

National Guidelines for agencies working with child witnesses

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With thanks to:



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INTRODUCTION



Being a witness in the criminal justice system is a highly stressful experience for children, and for the families/whānau supporting them.

These Guidelines express the commitment of agencies working with child witnesses to collectively ensure that each child witness, along with their family/whānau, receives the best possible service throughout their involvement in the criminal justice system, and that all possible steps are taken to minimise any negative impact experienced by them.

The Guidelines have been developed jointly by the Ministry of Justice, New Zealand Police, Child, Youth and Family and Crown Law in response to the Auckland University of Technology's Institute of Public Policy's report *Child Witnesses in the New Zealand Criminal Courts: A Review of Practice and Implications for Policy* which identified a need for greater consistency between agencies in how child witnesses are supported through the criminal justice system.



Purpose

These Guidelines aim to provide:

- ♥ A principle-based platform for a nationally consistent approach to working with child witnesses and
- ♥ Clarity about the roles and responsibilities of agencies towards child witnesses – who does what, when, and where and
- ♥ A high level framework to assist agencies when establishing monitoring systems.



Scope

These Guidelines cover a child witness's experience of the criminal justice process from the point the child is first interviewed by agencies to the conclusion of the criminal proceedings.

The Guidelines are designed to complement information held by agencies on protocols, processes and guidance involving child witnesses. These Guidelines sit alongside:

- ♥ Agencies' operational Guidelines for investigative interviewing and court preparation and
- ♥ Information resources for witnesses/complainants and their families/whānau.

It is expected that these Guidelines will be updated on a regular basis to incorporate government initiatives that aim to improve the quality of services provided by agencies to victims and witnesses.



Audience

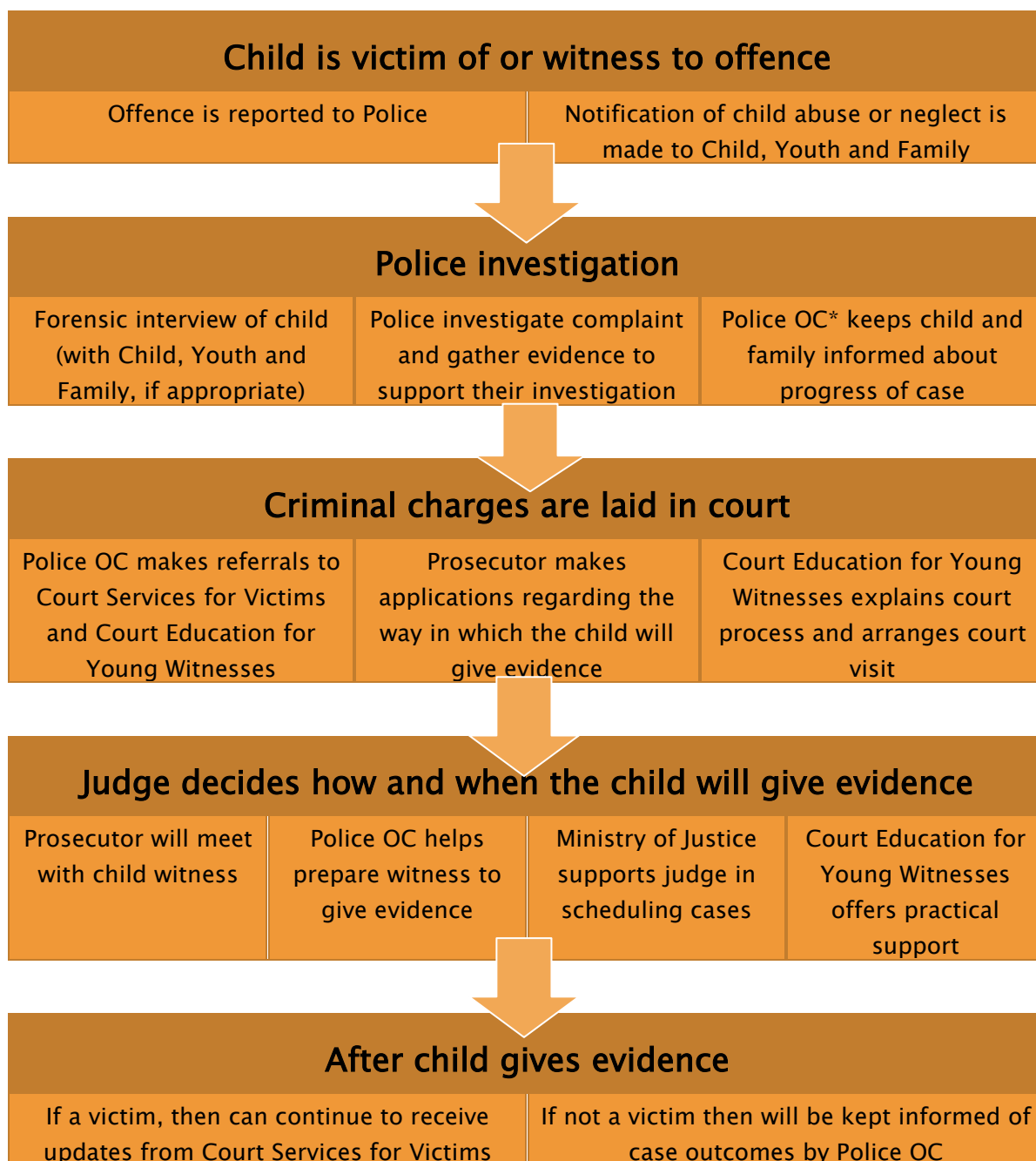
The main audience for these Guidelines is government agencies working with child witnesses.

The Guidelines will be publicly available and may be helpful for other organisations working with child witnesses, including those in the voluntary sector.

Alongside the leaflet “Moving through the criminal justice system: Information for families/whānau of young witnesses”, the Guidelines may also be useful as a source of information for parents, whānau and others supporting child witnesses.



Overview of agency responsibilities throughout the criminal justice process



* Police officer in charge of the case / witness

NB This diagram does not reflect the youth justice process.



Child witnesses

In these Guidelines, “child witness” means any child aged under 18 who provides evidence for criminal proceedings for the prosecution. While child witnesses may also be called by the defence, defence counsel are not bound by these guidelines and different processes will be followed

This applies whether the criminal proceedings are dealt with in a District or High Court.

These Guidelines apply to child witnesses who are:

- ♥ complainants where either the child, or someone on their behalf has made a complaint to Police about a criminal offence against them.
- ♥ witnesses who are testifying for the prosecution about what they know about a crime but are not the complainant.

If the child witness is also a victim of crime, he or she also has rights under the Victims’ Rights Act 2002.

The Guidelines do not cover the support and intervention offered to a child or young person who is alleged to have committed an offence.



Parents, families, whānau

In these Guidelines, the term “family/whānau” is a broad term used to describe any of the child’s living arrangements and any wider whānau members who are actively involved in supporting the child.

Also, under the Victims’ Rights Act 2002, when a child is a victim of crime, their parent or legal guardian are also considered a victim of crime and are entitled to rights and services as described in the Act.



Government agencies

While the head of each government agency is ultimately responsible for their agency’s role in managing child witnesses, there are some roles within the agencies that manage the day-to-day approach to child witnesses.

New Zealand Police

The Police lead in dealing with a child witness will be one of the following:

- ♥ The Police Officer in Charge of the case
- ♥ The Police Officer in Charge of Witnesses
- ♥ A specialist Child Protection Team will manage the case, where a case of child abuse has been reported.

Note that as the Police OC could be either Case or Witnesses, simply “Police OC” is used throughout the Guidelines.

The Police role is to investigate the crime, and where there is enough evidence, arrest the offender and prepare a case to be presented in court.

Child, Youth and Family

Child, Youth and Family’s role is to address any care and protection concerns for the child or young person involved by assessing their needs and , in conjunction with the child and their whānau, developing plans for that child’s protection and support. The Police will retain the lead role in dealing with a child witness.

Child, Youth and Family has an additional parental role with children who are in the care of the Chief Executive, under the Children, Young Persons, and their Families Act 1989, and must ensure that their needs are being met.

In a complaint of serious child abuse, Police and Child, Youth and Family work together to plan the investigation and interventions and monitor the case.

Ministry of Justice

There may be several different Ministry of Justice staff working with a child witness at different points in the process:

- ♥ A victim advisor (once charges have been filed in court). As well as providing general Court Services for Victims, the victim advisor is responsible for delivering the Court Education for Young Witnesses to the child.
 - Court Services for Victims are only available to victims of crimes where the crime is being handled in a District or High Court.
 - Court Education for Young Witnesses is available to all child witnesses who are providing evidence in a District or High Court whether or not they are victims of the crime.

- 🔗 The court registrar (or their staff) who is responsible for scheduling cases.

Prosecution

Depending on the seriousness and complexity of the case, the prosecutor in a criminal case will either be:

- 🔗 A Police prosecutor from New Zealand Police or
- 🔗 A Crown prosecutor contracted through Crown Law.

Youth Justice

If the crime was committed by a child or young person, the process of the case is different as it goes through the youth justice process.

In most cases this will involve a family group conference. If the young person is a victim of the crime, they will be invited to the conference along with their support person to have a say in how the young person will be dealt with. They will not give evidence. The Youth Justice Coordinator, who works for Child, Youth and Family, will make all the arrangements for a family group conference; including ensuring the victim knows when and where the conference will be held.

Child witnesses may be called to give evidence in defended cases proceeding through the Youth Court. In these cases the Police OC will provide information and support.

Court Services for Victims and Court education for young witnesses are not currently available in the Youth Court.

KEY PRINCIPLES FOR ENGAGING WITH CHILD WITNESSES



Government agencies are committed to minimising the negative impact of being a witness for both child witnesses and their family/whānau. The key government agencies who support child witnesses have worked together to develop the following five key principles which establish a platform for how the agencies, individually and collectively, will engage with child witnesses and their families/whānau.



Responsiveness

Agencies will strive to understand the needs of child witnesses and to provide services responsive to those needs.



Participation

Agencies will make every effort to make participation in the criminal justice process accessible to the child witness and their family/whānau.



Information

Agencies will keep child witnesses and their families/whānau fully informed with timely and accurate information during the course of the criminal justice process.



Support

Agencies will ensure that the child witness and their family/whānau have appropriate support throughout the criminal justice process.



Safety

Agencies will always take appropriate steps to secure the safety and well-being of the child witness and the family/whānau members supporting them.



Agencies will strive to understand the needs of child witnesses and to provide services responsive to those needs

Child witnesses are a very diverse group, varying in everything from age to culture to their life experiences and their current situation. One common finding though, is that giving evidence for criminal proceedings can be particularly stressful for children.

The way children, particularly young children, think and communicate can mean that they find it difficult to recall and narrate events in the same way as an adult¹. Children may also not understand the justice process and feel confused or anxious about what will happen as a result of their evidence².

A child's culture can also form a large part of their world and they may find themselves in an unfamiliar culture as well as surrounded by unfamiliar people in a completely new environment such as a courtroom³. These factors can also make children feel stressed and anxious, resulting in a significant negative effect on children's ability to recall memory⁴.

Also, it cannot always be assumed that the child's family/whānau is supportive. In some cases, particularly those where the complaint is against a family member, all or part of the family may not support the child giving evidence.

All agencies engaging with child witnesses will consider a range of developmental and social factors to identify the needs of each child, noting that the needs of the witness may change at different stages of the process.

To assist in ensuring responsiveness to child witnesses' needs:

¹ Bala et al (2005) Judicial Assessment of the Credibility of Child Witnesses 42 Alta. Law Review 995 2004–2005

² *Preparing children to testify as witnesses in court* Canadian Society for the Investigation of Child Abuse

³ Nathanson, R. and Saywitz, K. (2003) The effects of the courtroom context on children's memory and anxiety. *Journal of Psychiatry and the Law*, 31, 67–98.

⁴ Nathanson, R. and Saywitz, K. (2003) The effects of the courtroom context on children's memory and anxiety. *Journal of Psychiatry and the Law*, 31, 67–98.

The investigation

- ✔ Police, with Child, Youth and Family where involved, will ensure that the child is interviewed by the most appropriate person and in the most appropriate manner.
- ✔ Police and Child, Youth and Family record forensic interviews. Police are responsible for the security of any recording made.

Preparing for court

- ✔ Police will consult the child witness and their family/whānau about their preference in relation to ways of giving evidence in court.
- ✔ The Police OC will liaise with the prosecutor and discuss the case, how the witnesses are likely to deal with giving evidence, timings of the trial and any particular issues or vulnerabilities the child witness may have.
- ✔ The prosecutor will make an application to the judge regarding how the child will give evidence where the child is a complainant.
- ✔ The prosecutor or the defence counsel can also make an application to the judge for the witness to give their evidence in an alternative way where the child is not the complainant.
- ✔ The judge may also make directions regarding how the child witness should give evidence even if there are no applications.
- ✔ Police should assess any communications needs, such as an interpreter, and make an application for assistance to the judge. The judge may also make a direction for communications assistance without a lawyer's application.
- ✔ Court staff will make arrangements for communication assistance if it is required for the purposes of a trial or defended hearing.

At court

- ✔ The prosecutor will assess the schedule for the trial and work with the court and the judge to ensure that the child is able to give their testimony at a time that best meets the child's needs.
- ✔ The prosecutor and defence counsel are responsible for asking questions in a way that the child witness can understand. If they do not, they may be directed to do so by the judge.

More:

- 👉 [Evidence Act 2006](#)
- 👉 [Evidence Regulations 2007](#)
- 👉 [Child Protection Protocol between New Zealand Police and Child, Youth and Family April 2010](#)
- 👉 [Child, Youth and Family policy for interviewing children](#)
- 👉 [The Crown prosecutor's role](#)
- 👉 [Child, Youth and Family booklet: What Happens at a Forensic Interview](#)

Agencies will make every effort to make participation in the criminal justice system accessible to child witnesses and their family/whānau.

Entering the criminal justice system is a confusing and stressful experience for any witness, let alone a child witness. It is also highly stressful for family/whānau who want to do their best to support the child.

Agencies can help the child witness and the family/whānau feel a greater sense of control and assurance as participants in the process by ensuring that child witnesses, and their families/whānau understand:

- ♥ the role(s) that they will play in the investigation and any case and
- ♥ the options at each point in the process for how they can participate.

Agencies can also assist the child witness and their family/whānau choose the most appropriate option for their participation.

To assist making the criminal justice system accessible:

The investigation

- ♥ The Police OC is responsible for seeking the views of the child witness about what support they would like throughout the process and explaining all the options available.
- ♥ Police will ensure that any support people are briefed on their role and are assisted to fulfil that role.
- ♥ The Police OC will explain to the witness and family/whānau what the forensic interview is for and how the interview will work.
- ♥ The Police OC will discuss with the child's family/whānau how to talk about the case with the child, including the need to avoid contaminating evidence throughout the process.
- ♥ The Police OC will inform the child witness and family/whānau of the likelihood that the child witness will need to appear in court.

Where the child witness is a victim of the crime

- ♥ The Police OC will notify Court Services for Victims regarding all victims relating to cases proceeding through District or High Courts.
- ♥ A victim advisor will contact the child witness or their family/whānau and offer their services throughout the court process, and if accepted, will fully explain the court process to the child witness and their family/whānau.
- ♥ The victim advisor will also offer the Court Education for Young Witnesses service.
- ♥ The Police OC will ask the child witness if they would like to make a victim impact statement. The child's parent can also prepare a Victim Impact Statement. The Police OC or another support agency can help the victim write this statement.
- ♥ Where the child witness is a victim of certain serious offences⁵, the Police OC will offer the witness and their family/whānau the opportunity to join the victim notification system and help fill out the registration form.
- ♥ If the child witness or their family/whānau has accepted Court Services for Victims, the victim advisor will make sure that the child witness and their family understand what is likely to happen on the day they are to give evidence.

All child witnesses

- ♥ The Police OC will advise all witnesses how to access the Education for Young Witnesses service.
- ♥ The Police OC will make arrangements for key child witnesses to meet with the prosecutor prior to the trial to discuss what will happen when they are giving evidence.
- ♥ The Police OC will not discuss evidential matters with the child witness, unless there is something specific the prosecutor wishes to discuss with the witness. To refresh the witness's memory before giving evidence the Police OC will provide the child with an opportunity to review their witness statement (including any forensic interview). This should take place within a week of the hearing or trial, but the timing will vary depending on the circumstances of the case.

⁵ Section 29 Victims' Rights Act 2002. A victim of a certain offence is defined as a victim of sexual violation or a serious assault, was seriously injured as a result of the offence, the offence resulted in the death of someone in the child's family, or the child was left incapable of looking after themselves, or the child and their family have ongoing reasonable fears for the child's safety or for the safety of any of the child's family.

- ♥ The prosecutor, with assistance from the Police OC, will make applications to ensure the requested support person or people can sit with the child when he or she is giving evidence.
- ♥ If the child has accepted the Court Education for Young Witnesses service, the victim advisor will arrange a courtroom visit to familiarise the child and their family with the courtroom and the role of the people involved with the trial. This can also be arranged with the Police OC or court staff.
- ♥ The Police OC will provide whatever practical assistance they can to ensure a witness is able to get to court to give evidence. This may include help with travel and accommodation expenses as prescribed in the Witnesses and Interpreters Fees Regulations 1974.

At court

- ♥ Either the victim advisor or the Police OC will meet the child witness at court and arrange a suitable space for the child and their support person and/or family/whānau to wait.
- ♥ If the child is giving evidence by closed circuit television (CCTV), a court registrar will sit in the CCTV room with the witness and explain the process. They will also swear/affirm the oath to the witness if necessary, show the child any exhibits and ensure the support person does not interfere in any way with the child giving evidence.
- ♥ If the child witness is required to wait at court after giving evidence, the victim advisor or Police OC will arrange a suitable waiting space for the witness and their support person/people.
- ♥ The Police OC or the victim advisor will ascertain from the victim and the family/whānau if they wish to read from their victim impact statements at sentencing or have someone else read for them. If so, the prosecutor will pass this request on to the judge.

Family group conferences

- ♥ Where the child witness is also a victim they have specific and important rights in the family group conference.
- ♥ The Police can refer a young offender to a family group conference or when a case is proven against a defendant who is a young person, the court will direct that a family group conference take place to consider how to deal with the young person and his or her sentencing options.

- ” The youth justice coordinator (employed by Child, Youth and Family) is required to consult the victim about the time, date, and place of the family group conference, and to take the victim’s views into account at all stages in the process.
- ” Victims, as members of the family group conference, must agree to the decisions before the plan can be finalised. Victims can then ask to be kept informed of the child or young person’s progress in completing the plan and will be informed when the plan is completed.

More

- ” [Witnesses and Interpreters Fees Regulations 1974](#)
- ” [Information for victims of crime](#)
- ” [Guidelines for communication between Crown prosecutors and victims of crime](#)
- ” [Information for victims of youth crime](#) (Ministry of Justice)
- ” [Righting the Wrong: Information on working with victims](#) (Child, Youth and Family)



Information

Agencies will keep child witnesses and/or their families/whānau fully informed with timely and accurate information during the course of the criminal justice process

Understanding the criminal justice process, and knowing exactly where they are in the process and what to expect, helps reduce anxiety for child witnesses and their families/whānau.

Victims of crime (which include the parent or legal guardian of a child who is a victim⁶) have a legal right under the Victims' Rights Act 2002 to be informed about the case as it progresses through the criminal justice system

To ensure this principle is met:

The investigation

- ♥ The Police OC is responsible for keeping the child witness and their family/whānau informed about the progress of the investigation, including whether the child is likely to have to give evidence in court.
- ♥ The Police OC and Child, Youth and Family will liaise with the child witness and their family about any forensic interview that is to take place.
- ♥ The Police OC will inform the child witness when they lay charges and explain the charges that have been laid.
- ♥ The Police OC will inform the child witness and the family if the defendant/accused pleads guilty and the child witness will not be required to give evidence.

Preparing for court

- ♥ If the child witness or their family/whānau has accepted Court Services for Victims, the victim advisor will be the key contact for informing them about the court process, and how the case they are involved with is proceeding. Otherwise the Police OC will do so.
- ♥ The Police OC will notify the witness once a trial date has been arranged.
- ♥ If the child witness or their family/whānau has accepted Court Services for Victims, the victim advisor will inform them each time the person accused of the offence will be appearing in court.

⁶ Providing they are not involved as the defendant

After court

- ♥ If the witness is a victim and has accepted Court Services for Victims then the victim advisor will tell the child witness and/or their parent about whether the defendant was found guilty or not guilty and when sentencing will take place. If the witness is a victim, they have the right to this information under the Victims' Rights Act 2002. Child witnesses who are not victims will be kept informed by the Police OC.
- ♥ If the witness is a victim and has accepted Court Services for Victims then the Victim Advisor will keep the child witness and/or their parent(s)/legal guardian(s) updated regarding any appeals.
- ♥ The Police OC is likely to offer the child witness and their family/whānau an opportunity to discuss the outcome of the trial and ask any questions.
- ♥ If the child and their parent did not take up the opportunity to register with the victim notification system earlier and the offender has been convicted of serious offences⁷, the Police will ensure they know that they can join the system at any time, including when the offender is in prison and give assistance to make the application. This may also be done by the victim advisor.

More

- ♥ [Information for victims of crime](#)
- ♥ [Information for parents, carers, family and whānau](#)
- ♥ [Court Services for Victims](#)

⁷ Section 29 Victims' Rights Act 2002. A victim of a certain offence is defined as a victim of sexual violation or a serious assault, was seriously injured as a result of the offence, the offence resulted in the death of someone in the child's family, or the child was left incapable of looking after themselves, or the child and their family have ongoing reasonable fears for the child's safety or for the safety of any of the child's family.



Support

Agencies will ensure that the child witness and their family/whānau have appropriate support throughout the criminal justice process.

Being involved in criminal court proceedings can be very stressful for child witnesses. Making sure the child has appropriate support will assist the child's wellbeing during and after the process, as well as enhancing the accuracy and credibility of their evidence⁸.

The case can also be personally difficult for families/whānau of a child witness. Even hearing the facts of the case can be very distressing for people who care about the child. Agencies will consider the needs of the family/whānau as well as of the child witness and take into account significant stress(es) recently experienced by the child and family such as bereavement, sickness, family break-up, domestic violence, or moving house and any agencies or organisations that are involved with the family.

There may also be a need to make special arrangements for consultation with family/whānau where the alleged offender is a parent or family member. This includes acknowledging the fact that the family may not always support the child; all or part of the family may believe the offender's version of events or disagree with the child's decision to talk about events outside the family.

To ensure appropriate support:

The investigation

- 💡 The Police OC, with the Child, Youth and Family social worker if involved, is responsible for identifying suitable support people for the child witness, explaining their role to them and assisting them to fulfil that role. Providing support people from the same culture as the child may be beneficial. There may be different support people at different parts of the process.
- 💡 The Police OC, and the Child, Youth and Family worker if one is involved, are responsible for ensuring that the family/whānau are directed to all available support both through the criminal justice process and from other support organisations.
- 💡 Following a forensic interview, the interviewer may recommend that the Child,

⁸ *Child Witnesses in the Court Process: A Review of Practice and Recommendations for Change*, Report to the Court Consultative Committee from the Working Party on Child Witnesses (1996).

- ♥ Youth and Family social worker make a referral to services such as counselling support where there are ongoing care and protection issues. The social worker will consult with the child's family and whānau about any referrals made.
- ♥ Where Child, Youth and Family is involved, it will co-ordinate referrals to organisations like ACC for the provision of support such as counselling to address the child's needs.
- ♥ The Police OC will direct the child witness or their family/whānau on how to apply for any grants that they may be eligible for after reporting the crime.

Preparing for court

- ♥ Either the victim advisor or the Police OC will let the witness and family/whānau know what practical and personal support is available through both the criminal justice system and other support agencies, and direct them on how to apply for any grants they may be entitled to for attending court and other expenses.
- ♥ The Police OC or victim advisor will talk to the child witness to find out what support person or people they wish to have with them when giving evidence.
- ♥ The prosecutor will make the necessary applications for approval of support people for the witness.
- ♥ The Police OC or victim advisor will explain to the support person or people how they should behave while the child is giving evidence.

At court

- ♥ Court staff will ensure that there is appropriate seating for support people.
- ♥ The Police OC will check with the child and their family/whānau once the child has given evidence to answer any questions the child and their family may have. Where the Police OC is unavailable, this role may be filled by the victim advisor or any other support person (such as a Victim Support worker) working with the child and their family. If there are any questions that can only be answered by the Police, the victim advisor or support person will pass the questions onto the Police OC who will contact the child and their family/whānau.

More

- ♥ [Information for victims of crime](#)



Agencies will always take appropriate steps to secure the safety and wellbeing of the child witness and the family/whānau members supporting them.

Child witnesses and their family/whānau may need assurance that they will be kept safe when they participate in the criminal justice process. Even seeing the defendant/accused or their supporters in the courthouse can increase the anxiety of child witnesses.

Agencies will work together to provide appropriate assistance to child witnesses and their families/whānau so that their safety and security is maintained.

To ensure safety and security:

The investigation

- 🔥 The Police OC, with Child, Youth and Family where involved, will identify and seek support from the child's support network to ensure the safety and wellbeing of the child witness.
- 🔥 The Police OC will ensure that the witness and family/whānau members understand all the options available to them to assist with their security (eg protection orders, relevant NGOs).
- 🔥 Where the child witness is a victim of certain serious offences⁹, the prosecutor must make reasonable efforts to obtain their views on the release of the accused on bail and to present these views to the court on the first appearance of the accused person. The Police OC will usually take responsibility for talking to the child and their family about their views on bail.
- 🔥 If the child witness is the victim of certain serious offences¹⁰, Police will offer the child witness the opportunity to register for the victim notification system.

⁹ Defined in section 29 of the Victims' Rights Act 2002

¹⁰ Section 29 Victims' Rights Act 2002. A victim of a certain offence is defined as a victim of sexual violation or a serious assault, was seriously injured as a result of the offence, the offence resulted in the death of someone in the child's family, or the child was left incapable of looking after themselves, or the child and their family have ongoing reasonable fears for the child's safety or for the safety of any of the child's family.

Preparing for court

- ✎ If the child is a victim, the victim advisor will liaise with court staff, the Police OC and the prosecutor to ensure any security or practical needs are worked out prior to the trial day.
- ✎ The Police OC will ensure that the child witness and their family/whānau understand the rules around name suppression.
- ✎ The Police OC is responsible for ensuring that the child witness and their family/whānau understand the options for feeling secure while giving evidence.
- ✎ The prosecutor will make an application to the judge to give evidence in a different way (eg requests for screening, clearing the court, giving evidence by CCTV etc).
- ✎ The Police OC, in conjunction with the prosecutor or Crown solicitor, is responsible for applying for an anonymity order for the child witness and their family if giving evidence could put the child witness in danger.

At court

- ✎ Where necessary, the Police OC or victim advisor will meet the child witness outside the court and arrange a suitable way of entering to ensure that the witness and their support people feel secure.
- ✎ The Police OC or victim advisor will ensure that the child witness and family/whānau have access to a suitable waiting space where they will not encounter the defendant/accused or their family.
- ✎ At the conclusion of proceedings, where the child witness is a victim of certain serious offences¹¹, the Police OC or victim advisor will ensure the child witness and family/whānau have the opportunity to register with the victim notification system if they have not already done so.

More

- ✎ [Victim notification system](#)

¹¹ Defined in section 29 of the Victims' Rights Act 2002



Agencies will seek to protect the interests of child witnesses while fulfilling their duties to the court and the Crown in the interests of justice. All agencies work within a legislative framework. Important statutes relevant to the treatment of child witnesses are:

Evidence Act 2006

This Act sets out how witnesses should give evidence including provisions allowing for support people, communication assistance and the giving of evidence in alternative ways.

Victims' Rights Act 2002

This Act sets out rights for all victims of crime, including rights to information throughout the criminal justice process.

Criminal Justice Act 1985

Criminal Procedure (Reform and Modernisation) Bill

This Act contains provisions relating to the suppression of victims' and witnesses' names. The Criminal Procedure (Reform and Modernisation) Bill, currently before Parliament, will replace the Criminal Justice Act and will clarify a victim's entitlement to name suppression.

Children, Young Persons and their Families Act 1989

This Act promotes the well-being of children, young persons, and their families and family groups.