

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 173

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

AN ACT

RELATING TO TRIAL PROCEDURE; ALLOWING A VICTIM THE RIGHT TO DENY A PRETRIAL STATEMENT OR PRETRIAL INTERVIEW; PROVIDING FOR THE ADMISSIBILITY OF A CHILD'S FORENSIC INTERVIEW IN CERTAIN CIRCUMSTANCES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 38-6A-1 NMSA 1978 (being Laws 2011, Chapter 98, Section 1) is amended to read:

"38-6A-1. SHORT TITLE.--~~[This act]~~ Chapter 38, Article 6A NMSA 1978 may be cited as the "~~[Uniform]~~ Child Witness Protective Measures Act".

SECTION 2. Section 38-6A-2 NMSA 1978 (being Laws 2011, Chapter 98, Section 2) is amended to read:

"38-6A-2. DEFINITIONS.--As used in the ~~[Uniform]~~ Child  
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underscored material = new  
[bracketed material] = delete

1 Witness Protective Measures Act:

2 A. "alternative method" means:

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

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

9 (b) the defendant was represented by  
10 counsel at the deposition or waived counsel;

11 (c) the defendant was present at the  
12 deposition; and

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

16 (2) in a criminal proceeding in which a child  
17 witness does not give testimony face-to-face with the  
18 defendant, a videotaped deposition of the child witness that  
19 complies with the following requirements:

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

22 (b) the defendant was represented by  
23 counsel at the deposition or waived counsel;

24 (c) the defendant was able to view the  
25 deposition, including the child witness, through closed-circuit

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1 television or equivalent technology, and the defendant and  
2 counsel were able to communicate with each other during the  
3 deposition through headsets and microphones or equivalent  
4 technology; 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 or

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

13 (a) having the child witness testify in  
14 person in an open forum;

15 (b) having the child witness testify in  
16 the presence and full view of the finder of fact and presiding  
17 officer; and

18 (c) allowing all of the parties to be  
19 present, to participate and to view and be viewed by the child  
20 witness;

21 B. "child witness" means:

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

25 (2) an alleged victim under the age of sixteen

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1 who has been or will be called to testify in a criminal  
2 proceeding;

3 C. "criminal proceeding" means a trial or hearing  
4 before a court in a prosecution of a person charged with  
5 violating a criminal law of New Mexico or a delinquency  
6 proceeding pursuant to the Delinquency Act involving conduct  
7 that if engaged in by an adult would constitute a violation of  
8 a criminal law of New Mexico;

9 D. "forensic interview" means a recorded interview  
10 conducted through a children's advocacy center pursuant to the  
11 Children's Advocacy Centers Act;

12 [~~D.~~] E. "noncriminal proceeding" means a trial or  
13 hearing before a court or an administrative agency of New  
14 Mexico having judicial or quasi-judicial powers in a civil  
15 case, an administrative proceeding or any other case or  
16 proceeding other than a criminal proceeding; and

17 [~~E.~~] F. "presiding officer" means the person under  
18 whose supervision and jurisdiction the proceeding is being  
19 conducted. "Presiding officer" includes a judge in whose court  
20 a case is being heard, a quasi-judicial officer or an  
21 administrative law judge or hearing officer."

22 SECTION 3. A new section of the Child Witness Protective  
23 Measures Act is enacted to read:

24 "[NEW MATERIAL] RIGHT TO REFUSE INTERVIEW.--A victim who  
25 is a child witness who has previously given a recorded

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1 statement as part of a forensic interview or in-court testimony  
2 regarding a criminal or noncriminal offense shall not be  
3 compelled to give a pretrial statement or pretrial interview;  
4 provided that a court may order an additional forensic  
5 interview, to be conducted in accordance with the standard  
6 procedures of the children's advocacy center, based on a  
7 finding that an existing forensic interview was not trustworthy  
8 or was not reasonably complete under the circumstances or that  
9 an additional interview is warranted by new information."

10 SECTION 4. A new section of the Child Witness Protective  
11 Measures Act is enacted to read:

12 "[NEW MATERIAL] ADMISSIBILITY OF A CHILD WITNESS'S  
13 PREVIOUS STATEMENTS.--

14 A. When a child witness testifies at a court  
15 proceeding as a victim in a criminal or noncriminal proceeding  
16 and is subject to cross-examination, a forensic interview by  
17 the child witness may be admitted as evidence if the court  
18 finds that the forensic interview bears adequate circumstantial  
19 guarantees of trustworthiness. In determining the  
20 trustworthiness of the forensic interview, the court shall  
21 consider the timing of the forensic interview, the content of  
22 the forensic interview, the thoroughness of the forensic  
23 interview and the context in which the forensic interview was  
24 conducted.

25 B. A previous statement of material fact by a child

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1 witness may be admitted as evidence at trial or a preliminary  
2 hearing if the court finds that the statement is nontestimonial  
3 and the statement bears adequate circumstantial guarantees of  
4 trustworthiness.

5 C. Absent a showing of good cause, a proponent  
6 seeking admission of a previous statement or forensic interview  
7 of a child witness shall provide notice of intent to introduce  
8 such statement or forensic interview at least five days before  
9 a preliminary hearing or at least twenty days before trial.

10 D. This section shall not be construed to limit the  
11 admissibility of evidence that is otherwise admissible."

12 SECTION 5. Section 38-6A-3 NMSA 1978 (being Laws 2011,  
13 Chapter 98, Section 3) is amended to read:

14 "38-6A-3. APPLICABILITY.--

15 A. The [~~Uniform~~] Child Witness Protective Measures  
16 Act applies to the testimony, pretrial statement or pretrial  
17 interview of a child witness in a criminal or noncriminal  
18 proceeding. However, the [~~Uniform~~] Child Witness Protective  
19 Measures Act does not preclude, in a criminal or noncriminal  
20 proceeding, any other procedure permitted by law:

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

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

25 B. The supreme court may adopt rules of procedure

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1 and evidence to implement the provisions of the [~~Uniform~~] Child  
2 Witness Protective Measures Act."

3 SECTION 6. Section 38-6A-6 NMSA 1978 (being Laws 2011,  
4 Chapter 98, Section 6) is amended to read:

5 "38-6A-6. FACTORS FOR DETERMINING WHETHER TO PERMIT  
6 ALTERNATIVE METHOD.--If the presiding officer determines that a  
7 standard pursuant to Section [~~5 of the Uniform Child Witness~~  
8 ~~Protective Measures Act~~] 38-6A-5 NMSA 1978 has been met, the  
9 presiding officer [~~shall determine whether to~~] may allow a  
10 child witness to testify by an alternative method [~~and in doing~~  
11 ~~so shall consider~~]:

12 A. ~~alternative methods reasonably available for~~  
13 ~~protecting the interests of or reducing mental or emotional~~  
14 ~~harm to the child;~~

15 B. ~~available means for protecting the interests of~~  
16 ~~or reducing mental or emotional harm to the child without~~  
17 ~~resort to an alternative method;~~

18 C. ~~the nature of the case;~~

19 D. ~~the relative rights of the parties;~~

20 E. ~~the importance of the proposed testimony of the~~  
21 ~~child;~~

22 F. ~~the nature and degree of mental or emotional~~  
23 ~~harm that the child may suffer if an alternative method is not~~  
24 ~~used; and~~

25 G. ~~any other relevant factor]."~~

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1           SECTION 7. REPEAL.--Section 38-6A-9 NMSA 1978 (being Laws  
2 2011, Chapter 98, Section 9) is repealed.

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