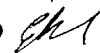



**MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN**  
**2007 (FIRST) Regular Session**

Bill No. 148(Ec)

Introduced by:

Ray Tenorio 

E. J. B. Calvo 

F. T. Ishizaki 

A. B. 

**AN ACT TO ADD NEW CHAPTERS 91 & 92 TO 8GCA  
RELATIVE TO CHILD WITNESS TESTIMONY BY  
ALTERNATIVE METHODS.**

JUN 22 PM 3:16  
LAW

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new Chapter 91 is hereby *added* to Title 8, Guam Code

3 Annotated to read:

4 **Chapter 91**

5 **CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT**

6 **§91101. Short Title.** This Act may be cited as the Uniform Child Witness Testimony  
7 by Alternative Methods Act.

8 **§91102. Definitions.** As used in this Chapter:

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

11 (A) having the child testify in person in an open forum;

12 (B) having the child testify in the presence and full view of the finder of fact and  
13 presiding officer; and

1 (C) allowing all of the parties to be present, to participate, and to view and be viewed  
2 by the child.

3 (2) "Child witness" means an individual under the age of Fifteen (15) who has been  
4 or will be called to testify in a proceeding.

5 (3) "Criminal proceeding" means a trial or hearing before a court in a prosecution of  
6 a person charged with violating a criminal law of Guam or a Family Court juvenile  
7 proceeding involving conduct that if engaged in by an adult would constitute a  
8 violation of a criminal law of Guam.

9 (4) "Noncriminal proceeding" means a trial or hearing before a court or an  
10 administrative agency of the Government of Guam having judicial or quasi-judicial  
11 powers, other than a criminal proceeding.

12 **§91103. Applicability.** This Chapter applies to the testimony of a child witness in a  
13 criminal or noncriminal proceeding. However, this Chapter does not preclude, in a  
14 noncriminal proceeding, any other procedure permitted by law for a child witness to  
15 testify involving conduct that if engaged in by an adult would constitute a violation  
16 of a criminal law of Guam, testimony by a child witness in a closed forum as  
17 provided for by 8GCA: Chapter 92.

18 **§91104. Hearing Whether To Allow Testimony By Alternative Method.**

19 (a) The judge in a criminal or noncriminal proceeding may order a hearing to  
20 determine whether to allow a child witness to testify by an alternative method. The  
21 judge, for good cause shown, shall order the hearing upon motion of a party, a child  
22 witness, or an individual determined by the judge to have sufficient standing to act  
23 on behalf of the child.

24 (b) A hearing to determine whether to allow a child witness to testify by an  
25 alternative method must be conducted on the record after reasonable notice to all

1 parties, any nonparty movant, and any other person the judge specifies. The child's  
2 presence is not required at the hearing unless ordered by the judge. In conducting the  
3 hearing, the judge is not bound by rules of evidence except the rules of privilege.

4  
5 **§91105. Standards For Determining Whether Child Witness May Testify By**  
6 **Alternative Method.**

7 (a) In a criminal proceeding, the judge may allow a child witness to testify by an  
8 alternative method only in the following situations:

9 (1) The child may testify otherwise than in an open forum in the presence and full  
10 view of the finder of fact if the judge finds by clear and convincing evidence that the  
11 child would suffer serious emotional trauma that would substantially impair the  
12 child's ability to communicate with the finder of fact if required to testify in the open  
13 forum.

14 (2) The child may testify other than face-to-face with the defendant if the judge finds  
15 by clear and convincing evidence that the child would suffer serious emotional  
16 trauma that would substantially impair the child's ability to communicate with the  
17 finder of fact if required to be confronted face-to-face by the defendant.

18 (b) In a noncriminal proceeding, the judge may allow a child witness to testify by an  
19 alternative method if the judge finds by a preponderance of the evidence that  
20 allowing the child to testify by an alternative method is necessary to serve the best  
21 interests of the child or enable the child to communicate with the finder of fact. In  
22 making this finding, the judge shall consider:

23 (1) the nature of the proceeding;

24 (2) the age and maturity of the child;

25 (3) the relationship of the child to the parties in the proceeding;

26 (4) the nature and degree of emotional trauma that the child may suffer in testifying;

27 and

1 (5) any other relevant factor.

2 **§91106. Factors For Determining Whether To Permit Alternative Method.** If the  
3 judge determines that a standard under §91105 of this Chapter has been met, the  
4 judge shall determine whether to allow a child witness to testify by an alternative  
5 method and in doing so shall consider:

6 (1) alternative methods reasonably available;

7 (2) available means for protecting the interests of or reducing emotional trauma to  
8 the child without resort to an alternative method;

9 (3) the nature of the case;

10 (4) the relative rights of the parties;

11 (5) the importance of the proposed testimony of the child;

12 (6) the nature and degree of emotional trauma that the child may suffer if an  
13 alternative method is not used; and

14 (7) any other relevant factor.

15

16 **§91107. Order Regarding Testimony By Alternative Method.**

17 (a) An order allowing or disallowing a child witness to testify by an alternative  
18 method must state the findings of fact and conclusions of law that support the judge's  
19 determination.

20 (b) An order allowing a child witness to testify by an alternative method must:

21 (1) state the method by which the child is to testify;

22 (2) list any individual or category of individuals allowed to be in, or required to be  
23 excluded from, the presence of the child during the testimony;

24 (3) state any special conditions necessary to facilitate a party's right to examine or  
25 cross-examine the child;

26 (4) state any condition or limitation upon the participation of individuals present  
27 during the testimony of the child;

1 (5) state any other condition necessary for taking or presenting the testimony.

2 (c) The alternative method ordered by the judge may be no more restrictive of the  
3 rights of the parties than is necessary under the circumstances to serve the purposes  
4 of the order.

5

6 **§91108. Right Of Party To Examine Child Witness.** An alternative method  
7 ordered by the judge must permit a full and fair opportunity for examination or cross-  
8 examination of the child witness by each party.

9

10 **§91109. Severability Clause.** If any provision of this Act or the application to any  
11 person or circumstance is held invalid, the invalidity does not affect other provisions  
12 or applications of this Act which can be given effect without the invalid provision or  
13 application, and to this end the provisions of this Act are severable.

14

15 **Section 2.** A new Chapter 92 is hereby *added* to Title 8, Guam Code  
16 Annotated to read:

17

18

## Chapter 92

19

### PRIVACY FOR VULNERABLE WITNESSES

20

21 **§92101. Exclusion Of Public From Trial For Sex Offenses Involving Minors**  
22 **Under Age Of Eighteen.** At the trial of a complaint or indictment for criminal  
23 sexual conduct, incest, carnal abuse or other crime involving sex, where a minor  
24 under eighteen (18) years of age is the person upon, with or against whom the crime  
25 is alleged to have been committed, or at the trial of a complaint or indictment for  
26 getting a woman with child out of wedlock, or for the non-support of a child born out

1 of wedlock, the judge *may* exclude the general public from the court room, admitting  
2 only such persons as may have a direct interest in the case.

3  
4 **§92102. Exclusion Of Public From Trial Of Criminal Proceeding Involving**  
5 **Husband And Wife.** The judge *may* exclude the general public from the court room  
6 during the trial of any criminal proceeding involving husband and wife.

7  
8 **§92103. Exclusion Of Public From Trial Involving Crime Of Incest, Child**  
9 **Pornography Or Criminal Sexual Conduct.** To protect the parties involved at a  
10 trial arising from a complaint or indictment for incest, child pornography or criminal  
11 sexual conduct, the judge *may* exclude all spectators from the courtroom in which  
12 such trial is being held, or from said courtroom during those portions of such trial  
13 when direct testimony is to be presented; provided, that either of the parties requests  
14 that all spectators be so excluded at the trial or portions thereof; and provided  
15 further, that the defendant in such trial by a written statement waives his right to a  
16 public trial for those portions from which spectators are so excluded.

17  
18 **§92104. Compelling Interest Must Justify Closure.** The court must determine, on  
19 a case-by-case basis, whether the Territory's legitimate concern for the victim's  
20 wellbeing necessitates closure of court proceedings as provided for in §92101,  
21 §92102 and §92103 of this Chapter. In accommodating the Territory's interest for  
22 closure of court proceedings, the court shall further determine if such  
23 accommodation requires the closure of all proceedings or only portions of the  
24 proceedings. The court *may*, in consideration of accommodating the Territory's  
25 interest for closure of court proceedings, deny access to the transcript, court  
26 personnel, or any other possible source that could provide an account of the victim's  
27 testimony during such time the order of closure was in effect. The court *may*, in

1 consideration of accommodating the Territory's interest for closure of court  
2 proceedings, deny access to victim's identity.

3

4 **Section 3.** A new Section 80.70 is hereby *added* to Chapter 80 of Title 8,  
5 Guam Code Annotated to read:

6 **§80.70. Expedited Trials Of Sex Crimes Involving Minor Children As Victims**  
7 **Or Witnesses; Continuance; Impact Statement.** In any criminal proceeding  
8 involving an alleged sex crime perpetrated upon a minor child, or in which a minor  
9 child is expected to testify as a witness to a sex crime, the court shall, in order to  
10 minimize stress on such child, take action to expedite trial and give precedence to the  
11 case over any other case; provided, however, that nothing in this section shall be  
12 construed to mean that trial shall be expedited if it is not in the best interests of the  
13 child.

14

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