

340 CREDIBILITY OF CHILD WITNESS

The testimony of a child should be weighed in the same manner as testimony of any other witness. Considerations of age, intelligence, ability to observe and report correctly, ability to understand the questions and to answer them, sense of duty to speak the truth, conduct on the witness stand, interest, appearance, and other matters bearing on credibility apply to a child witness in common with all witnesses.

COMMENT

Wis JI-Criminal 340 was originally published in 1962 and revised in 1979 and 1991. The 2001 revision adopted a new format without substantive change.

Whether this instruction should be added to Wis JI-Criminal 300 is a matter of discretion with the trial judge. The age at which a minor is to have his testimony evaluated as that of a mature person has never been determined by the Wisconsin Supreme Court.

There has never been an absolute rule that a special instruction on the credibility of a child witness is necessary, especially where the court has instructed the jury on the credibility of witnesses generally with Wis JI-Criminal 300. In Collier v. State, 30 Wis.2d 101, 140 N.W.2d 252 (1966), it was held that a special instruction on the credibility of a seven-year-old boy was not necessary, where Wis JI-Criminal 300 was given. The same conclusion was reached in Marks v. State, 63 Wis.2d 769, 218 N.W.2d 328 (1974), concerning a twelve-year-old boy.

Under Wis. Stat. § 906.01, all persons are deemed competent witnesses (except in certain situations described in Wis. Stat. §§ 885.16 and 885.17, the so-called Dead Man's Statutes). Thus, the weight and credibility of the child witness' testimony becomes the only issue, a question solely for the jury. This rule was reaffirmed in State v. Hanson, 149 Wis.2d 474, 439 N.W.2d 133 (1989), and State v. Dwyer, 149 Wis.2d 850, 440 N.W.2d 344 (1989).

Under Wis. Stat. § 906.03(1), all persons are required to take an oath before testifying. However, the child witness need not take a formal oath, provided there is at least a solemn promise to tell the truth or the equivalent. See Judicial Council Committee Note to § 906.03, 59 Wis.2d R162. It has been held that where an eight-year-old child was extensively questioned by the court, and by counsel for both parties, as to her telling the truth, that there was no error in admitting her testimony without an oath or solemn promise. State v. Davis, 66 Wis.2d 636, 225 N.W.2d 505 (1975). "How an oath or affirmation directed by the statute is modified or dispensed with when testimony is elicited from young children lies within the sound discretion of the circuit court. Each case must be decided on its own merits." State v. Hanson, supra at 482. Also see State v. Dwyer, supra.