

ALBUQUERQUE DIVORCE LAWYER BLOG

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New Mexico Legislative Update: Protection of Child Witnesses

When a divorce with children and a child custody or time-sharing dispute, cannot be settled between the parties, the presiding court, which in New Mexico is most often the district court in the area or county where the children live, may need to have one or more hearings in order to determine what sort of custody arrangement is in the best interest of the children. Once it has been determined that a hearing is necessary, a common question becomes whether or not the parties' children should be called to testify at a family law hearing.

During the 2011 session, the New Mexico legislature passed, and the governor signed, House Bill 196, which provides for the creation of the Uniform Child Witness Protective Measures Act. This new act applies to both criminal and non-criminal judicial proceedings, which includes family hearings, and gives judges the power to allow children testify by an alternative means, rather than by actually testifying at a hearing subject to cross examination by each party's counsel.

The alternative methods allowed by the Act can include testimony by closed-circuit television, deposition, testimony in a closed forum. In determining when alternative method testimony is appropriate in a non-criminal hearing, the court will determine a variety of factors, including the age and maturity of the child, the potential emotional harm posed to the child by testifying and the nature of the proceedings before the court.

Several judicial districts throughout New Mexico already have procedures in place that limit how and when a child's testimony is presented to the court. However, this new Act may change how and when those procedures are used. In a hotly contested custody battle, it is essential to have counsel familiar with the rules governing the testimony of children in order to ensure that any such testimony is reliable and properly used.

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