

1 (3) Allowing all of the parties to be present, to
2 participate, and to view and be viewed by the child
3 witness.

4 "Child witness" means an individual who has been or will be
5 called to testify in a criminal or noncriminal proceeding and
6 who is or will be under the age of eighteen at the time of the
7 testimony.

8 "Criminal proceeding" means a trial or hearing before a
9 court in a prosecution of a person charged with violating a
10 criminal law of this State or a proceeding involving conduct
11 that if engaged in by an adult would constitute a violation of a
12 criminal law of this State.

13 "Noncriminal proceeding" means a trial or hearing before a
14 court or an administrative agency having judicial or quasi-
15 judicial powers, other than a criminal proceeding.

16 § -3 **Applicability.** This chapter applies to the
17 testimony of child witnesses in a criminal or noncriminal
18 proceeding; provided that this chapter shall not preclude other
19 procedures permitted by law for a child witness to testify.

20 § -4 **Hearing whether to allow testimony by alternative**
21 **method.** (a) The presiding officer of a criminal or noncriminal
22 proceeding may order a hearing to determine whether to allow a



1 child witness to testify by an alternative method. The
2 presiding officer, for good cause shown, shall order the hearing
3 upon motion of a party, a child witness, or an individual
4 determined by the presiding officer to have sufficient standing
5 to act on behalf of the child witness.

6 (b) A hearing to determine whether to allow a child
7 witness to testify by an alternative method shall be conducted
8 on the record after reasonable notice to all parties, any
9 nonparty movant, and any other person the presiding officer
10 specifies. The child witness' presence is not required at the
11 hearing unless ordered by the presiding officer. In conducting
12 the hearing, the presiding officer shall not be bound by rules
13 of evidence, except the rules of privilege.

14 **§ -5 Standards for determining whether a child witness**
15 **may testify by alternative method.** (a) In a criminal
16 proceeding, the presiding officer may permit a child witness to
17 testify by an alternative method only in the following
18 situations:

19 (1) A child witness may testify other than in an open
20 forum in the presence and full view of the finder of
21 fact if the presiding officer finds by clear and
22 convincing evidence that the child witness would



1 suffer serious emotional distress that would
2 substantially impair the child witness' ability to
3 communicate with the finder of fact if required to
4 testify in the open forum; or

5 (2) A child witness may testify other than face-to-face
6 with the defendant if the presiding officer finds by
7 clear and convincing evidence that the child witness
8 would suffer serious emotional distress that would
9 substantially impair the child witness' ability to
10 communicate with the finder of fact if required to be
11 confronted face-to-face by the defendant.

12 (b) In a noncriminal proceeding, the presiding officer may
13 order a child witness to testify by an alternative method if the
14 presiding officer finds by a preponderance of the evidence that
15 allowing the child witness to testify by an alternative method
16 is necessary to serve the best interests of the child witness or
17 enable the child witness to communicate with the finder of fact.

18 In making this finding, the presiding officer shall consider:

- 19 (1) The nature of the proceeding;
20 (2) The age and maturity of the child witness;
21 (3) The relationship of the child witness to the parties
22 in the proceeding;



1 (4) The nature and degree of emotional distress that the
2 child witness would suffer in testifying; and

3 (5) Any other relevant factor.

4 § -6 Factors for determining whether to permit

5 alternative method. If the presiding officer determines that a
6 standard under section -5 has been met, the presiding officer
7 shall determine whether to allow a child witness to testify by
8 an alternative method by considering:

9 (1) Alternative methods reasonably available;

10 (2) Available means for protecting the interests of or
11 reducing emotional distress to the child witness
12 without resort to an alternative method;

13 (3) The nature of the case;

14 (4) The relative rights of the parties;

15 (5) The importance of the proposed testimony of the child
16 witness;

17 (6) The nature and degree of emotional distress that the
18 child witness would suffer if an alternative method is
19 not used; and

20 (7) Any other relevant factor.

21 § -7 Hearing to determine procedures for pro se party

22 examination of child witness. (a) If the presiding officer of



1 a criminal or noncriminal proceeding orders a hearing to
2 determine whether to allow a child witness to testify by an
3 alternative method pursuant to -4(a) and one of the parties
4 is expected to be without counsel for the examination of the
5 child witness, the presiding officer shall also conduct a
6 hearing to determine the method by which a pro se party may
7 examine a child witness.

8 (b) A hearing to determine the method by which a pro se
9 party may examine a child witness shall be conducted in the same
10 manner as established under -4(b) and may be consolidated with
11 or immediately follow a hearing on whether to allow testimony by
12 alternative method conducted pursuant to section -4.

13 **§ -8 Standards to determine method by which pro se party**
14 **may examine child witness in criminal proceeding.** (a) In a
15 criminal proceeding, the presiding officer shall order a pro se
16 party:

17 (1) Excluded from the presence of the child witness during
18 the child witness' testimony upon a finding by clear
19 and convincing evidence that the child witness would
20 suffer serious emotional distress that would
21 substantially impair the child witness' ability to



1 communicate with the finder of fact if required to
2 testify in the presence of the pro se party; or

3 (2) Excluded from the presence of the child witness during
4 the child witness' testimony and precluded from use of
5 technology that would permit the child witness to see
6 or hear the pro se party, if the presiding officer
7 finds by clear and convincing evidence that the child
8 witness would suffer serious emotional distress that
9 would substantially impair the child witness' ability
10 to communicate with the finder of fact if required to
11 testify after hearing the pro se party's voice.

12 (b) If, in a criminal proceeding, the court excludes the
13 pro se party from the presence of the child witness during the
14 child witness' testimony and precludes the pro se party from use
15 of technology that permits the child witness to see or hear the
16 pro se party, the court shall make reasonable accommodations to
17 permit examination of the child witness by the pro se party by
18 use of available technology to contemporaneously pose questions
19 to the child witness, including appointing a person to speak the
20 questions composed by the pro se party.

21 (c) If the court appoints an attorney to speak the
22 questions composed by the pro se party:



1 (1) No attorney-client privileges shall form based upon
2 the appointment; and

3 (2) If the case is tried to a jury, the court shall
4 explain to the jury that the pro se party is
5 continuing to represent the party's self and that the
6 pro se composed the questions asked by the attorney.

7 **§ -9 Standards to determine method by which pro se party**
8 **may examine child witness in a noncriminal proceeding.** (a) In
9 a noncriminal proceeding, the presiding officer may order a pro
10 se party

11 (1) Excluded from the presence of the child witness during
12 the child witness' testimony if the presiding officer
13 finds by a preponderance of the evidence that
14 excluding the pro se party is necessary to serve the
15 best interests of the child witness or enable the
16 child witness to communicate with the finder of fact;
17 or

18 (2) Excluded from the presence of the child witness during
19 the child witness' testimony and excluded from
20 speaking or using technology so that the child witness
21 can hear the pro se party's voice, if the presiding
22 officer finds by a preponderance of the evidence that



1 doing so is necessary to serve the best interests of
2 the child witness or enable the child witness to
3 communicate with the finder of fact.

4 (b) In making the findings pursuant to subsection (a), the
5 presiding officer shall consider:

6 (1) The nature of the proceeding;

7 (2) The age and maturity of the child witness;

8 (3) The relationship of the child witness to the parties
9 in the proceeding;

10 (4) The nature and degree of emotional distress that the
11 child witness would suffer in testifying; and

12 (5) Any other relevant factor.

13 (c) If, in a noncriminal proceeding, the court excludes
14 the pro se party from the presence of the child witness during
15 the child witness' testimony and precludes the pro se party from
16 speaking directly to the child witness through the use of
17 available technology, the court shall make reasonable
18 accommodations to permit examination of the child witness by the
19 pro se party by use of available technology to contemporaneously
20 pose questions to the child witness, including appointing a
21 person to speak the questions composed by the pro se party.



1 (d) If the court appoints an attorney to speak the
2 questions composed by the pro se party:

3 (1) No attorney-client privileges shall form based upon
4 the appointment; and

5 (2) If the case is tried to a jury, the court shall
6 explain to the jury that the pro se party is
7 continuing to represent the party's self and that the
8 pro se party composed the questions asked by the
9 attorney.

10 **§ -10 Order regarding testimony by alternative method.**

11 (a) An order allowing or disallowing a child witness to testify
12 by an alternative method shall state findings of fact and
13 conclusions of law supporting the presiding officer's
14 determination.

15 (b) An order allowing a child witness to testify by an
16 alternative method shall:

17 (1) State the method by which the child witness is to
18 testify;

19 (2) List any individuals or category of individuals
20 allowed to be in, or required to be excluded from, the
21 presence of the child witness during the child
22 witness' testimony;



- 1 (3) State any special conditions to facilitate a party's
2 right to examine or cross-examine the child witness;
- 3 (4) State any conditions or limitations upon the
4 participation of persons present or excluded during
5 the taking of the testimony of the child witness; and
- 6 (5) State any other conditions for taking or presenting
7 the testimony of the child witness.

8 (c) The alternative method ordered by the presiding
9 officer shall not be more restrictive of the rights of the
10 parties than is necessary under the circumstances to serve the
11 purposes of the order allowing a child witness to testify by
12 alternative method.

13 **§ -11 Right of parties to examine child witness.** An
14 alternative method ordered by the presiding officer shall permit
15 a full and fair opportunity for examination and cross-
16 examination of the child witness by each party.

17 **§ -12 Uniformity of application and construction.** In
18 applying and construing this chapter, consideration shall be
19 given to the need to promote uniformity of the law with respect
20 to its subject matter among states that enact it."

21 SECTION 2. If any provision of this Act, or the
22 application thereof to any person or circumstance, is held



1 invalid, the invalidity does not affect other provisions or
2 applications of the Act that can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

5 SECTION 3. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Uniform Child Witness Testimony by Alternative Methods Act

Description:

Enacts the Uniform Child Witness Testimony by Alternative Methods Act, which authorizes courts to allow for children to testify in a place other than an open forum or away from the finder of fact, court, or parties. (HB129 HD1)

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