§ 190.32 Videotaped examination; definitions, application, order and procedure.

1. Definitions. As used in this section:

(a) "Child witness" means a person twelve years old or less whom the people intend to call as witness in a grand jury proceeding to give evidence concerning any crime defined in article one hundred thirty or two hundred sixty or section 255.25, 255.26 or 255.27 of the penal law of which the person was a victim.

(b) "Special witness" means a person whom the people intend to call as a witness in a grand jury proceeding and who is either:

(i) Unable to attend and testify in person in the grand jury proceeding because the person is either physically ill or incapacitated; or

(ii) More than twelve years old and who is likely to suffer very severe emotional or mental stress if required to testify in person concerning any crime defined in article one hundred thirty or two hundred sixty or section 255.25, 255.26 or 255.27 of the penal law to which the person was a witness or of which the person was a victim.

(c) "Operator" means a person employed by the district attorney who operates the video camera to record the examination of a child witness or a special witness.

2. In lieu of requiring a witness who is a child witness to appear in person and give evidence in a grand jury proceeding, the district attorney may cause the examination of such witness to be videotaped in accordance with the provisions of subdivision five of this section.

3. Whenever the district attorney has reason to believe that a witness is a special witness, he may make an ex parte application to the court for an order authorizing the videotaping of an examination of such special witness and the subsequent introduction in evidence in a grand jury proceeding of that videotape in lieu of the live testimony of such special witness. The application must be in writing, must state the grounds of the application and must contain sworn allegations of fact, whether of the district attorney or another person or persons, supporting such grounds. Such allegations may be based upon personal

knowledge of the deponent or upon information and belief, provided, that in the latter event, the sources of such information and the grounds for such belief are stated.

4. If the court is satisfied that a witness is a special witness, it shall issue an order authorizing the videotaping of such special witness in accordance with the provisions of subdivision five of this section. The court order and the application and all supporting papers shall not be disclosed to any person except upon further court order.

5. The videotaping of an examination either of a child witness or a special witness shall proceed as follows:

(a) An examination of a child witness or a special witness which is to be videotaped pursuant to this section may be conducted anywhere and at any time provided that the operator begins the videotape by recording a statement by the district attorney of the date, time and place of the examination. In addition, the district attorney shall identify himself, the operator and all other persons present.

(b) An accurate clock with a sweep second hand shall be placed next to or behind the witness in such position as to enable the operator to videotape the clock and the witness together during the entire examination. In the alternative, a date and time generator shall be used to superimpose the day, hour, minute and second over the video portion of the recording during the entire examination.

(c) A social worker, rape crisis counselor, psychologist or other professional providing emotional support to a child witness or to a special witness, as defined in subparagraph (ii) of paragraph (b) of subdivision one of this section, or any of those persons enumerated in paragraphs (a), (b), (c), (d), (e), (f) and (g) of subdivision three of section 190.25 may be present during the videotaping except that a doctor, nurse or other medical assistant also may be present if required by the attendant circumstances. Each person present, except the witness, must, if he has not previously taken a constitutional oath of office or an oath that he will keep secret all matters before a grand jury, must take an oath on the record that he will keep secret the videotaped examination.

(d) The district attorney shall state for the record the name of the

witness, and the caption and the grand jury number, if any, of the case. If the witness to be examined is a child witness, the date of the witness' birth must be recorded. If the witness to be examined is a special witness, the date of the order authorizing the videotaped examination and the name of the justice who issued the order shall be recorded.

(e) If the witness will give sworn testimony, the administration of the oath must be recorded. If the witness will give unsworn testimony, a statement that the testimony is not under oath must be recorded.

(f) If the examination requires the use of more than one tape, the operator shall record a statement of the district attorney at the end of each tape declaring that such tape has ended and referring to the succeeding tape. At the beginning of such succeeding tape, the operator shall record a statement of the district attorney identifying himself, the witness being examined and the number of tapes which have been used to record the examination of such witness. At the conclusion of the examination the operator shall record a statement of the district attorney certifying that the recording has been completed, the number of tapes on which the recording has been made and that such tapes constitute a complete and accurate record of the examination of the witness.

(g) A videotape of an examination conducted pursuant to this section shall not be edited unless upon further order of the court.

6. When the videotape is introduced in evidence and played in the grand jury, the grand jury stenographer shall record the examination in the same manner as if the witness had testified in person.

7. Custody of the videotape shall be maintained in the same manner as custody of the grand jury minutes.