

CHAPTER.....

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:

**Section 1.** Chapter 50 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this act.

**Sec. 2.** *The provisions of sections 2 to 14, inclusive, of this act may be cited as the Uniform Child Witness Testimony by Alternative Methods Act.*

**Sec. 3.** *As used in sections 2 to 14, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

**Sec. 4.** *“Alternative method” means a method by which a child witness testifies which does not include all of the following:*

- 1. Having the child testify in person in an open forum;*
- 2. Having the child testify in the presence and full view of the finder of fact and presiding officer; and*
- 3. Allowing all of the parties to be present, to participate and to view and be viewed by the child.*

**Sec. 5.** *“Child witness” means a child under the age of 14 years who has been or will be called to testify in a proceeding.*

**Sec. 6.** *“Criminal proceeding” means:*

- 1. A trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state; or*
- 2. A delinquency proceeding which is conducted pursuant to title 5 of NRS.*

**Sec. 7.** *“Noncriminal proceeding” means a trial or hearing before a court or an administrative agency of this state having judicial or quasi-judicial powers, other than a criminal proceeding.*

**Sec. 8. 1.** *The provisions of sections 2 to 14, inclusive, of this act apply to the testimony of a child witness in a criminal or noncriminal proceeding.*

**2.** *The provisions of sections 2 to 14, inclusive, of this act do not preclude:*

- (a) In a noncriminal proceeding, any other procedure permitted by law for a child witness to testify; or*

*(b) In a delinquency proceeding which is conducted pursuant to title 5 of NRS, testimony by a child witness in a closed forum as authorized by NRS 62.193.*

**Sec. 9. 1.** *The presiding officer in a criminal or noncriminal proceeding:*

*(a) May order a hearing to determine whether to allow a child witness to testify by an alternative method.*

*(b) For good cause shown, shall order the hearing upon motion of a party, a child witness, or a natural person determined by the presiding officer to have sufficient standing to act on behalf of the child.*

**2.** *A hearing to determine whether to allow a child witness to testify by an alternative method must be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer. In conducting the hearing, the presiding officer is not bound by rules of evidence except the rules of privilege.*

**Sec. 10. 1.** *In a criminal proceeding, the presiding officer may allow a child witness to testify by an alternative method only in the following situations:*

*(a) The child may testify otherwise than in an open forum in the presence and full view of the finder of fact 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 if required to testify in the open forum.*

*(b) The child may testify other than 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 if required to be confronted face-to-face by the defendant.*

**2.** *In a noncriminal proceeding, the presiding officer may allow a child witness to testify by an alternative method if the presiding officer finds by 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 enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:*

*(a) The nature of the proceeding;*

*(b) The age and maturity of the child;*

*(c) The relationship of the child to the parties in the proceeding;*

*(d) The nature and degree of emotional trauma that the child may suffer in testifying; and*

*(e) Any other relevant factor.*

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

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

**Sec. 12.** *1. 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.*

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

- (a) State the method by which the child is to testify;*
- (b) List any natural person or category of natural person allowed to be in, or required to be excluded from, the presence of the child during the testimony;*
- (c) State any special conditions necessary to facilitate a party's right to examine or cross-examine the child;*
- (d) State any condition or limitation upon the participation of natural persons present during the testimony of the child; and*
- (e) State any other condition necessary for taking or presenting the testimony.*

*3. 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.*

**Sec. 13.** *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.*

**Sec. 14.** *In applying and construing the Uniform Child Witness Testimony by Alternative Methods 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.*