing, and upon a finding that the minor is unavailable as provided in rule of evidence 5.804(a), order the videotaping of the minor's testimony for viewing in the courtroom by the court. The videotaping shall comply with the provisions of rule of criminal procedure 2.13(2)(b), and shall be admissible as evidence in the trial. In addition, upon a finding of necessity, the court may allow the testimony of a victim or witness with a mental illness, mental retardation, or other developmental disability to be taken as provided in this subsection, regardless of the age of the victim or witness.

3. The court may upon motion of a party admit into evidence the recorded statements of a child, as defined in section 702.5, describing sexual contact performed with or on the child, not otherwise admissible in evidence by statute or court rule if the court determines that the recorded statements substantially comport with the requirements for admission under rule of evidence 5.803(24) or 5.804(b)(5).

4. A court may, upon its own motion or upon the motion of a party, order the court testimony of a child to be limited in duration in accordance with the developmental maturity of the child. The court may consider or hear expert testimony in order to determine the appropriate limitation on the duration of a child's testimony. However, the court shall, upon motion, limit the duration of a child's uninterrupted testimony to one hour, at which time the court shall allow the child to rest before continuing to testify.

## **KANSAS**

**Kan. Stat. Ann. § 22-3434 (2012). Videotape of testimony of child victim admissible in certain cases; limitations; standard of proof; objections, restrictions**

(a) On motion of the attorney for any party to a criminal proceeding in which a child less than 13 years of age is alleged to be a victim of the crime, subject to the conditions of subsection (b), the court may order that the testimony of the child be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding if: (A) The recording is both visual and aural and is recorded on film or videotape or by other electronic means; (B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered; (C) every voice on the recording is identified; and (D) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript is provided to the parties.

(b) The state must establish by clear and convincing evidence that to require the child who is the alleged victim to testify in open court will so traumatize the child as to prevent the child from reasonably communicating to the jury or render the child unavailable to testify. The court shall make such an individualized finding before the state is permitted to proceed under this section.

(c) At the taking of testimony under this section:

(1) Only the attorneys for the defendant, the state and the child, any person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;

(2) only the attorneys may question the child;

(3) the persons operating the recording or closed-circuit equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony but does not permit the child to see or hear them; and

(4) the court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

(d) If the testimony of a child is taken as provided by this section, the child shall not be compelled to testify in court during the proceeding.

(e) (1) Any objection by any party to the proceeding to a recording under subsection (a)(2) is inadmissible must be made by written motion filed with the court at least seven days before the commencement of the trial. An objection under this subsection shall specify the portion of the recording which is objectionable and the reasons for the objection. Failure to file an objection within the time provided by this subsection shall constitute waiver of the right to object to the admissibility of the recording unless the court, in its discretion, determines otherwise.

(2) The provisions of this subsection (d) shall not apply to any objection to admissibility for the reason that the recording has been materially altered.

**KAN. STAT. ANN. § 38-2249 (2012). RULES OF EVIDENCE**

(a) In all proceedings under this code, the rules of evidence of the code of civil procedure shall apply, except that no evidence relating to the condition of a child shall be excluded solely on the ground that the matter is or may be the subject of a physician-patient privilege, psychologist-client privilege or social worker-client privilege.

(b) The judge presiding at all hearings under this code shall not consider or rely upon any report not properly admitted according to the rules of evidence, except as provided by K.S.A. 2007 Supp. 38-2219, and amendments thereto.

(c) In any proceeding in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, a recording of an oral statement of the child, or of any witness less than 13 years of age, made before the proceeding began, is admissible in evidence if:

(1) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

(2) no attorney for any party or interested party is present when the statement is made;

(3) the recording is both visual and aural and is recorded on film, videotape or by other electronic means;

(4) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(5) the statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

(6) every voice on the recording is identified;

(7) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party or interested party; and

(8) each party or interested party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence.

(d) On motion of any party to a proceeding pursuant to the code in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, the court may order that the testimony of the child, or of any witness less than 13 years of age, be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the parties and interested parties to the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the parties and interested parties to the proceeding if:

(A) The recording is both visual and aural and is recorded on film, videotape or by other electronic means;

(B) the recording equipment is capable of making an accurate recording, the operator of the equipment is

competent and the recording is accurate and has not been altered;

(C) every voice on the recording is identified; and

(D) each party and interested party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.

(e) At the taking of testimony under subsection (d):

(1) Only an attorney for each party, interested party, the guardian ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;

(2) only the attorneys for the parties may question the child; and

(3) the persons operating the recording or closed-circuit equipment shall be confined to an adjacent room or behind a screen or mirror that permits such person to see and hear the child during the child's testimony, but does not permit the child to see or hear such person.

(f) If the testimony of a child is taken as provided by subsection (d), the child shall not be compelled to testify in court during the proceeding.

(g) (1) Any objection to a recording under subsection (d)(2) that such proceeding is inadmissible must be made by written motion filed with the court at least seven days before the commencement of the adjudicatory hearing. An objection under this subsection shall specify the portion of the recording which is objectionable and the reasons for the objection. Failure to file an objection within the time provided by this subsection shall constitute waiver of the right to object to the admissibility of the recording unless the court, in its discretion, determines otherwise.

(2) The provisions of this subsection shall not apply to any objection to admissibility for the reason that the recording has been materially altered.

## **KENTUCKY**

### **Ky. Rev. Stat. Ann. § 421.350 (2012). Testimony of child allegedly victim of illegal sexual activity**

(1) This section applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under KRS 510.040 to 510.155, 529.030 to 529.050, 529.070, 530.020, 530.060, 530.064(1)(a), 531.310, 531.320, 531.370, or any specified in KRS 439.3401 and all dependency proceedings pursuant to KRS Chapter 620, when the act is alleged to have been committed against a child twelve (12) years of age or younger, and applies to the statements or testimony of that child or another child who is twelve (12) years of age or younger who witnesses one of the offenses included in this subsection.

(2) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the

proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence the court finds would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

(3) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (3) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by subsection (3) of this section. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:

(a) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;

(b) The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(c) Each voice on the recording is identified; and

(d) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

(4) If the court orders the testimony of a child to be taken under subsection (2) or (3) of this section, the child may not be required to testify in court at the proceeding for which the testimony was taken, but shall be subject to being recalled during the course of the trial to give additional testimony under the same circumstances as with any other recalled witness, provided that the additional testimony is given utilizing the provisions of subsection (2) or (3) of this section.

(5) For the purpose of subsections (2) and (3) of this section, "compelling need" is defined as the substantial probability that the child would be unable to reasonably communicate because of serious emotional distress produced by the defendant's presence.

## **LOUISIANA**

### **LA. Rev. Stat. § 15:283 (2012). Protected person; testimony taken outside courtroom**

A. On its own motion or on the motion of the attorney for any party, a court may order that the testimony of a protected person who may have been a witness to or victim of a crime be taken in a room other than the courtroom and be simultaneously televised by closed circuit television to the court and jury, when the court makes a specific finding of necessity based upon both of the following:

(1) Expert testimony that the protected person would be likely to suffer serious emotional distress if forced to give testimony in open court.



(2) Expert testimony that, without such simultaneous televised testimony, the protected person cannot reasonably communicate his testimony to the court or jury.

B. The court shall ensure that the protected person cannot see or hear the accused unless such viewing or hearing is requested for purposes of identification. However, the court shall ensure that the accused is afforded the ability to consult with his attorney during the testimony of the protected person.

C. The only persons who may be present in the room with the protected person are the person or persons operating the audio-video equipment, the presiding judge, the attorneys for the state, the attorneys for the defendant, and any person, other than a relative of the protected person, whose presence is determined by the court to be necessary to the welfare and well-being of the protected person during his testimony. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the protected person during his testimony but does not permit the protected person to see or hear them.

D. Only the attorneys, or the presiding judge as authorized by law, may question the protected person.

E. For the purposes of this Section, "protected person" means a person who is the victim of a crime or a witness in a criminal prosecution who is either of the following:

(1) Under the age of seventeen years.

(2) Has a developmental disability as defined in R.S. 28:451.2(12).

## **MAINE**

**Maine has neither a statute nor published state case law discussing the use of CCTV in criminal child abuse cases.**

## **MARYLAND**

## **Md. Code Ann. Crim. Proc. § 11-303 (2012). Testimony of child victim by closed circuit television**

(a) Scope of section. -- This section applies to a case of abuse of a child under Title 5, Subtitle 7 of the Family Law Article or § 3-601 or § 3-602 of the Criminal Law Article.

(b) In general. -- A court may order that the testimony of a child victim be taken outside the courtroom and shown in the courtroom by closed circuit television if:

(1) the court determines that testimony by the child victim in the presence of a defendant or a child respondent will result in the child victim's suffering serious emotional distress such that the child victim cannot reasonably communicate; and

(2) the testimony is taken during the proceeding.

(c) Determination by court. --

(1) In determining whether testimony by the child victim in the presence of the defendant or child respondent will result in the child victim's suffering such serious emotional distress that the child cannot reasonably communicate, the court may:

(i) observe and question the child victim inside or outside the courtroom; and

(ii) hear testimony of a parent or custodian of the child victim or other person, including a person who has dealt with the child victim in a therapeutic setting.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, each defendant or child respondent, one attorney for a defendant or child respondent, one prosecuting attorney, and one attorney for the child victim may be present when the court hears testimony on whether to allow a child victim to testify by closed circuit television.

(ii) If the court decides to observe or question the child victim in connection with the determination to allow testimony by closed circuit television:

1. the court may not allow the defendant or child respondent to be present; but

2. one attorney for each defendant or child respondent, one prosecuting attorney, and one attorney for the child victim may be present.

(d) Procedures during testimony. --

(1) Only the following persons may be in the room with the child victim when the child victim testifies by closed circuit television:

(i) one prosecuting attorney;

(ii) one attorney for each defendant or child respondent;

(iii) one attorney for the child victim;

(iv) the operators of the closed circuit television equipment; and

(v) subject to the Maryland Rules, any person whose presence, in the opinion of the court, contributes to the well-being of the child victim, including a person who has dealt with the child victim in a therapeutic setting concerning the abuse.

(2) During the child victim's testimony by closed circuit television, the court and the defendant or child respondent shall be in the courtroom.

(3) The court and the defendant or child respondent shall be allowed to communicate with the persons in the room where the child victim is testifying by any appropriate electronic method.

(4) (i) In a juvenile delinquency proceeding or criminal proceeding, only one prosecuting attorney, one attorney for each defendant or child respondent, and the court may question the child victim.

(ii) In a child in need of assistance case, only one attorney for each party and the court may question the child victim.

(e) Applicability. -- This section does not apply if a defendant or child respondent is without counsel.

(f) Identification of defendant. -- This section may not be interpreted to prevent a child victim and a defendant or child respondent from being in the courtroom at the same time when the child victim is asked to identify the defendant or child respondent.

(g) Two-way closed circuit television. -- This section does not allow the use of two-way closed circuit television or other procedure that would let a child victim see or hear a defendant or child respondent.

## MASSACHUSETTS

### **Mass. Ann. Laws ch. 278, § 16D (2012). Definitions; Alternative Procedure for Taking Testimony of Child Witness; Order; Presence of Counsel and Defendant; Filming, Videotaping, or Transmitting of Testimony**

(a) For the purposes of this section, the following words shall have the following meanings:--

"Child witness", a person who is under the age of fifteen years and who is alleged to have been a victim of, or a witness to an alleged violation of section thirteen B, thirteen F, thirteen H, twenty-two, twenty-two A, twenty-three, twenty-four or twenty-four B of chapter two hundred and sixty-five, or section two, three, four, four A, four B, five, six, seven, eight, twelve, thirteen, sixteen, seventeen, twenty-four, twenty-eight, twenty-nine, twenty-nine A, twenty-nine B, thirty-three, thirty-four or thirty-five A of chapter two hundred and seventy-two.

"Simultaneous electronic means", Any device capable of projecting a live visual and aural transmission such as closed-circuit television.

(b) (1) At any time after the issuance of a complaint or indictment alleging an offense punished by any of the statutes listed herein, the court on its own motion or on motion of the proponent of a child witness,

and after a hearing, may order the use of a suitable alternative procedure for taking the testimony of the child witness, in proceedings pursuant to said complaint or indictment, provided that the court finds by a preponderance of the evidence at the time of the order that the child witness is likely to suffer psychological or emotional trauma as a result of testifying in open court, as a result of testifying in the presence of the defendant, or as a result of both testifying in open court and testifying in the presence of the defendant. If the court orders the use of a suitable alternative for taking the testimony of a child witness pursuant to this section, the court shall make and enter specific findings upon the record describing with particularity the reasons for such order.

(2) An order issued under paragraph (1) shall provide that the testimony of the child witness be recorded on videotape or film to be shown in court at a later time or that the testimony be transmitted to the courtroom by simultaneous electronic means.

(3) Testimony taken by an alternative procedure pursuant to an order issued under paragraph (1) shall be taken in the presence of the judge, the prosecutor, defense counsel and such other persons as the court may allow. The defendant shall also have the right to be present unless the court's order under paragraph (1) is based wholly or in part upon a finding that the child witness is likely to suffer trauma as a result of testifying in the presence of the defendant. If the order is based on such a finding, the testimony of the child witness shall not be taken in the presence of the defendant except as provided in paragraph (4).

(4) Testimony taken by an alternative procedure pursuant to an order issued under paragraph (1) shall be taken in a suitable setting outside the courtroom, except that an order based only on a finding that the child witness is likely to suffer trauma as a result of testifying in the presence of the defendant may provide that the testimony be taken in a suitable setting inside the courtroom in a manner so that the child witness is not able to see or hear the defendant.

(5) When testimony is taken by an alternative procedure pursuant to an order issued under paragraph (1), counsel shall be given the opportunity to examine or cross-examine the child witness to the same extent as would be permitted at trial, and the defendant shall be able to see and hear the child witness and to have constant private communication with defense counsel.

(6) The film, videotape or transmission of testimony taken by an alternative procedure pursuant to an order issued under paragraph (1) shall be admissible as substantive evidence to the same extent as and in lieu of live testimony by the child witness in any proceeding for which the order is issued or in any related criminal proceeding against the same defendant when consistent with the interests of justice, provided that such an order is entered or re-entered based on current findings at the time when or within a reasonable time before the film, videotape or transmission is offered into evidence. Subsequent testimony of a child witness in any such proceeding shall also be taken by a suitable alternative procedure pursuant to this section.

(7) Whenever pursuant to an order issued under paragraph (1), testimony is recorded on videotape or film or is transmitted to the courtroom by simultaneous electronic means, the court shall ensure that:

- (a) The recording or transmitting equipment is capable of making an accurate recording or transmission and is operated by a competent operator;
- (b) The recording or transmission is in color and the witness is visible at all times;
- (c) Every voice on the recording or transmission is audible and identified;

(d) The courtroom is equipped with monitors which permit the jury and others present in the courtroom to see and hear the recording or transmission;

(e) In the case of recorded testimony, the recording is accurate and has not been altered;

(f) In the case of recorded testimony, each party is afforded the opportunity to view the recording before it is shown in the courtroom.

(8) Nothing in this section shall be deemed to prohibit the court from using other appropriate means, consistent with this section and other laws and with the defendant's rights, to protect a child witness from trauma during a court proceeding.

## **MICHIGAN**

### **Mich. Comp. Laws § 3.923 (2012). Miscellaneous Procedures**

(E) Electronic Equipment; Support Person. The court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of videotaped statements and depositions, anatomical dolls, or support persons, and may take other measures to protect the child witness as authorized by MCL 712A.17b.

### **MICH. COMP. LAWS § 712A.17b (2012). Testimony of child or developmentally disabled alleged victim of particular offense; videorecording of testimony; release or disclosure of videorecorded statement; penalties**

Sec. 17b. (1) As used in this section:

(a) "Custodian of the videorecorded statement" means the family independence agency, 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 (16) and (17).

(d) "Witness" means an alleged victim of an offense listed under subsection (2) who is either of the following:

(i) A person under 16 years of age.

(ii) A person 16 years of age or older with a developmental disability.

(2) This section only applies to either of the following:

(a) A proceeding brought under section 2(a)(1) [FN1] of this chapter in which the alleged offense, if committed by an adult, would be a felony 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) A proceeding brought under section 2(b) of this chapter.

(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. The videorecorded statement shall be admitted at all proceedings except the adjudication stage instead of the live testimony of the witness. 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 statement.

(6) 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; and, if appropriate for the witness's developmental level, shall include, but need not be 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 respondent.

(d) The details of the offense or offenses.

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

(7) 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. Each respondent and, if represented, his or her attorney has the right to view and hear the videorecorded statement at a reasonable time before it is offered into evidence. 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) Except as otherwise provided in subsection (15), if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify in the presence of the respondent at a court proceeding or in a videorecorded deposition taken as provided in subsection (13), the court shall order that the witness during his or her testimony be shielded from viewing the respondent in such a manner as to enable the respondent to consult with his or her attorney and to see and hear the testimony of the witness without the witness being able to see the respondent.

(13) In a proceeding brought under section 2(b) of this chapter, if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify at the adjudication stage, the court shall order to be taken a videorecorded deposition of a witness that shall be admitted into evidence at the adjudication stage instead of the live testimony of the witness. The examination and cross-examination of the witness in the videorecorded deposition shall proceed in the same manner as permitted at the adjudication stage.

(14) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony 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, if, upon the motion of a party made before the adjudication stage, 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 1 or both of those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider both of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(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 1 or both of the following:

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

(b) 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.

(16) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony 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, 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), and (15), the court shall order that a videorecorded deposition of a witness shall be taken to be admitted at the adjudication stage instead of the witness's live testimony.

(17) For purposes of the videorecorded deposition under subsection (16), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the adjudication stage, and the court shall order that the witness, during his or her testimony, shall not be confronted by the respondent but shall permit the respondent to hear the testimony of the witness and to consult with his or her attorney.

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

(19) 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. § 595.02 (2012). TESTIMONY OF WITNESSES**

Subd. 4. Court order.

(a) In a proceeding in which a child less than 12 years of age is alleging, denying, or describing:



(1) an act of physical abuse or an act of sexual contact or penetration performed with or on the child or any other person by another; or

(2) an act that constitutes a crime of violence committed against the child or any other person,

the court may, upon its own motion or upon the motion of any party, order that the testimony of the child be taken in a room other than the courtroom or in the courtroom and televised at the same time by closed-circuit equipment, or recorded for later showing to be viewed by the jury in the proceeding, to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

(b) At the taking of testimony under this subdivision, only the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 or a dissolution or custody proceeding under chapter 518, the attorneys for those parties with a right to participate may be present with the child during the child's testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, finds in a hearing conducted outside the presence of the jury, that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

(1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or

(2) the defendant can see and hear the testimony of the child by video or television monitor from a separate room and communicate with counsel, but the child cannot see or hear the defendant.

(d) As used in this subdivision, "crime of violence" has the meaning given it in section 624.712, subdivision 5, and includes violations of section 609.26.

#### Subd. 5. Waiver of privilege for health care providers.

A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider on the person's own behalf or in a representative capacity, waives in that action any privilege existing under subdivision 1, paragraphs (d) and (g), as to any information or opinion in the possession of a health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. This waiver must permit all parties to the action, and their attorneys or authorized representatives, to informally discuss the information or opinion with the health care provider if the provider consents. Prior to an informal discussion with a health care provider, the defendant must mail written notice to the other party at least 15 days before the discussion. The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. Appropriate medical authorizations permitting discussion must be provided by the party commencing the action upon request from any other party.

A health care provider may refuse to consent to the discussion but, in that event, the party seeking the information or opinion may take the deposition of the health care provider with respect to that information and opinion, without obtaining a prior court order.

For purposes of this subdivision, "health care provider" means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

## **MISSISSIPPI**

### **Miss. CODE ANN. § 13-1-405 (2012). Use of closed circuit television to show child's testimony**

(1) Upon motion and hearing in camera, the trial court may order that the testimony of a child under the age of sixteen (16) that an unlawful sexual act, contact, intrusion, penetration or other sexual offense was committed upon him or her, or that he or she witnessed its perpetration upon another child, be taken outside of the courtroom and shown in the courtroom by means of closed circuit television, upon a finding based on specific behavioral indicators described in Section 13-1-411, that there is a substantial likelihood that the child will suffer traumatic emotional or mental distress if compelled to testify in open court.

(2) The motion may be filed by the child, his attorney, parent, legal guardian or guardian ad litem, or any party to the case. The court may also raise the matter on its own motion.

(3) Upon stipulation of the parties, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting concerning the offense to aid in formulating methods of questioning the child and to assist the court in interpreting the answers of the child.

(4) Closed circuit television testimony may be taken by any method not inconsistent with the Mississippi Rules of Civil Procedure and the Mississippi Uniform Criminal Rules of Circuit Court Practice. After a determination that the defendant's presence would cause a substantial likelihood of traumatic emotional or mental distress to the child, the judge may exclude the defendant from the room where the testimony is taken. In any case in which the defendant is so excluded, arrangements must be made for the defense attorney to be in continual contact with the defendant by any appropriate private electronic or telephonic method throughout the questioning. The defendant and the jury must be able to observe the demeanor of the child witness at all times during the questioning.

(5) The court shall make specific findings of fact, on the record, as to the basis for its rulings under this section.

(6) All parties must be represented by counsel at any taking of any testimony under this section.

### **Miss. CODE ANN. § 13-1-411 (2012). Specific behavioral indicators**

The phrase "specific behavioral indicators" when used herein to refer to evidence (regardless of admissibility) that a child has suffered physical or sexual abuse or might suffer traumatic emotional or mental distress if required to testify in court, shall include, by way of illustration and not of limitation, indications of physical or psychological trauma which are (a) well defined, (b) positively correlated or causally linked with the likelihood of traumatic emotional or mental distress on testifying, and (c) rarely, if

at all, present in children who have not suffered child abuse, considering the combination or intensity present in the child at issue.

The evidence described in this section shall be provided by competent witnesses, including but not limited to child psychologists, child psychiatrists and other qualified witnesses.

**Miss. R. EVID. 617 (2012). Use of closed circuit television to show child's testimony**

(a) Upon motion and hearing in camera, the trial court may order that the testimony of a child under the age of sixteen (16) years, that an unlawful sexual act, contact, intrusion, penetration or other sexual offense was committed upon him or her be taken outside of the courtroom and shown in the courtroom by means of closed-circuit television upon a finding that there is a substantial likelihood that the child will suffer traumatic emotional or mental distress if compelled to testify in open court and, in the case of a criminal prosecution, if compelled to testify in the presence of the accused.

(b) The motion may be filed by the child, his attorney, parent, legal guardian or guardian ad litem, the prosecuting attorney, or any party to the case. In addition, the court may act upon its own motion.

(c) Upon stipulation of the parties, the court may appoint a person, who is qualified as an expert in the field of child sexual abuse and who has dealt with the child in a therapeutic setting concerning the offense or act, to aid in formulating methods of questioning the child and to assist the court in interpreting the answers of the child.

(d) Closed circuit television testimony may be taken by any method not inconsistent with the Confrontation Clauses of the Constitution of the United States and of the State of Mississippi, the Mississippi Rules of Civil Procedure, the Mississippi Uniform Criminal Rules of Circuit Court Practice, and these rules. In the case of a criminal prosecution, after a determination that the defendant's presence would cause a substantial likelihood of serious traumatic emotional or mental distress to the child, the trial court may exclude the defendant from the room where the testimony is taken. In any such case in which the defendant is so excluded, arrangements must be made for the defense attorney to be in continual contact with the defendant by any appropriate private electronic or telephonic method throughout the questioning. The defendant, the court and the jury must be able to observe the demeanor of the child witness at all times during the questioning.

(e) The court shall make specific findings of fact, on the record, as to the basis for its rulings under this rule.

(f) All parties must be represented by counsel at any taking of any testimony under this rule.

(g) This rule does not preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time.

## **MISSOURI**

**Mo. Rev. Stat. § 491.680 (2012). Court may order video recording of alleged child victim, when --procedure -- transcript -- exclusion of defendant from proceedings, opportunity to review -- cross-examination**

1. In any criminal prosecution under the provisions of chapter 565, 566 or 568, RSMo, involving an alleged child victim, upon the motion of the prosecuting attorney, the court may order that an in-camera videotaped deposition of the testimony of the alleged child victim be made for use as substantive evidence at preliminary hearings and at trial.

2. If the court finds, at a hearing, that significant emotional or psychological trauma to the child which would result from testifying in the personal presence of the defendant exists, which makes the child unavailable as a witness at the time of the preliminary hearing or trial, the court shall order that an in-camera videotaped deposition of the testimony of the alleged child victim be made for use as substantive evidence at the preliminary hearings and at trial. Such recording shall be retained by the prosecuting attorney and shall be admissible in lieu of the child's personal appearance and testimony at preliminary hearings and at trial, conflicting provisions of section 544.270, RSMo, notwithstanding. A transcript of such testimony shall be made as soon as possible after the completion of such deposition and shall be provided to the defendant together with all other discoverable materials.

3. Upon a finding of trauma as provided for in subsection 2 of this statute, the court may also exclude the defendant from the videotape deposition proceedings in which the child is to testify. Where any such order of exclusion is entered, the child shall not be excused as a witness until the defendant has had a reasonable opportunity to review the videotape deposition in private with his counsel and to consult with his counsel; and until his counsel has been afforded the opportunity to cross-examine the child following such review and consultation.

4. The court shall preside over the depositions, which shall be conducted in accordance with the rules of evidence applicable to criminal cases.

5. The attorney for the defendant shall have at least two opportunities to cross-examine the deposed alleged child victim: once prior to the preliminary hearing and at least one additional time prior to the trial.

6. Prior to the taking of the deposition which is to be used as substantive evidence at the trial pursuant to sections 491.675 to 491.693, the defendant's attorney shall be provided with such discoverable materials and information as the court may, on motion, direct; shall be afforded a reasonable time to examine such materials; and shall be permitted to cross-examine the child during the deposition.

7. If the defendant is not represented by counsel and if, upon inquiry, it appears to the court that the defendant will be unable to obtain counsel within a reasonable period of time, the court shall appoint the public defender or other counsel to represent the defendant at the deposition.

## **MONTANA**

**MONT. CODE ANN. § 46-16-227 (2012). Raising issue of testimony of child witness outside presence of defendant -- motion by prosecution or defense**

Upon a motion by the prosecution or defense if the defense intends to call a child witness other than the victim in its case in chief, a court shall conduct a hearing to consider whether the testimony of a child witness may be taken outside the presence of the defendant and communicated to the courtroom by two-way electronic audio-video communication.

**MONT. CODE ANN. § 46-16-229 (2012). Order for two-way electronic audio-video communication testimony -- finding by court -- procedure for conducting testimony**

(1) The court shall order that the testimony of a child witness be taken by two-way electronic audio-video communication if, after considering the factors set forth in 46-16-228(3), the court finds by clear and convincing evidence that the child witness is unable to testify in open court in the presence of the defendant for any of the following reasons:

- (a) the child witness is unable to testify because of fear caused by the presence of the defendant;
- (b) the child witness would suffer substantial emotional trauma from testifying in the presence of the defendant; or
- (c) conduct by the defendant or the defendant's attorney causes the child witness to be unable to continue testifying.

(2) If the court orders that the child witness's testimony be taken by two-way electronic audio-video communication, the testimony must be taken outside the courtroom in a suitable location designated by the judge. Examination and cross-examination of the child witness must proceed as though the child witness were testifying in the courtroom. The only persons who may be permitted in the room with the child witness during the child's testimony are:

- (a) the judge or a judicial officer appointed by the court;
- (b) the prosecutor;
- (c) the defense attorney;
- (d) the child's attorney;
- (e) persons necessary to operate the two-way electronic audio-video communication equipment; and
- (f) any person whose presence is determined by the court to be necessary to the welfare and well-being of the child witness.

(3) The defendant must be afforded a means of private, contemporaneous communication with the defendant's attorney during the testimony.

(4) This section does not preclude the presence of both a victim and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

## NEBRASKA

- **Nebraska does not have a specific statute allowing for the use of Closed Circuit Television in child abuse cases. A Nebraska Supreme Court case: *State v. Warford* 2389 N.W.2d 575 (1986)—decided prior to *Maryland v. Craig*, 497 U.S. 836 (1990) – invalidated the use of closed circuit television under confrontation grounds where the defendant did not have contact with his attorney cross examining the child witness in a separate room. As long as the factors articulated in *Craig* are satisfied, the use of CCTV in child abuse cases in Nebraska is Constitutional.**
- **Nebraska does have a statute which allows for the use of video depositions.**

**NEB. REV. STAT. ANN. § 29-1926 (2012). CHILD VICTIM OR CHILD WITNESS; VIDEOTAPE DEPOSITION AND IN CAMERA TESTIMONY; CONDITIONS; USE; FINDINGS BY COURT; RELEASE; VIOLATION; PENALTY**

(1) (a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need, the court shall order the taking of a videotape deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child. If the court orders a videotape deposition, the court shall:

- (i) Designate the time and place for taking the deposition. The deposition may be conducted in the courtroom, the judge's chambers, or any other location suitable for videotaping;
- (ii) Assure adequate time for the defense attorney to complete discovery before taking the deposition; and
- (iii) Preside over the taking of the videotape deposition in the same manner as if the child were called as a witness for the prosecution during the course of the trial.

(b) Unless otherwise required by the court, the deposition shall be conducted in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness or a counselor or other person with whom the child is familiar. Such parent, guardian, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony.

(c) At any time subsequent to the taking of the original videotape deposition and upon sufficient cause shown, the court shall order the taking of additional videotape depositions to be admitted at the time of the trial.

(d) If the child testifies at trial in person rather than by videotape deposition, the taking of the child's testimony may, upon request of the prosecuting attorney and upon a showing of compelling need, be conducted in camera.

(e) Unless otherwise required by the court, the child shall testify in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court,

including the parent or guardian of the child victim or child witness or a counselor or other person with whom the child is familiar. Such parent, guardian, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony. Unless waived by the defendant, all persons in the room shall be visible on camera except the camera operator.

(f) If deemed necessary to preserve the constitutionality of the child's testimony, the court may direct that during the testimony the child shall at all times be in a position to see the defendant live or on camera.

(g) For purposes of this section, child shall mean a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial.

(h) Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to facilitate and preserve a child's testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial videotape deposition, in camera live testimony, in camera videotape testimony, or any other accommodation, the court shall make particularized findings on the record of:

(i) The nature of the offense;

(ii) The significance of the child's testimony to the case;

(iii) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;

(iv) The child's age;

(v) The child's psychological maturity and understanding; and

(vi) The nature, degree, and duration of potential injury to the child from testifying.

(i) The court may order an independent examination by a psychologist or psychiatrist if the defense attorney requests the opportunity to rebut the showing of compelling need produced by the prosecuting attorney. Such examination shall be conducted in the child's county of residence.

(j) After a finding of compelling need by the court, neither party may call the child witness to testify as a live witness at the trial before the jury unless that party demonstrates that the compelling need no longer exists.

(k) Nothing in this section shall limit the right of access of the media or the public to open court.

(l) Nothing in this section shall preclude discovery by the defendant as set forth in section 29-1912.

(m) The Supreme Court may adopt and promulgate rules of procedure to administer this section, which rules shall not be in conflict with laws governing such matters.

(2) (a) No custodian of a videotape of a child victim or child witness alleging, explaining, denying, or

describing an act of sexual assault pursuant to section 28-319, 28-319.01, or 28-320.01 or child abuse pursuant to section 28-707 as part of an investigation or evaluation of the abuse or assault shall release or use a videotape or copies of a videotape or consent, by commission or omission, to the release or use of a videotape or copies of a videotape to or by any other party without a court order, notwithstanding the fact that the child victim or child witness has consented to the release or use of the videotape or that the release or use is authorized under law, except as provided in section 28-730. Any custodian may release or consent to the release or use of a videotape or copies of a videotape to law enforcement agencies or agencies authorized to prosecute such abuse or assault cases on behalf of the state.

(b) The court order may govern the purposes for which the videotape may be used, the reproduction of the videotape, the release of the videotape to other persons, the retention and return of copies of the videotape, and any other requirements reasonably necessary for the protection of the privacy and best interests of the child victim or child witness.

(c) Pursuant to section 29-1912, the defendant described in the videotape may petition the district court in the county where the alleged offense took place or where the custodian of the videotape resides for an order releasing to the defendant a copy of the videotape.

(d) Any person who releases or uses a videotape except as provided in this section shall be guilty of a Class I misdemeanor.

## **NEVADA**

### **Nev. Rev. Stat. Ann. § 50.500 (2012). Uniform Child Witness Testimony**

The provisions of NRS 50.500 to 50.620, inclusive, may be cited as the Uniform Child Witness Testimony by Alternative Methods Act.

### **Nev. Rev. Stat. Ann. § 50.520 (2012). "Alternative method" defined**

"Alternative method" means a method by which a child witness testifies which does not include all of the following:

1. Having the child testify in person in an open forum;
2. Having the child testify in the presence and full view of the finder of fact and presiding officer; and
3. Allowing all of the parties to be present, to participate and to view and be viewed by the child.

### **Nev. Rev. Stat. Ann. § 50.530 (2012). "Child witness" defined**

"Child witness" means a child under the age of 14 years who has been or will be called to testify in a proceeding.



## **Nev. Rev. Stat. Ann. § 50.540 (2012). "Criminal proceedings" defined**

"Criminal proceeding" means:

1. A trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this State; or
2. A delinquency proceeding which is conducted pursuant to title 5 of NRS.

## **Nev. Rev. Stat. Ann. § 50.570 (2012). Hearing to determine whether to allow testimony by alternative method**

1. The presiding officer in a criminal or noncriminal proceeding:

(a) May order a hearing to determine whether to allow a child witness to testify by an alternative method.

(b) For good cause shown, shall order the hearing upon motion of a party, a child witness, or a natural person determined by the presiding officer to have sufficient standing to act on behalf of the child.

2. A hearing to determine whether to allow a child witness to testify by an alternative method must be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer. In conducting the hearing, the presiding officer is not bound by rules of evidence except the rules of privilege.

## **NEV. REV. STAT. ANN. § 50.580 (2012). Standards for determining whether child witness may testify by alternative method**

1. In a criminal proceeding, the presiding officer may allow a child witness to testify by an alternative method only in the following situations:

(a) The child may testify otherwise than in an open forum in the presence and full view of the finder of fact if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum.

(b) The child may testify other than face-to-face with the defendant if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

2. In a noncriminal proceeding, the presiding officer may allow a child witness to testify by an alternative method if the presiding officer finds by 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 enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

(a) The nature of the proceeding;

- (b) The age and maturity of the child;
- (c) The relationship of the child to the parties in the proceeding;
- (d) The nature and degree of emotional trauma that the child may suffer in testifying; and
- (e) Any other relevant factor.

**Nev. Rev. Stat. Ann. § 50.590 (2012). Factors for determining whether to permit alternative method**

If the presiding officer determines that a standard pursuant to NRS 50.580 has been met, the presiding officer shall determine whether to allow a child witness to testify by an alternative method. In making this determination, the presiding officer shall consider:

1. Alternative methods reasonably available;
2. Available means for protecting the interests of or reducing emotional trauma to the child without resorting to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;
5. The importance of the proposed testimony of the child;
6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. Any other relevant factor.

**Nev. Rev. Stat. Ann. § 50.600 (2012). Order regarding testimony by alternative method**

1. An order allowing or disallowing a child witness to testify by an alternative method must state the findings of fact and conclusions of law that support the presiding officer's determination.
2. An order allowing a child witness to testify by an alternative method must:
  - (a) State the method by which the child is to testify;
  - (b) List any natural person or category of natural person allowed to be in, or required to be excluded from, the presence of the child during the testimony;
  - (c) State any special conditions necessary to facilitate a party's right to examine or cross-examine the child;
  - (d) State any condition or limitation upon the participation of natural persons present during the

testimony of the child; and

(e) State any other condition necessary for taking or presenting the testimony.

3. The alternative method ordered by the presiding officer may be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order.

### **Nev. Rev. Stat. Ann. § 50.610 (2012). Right of party to examine child witness**

An alternative method ordered by the presiding officer must permit a full and fair opportunity for examination or cross-examination of the child witness by each party.

## **NEW HAMPSHIRE**

- ***State v. Hernandez, 986 A.2d 480 (N.H. 2009) upholds the use of CCTV where the circumstances meet the factors articulated in Craig.***

### **N.H. Rev. Stat. Ann. § 517:13-a (2012). Videotape Trial Testimony Authorized**

I. In any criminal case, the state may move to take videotape trial testimony of any witness, including the victim, who was 16 years of age or under at the time of the alleged offense. Any victim or other witness who was 16 years of age or under at the time of the offense may also move to take videotape trial testimony. The court shall order videotape trial testimony if it finds by a preponderance of the evidence that:

(a) The child will suffer emotional or mental strain if required to testify in open court; or

(b) Further delay will impair the child's ability to recall and relate the facts of the alleged offense.

II. Videotape trial testimony taken pursuant to this section shall be conducted before the judge at such a place as ordered by the court in the presence of the prosecutors, the defendant and his attorneys, and such other persons as the court allows. Examination and cross-examination of the child shall proceed in the same manner as permitted at trial. Such testimony shall be admissible into evidence at trial in lieu of any other testimony by the child.

III. Unless otherwise ordered by the court for good cause shown, no victim or witness whose testimony is taken pursuant to this section shall be required to appear or testify at trial.

IV. Any witness who is 16 years of age or under shall be allowed to have his parent or any other appropriate adult, or both, present during his testimony.

V. The supreme court shall make any rules necessary to implement the provisions of this section.

## NEW JERSEY

### **N.J. Stat. Ann. § 2A:61B-1 (2012). Definitions; accrual of actions; proceedings**

a. As used in this act:

(1) "Sexual abuse" means an act of sexual contact or sexual penetration between a child under the age of 18 years and an adult. A parent, resource family parent, guardian or other person standing in loco parentis within the household who knowingly permits or acquiesces in sexual abuse by any other person also commits sexual abuse, except that it is an affirmative defense if the parent, resource family parent, guardian or other person standing in loco parentis was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.

(2) "Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of sexually arousing or sexually gratifying the actor. Sexual contact of the adult with himself must be in view of the victim whom the adult knows to be present.

(3) "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the adult or upon the adult's instruction.

(4) "Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

(5) "Injury or illness" includes psychological injury or illness, whether or not accompanied by physical injury or illness.

b. In any civil action for injury or illness based on sexual abuse, the cause of action shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action shall be brought within two years after reasonable discovery.

c. Nothing in this act is intended to preclude the court from finding that the statute of limitations was tolled in a case because of the plaintiff's mental state, duress by the defendant, or any other equitable grounds. Such a finding shall be made after a plenary hearing. At the plenary hearing the court shall hear all credible evidence and the Rules of Evidence shall not apply, except for Rule 403 or a valid claim of privilege. The court may order an independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled.

d. (1) Evidence of the victim's previous sexual conduct shall not be admitted nor reference made to it in the presence of a jury except as provided in this subsection. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant

regarding the sexual conduct of the victim is relevant and that the probative value of the evidence offered is not outweighed by its collateral nature or by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.

(2) In the absence of clear and convincing proof to the contrary, evidence of the victim's sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

(3) Evidence of the victim's previous sexual conduct shall not be considered relevant unless it is material to proving that the source of semen, pregnancy or disease is a person other than the defendant. For the purposes of this subsection, "sexual conduct" shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, living arrangement and life style.

e. (1) The court may, on motion and after conducting a hearing in camera, order the taking of the testimony of a victim on closed circuit television at the trial, out of the view of the jury, defendant, or spectators upon making findings as provided in paragraph (2) of this subsection.

(2) An order under this section may be made only if the court finds that the victim is 16 years of age or younger and that there is a substantial likelihood that the victim would suffer severe emotional or mental distress if required to testify in open court. The order shall be specific as to whether the victim will testify outside the presence of spectators, the defendant, the jury, or all of them and shall be based on specific findings relating to the impact of the presence of each.

(3) A motion seeking closed circuit testimony under paragraph (1) of this subsection may be filed by:

(a) The victim or the victim's attorney, parent or legal guardian;

(b) The defendant or the defendant's counsel; or

(c) The trial judge on the judge's own motion.

(4) The defendant's counsel shall be present at the taking of testimony in camera. If the defendant is not present, he and his attorney shall be able to confer privately with each other during the testimony by a separate audio system.

(5) If testimony is taken on closed circuit television pursuant to the provisions of this act, a stenographic recording of that testimony shall also be required. A typewritten transcript of that testimony shall be included in the record on appeal. The closed circuit testimony itself shall not constitute part of the record on appeal except on motion for good cause shown.

f. (1) The name, address, and identity of a victim or a defendant shall not appear on the complaint or any other public record as defined in P.L. 1963, c. 73 (C. 47:1A-1 et seq.). In their place initials or a fictitious name shall appear.

(2) Any report, statement, photograph, court document, complaint or any other public record which states the name, address and identity of a victim shall be confidential and unavailable to the public.

(3) The information described in this subsection shall remain confidential and unavailable to the public unless the victim consents to the disclosure or if the court, after a hearing, determines that good cause exists for the disclosure. The hearing shall be held after notice has been made to the victim and to the defendant and the defendant's counsel.

(4) Nothing contained herein shall prohibit the court from imposing further restrictions with regard to the disclosure of the name, address, and identity of the victim when it deems it necessary to prevent trauma or stigma to the victim.

g. In accordance with R. 5:3-2 of the Rules Governing the Courts of the State of New Jersey, the court may, on its own or a party's motion, direct that any proceeding or portion of a proceeding involving a victim sixteen years of age or younger be conducted in camera.

h. A plaintiff who prevails in a civil action pursuant to this act shall be awarded damages in the amount of \$ 10,000, plus reasonable attorney's fees, or actual damages, whichever is greater. Actual damages shall consist of compensatory and punitive damages and costs of suit, including reasonable attorney's fees. Compensatory damages may include, but are not limited to, damages for pain and suffering, medical expenses, emotional trauma, diminished childhood, diminished enjoyment of life, costs of counseling, and lost wages.

**N.J. Stat. Ann. § 2A:84A-32.4 (2012). Prosecutions or actions for sexual assault, criminal sexual conduct, or child abuse or neglect; closed circuit testimony by minor**

a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, or child abuse, or in any action alleging an abused or neglected child under P.L. 1974, c. 119 (C. 9:6-8.21 et seq.), the court may, on motion and after conducting a hearing in camera, order the taking of the testimony of a witness on closed circuit television at the trial, out of the view of the jury, defendant, or spectators upon making findings as provided in subsection b. of this section.

b. An order under this section may be made only if the court finds that the witness is 16 years of age or younger and that there is a substantial likelihood that the witness would suffer severe emotional or mental distress if required to testify in open court. The order shall be specific as to whether the witness will testify outside the presence of spectators, the defendant, the jury, or all of them and shall be based on specific findings relating to the impact of the presence of each.

c. A motion seeking closed circuit testimony under subsection a. of this section may be filed by:

- (1) The victim or witness or the victim's or witness's attorney, parent or legal guardian;
- (2) The prosecutor;
- (3) The defendant or the defendant's counsel; or
- (4) The trial judge on the judge's own motion.

d. The defendant's counsel shall be present at the taking of testimony in camera. If the defendant is not present, he and his attorney shall be able to confer privately with each other during the testimony by a separate audio system.

e. If testimony is taken on closed circuit television pursuant to the provisions of this act, a stenographic recording of that testimony shall also be required. A typewritten transcript of that testimony shall be included in the record on appeal. The closed circuit testimony itself shall not constitute part of the record on appeal except on motion for good cause shown.

## **NEW MEXICO**

### **N.M. Stat § 38-6A-1 (2012). Uniform Child Witness Protective Measures Act**

This act may be cited as the "Uniform Child Witness Protective Measures Act".

### **N.M. Stat § 38-6A-2 (2012). Definitions**

As used in the Uniform Child Witness Protective Measures Act:

A. "alternative method" means:

(1) in a criminal proceeding in which a child witness does not give testimony in an open forum in full view of the finder of fact, a videotaped deposition of the child witness that complies with the following requirements:

(a) the deposition was presided over by a district judge;

(b) the defendant was represented by counsel at the deposition or waived counsel;

(c) the defendant was present at the deposition; and

(d) the defendant was given an adequate opportunity to cross-examine the child witness, subject to such protection of the child witness as the judge deemed necessary;

(2) in a criminal proceeding in which a child witness does not give testimony face-to-face with the defendant, a videotaped deposition of the child witness that complies with the following requirements:

(a) the deposition was presided over by a district judge;

(b) the defendant was represented by counsel at the deposition or waived counsel;

(c) the defendant was able to view the deposition, including the child witness, through closed-circuit television or equivalent technology, and the defendant and counsel were able to communicate with each other during the deposition through headsets and microphones or equivalent technology; and

(d) the defendant was given an adequate opportunity to cross-examine the child witness, subject to such protection of the child witness as the judge deemed necessary; or

(3) in a noncriminal proceeding, testimony by closed-circuit television, deposition, testimony in a closed forum or any other method of testimony that does not include one or more of the following:

(a) having the child testify in person in an open forum;

(b) having the child testify in the presence and full view of the finder of fact and presiding officer; and

(c) allowing all of the parties to be present, to participate and to view and be viewed by the child;

B. "child witness" means:

(1) an individual under the age of sixteen who has been or will be called to testify in a noncriminal proceeding; or

(2) an alleged victim under the age of sixteen who has been or will be called to testify in a criminal proceeding;

C. "criminal proceeding" means a trial or hearing before a court in a prosecution of a person charged with violating a criminal law of New Mexico or a delinquency proceeding pursuant to the Delinquency Act involving conduct that if engaged in by an adult would constitute a violation of a criminal law of New Mexico;

D. "noncriminal proceeding" means a trial or hearing before a court or an administrative agency of New Mexico having judicial or quasi-judicial powers in a civil case, an administrative proceeding or any other case or proceeding other than a criminal proceeding; and

E. "presiding officer" means the person under whose supervision and jurisdiction the proceeding is being conducted. "Presiding officer" includes a judge in whose court a case is being heard, a quasi-judicial officer or an administrative law judge or hearing officer.

### **N.M. Stat § 38-6A-3 (2012). Applicability**

A. The Uniform Child Witness Protective Measures Act applies to the testimony of a child witness in a criminal or noncriminal proceeding. However, the Uniform Child Witness Protective Measures Act does not preclude, in a criminal or noncriminal proceeding, any other procedure permitted by law:

(1) for a child witness to testify by an alternative method, however denominated; or

(2) for protecting the interests of or reducing mental or emotional harm to a child witness.

B. The supreme court may adopt rules of procedure and evidence to implement the provisions of the Uniform Child Witness Protective Measures Act.



**N.M. Stat § 38-6A-4 (2012). Hearing whether to allow testimony by alternative method**

A. The presiding officer in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness or an individual determined by the presiding officer to have sufficient standing to act on behalf of the child.

B. A hearing to determine whether to allow a child witness to testify by an alternative method shall be conducted on the record after reasonable notice to all parties, to any nonparty movant and to any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer.

**N.M. Stat § 38-6A-5 (2012). Standards for determining whether a child witness may testify by alternative method**

A. In a criminal proceeding, the presiding officer may allow a child witness to testify by an alternative method in the following situations:

(1) the child may testify otherwise than in an open forum in the presence and full view of the finder of fact upon a showing that the child witness may be unable to testify without suffering unreasonable and unnecessary mental or emotional harm; and

(2) the child may testify other than face-to-face with the defendant if the presiding officer makes specific findings that the child witness would be unable to testify face-to-face with the defendant without suffering unreasonable and unnecessary mental or emotional harm.

B. In a noncriminal proceeding, the presiding officer may allow a child witness to testify by an alternative method if the presiding officer finds that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

(1) the nature of the proceeding;

(2) the age and maturity of the child;

(3) the relationship of the child to the parties in the proceeding;

(4) the nature and degree of mental or emotional harm that the child may suffer in testifying; and

(5) any other relevant factor.

**N.M. Stat § 38-6A-6 (2012). Factors for determining whether to permit alternative method**

If the presiding officer determines that a standard pursuant to Section 5 of the Uniform Child Witness Protective Measures Act has been met, the presiding officer shall determine whether to allow a child witness to testify by an alternative method and in doing so shall consider:

- A. alternative methods reasonably available for protecting the interests of or reducing mental or emotional harm to the child;
- B. available means for protecting the interests of or reducing mental or emotional harm to the child without resort to an alternative method;
- C. the nature of the case;
- D. the relative rights of the parties;
- E. the importance of the proposed testimony of the child;
- F. the nature and degree of mental or emotional harm that the child may suffer if an alternative method is not used; and
- G. any other relevant factor.

**N.M. Stat § 38-6A-7 (2012). Order regarding testimony by alternative method**

A. An order allowing or disallowing a child witness to testify by an alternative method shall state the findings of fact and conclusions of law that support the presiding officer's determination.

B. An order allowing a child witness to testify by an alternative method shall:

- (1) state the method by which the child is to testify;
- (2) list any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;
- (3) state any special conditions necessary to facilitate a party's right to examine or cross-examine the child;
- (4) state any condition or limitation upon the participation of individuals present during the testimony of the child; and
- (5) state any other condition necessary for taking or presenting the testimony.

C. The alternative method ordered by the presiding officer shall be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order and shall be subject to the other provisions of the Uniform Child Witness Protective Measures Act.

### **N.M. Stat § 38-6A-8 (2012). Right of party to examine child witness**

An alternative method ordered by the presiding officer shall permit a full and fair opportunity for examination or cross-examination of the child witness by each party, subject to such protection of the child witness as the presiding officer deems necessary.

### **N.M. Stat § 38-6A-9 (2012). Uniformity of application and construction**

In applying and construing the Uniform Child Witness Protective Measures Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

## **NEW YORK**

### **N.Y. C.P.L.R. 65.00 (2012). DEFINITIONS**

[Expires and is repealed Sept 1, 2011]

As used in this article:

1. "Child witness" means a person fourteen years old or less who is or will be called to testify in a criminal proceeding, other than a grand jury proceeding, concerning an offense defined in article one hundred thirty of the penal law or section 255.25, 255.26 or 255.27 of such law which is the subject of such criminal proceeding.
2. "Vulnerable child witness" means a child witness whom a court has declared to be vulnerable.
3. "Testimonial room" means any room, separate and apart from the courtroom, which is furnished comfortably and less formally than a courtroom and from which the testimony of a vulnerable child witness can be transmitted to the courtroom by means of live, two-way closed-circuit television.
4. "Live, two-way closed-circuit television" means a simultaneous transmission, by closed-circuit television, or other electronic means, between the courtroom and the testimonial room in accordance with the provisions of section 65.30.
5. "Operator" means the individual authorized by the court to operate the closed-circuit television equipment used in accordance with the provisions of this article.

6. A person occupies "a position of authority with respect to a child" when he or she is a parent, guardian or other person responsible for the custody or care of the child at the relevant time or is any other person who maintains an ongoing personal relationship with such parent, guardian or other person responsible for custody or care, which relationship involves his or her living, or his or her frequent and repeated presence, in the same household or premises as the child.

### **N.Y. C.P.L.R. 65.10 (2012). Closed-circuit television; general rule; declaration of vulnerability**

[Expires and is repealed Sept 1, 2011]

1. A child witness shall be declared vulnerable when the court, in accordance with the provisions of section 65.20, determines by clear and convincing evidence that it is likely [fig 1] that such child witness will suffer [fig 2] serious mental or emotional harm if required to testify at a criminal proceeding without the use of live, two-way closed-circuit television and that the use of such live, two-way closed-circuit television will [fig 3] diminish the likelihood or extent of, such harm.

2. When the court declares a child witness to be vulnerable, it shall, except as provided in subdivision four of section 65.30, authorize the taking of the testimony of the vulnerable child witness from the testimonial room by means of live, two-way closed-circuit television. Under no circumstances shall the provisions of this article be construed to authorize a closed-circuit television system by which events in the courtroom are not transmitted to the testimonial room during the testimony of the vulnerable child witness.

3. Nothing herein shall be construed [construed] [n1] to preclude the court from exercising its power to close the courtroom or from exercising any authority it otherwise may have to protect the well-being of a witness and the rights of the defendant.

### **N.Y. C.P.L.R. 65.20 (2012). Closed-circuit television; procedure for application and grounds for determination**

[Expires and is repealed Sept 1, 2011]

1. Prior to the commencement of a criminal proceeding; other than a grand jury proceeding, either party may apply to the court for an order declaring that a child witness is vulnerable.

2. A child witness should be declared vulnerable when the court, in accordance with the provisions of this section, determines by clear and convincing evidence that the child witness would suffer serious mental or emotional harm that would substantially impair the child witness' ability to communicate with the finder of fact without the use of live, two-way closed-circuit television.

3. A motion pursuant to subdivision one of this section must be made in writing at least eight days before the commencement of trial or other criminal proceeding upon reasonable notice to the other party and with an opportunity to be heard.

4. The motion papers must state the basis for the motion and must contain sworn allegations of fact which, if true, would support a determination by the court that the child witness is vulnerable. Such allegations may be based upon the personal knowledge of the deponent or upon information and belief, provided that, in the latter event, the sources of such information and the grounds for such belief are stated.

5. The answering papers may admit or deny any of the alleged facts and may, in addition, contain sworn allegations of fact relevant to the motion, including the rights of the defendant, the need to protect the child witness and the integrity of the truth-finding function of the trier of fact.

6. Unless all material facts alleged in support of the motion made pursuant to subdivision one of this section are conceded, the court shall, in addition to examining the papers and hearing oral argument, conduct an appropriate hearing for the purpose of making findings of fact essential to the determination of the motion. Except as provided in subdivision six of this section, it may subpoena or call and examine witnesses, who must either testify under oath or be permitted to give unsworn testimony pursuant to subdivision two of section 60.20 and must authorize the attorneys for the parties to do the same.

7. Notwithstanding any other provision of law, the child witness who is alleged to be vulnerable may not be compelled to testify at such hearing or to submit to any psychological or psychiatric examination. The failure of the child witness to testify at such hearing shall not be a ground for denying a motion made pursuant to subdivision one of this section. Prior statements made by the child witness relating to any allegations of conduct constituting an offense defined in article one hundred thirty of the penal law or incest as defined in section 255.25, 255.26 or 255.27 of such law or to any allegation of words or conduct constituting an attempt to prevent, impede or deter the child witness from cooperating in the investigation or prosecution of the offense shall be admissible at such hearing, provided, however, that a declaration that a child witness is vulnerable may not be based solely upon such prior statements.

8. (a) Notwithstanding any of the provisions of article forty-five of the civil practice law and rules, any physician, psychologist, nurse or social worker who has treated a child witness may testify at a hearing conducted pursuant to subdivision five of this section concerning the treatment of such child witness as such treatment relates to the issue presented at the hearing, provided that any otherwise applicable statutory privileges concerning communications between the child witness and such physician, psychologist, nurse or social worker in connection with such treatment shall not be deemed waived by such testimony alone, except to the limited extent of permitting the court alone to examine in camera reports, records or documents, if any, prepared by such physician, psychologist, nurse or social worker. If upon such examination the court determines that such reports, records or documents, or any one or portion thereof, contain information material and relevant to the issue of whether the child witness is a vulnerable child witness, the court shall disclose such information to both the attorney for the defendant and the district attorney.

(b) At any time after a motion has been made pursuant to subdivision one of this section, upon the demand of the other party the moving party must furnish the demanding party with a copy of any and all of such records, reports or other documents in the possession of such other party and must, in addition, supply the court with a copy of all such reports, records or other documents which are the subject of the demand. At any time after a demand has been made pursuant to this paragraph, the moving party may demand that property of the same kind or character in possession of the party that originally made such demand be furnished to the moving party and, if so furnished, be supplied, in addition, to the court.

9. (a) Prior to the commencement of the hearing conducted pursuant to subdivision five of this section, the district attorney shall, subject to a protective order, comply with the provisions of subdivision one of section 240.45 of this chapter as they concern any witness whom the district attorney intends to call at the hearing and the child witness.

(b) Before a defendant calls a witness at such hearing, he or she must, subject to a protective order, comply with the provisions of subdivision two of section 240.45 of this chapter as they concern all the witnesses the defendant intends to call at such hearing.

10. The court may consider, in determining whether there are [fig 1] factors which would cause the child witness to suffer [fig 2] serious mental or emotional harm, a finding that any one or more of the following [fig 3] circumstances have been established by clear and convincing evidence:

(a) The manner of the commission of the offense of which the defendant is accused was particularly heinous or was characterized by aggravating circumstances.

(b) The child witness is particularly young or otherwise particularly subject to psychological harm on account of a physical or mental condition which existed before the alleged commission of the offense.

(c) At the time of the alleged offense, the defendant occupied a position of authority with respect to the child witness.

(d) The offense or offenses charged were part of an ongoing course of conduct committed by the defendant against the child witness over an extended period of time.

(e) A deadly weapon or dangerous instrument was allegedly used during the commission of the crime.

(f) The defendant has inflicted serious physical injury upon the child witness.

(g) A threat, express or implied, of physical violence to the child witness or a third person if the child witness were to report the incident to any person or communicate information to or cooperate with a court, grand jury, prosecutor, police officer or peace officer concerning the incident has been made by or on behalf of the defendant.

(h) A threat, express or implied, of the incarceration of a parent or guardian of the child witness, the removal of the child witness from the family or the dissolution of the family of the child witness if the child witness were to report the incident to any person or communicate information to or cooperate with a court, grand jury, prosecutor, police officer or peace officer concerning the incident has been made by or on behalf of the defendant.

(i) A witness other than the child witness has received a threat of physical violence directed at such witness or to a third person by or on behalf of the defendant.

(j) The defendant, at the time of the inquiry, (i) is living in the same household with the child witness, (ii) has ready access to the child witness or (iii) is providing substantial financial support for the child witness.

(k) The child witness has previously been the victim of an offense defined in article one hundred thirty of the penal law or incest as defined in section 255.25, 255.26 or 255.27 of such law.

(l) According to expert testimony, the child witness would be particularly susceptible [susceptible] [n1] to psychological harm if required to testify in open court or in the physical presence of the defendant.

11. Irrespective of whether a motion was made pursuant to subdivision one of this section, the court, at the request of either party or on its own motion, may decide that a child witness may be vulnerable based on its own observations that a child witness who has been called to testify at a criminal proceeding is suffering severe mental or emotional harm and therefore is physically or mentally unable to testify or to continue to testify in open court or in the physical presence of the defendant and that the use of live, two-way closed-circuit television is necessary to enable the child witness to testify. If the court so decides, it must conduct the same hearing that subdivision five of this section requires when a motion is made

pursuant to subdivision one of this section, and it must make findings of fact pursuant to subdivisions nine and eleven of this section, before determining that the child witness is vulnerable.

12. In deciding whether a child witness is vulnerable, the court shall make findings of fact which reflect the causal relationship between the existence of any one or more of the factors set forth in subdivision nine of this section or other relevant factors which the court finds are established and the determination that the child witness is vulnerable. If the court is satisfied that the child witness is vulnerable and that, under the facts and circumstances of the particular case, the defendant's constitutional rights to an impartial jury or of confrontation will not be impaired, it may enter an order granting the application for the use of live, two-way closed-circuit television.

13. When the court has determined that a child witness is a vulnerable child witness, it shall make a specific finding as to whether placing the defendant and the child witness in the same room during the testimony of the child witness will contribute to the likelihood that the child witness will suffer severe mental or emotional harm. If the court finds that placing the defendant and the child witness in the same room during the testimony of the child witness will contribute to the likelihood that the child witness will suffer severe mental or emotional harm, the order entered pursuant to subdivision eleven of this section shall direct that the defendant remain in the courtroom during the testimony of the vulnerable child witness.

### **N.Y. C.P.L.R. 65.30 (2012). Closed-circuit television; special testimonial procedures**

[Expires and is repealed Sept 1, 2011]

1. When the court has entered an order pursuant to section 65.20, the testimony of the vulnerable child witness shall be taken in the testimonial room and the image and voice of the vulnerable child witness, as well as the image of all other persons other than the operator present in the testimonial room, shall be transmitted live by means of closed-circuit television to the courtroom. The courtroom shall be equipped with monitors sufficient to permit the judge, jury, defendant and attorneys to observe the demeanor of the vulnerable child witness during his or her testimony. Unless the courtroom has been closed pursuant to court order, the public shall also be permitted to hear the testimony and view the image of the vulnerable child witness.

2. In all instances, the image of the jury shall be simultaneously transmitted to the vulnerable child witness in the testimonial room. If the court order issued pursuant to section 65.20 specifies that the vulnerable child witness shall testify outside the physical presence of the defendant, the image of the defendant and the image and voice of the person examining the vulnerable child witness shall also be simultaneously transmitted to the vulnerable child witness in the testimonial room.

3. The operator shall place herself or himself and the closed-circuit television equipment in a position that permits the entire testimony of the vulnerable child witness to be transmitted to the courtroom but limits the ability of the vulnerable child witness to see or hear the operator or the equipment.

4. Notwithstanding any provision of this article, if the court in a particular case involving a vulnerable child witness determines that there is no live, two-way closed-circuit television equipment available in the court or another court in the county or which can be transported to the court from another county or that such equipment, if available, is technologically inadequate to protect the constitutional rights of the defendant, it shall not permit the use of the closed-circuit television procedures authorized by this article.

5. If the order of the court entered pursuant to section 65.20 requires that the defendant remain in the courtroom, the attorney for the defendant and the district attorney shall also remain in the courtroom unless the court is satisfied that their presence in the testimonial room will not impede full and private

communication between the defendant and his or her attorney and will not encourage the jury to draw an inference adverse to the interest of the defendant.

6. Upon request of the defendant, the court shall instruct the jury that they are to draw no inference from the use of live, two-way closed-circuit television in the examination of the vulnerable child witness.

7. The vulnerable child witness shall testify under oath except as specified in subdivision two of section 60.20. The examination and cross-examination of the vulnerable child witness shall, in all other respects, be conducted in the same manner as if the vulnerable child witness had testified in the courtroom.

8. When the testimony of the vulnerable child witness is transmitted from the testimonial room into the courtroom, the court stenographer shall record the testimony [testimony] [n1] in the same manner as if the vulnerable child witness had testified in the courtroom.

## **NORTH CAROLINA**

### **N.C. Gen. Stat. § 15A-1225.1 (2012). Child witnesses; remote testimony**

(a) Definitions:

(1) Child. -- For the purposes of this section, a minor who is under the age of 16 years old at the time of the testimony.

(2) Criminal proceeding. -- Any hearing or trial in a prosecution of a person charged with violating a criminal law of this State, and any hearing or proceeding conducted under Subchapter II of Chapter 7B of the General Statutes where a juvenile is alleged to have committed an offense that would be a criminal offense if committed by an adult.

(3) Remote testimony. -- A method by which a child witness testifies in a criminal proceeding outside of the physical presence of the defendant.

(b) Remote Testimony Authorized. -- In a criminal proceeding, a child witness who has been found competent to testify may testify, under oath or affirmation, other than in an open forum when the court determines:

(1) That the child witness would suffer serious emotional distress, not by the open forum in general, but by testifying in the defendant's presence, and

(2) That the child's ability to communicate with the trier of fact would be impaired.

(c) Hearing Procedure. -- Upon motion of a party or the court's own motion, and for good cause shown, the court shall hold an evidentiary hearing to determine whether to allow remote testimony. Hearings in the superior court division, and hearings conducted under Subchapter II of Chapter 7B of the General Statutes, shall be recorded. The presence of the child witness is not required at the hearing unless ordered by the presiding judge.

(d) Order. -- An order allowing or disallowing the use of remote testimony shall state the findings of fact



and conclusions of law that support the court's determination. An order allowing the use of remote testimony shall do the following:

(1) State the method by which the child is to testify.

(2) List any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony.

(3) State any special conditions necessary to facilitate the cross-examination of the child.

(4) State any condition or limitation upon the participation of individuals in the child's presence during his or her testimony.

(5) State any other condition necessary for taking or presenting the testimony.

(e) Testimony. -- The method used for remote testimony shall allow the judge, jury, and defendant or juvenile respondent to observe the demeanor of the child as the child testifies in a similar manner as if the child were in the open forum. The court shall ensure that the defense counsel, except a pro se defendant, is physically present where the child testifies, has a full and fair opportunity for cross-examination of the child witness, and has the ability to communicate privately with the defendant or juvenile respondent during the remote testimony. Nothing in this section shall be construed to limit the provisions of G.S. 15A-1225.

(f) Nonexclusive Procedure and Standard. -- Nothing in this section shall:

(1) Prohibit the use or application of any other method or procedure authorized or required by statute, common law, or rule for the introduction into evidence of the statements or testimony of a child in a criminal or noncriminal proceeding.

(2) Be construed to require a court, in noncriminal proceedings, to apply the standard set forth in subsection (b) of this section, or to deviate from a standard or standards authorized by statute, common law, or rule, for allowing the use of remote testimony in noncriminal proceedings.

(g) This section does not apply if the defendant is an attorney pro se, unless the defendant has a court-appointed attorney assisting the defendant in the defense, in which case only the court-appointed attorney shall be permitted in the room with the child during the child's testimony.

## **NORTH DAKOTA**

- **North Dakota has neither a statute nor published state case law discussing the use of CCTV in criminal child abuse cases.**

## OHIO

### **Ohio Rev. Code Ann. § 2152.81 (2012). Deposition of child victim; videotaping; testimony taken outside courtroom and televised into it or replayed in courtroom**

(A) (1) As used in this section, "victim" includes any of the following persons:

(a) A person who was a victim of a violation identified in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult;

(b) A person against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult.

(2) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation of section 2905.03, 2905.05, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2919.22 of the Revised Code or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or act was a child who was less than thirteen years of age when the complaint or information was filed or the indictment was returned, the juvenile judge, upon motion of an attorney for the prosecution, shall order that the testimony of the child victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (A)(3) of this section. The judge shall notify the child victim whose deposition is to be taken, the prosecution, and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The notice shall identify the child victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall have the right, as at an adjudication hearing, to full examination and cross-examination of the child victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the juvenile court in which the action is pending and is admissible in the manner described in division (B) of this section. If a deposition of a child victim taken under this division is admitted as evidence at the proceeding under division (B) of this section, the child victim shall not be required to testify in person at the proceeding. However, at any time before the conclusion of the proceeding, the attorney for the child charged with the violation or act may file a motion with the judge requesting that another deposition of the child victim be taken because new evidence material to the defense of the child charged has been discovered that the attorney for the child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Any motion requesting another deposition shall be accompanied by supporting affidavits. Upon the filing of the motion and affidavits, the court may order that additional testimony of the child victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division; if the admitted deposition was a videotaped deposition taken in accordance with division (A)(3) of this section, the new deposition also shall be videotaped in accordance with that division, and, in other cases, the new deposition may be videotaped in accordance with that division.

(3) If the prosecution requests that a deposition to be taken under division (A)(2) of this section be

videotaped, the juvenile judge shall order that the deposition be videotaped in accordance with this division. If a juvenile judge issues an order to video tape\* the deposition, the judge shall exclude from the room in which the deposition is to be taken every person except the child victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the child who is charged with the violation or act, any person needed to operate the equipment to be used, one person chosen by the child victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the child victim giving the deposition. The person chosen by the child victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the child victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the child victim giving the deposition during the deposition. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the deposition, except on a monitor provided for that purpose. The child victim giving the deposition shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person in that room, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (A)(2) of this section and is admissible in the manner described in this division and division (B) of this section, and, if a deposition that is videotaped under this division is admitted as evidence at the proceeding, the child victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (B) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the child who is charged with the violation or act are afforded an opportunity to view the recording before it is shown in the proceeding.

(B) (1) At any proceeding in relation to which a deposition was taken under division (A) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; if

the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; if the child victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or if both of the following apply:

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the child victim who gave the testimony in the deposition were to testify in person at the proceeding, the child victim would experience serious emotional trauma as a result of the child victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (B) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (A) and (B) of this section are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (A) of this section or otherwise taken.

(C) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint or information was filed or indictment was returned, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the child victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (E) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (A)(3) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act.

(D) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is

charged with a violation listed in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint or information was filed or the indictment was returned, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the child victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the child who is charged with the violation or act, and any other persons who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (E) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (A)(3)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(E) For purposes of divisions (C) and (D) of this section, a juvenile judge may order the testimony of a child victim to be taken outside of the room in which a proceeding is being conducted if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following circumstances:

(1) The persistent refusal of the child victim to testify despite judicial requests to do so;

(2) The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

(F) (1) If a juvenile judge issues an order pursuant to division (C) or (D) of this section that requires the testimony of a child victim in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the child victim to whose testimony it applies, the order applies only during the testimony of the specified child victim, and the child victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (A)(3) of this section or a proceeding under division (C) or (D) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code.

(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under

divisions (A) and (B) of this section, the videotaping of a deposition under division (A)(3) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (C) or (D) of this section, shall enter the determination and findings on the record in the proceeding.

**Ohio Rev. Code Ann. § 2945.481 (2012). Deposition of child victim; videotaping; testimony taken outside courtroom and televised into it or replayed in courtroom**

(A) (1) As used in this section, "victim" includes any person who was a victim of a violation identified in division (A)(2) of this section or an offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (A)(2) of this section or an offense of violence.

(2) In any proceeding in the prosecution of a charge of a violation of section 2905.03, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2919.22 of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the judge of the court in which the prosecution is being conducted, upon motion of an attorney for the prosecution, shall order that the testimony of the child victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (A)(3) of this section. The judge shall notify the child victim whose deposition is to be taken, the prosecution, and the defense of the date, time, and place for taking the deposition. The notice shall identify the child victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The defendant shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the defense. The prosecution and the attorney for the defense shall have the right, as at trial, to full examination and cross-examination of the child victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the court in which the action is pending and is admissible in the manner described in division (B) of this section. If a deposition of a child victim taken under this division is admitted as evidence at the proceeding under division (B) of this section, the child victim shall not be required to testify in person at the proceeding. However, at any time before the conclusion of the proceeding, the attorney for the defense may file a motion with the judge requesting that another deposition of the child victim be taken because new evidence material to the defense has been discovered that the attorney for the defense could not with reasonable diligence have discovered prior to the taking of the admitted deposition. A motion for another deposition shall be accompanied by supporting affidavits. Upon the filing of a motion for another deposition and affidavits, the court may order that additional testimony of the child victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division; if the admitted deposition was a videotaped deposition taken in accordance with division (A)(3) of this section, the new deposition also shall be videotaped in accordance with that division and in other cases, the new deposition may be videotaped in accordance with that division.

(3) If the prosecution requests that a deposition to be taken under division (A)(2) of this section be videotaped, the judge shall order that the deposition be videotaped in accordance with this division. If a judge issues an order that the deposition be videotaped, the judge shall exclude from the room in which the deposition is to be taken every person except the child victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the defense, any person needed to

operate the equipment to be used, one person chosen by the child victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the child victim giving the deposition. The person chosen by the child victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the child victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror, so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the child victim giving the deposition during the deposition. The defendant shall be permitted to observe and hear the testimony of the child victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the child victim giving the deposition, except on a monitor provided for that purpose. The child victim giving the deposition shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (A)(2) of this section and is admissible in the manner described in this division and division (B) of this section, and, if a deposition that is videotaped under this division is admitted as evidence at the proceeding, the child victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (B) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the defendant are afforded an opportunity to view the recording before it is shown in the proceeding.

(B) (1) At any proceeding in a prosecution in relation to which a deposition was taken under division (A) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; if the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; if the child victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or if both of the following apply:

(a) The defendant had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the child victim who gave the testimony in the deposition were to testify in person at the proceeding, the child victim would experience serious emotional trauma as a result of the child victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (B) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (A) and (B) of this section are in addition to any other provisions of the Revised Code, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a criminal proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (A) of this section or otherwise taken.

(C) In any proceeding in the prosecution of any charge of a violation listed in division (A)(2) of this section or an offense of violence and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the prosecution may file a motion with the judge requesting the judge to order the testimony of the child victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the jury, if applicable, the defendant, and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this section, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant, for one or more of the reasons set forth in division (E) of this section. If a judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (A)(3) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The defendant shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant.

(D) In any proceeding in the prosecution of any charge of a violation listed in division (A)(2) of this section or an offense of violence and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the prosecution may file a motion with the judge requesting the judge to order the testimony of the child victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the jury, if applicable, the defendant, and any other persons who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room



in which the proceeding is being conducted in the physical presence of the defendant, for one or more of the reasons set forth in division (E) of this section. If a judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The defendant shall be permitted to observe and hear the testimony of the child victim who is giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (A)(3)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(E) For purposes of divisions (C) and (D) of this section, a judge may order the testimony of a child victim to be taken outside the room in which the proceeding is being conducted if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the defendant due to one or more of the following:

(1) The persistent refusal of the child victim to testify despite judicial requests to do so;

(2) The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

(F) (1) If a judge issues an order pursuant to division (C) or (D) of this section that requires the testimony of a child victim in a criminal proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the child victim to whose testimony it applies, the order applies only during the testimony of the specified child victim, and the child victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order.

(2) A judge who makes any determination regarding the admissibility of a deposition under divisions (A) and (B) of this section, the videotaping of a deposition under division (A)(3) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (C) or (D) of this section, shall enter the determination and findings on the record in the proceeding.

### **Ohio Rev. Code Ann. § 2937.11 (2012). Presentation of state's case**

(A) (1) As used in this section, "victim" includes any person who was a victim of a felony violation identified in division (B) of this section or a felony offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a felony violation identified in division (B) of this section or a felony offense of violence.

(2) At the preliminary hearing set pursuant to section 2937.10 of the Revised Code and the Criminal Rules, the prosecutor may state, but is not required to state, orally the case for the state and shall then proceed to examine witnesses and introduce exhibits for the state. The accused and the magistrate have full right of cross examination, and the accused has the right of inspection of exhibits prior to their

introduction. The hearing shall be conducted under the rules of evidence prevailing in criminal trials generally. On motion of either the state or the accused, witnesses shall be separated and not permitted in the hearing room except when called to testify.

(B) In a case involving an alleged felony violation of section 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2907.24, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2919.22 of the Revised Code or an alleged felony offense of violence and in which an alleged victim of the alleged violation or offense was less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, upon motion of the prosecution, the testimony of the child victim at the preliminary hearing may be taken in a room other than the room in which the preliminary hearing is being conducted and be televised, by closed circuit equipment, into the room in which the preliminary hearing is being conducted, in accordance with division (C) of section 2945.481 [2945.48.1] of the Revised Code.

(C) In a case involving an alleged felony violation listed in division (B) of this section or an alleged felony offense of violence and in which an alleged victim of the alleged violation or offense was less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, the court, on written motion of the prosecutor in the case filed at least three days prior to the hearing, shall order that all testimony of the child victim be recorded and preserved on videotape, in addition to being recorded for purposes of the transcript of the proceeding. If such an order is issued, it shall specifically identify the child victim concerning whose testimony it pertains, apply only during the testimony of the child victim it specifically identifies, and apply to all testimony of the child victim presented at the hearing, regardless of whether the child victim is called as a witness by the prosecution or by the defense.

## **OKLAHOMA**

### **Okla. Stat. Ann. tit. 10, § 1-4-506 (2012). Taking testimony of child age 12 or under in room other than courtroom--Recording**

A. This section shall apply only to a proceeding brought under the Oklahoma Children's Code in which a child at the time of the testimony is alleged to be deprived, and shall apply only to the testimony of that child or other child witness.

B. 1. When appropriate facilities are reasonably available, the court shall, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom for review by:

- a. the court,
- b. the finder of fact, and
- c. the parties to the proceeding.

2. Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child, and persons necessary to operate the equipment may be present in the room with the child during the testimony of the child.

3. Only the attorneys for the parties may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the testimony of the child, but does not permit the child to see or hear them.

C. 1. The court shall, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before:

- a. the court,
- b. the finder of fact, and
- c. the parties to the proceeding.

2. Only those persons permitted to be present at the taking of testimony under subsection B of this section may be present during the taking of the child's testimony.

3. Only the attorneys for the parties may question the child, and the persons operating the equipment shall be confined from the child's sight and hearing. The court shall ensure that:

- a. the recording is both visual and aural and is recorded on film or videotape or by other electronic means,
- b. the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered,
- c. every voice on the recording is identified, and
- d. each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

D. If the testimony of a child is taken as provided by subsection B or C of this section, the child shall not be compelled to testify in court during the proceeding.

E. If the testimony of a child is taken as provided in subsection B or C of this section, the attorney for any parent shall, on request, be permitted a recess of sufficient length to allow the attorney to consult with his or her client prior to conclusion of the testimony.

**OKLA. STAT. ANN. TIT. 12, § 2611.3 (2012). Uniform Child Witness Testimony by Alternative Methods Act**

Sections 1 through 9 of this act shall be known and may be cited as the "Uniform Child Witness Testimony by Alternative Methods Act".

## **Okla. Stat. Ann. tit. 12, § 2611.4 (2012). Definitions**

As used in the Uniform Child Witness Testimony by Alternative Methods Act:

1. "Alternative method" means a method by which a child witness testifies which does not include all of the following:
  - a. having the child testify in person in an open forum,
  - b. having the child testify in the presence and full view of the finder of fact and presiding officer, and
  - c. allowing all of the parties to be present, to participate, and to view and be viewed by the child;
2. "Child witness" means an individual under thirteen (13) years of age who has been or will be called to testify in a proceeding;
3. "Criminal proceeding" means a deposition, conditional examination ordered pursuant to Section 765 of Title 22 of the Oklahoma Statutes, trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state, a juvenile certified to stand trial as an adult pursuant to Section 7303-4.3 of Title 10 of the Oklahoma Statutes, a juvenile prosecuted as an adult pursuant to Section 7306-1.1 of Title 10 of the Oklahoma Statutes, or a youthful offender prosecuted pursuant to the Youthful Offender Act; and
4. "Noncriminal proceeding" means a deposition, trial or hearing before a court or an administrative agency of this state having judicial or quasi-judicial powers, other than a criminal proceeding.

## **Okla. Stat. Ann. tit. 12, § 2611.5 (2012). Testimony to which act applies--Other procedures not precluded**

The Uniform Child Witness Testimony by Alternative Methods Act applies to the testimony of a child witness in a criminal or noncriminal proceeding. However, the Uniform Child Witness Testimony by Alternative Methods Act does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness to testify in a proceeding conducted pursuant to the Oklahoma Children's Code or the Oklahoma Juvenile Code.

## **Okla. Stat. Ann. tit. 12, § 2611.6 (2012). Hearing--Determination of whether to use alternative method testimony**

A. The judge or presiding officer in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The judge or presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the judge or presiding officer to have sufficient standing to act on behalf of the child.

B. A hearing to determine whether to allow a child witness to testify by an alternative method shall be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other

person the presiding officer specifies. The presence of the child is not required at the hearing unless ordered by the judge or presiding officer. In conducting the hearing, the judge or presiding officer shall not be bound by rules of evidence except the rules of privilege.

### **Okla. Stat. Ann. tit. 12, § 2611.7 (2012). Situations where alternative method testimony permitted**

A. In a criminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method only in the following situations:

1. The child may testify otherwise than in an open forum in the presence and full view of the finder of fact if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum; and

2. The child may testify other than face-to-face with the defendant if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

B. In a criminal proceeding, the child may have an advocate appointed by the court to monitor the potential for emotional trauma. The advocate shall be a registered professional social worker, psychologist, or psychiatrist.

C. In a noncriminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method if the judge or presiding officer finds by 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 enable the child to communicate with the finder of fact. In making the finding, the judge or presiding officer shall consider:

1. The nature of the proceeding;
2. The age and maturity of the child;
3. The relationship of the child to the parties in the proceeding;
4. The nature and degree of emotional trauma that the child may suffer in testifying; and
5. Any other relevant factor.

### **Okla. Stat. Ann. tit. 12, § 2611.8 (2012). Determination of whether to allow child witness to testify by an alternative method**

If the judge or presiding officer determines that a standard under Section 5 of this act has been met, the judge or presiding officer shall determine whether to allow a child witness to testify by an alternative method and in doing so shall consider:

1. Alternative methods reasonably available;
2. Available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;
5. The importance of the proposed testimony of the child;
6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. Any other relevant factor.

**Okla. Stat. Ann. tit. 12, § 2611.9 (2012). Order--Required contents**

A. An order allowing or disallowing a child witness to testify by an alternative method shall state the findings of fact and conclusions of law that support the determination of the judge or presiding officer.

B. An order allowing a child witness to testify by an alternative method shall:

1. State the method by which the child is to testify;
2. List any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;
3. State any special conditions necessary to facilitate a party's right to examine or cross-examine the child;
4. State any condition or limitation upon the participation of individuals present during the testimony of the child; and
5. State any other condition necessary for taking or presenting the testimony.

C. The alternative method ordered by the judge or presiding officer shall not be more restrictive of the rights of the parties than is necessary under the circumstance to serve the purposes of the order.

**Okla. Stat. Ann. tit. 12, § 2611.10 (2012). Opportunity for examination and cross-examination**

An alternative method ordered by the judge or presiding officer shall permit a full and fair opportunity for examination or cross-examination of the child witness by each party.

## OREGON

### **Or. Rev. Stat. § 419C.025 (2012). Appearance by telephone or closed-circuit television**

(1) Except as provided in subsection (2) of this section, when a person is directed to appear before the court in a proceeding under this chapter, the person may appear by telephone or closed-circuit television as long as all parties having an interest in the proceeding have access to the telephone or television circuit used for the appearance and as long as the appearance is made publicly audible within the courtroom of the court under whose authority the hearing is held.

(2) A person may not appear before the court as provided in subsection (1) of this section if:

(a) The proceeding is a contested adjudication;

(b) The proceeding is a contested waiver hearing;

(c) The proceeding is a contested dispositional hearing;(d) The person has been issued a summons under ORS 419C.306 (2); or

(e) The person who is the subject of the proceeding objects to appearance by telephone or closed-circuit television and the court finds that such appearance would be detrimental to the best interest of the person making the objection.

(3) A person who appears before the court under subsection (1) of this section shall be provided with the opportunity to consult privately with counsel during the proceeding.

## PENNSYLVANIA

### **42 Pa. Cons. Stat. Ann. § 5982 (2012). Definitions**

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"CHILD" OR "CHILDREN." An individual or individuals under 16 years of age.

"CONTEMPORANEOUS ALTERNATIVE METHOD." Any method of capturing the visual images, oral communications and other information presented during a prosecution or adjudication involving a child victim or a child material witness and transmitting and receiving such images, communications and other information at or about the time of their creation, including, but not limited to, closed-circuit television, streaming image sent via the Internet or an intranet and any other devices or systems used to accomplish such ends.

"QUALIFIED SHORTHAND REPORTER." An individual engaged in the active practice of general shorthand reporting who is skilled in the art of verbatim reporting by the use of a written shorthand system, whether

manual or machine; or any individual who is an official court or legislative reporter; or any individual who is the holder of a certified shorthand reporter certificate mandated by State or Federal law.

#### **42 Pa. Cons. Stat. Ann. § 5984.1 (2012). Recorded testimony**

(a) RECORDING.-- Subject to subsection (b), in any prosecution or adjudication involving a child victim or child material witness, the court may order that the child victim's or child material witness's testimony be recorded for presentation in court by any method that accurately captures and preserves the visual images, oral communications and other information presented during such testimony. The testimony shall be taken under oath or affirmation before the court in chambers or in a special facility designed for taking the recorded testimony of children. Only the attorneys for the defendant and for the Commonwealth, persons necessary to operate the equipment, a qualified shorthand reporter and any person whose presence would contribute to the welfare and well-being of the child victim or child material witness, including persons designated under section 5983 (relating to rights and services), may be present in the room with the child during testimony. The court shall permit the defendant to observe and hear the testimony of the child victim or child material witness but shall ensure that the child victim or material witness cannot hear or see the defendant. Examination and cross-examination of the child victim or child material witness shall proceed in the same manner as normally permitted. The court shall make certain that the defendant and defense counsel have adequate opportunity to communicate for the purpose of providing an effective defense.

(b) DETERMINATION.-- Before the court orders the child victim or the child material witness to testify by recorded testimony, the court must determine, based on evidence presented to it, that testifying either in an open forum in the presence and full view of the finder of fact or in the defendant's presence will result in the child victim or child material witness suffering serious emotional distress that would substantially impair the child victim's or child material witness's ability to reasonably communicate. In making this determination, the court may do any of the following:

(1) Observe and question the child victim or child material witness, either inside or outside the courtroom.

(2) Hear testimony of a parent or custodian or any other person, such as a person who has dealt with the child victim or child material witness in a medical or therapeutic setting.

(c) COUNSEL AND CONFRONTATION.--

(1) If the court observes or questions the child victim or child material witness under subsection (b)(1), the attorney for the defendant and the attorney for the Commonwealth have the right to be present, but the court shall not permit the defendant to be present.

(2) If the court hears testimony under subsection (b)(2), the defendant, the attorney for the defendant and the attorney for the Commonwealth have the right to be present.



## **42 Pa. Cons. Stat. Ann. § 5985 (2012). Testimony by contemporaneous alternative method**

(a) CONTEMPORANEOUS ALTERNATIVE METHOD.-- Subject to subsection (a.1), in any prosecution or adjudication involving a child victim or a child material witness, the court may order that the testimony of the child victim or child material witness be taken under oath or affirmation in a room other than the courtroom and transmitted by a contemporaneous alternative method. Only the attorneys for the defendant and for the Commonwealth, the court reporter, the judge, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the child victim or child material witness, including persons designated under section 5983 (relating to rights and services), may be present in the room with the child during his testimony. The court shall permit the defendant to observe and hear the testimony of the child victim or child material witness but shall ensure that the child cannot hear or see the defendant. The court shall make certain that the defendant and defense counsel have adequate opportunity to communicate for the purposes of providing an effective defense. Examination and cross-examination of the child victim or child material witness shall proceed in the same manner as normally permitted.

(A.1) DETERMINATION.-- Before the court orders the child victim or the child material witness to testify by a contemporaneous alternative method, the court must determine, based on evidence presented to it, that testifying either in an open forum in the presence and full view of the finder of fact or in the defendant's presence will result in the child victim or child material witness suffering serious emotional distress that would substantially impair the child victim's or child material witness's ability to reasonably communicate. In making this determination, the court may do all of the following:

(1) Observe and question the child victim or child material witness, either inside or outside the courtroom.

(2) Hear testimony of a parent or custodian or any other person, such as a person who has dealt with the child victim or child material witness in a medical or therapeutic setting.

(A.2) COUNSEL AND CONFRONTATION.--

(1) If the court observes or questions the child victim or child material witness under subsection (a.1)(1), the attorney for the defendant and the attorney for the Commonwealth have the right to be present, but the court shall not permit the defendant to be present.

(2) If the court hears testimony under subsection (a.1)(2), the defendant, the attorney for the defendant and the attorney for the Commonwealth have the right to be present.

## **RHODE ISLAND**

**R.I. Gen. Laws § 11-37-13.2 (2012). Alternative methods of victim testimony -- Child victim**

(a) In any judicial proceeding in which a person has been charged with sexual assault of a child who at the time of trial is seventeen (17) years of age or less, the court may order, upon a showing that the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm, that the testimony of the child be taken in a room other than the courtroom and either be recorded for later showing before the court and/or the finder of fact in the proceeding or be broadcast simultaneously by closed circuit television to the court and/or finder of fact in the proceeding. When the child is fourteen (14) years of age or younger at the time of trial, there shall be a rebuttable presumption that the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm. Only the judge, attorneys for the parties, persons necessary to operate the recording or broadcasting equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his or her testimony. Examination and cross-examination shall proceed in the same manner as permitted at the trial or hearing.

(b) The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror which permits them to see and hear the child during his or her testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but ensure that the child cannot hear or see the person alleged to have committed the assault. The defendant shall be afforded a means of communicating with his or her attorney throughout the proceedings, and, upon request of the defendant or his or her attorney, recesses shall be permitted to allow them to confer. The court shall ensure that:

(1) The recording or broadcast is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;

(3) Each voice on the recording is identified;

(4) Each party is afforded an opportunity to view any recording made prior to trial before it is shown in the courtroom; and

(5) The statement is sworn to under oath by the child.

(c) If the court orders the testimony of a child to be so recorded or broadcast, the child shall not be required to testify at the proceeding for which the testimony was taken, and the testimony shall be used in lieu of the live testimony of the child.

**R.I. Gen. Laws § 12-28-8 (2012). 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**

### **S.C. CODE ANN. § 16-3-1550 (2012). Restriction on employers of victims and witnesses; protection of rights of victims and witnesses**

....

(E) The circuit or family court must treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate. The prosecuting agency or defense attorney must notify the court when a victim or witness deserves special consideration.

### **S.C. CODE ANN. § 19-1-180 (2012). Out-of-court statements by certain children**

(A) An out-of-court statement made by a child who is under twelve years of age or who functions cognitively, adaptively, or developmentally under the age of twelve at the time of a family court proceeding brought pursuant to Title 20 concerning an act of alleged abuse or neglect as defined by Section 20-7-490 is admissible in the family court proceeding if the requirements of this section are met regardless of whether the statement would be otherwise inadmissible.

(B) An out-of-court statement may be admitted as provided in subsection (A) if:

(1) the child testifies at the proceeding or testifies by means of videotaped deposition or closed-circuit television, and at the time of the testimony the child is subject to cross-examination about the statement;  
or

(2)(a) the child is found by the court to be unavailable to testify on any of these grounds:

(i) the child's death;

- (ii) the child's physical or mental disability;
- (iii) the existence of a privilege involving the child;
- (iv) the child's incompetency, including the child's inability to communicate about the offense because of fear;
- (v) substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of videotaped deposition or closed-circuit television; and

(b) the child's out-of-court statement is shown to possess particularized guarantees of trustworthiness.

(C) The proponent of the statement shall inform the adverse party of the proponent's intention to offer the statement and the content of the statement sufficiently in advance of the proceeding to provide the defendant with a fair opportunity to prepare a response to the statement before the proceeding at which it is offered. If the child is twelve years of age or older, the adverse party may challenge the professional decision that the child functions cognitively, adaptively, or developmentally under the age of twelve.

(D) In determining whether a statement possesses particularized guarantees of trustworthiness under subsection (B)(2)(b), the court may consider, but is not limited to, the following factors:

- (1) the child's personal knowledge of the event;
- (2) the age and maturity of the child;
- (3) certainty that the statement was made, including the credibility of the person testifying about the statement;
- (4) any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;
- (5) whether more than one person heard the statement;
- (6) whether the child was suffering pain or distress when making the statement;
- (7) the nature and duration of any alleged abuse;
- (8) whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;
- (9) whether the statement has a ring of verity, has internal consistency or coherence, and uses terminology appropriate to the child's age;
- (10) whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

(E) The court shall support with findings on the record any rulings pertaining to the child's unavailability and the trustworthiness of the out-of-court statement.

(F) Any hearsay testimony admissible under this section shall not be admissible in any other proceeding.

(G) If the parents of the child are separated or divorced, the hearsay statement shall be inadmissible if (1) one of the parents is the alleged perpetrator of the alleged abuse or neglect and (2) the allegation was made after the parties separated or divorced. Notwithstanding this subsection, a statement alleging abuse or neglect made by a child to a law enforcement official, an officer of the court, a licensed family counselor or therapist, a physician or other health care provider, a teacher, a school counselor, a Department of Social Services staff member, or to a child care worker in a regulated child care facility is admissible under this section.

## **SOUTH DAKOTA**

### **S.D. Codified Laws § 26-8A-30 (2012). Testimony of child by closed circuit television -- When permitted -- Hearing**

In any proceeding in which a child under the age of twelve, or a child twelve years of age or older who is developmentally disabled as defined in § 27B-1-3, is describing any act of sexual contact or rape performed with or on the child by another, or describing any act of physical abuse or neglect of the child by another, or any act of physical abuse or neglect of another child, or any act constituting a crime of violence as defined in § 22-1-2 committed against the child or another child, the court or any party may move to allow that the testimony of the child be taken in a room other than the courtroom and televised at the same time to the courtroom by closed circuit television equipment. Prior to allowing the child to testify under this section, the court shall hold a hearing outside the presence of the jury and make a finding on the record that testimony by the child in the courtroom will cause the child to suffer more than de minimis emotional distress and that testifying under the provisions of this section is necessary to protect the welfare of the child.

### **S.D. CODIFIED LAWS § 26-8A-31 (2012). Persons allowed to be present during closed circuit television testimony--Display of defendant's image in room where witness testifies**

At the taking of testimony pursuant to § 26-8A-30, the public shall be excluded from the room in which the witness is testifying. The persons permitted to be physically present shall be determined by the court. The court, in its discretion, may permit in the room a person whose presence would contribute to the well-being of the witness or the reduction of apprehension of the witness during the testimony. Attorneys for the parties may not be excluded.

If the court makes a specific finding, outside the presence of the jury, that the presence of the defendant, or in a civil case, the presence of the respondent, in the same room as the witness, will cause substantial emotional distress to the child and that such distress would impair the ability of the witness to communicate, upon such finding the court may exclude the defendant from the room in which the witness is testifying. However, if the defendant is excluded, the testimony of the witness shall be by two-way closed circuit television such that the testimony of the witness is televised in the courtroom and simultaneously thereto, a monitor in the room in which the witness is testifying displays a view of the courtroom which view shall include the defendant. The right to have the defendant's image televised in the room in which the witness is testifying is a right of the defendant which the defendant may waive. If

the defendant is excluded from the room in which the witness is testifying, the court shall provide for instantaneous communication between the defendant and defense counsel.

## TENNESSEE

### **Tenn. Code Ann. § 24-7-117 (2012). Audio-visually recorded testimony in child sexual abuse proceedings**

(a) This section shall apply to proceedings in the prosecution of offenses defined in § 37-1-602 as "child sexual abuse" and to any civil proceeding in which child sexual abuse as defined in § 37-1-602 is an issue, and it shall apply only to the statements of a child or children under the age of thirteen (13) years of age who are victims of such abuse.

(b) The court may, on the motion of any party, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact. Only the court, the attorneys for the parties, the defendant, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during the child's testimony. Only the attorneys or the court may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits such persons to see and hear the child during the child's testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person. The court shall also ensure that:

(1) The recording is both visual and oral and is recorded on film or videotape or by other similar audio-visual means;

(2) The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(3) Each voice on the recording is identified; and

(4) The attorney for the defendant is afforded an opportunity to view the recording before it is shown in the courtroom.

(c) The court may, on the motion of either party upon showing of good cause, order that additional testimony of the child be taken, if time and circumstances permit, outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding in accordance with subsection (b). If time and circumstances do not permit such additional out of court recording, the court may order the child to testify in court. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting such order.

(d) If the court orders the testimony of a child to be taken under subsection (b) or (c), the child shall not be required to testify in court at the proceeding for which the testimony was taken, unless so ordered pursuant to subsection (c).

## **Tenn. Code Ann. § 24-7-120 (2012). Child's testimony--Closed circuit television**

(a) In a criminal case where the victim of any of the offenses listed in subsection (e) was thirteen (13) years of age or younger at the time the offense was committed, the court may order the child's testimony be taken outside the courtroom by means of two-way closed circuit television, hereafter referred to as "CCTV." Prior to entering such an order, the trial judge must make a case-specific finding of necessity that:

- (1) The particular child involved would be traumatized;
- (2) The source of the trauma is not the courtroom generally, but the presence of the defendant; and
- (3) The emotional distress suffered by the child would be more than de minimis, such that the child could not reasonably communicate.

(b) If the testimony of a child is ordered to be taken by two-way CCTV, it shall be taken during the judicial proceeding and the following rules shall apply:

- (1) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child;
- (2) The operators of CCTV shall make every effort to be unobtrusive;
- (3) Only the following persons shall be permitted in the room with the child while the child testifies by CCTV:
  - (A) The prosecuting attorney;
  - (B) The attorney for the defendant;
  - (C) An interpreter, where necessity dictates;
  - (D) The operators of CCTV equipment;
  - (E) Court security personnel, where required;
  - (F) A parent, counselor or therapist; and
  - (G) Any person whose presence, in the opinion of the court, contributes to the well being of the child, including a person who has dealt with the child in a therapeutic setting concerning the offense;
- (4) The child's testimony shall be memorialized by video taped recording;
- (5) During the child's testimony by CCTV, the judge, jury and the defendant shall remain in the courtroom;
- (6) The judge and the defendant shall be allowed to communicate with those persons in the room where the child is testifying by any appropriate electronic method; and
- (7) The defendant shall not be allowed to enter the room where the child is testifying by way of CCTV, except where the defendant is acting as an attorney pro se.

(c) This section shall not be interpreted to preclude, for the purpose of identification of the defendant, the presence of both the victim and the defendant in the courtroom at the same time.

(d) The provisions of this section shall also apply to a witness who was not the victim of any of the offenses set out in subsection (e) but who was thirteen (13) years of age or younger at the time the offense which gave rise to the criminal case was committed; provided, there is an individual finding of necessity by the trial judge that conforms to the requirements of this section.

(e) The offenses to which the provisions of this section apply are:

(1) Aggravated sexual battery, as defined in § 39-13-504;

(2) Rape of a child, as defined in § 39-13-522;

(3) Incest, as defined in § 39-15-302;

(4) Aggravated child abuse, as defined in § 39-15-402;

(5) Kidnapping, as defined in § 39-13-303;

(6) Aggravated kidnapping, as defined in § 39-13-304;

(7) Especially aggravated kidnapping, as defined in § 39-13-305; and

(8) Criminal attempt, as defined in § 39-12-101, to commit any of the offenses enumerated within this subsection.

## **TEXAS**

### **Tex. Code Crim. Proc. art. 38.071 (2012). Testimony of Child Who Is Victim of Offense**

Sec. 1. This article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant about an offense defined by any of the following sections of the Penal Code:

(1) Section 19.02 (Murder);

(2) Section 19.03 (Capital Murder);



- (3) Section 19.04 (Manslaughter);
- (4) Section 20.04 (Aggravated Kidnapping);
- (5) Section 21.11 (Indecency with a Child);
- (6) Section 22.011 (Sexual Assault);
- (7) Section 22.02 (Aggravated Assault);
- (8) Section 22.021 (Aggravated Sexual Assault);
- (9) Section 22.04(e) (Injury to a Child, Elderly Individual, or Disabled Individual);
- (10) Section 22.04(f) (Injury to a Child, Elderly Individual, or Disabled Individual), if the conduct is committed intentionally or knowingly;
- (11) Section 25.02 (Prohibited Sexual Conduct);
- (12) Section 29.03 (Aggravated Robbery);
- (13) Section 43.25 (Sexual Performance by a Child); or
- (14) Section 21.02 (Continuous Sexual Abuse of Young Child or Children).

Sec. 2. (a) The recording of an oral statement of the child made before the indictment is returned or the complaint has been filed is admissible into evidence if the court makes a determination that the factual issues of identity or actual occurrence were fully and fairly inquired into in a detached manner by a neutral individual experienced in child abuse cases that seeks to find the truth of the matter.

(b) If a recording is made under Subsection (a) of this section and after an indictment is returned or a complaint has been filed, by motion of the attorney representing the state or the attorney representing the defendant and on the approval of the court, both attorneys may propound written interrogatories that shall be presented by the same neutral individual who made the initial inquiries, if possible, and recorded under the same or similar circumstances of the original recording with the time and date of the inquiry clearly indicated in the recording.

(c) A recording made under Subsection (a) of this section is not admissible into evidence unless a recording made under Subsection (b) is admitted at the same time if a recording under Subsection (b) was requested prior to the time of the hearing or proceeding.

Sec. 3. (a) On its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact. To the extent practicable, only the judge, the court reporter, the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the persons necessary to operate the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the

testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact, but the court shall attempt to ensure that the child cannot hear or see the defendant. The court shall permit the attorney for the defendant adequate opportunity to confer with the defendant during cross-examination of the child. On application of the attorney for the defendant, the court may recess the proceeding before or during cross-examination of the child for a reasonable time to allow the attorney for the defendant to confer with defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors.

Sec. 4. (a) After an indictment has been returned or a complaint filed, on its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, the court may order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact. To the extent practicable, only those persons permitted to be present at the taking of testimony under Section 3 of this article may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Section 3. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact but shall attempt to ensure that the child cannot hear or see the defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors. The court shall also ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and is not altered;

(3) each voice on the recording is identified;

(4) the defendant, the attorneys for each party, and the expert witnesses for each party are afforded an opportunity to view the recording before it is shown in the courtroom;

(5) before giving his testimony, the child was placed under oath or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully;

(6) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time the recording was made; and

(7) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings is established at the hearing or proceeding.

(c) After a complaint has been filed or an indictment returned charging the defendant, on the motion of the attorney representing the state, the court may order that the deposition of the child be taken outside of the courtroom in the same manner as a deposition may be taken in a civil matter. A deposition taken under this subsection is admissible into evidence.

Sec. 5. (a) On the motion of the attorney representing the state or the attorney representing the defendant and on a finding by the court that the following requirements have been substantially satisfied, the recording of an oral statement of the child made before a complaint has been filed or an indictment returned is admissible into evidence if:

- (1) no attorney or peace officer was present when the statement was made;
- (2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- (3) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and has not been altered;
- (4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;
- (5) every voice on the recording is identified;
- (6) the person conducting the interview of the child in the recording is expert in the handling, treatment, and investigation of child abuse cases, present at the hearing or proceeding, called by the state, and subject to cross-examination;
- (7) immediately after a complaint was filed or an indictment returned, the attorney representing the state notified the court, the defendant, and the attorney representing the defendant of the existence of the recording;
- (8) the defendant, the attorney for the defendant, and the expert witnesses for the defendant were afforded an opportunity to view the recording before it is offered into evidence and, if a proceeding was requested as provided by Subsection (b) of this section, in a proceeding conducted before a district court judge but outside the presence of the jury were afforded an opportunity to cross-examine the child as provided by Subsection (b) of this section from any time immediately following the filing of the complaint or the returning of an indictment charging the defendant until the date the hearing or proceeding begins;
- (9) the recording of the cross-examination, if there is one, is admissible under Subsection (b) of this section;
- (10) before giving his testimony, the child was placed under oath or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully;
- (11) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time that the recording was made; and
- (12) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings has been established at the hearing or proceeding.

(b) On the motion of the attorney representing the defendant, a district court may order that the cross-examination of the child be taken and be recorded before the judge of that court at any time until a recording made in accordance with Subsection (a) of this section has been introduced into evidence at the hearing or proceeding. On a finding by the court that the following requirements were satisfied, the

recording of the cross-examination of the child is admissible into evidence and shall be viewed by the finder of fact only after the finder of fact has viewed the recording authorized by Subsection (a) of this section if:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the attorney representing the defendant, and the recording is accurate and has not been altered;

(3) every voice on the recording is identified;

(4) the defendant, the attorney representing the defendant, the attorney representing the state, and the expert witnesses for the defendant and the state were afforded an opportunity to view the recording before the hearing or proceeding began;

(5) the child was placed under oath before the cross-examination began or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully; and

(6) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings was established at the hearing or proceeding.

(c) During cross-examination under Subsection (b) of this section, to the extent practicable, only a district court judge, the attorney representing the defendant, the attorney representing the state, persons necessary to operate the equipment, and any other person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact, but shall attempt to ensure that the child cannot hear or see the defendant.

(d) Under Subsection (b) of this section the district court may set any other conditions and limitations on the taking of the cross-examination of a child that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors.

Sec. 6. If the court orders the testimony of a child to be taken under Section 3 or 4 of this article or if the court finds the testimony of the child taken under Section 2 or 5 of this article is admissible into evidence, the child may not be required to testify in court at the proceeding for which the testimony was taken, unless the court finds there is good cause.

Sec. 7. In making any determination of good cause under this article, the court shall consider the rights of the defendant, the interests of the child, the relationship of the defendant to the child, the character and duration of the alleged offense, any court finding related to the availability of the child to testify, the age, maturity, and emotional stability of the child, the time elapsed since the alleged offense, and any other relevant factors.

Sec. 8. (a) In making a determination of unavailability under this article, the court shall consider relevant

factors including the relationship of the defendant to the child, the character and duration of the alleged offense, the age, maturity, and emotional stability of the child, and the time elapsed since the alleged offense, and whether the child is more likely than not to be unavailable to testify because:

(1) of emotional or physical causes, including the confrontation with the defendant; or

(2) the child would suffer undue psychological or physical harm through his involvement at the hearing or proceeding.

(b) A determination of unavailability under this article can be made after an earlier determination of availability. A determination of availability under this article can be made after an earlier determination of unavailability.

Sec. 9. If the court finds the testimony taken under Section 2 or 5 of this article is admissible into evidence or if the court orders the testimony to be taken under Section 3 or 4 of this article and if the identity of the perpetrator is a contested issue, the child additionally must make an in-person identification of the defendant either at or before the hearing or proceeding.

Sec. 10. In ordering a child to testify under this article, the court shall take all reasonable steps necessary and available to minimize undue psychological trauma to the child and to minimize the emotional and physical stress to the child caused by relevant factors, including the confrontation with the defendant and the ordinary participation of the witness in the courtroom.

Sec. 11. In a proceeding under Section 2, 3, or 4 or Subsection (b) of Section 5 of this article, if the defendant is not represented by counsel and the court finds that the defendant is not able to obtain counsel for the purposes of the proceeding, the court shall appoint counsel to represent the defendant at the proceeding.

Sec. 12. In this article, "cross-examination" has the same meaning as in other legal proceedings in the state.

Sec. 13. The attorney representing the state shall determine whether to use the procedure provided in Section 2 of this article or the procedure provided in Section 5 of this article.

- **The section of statute which authorized procedure for admitting child's videotaped testimony at trial, under which a list of written interrogatories was posed by a forensic examiner to child in an ex parte interview, in lieu of live testimony, was not a sufficient substitute for live, adversarial cross-examination to satisfy defendant's Sixth Amendment right to confrontation. This case does not affect testimony given by two-way CCTV. *Coronado v. State*, 351 S.W.3d 315(Tex. Crim. App. 2011).**

## UTAH

### **Utah R. Crim. Proc. 15.5 (2012). Out of court statement and testimony of child victims or child witnesses of sexual or physical abuse -- Conditions of admissibility**

(a) In any case concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or other witness younger than 14 years of age which was recorded prior to the filing of an information or indictment is, upon motion and for good cause shown, admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

(1) the child is available to testify and to be cross-examined at trial, either in person or as provided by law, or the child is unavailable to testify at trial, but the defendant had a previous opportunity to cross-examine the child concerning the recorded statement, such that the defendant's rights of confrontation are not violated;

(2) no attorney for either party is in the child's presence when the statement is recorded;

(3) the recording is visual and aural and is recorded on film, videotape or other electronic means;

(4) the recording is accurate and has not been altered;

(5) each voice in the recording is identified;

(6) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(7) the defendant and his attorney are provided an opportunity to view the recording before it is shown to the court or jury; and .

(8) the court views the recording before it is shown to the jury and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence.

(b) In a criminal case concerning a charge of child abuse or of a sexual offense against a child, the court, upon motion of a party and for good cause shown, may order that the testimony of any victim or other witness younger than 14 years of age be taken in a room other than the court room, and be televised by closed circuit equipment to be viewed by the jury in the court room. All of the following conditions shall be observed:

(1) Only the judge, attorneys for each party and the testifying child (if any), persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be in the room during the child's testimony. A defendant who consents to be hidden from the child's view may also be present unless the court determines that the child will suffer serious emotional or mental strain if required to testify in the defendant's presence, or that the child's testimony will be inherently unreliable if required to testify in the defendant's presence. If the court makes that determination, or if the defendant consents:

(A) the defendant may not be present during the child's testimony;

(B) the court shall ensure that the child cannot hear or see the defendant;

(C) the court shall advise the child prior to his testimony that the defendant is present at the trial and may listen to the child's testimony;

(D) the defendant shall be permitted to observe and hear the child's testimony, and the court shall ensure that the defendant has a means of two-way telephonic communication with his attorney during the child's testimony; and .

(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.

(2) Only the judge and an attorney for each party may question the child.

(3) As much as possible, persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(4) If the defendant is present with the child during the child's testimony, the court may order that persons operating the closed circuit equipment film both the child and the defendant during the child's testimony, so that the jury may view both the child and the defendant, if that may be arranged without violating other requirements of Subsection (b)(1).

(c) In any criminal case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of a party and for good cause shown, that the testimony of any victim or other witness younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

(1) the recording is visual and aural and recorded on film, videotape or by other electronic means;

(2) the recording is accurate and is not altered;

(3) each voice on the recording is identified; and .

(4) each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

## **VERMONT**

### **Vt. Rule 807 (2012). Testimony Where Victim Is a Minor, a Mentally Ill Person or a Mentally Retarded Person**

(a) Application. This rule applies only to the testimony of a child age 12 or under or mentally ill or mentally retarded person as defined in 14 V.S.A. § 3061(4) or (5) in a proceeding:

(1) in a prosecution for sexual assault under 13 V.S.A. § 3252 or aggravated sexual assault under 13 V.S.A.

§ 3253 alleged to have been committed against that child or mentally ill or mentally retarded person;

(2) in a prosecution for lewd and lascivious conduct with a child under 13 V.S.A. § 2602 or incest under 13 V.S.A. § 205 alleged to have been committed against that child;

(3) in a prosecution for abuse, neglect or exploitation under 33 V.S.A. § 6913 or lewd and lascivious conduct under 13 V.S.A. § 2601 alleged to have been committed against that mentally ill or mentally retarded person;

(4) under chapter 55 of Title 33 involving a delinquent act alleged to have been committed against that child or mentally ill or mentally retarded person, if that delinquent act would be an offense listed in this subsection if committed by an adult;

(5) in a civil action in which one of the parties or witnesses has been an alleged victim of causes of action alleging sexual assault, lewd and lascivious conduct or sexual activity as defined in 33 V.S.A. § 6902.

(b) Who may move. The court may, on motion of any party, on its own motion or on motion of the attorney or guardian ad litem for the child or mentally ill or mentally retarded person order that the testimony of the child or mentally ill or mentally retarded person be taken by two-way closed-circuit television or by recorded testimony under this rule.

(c) Finding a trauma. The court shall make an order for two-way closed-circuit television or recorded testimony under this rule only upon a finding that requiring the child or mentally ill or mentally retarded person to testify in court will present a substantial risk of trauma to the child or mentally ill or mentally retarded person which would substantially impair the ability of the child or mentally ill or mentally retarded person to testify.

(d) Recorded testimony. The testimony of the child or mentally ill or mentally retarded person may be taken outside the courtroom and recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only the court and the attorneys may question the child or mentally ill or mentally retarded person. In pro se proceedings, the court may modify the provisions of this subsection relating to the role of a pro se party. The court shall permit the person against whom the child, or mentally ill or mentally retarded person is testifying to observe and hear the testimony of the child or mentally ill or mentally retarded person in person and to confer personally with his or her attorney. Only the person against whom the testimony is directed, the attorneys, the court, persons necessary to operate the equipment and any person who is not a potential witness and whose presence the court finds would contribute to the welfare and well-being of the child or mentally ill or mentally retarded person may be present in the room with the child or mentally ill or mentally retarded person during the testimony. The persons operating the equipment shall be situated whenever possible in such a way that they can see and hear the child or mentally ill or mentally retarded person during the testimony, but the child or mentally ill or mentally retarded person cannot see or hear them. If the testimony is taken under this subsection, the court shall also ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and is not altered except as ordered by the court;

(3) each voice on the recording is identified; and



(4) each party is afforded an opportunity to view the recording before it is shown in the courtroom.

(e) Two-way closed-circuit television. The testimony of the child or mentally ill or mentally retarded person may be taken in a room other than the courtroom and be televised by two-way closed-circuit equipment to be viewed by the finder of fact and others present in the courtroom. Only the persons necessary to operate the equipment and a person who is not a potential witness and whose presence the court finds would contribute to the welfare and well-being of the child or mentally ill or mentally retarded person may be present in the room with the child or mentally ill or mentally retarded person during the testimony.

(f) Placing of the party against whom the testimony is directed. During the recording of testimony under subsection (d) of this rule the party shall be situated in such a way that the child or mentally ill or mentally retarded person can hear and see the party unless the court finds that requiring the child or mentally ill or mentally retarded person to hear and see the party presents a substantial risk of trauma to the child or mentally ill or mentally retarded person which would substantially impair the ability of the child or mentally ill or mentally retarded person to testify, in which case the court may order that the party be situated in such a way that the child or mentally ill or mentally retarded person cannot hear or see the party. During the taking of testimony by two-way closed-circuit equipment under subsection (e) the party's image shall be transmitted to the witness unless the court finds that requiring the witness to hear and see the party presents a substantial risk of trauma to the witness which would substantially impair the ability of the witness to testify, in which case the image of the party shall not be transmitted to the witness.

(g) In-court testimony not required. If the court orders the testimony of a child or mentally ill or mentally retarded person to be taken under this rule, the child or mentally ill or mentally retarded person may not be required to testify in court at the proceeding for which the testimony was taken, unless otherwise ordered by the court for good cause shown.

## VIRGINIA

### **Va. Code Ann. § 18.2-67.9 (2012). Testimony by child victims and witnesses using two-way closed-circuit television**

A. The provisions of this section shall apply to an alleged victim who was fourteen years of age or under at the time of the alleged offense and is sixteen or under at the time of the trial and to a witness who is fourteen years of age or under at the time of the trial.

In any criminal proceeding, including preliminary hearings, involving an alleged offense against a child, relating to a violation of the laws pertaining to kidnapping (§ 18.2-47 et seq.), criminal sexual assault (§ 18.2-61 et seq.) or family offenses pursuant to Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, or involving an alleged murder of a person of any age, the attorney for the Commonwealth or the defendant may apply for an order from the court that the testimony of the alleged victim or a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The party seeking such order shall apply for the order at least seven days before the trial date or at least seven days before such other preliminary proceeding to which the order is to apply.

B. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsection A if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;
2. The child's substantial inability to communicate about the offense; or
3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child's unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the Commonwealth and the defendant's attorney shall be present in the room with the child, and the child shall be subject to direct and cross-examination. The only other persons allowed to be present in the room with the child during his testimony shall be those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

E. Notwithstanding any other provision of law, none of the cost of the two-way closed-circuit television shall be assessed against the defendant.

**Va. Code Ann. § 63.2-1521 (2012). Testimony by child using two-way closed-circuit television**

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, the child's attorney or guardian ad litem or, if the child has been committed to the custody of a local department, the attorney for the local department may apply for an order from the court that the testimony of the alleged victim or of a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The person seeking such order shall apply for the order at least seven days before the trial date.

B. The provisions of this section shall apply to the following:

1. An alleged victim who was fourteen years of age or under on the date of the alleged offense and is sixteen or under at the time of the trial; and
2. Any child witness who is fourteen years of age or under at the time of the trial.

C. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsections A and B if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;
2. The child's substantial inability to communicate about the offense; or
3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child's unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

D. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the child and the defendant's attorney and, if the child has been committed to the custody of a local board, the attorney for the local board shall be present in the room with the child, and the child shall be subject to direct and cross examination. The only other persons allowed to be present in the room with the child during his testimony shall be the guardian ad litem, those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

E. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

## WASHINGTON

### WASH. REV. CODE ANN. § 9A.44.150 (2012). Testimony of child by closed-circuit television

(1) On motion of the prosecuting attorney in a criminal proceeding, the court may order that a child under the age of ten may testify in a room outside the presence of the defendant and the jury while one-way closed-circuit television equipment simultaneously projects the child's testimony into another room so the defendant and the jury can watch and hear the child testify if:

(a) The testimony will:

(i) Describe an act or attempted act of sexual contact performed with or on the child witness by another person or with or on a child other than the child witness by another person;

(ii) Describe an act or attempted act of physical abuse against the child witness by another person or against a child other than the child witness by another person; or

(iii) Describe a violent offense as defined by RCW 9.94A.030 committed against a person known by or familiar to the child witness or by a person known by or familiar to the child witness;

(b) The testimony is taken during the criminal proceeding;

(c) The court finds by substantial evidence, in a hearing conducted outside the presence of the jury, that requiring the child witness to testify in the presence of the defendant will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at the trial. If the defendant is excluded from the presence of the child, the jury must also be excluded;

(d) As provided in subsection (1)(a) and (b) of this section, the court may allow a child witness to testify in the presence of the defendant but outside the presence of the jury, via closed-circuit television, if the court finds, upon motion and hearing outside the presence of the jury, that the child will suffer serious emotional distress that will prevent the child from reasonably communicating at the trial in front of the jury, or, that although the child may be able to reasonably communicate at trial in front of the jury, the child will suffer serious emotional or mental distress from testifying in front of the jury. If the child is able to communicate in front of the defendant but not the jury the defendant will remain in the room with the child while the jury is excluded from the room;

(e) The court finds that the prosecutor has made all reasonable efforts to prepare the child witness for testifying, including informing the child or the child's parent or guardian about community counseling services, giving court tours, and explaining the trial process. If the prosecutor fails to demonstrate that preparations were implemented or the prosecutor in good faith attempted to implement them, the court shall deny the motion;

(f) The court balances the strength of the state's case without the testimony of the child witness against the defendant's constitutional rights and the degree of infringement of the closed-circuit television procedure on those rights;

(g) The court finds that no less restrictive method of obtaining the testimony exists that can adequately protect the child witness from the serious emotional or mental distress;

(h) When the court allows the child witness to testify outside the presence of the defendant, the defendant can communicate constantly with the defense attorney by electronic transmission and be granted reasonable court recesses during the child's testimony for person-to-person consultation with the defense attorney;

(i) The court can communicate with the attorneys by an audio system so that the court can rule on objections and otherwise control the proceedings;

(j) All parties in the room with the child witness are on camera and can be viewed by all other parties. If viewing all participants is not possible, the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child;

(k) The court finds that the television equipment is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment; and

(l) The court imposes reasonable guidelines upon the parties for conducting the filming to avoid trauma to the child witness or abuse of the procedure for tactical advantage.

The prosecutor, defense attorney, and a neutral and trained victim's advocate, if any, shall always be in the room where the child witness is testifying. The court in the court's discretion depending on the circumstances and whether the jury or defendant or both are excluded from the room where the child is testifying, may remain or may not remain in the room with the child.

(2) During the hearing conducted under subsection (1) of this section to determine whether the child witness may testify outside the presence of the defendant and/or the jury, the court may conduct the observation and examination of the child outside the presence of the defendant if:

(a) The prosecutor alleges and the court concurs that the child witness will be unable to testify in front of the defendant or will suffer severe emotional or mental distress if forced to testify in front of the defendant;

(b) The defendant can observe and hear the child witness by closed-circuit television;

(c) The defendant can communicate constantly with the defense attorney during the examination of the child witness by electronic transmission and be granted reasonable court recesses during the child's examination for person-to-person consultation with the defense attorney; and

(d) The court finds the closed-circuit television is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment. Whenever possible, all the parties in the room with the child witness shall be on camera so that the viewers can see all the parties. If viewing all participants is not possible, then the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child.

(3) The court shall make particularized findings on the record articulating the factors upon which the court based its decision to allow the child witness to testify via closed-circuit television pursuant to this section. The factors the court may consider include, but are not limited to, a consideration of the child's age, physical health, emotional stability, expressions by the child of fear of testifying in open court or in front of the defendant, the relationship of the defendant to the child, and the court's observations of the child's inability to reasonably communicate in front of the defendant or in open court. The court's findings shall identify the impact the factors have upon the child's ability to testify in front of the jury or the defendant or both and the specific nature of the emotional or mental trauma the child would suffer. The court shall

determine whether the source of the trauma is the presence of the defendant, the jury, or both, and shall limit the use of the closed-circuit television accordingly.

(4) This section does not apply if the defendant is an attorney pro se unless the defendant has a court-appointed attorney assisting the defendant in the defense.

(5) This section may not preclude the presence of both the child witness and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

(6) The Washington supreme court may adopt rules of procedure regarding closed-circuit television procedures.

(7) All recorded tapes of testimony produced by closed-circuit television equipment shall be subject to any protective order of the court for the purpose of protecting the privacy of the child witness.

(8) Nothing in this section creates a right of the child witness to a closed-circuit television procedure in lieu of testifying in open court.

(9) The state shall bear the costs of the closed-circuit television procedure.

(10) A child witness may or may not be a victim in the proceeding.

(11) Nothing in this section precludes the court, under other circumstances arising under subsection (1)(a) of this section, from allowing a child to testify outside the presence of the defendant and the jury so long as the testimony is presented in accordance with the standards and procedures required in this section.

## **WEST VIRGINIA**

### **W. Va. Code Ann. § 62-6B-2 (2012). Definitions**

For the purposes of this article, the words or terms defined in this section, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Child witness" means a person thirteen years of age or less who is or will be called to testify in a criminal matter concerning an alleged violation of the provisions of sections three [§ 61-8B-3], four [§ 61-8B-4], five [§ 61-8B-5] and seven [§ 61-8B-7], article eight-b, chapter sixty-one of this code in which the child is the alleged victim.

(2) "Live, two-way closed-circuit television" means a simultaneous transmission, by closed-circuit television or other electronic means, between the courtroom and the testimonial room.

(3) "Operator" means the individual authorized by the court to operate the two-way closed-circuit television equipment used in accordance with the provisions of this article.

(4) "Testimonial room" means a room within the courthouse other than the courtroom from which the

testimony of a child witness or the defendant is transmitted to the courtroom by means of live, two-way closed-circuit television.

**W. Va. Code Ann. § 62-6B-3 (2012). Findings of fact required for taking testimony of child witness by closed-circuit television; considerations for court**

(a) Upon a written motion filed by the prosecuting attorney, and upon findings of fact determined pursuant to subsection (b) of this section, a circuit court may order that the testimony of a child witness may be taken at a pretrial proceeding or at trial through the use of live, two-way closed-circuit television.

(b) Prior to ordering that the testimony of a child witness may be taken through the use of live, two-way closed-circuit television, the circuit court must find by clear and convincing evidence, after conducting an evidentiary hearing on this issue, that:

(1) The child is an otherwise competent witness;

(2) That, absent the use of live, two-way closed-circuit television, the child witness will be unable to testify due solely to being required to be in the physical presence of the defendant while testifying;

(3) The child witness can only testify if live, two-way closed-circuit television is used in the trial; and

(4) That the state's ability to proceed against the defendant without the child witness' live testimony would be substantially impaired or precluded.

(c) The court shall consider the following factors in determining the necessity of allowing a child witness to testify by the use of live, two-way closed-circuit television:

(1) The age and maturity of the child witness;

(2) The facts and circumstances of the alleged offense;

(3) The necessity of the child's live testimony to the prosecution's ability to proceed;

(4) Whether or not the facts of the case involve the alleged infliction of bodily injury to the child witness or the threat of bodily injury to the child or another; and

(5) Any mental or physical handicap of the child witness.

(d) In determining whether to allow a child witness to testify through live, two-way closed-circuit television the court shall appoint a psychiatrist, licensed psychologist with at least five years clinical experience or a licensed clinical social worker with at least five years of significant clinical experience in the treatment and evaluation of children who shall serve as an advisor or friend of the court to provide the court with an expert opinion as to whether, to a reasonable degree of professional certainty, the child witness will suffer severe emotional harm, be unable to testify based solely on being in the physical presence of the defendant while testifying and that the child witness does not evidence signs of being subjected to undue influence or coercion. The opinion of the psychiatrist, licensed psychologist or licensed clinical social worker shall be filed with the circuit court at least thirty days prior to the final hearing on the use of live, two-way closed-circuit television and the defendant shall be allowed to review the opinion and present evidence on the issue by the use of an expert or experts or otherwise.

**W. Va. Code Ann. § 62-6B-4 (2012). Procedures required for taking testimony of child witness by closed-circuit television; election of defendant; jury instruction; sanction for failure to follow procedures**

(a) If the court determines that the use of live, two-way closed-circuit testimony is necessary and orders its use the defendant may, at any time prior to the child witness being called, elect to absent himself from the courtroom during the child witness' testimony. If the defendant so elects the child shall be required to testify in the courtroom.

(b) (1) If live, two-way closed-circuit television is used in the testimony of the child witness, he or she shall be taken into the testimonial room and be televised live, by two-way closed-circuit equipment to the view of the defendant, counsel, the court and, if applicable, the jury. The projected image of the defendant shall be visible for child witness to view if he or she chooses to do so and the view of the child witness available to those persons in the courtroom shall include a full body view. Only the prosecuting attorney, the attorney for the defendant and the operator of the equipment may be present in the room with the child witness during testimony. Only the court, the prosecuting attorney and the attorney for the defendant may question the child. In pro se proceedings, the court may modify the provisions of this subdivision relating to the role of the attorney for the defendant to allow the pro se defendant to question the child witness in such a manner as to cause as little psychological trauma as possible under the circumstances. The court shall permit the defendant to observe and hear the testimony of the child witness contemporaneous with the taking of the testimony. The court shall provide electronic means for the defendant and the attorney for the defendant to confer confidentially during the taking of the testimony.

(2) If the defendant elects to not be physically present in the courtroom during the testimony of the child witness, the defendant shall be taken into the testimonial room and be televised live, by two-way closed-circuit equipment to the view of the finder of fact and others present in the courtroom. The defendant shall be taken to the testimonial room prior to the appearance of the child witness in the courtroom. There shall be made and maintained a recording of the images and sounds of all proceedings which were televised pursuant to this article. While the defendant is in the testimonial room, the defendant shall be permitted to view the live, televised image of the child witness and the image of those other persons in the courtroom whom the court determines the defendant is entitled to view. Only the court, the prosecuting attorney and the attorney for the defendant may question the child. In pro se proceedings, the court may modify the provisions of this subdivision relating to the role of the attorney for the defendant to allow the pro se defendant to question the child witness in such a manner as to cause as little emotional distress as possible under the circumstances. The transmission from the courtroom to the testimonial room shall be sufficient to permit the defendant to observe and hear the testimony of the child witness contemporaneous with the taking of the testimony. No proceedings other than the taking of the testimony of the child witness shall occur while the defendant is outside the courtroom. In the event that the defendant elects that the attorney for the defendant remain in the courtroom while the defendant is in the testimonial room, the court shall provide electronic means for the defendant and the attorney for the defendant to confer confidentially during the taking of the testimony.

(c) In every case where the provisions of the article are used, the jury, at a minimum shall, be instructed, unless such instruction is waived by the defendant, that the use of live, two-way closed-circuit television is being used solely for the child's convenience, that the use of the medium cannot as a matter of law and



fact be considered as anything other than being for the convenience of the child witness and that to infer anything else would constitute a violation of the oath taken by the jurors.

**W. VA. CHILD ABUSE AND NEGLECT PROCEEDINGS, RULE 9 (2012). Use of closed circuit television testimony**

(a) In any case governed by these rules in which a child eleven (11) years old or less is to be a witness, the court, upon order of its own or upon motion of a party, may permit the child witness to testify through live, one-way, closed-circuit television whereby there shall be no transmission into the room from which the child witness is testifying.

(b) In any case in which a child over the age of eleven (11) years is to be a witness, the court, upon order of its own or upon motion of a party, and upon a finding of good cause, shall permit the child witness to testify through live, one-way, closed-circuit television whereby there shall be no transmission into the room from which the child witness is testifying.

(c) The testimony of the child witness shall be taken in any room, separate and apart from the courtroom, from which testimony of the child witness can be transmitted to the courtroom by means of live, one-way, closed-circuit television. The testimony shall be deemed as given in open court.

(d) The judge, the attorneys for the parties, and any other person the court permits for the purpose of providing support for the child in order to promote the ability of the child to testify shall be present in the testimonial room at all times during the testimony of the child witness. The judge may permit liberal consultation between counsel and the parties by adjournment, electronic means, or otherwise.

(e) The image and voice of the child witness, as well as the image of all other persons present in the testimony room, other than the operator, shall be transmitted live by means of live, one-way, closed-circuit television in the courtroom. The courtroom shall be equipped with monitors sufficient to permit the parties to observe the demeanor of the child witness during his or her testimony.

(f) The operator shall place herself or himself and the closed-circuit television equipment in a position that permits the entire testimony of the child witness to be transmitted to the courtroom.

(g) The child witness shall testify under oath, and the examination and cross-examination of the child witness shall, in all other respects, be conducted in the same manner as if the child witness testified in the courtroom.

(h) When the testimony of the child witness is transmitted from the testimonial room into the courtroom, the court stenographer shall record the testimony in the same manner as if the child witness testified in the courtroom.

(i) Under all circumstances, the image of the child witness transmitted shall include the entirety of his or her person ordinarily subject to observation by the human eye, subject to such limitations as may be unavoidable by reason of standard courtroom furnishings.

(j) Should it be required, for the purposes of identification that the person to be identified and the child witness be present in the courtroom at the same time, the court shall ensure that this meeting takes place

after the child witness has completed his or her testimony; and this confrontation shall, to the extent possible, be accomplished in a manner that is nonthreatening to the child witness.

## WISCONSIN

### Wis. Stat. Ann. § 972.11 (2012). Evidence and practice; civil rules applicable

(1) Except as provided in subs. (2) to (4), the rules of evidence and practice in civil actions shall be applicable in all criminal proceedings unless the context of a section or rule manifestly requires a different construction. No guardian ad litem need be appointed for a defendant in a criminal action. Chapters 885 to 895 and 995, except ss. 804.02 to 804.07 and 887.23 to 887.26, shall apply in all criminal proceedings.

(2) (a) In this subsection, "sexual conduct" means any conduct or behavior relating to sexual activities of the complaining witness, including but not limited to prior experience of sexual intercourse or sexual contact, use of contraceptives, living arrangement and life-style.

....

(2m) (a) At a trial in any criminal prosecution, the court may, on its own motion or on the motion of any party, order that the testimony of any child witness be taken in a room other than the courtroom and simultaneously televised in the courtroom by means of closed-circuit audiovisual equipment if all of the following apply:

1. The court finds all of the following:

- a. That the presence of the defendant during the taking of the child's testimony will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.
- b. That taking the testimony of the child in a room other than the courtroom and simultaneously televising the testimony in the courtroom by means of closed-circuit audiovisual equipment is necessary to minimize the trauma to the child of testifying in the courtroom setting and to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

2. The trial in which the child may be called as a witness will commence:

- a. Prior to the child's 12th birthday; or
- b. Prior to the child's 16th birthday and, in addition to its finding under subd. 1., the court finds that the interests of justice warrant that the child's testimony be taken in a room other than the courtroom and simultaneously televised in the courtroom by means of closed-circuit audiovisual equipment.

(b) Among the factors which the court may consider in determining the interests of justice under par. (a)

2. b. are any of the following:

1. The child's chronological age, level of development and capacity to comprehend the significance of the events and to verbalize about them.
2. The child's general physical and mental health.

3. Whether the events about which the child will testify constituted criminal or antisocial conduct against the child or a person with whom the child had a close emotional relationship and, if the conduct constituted a battery or a sexual assault, its duration and the extent of physical or emotional injury thereby caused.
4. The child's custodial situation and the attitude of other household members to the events about which the child will testify and to the underlying proceeding.
5. The child's familial or emotional relationship to those involved in the underlying proceeding.
6. The child's behavior or reaction to previous interviews concerning the events involved.
7. Whether the child blames himself or herself for the events involved or has ever been told by any person not to disclose them; whether the child's prior reports to associates or authorities of the events have been disbelieved or not acted upon; and the child's subjective belief regarding what consequences to himself or herself, or persons with whom the child has a close emotional relationship, will ensue from providing testimony.
8. Whether the child manifests or has manifested symptoms associated with posttraumatic stress disorder or other mental disorders, including, without limitation, reexperiencing the events, fear of their repetition, withdrawal, regression, guilt, anxiety, stress, nightmares, enuresis, lack of self-esteem, mood changes, compulsive behaviors, school problems, delinquent or antisocial behavior, phobias or changes in interpersonal relationships.
9. The number of separate investigative, administrative and judicial proceedings at which the child's testimony may be required.

(b) If a court orders the testimony of a child to be taken under par. (a), the court shall do all of the following:

1. To the extent it is practical and subject to s. 972.10 (3), schedule the testimony on a date when the child's recollection is likely to be fresh and at a time of day when the child's energy and attention span are likely to be greatest.
2. Provide a room for the child to testify from that provides adequate privacy, freedom from distractions, informality and comfort appropriate to the child's developmental level.
3. Order a recess whenever the energy, comfort or attention span of the child or other circumstances so warrant.
4. Determine that the child understands that it is wrong to tell a lie and will testify truthfully if the child's developmental level or verbal skills are such that administration of an oath or affirmation in the usual form would be inappropriate.
5. Before questioning by the parties begins, attempt to place the child at ease, explain to the child the purpose of the testimony and identify all persons attending.
6. Supervise the spatial arrangements of the room and the location, movement and deportment of all persons in attendance.

7. Allow the child to testify while sitting on the floor, on a platform or on an appropriately sized chair, or while moving about the room within range of the visual and audio recording equipment.

8. Bar or terminate the attendance of any person whose behavior is disruptive or unduly stressful to the child.

(c) Only the following persons may be present in the room in which the child is giving testimony under par. (a):

1m. Any person necessary to operate the closed-circuit audiovisual equipment.

2m. The parents of the child, the guardian or legal custodian of the child or, if no parent, guardian or legal custodian is available or the legal custodian is an agency, one individual whose presence would contribute to the welfare and well-being of the child.

3m. One person designated by the attorney for the state and approved by the court and one person designated by either the defendant or the attorney for the defendant and approved by the court.

(3) (a) In a prosecution under s. 940.22 involving a therapist and a patient or client, evidence of the patients or clients personal or medical history is not admissible except if:

1. The defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the evidence; and

2. The court finds that the evidence is relevant and that its probative value outweighs its prejudicial nature.

(b) The court shall limit the evidence admitted under par. (a) to relevant evidence which pertains to specific information or examples of conduct. The courts order shall specify the information or conduct that is admissible and no other evidence of the patients or clients personal or medical history may be introduced.

(c) Violation of the terms of the order is grounds for a mistrial but does not prevent the retrial of the defendant.

(3m) A court may not exclude evidence in any criminal action or traffic forfeiture action for violation of s. 346.63 (1) or (5), or a local ordinance in conformity with s. 346.63 (1) or (5), on the ground that the evidence existed or was obtained outside of this state.

(4) Upon the motion of any party or its own motion, a court may order that any exhibit or evidence be delivered to the party or the owner prior to the final determination of the action or proceeding if all of the following requirements are met:

(a) There is a written stipulation by all the parties agreeing to the order.

(b) No party will be prejudiced by the order.

(c) A complete photographic or other record is made of any exhibits or evidence so released.

## WYOMING

**In *Bush v. State*, 193 P.3d 203 (Wyo. 2008), the Wyoming Supreme Court upheld the use of CCTV under the circumstances articulated in *Craig*. Wyoming has no CCTV statute.**

### WYO. R. CR. PROC. 26 (2012). TAKING OF TESTIMONY

(a) In general. -- In all trials, the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute, or by these rules, by the Wyoming Rules of Evidence, or by other rules adopted by the Supreme Court of Wyoming.

(b) Testimony by electronic means. -- The court may permit a witness to testify by electronic means at any hearing or, if substantial rights of the defendant are not prejudiced thereby, at a trial. This section does not apply to previously recorded testimony. The party proposing to have a witness testify by electronic means shall give five days written notice of the request to the opposing party, unless the time is shortened by the court for good cause. An oath or affirmation administered by a judicial officer to a witness who will testify by electronic means shall be done in the same manner and shall have the same effect as an oath or affirmation administered in open court.

## FEDERAL LEGISLATION

### 18 USCS § 3509 (2012). 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.

(13) [Redesignated]

(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 of 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 [18 USCS § 2256]) 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 [18 USCS § 2256]), 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.

- ***U.S. v. Bordeaux*, 400 F.3d 548, 549(8th Cir. 2005), clarifies that fear described in (B)(l)(1) must be from the defendant, and that *Craig* applies to two way CCTV.**

## **AMERICAN SAMOA**

## **GUAM**

### **GUAM CODE ANN. 6, APPX. A, RULE 804.1 (2012). PROTECTION OF CHILD WITNESSES**

(a) Conditions. In a case of physical, sexual or mental abuse of a child as defined in Guam law, a court may order that the testimony of a child victim be taken outside the courtroom and shown in the courtroom by means of closed-circuit television if:

(1) The testimony is taken during the proceeding; and

(2) The judge determines that testimony by the child victim in the defendant's presence will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.

(b) Location of certain persons; question of child.

(1) Only the following persons may be in the room with the child when the child testifies by closed-circuit television:

(i) The prosecuting attorney;

(ii) The attorney for the defendant;

(iii) The operators of the closed-circuit television equipment; and

(iv) Unless the defendant objects, any person whose presence, in the opinion of the court, contributes to the well-being of the child, including a person who has dealt with the child in a therapeutic setting concerning the abuse.

(2) During the child's testimony by closed-circuit television, the judge and the defendant shall be in the courtroom.

(3) The judge and the defendant shall be allowed to communicate with the persons in the room where the child is testifying by any appropriate electronic method.

(4) Only the prosecuting attorney, the attorney for any defendant, and the judge may question the child.

(c) Examination by judge.

(1) In determining whether testimony by the child victim in the defendant's presence will result in the child suffering serious emotional distress such that the child cannot reasonably communicate, the judge may observe and question the child either inside or outside the courtroom and hear testimony of a parent or custodian of the child or any other person, including a person who has dealt with the child in a therapeutic setting.

(i) Except as provided in subparagraph (ii) of this paragraph, any defendant, any defendant's attorney, and the prosecutor shall have the right to be present when the judge hears testimony on whether to allow a child victim to testify by closed-circuit television.

(ii) If the judge decides to observe or question the child in connection with the determination to allow closed-circuit television:

1. Any defendant's attorney and the prosecutor shall have the right to be present; and
2. The judge may not permit a defendant to be present.

(d) Applicability. The provisions of this section do not apply if the defendant is an attorney pro se.

(e) Identification of defendant. This section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time.

(f) Two-way closed-circuit television prohibited. This section may not be interpreted to permit the use of two-way closed-circuit television or any other procedure that would result in the child being exposed to the defendant.

## **PUETRO RICO**

**P.R. LAWS ANN. TIT. 25 § 973A1 (2012). Bill of rights of minors, minors with disabilities and/or impairments**

In addition to the rights listed in § 973a of this title, every victim or witness to a crime or offense under eighteen (18) years of age and every person who has a disability or mental retardation, shall have the following rights:

- (a) Shall not be exposed to experiences that could cause serious consequences to his/her mental and emotional health.
- (b) Offer, when the circumstances justify it, their testimony through available alternate means, whether in open court, through a closed circuit television system or by a deposition recorded on video tape, or any reliable recording system.
- (c) Shall be accompanied in court by support personnel that may be a relative or person close to him/her, counselor or technical personnel of the program, or a competent professional, while giving testimony.
- (d) In the course of the procedures, the court shall see to the welfare of the minor, giving priority in its calendar, to the procedures in which they are the victims or witnesses of crimes or offenses and shall avoid long hours of testimony without recess.

**P.R. LAWS ANN. TIT. 34, APPX. II R. 131.1 (2012). Testimony of the Victim in the Prosecution of Crimes Against Minors Through One-Way, Closed-Circuit Television System of The Victim or Witness Who is a Minor or Over Eighteen Years of Age who Suffers from a Disability or Mental Retardation**

Under specific conditions and circumstances, the interrogation of the underage victim or witness may be conducted according to the procedure established herein. Provided, That for the purposes of this rule and Rules 131.2 and 131.3 of this appendix, the term "minor" shall mean any person who has not attained the age of eighteen years and any person over eighteen (18) years of age who suffers from a disability or mental retardation which has been previously judicially determined or established through expert evidence or by stipulation of the parties.

*(1) Conditions.* The court may order, motu proprio, or at the request of the prosecution, or of the witness or victim who is a minor, that the latter can testify outside the courtroom during the proceeding through the use of a one or two-way closed circuit television system, if the following conditions concur:

- (a) The minor offers testimony during the judicial process, and
- (b) the judge has previously determined during the proceeding that, due to the presence of the defendant, it is likely that the minor, although competent to testify, would suffer grave emotional distress, which would prevent him/her to communicate effectively, and
- (c) at the time of testifying, the minor is under oath or affirmation, and has been duly admonished.

*(2) Persons that may be present in the place where the minor gives testimony.* Only the persons listed hereinbelow shall be admitted to the place where the minor gives testimony:

- (a) The prosecutor in charge of the case;
- (b) the defense attorney;
- (c) the closed-circuit equipment operators;
- (d) any support personnel, as this term is defined in Rule 131.3 of this appendix, to be determined by the court.

The judge, the defendant, the jury, and the public shall remain in the courtroom while the minor testifies through the one or two-way, closed-circuit system. The defendant and the judge shall be allowed to communicate with the persons present in the place where the minor is testifying by using the electronic equipment suited for those purposes. The defendant will be able to simultaneously observe and hear the minor testify, but the minor shall not be able to see the defendant, except when a two-way system is authorized. Only the prosecutor in charge of the case, the defense attorney, and the judge may interrogate the minor during his/her testimony.

(3) *Determination of need.* To determine whether it is likely that the minor could suffer grave emotional distress that could prevent him/her from communicating effectively if he/she has to testify before the defendant, the judge may observe and interrogate the minor in or outside the court, and also hear the testimony of the parents, guardians, custodians, tutor, or guardian ad litem of the minor, and any other person who, in the discretion of the judge, contributes to the welfare of the minor, including the person or persons who have interacted with the minor in a therapeutic environment, due to the nature of the crime.

(a) The defendant, the defense attorney, and the prosecutor in charge of the case shall be entitled to be present when the judge hears testimony to determine whether he/she authorizes the victim who is a minor, to testify outside of the courtroom where trial is being held, by means of the one or two-way, closed-circuit system.

(b) If the judge decides to observe or interrogate the injured minor, in order to make the determination provided in clause (a) of this section, the defense attorney and the prosecutor in charge of the case shall be present

(4) *Applicability.* The provisions contained in this rule shall not apply when the defendant appears pro se.

(5) *Identification of the defendant.* For the victim to identify the defendant, both shall be required to appear in the courtroom after the minor has testified.

## **VIRGIN ISLANDS**

### **V.I. CODE ANN. TIT. 5, § 3510 (2012). Videotaped testimony of minors who are the victims of sexual and child abuse**

(a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a minor victim, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant against the need to protect a minor witness and to preserve the integrity of the court's fact finding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other provision of law to the contrary, the court in an adjudicatory or disposition hearing pursuant to section 2548 or 2549 of this title or, in a criminal proceeding involving sexual and child abuse, or in a criminal case involving a crime of violence, as defined in Title 23, section 451(e), Virgin Islands Code, or a violation of the controlled substances law as codified in Title 19, chapter 29 of this code, and where a minor is to testify as a witness, upon written notice of the prosecutor made at least three days prior to the date of the hearing or trial on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor, who is 16 years of age or younger, be taken by contemporaneous examination and cross-examination in a room near the courtroom and out of the presence of the jury, defendant and public, and communicated contemporaneously to the courtroom by means of two-way closed-circuit television, if the court makes any of the following findings:

(1) The minor's testimony will involve a recitation of the facts of an alleged sexual or physical offense committed on, with, or in the presence of the minor.

(2) The impact on the minor of one or more factors enumerated in subparagraphs (A) to (D) of this

paragraph, inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used:

(A) Threats of serious bodily injury to be inflicted on the minor or a family member, of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding or to prevent the minor from reporting the alleged sexual or physical offense or from assisting in criminal prosecution;

(B) Use of a firearm or any other deadly weapon during the commission of the crime;

(C) Infliction of great bodily injury upon the victim during the commission of the crime;

(D) Conduct on the part of the defendant or defense counsel during the hearings or trial which causes the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary in order to obtain the minor's testimony.

(c) The conditions imposed on the use of the closed circuit video-taped presentation shall be as follows:

(1) In addition to the minor, the persons present in the room from which the minor will testify, (hereinafter referred to as the "testimonial room") shall consist of the prosecutor, the defense attorney, the guardian ad litem as provided by section 2542 of this title, the therapist, counselor, or other professional who has worked most closely with the minor concerning the alleged sexual or child abuse, and the judge if he determines that his presence is necessary.

(2) The videocamera and cameraman shall be separated from the testimonial room by means of a one-way mirror which would allow the videotaping of the minor's testimony.

(3) The courtroom shall be equipped with monitors having the capacity to present images and sound with clarity, in order that the jury, defendant, and judge shall be able to see and hear the testimony of the minor.

(4) No bright lights shall be employed in the testimonial room.

(5) Color images may be projected to the courtroom by the videocamera.

(6) The videocamera may be equipped with zoom lens to be used only on notice to counsel who may have an opportunity to object.

(7) The videocamera, the witness and counsel shall be so arranged that the witness and counsel in the testimonial room can be seen on the courtroom monitors simultaneously. The face of the witness shall be visible on the monitors at all times, except on agreement by counsel or direction by the court for some other arrangement. The placement of counsel in the testimonial room shall be at the discretion of each counsel.

(8) The defendant and his attorney shall be provided by the Government with a video system which will

permit constant private communication between them during the testimony of the minor.

(9) If the judge determines that his presence is not necessary in the testimonial room, an audio system may be provided connecting the judge with the testimonial room in order that he may be able to rule on objections and otherwise control the proceedings from the bench.

(10) The testimony of the minor may be interrupted at reasonable intervals to provide the defendant with an opportunity for consultation with his counsel.

(d) (1) The hearing on a motion to videotape the minor witness, pursuant to this section, shall be conducted out of the presence of the jury.

(2) Notwithstanding any other provision of law to the contrary, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the four factors enumerated in subsection (b)(2) of this section, is so substantial that the minor is unavailable as a witness unless closed-circuit television is used, 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 guardian ad litem, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and the defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in the testimonial room, the court shall:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order and the reasons in support of the exclusion of the defendant from the testimonial room. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of two-way closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the hearing or trial on the use of two-way closed-circuit television procedures.

(4) Instruct the guardian ad litem, outside of the presence of the jury, that he is not to coach, cue, or in any way, influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participated in the examination, be made and preserved on videotape 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 his attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the videotape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape which is taken pursuant to this section



is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(f) When the court orders the testimony of a minor to be taken in a room near the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his testimony to meet for a reasonable period of time with the judge, the prosecutor, defense counsel and the guardian ad litem. The purpose of the meeting shall be to explain the court process to the child and to allow the attorneys an opportunity to establish a rapport with the minor to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or any of the facts of the case with the minor during the meeting.

(g) When the court orders that the testimony of a minor may be taken in the testimonial room, nothing in this section shall prohibit the court from ordering the minor to be brought into the courtroom for a limited purpose, including the identification of the defendant or defendants, as the court deems necessary.

(h) The examination of the minor shall be under oath.

(i) Nothing in this section shall affect the requirements of section 831 of this title.