



## Ohio Revised Code

### Section 2945.49 Testimony of witness who dies or cannot be produced - videotape of preliminary hearing testimony of child victim.

Effective: October 14, 1997

Legislation: Senate Bill 53 - 122nd General Assembly

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(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 testimony, 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, 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 an alleged victim of the alleged violation or offense was 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, 2907.21, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, or 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 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 section 2935.01 of the Revised Code.