

1.1 A bill for an act

1.2 relating to crimes; adopting the Uniform Child Witness Testimony by Alternative
1.3 Methods Act; amending Minnesota Statutes 2008, section 595.02, subdivisions
1.4 3, 4; proposing coding for new law in Minnesota Statutes, chapter 595.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2008, section 595.02, subdivision 3, is amended to read:

1.7 Subd. 3. **Certain out-of-court statements admissible.** (a) An out-of-court
1.8 statement made by a child under the age of ten years or a person who is mentally impaired
1.9 as defined in section 609.341, subdivision 6, alleging, explaining, denying, or describing
1.10 any act of sexual contact or penetration performed with or on the child or any act of
1.11 physical abuse of the child or the person who is mentally impaired by another, not
1.12 otherwise admissible by statute or rule of evidence, is admissible as substantive evidence
1.13 if:

1.14 ~~(a)~~ (1) the court or person authorized to receive evidence finds, in a hearing
1.15 conducted outside of the presence of the jury, that the time, content, and circumstances
1.16 of the statement and the reliability of the person to whom the statement is made provide
1.17 sufficient indicia of reliability; ~~and~~

1.18 ~~(b)~~ (2) the child or person mentally impaired as defined in section 609.341,
1.19 subdivision 6, either:

1.20 (i) testifies at the proceedings, or for a child only, testifies by an alternative method
1.21 under section 595.10; or

1.22 (ii) is unavailable as a witness and there is corroborative evidence of the act; and

1.23 ~~(c)~~ (3) the proponent of the statement notifies the adverse party of the proponent's
1.24 intention to offer the statement and the particulars of the statement sufficiently in advance

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2.1 of the proceeding at which the proponent intends to offer the statement into evidence to
2.2 provide the adverse party with a fair opportunity to prepare to meet the statement.

2.3 (b) For purposes of this subdivision, an out-of-court statement includes video, audio,
2.4 or other recorded statements. An unavailable witness includes an incompetent witness.

2.5 Sec. 2. Minnesota Statutes 2008, section 595.02, subdivision 4, is amended to read:

2.6 Subd. 4. **Court order.** (a) In a proceeding in which a child less than 12 years
2.7 of age is alleging, denying, or describing:

2.8 (1) an act of physical abuse or an act of sexual contact or penetration performed with
2.9 or on the child or any other person by another; or

2.10 (2) an act that constitutes a crime of violence committed against the child or any
2.11 other person,

2.12 the court may, upon its own motion or upon the motion of any party, order that the
2.13 testimony of the child be taken by an alternative method under section 595.10, such as
2.14 in a room other than the courtroom or in the courtroom and televised at the same time
2.15 by closed-circuit equipment, or recorded for later showing to be viewed by the jury in
2.16 the proceeding, to minimize the trauma to the child of testifying in the courtroom setting
2.17 and, where necessary, to provide a setting more amenable to securing the child witness's
2.18 uninhibited, truthful testimony.

2.19 ~~(b) At the taking of testimony under this subdivision, only the judge, the attorneys~~
2.20 ~~for the defendant and for the state, any person whose presence would contribute to~~
2.21 ~~the welfare and well-being of the child, persons necessary to operate the recording or~~
2.22 ~~closed-circuit equipment and, in a child protection proceeding under chapter 260 or a~~
2.23 ~~dissolution or custody proceeding under chapter 518, the attorneys for those parties with a~~
2.24 ~~right to participate may be present with the child during the child's testimony.~~

2.25 ~~(c) The court shall permit the defendant in a criminal or delinquency matter to~~
2.26 ~~observe and hear the testimony of the child in person. If the court, upon its own motion or~~
2.27 ~~the motion of any party, finds in a hearing conducted outside the presence of the jury, that~~
2.28 ~~the presence of the defendant during testimony taken pursuant to this subdivision would~~
2.29 ~~psychologically traumatize the witness so as to render the witness unavailable to testify,~~
2.30 ~~the court may order that the testimony be taken in a manner that:~~

2.31 ~~(1) the defendant can see and hear the testimony of the child in person and~~
2.32 ~~communicate with counsel, but the child cannot see or hear the defendant; or~~

2.33 ~~(2) the defendant can see and hear the testimony of the child by video or television~~
2.34 ~~monitor from a separate room and communicate with counsel, but the child cannot see or~~
2.35 ~~hear the defendant.~~

3.1 ~~(d)~~ (b) As used in this subdivision, "crime of violence" has the meaning given it in
3.2 section 624.712, subdivision 5, and includes violations of section 609.26.

3.3 Sec. 3. **[595.10] CHILD WITNESS TESTIMONY BY ALTERNATIVE**
3.4 **METHODS.**

3.5 Subdivision 1. Citation. This section may be cited as the Uniform Child Witness
3.6 Testimony by Alternative Methods Act.

3.7 Subd. 2. Definitions. (a) As used in this section, the terms in paragraphs (b) to (e)
3.8 have the meanings given them.

3.9 (b) "Alternative method" means a method by which a child witness testifies that does
3.10 not include all of the following:

3.11 (1) having the child testify in person in an open forum;

3.12 (2) having the child testify in the presence and full view of the finder of fact and
3.13 presiding officer; and

3.14 (3) allowing all of the parties to be present, to participate, and to view and be
3.15 viewed by the child.

3.16 (c) "Child witness" means an individual under the age of 13 who has been or will be
3.17 called to testify in a proceeding.

3.18 (d) "Criminal proceeding" means a trial or hearing before a court in a prosecution
3.19 of a person charged with violating a criminal law of this state or a juvenile delinquency
3.20 proceeding involving conduct that if engaged in by an adult would constitute a violation of
3.21 a criminal law of this state.

3.22 (e) "Noncriminal proceeding" means a trial or hearing before a court or state agency
3.23 having judicial or quasi-judicial powers, other than a criminal proceeding.

3.24 Subd. 3. Applicability. This section applies to the testimony of a child witness in a
3.25 criminal or noncriminal proceeding. This section does not preclude:

3.26 (1) in a noncriminal proceeding, any other procedure permitted by law for a child
3.27 witness to testify; or

3.28 (2) in a juvenile delinquency proceeding involving conduct that if engaged in by
3.29 an adult would constitute a violation of a criminal law of this state, testimony by a child
3.30 witness in a closed forum as required by law that permits or requires closed juvenile
3.31 hearings.

3.32 Subd. 4. Hearing whether to allow testimony by alternative method. (a) The
3.33 presiding officer in a criminal or noncriminal proceeding may order a hearing to determine
3.34 whether to allow a child witness to testify by an alternative method. The presiding officer,
3.35 for good cause shown, shall order the hearing upon motion of a party, a child witness,

4.1 or an individual determined by the presiding officer to have sufficient standing to act on
4.2 behalf of the child.

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

4.9 **Subd. 5. Standards for determining whether child witness may testify by**
4.10 **alternative method.** (a) In a criminal proceeding, the presiding officer may allow a child
4.11 witness to testify by an alternative method only in the following situations:

4.12 (1) the child may testify other than in an open forum in the presence and full view of
4.13 the finder of fact if the presiding officer finds by clear and convincing evidence that the
4.14 child would suffer serious emotional trauma that would substantially impair the child's
4.15 ability to communicate with the finder of fact if required to testify in the open forum; and

4.16 (2) the child may testify other than face-to-face with the defendant if the presiding
4.17 officer finds by clear and convincing evidence that the child would suffer serious emotional
4.18 trauma that would substantially impair the child's ability to communicate with the finder
4.19 of fact if required to be confronted face-to-face by the defendant.

4.20 (b) In a noncriminal proceeding, the presiding officer may allow a child witness to
4.21 testify by an alternative method if the presiding officer finds by a preponderance of the
4.22 evidence that allowing the child to testify by an alternative method is necessary to serve
4.23 the best interests of the child or enable the child to communicate with the finder of fact. In
4.24 making this finding, the presiding officer shall consider:

4.25 (1) the nature of the proceeding;

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

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

4.28 (4) the nature and degree of emotional trauma that the child may suffer in testifying;

4.29 and

4.30 (5) any other relevant factor.

4.31 **Subd. 6. Factors for determining whether to permit alternative method.**

4.32 If the presiding officer determines that a standard under subdivision 5 has been met,
4.33 the presiding officer shall determine whether to allow a child witness to testify by an
4.34 alternative method and in doing so shall consider:

4.35 (1) alternative methods reasonably available;

5.1 (2) available means for protecting the interests of or reducing emotional trauma to
5.2 the child without resorting to an alternative method;

5.3 (3) the nature of the case;

5.4 (4) the relative rights of the parties;

5.5 (5) the importance of the proposed testimony of the child;

5.6 (6) the nature and degree of emotional trauma that the child may suffer if an
5.7 alternative method is not used; and

5.8 (7) any other relevant factor.

5.9 **Subd. 7. Order regarding testimony by alternative method.** (a) An order
5.10 allowing or disallowing a child witness to testify by an alternative method must state the
5.11 findings of fact and conclusions of law that support the presiding officer's determination.

5.12 (b) An order allowing a child witness to testify by an alternative method must:

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

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

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

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

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

5.21 (c) The alternative method ordered by the presiding officer may be no more
5.22 restrictive of the rights of the parties than is necessary under the circumstances to serve
5.23 the purposes of the order.

5.24 **Subd. 8. Right of party to examine child witness.** An alternative method
5.25 ordered by the presiding officer must permit a full and fair opportunity for examination
5.26 or cross-examination of the child witness by each party.

5.27 **EFFECTIVE DATE.** This section is effective for criminal and noncriminal
5.28 proceedings beginning on or after August 1, 2009.