

EVIDENCE OF CHILD WITNESS BILL 2007

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

Clause

1. Short title and commencement
2. Interpretation

PART II

MANNER OF GIVING EVIDENCE BY CHILD WITNESS

3. How evidence of child witness may be given
4. Screening
5. Evidence by live link
6. Video recording of a child witness
7. Previous video recording of a child witness may be proved
8. Examination of child witness through intermediary
9. Adults accompanying child witness
10. Formal attire may be dispensed with
11. Presumption as to age of child witness
12. Child witness suffering from a disability
13. Child witness attaining age of sixteen years while giving evidence during trial
14. Restrictions on media reporting and publication

Bill

PART III

GENERAL

Clause

15. Regulations
16. Application of Evidence Act 1950 and Criminal Procedure Code

A BILL

i n t i t u l e d

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

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;

Bill

"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];

"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 sixteen 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; or
 - (c) by video recording.

Evidence of Child Witness

(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;

Bill

- (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.

Evidence of Child Witness

(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.

Previous video recording of a child witness may be proved

7. When a child witness attains the age of sixteen 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

Bill

(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

Evidence of Child Witness

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 sixteen 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 sixteen 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.

Bill

(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.

Evidence of Child Witness

EXPLANATORY STATEMENT

This Bill seeks to make provisions for the procedure relating to the giving of evidence by child witnesses and for other matters connected therewith.

2. Part I contains preliminary provisions.
3. *Clause 1* contains the short title and provision on the commencement of the proposed Act.
4. *Clause 2* defines certain words and expressions used in the proposed Act.
5. Part II deals with the manner of giving evidence by child witnesses.
6. *Clause 3* sets out the manner in which the evidence of a child witness may be given. A child witness may give evidence in any or a combination of the manner. However with regard to video recording evidence, it is only confined to evidence given in examination-in-chief. The evidence so given is deemed to be evidence in an open Court.
7. *Clause 4* provides for a screen or other arrangement to be put up to prevent a child witness who is giving evidence in Court from seeing the accused or a child charged with any offence.
8. *Clause 5* seeks to provide for the evidence of a child witness to be given by means of a live link. It also empowers the Court to make an order, *inter alia*, specifying the persons who may be present at the place where the live link facilities are available and in the courtroom.
9. *Clause 6* provides for the evidence of a child witness by way of video recording. The video recording of the child witness shall be admitted as evidence-in-chief during a proceeding but shall subject to the Evidence Act 1950 [Act 56]. *Subclause 6(3)* provides for the admission of the video recording upon the issuance of a certificate by a person who recorded the video.
10. *Clause 7* provides for a previous video recording of evidence made by a child witness pursuant to *clause 6*, who attains the age of sixteen years before giving evidence in the Court, may be proved.
11. *Clause 8* provides for the examination of a child witness through an intermediary such as an interpreter or any other person authorized by the Court. It also provides for the functions of the intermediary. The intermediary shall not influence the answer of the child witness or disrupt the questioning of the child witness.
12. *Clause 9* provides for adults accompanying a child witness while the child witness is giving evidence in the Court. The adult accompanying the child witness shall not influence the answer of the child witness or disrupt the questioning of the child witness.

Bill

13. *Clause 10* seeks to empower the Court to direct the Court officers to dispense with their formal attire during the giving of evidence by a child witness.
14. *Clause 11* provides for the presumption by the Court as to the age of a child witness. A certificate of a medical officer may be given in evidence as to the age of that child witness.
15. Under *clause 12* a child witness who is suffering from a disability may give his evidence in any other manner apart from the manner as set out in *clause 3* and such evidence is to be deemed oral evidence.
16. *Clause 13* provides for the Court to continue to hear the evidence of a child witness if while giving evidence the child witness attains the age of sixteen years.
17. *Clause 14* seeks to restrict the media reporting and publication of the particulars of a child witness in a proceeding which may lead to the identification of the child witness. It also provides for the penalty for non-compliance with this provision.
18. Part III deals with general matters.
19. *Clause 15* seeks to empower the Minister to make regulations.
20. *Clause 16* seeks to provide for the Evidence Act 1950 [*Act 56*] and the Criminal Procedure Code [*Act 593*] to continue to apply except in so far as those laws are expressly modified by the proposed Act.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U²)2355]