INTERVIEWING THE CHILD WITNESS: 
THE DO'S AND THE DON'T'S, THE 
HOW'S AND THE WHY'S

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INTRODUCTION

Children who are asked to provide testimony encounter adult strangers who use language they often do not understand and who demand information they may be reluctant to give. Should they be unable to relate their accounts in the way adults expect, children may be considered unreliable and therefore may be excluded from further proceedings, or they may be discredited publicly at trial. Yet the results of empirical studies clearly demonstrate that the nature of the interview process itself likely contributes at least as much to the veracity and completeness of the account obtained as does the sophistication of the child who is interviewed. In recent years, psychologists have conducted a variety of investigations in order to determine which techniques for interviewing child witnesses produce the most complete and reliable testimony. The purpose of this Article is to recommend to attorneys guidelines for interviewing child witnesses based upon those empirical findings.

Imagine the plight of the nine-year-old child who was confronted with the following questions at deposition:

You don't know if any of your brothers or sisters or if I was your brother — well, any of your brothers or sisters didn't really tell what happened, didn't quite tell the truth once, you don't know of any of that happening in your family? . . . Did you just pick that up just because you talk — plan your time to fill your space, the spacing off or riding your bike, or did anybody tell you you should read license plates? . . . Prior to seeing Mr. B. in his front yard on that night — on that day — And the individual in the car, did you ever see Mr. B. get into his car before that, or get out of his car?

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As these examples illustrate, children who give testimony in legal cases often encounter intimidating adults who use language they cannot understand.² Under such circumstances, how can we expect child witnesses to provide useful responses?

With education regarding child development and proper, non-suggestive questioning techniques, adult interviewers can learn to elicit reports from children that are more complete and accurate. Familiarity with those recommendations may encourage judges to require the use of developmentally-appropriate questioning techniques when attorneys examine children in court-related proceedings and may encourage legislators to enact statutes that mandate the use of such methods.

Recent research clearly shows that the skill of the interviewer directly influences whether a child relates a true memory, discusses a false belief, affirms details suggested by others, embellishes fantasies, or provides no information at all.³ In other words, the specific techniques employed by an interviewer have a direct effect on the quality of the report. Thus, the interviewer is the controlling party in the questioning process and, as such, needs to be familiar with those techniques for interviewing child witnesses which produce the most complete and reliable accounts.

Recent appellate court opinions have heeded this empirical finding.⁴ For example, in State v. Michaels,⁵ the New Jersey Supreme Court considered whether the state's interview techniques in this case had been "so coercive or suggestive that they had a capacity to distort substantially the children's recollections of actual events and thus compromise the reliability of the children's statements and testimony based on their recollections."⁶

Recent psychological studies have investigated both the assessment of individual questioning techniques and the development of new structures for the interview.⁷ Although professional disagree-

⁵. 642 A.2d 1372 (N.J. 1994).
⁶. See Carolyn J. Boyd, Questioning Techniques of Child Protective Service Workers (May 1993) (unpublished master's thesis on file with the University of Tennessee at
ments have been aired with respect to certain aspects of interviewing practice, experts' recommendations for proper interviewing of child witnesses are remarkably consistent.8

Despite the general consensus of psychological experts, however, statutes are notably weak regarding permissible procedures for interviewing children.9 Table 1 provides a summary of state statutes that address the issue of questioning child witnesses. As the table indicates, statutes vary widely across jurisdictions. For example, only Illinois, New Mexico, Utah, and Washington specifically require special training for individuals who interview child witnesses.10 Although a number of states address the general issue of creating a positive interview climate for children, considerable variation exists regarding the specifics of developing such an environment. For instance, some states, including Connecticut and Massachusetts, require that children be protected from harassment, whereas other states, such as Delaware and Washington, mandate that legal procedures be explained to child witnesses.11 Just two states, Alaska and Iowa, have enacted statutes that recommend limiting the amount of time that a child spends on the witness stand.12 Surprisingly, only seven states — Delaware, Florida, North Dakota, Pennsylvania, Rhode Island, Washington, and Wisconsin — have laws requiring that proceedings be explained to children in age-appropriate language.13 And only one state, California, specifically requires that questions posed to children be developmentally appropriate; that is, phrased in language that the child can understand!14

8. PERRY & HUNT, supra note 3.
9. Id.
10. See Table 1, Appendix.
11. See Table 1, Appendix.
12. See Table 1, Appendix.
13. See Table 1, Appendix.
14. See Table 1, Appendix.
Because statutes provide scant guidance regarding appropriate methods for questioning child witnesses, this Article suggests that attorneys and other professionals who interview children follow the empirically-based recommendations offered below. This Article will discuss both the “do’s” and the “don’t’s” of interviewing child witnesses. For each specific recommendation, this Article will provide a rationale and a description of relevant empirical findings.

THE DO’S: EMPIRICALLY-SOUND PRACTICE

PREPARE FOR THE INTERVIEW

Adults who interview children need to understand some basic principles of child development. For example, interviewers need to understand that there are differences in language comprehension and usage between child and adult. Without that foundation, interviewers risk obtaining either contaminated information or poor quality reports from children. In this regard, the comprehensive guidelines for interviewing child witnesses in criminal proceedings, developed by the United Kingdom’s Home Office in 1992 and known as the Memorandum of Good Practice, caution that “all interviews should be undertaken only by those with training, experience and an aptitude for talking to children.”15

A number of basic textbooks and articles tailored to legal professionals offer summaries of child development.16 A few hours of reading can provide a good foundation for attorneys who must prepare to interview children.

CREATE AN APPROPRIATE CLIMATE FOR THE INTERVIEW

Interview climate is an especially important consideration, because atmosphere affects the quality of the report obtained. An interviewer who is overly friendly and reassuring may unwittingly encourage a child to fabricate details.17 On the other hand, a hostile or accusatory context can produce increased errors in children’s re-

ports. A neutral environment — that is, one which is warm but not effusive, and professional but not intimidating — is most likely to produce accurate reports from children.

A professional who interviews children should be warm and friendly. It is appropriate, for example, to welcome the child with a smile, to chat about the child's interests and hobbies, to provide a comfortable child-sized chair, and to offer the child a glass of water or a can of soda. However, it would be inappropriate to buy the child a gift or a meal, especially in exchange for providing the “right” answers to questions posed. During the interview, it is tempting to smile and nod approvingly while the child is talking. However, such an approach may be interpreted by the child as reinforcement for the words uttered rather than general support for the child's willingness to cooperate. Therefore, it is preferable for the adult to smile while he or she is talking and simply to listen intently, but without a scowl, while the child is talking. Remember, too, that children, especially those who are quite young, may require frequent breaks from the interviewing process.

USE DEVELOPMENTALLY-APPROPRIATE LANGUAGE

An interviewer would not consider using English to question an adult whose sole language is Swahili. Why, then, would an attorney consider questioning a child using language that is complex, developmentally sophisticated, or even obfuscating? Yet, a number of researchers have documented attorneys' use of confusing language when questioning children. More importantly, researchers have demonstrated convincingly that complex question forms have deleterious effects on answers provided by both children and adults. In one study, kindergartners, fourth-graders, ninth-graders, and college students were questioned about a videotaped scenario. Some questions were phrased in “lawyeresqe” (i.e., including negatives, double negatives, multiple parts, difficult vocabulary, or complex syntax). Other questions, matched for content with the “lawyeresqe” forms, were phrased


simply. Across age groups, participants correctly answered twice as many simply-phrased questions as “lawyerese” questions. Moreover, participants of all ages accurately judged how well they understood and could answer the simply-phrased questions ninety percent of the time, but the “lawyerese” questions only fifty-five percent of the time.\(^2\) This research concluded that attorneys risk miscarriage of justice when they use complex question forms when interviewing both children and adults.\(^3\)

An attorney may use several specific strategies for increasing the likelihood that an interview of a child will be developmentally appropriate:

1. **Use active voice.** Children have difficulty comprehending the passive voice. For example, it is better to say, “You said the red car hit the blue car” than “You said the blue car was hit by the red car.” A child is likely to interpret the latter sentence as meaning that the blue car inflicted the resulting damage on the red car.

2. **Avoid negatives.** Attorneys are renowned for using negatives and even double negatives when questioning witnesses.\(^4\) This approach is definitely counterproductive with children.\(^5\) Phrase all questions positively. Instead of saying, “Is it not true that you went to the store?” say, “Did you go to the store?”

3. **Include only one query per question.** The most difficult type of question for children to answer involves multiple parts such as “Were you happy [no] or was your dad mad [yes]?\(^6\)” Children do not know how to respond if the answers to the question’s subparts are not the same. It is more productive to ask separate questions.

4. **Use simple words.** Avoid big words and legal jargon; children simply do not understand them.\(^7\)

5. **Use simple phrases.** Avoid “front-loading” questions. “Front-loading” involves using a number of qualifying phrases before asking the crucial part of the question.\(^8\) For example, an attorney might say, “On the evening in question, before you went to the store and after you returned from school, while no one else was home but you, did your mother strike you?” A better approach would be, “Did your mother strike you after school that day? [If yes] Did your mother

\(^{22}\) Id. at 625-27.

\(^{23}\) Id.

\(^{24}\) BRENAN & BRENNAN, supra note 2, at 62-64.

\(^{25}\) Perry, 19 LAW & HUMAN BEHAV. at 622-23.

\(^{26}\) Id. at 622-25.

\(^{27}\) Saywitz, 14 LAW & HUMAN BEHAV. at 534.

INTERVIEWING CHILD WITNESSES

strike you before you went to the store? Was anyone else at home when your mother struck you?” Keep each question simple and separate.

6. Use the child’s terms. Because children do not necessarily use words in the same ways that adults do, it is important to define each child’s vocabulary.29 Once the terms have been clearly defined, use the child’s words to describe people, actions, and objects.

7. Be alert to any signals of comprehension difficulty. Children are not likely to disclose to adults when they do not understand a question.30 In fact, children generally are taught to answer questions, even if they do not comprehend them. Therefore, professionals need to take the initiative in actively searching for clues that a child does not understand a particular question. Watch for a puzzled look, knitted eyebrows, downcast eyes, long pauses, and irrelevant responses. Those behaviors may signal something other than lack of comprehension, of course, but they also serve as red flags that a child is confused. Pause, and if no appropriate response is forthcoming, rephrase the question.

ESTABLISH RAPPORT

Britain’s Home Office wisely noted:

The main aim of the first phase of the interview is to build up a rapport between the interviewer and the child in which the child is helped to relax and feel as comfortable as possible in the interview situation. However, this phrase serves a number of important additional functions. If used correctly, it should supplement the interviewer’s knowledge about the child’s social, emotional and cognitive development, and particularly about his or her communication skills and degree of understanding. . . . A rapport phase, however brief, should not be omitted even if the child has had significant previous contact with the interviewer.31

Recent research found that, when child abuse interviewers spent adequate time on rapport-building activities, the first substantive open-ended question regarding abuse produced four times as much information as when inadequate time was spent on rapport-building.32 Despite the importance of the rapport-building phase, however, Perry and Hunt reported that, in forty percent of the Child Protective Services transcripts they analyzed, interviewers made no attempts to es-

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29. Saywitz, 14 LAW & HUMAN BEHAV. at 531-34.
30. Perry, 19 LAW & HUMAN BEHAV. at 625-27.
tablish rapport with the child being questioned. Furthermore, those
interviewers who did try to build rapport primarily used specific ques-
tions (e.g., “What is your dog’s name?”) rather than open-ended ques-
tions (e.g., “What do you like to do when you play with your dog?”).
Consequently, interviewers talked three times more than children
during the so-called rapport-building phase.

Koehnken advised, “Before you begin to ask the child about the
event it is very important to create a relaxing atmosphere and to make
the child feel secure and confident.” For example, the attorney
might ask the child to talk about friends, hobbies, favorite subjects in
school, and so on. Avoid emotionally-charged topics which, for some
children, might include questions related to school. Ask some ques-
tions that can be answered positively, thereby creating a positive
mood. It is essential that the professional interact meaningfully with
the child, “contributing as an interested party, not simply asking a
series of census-like questions...” Remember that the adult is ask-
ing the child to disclose personal information, so the adult should do
the same. For example, if the child talks about a favorite hobby, the
adult could reciprocate by mentioning a similar, enjoyable pastime. If
the child discusses a pet, the interviewer could offer a short vignette
about an animal.

**EXPLAIN INTERVIEW PURPOSE**

Koehnken offered the following perspective:

The child may not exactly know why he or she is being inter-
viewed. However, unless it is clear what the purpose of the
interview is it will be difficult to get the required information.

Tell the child why you are conducting the interview. For example,
you might say, “I am going to talk to you about some things you said to
—,” or “I want to talk to you about how sad you’ve been feeling lately.”

In this regard, the Home Office explained:

At some early point during the rapport phase the reason for
the interview should be briefly explained in a way that takes
account of the child’s needs, and which does not refer to the
alleged offence... It will be permissible for the interviewer
to say that he or she wants to talk about something the child
has told someone else but the interviewer should not mention

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33. See Perry & Hunt, supra note 3.
34. See Gunter Koehnken, *The Cognitive Interview: A Step-by-Step Introduction* 8
(June, 1993) (unpublished Training Materials, on file with Creighton University) [here-
inafter Koehnken].
35. Id.
36. Id. at 9.
the substance of the previous disclosure. If no such disclosure
has been made the interviewer might say that he or she
wished to talk to the child because something seemed to be
making the child unhappy.37

Make it clear to the child that he or she is the one who has all the
information. Explain to the child that you were not present at the
event(s), and so you do not know what happened. Therefore, you need
to count on the child to tell you everything that happened.

Discuss Interview Ground Rules

Imagine a situation in which you have been asked to perform a
difficult and emotionally trying task. Imagine also that you have been
told that you must perform the task perfectly on the first try. However, the powerful figure making these demands of you refuses to pro-
vide any information about how the task should be performed, what
might happen in the course of performing the task, and what pitfalls
you might encounter. To top it off, the authority figure cautions you
that perfection is required because your performance could have seri-
ous life consequences for others. Feel any pressure? Of course! Yet
this Kafkaesque scenario is replayed time and time again when chil-
dren are interviewed in forensic contexts. Children have a right to
know what will happen to them in legal proceedings, including
interviews.

In addition, children need to know that it is permissible for them
to tell adults when they either do not understand a question or do not
know an answer. Children spend most of their waking hours in
school, where providing answers to questions is expected and saying,
"I don't know" is typically strongly discouraged. In a laboratory study,
researchers found that kindergarten, second-grade and fifth-grade
children who had been trained to use the "I don't know" response gen-
erally used it appropriately and used it significantly more often than
children who had not been so trained.38

Several specific approaches help to establish the ground rules for
a productive and less stressful interview.

1. Emphasize the importance of truth-telling. For example,
you might say, "I'm going to ask you some questions, and I
want you to tell me what really happened. I don't want you to
guess if you are not sure or to make anything up. Just tell me
what really, really happened."

38. Nancy E. Walker, Shelby Lanning & Jennifer Eilts, Do Children Respond Accurately to Forced Choice Questions?: Yes or No, presented to the NATO Advanced Study Institute: Recollections of Trauma, Scientific Research, and Clinical Practice (Port de Bourgenay, France June 1996) [hereinafter LUNNING & EILTS].
2. Explicitly indicate your need for detailed information. Ask the child to tell you everything that happened, even the smallest details that do not seem important.

3. Teach the child how to use the “don’t know” response. You might say, “If you don’t know the answer to my question, that’s Okay; just say, ‘I don’t know.’ For example, if I ask you the question, ‘How many wogs are in a wug?’ and you don’t know the answer to that question, you should say, ‘I don’t know.’ Let’s practice that. ‘How many wogs are in a wug?’ [Child responds, ‘I don’t know.’]” Use additional examples until you feel certain that the child understands when to provide a “don’t know” response.

4. Give the child permission to tell you when he or she does not understand your question. You might say, “If you don’t understand my question that means I didn’t do a very good job of asking it. Just say, ‘I don’t understand that question’ and I will try to ask it a different way.” Be aware, however, that most children, especially those who are very young, will have difficulty identifying questions they do not comprehend. Be sure to role model for the child that it is permissible to say “I don’t understand.” If you do not understand the child’s response, you might say something like this: “My brain’s not working very fast today, so I didn’t understand what you just said. Maybe you could tell me what you said in a little different way.”

5. Some practitioners even suggest conducting a practice interview. This approach helps the child to experience what the real interview will be like. For example, you might conduct a practice interview about the child’s pet. During the practice interview, use the ground rules discussed above. The practice interview also is beneficial because it can provide valuable information about the child’s competency and credibility.

REQUEST A FREE NARRATIVE

Children’s spontaneous, free recall reports, although typically less detailed than those elicited by specific questioning, tend to be more accurate than reports obtained through direct questioning. However, Perry and Hunt found that only two percent of the Child Protective Services interviews in their sample began the incident-relevant portion of the interview with open-ended questions. Although chil-

39. Perry, et al., 19 Law & Human Behav. at 613.
40. Fisher & Geiselman, supra note 7, at 189.
42. See Perry & Hunt, supra note 3.
INTERVIEWING CHILD WITNESSES

Children may be reluctant to provide free narrative accounts, an adult who creates a comfortable atmosphere for the interview and who exhibits patience and calm is more likely to elicit free narrative accounts.

Second, as Koehnken emphasized, "[i]t is essential not to interrupt the child during his or her narration or to ask specific questions! The single most important skill an interviewer can learn is not to interrupt the child in the middle of a narrative response!" Fisher and Geiselman reported that judicious use of pauses typically leads to the interviewee providing significantly more details. Indeed, interviewers' pauses can produce far more relevant information from a child than asking direct questions.

Several specific steps may be taken to encourage the production of free narrative:

1. Ask only general, open-ended questions. Britain's Home Office recommended:

   [The free narrative] is the heart of the interview and the interviewer's role is to act as a facilitator, not an interrogator. Only the most general, open-ended questions should be asked in this phase, for example: "Why do you think we are here today?"; "Is there anything that you would like to tell me?" If the child responds in a positive way to such questions then the interviewer can encourage the child to give a free narrative account of events. Every effort must be made to obtain information from the child which is spontaneous and free from the interviewer's influence.

2. Use narrative prompts. Steller and Boychuck recommended using narrative prompts such as "I understand something may have happened to you. Tell me as best you can about that so I understand."

3. Stress again that the child should provide as much detail as possible. Koehnken recommended, "[A]sk the child to describe in narrative style his or her general recollections of the event(s). You might say, 'Tell me everything you can, even the little things you think aren't important.'"

4. Tolerate pauses, even if they are long.

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43. Koehnken, supra note 34, at 11.
44. Fisher & Geiselman, supra note 7, at 78.
45. Memorandum of Good Practice, supra note 15, at 17.
46. See Max Steller & Tascha Boychuck, Children as Witnesses in Sexual Abuse Cases: Investigative Interview and Assessment Techniques, in Helen Dent & Rhona Flin, Children as Witnesses 50 (1992) [hereinafter Steller & Boychuck].
47. Koehnken, supra note 34, at 11.
48. Fischer & Geiselman, supra note 7, at 78.
ASK DIRECT QUESTIONS ONLY IF NECESSARY

It may be appropriate, and even necessary, to ask direct questions following the free narrative portion of the interview. Warren and McGough explained the problem as follows: “The major issue confronted by interviewers is likely to be the paradox that young children need help recalling experiences, but that direct, specific questions and other recall prompts may produce distortions and suggestibility.”49 Therefore, many experts wisely urge practitioners to ask direct questions only if necessary—that is, if the free narrative does not provide sufficient information.50

Interviewers should continue to ask open-ended questions concerning a particular topic until they produce no further information. For example, it often is productive simply to ask, “What else?” or “I don’t think I understand yet—what else can you tell me about that?” Another strategy is to make statements that encourage the child to continue, such as, “Tell me more about that,” or “I’d like to hear more about that.” Steller and Boychuck suggest that cue questions may trigger the child’s memory of an event or the production of additional details related to a memory. For example, if the interviewer asked, “Where did something happen?” and the child replied, “In the bedroom,” the interviewer should follow up with another general question, such as, “Tell me as much as you can remember about what happened in the bedroom.”51

EXPLAIN LEGAL PROCEEDINGS

Just as it is vital to delineate the ground rules for an interview, so too it is important to tell the child what will happen during legal proceedings. Fear of the unknown is a common experience for children and adults alike, especially in circumstances that are inherently intimidating. Children should be literally walked through the legal system.

Because children tend to be literal, concrete thinkers, a picture is worth a thousand words. You can describe accurately what will happen, but the child’s mental picture may look nothing like your careful depiction. If possible, therefore, arrange a field trip to the courtroom where the child will testify. Allow the child to see, touch, hear, and smell the courtroom. Encourage the child to sit in the witness chair and to try using the microphone. Point out where the judge, attor-

49. See Amye R. Warren & Lucy S. McGough, Research on Children’s Suggestibility: Implications for the Investigative Interview, (unpublished manuscript, on file with the University of Tennessee at Chattanooga).
50. Perry & Hunt, supra note 3.
51. Steller & Boychuck, supra note 46, at 50.
neys, defendant, jurors, and spectators will be seated. Use these cues as springboards for answering specific questions the child might have.

FORMALLY CLOSE THE INTERVIEW

Perry and Hunt reviewed the recommendations offered by nine experts on interviewing children. Seventy-eight percent of those experts specifically noted that the interview’s closing phase is critical. Yet, an analysis of the transcripts from Child Protective Service interviews of alleged child sexual abuse victims revealed that fifty-nine percent of the interviewers abruptly ended the session and dismissed the child without any closing remarks at all. One interviewer simply stated, “The end!”

If you attended a dinner party, ate wholeheartedly at the meal, and then abruptly left without a further word, you would be considered odd at best. Most likely, the host would be baffled, incredulous, and/or offended. The same is true for a child whose interview omits a closing phase.

Closing the interview gracefully has many advantages. First, it provides an opportunity to thank the child for participating in what may have been an emotionally wrenching event. Second, it allows the interviewer to recap what the child disclosed and to ask once again for verification of the veracity of the interviewer’s summary. Third, it allows the interviewer to explain what may happen next in legal proceedings and for the child to ask any remaining questions.

It is important to open the interview during the rapport-building phase in a positive manner. So, too, it is essential to close the interview on a positive note. In this regard, the British Home Office noted, “Every effort should be made to ensure that the child is not distressed but is in a positive frame of mind.”

These steps may be helpful:

1. Recap the child's account, using the child's language and terminology. Ask for verification after each statement.
2. Explain what will happen next, both immediately that day and over the next few days or weeks. Be careful not to make promises that you may not be able to keep.
3. Ask if the child has any questions, and answer them if you can. If you cannot answer the questions, explain why. Offer to research the answers if you are able and willing to do so.
4. Give the child and/or the accompanying adult a contact name and telephone number in case the child decides later that there is further information to discuss.

52. Perry & Hunt, supra note 3.
53. Perry & Hunt, supra note 3.
5. Return to some of the neural topics discussed during the rapport phase — pets, hobbies, the weather, and so forth. This step is important because it constitutes a "wind-down" phase that encourages each party to separate from the more intense interview process.

6. Thank the child for his or her time, effort, and cooperation.

 Attorneys who follow the interview practices recommended above should avoid many interview "dont's." For example, by using brief, clear, age-appropriate questions that are phrased positively and in the active voice, attorneys steer clear of the pernicious "lawyerese" that often confuses children. By including each of the interview steps described above, attorneys increase the likelihood that rapport will be established, ground rules will be understood, terminology will be comprehended, detailed free narratives will be provided, and high quality reports will be obtained. A few additional caveats, however, are in order.

THE "DON'TS"

AVOID DEMONSTRATIVE AIDS IF POSSIBLE

Several states permit the use of demonstrative aids. For example, children sometimes use anatomically-detailed dolls to provide evidence in cases of alleged sexual abuse. The New York statute is illustrative: "A child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings during his testimony." Despite common legal acceptance of the practice, however, widespread concern exists regarding the potential suggestiveness of anatomical dolls. As a result, some jurisdictions have banned their use, and many researchers have suggested using such props only as a last resort. In Perry and Hunt's sample of experts, only the American Professional Society on the Abuse of Children fully endorsed the use of demonstrative aids with child witnesses.

55. Perry, 19 Law & Human Behav. at 627.
56. See Table 1, Appendix.
60. Perry & Hunt, supra note 3.
INTERVIEWING CHILD WITNESSES

AVOID DISCUSSIONS OF “GOOD” AND “BAD” TOUCHES

Some researchers argue that discussions of the difference between “good” and “bad” touches do not elicit useful information. In addition, such discussions may diminish perceptions of a child’s competency. Before adolescence, most children do not possess the reasoning abilities required to process abstractions, particularly in the legal context. Discussion of “good” and “bad” touches, incorporate two abstract concepts: (1) touch and (2) good versus bad.

As used by adults, the word touch encompasses a variety of actions (e.g., fondling, patting, probing). A child, however, may underextend the meaning of the word. Thus, for the child, touch may not include vaginal penetration by a finger.

Even if a child understands such nuances with regard to the word touch, she or he still may not comprehend the abstract concepts of good and bad. As a result, children may answer “good” touch/bad touch questions in a way that underestimates their true understanding of what constitutes an inappropriate action. None of the experts in Perry and Hunt’s sample advocated the assessment of children’s comprehension of “good” versus “bad” touches, yet one-fourth of the Child Protective Service interviewers in their sample initiated such discussions.

AVOID LEADING AND SUGGESTIVE QUESTIONS

Leading or suggestive questions imply the desired answer or assume facts that are likely to be in dispute. It is tempting to use such questions, particularly with younger children who need help recalling and relating experiences. However, research has repeatedly demonstrated that young children tend to be more likely to go along with unwitting or intentional suggestions than adults. Recent studies

63. Perry & Hunt, supra note 3.
have also revealed that children’s free recall reports can be distorted if interviewers repeatedly ask misleading questions, particularly if negative expectations about a person have been created in the child’s mind. Thus, use of leading and suggestive questions with children can open a Pandora’s Box that is better left sealed.

Of course, children are not wholly malleable. They seem better able to resist suggestions concerning central details as opposed to peripheral details, as well as those involving event details they find salient. Laboratory studies permit isolation of such variables. In a real-world interview, however, what the child considers to be central and/or salient may not be particularly helpful to the legal investigation at hand. In that situation, it is tempting to ask leading or suggestive questions to get at the heart of the matter. The interviewer, then, is caught in the conundrum depicted by Saywitz and Goodman:

> Because children often say little in free recall and because more specific questioning can be controversial, in an actual case, “to lead or not to lead” becomes a crucial question. Those who argue that specific questions should not be asked of children want to reduce errors of false reports; however, errors of nonreporting of abuse, that is errors of omission, must also be considered.

Leading and suggestive questions should be avoided if at all possible. Instead, use open-ended questions that encourage free narrative and pauses that indicate that more information would be helpful. Use leading questions only as a last resort and, in that event, use only mildly leading questions.

**Avoid Modifying the Child’s Statements**

Modifications occur when an interviewer rewords a child’s statement in a way that changes its meaning, or claims that the child made a statement that he or she has not made. For example, a modification occurs if a child says, “Daddy touched me down there,” and the interviewer rewords this as “Daddy touched the child’s private parts.”

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66. Goodman & Reed, 10 Law & Human Behav. at 328.
68. See Karen J. Saywitz and Gail Goodman, Interviewing Children In and Out of Court: Current Research and Practical Implications, reprinted in ASPAC Handbook on Child Maltreatment, 8 (L. Berliner, et al., eds., (Sage, 1993)).
70. Perry & Hunt, supra note 3.
INTERVIEWING CHILD WITNESSES

interviewer responds, “So Daddy put his finger in there.” Clearly, the child’s statement has been modified. Although the modification is plausible, certainly it is not the only possible interpretation of the child’s words — nor may it be the correct interpretation.

An interviewer’s modifications may be unintentional or accidental. Sometimes they occur when the adult wants the child’s statements to match information from other sources or the interviewer’s own biases or preconceptions. An interviewer uses modifications to speed up an interview that is dragging. However, interviewers who attempt this practice run the risk of introducing misinformation into children’s memories.

In their analysis of Child Protective Service interviews, Perry and Hunt found that children explicitly agreed with interviewers’ modifications forty-six percent of the time, disagreed twenty-six percent of the time, and ignored the modifications twenty-eight percent of the time. More importantly, the interviewers treated ignored modifications as if they were true. In other words, interviewers appeared to interpret children’s silence following modifications as tacit agreement with the modified statements. As a result, the interviewers continued to use the modified statements throughout the interview, whether the child explicitly agreed with the changed statements or whether they ignored the changes. Interviewers stopped using the modifications only when the children explicitly disagreed with the modifications. Perry and Hunt noted, “We therefore conclude that unless children explicitly correct interviewers, which younger children do not seem to be willing and/or able to do, interviewers are likely to continue repeating modifications, potentially driving misinformation deep into children’s memories.”

ELIMINATE MULTI-PART QUESTIONS

Multi-part questions occur when two or more inquiries with potentially different responses are contained within the same query:

Interviewer: Would it be a special time when you would go up there with [him], or would there be anybody there at his house?

72. Perry & Hunt, supra note 3.
73. Id.
Children, and even adults, have difficulty attending to multiple ideas at one time. It is not surprising, therefore, that multi-part questions stump almost everyone. In fact, researchers found that more than seventy percent of children’s responses to multi-part questions did not appear to answer the questions asked by the interviewer. Therefore, avoid multi-part questions like the plague.

**Avoid Forced-Choice Questions**

Forced-choice questions occur when questions are phrased in a way that presents a limited number of response options. For example:

Interviewer: Did he do it real real hard or real real fast?
Child: Fast.

In Perry and Hunt’s sample of Child Protective Service interviews, children chose one of the forced-choice answers suggested by the interviewer more than sixty-five percent of the time. Similarly, in a laboratory investigation of children’s reactions to forced-choice questions, researchers found that, when interviewers asked forced-choice questions in which neither response was correct, younger children, especially females, were particularly likely to select one of the incorrect responses offered by the interviewer. Thus, research suggests that forced-choice questions should be avoided because they limit and inappropriately direct children’s responses.

**CONCLUSION**

The process of interviewing child witnesses can be improved when attorneys and other adult interviewers understand both the fundamentals of child development and research findings that bear upon proper questioning techniques. When interviews of children are conducted in a developmentally-appropriate and nonsuggestive manner, the quantity and quality of the information obtained is enhanced, a fact noted in recent appellate decisions. However, statutes provide little guidance regarding appropriate methods for questioning children. Therefore, this Article encourages professionals who interview chil-

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75. Perry, 19 Law & Human Behav. at 627; Walker, Handbook on Questioning Children: A Linguistic Perspective (1994).
76. Perry & Hunt, supra note 3.
77. Hunt, supra note 74, at 3-4, 12.
78. Perry & Hunt, supra note 3.
79. Lanning & Elts, supra note 38.
80. Nancy E. Walker, Shelby S. Lunning & Jennifer L. Elts, Do Children Respond Accurately to Forced Choice Questions?: Yes or No, presented to the NATO advanced Study Institute: Recollections of Trauma, Scientific Research and Clinical Practice (Port de Bourgenay, France June 1996).
dren in legal contexts to follow the empirically-based interview techniques discussed in this Article, as well as to avoid the faulty questioning techniques this Article has described.
Table 1
U.S. Statutes Regarding Questioning of Child Witnesses

<table>
<thead>
<tr>
<th>State</th>
<th>Source</th>
<th>Section Number</th>
<th>Statutory Language</th>
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<tbody>
<tr>
<td>Alabama</td>
<td>ALA. CODE (Cum. Supp. 1994)</td>
<td>15-1-2(a)</td>
<td>The presiding judge of a judicial circuit, after consultation with the district attorney for the judicial circuit may provide for reasonable limits on the number of interviews a victim of sexual abuse or exploitation, who is under 12 years of age, must submit to for law enforcement or other purposes. The judge shall, to the extent possible, protect the victim from the psychological damage of repeated interrogation while preserving the rights of the public, the victim, and the person charged with the violation. In any criminal prosecution for a physical offense or a sexual offense wherein the alleged victim is a child under the age of 16 years and in any criminal prosecution involving the sexual exploitation of a child under the age of 16, the court may allow leading questions at trial by the prosecution or defense of any victim or witness in a case who is under the age of 10, if the court determines that the allowance of leading questions will further the interests of justice. The court may on motion of the prosecution or the defense, or on its own motion, limit the scope and extent of any leading questions. The court may also allow leading questions of the child witnesses in the interests of justice.</td>
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<td>15-25-1</td>
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<td>15-25-3</td>
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<td>State</td>
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<td>Alaska</td>
<td>ALASKA STAT. CODE OF CRIM. PROC. (1990)</td>
<td>12.45.046(c)</td>
<td>... the court may (1) allow the child to testify while sitting on the floor or on an appropriately sized chair; (2) schedule the procedure in a room that provides adequate privacy, freedom from distractions, informality, and comfort appropriate to the child's developmental age; and (3) order a recess when the energy, comfort, or attention span of the child warrants.</td>
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<td>Arizona</td>
<td>ARK. CODE ANN. (Michie 1994)</td>
<td>16-42-102</td>
<td>In any prosecution for a sexual offense or inchoate offense to a sexual offense, upon motion of the prosecuting attorney and after notice to opposing counsel, the court may, for good cause shown, allow the presence of the parent, stepparent, guardian, custodian, or other person with custody of an alleged minor victim of a sexual offense or inchoate offense to a sexual offense during the examination and cross-examination of the minor at any hearing, deposition, or trial.</td>
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<tr>
<td>California</td>
<td>CAL. EVID. CODE (West 1993)</td>
<td>765(b)</td>
<td>With a witness under the age of 14, the court shall take special care to protect him or her from undue harassment or embarrassment, and to restrict the unnecessary repetition of questions. The court shall also take special care to insure that questions are stated in a form which is appropriate to the age of the witness. The court may in the interests of justice, on objection by a party, forbid the asking of a question which is in a form that is not reasonably likely to be understood by a person of the age of the witness.</td>
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<td>Colorado</td>
<td>COLO. REV. STAT. (Cum. Supp. 1993)</td>
<td>13-90-106(1)(b)(II)</td>
<td>This proscription [who may not testify] does not apply to a child under ten years of age, in any civil or criminal proceeding for child abuse, sexual abuse, sexual assault, or incest, when the child is able to describe or relate in language appropriate for a child of that age the events or facts respecting which the child is examined.</td>
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<td>Location</td>
<td>Source</td>
<td>Code Section</td>
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<td>Connecticut</td>
<td>CONN. GEN. STAT. (1958)</td>
<td>54-86g(b)(4)</td>
<td>The attorneys for the defendant and for the state shall question the child while seated at a table positioned in front of the child, shall remain seated while posing objections and shall ask questions and pose objections in a manner which is not intimidating to the child.</td>
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<td>Delaware</td>
<td>DEL. CODE ANN. (1987)</td>
<td>tit. 11, § 5134(a)</td>
<td>A child victim or witness is entitled to an explanation, in language understood by the child, of all legal proceedings in which the child is to be involved.</td>
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<td>District of Columbia</td>
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<td>Florida</td>
<td>FLA. STAT. ANN. (West Cum. Supp. 1995)</td>
<td>92.55(3)</td>
<td>In addition to such other relief as provided by law, the court may enter orders limiting the number of times that a child may be interviewed, prohibiting depositions of a child, requiring the submission of questions prior to examination of a child, setting the place and conditions for interviewing a child or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties or the defendant in any criminal action. The chief judge of each judicial circuit, after consultation with the state attorney and the public defender for the judicial circuit, the appropriate chief law enforcement officer, and any other person deemed appropriate by the chief judge, shall provide by order reasonable limits on the number of interviews that a victim of a violation ... who is under 16 years of age ... must submit to for law enforcement or discovery purposes.</td>
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<td>914.16</td>
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<td>914.17(1)</td>
<td>It is the duty of the guardian ad litem or other advocate to perform the following services: (a) To explain, in language understandable to the minor, all legal proceedings in which the minor shall be involved.</td>
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<td>State</td>
<td>Statute Code</td>
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| Georgia   | GA. CODE ANN. (1994)                          | 38-1607   | (a) Except as provided in subsection (b) of this Code section, persons who do not have the use of reason, such as idiots, lunatics during lunacy, and children who do not understand the nature of an oath, shall be incompetent witnesses.  
(b) Notwithstanding the provisions of subsection (a) of this Code section, in all cases involving deprivation as defined by Code Section 15-11-2(24A-401), or in criminal cases involving child molestation, and in all other criminal cases in which a child was a victim of or a witness to any crime, any such child shall be competent to testify, and his credibility shall be determined as provided in Article 4 of this chapter. |
<p>| Hawaii    |                                               |           | Conduct on the part of the defendant or defense counsel during the hearing or trial which causes the minor to be unable to continue his or her testimony notwithstanding the notice requirement contained in subsection 2 of this section. |
| Illinois  | ILL. ANN. STAT. (Smith-Hurd 1993)              | Ch. 725, para. 210, § 4.10 | The Office may conduct and charge tuition for training programs for State’s Attorneys, Assistant State’s Attorneys and other law enforcement officers. The Office shall conduct training programs for Illinois state’s attorneys, assistant state’s attorneys and law enforcement officers on techniques and methods of eliminating or reducing the trauma of testifying in criminal proceedings for children who serve as witnesses in such proceedings. |
| Indiana   |                                               |           |                                                                                                                                                                                                          |</p>
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<th>State</th>
<th>Code Reference</th>
<th>Statute/Section</th>
<th>Commentary</th>
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<tr>
<td>Iowa</td>
<td>Iowa Code Ann. (West 1994)</td>
<td>910A.14.4</td>
<td>A court may, upon its own motion or upon the motion of a party, order the court testimony of a child to be limited in duration in accordance with the developmental maturity of the child. The court may consider or hear expert testimony in order to determine the appropriate limitation on the duration of a child’s testimony. However, the court shall, upon motion, limit the duration of a child’s uninterrupted testimony to one hour, at which time the court shall allow the child to rest before continuing to testify.</td>
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<td>Maine</td>
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<td>Maryland</td>
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<td>Massachusetts</td>
<td>Mass. Gen. Laws Ann. (Cum. Supp. 1996)</td>
<td>Ch. 278, § 16D(h)(1)</td>
<td>At any time after the issuance of a complaint or indictment alleging an offense punished by any of the statutes listed herein, the court on its own motion or on motion of the proponent of a child witness, and after a hearing, may order the use of a suitable alternative procedure for taking the testimony of the child witness, in proceedings pursuant to said complaint or indictment, provided that the court finds by a preponderance of the evidence at the time of the order that the child witness is likely to suffer psychological or emotional trauma as a result of testifying in open court, as a result of testifying in the presence of the defendant, or as a result of both testifying in open court and testifying in the presence of the defendant.</td>
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<td>Michigan</td>
<td>Nothing in this section shall be deemed to prohibit the court from using other appropriate means consistent with this section and other laws and with the defendant's rights to protect a child witness from trauma during court proceedings.</td>
<td>Ch. 278, § 46D(6)</td>
<td>Michigan Stat. Ann. (West Cum. Supp. 1996)</td>
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<td>Minnesota</td>
<td>A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.</td>
<td>Minn. Stat. Ann. (West, 1993) 595.025(m)</td>
<td>Minnesota Code Ann. (1972)</td>
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<td>Mississippi</td>
<td>The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross examination of witnesses.</td>
<td>43-21-309(3)</td>
<td>Mississippi Code Ann. (1994)</td>
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<td>Missouri</td>
<td>Visual and oral recordings of child under twelve admissible, when the statement was made in response to questioning, calculated to lead the child to make a particular statement or to act in a particular way.</td>
<td>Mo. Ann. Stat. (Vermont Cum. Supp. 1996) 493-304.1(4)</td>
<td>Montana</td>
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<td>State</td>
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<td>Nevada</td>
<td>NEV. REV. STAT. (1987)</td>
<td>50.115.1</td>
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<td>New Jersey</td>
<td>N.J. Stat. Ann. (West 1994)</td>
<td>2A:84A-16.1</td>
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<td>New Mexico</td>
<td>N.M. STAT. ANN. (Michie Cum. Supp. 1993)</td>
<td>32A-18-1.A</td>
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<td>State</td>
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<td>New York</td>
<td>N.Y. Exec. Law (McKinney Cum. Supp. 1996)</td>
<td>642-a.</td>
<td>To the extent permitted by law, criminal justice agencies, crime victim-related agencies, social services agencies and the courts shall comply with the following guidelines in their treatment of child victims: (1) To minimize the number of times a child victim is called upon to recite the events of the case and to foster a feeling of trust and confidence in the child victim, whenever practicable, a multi-disciplinary team involving a prosecutor, law enforcement agency personnel, and social services agency personnel should be used for the investigation and prosecution of child abuse cases. (2) Whenever practicable, the same prosecutor should handle all aspects of a case involving an alleged child victim. (3) To minimize the time during which a child victim must endure the stress of his involvement in the proceedings, the court should take appropriate action to ensure a speedy trial in all proceedings involving an alleged child victim. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of the child. (4) The judge presiding should be sensitive to the psychological and emotional stress a child witness may undergo when testifying. (5) ... when appropriate, a child witness ... should be permitted to testify via live, two-way closed-circuit television. (6) ... a person supportive of the “child witness” or “special witness” ... should be permitted to be present and accessible to a child witness at all times during his testimony, although the person supportive of the child witness should not be permitted to influence the child’s testimony. (7) A child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings during his testimony.</td>
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<td>North Carolina</td>
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<td>State</td>
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In all criminal cases and juvenile proceedings involving a child victim or witness, the court and the state's attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness. Upon request of a witness who is under the age of fourteen, the court shall permit an individual selected by the court to sit with, accompany, or be in close proximity to the witness in order to provide support to the witness while that witness is giving testimony. |
| Ohio      |                                 |                                                                           |
| Oklahoma  |                                 |                                                                           |
| Oregon    | OR. REV. STAT. (1991) | 40.370 Rule 611(1)  
The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth, avoid needless consumption of time and protect witnesses from harassment or undue embarrassment. |
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<th>State</th>
<th>Statute</th>
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<td>Pennsylvania</td>
<td>P.A. Cons. Stat. Ann. (1993)</td>
<td>42-5983(a)</td>
<td>Courts of common pleas may designate one or more persons as a child advocate to provide the following services on behalf of children who are involved in criminal proceedings as victims or material witnesses: (1) To explain, in language understood by the child, all legal proceedings in which the child will be involved. (2) As a friend of the court, to advise the judge, whenever appropriate, of the child's ability to understand and cooperate with any court proceedings.</td>
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<td>Rhode Island</td>
<td>R.I. Gen. Laws (1994)</td>
<td>12-28-9.(1)</td>
<td>To have explanations, in language understandable to a child of the victim's age, of all investigative and judicial proceedings in which the child will be involved.</td>
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<td>South Carolina</td>
<td>S.C. Code Ann. (Law Co-op. Cum Supp. 1994)</td>
<td>19-1-180(D)(9)</td>
<td>In determining whether a statement possesses particularized guarantees of trustworthiness ..., the court may consider, but is not limited to, the following factors: (9) whether the statement has a ring of verity, has internal consistency or coherence, and uses terminology appropriate to the child's age.</td>
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<td>South Dakota</td>
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<td>Tennessee</td>
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<td>Texas</td>
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<td>Utah</td>
<td>Utah Code Ann. (1993)</td>
<td>77-37-4(1)</td>
<td>Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.</td>
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<td>77-37-4(2)</td>
<td>Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.</td>
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<td>Vermont</td>
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<td><em>77-37-4(3)</em> Child victims and witnesses have the right to have</td>
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<td>interviews relating to a criminal prosecution kept to a minimum. All</td>
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<td>agencies shall coordinate interviews and ensure that they are conducted by</td>
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<td>persons sensitive to the needs of children.</td>
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<td>Virginia</td>
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<td>Washington</td>
<td>WASH. REV. CODE ANN. (West Cum. Supp. 1995)</td>
<td><em>7.69A.030(1)</em> To have explained in language easily understood by the child,</td>
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<td>all legal proceedings and/or police investigations in which the child may</td>
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<td>be involved.</td>
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<td><em>7.69A.030(5)</em> To allow an advocate to make recommendations to the prosecuting</td>
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<td>attorney about the ability of the child to cooperate with prosecution and</td>
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<td>the potential effect of the proceedings on the child.</td>
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<td><em>7.69A.030(6)</em> To allow an advocate to provide information to the court</td>
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<td>concerning the child's ability to understand the nature of the proceedings.</td>
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<td><em>7.69A.030(8)</em> To allow an advocate to be present in court while the child</td>
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<td>testifies in order to provide emotional support to the child.</td>
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<td><em>7.69A.030(9)</em> To provide information to the court as to the need for the</td>
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<td>presence of other supportive persons at the court proceedings while the child</td>
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<td>testifies in order to promote the child's feelings of security and safety.</td>
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<td><em>7.69A.030(10)</em> To allow law enforcement agencies the opportunity to enlist</td>
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<td>the assistance of other professional personnel such as child protection</td>
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<td>services, victim advocates or prosecutorial staff trained in the interviewing</td>
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<td>of the child victim.</td>
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<td>Wisconsin</td>
<td>WIS. STAT. ANN. (West 1995) 950.55(2)</td>
<td>Counties are encouraged to provide the following additional services on behalf of children who are involved in criminal or delinquency proceedings as victims or witnesses.</td>
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<td>950.055(2)(a)</td>
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<td>Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.</td>
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<td>950.055(2)(b)</td>
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<td>Advice to the judge, when appropriate and as a friend of the court, regarding the child’s ability to understand proceedings and questions.</td>
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<td>967.04(7)(b)(1)</td>
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<td>The child’s chronological age, level of development and capacity to comprehend the significance of the events and to verbalize about them.</td>
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<td>Wyoming</td>
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