

TITLE 9
EVIDENCE

CHAPTER 18
UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT

9-1801. SHORT TITLE. This chapter may be cited as the "Uniform Child Witness Testimony by Alternative Methods Act."

[9-1801, added 2003, ch. 152, sec. 2, p. 438.]

9-1802. DEFINITIONS. In this chapter:

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

- (a) Having the child present in person in an open forum;
- (b) Having the child testify in the presence and full view of the finder of fact and presiding officer; and
- (c) Allowing all of the parties to be present, to participate and to view and be viewed by the child.

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

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

(4) "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.

[9-1802, added 2003, ch. 152, sec. 2, p. 438.]

9-1803. APPLICABILITY. This chapter applies to the testimony of child witnesses in all criminal or noncriminal proceedings. However, this chapter does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness to testify, or in a juvenile courtroom proceeding involving conduct that if engaged in by an adult would constitute a violation of a criminal law of this state, testimony by a child witness in a closed forum as may be authorized or required by law.

[9-1803, added 2003, ch. 152, sec. 2, p. 438.]

9-1804. HEARING WHETHER TO ALLOW TESTIMONY BY ALTERNATIVE METHOD. (1) The presiding officer of a criminal or noncriminal proceeding may order a hearing to determine whether to allow presentation of the testimony of a child witness by an alternative method. The presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the presiding officer to have sufficient standing to act on behalf of the child.

(2) A hearing to determine whether to allow presentation of the testimony of a child witness 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 conduct-

ing the hearing, the presiding officer is not bound by rules of evidence, except for the rules of privilege.

[9-1804, added 2003, ch. 152, sec. 2, p. 438.]

9-1805. STANDARDS FOR DETERMINING WHETHER CHILD WITNESS' TESTIMONY MAY BE PRESENTED BY ALTERNATIVE METHOD. (1) In a criminal proceeding, the presiding officer may order the presentation of the testimony of a child witness by an alternative method only in the following situations:

(a) A child witness' testimony may be taken 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) A child witness' testimony may be taken other than in a face-to-face confrontation between the child and a 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 order the presentation of the testimony of a child witness by an alternative method if the presiding officer finds by a preponderance of the evidence that presenting the testimony of the child 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.

[9-1805, added 2003, ch. 152, sec. 2, p. 438.]

9-1806. FACTORS FOR DETERMINING WHETHER TO PERMIT ALTERNATIVE METHOD. If the presiding officer determines that a standard under section [9-1805](#), Idaho Code, has been met, the presiding officer shall determine whether to allow the presentation of the testimony of a child witness by an alternative method and in doing so shall consider:

- (1) Alternative methods reasonably available;
- (2) Available means for protecting the interests of or reducing emotional trauma to the child without resort 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.

[9-1806, added 2003, ch. 152, sec. 2, p. 439.]

9-1807. ORDER REGARDING TESTIMONY BY ALTERNATIVE METHOD. (1) An order allowing or disallowing the presentation of the testimony of a child witness 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 the presentation of the testimony of a child witness by an alternative method must state:

(a) The method by which the testimony is to be presented;

(b) A list, individually or by category, of the persons either allowed to be present or required to be excluded during the taking of the testimony of the child;

(c) Any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

(d) Any condition or limitation upon the participation of persons present during the taking of the testimony of the child; and

(e) Any other condition necessary for taking or presenting the testimony.

(3) The alternative method ordered by the presiding officer must be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order.

[9-1807, added 2003, ch. 152, sec. 2, p. 439.]

9-1808. RIGHT OF PARTIES TO EXAMINE CHILD WITNESS. An alternative method ordered by the presiding officer must permit a full and fair opportunity for examination and cross-examination of the child witness.

[9-1808, added 2003, ch. 152, sec. 2, p. 440.]