

# State of Wisconsin



1997 Assembly Bill 621

Date of enactment: **July 1, 1998**  
Date of publication\*: **July 15, 1998**

## 1997 WISCONSIN ACT 319

AN ACT *to amend* 967.04 (10); and *to create* 908.08 (5) (am) and 972.11 (2m) of the statutes; **relating to**: the testimony at trial of child witnesses in certain cases.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 908.08 (5) (am) of the statutes is created to read:

908.08 (5) (am) The testimony of a child under par. (a) may be taken in accordance with s. 972.11 (2m), if applicable.

**SECTION 2.** 967.04 (10) of the statutes is amended to read:

967.04 (10) If a court or hearing examiner admits a videotaped deposition into evidence under sub. (9), the child may not be called as a witness at the proceeding in which it was admitted unless the court or hearing examiner so orders upon a showing that additional testimony by the child is required in the interest of fairness for reasons neither known nor with reasonable diligence discoverable at the time of the deposition by the party seeking to call the child. The testimony of a child who is required to testify under this subsection may be taken in accordance with s. 972.11 (2m), if applicable.

**SECTION 3.** 972.11 (2m) of the statutes is created to read:

972.11 (2m) (a) At a trial in any criminal prosecution, the court may, on its own motion or on the motion of any party, order that the testimony of any child witness be taken in a room other than the courtroom and simultaneously

televised in the courtroom by means of closed-circuit audiovisual equipment if all of the following apply:

1. The court finds all of the following:

a. That the presence of the defendant during the taking of the child's testimony will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.

b. That taking the testimony of the child in a room other than the courtroom and simultaneously televising the testimony in the courtroom by means of closed-circuit audiovisual equipment is necessary to minimize the trauma to the child of testifying in the courtroom setting and to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

2. The trial in which the child may be called as a witness will commence:

a. Prior to the child's 12th birthday; or

b. Prior to the child's 16th birthday and, in addition to its finding under subd. 1., the court finds that the interests of justice warrant that the child's testimony be taken in a room other than the courtroom and simultaneously televised in the courtroom by means of closed-circuit audiovisual equipment.

(b) Among the factors which the court may consider in determining the interests of justice under par. (a) 2. b. are any of the following:

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

1. The child's chronological age, level of development and capacity to comprehend the significance of the events and to verbalize about them.

2. The child's general physical and mental health.

3. Whether the events about which the child will testify constituted criminal or antisocial conduct against the child or a person with whom the child had a close emotional relationship and, if the conduct constituted a battery or a sexual assault, its duration and the extent of physical or emotional injury thereby caused.

4. The child's custodial situation and the attitude of other household members to the events about which the child will testify and to the underlying proceeding.

5. The child's familial or emotional relationship to those involved in the underlying proceeding.

6. The child's behavior at or reaction to previous interviews concerning the events involved.

7. Whether the child blames himself or herself for the events involved or has ever been told by any person not to disclose them; whether the child's prior reports to associates or authorities of the events have been disbelieved or not acted upon; and the child's subjective belief regarding what consequences to himself or herself, or persons with whom the child has a close emotional relationship, will ensue from providing testimony.

8. Whether the child manifests or has manifested symptoms associated with posttraumatic stress disorder or other mental disorders, including, without limitation, reexperiencing the events, fear of their repetition, withdrawal, regression, guilt, anxiety, stress, nightmares, enuresis, lack of self-esteem, mood changes, compulsive behaviors, school problems, delinquent or antisocial behavior, phobias or changes in interpersonal relationships.

9. The number of separate investigative, administrative and judicial proceedings at which the child's testimony may be required.

(bm) If a court orders the testimony of a child to be taken under par. (a), the court shall do all of the following:

1. To the extent it is practical and subject to s. 972.10 (3), schedule the testimony on a date when the child's rec-

ollection is likely to be fresh and at a time of day when the child's energy and attention span are likely to be greatest.

2. Provide a room for the child to testify from that provides adequate privacy, freedom from distractions, informality and comfort appropriate to the child's developmental level.

3. Order a recess whenever the energy, comfort or attention span of the child or other circumstances so warrant.

4. Determine that the child understands that it is wrong to tell a lie and will testify truthfully if the child's developmental level or verbal skills are such that administration of an oath or affirmation in the usual form would be inappropriate.

5. Before questioning by the parties begins, attempt to place the child at ease, explain to the child the purpose of the testimony and identify all persons attending.

6. Supervise the spatial arrangements of the room and the location, movement and deportment of all persons in attendance.

7. Allow the child to testify while sitting on the floor, on a platform or on an appropriately sized chair, or while moving about the room within range of the visual and audio recording equipment.

8. Bar or terminate the attendance of any person whose behavior is disruptive or unduly stressful to the child.

(c) Only the following persons may be present in the room in which the child is giving testimony under par. (a):

1m. Any person necessary to operate the closed-circuit audiovisual equipment.

2m. The parents of the child, the guardian or legal custodian of the child or, if no parent, guardian or legal custodian is available or the legal custodian is an agency, one individual whose presence would contribute to the welfare and well-being of the child.

3m. One person designated by the attorney for the state and approved by the court and one person designated by either the defendant or the attorney for the defendant and approved by the court.