

INTERMEDIARY SERVICES



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

WHAT IS THE ROLE OF THE INTERMEDIARY ?

- The role of the intermediary is to convey the evidence-related questions from the prosecution, the defence or the magistrate to the child witness or witness with a mental disability in a manner which is sensitive and understandable to the witness.
- In carrying out this duty, the intermediary has two specific functions:
 - ▶ To protect the witness against hostile cross-examination, and
 - ▶ assist the witness in understanding the questions posed.
- The witness will, therefore, only talk to the intermediary during the court proceedings.

HOW DO CHILDREN TESTIFY IN COURT ?

- A child is any person below the age of eighteen (18) years.
- A child witness gives evidence in a room separate from the courtroom. This room is referred to as the Private Testifying Room and is usually located close to the main courtroom. It has comfortable chairs where the child and the intermediary can sit during court proceedings. Depending on the availability of space, it may also provide a small sleeping couch for a child to take a nap when drowsy or tired during testimony.

A video camera or a one-way mirror is installed in the private testifying room to facilitate communication between the Private Testifying Room and the main courtroom while the child is giving evidence. The intermediary is provided with earphones to enable him or her to follow the proceedings in the courtroom. The intermediary will hear the questions and relay these to the child. The child's responses will be captured on the live video link.

- The child can neither see nor hear the accused or anyone from the courtroom. The courtroom is provided with closed circuit television sets or one-way mirrors to enable people in the court to view and hear the child and the intermediary from the Private Testifying Room. The video is live, which means that the members of the court will see and hear the child and the intermediary as they speak. No videotape recording is made when the child gives evidence.
- The magistrate is able to have a clear and close view of the child and the intermediary from the Private Testifying Room through a monitor that is installed on the court bench. This monitor also allows the magistrate to see when the child is tired and requires a break or nap.



Monitor for the close view by the Magistrate

HOW DO PERSONS WITH MENTAL DISABILITY TESTIFY IN COURT ?

- The law allows a witness with a mental disability to testify in court with the assistance of an intermediary, and in the same way as with the child witness. The above section dealing with child witnesses therefore applies to mentally disabled witnesses as well.

ARE ALL CHILDREN/MENTALLY DISABLED WITNESSES ENTITLED TO RECEIVE INTERMEDIARY SERVICES ?

The use of intermediary services is only available:

- To children/mentally disabled persons under the mental or biological age of eighteen (18) years who would be exposed to undue mental stress or suffering if they were to testify in an open court.
- They are also available for use by adult witnesses in particular circumstances, e.g. when the adult witness shows signs of trauma.
- In order to make use of an intermediary and closed-circuit television/one-way mirror, it must be proved in court that the witness will experience more than the normal stress associated with testifying in an open court.

What does undue mental stress or suffering mean?

- Children express stress in different ways - these could include nightmares, bedwetting, change in behaviour, fear, deterioration in schoolwork and depression.
- Children who show any of these symptoms or similar symptoms are more likely to experience undue stress when testifying in open court. As a parent/guardian, it is therefore important to alert the prosecutor of any strange behaviour by your child.



The intermediary keeps children in the private children's waiting room before they are called to testify

HOW DOES THE STATE USUALLY PROVE UNDUE MENTAL STRESS ?

- The prosecutor will have to prove to the court that the child will experience undue mental stress or suffering during the court process.
- The prosecutor may require the child to undergo an assessment. In this case, the prosecutor will refer the child to a social worker for an assessment and this will usually be arranged by the investigating officer.
- The social worker will consult with the child to determine whether the child will suffer undue mental stress if he or she should testify in court, and will submit a report with the findings.
- This report will be used in court to prove that there is a necessity for the child to testify from the Private Testifying Room with the assistance of an intermediary.
- In cases involving a mentally disabled witness, the same process will be followed.
- The child or any other witness will also be taken through the Court Preparation Programme offered by the Court Preparation Officers before testifying in court. This programme is intended to allay witnesses' fears and to empower them on the court procedure and their roles in court.



Private children's court preparation room

WHO CAN ASK FOR AN INTERMEDIARY ?

- Since an intermediary is not automatically appointed, the general rule is that the prosecutor or attorney who is calling the witness should apply to court for the appointment of the intermediary.
- The court may however appoint an intermediary if it sees that the child is experiencing undue mental stress when testifying, even though no such application has been made.
- Parents or caregivers should approach prosecutors to find out whether the child can make use of an intermediary and indicate if they have observed any signs of stress.



Intermediary consulting with the parent, where necessary, to learn more about the child.

DOES THE CHILD HAVE TO GO INTO THE MAIN COURTROOM ?

- Generally, the child remains in the Private Children Waiting Room with parents/guardians until he/she is called to testify.
- The Private Children's Waiting Room provides suitable furniture for children. It also has the play and reading areas to keep the children occupied and having fun.

WILL THE CHILD RECEIVE TRAVELLING AND FOOD ALLOWANCE FOR COMING TO COURT ?

- Every state witness, including the child, is entitled to travelling and food allowance when in court. This allowance is usually referred to as witness fees.
- The parent/guardian is also entitled to the same allowance for accompanying the child to court.
- The intermediary will assist the parent and child witness to get this allowance every time they attend court, but up to the time the child testifies in court. The parent/guardian is further allowed to use the Private Witness Kitchen if he/she has brought prepared food for the child.



Private witness kitchen is an optional provision.

CAN INTERMEDIARIES BE USED IN THE CHILDREN'S COURTS ?

- A Magistrate has a discretion to request that intermediary services be provided to a child appearing in the children's court. This discretion can be granted if the Magistrate is of the opinion that the child will suffer mental stress, if testifying without assistance.

FOR MORE INFORMATION CONTACT:

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