

Children In The Courtroom: Child Testimony

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Presentation Map

Competency to Testify

Discuss initial considerations and competency to testify

Avoiding Testimony

Explore avenues to avoid the need for child testimony

Minimizing Trauma

Provide strategies and tools for minimizing the trauma to children when testimony is necessary



Presentation Goal

Provide information on a broad range of issues and tools surrounding child testimony.

This will not be a deep dive into any singular issue, but a resource to come back to so you aren't starting from scratch later.

The Good News!

1) Child testimony doesn't happen often.

2) Typically, most (if not all) of the parties don't want to make a child testify and they also want to minimize the trauma to the child when they do have to testify.

This means you'll probably have other parties agreeing to your requests and maybe even assisting you!

The Bad News

This presentation will be **BORING.**

It is filled with citations and case quotes, statutes, and court rules.

Hopefully, what you lose in entertainment, you will gain in utility.

Initial Considerations

Step 1: Assess the case.

- Does the child have information you need for your case?
- Does the child have information another party likely needs for their case?

Step 2: Consult with the child (depending on your role).

- Do they want to testify?

Step 3: Consult with the other parties.

- Do they intend to call the child to testify?



The point is to start these assessments and conversations early. Don't wait until the week before trial to realize you or another party needs the child to testify.



Competency

Is the child competent to testify?

Competency

ER 601

Every person is competent to be a witness except as otherwise provided by statute or by court rule.

Competency

RCW 5.60.020

Every person of sound mind and discretion, except as hereinafter provided, may be a witness in any action, or proceeding.

RCW 5.60.050

The following persons shall not be competent to testify:

- (1) Those who are of unsound mind, or intoxicated at the time of their production for examination, and
- (2) Those who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly.

Competency

All witnesses are presumed to be competent to testify, including children.

State v. S.J.W., 170 Wash. 2d 92 (2010)

- “Because RCW 5.60.050 no longer makes any reference to age, the default rule for all witnesses should apply, i.e., that every person is presumed competent to testify...Requiring a trial court to presume a witness is incompetent based solely on his age would be inconsistent with the current statutory scheme that gives no weight to the witness's age. A six-year-old child (as in Allen) may be more competent to testify than an adult in a given case; no court should presume a child is incompetent to testify based upon age alone. Rather, we hold that courts should presume all witnesses are competent to testify regardless of their age.”

Competency

It falls to the party challenging witness competency to establish incompetence.

State v. S.J.W., 170 Wash. 2d 92 (2010)

- “A party challenging the competency of a child witness has the burden of rebutting that presumption with evidence indicating that the child is of unsound mind, intoxicated at the time of his production for examination, incapable of receiving just impressions of the facts, or incapable of relating facts truly. The Allen factors continue to be a guide when competency is challenged.”

Competency

“The determination of competency rests primarily with the trial judge who sees the witness, notices his or her manner and demeanor, and considers his or her capacity and intelligence.” *State v. C.J.*, 148 Wn.2d 672 (2003)

Competency

The court uses the Allen Factors when assessing child competency.

A young child is competent to testify as a witness at trial if that child has:

- (1) an understanding of the obligation to speak the truth on the witness stand,
- (2) the mental capacity at the time of the occurrence to receive an accurate impression of the matter about which the witness is to testify,
- (3) a memory sufficient to retain an independent recollection of the occurrence,
- (4) the capacity to express in words the witness' memory of the occurrence, and
- (5) the capacity to understand simple questions about it.

State v. C.J., 148 Wn.2d 672 (2003)

Competency

State v. Perez, 137 Wash. App. 97 (2007)

The court found a 4-year-old competent to testify.

- “Here, the child witness accepted things he had been told, such as scenes from the day of his birth, the habits of dinosaurs and dragons, and the activities of Spiderman. But, his testimony at the competency hearing nonetheless supports the trial judge's conclusion that he was competent to testify.”
- “Defense counsel elicited the boy's views on the personal habits of dinosaurs and dragons. S. knew that dinosaurs and Spiderman were not real but was not so sure about dragons. S. also talked about visits to Hawaii, New York, and the Fiji Islands. He admitted that he made up the Hawaii trip to make his mother laugh. He said he understood the difference between teasing and telling the truth and was not teasing about the substance of his testimony.”
- “The court was satisfied that the child could distinguish the true from the false, despite his vivid imagination. The court also determined that S. understood the need to tell the truth, had the mental capacity to receive an accurate impression of the events at the time they occurred, and had the present ability to understand simple questions and express his memory in words. The court ruled that S. was competent to testify.”

Competency

State v. Carlson, 61 Wash. App. 865 (1991)

- “Any inconsistencies in the child's testimony go to weight and credibility, not competency.”
- “...a child's reluctance to testify about specific acts of abuse does not render him or her incompetent.”

Competency

State v. Leavitt, 111 Wash. 2d 66 (1988)

- During a hearing to determine competency to testify, where the rules of evidence did not apply, the court upheld the trial court's procedure of having the child whisper answers to a social worker who then restated them for others to hear.
- "In short, the child displayed appropriate competence except to describe the specific acts. The court noted that the child was very reluctant, very reticent. Upon suggestion from the prosecutor, the court swore the social worker to truly and correctly repeat the answers given by the child, if necessary. The judge noted the limited nature of the hearing, referred to applicable cases and ER 104(a), and stated his authority to exercise his discretion to arrive at the possible truth. The prosecutor then asked 12 questions, the child gave the answer to the social worker who then stated the answer aloud. The court noted that the social worker did not suggest the answers in any manner. The trial judge stated that he could hear most of the answers given by the child and that 'I would say, if not all, 90 plus percent of the answers came out exactly as what I had heard from the witness.'"

Avoiding Testimony

Is the child's testimony truly necessary?

- Are there applicable hearsay exceptions?
- Can other witnesses provide the necessary information?
- Are there admissible documents that contain the information?

Hearsay

Has the child made the needed statements before? Is there a way to bring in those prior statements?

Hearsay

First, is it even hearsay?

If it isn't hearsay, you don't need an exception.

ER 801

- Is it a statement?
- Is it being offered for the truth of the matter asserted?

Hearsay

ER 801(d) – These things, by definition, are not hearsay.

- Prior statement by witness under certain circumstances
- Admissions by party-opponent

Hearsay

Betts v. Betts, 3 Wn. App. 53 (1970)

“The foster mother saw an item in the paper relative to the remarriage of the child's mother and with reference to it, testified as follows:

A. So I told her that her mama and Mr. Ray Caporale had got married, and she started crying. She said, -- she ran and put her arms around me and her head in my lap and started crying real bad and hard and said, "He killed my brother and he'll kill my mommie too," -- and she doesn't seem to ever get that out of her mind. Q. Does she say this often? A. Yes, she tells all her friends -- explains why she is with us, and she goes into this tale, and I don't seem to be able to get her not to tell her problems to outsiders. Q. Did she ever make statements about this prior to the incident you have just mentioned, which apparently occurred after the trial? A. Yes, yes, she started telling about her little brother was in heaven and how he had gotten there and she always blamed him for it. Q. By "him," who do you mean? A. Mr. Caporale. Q. Has anyone in your presence tried to pull this information out of this child? A. No, because I didn't want to worry her. When she talks, we let her talk; but we don't try to change her mind, one way or the other, because we aren't there to do that -- just give her a home.

The foster mother further stated, "She always mentioned, 'He's mean.' That is the word she uses -- 'He's mean.'"

We hold that use of this testimony does not violate the hearsay evidence rule.

...

The statements of the child were not admitted to prove the truth of the assertions she made, but merely to indirectly and inferentially show the mental state of the child at the time of the child custody proceedings."

Hearsay Exceptions

Does a hearsay exception apply?

ER 803 (Declarant Availability Immaterial)

- Present sense impression
- Excited utterance
- Then existing mental, emotional, physical condition
- Statements for medical diagnosis or treatment
- Recorded recollection

ER 804 (Declarant Unavailable)

- Former Testimony
- Statement under belief of impending death
- Statement against interest

RCW 9A.44.120

RCW 9A.44.120 Admissibility of child's statement—Conditions.

(1) A statement not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings under Title 13 RCW and criminal proceedings, including juvenile offense adjudications, in the courts of the state of Washington if:

(a)(i) It is made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another, describing any attempted act of sexual contact with or on the child by another, or describing any act of physical abuse of the child by another that results in substantial bodily harm as defined by RCW 9A.04.110; or

(ii) It is made by a child when under the age of 18 describing any of the following acts or attempted acts performed with or on the child: Trafficking under RCW 9A.40.100; commercial sexual abuse of a minor under RCW 9.68A.100; promoting commercial sexual abuse of a minor under RCW 9.68A.101; or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102;

(b) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

(c) The child either:

(i) Testifies at the proceedings; or

(ii) Is unavailable as a witness, except that when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

(2) A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

Note: (1)(a)(ii), the age limit changed from under 16 to under 18 on July 1, 2025.

Note: There were attempts to broaden the law via SSB 5169 in 2025. Bill was reintroduced in 2026.

RCW 9A.44.120

Admissibility under RCW 9A.44.120 requires indicia of reliability.

“Before a child's hearsay statements are admissible under the child victim hearsay statute, RCW 9A.44.120, the court must find ‘that the time, content, and circumstances of the statement provide sufficient indicia of reliability.’” *State v. Swanson*, 62 Wash. App. 186, 192, 813 P.2d 614, 617 (1991)

RCW 9A.44.120

The Ryan Factors are used to determine indicia of reliability.

- (1) whether there is an apparent motive to lie,
- (2) the general character of the declarant,
- (3) whether more than one person heard the statement,
- (4) the spontaneity of the statements,
- (5) the timing of the declaration and the relationship between the declarant and the witness,
- (6) whether the statement contained express assertions of past fact,
- (7) whether the declarant's lack of knowledge could be established through cross-examination,
- (8) the remoteness of the possibility of the declarant's recollection being faulty, and
- (9) whether the surrounding circumstances suggested the declarant misrepresented the defendant's involvement.

"No single Ryan factor is decisive and the reliability assessment is based on an overall evaluation of the factors. *State v. Young*, 62 Wn. App. 895, 902-03, 802 P.2d 829, 817 P.2d 412 (1991). But the factors must be 'substantially met before a statement is demonstrated to be reliable.' *State v. Griffith*, 45 Wn. App. 728, 738-39, 727 P.2d 247 (1986); see also *State v. Stevens*, 58 Wn. App. 478, 487, 794 P.2d 38 (1990) (appellate court may affirm admissibility of statements when trial court misapplied Ryan factors if reliability is apparent from the record)." *State v. Kennealy*, 151 Wash. App. 861 (2009)

Other Witnesses

Is the child the only person that can testify about this issue or event?

Use of Documents

Is there an admissible document that contains the desired information?
ER 901-1008; RCW 5.45

Basis of Expert Opinion

An expert can testify about the underlying facts they relied on to form their opinion even if those facts aren't admissible into evidence. ER 703, 705

However, such information is not substantive evidence and cannot be relied upon by the court when making it's ruling. *In re Welfare of X.T.*, 174 Wash. App. 733 (2013)

Other Things to Consider

- Was the child on the witness list?
- Was the child subpoenaed?
- Are there agreements you can make with the parties that avoid the need for testimony?
- If you represent the child, discussing with them the pros and cons of testifying vs. not testifying.

Talk to the other parties!

You may be able to reach an agreement on these things.

A party might agree to not call a child to testify if the parties stipulate to some hearsay exception or similar issue ahead of time.

Parties might agree to a declaration in lieu of testimony.

It never hurts to ask.

Minimizing Trauma

What can you do to make testimony less traumatic for the child?

- Preparing the child for testimony
- Comfort items
- Facility animals
- Remote testimony
- Exclusion of others during testimony

Preparing The Child

A child witness needs to be prepared for testimony like any other client or witness (and more).

- Within developmentally appropriate limits...
- Talk to them about what is a trial, what is testimony, who is involved.
- Ask them what they already know from TV and movies. Then go through what is true or inaccurate.
- A child might think they go to jail if they do it wrong.
- Show them the courtroom. Take them to a hearing to observe.
- Tell them who might ask them questions – Child’s counsel, AAG, parent’s counsel, GAL, the judge.
- Explain direct vs. cross and what each might look like.
- Go over anticipated direct and cross questions.
 - NOTE: Be very careful here, especially with a young client. You don’t want to influence their testimony or feed them answers.

Preparing The Child

- Discuss options and ideas for what might help them feel more comfortable while testifying.
- Talk to them about feeling nervous and that adults get nervous about testimony too.
- Explain that “I don’t know” is an ok answer when they don’t know. Tell them not to guess an answer when they don’t know.
- Discuss what to do (and make a plan) for if they get overwhelmed or need a break. Depending on the plan, tell the court and other parties about the plan.
- Open direct with innocuous questions to ease them in such as what school they go to, their favorite cartoon character, etc. Maybe parties can agree on opening questions.
- What to do and what to expect if there is an objection during their testimony.
 - Stop talking. Wait for the attorneys and the judge to be done. Then the judge or the attorney will either tell them to answer or ask them another question.
 - Tell them that it is ok to ask for the question to be repeated.

Preparing The Child

- What to do if they don't understand a question. Explain that it is ok to say, "I don't understand the question" and to not guess what the question means if they don't understand.
 - Similarly, it's ok to say "I didn't hear the question" if they didn't hear it.
- Do they have a physical tick or speech impediment? Would they like to address it in the beginning of their testimony?
- ER 612 – If there are writings that you think might be needed to refresh the child's recollection while testifying, talk to them about what that looks like. Explain the "song and dance" of getting them the document during testimony.
- 5th Amendment considerations and advice.
- Go over these things multiple times.

Services

Does the child have a counselor or other service/support that can assist them before and after testimony? If not, should they?

Work with the child and the other parties to explore options that can help support the child in processing their feelings and any trauma related to testimony.

Direct and Cross Examination

ER 611

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross examination. Cross examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

...

Direct and Cross Examination

State v. Hakimi, 124 Wash. App. 15 (2004)

“It is well settled in Washington that the trial court has broad discretion ‘to conduct [a] trial with dignity, decorum and dispatch and [to enable it to] maintain impartiality.’” Quoting *State v. Johnson*, 77 Wn.2d 423, 426, 462 P.2d 933 (1969).

State v. Beck, 56 Wash. 2d 474 (1960)

“The latitude to be allowed on cross-examination is within the sound discretion of the trial court.” Citing *State v. Schneider*, 158 Wash. 504 (1930) (“...it must be held that the trial court has a large discretion in permitting or restraining [cross-examination]...”)

Miller v. Peterson, 42 Wash. App. 822 (1986)

“The scope of cross examination is within the broad discretion of the trial court and will not be overturned on appeal absent an abuse of discretion.”

Leading Questions on Direct

ER 611(c)

Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

State v. Canida, 4 Wash. App. 275 (1971)

“The use of leading questions during the direct examination of a child witness is a matter within the sound discretion of the trial court.” Citing *State v. Allen*, 70 Wn.2d 690 (1967).

Leading Questions on Direct

State v. Davis, 20 Wash. 2d 443 (1944)

“We appreciate the general rule relative to the asking of leading questions, but there are exceptions to this rule. Much discretion is also vested in the trial court in permitting leading questions to be asked. Wharton's Criminal Evidence (11th ed.), vol. 3, p. 2136, § 1270, has the following to say on this matter:

‘Leading questions are also permissible in the examination of children unaccustomed to court proceedings, and in the examination of a young, uneducated, and unsophisticated girl testifying to the details of a rape.’

...

‘It is the rule that, with witnesses of tender years, wide latitude is allowed in examination of the witness, and we think it clear that the trial court did not abuse the discretion vested in it. *State v. Hill*, 45 Wash. 694, 89 Pac. 160; *State v. Hanson*, 133 Wash. 527, 234 Pac. 28.’”

Leading Questions on Direct

Some federal courts have directly said child witnesses are an exception to the rule against leading questions on direct.

United States v. Johnson, 519 F.3d 816 (8th Cir. 2008)

“This court has long recognized the child witness exception to the general prohibition of leading questions. *United States v. Flute*, 363 F.3d 676, 678 (8th Cir. 2004). Specifically, this court repeatedly has upheld the use of leading questions to develop the testimony of sexually abused children, especially regarding precise physiological details of the sexual assaults. *United States v. Grassrope*, 342 F.3d 866, 869 (8th Cir. 2003)...”

Excluding the Public

RCW 13.34.115 - Hearings—Public excluded when in the best interests of the child—Notes and records—Video recordings.

(1) All hearings shall be public, and conducted at any time or place within the limits of the county, except if the judge finds that excluding the public is in the best interests of the child.

(2) Either parent, or the child's attorney or guardian ad litem, may move to close a hearing at any time. If the judge finds that it is in the best interests of the child the court shall exclude the public.

(3) If the public is excluded from the hearing, the following people may attend the closed hearing unless the judge finds it is not in the best interests of the child:

(a) The child's relatives;

(b) The child's foster parents if the child resides in foster care; and

(c) Any person requested by the parent.

...

Excluding the Public

Closure to the public under RCW 13.34.115 requires an Ishikawa analysis in addition to the best interest finding. *In re Dependency of A.M.*, 2014 Wash. App. LEXIS 2910 (2014) (Unpublished) (citing *In re Det. of D.F.F.*, 172 Wn.2d 37 (2011)).

Seattle Times Co. v. Ishikawa, 97 Wn.2d 30 (1982).

In Chambers Testimony

In re Welfare of McGee, 36 Wash. App. 660 (1984).

The Court of Appeals did not allow an interview of the child in chambers where the trial court excluded the parent and the parent's attorney from the interview.

In re Welfare of S.E., 63 Wash. App. 244 (1991).

The Court of Appeals upheld an interview of the child in chambers with the parent excluded when done on the record, with parent's counsel and other parties present, and an opportunity to cross examine.

NOTE: The law allows an in chambers interview of a child by the court in some family law matters. See RCW 26.09.210. There is no such statute for dependency cases. Don't let the court get them mixed up and create an appeal issue.

Exclusion of Parents

In re Dependency of A.D., 193 Wash. App. 445 (2016)

The Court of Appeals upheld exclusion of the parents from the courtroom during child testimony.

“Nakalji argues that there was no reason to exclude her while A.D. testified because she did not participate in any abuse. Although Nakalji was not abusive, she was extremely neglectful, about which A.D. testified. Moreover, like the children in S.E., A.D. testified about not wanting to live with his parents. Nakalji also argues that 17-year-old A.D. needed less protection than the very young children in S.E. This is not persuasive. Although A.D. was a teenager, he was still a minor.”

Reminder: Right to confrontation is for criminal proceedings and doesn't apply to dependency and termination proceedings. *In re Dependency of Penelope B.*, 104 Wash. 2d 643 (1985).

Prerecorded Testimony

A videotaped deposition might be preferable over in court testimony. It takes place outside of the courtroom which may be less intimidating for the child. Similarly, various agreements, stipulations, and/or court orders may be obtainable to allow for other accommodations for the child.

CR 30 & CR 32 address depositions, videotaping of depositions, and use of depositions at trial. There are, however, numerous considerations and hurdles surrounding this practice that are beyond the scope of this presentation.

Analogous federal law regarding criminal cases: 18 U.S. Code § 3509
With specific findings, allows the court to order a videotaped deposition of a child's testimony. It also has mechanisms for physically excluding the defendant from the deposition.

Remote Testimony

CR 43(a)(1)

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute. Except as provided in CR 43(f)(1), the court may permit, with appropriate safeguards, testimony by remote means if the parties agree and the court approves, or if the court determines the purposes of CR 1 will be served. In determining whether testimony should be allowed by remote means per CR 1, the court may consider whether the witness is subject to a trial subpoena, whether there will be any prejudice to any party or the witness if testimony by remote means is permitted, the witness' access to technology that allows the witness to be seen and heard, and the court's ability to facilitate remote testimony. Advance notice of a party's intention to use remote testimony must be given no less than 10 days prior to trial, absent good cause shown.

Note: This rule was amended in 2024. It used to only allow remote testimony "For good cause in compelling circumstances and with appropriate safeguards..."

Remote Testimony

Remote testimony is expressly allowed for child witnesses under certain circumstances in criminal prosecutions per RCW 9A.44.150.

Use of Comfort Items

There is a lot of criminal case law supporting allowing minor witnesses to have a doll, teddy bear, or similar comfort item with them during testimony.

Note: Cases appear to distinguish use of an item that belongs to the witness versus something given to the witness by a party for the purpose of testimony. Similarly, there appears to be a distinction in an item brought with the witness to the hearing versus something given to them during testimony.

Use of Comfort Items

Footnote from *State v. Dye*, 170 Wash. App. 340, 347 (2012), aff'd, 176 Wn.2d 1011 (2013) – Criminal case where adult victim with developmental delays had prosecutor's facility dog with them during testimony:

“See, e.g., *Hakimi*, 124 Wn. App. at 21 (court did not err by allowing nine-year-old victims to hold dolls during testimony in sexual abuse trial when the judge “weighed the interests of *Hakimi's* two victims [against] any potential prejudice to *Hakimi*”); *State v. Cliff*, 116 Idaho 921, 924, 782 P.2d 44 (1989) (“In cases, such as this, where it is necessary to receive testimony from young children, the court must strike a balance between the defendant's right to a fair trial and the witnesses' need for an environment in which he or she will not be intimidated into silence or to tears.”); *State v. Dickson*, 337 S.W.3d 733, 743-44 (Mo. Ct. App. 2011) (court did not abuse discretion by allowing child victim to hold comfort item after balancing benefit against potential prejudice); *State v. Powell*, 318 S.W.3d 297, 304 (Mo. Ct. App. 2010) (“We ... emphasize that trial courts must be cognizant of the possibility that comfort items or other accommodations for minors may unfairly engender sympathy for complaining witnesses. When an objection is raised, courts should require some explanation of the need for such items, particularly when the items will be used during the testimony of teenage children. Nevertheless, in this case, we conclude that the trial court properly weighed the impact of the teddy bears on the witnesses and the jury.”); *State v. Marquez*, 124 N.M. 409, 413, 951 P.2d 1070 (1997) (not error to allow 12-year-old victim of sexual assault to hold teddy bear while testifying when court “properly balanced” her need against possibility of prejudice); see also Marianne Dellinger, *Using Dogs for Emotional Support of Testifying Victims of Crime*, 15 *Animal L.* 171, 172, 185 (2009) (advocating use of dogs “only in cases where the witness can demonstrate a truly compelling need for the emotional support and only where the proper balancing with the defendants' rights is performed”).”

Support Person

RCW 7.69A.030 (Technically for crime victims but should be persuasive and says any “juvenile court proceeding.”)

In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. Except as provided in RCW 7.69A.050 regarding child victims or child witnesses of violent crimes, sex crimes, or child abuse, the enumeration of rights shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Child victims and witnesses have the following rights, which apply to any criminal court and/or juvenile court proceeding:

Support Person

(2) With respect to child victims of sex or violent crimes or child abuse, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the child victim...The role of the crime victim advocate is to provide emotional support to the child victim and to promote the child's feelings of security and safety.

(3) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.

(5) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.

(8) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.

(9) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the child testifies in order to promote the child's feelings of security and safety.

Support Person

18 U.S. Code § 3509 – Analogous federal code regarding criminal cases:

(i) Adult Attendant.—

A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

Facility Dogs

RCW 10.52.110 – Courthouse facility dog program.

(1) Courts are authorized to exercise discretion permitting a courthouse facility dog to be used in any judicial proceeding.

(2) Courts with an available courthouse facility dog must allow a witness under eighteen years of age, or who has a developmental disability as defined in RCW 71A.10.020, to use a courthouse facility dog to accompany them while testifying in court....

Technically under Title 10 (Criminal Procedure), but the language is quite broad. The findings related to the bill are also persuasive and quite broad in their language.

Not every county or court has a facility dog. Ask around if you are unsure. The prosecutor's office is probably your best bet for this information.

Facility Dogs

State v. Dye, 178 Wash. 2d 541 (2013) – Predates RCW 10.52.110. Criminal case where an adult victim with developmental delays had the prosecutor's facility dog with them during testimony.

“Dye has failed to establish that his fair trial rights were violated. Any prejudice that resulted from Ellie's [the facility dog] presence was minor and largely mitigated by the limiting instruction that the trial court gave. In contrast, the trial court ruled that Ellie's presence would be helpful in reducing Lare's anxiety and eliciting his testimony, and no evidence to the contrary appears on the record. Both the general trend of courts to allow special procedural accommodations for child witnesses and the deference built into the abuse of discretion standard require us to respect the trial court's decision in how to structure its own proceedings. While the possibility that a facility dog may incur undue sympathy calls for caution and a conscientious balancing of the benefits and the prejudice involved, the trial court balanced the competing factors appropriately. The trial court did not abuse its discretion, and the Court of Appeals is affirmed.”

Facility Dogs

Dye Cont.

“Our confrontation clause analysis in Foster, 135 Wn.2d at 466-70, and our fair trial analysis in Finch, 137 Wn.2d 843-46, show that where special courtroom procedures implicate constitutional rights, it is not the defendant's burden to prove that he or she has been prejudiced, but the prosecution's burden to prove that a special dispensation for a vulnerable witness is necessary. The present context is no different. However, we do not require a showing of “substantial need” or “compelling necessity” like Delaware, in Gomez, 25 A.3d at 798-99, or Hawaii, in Palabay, 9 Haw. App. at 417. Trial courts have a unique perspective on the actual witness that an appellate court reviewing a cold record lacks; because the trial court is in the best position to analyze the actual necessity of a special dispensation, we will not overrule the trial court's exercise of discretion unless the record fails to reveal the party's reasons for needing a support animal or if the record indicates that the trial court failed to consider those reasons.”

Reminder – No right to confrontation in dependency cases

Facility Dogs

Counties in WA state with active courthouse facility dog programs (as of May 2025):

- Snohomish
- King
- Thurston
- Lewis
- Spokane
- Clark
- Kittitas
- Grant

From reaching out to <https://courhousedogs.org/>

Note: Counties lose and gain dogs/programs, so check even if your county isn't on this list!

Protecting Due Process

Children and parents have significant due process rights at issue in a dependency or termination case.

Assuming the child testifying is the subject of the dependency, the court may need to weigh competing due process claims for any objections to accommodations.

Protecting Due Process

Challenges to procedures effecting due process are typically analyzed under the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Under the Mathews Test, the court weighs:

- (1) the private interests affected,
- (2) the risk of error created by the procedures used and the probable value of any additional procedural safeguards, and
- (3) the State's interest in using the challenged procedure.

Protecting Due Process

The nature of the analysis could change depending on the facts.

- Are there competing private interests?
- Are the private interests more or less persuasive based on the exact accommodation?
- Are appropriate safeguards being used to limit due process infringement?
- Do some private interests align with the state interests?
- Has sufficient evidence been produced to support the change in proceedings?

Protecting Due Process

“We conclude that for the purposes of Mathews, the child's liberty interest in a dependency proceeding is very different from, but at least as great as, the parent’s.” *In re Dependency of M.S.R.*, 174 Wn. 2d 1 (2012).

Mathews and the child’s interests are more thoroughly explored in Part 2 of the training series.

Protecting Due Process

Some of the primary considerations regarding due process concerns are: Can the party hear/review the evidence and consult with their attorney. See *In re Welfare of M.B.*, 195 Wash. 2d 859 (2020); *In re Dependency of G.L.L.*, 20 Wash. App. 2d 425 (2021).

Shelter Care & Other Hearings

The rules of evidence don't apply at shelter care or many other dependency hearings.
ER 1101(c)(3).



**Practice
Standards**

Obligations of child's attorney

Practice Standards

At the request of the legislature, the Washington State Supreme Court Commission on Children in Foster Care created the Representation of Children and Youth in Dependency Cases Practice, Caseload, and Training Standards.

Attorneys appointed to represent children in dependencies are to comply with the Practice Standards.

Practice Standards

Section 7.3 Whether Child Should Testify

“Consistent with RPC 1.2 and 1.4, the child’s attorney is expected to fully counsel and advise the child regarding a decision as to whether to call the child as a witness, including assessing the child’s competency to testify.”

Practice Standards

- (1) Among the factors that should be considered is the child's need or desire to testify. Other factors include, but are not limited to, potential repercussions of testifying or not testifying, including potential criminal/juvenile offender liability; the necessity of the child's direct testimony; the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the child; and the child's developmental ability to provide direct testimony and withstand possible cross-examination.
- (2) As a child may be called to testify by any party, competency should be considered prior to all testimonial hearings regardless of whether or not the attorney and child intend to have the child testify. Relevant to competency, the attorney should consider prior to any testimonial hearing, the developmental ability of the child to recall and relate events and whether or not the child is able to understand the difference between a truth and a lie. The child's propensity for truthfulness is immaterial to competency, and competency is presumed regardless of age of the witness. If the attorney anticipates that their client will be called to testify and anticipates a challenge to the competency of their client, the attorney should explain in developmentally appropriate terms the purpose and procedure of a competency hearing.

Practice Standards

7.5 Child Witness

If the child is to testify, the attorney should effectively prepare them to do so. This preparation should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination. Attorneys should ensure, through motions, if necessary, that testifying will cause minimum harm to the child. The child's attorney is expected to work with other parties who may call the child as a witness to ensure as much as possible that the child is afforded an opportunity to testify in a manner that safeguards the child's emotional well-being. The child's attorney should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.

7.6 Challenges to Child's Testimony/Statements

The child's competency to testify, or the reliability of the child's testimony or out-of-court statements, may be called into question. The child's attorney should be familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility and, where appropriate, attempt to establish the competency and reliability of the child.

Talk to the other parties!

You may be able to reach an agreement on these things.

Parties might agree outright to remote testimony, use of a therapy dog, removal of some parties, etc.

It never hurts to ask.

More Resources

[Handbook on Questioning Children: A Linguistic Perspective by Anne Graffen Walker, PhD](#)

“A growing body of research suggests that children are more accurate and complete in their responses to evidentiary questions when they have been familiarized with the questioner, the setting, the language, and the customs of the legal world that are about to enter.”

[ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases](#)

Section D. Hearings – Mirrors WA Standards in many ways but has commentary and references other resources/authority.

[DOJ Office for Victims of Crime – Child Victims and Witnesses Support Materials](#)

<https://ovc.ojp.gov/child-victims-and-witnesses-support>

And much more! You just have to look for it!



Thank you!

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