

Just in case...

Guidelines in case your child is testifying in court



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NATIONAL
CENTER FOR 
**MISSING &
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OJJDP Office of Juvenile Justice
and Delinquency Prevention
Office of Justice Programs ♦ U.S. Department of Justice

Guidelines in case your child is testifying in court

Testifying in court may be a difficult experience for adults and an even more difficult experience for children, especially those who are victims of abduction or sexual exploitation. Children may feel embarrassed and ashamed about their victimization and may be reluctant to discuss it in a courtroom. The entire court process may be intimidating and confusing for children and their families. Family members and children may have concerns about lengthy questioning, courtroom delays, and facing the defendant in court.

Fortunately many court officials and prosecutors have recognized the specialized needs of children when they testify in court and established measures to assist them.

This brochure is designed to help parents and guardians talk to their children about testifying in court. While this brochure does not and cannot provide legal advice, it does provide suggestions that may empower parents and guardians when working with legal professionals. Included is an explanation of the courtroom process, a discussion of current reforms to help child witnesses testify, advice for talking to children about their testimony, considerations in working with legal professionals, and suggestions for aftercare following the trial.

The Courtroom Process

To **testify** in court means to answer questions under oath. Explain to your child that an **oath** is simply a promise to tell the truth. There are a number of situations in which your child may be asked to testify in court. Your child may have been exploited, neglected, or involved in a custody or visitation dispute if you are going through a separation or divorce. Your child may have been a victim of a crime such as robbery. He or she may have been injured and may be involved in a civil suit for damages. Or your child may have been the victim of a family or

nonfamily abduction. A child may also have to testify in court if he or she was a witness to a crime or accident.

Depending on the kind of offense and laws in your jurisdiction, your child could testify in **criminal court**, **civil court**, or **family court**. Matters of child-sexual exploitation and abuse are most often handled in criminal court. Common names for family court include **juvenile court**, **children's court**, and **domestic-relations court**. Divorce and custody cases are generally heard in domestic-relations court.

When criminal charges are filed and the person accused of the crime, known as the **defendant**, pleads not guilty, a criminal trial is held. The case will be heard either by a judge alone or by a judge and **jury**, the group of people selected to hear the case. In a jury trial, the jurors will listen to the evidence and decide the outcome. Also present in the courtroom will be the **bailiff**, who is a law-enforcement officer for the court; a **court reporter** who records what is said; and a **court clerk** who administers the oath. Furthermore the judge may allow members of the public and media in the courtroom while your child testifies, but usually will not allow other witnesses. In certain cases the judge may ban the public and media from the courtroom if your child is testifying on a sensitive or embarrassing subject or to uphold laws regarding the protection of juvenile witnesses or victims.

Each side will have its own attorney present to ask questions of witnesses and argue the case. In some cases more than one attorney may be present for each side or there may even be a prosecution/defense team consisting of several attorneys. The **prosecutor** will try to prove beyond a reasonable doubt that the defendant committed a crime. The **defense attorney** represents the defendant. The prosecutor and defense attorney may both question your child.

Your child may have to tell the same story in detail to each attorney and should expect to be questioned closely.

The judge may play an important role in helping your child testify. For example the judge may provide alternative seating, shorten the length of time your child is required to testify, and control the defense attorney's use of cross-examination to prevent any attempts to harass or intimidate your child. The judge may allow your child to have a special support person present when questioned. The judge may also directly question your child. The judge will decide whether you are allowed to be present in the courtroom when your child testifies.

The family-court process differs from the criminal-court process in several important ways. While a criminal trial generally involves a jury, the family-court trial usually does not. Family court generally has a more relaxed and private atmosphere. Testimony in family court may be presented in the judge's office or **chambers**. There are only a few people present during testimony in family court including the child witness, support persons, judge, court reporter, and attorneys for each side.

Many jurisdictions appoint a special attorney or advocate, called a **guardian ad litem**, to help represent the best interests of the child in family court. The guardian ad litem represents only the child and serves in addition to the attorneys representing each side. The family court may use a specially trained volunteer who is not an attorney, often called a **court-appointed, special advocate** (CASA), as well as a guardian ad litem.

Reforms to Help Child Witnesses Testify

The rules of evidence and procedure in the legal system within the United States are designed to help ensure a fair trial for all people accused of

a crime. All defendants have certain rights guaranteed to them by the Constitution of the United States and the constitution of the jurisdiction where the trial is occurring. These include the right to confront witnesses, have a public trial, and not testify against themselves. The judge may decide that because of the defendant's right to confront witnesses, your child may have to testify while the defendant is present in court. These legal rights are necessary to help ensure a fair trial.

Efforts have been made to pass laws or change procedures in order to accommodate the special concerns of the child witness. Certain procedures have been adopted in most jurisdictions making it easier for children to testify such as allowing the presence of a support person, using child-sized chairs, letting the child sit on the parent or guardian's lap, or permitting testimony in the judge's chambers. Some jurisdictions have even adopted procedures in which a child may be able to testify via closed-circuit television or videotaped depositions. Ask the lawyer or guardian ad litem to use any available or permissible ways to make it easier for your child to testify.

Talking to Your Child About Testifying

Remember you will have a better case against an offender if your child is a reliable witness — that is, tells the truth in a clear, thorough, and comprehensible manner. Although some people believe young children are not competent to testify in court, in fact a young child may be as reliable a witness as an adult. In order for your child to be able to testify, the judge will need to determine whether your child is “competent” to testify. In order to find your child legally competent to testify, the judge or prosecutor may ask your child questions to determine if he or she understands the difference between telling a lie and telling the truth.

Below is a list of suggestions that may help when you talk to your child about testifying.

- Do **not** go over your child's testimony before the courtroom appearance. The attorney may ask your child, "Did someone tell you to say that?" Thus, if you have "gone over" your child's testimony with him or her before the trial, the defense attorney may argue that you have coached your child and influenced the testimony. Try not to discuss the facts of the case with or in front of your child. If an attorney seeks to question your child before trial, you should consult with the prosecutor, guardian ad litem, a victim/witness advocate, and/or your own attorney.
- Any anxiety your child has about testifying in court will be lessened if he or she knows what to expect from the courtroom process. The prosecutor, victim/witness advocate, or a counselor will be familiar with local practices and should provide you with accurate information. A visit to the courtroom when it is not in session may also demystify the experience for your child. The victim/witness advocate or guardian ad litem may help by explaining courtroom dynamics to your child and showing where key people will be seated.
- Your child may be taught strategies to reduce anxiety before or while testifying. These may include relaxation exercises or simply playing with a favorite toy. Again, a therapist or victim/witness advocate may help with ideas.
- If your child is a victim of sexual exploitation or abuse, he or she may be especially afraid or embarrassed about discussing the event in court. Reassure your child that disclosing the victimization is the right action to take.
- Remind your child you know he or she is telling the truth and you believe him or her. Make sure your child knows no matter what

happens in the legal process, your feelings toward him or her will not change.

- Advise your child the most important thing to do in court is to tell the truth.
- Tell your child if he or she is confused or does not know the answer, feel free to say so. No one expects your child to remember **all** the details or know **all** the answers. Be sure to let your child know that not remembering all of the details or knowing all of the answers does not mean he or she has done something wrong.

Working with Legal Professionals

In addition to providing comfort and support to your child during the legal process, monitor the legal professional's handling of the case to help ensure your child's needs are met. Below are guidelines for parents and guardians working with legal professionals.

- If the attorney does not have experience in working with child witnesses, ask if he or she will consult with one who has this experience. Many prosecutors' offices now have a crimes-against-children unit, with specially trained attorneys, to handle these cases.
- In your meeting with the lawyers before the court appearance, talk with the attorneys about the best time of day for your child to testify — that is, try to schedule the testimony so as not to interfere with naps or mealtimes. If your child is very young, attempt to have the testimony scheduled early in the day, before your child becomes tired. The lawyers should know of planned events that might interfere with testimony such as a school field trip, vacation, or birthday. If your child has any special ways of showing fear or distress, tell the lawyer.
- Discuss with the attorneys any special measures that may be taken to alleviate your

child's anxiety on the witness stand. The attorney may speak to the judge to request permission for your child to testify in the judge's chambers, obtain a smaller witness chair, or allow the use of dolls or drawings to demonstrate what happened. It may also be possible to "isolate" your child from the offender outside of the courtroom. Many courts now have special waiting areas, away from the proceedings, for children.

- Meet with any victim/witness advocate who may be assigned to your case. When assigned, this person should follow the case all the way to resolution. In addition the district attorney's office or law enforcement may have a victim/witness program. This program may also be listed in the telephone book under the **county department of social services**. A local nonprofit organization serving missing and sexually exploited children and their families may also help guide your family through the legal system.
- You may be entitled to "restitution" on behalf of your child. Restitution is costs the defendant may be ordered to pay if he or she is found guilty. Costs that are subject to restitution include travel and transportation expenses for your family, time off from work, counseling, and reimbursement for personal property loss. In addition to the defendant being required to pay restitution, many jurisdictions have restitution funds available for witnesses and victims. Ask the prosecutor or victim/witness advocate assigned to your case about the ability to request restitution.

Your Child's Appearance in Court

Before your child appears in court, find out whether you will be able to be present in court with him or her. If you are also a witness in the case, you may not be able to be present when

your child testifies. In that case you should ask if a support person, such as a victim/witness advocate, relative, or friend, may be in court when your child testifies.

On the day of your child's courtroom appearance, both your child and you should have a good breakfast and try to relax as much as possible. You should both dress neatly and comfortably. Since there may be long periods of waiting and unforeseen delays, bring snack food and some quiet toys to amuse your child such as crayons, a book, or a doll. You should not discuss the case with each other or anyone else.

After the Courtroom Testimony

After the testimony is over, reassure your child he or she testified well and you are proud. You may not know the outcome of the trial or be disappointed with the outcome, but make sure your child knows telling what happened was the right action to take.

Your child may have some stress-related sleep problems, worries, or feelings of insecurity for a day or two. You should consider professional counseling for your child to help him or her address any long-lasting trauma of the victimization as well as the entire judicial process. Do not be afraid to talk to your child about the experience and listen carefully to any of his or her thoughts, fears, or concerns. Answer questions as truthfully and honestly as possible.

The Role of the Parent or Guardian

- Your child will testify more effectively and with less trauma if you control your own anxiety, perhaps by talking to relatives, friends, or a therapist. Do not neglect any needs you may have in addressing and working through your own feelings of guilt and anger over what has happened to your child.

- Ask others how you can most effectively help your child in court, and make sure the appropriate legal personnel are properly handling the case. Make use of advocates, and be proactive in helping to ensure what is best for your child.
- Resist the urge to discuss or prepare your child for his or her testimony in court.
- Do not try to investigate or handle the case yourself. This is not your role and may harm the case. If you do learn information that may be helpful, be sure to notify the proper authorities.
- Remember you may already know what the truth is, and the legal decision — however it may turn out — does not change that.
- Your most important role is to provide comfort, support, reassurance, and love to your child during this potentially difficult and trying time. This will go a long way in helping your child through the healing process.

National Center for Missing & Exploited Children

The National Center for Missing & Exploited Children® (NCMEC) was established in 1984 as a private, nonprofit organization. Per 42 U.S.C. § 5773 NCMEC fulfills 19 core federal mandates including the operation of a national, 24-hour, toll-free telephone line by which individuals may report information regarding the location of a missing child and request information about the procedures necessary to reunite a child with his or her legal custodian; operation of the national resource center and information clearinghouse for missing and sexually exploited children; coordination of programs to locate, recover, or reunite missing children with their families; provision of technical assistance and training in the prevention, investigation, prosecution,

and treatment of cases involving missing and sexually exploited children; and operation of a CyberTipline® for reporting Internet-related, child-sexual exploitation.

A 24-hour, toll-free telephone line, 1-800-THE-LOST® (1-800-843-5678), is available in Canada and the United States for those who have information regarding missing and sexually exploited children. The “phone free” number is 001-800-843-5678 when dialing from Mexico and 00-800-0843-5678 when dialing from many other countries. For a list of other toll-free numbers available when dialing from specific countries visit www.missingkids.com, and from the home page respectively click on the “More Services” and “24-Hour Hotline” links. The CyberTipline is available worldwide for online reporting of these crimes at www.cybertipline.com. The TTY line is 1-800-826-7653.

For information about the services offered by NCMC’s other offices, please call them directly in California at 714-508-0150, Florida at 561-848-1900, Florida/Collier County at 239-566-5801, Kansas City at 913-469-5437, New York/Buffalo at 716-842-6333, New York/Mohawk Valley at 315-732-7233, New York/Rochester at 585-242-0900, South Carolina at 803-254-2326, and Texas at 512-465-2156.

A number of publications, addressing various aspects of the missing- and sexually exploited-child issue, are available free-of-charge in single copies by contacting the



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