

Practice Book Revisions

Superior Court

Code of Judicial Conduct

Rules of Professional Conduct

Forms

Code of Evidence Revisions

July 13, 2010

NOTICE

SUPERIOR COURT

Notice is hereby given that on June 21, 2010, the judges of the Superior Court adopted the revisions to the Practice Book and to the Code of Evidence which are contained herein.

These revisions become effective on January 1, 2011, except that new Practice Book Chapter 25A and new Form 207, the repeal of Sections 25-65 through 25-67, and the amendments to Rule 1.15 of the Rules of Professional Conduct become effective on August 1, 2010.

Attest:

Carl E. Testo
Director of Legal Services

INTRODUCTION

Contained herein are amendments to the Superior Court rules and forms, to the Rules of Professional Conduct, to the Code of Judicial Conduct, and to the Code of Evidence. These amendments are indicated by brackets for deletions and underlines for added language. The designation "NEW" is printed with the title of each new rule and form. This material should be used as a supplement to the Practice Book and the Code of Evidence until the next editions of these publications become available.

It should be noted that on March 26, 2010, a number of the changes contained herein were adopted by the judges of the Superior Court on an interim basis effective April 15, 2010, pursuant to Practice Book Section 1-9 (c). Those changes were printed in the April 13, 2010, issue of the Connecticut Law Journal.

With regard to the Practice Book revisions herein, the Amendment Notes to the Rules of Professional Conduct and to the Code of Judicial Conduct and the Commentaries to the Superior Court rules and forms are for informational purposes only.

Rules Committee of the
Superior Court

**AMENDMENTS TO THE
CONNECTICUT CODE OF EVIDENCE**

TABLE OF SECTIONS AFFECTED

Sec.

8-10. Hearsay Exception: Tender Years

Sec. 8-10. Hearsay Exception: Tender Years

[(a) A statement made by a child, twelve years of age or under at the time of the statement, concerning any alleged act of sexual assault or other sexual misconduct of which the child is the alleged victim, or any alleged act of physical abuse committed against the child by the child's parent, guardian or any other person then exercising comparable authority over the child at the time of the act, is admissible in evidence in criminal and juvenile proceedings if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the circumstances of the statement, including its timing and content, provide particularized guarantees of its trustworthiness;

(2) The statement was not made in preparation for a legal proceeding; and

(3) The child either:

(A) Testifies and is subject to cross-examination in the proceeding, either by appearing at the proceeding in person or by video telecommunication or by submitting to a recorded video deposition for that purpose; or

(B) Is unavailable as a witness, provided that:

(i) There is independent corroborative evidence of the alleged act. Independent corroboration does not include hearsay admitted pursuant to this section; and

(ii) The statement was made prior to the defendant's arrest or institution of juvenile proceedings in connection with the act described in the statement.

(b) A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement, the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that indicate its trustworthiness. If the statement is in writing, the proponent must provide the adverse party a copy of the writing; if the statement is otherwise recorded by audiotape, videotape, or some other equally reliable medium, the proponent must provide the adverse party a copy in the medium in the possession of the proponent in which the statement will be proffered. Except for good cause shown, notice and a copy must be given sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare to meet the statement.

(c) This section does not prevent admission of any statement under another hearsay exception. Courts, however, are prohibited from:

(1) applying broader definitions in other hearsay exceptions for statements made by children twelve years of age or under at the time of the statement concerning any alleged act described in the first paragraph of section (a) than they do for other declarants; and

(2) admitting by way of a residual hearsay exception statements described in the first paragraph of section (a).]

“Admissibility in criminal and juvenile proceedings of statement by child under thirteen relating to sexual offense or offense involving physical abuse against child. (a) Notwithstanding any other rule of evidence or provision of law, a statement by a child under thirteen years of age relating to a sexual offense committed against that child, or an offense involving physical abuse committed against that child by a person or persons who had authority or apparent authority over the child, shall be admissible in a criminal or juvenile proceeding if: (1) The court finds, in a hearing conducted outside the presence of the jury, if any, that the circumstances of the statement, including its timing and content, provide particularized guarantees of its trustworthiness, (2) the statement was not made in preparation for a legal proceeding, (3) the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement including the content of the statement, the approximate time, date and location of the statement, the person to whom the statement was made and the circumstances surrounding the statement that indicate its

trustworthiness, at such time as to provide the adverse party with a fair opportunity to prepare to meet it, and (4) either (A) the child testifies and is subject to cross-examination at the proceeding, or (B) the child is unavailable as a witness and (i) there is independent nontestimonial corroborative evidence of the alleged act, and (ii) the statement was made prior to the defendant's arrest or institution of juvenile proceedings in connection with the act described in the statement.

(b) Nothing in this section shall be construed to (1) prevent the admission of any statement under another hearsay exception, (2) allow broader definitions in other hearsay exceptions for statements made by children under thirteen years of age at the time of the statement concerning any alleged act described in subsection (a) of this section than is done for other declarants, or (3) allow the admission pursuant to the residual hearsay exception of a statement described in subsection (a) of this section.” General Statutes § 54-86/.

COMMENTARY: [This section addresses the unique and limited area of statements made by children concerning alleged acts of sexual assault or other sexual misconduct against the child, or other alleged acts of physical abuse against the child by a parent, guardian or other person with like authority over the child at the time of the alleged act. It recognizes that children, because of their vulnerability and psychological makeup, are not as likely as adults to exclaim spontaneously about such events, making section 8-3 (2) unavailable to admit statements about such events; are not as likely to seek or

receive timely medical diagnoses or treatment after such events, making section 8 -3 (5) unavailable; and it provides more specific guidance for this category of statements than does the residual exception, section 8 -9.

Subsection (a) defines the factual scope of the statements that may be admitted under the exception and the types of proceedings to which the exception applies. The proceedings included are criminal proceedings, with or without a jury, and juvenile proceedings; civil proceedings are not included. The rule applies to alleged acts of sexual assault or sexual misconduct committed by anyone against the child. It only applies to alleged acts of physical abuse committed by a parent, guardian or someone in a comparable position of authority at the time of the alleged act of physical abuse. It provides guidance on the test of trustworthiness the court must apply to the proffered statement (subdivision (1)); addresses the exclusion of testimonial statements prohibited by *Crawford. v. Washington*, 541 U.S. 36 (2004) (subdivisions (2) and (3)(B)(ii)); and, sets forth separate requirements when the child testifies and is subject to cross-examination and when the child is unavailable (subdivision (3)(B)).

Subsection (b) provides for notice to the adverse party of the proponents intent to offer the statement.

Subsection (c)(1) prohibits expanded interpretations of other hearsay exceptions where statements covered by this section are not admissible. It is not intended to limit exceptions that, heretofore, have been legally applied to such statements.

Subsection (c)(2), however, prohibits the use of the residual exception for statements treated by this section.]

The section was amended to harmonize it with the general statutes. As amended, and to be consistent with the 2009 amendment to General Statutes § 54-86/, it no longer explicitly provides that the cross-examination of the child may be by video telecommunication or by submitting to a recorded video deposition for that purpose; it does not require the proponent to provide the adverse party a copy of the statement in writing or in whatever other medium the original statement is in and is intended to be proffered in; and, it does not provide a good cause exception to the obligation to provide the adverse party with advance notice sufficient to permit the adverse party to prepare to meet the statement. These changes do not limit the discretion of the court to impose such requirements.