



## Judges' Hearing Checklist: Competency and Safeguards for Child Witnesses

### Competency Generally

- All witnesses are presumed competent to testify.
- A child with a disability can be competent to testify; the fact finder can determine whether the disability affects the witness' credibility.
- Generally, a judge should consider a child's competency outside of the jury's hearing; this is always required in criminal cases.

<b>Lack of Competency (<i>Hoggard</i>, 277 Ark. 117 (1982))</b>	
Required Findings	The court should determine whether the child witness: <ul style="list-style-type: none"> <li>○ Has the ability to observe the events.</li> <li>○ Has the ability to remember the events.</li> <li>○ And understands the moral duty to tell the truth.</li> </ul>
<b>Safeguards for Child Victims Giving Testimony (A.C.A. § 16-43-1202)</b>	
Required Findings	The court, with help from attorneys and/or the victim-witness coordinator, should ensure that the child: <ul style="list-style-type: none"> <li>○ Understands the nature of the proceedings.</li> <li>○ Understands the oath he or she will take.</li> <li>○ Understands the judge's role in determining whether the child is competent to testify.</li> <li>○ And understands he or she can tell the court when a question is unclear.</li> </ul>
Optional Motions	The prosecutor, attorney ad litem, or OCC attorney can motion to the court for the child to: <ul style="list-style-type: none"> <li>○ Testify at a time of day when he or she is most alert and able to understand the proceedings.</li> <li>○ Have a comfort item while he or she testifies.</li> <li>○ Or have a support person present while he or she testifies.</li> </ul>
<b>Parent or Guardian Attendance for Minor Victims of Sexual Offenses (A.C.A. § 16-42-102)</b>	
Required Findings	When a minor victim of a sexual assault is giving a deposition or testimony in court, the court can allow the presence of a parent or guardian for the victim if: <ul style="list-style-type: none"> <li>○ The prosecution gives notice to the opposing party.</li> <li>○ The prosecution makes a motion to the court requesting the parent or guardian's presence.</li> <li>○ And the motion states good cause for why the parent or guardian should be present.</li> </ul>
<b>Certified Facility Dogs (A.C.A. § 16-43-1002; AMCI 2d 115)</b>	
Required Findings	A court can allow a certified facility dog to help a child testifying if: <ul style="list-style-type: none"> <li>○ One is available in the judicial district.</li> <li>○ The party requesting a facility dog motions outside of the jury's presence to allow the dog.</li> <li>○ The dog has the appropriate training and liability insurance.</li> <li>○ The child and the dog have established a relationship to prepare for testimony.</li> <li>○ The dog might reduce the child's anxiety while testifying.</li> <li>○ The dog is being handled by a trained and certified handler.</li> <li>○ The child and the dog are seated on the stand before the jury enters.</li> <li>○ And, in a criminal case, the court instructs the jury on the dog's purpose and that its presence should not affect how they view the witness, the defendant, or any other person.</li> </ul>