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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1135

03/04/2013 Authored by Winkler; Cornish; Bly; Johnson, S.; Hortman and others
The bill was read for the first time and referred to the Committee on Judiciary Finance and Policy

1.1 A bill for an act
1.2 relating to witness testimony; providing for manner of child testimony; providing
1.3 for support person for child and certain adult witnesses; proposing coding for
1.4 new law in Minnesota Statutes, chapters 595; 631; repealing Minnesota Statutes
1.5 2012, section 631.046.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[595.065] CHILD WITNESS TESTIMONY.**

1.8 Subdivision 1. **Definitions.** For the purposes of this section, "child" means a person
1.9 under the age of 18.

1.10 Subd. 2. **Oath and reading of rights.** When a child is to testify in a proceeding,
1.11 the court shall:

1.12 (1) administer an oath to the child in a manner that allows the child to understand the
1.13 duty to tell the truth according to the child's developmental level; and

1.14 (2) explain to the child prior to the initiation of testimony that the child has the right to:

1.15 (i) notify the court during questioning if the child does not understand a question; and

1.16 (ii) have a question restated in a form that the child does understand.

1.17 Subd. 3. **Appropriate questioning and duration of testimony.** To ensure
1.18 that the testimony of the child is taken in a manner appropriate to the child's age and
1.19 developmental level, the court may:

1.20 (1) rephrase, or request the attorney to rephrase, a question asked of the child to
1.21 ensure the child understands the question and is able to answer that question completely; or

1.22 (2) set the time for testimony when the child is best able to understand the questions
1.23 and maintain sufficient attention and energy for testifying, including:

1.24 (i) limiting the duration of questioning by allowing for recesses during the child's
1.25 testimony;

- 2.1 (ii) limiting the timing of the child's testimony to the child's normal school hours;
 2.2 (iii) ordering a recess when necessary for the energy, comfort, or attention span
 2.3 of the child; or
 2.4 (iv) adjusting the layout of the courtroom.

2.5 Subd. 4. **Comfort item.** The court shall permit the child to have a comfort item
 2.6 in the child's possession while testifying, upon the request of the party calling the child
 2.7 witness, unless the court finds that granting the motion is likely to unfairly prejudice the
 2.8 trier of fact in evaluating the child's testimony.

2.9 Subd. 5. **Supportive person.** Notwithstanding any other law, a child witness may
 2.10 request to have in attendance or be accompanied by a parent, guardian, or other supportive
 2.11 person, whether or not the person is a witness in the case, during the testimony of the child.
 2.12 If the person so chosen is also a prosecuting witness, the party wishing to call the child
 2.13 witness shall present on noticed motion evidence that the presence of the supportive person
 2.14 is desired by the child and will be helpful to the child witness. The party may also present
 2.15 evidence on noticed motion that the close proximity of the supportive person is desired
 2.16 by the child and will be helpful to the child witness. The court shall grant the request
 2.17 unless information presented by another party or noticed by the court establishes that the
 2.18 presence or close proximity of the supportive person to the child during the testimony of
 2.19 the child witness would pose a substantial risk of influencing or affecting the content of
 2.20 the testimony. The supportive person who is present during the child's testimony may not:

- 2.21 (1) obscure the child from the view of the defendant or the trier of fact;
 2.22 (2) provide the child with an answer to any question asked of the child; or
 2.23 (3) assist or influence the testimony of the child.

2.24 Subd. 6. **Additional conditions and limitations.** In addition to the conditions and
 2.25 limitations in this section, the court may set any other condition or limitation on the taking
 2.26 of the testimony of a child that it finds just and appropriate, considering the interests of the
 2.27 child, the rights of the defendant, and any other relevant factors.

2.28 **EFFECTIVE DATE.** This section applies to all trials or testimonial proceedings
 2.29 commenced on or after August 1, 2013.

2.30 Sec. 2. **[631.047] PRESENCE OF SUPPORT PERSON FOR ADULT**
 2.31 **PROSECUTING WITNESS.**

2.32 Notwithstanding any other law, an adult witness for the prosecution in any case
 2.33 involving criminal sexual conduct as defined in sections 609.342, 609.343, 609.344,
 2.34 and 609.345, may choose to be accompanied by a supportive person, whether or not
 2.35 a witness, at the omnibus or other pretrial hearing. If the person so chosen is also a

3.1 prosecuting witness, the prosecution shall present on noticed motion evidence that the
3.2 person's attendance is both desired by the prosecuting witness for support and will be
3.3 helpful to the prosecuting witness. Upon that showing, the court shall grant the request
3.4 unless information presented by the defendant or noticed by the court establishes that the
3.5 support person's attendance during the testimony of the prosecuting witness would pose a
3.6 substantial risk of influencing or affecting the content of that testimony.

3.7 **EFFECTIVE DATE.** This section applies to all trials or testimonial proceedings
3.8 commenced on or after August 1, 2013.

3.9 Sec. 3. **REPEALER.**

3.10 Minnesota Statutes 2012, section 631.046, is repealed.

631.046 AUTHORIZING PRESENCE OF SUPPORT PERSON FOR MINOR PROSECUTING WITNESS.

Subdivision 1. **Child abuse and violent crime cases.** Notwithstanding any other law, a prosecuting witness under 18 years of age in a case involving child abuse as defined in section 630.36, subdivision 2, a crime of violence, as defined in section 624.712, subdivision 5, or an assault under section 609.224 or 609.2242, may choose to have in attendance or be accompanied by a parent, guardian, or other supportive person, whether or not a witness, at the omnibus hearing or at the trial, during testimony of the prosecuting witness. If the person so chosen is also a prosecuting witness, the prosecution shall present on noticed motion, evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony.

Subd. 2. **Other cases.** Notwithstanding any other law, a prosecuting witness in any case involving criminal sexual conduct as defined in sections 609.342, 609.343, 609.344, and 609.345 may choose to be accompanied by a supportive person, whether or not a witness, at the omnibus or other pretrial hearing. If the supportive person is also a witness, the prosecution and the court shall follow the motion procedure outlined in subdivision 1 to determine whether or not the supportive person's presence will be permitted.