

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 368

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO JUDICIAL AND ADMINISTRATIVE PROCEEDINGS; ENACTING  
THE UNIFORM CHILD WITNESS PROTECTIVE MEASURES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Uniform Child Witness Protective Measures Act".

Section 2. DEFINITIONS.--As used in the Uniform Child  
Witness Protective Measures Act:

A. "alternative method" means:

(1) in a criminal proceeding where 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;

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

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

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

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

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

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

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

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

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

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

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

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

12 B. "child witness" means an individual under the  
13 age of sixteen who has been or will be called to testify in a  
14 criminal or noncriminal proceeding;

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

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

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

6           Section 3. APPLICABILITY.--

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

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

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

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

19           Section 4. HEARING WHETHER TO ALLOW TESTIMONY BY  
20 ALTERNATIVE METHOD.--

21           A. The presiding officer in a criminal or  
22 noncriminal proceeding may order a hearing to determine whether  
23 to allow a child witness to testify by an alternative method.  
24 The presiding officer, for good cause shown, shall order the  
25 hearing upon motion of a party, a child witness or an

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1 individual determined by the presiding officer to have  
2 sufficient standing to act on behalf of the child.

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

9 Section 5. STANDARDS FOR DETERMINING WHETHER A CHILD  
10 WITNESS MAY TESTIFY BY ALTERNATIVE METHOD.--

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

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

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

24 B. In a noncriminal proceeding, the presiding  
25 officer may allow a child witness to testify by an alternative

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1 method if the presiding officer finds that allowing the child  
2 to testify by an alternative method is necessary to serve the  
3 best interests of the child or enable the child to communicate  
4 with the finder of fact. In making this finding, the presiding  
5 officer shall consider:

- 6 (1) the nature of the proceeding;
- 7 (2) the age and maturity of the child;
- 8 (3) the relationship of the child to the  
9 parties in the proceeding;
- 10 (4) the nature and degree of mental or  
11 emotional harm that the child may suffer in testifying; and  
12 (5) any other relevant factor.

13 Section 6. FACTORS FOR DETERMINING WHETHER TO PERMIT  
14 ALTERNATIVE METHOD.--If the presiding officer determines that a  
15 standard pursuant to Section 5 of the Uniform Child Witness  
16 Protective Measures Act has been met, the presiding officer  
17 shall determine whether to allow a child witness to testify by  
18 an alternative method and in doing so shall consider:

19 A. alternative methods reasonably available for  
20 protecting the interests of or reducing mental or emotional  
21 harm to the child;

22 B. available means for protecting the interests of  
23 or reducing mental or emotional harm to the child without  
24 resort to an alternative method;

25 C. the nature of the case;

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- 1 D. the relative rights of the parties;
- 2 E. the importance of the proposed testimony of the
- 3 child;
- 4 F. the nature and degree of mental or emotional
- 5 harm that the child may suffer if an alternative method is not
- 6 used; and
- 7 G. any other relevant factor.

8 Section 7. ORDER REGARDING TESTIMONY BY ALTERNATIVE  
9 METHOD.--

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

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

16 (1) state the method by which the child is to  
17 testify;

18 (2) list any individual or category of  
19 individuals allowed to be in, or required to be excluded from,  
20 the presence of the child during the testimony;

21 (3) state any special conditions necessary to  
22 facilitate a party's right to examine or cross-examine the  
23 child;

24 (4) state any condition or limitation upon the  
25 participation of individuals present during the testimony of

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1 the child; and

2 (5) state any other condition necessary for  
3 taking or presenting the testimony.

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

10 Section 8. RIGHT OF PARTY TO EXAMINE CHILD WITNESS.--An  
11 alternative method ordered by the presiding officer shall  
12 permit a full and fair opportunity for examination or cross-  
13 examination of the child witness by each party, subject to such  
14 protection of the child witness as the judge deems necessary.

15 Section 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--  
16 In applying and construing the Uniform Child Witness Protective  
17 Measures Act, consideration shall be given to the need to  
18 promote uniformity of the law with respect to its subject  
19 matter among states that enact it.

20 Section 10. SEVERABILITY.--If any part or application of  
21 the Uniform Child Witness Protective Measures Act is held  
22 invalid, the remainder or its application to other situations  
23 or persons shall not be affected.

24 Section 11. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is January 1, 2010.

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