

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

EXPLANATION OF S.B. 43

(Prepared by the Legal Division)

S.B. 43 adopts the Uniform Child Witness Testimony by Alternative Methods Act which is added to chapter 50 of NRS. The purpose of this uniform act is to provide certain children who are witnesses in criminal and noncriminal proceedings with alternative methods of testifying.

Section 3 defines "alternative method" as any method by which a child witness may testify when the child is not testifying in person, in open court and in the presence and full view of the judge, jury, defendant and other parties. According to the comments to the uniform act, such alternative methods may include the use of close-circuit television which is transmitted directly to the courtroom, audio visual recordings which can be presented in the courtroom, and room arrangements that avoid direct confrontation between the child witness and the judge, jury, defendant or other parties.

Section 5 defines "child witness" as a child under the age of 13 years who has been or will be called to testify in a proceeding. The comments to the uniform act indicate that the National Conference of Commissioners on Uniform State Laws suggests this age limitation based on recommendations received by the Conference.

Section 8 of this bill provides that the uniform act applies to children witnesses in criminal and noncriminal proceedings. Section 8 also provides that the uniform act does not preclude, in a noncriminal proceeding, any other procedure permitted by law by which a child witness may testify and does not preclude, in a delinquency proceeding, testimony by a child witness in a closed forum.

Section 9 of this bill sets forth the procedures for instituting and conducting a hearing to determine whether an alternative method for taking the testimony of a child witness should be authorized. The presiding officer in a criminal or noncriminal proceeding has the discretion to order a hearing to determine whether to allow a child witness to testify by an alternative method. However, if a party, child witness or person acting on behalf of the child requests such a hearing, the presiding officer is required to order the hearing.

Section 10 of this bill provides the standards by which the presiding officer at the criminal or noncriminal proceeding determines whether a child witness may testify by an alternative method. Subsection 1 of section 10 provides that in a criminal proceeding, a child witness does not have to testify in an open forum or 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. Subsection 2 of section 10 provides that in a noncriminal proceeding, a child witness may testify by an alternative method if the presiding officer finds by a preponderance of the evidence, after considering certain factors, 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.

Section 11 of this bill sets forth the factors the presiding officer will consider when determining what type of alternative method of testifying is appropriate for each child witness under the circumstances.

Section 12 of this bill provides that 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. Section 12 also provides that 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.

Section 13 of this bill provides that when it is constitutionally required in criminal proceedings, 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.

Section 14 of this bill provides that in applying and construing the uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.