



**IJM**

**UPDATED  
AUGUST 2023**

# **VIDI FRAMEWORK**

A guide to the utilization  
of Videotaped In-Depth Disclosure  
Interviews (VIDI) in online sexual  
exploitation of children cases

## About the Resource

IJM's VIDI Framework compiles all available legal, academic, and practical bases that point to Videotaped In-Depth Disclosure Interviews (VIDIs) as an effective tool, used to shield child victims of online sexual exploitation from trauma caused by the rigors of multiple interviews and live testimony in court. It aims to be a *go-to document* for caseworkers and front-liners seeking to utilize VIDIs in pursuing justice for child victims.

This resource was also published in consultation with Philippine survivors of online sexual exploitation of children. IJM conducted a closed-door focus group discussion with these survivor leaders, wherein their valuable insights, experiences, and recommendations towards this prosecution measure were collated.

This version of the resource is updated with the recent passage of the Anti-Online Sexual Abuse or Exploitation of Children (OSAEC) and Anti-Child Sexual Abuse or Exploitation Materials (CSAEM) Law last August 2022, the Expanded Anti-Trafficking in Persons Act of 2022, as well as jurisprudence which may be helpful in mainstreaming the use of VIDI in cases involving children.



## About International Justice Mission

International Justice Mission is a global organization that protects people in poverty from violence. IJM partners with local authorities in 29 program offices in 17 countries to combat slavery, violence against women and children, and police abuse of power against people who are poor. IJM works with local authorities and governments to rescue and restore survivors, hold perpetrators accountable, and help strengthen public justice systems so they can better protect people from violence.

Our 21 years of work in the Philippines led to a dramatic decrease in the prevalence of sex trafficking of children in bars and brothels—reductions ranging from 72%-86% in the cities where we partnered with local authorities. In 2016, IJM fully transitioned our program in the Philippines to combat online sexual exploitation of children, in particular the trafficking of children to create new child sexual abuse materials, including via livestreaming. We have assisted Philippine authorities in more than 341 operations, leading to the rescue of 1161 victims and arrest of 357 suspects of online sexual exploitation of children (first case dates back to 2011).

Learn more at [ijm.org.ph](http://ijm.org.ph).

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**Disclaimer and Restrictions:** The information in this document has been collected by IJM primarily through its work to combat online sexual exploitation of children in the Philippines. This document was published in consultation with survivor leaders.



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# Foreword

**From Prosecutor Wendell P. Bendoval**

*Executive Director, Interagency Council Against Trafficking*

*Department of Justice, Philippines*



**To our dearest partners and passionate child-protection advocates,**

It is with great joy that I share with you today a handy new resource – this comprehensive Framework on Videotaped In-Depth Interviews, or VIDIs.

Our partners in International Justice Mission have released this go-to document for us caseworkers seeking to utilize VIDIs in the process of pursuing justice for children victims.

This publication compiles all relevant topics of this child-protective prosecution measure; from its legal bases, steps in conducting the interviews, prosecution protocols, other effective practices in the prosecution of online sexual exploitation of children cases to sample studies of its usage.

As front-liners in this work: we know very well and have witnessed first-hand that, when cases involve children, the importance of building victim independent evidence is greater as the policy of Philippine law is to uphold the best interests of the child. In online sexual exploitation of children cases, it means protecting these children from retraumatization that is potentially triggered by court testimony or appearing in court, especially when the accused is a family member.

Approaching cases with an eye to prevent retraumatization of children is collectively known as child-protective prosecutions. Examples we are well-familiar with from our casework include maximizing digital evidence to reduce reliance on victim testimony, the Use of Plea Bargaining to prevent victim retraumatization, and other measures under the Rule on Examination of a Child Witness, specifically the use of Videotaped In-Depth Interviews as covered by this new resource.

IJM, together with the Philippine government, pioneers the advancement of trauma-informed, child-protective prosecutions, and continues advocating these for all jurisdictions.

In releasing this publication, it is our hope to mainstream in court proceedings VIDIs as a child-protective and victim-centric prosecution strategy, and further increase the awareness and capacity of caseworkers and front-liners in utilizing the VIDI framework for OSEC. I want to strongly encourage all public prosecutors to get a copy and utilize this reference as you prosecute online sexual exploitation of children cases. Together, let us build a robust system of protection for the young and the vulnerable.

The Philippine government has never been more equipped to carry the mission forward. May this new resource fuel our hope as we carry on this journey to protect every child, until are all free from online sexual exploitation.

# OSEC LANDSCAPE

Rationale

Legal Bases

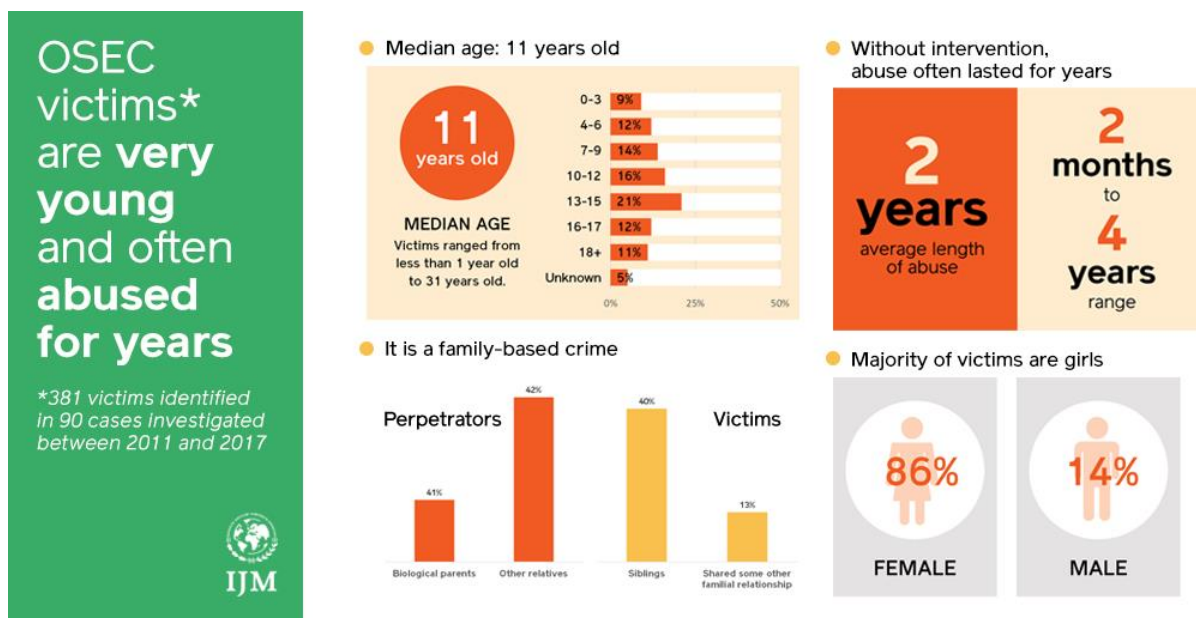
# OSEC Landscape

## RATIONALE

### PROBLEM

In online sexual exploitation of children (OSEC), children are sexually abused by traffickers who then spread or sell images or videos of the exploitation online—even livestreaming the abuse for sex offenders to direct from anywhere in the world.

These offenders pay traffickers, who 41% of the time are biological parents and 42% are other relatives of the victim, to sexually abuse children in person.<sup>1</sup> The same Study found that the median age of victims was 11, with the youngest rescued less than 1 year old.



See Footnote 1.

Upon rescue, these children are often required to recall and recount experiences of sexual abuse repeatedly in multiple interviews conducted by law enforcers, social workers, and other caseworkers. Eventually, they would re-narrate these traumatic stories through live testimonies in open court. Studies have shown this to be very

<sup>1</sup> International Justice Mission Philippines. (May 2020). Online Sexual Exploitation of Children in the Philippines: Analysis and Recommendations for Governments, Industry, and Civil Society. Retrieved from <http://ijm.org/studies>

distressing for the children, confirming that such court appearances cause anxiety.<sup>2</sup> They fear having to face their abusers and worry that they could be hurt if they meet their abusers in court. Children also dread the embarrassment of not being able to answer the questions posed to them. Some also fear the possibility of incarceration. As countless survivors have told IJM—and as IJM social workers and lawyers have witnessed in hundreds of cases—the risks of retraumatization are high when victims appear in court to testify against their abusers.<sup>3</sup>

Of course, the experiences of children vary. It can depend on their age, the severity of abuse, the peculiarities of the trial which they are being called to testify in, and other factors. What remains clear is that children risk a plethora of ramifications in the lead-up to, and when appearing and testifying in court. Aside from this, existing literature demonstrates the dangers of multiple interviewers repeatedly questioning a child or conducting duplicative interviews.<sup>4</sup>

Approaching cases with an eye to prevent retraumatization of children is collectively known as **child-protective prosecutions**.

#### SOLUTION

The law provides several measures that could protect children from this potential retraumatization and revictimization. One such measure is the **Videotaped In-Depth Interview (VIDI)** - a video recorded “inquiry or proceeding conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services for the purpose of determining whether child abuse has been committed.”<sup>5</sup> VIDIs, when conducted and recorded properly, are admissible as evidence and can be presented in lieu of live victim testimony during trial. As it is intended to serve as evidence, it takes on the nature of a child forensic interview.

VIDIs have two main objectives:

1. **To conduct a neutral, non-leading and fact-finding interview of the child to determine allegations of abuse as part of the investigation process; and**

<sup>2</sup> Pantell RH and AAP Committee on Psychosocial Aspects of Child and Family Health. The Child Witness in the Courtroom. *Pediatrics*. 2017;139(3):e20164008 available at <http://pediatrics.aappublications.org/content/pediatrics/139/3/e20164008.full.pdf> (last accessed Sept. 3, 2019).

<sup>3</sup> International Justice Mission Philippines. (November 2021). Child-Protective Prosecutions: A Strength-Based, Child-Centered Approach to Assess Prosecution Results. Retrieved from <https://osec.ijm.org/resources-list/child-protective-prosecutions/>

<sup>4</sup> The National Children’s Advocacy Center, pg. 3 (2012). National Children’s Advocacy Center’s Child Forensic Interview Structure. Huntsville, AL: Author, citing APSAC, 2002; Berliner & Conte, 1995; Cross, Jones, Walsh, Simone, & Kolko, 2007; Malloy, Lyon, & Quas, 2007; NCA, 2011b; Tedesco & Schnell, 1987.

<sup>5</sup> See A.M. No. 00-4-07-SC, Rule on Examination of a Child Witness. [hereinafter “RECW”], § 4(i) (2000).

2. To capture and preserve the testimony of the child victim in a manner that complies with the rules on admissibility of evidence for inquest/preliminary investigation and/or trial purposes.

The videotaped interview, when conducted properly, also prevents the need for repetition of basic questions and reduces duplicative interviews, protecting the child from harm. It reduces the number of times a child must tell their story and preserves the statements for future review by agencies or the court.

#### IJM EXPERIENCE

IJM, together with the Philippine government, pioneers the advancement of trauma-informed, child-protective prosecutions, and continues advocating these for all jurisdictions. An example of which, solely covered by this Framework, is the utilization of VIDIs to shield child victims of online sexual exploitation from trauma caused by the rigors of multiple interviews and live testimony in court.

Data<sup>6</sup> exhibits increased utilization of VIDIs in Luzon, Visayas, and Mindanao. As of August 9, 2023, IJM has supported 103 cases with 232 instances of video-captured child interviews. 66% of which, or 68 cases, were used by prosecutors during inquest/preliminary investigation. In other words, 105 victims no longer had to appear during these proceedings.

Further, 44 convictions were achieved; even if most are directly by plea bargaining, these cases still had VIDIs among its pieces of evidence, which proved to be valuable in negotiating the terms of the sentence.

These are outcomes directly resulting from IJM-supported casework.<sup>7</sup> This may not always be the case for OSEC prosecution. At this time, we remain hopeful that as VIDI is utilized more during trial for future cases, we will fully understand the positive implications of this strategy as those cases run their course. However, it is strongly encouraged to utilize VIDIs in stages of the legal proceedings (Inquest/Preliminary Investigation/Trial) where the caseworkers see it fit to use. Nevertheless, IJM witnessed first-hand its child-protective value during inquest where cases were favorably resolved by government prosecutors finding probable cause to charge the accused in court, and Philippine OSEC survivor leaders have validated it so.

**“VIDI was so useful and helpful since the children would not be retraumatized. I recovered well because of the help of VIDI. I experienced debriefing, and it was helpful to me.”**

Briella\*, Survivor Leader  
(\*pseudonym)

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<sup>6</sup> International Justice Mission data (IJM-supported cases) as of July 2023.

<sup>7</sup> VIDIs were taken and used during inquest or preliminary investigation in IJM-supported casework.



VIDI is a prosecution strategy amply provided for in the law. It finds basis in the Rule on Examination of a Child Witness [Administrative Matter (A.M.) No. 00-4-07-SC]. It is further strengthened by the recent passage of the Republic Act (R.A.) No. 11930 [otherwise known as the Anti-Online Sexual Abuse or Exploitation of Children (OSAEC) and Anti-Child Sexual Abuse or Exploitation Materials (CSAEM)], R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862 [otherwise known as the Expanded Anti-Trafficking in Persons Act of 2022]. Therefore, there is nothing preventing caseworkers from utilizing this strategy in investigating and prosecuting OSEC cases.

This section covers the Rule on Examination of a Child Witness, the 1987 Constitution, the Anti-Online Sexual Abuse or Exploitation of Children (OSAEC) and Anti-Child Sexual Abuse or Exploitation Materials (CSAEM), the Expanded Anti-Trafficking in Persons Act of 2022, recent jurisprudence, and other related domestic and international laws.

#### A. RULE ON EXAMINATION OF A CHILD WITNESS (A.M. NO. 00-4-07-SC)

VIDIs find their primary legal grounding in the Rule on Examination of a Child Witness (RECW) issued by the Supreme Court in 2000. It governs the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to a crime in all criminal and non-criminal proceedings.<sup>8</sup> The RECW aims to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.<sup>9</sup> The RECW further provides for a liberal construction to uphold the best interests of the child and to promote maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.<sup>10</sup>

Section 29 of the RECW specifically allows for the admissibility of VIDIs. It provides as follows:

#### **Section 29. Admissibility of videotaped and audiotaped in-depth investigative or disclosure interviews in child abuse cases.**

*“The court may admit videotape and audiotape in-depth investigative or disclosure interviews as evidence, under the following conditions:*

- (a) The child witness is unable to testify in court on grounds and under conditions established under section 28 (c).*

*Section 28 (c) of the Rule provides that the child witness is unable to testify if:*

- 1. he or she is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological injury; or*

<sup>8</sup> RECW, § 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* See Annex B for the full text of RECW.

2. *he or she is absent from the hearing and the proponent of his or her statement has been unable to procure his or her attendance by process or other reasonable means.<sup>11</sup>*

*(b) The interview of the child was conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services in situations where child abuse is suspected so as to determine whether child abuse occurred.*

*(c) The party offering the videotape or audiotape must prove that:*

1. *the videotape or audiotape discloses the identity of all individuals present and at all times includes their images and voices;*
2. *the statement was not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the statement of the child and not the product of improper suggestion;*
3. *the videotape and audiotape machine or device was capable of recording testimony;*
4. *the person operating the device was competent to operate it;*
5. *the videotape or audiotape is authentic and correct; and*
6. *it has been duly preserved.*

*The individual conducting the interview of the child shall be available at trial for examination by any party. Before the videotape or audiotape is offered in evidence, all parties shall be afforded an opportunity to view or listen to it and shall be furnished a copy of a written transcript of the proceedings.*

*The fact that an investigative interview is not videotaped or audiotaped as required by this section shall not by itself constitute a basis to exclude from evidence out-of-court statements or testimony of the child. It may, however, be considered in determining the reliability of the statements of the child describing abuse.”*

## **B. THE 1987 CONSTITUTION<sup>12</sup>**

The 1987 Philippine Constitution is the greatest law of the land from which rights of the Filipino people and obligations of the state arise. Special protections to the youth are enshrined therein to recognize their value and the role they play in society.

### **(a) Article II, Section 11**

*“Section 11. The State values the dignity of every human person and guarantees full respect for human rights.”*

### **(b) Article II, Sec. 13**

*“Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.”*

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<sup>11</sup> RECW, § 28. (Emphasis supplied.)

<sup>12</sup> See Philippine 1987 Constitution. Available at <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>

**(c) Article XIII, Sec. 11**

*“Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. **There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children.** The State shall endeavor to provide free medical care to paupers.” (Emphasis supplied.)*

**(d) Article XV, Sec. 3, par. 2**

*“Section 3. The State shall defend... The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development[.]” (Emphasis supplied.)*

**C. ANTI-ONLINE SEXUAL ABUSE OR EXPLOITATION OF CHILDREN AND ANTI-CHILD SEXUAL ABUSE OR EXPLOITATION MATERIALS, REPUBLIC ACT NO. 11930 (R.A. NO. 11930)**

The passage of R.A. No. 11930 in 2022 strengthened the protections accorded to children subjected to sexual violence, abuse, and exploitation. The law provided more basis for the use of VIDI in cases involving children. Its Section 19 explicitly stated that the child victim’s presence shall not be required in court and that his or her testimony shall follow the Rule on Examination of Child Witness (RECW). The provision reads:

**Section 19. Jurisdiction.**

*Jurisdiction over cases for the violation of this Act shall be vested in the Family Court which has territorial jurisdiction over the place where the offense or any of its essential elements was committed pursuant to Republic Act No. 8369, otherwise known as the “Family Courts Act of 1997,”: Provided, That the court shall not require the presence of a child victim during the trial and that the child shall testify in accordance with “Rule on Examination of a Child Witness,” as may be provided by the Supreme Court and the Rules of Court.*

The use of VIDI was reinforced in the Implementing Rules and Regulations (IRR) of R.A. No. 11930<sup>13</sup> through Sections 15 and 59 which discussed the taking and presentation of the child’s statement with the use of video recording, respectively. The said provisions are as follows:

**Section 15. Taking of statement.**

*“The sworn statement of the rescued child victim-survivor shall be taken after he/she has been informed about, and is able to understand, the legal procedures and the value of the statement given. As much as possible, the statement shall be taken in a place conducive for conducting interviews, in the presence of a registered social worker, and in a child-sensitive, gender-responsive, disability-inclusive, culture-sensitive, victim-centered, trauma-informed, and safe manner. A joint interview by an investigator and a social worker **should be enjoined** to avoid repetitive interviews and the same may be documented by any available medium of recording with the consent of the guardian of the child victim-survivor, or any duly-licensed person or institution having protective custody of the child victim-survivor: Provided, That if this joint interview shall be recorded via video, that it be conducted in*

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<sup>13</sup> The Implementing Rules and Regulations of R.A. No. 11930 was signed on May 18, 2023.

accordance with the requirements of Administrative Matter (A.M.) No. 004-07-SC (Rule on Examination of a Child Witness).

*The transcript and the copy of the audio or video interview conducted by the investigator and/or social worker who are specially trained to conduct such interview, concerning the personal information of the child victim-survivor and manner by which the rescued child victim-survivor was abused or exploited can be utilized as evidence before the office of the prosecutor and before the court, in lieu of a sworn statement. The interviewer and/or the person who recorded the interview shall execute an affidavit stating as to the manner he/she conducted the interview and how the interview was recorded.*"

### **Section 59. Presentation of child's statement as evidence.**

*"The Rule on Examination of a Child Witness shall be observed whenever a child testifies in court or via video conferencing.*

*To the extent allowable under such Rule, prosecutors handling OSAEC and CSAEM cases shall make use of alternative means of presenting a child's statement as evidence, which means do not require the presence of the child, such as, but not limited to, a videotaped in-depth disclosure interview."* (Emphasis supplied.)

Seeing that a child victim's statement may be taken in video format, in accordance with the RECW, the IRR necessarily referenced the same in Section 52 on the commencement of inquest proceedings as part of the supporting documents that may be filed with the complaint, to wit:

### **Section 52. Commencement of the inquest proceedings.**

*"Where a person is lawfully arrested without a warrant, the complainant or arresting officer shall file a complaint with the DOJ or any of its local prosecution office.*

*The inquest proceedings shall be considered commenced upon receipt by the inquest prosecutor of the following documents:*

- (a) the affidavit of arrest duly subscribed and sworn to before him by the arresting officer;*
- (b) the investigation report;*
- (c) the sworn statements of the complainant/s and witness/es;*
- (d) copy of the video from the body-worn camera or alternative recording device pursuant to the Rules on the Use of Body-Worn Cameras in the Execution of Warrants showing the arrest of the respondent. In the absence thereof, any video would show how the respondent was arrested;*
- (e) transcript of the audio or video forensic interview, if available;*
- (f) affidavit of the interviewer; and*
- (g) other supporting pieces of evidence gathered by the LEOs in the course of their investigation of the criminal incident involving the arrested or detained person." (Emphasis supplied.)*

#### **D. EXPANDED ANTI-TRAFFICKING IN PERSONS ACT OF 2022 (R.A. 9208, AS AMENDED BY R.A. NO. 10364 & R.A. NO. 11862)**

Similarly, albeit indirectly, R.A. No. 9208, as amended by R.A. No. 10364 & R.A. No. 11862 mentioned the use of the RECW when interviewing child victims in Section 8 (1),<sup>14</sup> as amended. It highlights the duty to

keep all records and proceedings under the law confidential. It further mandates the non-disclosure of proceedings and records, expressly protecting testimonies of children taken in accordance with the RECW. Since the law specifically called out the use and applicability of the RECW in trafficking cases in this way, the use of VIDI as evidence thereto cannot be discounted.

To implement the use of VIDI, the 2022 Revised Rules and Regulations Implementing Republic Act No. 9208, as amended<sup>15</sup>, also allowed documenting a victim's statement by any available medium of recording, which includes videotaped interviews. It is worded in the same way as in the IRR of R.A. No. 11930, as such:

### **Section 19. Taking of statement.**

*“The sworn statement of the rescued trafficked persons shall be taken after they have been informed about, and are able to understand, the legal procedures and the value of them giving the statement. As much as possible, the statement shall be taken in a place conducive for conducting interviews, in the presence of a registered social worker, and in a child- and gender-sensitive manner. In the absence of a registered social worker, any person trained in a child- and gender-sensitive, trauma-informed interview techniques may accompany the trafficked persons. A joint interview by an investigator and a social worker should be explored to avoid repetitive interviews and the same may be documented by any available medium of recording with the consent of the trafficked persons or his/her guardian.*

*The transcript and the copy of the audio or video interview conducted by the investigator and/or any registered and accredited social worker who are specially trained to conduct such interview, concerning the personal information of the trafficked persons and manner by which they were trafficked can be utilized as evidence before the office of the prosecutor and before the court, in lieu of a sworn statement. The interviewer and/or the person who recorded the interview shall execute an affidavit stating as to the manner he/she conducted the interview and how the interview was recorded.”*

### **Section 112. Information on available programs and services.**

*“All service providers shall immediately provide information to trafficked persons about their rights, the nature of protection and available assistance and support. Such information shall be provided in a language that the trafficked persons understand.*

*When the trafficked person is a child, interviews, examination, and other forms of investigation shall be conducted by specially trained professionals in a suitable environment and in a language that the child uses and understands. In all stages of the proceedings, all officials involved shall ensure that the best interests of the child are upheld and protected.*

*As much as possible, to avoid repetitive interviews which may cause the re-traumatization of trafficked persons, interviews of trafficked children shall be recorded pursuant to the requirements under the Rule on Examination of Child Witness (A.M. No. 004-07-SC).”*

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**(14 cont.)** – xxx

(1) Confidentiality. – All records and proceedings under this law, from the initial contact until the final deposition of the case, shall be considered privileged and confidential. The public shall be excluded during the proceedings and the records shall not be disclosed directly or indirectly to anyone by any of the parties of the participants in the proceedings for any purpose whatsoever where the testimony of the child shall be taken in accordance with A.M. No. 004-07-SC or the Rule on Examination of a Child Witness.

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15 Implementing Rules and Regulations of R.A. No. 9208, as amended by R.A. No. 10364 & R.A. No. 11862.

## E. OTHER RELATED DOMESTIC LAWS

General protections for children against online sexual exploitation of children spring from the Constitution, down to specific statutes, Rules of Court, and finally, to protocols that govern exploitation and abuse cases.

### Statutes.

#### **(a) Republic Act No. 7610, as amended by Republic Act no. 9231 (otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act)<sup>16</sup>**

*Section 2. Declaration of State Policy and Principles. – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions prejudicial their development including child labor and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher, or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation, and discrimination or when such acts against the child are committed by the said parent, guardian, teacher, or person having care and custody of the same.*

*It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.*

*The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.*

#### **(b) Rules and Regulations on the Reporting and Investigation of Child Abuse Cases Issued under Republic Act No. 7610**

As early as year 1993, government social workers and law enforcers have been mandated to jointly conduct investigative interview and “[t]o minimize the number of interviews of the child victim, his statement shall be transcribed or recorded on voice or video tape” under Section 8 of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases issued by the Department of Justice pursuant to Pursuant to Section 32 of Republic Act No 7610.<sup>17</sup>

### Governing Protocols.

#### **Committee for the Special Protection of Children (CSPC) Protocol on Case Management of Child Victims of Abuse, Neglect, and Exploitation (Adopted 31 May 2013)<sup>18</sup>**

<sup>16</sup> See Philippine Republic Act (R.A.) 7610, Section 2. Available at <https://gcg.gov.ph/files/dQGD5XvnYU8WtCkA3kHX.pdf>

<sup>17</sup> A copy of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases is accessible at [\[https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/10/38174\]](https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/10/38174).

<sup>18</sup> See CSPC-CPN Case Management Protocol. Available at [https://www.doj.gov.ph/files/transparency\\_seal/2016-Jan/CPN-CSPC%20Protocol%2026Nov2014.pdf](https://www.doj.gov.ph/files/transparency_seal/2016-Jan/CPN-CSPC%20Protocol%2026Nov2014.pdf)

This Case Management Protocol was adopted by the CSPC, an inter-agency body chaired by the Secretary of Justice and co-chaired by the Secretary of Social Welfare and Development, which exists by virtue of Executive Order No. 53 series of 2011. The protocol serves as a guidebook for duty bearers and stakeholders in all concerned government agencies and non-government organizations managing child abuse cases. It specifies the roles and responsibilities of these entities at every phase of the life cycle of a case – from referral to termination – with an emphasis on the need to perform these responsibilities in a child-sensitive and child-protective manner.

In particular, the Case Management Protocol includes the joint interview of a child victim by a law enforcer and a social worker as one of the crucial steps to take upon the rescue of a child victim.<sup>19</sup> To minimize the number of interviews, prevent revictimization, and preserve the testimony of the child victim, the protocol mandates “audio or videotaping the same.”<sup>20</sup>

#### F. SUPREME COURT DECISIONS APPLYING CERTAIN PROVISIONS OF THE RULES ON EXAMINATION OF A CHILD WITNESS

Below are recent landmark Supreme Court’s Decisions worthy of note. While the cases are not on all fours with an OSEC case involving VIDIs to be offered in evidence in lieu of a child victim’s testimony in court, the doctrines and discussions in these cases lend support to the presentation of VIDIs as corroborative evidence to prove the crime committed against the children.

In the recent case of *BBB247234 vs. People*<sup>21</sup>, the Supreme Court balanced an accused’s fundamental right to meet the witnesses face to face with the constitutional right of the children to special protection. It recognized that the retaking of testimony of a child victim-survivor would subject him/her to further trauma by letting her recreate the horrors of her experience of the crime committed against him/her. In rejecting therein petitioner’s insistence to retake the child victim-survivor’s testimony after he waived his right to cross-examine her on a later date preserved by the trial court for such purpose, the Supreme Court applied Section 2<sup>22</sup> of RECW, Section 11<sup>23</sup>, Article XIII and Section 3 (2)<sup>24</sup>, Article XV of the Constitution, thus:

“At this juncture, this Court must state that it cannot countenance petitioner’s insistence to **retake the testimony** of KKK247234 as that would **subject the child victim to further trauma by letting her recreate the horrors of her experience**. This is certainly what Section 2 of the Rule on Examination of a Child Witness seeks to prevent. To be clear, this Court is not diluting petitioner’s fundamental right to “meet the witnesses face to face” as guaranteed in Section 14 (2), Article III of the Constitution. It is **merely upholding Section 11, Article XIII and Section 3 (2), Article XV of the**

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<sup>19</sup> *Id.* at 17.

<sup>20</sup> *Id.* at 27.

<sup>21</sup> G.R. No. 247234, August 22, 2022.

<sup>22</sup> Section 2 of RECW states that: “The objectives of this Rule are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.”

<sup>23</sup> Section 11, Article XIII of the 1987 constitution provides that: “The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. **There shall be priority for the needs of the** underprivileged, sick, elderly, disabled, women, and **children**. The State shall endeavor to provide free medical care to paupers.” (Emphasis supplied.)

<sup>24</sup> Section 3(2), Article XV of the Constitution avers that: “The State shall defend xxx “The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development[.]”

**Constitution which recognize the rights of children to be prioritized especially in protection against conditions prejudicial to their development.** From the foregoing, the CA did not err when it allowed NNN247234, KKK247234, and Pedarse to testify.” (Emphasis supplied, citations omitted.)

In *People vs. BBB and XXX*<sup>25</sup>, the Supreme Court had the opportunity to affirm a trial court’s findings on the admissibility and evidentiary weight of hearsay testimony (narration of oppressor’s culpability) given by a child victim-survivor to some other prosecution witnesses. Said child victim was subsequently found to be unavailable to testify on the ground that her presentation in court would expose her to severe psychological injury. In upholding the trial court’s findings, the Supreme Court emphatically applied the pertinent provisions of RECW, thus:

“The Rule on Examination of Child Witness expressly allows the admission of hearsay testimony of a child provided that: (1) it is corroborated by other admissible evidence; and (2) the child is unavailable. Section 28(a), (c)(1) and (d) of the Rule on Examination of Child Witness state:

**Section 28. Hearsay exception in child abuse cases.** - A statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding subject to the following rules:

- (a) Before such hearsay statement may be admitted, its proponent shall make known to the adverse party the intention to offer such statement and its particulars to provide him a fair opportunity to object. If the child is available, the court shall, upon motion of the adverse party, require the child to be present at the presentation of the hearsay statement for cross-examination by the adverse party. **When the child is unavailable, the fact of such circumstance must be proved by the proponent.**

x x x x

- (c) **The child witness shall be considered unavailable under the following situations:**
  - (1) Is deceased, suffers from physical infirmity, lack of memory, mental illness, or **will be exposed to severe psychological injury;** or
  - (2) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.
- (d) **When the child witness is unavailable, his ( or her) hearsay testimony shall be admitted only if corroborated by other admissible evidence.** emphasis supplied)

Here, Dr. Inoturan conducted a mental status examination on AAA and found out that she is suffering from Post-Traumatic Stress Disorder or PTSD. Dr. Paredes and Dr. Arafias, too, assessed that AAA is emotionally disturbed and suffering from trauma brought by the sexual violence she experienced in the hands of XXX. As a result, AAA became so anxious of people in general. AAA is, therefore, an "unavailable" child witness within the context of Section 28(c)(1) and (d) since her presentation in court would expose her to severe psychological injury.

In any case, the prosecution presented the testimonies of expert witnesses to corroborate AAA's testimonies. Having interviewed AAA several times, these witnesses were able to gather sufficient information on AAA's harrowing experience in the hands of appellant and XXX. Too, they were able to credibly determine that AAA was honest and forthright. Significantly, the trial court noted that their testimonies were not only credible by themselves but also worthy of belief, thus:

The Court looked into the testimonies of the several witnesses presented by the prosecution relating to what AAA narrated to them and the court is convinced of the veracity of their narration. For one, their testimonies were properly corroborated by other prosecution witnesses. The[y] conducted interview/counseling in the performance of their official duties. They observed AAA to be spontaneous with her emotions tall[y]ing with what she was narrating. They also have gotten the impression that she is honest and forthright.



There is no reason to depart from the foregoing findings of the trial court. For it has been held that the trial court's assessment of the credibility of witnesses should be given highest respect since it had the better opportunity to observe the demeanor, conduct, and attitude of the witnesses under grueling examination.”

These Decisions promulgated by the Supreme Court only last year (2022) show a developing trend in jurisprudence protecting child victims against conditions prejudicial to their development, which in a way supports the utilization of VIDIs to afford child victims freedom from retraumatization.

#### G. RELATED INTERNATIONAL LAWS

Upholding children's rights is a recognized universal obligation embodied in numerous international instruments. Recognized as a vulnerable group, children are accorded special status in various treaties and protocols, which in turn impose positive obligations upon States to guarantee their protection.

##### *UN CRC. United Nations Convention on the Rights of the Child*

The UN CRC, to which the Philippines is a signatory State, is the primary international document which embodies the special protection owed to children. It spells out the obligation to uphold the best interests of children at all times. This entails protecting children from all forms of mental violence and protecting them from retraumatization. States are also subject to the obligation to promote the psychological recovery of child victims. The utilization of VIDIs through the OSEC prosecution process is a critical step towards upholding such obligations as a means to protect and act in the best interest of children.<sup>26</sup>

##### *UN General Comment No. 13 (2011) on UN CRC Article 19<sup>27</sup>*

This General Comment on Article 19 was issued to address the alarming extent and intensity of violence exerted on children. It strongly emphasizes the obligation to uphold and maintain the best interests of children. It provides that States have no leeway for discretion under Article 19, and are under strict obligation to undertake all appropriate measures provided therein. In line with this, States are required to adopt an integrated and cohesive system which incorporates the full range of measures necessary to protect children. This includes taking measures to protect children from all forms of violence, including mental and psychological harm. In this regard, VIDIs go towards enhancing and implementing a child rights-based and integrated child protection and support system that is in line with international norms.

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<sup>26</sup> See Convention on the Rights of the Child (1990), Articles 3, 19 and 39.

<sup>27</sup> See UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13, available at: <https://www.refworld.org/docid/4e6da4922.html> [accessed 9 August 2019].

## Optional Protocol to the CRC on the sale of children, child prostitution and child pornography<sup>28</sup>

The Optional Protocol serves to complement the UN CRC on matters involving child sexual abuse and exploitation. It highlights these grave violations of children's rights and emphasizes the urgency in addressing and ending it. Aside from defining the offenses involved, it creates an obligation for States to protect the rights and interests of child victims in their interactions with the criminal justice system. This obligation involves adapting procedures and providing support services that are sensitive to their needs. The use of VIDIs is critical in developing such child-sensitive procedures.

## United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law<sup>29</sup>

Section VI on the Treatment of Victims of the Principles and Guidelines provides that "Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. **The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.**" (emphasis supplied)

In its Preamble, this instrument relates to the Convention on the Rights of the Child and obligates the states to include in its procedures mechanisms to mitigate retraumatization, which may include VIDIs.

In fact, in *Ocampo, et al. vs. Enriquez, et al.* (G.R. No. 225973, November 08, 2016), the Supreme Court, sitting *en banc*, recognized that, "The provision of the Basic Principles and Guidelines on the prevention of the victim's re-traumatization applies in the course of legal and administrative procedures designed to provide justice and reparation."

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<sup>28</sup> See Article 8, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Volume 2171, A-27531.

<sup>29</sup> Full text of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law is accessible at [<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>].

# CONDUCTING VIDIS

Pre-Interview

Interview Proper

Post-Interview

Supplemental or Follow-up VIDI

# Conducting VIDIs

VIDI is a key measure provided by the law that can protect children from retraumatization and revictimization during the rescue, rehabilitation, and prosecution process. The following is a recommended procedure on how to organize relevant parties in conducting the VIDI; proper processes and protocols during the commencement of the VIDI; and what to do post-interview.

## PRE-INTERVIEW

### A. PRELIMINARY STEPS

#### Convening the multi-disciplinary team (MDT).

The requesting party<sup>30</sup> shall convene a multi-disciplinary team (MDT) composed of the representatives from the law enforcement agency, Department of Social Welfare and Development (DSWD) and/or the Local Social Welfare and Development Office, as the case may be, or the Department of Justice (DOJ), or other members of accredited child-caring institution to discuss the following:

- (a) case background;
- (b) available pieces of evidence;
- (c) intention to conduct VIDI;
- (d) the information sought during the interview and questions to be asked to obtain such information;
- (e) readiness of the child to be interviewed;
- (f) special needs of the child during interview (if any);
- (g) identification of interviewer and venue;
- (h) schedule; and
- (i) other relevant matters.

#### Coordination with other parties.

Once the necessary coordination with the MDT is complete, the requesting party shall proceed to coordinate with other relevant parties whose participation is necessary in conducting the VIDI. A request must be sent to the identified venue or interviewer to schedule the VIDI.<sup>31</sup> The request must contain the following:

- (a) brief case background;
- (b) estimated number of children to be interviewed;
- (c) estimated age(s) of child(ren); and
- (d) date and time of interview.

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<sup>30</sup> The requesting party refers to the person who wants to request the utilization of VIDI as part of investigation, prosecution, or for any other purpose.

<sup>31</sup> See Annex C for a Sample Letter Request for Venue or Interviewer.

### Individuals participating in the VID I.

#### (a) Interviewer

The RECW states that the interview be conducted by members of a multidisciplinary team, representatives of law enforcement, or child protective services.<sup>32</sup>

As a form of best practice, the interviewer should ideally be a member of the MDT who is duly trained in child forensic interviewing. While the law does not specify, the ideal members of the MDT may be those who come from different disciplines such as, but not limited to, representatives from the field of psychology/pediatrics/child caring institutions, social work, law enforcement, and prosecution. If this is not possible, the law allows representatives of law enforcement and child protective services, whose work involves dealing with or determining child abuse situations, to conduct the interview. The set-up of the interview will be further discussed in detail below.

Additionally, if permitted by the facility, it is recommended that the other MDT members observe the VID I through a one-way mirror and stand by for consultation.

#### (b) Child

In cases where there is more than one child involved, they should be interviewed one at a time.<sup>33</sup>

Pertinently, steps should be taken to ensure that the child is ready to be interviewed before conducting the VID I.<sup>34</sup> This can be done through close coordination with the social worker handling the case.

Once the social worker, in coordination with relevant parties, has determined the child to be forthcoming and is willing to be interviewed, the social worker will provide necessary aftercare intervention in order to prepare him/her for the interview. In the event there is a need for the child to undergo initial psychological assessment before the interview, he/she shall be referred to a psychologist.<sup>35</sup> The requesting parties must defer to the psychologist's recommendation on the child's readiness for the interview.

Apart from assessing the psychological readiness of the child, he/she should be intellectually and emotionally prepared for the interview. This can be done ahead of the VID I by providing the child with an overview of the purpose of the interview and preliminary questions may be asked about the circumstances of the case.<sup>36</sup>

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<sup>32</sup> RECW, § 29(b).

<sup>33</sup> Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VID I Framework conducted last 6 May 2022.

<sup>34</sup> Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VID I Framework conducted last 6 May 2022.

<sup>35</sup> See Annex D for the Directory of Organizations with Child Psychologists.

<sup>36</sup> Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VID I Framework conducted last 6 May 2022.

In cases when the parent(s) is/are the perpetrator or is perceived to have a strong bias in favor of the perpetrator, an Informed Consent Form to participate in VIDI must also be signed by the social worker who has temporary protective custody of the child. An exception is when the child has been re-integrated with his/her parents or family, provided that the parent(s) or family members are confirmed to (i) not be a threat to the child, (ii) not have relations with the perpetrator, or (iii) not have a conflict of interest.

### **(c) Social Worker**

As a matter of protocol, a social worker should be present to support the child during the interview.<sup>37</sup> In the event there are questions that the social worker needs to ask, he/she must submit these questions to the primary interviewer before the interview.

The DSWD social worker should also preferably be the same gender as the child.<sup>38</sup>

Generally, the social worker should be the primary support person for the child. In the event the child wishes for another person to accompany him/her for the interview (apart from the social worker), efforts should be made to consider such a request so long as necessary measures are taken to preserve the integrity of the child's testimony and ensure that the social worker had screened such person for any bias or any conflict of interest. This is to promote the best interests of the child.

## **Venue.**

### **(a) When a government facility is available**

Preferably, the interview should be conducted at a government interview facility.<sup>39</sup>

### **(b) When a government facility is unavailable**

If the interview cannot be conducted at a government interview facility, the interview may be done at a readily available interview room, provided that the principles of child friendly spaces are observed (as discussed further below). In such a case, a **VIDI Mobile Kit** is to be used to capture the interview.

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<sup>37</sup> See Committee for the Special Protection of Children, Protocol for Case Management of Child Victims of Abuse, Neglect, and Exploitation, p. 27.

<sup>38</sup> *Id.*

<sup>39</sup> See Annex E for Directory of Possible Interview Venues.

The **VIDI Mobile Kit**<sup>40</sup> comprises the following:

1. Video Camera with Charger and Case
2. Tripod
3. Laptop with Charger and Case
4. Storage Media
  - a. SD Card
  - b. Flash Drives
5. Extension Cord
6. Forms and Support Documents Folder
  - a. Informed Consent Form
  - b. Interview Guide and Script
  - c. Sample Joint Affidavit of Interviewer and Social Worker/Affidavit of the Interviewer and Affidavit of Social Worker, depending on the preference of the Public/Private Prosecutor

### **(c) Child-Friendly Spaces (CFS)**

Most OSEC cases require some form of victim interviews during the post-rescue or initial prosecution stages. Such interviews should not be conducted in places where there is heavy foot traffic.<sup>41</sup>

IJM had previously conducted a study exploring how **Child-Friendly Spaces (CFS)** can reduce trauma for OSEC survivors and offered alternatives to make child witness testimony more practicable and child protective. Specifically, it explores how responders can create a temporary child friendly space so that a VIDI can take place in a way that upholds the best interests of the child.

There is no agreed definition for CFS within the OSEC context. IJM's study, which relied on qualitative analysis following semi-structured interviews with casework experts in law enforcement, OSEC victim aftercare, medicine, and pediatrics, used the following working definition: "a child friendly space operates with the objective of providing comfort and security in a time of vulnerability."<sup>42</sup>

From the study, a set of key operating principles for cultivating CFS was derived. These relate to: Personnel, Space, and Accessories.

#### **1. Personnel**

- There should be limited access to the space where the interview is conducted. The number of people in the room during the interview should be kept to a minimum: interview, child, social worker, psychologist, and/or translator (where applicable).
- Those interacting with the child should have undergone trauma-informed care training.

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<sup>40</sup> See Annex F for the IJM VIDI Handler's Guide.

<sup>41</sup> Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI Framework conducted last 6 May 2022.

<sup>42</sup> See Annex G for the Abstract of IJM's Child-Friendly Spaces Research.

- Open communication and understanding of the process for both the child and the interviewer is important.
- Rapport building should always be done prior to the interview.

## **2. Space**

- The interview space should be enclosed and quiet. Hotel rooms or any room in a public/private building may be considered so long as it is peaceful with minimal foot traffic.
- Temperature control should be observed to provide physical comfort (not too hot/cold).
- There should be ready access to facilities, such as the restroom, water dispenser, etc. etc.
- The space should be painted in neutral colors to avoid emotional triggers.
- The space should ideally be intended for child use in terms of furniture design to create a sense of comfort.

## **3. Accessories**

- There should be a limited number of toys or play aids.
- There should be careful consideration of the child's needs before utilizing play aids or anatomically-accurate dolls.
- There should be ready access to supplies, such as water, tissue, etc.
- Drawing/coloring materials are encouraged as another way to facilitate disclosure from the child.
- Reading materials are not necessary in the interview room but are encouraged to be placed in the holding room.

Applying these principles to OSEC operations, transitional child friendly spaces – temporary zones of comfort and security – may be cultivated with the creative use of portable gear. Blankets, pillows, dividers, simple toys, combined with trauma-informed care, may spell the difference between a disempowered child and a child afforded agency, voice, power, and dignity.



## C. INTERVIEW DAY

### Rapport building.

If this has not already been done, the interviewer and social worker should spend time with the child ahead of the interview proper to build rapport. Rapport building prior to the interview should not touch matters of suspected abuse but instead focus on building a relationship with the child. The goal is to make the child familiar and comfortable with the interviewer.<sup>43</sup>

### Setting up the interview room.

The interviewer should prepare the interview room by removing distracting materials, securing its privacy, positioning the furniture, and testing the recording equipment before bringing the child into the interview room. Again, the operating principles of a child friendly space should be observed. When setting up the room, anticipate the child's needs so that water, tissue, or writing materials are readily accessible.

### Preparing the child.

The primary interviewer and social worker should ensure that the child is physically, psychologically, and emotionally ready to undergo the interview. This means making sure that the child is not hungry or sleepy, and that the child had a recent bathroom break before beginning the interview.

**“The child should be put at ease first and briefed before the interview. The interviewer should use child friendly words so they will understand the questions well and answer easily. The interview should be conducted once the child is fully prepared.”**

Quell\*, Survivor Leader  
(\*pseudonym)

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<sup>43</sup> Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VID I Framework conducted last 6 May 2022.

## INTERVIEW PROPER

### A. WHO APPEARS IN THE VIDI

The participants in the VIDI shall be limited to those specified under **Individuals participating in the VIDI** (pages 18). These are the interviewer, social worker, and the child interviewee.

In cases where the presence of an interpreter/translator is needed for the child-interviewee (e.g. deaf, dialect different from the interviewee), such an individual should also be allowed to participate in the VIDI as long as neutrality is maintained.

As stated in the RECW, the images and voices of all persons present during the interview must be recorded in the VIDI at all times.<sup>44</sup> In the event a VIDI Mobile Kit is used, the primary interviewer shall pan the camera around the room to show that there are no other persons in the room aside from the interviewer, interviewee, and social worker (and interpreter/translator if necessary).

### B. PHASES OF THE INTERVIEW

The interview proper generally has three phases: (1) introductory phase, (2) substantive phase, and (3) closure phase.<sup>45</sup> The primary interviewer should ensure that the video recording has commenced at the beginning of the interview proper.

For guidance, the primary interviewer can refer to the Interview guide/script.<sup>46</sup> See also the Dutch Scenario Model interview protocol,<sup>47</sup> PEACE Model,<sup>48</sup> and other existing interview protocols across jurisdictions.<sup>49</sup>

#### Introductory Phase.

The goal of this phase is to ensure that the child is comfortable enough to eventually be able to give the most accurate, complete, and candid information. During this phase, the child will begin to trust the interviewer and become oriented to the interview process.<sup>50</sup> The interviewer should

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<sup>44</sup> RECW, § 29(c)(1).

<sup>45</sup> U.S. Department of Justice Office of Juvenile Justice and Delinquency, Child Forensic Interviewing; Best Practices, p. 7 (September 2015).; *See also* Child Welfare Information Gateway. (2017). *Forensic interviewing: A primer for child welfare professionals*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, p. 3.

<sup>46</sup> See Annex H for IJM VIDI Interviewer's Guide.

<sup>47</sup> Lamb, M. E., Orbach, Y., Hershkowitz, I., Esplin, P. W., & Horowitz, D. (2007). A structured forensic interview protocol improves the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol. *Child Abuse & Neglect*, 31(11–12), 1201–1231. <https://doi.org/10.1016/j.chiabu.2007.03.021>

<sup>48</sup> See P.E.A.C.E. A different approach to investigative interviewing. Available at <https://www.fis-international.com/assets/Uploads/resources/PEACE-A-Different-Approach.pdf>

<sup>49</sup> U.S. Department of Justice Office of Juvenile Justice and Delinquency, Child Forensic Interviewing; Best Practices, p. 7 (September 2015). ; *See also* Child Welfare Information Gateway. (2017). *Forensic interviewing: A primer for child welfare professionals*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, p. 3.

<sup>50</sup> Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI Framework conducted last 6 May 2022.

begin to understand the child's linguistic patterns, gauge the child's willingness to participate, and start to respond appropriately to the child's developmental, emotional, and cultural needs.<sup>51</sup>

During this phase, the primary interviewer should:

1. Begin by stating the circumstances surrounding the interview by stating the (a) time, (b) date, (c) venue of the interview, and (d) who are in the interview room;
2. Introduce the individuals participating in the interview;
3. Secure the voluntariness and consent of the child and social worker;
4. Outline the interview instructions and ground rules;<sup>52</sup>
5. Discuss the importance of telling the truth;
6. Allow the child to engage in a practice narration. This can be a short conversation about his/her interests or activities. This practice should provide an opportunity for the child to describe a recent non-abuse related experience in detail.

### Substantive Phase.

In this phase, important facts establishing the reported abuse are gathered:

1. Identity of the victim(s) and perpetrators,
2. Facts establishing the elements of the offense and prior offenses,
3. Other victims in the community, and
4. Other abusers and facilitators.

Questions should be as open-ended and non-suggestive as possible.<sup>53</sup> Recall prompts are open-ended, inviting the child to tell everything he or she remembers in his or her own words.<sup>54</sup> This question-type is regarded and accepted as a form of best practice.

Recommended recall prompts are:

1. "What?"
2. "How?"
3. "When?"
4. "Where?"
5. "Tell me more."
6. "What happened next?"

More focused questions should only be asked later in the interview, depending on the developmental level of the child, the child's degree of candor or reluctance, the immediacy of child protection issues, and the existence of reliable information previously gathered.

Asking the child to recognize something (i.e. recognition prompts) can provide the child with context and offer interviewer-created options.<sup>55</sup> However, these should be used judiciously as this might be suggestive and regarded as being leading.

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<sup>51</sup> U.S. Department of Justice Office of Juvenile Justice and Delinquency, *Child Forensic Interviewing; Best Practices*, p. 8 (September 2015).

<sup>52</sup> Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VIDF Framework conducted online last 6 May 2022.

<sup>53</sup> Child Welfare Information Gateway. (2017). *Forensic interviewing: A primer for child welfare professionals*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, p. 3.

<sup>54</sup> U.S. Department of Justice Office of Juvenile Justice and Delinquency, *Child Forensic Interviewing; Best Practices* (September 2015), p. 7.

Pertinently, at no point should the child be forced to answer all questions including those which he/she cannot remember or be pressured to answer something he/she cannot give a full and definite answer to. Similarly, the interview should be conducted according to the pace of the child and no time limits should be placed for him/her to answer a question.<sup>56</sup>

### Closure Phase.

This phase helps transition from the emotionally charged substantive phase to the conclusion of the interview. The goal here is to end the interview in a respectful and dignified manner in keeping with the best interests of the child. The interviewer may employ different strategies, depending on the child's needs and other circumstances.<sup>57</sup> Before ending the interview, the primary interviewer should ask the DSWD social worker if there are any additional/follow-up questions. The primary interviewer will then end the interview by stating the time and date, before ending the recording. The following are helpful strategies to adopt during this phase:

1. Ask the child if there is something the interviewer needs to know.
2. Ask the child if there is something he or she wants to tell or ask the interviewer.
3. Avoid making promises that might not be kept.
4. Thank the child for his or her effort rather than for specific content.
5. Provide the child with contact details of a person that the child can reach out should he or she wish to be interviewed again.

### C. OTHER IMPORTANT REMINDERS

1. For law enforcers, avoid wearing uniforms or having guns that are visible during the interview.
2. Avoid touching the child. Maintaining an arm's length distance between the interviewer and the child is recommended.
3. Once the recording has started, avoid stopping or pausing it until the entire interview is completed. The recording must be one, long, continuous shot. Where there are pauses or periods of silence, the interview should state the time and date on record.
4. Breaks during interviews are allowed. Where breaks are taken, the recording should continue and not be paused. The interviewer should verbally state the date and time stamps before and after each break.
5. In the event of a situation where an interview ends abruptly (e.g. if the child has taken a break or is feeling fatigued and does not wish to continue the interview), the interviewer should detail the circumstances on record before stopping the recording.
6. Multiple VIDI recordings took place should also be set out in the affidavit of the interviewer. Should the VIDI recording continue on a separate occasion, the interviewer should state the time/date on record before continuing with the interview proper.
7. Anatomically-correct dolls and visual aids may be utilized to determine the specific body part the child is referring to. However, this strategy should only be implemented by someone who has had training or recognized experience on the introduction and utilization of the same during interviews, and utilized as a last resort.
8. Drawing materials can be provided to help the child communicate what he/she cannot express verbally. Where the child has made drawings, it is recommended that where possible, it is best

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<sup>55</sup> *Id.*

<sup>56</sup> Recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI Framework conducted last 6 May 2022.

<sup>57</sup> U.S. Department of Justice Office of Juvenile Justice and Delinquency, Child Forensic Interviewing; Best Practices (September 2015), p. 10.

practice to use a second camera to zoom in on the child's drawing. However, in cases where the same is not available, the camera should slowly zoom in as the child draws, focus on the child's drawing and immediately zoom out after.

9. Ask the child to describe his or her experience in detail and minimize interruption during the child's initial narrative account.
10. Consult with the MDT members to determine whether there is a need to raise additional questions or resolve any ambiguities or contradictions. For the avoidance of doubt, the recording should not be stopped when this is taking place. Where there are pauses or periods of silence, the interview should state the time and date on record.

## INTERVIEW PROPER

### A. DEBRIEFING AND PSYCHOLOGICAL ASSESSMENT

To ensure the child's psychological well-being and to address any concerns or questions the child may have outside of the recorded interview, the social worker (or in his/her absence, any trained member of the MDT) should conduct a debriefing with the child. This debriefing should be done as soon as the interview has ended and need not be recorded.<sup>58</sup>

Where necessary, the child should also be referred to a psychologist for assessment at the earliest time.

As a matter of strategy, the requesting party should also request an assessment from the psychologist on the risks of *severe* psychological injury<sup>59</sup> the child will be exposed to if made to testify in court per **Individuals participating in the VID I** (page 18 of this Framework). It is critical for such an assessment to detail the severity of psychological injury the child would be exposed to as this is a condition for the admissibility of VID I under REC W.

### B. SECURING THE RECORDING

The recording that is automatically saved in the SD card inserted in the video camera is considered the original. The SD card must be properly secured, labeled, and stored.

Copies should be made for back-up purposes in order to avoid damaging or compromising the original video. In the event of requests to view the recording, these should be dealt with using only the copies of the recording.

In the case of an existing government interview facility, the copy can be secured from the operator of the recording equipment. It is recommended that at least three properly labelled copies are secured – one copy will be attached to the complaint, while two copies are to be retained by the law enforcer.

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<sup>58</sup> Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VID I Framework conducted last 6 May 2022.

<sup>59</sup> See Annex D for the Directory of Organizations with Child Psychologists.

### C. CHAIN OF CUSTODY

Making copies of the recorded interview should be done immediately after the interview. As a matter of best practice, another person should be present to witness the process of storing and making copies of the files.

This witness may be any member of the MDT/the social worker/co-police officer so long as that individual can be called as a witness to attest on the integrity and continuous chain of custody of digital files. To this end, such details should be included in the individual's affidavit.

If the interview was conducted in a government facility, the operator of the VIDI equipment will be responsible for the transfer or storage of the video. This is, however, subject to any existing procedures or protocol of that particular facility.

If the interview was done using the VIDI Mobile Kit, the requesting party is responsible for the video's storage.

The custodian must seal the video and ensure its confidentiality.

### D. PREPARATION OF JOINT AFFIDAVIT OF INTERVIEWER AND SOCIAL WORKER, OR SEPARATE AFFIDAVITS OF BOTH

The primary interviewer and assisting social worker must execute a joint or separate affidavit stating the circumstances surrounding the conduct of the interview, the pertinent disclosures of the child victim, and how the video file was secured and stored.<sup>60</sup>

### E. TRANSCRIPTION

It is best practice that the services of a professional or legal transcriptionist be obtained. The transcription of the interviewer, however, may be done by interviewer or his/her designee. Having a transcript of the interview is a requisite for the offer of VIDI as evidence in court.<sup>61</sup> Preserving the confidentiality of the interview should always be ensured in the transcription process.

## SUPPLEMENTAL OR FOLLOW-UP VIDI

Should a supplemental or follow-up interview be required, another VIDI may be conducted to reflect the additional disclosure of facts. If an affidavit has already been filed, a supplemental affidavit will be necessary.<sup>62</sup>

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<sup>60</sup> See Annex I for a Sample Joint or Separate Affidavit/s of Child Forensic Interviewers.

<sup>61</sup> RECW, § 29.

<sup>62</sup> See Annex J for a Sample Supplemental Affidavit of Interviewers.

# PROSECUTION PROTOCOL

Inquest/ Preliminary Investigation  
Trial

Best Practices in OSEC Prosecution

# Prosecution Protocol

## INQUEST / PRELIMINARY INVESTIGATION

### A. ATTACHING THE VIDİ TO THE COMPLAINT

In lieu of the child’s affidavit, the following shall be submitted to the prosecutor:

- The joint affidavit executed by the primary interviewer and social worker during the post-interview process (see **Individuals participating in the VIDİ**, page 18 of this Framework, and Annex I);
- Storage media (discs, SD cards, or USBs) containing the recorded interview;
- Transcription of the interview, if available.

These materials must be included in the documents submitted during case filing (i.e. inquest packet in case of an inquest; or complaint in case of a preliminary investigation).

### B. ADVOCATING THE USE OF VIDİ TO THE PROSECUTOR

The intention to use VIDİ in lieu of the child victim’s live testimony should be communicated to the prosecutor during the MDT meeting (see **Individuals participating in the VIDİ**, page 16 of this Framework).

Upon inquest or preliminary investigation, the requesting party should inform the resolving prosecutor that the documents submitted will include (i) the joint affidavit of the interviewers, (ii) storage media containing the recorded interview, and (iii) the corresponding transcription, if available, in lieu of the affidavit of the child victim. It should be reiterated to the resolving prosecutor that the RECW provides for the use of VIDİ in lieu of a child victim’s testimony as a child protection mechanism, and that the VIDİ was conducted in accordance with the rules on admissibility.

## TRIAL

### A. REQUIREMENTS FOR ADMISSIBILITY

For VIDİ to be admissible as evidence, the following conditions must be satisfied:

1. **The child witness must be unable to testify in court on the grounds established under section 28 (c) of the RECW.**<sup>63</sup>

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<sup>63</sup> RECW, § 29.



Section 28 (c) of the RECW provides that the child witness is unable to testify if:

- i. he or she is deceased, suffers from physical infirmity, lack of memory, mental illness, or *will be exposed to severe psychological injury*; or
- ii. he or she is absent from the hearing and the proponent of his or her statement has been unable to procure his or her attendance by process or other reasonable means.<sup>64</sup>

**2. The interview of the child was conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services in situations where child abuse is suspected.**<sup>65</sup>

**3. The party offering the videotape or audiotape must prove that:**

- i. the videotape or audiotape discloses the identity of *all* individuals present and *at all times* includes their images and voices;
- ii. the statement was not made in response to questioning calculated to lead the child to make a particular statement, and is clearly shown to be the statement of the child and not the product of improper suggestion;
- iii. the videotape and audiotape machine or device was capable of recording testimony;
- iv. the person operating the device was competent to operate it;
- v. the videotape or audiotape is authentic and correct; and
- vi. it has been duly preserved.<sup>66</sup>

## **B. PRE-TRIAL**

As part of pre-trial preparation, the VID, the joint affidavit of the interviewer and social worker, and the transcript of the interview must be listed and included as exhibits. Such exhibits and witnesses must be reflected in the Pre-Trial Order.

If a VID has not yet been conducted or a supplemental VID is needed, the prosecution may indicate a reservation in the Pre-Trial Order for its utilization.

## **C. MOTION TO DECLARE THE CHILD UNAVAILABLE**

### **Grounds.**

The admission and utilization of the VID relies on the unavailability of the child to testify in court per Section 28 (c) of the RECW. The RECW provides that the child witness is unable to testify if:

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<sup>64</sup> RECW, § 28(c).

<sup>65</sup> RECW, § 29.

<sup>66</sup> *Id.*

- i. he or she is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological injury; or
- ii. he or she is absent from the hearing and the proponent of his or her statement has been unable to procure his or her attendance by process or other reasonable means.<sup>67</sup>

To this end, in the course of presenting the prosecution’s evidence, the prosecutor must file a Motion to declare the child unavailable for trial and to apply to allow the presentation of VID I in lieu of child testimony.<sup>68</sup>

### Severe Psychological Injury.

In the absence of other grounds for unavailability specified in the REC W, proceeding under the limb in which the child “will be exposed to severe psychological injury” as a ground for his/her unavailability is recommended.

The term “severe psychological injury” is not defined in Philippine jurisprudence, and courts currently decide its existence on a case-by-case basis. To this end, the prosecution may adduce expert assessments from child psychologists who have been clinically treating the child in question to establish the risk of “severe psychological injury.” The psychologist will be called on to testify in court on these pertinent findings.

The prosecution may further rely on academic research to argue that the child victim would suffer psychological injury and emotional trauma from testifying, especially in cases involving family members exerting abuse of power over the child, in an intimidating courtroom setting.

Psychological injury can have two diagnostic categories: (1) mood and depressive disorders (see Diagnostic and Statistical Manual of Mental Disorders (DSM)-IV and DSM-V) and (2) anxiety disorders. A global meta-analysis of recorded child abuse cases has shown that 70% of abused children are likely to experience psychological injury as a result of abuse.<sup>69</sup>

#### D. AFTER A COURT ORDER THAT THE CHILD IS UNAVAILABLE IS GRANTED

Upon granting the motion, the Court will issue an order declaring the child unavailable to testify in court and allow the presentation of VID I. The prosecution will then be able to present its evidence.

*CAVEAT: Since VID Is covered by IJM-supported cases are yet to be tested in court, the following are recommended strategies in the presentation of VID I in court.*

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<sup>67</sup> REC W, § 28(c).

<sup>68</sup> See Annex K for the Motion to Establish the Child Witness Unavailable and Admit VID I.

<sup>69</sup> Amado, Arce, Herraiz Psychological Injury in Victims of Child Abuse: A Meta-Analytic Review, *Psychosocial Intervention* 24 (2015) 49-62.

## Witnesses

In presenting the VIDI, the person who conducted the interview is required to be available at trial for examination by any party.<sup>70</sup> The interviewer will therefore testify in court on:

- i. The circumstances surrounding the interview;
- ii. Attest his/her presence during the interview;
- iii. Attest that the video device was capable of recording testimony;
- iv. Identify and authenticate that the video accurately depicts the scene as it was;
- v. Identify and authenticate the transcript of the interview;
- vi. Attest that he/she was competent to operate the video recording device if he/she indeed was the one who operated the device.

If a person other than the interviewer operated the recording device, such person must testify as to his/her competency to operate said device.

The social worker may also be called to testify in order to corroborate evidence that the interview was conducted, as well as evidence of the statements made by the child during the VIDI. If necessary, the psychologist who assessed the risk of psychological injury on the child should also be presented.

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<sup>70</sup> *Id.*

Throughout the prosecution process, the following fundamental principles should guide caseworkers:

**A. NON-RELIANCE ON CHILD WITNESS TESTIMONY**

When possible, the prosecution should utilize plea bargains to achieve convictions while minimizing negative victim impact. As a matter of priority, cases moving to trial should rely on digital or financial evidence, evidence from law enforcement, object/demonstrative evidence, and other non-victim evidence. VID I is presented in lieu of the child’s testimony to corroborate the other evidence and prove damages incurred, if necessary.

**B. OTHER CHILD PROTECTIVE OPTIONS DURING ANY EXAMINATION**

Videotaped depositions may be utilized if at the early pre-trial stages or before witness presentation, the court categorically disallows the VID I. In the event the child needs to give evidence in court, the prosecution should ensure that all child-protective measures laid down in the REC W and other laws are explored and implemented. For example, the prosecution may move for the child’s testimony to be conducted via live-link. Screens, one-way mirrors, and similar child-protective measures are also available options under the REC W.<sup>71</sup>

**C. WHEN A CHILD’S LIVE TESTIMONY IS IN HIS OR HER BEST INTERESTS, ALLOW IT**

The child may testify in person in court if this will contribute to his/her healing and recovery and is in his/her best interests.<sup>72</sup>

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<sup>71</sup> REC W, § 25-26.

<sup>72</sup> See Philippine Republic Act (R.A.) 7610, Section 2, for the Best Interests of the Child. Available at <https://gcg.gov.ph/files/dQGD5XvnYU8WtCkA3kHX.pdf>

# FAQS

# Frequently Asked Questions (FAQs)

## PROSECUTOR

### THE PROSECUTOR IS UNCOMFORTABLE USING VIDIS. WHAT CAN I DO?

Advocate to the prosecutor by directing him/her to the multiple legal bases including Section 29 of RECW. Aside from the legal bases, emphasize the importance of adopting a trauma-informed prosecution strategy and how VIDIS avoids the retraumatization of a child survivor.

In the event the prosecutor is still adamant about calling the child to give his/her live testimony, remind the prosecutor that the Committee for the Special Protection of Children (CSPC) Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation (to which the DOJ is a signatory) mandates videotaping any interviews with the child victim in order to minimize the number of interviews conducted.

## JUDGE

### WHAT IF THE PRESIDING JUDGE OF THE FAMILY COURT WHICH I AM ASSIGNED TO HAS A STRONG PENCHANT FOR REQUIRING VICTIM TESTIMONY IN OPEN COURT TO CONVICT AN ACCUSED?

Through experience, the relevant prosecution teams would be familiar with the style and idiosyncrasies of respective judges. Through consultation across teams, preparations can be made beforehand to tailor arguments for the use of VIDIS in lieu of victim testimony to the specific presiding judge. This is done through the formal filing of the requisite *Motion to Establish the Child Witness Unavailable and Admit VIDIS*.

## CHILD

### A. WHAT IF THE CHILD DOES NOT MAKE ANY DISCLOSURES?

The primary interviewer and social worker should consider spending more time with the child to build rapport. If the child still refuses to disclose any critical information, this may be due to either there being no actual abuse or the relationship the child has with the alleged abuser. In the case of the latter, the child should be referred to a psychologist for further assessment and counselling.

### B. WHAT IF THE CHILD DOES NOT WANT TO BE INTERVIEWED?

Respect the child's decision not to be interviewed. Consider referring the child to a psychologist for assessment. Interview the child only when he/she is ready.

### C. WHAT IF THE CHILD WANTS TO BE INTERVIEWED, BUT NOT VIDEOTAPED?

Respect the child's decision not to be videotaped. Consider the option of audiotaping the interview. Section 29 of the RECW allows for not only videotaping but audiotaping as well.

## SOCIAL WORKER

### WHAT IF THERE IS NO SOCIAL WORKER AVAILABLE FOR THE RECORDING OF THE VID?

While the presence of a DSWD social worker is not a legal requirement, it is recommended as a matter of best practice in consideration of the child's well-being.

In the event a social worker is not available, the VID may still proceed. However, the primary interviewer must take extra care to ensure the child's needs and well-being are recognized and addressed throughout the interview – a role primarily played by a social worker.

## BREAKS

### WHAT IF THE CHILD WANTS TO TAKE A BREAK?

Breaks during interviews are allowed. However, the recording – be it videotaping or audiotaping - should continue and *not* be paused during breaks. The date and time stamps before and after each break should be clearly stated (see [Other Important Reminders](#), page 23 of this Framework).

Although it is recognized that interruptions are likely to arise given that he/she is a child after all, efforts should be taken prior to the commencement of the VID to ensure that the child has gone to the toilet, is well-rested and well-fed, and has drunk water.

## INTERVIEWER

### IS IT NECESSARY TO HAVE A PSYCHOLOGIST DURING THE VID FOR THE PURPOSES OF DETERMINING THE RESULTING TRAUMA ON THE CHILD?

The presence of a psychologist is not a requirement under the RECW. However, it is recommended as a matter of best practice. A psychologist can assess the capacity of the child, his/her readiness to do the interview, and his/her developmental stage. This could assist interviewers in formulating child-appropriate questions and better understanding the child's mental and emotional state over the course of the interview.

Additionally, where a psychological assessment of the child is needed, the presence of a psychologist during the VID could obviate the need for multiple repetitive interviews with the child, which could be retraumatizing.

## INTERVIEW QUESTIONS

### THE VID I IS CONDUCTED DURING THE INVESTIGATION STAGE. CAN THE INTERVIEWER USE LEADING QUESTIONS?

Section 29 (c) of the REC W specifically states that the party offering the VID I must prove that the statements therein were not made in response to questioning calculated to lead the child to make a particular statement and not a product of improper suggestion. It is therefore better to err on the side of caution and frame questions that allow the child to narrate the story and then follow up by clarifying terms used by the child or summarizing his/her account to confirm what was said.

## INTERVIEW ROOM AND LOCATION

### A. WHAT LOCATIONS ARE RECOMMENDED FOR THE RECORDING OF A VID I?

It is recommended that VID Is are conducted in an existing government interview facility.<sup>73</sup>

If a VID I room cannot be secured and a Mobile VID I Kit is to be used, the interview location should be quiet, peaceful, and enclosed with minimal foot traffic. For further details, please see page 10 of this Document.

### B. WHAT IS THE IDEAL SET-UP FOR A VID I?

The VID I should be conducted in a child-friendly space. Participants should be limited to the primary interviewer, assisting social worker, and the child interviewee. The camera should be positioned at an angle where all participants are always captured, to show that there is no suggestion or coercion in obtaining answers from the child.

### C. WHAT IF THERE IS NO AVAILABLE INTERVIEW FACILITY?

The interview can be conducted at any readily available interview room, provided that the principles of a child friendly space are observed. In this case, the VID I Mobile Kit may be used to record the interview so long as it is in line with the best interest of the child.

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<sup>73</sup> See Annex E for Directory of Possible Interview Venues.



## PACE AND DURATION

### A. IS THERE A LIMIT ON THE DURATION OF THE INTERVIEW?

No, there are no legal restrictions on how short or long the VID I should be. The only limitation is the child's well-being. It is important to be sensitive to the energy and attention span of the child. If the child wants to end the interview, the interviewer should end the interview.

### B. HOW FAST OR SLOW DO WE GO DURING THE INTERVIEW?

The pace of the interview depends on the needs of the child. The interviewer must always be sensitive to the developmental level and behavioral cues of the child and should be ready to adjust the pace of the interview to fit the child's needs.

## TIMING

### A. HOW SOON AFTER THE RESCUE SHOULD THE INTERVIEW BE DONE?

This depends on the readiness of the child. If the child is exhibiting reluctance or if the social worker (in coordination with the relevant parties) determines that it would not be appropriate to conduct an interview immediately after rescue, a VID I should not be conducted. In such an event, continued communication with the social worker (or any other person caring for the child) is pivotal to determine when the child is ready to be interviewed.

### B. SHOULD VID IS BE CONDUCTED FOR EVERY RESCUE?

In an ideal situation, a case will be able to rely on strong digital or financial evidence, evidence from law enforcement officers, object/demonstrative evidence, and other non-victim evidence, independent of child testimony.

Nevertheless, it is recommended that VID I be conducted in every case (subject to the readiness of the child). Conducting a VID I will have many benefits in the future of a case, especially for the child. While it may appear time-consuming in the first instance, its benefits far outweigh the costs insofar as protecting the best interests of the child.

### C. WHAT IF THERE ARE NO DISCLOSURES DURING THE INQUEST PERIOD?

If the child has not disclosed anything in the VID I taken during inquest period, you have the option of conducting a supplemental VID I at a later stage (see [Supplemental or Follow-up VID I](#), page 25 of this Framework).

**D. VIDIS ARE TIME-CONSUMING. THE POLICE MAY NOT MEET THE INQUEST DEADLINE. WHAT NEEDS TO BE DONE TO ENSURE THEY ARE INCLUDED AS EVIDENCE?**

The concern that the inquest timelines are tight is valid. However, if the best interest of the child is to be a priority, VIDIs should be included as early as in the filing of complaint. To address this concern, it may be helpful to assign interviewer(s) in the team to focus on this area while others work on other matters.

The implementation of VIDI is also new for many people but as it becomes common practice and more familiar, it will be less time-consuming. To this end, this VIDI Framework serves as a helpful guide to build confidence in conducting VIDI and speed up the process over time.

**E. WHEN IS THE BEST TIME TO TAKE VIDIS?**

Ideally, conducting a VIDI as soon as a child is rescued to preserve his or her testimony early, and avoid multiple interviews is desired. However, it is a recognized possibility that the child, at that point, might not be ready to disclose anything because of shock from the rescue. The best practice is to first establish rapport with the child and make him or her feel safe and comfortable before getting into the questions.

**TECHNICAL ASPECT**

**A. WHAT SHOULD I DO IF THE INTERVIEW GETS CUT OFF BECAUSE THE CAMERA DIES DUE TO LOW BATTERY?**

To avoid this situation, make sure that the camera is fully charged or directly plugged into the main electrical source before the interview starts. The VIDI should be continuous to avoid any speculation about the integrity of the interview.

In cases when the recording of the VIDI is interrupted due to technical issues (such as low battery), the interviewer should state on record the time-stamp, date, and reasons for the interruption before recommencing the recording. A do-over of the interview (and recording) is necessary if nothing was captured.

Proper orientation on the recording of VIDI should also be done prior to the interview to avoid missteps in procedure. Ensuring that all equipment is in working order throughout the entire VIDI process is pivotal to creating a conducive environment for the child victim in order to avoid any re-narration on his/her part.

**B. IS THERE EQUIPMENT CAPABLE OF RECORDING ON TWO SEPARATE STORAGE DEVICES SIMULTANEOUSLY?**

Such technology is not available at the moment. The current practice is to create copies of the recording immediately after conducting the VIDI. The making of copies should be witnessed by a third person and documented to establish integrity and chain of custody over the files (see [Chain of Custody](#), page 24 of this Framework)

## INTEGRITY OF STORAGE MEDIA

### HOW SHOULD THE INTEGRITY OF THE SD CARDS AND USB FLASH DRIVES BE PRESERVED?

As a best practice, each storage media containing the interview should be securely kept in a zip lock bag, properly sealed, and labeled. The label must have the following details: 1. date and time of the interview, 2. name and signature of the custodian/person who sealed it, 3. name of interviewee, 4. name of the witness in reproducing the files (if any).

## MULTIPLE INTERVIEWS

### CAN MULTIPLE INTERVIEWS BE CONDUCTED IF THERE ARE INSUFFICIENT DISCLOSURES?

Yes. The law does not limit VIDIs to one interview, especially in cases where, despite effort to ascertain readiness of the victim and the quality of his/her disclosures, the actual interview is still insufficient. However, this should be the exception rather than the rule since the primary goal of VIDI is to avoid multiple interviews and further retraumatization. A re-interview should only be done under exceptional circumstances insofar as they relate to critical facts or the elements of the crime.

Pertinently, subsequent interviews should not be a repetition of the first. As far as possible, questions asked in subsequent interviews should pertain to new matters that have not been covered in the first or preceding interviews.

## OTHER FORENSIC INTERVIEWS

### WHAT IS THE DIFFERENCE BETWEEN VIDi AND A TRADITIONAL CHILD FORENSIC INTERVIEW CONDUCTED IN A CONTROLLED FACILITY?

There is slight difference in terms of the quality of substantive evidence collected through either process. The goal of both is to gather reliable information to ascertain the allegations of abuse or exploitation and preserve the narration of events by the child. Both interviews are conducted in an investigation or trial to establish facts and may be submitted in court as evidence in lieu of a child's testimony.

However, an advantage that VIDI has over a traditional child forensic interview conducted in a controlled facility like Philippine General Hospital is that of accessibility. Given that rarity and difficulties in securing a facility, VIDI (especially VIDI Mobile Kits) allow for greater flexibility and responsiveness in OSEC investigation and prosecution.

# ANNEXES

# Annex A

ANTI-ONLINE SEXUAL ABUSE OR EXPLOITATION OF CHILDREN AND ANTI-CHILD SEXUAL ABUSE OR EXPLOITATION MATERIALS, REPUBLIC ACT NO. 11930<sup>74</sup>

Republic of the Philippines  
Congress of the Philippines  
Metro Manila

Eighteenth Congress  
Third Regular Session

*Begun and held in Metro Manila, on Monday, the twenty-sixth day of July, two thousand twenty one.*

[ REPUBLIC ACT NO. 11930, July 30, 2022 ]

**AN ACT PUNISHING ONLINE SEXUAL ABUSE OR EXPLOITATION OF CHILDREN, PENALIZING THE PRODUCTION, DISTRIBUTION, POSSESSION AND ACCESS OF CHILD SEXUAL ABUSE OR EXPLOITATION MATERIALS, AMENDING REPUBLIC ACT NO. 9160, OTHERWISE KNOWN AS THE “ANTI-MONEY LAUNDERING ACT OF 2001”, AS AMENDED AND REPEALING REPUBLIC ACT NO. 977, OTHERWISE KNOWN AS THE “ANTI-CHILD PORNOGRAPHY ACT OF 2009”**

**Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:**

**Section 1. Short Title.** — This Act shall be known as the "Anti-Online Sexual Abuse or Exploitation of Children (OSAEC) and Anti-Child Sexual Abuse or Exploitation Materials (CSAEM) Act."

**Section 2. Declaration of Policy.** — The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, emotional, psychological and social well-being. Thus, it is the policy of the State to provide special protections to children from all forms of sexual violence, abuse and exploitation especially those committed with the use of information and communications technology (ICT), provide sanctions for their commission and carry out programs for the prevention, deterrence and intervention in all situations of online sexual abuse and exploitation of children in the digital and non-digital production, distribution or possession of child sexual abuse or exploitation material. Towards this end, the State shall:

- (a) Guarantee the fundamental rights of every child from all forms of neglect, cruelty and other conditions prejudicial to their development;
- (b) Protect every child from all forms of abuse or exploitation, whether committed with or without the use of ICT, such as when the abuse or exploitation involves:
  - (1) performances and materials through online or offline means or a combination of both; and
  - (2) the inducement or coercion of a child to engage or be involved in child sexual abuse or exploitation materials through whatever means.

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<sup>74</sup> Copy retrieved from [https://lawphil.net/statutes/repacts/ra2022/ra\\_11930\\_2022.html](https://lawphil.net/statutes/repacts/ra2022/ra_11930_2022.html).

(c) Comply with international treaties concerning the rights of children to which the Philippines is a signatory or a State party which include, but is not limited to, the United Nations (UN) Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the International Labour Organization (ILO) Convention No. 182 on the Elimination of the Worst Forms of Child Labour, and the Convention against Transnational Organized Crime;

(d) Ensure the right of children to useful, meaningful and safe access to digital technologies that will provide knowledge and develop their understanding of civil, political, cultural, economic and social rights and help them achieve their potential to be empowered, responsible, law-abiding citizens, with the end in view of protecting them from any form of violence online; and

(e) Provide paramount consideration to the interests of children in all actions affecting them, whether undertaken by public or private social welfare institutions, courts of law, executive agencies, law enforcement agencies, local government units (LGUs), legislative bodies, and private business enterprises especially those related to the online safety and protection of children.

**Section 3. *Definition of Terms.*** — As used in this Act:

(a) Child refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of physical, mental, intellectual or sensory disability or condition. For purposes of this Act, a child shall also refer to:

(1) A person regardless of age who is presented, depicted or portrayed as a child as defined herein; and

(2) Computer-generated, digitally or manually crafted images, or graphics of a person who is represented or who is made to appear to be a child as defined herein.

(b) Child sexual abuse refers to any form of communication through any platform or format, or any physical interaction between a child and any person when the child is being used for any act or activity inducing sexual stimulation or for the purpose of sexual gratification or in pursuit of the desire to have carnal knowledge of the child, regardless of the gender of the perpetrator or the victim, or the consent of the victim;

(c) Child sexual abuse or exploitation material or child sexual abuse material (CSAEM/CSAM) refers to any representation, whether offline, or by, through or with the use of ICT, by means of visual, video, audio, written, or any combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of a child engaged or involved in real or simulated sexual activities, or depicting acts of sexual abuse or exploitation of a child as a sexual object. It shall also include materials that focus on the genitalia or other private body parts of a child. For purposes of this Act, CSAEM may interchangeably be referred to as CSAM;

(d) Child sexual exploitation refers to any of the following acts even if consent appears to have been granted by the child:

(1) Child sexual abuse with consideration whether monetary or nonmonetary consideration, favor, or benefit in exchange for the opportunity to perform such abusive or exploitative act

(2) Actual sexual intercourse with a child or children with or without consideration;

- (3) Employing fraud, machination, undue influence, intimidation, threat or deception by any person to commit sexual abuse of or sexual intercourse with a child or children; or
- (4) Any other similar or analogous acts related to child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the development of the child;
- (e) Competent authority refers to law enforcement authority, investigating authority, prosecutor, court, telecommunications/ICT regulator, cybercrime investigator/coordinator, data privacy regulator, or the National Coordination Center against OSAEC and CSAEM (NCC-OSAEC-CSAEM);
- (f) Computer refers to an electronic, magnetic, optical, electrochemical, or other data processing or communications device, or grouping of such devices, capable of performing logical, arithmetic, routing, or storage functions and which includes any storage facility or equipment or communications facility or equipment directly related to or operating in conjunction with such device. It covers any type of computer device including devices with data processing capabilities like mobile phones, smartphones, computer networks and other devices connected to the internet;
- (g) Computer data refers to any representation of facts, information, or concepts in a form suitable for processing in a computer system, including a suitable program that can enable a computer system to perform a function, and electronic documents or electronic data messages whether stored in local computer systems or online;
- (h) Content data refers to the content of the communication, the meaning or purport of the communication, or the message or information being conveyed by the communication, other than traffic data, or subscriber's information/registration information;
- (i) Grooming refers to predatory conduct, act, or pattern of acts, of establishing a relationship of trust, or emotional connection by another, with a child or someone who is believed to be a child, and/or the family, guardian, and/or caregivers, whether in person or via electronic and other similar devices, for the purpose of perpetrating sexual abuse or exploitation or the production of any form of CSAEM;
- (j) Image-based sexual abuse (ISA) refers to a form of technology-facilitated sexual violence. The term describes a pattern of behavior involving the nonconsensual creation, distribution, or threats to distribute nude or sexual images. It includes a diversity of behaviors including, but not limited to, "sextortion scams," the use of artificial intelligence to construct "deepfake" pornographic videos, threats to distribute photographs and videos; and the taking or sharing of sexual assault imagery;
- (k) Information and communications technology (ICT) refers to the totality of electronic means to access, create, collect, store, process, receive, transmit, present and disseminate information;
- (l) Internet address refers to the uniform resource locator or internet protocol address of an internet site;
- (m) Internet asset includes internet site and any device that is engaged in peer-to-peer sharing of OSAEC and CSAEM
- (n) Internet café or kiosk refers to an establishment or any place or venue that offers or proposes to offer the use of its computer/s or computer system for the purpose of accessing the internet, computer games or related activities: *Provided*, That for purposes of this Act, non-formal business establishments that provide internet services shall also be considered as internet café or kiosk;

- (o) Internet hotspot refers to an establishment or any place or venue that offers access to the internet. It includes hotels or motels, malls, restaurants, internet cafés or kiosks, public spaces or other related/similar places;
- (p) Internet intermediaries refer to persons or entities that provide infrastructure, platforms, access to, and host, transmit and index content, products and services originated by third parties on the internet. These include, among others:
- (1) Internet service providers;
  - (2) Web hosting providers including domain name registrars;
  - (3) Internet search engines and portals;
  - (4) E-commerce intermediaries;
  - (5) Internet payment system providers; and
  - (6) Participative network platform providers including social media intermediaries.
- (q) Internet service provider (ISP) refers to a public telecommunication entity (PTE) or value-added service (VAS) provider duly authorized by or registered with the National Telecommunications Commission (NTC) that provides users or other entities with data connection allowing access to the internet through physical transport infrastructure, and such access is necessary for internet users to access content and services on the internet, and for content providers to publish or distribute materials online;
- (r) Internet site refers to a website, bulletin board service, internet chat room, newsgroup, or any other internet or shared network protocol address;
- (s) Luring refers to the act of communicating, by means of a computer system, with a child or someone who the offender believes to be a child for the purpose of facilitating the commission of sexual activity or production of any form of CSAEM;
- (t) Online sexual abuse or exploitation of children (OSAEC) refers to the use of ICT as a means to abuse and/or exploit children sexually, which includes cases in which offline child abuse and/or exploitation is combined with an online component. This can also include, but is not limited to, the production, dissemination and possession of CSAEM; online grooming of children for sexual purposes; sexual extortion of children, sharing image-based sexual abuse; commercial sexual exploitation of children; exploitation of children through online prostitution; and live-streaming of sexual abuse, with or without the consent of the victim: *Provided*, That OSAEC may be used interchangeably with online child sexual exploitation or abuse (OCSEA);
- (u) Pandering refers to the act of offering, advertising, promoting, representing or distributing through any means any child sexual abuse or exploitation material, or any material that purports to contain any form of child sexual abuse or exploitation material, regardless of its actual content;
- (v) Participative network platform provider refers to any person or entity, including a social media intermediary, that facilitates social communication and information exchanges which is based on online technologies such as web, instant messaging, or mobile technologies, that enable users to contribute to developing, rating, collaborating and distributing internet content and developing and customizing internet applications or to conduct social networking. It may also refer to a person or an



entity that provides a platform or site for blogging, video-sharing, picture-sharing, file-sharing sites, online gaming or instant messaging, among others;

(w) Payment system provider (PSP) refers to an entity engaged in any monetary transaction which includes banks, fiat or digital money service businesses including cryptocurrencies, credit card companies and other financial institutions;

(x) Person refers to any natural or juridical entity;

(y) Sexual activity includes the following acts, whether actually performed or simulated:

(1) Sexual intercourse or lascivious act, including contact involving the genitalia, oral stimulation of the genitals or oral stimulation of the anus, whether between persons of the same or opposite sex;

(2) Masturbation;

(3) Sadistic or masochistic abuse;

(4) Lascivious exhibition of the genitalia, buttocks, breasts, pubic area and anus;

(5) Bestiality;

(6) Use of any object or instrument for lascivious acts; or

(7) Any other analogous circumstance.

(z) Sexualization of a child refers to the act of using a child as an object for the sexual desire or satisfaction of another, even if there is no actual sexual intercourse or no private part of the body of the child has been shown;

(aa) Streaming refers to the broadcasting or viewing through the use of ICT, whether the viewer is passively watching or actively directing the content. It is considered live-streaming when the broadcasting or viewing occurs in real-time;

(bb) Subscriber's information or Registration information refers to any information contained in the form of computer data or any other form that is held by a service provider or internet intermediary, relating to subscribers or registrants of its services other than traffic or content data and by which identity can be established:

(1) The type of communication service used, the technical provisions taken thereto and the period of service;

(2) The identity, postal or geographic address, telephone and other access numbers, assigned network address, billing and payment information of the subscriber that is available on the basis of the service agreement or arrangement; and

(3) Any other available information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.

(cc) Traffic data or non-content data refers to any computer data other than the content of the communication including the origin, destination, route, time, date, size, duration, or type of communication of the underlying service; and

(dd) Web hosting provider refers to a person that provides infrastructure for hosting, supplies web server space and internet connectivity that enables a user to post, upload, download and share user-generated content, or a content provider who supplies content to the internet. It shall also refer to a person that provides specialized hosting services such as streaming services or application hosting, domain name registration services, or services that enable users to create and manage their websites.

**Section 4. *Unlawful or Prohibited Acts.*** — Regardless of the consent of the child, it shall be unlawful for any person to commit the following acts through online or offline means or a combination of both:

- (a) To hire, employ, use, persuade, induce, extort, engage, or coerce a child to perform or participate in whatever way in the creation or production of any form of OSAEC and CSAEM;
- (b) To produce, direct, manufacture, facilitate, or create any form of CSAEM, or participate in the production, direction, manufacture, facilitation or creation of the same;
- (c) To offer, sell, distribute, advertise, promote, export, or import, by any means, any form of CSAEM;
- (d) To knowingly publish, transmit and broadcast, by any means, any form of CSAEM;
- (e) To permit or influence the child to engage, participate or assist in any form of CSAEM;
- (f) To produce, direct, create, hire, employ or pay a facilitator to stream or livestream acts of child sexual abuse or exploitation
- (g) To stream or live-stream acts of, or any form of, child sexual abuse and exploitation;
- (h) To recruit, transport, transfer, harbor, provide, or receive a child or to induce or influence the same, for the purpose of violating this Act;
- (i) To introduce or match a child to a foreign national or to any person for the purpose of committing any of the offenses under this Act;
- (j) For film distributors, theaters and ICT services by themselves or in cooperation with other entities, to distribute any form of CSAEM or to facilitate the commission of any of the offenses under this Act;
- (k) To knowingly benefit from, financial or otherwise, the commission of any of the offenses of this Act;
- (l) To provide a venue for the commission of prohibited acts under this section such as dens, private rooms, cubicles, cinemas, houses, private homes, or other establishments;
- (m) To engage in the luring or grooming of a child: *Provided*, That grooming taking place offline as a prelude to violations under this Act shall also be penalized;
- (n) To sexualize children by presenting them as objects of sexual fantasy, or making them conversational subjects of sexual fantasies, in any online or digital platform;
- (o) To engage in pandering as defined under this Act;

(p) To willfully subscribe, join, donate to, or support an internet site that hosts OSAEC or the streaming or live-streaming of child sexual abuse and exploitation;

(q) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means of any brochure, flyer, or any material that promotes OSAEC and child sexual abuse or exploitation

(r) To possess any form of CSAEM: *Provided*, That possession of three (3) or more CSAEMs is prima facie evidence of the intent to sell, distribute, publish or broadcast;

(s) To willfully access any form of CSAEM; and

(t) To conspire to commit any of the prohibited acts stated in this section:

*Provided*, That the investigation or prosecution of offenses under this Act shall be without prejudice to appropriate investigation and prosecution mechanisms under Republic Act No. 9208, otherwise known as the "Anti-Trafficking in Persons Act of 2003," as amended, and other related laws.

**Section 5. *Effect of Consent of the Victim.*** — The consent of the victim is not material or relevant and shall not be available as a defense in the prosecution of the unlawful acts prohibited under this Act.

**Section 6. *Syndicated and Large-Scale Violations of this Act.*** — Any violation of this Act shall be deemed to have been committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. If the crime was committed against three (3) or more persons, it shall be considered as large-scale violation of this Act.

**Section 7. *Protection of a Good Samaritan.*** — Any person who has the responsibility of reporting cases under this Act, blocking an internet address, removing a website or domain, taking down of shared videos, pictures, or messages for the services provided by an internet intermediary, and providing information for the purpose of an investigation or prosecution of a case involving acts of OSAEC shall not be held civilly, criminally or administratively liable: *Provided*, That the action was:

(1) done in good faith;

(2) necessary to prevent access or dissemination of CSAEMs; and

(3) reported within twenty-four (24) hours from the act of blocking an internet address, removing a website or domain, or taking down of shared video, picture or messages.

**Section 8. *Safe Harbor Exception.*** — Access, possession and recording of any CSAEM of any person for the purpose of complying with the duties under this Act; the reporting to government authorities; legitimate investigation and administration of the criminal justice system; and legitimate policy, scholarly and academic purposes with requisite ethical clearance, shall not be subject to any civil, criminal, or administrative liability.

**Section 9. *Duties and Responsibilities of Private Sectors.*** —

(a) Duties of Internet Intermediaries. — Internet intermediaries shall:

(1) Adopt in their terms of service or service agreements with third-party users or creators of contents, products and services the prohibition of any form or any conduct of streaming or live-streaming of OSAEC and CSAEM in the use of their website, platform, server or facility

(2) Preserve within six (6) months from the date of the transaction extendible for another six (6) months or during the pendency of the case, all subscriber's or registration information and traffic data in its control and possession: *Provided*, That in the case of content data, the same shall be preserved within one (1) year, and upon notice by the competent authority, the preservation shall be extendible for another six (6) months: *Provided*, however, That the competent authority shall expressly identify and specify such relevant evidence that needs preservation: *Provided*, further, That the integrity of all computer data such as subscriber's information, traffic data and content data relating to communication services provided by a service provider shall be protected for the purpose of investigation and prosecution of cases under this Act: *Provided*, finally, That the preservation period provided under the law governing foreign corporations doing business in the Philippines or the period provided under this Act, whichever is longer, shall prevail;

(3) Immediately block access to, remove or take down the internet address, uniform resource locator (URL), websites or any content thereof containing CSAEM or involving streaming or live-streaming of OSAEC, within twenty-four (24) hours from receipt of notice from a competent authority or notice containing sufficient information to identify the content and its source: *Provided*, That this period may be extended to another twenty-four (24) hours upon submission of a written justification if the notice was made by any private citizen or by a competent authority without sufficient information to identify the content and its source: *Provided*, however, That the period provided in the preceding paragraph on the period of preservation of subscriber's or registration information, traffic or content data shall apply: *Provided*, further, That the competent authority shall, as far as practicable, expressly identify and specify such relevant evidence that needs preservation

(4) Report to the Department of Justice (DOJ), within three (3) days, the internet address or websites blocked, removed or taken down, or any form of unusual data activity using its server or facility: *Provided*, That in cases when a foreign internet intermediary is prohibited by its country to share data, the reports filed by such foreign internet intermediary to the corresponding entity tasked by its government to receive cybercrime reports shall be deemed in compliance with this provision: *Provided*, however, That the said foreign internet intermediary shall inform the DOJ of such reporting: *Provided*, further, That whatever relevant evidence otherwise not prohibited by law to be shared shall nevertheless be reported to the DOJ;

(5) Provide, pursuant to a subpoena issued by the Philippine National Police (PNP) in accordance with Republic Act No. 6975, as amended, otherwise known as the "Department of the Interior and Local Government Code of 1990" or by the National Bureau of Investigation (NBI) in accordance with Republic Act No. 10867, otherwise known as the "National Bureau of Investigation Reorganization and Modernization Act or by the prosecutor in accordance with the Rules of Court; and notwithstanding the provisions of Republic Act No. 10175, otherwise known as the "Cybercrime Prevention Act of 2012" and in accordance with Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012," the subscriber's or registration information and/or traffic data of any person who:

- (i) Gained or attempted to gain access to an internet site, internet asset or internet application which contains any form of CSAEM; or
- (ii) Facilitated the violations of this Act; or
- (iii) Conducted the streaming or live-streaming of child sexual exploitation.

The subpoena must particularly describe the information asked for and indicate the relevancy of such information to the sexual abuse and exploitation of children (SAEC) case.

The subpoena must particularly describe the information asked for and indicate the relevancy of such information on violations of this Act.

(6) Develop, establish and install mechanisms or measures designed to prevent, detect, respond or report violations of this Act within their websites, platforms, applications, servers or facilities, compatible with the products and services they offer that may be in accordance with the global best practices and guidelines to counter violations of this Act which may include the installation of available technology, program, or software to ensure that access to or streaming of violations of this Act will be removed, blocked or filtered;

(7) Coordinate with the Department of Justice-Office of Cybercrime (DOJ-OOC) to define the standard upon which an internet intermediary is measured, in order to fairly assess if an internet intermediary has reasonably complied with its duties under this Act; and

(8) Have a policy on notifying their community to ensure that their policy has a provision on delaying or dispensing with notification to an account holder, subscriber or customer of the internet intermediary who is stated to be a suspected offender of an act of OSAEC in an ongoing criminal investigation, of the existence of a subpoena, warrant, court order, or other governmental request directing the internet intermediary to disclose information about the said account holder, subscriber or customer for the purposes of the criminal investigation.

(b) Duties of Internet Service Providers (ISPs). — In addition to the above duties and responsibilities, all ISPs shall:

(1) Notify the PNP or the NBI within forty-eight (48) hours from receipt of information that any form of child sexual abuse or exploitation is being committed using its server or facility, or is likely being committed using its server or facility based on, among others, traffic analysis and observed sudden surges in usage;

(2) Block CSAEM or the streaming or live-streaming of a child sexually abused or exploited within twenty-four (24) hours from receipt of notice containing sufficient information to identify the content and its source: *Provided*, That if the information contained in the notice points to a legitimate website where the blocking thereof may result to blocking of legitimate contents therein, the ISPs shall have the obligation to inform the PNP or NBI within the same period of such fact: *Provided*, further, That failure of the ISPs to block any form of CSAEM or the streaming and/or live-streaming of child sexual exploitation within twenty-four (24) hours from receipt of notice as described above, shall be prima facie evidence of knowledge, as punished under Section 4 (d) of this Act;

(3) Maintain logs of each and every subscriber and the IP address assigned to each and every subscriber at a given date and time

(4) Develop and adopt a set of systems and procedures for preventing, blocking, detecting, and reporting of OSAEC and CSAEM committed within their platforms, which are compatible with the services and products they offer, including the maintenance and management of an updated list of URLs containing CSAEM by partnering with organizations that maintain the most comprehensive list of URLs with CSAEM, and those with hashes of the same;

(5) Adopt and integrate child protection standards in their corporate governance practice and processes; a

(6) Establish high privacy setting as default safety and privacy settings for children, and where practicable and necessary, adopt age-verification controls and protocols to restrict their access to

materials within the purview of Section 3 (c) (iv) of Presidential Decree No. 1986, entitled as "Creating the Movie and Television Review and Classification Board."

(c) Duties of PSPs. In addition to the duties specified for internet intermediaries as applicable to internet PSPs, any person who has direct knowledge of any OSAEC and CSAEM financial activity shall have the duty to report any suspected OSAEC and CSAEM-related activity or suspicious transaction to the DOJ-OOC within twenty-four (24) hours and they shall also have the duty to report to the Anti-Money Laundering Council (AMLC), within five (5) days from discovery thereof.

Law enforcement agencies investigating violations of this Act may require financial intermediaries, internet PSPs, and other financial facilitators to provide financial documents and information upon order of any competent court when it has been established that there is reasonable ground to believe that the transactions to be examined involve prohibited activities under this Act.

Notwithstanding the provisions of Republic Act No. 1405, entitled "An Act Prohibiting Disclosure of or Inquiry into Deposits with any Banking Institution and Providing Penalty Therefor," as amended, Republic Act No. 6426, otherwise known as the "Foreign Currency Deposit Act of the Philippines," as amended, Republic Act No. 8791, otherwise known as "The General Banking Law of 2000," as amended, and other pertinent laws, the law enforcement agencies investigating cases under this Act may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or any non-bank financial institution upon order of any competent court when it has been established that there is reasonable ground to believe that the deposit or investments, including related accounts involved, are related to violations of this Act.

Violations under Sections 4 and 5 of this Act shall be considered as "unlawful activity" under Section 3 (i) of Republic Act No. 9160, otherwise known as the "Anti-Money Laundering Act of 2001," as amended, and shall be punishable under the said Act.

Money transfer and remittance centers shall require individuals transacting with them to present valid government identification cards.

The Department of the Interior and Local Government (DILG) and the AMLC shall promulgate, within ninety (90) days from the effectivity of this Act, the necessary rules and regulations for the implementation of this provision.

(d) Responsibility of All Internet Hotspots, Cafés or Kiosks. — Internet hotspots, cafés or kiosks shall:

- (1) Notify the NCC-OSAEC-CSAEM, within twenty-four (24) hours from obtaining facts and circumstances, of any violation of this Act that are being committed within their premises: *Provided*, That there is a prima facie knowledge that a violation of this Act is being committed if such acts or omission has been committed within the premises of such internet hotspot, café or kiosk;
- (2) Install and update programs and software designed to detect sexually explicit activities involving children and ensure that access to or transmittal of such materials will be blocked or filtered; and
- (3) Promote awareness against OSAEC and CSAEM through clear and visible signages in both English and the local dialect, with local and national hotlines posted within their facilities.

**Section 10. Penalties.** — The following penalties shall be imposed on the following offenses:

(a) Any person who violates Section 4, paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this Act shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00).

(b) Any person who violates Section 4, paragraphs (k) and (l) of this Act shall suffer the penalty of reclusion temporal in its maximum period to reclusion perpetua and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00).

(c) Any person who violates Section 4, paragraphs (m), (n), and (o) of this Act shall suffer the penalty of reclusion temporal in its maximum period and a fine of not less than Eight hundred thousand pesos (P800,000.00) but not less than One million pesos (P1,000,000.00).

(d) Any person who violates Section 4, paragraph (p) of this Act shall suffer the penalty of reclusion temporal in its medium period and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than Eight hundred thousand pesos (P800,000.00).

(e) Any person who violates Section 4, paragraph (q) of this Act shall suffer the penalty of reclusion temporal in its minimum period and a fine of not less than Three hundred thousand pesos (P300,000.00) but not more than Five hundred thousand pesos (P500,000.00).

(f) Any person who violates Section 4, paragraph (r) of this Act shall suffer the penalty of reclusion temporal and a fine of not less than Three hundred thousand pesos (P300,000.00).

(g) Any person who violates Section 4, paragraph (s) of this Act shall suffer the penalty of prision mayor in its maximum period and a fine of not less than Two hundred thousand pesos (P200,000.00) but not more than Three hundred thousand pesos (P300,000.00).

(h) Any person who violates Section 4, paragraph (t) of this Act shall suffer the penalty of prision mayor in its medium period and a fine of not less than One hundred thousand pesos (P100,000.00) but not more than Two hundred thousand pesos (P200,000.00).

(i) Any person who violates Section 6 of this Act shall suffer the penalty of life imprisonment and a fine of not less than Five million pesos (P5,000,000.00) but not more than Twenty million pesos (P20,000,000.00).

In addition to the above penalties, the following offenders shall be ineligible for parole:

(1) An offender who is a recidivist;

(2) An offender who is a step-parent or collateral relative within the third (3rd) degree of consanguinity or affinity having control or moral ascendancy over the child; and

(3) Any offender whose victim died or suffered permanent mental, psychological or physical disability.

Except for the violations of this Act that are penalized with life imprisonment, the frustrated commission of the acts prohibited under Section 4 shall be punishable with the penalty one degree lower than that prescribed under this Act: *Provided*, That attempted commission of the acts prohibited under Section 4 shall be punishable with the penalty two (2) degrees lower than that prescribed under this Act.

Any person found guilty of violating Section 9 of this Act shall suffer the penalty of prision mayor in its medium period and a fine of not less than One million two hundred thousand pesos (P1,200,000.00) but not more than Two million pesos (P2,000,000.00) for the first offense. In case of subsequent offense, the penalty shall be a fine of not less than Two million pesos (P2,000,000.00) but not more than Three million pesos

(P3,000,000.00) and revocation of its license or franchise to operate and the immediate closure of the establishment, when applicable.

Any government official or employee or agent who abuses the authority provided for under Sections 9 and 23 of this Act shall be penalized with imprisonment of prison mayor in its maximum period and perpetual disqualification to hold public office, the right to vote and participate in any public election and a fine of not less than Five hundred thousand pesos (P500,000.00). All the benefits due from service in the government of such public officer or employee shall also be forfeited.

**Section 11. *Juridical Persons.*** — If the offender is a juridical person, the penalty shall be imposed upon the owner, manager, partner, member of the board of directors and/or any responsible officer of an enterprise who participated in the commission of the crime or shall have knowingly permitted or failed to prevent its commission. In addition, the corporation shall be fined a minimum of ten percent (10%) but not more than thirty percent (30%) of its net worth and its respective license or permit to operate may be revoked.

**Section 12. *Alien Offenders.*** — If the offender is a foreigner, the offender shall be criminally prosecuted immediately. Thereafter, the offender shall be deported after serving sentence and will be permanently barred from re-entering the Philippines

**Section 13. *Confiscation and Forfeiture of the Proceeds, Tools and Instruments Used in Child Sexual Abuse or Exploitation.*** — In addition to the penalty imposed for violations of this Act, the court shall order the confiscation and forfeiture in favor of the government of all the proceeds, tools and instruments used in the commission of the crime, unless these are properties of a third person not liable for the unlawful act: *Provided*, That all awards for damages shall be taken from the personal and separate properties of the offender: *Provided*, however, That if such properties are insufficient, the deficiency shall be taken from the confiscated and forfeited proceeds, tools and instruments.

All proceeds derived from the sale of properties used for the commission of any form of child sexual abuse or exploitation shall be exclusively used for the purpose of child-rearing programs under the special account of the Department of Social Welfare and Development (DSWD).

When the proceeds, tools and instruments used in the commission of the offense have been destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, tools and instruments used in the commission of the offense.

**Section 14. *Extra-Territorial Jurisdiction.*** — The State shall exercise jurisdiction over any act defined and penalized under this Act, even if committed outside the Philippines and whether or not such act or acts constitute an offense at the place of commission, if the offense, being a continuing offense, was either commenced in the Philippines; or committed in another country: *Provided*, That in the case of the latter, the suspect or accused is a Filipino citizen, a permanent resident of the Philippines, and has committed the act against a citizen of the Philippines.

No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the Philippines, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Secretary of Justice.

**Section 15. *Extradition and Mutual Legal Assistance.*** — The DOJ shall be the central authority for all requests for extradition and mutual legal assistance in all legal matters: *Provided*, That the government may surrender or extradite any person accused or convicted of child sexual abuse or exploitation pursuant to the extradition law and applicable extradition treaty.



The DOJ shall make and receive requests for mutual legal assistance in criminal matters from a foreign State relative to the investigation or prosecution of, related criminal proceedings to, any form of child sexual abuse or exploitation and execute or arrange for the execution of such request for assistance. In case there is an existing mutual legal assistance treaty between the Philippines and a foreign State, the provisions of that treaty shall apply.

**Section 16. Cooperation of Law Enforcement Agencies in OSAEC and CSAEM Investigation.** — Recognizing the transnational nature of OSAEC and CSAEM, and notwithstanding the immediately preceding section, the PNP and NBI shall endeavor to establish cooperation arrangements with foreign law enforcement agencies for faster exchange of information, best practices, and joint investigations on OSAEC and CSAEM cases.

**Section 17. Authority of Law Enforcement Agencies to Retain Computer Data.** — Notwithstanding the provisions of Sections 15 and 16 of Republic Act No. 10175, whenever a cybercrime warrant is issued for an OSAEC and CSAEM cases, law enforcement authorities shall be authorized to retain a copy of the result of digital forensic examinations for the purpose of identifying additional victims and suspects, and carrying out a further investigation, case build-up, and referral of information, whenever the crime is found to have nexus abroad, to foreign law enforcement authorities for the conduct of a parallel investigation.

**Section 18. Appointment of Special Prosecutors.** — The DOJ shall appoint or designate special prosecutors to prosecute cases for the violation of this Act.

**Section 19. Jurisdiction.** — Jurisdiction over cases for the violation of this Act shall be vested in the Family Court which has territorial jurisdiction over the place where the offense or any of its essential elements was committed pursuant to Republic Act No. 8369, otherwise known as the "Family Courts Act of 1997," *Provided*, That the court shall not require the presence of a child victim during the trial and that the child shall testify in accordance with "Rule on Examination of a Child Witness," as may be provided by the Supreme Court and the Rules of Court.

**Section 20. Venue.** — A criminal action arising from a violation of this Act shall be filed where the offense was committed, where any of its elements occurred, or where the child is found or actually resides at the time of the commission of the offense: *Provided*, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of the other courts.

**Section 21. Confidentiality.** — The right to privacy of the child shall be ensured at any stage of the investigation, prosecution and trial of an offense under this Act. Towards this end, the following rules shall be observed:

- (a) The judge, prosecutor or any officer of the law to whom the complaint has been referred may, whenever necessary, ensure a fair and impartial proceeding and after considering all circumstances for the best interest of the child, conduct a closed-door investigation, prosecution or trial;
- (b) The name and personal circumstances of the child, including the child's immediate family, or any other information tending to establish the identity of the child shall not be disclosed to the public;
- (c) Any record regarding a child shall be confidential and kept under seal. <sup>LA WPHIL</sup> Except upon written request and order of the court, a record shall be released only to the following:

- (1) Members of the court staff for administrative use;
- (2) The prosecuting attorney;
- (3) Defense counsel;

- (4) The guardian ad litem;
- (5) Agents of investigating law enforcement agencies; and
- (6) Other persons as determined by the court.

(d) Any form of child sexual abuse or exploitation that is part of the court records shall be subject to a protective order that provides as follows:

- (1) Any form of child sexual abuse or exploitation may be viewed only by the parties, their counsel, their expert witness and guardian ad litem;
- (2) Neither form of child sexual abuse or exploitation nor any portion thereof shall be divulged to any other person, except as necessary for investigation, prosecution or trial; and
- (3) No person shall be granted access to any form of child sexual abuse or exploitation or any part thereof unless there is a written affirmation of the receipt of a copy of the protection order; that such person submits to the jurisdiction of the court with respect to the protective order; and that, in case of violation thereof, such person will be subject to the contempt power of the court; and

(e) It shall be unlawful for any editor, publisher, reporter or columnist in case of printed materials, announcer, producer or social media influencer or content creator, in case of television and radio broadcasting and digital media, and producer and director of the film in case of the movie industry, to cause any undue publicity that may result in the further suffering of the child. Any person or agency involved in the reporting, investigation or trial of cases under this Act shall refrain from any act or statement that may be construed as blaming the victim or placing responsibility on the victim for the offense committed against them.

**Section 22. *Applicability of Juvenile Justice and Welfare Act, as Amended.*** — In cases where the offender is a child, the prosecution of the offense shall be in accordance with Republic Act No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006," as amended, and the child shall be accorded the appropriate treatment and services under the said law: *Provided*, That in cases of self-generated CSAMs, the child producing the sexualized materials shall be considered as a victim and not as an offender. The child victim shall be accorded the necessary treatment and services under this Act and in existing laws.

**Section 23. *Initiation of Investigation.*** — Law enforcement agencies are mandated to immediately initiate investigation and counter-OSAEC and -CSAEM-intelligence gathering upon receipt of statements or affidavits from victims of OSAEC and CSAEM, or their families, and other persons who have knowledge or information about violations of this Act, including the private sector.

Agencies that receive complaints of violations of this Act shall develop both online and face-to-face reporting mechanisms that are gender-sensitive, age-appropriate and culturally sensitive to children, especially girls.

In investigating violations of this Act, a law enforcement officer may, upon a written order from the regional trial court, track, intercept, view, monitor, surveil, listen to, and record, by technical or electronic means, any communications, information or messages, including the procurement of content data, transmitted by means of a computer system involving at least one (1) person reasonably believed to have committed violations under this Act: *Provided*, That when the offense involves the use of computer systems and digital platforms, a court order shall not be required in order for a law enforcement officer acting in an undercover capacity to intercept a communication with a person reasonably believed to have committed, is committing, or is about to commit any of the violations of this Act.

Where an order is required, the order shall only be issued or granted upon written application of a law enforcement officer, who shall be examined under oath or affirmation, and the witnesses he or she may produce and the showing that:

- (1) there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed, or is being committed, or is about to be committed;
- (2) that there are reasonable grounds to believe that evidence that will be obtained is essential to the conviction of any person for, or to the solution of, or to the prevention of, any such crimes; and
- (3) that there are no other means readily available for obtaining such evidence.

The order shall only be effective for the length of time determined by the court, which shall not exceed a period of ten (10) days from its issuance. *ta ωph!!* The court issuing the order may, upon motion, extend its effectivity based only on justifiable reasons for a period not exceeding ten (10) days from the expiration of the original period.

In investigating violations of this Act involving the use of the internet and other digital platforms, law enforcement officers acting in an undercover capacity who record their communications with a person or persons reasonably believed to have committed, is committing, or is about to commit any of the violations under this Act shall not be considered as wiretapping or illegal interception, shall not be liable under the provisions of Republic Act No. 4200, otherwise known as "The Anti-Wiretapping Law": *Provided*, That victims of violations of this Act shall not be liable under the provisions of "The Anti-Wiretapping Law" and the "Cybercrime Prevention Act of 2012" if they record, transmit, or perform any other acts directly or indirectly related to the reporting of any violation of this Act committed against them.

**Section 24.** *Who May File a Complaint.* — Complaints on cases of any form of child sexual abuse or exploitation punishable under this Act may be filed by the following:

- (1) Offended party;
- (2) Parents or guardians;
- (3) Ascendant or collateral relative within the third (3rd) degree of consanguinity;
- (4) Officer, social worker or representative of a licensed child-caring institution;
- (5) Officer or social worker of the DSWD;
- (6) Local social welfare development officer;
- (7) Any barangay official;
- (8) Any law enforcement officer;
- (9) At least three (3) concerned responsible citizens residing in the place where the violation occurred; or
- (10) Any person who has personal knowledge of the circumstances of the commission of any offense under this Act.

**Section 25.** *Affidavit of Desistance.* — Cases involving OSAEC and CSAEM shall not be dismissed based on the affidavit of desistance executed by the victims or their parents or legal guardians. Public and private

prosecutors are directed to vigorously oppose and manifest objections to motions for dismissal. Any act that unduly pressures the complainant to execute an affidavit of desistance shall be punishable under this Act.

**Section 26. *Protective Custody of the Child.*** — The child victim shall be immediately placed under the protective custody of the city or municipal social welfare and development office: *Provided*, That in cases where (a) the city or municipal social welfare and development office has no registered social worker that can perform case management; (b) the LGU does not have any residential care facility that can afford center-based intervention and rehabilitation; and/or (c) it was assessed that there are safety and risk factors detrimental to the child's stay in the same locality, the DSWD shall provide support and assistance to the concerned city or municipal social welfare and development office by assuming temporary protective custody over the child: *Provided*, however, That the needs of the child shall be provided for by the concerned LGU: *Provided*, further, That the custody proceedings shall be in accordance with the provisions of Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code."

The DSWD and the DOJ shall extend all necessary legal assistance and support to the city or municipal social welfare and development office for any legal impediment that may arise in performing their functions in assuming temporary protective custody as another form of technical assistance and resource augmentation. In the regular performance of this function, the city or municipal social welfare and development office or the DSWD shall be free from any administrative, civil or criminal liability.

The child shall also be considered as a victim of a violent crime defined under Section 3 (d) of Republic Act No. 7309, entitled "An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes," and may claim compensation therefor.

**Section 27. *Mandatory Services to Victims of Child Sexual Abuse or Exploitation.*** — To ensure recovery, rehabilitation and reintegration into the mainstream of society, concerned government agencies and the LGUs, through its city or municipal social welfare and development office, shall make available the following services to victims of any form of child sexual abuse or exploitation and their families, when applicable:

- (a) Emergency shelter or appropriate housing;
- (b) Counseling;
- (c) Free legal services, which shall include information about the victim's rights and the procedure for filing of complaints, claims for compensation and such other legal remedies available to them in a language understood by the child;
- (d) Medical or psychological services;
- (e) Livelihood and skills training; and
- (f) Educational assistance.

Sustained supervision and follow-through mechanism that will track the progress of recovery, rehabilitation and reintegration of the child victims shall be adopted and carried out.

The DSWD and other concerned national government agencies may provide the necessary technical assistance and resource augmentation to the LGUs or city or municipal social welfare and development office, subject to the availability of funds.

**Section 28. *Programs for Victims of Child Sexual Abuse or Exploitation.*** — The National Coordination Center against OSAEC and CSAEM created under Section 30 of this Act shall develop and implement the necessary

programs that will prevent any form of child sexual abuse or exploitation, as well as protect, heal and reintegrate the child or children into the mainstream of society. Such programs shall include the

- (a) provision of mandatory services including counseling, free legal services, medical or psychological services, livelihood and skills training and educational assistance to the child or children and their families;
- (b) sponsorship of a national research program on OSAEC and CSAEM and the establishment of a data collection system for monitoring and evaluation purpose;
- (c) provision of necessary technical and material support services to appropriate government agencies and nongovernment organizations (NGOs);
- (d) sponsorship of conferences and seminars to provide a venue for consensus building amongst the public, the academe, government, nongovernment and international organizations;
- (e) promotion of information and education campaigns regarding the safe and responsible use of the internet in relation to the violations of this Act to educate the public, including children; and
- (f) provision of programs developed for purposes of intervention and diversion, as well as rehabilitation of the child victim, for reintegration into the family of the child or community.

**Section 29. Reasonable Accommodation for Children with Disabilities.** — The DOJ and the DSWD shall develop guidelines, within ninety (90) days from the finalization of the implementing rules and regulations of this Act and pursuant to the UN Convention on the Rights of Persons with Disabilities, for the provision, as far as practicable, of necessary and appropriate modification and adjustments across all stages of case management of OSAEC cases to ensure children with disabilities will have access to justice.

The Supreme Court shall, in accordance with its rules and the UN Convention on the Rights of Persons with Disabilities, issue guidelines for the provision, as far as practicable, of necessary and appropriate modification and adjustments across all stages of case management of OSAEC and CSAEM cases to ensure children with disabilities will have access to justice.

**Section 30. National Coordination Center against OSAEC and CSAEM.** — There shall be a National Coordination Center against OSAEC and CSAEM (NCC-OSAEC-CSAEM) under the Inter-Agency Council Against Trafficking (IACAT) formed under Republic Act No. 9208, otherwise known as the "Anti-Trafficking in Persons Act of 2003," as amended. The IACAT shall retain its composition and functions as provided under the Anti-Trafficking in Persons Act of 2003, as amended, with the additional mandate of addressing cases falling under this Act. The NCC-OSAEC-CSAEM, under the direction of the IACAT, shall develop and implement the necessary programs that will prevent the commission of OSAEC and CSAEM, as well as protect, heal and reintegrate the child into the mainstream of society. Such programs shall include the following:

- (a) Provision of mandatory services including emergency shelter or appropriate housing including foster care or kinship care arrangements, counseling, free legal services, medical or psychological services, as well as support services including community-based rehabilitation, livelihood and skills training, educational assistance to the child, sustained supervision and follow-through mechanisms that will track the progress of recovery, rehabilitation, and reintegration of the child;
- (b) Sponsorship of a national research program on OSAEC and CSAEM and the establishment of a data collection system for monitoring and evaluation purposes;
- (c) Development and implementation of a sustained, gender-responsive and effective communication, education and information campaigns at the national, local and community levels using all forms of

media, aimed at promoting a working understanding of the law and situating it in the larger context of women and children's rights;

(d) Development of a monitoring and data collection system or database, for purposes of ensuring efficient collection and storage of data on all OSAEC and CSAEM cases, including:

(1) the number of cases being investigated, submitted for prosecution, dropped, filed or are pending before the courts, as well as the number of convictions and acquittals;

(2) the profile/information on each case;

(3) the number of victims of OSAEC and CSAEM referred to the agency by countries/area and by area of origin; and

(4) disaggregated data on OSAEC and CSAEM victims and the accused/defendants as to gender, age and nationality.

(e) Establishment of a point-of-contact and coordination system with international organizations for the receipt of reports on OSAEC and CSAEM; and

(f) Promotion of information, awareness and education campaigns regarding safe and responsible use of the internet in relation to OSAEC and CSAEM to educate the public, including children.

**Section 31. Secretariat.** — The NCC-OSAEC-CSAEM shall have its own Secretariat and shall be headed by an Executive Director, who shall be appointed by the IACAT. The Executive Director must have adequate knowledge of, training and experience in the phenomenon of and issues involved in OSAEC, CSAEM and in the field of law, law enforcement, ICT, social work, and child protection. The Executive Director shall be under the supervision of the IACAT and shall perform the following functions:

(a) Act as the administrative officer of its Secretariat;

(b) Advise and assist the IACAT Chairpersons in formulating and implementing the objectives, policies, plans and programs of the NCC-OSAEC-CSAEM, including those involving mobilization of government offices as well as other relevant government offices, task forces, and mechanisms;

(c) Oversee the referral pathway protocols;

(d) Oversee all operational activities;

(e) Provide assistance to law enforcement agencies in the investigation and prosecution of OSAEC and CSAEM cases;

(f) Ensure the security of the database of OSAEC and CSAEM cases;

(g) Ensure effective and efficient performance of functions and prompt implementation of objectives, policies, plans and programs;

(h) Propose effective allocations of resources for implementing objectives, policies, plans and programs;

(i) Submit periodic reports to the IACAT members on the progress of objectives, policies, plans and programs;

(j) Coordinate with the DOJ-OOC to monitor compliance of internet intermediaries pursuant to the latter's obligations under this Act; and

(k) Perform other duties as the IACAT Chairs may assign.

**Section 32. Referral Pathway for OSAEC Cases.** — There shall be an organized and unified referral pathway for reporting, detecting, investigating, prosecuting, and providing aftercare assistance and support in OSAEC and CSAEM cases. The NCC-OSAEC-CSAEM shall develop a system and a set of gender-responsive, child-friendly, victim-centered and trauma-informed protocols for referring OSAEC and CSAEM cases and recording and maintaining a unified database for the purpose of tracking and updating the status and stages of investigation and prosecution of the same, consistent with existing laws on the protection of the welfare of children. The NCC-OSAEC-CSAEM shall also develop a feedback mechanism for victim-survivors who have accessed its services via this pathway.

**Section 33. Local Governments.** — Local governments shall pass an ordinance to localize efforts against OSAEC and CSAEM, take account local culture and norms, institutionalize community-based initiatives that address OSAEC and CSAEM at the barangay level, establish OSAEC and CSAEM prevention programs that aim to educate families against OSAEC and CSAEM, and provide a holistic local program for rehabilitation and reintegration under the local social welfare and development office including support and protection for victims and survivors.

**Section 34. Blacklisting of Alien OSAEC Offenders.** — In coordination with the Department of Foreign Affairs (DFA), the Bureau of Immigration (BI) and the DOJ shall ensure that all convicted offenders of OSAEC, CSAEM, or similar or equivalent crimes in other jurisdictions, or those aliens reported to or being monitored by Philippine law enforcement authorities for conducting OSAEC and CSAEM activities shall not be allowed entry in the Philippines. In addition to its data system collection and database functions under Section 32, the NCC-OSAEC-CSAEM shall create and maintain an updated registry of blacklisted aliens based on the information from the DFA, BI and the DOJ.

**Section 35. Age Verification Protocols.** — All online providers of adult content shall be required to adopt an anonymous age verification process before granting access to adult content. Not later than one (1) year after the passage of this Act, the NTC shall complete a policy study into age-verification controls and protocols by internet intermediaries that may be put in place in order to restrict the access of children to materials within the purview of Section 3 (c) (iv) of Presidential Decree No. 1986, with the end in view of promulgating rules and regulations to this effect. Said rules and regulations governing the adoption of an anonymous age verification process shall be promulgated not later than eighteen (18) months after the passage of this Act. Nothing in this provision shall be construed as an exemption to the provisions of the "Data Privacy Act of 2012."

**Section 36. Authorized Sharing of Information.** — The AMLC shall share information relating to activities prohibited under this Act with the NCC-OSAEC-CSAEM for the purpose of prosecuting offenders alleged to have committed such activities. This information may be shared among AMLA-covered institutions to facilitate compliance with their obligations as reporting entities under this Act.

**Section 37. Creation of the OSAEC and CSAEM Offenders Registry.** — An OSAEC and CSAEM offenders registry for both Filipino nationals and foreigners shall be created containing the following information of adult individuals convicted of OSAEC, CSAEM and other sexual offenses against children:

(a) name;

(b) address;

(c) employment;

- (d) fingerprints;
- (e) complete criminal history;
- (f) recent photograph; and
- (g) other relevant information necessary for the proper registration of child sexual offenders.

The OSAEC and CSAEM offenders registry shall be lodged in the NCC-OSAEC-CSAEM, shall be regularly updated and shared with relevant national government authorities, and shall also be linked to international law enforcement agencies. In accordance with the provisions of the Data Privacy Act of 2012, the NCC-OSAEC-CSAEM may release relevant information that is necessary to protect the public from imminent danger concerning a specific person required to register under this section: *Provided, That juvenile offenders shall not be recorded in the registry.*

**Section 38. Congressional Oversight Committee.** — There is hereby created a Congressional Oversight Committee composed of five (5) members from the Senate of the Philippines and five (5) members from the House of Representatives. The members of the Senate shall be composed of the Chairperson of the Senate Committee on Women, Children, Family Relations and Gender Equality and the remaining four (4) members shall be appointed by the Senate President. The members of the House of Representatives shall be composed of the Chairpersons of the Committees on Welfare of Children, Revision of Laws, and Information and Communications Technology and the remaining two (2) members shall be appointed by the Speaker of the House of Representatives.

The oversight committee shall monitor and ensure the effective implementation of this Act, recommend the necessary remedial legislation or administrative measures, and perform such other duties and functions as may be necessary to attain the objectives of this Act.

**Section 39. Transitory Provisions.** — The mandates, office and funding of the existing Inter-Agency Council Against Child Pornography (IACACP) under Republic Act No. 9775, otherwise known as the "Anti-Child Pornography Act of 2009," shall remain until the effectivity of this Act. Upon the effectivity of this Act, all the powers, functions, offices, personnel, assets, information and database of the IACACP shall be transferred to the NCC-OSAEC-CSAEM without the need of conveyance or order, as the case may be.

Within one (1) year from the effectivity of this Act, the existing budget or funds of the IACACP shall be utilized by the NCC-OSAEC-CSAEM.*la ωph!!*

The Secretariat or employees of the IACACP shall continue to exercise their respective functions, duties and responsibilities with the corresponding benefits and privileges. As far as practicable, all personnel of the affected offices, agencies and units shall be absorbed by the NCC-OSAEC-CSAEM.

**Section 40. Appropriations.** — The amount necessary for the implementation of this Act shall be included in the annual General Appropriations Act. There is likewise established an Endowment Fund which shall be self-sustaining and shall consist of contributions, donations, grants, or loans from domestic and foreign sources.

**Section 41. Implementing Rules and Regulations (IRR).** — The members of the IACAT shall constitute itself as the IRR Committee with the DSWD and the DOJ as the lead agencies, and with the inclusion of the Department of Education, Department of Information and Communications Technology, DILG, Department of Tourism, National Privacy Commission, NTC and the AMLC, and two (2) NGOs on children's rights, to promulgate rules and regulations for the effective implementation of this Act. The IRR Committee shall promulgate the rules and regulations within six (6) months from the effectivity of this Act. Such rules and regulations shall take effect upon their publication in two (2) national newspapers of general circulation.



**Section 42.** *Suppletory Application of the Revised Penal Code.* — The Revised Penal Code shall be suppletorily applicable to this Act.

**Section 43.** *Separability Clause.* — If any part of this Act is declared unconstitutional or invalid, the other provisions not affected thereby shall continue to be in full force and effect.

**Section 44.** *Repealing Clause.* — Republic Act No. 9775 and Section 4 (c) (1) of Republic Act No. 10175, otherwise known as the "Cybercrime Prevention Act of 2012," are hereby repealed.

All other laws, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

**Section 45.** *Effectivity.* — This Act shall take effect after fifteen (15) days following its complete publication in the Official Gazette or in a newspaper of general circulation.

# Annex B

## RULE ON EXAMINATION OF A CHILD WITNESS<sup>75</sup>

Republic of the Philippines  
Supreme Court  
Manila

A.M. NO. 00-4-07-SC      November 21, 2000

### RULE ON EXAMINATION OF A CHILD WITNESS

**Section 1. *Applicability of the Rule.*** - Unless otherwise provided, this Rule shall govern the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime. It shall apply in all criminal proceedings and non-criminal proceedings involving child witnesses.

**Section 2. *Objectives.*** - The objectives of this Rule are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.

**Section 3. *Construction of the Rule.*** - This Rule shall be liberally construed to uphold the best interests of the child and to promote maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.

**Section 4. *Definitions.*** -

(a) A "child witness" is any person who at the time of giving testimony is below the age of eighteen (18) years. In child abuse cases, a child includes one over eighteen (18) years but is found by the court as unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

(b) "Child abuse" means physical, psychological, or sexual abuse, and criminal neglect as defined in Republic Act No. 7610 and other related laws.

(c) "Facilitator" means a person appointed by the court to pose questions to a child.

(d) "Record regarding a child" or "record" means any photograph, videotape, audiotape, film, handwriting, typewriting, printing, electronic recording, computer data or printout, or other memorialization, including any court document, pleading, or any copy or reproduction of any of the foregoing, that contains the name, description, address, school, or any other personal identifying information about a child or his family and that is produced or maintained by a public agency, private agency, or individual.

(e) A "guardian ad litem" is a person appointed by the court where the case is pending for a child who is a victim of, accused of, or a witness to a crime to protect the best interests of the said child.

(f) A "support person" is a person chosen by the child to accompany him to testify at or attend a judicial proceeding or deposition to provide emotional support for him.

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<sup>75</sup> Copy retrieved from [https://lawphil.net/courts/supreme/am/am\\_004\\_07\\_sc\\_2000.html](https://lawphil.net/courts/supreme/am/am_004_07_sc_2000.html)

(g) "Best interests of the child" means the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the child and most encouraging to his physical, psychological, and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.

(h) "Developmental level" refers to the specific growth phase in which most individuals are expected to behave and function in relation to the advancement of their physical, socio-emotional, cognitive, and moral abilities.

(i) "In-depth investigative interview" or "disclosure interview" is an inquiry or proceeding conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services for the purpose of determining whether child abuse has been committed.

#### **Section 5. *Guardian ad litem.* -**

(a) The court may appoint a guardian ad litem for a child who is a victim of, accused of, or a witness to a crime to promote the best interests of the child. In making the appointment, the court shall consider the background of the guardian ad litem and his familiarity with the judicial process, social service programs, and child development, giving preference to the parents of the child, if qualified. The guardian ad litem may be a member of the Philippine Bar. A person who is a witness in any proceeding involving the child cannot be appointed as a guardian ad litem.

(b) The guardian ad litem:

- (1) Shall attend all interviews, depositions, hearings, and trial proceedings in which a child participates;
- (2) Shall make recommendations to the court concerning the welfare of the child;
- (3) Shall have access to all reports, evaluations, and records necessary to effectively advocate for the child, except privileged communications;
- (4) Shall marshal and coordinate the delivery of resources and special services to the child;
- (5) Shall explain, in language understandable to the child, all legal proceedings, including police investigations, in which the child is involved;
- (6) Shall assist the child and his family in coping with the emotional effects of crime and subsequent criminal or non-criminal proceedings in which the child is involved;
- (7) May remain with the child while the child waits to testify;
- (8) May interview witnesses; and
- (9) May request additional examinations by medical or mental health professionals if there is a compelling need therefor.

(c) The guardian ad litem shall be notified of all proceedings but shall not participate in the trial. However, he may file motions pursuant to sections 9, 10, 25, 26, 27 and 31(c). If the guardian ad litem is a lawyer, he may object during trial that questions asked of the child are not appropriate to his developmental level.

(d) The guardian ad litem may communicate concerns regarding the child to the court through an officer of the court designated for that purpose.

(e) The guardian ad litem shall not testify in any proceeding concerning any information, statement, or opinion received from the child in the course of serving as a guardian ad litem, unless the court finds it necessary to promote the best interests of the child.

(f) The guardian ad litem shall be presumed to have acted in good faith in compliance with his duties described in sub-section (b).

**Section 6. Competency.** - Every child is presumed qualified to be a witness. However, the court shall conduct a competency examination of a child, motu proprio or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court.

(a) *Proof of necessity.* - A party seeking a competency examination must present proof of necessity of competency examination. The age of the child by itself is not a sufficient basis for a competency examination.

(b) *Burden of proof.* - To rebut the presumption of competence enjoyed by a child, the burden of proof lies on the party challenging his competence.

(c) *Persons allowed at competency examination.* Only the following are allowed to attend a competency examination:

(1) The judge and necessary court personnel;

(2) The counsel for the parties;

(3) The guardian ad litem;

(4) One or more support persons for the child; and

(5) The defendant, unless the court determines that competence can be fully evaluated in his absence.

(d) *Conduct of examination.* - Examination of a child as to his competence shall be conducted only by the judge. Counsel for the parties, however, can submit questions to the judge that he may, in his discretion, ask the child.

(e) *Developmentally appropriate questions.* - The questions asked at the competency examination shall be appropriate to the age and developmental level of the child; shall not be related to the issues at trial; and shall focus on the ability of the child to remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully.

(f) *Continuing duty to assess competence.* - The court has the duty of continuously assessing the competence of the child throughout his testimony.

**Section 7. Oath or affirmation.** - Before testifying, a child shall take an oath or affirmation to tell the truth.

**Section 8. Examination of a child witness.** - The examination of a child witness presented in a hearing or any proceeding shall be done in open court. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

The party who presents a child witness or the guardian ad litem of such child witness may, however, move the court to allow him to testify in the manner provided in this Rule.

**Section 9. *Interpreter for child.* -**

(a) When a child does not understand the English or Filipino language or is unable to communicate in said languages due to his developmental level, fear, shyness, disability, or other similar reason, an interpreter whom the child can understand and who understands the child may be appointed by the court, *motu proprio* or upon motion, to interpret for the child.

(b) If a witness or member of the family of the child is the only person who can serve as an interpreter for the child, he shall not be disqualified and may serve as the interpreter of the child. The interpreter, however, who is also a witness, shall testify ahead of the child.

(c) An interpreter shall take an oath or affirmation to make a true and accurate interpretation.

**Section 10. *Facilitator to pose questions to child.* -**

(a) The court may, *motu proprio* or upon motion, appoint a facilitator if it determines that the child is unable to understand or respond to questions asked. The facilitator may be a child psychologist, psychiatrist, social worker, guidance counselor, teacher, religious leader, parent, or relative.

(b) If the court appoints a facilitator, the respective counsels for the parties shall pose questions to the child only through the facilitator. The questions shall either be in the words used by counsel or, if the child is not likely to understand the same, in words that are comprehensible to the child and which convey the meaning intended by counsel.

(c) The facilitator shall take an oath or affirmation to pose questions to the child according to the meaning intended by counsel.

**Section 11. *Support persons.* -**

(a) A child testifying at a judicial proceeding or making a deposition shall have the right to be accompanied by one or two persons of his own choosing to provide him emotional support.

(1) Both support persons shall remain within the view of the child during his testimony.

(2) One of the support persons may accompany the child to the witness stand, provided the support person does not completely obscure the child from the view of the opposing party, judge, or hearing officer.

(3) The court may allow the support person to hold the hand of the child or take other appropriate steps to provide emotional support to the child in the course of the proceedings.

(4) The court shall instruct the support persons not to prompt, sway, or influence the child during his testimony.

(b) If the support person chosen by the child is also a witness, the court may disapprove the choice if it is sufficiently established that the attendance of the support person during the testimony of the child would pose a substantial risk of influencing or affecting the content of the testimony of the child.

(c) If the support person who is also a witness is allowed by the court, his testimony shall be presented ahead of the testimony of the child.

**Section 12. *Waiting area for child witnesses.*** - The courts are encouraged to provide a waiting area for children that is separate from waiting areas used by other persons. The waiting area for children should be furnished so as to make a child comfortable.

**Section 13. *Courtroom environment.*** - To create a more comfortable environment for the child, the court may, in its discretion, direct and supervise the location, movement and deportment of all persons in the courtroom including the parties, their counsel, child, witnesses, support persons, guardian ad litem, facilitator, and court personnel. The child may be allowed to testify from a place other than the witness chair. The witness chair or other place from which the child testifies may be turned to facilitate his testimony but the opposing party and his counsel must have a frontal or profile view of the child during the testimony of the child. The witness chair or other place from which the child testifies may also be rearranged to allow the child to see the opposing party and his counsel, if he chooses to look at them, without turning his body or leaving the witness stand. The judge need not wear his judicial robe.

Nothing in this section or any other provision of law, except official in-court identification provisions, shall be construed to require a child to look at the accused.

Accommodations for the child under this section need not be supported by a finding of trauma to the child.

**Section 14. *Testimony during appropriate hours.*** - The court may order that the testimony of the child should be taken during a time of day when the child is well-rested.

**Section 15. *Recess during testimony.*** -

The child may be allowed reasonable periods of relief while undergoing direct, cross, re-direct, and re-cross examinations as often as necessary depending on his developmental level.

**Section 16. *Testimonial aids.*** - The court shall permit a child to use dolls, anatomically-correct dolls, puppets, drawings, mannequins, or any other appropriate demonstrative device to assist him in his testimony.

**Section 17. *Emotional security item.*** - While testifying, a child shall be allowed to have an item of his own choosing such as a blanket, toy, or doll.

**Section 18. *Approaching the witness.*** - The court may prohibit a counsel from approaching a child if it appears that the child is fearful of or intimidated by the counsel.

**Section 19. *Mode of questioning.*** - The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment of the truth, (2) ensure that questions are stated in a form appropriate to the developmental level of the child, (3) protect children from harassment or undue embarrassment, and (4) avoid waste of time.

The court may allow the child witness to testify in a narrative form.

**Section 20. *Leading questions.*** - The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice.

**Section 21. *Objections to questions.*** - Objections to questions should be couched in a manner so as not to mislead, confuse, frighten, or intimidate the child.

**Section 22. *Corroboration.*** - Corroboration shall not be required of a testimony of a child. His testimony, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.

**Section 23. *Excluding the public.*** - When a child testifies, the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made to protect the right to privacy of the child or if the court determines on the record that requiring the child to testify in open court would cause psychological harm to him, hinder the ascertainment of truth, or result in his inability to effectively communicate due to embarrassment, fear, or timidity. In making its order, the court shall consider the developmental level of the child, the nature of the crime, the nature of his testimony regarding the crime, his relationship to the accused and to persons attending the trial, his desires, and the interests of his parents or legal guardian. The court may, *motu proprio*, exclude the public from the courtroom if the evidence to be produced during trial is of such character as to be offensive to decency or public morals. The court may also, on motion of the accused, exclude the public from trial, except court personnel and the counsel of the parties.

**Section 24. *Persons prohibited from entering and leaving courtroom.*** - The court may order that persons attending the trial shall not enter or leave the courtroom during the testimony of the child.

**Section 25. *Live-link television testimony in criminal cases where the child is a victim or a witness.*** -

(a) The prosecutor, counsel or the guardian ad litem may apply for an order that the testimony of the child be taken in a room outside the courtroom and be televised to the courtroom by live-link television.

Before the guardian ad litem applies for an order under this section, he shall consult the prosecutor or counsel and shall defer to the judgment of the prosecutor or counsel regarding the necessity of applying for an order. In case the guardian ad litem is convinced that the decision of the prosecutor or counsel not to apply will cause the child serious emotional trauma, he himself may apply for the order.

The person seeking such an order shall apply at least five (5) days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(b) The court may *motu proprio* hear and determine, with notice to the parties, the need for taking the testimony of the child through live-link television.

(c) The judge may question the child in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian ad litem, prosecutor, and counsel for the parties. The questions of the judge shall not be related to the issues at trial but to the feelings of the child about testifying in the courtroom.

(d) The judge may exclude any person, including the accused, whose presence or conduct causes fear to the child.

(e) The court shall issue an order granting or denying the use of live-link television and stating the reasons therefor. It shall consider the following factors:

- (1) The age and level of development of the child;
- (2) His physical and mental health, including any mental or physical disability;
- (3) Any physical, emotional, or psychological injury experienced by him;
- (4) The nature of the alleged abuse;
- (5) Any threats against the child;
- (6) His relationship with the accused or adverse party;

- (7) His reaction to any prior encounters with the accused in court or elsewhere;
- (8) His reaction prior to trial when the topic of testifying was discussed with him by parents or professionals;
- (9) Specific symptoms of stress exhibited by the child in the days prior to testifying;
- (10) Testimony of expert or lay witnesses;
- (11) The custodial situation of the child and the attitude of the members of his family regarding the events about which he will testify; and
- (12) Other relevant factors, such as court atmosphere and formalities of court procedure.

(f) The court may order that the testimony of the child be taken by live-link television if there is a substantial likelihood that the child would suffer trauma from testifying in the presence of the accused, his counsel or the prosecutor as the case may be. The trauma must be of a kind which would impair the completeness or truthfulness of the testimony of the child.

(g) If the court orders the taking of testimony by live-link television:

- (1) The child shall testify in a room separate from the courtroom in the presence of the guardian ad litem; one or both of his support persons; the facilitator and interpreter, if any; a court officer appointed by the court; persons necessary to operate the closed-circuit television equipment; and other persons whose presence are determined by the court to be necessary to the welfare and well-being of the child;
- (2) The judge, prosecutor, accused, and counsel for the parties shall be in the courtroom. The testimony of the child shall be transmitted by live-link television into the courtroom for viewing and hearing by the judge, prosecutor, counsel for the parties, accused, victim, and the public unless excluded.
- (3) If it is necessary for the child to identify the accused at trial, the court may allow the child to enter the courtroom for the limited purpose of identifying the accused, or the court may allow the child to identify the accused by observing the image of the latter on a television monitor.
- (4) The court may set other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the best interests of the child.

(h) The testimony of the child shall be preserved on videotape, digital disc, or other similar devices which shall be made part of the court record and shall be subject to a protective order as provided in section 31(b).

**Section 26. Screens, one-way mirrors, and other devices to shield child from accused. -**

(a) The prosecutor or the guardian ad litem may apply for an order that the chair of the child or that a screen or other device be placed in the courtroom in such a manner that the child cannot see the accused while testifying. Before the guardian ad litem applies for an order under this section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of section 25(a) of this Rule. The court shall issue an order stating the reasons and describing the approved courtroom arrangement.

(b) If the court grants an application to shield the child from the accused while testifying in the courtroom, the courtroom shall be arranged to enable the accused to view the child.



## **Section 27. Videotaped deposition. -**

- (a) The prosecutor, counsel, or guardian ad litem may apply for an order that a deposition be taken of the testimony of the child and that it be recorded and preserved on videotape. Before the guardian ad litem applies for an order under this section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of section 25(a).
- (b) If the court finds that the child will not be able to testify in open court at trial, it shall issue an order that the deposition of the child be taken and preserved by videotape.
- (c) The judge shall preside at the videotaped deposition of a child. Objections to deposition testimony or evidence, or parts thereof, and the grounds for the objection shall be stated and shall be ruled upon at the time of the taking of the deposition. The other persons who may be permitted to be present at the proceeding are:
- (1) The prosecutor;
  - (2) The defense counsel;
  - (3) The guardian ad litem;
  - (4) The accused, subject to sub-section (e);
  - (5) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child;
  - (6) One or both of his support persons, the facilitator and interpreter, if any;
  - (7) The court stenographer; and
  - (8) Persons necessary to operate the videotape equipment.
- (d) The rights of the accused during trial, especially the right to counsel and to confront and cross-examine the child, shall not be violated during the deposition.
- (e) If the order of the court is based on evidence that the child is unable to testify in the physical presence of the accused, the court may direct the latter to be excluded from the room in which the deposition is conducted. In case of exclusion of the accused, the court shall order that the testimony of the child be taken by live-link television in accordance with section 25 of this Rule. If the accused is excluded from the deposition, it is not necessary that the child be able to view an image of the accused.
- (f) The videotaped deposition shall be preserved and stenographically recorded. The videotape and the stenographic notes shall be transmitted to the clerk of the court where the case is pending for safekeeping and shall be made a part of the record.
- (g) The court may set other conditions on the taking of the deposition that it finds just and appropriate, taking into consideration the best interests of the child, the constitutional rights of the accused, and other relevant factors.
- (h) The videotaped deposition and stenographic notes shall be subject to a protective order as provided in section 31(b).

(i) If, at the time of trial, the court finds that the child is unable to testify for a reason stated in section 25(f) of this Rule, or is unavailable for any reason described in section 4(c), Rule 23 of the 1997 Rules of Civil Procedure, the court may admit into evidence the videotaped deposition of the child in lieu of his testimony at the trial. The court shall issue an order stating the reasons therefor.

(j) After the original videotaping but before or during trial, any party may file any motion for additional videotaping on the ground of newly discovered evidence. The court may order an additional videotaped deposition to receive the newly discovered evidence.

**Section 28. Hearsay exception in child abuse cases.** - A statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding subject to the following rules:

(a) Before such hearsay statement may be admitted, its proponent shall make known to the adverse party the intention to offer such statement and its particulars to provide him a fair opportunity to object. If the child is available, the court shall, upon motion of the adverse party, require the child to be present at the presentation of the hearsay statement for cross-examination by the adverse party. When the child is unavailable, the fact of such circumstance must be proved by the proponent.

(b) In ruling on the admissibility of such hearsay statement, the court shall consider the time, content and circumstances thereof which provide sufficient indicia of reliability. It shall consider the following factors:

(1) Whether there is a motive to lie;

(2) The general character of the declarant child;

(3) Whether more than one person heard the statement;

(4) Whether the statement was spontaneous;

(5) The timing of the statement and the relationship between the declarant child and witness;

(6) Cross-examination could not show the lack of knowledge of the declarant child;

(7) The possibility of faulty recollection of the declarant child is remote; and

(8) The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of the accused.

(c) The child witness shall be considered unavailable under the following situations:

(1) Is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological injury; or

(2) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

(d) When the child witness is unavailable, his hearsay testimony shall be admitted only if corroborated by other admissible evidence.

**Section 29. Admissibility of videotaped and audiotaped in-depth investigative or disclosure interviews in child abuse cases.** - The court may admit videotape and audiotape in-depth investigative or disclosure interviews as evidence, under the following conditions:

- (a) The child witness is unable to testify in court on grounds and under conditions established under section 28 (c).
- (b) The interview of the child was conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services in situations where child abuse is suspected so as to determine whether child abuse occurred.
- (c) The party offering the videotape or audiotape must prove that:
  - (1) the videotape or audiotape discloses the identity of all individuals present and at all times includes their images and voices;
  - (2) the statement was not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the statement of the child and not the product of improper suggestion;
  - (3) the videotape and audiotape machine or device was capable of recording testimony;
  - (4) the person operating the device was competent to operate it;
  - (5) the videotape or audiotape is authentic and correct; and
  - (6) it has been duly preserved.

The individual conducting the interview of the child shall be available at trial for examination by any party. Before the videotape or audiotape is offered in evidence, all parties shall be afforded an opportunity to view or listen to it and shall be furnished a copy of a written transcript of the proceedings.

The fact that an investigative interview is not videotaped or audiotaped as required by this section shall not by itself constitute a basis to exclude from evidence out-of-court statements or testimony of the child. It may, however, be considered in determining the reliability of the statements of the child describing abuse.

**Section 30. Sexual abuse shield rule.** -

- (a) Inadmissible evidence. - The following evidence is not admissible in any criminal proceeding involving alleged child sexual abuse:
  - (1) Evidence offered to prove that the alleged victim engaged in other sexual behavior; and
  - (2) Evidence offered to prove the sexual predisposition of the alleged victim.
- (b) Exception. - Evidence of specific instances of sexual behavior by the alleged victim to prove that a person other than the accused was the source of semen, injury, or other physical evidence shall be admissible.

A party intending to offer such evidence must:

(1) File a written motion at least fifteen (15) days before trial, specifically describing the evidence and stating the purpose for which it is offered, unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(2) Serve the motion on all parties and the guardian ad litem at least three (3) days before the hearing of the motion.

Before admitting such evidence, the court must conduct a hearing in chambers and afford the child, his guardian ad litem, the parties, and their counsel a right to attend and be heard. The motion and the record of the hearing must be sealed and remain under seal and protected by a protective order set forth in section 31(b). The child shall not be required to testify at the hearing in chambers except with his consent.

**Section 31. Protection of privacy and safety. -**

(a) *Confidentiality of records.* - Any record regarding a child shall be confidential and kept under seal. Except upon written request and order of the court, a record shall only be released to the following:

- (1) Members of the court staff for administrative use;
- (2) The prosecuting attorney;
- (3) Defense counsel;
- (4) The guardian ad litem;
- (5) Agents of investigating law enforcement agencies; and
- (6) Other persons as determined by the court.

(b) *Protective order.* - Any videotape or audiotape of a child that is part of the court record shall be under a protective order that provides as follows:

- (1) Tapes may be viewed only by parties, their counsel, their expert witness, and the guardian ad litem.
- (2) No tape, or any portion thereof, shall be divulged by any person mentioned in sub-section (a) to any other person, except as necessary for the trial.
- (3) No person shall be granted access to the tape, its transcription or any part thereof unless he signs a written affirmation that he has received and read a copy of the protective order; that he submits to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, he will be subject to the contempt power of the court.
- (4) Each of the tape cassettes and transcripts thereof made available to the parties, their counsel, and respective agents shall bear the following cautionary notice:

"This object or document and the contents thereof are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portion shall be made, given, sold, or shown to any person without prior court order. Any person violating such protective order is subject to the contempt power of the court and other penalties prescribed by law."

- (5) No tape shall be given, loaned, sold, or shown to any person except as ordered by the court.
- (6) Within thirty (30) days from receipt, all copies of the tape and any transcripts thereof shall be returned to the clerk of court for safekeeping unless the period is extended by the court on motion of a party.
- (7) This protective order shall remain in full force and effect until further order of the court.

(c) *Additional protective orders.* - The court may, motu proprio or on motion of any party, the child, his parents, legal guardian, or the guardian ad litem, issue additional orders to protect the privacy of the child.

(d) *Publication of identity contemptuous.* - Whoever publishes or causes to be published in any format the name, address, telephone number, school, or other identifying information of a child who is or is alleged to be a victim or accused of a crime or a witness thereof, or an immediate family of the child shall be liable to the contempt power of the court.

(e) *Physical safety of child; exclusion of evidence.* - A child has a right at any court proceeding not to testify regarding personal identifying information, including his name, address, telephone number, school, and other information that could endanger his physical safety or his family. The court may, however, require the child to testify regarding personal identifying information in the interest of justice.

(f) *Destruction of videotapes and audiotapes.* - Any videotape or audiotape of a child produced under the provisions of this Rule or otherwise made part of the court record shall be destroyed after five (5) years have elapsed from the date of entry of judgment.

(g) *Records of youthful offender.* - Where a youthful offender has been charged before any city or provincial prosecutor or before any municipal judge and the charges have been ordered dropped, all the records of the case shall be considered as privileged and may not be disclosed directly or indirectly to anyone for any purpose whatsoever.

Where a youthful offender has been charged and the court acquits him, or dismisses the case or commits him to an institution and subsequently releases him pursuant to Chapter 3 of P. D. No. 603, all the records of his case shall also be considered as privileged and may not be disclosed directly or indirectly to anyone except to determine if a defendant may have his sentence suspended under Article 192 of P. D. No. 603 or if he may be granted probation under the provisions of P. D. No. 968 or to enforce his civil liability, if said liability has been imposed in the criminal action. The youthful offender concerned shall not be held under any provision of law to be guilty of perjury or of concealment or misrepresentation by reason of his failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him for any purpose.

"Records" within the meaning of this sub-section shall include those which may be in the files of the National Bureau of Investigation and with any police department or government agency which may have been involved in the case. (Art. 200, P. D. No. 603)

**Section 32. *Applicability of ordinary rules.*** - The provisions of the Rules of Court on deposition, conditional examination of witnesses, and evidence shall be applied in a suppletory character.

**Section 33. *Effectivity.*** - This Rule shall take effect on December 15, 2000 following its publication in two (2) newspapers of general circulation.

# Annex C

## SAMPLE LETTER REQUEST FOR VENUE OR INTERVIEWER

[DATE]

[NAME OF CONTACT PERSON]

[POSITION OF CONTACT PERSON]

**Women and Children's Protection Unit**  
Vicente Sotto Memorial Medical Center  
B. Rodriguez St., Cebu City, Philippines

*Subject:* **Request for venue of the Videotaped Forensic Interviews of Suspected Victims of Online Sexual Exploitation**

Dear \_\_\_\_\_,

By way of background, the Philippine National Police –Anti-Cybercrime Group\_\_\_\_(PNP-ACG\_\_\_\_) are expecting to turn-over victims of online sexual exploitation to DSWD following a rescue operation scheduled to take place on **[RESCUE OPERATION SCHEDULE]**.

We are expecting *at least* one teenage victim to be rescued during the operation and would like to request the use of the Pink Center facilities to conduct a Videotape Forensic Interview on **[PREFERRED SCHEDULE]**.

I would be grateful if you could confirm receipt of this letter and provide a response as to our use of the Pink Center at your earliest possible convenience.

I remain at your disposal if you require any further information regarding this request.

Respectfully,

[NAME]

Position

Organization

# Annex D

## DIRECTORY OF ORGANIZATIONS WITH CHILD PSYCHOLOGISTS

Directory of Organizations with Child Psychologists		
Organization	Contact Details	Address
<b>Women and Children Protection Desk</b> <i>Please contact any of the following Visayas Field Units (Lapu-Lapu City, Cebu City, Liloan City, Mandaue City, or Police Non-Commission Office).</i>		
Pink Room, Vicente Sotto Memorial Medical Center	(032) 253 9891	B. Rodriguez St, Sambag II, Cebu City, Cebu
Department of Social Welfare and Development, Region VII	(032) 233 8785	M.J. Cuenco Avenue corner General Maxilom Avenue, Barangay Carreta, Cebu City, Cebu

# Annex E

## DIRECTORY OF POSSIBLE INTERVIEW VENUES

Directory of Possible Interview Venues		
Organization	Contact Details	Address
Child Protection Unit – Philippine General Hospital	526-84-18 524-07-12 Fax 524-15-12	PGH Compound, Taft Manila (near Emergency Room)
Pink Room, Vicente Sotto Memorial Medical Center	(032) 253 9891	B. Rodriguez St, Sambag II, Cebu City, Cebu



# Annex F

## IJM'S VIDİ HANDLER'S GUIDE

### I. Purpose of the Kit

The Videotaped In-Depth Disclosure Interview (VIDI) Kit is primarily a child-protective measure. It allows us to secure disclosures from the child interviewee through the use of a video recorder which could then be presented during inquest, preliminary investigation, or trial in lieu of the child's actual testimony. Through this measure, the child is protected from retraumatization caused by having to repeatedly relay experiences of abuse or by simply having to confront a perpetrator.

### II. Legal Basis

The VIDI Kit is founded on Section 29 of the Rule on Examination of a Child Witness (RECW) which allows the admission of videotape and audiotape in-depth investigative or disclosure interviews as evidence, subject to certain conditions. The provisions goes as follows:

**Section 29. Admissibility of videotaped and audiotaped in-depth investigative or disclosure interviews in child abuse cases.** - The court may admit videotape and audiotape in-depth investigative or disclosure interviews as evidence, under the following conditions:

- (a) The child witness is unable to testify in court on grounds and under conditions established under **section 28 (c)**.<sup>76</sup>
- (b) The interview of the child was conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services in situations where child abuse is suspected so as to determine whether child abuse occurred.
- (c) The party offering the videotape or audiotape must prove that:
  - (1) the videotape or audiotape discloses the identity of all individuals present and at all times includes their images and voices;
  - (2) the statement was not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the statement of the child and not the product of improper suggestion;
  - (3) the videotape and audiotape machine or device was capable of recording testimony;
  - (4) the person operating the device was competent to operate it;
  - (5) the videotape or audiotape is authentic and correct; and
  - (6) it has been duly preserved.

The individual conducting the interview of the child shall be available at trial for examination by any party. Before the videotape or audiotape is offered in evidence, all parties shall be afforded an opportunity to view or listen to it and shall be furnished a copy of a written transcript of the proceedings.

The fact that an investigative interview is not videotaped or audiotaped as required by this section shall not by itself constitute a basis to exclude from evidence out-of-court statements or

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#### 76 Section 28.

(c) The child witness shall be considered unavailable under the following situations:

- (1) Is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological injury; or
- (2) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

testimony of the child. It may, however, be considered in determining the reliability of the statements of the child describing abuse.

### **III. Key Components of the VID I Kit**

1. Video Camera with Charger and Case
2. Tripod
3. Laptop with Charger and Case
4. Storage Media
  - a. 1 32 GB SD Card
  - b. 2 16GB USB 3.0 Flash Drives
5. Extension Cord
6. Forms and Support Documents Folder

### **IV. Handling of the VID I Kit**

1. Who is a “*handler*”: A handler is any person authorized to possess, deploy, and operate the VID I Kit. Concurrently, the handler assumes full responsibility over the transportation and operation of the kit from turn-over to him/her to the turn-over to the next handler or return to the official storage place of the kit.
2. Duty and standard of care: The handler is expected to handle the VID I kit with reasonable care. In other words, the handler must take care of the kit in a manner that is expected of an ordinary, reasonable, and prudent person under the same circumstances.

### **V. Key Roles in an Interview**

In every interview, there are at least three persons who ought to be present in the interview room:

1. The Interviewer
2. The Interviewee/s
3. The Social Worker

No interview must start without the three persons present.

### **VI. The Interview Room**

The VID I Kit is meant to be mobile – inevitably, it will be used in areas where there are no readily-available video interview rooms. The handler must be prepared to identify such a room and make it a child- and interview- friendly environment. The following tips can be taken into consideration:

1. Coordinate beforehand: During the briefing, coordinate as soon as possible as to the identification and preparation of an interview space.
2. Minimum standards: The interview space must at least be in a private and enclosed room that is well-ventilated and well-lit. There must be minimal noise and foot traffic in the vicinity, in order to accommodate the technical needs of a clear video recording.
3. Neutral and objective: A child-friendly interview room is both physically and psychologically safe. Thus, it must be neutral so that it does not offend children coming from diverse cultural and personal backgrounds. It must be objective -- avoiding artwork of a fantasy nature which could encourage imaginative thinking and thus potentially affect the quality of the child’s disclosure.

## VII. Setting Up

The interview room will always differ, depending on what is available on-site. The room's characteristics – its size, lighting, ventilation, and location – will always be the primary consideration in setting up the VIDI kit. In any case, the following general principles must be borne in mind:

1. The video camera and tripod must be positioned in a non-intrusive way.
2. The camera must be near enough to absorb the voices of the interviewer and interviewee. (Note: The camera has a built-in microphone which automatically absorbs the sounds produced by the images captured.)
3. The camera must be far enough to capture all of the persons in the room (the interviewer, the interviewee, and the child).
4. The room ought to be as quiet as possible. Intrusive sounds and noises must be blocked. (e.g. turn off the aircon if it is too loud)
5. The room must be well-lit. A reasonable standard is the recognizability of the persons included in the interview.

## VIII. Conduct During Interview Proper

Upon ensuring that the interview room is properly set-up and the interviewer, social worker, and interviewee are ready, the handler shall leave the room. He/she must not be captured in the video recording at any given moment and will avoid interrupting the interview as soon as it starts.

To provide support, the handler must remain within the vicinity, making sure that the interviewer is well-aware of his/her location. He/she must be readily available within the entire duration of the interview to provide any necessary assistance.

Upon the conclusion of the interview, the handler must be prepared to assist the interviewer in transferring and reproducing copies of the video files and wrapping up the equipment.

## IX. Transfer and Reproduction of the Video Files

Once the interview is finished, the handler shall assist the interviewer in the transfer of the video files from the camera to the laptop. Please note that this should be accomplished first before packing up the video equipment.

If feasible, another representative (law enforcer or social worker) must be present to witness the process of transferring and reproducing the files. The foregoing requirement is for purposes of establishing the integrity and chain of custody over the video files. The following steps may be observed:

### *Transferring from video camera to laptop*

1. Eject the SD card from the video camera.
2. Insert the SD card into its adapter (a flat rectangular device).
3. Turn on the laptop.
4. Insert the SD card adapter into the laptop's SD card reader and wait for the laptop to read the SD card, after which the files are ready for copying into the laptop.
5. Create a folder on the laptop's Desktop and identify it with a name (e.g. Video Interview DDMMYY). In the event of multiple interviews, it is best to create sub-folders properly identified with each interviewee's nickname or any other name (e.g. Victim 1, Victim 2, etc.).
6. Copy then Paste the video files from the SD Card to the correct folder/s on the laptop. Make sure it is not Cut, as that would effectively delete the video files from the SD Card. Avoid this as much as possible.
7. Eject the SD card from the laptop.

### *Reproducing copies of the video file/s*

1. Insert the USB flash drive into the laptop's USB port. Wait for the laptop to read/install the USB flash drive, after which the USB is ready to store copies of the video files.
2. Copy then Paste the folder containing the video files from the laptop's desktop to the USB flash drive. Make sure it is not Cut, as that would effectively delete the video files. Avoid this at this point as much as possible.
3. Eject the USB flash drive from the laptop.
4. Repeat for every USB flash drive.
5. Best practice is to reproduce copies into two (2) USB flash drives: one for the law enforcement officer's copy and one for the prosecutor.
6. Upon completion of the reproduction process, permanently delete the video files on the laptop. (press shift + delete)
7. Properly turn off the laptop.

### **X. Turn Over of USB Flash Drives**

The USB Flash Drives containing copies of the video files will be turned over to the interviewer.

Upon turn-over of the USB flash drives, have the receiver sign an Acknowledgment Receipt specifying the (1) name of the person turning over, (2) name and signature of the receiver, (3) technical details, (4) number (how many), and (5) purpose of the flash drives being turned over.

### **XI. Wrapping Up**

Allow the representative/s to pack-up the VID I kit if the circumstances allow. However, the handler must closely supervise to ensure that all components of the kit are secured.

### **XII. Tips for the Interviewer**

1. Rapport building is key to a smooth interview. Prior to recording, take some time to establish rapport with the child through informal conversations unrelated to the circumstances involving the disclosure sought. Even prior to entering the interview room, the interviewer can already spend some time with the interviewee through play or sharing a meal.
2. Do not forget to state the time, date, and location stamp at the beginning and end of the interview.
3. Once the recording has started, avoid stopping until the entire interview is completed. It must be one, long, continuous shot.
4. Breaks during interviews are allowed. In case of breaks, continue the recording. Provide the date and time stamps before and after a break.
5. To establish the fact that there is no other person in room aside from the interviewer, interviewees, and social worker, pan the camera around the room (see interview guide for more details).
6. When setting up the room, anticipate the child's needs. Water bottles, snacks, and little toys can be provided in the room, if available.

# Annex G

## IJM'S CHILD-FRIENDLY SPACES RESEARCH: ABSTRACT

### **Creating Child Friendly Spaces for Video In-Depth Interviews:** *A Research Project In Support of Child Protective Court-Admissible Interviews*

Most online sexual exploitation of children (OSEC) cases require some form of victim interviews as part of the post-rescue or prosecution stages. This study explores how child friendly spaces (CFS) can reduce trauma for OSEC survivors by making theoretical alternatives to victim witness testimony more practicable and child-protective. Specifically, it explores how responders can create a temporary child friendly space so that a Videotaped In-Depth Disclosure Interviews (VIDI) can take place in a way that upholds the best interests of the child.

Due to the lack of a CFS definition within the OSEC context, the study used a working definition: “a child friendly space operates with the objective to provide comfort and security in a time of vulnerability.” The study utilized a qualitative analysis of six semi-structured interviews with key informants possessing casework expertise in law enforcement, OSEC victim aftercare, medicine, and pediatrics.

Upon analysis, personnel, physical space, and accessories emerged as the three dimensions of a child friendly space.

Key findings were: (1) trauma-informed personnel are key elements of a child friendly space, (2) privacy is critical, and can be increased with accessible tools, (3) neutral colors and simple, minimal toys are preferred. Physical space and accessories provide atmospheric benefits, while trauma-informed care ensures information, choice, and agency are provided to the child.

Applying these principles to OSEC operations, the idea of transitional child friendly spaces – temporary zones of comfort and security – appear feasible, with the creative use of portable gear. Blankets, pillows, dividers, simple toys, combined with trauma-informed care, may spell the difference between a disempowered child and a child afforded agency, voice, power, and dignity.

Immediate next steps include casework application through a CFS kit, and subsequent refinement as responders learn how to best protect children in the varied scenarios of an OSEC rescue. Future research pathways include exploring more perspectives, including the survivor voice.

# Annex H

## IJM'S VIDI INTERVIEWER'S GUIDE

### CIRCUMSTANCE SURROUNDING THE VIDEO-RECORDING

**Interviewer:** This interview right now is conducted with the consent of everyone who is present here. The time of the interview is [TIME], [DATE]. This interview is held in [VENUE].

*(Kini nga interbyu karon atong gi-record nga adunay pagtugot sa tanang ania dinhi. Ang oras nato karon alas [ORAS], [PETSAS]. Kini nga interbyu gihimo sa [VENUE].)*

Only three persons are present inside the room right now. [Pans the camera around the room].

*(Tulo ra ka tawo ang naa sulod sa kwarto karon. [Pans the camera around the room].)*

### INTRODUCTION OF ATTENDEES:

**Interviewer:** I am introducing the people/persons who are present here right now.

*(Akong ipaila-ila ang mga tawo nga nitambong karon:)*

**Interviewer:** I am [NAME]. I am a/an [POSITION] in [ORGANIZATION]. I am the one conducting the interview of [NAME OF CHILD] right now.

*(Ako si [NAME]. Ako usa ka [POSITION] sa [ORGANIZATION]. Ako ang mang-conduct sa interview ni [NAME OF CHILD] karon.)*

**Child:** I am [NAME], born on [BIRTHDAY], [AGE] years old.

*(Ako si [NAME], natawo pag [Birthdate], [AGE] years old.)*

**Social Worker:** I am [NAME], I will be assisting [NAME OF CHILD] in this interview.

*(Ako si [NAME]. Ako ang mu-assist ni [NAME OF CHILD] sa interview.)*

**Interviewer:**

[NAME OF CHILD], do you consent that we will record this interview?

*([NAME OF CHILD], ni-uyon ka ba nga e-record nako kini nga interbyu?)*

### LAYING OF GROUND RULES AND TRUTH/LIE TEST:

**Interviewer:** [NAME OF CHILD], this recorded interview will not be broadcasted on TV, radio or newspaper. The viewers of this interview are only the persons who are willing to help you.

*([NAME OF CHILD], kani nga pag-record ani nga interbyu dili igasibya sa TV, radyo o newspaper. Ang makakita ani nga interbyu mao lamang ang mga tawo nga buot mutabang nimo.)*

**Interviewer:** There is no wrong answer as long as it is the truth. Do you understand what is “truth”? For example, I will ask you, “what is your name?” then you will answer me that you are [ANOTHER PERSON’S NAME], are you telling the truth?

*(Walay sayop nga tubag basta kani tinood. Kasabot ka unsa nang tinood? Pananglitan, mangutana ko nimo, “Unsa imong pangalan?” Dayon, motubag ka nga si [another person’s name] ka, nagsulti ba ka sa tinood?)*

**Child:** No.

*(Wala.)*

**Interviewer:** But if you answer me that you are [NAME OF CHILD], are you telling the truth?

*(Apan kung motubag ka nga “ako si [NAME OF CHILD]”, nagsulti ba ka sa tinood?)*

**Child:** Yes.

*(Oo.)*

**Interviewer:** If there is something in my question that you do not understand, you can say that I don't understand or you can just ask me. You can also ask me to repeat the question if you were not able to hear it or you were not able to hear it clearly.

*(Kung naa kay dili masabtan sa akong pangutana, puedi ra ka moingon wala ko kasabot o puedi pud ka mangutana nako. Puedi ra pud nimo ipabalik ang pangutana kung wala nimo ni madungog o maklaro pagdungog.)*

**Interviewer:** We will have a break after \_\_\_\_\_ to ask also my companions if they have something to ask to you. We can also have a break if you want to eat, to rest or to go to the CR. Just tell me.

*(Mo-break ta human sa tunga o usa ka oras para mangutana ko sa akong mga kauban kung naa ba pud sila gusto ipapangutana nimo. Puedi pud ta mo-break kung gusto ka mokaon, mopahulay o moadto sa CR. Ingna lang ko.)*

## VOLUNTARINESS/CONSENT:

**Interviewer:** Are you willing to tell the truth as response to my questions?

*(Andam ba pa nga musulti sa tinood isip tubag sa akong mga pangutana?)*

**Interviewer:** Are you afraid right now? Is there someone who forced you to agree to be interviewed?

*(Nahadlok ba ka karon? Naay nagpugos nimo para musugot para magpa-interview?)*

### Identity of the child

- Name
- Age, birthdate
- Address
- Parents

### Identity of suspected perpetrator

- Name of suspected perp
- Relation
- What she calls the suspected perp

### Exploitation by suspected perp

- How suspected perp introduce her or groomed her for exploitation
- What suspected perp tells her about posing before the camera
- Any consideration/ promises/ payment that suspected perp gives her in exchange for posing before the camera
- Description of the house/ room where the exploitation happens, equipment and gadgets used
  - Specific instances that she was asked to pose nude by suspected perp, acts of exploitation, usual time of day
  - How often
  - Were there any recent incidents
  - Describe the room, sex/toys, gadgets, equipment used
  - Description of what she sees on the screen- people, etc
  - Instructions given by suspected perp, specific acts done by suspected perp
  - Positions and poses, acts she is told to perform
  - People present – who are assisting suspected perp
  - Other victims she witnessed posing nude?

### Exploitation of other victims by suspected perp

- Identify of other victims
- Acts done by suspected perps to other victims

#### INTERVIEW BREAK:

**Interviewer:** We will have a break. The time now is [TIME], [DATE].  
(*Mo-break sa ta. Ang oras nato karon alas [ORAS], [PETSAS].*)

#### INTERVIEW RESUMES:

**Interviewer:** We will continue this interview. The time now is [TIME], [DATE]. It is still the [NUMBER OF PERSONS INSIDE THE ROOM] of us inside the room right now. [Pans the camera around the room].  
(*Atong padayonon ang atong interbyu. Ang oras nato karon alas [ORAS], [PETSAS]. Kita ra gihapong tulo [Number of Persons Inside the Room] ang naa sulod sa kwarto karon. [Pans the camera around the room].*)

#### CLOSING THE INTERVIEW

**Interviewer:** Do you want to say something?  
(*Aduna ka pa ba'y gustong isulti?*)

**Interviewer:** Do you want to change something in what you have told / narrate to us? Why are you changing it?  
(*Aduna ka bay gustong ilisdan sa imong gipangsaysay? Ngano man?*)

**Interviewer:** We are going to end this interview now at [TIME] and [DATE].  
(*Ato nang tapuson kini nga interbyu sa [ORAS] ug petsa [DATE].*)



# Annex I

## SAMPLE JOINT AFFIDAVITS OF CHILD FORENSIC INTERVIEWERS

Republic of the Philippines ]  
\_\_\_\_\_ ] S.S.

### JOINT AFFIDAVIT OF INTERVIEWERS

We, \_\_\_\_\_ and \_\_\_\_\_ of legal age and Filipino under oath, hereby depose and say:

**1. Q: What is your occupation?**

A: I, \_\_\_\_\_, is a police officer assigned at the \_\_\_\_\_.

I, \_\_\_\_\_, is a social worker assigned at \_\_\_\_\_ under the Department of Social Welfare and Development, Region \_\_\_\_\_.

We are duly trained representatives of the law enforcement and child protective services [multidisciplinary team (*choose if not part of either LE or CPS*)], respectively, in situations where child abuse is suspected so as to determine whether child abuse occurred pursuant to Section 29 (b) of the Rules of Examination of Child Witness.

**2. Q: Where were you on [date] between [time]?**

A: [Place of interview]

**3. Q: What were you doing at [place of interview]?**

A: We conducted a [videotaped/audiotaped] in-depth investigative or disclosure interview with the child, [name of child], inside the interview room at [place of interview].

**4. Q: Who is [name of child]?**

A: [name of child] is one of the children who was turned over to DSWD for protective custody after the [law enforcement agency] conducted an entrapment and rescue operation last [date] at [place of operation]. Social workers brought [name of child] to [place of interview] for processing and interview.

**5. Q: How old is [name of child]?**

A: [age and date of birth]

**6. Q: How did you conduct the videotaped in-depth investigative or disclosure interview?**

A: We held the interview inside the interview room at [place of interview] where only [names of interviewers], and the child, [name of child] were present. A video recorder/camera is set up to capture the entire interview from start to finish.

*In the case of mobile VIDI kit:*

I, [name of interviewer who operated video camera], turned on the video camera inside the room.

*In the case of in-facility VIDI equipment:*

[Name of video operator] was the one operating the video recording equipment in the observation room adjacent to the interview room.

I, [name of social worker], was the one who assisted [name of child]. We told [name of child] to tell the truth. We started the interview at around [start time] and ended at [end time].

The interview was conducted in [name of language/dialect], a language known and understood by [name of child].

**7. Q: What relevant information did [name of child] disclose to you during the videotaped interview?**

A: During the interview, [name of child] made the following disclosures:

*[Relevant information to support case filing Description of abuse]*

- 7.1. Her parents' name are [name of mother and father] and they work as [occupation. Include other personal circumstances of the child.]
- 7.2. After showing her a photo, she identified herself. The photo was taken by her mother using her cellphone. She was 8 years old at that time.
- 7.3. After showing her another photo, she identified the siblings in the photo. It was taken by her mother using the same cellphone. Her siblings were 10 and 9 at that time.
- 7.4. She disclosed that her mother is always on the computer chatting with a foreigner.
- 7.5. When she was 8, her mother told her to say "hi" to a foreigner in front of the computer. Her mother then told her to take off her clothes and taught her to pose in front of the camera.
- 7.6. She felt afraid, but her mother told her she would give her money after.
- 7.7. This was repeated multiple times with different foreigners until yesterday, when they were brought here by the police and social workers.
- 7.8. Yesterday, she was at home with her mother and two other siblings. Her mother was talking to a foreigner. Then the police came and took their mother. The child together with her siblings were with the social workers.
- 7.9 Identification of Suspect (photo-board)

**8. Q: After the interview, what happened next?**

A:

*In case of mobile VIDI kit:*

I [name of law enforcement officer] extracted the video file of the recorded interview from the recording device to the computer/laptop and saved in a CD/USB with file name [name of file].

*In the case of in-facility VIDI equipment:*

[Name of video operator] extracted the video file of the recorded interview from the recording device to the computer/laptop and saved it in a CD/USB with file name [name of file].

**9. Q: Please describe your observations of [name of child].** A: At the time of processing, [name of child] (e.g. demeanor, behavior, feelings in relation to potential psychological injury).

10. We are executing this affidavit pursuant to Section 29, Rules of Examination of Child Witness, to attest that the foregoing statements are a faithful summary of the relevant disclosures of [name of child] and for whatever legal purpose this may serve.

IN WITNESS WHEREOF, we have hereunto affixed my signature this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, Philippines.

**Affiant**

**Affiant**

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, Philippines. I hereby certify that I have personally examined the affiants and I am fully convinced that they understood this statement and that they executed the same freely and voluntarily.

---

Republic of the Philippines }  
City of \_\_\_\_\_ }

**PINAGSAMANG SINUMPAANG SALAYSAY  
(JOINT AFFIDAVIT)**

Kami, \_\_\_\_\_ at \_\_\_\_\_, nasa wastong gulang at Filipino, matapos makapanumpa ng naayon sa batas ay nagsasalaysay ng mga sumusunod:

**1. Q: Ano ang iyong trabaho?**

A: Ako, si \_\_\_\_\_, ay isang pulis at naka-assign sa \_\_\_\_\_. Ako ay ay naatasan bilang imbestigador ng kaso na ito.

A: Ako, si \_\_\_\_\_, ay isang social worker na naka-assign sa \_\_\_\_\_.

**2. Q: Nasaan ka nung umaga ng \_\_\_\_\_?**

A: Kami ay nasa Survivor Center.

**3. Q: Ano ang ginawa mo sa Survivor Center?**

A: Ininterview namin si \_\_\_\_\_, isang minor de edad, gamit ang videotape camera recorder.

**4. Q: Sino si \_\_\_\_\_?**

A: Siya ang na-rescue namin pagkaraan ng entrapment at rescue operation na ginawa noong \_\_\_\_\_ ng \_\_\_\_\_ sa \_\_\_\_\_ laban sa suspect na si \_\_\_\_\_. Dinala ng mga social workers ang bata sa Survivor Center para sa processing at interview.

**5. Q: Ilang taon na si \_\_\_\_\_?**

A: \_\_\_\_\_

**6. Q: Paano nyo ginawa yung videotaped forensic interview?**

A: Gumamit kami ng video camera recorder para makuha yung interview. Ginawa namin yung interview sa isa sa mga kwarto ng Survivor Center.

Ako, si \_\_\_\_\_, and nag-bukas ng video camera sa loob ng kwarto. Pagkatapos, nagpakilala ako. Pinakilala ko rin ang mga tao na nasa loob ng kwarto. Pinaliwanag ko ang layunin ng videotaped interview ng bata at kung ano ang mangyayari habang may interview. Sinigurado ko rin na may kakayanan ang bata na magsabi ng katotohanan. Pagtapos noon, nagsimula na akong magtanong. Nagsimula kami sa oras na \_\_\_\_\_ at natapos sa oras na \_\_\_\_\_.

**7. Q: Ano ang mga impormasyon na ibinunyag ni \_\_\_\_\_ sa iyo sa interview?**

A: Sa interview, isiniwalat ni \_\_\_\_\_ ng mga susunod na impormasyon at pangyayari:

7.1

7.2

7.3

Ang affidavit na ito ay isinasagawa upang manumpa sa katotohanan ng mga pahayag na ibinigay namin dito at alinsunod sa Rule on Examination of a Child Witness, at sa alin pa mang legal na layunin kung para saan ito ay kakailanganin.

Bilang pagpapatunay, kami ay lumalagda na makikita sa ibabaw ng nakatatak naming pangalan nitong ika- \_\_\_\_  
\_\_\_\_ng 20\_\_, dito sa lungsod ng \_\_\_\_\_, Philippines.

\_\_\_\_\_  
Nagsasalaysay (Police)

\_\_\_\_\_  
Nagsasalaysay (Social Worker)

# Annex J

## SAMPLE SUPPLEMENTAL AFFIDAVIT OF INTERVIEWERS

Republic of the Philippines ]

City of \_\_\_\_\_.]<sup>ss</sup>

x-----x

### SUPPLEMENTAL JOINT AFFIDAVIT OF INTERVIEWERS

We, \_\_\_\_\_ of legal age, Filipino, police officer assigned at the \_\_\_\_\_  
\_\_\_\_\_, and \_\_\_\_\_ likewise of legal age, Filipino, Social Worker of \_\_\_\_\_  
\_\_\_\_\_ Region \_\_\_\_\_, hereby depose and say:

1. Q: Where were you on \_\_\_\_\_, 20\_\_\_\_ at around  
\_\_\_\_\_AM?

A: We were both at the Forensic Room of Women and Children Center of Department of Social Welfare & Development Region VII (DSWD7).

2. Q: What were you doing then at Forensic Room of  
Women and Children Center at DSWD7?

A: We conducted a follow-up videotape in-depth interview with \_\_\_\_\_.

3. Q: How old is \_\_\_\_\_?

A: \_\_\_\_\_ is \_\_\_\_ years old. He was born on \_\_\_\_\_.

4. Q: How did you conduct the videotape in-depth  
interview?

A: We held the interview inside the Forensic Interview at Children and Women Center of Department of Social Welfare & Development Region VII (DSWD7). A total of three (3) of us were present in the room: myself, \_\_\_\_\_, and the minor, \_\_\_\_\_. A video recording was set up to capture the entire interview from start to finish.

5. Q: What information did \_\_\_\_\_  
disclose to you during the follow-up videotape in-depth interview?

A: During the interview, \_\_\_\_\_ made the following disclosures:

5.1

5.2

5.3

5.4

5.5

5.6

We are executing this affidavit to attest to the truthfulness of the foregoing statements and for whatever legal purpose this may serve.

**IN WITNESS WHEREOF**, we have hereunto affixed our signatures this \_\_\_\_ of \_\_\_\_ 20\_\_\_\_ at \_\_\_\_  
\_\_\_\_City, Philippines.

---

*Affiant*  
PNP ID No.  
Valid Until:

---

*Affiant*  
PRC ID No.  
Valid Until:

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_ of \_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ City, \_\_\_\_\_, Philippines. I hereby certify that I have personally examined the affiants and I am fully convinced that they understood this statement and that they executed the same freely and voluntarily.

# Annex K

## MOTION TO ESTABLISH THE CHILD WITNESS UNAVAILABLE AND ADMIT VIDI

REPUBLIC OF THE PHILIPPINES  
REGIONAL TRIAL COURT  
\_\_\_\_\_ JUDICIAL REGION  
BRANCH \_\_\_\_\_  
\_\_\_\_\_ CITY

PEOPLE OF THE PHILIPPINES,

Plaintiff,

Crim. Case Nos.

\_\_\_\_\_ &  
\_\_\_\_\_

-versus-

\_\_\_\_\_,  
Respondent.

For: Violation under Section 4(a) in  
relation to Section 6(a) & (d) and Sec. 10  
of R.A. 9208 as expanded by R.A. 10364

x-----/

### MOTION TO ESTABLISH CHILD VICTIM AS UNAVAILABLE TO TESTIFY IN COURT AND MOTION TO ADMIT VIDEOTAPE IN-DEPTH INTERVIEW IN LIEU OF CHILD TESTIMONY

THE PROSECUTION, unto this Honorable court, respectfully states that:

#### Background

1. Last January \_\_\_\_, \_\_\_\_, the Women and Children Protection Center-Visayas Field Unit (WCPC-VFU) conducted an entrapment and rescue operation at the residence of the accused \_\_\_\_\_ (the “Accused”), which resulted in the arrest of the Accused and the rescue of minor victim, \_\_\_\_\_ (the “Child Witness”).
2. While in the protective custody of the Crisis Intervention Unit (CIU) of the Department of Social Welfare and Development Region 7 (DSWD 7), the Child Witness participated in a properly taken videotape in-depth interview conducted by \_\_\_\_\_, a police officer with WCPC-VFU.

#### Section 29 of the Rule on Examination of a Child Witness

3. When considering the construction of the Rule on Examination of a Child Witness (the “Rule”), it is imperative to keep in mind Sec. 3 of the Rule, which requires the Rule be “liberally construed to uphold the best interest of the child”. In turn, “best interest of the child” is defined in Sec. 4(g) as:  
the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the child and most encouraging to his physical, psychological, and emotional development. It also means the **least detrimental available alternative** for safeguarding the growth and development of the child (emphasis added).
4. Bearing in mind these considerations, the court may, under Sec. 29 of the Rule, admit videotape in-depth investigative or disclosure interviews of a child witness as evidence under the following conditions:
  - a. the child witness is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological injury;



- b. the interview of the child was conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services in situations where child abuse is suspected so as to determine whether child abuse occurred; and
  - c. the party offering the videotape or audiotape must prove that the proper procedures were followed under Sec. 29(c) of the Rule.<sup>77</sup>
5. In this case, the individual who conducted the interview of the Child Witness, \_\_\_\_\_, is a representative of law enforcement, who is available at trial for examination by any party in accordance with Sec. 29 of the Rule.

*The Child Witness is Unavailable to Testify*

6. The Prosecution submits that the Child Witness is unable to testify in court on the grounds that requiring her to do so would expose her to severe psychological injury pursuant to Sec. 28(c)(1) of the Rule. While it is acknowledged that the term “severe psychological injury” is undefined in Philippine jurisprudence, we assert that there is a substantial likelihood, established by expert testimony as well as existing academic research, that the Child Witness would suffer severe psychological injury and emotional trauma from testifying against a family member in an intimidating courtroom setting. This is compounded by the fact that the Child Witness is 11 years old, while the Accused is her eldest sibling who had one time exerted substantial authority over the Child Witness.
7. Furthermore, a global meta-analysis of recorded child abuse cases showed that seventy (70) percent of abused children were likely to experience psychological injury as a result of their abuse.<sup>78</sup> Research by Intebi (1998) indicates that child sexual abuse is linked to severe psychological injury. Furthermore, numerous empirical studies have established a relationship between child sexual abuse and psychological injury.<sup>79</sup>
8. Based on the research outlined above and considering the best interests of the Child Witness in this case, it is respectfully prayed that the Honourable Court grants a Motion declaring that the Child Witness is unavailable to testify in court.

*The Videotape In-Depth Interview Should Be Admitted*

9. Having established that the Child Witness is unavailable to testify in Court in accordance with Sec. 28(c) of Rule, the Prosecution requests the Court to admit the videotape in-depth interview as testimonial evidence in lieu of the Child Witness’s live testimony.
10. The procedure for recording and preserving the videotape in-depth interview has been followed in accordance to Sec. 29(c) of the Rule in that:
  - a. the videotape discloses the identity of all individuals present and at all times include their images and voices;
  - b. there are no leading questions posed or improper suggestions made to the Child Witness;
  - c. the interview was captured successfully by the recording device;
  - d. the individual operating the recording device was competent to use it; and
  - e. the videotape is authentic, correct, and duly preserved.
11. In addition to the research outlined in the previous section, there is an abundance of literature demonstrating the dangers of multiple interviewers repeatedly questioning a child or conducting duplicative interviews relating to the abuse.<sup>80</sup> It is the Prosecution’s view that the admission of the videotape in-depth interview is the least detrimental available alternative for safeguarding the growth and development of the Child Witness in consideration of the best interests of the Child Witness under Secs. 3 and 4(g) of the Rule.<sup>81</sup>
12. Based on the admissibility of the videotape in-depth interview and the risk of exposing the Child Witness to severe psychological injury by requiring her to testify against a family member in court,

<sup>77</sup> A.M. NO. 00-4-07-SC.

<sup>78</sup> Amado, Arce, Herraiz Psychological Injury in Victims of Child Abuse: A Meta-Analytic Review, *Psychosocial Intervention* 24 (2015) 49-62.

<sup>79</sup> Jumper, 1995; Paolucci, Genuis, & Violato, 2001.

<sup>80</sup> Ceci and Bruck, 1995; Fivush, Peterson, and Schwarzmuller, 2002; Malloy and Quas, 2009; Poole and Lamb, 1998; Poole and Lindsay, 2002.

<sup>81</sup> In accordance with the definition of “Best Interests of the Child” in Section 4 (g) of the Rules.

the Prosecution respectfully prays that the Honourable Court grants a further Motion to admit the videotape in-depth interview in lieu of the Child Witness's live testimony in this case.

**PRAYER**

IN VIEW OF THE FOREGOING, it is most respectfully prayed that this Honourable Court would grant the following orders:

1. that the Child Witness is unavailable to testify in court;
2. that the videotape in-depth interview of the Child Witness be admitted as testimonial evidence in lieu of her live testimony; and
3. other relief and remedies deemed just and equitable under the premises are likewise prayed for.

RESPECTFULLY SUBMITTED.

\_\_\_\_\_ City, Philippines, [insert date and month], [year]

[Name]  
[Position]  
[Organization]  
[Office Address]  
Roll of Attorneys No. \_\_\_\_\_  
PTR No. \_\_\_\_\_  
IBP No. \_\_\_\_\_  
MCLE Compliance No. \_\_\_\_\_

*With my conformity:*

\_\_\_\_\_  
*Resident Prosecutor,* \_\_\_\_\_  
Office of the \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ City



**IJM**