

Attorney General's Guidelines	Guideline no. 2.5 – prosecution policy in putting on trial a witness and/or complainant who changes his/her police testimony during trial
October 14th 1993; August 1st 2002; Tevet 27 5763, January 1st 2003	Last update: Eyar 18 5766, May 16th 2006

2.5 Prosecution Policy in Putting on Trial a Witness and/or Complainant who Changes His/Her Police Testimony During Trial

1. From time to time it occurs that a witness giving testimony before the police changes it during trial or gives a contradicting testimony before court. In this matter article 240(a) of the Penal Law 1977 determines that:

"One who makes statements or gives testimonies in a specific issue before different authorities and his/her statements or testimonies contradict each other regarding a fundamental factual issue, and does so with intent to deceive, will be sentenced to five years' imprisonment."

2. Considering the above mentioned, the witness must be warned about the severity of his/her actions, both before and during the discussion, whether he/she is a hostile witness or not. If despite the warning the witness adheres to his/her version, without providing a convincing explanation, one should consider filing a charge sheet against him/her, according to the determination of the abovementioned guideline. It is all the more true when the person changing the version is the complainant in the case, a state's evidence or a public servant.
3. In cases in which there is substantive external evidence that the original testimony was false to begin with, out of intention to incriminate the accused, there is, as a general rule, a public interest to pursue justice and sometimes even put on trial for the offense of delivering false information according to article 243 of the Penal Law.
4. In cases in which it is apparent that giving contradicting versions was malicious, one can even use article 81 of the Penal Law 1977, permitting the court to award compensation against the complainant who submitted his/her complaint negligently or out of spite or without grounds.
5. In making a decision regarding commencing proceedings against a witness giving contradicting testimonies, one should consider the following criteria:
 - a. The effect the contradicting testimony had on the criminal procedure in which it was given – as much as the contradicting testimony influenced the outcome of the legal procedure, so increases the public interest to pursue justice.
 - b. The essence of the criminal procedure in which the contradicting testimonies were given in terms of the offenses' severity and the intensity of public interest – as much as the criminal procedure in which the contradicting testimonies were given deals with severe offenses, so increases the public interest to pursue justice.

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- c. The quality of justifications given by the witness for his/her contradicting testimonies – a case in which a witness changes his/her version due to fear or concern of damage or harassment because of his/her original testimony, is different from a case in which the version change derives from wanting to assist a friend, as in a case in which an accomplice who incriminated his/her friend changes the testimony in order to "save the friend's neck". In this context, we emphasize the uniqueness of violent and sexual offenses, and even more so when these are done between partners or within one's family (further see articles 9-10 of this guideline).
 - d. Court's reference to the witness who gave the contradicting testimonies and to the testimony itself – in cases in which the court explicitly refers to the need to investigate the witness regarding contradicting testimonies, there is, as a general rule, a public interest to pursue justice. However, this criteria should be restricted in cases in which the court lacks information regarding the witness' motives to change his/her original version (such as in cases there is concern to appear in court in front of the accused), where the court's recommendation does not justify by itself pursuing justice with the witness.
 - e. Witness' relevant criminal record – criminal record in offenses related to obstruction of judicial proceedings will justify, as a general rule, pursuing justice with the witness.
6. Let us emphasize that the abovementioned list of criteria is not exhaustive, and that such cases might be characterized by unique circumstances which necessitates additional considerations to those mentioned above. Certainly, in such cases one should consider taking into account those additional considerations relevant to making a decision regarding commencing proceedings against a witness giving contradicting testimonies. In any event, deciding to commence investigation under such circumstances will be made only by a district attorney, or someone authorized to do so by him/her.
 7. As a general rule, it is appropriate that charge sheets for the offense of giving contradicting testimonies will be filed only when most abovementioned criteria applies and that the prosecution's policy regarding such offenses will be a careful and restrained one.
 8. As a general rule, commencing an investigation against a witness suspected in the offense of giving contradicting testimonies may influence the findings determined by the judge in the criminal procedure in which the witness has testified. Likewise, in making the decision to commence investigation one needs to examine the court's determinations in the judicial ruling, as much as they refer to the witness' testimony. Therefore, as a general rule, commencing an investigation and making a decision to put on trial will be done only after the relevant court's procedure ends, unless there are special circumstances justifying an immediate commencement of investigation.

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A Witness who was a Victim of a Sexual or Violent Offense

9. While making a decision regarding commencing proceedings against a witness who was a victim of a sexual or violent offense one must take into account the witness' state of mind during trial (especially when the victim is a minor who is supposed to testify against a family member) and to examine whether the original testimony is a truthful one and the contradiction derives from fear of the accused, from wishing to reconcile, from guilt towards the accused, from lack of emotional strength required to give an incriminating testimony against him/her in court, etc. in such cases one must take a cautious approach and refrain, as a general rule, from putting the victim on trial for giving a contradicting testimony.

10. Therefore, only in extremely rare cases there is room to commence criminal proceedings against the witness in such a case, and certainly there is no room to arrest him/her for investigational purposes. However, obviously, there is still room for investigating whether the victim was convinced to change his/her police testimony, and if so – who is responsible for it.