

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 1: CRIMES AGAINST THE PERSON

§ 1318. Testimony of Children in Criminal Proceedings.

(a) In a criminal proceeding under this title involving the prosecution of an offense committed against a child under the age of 16, or witnessed by a child under the age of 16, the court

(1) may appoint a guardian ad litem for the child;

(2) on its own motion or on the motion of the party presenting the witness or on the motion of the guardian ad litem of the child, may order that testimony of the child be taken by closed circuit television or through one-way mirrors if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate.

(b) In making a determination under (a) (2) of this section, the court shall consider factors it considers relevant, including

(1) the child's chronological age;

(2) the child's level of development;

(3) the child's general physical health;

(4) any physical, emotional, or psychological injury experienced by the child; and

(5) the mental or emotional strain that will be caused by requiring the child to testify under normal courtroom procedures.

(c) If the court determines under (a) (2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, 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 defendant, the court, and the finder of fact in the proceeding. If the court authorized use of closed circuit televised testimony under this subsection,

(1) each of the following may be in the room with the child when the child testifies:

(A) the prosecuting attorney;

(B) the attorney for the defendant; and

(C) operators of the closed-circuit television equipment;

(2) the court may, in addition to persons specified in (1) of this subsection, admit a person whose presence, in the opinion of the court, contributes to the well-being of the child.

(d) When a child is to testify under (c) of this section, only the court and counsel may question the child. The persons operating the equipment shall do so in as unobtrusive a manner as possible. If the defendant requests, the court shall excuse the defendant from the courtroom, shall permit the defendant to attend in another location, and shall afford the defendant a means of viewing the child's testimony and of communicating with the defendant's attorney throughout the

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proceedings. Upon request of the defendant or the defendant's attorney, the court shall permit a recess to allow them to confer. The court shall provide a means of communicating with the attorneys during the questioning of the child. Objections made by the attorneys to questions of a child witness may be resolved in the courtroom if the court finds it necessary.

(e) If the court determines under (a) (2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, the court may authorize the use of one-way mirrors in conjunction with the taking of the child's testimony. The attorneys may pose questions to the child and have visual contact with the child during questioning, but the mirrors shall be placed to provide a physical shield so that the child does not have visual contact with the defendant and jurors.

(f) If the court does not find under (a) (2) of this section that the testimony by the child victim or witness under normal court procedures will result in the child's inability to effectively communicate, the court may, after taking into consideration the factors specified in (b) of this section, supervise the spatial arrangements of the courtroom and the location, movement, and deportment of all persons in attendance so as to safeguard the child from emotional harm or stress. In addition to other procedures if finds appropriate, the court may

- (1) allow the child to testify while sitting on the floor or on an appropriately sized chair;
- (2) schedule the procedure in a room that provides adequate privacy, freedom from distractions, informality, and comfort appropriate to the child's developmental age; and
- (3) order a recess when the energy, comfort, or attention span of the child warrants.

Source: PL 12-82, § 5 (1318).

Commission Comment: See comment to 6 CMC § 1301 regarding PL 12-82.