

FACT SHEET: Working With Child Witnesses

Children are frequently called as witnesses in neglect, adoption, custody, and criminal trials. Attorneys working with child witnesses must consider the child's stage of development, relationships, emotional state, and privacy when preparing these witnesses. Below are key legal standards and considerations.

Witness Competency

Children as young as three have been found to be competent (Galindo v. US, 630 A. 2d 202 (D.C. 1993)).

There is a three-part test for testimonial competence: (see Barnes v. US, 600 A.2d 821 (D.C. 1991); Galindo v. US, 630 A. 2d 202 (D.C. 1993))

- ◆ Witness is able to recall the events which are the subject of the testimony.
- ◆ Witness understands the difference between the truth and a lie.
- ◆ Witness appreciates the duty to tell the truth.

Protecting Child Witnesses

A victim or witness's medical and/or mental health records may be disclosed only if:

- ◆ The charge involves homicide or inflicting injuries on a human;
- ◆ The disclosure is required in the interests of public justice; AND
- ◆ The defense gets leave of the court prior to issuing a subpoena for the medical records. This is done via a Brown motion (see Brown v. US, 625 A.2d 97 (D.C. 1997)).

A child does not have to testify in a *neglect* trial if: (In re Jam. J., 825 A.2d 902 (D.C. 2003))

- ◆ Testifying would create a serious risk of harm to the child;
- ◆ The risk can't be alleviated with a procedural modification such as an *in camera* interview; AND
- ◆ The value of the testimony, and the parent's need for it, is not required in the interests of justice.

A child can testify *in camera* in a *criminal* trial if: (Hicks-Bey v. US, 649 A.3d 574 (D.C. 1994))

- ◆ The protections are necessary to protect the welfare of this particular child;
- ◆ The child will be traumatized by the presence of the defendant; AND
- ◆ The emotional distress suffered by the child will be more than *de minimis*.

Preparing Children to Testify

To prepare a child witness and minimize the stress he or she experiences, advocates should:

- Explain to the child the process of and purpose for testifying
- Schedule a visit to the courtroom when court is not in session
- Practice answering simple questions and giving "I don't know" responses when appropriate
- Invite supportive adults (relatives, mentor, therapist, etc.) to attend court
- Ask caregiver to pack a comfort item, snacks, toys, books, and homework
- Consider whether the child can wait in a child-friendly location instead of the courthouse
- Schedule therapy appointment for evening or day after testimony