



# EFFECTIVE LAW IN AN EFFECTIVE STATE

*Local conditions in the global context in the face  
of 21st century challenges of fighting crime.*

**Good Practices in Child Interviewing in the USA**  
**Promoted by the *National Children's Advocacy Center***  
**and Entities with a Similar Profile of Activity**

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## Preface

A child witness is a person who is under the age of eighteen at the time of testifying. In the USA, as a general rule, there is no explicit age limit defined by law for a child to be a 'credible' witness. Every child who, in the opinion of the court and law enforcement authorities, can be a witness, as long as an expert in psychology or child psychiatry does not provide a negative opinion. Consideration should be paid to dealing with a child who has been admitted as a witness, in particular how, given their young age, to interview them and obtain evidence of the crime committed.

## 1. Historical background

In the United States of America, children were first allowed to provide courtroom testimony with the US Supreme Court decision of 1895 allowing a 5.5-year-old to serve as a witness. It is now estimated that substantially more than 100 000 children appear in court each year<sup>1</sup>. The exact number of trial cases in which children are not victims but only witnesses to violence is unknown. In 2022, it was estimated that a quarter of children in the United States had witnessed violence and 9.8 % had witnessed intra-family violence.

With growing awareness of child abuse and a continual increase in reported abuse cases, in 1982 the President's Task Force on Victims of Crime recommended 62 reforms, including some intended to benefit child victims. However, despite its recommendations, "children remained unheard and re-victimized in criminal and delinquency courts"<sup>2</sup>.

The increasing amount of scientific literature, on the psychological and physiological consequences of children witnessing and experiencing violence and appearing in court, supports the modification of court procedures and their adaptation to the needs of juvenile witnesses of criminal acts<sup>3</sup>. In order to decrease the stress experienced by children appearing in law enforcement agencies and courtrooms, various facilities have been developed, ranging from allowing children to hold 'comforting' objects such as cuddly toys or mascots up to being accompanied by a support person while testifying. One of the most recent facilities and support measures is the use of specially trained facility dogs, which can offer a kind of support and comfort for witnesses<sup>4</sup>.

It is worth noting that in its 1988 decision in *Coy v Iowa*<sup>5</sup>, the US Supreme Court ruled that a screen between a child witness and the accused violated the confrontation clause of the sixth amendment. However, in 1990, in *Maryland v Craig*<sup>6</sup>, the US Supreme Court ruled that a testimony via CCTV is admissible when there is a 'case-specific finding of necessity'. Also

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<sup>1</sup> [www.pbs.org/wgbh/pages/frontline/shows/innocence/readings/childwitnesses.html](http://www.pbs.org/wgbh/pages/frontline/shows/innocence/readings/childwitnesses.html) [accessed on: 08.06.2023, 18:00].

<sup>2</sup> [www.americanbar.org/content/dam/aba/publishing/criminal\\_justice\\_section\\_newsletter/crimjust\\_policy\\_my09101d.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_my09101d.authcheckdam.pdf). [accessed on: 07.06.2023, 18:00].

<sup>3</sup> [www.pediatrics.org/cgi/content/full/129/1/e224/](http://www.pediatrics.org/cgi/content/full/129/1/e224/) [accessed on: 02.06.2023, 17:00].

<sup>4</sup> [www.courthousedogs.com](http://www.courthousedogs.com) [accessed on: 02.06.2023, 15:00].

<sup>5</sup> *Coy v Iowa*, 487 US 1012 (1988).

<sup>6</sup> *Maryland v Craig*, 497 US 836 (1990).

in 1990, the Victims of Child Abuse Act was passed<sup>7</sup>, which was subsequently amended to provide protection for both child victims and child witnesses<sup>8</sup>. The 2005 US Attorney General's Guidelines<sup>9</sup> state that “[t]he primary goal of such (Department of Justice) officials is therefore to reduce the trauma for child victims and child witnesses caused by their contact with the criminal justice system”. Although the federal statute and guidelines offer substantial protection for children who are victims or witnesses of a crime, particularly live testimony by 2-way closed-circuit television or videotaped testimony, most cases are tried not in federal court but rather in courts under state jurisdiction. The National Conference of Commissioners on Uniform State Laws drafted The Uniform Child Witness by Alternative Methods Act in 2002<sup>10</sup>, which encouraged states to allow victims and witnesses younger than 13 years to testify by alternative (closed-circuit) methods, which, to date, has only been enacted in a small number of states. However, all US states have laws that minimise the impact on children associated with appearing in court either by allowing support persons or consolation items, or laws to exclude the press from attending the hearing. Nevertheless, some states, such as California, have codes that apply only to victims of physical and sexual abuse and exclude children who witness violence; these children are covered by the federal statute.

In order to further protect the rights of child victims and witnesses, the Attorney General's report of 2005 provided for the appointment and remuneration of a guardian ad litem (GAL) to protect the interests of the child<sup>11</sup>. However, title 18<sup>12</sup> only provides for GALs in cases of child abuse or exploitation in child welfare proceedings and criminal cases, but does not address children witnessing other violent crimes, such as murder of a mother by a father. Nevertheless, some states have extended the provisions set out in the federal code to offer services to children who witness violence. Apart from GALs, a network of nearly 1,000

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<sup>7</sup> *The Victims of Child Abuse Act*, Pub L No. 101-647 (1990).

<sup>8</sup> Child victims' and child witnesses' rights. 18 USC §3509 (2011).

<sup>9</sup> [www.justice.gov/sites/default/files/olp/docs/ag\\_guidelines2012.pdf](http://www.justice.gov/sites/default/files/olp/docs/ag_guidelines2012.pdf) [accessed on: 09.06.2023, 21:00].

<sup>10</sup> National Conference of Commissioners on Uniform State Laws. *Uniform Child Witness Testimony by Alternative Methods Act*. Tucson, AZ: National Conference of Commissioners on Uniform State Laws (2002) - [www.uniformlaws.org/shared/docs/child\\_witness\\_testimony/child\\_witness\\_final\\_02.pdf](http://www.uniformlaws.org/shared/docs/child_witness_testimony/child_witness_final_02.pdf) [accessed on: 06.06.2023, 21:00]

<sup>11</sup> Cooper TA. *Sacrificing the child to convict the defendant: secondary traumatization of child witnesses by prosecutors, their inherent conflict of interest, and the need for child witness counsel*. *Cardozo Public Law, Policy, and Ethics Journal*. 2011, pp. 239–286.

<sup>12</sup> Child victims' and child witnesses' rights. 18 USC §3509 (2011).

community-based programmes<sup>13</sup> trains and supports citizen volunteers to advocate for the best interests of abused and neglected children in courtrooms and communities as court-appointed special advocates.

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<sup>13</sup> [www.casaforchildren.org](http://www.casaforchildren.org) [accessed on: 08.06.2023, 22:00].



## 2. Children's testimony in court - requirements for admission

The purpose of child testimony in court is to provide trustworthy evidence. The qualifications for a child to provide testimony include the following:

- sufficient intelligence, understanding, and ability to observe, recall, and communicate events;
- an ability to comprehend the seriousness of an oath;
- an appreciation of the necessity to tell the truth.

The ability of children to provide trustworthy testimony must be considered in terms of a developmental context as well as the circumstances of the event precipitating a court appearance, the ongoing influences in the current home, and the environment and processes leading up to and including appearance in the courtroom. The ability to recall events evolves throughout childhood, as does the ability to understand and contextualize these events, including the ability to distinguish an experience and thoughts as one's own or someone else's. Truthfulness and lying also have different meanings throughout an individual's moral development. Indeed, the US Supreme Court's recognition that brain maturation and cognitive development continue well into adulthood was part of the basis for its decisions prohibiting capital punishment (*Roper v Simmons*<sup>14</sup>) and mandatory life imprisonment without parole (*Miller v Alabama*<sup>15</sup>) for individuals younger than 18 years.

Another element that determines whether a minor witness is allowed to testify is his or her memory. Its development begins at birth as infants quickly develop the abilities to recognize the faces and voices of their caregivers. Memory underscores basic language development as older infants and toddlers develop the ability to associate words with objects and actions, and children as young as 3 years can recall and articulate experiences. For purposes of court testimony, there is an extensive experimental literature on the validity and reliability of children's recall of events<sup>16</sup>, with a study of a medically invasive event being recalled reliably

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<sup>14</sup> *Roper v Simmons*, 543 US (2005)

<sup>15</sup> *Miller v Alabama*, 567 US (2012)

<sup>16</sup> Faigman D, Ceci C. *Children's memory and testimony*. In: Faigman D, Blumenthal J, Cheng E, Mnookin J, Murphy E, Sanders J, eds. *Modern Scientific Evidence: The Law and Science of Expert Testimony*. Vol 2. St Paul, MN: West/Thomson Publishing Co; 2009–2010, pp.:559–645.



by 3- to 7-year-olds (mean age: 5.3 years)<sup>17</sup>. However, over time and under variable external circumstances, information provided in interviews can change. Researchers<sup>18</sup> on the title issue point out that memory may change over time as a result of constructive processes that serve to fill in the gaps that occur as the original memory weakens. Some of these changes occur because, as children gather more experience, they may embellish an event with circumstances that occurred in a similar although unrelated event. In experimental studies, the accuracy of information retained over time is challenging for both children and adults.

The next determinant indicating that children may be allowed to testify is susceptibility to suggestibility. Suggestibility “refers to the degree to which children’s encoding, storage, retrieval and reporting of events can be influenced by a range of social and psychological factors”<sup>19</sup>. Experimental studies showed that young children can be induced to recall events that did not occur and that they are less likely to deny events that did occur. In a classic experiment, “*the Sam Stone study*”, which took place over 10 weeks, 3- to 4-year-olds in a control group had excellent recall, and only 10% assented to false statements<sup>20</sup>. However, if the character in the study was stereotyped with ‘clumsiness’, 42% of children assented to false statements; adding questioning suggestive to stereotyping raised the false assenting rate to 72%. Older children 6 to 8 years of age had a false assenting rate only half as high as that in 3- to 5-year-olds and followed a similar stepwise pattern<sup>21</sup>. Substantial experimental literature exists on children being subject to suggestibility by parents and authority figures as well as intimidation during police or courtroom procedures. In addition, because of their willingness to be responsive to adults, children are more likely to answer complex, ambiguous questions than adults. This tendency can be exploited by attorneys interested in diminishing the credibility of a child’s testimony<sup>22</sup>.

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<sup>17</sup> Merritt KA, Ornstein PA, Spicker B. *Children’s memory for a salient medical procedure: implications for testimony*. Pediatrics. 1994;94(1), pp.: 17–23.

<sup>18</sup> Ceci SJ, Bruck M. *Suggestibility of the child witness: a historical review and synthesis*. Psychol Bull. 1993;113(3), pp.: 403–439.

<sup>19</sup> Ceci SJ, Bruck M. *Suggestibility of the child witness: a historical review and synthesis*. Psychol Bull. 1993;113(3), pp.:403–439.

<sup>20</sup> Goodman GS, Quas JA, Ogle CM. *Child maltreatment and memory*. Annu Rev Psychol. 2010; pp.:325–351.

<sup>21</sup> Leichtman MD, Ceci SJ. *The effects of stereotypes and suggestions on pre-schoolers reports*. Dev Psychol. 1995; pp.:568–578.

<sup>22</sup> Zajac R, Gross J, Hayne H. *Asked and answered: questioning children in the courtroom*. Psychiatry, Psychology and Law. 2003; pp.:199–209.

The final element affecting a child's potential to act as a witness is an openness to lying. Lying is when "one person intends to mislead another, doing so deliberately" and "there are two primary ways to lie: to conceal and to falsify"<sup>23</sup>. It is indicated that all children (and adults) lie, and that uttering statements that are knowingly untrue occurs in children as young as 3 years old, but that the underlying motivation and understanding of lying varies according to age, stage of moral development and external factors. Experimental studies have documented that 3- to 4-year-olds lie and that they are more likely to lie to cover up the misbehaviour of a friend than a stranger. If caught doing something they were asked not to do (in a videotaped study), one-third of 4- to 6-year-olds will deny the act, with girls being much more likely to do so than boys. Developmentally, although 3- to 4-year-olds are more likely to label anything that is not true as a lie, older children can distinguish between a mistake and intentional misrepresentation. Given that many children lie spontaneously in experimental situations that have no immediate consequences for the child, it is not surprising that in coercive situations, especially if asked to do so by a parent or authority figure, children will lie. Younger children may be coerced into lying to please parents, and older children may lie if threatened. The ability to detect whether a child is lying for professionals, including psychologists, psychiatrists, and law enforcement, is no better than chance and often significantly less than chance<sup>24</sup>.

Although a child's stage of development is the most likely factor influencing the quality of testimony in a courtroom appearance, other critical components include the nature of and duration of time since the event, the postexperience interviews, the preparation for court, and the nature of the courtroom experience also play a role in the process of getting to the truth and allowing the child to act as a witness in the criminal trial.

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<sup>23</sup> Ekman P. *Lying, leakage, and clues to deceit*. In: *Telling Lies*. New York, NY: WW Norton; 1985, pp.:25–42.

<sup>24</sup> Edelstein RS, Luten TL, Ekman P, Goodman GS. *Detecting lies in children and adults*. *Law Hum Behav*. 2006; pp.:1–10.

### 3. *National Children's Advocacy Center*

The *National Children's Advocacy Center* (NCAC), located in Huntsville, Alabama, has revolutionised the United States' response to child sexual abuse and its involvement in the criminal law trial. Since its creation in 1985, the NCAC has served as a model for the more than 1,100 *Children's Advocacy Centres* (CACs) now operating in the United States and more than 41 countries throughout the world. The CAC model of a Multidisciplinary Team (MDT) approach, developed through the vision of former Congressman Robert E. 'Bud' Cramer and a group of key individuals, pulled together law enforcement, criminal justice, child protective services, and medical and mental health workers onto one coordinated team. Instead of enduring questioning from multiple professionals, the potential victim talks to a specialized interviewer in a non-threatening, child-friendly environment. The information gained during that interview is shared with members of the MDT. After developing its innovative CAC/MDT approach on the local level, the NCAC began to train others to deal effectively with these complex investigations. Through its influence in training, communities across the country and across the world began to model their child abuse programs after the CAC/MDT approach created at the NCAC<sup>25</sup>.

As part of the training courses provided by the *National Children's Advocacy Center* (NCAC) *Forensic Interviewing of Children*, its participants learn necessary skills to conduct a competent investigative interview of a child using the NCAC *Child Forensic Interview* (CFI) Structure. Participants are also introduced to evidence-based literature that supports the NCAC CFI structure. This interactive training is facilitated by practicing forensic interviewers who are well-versed in the current literature. The training includes lectures, skill-building activities, guided discussions, reflections, and an interview practicum in a supportive environment with assessment and feedback provided by experienced interviewers. The training organisers administer a pre- and post-training knowledge check.

Topics covered in this course include the following:

- NCAC Child Forensic Interview Structure

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<sup>25</sup> National Children's Advocacy Center (nationalcac.org) [accessed on: 08.06.2023, 18:00].

- Dynamics of Abuse
- Forensic Conversations
- Child Development
- Memory and Suggestibility
- Pre-Interview Planning
- Inclusive Forensic Interviewing
- Interview Practicum and Assessment
- Transition Strategies
- Effective Courtroom Testimony.

Due to the scope of the material and the detail, the training course lasts four weeks. Participants are expected to complete six-hours of pre-work consisting of selected readings and interactive recorded exercises prior to the first official day of training<sup>26</sup>.

*National Children's Advocacy Centre Forensic Interviewing of Children* is a forensic service provided to children who may have experienced violence or witnessed a crime or other act of violence. The primary purpose of this type of forensic service is to ensure the safety of the individual child as well as other children in the community. Forensic services are provided in a safe and child-friendly environment. A court interview is a forensic interview, which is a single session that is recorded to obtain unique information about a child when there are concerns about possible abuse or when a child has witnessed violence against another person. The forensic interview is conducted by a professional trained in the NCAC *Forensic Interview* model. Interviews are remotely observed by representatives of the authorities involved in the investigation (such as law enforcement and child protection services). In justified cases and situations, an extended forensic interview may be conducted, which is a multi-session interview conducted by professionals trained in the NCAC *Extended Forensic Interview* model. Extended Forensic Interviews are conducted with children involved in a criminal or child protection

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<sup>26</sup> <https://www.nationalcac.org/forensic-interviewing-of-children-training/> [accessed on: 03.06.2023, 19:00].

investigation, who may find it difficult to provide their information in a single interview session<sup>27</sup>.

*The Madison County Multidisciplinary Team (MDT)* is a specific entity with good practices for interviewing child witnesses. This is an entity that includes staff from the Madison County District Attorney's Office, law enforcement and the Department of Human Resources (DHR) to coordinate services for families while an investigation of alleged child abuse is ongoing. A multidisciplinary team of experts and lawyers was needed to ensure the safety and protection of children, including strengthening their role as witnesses. In cases where a crime may have occurred, law enforcement should be notified. The main objective of the MDT is to decrease the number of interviews a child will have to undergo with various professionals and law enforcement officials. The MDT is aimed at answering questions in a tailored and sensitive manner during the investigation. This entity consists of social workers, police officers, deputy district prosecutors, lawyers, nurses and a child interview specialist. All these professionals are appropriately trained and sensitised to the difficult and challenging time that the child and their parent(s) may be experiencing. The first step for the social worker is to assess the child's safety and level of protection. The interview specialist asks the child questions and takes part in a team discussion after the interview. The nurse deals with any medical issues, and a medical examination is available for each child. The police officer is from the police station where the alleged crime occurred and, along with the deputy district prosecutor, determines whether a criminal act has been committed and what other investigative steps need to be taken in a particular case. The victim's lawyer is the 'link' with the court system if criminal proceedings are initiated. Such a division of tasks ensures that the child witness is as relieved as possible and that all procedural activities are optimally used and carried out. Children feel comfortable knowing what to expect. Informing the child that someone wants to talk to them about what has been reported is helpful. According to experts, it is important to put the child at ease and allow them to talk freely. At the same time, it is important not to rehearse with the child or tell the child what to say/testify<sup>28</sup>.

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<sup>27</sup> <https://cachouston.org/our-services/forensic-services/#:~:text=Extended%20Forensic%20Interviews%20and%20Evaluations%20are%20multi-session%20interviews,interview%2C%20but%20there%20is%20evidence%20suggestive%20of%20victimization.> [accessed on: 03.06.2023, 21:00].

<sup>28</sup> <https://www.nationalcac.org/multidisciplinary-team/> [accessed on: 08.06.2023, 18:00].

Another good practice is that the interviewer talks to the child in private. If something bad has happened to the child, it may initially be difficult for the child to talk about it in front of the parent. If the child discloses incidents of abuse, this can be a difficult experience for the parent. Team members have an ongoing duty to observe, assess and investigate allegations raised. The team must focus on the child.

## Summary

A child who is a victim or witness to a crime has already suffered a traumatic experience. Parents and carers have good reasons to be concerned that their child will experience more trauma during criminal proceedings, which often commence with being interviewed by the Police. Therefore, it is important for law enforcement to make use of good practices that qualified teams and entities possess to support and protect children involved in the criminal trial. The next step is how to turn good practice into legal regulations and thus holistically raise standards in the country.

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