

AN ACT

To amend sections 109.54, 2151.3511, 2907.41, 2937.11, and 2945.49 and to amend, for the purpose of adopting a new section number as indicated in parentheses, section 2907.41 (2945.481) of the Revised Code to expand the list of offenses for which a criminal or juvenile court may admit videotaped testimony of a child victim of the offense or order the child victim's testimony taken outside the courtroom and televised into or videotaped for replay in the courtroom and to permit the procedures to be used when the victim is under 13 years of age.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 109.54, 2151.3511, 2907.41, 2937.11, and 2945.49 be amended and section 2907.41 (2945.481) of the Revised Code be amended for the purpose of adopting a new section number as indicated in parentheses to read as follows:

Sec. 109.54. (A) The bureau of criminal identification and investigation may investigate any criminal activity in this state that is of statewide or intercounty concern when requested by local authorities and may aid federal authorities, when requested, in their investigation of any criminal activity in this state. The bureau may investigate any criminal activity in this state involving drug abuse or illegal drug distribution prohibited under Chapter 3719. or 4729. of the Revised Code. The superintendent and any agent of the bureau may participate, as the director of an organized crime task force established under section 177.02 of the Revised Code or as a member of the investigatory staff of a task force established under that section ~~of that nature~~, in an investigation of organized criminal activity anywhere within this state under sections 177.01 to 177.03 of the Revised Code.

(B) The bureau may provide any trained investigative personnel and specialized equipment that are requested by any sheriff or chief of police, by the authorized designee of any sheriff or chief of police, or by any other

authorized law enforcement officer to aid and assist the officer in the investigation and solution of any crime or the control of any criminal activity occurring within the officer's jurisdiction. This assistance shall be furnished by the bureau without disturbing or impairing any of the existing law enforcement authority or the prerogatives of local law enforcement authorities or officers. Investigators provided pursuant to this section, or engaged in an investigation pursuant to section 109.83 of the Revised Code, may go armed in the same manner as sheriffs and regularly appointed police officers under section 2923.12 of the Revised Code.

(C)(1) The bureau shall obtain recording equipment that can be used to record depositions of the type described in division (A) of section 2151.3511 and division (A) of section ~~2907.41~~ 2945.481 of the Revised Code, or testimony of the type described in division (D) of section 2151.3511 and division (D) of section ~~2907.41~~ 2945.481 or in division (C) of section 2937.11 of the Revised Code, shall obtain closed circuit equipment that can be used to televise testimony of the type described in division (C) of section 2151.3511 and division (C) of section ~~2907.41~~ 2945.481 or in division (B) of section 2937.11 of the Revised Code, and shall provide the equipment, upon request, to any court for use in recording any deposition or testimony of one of those types or in televising the testimony in accordance with the applicable division.

(2) The bureau shall obtain the names, addresses, and telephone numbers of persons who are experienced in questioning children in relation to an investigation of a violation of section 2905.03, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, or 2907.323, or division (B)(5) of section 2919.22 of the Revised Code or an offense of violence and shall maintain a list of those names, addresses, and telephone numbers. The list shall include a classification of the names, addresses, and telephone numbers by appellate district. Upon request, the bureau shall provide any county sheriff, chief of police, prosecuting attorney, village solicitor, city director of law, or similar chief legal officer with the name, address, and telephone number of any person contained in the list.

Sec. 2151.3511. (A)(1) As used in this section, "victim" includes any of the following persons:

(a) A person who was a victim of a violation identified in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult;

(b) A person against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (A)(2) of this section

or an act that would be an offense of violence if committed by an adult.

(2) In any proceeding in juvenile court involving a complaint in which a child is charged with a violation of section 2905.03, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, or 2907.323, or division (B)(5) of section 2919.22 of the Revised Code or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or act was a child who was ~~under eleven~~ less than thirteen years of age when the complaint was filed, the juvenile judge, upon motion of an attorney for the prosecution, shall order that the testimony of the child victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (A)~~(2)~~(3) of this section. The judge shall notify the child victim whose deposition is to be taken, the prosecution, and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition, ~~which~~. The notice shall identify the child victim who is to be examined; and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall have the right, as at an adjudication hearing, to full examination and cross-examination of the child victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the juvenile court in which the action is pending and is admissible in the manner described in division (B) of this section. If a deposition of a child victim taken under this division is admitted as evidence at the proceeding under division (B) of this section, the child victim shall not be required to testify in person at the proceeding. However, at any time before the conclusion of the proceeding, the attorney for the child charged with the violation or act may file a motion with the judge requesting that another deposition of the child victim be taken because new evidence material to the defense of the child charged has been discovered that the attorney for the child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Any ~~such~~ requesting another deposition shall be accompanied by supporting affidavits. Upon the filing of ~~such a~~ the motion and affidavits, the court may order that additional

testimony of the child victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division; if the admitted deposition was a videotaped deposition taken in accordance with division (A)(~~2~~)(3) of this section, the new deposition also shall be videotaped in accordance with that division, and, in other cases, the new deposition may be videotaped in accordance with that division.

(~~2~~)(3) If the prosecution requests that a deposition to be taken under division (A)(~~1~~)(2) of this section be videotaped, the juvenile judge shall order that the deposition be videotaped in accordance with this division. If a juvenile judge issues ~~such~~ an order to video tape the deposition, the judge shall exclude from the room in which the deposition is to be taken every person except the child victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the child who is charged with the violation or act, any person needed to operate the equipment to be used, one person chosen by the child victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the child victim giving the deposition. The person chosen by the child victim shall not ~~himself or herself~~ be a witness in the proceeding; and, both before and during the deposition, shall not discuss the testimony of the child victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror so that ~~any such~~ the person operating the recording equipment can see and hear, but cannot be seen or heard by, the child victim giving the deposition during the deposition. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the deposition on a monitor ~~and~~, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, ~~but~~ and shall be restricted to a location ~~that is such that~~ from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the deposition, except on a monitor provided for that purpose. The child victim giving the deposition shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides ~~in such a manner~~ by

c means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each ~~such~~ person in that room, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (A)~~(1)~~(2) of this section and is admissible in the manner described in this division and division (B) of this section, and, if ~~such a videotaped~~ deposition that is videotaped under this division is admitted as evidence at the proceeding, the child victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (B) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the child who is charged with the violation or act are afforded an opportunity to view the recording before it is shown in the proceeding.

(B)(1) At any proceeding in relation to which a deposition was taken under division (A) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; if the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; if the child victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or if both of the following apply:

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the child victim who gave the testimony in the deposition were to testify in person at the proceeding, the child victim would experience serious emotional trauma as a result of ~~his~~ the child victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (B) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (A) and (B) of this section are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding; and do not limit the admissibility under any ~~such~~ of those other provisions of any deposition taken under division (A) of this section or otherwise taken.

(C) In any proceeding in juvenile court involving a complaint in which a child is charged with a violation listed in division (A)~~(1)~~(2) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a child who was ~~under eleven~~ less than thirteen years of age when the complaint was filed, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the child victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file ~~such~~ a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue ~~such an~~ the order; upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (E) of this section. If a juvenile judge issues ~~such~~ an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)~~(2)~~(3) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (A)~~(2)~~(3) of

this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(2)(3) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor ~~and~~ shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, ~~but~~ and shall be restricted to a location ~~that is such that~~ from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act.

(D) In any proceeding in juvenile court involving a complaint in which a child is charged with a violation listed in division (A)(4)(2) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a child who was ~~under eleven~~ less than thirteen years of age when the complaint was filed, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the child victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the child who is charged with the violation or act, and any other persons who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file ~~such~~ a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue ~~such an~~ the order; upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (E) of this section. If a juvenile judge issues ~~such~~ an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(2)(3) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(2)(3) of this section. The child who is charged with the violation or act

shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor ~~and~~, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, ~~but and~~ shall be restricted to a location ~~that is such that~~ from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (A)~~(2)~~(3)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(E) For purposes of divisions (C) and (D) of this section, a juvenile judge may order the testimony of a child victim to be taken outside of the room in which a proceeding is being conducted if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following circumstances:

(1) The persistent refusal of the child victim to testify despite judicial requests to do so;

(2) The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

(F)(1) If a juvenile judge issues an order pursuant to division (C) or (D) of this section that requires the testimony of a child victim in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the child victim to whose testimony it applies, the order applies only during the testimony of the specified child victim, and the child victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (A)~~(2)~~(3) of this section or a proceeding under division (C) or (D) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code.

(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under divisions (A) and (B) of this section, the videotaping of a deposition under division (A)~~(2)~~(3) of this section, or the

taking of testimony outside of the room in which a proceeding is being conducted under division (C) or (D) of this section, shall enter the determination and findings on the record in the proceeding.

Sec. 2937.11. (A)(1) As used in this section, "victim" includes any person who was a victim of a felony violation identified in division (B) of this section or a felony offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a felony violation identified in division (B) of this section or a felony offense of violence.

(2) At the preliminary hearing set pursuant to section 2937.10 of the Revised Code and the Criminal Rules, the prosecutor may state, but is not required to state, orally the case for the state and shall then proceed to examine witnesses and introduce exhibits for the state. The accused and the magistrate have full right of cross examination, and the accused has the right of inspection of exhibits prior to their introduction. The hearing shall be conducted under the rules of evidence prevailing in criminal trials generally. On motion of either the state or the accused, witnesses shall be separated and not permitted in the hearing room except when called to testify.

(B) In a case involving an alleged felony violation of section 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, or 2907.323, or division (B)(5) of section 2919.22 of the Revised Code or an alleged felony offense of violence and in which an alleged victim of the alleged violation or offense was under eleven less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, upon motion of the prosecution, the testimony of the child victim at the preliminary hearing may be taken in a room other than the room in which the preliminary hearing is being conducted and be televised, by closed circuit equipment, into the room in which the preliminary hearing is being conducted, in accordance with division (C) of section ~~2907.41~~ 2945.481 of the Revised Code.

(C) In a case involving an alleged felony violation ~~of section 2907.02, 2907.03, 2907.04, or 2907.05 of the Revised Code~~ listed in division (B) of this section or an alleged felony offense of violence and in which an alleged victim of the alleged violation or offense was under eleven less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, the court, on written motion of the prosecutor in the case filed at least three days prior to the hearing, shall order that all testimony of the child victim be recorded and preserved on videotape, in addition to being recorded for purposes of the transcript of the proceeding. If such an order is issued, it shall specifically identify the child victim concerning whose testimony it pertains, apply only during the testimony of the child victim it

specifically identifies, and apply to all testimony of the child victim presented at the hearing, regardless of whether the child victim is called as a witness by the prosecution or by the defense.

Sec. ~~2907.41~~ 2945.481. (A)(1) as used in this section, "victim" includes any person who was a victim of a violation identified in division (A)(2) of this section or an offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (a)(2) of this section or an offense of violence.

(2) In any proceeding in the prosecution of a charge of a violation of section ~~2905.03, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, or 2907.323, or division (B)(5) of section 2919.22~~ of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a child who was ~~under eleven~~ less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the judge of the court in which the prosecution is being conducted, upon motion of an attorney for the prosecution, shall order that the testimony of the child victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (A)~~(2)~~(3) of this section. The judge shall notify the child victim whose deposition is to be taken, the prosecution, and the defense of the date, time, and place for taking the deposition, ~~which. The~~ notice shall identify the child victim who is to be examined, and shall indicate whether a request that the deposition be videotaped has been made. The defendant shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the defense. The prosecution and the attorney for the defense shall have the right, as at trial, to full examination and cross-examination of the child victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the court in which the action is pending and is admissible in the manner described in division (B) of this section. If a deposition of a child victim taken under this division is admitted as evidence at the proceeding under division (B) of this section, the child victim shall not be required to testify in person at the proceeding. However, at any time before the conclusion of the proceeding, the attorney for the defense may file a motion with the judge requesting that another deposition of the child victim be taken because new evidence material to the defense has been

discovered that the attorney for the defense could not with reasonable diligence have discovered prior to the taking of the admitted deposition. ~~Any such~~ A motion for another deposition shall be accompanied by supporting affidavits. Upon the filing of ~~such~~ a motion for another deposition and affidavits, the court may order that additional testimony of the child victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division; if the admitted deposition was a videotaped deposition taken in accordance with division (A)~~(2)~~(3) of this section, the new deposition also shall be videotaped in accordance with that division and in other cases, the new deposition may be videotaped in accordance with that division.

~~(2)~~(3) If the prosecution requests that a deposition to be taken under division (A)~~(1)~~(2) of this section be videotaped, the judge shall order that the deposition be videotaped in accordance with this division. If a judge issues ~~such~~ an order that the deposition be videotaped, the judge shall exclude from the room in which the deposition is to be taken every person except the child victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the defense, any person needed to operate the equipment to be used, one person chosen by the child victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the child victim giving the deposition. The person chosen by the child victim shall not ~~himself or herself~~ be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the child victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror, so that ~~any such~~ the person operating the recording equipment can see and hear, but cannot be seen or heard by, the child victim giving the deposition during the deposition. The defendant shall be permitted to observe and hear the testimony of the child victim giving the deposition on a monitor ~~and~~, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony ~~but, and~~ shall be restricted to a location ~~that is such that~~ from which the defendant cannot be seen or heard by the child victim giving the deposition, except on a monitor provided for that purpose. The child victim giving the deposition shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant. The judge, at the judge's discretion, may preside at the deposition

by electronic means from outside the room in which the deposition is to be taken; if the judge presides ~~in such a manner~~ by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (A)~~(1)~~(2) of this section and is admissible in the manner described in this division and division (B) of this section, and, if ~~such a videotaped~~ such a videotaped deposition that is videotaped under this division is admitted as evidence at the proceeding, the child victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (B) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means;

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding;

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified;

(d) Both the prosecution and the defendant are afforded an opportunity to view the recording before it is shown in the proceeding.

(B)(1) At any proceeding in a prosecution in relation to which a deposition was taken under division (A) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; if the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; if the child victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or if both of the following apply:

(a) The defendant had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or

edirect examination;

(b) The judge determines that there is reasonable cause to believe that, if the child victim who gave the testimony in the deposition were to testify in person at the proceeding, the child victim would experience serious emotional trauma as a result of ~~his~~ the child victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (B) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (A) and (B) of this section are in addition to any other provisions of the Revised Code, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a criminal proceeding and do not limit the admissibility under any ~~such~~ of those other provisions of any deposition taken under division (A) of this section or otherwise taken.

(C) In any proceeding in the prosecution of any charge of a violation listed in division (A)~~(1)~~(2) of this section or an offense of violence and in which an alleged victim of the violation or offense was a child who was ~~under eleven~~ less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the prosecution may file a motion with the judge requesting the judge to order the testimony of the child victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the jury, if applicable, the defendant, and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file ~~such~~ a motion under this division at least seven days before the date of the proceeding. The judge may issue ~~such~~ an the order; upon the motion of the prosecution filed under this section, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant, for one or more of the reasons set forth in division (E) of this section. If a judge issues ~~such~~ an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)~~(2)~~(3) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (A)~~(2)~~(3) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from

the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(2)(3) of this section. The defendant shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor ~~and~~, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony ~~but, and~~ shall be restricted to a location ~~that is such that~~ from which the defendant cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant.

(D) In any proceeding in the prosecution of any charge of a violation listed in division (A)(1)(2) of this section or an offense of violence and in which an alleged victim of the violation or offense was a child who was ~~under eleven~~ less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the prosecution may file a motion with the judge requesting the judge to order the testimony of the child victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the jury, if applicable, the defendant, and any other persons who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file ~~such~~ a motion under this division at least seven days before the date of the proceeding. The judge may issue ~~such an~~ the order; upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant, for one or more of the reasons set forth in division (E) of this section. If a judge issues ~~such~~ an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(2)(3) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(2)(3) of this section. The defendant shall be permitted to observe and hear the testimony of the child victim who is giving the testimony on a monitor ~~and~~, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony ~~but, and~~ shall be restricted to a location ~~that is such that~~ from which the defendant cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim

giving the testimony shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (A)~~(2)(3)~~(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(E) For purposes of divisions (C) and (D) of this section, a judge may order the testimony of a child victim to be taken outside the room in which the proceeding is being conducted if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the defendant due to one or more of the following:

(1) The persistent refusal of the child victim to testify despite judicial requests to do so;

(2) The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

(F)(1) If a judge issues an order pursuant to division (C) or (D) of this section that requires the testimony of a child victim in a criminal proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the child victim to whose testimony it applies, the order applies only during the testimony of the specified child victim, and the child victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order.

(2) A judge who makes any determination regarding the admissibility of a deposition under divisions (A) and (B) of this section, the videotaping of a deposition under division (A)~~(2)(3)~~ of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (C) or (D) of this section, shall enter the determination and findings on the record in the proceeding.

Sec. 2945.49. (A)(1) As used in this section, "victim" includes any person who was a victim of a felony violation identified in division (B)(1) of this section or a felony offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a felony violation identified in division (B)(1) of this section or a felony offense of violence.

(2) Testimony taken at an examination or a preliminary hearing at which the defendant is present, or at a former trial of the cause, or taken by deposition at the instance of the defendant or the state, may be used whenever the witness giving the testimony dies or cannot for any reason be produced at the trial or whenever the witness has, since giving that

ony, become incapacitated to testify. If the former testimony is contained within an authenticated transcript of the testimony, it shall be proven by the transcript, otherwise by other testimony.

(B)(1) At a trial on a charge of a felony violation of section 2905.05, 2907.02, 2907.03, 2907.04, ~~or~~ 2907.05, 2907.21, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, or 2919.22 of the Revised Code or a felony offense of violence and in which ~~the~~ an alleged victim of the alleged violation or offense was under eleven less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, the court, upon motion of the prosecutor in the case, may admit videotaped preliminary hearing testimony of the child victim as evidence at the trial, in lieu of the child victim appearing as a witness and testifying at the trial, if all of the following apply:

(a) The videotape of the testimony was made at the preliminary hearing at which probable cause of the violation charged was found;

(b) The videotape of the testimony was made in accordance with division (C) of section 2937.11 of the Revised Code;

(c) The testimony in the videotape is not excluded by the hearsay rule and otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801, if the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803, if the child victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule, or if both of the following apply:

(i) The accused had an opportunity and similar motive at the preliminary hearing to develop the testimony of the child victim by direct, cross, or redirect examination;

(ii) The court determines that there is reasonable cause to believe that if the child victim who gave the testimony at the preliminary hearing were to testify in person at the trial, the child victim would experience serious emotional trauma as a result of the child victim's participation at the trial.

(2) If a child victim of an alleged felony violation of section 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, ~~2907.06,~~ 2907.21, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, ~~or~~ 2907.323, or ~~division (B)(5) of section~~ 2919.22 of the Revised Code or an alleged felony offense of violence testifies at the preliminary hearing in the case, if the testimony of the child victim at the preliminary hearing was videotaped pursuant to division (C) of section 2937.11 of the Revised Code, and if the defendant in the case files a written objection to the use, pursuant to division (B)(1) of this section, of the

videotaped testimony at the trial, the court, immediately after the filing of the objection, shall hold a hearing to determine whether the videotaped testimony of the child victim should be admissible at trial under division (B)(1) of this section and, if it is admissible, whether the child victim should be required to provide limited additional testimony of the type described in this division. At the hearing held pursuant to this division, the defendant and the prosecutor in the case may present any evidence that is relevant to the issues to be determined at the hearing, but the child victim shall not be required to testify at the hearing.

After the hearing, the court shall not require the child victim to testify at the trial, unless it determines that both of the following apply:

(a) That the testimony of the child victim at trial is necessary for one or more of the following reasons:

(i) Evidence that was not available at the time of the testimony of the child victim at the preliminary hearing has been discovered;

(ii) The circumstances surrounding the case have changed sufficiently to necessitate that the child victim testify at the trial.

(b) That the testimony of the child victim at the trial is necessary to protect the right of the defendant to a fair trial.

The court shall enter its finding and the reasons for it in the journal. If the court requires the child victim to testify at the trial, the testimony of the victim shall be limited to the new evidence and changed circumstances, and the child victim shall not otherwise be required to testify at the trial. The required testimony of the child victim may be given in person or, upon motion of the prosecution, may be taken by deposition in accordance with division (A) of section ~~2907.41~~ 2945.481 of the Revised Code provided the deposition is admitted as evidence under division (B) of that section, may be taken outside of the courtroom and televised into the courtroom in accordance with division (C) of that section, or may be taken outside of the courtroom and recorded for showing in the courtroom in accordance with division (D) of that section.

(3) If videotaped testimony of a child victim is admitted at trial in accordance with division (B)(1) of this section, the child victim shall not be compelled in any way to appear as a witness at the trial, except as provided in division (B)(2) of this section.

(C) An order issued pursuant to division (B) of this section shall specifically identify the child victim concerning whose testimony it pertains. The order shall apply only during the testimony of the child victim it specifically identifies.

(D) As used in this section, "prosecutor" has the same meaning as in

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section 2935.01 of the Revised Code.

SECTION 2. That existing sections 109.54, 2151.3511, 2907.41, 2937.11, and 2945.49 of the Revised Code are hereby repealed.

SECTION 3. Section 109.54 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 445 and Sub. H.B. 480 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____