

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2026

Proposed Order Amending Rule 2(d) of the Vermont Rules for Family Proceedings

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 2(d) of the Vermont Rules for Family Proceedings be amended as follows (new matter underlined):

RULE 2. CHILDREN IN NEED OF CARE OR SUPERVISION

(d) **Scheduling; Discovery.**

* * * * *

(7) *Minor Child as Witness.* In any proceeding in which a party intends to call a minor child as a witness under oath at an evidentiary hearing, the party must file notice with the court within a reasonable time prior to the hearing. The notice may include recommendations as to special arrangements for the interrogation of the child designed to protect the child’s welfare by minimizing the emotional trauma to the child-witness. Upon receipt of the notice to call a child witness, the court may set the matter for a pre-trial hearing and may issue an order outlining special arrangements under which such testimony will be given. In fashioning such arrangements, the court must consider both the scope and the planned duration of the child’s testimony. The order related to special arrangements may include but is not limited to the following:

(A) limitations with respect to persons who may be present during the child’s testimony.

(B) inclusion of a support person or a support animal for the child during the testimony.

(C) a specified location for the testimony including designated seating for the child, the judge and other persons permitted to be present.

(D) advance submission to the court of questions a party intends to ask the child.

(E) a requirement that the questioning of the child be done exclusively by the judge or another neutral person designated by the court.

(F) permission for the child to testify from a remote location.

(G) a requirement that the child be called by the child’s preferred name.

Reporter's Notes—2026 Amendment

Rule 2(d) is amended to require parties in CHINS and TPR proceedings to provide notice of intent to call a minor child as a fact witness under oath. The rule applies to all child witnesses in the proceeding not just the child who is the subject of the petition. The amendment further permits the court to order that special arrangements be made for the testimony in appropriate circumstances.

In a criminal case involving sexual abuse of a child, V.R.E. 807 authorizes the court to order the taking of testimony from a child witness under the age of 13 by two-way closed-circuit television or recorded testimony. V.R.E. 807(a). In order to issue such an order, the court must first find that requiring the child to testify in court will result in trauma to the witness. V.R.E. 807(c). The rule thus seeks to balance the state's interest in protecting children from the trauma of testifying against the defendant's constitutional right to face-to-face confrontation “ ‘[g]iven the State's traditional and transcendent interest in protecting the welfare of children and buttressed by the growing body of academic literature documenting the psychological trauma suffered by child abuse victims who must testify in court.’ ” State v. Berquist, 2019 VT 17, ¶ 65, 210 Vt. 102, 211 A.3d 946 (quoting Maryland v. Craig, 497 U.S. 836, 855 (1990)).

CHINS proceedings governed by Rule 2 are civil and therefore do not implicate the confrontation rights protected by the U.S. Constitution. Nonetheless, evidentiary trial proceedings that come within the ambit of Rule 2, such as merits hearings on a CHINS petition, may require the testimony of a child concerning neglect or physical or sexual abuse by a parent. While the right to confrontation does not apply to these proceedings, a parent or guardian in a CHINS proceeding does have the right to be present at evidentiary hearings and to call and examine witnesses. 33 V.S.A. §§ 5315(c), 5317(b).

Research suggests that the formality of courtroom proceedings combined with questioning by multiple adults who often ask confusing questions can be stressful for a child and can impact a child's ability to accurately recall events. R. Nathanson, The Effects of the Courtroom Context on Children's Memory and Anxiety, 31 J. Psychiatry & L. 67 (2003). Under V.R.E. 611, the court is required “to exercise

reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation orderly and effective for the ascertainment of the truth.” V.R.E. 611(a). The list of possible arrangements for the testimony of a child is intended to assist the court in ensuring that the process is effective for the ascertainment of the truth by minimizing potential trauma to the child-witness.

The amendment also applies to termination of parental rights cases where a child is called as a witness. Termination of parental rights proceedings are governed by Rule 2 unless the provisions of Rule 3 set forth a different procedure. V.R.F.P. 3(a).

The amendment is not intended to limit the applicability of other requirements under the Rules of Evidence including a finding of relevancy pursuant to V.R.E. 402 and a finding of competency pursuant to V.R.E. 601. Nor is it intended to limit the court’s ability to order that the testimony of a child be recorded or taken by closed-circuit television under the criteria set forth in V.R.E. 807.

3. That this amendment be prescribed and promulgated, effective on _____. The Reporter’s Notes are advisory.

4. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2026.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice

Christina E. Nolan, Associate Justice

Michael P. Drescher, Associate Justice