

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 242

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT;
2 AMENDING SECTION 9-1805, IDAHO CODE, TO PROVIDE THAT TESTIMONY SHALL
3 BE PRESENTED BY ALTERNATIVE METHOD FOR CERTAIN CHILD WITNESSES AND TO
4 PROVIDE THAT A CHILD'S REMOTE TESTIMONY SHALL BE ACCEPTED UNDER CERTAIN
5 CIRCUMSTANCES; AND AMENDING SECTION 9-1806, IDAHO CODE, TO PROVIDE THAT
6 TESTIMONY BY ALTERNATIVE METHOD SHALL BE ALLOWED FOR CERTAIN CHILD WIT-
7 NESSES.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 9-1805, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 9-1805. STANDARDS FOR DETERMINING WHETHER CHILD WITNESS'S TESTIMONY
13 MAY BE PRESENTED BY ALTERNATIVE METHOD. (1) In a criminal proceeding, the
14 presiding officer may order the presentation of the testimony of a child wit-
15 ness by an alternative method only in the following situations:

16 (a) For a child witness twelve (12) years of age or older, the child
17 witness's testimony may be taken otherwise than in an open forum in the
18 presence and full view of the finder of fact if the presiding officer
19 finds by clear and convincing evidence that the child would suffer seri-
20 ous emotional trauma that would substantially impair the child's abil-
21 ity to communicate with the finder of fact if required to testify in the
22 open forum. For a child witness younger than twelve (12) years of age,
23 the child witness's testimony shall be taken otherwise than in an open
24 forum in the presence and full view of the finder of fact if the child
25 would suffer serious emotional trauma that would substantially impair
26 the child's ability to communicate with the finder of fact if required
27 to testify in the open forum.

28 (b) For a child witness twelve (12) years of age or older, the child
29 witness's testimony may be taken other than in a face-to-face con-
30 frontation between the child and a defendant if the presiding officer
31 finds by clear and convincing evidence that the child would suffer
32 serious emotional trauma that would substantially impair the child's
33 ability to communicate with the finder of fact if required to be con-
34 fronted face-to-face by the defendant. For a child witness younger than
35 twelve (12) years of age, the child witness's testimony shall be taken
36 other than in a face-to-face confrontation between the child and a de-
37 fendant if the child would suffer serious emotional trauma that would
38 substantially impair the child's ability to communicate with the finder
39 of fact if required to be confronted face-to-face by the defendant.

40 (2) In a noncriminal proceeding, the presiding officer ~~may~~ shall order
41 the presentation of the testimony of a child witness by an alternative method
42 if ~~the presiding officer finds by a preponderance of the evidence that pre-~~

1 sending the testimony of the child by an alternative method is necessary to
 2 serve the best interests of the child or enable the child to communicate with
 3 the finder of fact. In making this a finding that presentation of testimony
 4 by an alternative method is necessary, the presiding officer shall consider:

- 5 (a) The nature of the proceeding;
- 6 (b) The age and maturity of the child;
- 7 (c) The relationship of the child to the parties in the proceeding;
- 8 (d) The nature and degree of emotional trauma that the child may suffer
 9 in testifying; and
- 10 (e) Any other relevant factor.

11 (3) Remote testimony by a child shall be accepted when requested by the
 12 parent or guardian of the child or by an attorney representing the child or
 13 the child's parent or guardian.

14 SECTION 2. That Section 9-1806, Idaho Code, be, and the same is hereby
 15 amended to read as follows:

16 9-1806. FACTORS FOR DETERMINING WHETHER TO PERMIT ALTERNATIVE
 17 METHOD. ~~If the presiding officer determines a determination is made that~~
 18 ~~a standard under section 9-1805, Idaho Code, has been met, the presiding~~
 19 ~~officer shall determine whether to allow the presentation of the testimony~~
 20 ~~of a child witness who is twelve (12) years of age or older by an alternative~~
 21 ~~method and in doing so shall consider:~~

- 22 (1) Alternative methods reasonably available;
- 23 (2) Available means for protecting the interests of or reducing emo-
 24 tional trauma to the child without resort to an alternative method;
- 25 (3) The nature of the case;
- 26 (4) The relative rights of the parties;
- 27 (5) The importance of the proposed testimony of the child;
- 28 (6) The nature and degree of emotional trauma that the child may suffer
 29 if an alternative method is not used; and
- 30 (7) Any other relevant factor.

31 If a determination is made that a standard under section 9-1805(1),
 32 Idaho Code, has been met, the presiding officer shall allow the presentation
 33 of the testimony of a child witness who is younger than twelve (12) years of
 34 age by an alternative method.