



Judges' Legal Guide: Competency and Safeguards for Child Witnesses

Child Witnesses Generally

- All witnesses are presumed to be competent to testify unless the law provides otherwise. **Ark. R. Evid. 601.**
- A child's competency to testify should be determined by the trial judge as a preliminary matter. **Ark. R. Evid. 104(a).**
- A judge can consider any information that helps to determine whether the child is competent to testify; the judge is not bound by the rules of evidence. *Id.*
- Generally, a judge should consider a child's competency outside of the jury's hearing; this is always required in criminal cases. **Ark. R. Evid. 104(c).**
- Courts have rejected a precise age for deciding whether a child is competent to testify. *Hoggard v. State*, **277 Ark. 117, 122 (1982).**
- If a child witness with a disability is found competent to testify, the disability status will not prevent the child from testifying. It is for the finder of fact to determine whether factors such as disability status affect a witness' credibility. *Byndom v. State*, **344 Ark. 391, 400-01 (2001).**

Competency and Safeguards for Child Witnesses

- *A court admitting testimony from a child witness should make findings on the record that the child witness can:*
 - Observe events. *Hoggard*, **277 Ark. at 122.**
 - Remember events. *Id.*
 - Understand the moral duty to tell the truth. *Id.*
- *The court should make findings on the record that the prosecuting attorney, attorney ad litem, Office of Chief Counsel attorney, or victim-witness coordinator:*
 - Explained the nature of the proceedings to the child. **Ark. Code Ann. § 16-43-1202.**
 - Explained to the child the oath that will be administered. *Id.*
 - Explained to the child that the judge will determine whether the child is competent to testify. *Id.*
 - Explained to the child that the child can tell the court if there is a question he or she does not understand. *Id.*
- The prosecuting attorney, attorney ad litem, or OCC attorney can make a motion to the court:
 - For the child to testify at a time of day when he or she is most alert and able to understand what is being asked. *Id.*
 - For the child to have a comfort item while he or she testifies. *Id.*
 - For the child to have a support person present while he or she testifies. *Id.*
- The prosecuting attorney, attorney ad litem, or OCC attorney can make proper and timely objections to ensure the child is not questioned in an argumentative or harassing manner. *Id.*
- The prosecuting attorney can make a motion to the court, with notice to opposing counsel, stating good cause to allow a minor who is the alleged victim of a sexual offense (including attempt) to have a parent or other custodian present while he or she gives any testimony at a deposition or in court. **Ark. Code Ann. § 16-42-102.**



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Facility Dogs as a Safeguard for Child Witnesses

- A court can allow a child witness to have access to a certified facility dog if one is available in the judicial district. **Ark. Code Ann. § 16-43-1002.**
- ***The court should make findings on the record that:***
 - The party requesting the dog made a motion to the court outside of the jury's presence that:
 - Included the dog's credentials and liability insurance. ***Id.***
 - Included a statement that the dog and the child have established a relationship to prepare for testimony. ***Id.***
 - Included a statement that the dog might reduce the child's anxiety while testifying. ***Id.***
 - The dog is a certified facility dog that has:
 - Graduated from an appropriate nonprofit organization that provides rigorous training for dogs to help child witnesses reduce stress in court proceedings. ***Id.***
 - Been trained in such a program for at least two years. ***Id.***
 - Passed the public access test required for service dogs. ***Id.***
 - The dog is under the direction of a certified handler who has received training from an appropriate organization on handling trained dogs for use in court proceedings. ***Id.***
 - The dog's handler accompanied the dog to the witness stand with the child while the jury was not present. ***Id.***
 - The jury was seated after the child and the dog were situated on the witness stand. ***Id.***
 - In a criminal case, the court instructed the jury on the dog's purpose and that the dog's presence should not affect their view of the witness, defendant, or any other person involved. ***Id.***; **AMCI 2d 115, Certified Facility Dog.**
- During jury selection, attorneys may ask potential jurors whether a dog's presence would affect how they view the child or the defendant. **Ark. Code Ann. § 16-43-1002; Ark. R. Crim. P. 32.2.**