

THE SUPPORT PERSON FOR CHILD WITNESSES

Submitted by the Child Witness Institute

KEY CONCEPTS	
Support Person	Child Witness
Court Testimony	

1. Introduction

Amidst the myriad of difficulties children encounter in the criminal justice system, one of the problems identified is the fact that the child is required to traverse this process alone and unsupported. This problem has introduced the idea of providing the child with a trusted person to support them through the process of testifying. This individual is referred to as a support person. The aim of introducing the support person would be, primarily, to assist in reducing the formality of the courtroom, and in that way counter the feelings of stress and intimidation associated with the courtroom and the judicial process.¹ The support person will provide the child witness with emotional support by identifying when the child is feeling stressed and informing the court thereof. In practice, therefore, the support person would meet the child at the court for the first time. Thereafter, this individual will spend a short time building rapport with and explaining their role to the child. The support person will not ask the child any questions regarding their testimony, nor will he or she prepare the child in any way for the court experience. In effect, therefore, the support person will provide the child with emotional support.

Use has been made of support persons in a number of jurisdictions around the world, and approval for their use has been found in a number of court judgements. However, the use of these individuals is in most instances subject to the discretion of the presiding officer. The child witness is, therefore, not assured of such support.²

Although the function of the support person is said to contribute to a reduction in the formality of the courtroom environment and to provide emotional support, there are differing opinions as to who this person should be and the extent of his or her interaction with the child witness.

In general, the function of the support person is to accompany the child witness. This could be either to sit next to the child in the courtroom or to accompany the child if the latter should testify from a separate room.

¹ Spencer, JR & Flin, R. 1993. **The evidence of children.** Blackstone Press.

² Ibid

REGULATING THE USE OF THE SUPPORT PERSON

As previously mentioned, the use of the support person is primarily at the discretion of the presiding officer. However, some countries have developed certain guidelines in this regard, and in some instances, actual legislation has been passed to formalise this procedure:

Position in England

The Crown Court in England has set about defining the position of the support person in paragraph 23A(10) of the Crown Court Rules, which states:

“A witness giving evidence through a television link...shall be accompanied by a person acceptable to a judge of the Crown Court and, unless the judge otherwise directs, by no other person.”³

As far as deciding the category of persons who would be able to act as a support for the child witness, Deputy Lord Chief Justice Watkins issued a guideline in October 1991 stating that as a general rule, the support person accompanying the child witness should be the court usher and that this person should be specially selected and trained.⁴

Position in Scotland

The Scottish Law Commission has taken the matter a step further by providing certain guidelines for the exercise of discretion in the appointment of support persons.⁵ The Commission decided to leave the decision to reduce the formality of the courtroom to the discretion of the presiding officer with the following guideline on support persons to be taken into consideration:

“...c) permitting a relative or other supporting person to sit with the child while giving evidence...”

Position in the United States of America

In a number of jurisdictions in America, the concept of reducing the formality of the courtroom has been formalised and is, in fact, regulated by legislation.⁶ This legislation includes the right of the child witness to a support person under the Victims of Child Abuse Act of 1990, which states:

“A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close proximity to or in contact with the child while the child testifies. The court may

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

allow the child attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding."⁷

In this instance, the presiding officer only has a discretion in so far as physical contact between the child and the support person is concerned.

Position in Zimbabwe

A support person is a person appointed by the court for a specific vulnerable witness, who is entitled to sit or stand near the witness while the witness is testifying. Their purpose is to provide moral support for the witness and any other functions that the court may require them to do, according to s319G(3) of the Criminal Procedure and Evidence Act 2016 [Chapter9:07]). A support person can be a parent, guardian or other relative of the witness or any other person that the court considers may be able to provide the witness with the necessary moral support while the witness testifies (s319F(2)). Although Zimbabwe also has intermediaries, these functions are distinct from that of the support person.

Position in South Africa

At the outset, it is important to distinguish between a support person and the intermediary. The latter was introduced by s170A of the Criminal Procedure Act 51 of 1977 and made provision for the child witness to testify through such person in an informally arranged setting.⁸ This provision was designed to address the stress children experience when testifying in open court. The intermediary is seen by the court as a kind of an interpreter who must convey the general purport of the questions asked. The intermediary, therefore, can only provide a limited support role for the child witness. The support person, on the other hand, is somebody whose specific function is to support and comfort the child witness.

The position in South Africa regarding the use of support persons in child witness cases follows a discretionary principle. The magistrate, as presiding officer of the court, has an inherent discretion to allow a support person to accompany the child during his or her testimony. For instance, in *S v Lombard and Others* (unreported) SH6/21/00, 17 November 2000, Port Elizabeth, a young child abuse victim, testifying against his parents on charges of sodomy and indecent assault, requested that the court order him to stand inside the special courtroom in order to protect him while he gave evidence. The defence did not object to this request and the court granted the application. Although the person chosen by the child may not seem to be the most obvious choice, because there were other more likely support people available to him (for instance, the stepmother and stepfather with whom the child had a good relationship) it is nevertheless interesting that the court was prepared to accommodate the child's wishes.

THE NEED FOR CAUTION WHEN USING A SUPPORT PERSON

⁷ Ibid

⁸ Müller, K.D. and Hollely, K.A. 2009. **Introducing the Child Witness**. 2nd Edition. Printrite: Port Elizabeth.

Despite the guidelines and legislative regulations governing the use of support persons with child witnesses, there are issues to consider that may affect the efficacy of this testimony where the child is accompanied by such support person.

Adults often believe that children will be more relaxed and cooperative if a support person sits with them during their testimony.⁹ However, there is available research that argues that children do not always function optimally in the presence of a support person.¹⁰ Children may be more insecure around a support person and therefore less capable of dealing with a stressful event. In older children the close presence of a support person may increase feelings of embarrassment where intimate sexual details have to be provided.

Yuille *et al*¹¹ argue that it is important to remember that the primary role of the support person is to provide the child witness with an environment in which he or she will feel secure enough to testify about abusive experiences. Problems arise when role-players involved with child witnesses try to predict when support may be beneficial or necessary. Many professionals overemphasise children's fears regarding testifying with the result that the child's ability to deal with the related stress is not considered. This argument reiterates the need for individual assessment of child witnesses prior to their court appearance.

Yuille *et al*¹² go on to argue that although the presence of a support person, specifically someone familiar to the child, in the initial stages of testifying may bring comfort to the child witness, questions that require responses that are sexually explicit may be met with inhibited responses. The child may be unwilling to discuss these details in front of the support person out of a sense of shame and embarrassment.

RESEARCH ON THE BENEFIT OF THE SUPPORT PERSON

A study was conducted in England evaluating the support offered to child witnesses in the Crown Court by the Witness Service.¹³ The researchers examined the benefit of supporting child witnesses prior to, during and after their court appearance. Part of the evaluation focussed on the effect of the support person accompanying the child while they testified. Of the four courts chosen for the pilot research, only two permitted volunteers to accompany the child witness in the closed-circuit television link room.

In the evaluation it was found that the identity of the support person to accompany the child, or whether one was allowed at all, was usually a last minute decision and caused stress for both the volunteers as well as the child witnesses. In general, however, the research results suggest that the child witnesses derived some emotional support from the presence of a support person known to them and that this support improved the quality of their evidence.

⁹ Yuille, JC, Hunter, R, Joffe, R & Zaparniuk, J. 1993. Interviewing children in sexual abuse cases in **Child victims, child witnesses** edited by Goodman, GS & Bottoms, B. Guilford Press:97.

¹⁰ Ibid 9

¹¹ Ibid 9

¹² Ibid 9

¹³ Victim Support 1996. **Children in court**. S&B.