

Uniform Child Witness Testimony by Alternative Method Act

This Act establishes methods by which children under 16 years old are protected from testifying in open court, face to face with a defendant in a criminal case, or in front of all parties in a non-criminal case.

According to NCCUSL:

“Increasingly, children are called to testify in court proceedings. Trauma resulting from exposure to an open courtroom or confrontation with a defendant can lead to emotional distress and inaccurate testimony. The Uniform Child Witness Testimony by Alternative Method Act (UCWTBAMA) addresses the complicated issues of child witness testimony.

In the process of revising the Uniform Rules of Evidence (URE), a project completed in 1999, the Drafting Committee eliminated what was then Rule 807(d). Rule 807 provides an exception to the hearsay rule for statements of a child victim and the deleted subdivision provided alternative methods for taking the testimony of a child victim. The provisions were removed from the URE because the Committee: (1) believed the provisions were incompatible with a child victim or witness exception to the hearsay rule and would be better dealt with in a separate rule or statute, (2) noted wide divergence among the states with respect to the use of alternative means of taking child witness testimony, supporting the argument for a uniform state law on this subject, and (3) felt that a separate uniform law on the subject would better allow states to fashion procedures based on local decisional law. Accordingly, Rule 807(a)(2) of the URE, as modified in 1999, more generally provides that the child must either testify at the proceeding “[or pursuant to an applicable state procedure for the giving of testimony by a child]” and allows a statement of a child to be introduced through an alternative method recognized under applicable state law without complicating the Rule 807 exception to the hearsay rule.

The UCWTBAMA fills the gap created in the 1999 URE by providing an “applicable state procedure” that gives presiding officers clear authority to allow children to testify using alternative methods in criminal, civil, and administrative matters. The Act does not displace existing practices, such as closed circuit television and identity screens, nor does it seek to change a state’s defined age under which such procedures are available. Instead, the Act creates a common framework that integrates a state’s existing practices and alternative means of taking testimony and applies fair and predictable standards to that process. The Act does not apply to the taking or use of evidence obtained through discovery depositions or other discovery mechanisms authorized and regulated by the Rules of Civil or Criminal Procedure of the enacting jurisdiction.

First, the Act gives the presiding officer of a criminal or noncriminal proceeding the power to order a hearing, upon a motion by a party, child witness, or other individual determined to have standing, and with good cause shown, to determine whether to allow a child to testify by an alternative method. While this hearing must be conducted on the record after reasonable notice to all parties, the child’s presence is not required. The presiding officer is bound only by the rules of privilege and not by the other normal rules of evidence.

In a criminal proceeding, if the presiding officer finds, upon clear and convincing evidence, that the child would suffer serious emotional trauma which would substantially impair the child’s ability to communicate with the finder of fact, the officer may allow the child to testify other than: (1) in an open forum in the presence and full view of the finder of fact or (2) face-to-face with the defendant. This standard follows the holding of *Maryland v. Craig* (497 U.S. 836, 1990) and adopts the standard of proof set by a number of states and the persuasive holding of *Reutter v. State*, 886 P.2d 1298 (Alaska Ct. App. 1994).

In a noncriminal proceeding, if the presiding officer finds, upon 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 to enable the child to communicate with the trier of fact, the officer may allow the child to testify by an alternative method. The presiding officer is directed in this circumstance to consider the nature of the proceeding, age and maturity of the child, relationship of the child to the parties in the proceeding, nature and degree of emotional trauma the child may suffer in testifying, and any other relevant factor(s).

If either of the above standards are met, the Act directs the presiding officer to consider a number of additional factors, including the nature of the alternative means of testimony reasonably available, other alternatives for reducing emotional trauma to the child, nature of the case, relative rights of the parties, importance of the proposed testimony, nature and degree of emotional trauma the child may suffer if an alternative method is not used, and other related factor(s). After considering these factors, the court may issue an order which states the method(s) to be used, the parties allowed in or excluded from the child's presence, any special conditions relative to a party's right to examine or cross-examine the child, and conditions or limitations upon the participation of individuals present during the child's testimony. The Act directs the presiding officer to employ an alternative method that is no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order and requires that the method chosen must permit a full and fair opportunity for cross-examination of the child witness by each party.

The Uniform Child Witness Testimony by Alternative Methods Act provides judges, administrative officers, and other presiding officers with a clear and legally sound means of protecting child witnesses from the emotional trauma associated with giving testimony, while at the same time protecting the 6th Amendment rights of defendants and respondents. It creates a sound procedural basis for the use of alternative methods of testimony, and clear standards for the use of these methods, without displacing an enacting state's existing mechanisms and means of addressing this issue.”

NCCUSL reports Idaho, Nevada, New Mexico, and Oklahoma had enacted this Uniform Law as of May, 2012.

Submitted as:

New Mexico

[HB 196](#)

Status: Enacted into law in 2011.

1 Section 1. [*Short Title.*] This Act may be cited as the “Uniform Child Witness Testimony by
2 Alternative Method Act.”

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4 Section 2. [*Definitions.*] As used in the Uniform Child Witness Testimony by Alternative Method
5 Act:

6 A. “Alternative method” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 B. "Child witness" means:

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

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

41 C. "Criminal proceeding" means a trial or hearing before a court in a prosecution of a person
42 charged with violating a criminal law of [insert state] or a delinquency proceeding pursuant to the
43 [insert citation] involving conduct that if engaged in by an adult would constitute a violation of a
44 criminal law of [this state];

45 D. "Noncriminal proceeding" means a trial or hearing before a court or an administrative
46 agency of [this state] having judicial or quasi-judicial powers in a civil case, an administrative
47 proceeding or any other case or proceeding other than a criminal proceeding; and

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

51
52 Section 3. [*Applicability.*]

53 A. The Uniform Child Witness Testimony by Alternative Method Act applies to the testimony of a
54 child witness in a criminal or noncriminal proceeding. However, the Uniform Child Witness Testimony
55 by Alternative Method Act does not preclude, in a criminal or noncriminal proceeding, any other
56 procedure permitted by law:

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

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

60 B. The Supreme Court may adopt rules of procedure and evidence to implement the
61 provisions of the Uniform Child Witness Testimony by Alternative Method Act.

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63 Section 4. [*Hearing Whether to Allow Testimony by Alternative Method.*]

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

69 B. A hearing to determine whether to allow a child witness to testify by an alternative
70 method shall be conducted on the record after reasonable notice to all parties, to any nonparty
71 movant and to any other person the presiding officer specifies. The child's presence is not required at
72 the hearing unless ordered by the presiding officer.
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74 Section 5. [*Standards for Determining Whether a Child Witness May Testify by Alternative*
75 *Method.*]

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

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

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

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

88 (1) the nature of the proceeding;

89 (2) the age and maturity of the child;

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

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

93 (5) any other relevant factor.
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95 Section 6. [*Factors for Determining Whether to Permit Alternative Method.*] If the presiding
96 officer determines that a standard pursuant to Section 5 of the Uniform Child Witness Testimony by
97 Alternative Method Act has been met, the presiding officer shall determine whether to allow a child
98 witness to testify by an alternative method and in doing so shall consider:

99 A. alternative methods reasonably available for protecting the interests of or reducing mental
100 or emotional harm to the child;

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

103 C. the nature of the case;

104 D. the relative rights of the parties;

105 E. the importance of the proposed testimony of the child;

106 F. the nature and degree of mental or emotional harm that the child may suffer if an
107 alternative method is not used; and

108 G. any other relevant factor.
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110 Section 7. [*Order Regarding Testimony by Alternative Method.*]

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

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

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

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

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

119 (4) state any condition or limitation upon the participation of individuals present
120 during the testimony of the child; and

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

122 C. The alternative method ordered by the presiding officer shall be no more restrictive of the
123 rights of the parties than is necessary under the circumstances to serve the purposes of the order and
124 shall be subject to the other provisions of the Uniform Child Witness Testimony by Alternative Method
125 Act.

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127 Section 8. [*Right of Party to Examine Child Witness.*] An alternative method ordered by the
128 presiding officer shall permit a full and fair opportunity for examination or cross examination of the
129 child witness by each party, subject to such protection of the child witness as the presiding officer
130 deems necessary.

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132 Section 9. [*Uniformity of Application and Construction.*] In applying and construing the
133 Uniform Child Witness Testimony by Alternative Method Act, consideration shall be given to the
134 need to promote uniformity of the law with respect to its subject matter among states that enact it.

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136 Section 10. [*Severability.*] If any part or application of the Uniform Child Witness Testimony
137 by Alternative Method Act is held invalid, the remainder or its application to other situations or
138 persons shall not be affected.

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140 Section 11. [*Effective Date.*] The effective date of the provisions of this Act is [insert date].