

The Child Witness

It is very difficult for children to be witnesses in a trial. In order to determine if a child should testify in a trial, the attorney should consider numerous factors. Among some of the factors that should be considered in determining whether the child should testify are:

- The child's need or desire to testify.
- The significance or importance of the child's testimony.
- The age of the child.
- The developmental ability of the child.
- The child's ability to withstand a cross-examination.

Children under the age of three are not called as witnesses. It is also quite uncommon to call a three or four-year-old child to the stand as well. Young children are not able to articulate their thoughts and beliefs into coherent sentences that are needed for a judge or jury to properly assess their testimony. Younger children also tend to confuse the timing of events and specificity often required during trials. Young children are not the best or most reliable witnesses. However, children of a young age are sometimes required to testify if no other individual is able to testify to certain events.

Are children witnesses credible?

Sometimes a judge or jury may be more apt to believe a child witness than an adult witness depending on the circumstances in the case. However, other times a judge or jury may not be as apt to believe the child witness if the child's statements appear incoherent and confused. Children often lack the cognitive and verbal abilities, which is a trait that is expected of a credible witness. Even if the child appears to testify in a coherent manner, jury instructions may often diminish the child's credibility. It is recommended that if a trial court finds that a special jury instruction is necessary when a child testifies, the instruction should either:

- Instruct the jury either that the child witness' testimony is to be weighed according to the same standards applicable to all witnesses.

OR

- Instruct that the child's testimony should be assessed in light of the child's age, knowledge, and experience.