

11.07. Child's Age (CPLR 4516)

Whenever it becomes necessary to determine the age of a child, he (or she) may be produced and exhibited to enable the court or jury to determine his (or her) age by a personal inspection.

Note

This rule restates verbatim CPLR 4516 (*see People v Kaminsky*, 208 NY 389, 394 [1913] [the rule (formerly a Penal Law statute) “is the general rule prevailing in nearly all jurisdictions apart from any statutory provision on the subject”]). The CPLR provision applies to the determination of the age of a “child,” not an “adult” (*People v Blodgett*, 160 AD2d 1105, 1106 [3d Dept 1990]).

Penal Law § 263.25 allows for other methods of determining the age of a child, but only applies to a determination of the age of a child for the purposes of Penal Law article 263 (Sexual Performance by a Child). That statute states:

“Whenever it becomes necessary for the purposes of this article to determine whether a child who participated in a sexual performance was under an age specified in this article, the court or jury may make such determination by any of the following: personal inspection of the child; inspection of a photograph or motion picture which constituted the sexual performance; oral testimony by a witness to the sexual performance as to the age of the child based upon the child's appearance; expert medical testimony based upon the appearance of the child in the sexual performance; and any other method authorized by any applicable provision of law or by the rules of evidence at common law.”