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HOUSE BILL 196

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO JUDICIAL AND ADMINISTRATIVE PROCEEDINGS; ENACTING
THE UNIFORM CHILD WITNESS PROTECTIVE MEASURES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the
"Uniform Child Witness Protective Measures Act".

SECTION 2. DEFINITIONS.--As used in the Uniform Child
Witness Protective Measures Act:

A. "alternative method" means:

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

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

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1 (b) the defendant was represented by
2 counsel at the deposition or waived counsel;

3 (c) the defendant was present at the
4 deposition; and

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

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

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

14 (b) the defendant was represented by
15 counsel at the deposition or waived counsel;

16 (c) the defendant was able to view the
17 deposition, including the child witness, through closed-circuit
18 television or equivalent technology, and the defendant and
19 counsel were able to communicate with each other during the
20 deposition through headsets and microphones or equivalent
21 technology; and

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

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

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

7 (b) having the child testify in the
8 presence and full view of the finder of fact and presiding
9 officer; and

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

12 B. "child witness" means:

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

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

19 C. "criminal proceeding" means a trial or hearing
20 before a court in a prosecution of a person charged with
21 violating a criminal law of New Mexico or a delinquency
22 proceeding pursuant to the Delinquency Act involving conduct
23 that if engaged in by an adult would constitute a violation of
24 a criminal law of New Mexico;

25 D. "noncriminal proceeding" means a trial or

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1 hearing before a court or an administrative agency of New
2 Mexico having judicial or quasi-judicial powers in a civil
3 case, an administrative proceeding or any other case or
4 proceeding other than a criminal proceeding; and

5 E. "presiding officer" means the person under whose
6 supervision and jurisdiction the proceeding is being conducted.
7 "Presiding officer" includes a judge in whose court a case is
8 being heard, a quasi-judicial officer or an administrative law
9 judge or hearing officer.

10 SECTION 3. APPLICABILITY.--

11 A. The Uniform Child Witness Protective Measures
12 Act applies to the testimony of a child witness in a criminal
13 or noncriminal proceeding. However, the Uniform Child Witness
14 Protective Measures Act does not preclude, in a criminal or
15 noncriminal proceeding, any other procedure permitted by law:

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

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

20 B. The supreme court may adopt rules of procedure
21 and evidence to implement the provisions of the Uniform Child
22 Witness Protective Measures Act.

23 SECTION 4. HEARING WHETHER TO ALLOW TESTIMONY BY
24 ALTERNATIVE METHOD.--

25 A. The presiding officer in a criminal or

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1 noncriminal proceeding may order a hearing to determine whether
2 to allow a child witness to testify by an alternative method.
3 The presiding officer, for good cause shown, shall order the
4 hearing upon motion of a party, a child witness or an
5 individual determined by the presiding officer to have
6 sufficient standing to act on behalf of the child.

7 B. A hearing to determine whether to allow a child
8 witness to testify by an alternative method shall be conducted
9 on the record after reasonable notice to all parties, to any
10 nonparty movant and to any other person the presiding officer
11 specifies. The child's presence is not required at the hearing
12 unless ordered by the presiding officer.

13 SECTION 5. STANDARDS FOR DETERMINING WHETHER A CHILD
14 WITNESS MAY TESTIFY BY ALTERNATIVE METHOD.--

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

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

23 (2) the child may testify other than face-to-
24 face with the defendant if the presiding officer makes specific
25 findings that the child witness would be unable to testify

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1 face-to-face with the defendant without suffering unreasonable
2 and unnecessary mental or emotional harm.

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

- 10 (1) the nature of the proceeding;
- 11 (2) the age and maturity of the child;
- 12 (3) the relationship of the child to the
13 parties in the proceeding;
- 14 (4) the nature and degree of mental or
15 emotional harm that the child may suffer in testifying; and
- 16 (5) any other relevant factor.

17 SECTION 6. FACTORS FOR DETERMINING WHETHER TO PERMIT
18 ALTERNATIVE METHOD.--If the presiding officer determines that a
19 standard pursuant to Section 5 of the Uniform Child Witness
20 Protective Measures Act has been met, the presiding officer
21 shall determine whether to allow a child witness to testify by
22 an alternative method and in doing so shall consider:

23 A. alternative methods reasonably available for
24 protecting the interests of or reducing mental or emotional
25 harm to the child;

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

4 C. the nature of the case;

5 D. the relative rights of the parties;

6 E. the importance of the proposed testimony of the
7 child;

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

11 G. any other relevant factor.

12 SECTION 7. ORDER REGARDING TESTIMONY BY ALTERNATIVE
13 METHOD.--

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

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

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

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

25 (3) state any special conditions necessary to

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1 facilitate a party's right to examine or cross-examine the
2 child;

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

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

8 C. The alternative method ordered by the presiding
9 officer shall be no more restrictive of the rights of the
10 parties than is necessary under the circumstances to serve the
11 purposes of the order and shall be subject to the other
12 provisions of the Uniform Child Witness Protective Measures
13 Act.

14 **SECTION 8. RIGHT OF PARTY TO EXAMINE CHILD WITNESS.--**An
15 alternative method ordered by the presiding officer shall
16 permit a full and fair opportunity for examination or cross-
17 examination of the child witness by each party, subject to such
18 protection of the child witness as the presiding officer deems
19 necessary.

20 **SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--**
21 In applying and construing the Uniform Child Witness Protective
22 Measures Act, consideration shall be given to the need to
23 promote uniformity of the law with respect to its subject
24 matter among states that enact it.

25 **SECTION 10. SEVERABILITY.--**If any part or application of

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1 the Uniform Child Witness Protective Measures Act is held
2 invalid, the remainder or its application to other situations
3 or persons shall not be affected.

4 SECTION 11. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2012.