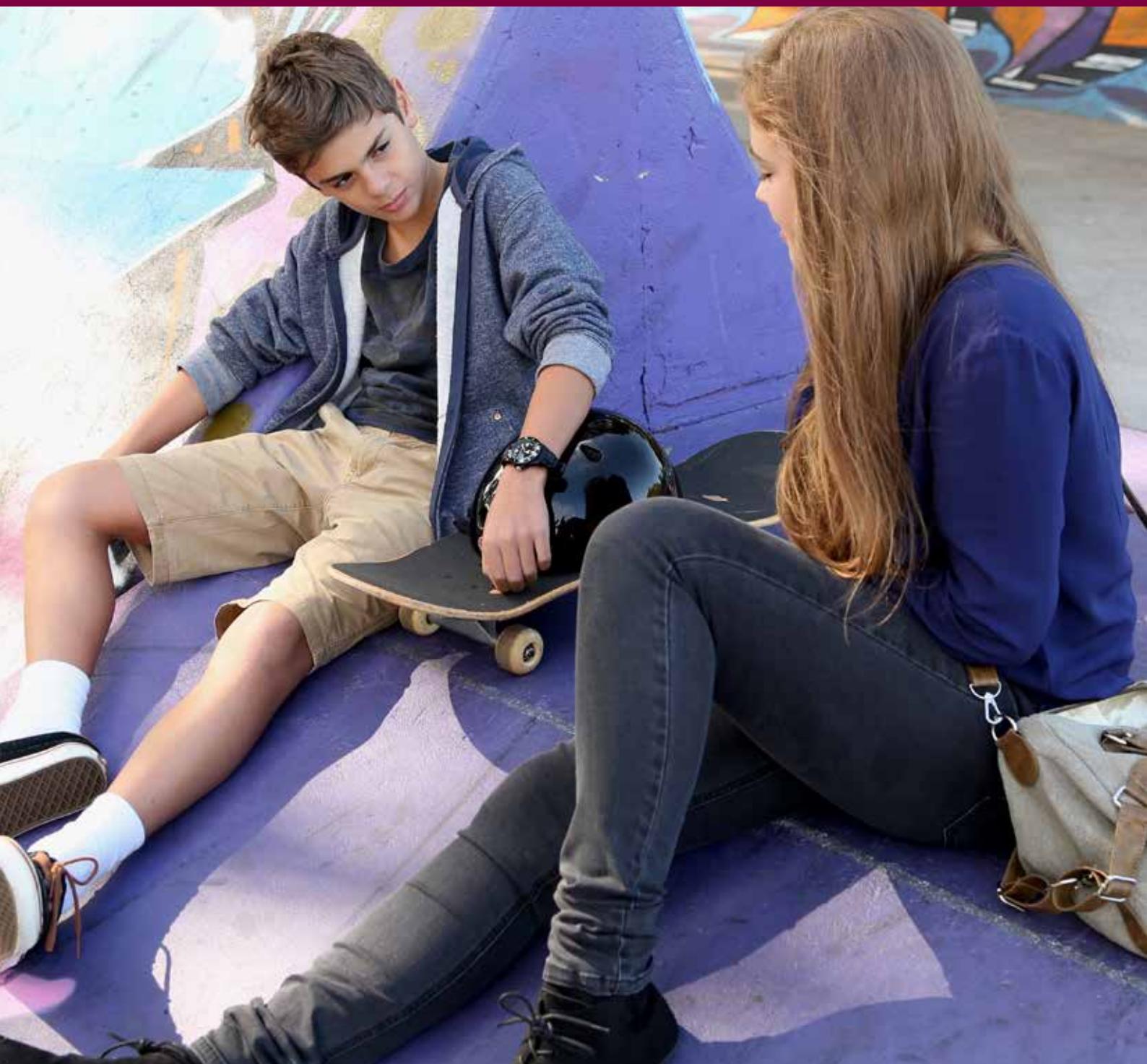




Government of **Western Australia**
Department of the Attorney General

A Guide to Giving Evidence



BEING A WITNESS

This magazine will help you understand your role as a witness. Lots of young people feel scared, worried, nervous and confused when they have to give evidence.

You will learn about giving evidence, the rules for witnesses and some contact numbers that may help you as the case moves through the court process.

WHAT IS A WITNESS?

A witness is a victim, or someone who has seen or heard something that is important for a court to know during a trial.

If you are going to give evidence, you would have provided a statement to police. A statement can be done in two different ways. Some people talk to the police and their statement is then typed and signed. Other witnesses will sit in a room with a police officer and answer questions which are recorded onto a DVD. This is called a Visually Recorded Interview (VRI).

There are different types of courts in Western Australia including:

- ➡ Children's Court
- ➡ Magistrates Court
- ➡ District Court
- ➡ Supreme Court.



BEFORE YOU GIVE EVIDENCE

Once you know that you have to give evidence the Child Witness Service will be available to help you. A child witness worker will support you through the court process and answer your questions.

If you are required to give evidence at any court you should be given a summons. A summons is a legal document that tells you the date of the trial and which court you need to attend.

“YOU CANNOT JUST IGNORE A SUMMONS AS IT IS A LEGAL DOCUMENT THAT STATES YOU HAVE TO ATTEND COURT. THE SUMMONS IS USUALLY GIVEN TO YOU BY A POLICE OFFICER OR SOMEONE FROM THE SHERIFF’S OFFICE.”



In most cases you will also meet with the prosecutor before you give evidence.

THE PROSECUTOR WORKS FOR THE STATE TO PRESENT EVIDENCE ABOUT THE ALLEGED OFFENCE. THIS MEETING IS CALLED PROOFING. THE PROOFING ALLOWS YOU TO TALK ABOUT YOUR EVIDENCE TO MAKE SURE IT IS CORRECT AND YOU HAVE INCLUDED EVERYTHING

If you have a written statement the prosecutor will sit and talk with you about the content of your statement. If you did a visually recorded interview, the prosecutor will sit with you while you watch the DVD before the trial.



HOW DO I GIVE EVIDENCE?

There are two ways to give evidence: open court or closed-circuit television (CCTV).

Open court

When a witness gives evidence in open court this means they appear in the actual courtroom to answer the questions. Other people in the courtroom at this time will include the judge and jury or magistrate, prosecutor, defence lawyer, security and the accused.

Closed-circuit television (CCTV)

When a witness gives evidence via CCTV, they will link into the courtroom live via TVs and cameras. There will be two TV screens in front of them and the witness will see the judge or magistrate on one TV and the prosecutor or defence lawyer on the other TV. If you use CCTV you will not see the accused person.

Some people are automatically allowed to give their evidence in the CCTV room but this is not the case for everyone. If you are worried about giving your evidence in the courtroom it is important that you let your child witness worker know straight away.



“ YOUR CHILD
WITNESS WORKER
CAN SHOW YOU WHAT
EITHER A COURTROOM,
OR CCTV LOOKS LIKE,
DEPENDING ON HOW YOU
ARE GIVING
YOUR EVIDENCE ”



WHAT TO EXPECT WHEN GIVING EVIDENCE

When you first start giving your evidence the court will ask you to state your full name. It is important that you also provide your middle names if you have any. After you have provided your full name you will have to make a promise to the court that you will tell the truth when giving your evidence. You can choose between saying the **oath** or the **affirmation** (see definitions on page 10).

There are three parts to giving evidence:

Evidence in chief

These are the questions that will be asked by the prosecutor. If you have provided a visually recorded interview this will generally be part of your evidence in chief.

Cross examination

This is the part of your evidence where the defence lawyer will ask you questions. The defence lawyer works for the accused person and represents their case in court.

Re-examination

Once the defence lawyer has finished asking questions the prosecutor can speak with you again. This is called re-examination and allows the prosecutor to clarify anything said during cross examination or to allow you to explain an answer where necessary. Re-examination does not happen in all cases.

SOME RULES TO HELP WITNESSES

- **You must tell the truth.** This is the most important rule.
- **Tell the lawyers if you don't understand a question.** Sometimes the questions might be hard to understand or they might be confusing. It is important that you tell the lawyers if you don't understand so they can ask the question in a way that is easier for you to understand.
- **It is OK to say you don't remember.** If you are asked a question and the truth is you don't remember the answer then it is OK for you to tell the court that you don't remember. It is important that you don't guess your answers. No one is going to be angry with you if you don't remember an answer.
- **It's OK to say you don't know the answer.** If you are asked a question and you don't know the answer it is OK to tell the court that you don't know.

- **It is OK to ask for a break.** If you are giving evidence and start to feel upset, confused or tired it is a good idea to ask for a break.
- **You can correct the lawyers.** The lawyers may suggest that things happened in a certain way and if you don't agree it is OK to tell them they are wrong.
- **You must answer all of the questions.** If an inappropriate question is asked the judge or magistrate, or one of the lawyers will say something. Sometimes there will be questions that you don't like or you can't see why they matter but you will still have to answer them.
- **Do not discuss your evidence with other witnesses.** It is very important that you do not discuss your evidence with other witnesses.



TIPS FOR GIVING EVIDENCE

- ➡ Sometimes you may be asked the same question more than once. It doesn't mean that you have given a wrong answer. The lawyers just need to clarify what you are saying.
- ➡ If you do not hear a question properly it is OK to ask the lawyers to repeat the question.
- ➡ Take your time to answer the questions. There is no time limit so it is OK to think about your answers.
- ➡ Sometimes the lawyer asking the questions may have a firm voice but just remember you are not in any trouble and no one is angry with you.
- ➡ If you are feeling nervous or upset it may help to take some deep breaths. A glass of water and tissues will be available.
- ➡ When some people get nervous their voice can be very quiet. If the court is having trouble hearing your answers they may ask you to speak louder. No one is angry with you but it is important that everyone can hear your answers.
- ➡ The judge/magistrate is called "Your Honour."
- ➡ There is no chewing gum or eating in the court or CCTV room.
- ➡ Mobile phones have to be turned off when you are giving evidence.

FREQUENTLY ASKED QUESTIONS

Below are some of the questions that young people ask us about the day they attend to give evidence.

What should I wear when I come to court as a witness? It is important that you wear clean clothing that is respectful to the court. Don't wear t shirts with offensive slogans or pictures. Low cut tops are also inappropriate. While jeans with rips can be fashionable it is best not to wear them to court. You will also need to remove hats and sunglasses when giving evidence. Bring a jacket because it can be cold in court.

What time should I arrive at the court? The summons will generally provide you with a time for attending court however you may be given a different time by the prosecutor or child witness worker. The court will normally start at 10am and finish at 4pm.

Do I need to bring anything with me? Bring some snacks as you may have to wait prior to giving evidence. You may also want to bring a book, magazine, hand held games (ie Nintendo DS) or an iPod/iPad. Depending on the court that you are attending there may also be a DVD player for you to watch movies.

How many days will I need to attend the court? You will need to attend court until you have completed your evidence. This can sometimes mean that you need to attend court for two days in a row.

Who can I bring for support? You are welcome to bring your parents or an adult you feel comfortable with on the day you give evidence. There can be limited space available at some of the courts so it is best to only bring a couple of people with you.

If you are giving evidence in the CCTV room you can nominate a support person to sit in the CCTV room with you. The person has to be over 18 years old and they cannot be a witness in the trial. The support person also has to be approved by the court. It is best to discuss this with your worker from the Child Witness Service.



DEFINITIONS

Accused: The person who has been charged with a crime. This person can also be known as the defendant.

Adjourned: When a court matter is postponed to another date.

Affirmation: A promise that you make to the court that you will tell the truth when giving evidence. It states the following:

"I sincerely declare and affirm that the evidence I give in this case will be the truth, the whole truth and nothing but the truth"

You can choose between the affirmation and oath (see oath)

Alleged: When someone has been accused of committing a crime but it is yet to be proven in court.

Bail: When the accused person is allowed to remain in the community whilst the matter goes through the court process. Sometimes there are special rules that the accused has to follow and these are called bail conditions.

Child Witness Service: The staff will support you as the matter moves through court. This support can include a tour of the courts or CCTV room, counselling referrals, providing information and preparation on your role as a witness and answering questions about the court process.

Closed Circuit Television (CCTV): The CCTV room that is separate to the courtroom where a young person can give their evidence instead of being in the courtroom. Please speak with your child witness worker to see if you can use the CCTV room to give your evidence.

Complainant: The person who has been the victim of a crime.

Court Appointed Officer (CAO): The person who sits in the CCTV room with you when you give evidence.

Cross Examination: The part of your evidence where you answer questions from the defence lawyer.

Defence Lawyer: The lawyer who works for the accused person and represents their case in court.

Evidence: Information that witnesses provide to the court about the alleged crime.

Evidence in Chief: The first part of your evidence when you answer questions asked by the prosecutor. If you have done a visually recorded interview with the police this will be part of your evidence in chief.

Guilty: This means that there was enough evidence to prove that the accused person has committed the crime.

Judge: The person in charge of all court matters in the District and Supreme Court.

Jury: The 12 people from the community who listen to all the evidence presented at a trial and decide if the accused person is guilty or not guilty of a crime (see verdict).

Magistrate: The person in charge of a court matter when it is heard in the Magistrates or Children's Court. In a trial the magistrate will listen to the evidence and decide if the accused person is guilty or not guilty of the charge.

Not Guilty: This means that there was not enough evidence during the trial to prove that the accused person had committed a crime.

Oath: A promise that you make to the court that you will tell the truth when giving evidence. It states the following:

"I swear by almighty God that the evidence I give in this case will be the truth, the whole truth and nothing but the truth"

You will hold the bible in your hand when reading out the oath. You can choose between the affirmation and oath (see affirmation)

Offence: When someone has been charged with breaking the law it is alleged that they have committed an offence.

Office of the Director of Public Prosecutions: The lawyers in this office represent the state in criminal matters. The lawyers will appear in the District and Supreme Courts. The office is also known as the DPP.

Open Court: When a witness provides their evidence in the courtroom. The judge/magistrate, lawyers and the accused person will be in the courtroom with the witness when they are giving evidence.

Plea: When the accused person tells the court if they are going to plead guilty or not guilty to the charges.

Police Prosecutor: A police officer who is trained to present the case against the accused person in the Magistrate and Children's Court.

Police Statement: The statement that you provide to police which has the details of what happened.

Proofing: The appointment that you will have with the state Prosecutor to review your evidence before a trial.

Prosecutor: The lawyer who works on behalf of the state to present evidence against the accused person.

Sentencing: When a judge or magistrate will decide on the penalty for someone convicted of a crime.

Summons: The legal document that is given to you and explains when you must attend court to give evidence.

Support Person: A person that is approved by the court to sit with you in the CCTV room when you give evidence. The person cannot be a witness in the same court matter and must be over 18 years old.

Trial: The date where all of the evidence is presented to the court by witnesses and a decision is made on whether or not the accused is guilty or not guilty. It is important to remember that a trial will normally last for more than one day.

Verdict: The outcome of the trial. In the District and Supreme Court the verdict is decided by the jury. In the Children's and Magistrates Court it is decided by the magistrate. The accused person can be found guilty or not guilty.

Victim Impact Statement: A document that allows the complainant to tell the court about the impact the crime has had on their life. The victim impact statement is given to the court at the time of sentencing.

Visually Recorded Interview (VRI): Some young people will give a statement to police that is recorded on a DVD. This statement is called a visually recorded interview.

Witness: A witness is someone who gives evidence about something they heard or saw. A witness will answer questions from both the prosecutor and defence lawyer when the case goes to a trial.

USEFUL CONTACTS

Child Witness Service

Phone 9425 2850

Email mbxcws@justice.wa.gov.au

Office of the Director of Public Prosecutions

Phone 9425 3999

Police Prosecutions

Phone 9218 5200

Kids Help Line

Phone 1800 551 800

Lifeline

Phone 13 11 14

Crisis Care

Phone 9223 1111

Youth Beyond Blue

Phone 1300 224 636

Web www.youthbeyondblue.com

Headspace

Web www.headspace.org.au

Victims of Crime Website

Web www.victimsofcrime.wa.gov.au

Sexual Assault Resource Centre

Phone 9340 1828

Police

Phone 131 444

QUESTIONS TO ASK YOUR WORKER

Child Witness Service
Department of the Attorney General
Phone 9425 2850
Email mbxcws@justice.wa.gov.au
Web www.dotag.wa.gov.au