

SENATE BILL NO. 43--SENATOR CARE

PREFILED JANUARY 30, 2003

Referred to Committee on Judiciary

SUMMARY—Adopts Uniform Child Witness Testimony by Alternative Methods Act. (BDR 4-378)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to witnesses; adopting the Uniform Child Witness Testimony by Alternative Methods Act; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 50 of NRS is hereby amended by adding
- 2 thereto the provisions set forth as sections 2 to 14, inclusive, of this
- 3 act.
- 4 **Sec. 2.** *The provisions of sections 2 to 14, inclusive, of this*
- 5 *act may be cited as the Uniform Child Witness Testimony by*
- 6 *Alternative Methods Act.*
- 7 **Sec. 3.** *As used in sections 2 to 14, inclusive, of this act,*
- 8 *unless the context otherwise requires, the words and terms defined*
- 9 *in sections 4 to 7, inclusive, of this act have the meanings ascribed*
- 10 *to them in those sections.*
- 11 **Sec. 4.** *“Alternative method” means a method by which a*
- 12 *child witness testifies which does not include all of the following:*
- 13 1. *Having the child testify in person in an open forum;*
- 14 2. *Having the child testify in the presence and full view of the*
- 15 *finder of fact and presiding officer; and*
- 16 3. *Allowing all of the parties to be present, to participate and*
- 17 *to view and be viewed by the child.*
- 18 **Sec. 5.** *“Child witness” means a child under the age of 13*
- 19 *years who has been or will be called to testify in a proceeding.*



- 1 **Sec. 6. “Criminal proceeding” means:**
2 1. *A trial or hearing before a court in a prosecution of a*
3 *person charged with violating a criminal law of this state; or*
4 2. *A delinquency proceeding which is conducted pursuant to*
5 *title 5 of NRS.*
- 6 **Sec. 7. “Noncriminal proceeding” means a trial or hearing**
7 *before a court or an administrative agency of this state having*
8 *judicial or quasi-judicial powers, other than a criminal*
9 *proceeding.*
- 10 **Sec. 8. 1. The provisions of sections 2 to 14, inclusive, of**
11 *this act apply to the testimony of a child witness in a criminal or*
12 *noncriminal proceeding.*
- 13 2. *The provisions of sections 2 to 14, inclusive, of this act do*
14 *not preclude:*
- 15 (a) *In a noncriminal proceeding, any other procedure*
16 *permitted by law for a child witness to testify; or*
17 (b) *In a delinquency proceeding which is conducted pursuant to*
18 *title 5 of NRS, testimony by a child witness in a closed forum as*
19 *authorized by NRS 62.193.*
- 20 **Sec. 9. 1. The presiding officer in a criminal or**
21 *noncriminal proceeding:*
- 22 (a) *May order a hearing to determine whether to allow a child*
23 *witness to testify by an alternative method.*
- 24 (b) *For good cause shown, shall order the hearing upon*
25 *motion of a party, a child witness, or a natural person determined*
26 *by the presiding officer to have sufficient standing to act on behalf*
27 *of the child.*
- 28 2. *A hearing to determine whether to allow a child witness to*
29 *testify by an alternative method must be conducted on the record*
30 *after reasonable notice to all parties, any nonparty movant, and*
31 *any other person the presiding officer specifies. The child’s*
32 *presence is not required at the hearing unless ordered by the*
33 *presiding officer. In conducting the hearing, the presiding officer*
34 *is not bound by rules of evidence except the rules of privilege.*
- 35 **Sec. 10. 1. In a criminal proceeding, the presiding officer**
36 *may allow a child witness to testify by an alternative method only*
37 *in the following situations:*
- 38 (a) *The child may testify otherwise than in an open forum in*
39 *the presence and full view of the finder of fact if the presiding*
40 *officer finds by clear and convincing evidence that the child would*
41 *suffer serious emotional trauma that would substantially impair*
42 *the child’s ability to communicate with the finder of fact if*
43 *required to testify in the open forum.*
- 44 (b) *The child may testify other than face-to-face with the*
45 *defendant if the presiding officer finds by clear and convincing*



1 *evidence that the child would suffer serious emotional trauma that*
2 *would substantially impair the child's ability to communicate with*
3 *the finder of fact if required to be confronted face-to-face by the*
4 *defendant.*

5 *2. In a noncriminal proceeding, the presiding officer may*
6 *allow a child witness to testify by an alternative method if the*
7 *presiding officer finds by a preponderance of the evidence that*
8 *allowing the child to testify by an alternative method is necessary*
9 *to serve the best interests of the child or enable the child to*
10 *communicate with the finder of fact. In making this finding, the*
11 *presiding officer shall consider:*

- 12 (a) *The nature of the proceeding;*
- 13 (b) *The age and maturity of the child;*
- 14 (c) *The relationship of the child to the parties in the*
15 *proceeding;*
- 16 (d) *The nature and degree of emotional trauma that the child*
17 *may suffer in testifying; and*
- 18 (e) *Any other relevant factor.*

19 **Sec. 11.** *If the presiding officer determines that a standard*
20 *pursuant to section 10 of this act has been met, the presiding*
21 *officer shall determine whether to allow a child witness to testify*
22 *by an alternative method. In making this determination, the*
23 *presiding officer shall consider:*

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

34 **Sec. 12.** *1. An order allowing or disallowing a child witness*
35 *to testify by an alternative method must state the findings of fact*
36 *and conclusions of law that support the presiding officer's*
37 *determination.*

38 *2. An order allowing a child witness to testify by an*
39 *alternative method must:*

- 40 (a) *State the method by which the child is to testify;*
- 41 (b) *List any natural person or category of natural person*
42 *allowed to be in, or required to be excluded from, the presence of*
43 *the child during the testimony;*
- 44 (c) *State any special conditions necessary to facilitate a party's*
45 *right to examine or cross-examine the child;*



1 (d) *State any condition or limitation upon the participation of*
2 *natural persons present during the testimony of the child; and*

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

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

9 **Sec. 13.** *An alternative method ordered by the presiding*
10 *officer must permit a full and fair opportunity for examination or*
11 *cross-examination of the child witness by each party.*

12 **Sec. 14.** *In applying and construing the Uniform Child*
13 *Witness Testimony by Alternative Methods Act, consideration*
14 *must be given to the need to promote uniformity of the law with*
15 *respect to its subject matter among states that enact it.*

