

D R A F T
FOR DISCUSSION ONLY

Judicial Interview of Children Act

Uniform Law Commission

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Judicial Interview of Children Act

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Judicial Interview of Children Act

Prefatory Note

Existing laws in many states permit judges in certain private civil proceedings to interview children outside of open court to ascertain the child's views. The laws in most states, however, do not provide a comprehensive framework for conducting judicial interviews of children. In 1973, the Uniform Law Commission took the position that judicial interviews should be recorded, that courts had discretion to permit attorneys to attend, and that the recording should become part of the record in the case. See Uniform (Model) Marriage & Divorce Act, Sec. 404. This act moves beyond that cursory approach to provide procedures and standards relating to such interviews in proceedings regarding child custody, visitation, parenting time, relocation, other custodial rights, and some other ancillary private matters. This act uses the term "covered proceeding" to encompass the various civil proceedings in the family law domain in which children's views are relevant.

The act balances two compelling, but sometimes competing, interests: protecting a child when that child's views are elicited by a judicial officer and protecting the due process rights of the parties. When a court is conducting a judicial interview, the court must assess the child's maturity and ability to communicate and express views free of parental influence. The relatively free-ranging conversation that may result from a judicial interview means that contested factual information may surface during that interview. Accordingly, this act includes provisions that ensure that a party's due process rights are respected when a child communicates information that impacts a party's fundamental rights. It recognizes that parties have the right to know the information from an interview that the judicial officer may rely on in reaching a decision. It also ensures that when a child communicates information that may have a direct impact on the outcome of the proceeding, the parties have the opportunity to respond.

Judicial officers retain discretion to use other means of eliciting a child's views in a covered proceeding. For instance, a judicial officer may authorize the use of a forensic expert who evaluates the child or the child's family, testimony by a guardian ad litem or other child representative, or direct testimony by a child in court. Regarding a child's testimony in court, this act may operate alongside the Model Child Witness Testimony by Alternative Methods Act (MCWTAMA), but this act distinguishes judicial interviews from sworn testimony by a child in court. In judicial interviews, the child is not a fact witness and is not placed under oath.

Courts faced with international disputes in the child custody realm may use judicial interviews as an important step in their decision-making. In proceedings under the International Child Abduction Remedies Act (22 U.S.C. Section 9001, et. seq. [as amended]), implementing the Convention on the Civil Aspects of International Child Abduction, concluded at The Hague on October 25, 1980 (Hague Abduction Convention), state and federal courts in the United States frequently conduct interviews in assessing a child's objection to return to a foreign jurisdiction. This act applies to such proceedings when conducted in state court.

In addition, the 2013 conditional amendments to the Uniform Child Custody Jurisdiction and Enforcement Act were drafted to implement the custody jurisdiction and enforcement

1 provisions of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and
2 Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children,
3 concluded at The Hague on October 19, 1996 (Hague Child Protection Convention). Although
4 not yet ratified by the United States, the Hague Child Protection Convention has been widely
5 adopted in Europe and Latin America. In addressing various aspects of child protection, the
6 Hague Child Protection Convention provides for the recognition and enforcement of custody
7 orders or measures of protection of other Contracting States. One of the inquiries relevant to
8 recognition and enforcement of a custody order under the Hague Child Protection Convention
9 (art. 23) is whether the child had an opportunity to be heard in the original proceeding, with
10 some exceptions. Judicial interviews under this act provide the child with an effective
11 opportunity to be heard and thus should support enforcement and recognition of state court
12 custody decrees outside the United States.

13
14 This act expressly excludes from its scope proceedings under a state's child welfare
15 statutes because the rights of the parties and the child in those proceedings are defined by a
16 comprehensive framework of federal and state law. While this act may be a helpful resource for
17 judges when conducting judicial interviews in those cases, it is not designed to accommodate the
18 unique legal framework currently applicable to the child welfare context.

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This [act] may be cited as the Judicial Interview of Children Act.

The title is intended to clarify that the interviewer is a judicial officer in a legal proceeding and the interviewee is a subject child of that legal proceeding. The word “interview” is used to contrast with other processes through which a child’s views may be shared with a judicial officer. This act applies only to a judicial interview, which is distinct from testimony by a child in a court.

Section 2. Definitions

(1) “Child” means an unemancipated individual who is under [18] years of age or an adult who, because of physical or mental incapacity, is the subject of a covered proceeding.

(2) “[Child’s attorney]” means an attorney who provides legal representation for a child in a covered proceeding.

(3) “Court” means a tribunal authorized under other law to adjudicate a covered proceeding.

(4) “Covered proceeding” means a civil judicial proceeding relating to a child to determine any of the following:

- (A) legal or physical custody;
- (B) parenting time or visitation;
- (C) relocation;
- (D) nonparent custody or visitation;
- (E) private adoption;

1 (F) guardianship; or

2 (G) another matter involving custodial responsibility.

3 The term includes a proceeding under the International Child Abduction Remedies Act, 22
4 U.S.C. Section 9001, et seq.[, as amended].

5 (5) “[Guardian ad litem]” means an individual who:

6 (A) is appointed by the court to represent a child’s best interest in a
7 covered proceeding; and

8 (B) does not provide legal representation for the child.

9 (6) “Interview record” means a record of a judicial interview.

10 (7) “Judicial interview” means communication not under oath or affirmation
11 between a child and a judicial officer in a covered proceeding through which the judicial officer
12 elicits the child’s views as permitted under other law.

13 (8) “Judicial officer” means a judge, magistrate, hearing officer, or other
14 individual who is authorized by other law to:

15 (A) conduct a covered proceeding and make or recommend a final
16 decision in the proceeding; and

17 (B) conduct a judicial interview.

18 (9) “Party” means a litigant with a direct interest subject to adjudication in the
19 covered proceeding. The term does not include a child who is the subject of the proceeding.

20 (10) “Person” means an individual, estate, business or nonprofit entity, public
21 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
22 entity.

23 (11) “Record” means information:

1 (A) inscribed on a tangible medium; or

2 (B) stored in an electronic or other medium and retrievable in perceivable
3 form.

4 (12) “State” means a state of the United States, the District of Columbia, Puerto
5 Rico, the United States Virgin Islands, or any other territory or possession subject to the
6 jurisdiction of the United States. The term includes a federally recognized Indian tribe.

7 (13) “Testimony” means evidence provided by a witness under oath or
8 affirmation.

9 (14) “Views” means wishes, preferences, or perspectives. The term includes a
10 child’s objection to being returned in a proceeding under the International Child Abduction
11 Remedies Act, 22 U.S.C. Section 9001, et seq.[, as amended].

12 **Legislative Note:** *In paragraph (2) and throughout the act, a state should insert the appropriate*
13 *term for a “child’s attorney” used in the state.*

14
15 *It is the intent of the act to incorporate future amendments to the federal law cited in paragraph*
16 *(3) and paragraph (14). A state in which the constitution or other law does not permit*
17 *incorporation of future amendments when a federal statute is incorporated into state law should*
18 *omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration,*
19 *future amendments are incorporated into state law also should omit the phrase.*

20
21 *In paragraph (5) and throughout the act, a state should insert the appropriate term for a*
22 *“guardian ad litem” used in the state.*

23 24 **Comment**

25 “Child” is defined in various uniform acts, and this definition was reformulated from the
26 Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Uniform Deployed
27 Parents Custody and Visitation Act (UDPCVA). This act is not intended to expand the scope of
28 any existing law. The age of 18 is bracketed because slight differences in the age of majority
29 may exist across the United States. In addition, for some proceedings that fall under this act, the
30 relevant law may establish an age by which a child “ages out” of the application of the law. In
31 particular, under the Hague Abduction Convention, the protections afforded to a party
32 specifically cease once the child attains the age of 16, and this act does not change that
33 limitation.

1 This act defines the terms “child’s attorney” and “guardian ad litem” and distinguishes
2 the distinct role of an attorney for the child from the role of a non-attorney advocate for a child’s
3 best interest. The term “child’s attorney” as used in this act does not include a guardian ad litem
4 appointed for the child, whether or not the guardian ad litem is an attorney. While guardians ad
5 litem may be involved in a covered proceeding, they often testify, submit reports, or otherwise
6 provide evidence, and therefore are treated differently from a child’s attorney under this act
7 where the provision relates to actions permitted only by attorneys. States may use different terms
8 for these roles. For example, a child’s attorney may be referred to as “Attorney-For-Child” (New
9 York) or “Ad Litem Attorney” (Texas), and a guardian ad litem may be referred to as a “Best
10 Interest Advocate” (Arizona). Throughout the act, any reference to “child’s attorney” or
11 “guardian ad litem” will relate back to the roles defined in this section of the act.
12

13 The definition of “judicial interview” includes the requirement that it be authorized under
14 other law, whether by statute or caselaw. This act provides the procedural framework for
15 interviewing children, but it is not the source of authority for a judicial officer to conduct an
16 interview. The definition also acknowledges that any interview, while it may have a specific goal
17 under the law (i.e., to elicit a child’s views, etc.), will tend to be more conversational between the
18 judicial officer and the child. Above all, an interview is not testimony. Testimony refers to
19 placing a witness under oath and following the rules of evidence applicable in the jurisdiction.
20 Testimony also permits cross-examination and tends to be in open court.
21

22 “Testimony” is defined in this act to distinguish it from the unsworn judicial interview.
23 An interview is a less formal process conducted outside of open court, in which a judicial officer
24 seeks to learn about a child’s views. The standard rules of evidence do not apply to these
25 interviews. To testify is to give information through a formal process, often in an open
26 courtroom, to which rules of evidence and civil procedure apply. While some states use these
27 two terms interchangeably, this act intends to clearly distinguish between the two processes. A
28 judicial interview is not a substitute for testimony, when testimony is required or is more
29 appropriate.
30

31 In 2002, the Uniform Law Commission approved the Uniform (Model) Child Witness
32 Testimony by Alternative Methods Act (MCWTBAMA). That act gives judicial officers
33 authority to allow children to testify by an alternative method to protect a child witness from the
34 potential emotional impact of giving testimony in open court. The MCWTBAMA is distinct
35 from this act in that it applies when a child is otherwise obligated to give testimony as a witness,
36 while this act provides a framework for eliciting a child’s views through the mechanism of a
37 judicial interview. The two acts should work in parallel, and a state that considers enacting one
38 should contemplate enacting both.
39

40 “Covered proceeding” is intended to clarify the scope of this act by listing the specific
41 legal matters that both create the potential need for a judicial interview and to which this act
42 applies. Reference to these proceedings as “child custody proceedings” would be inappropriate
43 because other legal matters fall under the umbrella of this act that are specifically not child
44 custody proceedings. These include cases under the Hague Abduction Convention, for example,
45 which are limited in scope and are not considered “child custody” proceedings as that term is
46 understood. Some proceedings that are included in this act may not traditionally fall under the

1 family laws of a particular state, therefore, “family law proceeding” is not an appropriate choice
2 when describing the proceedings in this act.

3
4 The word “proceeding” is broad enough to encompass temporary proceedings and
5 emergency proceedings, such as those that may be brought under the UCCJEA or Uniform Child
6 Abduction Prevention Act (UCAPA). Insofar as domestic violence proceedings involve
7 temporary or emergency custody determinations, those proceedings would also be covered by
8 this act.

9
10 While, under Section 3, this act is not intended to cover child welfare proceedings, the
11 basic tenets of this act remain available for judges to use in their discretion. Similarly, this act
12 does not cover arbitration, but parties may choose to use the principles set out in this act in
13 addressing the powers of an arbitrator in interviewing children. Other law may impose an
14 obligation with respect to participation by the child in the proceeding. For example, Section 205
15 of the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act addresses
16 a child’s attendance at hearings. A judicial interview in this act may nonetheless play a role in
17 the proceeding without undermining other law.

18
19 This act uses the term “judicial officer” to refer to the person presiding over the covered
20 proceeding who makes the ultimate decision in the proceeding. Other dispute resolution
21 professionals who may involve children in their dispute resolution processes, such as mediators,
22 arbitrators, and parent coordinators, are not judicial officers under this act. In some states, the
23 “judicial officer” who interviews a child does not make the ultimate decision in the proceeding
24 but instead recommends the ultimate decision, based on a legal analysis. The recommendation is
25 not final and binding until it is approved by a judge. For example, Md. R. Civ. P. Cir. Ct. 2-541
26 provides for the referral of certain matters, including domestic relations matters, to a magistrate.
27 Magistrates are appointed by the court in which they serve, and are empowered to conduct a
28 hearing, take evidence, and based on the evidence, file a report with the court containing
29 proposed findings of fact, conclusions of law, and a recommended disposition of the matter
30 referred to them. *See* Md. R. Ct. Admin. 16-807. These “judicial officers” act, in all regards, as a
31 judge, short of having the legal authority to sign a final judgment. This act is intended to include
32 these recommending “judicial officers” as well.

33
34 The act uses the common Uniform Law Commission definition of “record” used as a
35 noun. However, it also includes a separate definition for an “interview record” to distinguish a
36 recording or transcription of a judicial interview.

37
38 An “interview record” is a fundamental component of this act in that it is the primary
39 mechanism by which parents’ due process rights are protected. The term is intended to be broad
40 and recognizes that different courts use different means of recording a covered proceeding, such
41 as audio recordings, video recordings, transcripts, and other methods.

42
43 This act specifically only applies to judicial interviews conducted by judicial officers who
44 are subject to judicial ethics rules and standards. It does not cover situations where a judicial
45 officer refers the case to a third person, such as a mental health professional. It also does not
46 cover those jurisdictions in which cases are routinely referred to an independent office or court-

annexed office to conduct an interview. A state can decide whether it wants to use the standards in this act for alternative processes that are established in that state in lieu of judicial interviews.

The act uses the term “views” to define what a judicial officer seeks from a child in a covered proceeding through a judicial interview. “Views” are intended to be broad and to encompass various existing terms used among states, such as a child’s preferences or wishes. The word “views” also includes a child’s particularized objection to being returned under the Hague Abduction Convention. To discern a child’s views, judges should use a form of questioning tailored to the child’s communication style and abilities. Often, a judicial officer will ask open-ended questions rather than directly ask the child the information that the judicial officer is seeking to elicit. By seeking information about the child’s maturity and underlying thoughts, the judicial officer can acquire an understanding of the child’s views in context. The information gained from a judicial interview will be part of the information gained in the covered proceeding, in which other evidence is adduced that will add context to the child’s views.

The act excludes the child who is the subject of the covered proceedings from the definition of “party.” While most states do not consider the child to be a party in covered proceedings, a few states do recognize the child as a party. [*Include citations to examples of child party status*]. States should accept this act’s definition of party for purposes of conducting judicial interviews, regardless of the state’s existing stance on child party status. This act governs a litigant’s participation in an interview, rights of access to the record of an interview, stipulations by parties, and other core aspects of the interview process. While the child has a fundamental interest in the proceeding, recognizing the child as a formal party would be inconsistent with the procedural framework of the act.

[insert fiscal note]

Section 3. Scope

(a) Except as provided in subsection (b)(1), this [act] applies to a covered proceeding in which other law permits a judicial officer to conduct a judicial interview of a child who is the subject of the proceeding.

(b) This [act] does not apply to:

(1) a judicial interview conducted in a proceeding under [cite to the state’s juvenile delinquency statutes] or [cite to the state’s child welfare statutes] to adjudicate an allegation that a child is delinquent, abused, neglected, dependent, or otherwise in need of care;

(2) testimony by a child; or

(3) an interview conducted by a person other than a judicial officer.

Comment

This act is limited to interviews of children authorized by other law. It does not cover securing information from children through other means, including testimony by the child, evaluation of the child by a forensic expert, or representation of the child by a lawyer or other representative. This act is also limited to interviews of children who are the direct subjects of the proceeding before the court and does not extend to other children (for example, a neighbor child who may have information relevant to the proceeding or a sibling of the subject child). This act specifically distinguishes between a judicial interview and testimony by a child witness, which must follow certain evidentiary and civil procedure rules.

The scope of a judicial interview is intentionally open-ended to allow the judicial officer to elicit the child's views in a covered proceeding as provided under other law, including caselaw. Existing law dictates the information to be sought by the judicial officer in the covered proceeding. In custody cases, some states may require a judicial officer to inquire about a child's views as to their physical or legal custodian. Under the Hague Abduction Convention, a court may focus on the child's objections to being returned. Where existing law does not require or specify which information a judicial officer should elicit, this act does not foreclose a judicial officer's discretion to determine the focus of the interview. Other law need only permit a judicial officer to undertake a judicial interview of a subject child.

This act does not apply to child welfare proceedings in which the government or a private party is seeking to restrict a parent's legal rights to a child based on an allegation of abuse or neglect. The act excludes such proceedings because they are different in scope and structure and are already the subject of separate state and federal legislation. *See e.g.*, the Child Abuse Prevention and Treatment Act, 42 USC § 5106a(b)(2)(B)(xiii) (establishing requirements for state child welfare systems as a condition of receiving federal funding). The federal Child Abuse Prevention and Treatment Act, for example, establishes detailed standards for child welfare proceedings that states must meet in order to be eligible for federal funding. *See* 42 U.S.C. Sec. 5106a(b) (mandating, among other requirements, that states must protect confidentiality of investigations of abuse or neglect and must appoint representative for any child subject to abuse and neglect proceedings). In addition, in child welfare proceedings, state law may require that counsel for all parties be permitted to attend an interview of the child. *See, e.g.*, *Interest of J.F.*, 308 A.3d 1252 (Pa. Super. Ct. 2024) (child's attorney and child's best interest attorney as well as parties' counsel entitled to attend in camera interview of child under state statutory law). Similarly, in juvenile delinquency proceedings, there are clear constitutional protections for the child who is the subject of that proceeding that are different from the proceedings covered by this act.

This act only applies to interviews by a judicial officer as defined in Section 2 of this act. A judicial officer is required to meet certain standards and adhere to the state's judicial code of ethics, requirements that do not apply to nonjudicial personnel who may be conducting interviews. Furthermore, this act does not apply to other people who may elicit information from a child, such as custody evaluators, guardians ad litem, attorneys for the child, arbitrators, court-employed mediators or others, even if their interview of the child is intended as an alternative to a judicial interview.

1 **Section 4. Decision to Conduct Judicial Interview**

2 (a) A judicial officer may conduct a judicial interview if the judicial officer determines
3 the judicial interview is in the child’s best interest and the requirements of other law are met.

4 (b) Unless prohibited by other law, the child, [child’s attorney], [guardian ad litem], or a
5 party may request a judicial interview. The decision to conduct a judicial interview is within the
6 judicial officer’s discretion and may be at the judicial officer’s own initiative.

7 (c) Except as provided by other law, in deciding whether a judicial interview is in the
8 child’s best interest, the judicial officer shall consider the child’s willingness or unwillingness to
9 communicate with the judicial officer and, to the extent applicable and readily ascertainable:

10 (1) the likelihood that the interview will assist the judicial officer in adjudicating
11 the covered proceeding;

12 (2) the child’s age, maturity, and capacity to formulate and communicate views to
13 the judicial officer;

14 (3) the child’s expressed desire to communicate with the judicial officer;

15 (4) the likely benefit to the child from the interview;

16 (5) the potential harm to the child from the interview, including embarrassment,
17 harassment, retaliation, and breach of a relationship, and the judicial officer’s ability to mitigate
18 harm while still eliciting the child’s views;

19 (6) the availability and suitability of other processes to elicit the child’s views;

20 (7) the likelihood that conducting the interview may facilitate recognition or
21 enforcement in another state or foreign court of the decision in the covered proceeding; and

22 (8) any other relevant factor.

23 (d) A judicial officer who conducts a judicial interview must have training in

1 interviewing a child [in accordance with judicial standards established under other law of this
2 state].

3 **Legislative Note:** *In subsection (d), a state with judicial training standards should insert that*
4 *language. A state that does not have judicial standards should omit the bracketed language.*
5

6 **Comment**

7 This section provides factors for the judicial officer to consider in determining whether to
8 conduct a judicial interview. These include the child's desire to speak to the judge and the
9 benefit to the child of being heard. Conversely, if a child does not want to communicate directly
10 with a judicial officer, that too should be considered by the judicial officer in determining
11 whether a judicial interview is the appropriate process. Courts often give significant weight to a
12 child's expressed desire to speak with the judge or, conversely, the child's expressed opposition
13 to being questioned. *See, e.g., In re Samantha W.W. Docket 534788 (NY App. Div. 2023) (trial*
14 *court erred in not interviewing a teenaged child who had asked to speak to the judge); Interest of*
15 *C.R.D. 2021 Tex. App. LEXIS 7039, 2021 WL 3779224 (Tex. App. 2021) (affirming trial*
16 *court's decision not to interview 12-year-old child who had opposed the interview and would*
17 *likely have suffered trauma).*

18
19 A court's decision whether to interview a child involves consideration of issues related to
20 the child's cognition, mental and emotional health and maturity, and the impact of an interview
21 on a specific child. Therefore, a court should also consider the child's cognitive and emotional
22 development and the child's ability to share information helpful to the court. The child may be
23 emotionally affected by the interview and may be guarded in the interview, particularly if the
24 record of the interview will be shared with the child's parents. A judicial officer must also
25 consider the difficulty in interpreting a child's words and may conclude that a judicial interview
26 is only helpful to the extent it is part of a more robust evidentiary process or is buttressed by
27 other methods of hearing from the child, such as through a forensic evaluation. A court should
28 consider whether an interview could disrupt the child's relationship with their parents, or with
29 any other person that impacts upon their wellbeing, such as a childcare provider, a grandparent, a
30 stepparent, a sibling, or someone else. Finally, if the proceeding falls under the Hague Abduction
31 Convention, a judicial officer should be mindful that the Convention requires courts to act
32 expeditiously in proceedings for the return of a child. The Convention's requirement for the
33 judicial officer to act expeditiously may impact upon the judicial officer's decision to conduct a
34 judicial interview, if conducting such an interview may aid or detract from the expeditious nature
35 of the proceeding.

36
37 It is within a judicial officer's discretion whether to conduct a judicial interview. A
38 judicial officer may conclude after considering the factors set out here that a judicial interview is
39 not the preferred process for obtaining the child's views. One situation where a judicial interview
40 may not be the preferred process is when a judicial officer seeks to elicit facts from a child that
41 should be elicited by testimony considering due process concerns.

42
43 This act does not require a separate evidentiary hearing to determine whether a judicial

1 interview is the judicial officer's preferred process for eliciting the child's views, nor does it
2 foreclose such an evidentiary hearing if the judicial officer determines one is appropriate and/or
3 necessary. Some judicial officers may elect to hold a judicial interview later in the covered
4 proceeding to allow for the presentation of evidence germane to making the decision anticipated
5 in Section 4. However, some judicial officers may elect to hold a judicial interview earlier in the
6 covered proceeding to provide additional time and opportunity for the parties to rebut the child's
7 communication without need for scheduling additional hearings at a later date. This act is not
8 intended to favor scheduling a judicial interview, if one is appropriate, at a particular time in the
9 covered proceeding – it is intended to be flexible so that a judicial officer has discretion as to
10 when to do so.

11
12 Other processes may be available to ascertain a child's views, separate from (either as an
13 alternative or in addition to) a judicial interview. The available processes will vary by state but
14 may include referral of a child to a mental health professional for an evaluation, appointment of a
15 guardian ad litem or child's attorney, and testimony of a child.

16
17 This act also prescribes baseline training for judicial interviewing, consistent with that
18 available under the law of the state. For judicial officers who wish to augment their required
19 training or expertise, professional groups such as the Association of Family and Conciliation
20 Courts offer programming on a wide range of practical skills in cases involving children. This act
21 includes bracketed/optional language that makes it clear that it does not require training beyond
22 what is already prescribed by the state. There is no restriction, however, on a judicial officer
23 seeking out their own training, separate from that which is otherwise required of them. There
24 may be online training courses available. Judicial officers should, however, be cognizant of the
25 distinction between trainings that teach interview skills of children who are the subject of child
26 welfare cases and children who are the subject of covered proceedings, as defined in this act.

27 28 **Section 5. Judicial Interview Procedure**

29 (a) The judicial officer shall permit a party, [child's attorney], or [guardian ad litem] to
30 propose questions in a record for the judicial interview. The judicial officer shall determine the
31 questions asked of the child.

32 (b) An interview record must be made.

33 (c) The judicial officer shall permit the [child's attorney] to attend the interview in
34 person. If a child has a [guardian ad litem], but does not have a [child's attorney], the judicial
35 officer shall permit the [guardian ad litem] to attend the interview in person. If a child has a
36 [child's attorney] and a [guardian ad litem], the judicial officer may permit the [guardian ad
37 litem] to attend the interview in person.

1 (d) The judicial officer may not permit a party or the party's attorney to attend the
2 interview in person but may permit a party, the party's attorney, or both, to observe or listen to
3 the interview remotely, in real time, with the opportunity to submit additional questions before
4 the judicial officer concludes the interview.

5 (e) If all parties agree, the parties may stipulate on the record that they waive access to
6 the interview record. A stipulation is not valid unless approved by a judicial officer. The judicial
7 officer may not approve a stipulation unless each party stipulates that the party waives any right
8 to access the interview record, to be informed of communication by the child during the
9 interview, and to respond to the child's communication. Unless otherwise stated in the
10 stipulation, a stipulation under this section precludes access to the interview record by the parties
11 in a future proceeding, including an appeal.

12 (f) Before starting the interview, the judicial officer shall explain to the child in an age-
13 appropriate manner that:

- 14 (1) the child is not required to answer the judicial officer's questions;
15 (2) the child's views will be considered but the judicial officer is the decision-
16 maker;
17 (3) the interview will be recorded;
18 (4) if applicable, the parties or their attorney may be observing or listening to the
19 interview in real time;
20 (5) if applicable, the interview record will be provided to the parties; and
21 (6) the judicial officer may be required in some circumstances to share the child's
22 communication under other law of this state.

23 **Comment**

1 This section provides a process designed to meet the dual goals of protecting the child's
2 interests and protecting the due process rights of the parties by setting out a procedural
3 framework that draws from caselaw and statute. That framework also gives the judicial officer
4 discretion to further tailor the process to balance these interests. On the issue of which
5 individuals may attend the interview in person, this section requires the judicial officer to permit
6 the attendance of a child's attorney or guardian ad litem. Including these individuals may help
7 the child to clarify views, as well as to provide the child emotional support. On the other hand,
8 this section prohibits parties and their attorneys from attending the interview in person. Given the
9 sheer volume of self-represented litigants in covered proceedings, this section intends to create a
10 level playing field so that the same rules apply to represented litigants as to self-represented
11 parties.

12
13 This section permits the parties, including through their attorneys, the child's attorney,
14 and guardian ad litem, to submit questions to the judicial officer for consideration before the
15 interview is conducted. The judicial officer should set reasonable timeframes for submitting
16 questions to avoid undue delay in the resolution of the proceeding. Judges traditionally accept
17 questions from the parties before they conduct an interview, but for those parties who may be
18 observing the interview in real time, they may be given the opportunity to submit additional
19 questions. A judge has the discretion to not accept, nor present, any of a party's questions in the
20 interview.

21
22 State law is varied on how to balance the key goals of protecting a child's privacy and
23 protecting the parties' due process rights. In a few states, statutory law expressly permits a
24 judicial officer to allow a child's attorney or guardian ad litem to attend the interview. *See* Ohio
25 Rev. Code Ann. Sec. 3109.04(B)(2)(c) (permitting child's attorney to be present during in
26 camera interview); 43 Okla. Stat. Sec. 113 (E) (requiring attendance of guardian ad litem at
27 judicial interview if guardian ad litem has been appointed). In most states, judicial interviews are
28 conducted without the presence of parties or parties' attorneys to minimize emotional discomfort
29 for the child. *[Insert research]*. Some states, however, do permit the parties' attorneys to attend
30 the judicial interview. In still other states, parties have the option either to include their attorney
31 in the judicial interview or to record it. *See Haase v. Haase*, 20 Va. App. 671 (1995).

32
33 Interview procedures in several states allow considerable discretion to the parties,
34 permitting them to waive the participation of their attorney in the judicial interview or waive
35 access to the record made of the judicial interview. *See Helen SK v. Samuel MK*, 288 P.3d 463
36 (Alaska 2013); *Barrett v. Wright*, 897 So.2d 398 (Ala. Civ. App. 2004). In other states, instead of
37 stipulating to certain due process protections, the party must affirmatively object to a private,
38 unrecorded, judicial interview. *KES v. CAT*, 107 P.3d 779 (Wyo. 2005). In order to protect due
39 process rights and review by appellate courts, this act requires a record of all judicial interviews.
40 The parties may, however, stipulate that they will not have access to the record. Subsequent
41 provisions of the act relate to disclosure of the record if a party does have access to it.

42
43 States vary regarding the point in time during the covered proceeding at which the
44 judicial interview should occur. In some states the judicial interview is held after fact-finding
45 evidence is adduced during a covered proceeding, on the rationale that the judicial interview is
46 intended to corroborate the information already presented. *Lincoln v. Lincoln*, 24 NY2d 270
47 (1969). This may also assist the judicial officer in deciding as to whether a judicial interview is

1 the appropriate process for the subject child, or whether some alternative process is better suited
2 to this child and family. In other states, the judicial interview must be conducted before a hearing
3 on the merits, unless the judicial officer has a principled reason to conduct it at another time.
4 *Helen SK v. Samuel MK*, 288 P.3d 463 (Alaska 2013). Conducting an inquiry early in the
5 proceedings may assist the parties in rebutting the child’s communication with the judicial
6 officer under this act. This act gives the judicial officer discretion to set the timing of a judicial
7 interview but recognizes that the timing may impact due process concerns and the scheduling of
8 hearings to ensure efficiency and eliminate duplication of evidence gathering.

9
10 Some states require the court to provide information to the child at the beginning of the
11 interview, before the child commences communication with a judicial officer, such as requiring
12 the court to advise the child who will have access to the record. *Helen SK v. Samuel MK*, 288
13 P.3d 463 (Alaska 2013); Rule 12, Arizona Rules of Family Law Procedure. This section seeks to
14 ensure that children understand that they retain the autonomy to refuse to answer questions,
15 should they prefer to do so. In such cases, the judicial officer should not press for an answer.

16
17 States have addressed due process concerns regarding the making of a record of the
18 judicial interview through different approaches, and the options provided in this section and in
19 subsequent sections reflect those differences. Some states permit parties to determine whether a
20 record is made of the judicial interview, but they vary on whether the default is that the interview
21 is recorded unless otherwise stipulated, or that the parties must request a record in advance of the
22 judicial interview. *Wilson v. Wilson*, 450 So.2d 104 (Ala. 1984); *Williams v. Cole*, 590 S.W. 2d
23 908 (Mo. 1979). While much of the law in this area comes from state caselaw, statutes or court
24 rules in several states address the question of recording. In Missouri, “[t]he court shall cause a
25 record of the interview to be made and to be made part of the record in the case.” Rev. Stat. Mo.
26 Section 452.385 (1974). In Florida, “absent agreement to the contrary, the children’s testimony
27 shall be taken in the presence of a court reporter.” Fla. Fam. Law Rule 12.407. This includes in
28 camera “testimony.” *Hickey v. Burlinson*, 33 So.3d 827 (Fla. App. 2010). In the District of
29 Columbia, “although trial judges are permitted, in certain circumstances, to interview children in
30 camera out of the glare and pressure of the courtroom, because the interview is still part of a
31 court proceeding, . . . it must be recorded, and . . . the record must be made available to the
32 parties and the appellate court.” *ND McN v. RJH Sr*, 979 A.2d 1195, 1201 (D.C. 2009). In
33 Kentucky, absent a waiver by the parties, a court must record and disclose for rebuttal a child’s
34 in camera interview if the family court accepts and acts upon the child’s testimony. *Rana v.*
35 *Hammond*, 2010 WL 4366281 (Ky. App. 2011). In Ohio, the court must make a record for
36 appellate review. *Donovan v. Donovan*, 674 N.E.2d 1252 (Ohio App. 1996).

37
38 While nearly all states that have legislated on judicial interviews have required a
39 recording (or a waiver thereof), New York has taken a different view. New York appellate courts
40 have cautioned trial judges to not divulge comments made during in camera interviews with
41 children and instead urged courts to protect a child’s right to confidentiality by avoiding
42 disclosure. *TEG v. GTG*, 44 Misc.3d 449, 454 (N.Y. Supp. 2014); *Lincoln v. Lincoln*, 24 NY2d
43 270 (N.Y. 1969). The New York courts have concluded that conducting a closed interview does
44 not violate a parent’s due process rights because the court’s role as an “impartial decision maker”
45 is the “core guarantee of due process,” and because the judge has an “obligation to be faithful to
46 the law and maintain professional competence in it.” *TEG v. GTG*, 44 Misc.3d 449, 454 (N.Y.

1 Supp. 2014); *Lincoln v. Lincoln*, 24 NY2d 270 (N.Y. 1969).

2
3 Under this act, judicial officers have broad discretion to design a process specific to the
4 child while protecting the due process rights of parties. This allows a judicial officer to protect
5 the child while also protecting the parties' rights and the fairness of the proceeding. However,
6 this act is limited to interviews by judicial officers. In some states, a judicial officer may delegate
7 their interviewing role to a third person, with certain limitations. In such states, if a judicial
8 officer does not feel suited to interview a child, then the officer may seek assistance from court
9 personnel. See *Helen SK v. Samuel MK*, 288 P.3d 463 (Alaska 2013). The delegation is limited
10 to conducting the interview; the authority to construe the child's views and make the ultimate
11 decision in the covered proceeding continues to rest with the judicial officer. This act, however,
12 limits its scope to only those interviews conducted directly by a judicial officer – a person who is
13 bound by specific ethics rules, is mandated to have certain training by this act, and who is the
14 direct decision-maker in the case at hand. That does not preclude a state, or other interviewer,
15 from using the principles in this act as guidelines, particularly to ensure due process protections
16 are adhered to in covered proceedings.

17
18 Finally, this act, and particularly this section, include several references to both a child's
19 attorney and a guardian ad litem. In some states, a court may appoint only a child's attorney. In
20 others, courts may only appoint a guardian ad litem. In still other states, a court may
21 simultaneously appoint both for a particular child. Therefore, this section includes references to
22 both distinct actors who serve as representatives for a child and their ability to participate in a
23 judicial interview. See, e.g., *Interest of J.F.*, 308 A.3d 1252 (Pa. Super. Ct. 2024) (child's
24 attorney and child's best interest attorney as well as parties' counsel entitled to attend in camera
25 interview of child under state statutory law)

26 27 **Section 6. Post-Interview Procedure**

28 **Alternative A**

29 (a) Unless otherwise prohibited by a stipulation approved under Section 5(e), on request
30 of a party, [child's attorney], or [guardian ad litem], and after payment of required costs, the
31 judicial officer shall grant access to the interview record within a reasonable time and before
32 making a final decision in the covered proceeding.

33 (b) After granting access to the interview record under subsection (a), on request of a
34 party or [child's attorney], the judicial officer shall provide the parties and [child's attorney] an
35 opportunity to submit evidence or legal argument in response to the child's communication in the
36 judicial interview.

1 **Alternative B**

2 (a) Unless otherwise prohibited by a stipulation approved under Section 5(e) and except
3 as provided under subsection (b), on request of a party, [child's attorney], or [guardian ad litem],
4 and after payment of required costs, the court shall grant access to the interview record if a party
5 appeals the final decision in the covered proceeding.

6 (b) Unless otherwise prohibited by a stipulation under Section 5(e) if the child makes a
7 factual allegation in the judicial interview, other than communication of the child's views, that is
8 or may be contested and is potentially dispositive in the covered proceeding, the judicial officer
9 shall disclose the allegation to the parties and provide them an opportunity to submit evidence
10 and legal argument in response.

11 **End of Alternatives**

12 (c) A party may not share the contents of the interview record with another person
13 without authorization from the court.

14 (d) The court may seal the interview record from public access on a finding required
15 under [cite to the state's statute for sealing a judicial record].

16 (e) The decision whether to permit the child to provide testimony in a covered proceeding
17 is governed by other law.

18 [(f) After conducting a judicial interview, if a judicial officer has reasonable cause to
19 believe that the child is the victim of abuse or neglect as defined in [cite to the state's child
20 welfare statutes], the judicial officer [may] [shall] inform [insert name of the state's child welfare
21 agency] and take other appropriate action warranted to protect the child.]

22 **Legislative Note:** A state that wants to provide access to the interview record at the trial court
23 level before a final decision in the covered proceeding should enact Alternative A. A state that
24 wants to allow access to the interview record only if a party appeals a final decision in the
25 covered proceeding should enact Alternative B.

1 *A state that has not imposed by statute or case law a mandatory duty on a judicial officer to*
2 *report suspected child abuse or neglect should include subsection (f). If the state wants to impose*
3 *a mandatory duty on a judicial officer to report, the state should enact the word “shall.” If the*
4 *state wants to leave the decision whether to report suspected child abuse or neglect up to judicial*
5 *discretion, the state should enact the word “may.” A state that has imposed a mandatory duty on*
6 *a judicial officer by other law should omit the bracketed subsection.*

8 **Comment**

9 This section provides a procedural framework for the covered proceeding after an
10 interview has been conducted. On the pivotal question of access to an interview record, different
11 states have developed different approaches. Some states only permit access to an interview
12 record if a party appeals the judicial officer’s decision. *See Ynclan v. Woodward*, 237 P.3d 145
13 (Ok. 2010). Other states permit access automatically, or upon payment of any required fees. *See*
14 *Uherek v. Sathe*, 391 N.J. Super. 164 (N.J. Super. 2007). As recognized in most states, the parties
15 may stipulate that they will not have access to the interview record, even if an interview record is
16 made.

17 This act provides for two alternatives in Section 6, to account for the differences in
18 existing state law. Both alternatives are structured to protect the due process rights of the parties
19 but differ in that Alternative A provides for access to the interview record at the trial level, unless
20 otherwise stipulated, and Alternative B provides for access to the interview record, unless
21 otherwise stipulated, only on appeal of the issue before the court in the covered proceeding.
22 Alternative B was added as an option for states, like Oklahoma, that have legislated that access
23 to an interview record is only provided in the event of an appeal. *See Oklahoma*, 43 OK Stat 113
24 (2024).

26 In light of the potential impact of a judicial interview on the ultimate decision in the
27 covered proceeding, subsection (b) of Alternative B requires the judicial officer to disclose
28 factual allegations made by the child during an interview that may be dispositive on the merits.
29 This safeguard will ensure that parties have the opportunity to respond at the trial level to
30 material fact allegations that the judicial officer may rely on in reaching a decision in the covered
31 proceeding.

33 These protections acknowledge that information from a child is one piece of a larger
34 evidentiary process, and the judicial officer hearing the case should have to place the child’s
35 communications from the judicial interview within a broader context in arriving at the ultimate
36 decision. For example, if a child shares in a judicial interview that the child saw her mother hit
37 her father with a baseball bat in the front yard, a party is entitled to have that information
38 weighed against other evidence the party could introduce, such as testimony under oath from an
39 adult neighbor that the father instead hit the mother with a golf club in the back yard, or both
40 parties’ testimony under oath that the family owns no baseball bat.

42 This act also acknowledges that privacy concerns may arise from party access to the
43 child’s communication in a judicial interview. In this age of social media, a record could become
44 weaponized and widely shared with friends, family, or even strangers. In other situations,
45 however, third parties, such as the child’s private therapist or a privately retained custody

1 evaluator in this case, may need access to the record to provide treatment or to more
2 comprehensively evaluate the family's situation. Therefore, this act limits those with whom a
3 record can be shared to the parties and their attorneys but gives the judicial officer the discretion
4 to permit others access to the record after it is shared. The record would also presumably be
5 placed into an otherwise public court file, and, as such, the judicial officer may be asked to seal
6 or shield the record from public access. The applicable law in the state as to sealing or shielding
7 of public court records should be referenced in a state's enactment of this act.
8

9 This act recognizes that the record of the judicial interview is more accurate than a
10 judicial officer's oral or written summary, inevitably filtered through the judicial officer's own
11 biases and training. Therefore, while not prohibiting a judicial officer's summary of the
12 interview, the act requires a record and does not consider a summary to be an adequate
13 substitute, absent a stipulation by the parties.
14

15 This act includes a bracketed subsection (f) for those states that do not already have clear
16 law regarding a judicial officer's reporting of suspected child abuse or neglect. In most states,
17 judicial officers are not under an express duty to report, but in some states judicial officers are
18 listed as mandatory reporters. Under the bracketed subsection, states may choose to impose a
19 mandatory duty to report or may clarify that the decision is within judicial discretion.
20

21 This section provides that, under certain circumstances, parties are permitted to submit
22 evidence and legal argument to address the child's communication with the judicial officer.
23 Other law will determine what evidence is permitted in a proceeding, but this evidence can
24 include additional witnesses, documentary evidence, legal argument, or even a request that the
25 child testify.
26

27 **Section 7. Uniformity of Application and Construction**

28 In applying and construing this uniform act, a court shall consider the promotion of
29 uniformity of the law among states that enact it.

30 **Section 8. Transitional Provision**

31 This [act] applies to a judicial interview requested or initiated on or after [the effective
32 date of this [act]].

33 **[Section 9. Severability]**

34 [If a provision of this [act] or its application to a person or circumstance is held invalid,
35 the invalidity does not affect another provision or application that can be given effect without the
36 invalid provision.]

1 ***Legislative Note:*** *Include this section only if the state lacks a general severability statute or a*
2 *decision by the highest court of the state adopting a general rule of severability.*

3 **Section 10. Effective Date**

4 This [act] takes effect [. . .].