



LAWS OF MALAYSIA

ONLINE VERSION OF UPDATED
TEXT OF REPRINT

Act 676

EVIDENCE OF CHILD WITNESS ACT 2007

As at 11 July 2023

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EVIDENCE OF CHILD WITNESS ACT 2007

Date of Royal Assent 29 August 2007

Date of publication in the
Gazette 30 August 2007

Latest amendment made by
Act A1688 which came
into operation on 11 July 2023

PREVIOUS REPRINTS

First Reprint 2017

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Act 676

EVIDENCE OF CHILD WITNESS ACT 2007

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LAWS OF MALAYSIA

Act 676

EVIDENCE OF CHILD WITNESS ACT 2007

An Act to make provisions relating to the giving of evidence by child witnesses, and for other matters connected therewith.

[31 December 2007, P.U (B) 438/2007]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Evidence of Child Witness Act 2007.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“Court” means the High Court, the Sessions Court, the Magistrates’ Court and the Court For Children;

“Minister” means the Minister charged with the responsibility for law;

“medical officer” means a registered medical practitioner in the public service and includes a registered medical practitioner in any teaching hospital of a university established under the Universities and University Colleges Act 1971 [*Act 30*];

“police officer” has the meaning assigned to it in the Police Act 1967 [*Act 344*];

“special hearing” means a special hearing conducted by the Court, in which evidence of examination-in-chief, cross-examination and re-examination of a child witness are pre-recorded;

“video recording”, in relation to a child witness, means a video recording of the oral evidence of the child witness, in the form of an interview conducted between a police officer and the child witness, expressed upon any format, made with a view to its admission as evidence of examination-in-chief of the child witness;

“live link” means a live television link or other arrangement whereby a child witness, while being absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person in such courtroom or other place and to be seen and heard by the persons specified in paragraphs 4(2)(a) to (d);

“child witness” means a person under the age of eighteen years who is called or proposed to be called to give evidence in any proceedings but does not include an accused or a child charged with any offence.

PART II

MANNER OF GIVING EVIDENCE BY CHILD WITNESS

How evidence of child witness may be given

3. (1) A child witness may, at any stage of a trial, give evidence in any one or a combination of the following manner:

- (a) by having a screen between him and the accused or a child charged with any offence;

- (b) by live link;
- (c) by video recording; or
- (d) by way of a special hearing.

(2) For the purposes of this section, any evidence given under subsection (1) shall be deemed to be evidence given in an open court.

Screening

4. (1) A child witness, while giving evidence in the Court, may be prevented by means of a screen or other arrangement from seeing and being seen by the accused or a child charged with any offence.

(2) The screen or other arrangement shall not prevent the child witness from being able to see, and to be seen by—

- (a) the Court;
- (b) the prosecutor;
- (c) the advocate for the accused or the child charged with any offence; and
- (d) the interpreter.

(3) Where two or more advocates are acting for the accused or the child charged with any offence, the requirement of paragraph (2)(c) is satisfied if the child witness is able at all material times to see and be seen by at least one of them.

Evidence by live link

5. (1) Where a child witness gives evidence by means of a live link from a location other than the courtroom, that location is deemed to be part of the courtroom in which the proceeding is being held for the purposes of this section.

- (2) The Court may make an order specifying—
- (a) that a member of the Court staff be present at that location;
 - (b) the interpreter for the proceedings;
 - (c) any adult permitted by the Court to accompany the child witness;
 - (d) the persons in the courtroom who must not be heard, or seen and heard, by the child witness and by the persons accompanying the child witness;
 - (e) the persons in the courtroom who must be able to see and hear the child witness and the persons accompanying the child witness;
 - (f) the method of operation of the live link system including compliance with such minimum technical standards as may be determined by the Chief Justice of the Federal Court; and
 - (g) any other matter as the Court considers necessary in the interest of justice.

Video recording of a child witness

6. (1) Where a video recording of a child witness is given in evidence, such video recording shall be admitted as evidence of examination-in-chief of the child witness:

Provided that the contents of the video recording shall be subject to the Evidence Act 1950 [Act 56].

(2) A video recording under subsection (1) shall not be admitted unless—

- (a) accompanied by a transcript of the original language used in the video recording; and

- (b) accompanied by a translation of the transcript, if the language used in the video recording is other than the national language.

(3) A certificate by a person who did the video recording pursuant to subsection (1) shall, until the contrary is proven, be admitted as a *prima facie* evidence of the authenticity of the content of the video recording.

(4) Where a video recording is admitted under this section, the child witness shall be called to be further examined-in-chief by the party who tendered the video recording in evidence on any matter which, in the opinion of such party, has not been dealt with adequately in the child witnesses recorded testimony.

(5) Notwithstanding any provision of this Act, where a child witness is called to be further examined-in-chief under subsection (4), he may give evidence by means of having a screen between him and the accused or child charged with any offence or by means of a live link.

(6) Where a video recording is given in evidence under this section, any statement made by the child witness which is disclosed in the recording shall be treated as if given by that child witness in direct oral evidence.

(7) In the case of a child witness who has been sworn, the Court shall admit the statement made by the child witness in the video recording as sworn evidence.

(8) In the case of evidence of a child witness of tender years, the Court, when considering the statement in the video recording as evidence shall assess and form an opinion as to whether the child witness possesses sufficient intelligence and understands the duty of speaking the truth, though not given upon oath.

Special hearing

6A. (1) Where the Court directs that evidence of a child witness be given by way of a special hearing, the Court may determine the time and place where the special hearing shall be conducted and persons who may be present during the special hearing.

(2) During the special hearing, a child witness shall be first examined-in-chief by the party to the proceedings who calls him, then, if the adverse party so desires, cross-examined then, if the party calling the child witness so desires, re-examined.

(3) Where the evidence of a child witness has been given by way of a special hearing, the child witness shall not be recalled for further examination-in-chief, cross-examination or re-examination in the proceedings of the case unless the Court is satisfied that—

- (a) the examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the evidence was recorded, of a matter which that party could not with reasonable diligence have ascertained by then; or
- (b) it is in the interest of justice to permit further examination of the child witness if his evidence appears to the Court essential to the just decision of the case.

(4) A child witness during a special hearing may give evidence by means of having a screen between him and the accused or child charged with any offence or by means of a live link or combination of both.

(5) For the purposes of this section, the Court may, where necessary, give any direction on any other matters relating to a special hearing as the Court considers appropriate.

Improper questions

6B. (1) The Court shall prohibit any improper question to the child witness which appears to the Court to be—

- (a) misleading or confusing;
- (b) insulting, intimidating, humiliating, harassing, annoying, offensive, oppressive or needlessly repetitive;
- (c) belittling in its manner or tone or otherwise inappropriate;
or
- (d) of no basis other than a stereotype based on the child witness' sex, race, culture or ethnicity, age or disability.

(2) For the purposes of subsection (1), the Court may have regard to the age, maturity, vulnerability or disability of the child witness as well as cultural background or religious beliefs of the child witness.

Previous video recording of a child witness may be proved

7. When a child witness attains the age of eighteen years before giving evidence in the Court, any previous video recording of evidence given by the child witness, made pursuant to section 6, may be proved.

Examination of child witness through intermediary

8. (1) Any examination of a child witness may be conducted through the Court or an interpreter or any other person authorized by the Court, acting as an intermediary, for the purposes of this section.

(2) The function of an intermediary is to communicate—

- (a) to the child witness, questions put to the child witness; and

- (b) to any person asking such questions, the answers given by the child witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the child witness.

- (3) An intermediary shall not—

- (a) prompt the child witness to answer any question;
- (b) influence the answers of the child witness; or
- (c) disrupt the questioning of the child witness.

- (4) An unrepresented accused shall not be entitled to question a child witness directly but may do so through an intermediary.

Adults accompanying child witness

- 9.** (1) The Court may allow a child witness to be accompanied by an adult while giving evidence in any proceedings.

(2) The Court may permit more than one adult to accompany the child witness if the Court considers it in the interests of justice to do so.

- (3) An adult accompanying the child witness shall not—

- (a) prompt the child witness to answer any question;
- (b) influence the answers of the child witness; or
- (c) disrupt the questioning of the child witness.

Formal attire may be dispensed with

10. The Court may direct that the wearing of coats, jackets, gowns or other formal attire of a judge and Court officers to be dispensed with during the giving of evidence by a child witness.

Presumption as to age of child witness

11. (1) If the Court is in doubt as to the exact age of a child witness, a certificate of a medical officer to the effect that, in his opinion, the child witness has or has not attained a specified age may be given in evidence, and the Court shall declare the age of that child witness for the purposes of this Act.

(2) The age of a child witness as declared by the Court under subsection (1) shall be deemed to be the true age of that child witness, unless and until the contrary is proved.

Child witness suffering from a disability

12. (1) A child witness who is suffering from any disability may, apart from giving his evidence in any manner prescribed in subsection 3(1) or a combination of the manner as prescribed in that subsection, give his evidence in any other manner in which he can make it intelligible.

(2) The evidence so given shall be deemed to be oral evidence.

(3) In this section, “disability” includes activity limitation resulting from physical, intellectual or sensory impairment, medical conditions or mental illness which may be permanent or temporary in nature.

Child witness attaining age of eighteen years while giving evidence during trial

13. When a child witness is giving evidence before the Court and in the course of giving evidence he attains the age of eighteen years, the Court shall continue to hear the evidence of that child witness and exercise all the powers under this Act.

Restrictions on media reporting and publication

14. (1) No person shall reveal or publish any particulars in any mass-media or transmit through any electronic medium that may lead to the identification of a child witness, in particular the name and address of the child witness, and the name and other particulars of the educational institution he attends.

(2) A picture of the child witness or any other person, place or thing which may lead to the identification of the child witness in the proceedings mentioned in subsection (1) shall not be published in any mass-media or transmit through any electronic medium.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

PART III**GENERAL****Regulations**

15. (1) The Minister may make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made—

- (a) to prescribe the procedures to be used for any of the purposes of this Act; and
- (b) to provide for the management and administration of facilities to be given to child witnesses.

Application of Evidence Act 1950 and Criminal Procedure Code

16. The provisions of the Evidence Act 1950 and the Criminal Procedure Code [*Act 593*] shall continue to apply except in so far as those provisions are expressly modified by this Act.

LAWS OF MALAYSIA**Act 676****EVIDENCE OF CHILD WITNESS ACT 2007****LIST OF AMENDMENTS**

| Amending law | Short title | In force from |
|--------------|---|---------------|
| Act A1688 | Evidence of Child Witness (Amendment) Act 2023 | 11-07-2023 |

LAWS OF MALAYSIA**Act 676****EVIDENCE OF CHILD WITNESS ACT 2007****LIST OF SECTIONS AMENDED**

| Section | Amending authority | In force from |
|---------|--------------------|---------------|
| 2 | Act A1688 | 11-07-2023 |
| 3 | Act A1688 | 11-07-2023 |
| 6A | Act A1688 | 11-07-2023 |
| 6B | Act A1688 | 11-07-2023 |
| 7 | Act A1688 | 11-07-2023 |
| 13 | Act A1688 | 11-07-2023 |
