

# Speedy Trial Statutes for Child Victims and Witnesses

## Updated July 2009

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\* Unaware of proper bluebook citation for Rule 7 (2009) under W. Va. Rules of Procedure for Child Abuse and Neglect Proceedings according to Michie's West Virginia Code Annotated Court Rules

## **ALABAMA**

### **ALA. CODE § 15-25-6 (2009). Speedy Trial**

In all criminal cases and juvenile proceedings involving offenses set out in Section 15-25-1, wherein the victim hereof or a witness to the offense is under the age of 16 years, the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

## **ALASKA**

## **ARIZONA**

### **ARIZ. R. CRIM. PROC. 8.1 (2008). Priorities in scheduling criminal cases**

- a. Priority of criminal trials. The trial of criminal cases shall have priority over the trial of civil cases. Any scheduling conflicts will be resolved in accordance with Rule 5(j), Uniform Rules of Practice.
- b. Preferences. The trial of defendants in custody and defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.
- c. Duty of prosecutor. The prosecutor shall advise the court of facts relevant to determining the order of cases on the calendar.
- d. Duty of defense counsel. The defendants counsel shall advise the court of the impending expiration of time limits in the defendants case. Failure to do so may result in sanctions and should be considered by the court in determining whether to dismiss an action with prejudice pursuant to Rule 8.6
- e. Extraordinary cases. Within twenty-five days after the arraignment in Superior Court either party may apply in writing to the court for a hearing to establish extraordinary circumstances requiring the suspension of Rule 8 in a particular case. Within five days of the receipt of the application the court shall hold the hearing and make findings of fact. The findings shall be immediately transmitted to the Chief Justice who may approve or

decline to approve them. Upon approval of the findings by the Chief Justice, they shall be returned to the trial court where upon motion of either party the trial court may suspend the provisions of Rule 8 and reset the trial date for a time certain.

### **ARIZ. R. CRIM. PROC. 8.7 (2008). Acceleration of trial**

Where special circumstances relating to the victim so warrant, the court may accelerate the trial to the earliest possible date that is consistent with the defendant's right to a fair trial. If necessary, the presiding judge shall assign another judge of the court to preside at trial in order to insure that the trial commence as scheduled.

### **ARIZ. R. CRIM. PROC. 39 (2008). Victims Rights**

1. Victim. As used in this rule, a "victim" is defined as a person against whom a criminal offense as defined by 13-4401(6) has allegedly been committed, or the spouse, parent, lawful representative, or child of someone killed or incapacitated by the alleged criminal offense, except where the spouse, parent, lawful representative, or child is also the accused. With regard to the rights to be notified and to be heard pursuant to this rule, a person ceases to be a victim upon the acquittal of the defendant or upon the dismissal of the charges against the defendant as a final disposition. If a victim is in custody for an offense, the victim's right to be heard pursuant to this rule is satisfied through affording the victim the opportunity to submit a written statement, where legally permissible and in the discretion of the court. A victim not in custody may exercise his or her right to be heard pursuant to this rule by appearing personally, or where legally permissible and in the discretion of the court, by submitting a written statement, an audiotape or videotape. The victim's rights of any corporation, partnership, association, or other similar legal entity shall be limited as provided by statute.

2. Criminal proceeding. As used in this rule, a "criminal proceeding" is defined as a trial, hearing, (including hearing before trial), oral argument, or other matter scheduled and held before a trial court at which the defendant has the right to be present, or any post-conviction proceeding.

b. Victims rights. These rules shall be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other rule in these Rules of Criminal Procedure, a victim shall have and be entitled to assert each of the following rights:

1. The right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
2. The right to be provided with written notice regarding those rights available to the victim under this rule and under any other provision of law.
3. Upon request, the right to be given reasonable notice of the date, time and place of any criminal proceeding.

4. The right to be present at all criminal proceedings.
5. The right to be notified of any escape of the defendant.
6. Upon request, the right to be informed of any release or proposed release of the defendant, whether that release be before expiration of the sentence or by expiration of the sentence, and whether it be permanent or temporary in nature.
7. Upon request, the right to confer with the prosecution, prior to trial when applicable, in connection with any decision involving the preconviction release of the defendant, a plea bargain, a decision not to proceed with a criminal prosecution, dismissal of charges, plea or sentence negotiation, a pretrial diversion program, or other disposition prior to trial; the rights to be heard at any such proceeding and at sentencing.
8. The right to be accompanied at any interview, deposition, or judicial proceeding by a parent or other relative, except persons whose testimony is required in the case. If the court finds, under this subsection 8 or subsection 9 below, that a party's claim that a person is a prospective witness is not made in good faith, it may impose any sanction it finds just, including holding counsel in contempt.
9. The right to name an appropriate support person, including a victim's caseworker, to accompany the victim at any interview, deposition, or court proceeding, except where such support person's testimony is required in the case.
10. The right to require the prosecutor to withhold, during discovery and other proceedings, the home address and telephone number of the victim, the address and telephone number of the victim's place of employment, and the name of the victim's employer, providing, however, that for good cause shown by the defendant, the court may order that such information be disclosed to defense counsel and may impose such further restrictions as are appropriate, including a provision that the information shall not be disclosed by counsel to any person other than counsel's staff and designated investigator and shall not be conveyed to the defendant.
11. The right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant. After charges are filed, defense initiated requests to interview the victim shall be communicated to the victim through the prosecutor. The victim's response to such requests shall also be communicated through the prosecutor. If there is any comment or evidence at trial regarding the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview under the Arizona Constitution. For purposes of a pretrial interview, a peace officer shall not be considered a victim if the act that would have made him or her a victim occurs while the peace officer is acting in the scope of his or her official duties.
12. At any interview or deposition to be conducted by defense counsel, the right to

condition the interview or deposition on any of the following:

(i) Specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that the interview or deposition be held at the victims home, at the prosecutors office, or in an appropriate location in the courthouse.

(ii) The right to terminate the interview or deposition if it is not conducted in a dignified and professional matter.

13. The right to a copy of any presentence report provided the defendant except those parts excised by the court or made confidential by the law.

14. The right to be informed of the disposition of the case.

15. The right to a speedy trial or disposition and prompt and final conclusion of the case after conviction and sentence.

16. The right to be informed of a victims right to restitution upon conviction of the defendant, of the items of loss included thereunder, and of the procedures for invoking the right.

c. Assistance and representation.

1. The victim shall also have the right to the assistance of the prosecutor in the assertion of the rights enumerated in this rule or otherwise provided for by law. The prosecutor shall have the responsibility to inform the victim, as defined by these rules, of the rights provided by these rules and by law, and to provide the victim with notices and information which the victim is entitled by these rules and by law to receive from the prosecutor.

2. The prosecutor shall have standing in any judicial proceeding, upon the victims request, to assert any of the rights to which the victim is entitled by this rule or by any other provision of law.

3. In any event of any conflict of interest between the state or any other prosecutorial entity and the wishes of the victim, the prosecutor shall have the responsibility to direct the victim to the appropriate legal referral, legal assistance, or legal aid agency.

4. In asserting any of the rights enumerated in this rule or provided for in any other provision of the law, the victim shall also have the right to engage and be represented by personal counsel of his or her choice.

d. Victims duty to implement rights. Any victim desiring to claim the notification rights and privileges provided by this rule must provide his or her full name, address and telephone number to the entity prosecuting the case and to any other entity from which notice is requested by the victim. If the victim is a corporation, partnership, association or

other legal entity and has requested notice of the hearings to which it is entitled by law, that legal entity shall promptly designate a representative by giving notice thereof, including such representatives address and telephone number, to the prosecutor and to any other entity from which notice is requested by the victim. Upon receipt of such notice, the prosecutor shall notify the defendant and the court thereof. Thereafter, only such a designated representative shall be entitled to assert a claim to victims rights on behalf of that legal entity. Any change in designation must be provided in writing to the prosecutor and to any other entity from which notice is requested by the victim.

e. Waiver. The rights and privileges enumerated in this rule may be waived by an victim. Failure to keep the address and telephone number current or to designate such representative of a legal entity shall be considered as a waiver of notification rights under this rule.

f. Court enforcement of victim notice requirements.

1. At the commencement of any proceeding which takes place more than seven days after the filing of charges by the prosecutor and at which the victim has a right to be heard, the court shall inquire of the prosecutor or otherwise ascertain whether the victim has requested notice and been notified of the proceeding.

2. If the victim has been notified as requested, the court shall further inquire of the prosecutor whether the victim is present. If the victim is present and the prosecutor advises the court that the victim wishes to be addressed by the court, the court shall inquire whether the victim has been advised by the prosecutor of the rights conferred by this rule. If the victim has not been so advised, the court shall recess the hearing and the prosecutor shall immediately comply with subsection (c)(1) of this rule. The court shall also provide the victim with a written list of the victims rights enumerated in subsection (b) of this rule.

3. If the victim has not been notified as requested, the court should not proceed unless public policy, the specific provisions of a statute, or the interests of due process otherwise require. In the absence of such considerations the court shall have discretion to reconsider any ruling made at a proceeding of which the victim did not receive notice as requested.

g. Appointment of victims representative. Upon request, the court shall appoint a representative for a minor victim or a representative for an incapacitated victim, as provided by ARS 13-4403. Notice of appointment of such representative shall be given by the court to the parties. (Added July 24, 1989, effective Aug. 1, 1989; amended Sept 19, 1989, effective Sept. 19, 1989; amended Nov 12, 1991, effective Dec. 31, 1991; amended Sept 24, 1992, effective Sept. 30, 1992; amended Feb 25, 1993, effective June 1, 1993; amended July 28, 1993, effective Dec. 1, 1993; amended effective December 1, 2003.)

## **ARKANSAS**

### **ARK. CODE ANN. § 16-80-102 (2008). Precedence given to criminal trials when victim under age of 14**

Notwithstanding any rule of court to the contrary and in furtherance of the purposes of the Arkansas Rules of Criminal Procedure, Rule 27.1, all courts of this state having jurisdiction of criminal offenses, except for extraordinary circumstances, shall give precedence to the trials of criminal offenses over other matters before the court, civil or criminal, when the alleged victim is a person under the age of fourteen (14) years.

## **CALIFORNIA**

### **CAL. EVID. CODE § 765 (2009). Court to control mode of interrogation**

(a) The court shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment.

(b) With a witness under the age of 14 or a dependent person with a substantial cognitive impairment, the court shall take special care to protect him or her from undue harassment or embarrassment, and to restrict the unnecessary repetition of questions. The court shall also take special care to ensure that questions are stated in a form which is appropriate to the age or cognitive level of the witness. The court may, in the interests of justice, on objection by a party, forbid the asking of a question which is in a form that is not reasonably likely to be understood by a person of the age or cognitive level of the witness.

### **CAL. PENAL CODE § 288 (2009). Lewd or lascivious acts involving children**

(a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b)

(1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c)

(1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars (\$10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid

into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent persons and postsecondary educational institutions that serve dependent persons or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) "Dependent person" means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. "Dependent person" includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent person under care.

## **COLORADO**

## **CONNECTICUT**

## **DELAWARE**

### **DEL. CODE ANN. tit. 11, § 5133 (2009). Expedited proceedings**

In all criminal proceedings in the Superior Court involving a child victim or witness, the Court and the prosecution shall take appropriate action to ensure a prompt trial in order to minimize the length of time a child victim or witness must endure the stress of the victim's or witness' involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the Court shall consider and give weight to any adverse impact such delay or continuance might have on the well-being of any child victim or witness.

### **DEL. CODE ANN. tit. 11, § 9404 (2009). Victim's interest in speedy prosecution; child victim or witness**

- (a) The court shall consider the interest of the victim in a speedy prosecution.
- (b) Proceedings shall be expedited in cases involving a child victim or witness particularly in child abuse and sexual abuse cases.

## **DISTRICT OF COLUMBIA**

### **D.C. CODE § 23-1903 (2009). Crime victim privacy and security**

- (a) Before, during, and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that may occur between the victim and the victim's family with the accused or the accused's or respondent's family, and defense witnesses.
- (b) The accused or defendant, the accused's or defendant's attorney or another person acting on behalf of the accused or defendant shall clearly identify himself or herself as being, representing or acting on behalf of the accused, defendant, or respondent in any contact with the victim.
- (c) A responsible official shall arrange for any crime victim's property being held for evidentiary purposes to be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.
- (d) In a proceeding in which a child is called to give testimony, on motion by the attorney for the government or the victim's legal or court-appointed representative, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must be involved with the criminal justice system. When deciding whether

to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child witness.

## **FLORIDA**

### **FLA. STAT. § 914.16 (2009). Child abuse and sexual abuse of victims under age 16 or persons with mental retardation; limits on interviews**

The chief judge of each judicial circuit, after consultation with the state attorney and the public defender for the judicial circuit, the appropriate chief law enforcement officer, and any other person deemed appropriate by the chief judge, shall provide by order reasonable limits on the number of interviews that a victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s. 847.0135(5) who is under 16 years of age or a victim of a violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who is a person with mental retardation as defined in s. 393.063 must submit to for law enforcement or discovery purposes. The order shall, to the extent possible, protect the victim from the psychological damage of repeated interrogations while preserving the rights of the public, the victim, and the person charged with the violation.

### **FLA. STAT. § 960.001 (2009). Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems**

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Parole Commission, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement the provisions of s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(a) Information concerning services available to victims of adult and juvenile crime. --As provided in s. 27.0065, state attorneys and public defenders shall gather information regarding the following services in the geographic boundaries of their respective circuits and shall provide such information to each law enforcement agency with jurisdiction within such geographic boundaries. Law enforcement personnel shall ensure, through distribution of a victim's rights information card or brochure at the crime scene, during the criminal investigation, and in any other appropriate manner, that victims are given, as a matter of course at the earliest possible time, information

about:

1. The availability of crime victim compensation, when applicable;
2. Crisis intervention services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs;
3. The role of the victim in the criminal or juvenile justice process, including what the victim may expect from the system as well as what the system expects from the victim;
4. The stages in the criminal or juvenile justice process which are of significance to the victim and the manner in which information about such stages can be obtained;
5. The right of a victim, who is not incarcerated, including the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, and the next of kin of a homicide victim, to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused, as provided by s. 16(b), Art. I of the State Constitution;
6. In the case of incarcerated victims, the right to be informed and to submit written statements at all crucial stages of the criminal proceedings, parole proceedings, or juvenile proceedings; and
7. The right of a victim to a prompt and timely disposition of the case in order to minimize the period during which the victim must endure the responsibilities and stress involved to the extent that this right does not interfere with the constitutional rights of the accused.

(b) Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim. --In the case of a homicide, pursuant to chapter 782; or a sexual offense, pursuant to chapter 794; or an attempted murder or sexual offense, pursuant to chapter 777; or stalking, pursuant to s. 784.048; or domestic violence, pursuant to s. 25.385:

1. The arresting law enforcement officer or personnel of an organization that provides assistance to a victim or to the appropriate next of kin of the victim or other designated contact must request that the victim or appropriate next of kin of the victim or other designated contact complete a victim notification card. However, the victim or appropriate next of kin of the victim or other designated contact may choose not to complete the victim notification card.
2. Unless the victim or the appropriate next of kin of the victim or other designated contact waives the option to complete the victim notification card, a copy of the victim

notification card must be filed with the incident report or warrant in the sheriff's office of the jurisdiction in which the incident report or warrant originated. The notification card shall, at a minimum, consist of:

- a. The name, address, and phone number of the victim; or
- b. The name, address, and phone number of the appropriate next of kin of the victim; or
- c. The name, address, and phone number of a designated contact other than the victim or appropriate next of kin of the victim; and
- d. Any relevant identification or case numbers assigned to the case.

3. The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact within 4 hours following the release of the defendant on bail or, in the case of a juvenile offender, upon the release from residential detention or commitment. If the chief administrator, or designee, is unable to contact the alleged victim or appropriate next of kin of the alleged victim or other designated contact by telephone, the chief administrator, or designee, must send to the alleged victim or appropriate next of kin of the alleged victim or other designated contact a written notification of the defendant's release.

4. Unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, the information contained on the victim notification card must be sent by the chief administrator, or designee, of the appropriate facility to the subsequent correctional or residential commitment facility following the sentencing and incarceration of the defendant, and unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, he or she must be notified of the release of the defendant from incarceration as provided by law.

5. If the defendant was arrested pursuant to a warrant issued or taken into custody pursuant to s. 985.101 in a jurisdiction other than the jurisdiction in which the defendant is being released, and the alleged victim or appropriate next of kin of the alleged victim or other designated contact does not waive the option for notification of release, the chief correctional officer or chief administrator of the facility releasing the defendant shall make a reasonable attempt to immediately notify the chief correctional officer of the jurisdiction in which the warrant was issued or the juvenile was taken into custody pursuant to s. 985.101, and the chief correctional officer of that jurisdiction shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact, as provided in this paragraph, that the defendant has been or will be released.

(c) Information concerning protection available to victim or witness. --A victim or

witness shall be furnished, as a matter of course, with information on steps that are available to law enforcement officers and state attorneys to protect victims and witnesses from intimidation. Victims of domestic violence shall also be given information about the address confidentiality program provided under s. 741.403.

(d) Notification of scheduling changes. --Each victim or witness who has been scheduled to attend a criminal or juvenile justice proceeding shall be notified as soon as possible by the agency scheduling his or her appearance of any change in scheduling which will affect his or her appearance.

(e) Advance notification to victim or relative of victim concerning judicial proceedings; right to be present. --Any victim, parent, guardian, or lawful representative of a minor who is a victim, or relative of a homicide victim shall receive from the appropriate agency, at the address found in the police report or the victim notification card if such has been provided to the agency, prompt advance notification, unless the agency itself does not have advance notification, of judicial and postjudicial proceedings relating to his or her case, including all proceedings or hearings relating to:

1. The arrest of an accused;
2. The release of the accused pending judicial proceedings or any modification of release conditions; and
3. Proceedings in the prosecution or petition for delinquency of the accused, including the filing of the accusatory instrument, the arraignment, disposition of the accusatory instrument, trial or adjudicatory hearing, sentencing or disposition hearing, appellate review, subsequent modification of sentence, collateral attack of a judgment, and, when a term of imprisonment, detention, or residential commitment is imposed, the release of the defendant or juvenile offender from such imprisonment, detention, or residential commitment by expiration of sentence or parole and any meeting held to consider such release.

A victim, a victim's parent or guardian if the victim is a minor, a lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or a victim's next of kin may not be excluded from any portion of any hearing, trial, or proceeding pertaining to the offense based solely on the fact that such person is subpoenaed to testify, unless, upon motion, the court determines such person's presence to be prejudicial. The appropriate agency with respect to notification under subparagraph 1. is the arresting law enforcement agency, and the appropriate agency with respect to notification under subparagraphs 2. and 3. is the Attorney General or state attorney, unless the notification relates to a hearing concerning parole, in which case the appropriate agency is the Parole Commission. The Department of Corrections, the Department of Juvenile Justice, or the sheriff is the appropriate agency with respect to release by expiration of sentence or any other release program provided by law. Any victim may waive notification at any time, and such waiver shall be noted in the agency's files.

(f) Information concerning release from incarceration from a county jail, municipal jail, juvenile detention facility, or residential commitment facility. --The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility shall, upon the request of the victim or the appropriate next of kin of a victim or other designated contact of the victim of any of the crimes specified in paragraph (b), make a reasonable attempt to notify the victim or appropriate next of kin of the victim or other designated contact prior to the defendant's or offender's release from incarceration, detention, or residential commitment if the victim notification card has been provided pursuant to paragraph (b). If prior notification is not successful, a reasonable attempt must be made to notify the victim or appropriate next of kin of the victim or other designated contact within 4 hours following the release of the defendant or offender from incarceration, detention, or residential commitment. If the defendant is released following sentencing, disposition, or furlough, the chief administrator or designee shall make a reasonable attempt to notify the victim or the appropriate next of kin of the victim or other designated contact within 4 hours following the release of the defendant. If the chief administrator or designee is unable to contact the victim or appropriate next of kin of the victim or other designated contact by telephone, the chief administrator or designee must send to the victim or appropriate next of kin of the victim or other designated contact a written notification of the defendant's or offender's release.

(g) Consultation with victim or guardian or family of victim.

1. In addition to being notified of the provisions of s. 921.143, the victim of a felony involving physical or emotional injury or trauma or, in a case in which the victim is a minor child or in a homicide, the guardian or family of the victim shall be consulted by the state attorney in order to obtain the views of the victim or family about the disposition of any criminal or juvenile case brought as a result of such crime, including the views of the victim or family about:

- a. The release of the accused pending judicial proceedings;
- b. Plea agreements;
- c. Participation in pretrial diversion programs; and
- d. Sentencing of the accused.

2. Upon request, the state attorney shall permit the victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or the victim's next of kin in the case of a homicide to review a copy of the presentence investigation report prior to the sentencing hearing if one was completed. Any confidential information that pertains to medical history, mental health, or substance abuse and any information that pertains to any other victim shall be redacted from the copy of the report. Any person who reviews

the report pursuant to this paragraph must maintain the confidentiality of the report and shall not disclose its contents to any person except statements made to the state attorney or the court.

3. When an inmate has been approved for community work release, the Department of Corrections shall, upon request and as provided in s. 944.605, notify the victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or the victim's next of kin if the victim is a homicide victim.

(h) Return of property to victim. --Law enforcement agencies and the state attorney shall promptly return a victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it. The trial or juvenile court exercising jurisdiction over the criminal or juvenile proceeding may enter appropriate orders to implement the provisions of this subsection, including allowing photographs of the victim's property to be used as evidence at the criminal trial or the juvenile proceeding in place of the victim's property when no substantial evidentiary issue related thereto is in dispute.

(i) Notification to employer and explanation to creditors of victim or witness. --A victim or witness who so requests shall be assisted by law enforcement agencies and the state attorney in informing his or her employer that the need for victim and witness cooperation in the prosecution of the case may necessitate the absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of his or her cooperation with law enforcement agencies or a state attorney, is subjected to serious financial strain shall be assisted by such agencies and state attorney in explaining to the creditors of such victim or witness the reason for such serious financial strain.

(j) Notification of right to request restitution. --Law enforcement agencies and the state attorney shall inform the victim of the victim's right to request and receive restitution pursuant to s. 775.089 or s. 985.437, and of the victim's rights of enforcement under ss. 775.089(6) and 985.0301 in the event an offender does not comply with a restitution order. The state attorney shall seek the assistance of the victim in the documentation of the victim's losses for the purpose of requesting and receiving restitution. In addition, the state attorney shall inform the victim if and when restitution is ordered. If an order of restitution is converted to a civil lien or civil judgment against the defendant, the clerks shall make available at their office, as well as on their website, information provided by the Secretary of State, the court, or The Florida Bar on enforcing the civil lien or judgment.

(k) Notification of right to submit impact statement. --The state attorney shall inform the victim of the victim's right to submit an oral or written impact statement pursuant to s. 921.143 and shall assist in the preparation of such statement if necessary.

(l) Local witness coordination services. --The requirements for notification provided

for in paragraphs (c), (d), and (i) may be performed by the state attorney or public defender for their own witnesses.

(m) Victim assistance education and training. --Victim assistance education and training shall be offered to persons taking courses at law enforcement training facilities and to state attorneys and assistant state attorneys so that victims may be promptly, properly, and completely assisted.

(n) General victim assistance. --Victims and witnesses shall be provided with such other assistance, such as transportation, parking, separate pretrial waiting areas, and translator services in attending court, as is practicable.

(o) Victim's rights information card or brochure. --A victim of a crime shall be provided with a victim's rights information card or brochure containing essential information concerning the rights of a victim and services available to a victim as required by state law.

(p) Information concerning escape from a state correctional institution, county jail, juvenile detention facility, or residential commitment facility. --In any case where an offender escapes from a state correctional institution, private correctional facility, county jail, juvenile detention facility, or residential commitment facility, the institution of confinement shall immediately notify the state attorney of the jurisdiction where the criminal charge or petition for delinquency arose and the judge who imposed the sentence of incarceration. The state attorney shall thereupon make every effort to notify the victim, material witness, parents or legal guardian of a minor who is a victim or witness, or immediate relatives of a homicide victim of the escapee. The state attorney shall also notify the sheriff of the county where the criminal charge or petition for delinquency arose. The sheriff shall offer assistance upon request. When an escaped offender is subsequently captured or is captured and returned to the institution of confinement, the institution of confinement shall again immediately notify the appropriate state attorney and sentencing judge pursuant to this section.

(q) Presence of victim advocate during discovery deposition; testimony of victim of a sexual offense. --At the request of the victim or the victim's parent, guardian, or lawful representative, the victim advocate designated by state attorney's office, sheriff's office, or municipal police department, or one representative from a not-for-profit victim services organization, including, but not limited to, rape crisis centers, domestic violence advocacy groups, and alcohol abuse or substance abuse groups shall be permitted to attend and be present during any deposition of the victim. The victim of a sexual offense shall be informed of the right to have the courtroom cleared of certain persons as provided in s. 918.16 when the victim is testifying concerning that offense.

(r) Implementing crime prevention in order to protect the safety of persons and property, as prescribed in the State Comprehensive Plan. --By preventing crimes that create victims or further harm former victims, crime prevention efforts are an essential part of providing effective service for victims and witnesses. Therefore, the agencies

identified in this subsection may participate in and expend funds for crime prevention, public awareness, public participation, and educational activities directly relating to, and in furtherance of, existing public safety statutes. Furthermore, funds may not be expended for the purpose of influencing public opinion on public policy issues that have not been resolved by the Legislature or the electorate.

(s) Attendance of victim at same school as defendant. --When the victim of an offense committed by a juvenile is a minor, the Department of Juvenile Justice shall request information to determine if the victim, or any sibling of the victim, attends or is eligible to attend the same school as the offender. However, if the offender is subject to a presentence investigation by the Department of Corrections, the Department of Corrections shall make such request. If the victim or any sibling of the victim attends or is eligible to attend the same school as that of the offender, the appropriate agency shall notify the victim's parent or legal guardian of the right to attend the sentencing or disposition of the offender and request that the offender be required to attend a different school.

(t) Use of a polygraph examination or other truth-telling device with victim. --No law enforcement officer, prosecuting attorney, or other government official shall ask or require an adult, youth, or child victim of an alleged sexual battery as defined in chapter 794 or other sexual offense to submit to a polygraph examination or other truth-telling device as a condition of proceeding with the investigation of such an offense. The refusal of a victim to submit to such an examination shall not prevent the investigation, charging, or prosecution of the offense.

(u) Presence of victim advocates during forensic medical examination. --At the request of the victim or the victim's parent, guardian, or lawful representative, a victim advocate from a certified rape crisis center shall be permitted to attend any forensic medical examination.

(2) The secretary of the Department of Juvenile Justice, and sheriff, chief administrator, or any of their respective designees, who acts in good faith in making a reasonable attempt to comply with the provisions of this section with respect to timely victim notification, shall be immune from civil or criminal liability for an inability to timely notify the victim or appropriate next of kin of the victim or other designated contact of such information. A good faith effort shall be evidenced by a log entry noting that an attempt was made to notify the victim within the time period specified by this section.

(3) (a) A copy of the guidelines and an implementation plan adopted by each agency shall be filed with the Governor, and subsequent changes or amendments thereto shall be likewise filed when adopted.

(b) A copy of a budget request prepared pursuant to chapter 216 shall also be filed for the sole purpose of carrying out the activities and services outlined in the guidelines.

(c) The Governor shall advise state agencies of any statutory changes which require

an amendment to their guidelines.

(d) The Executive Office of the Governor shall review the guidelines submitted pursuant to this section:

1. To determine whether all affected agencies have developed guidelines which address all appropriate aspects of this section;
2. To encourage consistency in the guidelines and plans in their implementation in each judicial circuit and throughout the state; and
3. To determine when an agency needs to amend or modify its existing guidelines.

(e) The Executive Office of the Governor shall issue an annual report detailing each agency's compliance or noncompliance with its duties as provided under this section. In addition, the Governor may apply to the circuit court of the county where the headquarters of such agency is located for injunctive relief against any agency which has failed to comply with any of the requirements of this section, which has failed to file the guidelines, or which has filed guidelines in violation of this section, to compel compliance with this section.

(4) The state attorney and one or more of the law enforcement agencies within each judicial circuit may develop and file joint agency guidelines, as required by this section, which allocate the statutory duties among the participating agencies. Responsibility for successful execution of the entire guidelines lies with all parties.

(5) Nothing in this section or in the guidelines adopted pursuant to this section shall be construed as creating a cause of action against the state or any of its agencies or political subdivisions.

(6) Victims and witnesses who are not incarcerated shall not be required to attend discovery depositions in any correctional facility.

(7) The victim of a crime, the victim's parent or guardian if the victim is a minor, and the state attorney, with the consent of the victim or the victim's parent or guardian if the victim is a minor, have standing to assert the rights of a crime victim which are provided by law or s. 16(b), Art. I of the State Constitution.

(8) For the purposes of this section, a law enforcement agency or the office of the state attorney may release any information deemed relevant to adequately inform the victim if the offense was committed by a juvenile. Information gained by the victim pursuant to this chapter, including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.

(9) As used in this section, the term "chief administrator" includes the appropriate chief

correctional officers of a county jail or municipal jail, and the appropriate chief administrator of a juvenile detention facility or residential commitment facility.

## **GEORGIA**

## **HAWAII**

## **IDAHO**

### **IDAHO CODE ANN. § 19-110 (2008). Expedition of court proceedings**

In all criminal cases and juvenile fact finding hearings that involve a child victim or witness, the court and the prosecuting attorney shall take all appropriate actions to ensure a speedy trial in order to minimize the length of time the child must endure the stress of his or her involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of any proceeding, the court shall consider and give weight to any adverse impact that the requested delay or continuance may have on the well-being of a child victim or witness, and findings of fact shall be made on this issue.

## **ILLINOIS**

## **INDIANA**

### **IND. R. EVID. 611 (2009). Mode and order of interrogations and presentations**

(a) *Control by court* -- The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment. (b) *Scope of cross-examination* -- Cross-examination should be limited to

the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. (c) *Leading questions* -- Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Ordinarily, leading questions should be permitted on cross-examination. Whenever a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

## **IOWA**

### **IOWA R. EVID. 5.611 (2009). Mode and order of interrogation and presentation**

a. Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

b. Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

c. Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop that witness's testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

## **KANSAS**

### **KAN. STAT. ANN. § 38-2246 (2008). Continuances**

All proceedings under this code shall be disposed of without unnecessary delay. Continuances shall not be granted unless good cause is shown.

## **KENTUCKY**

### **KY. REV. STAT. ANN. § 421.510 (2009). Speedy trial where child victim is involved**

(1) Where the victim is less than sixteen (16) years old and the crime is a sexual offense including violations of KRS 510.040 to 510.150, 530.020, 530.064(1)(a), 530.070, 531.310, 531.320, and 531.370, a speedy trial may be scheduled as provided in subsection (2) of this section.

(2) The court, upon motion by the attorney for the Commonwealth for a speedy trial, shall set a hearing date on the motion within ten (10) days of the date of the motion. If the motion is granted, the trial shall be scheduled within ninety (90) days from the hearing date.

(3) In ruling on any motion or other request for a delay or continuance of the proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

## **LOUISIANA**

### **LA. CODE EVID. ANN. art. 611 (2009). Mode and order of interrogation and presentation**

A. *Control by court.* --Except as provided by this Article and Code of Criminal Procedure Article 773, the parties to a proceeding have the primary responsibility of presenting the evidence and examining the witnesses. The court, however, shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

- (1) Make the interrogation and presentation effective for the ascertainment of the truth;
- (2) Avoid needless consumption of time; and
- (3) Protect witnesses from harassment or undue embarrassment.

B. *Scope of cross-examination.* --A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. However, in a civil case, when a party or person identified with a party has been called as a witness by an adverse party to testify only as to particular aspects of the case, the court shall limit the scope of cross-examination to matters testified to on direct examination, unless the interests of justice

otherwise require.

*C. Leading questions.* --Generally, leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony and in examining an expert witness on his opinions and inferences. However, when a party calls a hostile witness, a witness who is unable or unwilling to respond to proper questioning, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. Generally, leading questions should be permitted on cross-examination. However, the court ordinarily shall prohibit counsel for a party from using leading questions when that party or a person identified with him is examined by his counsel, even when the party or a person identified with him has been called as a witness by another party and tendered for cross-examination.

*D. Scope of redirect examination; recross examination.* --A witness who has been cross-examined is subject to redirect examination as to matters covered on cross-examination and, in the discretion of the court, as to other matters in the case. When the court has allowed a party to bring out new matter on redirect, the other parties shall be provided an opportunity to recross on such matters.

*E. Rebuttal evidence.* --The plaintiff in a civil case and the state in a criminal prosecution shall have the right to rebut evidence adduced by their opponents.

## **MAINE**

### **ME. R. EVID. 611 (2009). Mode and Order of Interrogation and Presentation**

(a) Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence on direct and cross-examination so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. In the interests of justice, the court may limit cross-examination with respect to matters not testified to on direct examination.

(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Ordinarily leading questions should be permitted on cross-examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of the state or any political subdivision thereof or of a

public or private corporation or of an association or body politic which is an adverse party, and interrogate such a witness by leading questions and contradict and impeach the witness in all respects as if the witness had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief. A witness examined in chief only as to the signature to or execution of a paper may be cross-examined only as to such signature or execution.

## **MARYLAND**

### **MD. CODE ANN., CRIM. PROC. § 11-1002 (2009). Guidelines for treatment of victim of crime, victim's representative, or witness**

(a) Responsibility of criminal justice units. -- The appropriate criminal justice unit should inform a victim of a crime, a victim's representative, or a witness of the guidelines listed in subsection (b) of this section.

(b) Guidelines. -- A victim of a crime, victim's representative, or witness:

(1) should be treated with dignity, respect, courtesy, and sensitivity;

(2) should receive crisis intervention help, if needed, or be told by the appropriate criminal justice unit where crisis intervention help, emergency medical treatment, creditor intercession services, or other social services and counseling may be obtained;

(3) should be notified in advance of dates and times of trial court proceedings in the case and, on written request, of postsentencing proceedings, and be notified if the court proceedings to which the victim of a crime, victim's representative, or witness has been subpoenaed will not proceed as scheduled;

(4) should be told of the protection available, and, on request, be protected by a criminal justice unit, to the extent reasonable, practicable, and, in the unit's discretion, necessary, from harm or threats of harm arising out of the crime victim's or witness's cooperation with law enforcement and prosecution efforts;

(5) during each phase of the investigative or court proceedings, should be provided, to the extent practicable, with a waiting area that is separate from a suspect and the family and friends of a suspect;

(6) should be told by the appropriate criminal justice unit of financial assistance, criminal injuries compensation, and any other social services available to the victim of a crime or victim's representative and receive help or information on how to apply for services;

(7) should be told of and, on request, should be given employer intercession services, when appropriate, by the State's Attorney's office or other available resource to seek employer cooperation in minimizing an employee's loss of pay or other benefits resulting from participation in the criminal justice process;

(8) on written request, should be kept reasonably informed by the police or the State's Attorney of the arrest of a suspect and closing of the case, and should be told which office to contact for information about the case;

(9) should be told of the right to have stolen or other property promptly returned and, on written request, should have the property promptly returned by a law enforcement unit when evidentiary requirements for prosecution can be satisfied by other means, unless there is a compelling law enforcement reason for keeping it;

(10) for a crime of violence, on written request, should be kept informed by pretrial release personnel, the State's Attorney, or the Attorney General, as appropriate, of each proceeding that affects the crime victim's interest, including:

- (i) bail hearing;
- (ii) dismissal;
- (iii) nolle prosequi;
- (iv) setting of charges;
- (v) trial; and
- (vi) disposition;

(11) on request of the State's Attorney and in the discretion of the court, should be allowed to address the court or jury or have a victim impact statement read by the court or jury at:

- (i) sentencing before the imposition of the sentence; or
- (ii) any hearing to consider altering the sentence;

(12) should be told, in appropriate cases, by the State's Attorney of the right to request restitution and, on request, should be helped to prepare the request and should be given advice as to the collection of the payment of any restitution awarded;

(13) should be entitled to a speedy disposition of the case to minimize the length of time the person must endure responsibility and stress in connection with the case;

(14) on written request to the parole authority, should be told each time there is to be a

hearing on provisional release from custody and each time the criminal will receive a provisional release;

(15) on written request to the Patuxent Institution, Division of Correction, or Parole Commission, as appropriate, should have a victim impact statement read at a hearing to consider temporary leave status or a provisional release; and

(16) on written request to the unit that has custody of the offender after sentencing, should be told by the unit whenever the criminal escapes or receives a mandatory supervision release.

(c) Availability of guidelines. --

(1) The Department shall make the guidelines in subsection (b) of this section available to the units involved with carrying out the guidelines.

(2) To the extent feasible, the guidelines in subsection (b) of this section shall be printed by Maryland Correctional Enterprises.

## **MASSACHUSETTS**

### **MASS. GEN. LAWS ch. 278, § 16F (2009). Expedited Trial for Sex Crimes Involving Minor Victims or Witnesses**

In any criminal proceeding involving an alleged sex crime perpetrated upon a minor child, or in which a minor child is expected to testify as a witness to a sex crime, the court shall, in order to minimize stress on such child, take action to expedite trial and give precedence to the case over any other case; provided, however, that nothing in this section shall be construed to mean that trial shall be expedited if it is not in the best interests of the child.

When a motion or a request for a continuance is made the prosecutor shall file an impact statement which specifies whether the commonwealth agrees to the request for continuance, whether the child or the child's representative agrees to such request, and the effect, if any, the granting of the continuance will have on the child. In ruling on any motion or request for continuance or other delay, the court shall consider and give weight to any possible adverse impact that a delay or continuance may have on the child. Prior to issuing an order on a motion for continuance or delay, the court shall make written findings of fact concerning the impact on the child of continuing or delaying the case.

## **MICHIGAN**

### **MICH. COMP. LAWS § 780.759 (2009). Speedy trial; requirements; hearing; notice; time of trial**

(1) As provided in subsection (2), a speedy trial may be scheduled for any case in which the victim is declared by the prosecuting attorney to be any of the following:

- (a) A victim of child abuse, including sexual abuse or any other assaultive crime.
- (b) A victim of criminal sexual conduct in the first, second, or third degree or of an assault with intent to commit criminal sexual conduct involving penetration or to commit criminal sexual conduct in the second degree.
- (c) Sixty-five years of age or older.
- (d) An individual with a disability that inhibits the individual's ability to attend court or participate in the proceedings.

(2) The chief judge, upon motion of the prosecuting attorney for a speedy trial for a case described in subsection (1), shall set a hearing date within 14 days of the date of the filing of the motion. Notice shall be made pursuant to the Michigan court rules. If the motion is granted, the trial shall not be scheduled earlier than 21 days from the date of the hearing.

### **MICH. COMP. LAWS §780.786 (2009). Court jurisdiction; notices to victim; consultation with prosecuting attorney; persons to be informed of victim's current address and telephone number**

(1) The court shall accept a petition submitted by a prosecuting attorney that seeks to invoke the court's jurisdiction for a juvenile offense, unless the court finds on the record that the petitioner's allegations are insufficient to support a claim of jurisdiction under section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(2) Within 72 hours after the prosecuting attorney files or submits a petition seeking to invoke the court's jurisdiction for an offense, the prosecuting attorney, or the court pursuant to an agreement under section 48a, shall give to each victim a written notice in plain English of each of the following:

- (a) A brief statement of the procedural steps in processing a juvenile case, including the fact that a juvenile may be tried in the same manner as an adult in a designated case or waived to the court of general criminal jurisdiction.
- (b) A specific list of the rights and procedures under this article.
- (c) A convenient means for the victim to notify the prosecuting attorney that the victim chooses to exercise his or her rights under this article.
- (d) Details and eligibility requirements for compensation from the crime victim services commission under 1976 PA 223, MCL 18.351 to 18.368.

- (e) Suggested procedures if the victim is subjected to threats or intimidation.
- (f) The person to contact for further information.
- (3) If the victim requests, the prosecuting attorney, or the court pursuant to an agreement under section 48a, shall give the victim notice of any scheduled court proceedings and any changes in that schedule.
- (4) If the juvenile has not already entered a plea of admission or no contest to the original charge at the preliminary hearing, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the victim's views about the disposition of the offense, including the victim's views about dismissal, waiver, and pretrial diversion programs, before finalizing any agreement to reduce the original charge.
- (5) A victim who receives a notice under subsection (1) and chooses to receive any notice or exercise any right under this article shall keep the following persons informed of the victim's current address and telephone number:
  - (a) The prosecuting attorney, or the court if an agreement under section 48a exists.
  - (b) If the juvenile is made a public ward, the family independence agency or county juvenile agency, as applicable.
  - (c) If the juvenile is imprisoned, the department of corrections or the sheriff as directed by the prosecuting attorney.

## **MINNESOTA**

### **MINN. STAT. § 611A.033 (2008). Speedy trial; notice of schedule change**

- (a) A victim has the right to request that the prosecutor make a demand under rule 11.10 of the Rules of Criminal Procedure that the trial be commenced within 60 days of the demand. The prosecutor shall make reasonable efforts to comply with the victim's request.
- (b) A prosecutor shall make reasonable efforts to provide advance notice of any change in the schedule of the court proceedings to a victim who has been subpoenaed or requested to testify.

## **MISSISSIPPI**

### **MISS. CODE ANN. § 99-43-19 (2008). Freedom from delay; continuances**

The victim shall have the right to a final disposition of the criminal proceeding free from unreasonable delay. To effectuate this right, the court, in determining whether to grant

any continuance, should make every reasonable effort to consider whether granting such continuance shall be prejudicial to the victim.

## **MISSOURI**

### **MO. REV. STAT. § 491.710 (2009). Hearings involving child witnesses given docket priority--delays or continuances granted, when**

In all criminal cases and juvenile court hearings under chapter 211, RSMo, involving a child victim or witness, as defined in section 491.678 or 491.696, the court shall give docket priority. The court and the prosecuting or circuit attorney shall take appropriate action to insure a speedy trial in order to minimize the length of time the child must endure the stress of his or her involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

## **MONTANA**

## **NEBRASKA**

### **NEB. REV. STAT. § 81-1848 (2009). Victims and witnesses of crimes; rights; enumerated**

(1) Victims as defined in section 29-119 shall have the following rights:

(a) To examine information which is a matter of public record and collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges. Such information shall include any disposition arising from such arrests, charges, sentencing, correctional supervision, and release, but shall not include intelligence or investigative information;

(b) To receive from the county attorney advance reasonable notice of any scheduled court proceedings and notice of any changes in that schedule;

(c) To be present throughout the entire trial of the defendant, unless the victim is to be called as a witness or the court finds sequestration of the victim necessary for a fair trial. If the victim is to be called as a witness, the court may order the victim to be sequestered;

(d) To be notified by the county attorney by any means reasonably calculated to give prompt actual notice of the following:

(i) The crimes for which the defendant is charged, the defendant's bond, and the time and place of any scheduled court proceedings;

(ii) The final disposition of the case;

(iii) The crimes for which the defendant was convicted;

(iv) The victim's right to make a written or oral impact statement to be used in the probation officer's preparation of a presentence investigation report concerning the defendant;

(v) The address and telephone number of the probation office which is to prepare the presentence investigation report;

(vi) That a presentence investigation report and any statement by the victim included in such report will be made available to the defendant unless exempted from disclosure by order of the court; and

(vii) The victim's right to submit a written impact statement at the sentencing proceeding or to read his or her impact statement submitted pursuant to subdivision (1)(d)(iv) of this section at the sentencing proceeding;

(e) To be notified by the county attorney by any means reasonably calculated to give prompt actual notice of the time and place of any subsequent judicial proceedings if the defendant was acquitted on grounds of insanity;

(f) To be notified as provided in section 81-1850, to testify before the Board of Parole or submit a written statement for consideration by the board, and to be notified of the decision of and any action taken by the board; and

(g) To submit a written statement for consideration at any conditional release proceedings, Board of Parole proceedings, pardon proceedings, or commutation proceedings. Conditional release proceeding means a proceeding convened pursuant to a Department of Correctional Services' decision to grant a furlough from incarceration for twenty-four hours or longer or a release into community-based programs, including educational release and work release.

(2) Victims and witnesses of crimes shall have the following rights:

(a) To be informed on all writs of subpoena or notices to appear that they are entitled to apply for and may receive a witness fee;

(b) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled in order to save the person an unnecessary trip to court;

(c) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts and to be provided with information as to the level of protection available;

(d) To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime, including information on how to apply for the assistance and services;

(e) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled;

(f) To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;

(g) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, shall be returned to the person within ten days after being taken;

(h) To be provided with appropriate employer intercession services to insure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances;

(i) To be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter;

(j) To be informed by the county attorney of the final disposition of a felony case in which they were involved and to be notified pursuant to section 81-1850 whenever the defendant in such case is released from custody; and

(k) To have the family members of all homicide victims afforded all of the rights under subsection (2) of this section and services analogous to those provided under section 81-1847.

**NEB. REV. STAT. § 29-1925 (2009). Child victim or child witness; testimony; legislative intent**

The Legislature recognizes that obtaining testimony in a criminal prosecution from a child victim of or a child witness to a felony offense may be a delicate matter and may require some special considerations. It is the intent of the Legislature to promote, facilitate, and preserve the testimony of such child victim or child witness in a criminal prosecution to the fullest extent possible consistent with the constitutional right to confrontation guaranteed by the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution.

**NEVADA**

**NEV. REV. STAT. § 62D.300 (2009). Power of juvenile court to expedite proceeding involving act committed against or witnessed by person less than 16 years of age**

1. Upon the request of the district attorney, the juvenile court may expedite any proceeding conducted pursuant to the provisions of this title that involves an act committed against a person who is less than 16 years of age or an act witnessed by a person who is less than 16 years of age.

**NEV. REV. STAT. § 62D.320 (2009). Continuances**

1. The juvenile court may continue any proceeding conducted pursuant to the provisions of this title for a reasonable period to receive oral and written reports or other competent, material and relevant evidence that may be helpful in determining the issues presented.
2. If a proceeding involves an act committed against a person who is less than 16 years of age or an act witnessed by a person who is less than 16 years of age, the juvenile court:
  - (a) May consider any adverse effects that a continuance of the proceeding may have on the mental or emotional health or well-being of the person who is less than 16 years of age; and
  - (b) May deny a continuance of the proceeding if the delay will adversely affect the mental or emotional health or well-being of the person who is less than 16 years of age.
3. If the juvenile court orders a continuance of a proceeding, the juvenile court shall make an appropriate order for the detention or temporary care of the child who is the subject of the proceeding during the period of the continuance.

**NEV. REV. STAT. § 174.515 (2009). Postponement: When and how ordered; court may require depositions of and undertakings by witnesses; court may consider adverse effect upon child who is victim or witness**

1. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party by affidavit, direct the trial to be postponed to another day. In all cases where a continuance is granted upon the application of either party the court may require, as a condition of granting such continuance, that the party applying therefor consent to taking, forthwith, or at any time to be fixed by the court, of the deposition of any witness summoned by the opposite party whose deposition has not previously been taken.

2. The court also may require all witnesses to enter into undertakings in such sum as the court may order, with or without sureties, to appear and testify on the day to which the case may be continued, but any witness who is unable to procure sureties for his attendance may be discharged on his own recognizance, upon giving his deposition in the manner prescribed in NRS 174.175; and 174.205.

3. If the trial involves acts committed against a child less than 16 years of age or involving acts witnessed by a child less than 16 years of age, the court may consider any adverse effect a continuance or other postponement might have upon the mental or emotional health or well-being of the child. The court may deny a continuance or other postponement if the delay will adversely affect the mental or emotional health or well-being of the child.

**NEV. REV. STAT. § 174.519 (2009). Request for preference in setting date for trial where child is victim or witness; court may consider effect on child of delay in commencement of trial**

If the trial involves acts committed against a child less than 16 years of age or involving acts witnessed by a child less than 16 years of age, the prosecuting attorney shall request the court, in its discretion, to give preference in setting a date for the trial of the defendant. In making a ruling, the court may consider the effect a delay in the commencement of the trial might have on the mental or emotional health or well-being of the child.

2. In determining whether to expedite a proceeding, the juvenile court may consider the effect that a delay in the proceeding may have on the mental or emotional health or well-being of the person who is less than 16 years of age.

## **NEW HAMPSHIRE**

### **N.H. REV. STAT. ANN. § 632-A:9 (2009). Speedy trial**

In any action under this chapter involving a victim 16 years of age or under or a victim 65 years of age or older, the court and the department of justice shall take appropriate action to ensure a speedy trial to minimize the length of time the victim must endure the stress of involvement in the proceeding. In ruling on any motion or request for a delay or continuance of proceedings, the court shall consider any adverse impact the delay or continuance may have on the well-being of the victim or any witness who is 16 years of age or under or 65 years of age or older. This provision establishes a right to a speedy trial for the victim and shall not be construed as creating any additional rights for the defendant.

## **NEW JERSEY**

### **N.J. REV. STAT §2A:163-5 (2009). Speedy trials**

In all criminal cases involving a child victim, the court shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim.

## **NEW MEXICO**

### **N.M. STAT. § 31-26-4 (2008). Victim's rights**

A victim shall have the right to:

A. be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;

B. timely disposition of the case;

- C. be reasonably protected from the accused throughout the criminal justice process;
- D. notification of court proceedings;
- E. attend all public court proceedings the accused has the right to attend;
- F. confer with the prosecution;
- G. make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
- H. restitution from the person convicted of the criminal offense that caused the victim's loss or injury;
- I. information about the conviction, sentencing, imprisonment, escape or release of the accused;
- J. have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause;
- K. promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property; and
- L. be informed by the court at a sentencing proceeding that the offender is eligible to earn meritorious deductions from the offender's sentence and the amount of meritorious deductions that may be earned by the offender.

**N.M. STAT. § 32A-1-16 (2008). Basic rights**

- A. A child subject to the provisions of the Children's Code [32A-1-1 NMSA 1978] is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.
- B. A person afforded rights under the Children's Code [32A-1-1 NMSA 1978] shall be advised of those rights at that person's first appearance before the court on a petition under the Children's Code.

## **NEW YORK**

### **N.Y. EXEC. LAW § 642-a (2009). Fair treatment as child victims as witnesses**

To the extent permitted by law, criminal justice agencies, crime victim-related agencies, social services agencies and the courts shall comply with the following guidelines in their treatment of child victims:

1. To minimize the number of times a child victim is called upon to recite the events of the case and to foster a feeling of trust and confidence in the child victim, whenever practicable and where one exists, a multi-disciplinary team as established pursuant to subdivision six of section four hundred twenty-three of the social services law and/or a child advocacy center [fig 1] shall be used for the investigation and prosecution of child abuse cases involving abuse of a child, as described in paragraph (i), (ii) or (iii) of subdivision (e) of section one thousand twelve of the family court act, sexual abuse of a child or the death of a child.
2. Whenever practicable, the same prosecutor should handle all aspects of a case involving an alleged child victim.
3. To minimize the time during which a child victim must endure the stress of his involvement in the proceedings, the court should take appropriate action to ensure a speedy trial in all proceedings involving an alleged child victim. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of the child.
4. The judge presiding should be sensitive to the psychological and emotional stress a child witness may undergo when testifying.
5. In accordance with the provisions of article sixty-five of the criminal procedure law, when appropriate, a child witness as defined in subdivision one of section 65.00 of such law should be permitted to testify via live, two-way closed-circuit television.
6. In accordance with the provisions of section 190.32 of the criminal procedure law, a person supportive of the "child witness" or "special witness" as defined in such section should be permitted to be present and accessible to a child witness at all times during his testimony, although the person supportive of the child witness should not be permitted to influence the child's testimony.
7. A child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings during his testimony.

## **NORTH CAROLINA**

## **NORTH DAKOTA**

### **N.D. CENT. CODE § 12.1-35-04 (2009). Limits on interviews and testimony**

The prosecuting attorney, the court, and appropriate law enforcement personnel, to the extent possible, shall protect the victim or witness from the psychological damage of repeated or lengthy interview, testimony, or discovery proceedings while preserving the rights of the public, the victim, and the person charged with the violation.

### **N.D. CENT. CODE § 12.1-35-05 (2009). Prompt disposition**

In all criminal cases and juvenile proceedings involving a child victim or witness, the court and the state's attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

## **OHIO**

## **OKLAHOMA**

## **OREGON**

### **OR. REV. STAT. § 44.545 (2007). Expediting proceedings**

(1) Except as otherwise provided in subsection (2) of this section or except for good cause shown by either party, in any case where a child or a member of the family of the

child is a victim of a crime and where a child under 18 years of age is called to give testimony, the court, consistent with the rules of civil or criminal procedure, shall expedite the action and insure that it takes precedence over any other. When determining whether or not to grant a continuance, the judge shall take into consideration the age of the child and the potential adverse impact the delay may have on the well-being of the child. The court shall make written findings of fact and conclusions of law when granting a continuance.

(2) The provisions of subsection (1) of this section do not apply to any juvenile proceeding other than the termination of parental rights.

## **PENNSYLVANIA**

## **RHODE ISLAND**

### **R.I. GEN. LAWS § 11-37-11.2 (2009). Speedy trial**

In any action under this chapter involving a child victim age fourteen (14) years or under or a victim sixty-five (65) years or older, the court and the attorney general's office shall take appropriate action to ensure a speedy trial to minimize the length of time the victim must endure the stress of involvement in the proceeding. In ruling on any motion or request for a delay or continuance of proceedings, the court shall consider any adverse impact the delay or continuance may have on the well-being of the victim or witness. This provision establishes a right to a speedy trial to the victim and shall not be construed as creating any additional rights to the defendant.

## **SOUTH CAROLINA**

### **S.C. CONST. ANN. art. I, § 24 (2008). Victims' Bill of Rights**

(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute; (2) be reasonably informed when

the accused or convicted person is arrested, released from custody, or has escaped; (3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present; (4) be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail; (5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing; (6) be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process; (7) confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition; (8) have reasonable access after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial; (9) receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders; (10) be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision; (11) a reasonable disposition and prompt and final conclusion of the case; (12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights. (B) Nothing in this section creates a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a wilful failure to comply with a writ of mandamus is punishable as contempt. (C) For purposes of this section: (1) A victim's exercise of any right granted by this section is not grounds for dismissing any criminal proceeding or setting aside any conviction or sentence. (2) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him. The term "victim" also includes the person's spouse, parent, child, or lawful representative of a crime victim who is deceased, who is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated. (3) The General Assembly has the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings. (4) The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage others granted by the General Assembly or retained by victims. (1998 Act No. 259, § 1.)

## **SOUTH DAKOTA**

## **TENNESSEE**

### **TENN. CODE ANN. § 40-38-116 (2009). Victim's right to a speedy trial**

(a) In any criminal proceeding in which a continuance is requested, the court shall consider the victim's views and the victim's right to a speedy trial. If the continuance is granted over the victim's objection, the court shall state on the record the reason for the continuance and the procedures that have been taken to avoid further delays.

(b) In determining a date for any criminal trial or other important criminal hearing, the court shall consider the interests of the victim's right to a speedy trial.

## **TEXAS**

### **TEX. CODE CRIM. PROC. ANN. art. 38.071 (2009). Testimony of Child Who Is Victim of Offense**

Sec. 1. This article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant about an offense defined by any of the following sections of the Penal Code:

- (1) Section 19.02 (Murder);
- (2) Section 19.03 (Capital Murder);
- (3) Section 19.04 (Manslaughter);
- (4) Section 20.04 (Aggravated Kidnapping);
- (5) Section 21.11 (Indecency with a Child);
- (6) Section 22.011 (Sexual Assault);
- (7) Section 22.02 (Aggravated Assault);
- (8) Section 22.021 (Aggravated Sexual Assault);
- (9) Section 22.04(e) (Injury to a Child, Elderly Individual, or Disabled Individual);
- (10) Section 22.04(f) (Injury to a Child, Elderly Individual, or Disabled Individual), if the conduct is committed intentionally or knowingly;

(11) Section 25.02 (Prohibited Sexual Conduct);

(12) Section 29.03 (Aggravated Robbery);

(13) Section 43.25 (Sexual Performance by a Child); or

(14) Section 21.02 (Continuous Sexual Abuse of Young Child or Children).

Sec. 2. (a) The recording of an oral statement of the child made before the indictment is returned or the complaint has been filed is admissible into evidence if the court makes a determination that the factual issues of identity or actual occurrence were fully and fairly inquired into in a detached manner by a neutral individual experienced in child abuse cases that seeks to find the truth of the matter.

(b) If a recording is made under Subsection (a) of this section and after an indictment is returned or a complaint has been filed, by motion of the attorney representing the state or the attorney representing the defendant and on the approval of the court, both attorneys may propound written interrogatories that shall be presented by the same neutral individual who made the initial inquiries, if possible, and recorded under the same or similar circumstances of the original recording with the time and date of the inquiry clearly indicated in the recording.

(c) A recording made under Subsection (a) of this section is not admissible into evidence unless a recording made under Subsection (b) is admitted at the same time if a recording under Subsection (b) was requested prior to the time of the hearing or proceeding.

Sec. 3. (a) On its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact. To the extent practicable, only the judge, the court reporter, the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the persons necessary to operate the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact, but the court shall attempt to ensure that the child cannot hear or see the defendant. The court shall permit the attorney for the defendant adequate opportunity to confer with the defendant during cross-examination of the child. On application of the attorney for the defendant, the court may recess the proceeding before or during cross-examination of the child for a reasonable time to allow the attorney for the defendant to confer with

defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors.

Sec. 4. (a) After an indictment has been returned or a complaint filed, on its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, the court may order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact. To the extent practicable, only those persons permitted to be present at the taking of testimony under Section 3 of this article may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Section 3. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact but shall attempt to ensure that the child cannot hear or see the defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors. The court shall also ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and is not altered;

(3) each voice on the recording is identified;

(4) the defendant, the attorneys for each party, and the expert witnesses for each party are afforded an opportunity to view the recording before it is shown in the courtroom;

(5) before giving his testimony, the child was placed under oath or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully;

(6) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time the recording was made; and

(7) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings is established at the hearing or proceeding.

(c) After a complaint has been filed or an indictment returned charging the defendant,

on the motion of the attorney representing the state, the court may order that the deposition of the child be taken outside of the courtroom in the same manner as a deposition may be taken in a civil matter. A deposition taken under this subsection is admissible into evidence.

Sec. 5. (a) On the motion of the attorney representing the state or the attorney representing the defendant and on a finding by the court that the following requirements have been substantially satisfied, the recording of an oral statement of the child made before a complaint has been filed or an indictment returned is admissible into evidence if:

(1) no attorney or peace officer was present when the statement was made;

(2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and has not been altered;

(4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;

(5) every voice on the recording is identified;

(6) the person conducting the interview of the child in the recording is expert in the handling, treatment, and investigation of child abuse cases, present at the hearing or proceeding, called by the state, and subject to cross-examination;

(7) immediately after a complaint was filed or an indictment returned, the attorney representing the state notified the court, the defendant, and the attorney representing the defendant of the existence of the recording;

(8) the defendant, the attorney for the defendant, and the expert witnesses for the defendant were afforded an opportunity to view the recording before it is offered into evidence and, if a proceeding was requested as provided by Subsection (b) of this section, in a proceeding conducted before a district court judge but outside the presence of the jury were afforded an opportunity to cross-examine the child as provided by Subsection (b) of this section from any time immediately following the filing of the complaint or the returning of an indictment charging the defendant until the date the hearing or proceeding begins;

(9) the recording of the cross-examination, if there is one, is admissible under Subsection (b) of this section;

(10) before giving his testimony, the child was placed under oath or was otherwise

admonished in a manner appropriate to the child's age and maturity to testify truthfully;

(11) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time that the recording was made; and

(12) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings has been established at the hearing or proceeding.

(b) On the motion of the attorney representing the defendant, a district court may order that the cross-examination of the child be taken and be recorded before the judge of that court at any time until a recording made in accordance with Subsection (a) of this section has been introduced into evidence at the hearing or proceeding. On a finding by the court that the following requirements were satisfied, the recording of the cross-examination of the child is admissible into evidence and shall be viewed by the finder of fact only after the finder of fact has viewed the recording authorized by Subsection (a) of this section if:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the attorney representing the defendant, and the recording is accurate and has not been altered;

(3) every voice on the recording is identified;

(4) the defendant, the attorney representing the defendant, the attorney representing the state, and the expert witnesses for the defendant and the state were afforded an opportunity to view the recording before the hearing or proceeding began;

(5) the child was placed under oath before the cross-examination began or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully; and

(6) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings was established at the hearing or proceeding.

(c) During cross-examination under Subsection (b) of this section, to the extent practicable, only a district court judge, the attorney representing the defendant, the attorney representing the state, persons necessary to operate the equipment, and any other person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony but does not permit the child to see or

hear them. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact, but shall attempt to ensure that the child cannot hear or see the defendant.

(d) Under Subsection (b) of this section the district court may set any other conditions and limitations on the taking of the cross-examination of a child that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors.

Sec. 6. If the court orders the testimony of a child to be taken under Section 3 or 4 of this article or if the court finds the testimony of the child taken under Section 2 or 5 of this article is admissible into evidence, the child may not be required to testify in court at the proceeding for which the testimony was taken, unless the court finds there is good cause.

Sec. 7. In making any determination of good cause under this article, the court shall consider the rights of the defendant, the interests of the child, the relationship of the defendant to the child, the character and duration of the alleged offense, any court finding related to the availability of the child to testify, the age, maturity, and emotional stability of the child, the time elapsed since the alleged offense, and any other relevant factors.

Sec. 8. (a) In making a determination of unavailability under this article, the court shall consider relevant factors including the relationship of the defendant to the child, the character and duration of the alleged offense, the age, maturity, and emotional stability of the child, and the time elapsed since the alleged offense, and whether the child is more likely than not to be unavailable to testify because:

(1) of emotional or physical causes, including the confrontation with the defendant; or

(2) the child would suffer undue psychological or physical harm through his involvement at the hearing or proceeding.

(b) A determination of unavailability under this article can be made after an earlier determination of availability. A determination of availability under this article can be made after an earlier determination of unavailability.

Sec. 9. If the court finds the testimony taken under Section 2 or 5 of this article is admissible into evidence or if the court orders the testimony to be taken under Section 3 or 4 of this article and if the identity of the perpetrator is a contested issue, the child additionally must make an in-person identification of the defendant either at or before the hearing or proceeding.

Sec. 10. In ordering a child to testify under this article, the court shall take all reasonable steps necessary and available to minimize undue psychological trauma to the child and to minimize the emotional and physical stress to the child caused by relevant factors, including the confrontation with the defendant and the ordinary participation of the

witness in the courtroom.

Sec. 11. In a proceeding under Section 2, 3, or 4 or Subsection (b) of Section 5 of this article, if the defendant is not represented by counsel and the court finds that the defendant is not able to obtain counsel for the purposes of the proceeding, the court shall appoint counsel to represent the defendant at the proceeding.

Sec. 12. In this article, "cross-examination" has the same meaning as in other legal proceedings in the state.

Sec. 13. The attorney representing the state shall determine whether to use the procedure provided in Section 2 of this article or the procedure provided in Section 5 of this article.

## **UTAH**

### **UTAH CODE ANN. § 77-37-3 (2008). Bill of Rights**

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, and Sections 62A-7-109.5, 77-38a-302, and 77-27-6. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have a right to be informed of their right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the convicted sexual offender for HIV infection as provided in Section 76-5-502. The law enforcement office where the sexual offense is reported shall have the responsibility to inform victims of this right.

(2) Informational rights of the victim under this chapter are based upon the victim providing the victim's current address and telephone number to the criminal justice agencies involved in the case.

### **UTAH CODE ANN. § 77-38-7 (2009). Victim's right to a speedy trial**

(1) In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's or minor's right to a speedy trial.

(2) The victim of a crime has the right to a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor and to prompt and final conclusion of the case after the disposition or conviction and sentence, including prompt and final conclusion of all collateral attacks on dispositions or criminal judgments.

(3) (a) In ruling on any motion by a defendant or minor to continue a previously

established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy disposition of the case.

(b) If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

## **VERMONT**

### **VT. STAT. ANN. tit. 13, § 5312 (2009). Victim's interest in speedy prosecution**

(a) The prosecutor's office shall make every effort to inform a victim of a listed crime of any pending motion that may substantially delay any deposition, change of plea, trial, sentencing hearing, or restitution hearing. The prosecutor shall inform the court of how the victim was notified and the victim's position on the motion, if any. In the event the victim was not notified, the prosecutor shall inform the court why notification did not take place.

(b) If a victim of a listed crime objects to a delay, the court shall consider the victim's objection.

### **VT. R. EVID. RULE 611 (2009). Mode and Order of Interrogation and Presentation**

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation orderly and effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness, except that when the witness is a party, the scope of cross-examination includes any matter of consequence to the determination of the action. In the case of a nonparty witness, the court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness,

an adverse party, or a witness identified with an adverse party, **interrogation** may be by leading questions.

## **VIRGINIA**

## **WASHINGTON**

### **WASH. REV. CODE § 10.46.085 (2009). Continuances not permitted in certain cases**

When a defendant is charged with a crime which constitutes a violation of RCW 9A.64.020 or chapter 9.68, 9.68A, or 9A.44 RCW, and the alleged victim of the crime is a person under the age of eighteen years, neither the defendant nor the prosecuting attorney may agree to extend the originally scheduled trial date unless the court within its discretion finds that there are substantial and compelling reasons for a continuance of the trial date and that the benefit of the postponement outweighs the detriment to the victim. The court may consider the testimony of lay witnesses and of expert witnesses, if available, regarding the impact of the continuance on the victim.

## **WEST VIRGINIA**

### **\*W. VA. R. OF PROC. FOR CHILD ABUSE AND NEG. PROC., RULE 7 (2009). Extensions of time and continuances**

Except as provided for in Rule 5, extensions of time and continuances beyond the times specified in these rules or by other applicable law shall be granted only for good cause, regardless of whether the parties are in agreement. If a continuance is granted in accordance with this rule, the court shall set forth in a written order its reasons for finding good cause.

## **WISCONSIN**

### **WIS. STAT. § 971.105 (2008). Child victims and witnesses; duty to expedite proceedings**

In all criminal and delinquency cases, juvenile fact-finding hearings under s. 48.31 and juvenile dispositional hearings involving a child victim or witness, as defined in s. 950.02, the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of the child's involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

## **WYOMING**

### **WYO. STAT. ANN. § 14-6-506 (2009). Victims; timing of proceedings**

(a) The court shall consider the victim's interest and circumstances when setting any date for the adjudicatory or disposition hearing or in granting or denying continuances.

(b) Nothing in this section shall infringe upon any rights of the accused delinquent or inhibit the ability of the prosecution and defense from entering into any agreement as to the setting of the matter for hearing or negotiated disposition of any charge or charges pending against the accused.

## **American Territories**

## **AMERICAN SAMOA**

## **GUAM**

### **GUAM CODE ANN. tit. 8, § 75.85 (2008). Child Witness Comfort, and Protection**

Notwithstanding any other provision of law, at any criminal proceeding in which a minor under the age of 18 is a prosecuting witness, the court shall take special precautions to provide for the comfort and support of the minor and to protect the minor from coercion, intimidation or undue influence as a witness.

### **GUAM CODE ANN. tit. 8, § 80.50 (2008). Criminal Trials Expedited; Precedence**

(a) The welfare of the people of the territory of Guam requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time, and it shall be the duty of all courts and judicial officers and of all prosecuting attorneys to expedite such proceedings to the greatest degree that is consistent with the ends of justice.

(b) In accordance with the policy stated in Subsection (a), criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings. No continuance of a trial shall be granted except upon affirmative proof in open court, upon reasonable notice, that the ends of justice require a continuance. No continuance shall be granted for any longer time than it is affirmatively proved the ends of justice require. Whenever any continuance is granted, the court shall enter in its minutes the facts proved which require the continuance.

## **PUERTO RICO**

### **P.R. LAWS ANN. tit. 34, R. of Crim. Proc. 131.3 (2006). Witnesses who are minors; assistance during testimony**

In any proceeding under these rules, and specifically, Rules 131.1 and 131.2 of this appendix, the court, on its own initiative or by petition of the Prosecutor, guardian *ad litem*, or the parents, tutor or guardian of a minor who is a witness in a criminal procedure, may authorize that assistance be given to the minor pursuant to the following:

(1) *Support personnel.* The minor shall have the right to be escorted by support personnel, which may be a relative or an acquaintance of the minor, or the professional or technical personnel who has intervened or offered assistance to the minor throughout the different stages of the process. The court may authorize the support personnel to remain next to the minor, including actions such as holding him/her on his/her lap, or holding his/her hands. While the minor is testifying, the support personnel shall not address the minor, nor make any suggestive movement whatsoever, nor communicate with the jury by making gestures nor through any other means.

In the cases of trial by jury, the court shall give special instructions to clarify the function of the support personnel, emphasizing the fact that his/her presence has the purpose of facilitating the testimony of the minor and not of physically protecting him/her from the defendant nor to influence in favor of his/her credibility.

(2) *Means to facilitate the rendering of testimony.* The court may authorize the use in court of anatomically correct dolls, mannequins, common toys, drawings or other demonstrative means that it deems pertinent in order to help the minor to give his/her testimony.

By petition of the Prosecutor, of any of the persons listed in subsection (1) of this rule, or on its own initiative, the court shall give priority to the case in which a minor is called to testify, on its calendar as well as on the order of the day, to reduce the time that the minor shall be exposed to the process. If the court has to continue the proceedings on a subsequent date, it shall take into consideration the age of the minor and any adverse effect that such postponement could entail. The court shall make findings of fact and conclusions of law, in writing, when it opts to postpone the hearing of the case.

## **VIRGIN ISLANDS**

### **V.I. CODE ANN. tit. 34, § 203 (2009). Rights of victims and witnesses**

This section may be cited and shall be known as the "Victim's and Witness' Bill of Rights." To the extent reasonably possible and subject to available resources, victims and witnesses of crime are afforded the following rights where applicable:

(a) Victims and witnesses have a right to be treated with dignity and compassion. (1) A victim has a right to basic human services to meet emergency and long term needs caused by financial, physical, or psychological injury.

(2) A victim or witness has a right to be treated with dignity by human service professionals who provide basic assistance.

(3) A victim or witness has a right to receive courteous assistance as he cooperates with criminal justice personnel.

(b) Victims and witnesses have a right to protection from intimidation and harm. (1) A victim has the right to be free from intimidation when involved in the criminal justice system.

(2) When the threat of damaging intimidation cannot be avoided, law enforcement agencies shall take measures to protect the victim or witness, including, but not limited to, transportation to and from court and physical protection in the courtroom and adjoining facilities.

(3) The court shall provide the victim or witness waiting areas that are separate from those that will be used by the defendant, his family, or friends.

(4) If a witness is threatened, the prosecutor shall, to the extent reasonably possible, attempt to prosecute the person.

(c) Victims and witnesses have a right to be informed concerning the criminal justice process. Victims and witnesses who wish to receive notification and information must provide the Department of Justice or the United States Attorney, as applicable, with their current address and telephone numbers. The prosecutor who is prosecuting the case shall have the responsibility of ensuring that the rights listed in this subsection are promulgated and complied with, except subsection (c)(6) and (7) of this section which are the responsibility of the Bureau of Corrections.

(1) A victim or a witness has a right to be informed about the procedures and practices of the criminal justice system.

(2) A victim has a right to be informed of financial assistance and other social services available to victims and witnesses.

(3) A victim has a right to be informed of any compensation or fees to which he is entitled.

(4) A victim has a right to know the status and progress of his case from the police investigation to final disposition.

(5) A victim or prosecution witness has a right to be informed of a defendant's release on bail.

(6) A victim or prosecution witness has a right to be informed of post-sentence hearings affecting the probation or parole of the offender.

(7) A victim or prosecution witness has the right to be informed when the convicted offender receives a temporary, provisional, or final release from custody or the offender escapes from custody.

(8) Unless there is a judicial determination to restrict attendance, a victim or witness has the right to attend all hearings and procedures involving his case. A victim or witness has the right to be informed of all hearings and procedures in time to exercise his right to attend.

(9) A victim has the right to be informed of whatever rights to legal counsel are available to him in this Territory.

(10) A victim has the right to discuss his case with the prosecutor.

(11) A victim has a right to be informed of all available civil remedies respecting his case and to proceed in civil suits for recovery of damages if possible, including placing a lien on any profits received by the offender as a result of publication or media coverage resulting from the crime.

(12) A victim has the right to discuss his case with the prosecutor and to be informed of any offers to plea bargain with the defendant.

(13) A victim or prosecution witness has the right to be notified in advance when a court proceeding has been rescheduled or cancelled.

(14) A witness has a right to be informed of financial assistance, compensation, or fees to which he is entitled.

(d) Victims and witnesses have a right to reparations. (1) A victim or witness has the right to receive a reasonable witness fee plus reimbursement for necessary out-of-pocket expenses associated with lawfully observing a subpoena. The court shall determine the rate of reimbursement and reimburse all eligible persons in a timely manner.

(2) A victim, or his surviving dependents, has the right to receive financial compensation for physical or emotional injuries suffered as a result of being a victim of a violent, bodily crime. The eligibility and award will be determined by the Virgin Islands Criminal Victims Compensation Commission.

(3) A victim has the right to receive restitution for expenses or property loss incurred as a result of the crime. The judge shall order restitution at every sentencing for a crime against person or property, or as a condition of probation or parole, unless the court finds a substantial and compelling reason not to order restitution. The court shall diligently, fairly, and in a timely manner enforce all orders of restitution.

(e) Victims and witnesses have a right to preservation of property and employment.

(1) A victim or witness has the right to respond to a subpoena without fear of retaliation or loss of wages from his employer. Victims and witnesses must be provided, where appropriate, with employer and creditor intercession services by the prosecutor who:

(A) shall seek employer cooperation in minimizing an employee's loss of pay and other benefits resulting from his participation in the criminal justice process, and

(B) shall seek consideration from creditors if the victim is unable, temporarily, to continue payments.

(2) A victim has the right to have recovered or taken personal property returned as expeditiously as possible unless the property is contraband, property subject to evidentiary analysis, property the ownership of which is disputed, or the property is needed for law enforcement or prosecution purposes. The property must be returned by the court, the prosecutor, or law enforcement agencies using photographs of property as

evidence whenever possible.

(f) Victims and witnesses have a right to due process in criminal court proceedings. The court, the prosecutor and the defense shall recognize the rights due victims and witnesses and protect them as diligently as the defendant's rights.

(1) A victim has the right to participate in the criminal justice process directly or through representation.

(2) A victim or witness has the right to retain counsel with standing in court to represent him in cases involving the victim's reputation.

(3) A victim or witness has the right to a speedy disposition of the case so as to minimize the stress, cost and inconvenience resulting from his involvement in a prosecution.

(g) Victims and witnesses who are very young, elderly, who are handicapped, or who have special needs, have a right to special recognition and attention by all criminal justice, medical, and social service agencies. The court shall treat "special" witnesses sensitively, using closed or taped sessions when appropriate. The prosecutor or defense shall notify the court when a victim or witness deserves special consideration.

## **FEDERAL LEGISLATION**

### **18 USCS § 3509 (2009). Child victims' and child witnesses' rights**

(a) Definitions. For purposes of this section--

(1) the term "adult attendant" means an adult described in subsection (i) who accompanies a child throughout the judicial process for the purpose of providing emotional support;

(2) the term "child" means a person who is under the age of 18, who is or is alleged to be--

(A) a victim of a crime of physical abuse, sexual abuse, or exploitation; or

(B) a witness to a crime committed against another person;

(3) the term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(4) the term "physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(5) the term "mental injury" means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

(6) the term "exploitation" means child pornography or child prostitution;

(7) the term "multidisciplinary child abuse team" means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse;

(8) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(9) the term "sexually explicit conduct" means actual or simulated--

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals or pubic area of a person or animal; or

(E) sadistic or masochistic abuse;

(10) the term "sex crime" means an act of sexual abuse that is a criminal act;

(11) the term "negligent treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(12) the term "child abuse" does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(13) [Redesignated]

(b) Alternatives to live in-court testimony.

(1) Child's live testimony by 2-way closed circuit television.

(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, or a guardian ad litem appointed under subsection (h) may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed circuit television. The person seeking such an order shall apply for such an order at least 5 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(B) The court may order that the testimony of the child be taken by closed-circuit television as provided in subparagraph (A) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

(i) The child is unable to testify because of fear.

(ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.

(iii) The child suffers a mental or other infirmity.

(iv) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(C) The court shall support a ruling on the child's inability to testify with findings on

the record. In determining whether the impact on an individual child of one or more of the factors described in subparagraph (B) is so substantial as to justify an order under subparagraph (A), the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

(D) If the court orders the taking of testimony by television, the attorney for the Government and the attorney for the defendant not including an attorney pro se for a party shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are--

- (i) the child's attorney or guardian ad litem appointed under subsection (h);
- (ii) persons necessary to operate the closed-circuit television equipment;
- (iii) a judicial officer, appointed by the court; and

(iv) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

(2) Videotaped deposition of child.

(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under subsection (h) may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.

(B) (i) Upon timely receipt of an application described in subparagraph (A), the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

(I) The child will be unable to testify because of fear.

(II) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

(III) The child suffers a mental or other infirmity.

(IV) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(ii) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the court shall order that the child's deposition be taken and preserved by videotape.

(iii) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are--

(I) the attorney for the Government;

(II) the attorney for the defendant;

(III) the child's attorney or guardian ad litem appointed under subsection (h);

(IV) persons necessary to operate the videotape equipment;

(V) subject to clause (iv), the defendant; and

(VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

(iv) If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

(v) Handling of videotape. The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(C) If at the time of trial the court finds that the child is unable to testify as for a reason described in subparagraph (B)(i), the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

(D) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(E) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

(F) The videotape of a deposition taken under this paragraph shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

(c) Competency examinations.

(1) Effect of Federal Rules of Evidence. Nothing in this subsection shall be construed to abrogate rule 601 of the Federal Rules of Evidence.

(2) Presumption. A child is presumed to be competent.

(3) Requirement of written motion. A competency examination regarding a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.

(4) Requirement of compelling reasons. A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons

exist. A child's age alone is not a compelling reason.

(5) Persons permitted to be present. The only persons who may be permitted to be present at a competency examination are--

(A) the judge;

(B) the attorney for the Government;

(C) the attorney for the defendant;

(D) a court reporter; and

(E) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

(6) Not before jury. A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.

(7) Direct examination of child. Examination of a child related to competency shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant including a party acting as an attorney pro se. The court may permit an attorney but not a party acting as an attorney pro se to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

(8) Appropriate questions. The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

(9) Psychological and psychiatric examinations. Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

(d) Privacy protection.

(1) Confidentiality of information.

(A) A person acting in a capacity described in subparagraph (B) in connection with a criminal proceeding shall--

(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

(ii) disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

(B) Subparagraph (A) applies to--

(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the Government to provide assistance in the proceeding;

(ii) employees of the court;

(iii) the defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

(iv) members of the jury.

(2) Filing under seal. All papers to be filed in court that disclose the name of or any

other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court--

(A) the complete paper to be kept under seal; and

(B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

(3) Protective orders.

(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may--

(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

(ii) provide for any other measures that may be necessary to protect the privacy of the child.

(4) Disclosure of information. This subsection does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

(e) Closing the courtroom. When a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate. Such an order shall be narrowly tailored to serve the Government's specific compelling interest.

(f) Victim impact statement. In preparing the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. A guardian ad litem appointed under subsection (h) shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. A guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

(g) Use of multidisciplinary child abuse teams.

(1) In general. A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses,

and the court and the attorney for the Government shall consult with the multidisciplinary child abuse team as appropriate.

(2) Role of multidisciplinary child abuse teams. The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including--

(A) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

(B) telephone consultation services in emergencies and in other situations;

(C) medical evaluations related to abuse or neglect;

(D) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;

(E) expert medical, psychological, and related professional testimony;

(F) case service coordination and assistance, including the location of services available from public and private agencies in the community; and

(G) training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

(h) Guardian ad litem.

(1) In general. The court may appoint, and provide reasonable compensation and payment of expenses for, a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the court shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

(2) Duties of guardian ad litem. A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. (The extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives.) A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

(3) Immunities. A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties described in paragraph (2).

(i) Adult attendant. A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap

throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

(j) Speedy trial. In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

(k) Stay of civil action. If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

(l) Testimonial aids. The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

(m) Prohibition on reproduction of child pornography.

(1) In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title [18 USCS § 2256]) shall remain in the care, custody, and control of either the Government or the court.

(2) (A) Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title [18 USCS § 2256]), so long as the Government makes the property or material reasonably available to the defendant.

(B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

