



DEPARTMENT OF PSYCHOLOGY

# Interviewing Child Witnesses

Proceedings of the 2019 Theoretical Course

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In collaboration with



# Preface

The PhD course *Interviewing child witnesses* (6 higher education credits) offers an introduction to child interviewing in forensic settings. The first part of these proceedings focus on different interviewing techniques. The PhD students were asked to choose and study one established legal interrogation technique and explain why (or why not) the technique is suitable for children of different ages. The students were also asked to explain for what purposes the technique is suitable (e.g., for child plaintiffs, witnesses or child suspects). The second part of these proceedings focuses on children in the legal system worldwide. The students were to give an oral presentation and a brief written account of the situation for children (as suspects, as witnesses, and as plaintiffs) in the legal system in their home country.

The course is mandatory for those PhD students enrolled in the House of Legal Psychology Erasmus Mundus Joint Doctorate Programme (EMJD-LP) and optional for Swedish PhD students with an interest in child forensic interviewing. For previous proceedings, please see the following links:

2013: [http://psy.gu.se/digitalAssets/1471/1471694\\_interviewing-child-witnesses-fall-2013.pdf](http://psy.gu.se/digitalAssets/1471/1471694_interviewing-child-witnesses-fall-2013.pdf)

2016: [https://psy.gu.se/digitalAssets/1661/1661644\\_interviewing-child-witnesses.web.pdf](https://psy.gu.se/digitalAssets/1661/1661644_interviewing-child-witnesses.web.pdf)

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*March 2020*

## Citation

Landström, S., Ernberg, E (Eds.). (2020). *Interviewing Child Witnesses. Proceedings of the 2019 Theoretical Course*. Department of Psychology, University of Gothenburg.

# Content

Part 1: Legal Child Interviewing Techniques .....	4
Interviewing Child Witnesses: The Cognitive Interview	
<i>Nkansah Anakwah</i> .....	5
The Folly of Youth: Juvenile Vulnerability and Criminal Interrogation Using the Reid Technique	
<i>Jennifer Kamorowski</i> .....	9
The Use of the Dutch Interrogation Manual in Child Suspect Interviews	
<i>Enide Maegherman</i> .....	13
The NICHD Protocol: Benefits and Routes for Future Research	
<i>Carey Marr</i> .....	18
The NICHD Investigative Interview Protocol: The Effectiveness in Police Context	
<i>Minhwan Jang</i> .....	23
 Part 2: Children in the Legal System .....	 28
Children and the Legal System in Ghana	
<i>Nkansah Anakwah</i> .....	29
Juveniles in the U.S. Criminal Legal System	
<i>Jennifer Kamorowski</i> .....	31
Child Interviewing in The Netherlands	
<i>Enide Maegherman</i> .....	33
Children in the Legal System in Australia	
<i>Carey Marr</i> .....	35
Children in the South Korean Legal System	
<i>Minhwan Jang</i> .....	37

# Part 1:

## Legal Child Interviewing Techniques

# Interviewing Child Witnesses: The Cognitive Interview

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Sometimes investigators have to rely on children for detailed information about a crime, as they may be the victim or the only witness to the crime. While children can be reliable witnesses, they have a fragile memory, compared with adults (Aldridge, 1999; Brainerd, Kingma, & Howe, 1985). Hence, it is appropriate that children are offered the needed support in retrieving as much details as possible. Detailed and accurate information is crucial in legal proceedings as they help establish the facts of a case and can provide valuable leads. Incomplete details can impede efforts of criminal justice professionals in resolving a crime. Therefore, any interview technique used with children should be able to support children in eliciting as much detail as possible. One of the interviewing tools that have been shown to accomplish this is the Cognitive Interview (CI). In this paper, I discuss the Cognitive Interview (CI) and its use with child interviewees. I first give a general overview of the CI and argue why the protocol can be used with children.

## An Overview of the Cognitive Interview

The Cognitive Interview (CI) was developed to enhance information recall by witnesses and victims of crime events (Fisher, Geiselman, & Amador, 1989). The technique is grounded on two principles of memory – encoding specificity (Tulving & Thomson, 1973), and multi-trace theory (Bower, 1967). According to the encoding specificity principle, if cues available during retrieval match those that were present during encoding, it enhances the retrieval of stored information. Thus, from the encoding specificity principle, providing witnesses or victims cues that were present at the time of a crime event will facilitate the retrieval of detailed information about the event. The multi-trace theory suggests that memories of an event that cannot be accessed using a particular retrieval probe can be accessed by another probe. Thus, according to this principle, there are multiple ways that memories about a crime event can be retrieved from witnesses and victims. Consequently, the CI was developed to have components that draw on these memory principles. There are four components in all, that provides cues to enhance the quality of information retrieved from witnesses and victim.

The first component of the CI is Context Reinstatement, which is based on the encoding specificity principle (Tulving & Thomson, 1973). Under this component, the witness or victim is asked by the interviewer to reinstate the external as well as internal context at the time of the event (Fisher et al., 1989). Thus, the interviewee is asked to create a mental image of the physical setting (external), as well as his or her state of mind (internal) at the time of the event. This strategy, which is based on the encoding specificity principle, is aimed at triggering cues of the experienced event to facilitate recall.

Another component of the CI is the instruction to Report Everything. With this, the interviewee is asked to report anything he or she remembers about the event, no matter how small or significant they deem it to be. Reporting any part of the event that comes to mind serves as a cue or trigger other more relevant aspects of the event (Milne & Bull, 2002).

The next two components of the CI – Change Perspective and Change Order – operates on the multi-trace principle (Bower, 1967). Witnesses or victims interviewed under the Change Order component are requested to report in reverse order. For example, after recounting the event from beginning to end, the interviewee can be asked to recount it from the end of the event to the beginning. Also, he or she could be asked to recount it from the middle to the end, as well as from the middle to the beginning. With the Change Perspective component, witnesses are requested to report from a variety of perspectives. The interviewee is asked to report the event from the standpoint of another witness who was at the scene. For example, if the interviewee witnessed a robbery in a supermarket, the interviewer may ask the witness to recall the event from the standpoint of the shop assistant. This is

to ensure that, what the witness is not able to recall from his perspective is retrieved using another perspective or trace.

### Children and The Cognitive Interview

The CI has been demonstrated to increase the amount of correct details reported by children in forensic interviews (El Asam & Samara, 2015). Mnemonics such as context reinstatement and report everything has been particularly effective in enhancing children's correct recall (Priestley, Roberts, & Pipe, 1999; Roome, Towse, & Crespo-Llado, 2019). Priestley et al (1999) found that reinstating cues among 5-7 year-olds led to 40% increase in the amount of correct details reported. Consistent with this finding, Milne and Bull (2003) also found that compared to the Structured Interview, the CI led to the provision of more correct details (without an increase in incorrect details) among children. Even after long retention intervals, the CI is still suitable for use with children. In research by Larson, Granhag & Spjut (2001), 10 – 11-year-old children viewed a video event and were interviewed 24 hours after witnessing the event or after 6 months. For each retention interval, children were interviewed with either the CI or SI. They found that for both retention intervals (24 hours and 6 months), children interviewed with the CI reported more correct details than those interviewed with the SI.

Another reason for the suitability of the CI with children is that it helps inoculate children against the effects of suggestive questions (Holliday, 2003; Holliday & Albon, 2004). Children are more susceptible to suggestive questions compared with adults (Bjorklund et al., 2000; Hjelmsäter, Granhag, Strömwall, & Memon, 2008; Poole & Lindsay, 2001). This has been attributed to the immature functioning of the frontal lobe (Schacter, Kagan, & Leichtman, 1995). Thus, care should be taken when interviewing children, to provide them with the best possible support, in guarding against suggestive influences during investigative interviews. Research has demonstrated the utility of the CI over other protocols in inoculating children against suggestive questions. For example in a study by Milne and Bull (2003), 8 – 10-year-old children were shown a video event of a magic show and interviewed about the event, using either SI or the CI. Prior to the interview, the participants had been given suggestive questions. It was revealed that compared to children interviewed with the SI, those who were interviewed with the CI were the most resistant to suggestive questions.

Despite the efficacy of the CI for interviewing children, there have been some concerns. Some researchers have argued that unlike adults, children, especially those below 6 years of age, may not be able to utilize some of the CI instructions effectively (Memon, Meissner, & Fraser, 2010; Milne & Bull, 2002). That is because, research has shown that children have difficulty understanding two of the CI instructions – Change Perspective and Change Order instructions (Saywitz, Geiselman, & Bornstein, 1999). El Asam and Samara (2015) have also argued that although the CI is suitable for children, the use of the Change Order and Change Perspective mnemonics should be reconsidered. Hence, recommendations have been made for these instructions to be refined and adapted for use with children (Memon et al., 2010). However, other research has demonstrated the CI could be more effective when the two instructions are removed altogether (Larsson, Granhag, & Spjut, 2003).

### Conclusion

The CI has been proved to be an effective forensic interviewing tool for children. This is in view of its demonstrated ability to enhance recall and inoculate children against misleading questioning during interviews. Also, compared with other protocols such as the Structured Interview, the CI has been shown to elicit more detailed reports from children. The context reinstatement and report everything instructions have been particularly shown to facilitate retrieval in child interviews. Notwithstanding, the CI will benefit from further development, especially in light of concerns raised about the difficulty for children in comprehending the change order and change perspective instructions.

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# The Folly of Youth: Juvenile Vulnerability and Criminal Interrogation Using the Reid Technique

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In April of 1989, 28-year-old Trisha Meili was jogging in New York City's Central Park when she was brutally beaten, raped, and left for dead. Within a few days, four boys between the ages of 14 and 16 had confessed, and a fifth had made statements implicating himself in this horrific crime (Dwyer, 2019; Storey, 2019). All five were convicted and sentenced to prison despite the fact that their statements did not match details of the crime, nor was there any physical evidence linking them to it. In 2002, the five men – now known as the 'Central Park Five' – were released from prison after Matias Reyes confessed to attacking Meili (Finn, 2019). His confession was corroborated by DNA evidence (Finn, 2019). After the attack on Meili, Reyes went on to rape and murder a woman and commit several other violent and sexual assaults before he was finally arrested on August 5, 1989 (Weinman, 2019).

The 'Central Park Jogger' case is only one of the more notorious and tragic examples of the repercussions when juveniles are pressured to render a false confession. The United States Supreme Court has recognized that "the pressure of custodial interrogation is so immense that it 'can induce a frighteningly high percentage of people to confess to crimes they never committed'" (*J. D. B. v. North Carolina*, 2011 citing *Corley v. United States*, 2009). The Court went on to acknowledge that the risk is even higher when a juvenile is subjected to police interrogation. Juveniles often lack the reasoning and evaluative capacities of adults, which makes them particularly susceptible to the manipulation and pressure frequently employed in accusatorial styles of interrogation (Drizin & Leo, 2004). The most widely known of this type of interrogation is the Reid Technique.

## Criminal Interrogations and The Reid Technique

Police in the United States are generally taught to interrogate adults and juveniles using the same method, and that method is often the Reid Technique (Cleary & Warner, 2016; Gallini, 2019; Reid & Inbau, 2000). The Reid Technique consists of two parts: first is a Behavioral Analysis Interview (BAI) in which the interrogating officer asks non-accusatory questions of the suspect in order to evaluate whether the suspect's behavior seems like that of a guilty person or of an innocent person (Inbau et al., 2013). The second phase is the Reid nine-step interrogation.

The purpose of the BAI is for the interrogator to analyze the suspect's behavior for signs of guilt. Yet research indicates that police are generally no better than laypeople at determining guilt based on behavioral cues (Vrij et al., 2010). In part, this is because behavioral indicators are not reliable in discriminating between liars and truth-tellers (Vrij et al., 2010). Nevertheless, once the interrogating officer believes in the suspect's guilt, the Reid method accommodates no option for the suspect to continue to maintain his innocence. The interrogator then moves to the interrogation phase (Inbau et al., 2013).

The Reid Technique of interrogation uses psychological persuasion intended to obtain a confession from the presumed-guilty suspect (Reid & Inbau, 2000). For example, the interrogating officer will directly accuse the suspect of the crime and reject all efforts of the suspect to deny responsibility. The officer may then offer moral justifications for why the suspect committed the crime and present alternative scenarios of how the crime might have occurred (minimization). Maximization techniques include convincing the suspect they have no way out but to confess. Any self-incriminating response by the suspect will be met with positive reinforcement from the interrogator (John E. Reid & Associates, Inc., n.d.).

The use of these various tactics varies in intensity depending on what the interrogator deems necessary to gain an admission of guilt. Another particularly notable strategy endorsed in the Reid

method is the fabrication of evidence. Police in the United States are permitted to claim they have nonexistent evidence (e.g., hair, DNA, fingerprints, video) in criminal interrogations. Problematically, fabricated evidence is linked to false confessions in real cases and has been shown to induce false confessions in research settings (Gallini, 2019; Kassin, 2014).

When faced with confrontational and manipulative tactics, such as those employed in the Reid Technique, the risk of false confession is substantially increased (Kassin, 2014). When Reid tactics are employed against juveniles, they are especially likely to lead to a false confession because juveniles have a number of developmental limitations that leave them vulnerable to psychological manipulation (Owen-Kostelnik et al., 2006).

### Youth and Susceptibility to False Confessions

The Central Park Five case is not an outlier with respect to false confessions by juveniles. Young people are demonstrably more vulnerable to false confessions in a criminal interrogation (Drizin & Leo, 2004). The lack of judgment development in adolescents makes them more likely to make admissions of guilt (both true and false) in interrogations when compared to adults (Malloy et al., 2014). For example, out of 125 confirmed false confession cases that occurred between 1971 and 2002, nearly one-third of those cases involved juveniles under the age of 18, and about 63% were young adults under the age of 25 (Drizin & Leo, 2004).

In fact, neuroscientific research indicates that the development of the prefrontal cortex does not complete until around the age of 25 (Grisso, 2006; McMullen, 2005). The prefrontal cortex is implicated in inhibiting impulsivity, controlling emotions, and the capacity to make decisions based on planning and consideration of the consequences of one's actions (Grisso, 2006; McMullen, 2005). Therefore, young peoples' ongoing brain development renders them less able to deal with the stresses of police interrogation than adults in a number of ways.

### Youth and Susceptibility to Psychological Manipulation

Juveniles are neurobiologically predisposed to be impulsive, often seeking an immediate reward with little consideration for possible consequences in the future (Owen-Kostelnik et al., 2006). For example, adolescents who have given a false confession commonly report that one reason for doing so was that they believed that if they confessed they would be allowed to go home (Drizin & Leo, 2004). Juveniles are also biologically and psychologically less risk-averse than adults are and less able to understand the potential consequences of confessing to a crime, thereby making them more likely to confess out of fear or despair to try to escape the interrogation setting (McMullen, 2005).

Young people are also susceptible to suggestion in an interrogation (Drizin & Leo, 2004; Redlich & Goodman, 2003) and are more likely to defer to an authority figure's explanation of events, including suggestions of their guilt (McMullen, 2005; Redlich & Goodman, 2003). They are also particularly vulnerable to accusations of guilt combined with the use of false evidence (Redlich & Goodman, 2003). For example, in a laboratory setting, Redlich and Goodman (2003) reported that 78% of 12- to 13-year-olds, 72% of 15- to 16-year-olds, and 59% of young adults made a false confession about causing a computer to crash when they were presented with fabricated evidence against them.

The Reid Technique is premised on psychological manipulation, deceit, fabricated evidence, and high-pressure tactics (Moore & Fitzsimmons, 2011). Young peoples' impulsivity, their lack of consideration for long-term consequences, and their tendency to defer to authority figures help explain why they are especially vulnerable to psychological pressure and manipulation in an interrogation setting. The exceptional risk posed by the use of both overt and subtle psychological manipulation tactics, combined with juveniles' specific vulnerabilities, should stand as evidence against use of the Reid Technique in interrogations of young people. It is precisely the use of high-pressure tactics and youths' underdeveloped decision-making skills that can coalesce to create situations like the Central Park Five case.

## Conclusion

The risk of a false confession when the Reid Technique is used with juveniles is exponentially higher because of their social and developmental vulnerability to psychological pressure, prompting some legal scholars to call for elimination of the Reid Technique in juvenile interrogations altogether (Spierer, 2017). Although some juveniles may appear (and act) like adults, there are some important and fundamental differences between the cognitive abilities of this population as compared to their adult counterparts. Juveniles lack the cognitive capacity and social sophistication to resist psychological manipulation in an interrogation setting, which creates significant doubt about the wisdom of forcing them to do so when so much is at stake. It serves neither the young person, nor society, when they feel compelled to render a shortsighted and ill-advised false confession in order to escape the immediate threat of the criminal interrogation.

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# The Use of the Dutch Interrogation Manual in Child Suspect Interviews

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Children frequently become involved in criminal investigations. Most often they become involved as victims or witnesses, but in some cases, they can also be involved as suspects. In all of these roles, there will usually be an attempt to obtain information from the child. Several researchers have argued that children are able to provide valid information (Goodman & Melinder, 2007; Otgaar, Howe, Merckelbach, & Muris, 2018). Saywitz, Lion, and Goodman (2017) have pointed out that the array of techniques that have been shown to increase accuracy and completeness of a child's report illustrates there is multiple ways to conduct a good interview.

The interviewing strategy used for suspect interviews in the Netherlands will be examined. Although not specifically intended for interviewing child suspects, there is no legal provision to differentiate between juvenile or adult suspects in terms of interrogation (Van Oosterhout & De Vocht, 2015). Although the police academy offers a training for interviewing vulnerable suspects, including juvenile suspects, this training is not a requirement to be able to conduct a suspect interview with a juvenile in practice. Therefore, it is worth investigating what aspects of the Dutch interrogation manual (hereafter: manual) are suitable when interviewing juvenile suspects. This assignment can only address a limited number of factors; the application of the manual to child suspects in practice might be more adaptable to individual circumstances.

There is limited legal protection offered to juveniles below the age of 12: they should be interrogated in the presence of an adult and it should take place in a child-friendly location. However, these requirements are not laid down in statutory law, but are due to instructions from the public prosecution office (Van Oosterhout & De Vocht, 2015). Therefore, for suspects under 12, there are fewer legal safeguards than for children over 12. The manner in which a juvenile suspect is interrogated differs between interrogators, with some officers saying that an interrogation is warranted if a juvenile can commit a crime, and that applying pressure is allowed (Van Oosterhout, 2015).

The suspect interview normally consists of three stages: opening the interview, a person-oriented interview, and a case-oriented interview (Van Amelsvoort & Rispens, 2017). For the case-oriented section of the interview, various methods are described in the manual (e.g. direct stacking method, free statement method). One of these, namely, the scenarios investigating method (SIM, Van Amelsvoort & Rispens, 2017) will be assessed for its suitability for use with children. The three sections of the interview can stretch over multiple interviews over several days.

## Opening Section

During the opening section, the suspect's rights and how the interview will take place are explained. The interviewers should check that the suspect understands that he is a suspect and what rights he has (Van Amelsvoort & Rispens, 2017). That step would be particularly important in young suspects, as they may have more difficulty understanding their rights than adult suspects (Goldstein, Condie, Kalbeitzer, Osman, & Geier, 2003). According to Ludlow and Gutierrez (2014), the development of language continues into middle childhood and even adolescence, meaning young suspects could struggle with understanding their rights. In Van Oosterhout's (2015) research, the juvenile's understanding of their rights was not always checked. In the Netherlands, these rights include the right to talk to a lawyer and to have a lawyer present during the interview, as well as the right to remain silent. The right not to incriminate oneself was not conveyed to the suspect in any of the interviews analysed by Van Oosterhout (2015). If the young suspect does not understand their rights

properly, it is likely to be detrimental to the quality of the information acquired during the interview. Namely, as explained by Redlich (2009), factors such as being impulsive and unaware of long-term consequences place juveniles at risk of making false admissions. That risk is likely bigger if they do not understand their right not to incriminate themselves or do not have a lawyer present. The effect of a lack of understanding may be limited due to some of the other safeguards in place. For example, a minor cannot waive the right to consultation prior to the interview (Art. 488c Section 1, DCCP) or to legal assistance during the interview (Özsüren & De Haas, 2019). A confidant is also allowed to be present during the interview (Openbaar Ministerie, 2017). Therefore, it appears some of the issues concerning the use of the manual with children or juveniles can be overcome with other safeguards.

The manual also emphasises that the interviewer should determine prior to the interview how they will interact with the suspect, e.g., whether or not to convey authority (Van Amelsvoort & Rispens, 2017). The sense of authority conveyed can be of particular importance when interviewing young suspects. Grisso and colleagues (2003) found that 11 to 15 year olds were more compliant with authority than 16 year olds were. In the context of a suspect interview, this presents a risk for young suspects making false admissions. Therefore, when applying the manual to young suspects, a non-authoritative role of the interviewer would be recommended to preserve the quality of the information gained from the suspect.

### Person-oriented Interview

The person-oriented interview has several functions, including finding out more personal information about the suspect, building rapport, and determining the suspect's willingness to make a statement. The information obtained during the person-oriented part of the interview is then used to decide which approach to take during the case-oriented interview. The manual also takes into account that when a suspect has a reduced attention capacity, it needs to be carefully considered whether it is beneficial to have a long person-oriented interview (Van Amelsvoort & Rispens, 2017). Several researchers have found support for the development of increased executive functioning, including attention, into adolescence (Gómez-Perrez & Ostrosky-Solis, 2006; Wartella & Ettema, 1974). Therefore, when interviewing child suspects, it may be advisable to keep the person-oriented interview short, despite the several functions it serves.

Perhaps the most important aspect of the person-oriented interview is the aim of building a working relationship, or rapport, with the suspect. In the manual (Van Amelsvoort & Rispens, 2017), it is mentioned that a suspect will be more willing to give a statement if the contact between the interviewer and the suspect is better. A number of elements that are important for building rapport according to legal psychological literature are also included in the manual (e.g., Vanderhallen & Vervaeke, 2014). These include, among others, active listening, being sincere, and showing empathy. Rapport has been argued to motivate children to provide more extensive and accurate statements (Hershkowitz, 2011). However, when researching rapport, the focus tends to be on interviewing child witnesses or victims (e.g. Price, Ahern, & Lamb, 2016; Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007). Although establishing rapport is commonly regarded as an essential part of a good interview, the research on the efficacy of rapport-building tools, or on adaptations for individual needs and contexts, remains limited (Saywitz, Larson, Hobbs, & Wells, 2015; Sauerland, Brackmann, & Otgaar, 2019). It is difficult to determine what the value of rapport building would be for child suspects. Nevertheless, based on research in other contexts, rapport is expected to have a positive influence on the information obtained as well as the child's experience of the interview. Van Oosterhout (2015) found that in only 6 out of 12 suspect interviews, the interviewers tried to establish some kind of rapport.

## Case-oriented Interview: Scenario Investigating Model

The SIM can be used when a suspect is willing to talk and should be adapted to the suspect based on the personal information acquired during the person-oriented interview. The basic aspects are: reducing the suspect's resistance to telling the truth, to "surround" tactical evidence, building up pressure by confronting him with tactical evidence, and rewarding the suspect when he changes his statement in line with the evidence after being confronted with the evidence, or can give a plausible explanation (Van Amelsvoort & Rispens, 2017). In this context, "surrounding" means to ask about evidence that can verify or falsify alternative explanations given by the suspect. For instance, for an incriminating text sent from a suspect's phone, the interviewer could first ask whether the suspect ever lets anyone else use his phone. If the suspect says no, the alternative scenario that someone else sent the text from the suspect's phone has already been discredited.

Several aspects of the SIM could be problematic when applied to children. The aim is to keep the suspect's resistance to making a statement low by increasing the suspect's perception of the evidence, which is thought to increase the internal pressure experienced by the suspect (Van Amelsvoort & Rispens, 2017). In combination with the influence of an authority figure, a child is likely to be more affected by the pressure than an adult is. Children are more likely to accept that the adult is knowledgeable, which makes them increasingly susceptible to suggestion (Saywitz et al., 2017). Therefore, the internal pressure intended to make adult suspects give a statement could cause children to give a false statement, or a statement not based on their own knowledge, in order to please the interviewer. For a child, the interview may be comparable to a teacher asking a question while knowing the correct answer. Consequently, a repeated question could indicate to the child that they got the answer wrong, causing them to change their answer (Dekens & Van der Sleen, 2010; Wood & Garven, 2000).

The confrontation with tactical evidence does not seem to be used often when interviewing juvenile suspects. Van Oosterhout (2015) found the most frequent confrontation was with a witness statement. The confrontation with other evidence discrepant with the statement the child has made, or the child's memory of the event, could again be a form of suggestion. Therefore, pressuring the child through confrontation with tactical evidence could again lead to false statements, and should be avoided. Another aspect of the SIM that should be cause for concern when used with children is the rewarding of statements changed in accordance with the evidence after confrontation. As children are likely to be more influenced by rewards, this could decrease the accuracy of a child's statement. The influence of positive reinforcement has been looked at in the McMartin pre-school case (Garven, Wood, Malpass, & Shaw, 1998), and has since also been tested experimentally. Garven, Wood, and Malpass (2000) found that children between the age of 5 and 7 were significantly more likely to make false accusations after receiving positive reinforcement. Although this research relates to child witnesses, there is no indication that child suspects should respond differently to the positive reinforcement. Considering the powerful influence of rewards in any form, this technique should not be used when applying the SIM to child suspects.

## Conclusion

It is worth noting that the limited research on interviewing child suspects is mostly observational research rather than experimental research (e.g., Redlich, Silverman, Chen, & Steiner, 2004; Van Oosterhout, 2015). Therefore, it is difficult to determine the effect of interviewing techniques known to be suitable for child witnesses on child suspects. The manual includes a number of aspects suitable for use with child suspects, such as informing them of their rights and the building of rapport. However, in light of the established literature on child interviewing, the SIM should not be used when interviewing child suspects, due to for instance the use of positive reinforcement. Considering the limited regulations on interviewing child suspects, it would be recommended to critically look at the interview method chosen in practice. An increase in research focusing on interviewing child suspects would also be vital when trying to establish a suitable technique.

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# The NICHD Protocol: Benefits and Routes for Future Research

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The National Institute of Child Health and Human Development (NICHD) interview protocol first developed out of other existing interview protocols. Interview techniques based on research for children had been around since 1990, but often the suggestions from these techniques were not used in practice by professionals (e.g., Warren, Woodall, Thomas, Nunno, Keeney, Larson, and Stadfeld, 1999). Despite training, interviewers would often use suggestive techniques, such as using direct, specific questions (e.g., Davies, Westcott, & Horan, 2000; Korkman, Santtila, & Sandnabba, 2006). Thus, the NICHD developed to be a precise and practical protocol, making it easier and more intuitive for interviewers to use (Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007). For example, the NICHD includes examples of prompts and open-ended questions to assist interviewers prepare for and succeed in interviewing. Additionally, the NICHD has a more structured approach, though it allows for the flexibility necessary when interviewing different individuals about differing situations. In this paper, I will summarize current research supporting the use of the NICHD protocol and outline basic psychological theories that explain the benefits of using such a protocol with children. I will then highlight potential future research directions by discussing the appropriateness of using the NICHD protocol with adolescents, an often overlooked population.

## Current Research Evaluating the NICHD Protocol

The NICHD protocol is one of the most researched protocols for interviewing children, and has been implemented in several countries throughout the world (e.g. the United States, Finland, Israel, Japan, etc.; La Rooy et al., 2015). The protocol can function within most legal systems, though the developers do clarify that small changes can be made for practical reasons or legal requirements (Lamb et al., 2007). Unlike earlier protocols that did not change interviewer behavior, experiments examining the NICHD show that after training, interviewers actually do modify their behavior, leading to asking more open-ended prompts and less closed or leading questions (La Rooy et al., 2015).

Research about the NICHD protocol also suggests that it helps elicit longer answers that have many more details than other types of standard questioning (e.g., Cyr & Lamb, 2009). A recent meta-analysis indeed confirmed that NICHD interviews with both younger and older children included more open invitations and fewer option posing or suggestive prompts (Benia, Hauck-Filho, Dillenburg, & Stein, 2015). Additionally, children provided more central details in response to open-ended prompts, though analyses on a subset of preschool-aged children did not reveal this enhanced performance. However, other studies suggest the protocol works well even with young children. For example, one study showed that children aged 4-6 provided a greater number of details in response to open-ended rather than specific questions (Lamb, Sternberg, Orbach, Esplin, Stewart, & Mitchell, 2003). Finally, another study suggested that charges were brought about 1.5 times more when child victims were interviewed using the NICHD than without it (Pipe, Orbach, Lamb, Abbott, & Stewart, 2008), providing evidence for observable change in legal outcomes.

Over the years, the NICHD has developed quickly for uses beyond just with children who may have been abused themselves. For example, research suggests that the protocol is also effective with children who have witnessed events of abuse (Lamb, Sternberg, Orbach, Hershkowitz, & Horowitz, 2003). This study found that witnesses and victims provided similar amounts of information, and observed that it seemed even easier for interviewers to ask open-ended questions from witnesses rather than victims themselves. Additionally, the NICHD has also been examined for use with youthful suspects (Hershkowitz, Horowitz, Lamb, Orbach, & Sternberg, 2004). One study examined children aged 9 through 14, and found that suspects reported a similar number of details regardless of age or whether or not they admitted to the accusation. Importantly, researchers found that more

information was elicited using open-ended prompts rather than closed questions, although fewer open-ended prompts were used when interviewing suspects who denied the allegations than those who admitted to them (Hershkowitz et al., 2004). To use the NICHD protocol with suspects, slight adaptations were made, including eliminating the narrative practice and including more examples of directive prompts to help elicit information from suspects who denied the allegations. However, such research provides evidence that the NICHD protocol can indeed elicit valuable information from suspects using open-ended questions.

## Theoretical Foundations for the NICHD Protocol

The NICHD was created to be developmentally appropriate for children, while also keeping general memory research in mind. As with adults, memories of children fade as time passes (Lamb, La Rooy, Malloy, & Katz, 2011), and developers of the NICHD suggest conducting interviews with children as soon as possible after a suspected incident (Lamb et al., 2007). Additionally, general research on memory suggests that also for children, information from open-ended questions is often more accurate than information from closed questions (e.g., Dale, Loftus, & Rathbun, 1978; Hutcheson, Baxter, Telfer, & Warden, 1995). Research suggests this is due to the idea that rather than simply recognizing an answer originally offered by the interviewer, the interviewee needs to recall the information for themselves. Such open-ended questions also often open the doors for even more information to be shared by the interviewee.

Letting the interviewee lead the discussion helps eliminate the potential risk of suggestibility offered by the interviewer. Adults can be vulnerable to suggestive questions, but children are especially vulnerable; for example, they are prone to answering affirmatively to yes/no questions (e.g., Brady, Poole, Warren, & Jones, 1999). Particularly for younger children under the age of 6, suggestible questions pose a risk and preschoolers are more likely to respond incorrectly to suggestible questions than older children (Ceci & Bruck, 1995; Goodman & Aman, 1990; Oates & Shrimpton, 1991). Indeed, as the developers of the NICHD write, *“risky questions are even riskier when addressed to children aged 6 and under”* (Lamb et al., 2007, p.7).

Keeping the suggestibility of children in mind, the NICHD was developed for use with children of all ages (Lamb et al., 2007). Indeed, much of the research on the protocol has included children aged as young as 4 years old. Although some may be skeptical of preschool children’s ability to answer open-ended questions, research on the NICHD does suggest that the protocol can work for children this young. For example, research suggests that because young children (below age 6) are just beginning to speak, their vocabulary and understanding is limited compared with older children (Ludlow & Gutierrez, 2014). Keeping the development of younger children in mind, the protocol places an emphasis on eliminating ambiguous or complex questions and coaches children to feel comfortable telling the interviewer when they do not know or do not understand (Lamb et al., 2007). These instructions are particularly important for very young children, but also generally hold true for older children (i.e., elementary aged children).

Although studies suggest that indeed older children report more details, young children can provide most of the relevant information in response to free-recall questions rather than closed questions (Lamb et al., 2003). Additionally, though younger children usually provide shorter accounts, the information they do share is often no less accurate than that of older children (e.g., Oates & Shrimpton, 1991). Thus, even young children are often more capable than people commonly believe. That being said, research does suggest that slight variations in strategy should be used for very young children. Developmentally, we can expect younger children to have more trouble providing a full free recall, as three and four-year-old children have more trouble retrieving details from memory spontaneously (Ornstein, Gordon, & Larus, 1992). Indeed, one study suggested that asking focused questions followed by open-ended prompts will work better for very young children who may struggle with extremely broad open-ended prompts that would work for older children (Hershkowitz, Lamb,

Orbach, Katz, & Horowitz, 2012). Other research specifies different cues that will work for different age groups, suggesting that action-based cues work well regardless of age, while time-based cues work better for older children beginning around 8 years of age due to a more advanced understanding of temporal concepts (Orbach & Lamb, 2007).

### Gaps in the Literature: Examining Adolescents

Despite a substantial base of research examining the use of the NICHD in very young children, adolescents are often overlooked. The NICHD was created for all children, and researchers argue that the techniques should work from preschoolers through teenagers (Harris, 2011), but little research has been done focused on teenagers and particularly older teenagers. In many countries, children under the age of 18 are still legally children, yet very few of the studies examining the NICHD include children over the age of 14 and those that do include teenagers have limited numbers of teenage participants, with average participant ages always below 10 (e.g., Carnes, Wilson, & Nelson-Gardell, 1999, Craig, Scheibe, Raskin, Kircher, & Dodd, 1999; Davies et al., 2000; Hershkowitz, Orbach, Lamb, Sternberg, & Horowitz, 2002; Lamb & Garretson, 2003; Wells, McCann, Adams, Voris, & Dahl, 1997). Developers of the NICHD emphasize that for older children and adolescents, open-ended questions should primarily be used, but beyond that not many distinctions are made within the protocol. Developmentally, this seems strange since adolescents are at a very unique stage of growth. As a brief from the National Children's Advocacy Center (2016) states, "adolescents are neither children nor adults but oftentimes a confusing combination of both." (p.4). Some general psychology research suggests that adolescents profit from extensive rapport building (Sauerland, Brackmann, & Otgaar, 2019), but research specifically examining the NICHD and adolescents is lacking.

Some elements of the NICHD may not be developmentally appropriate for adolescents. For example, in the first stage of the protocol, interviewers often go over rules with children. For five-year old interviewees, it makes sense to focus on whether they understand about telling the truth or not knowing that the interviewer does not know everything due to a theory of mind that may not yet be fully developed. However, such instructions for an adolescent may seem childish, particularly since adolescents are often "ever conscious of wanting to appear competent" (Newlin et al., 2015, p.4). The same may hold true for the practice narration, where older teenagers may be hesitant to chat with the interviewer about an unrelated topic. Indeed, one researcher suggests that although adults believe this kind of small talk means you "*are trying to get to know them*", *adolescents might "assume questioning will expose something bad about them"* (Beyer, n.d.). At the same time, adolescents may too closely resemble adults, leading to interviewers treating them more like adults than children. However, adolescents are still developing. They may process questions and language differently, be more impulsive in their actions and thinking, or challenge social convention by resisting authority figures, particularly those in forensic settings such as police officers (Juvenile Justice Center, 2000). Thus, in many ways the general structure of the substantive interview likely is developmentally appropriate for adolescents and a similar relaxed, supportive, and non-distracting environment that works for children would also likely benefit adolescents. However, research needs to be done on using the NICHD protocol specifically with adolescents (particularly aged 14-17) to examine efficacy.

### Conclusion

The NICHD protocol is the most widespread child interviewing procedure and holds scientific merit from a wide berth of research. While much of the research about the protocol originates from one research team, other research groups and international collaborators are now also examining the efficacy of the protocol to ensure reliability. The protocol is based on sound scientific research on child development and memory processes, particularly for middle aged children (6-14), though the protocol also seems effective for younger children (below 6) and older children (adolescents). Further research should be conducted to confirm and further examine the NICHD protocol's usefulness, particularly on these boundary age groups.

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# The NICHD Investigative Interview Protocol: The Effectiveness in Police Context

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According to the Police Crime Statistics in 2018 (Korean National Police Agency, 2019), nearly 4.2% (65,784) of the entire felony crimes (1,581,922) were committed by teenagers and children under 18, and there was a steady increase in the past years. Additionally, Korean National Police Agency (2019) reported that more than a thousand children under the age of 14 have been sexually victimized every year since 2013. The statistics suggested that, recently, a number of children are flowing into the legal system, either as a victim or as an offender. As such, the police in South Korea have actively taken measures and sought to implement policies to meet the public's demand for securing sexual violence crimes (Yi & Jo, 2015). As the South Korean Police became aware of and interested in the seriousness of the secondary damages—arising during the process of investigating sexual crimes—the police and the Ministry of Gender Equality and Family established more than 25 sexual violence victim support centers throughout the peninsular to provide medical assistance, counseling support, psychotherapy support, legal and investigation support to victims. In 2010, the police also employed the National Institute of Child Health and Human Development (NICHD) investigative interview protocol and are still using the protocol to interview children and the disabled to secure the credibility of vulnerable victims' statements, especially for investigating sexual crimes. In the sections that follow, I will provide an overview of the protocol's basic procedure, the underlying theories, and scientific evidence for the interviewing technique in the following section, followed by the argument of why this protocol is suitable in the investigative context.

## Developmental considerations

The NICHD child investigation interview protocol has a structured form. This protocol entails the critical stage of rapport-building that provides the interviewer with the opportunity to spontaneously describe the stories that the child interviewee experienced in the past (Lamb, Hershkowitz, Orbach, & Esplin, 2011). The protocol was developed mostly for interviews with child victims of sexual abuse. The rapport-building, one of the central components of the NICHD, is intended to create a more comfortable and supportive environment for children, thereby creating a trust relationship between police officers and children to listen to the child's spontaneous statements. Research suggests that the NICHD protocol increases the general quality of children's statements (Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007) and enhances the outcomes of interviews in comparison with previous standard techniques adopted for sexual abuse cases (Lamb et al., 2009). The protocol can be used to interview children in all age groups (Lamb et al., 2007). Recently, Benia, Hauck-Filho, Dillenburg, and Stein (2015) conducted a meta-analysis and found a supportive result that the NICHD protocol produced the same performance for both preschoolers and older schoolers. The analysis also indicated that when the protocol was employed, the interviewers used more open-ended questions and fewer suggestive and option-posing questions. It is clear that memory and cognitive abilities develop as children grow more. So one can raise a question about whether the NICHD protocol is suitable for younger children. Hershkowitz, Lamb, Orbach, Katz, and Horowitz (2012) revealed that—regarding free recall questions—children above five years provided more information than younger ones, while children under 4 responded better to direct questions (e.g., what, who, when). Besides, researchers found that younger children were poorer at sharing more information than older children and adult groups (Jack, Leov, & Zajac, 2014).

## The effectiveness of NICHD protocol in police context

To date, the studies conducted in the United Kingdom (Lamb et al., 2009), the United States (Sternberg, Lamb, Orbach, et al., 2001), Israel (Orbach, Hershkowitz, Lamb, Sternberg, Esplin, & Horowitz, 2000), and Canada (Cyr & Lamb, 2009) consistently demonstrated that the NICHD interview protocol is a useful tool for investigating child victims of sexual violence and abuse. Laboratory-based studies showed the supportive result that the information gained with open-ended questions was more accurate than the one with option-posing questions (Lamb & Fauchier, 2001; Lamb et al., 2007). Moreover, research revealed that the NICHD facilitates children to be more cooperative with interviewers and to provide more information about the case (Hershkowitz, Orbach, Lamb, Sternberg, & Horowitz, 2006).

The validity study of NICHD was first conducted in Israel, showing that interviews using the NICHD protocol after training and supervision included more open-ended questions and more case-related information than previous interviews. Studies with British police officers also supported the effectiveness of the NICHD protocol (Lamb et al., 2009). Lamb and colleagues (2009) analyzed 100 cases of suspected sexual abuse interviews with children. Half of the cases were interviews conducted by the NICHD protocol and the other half by the Memorandum of Good Practice (MOGP) process. The results revealed that the interviews conducted using the NICHD protocol led to more open-ended questions eliciting more information. Additionally, the amount of information gathered by direct or option-posing questions was less with the NICHD protocol cases compared to those by the MOGP procedure. A similar study of police officers in Quebec, Canada also verified the effectiveness of the NICHD protocol (Cyr & Lamb, 2009).

## The basic procedure of the NICHD protocol

The interviewer first introduces her/himself to the child prior to the rapport-building and clearly informs the child what he or she should primarily recall during the interview. The interviewer then explains why they need specific statements, the importance of describing only factual information, and the basic rules during the interview (Lamb, La Rooy, Malloy, & Katz, 2011). For example, throughout the interview, the child interviewer can always ask the child to revise what was stated earlier and to frankly say “I don’t know,” “I don’t remember,” or “I can’t understand” to the interviewer (Lamb et al., 2011). Next, children are encouraged to practice how to answer open-ended questions. In particular, since the crime event is an anecdotal memory including place, time, and interaction between people, the training is similarly conducted by asking about past experiences (e.g., holidays, birthdays, yesterday’s events, etc.; Lamb et al., 2011). This practice session helps children understand how to answer open-ended questions about the incident. Therefore, this practice has the effect of increasing the amount of statements during subsequent event-related interviews (Brubacher, Powell, & Price 2011; Sternberg et al., 2001). Police interviewers will then move on to the substantive phase of the interview regarding the incident. Open-ended questions should be used to listen to the child’s statements about the incident in the early stages of the interview (Lamb et al., 2007). In other words, children should be given a chance to state what happened voluntarily and not be asked with closed or suggestive questions (Lamb et al., 2011). If a child fails to answer open-ended questions continuously, specific questions can be used in such a way that police officers provide a gradual clue to the child. It is recommended that the interview—if the child does not make any statement about the incident when asked by police officers providing such specific clues—be terminated immediately, which is better than using suggestive questions (Lamb et al., 2009).

During this process, when a child first begins to talk about the incident, police officers should, if possible, examine the child’s experience with open-ended questions, and they should use specific and option-posing questions later in the interview. Besides, if option-posing or suggestive questions are used as needed, open questions should be asked immediately to elicit additional statements in a voluntary form in addition to statements obtained through option-posing or suggestive questions (e.g., paring; Lamb et al., 2011).



Afterward, the interviewer and interviewee will be given a short break as younger children can be physically and mentally exhausted (e.g., Burrow & Powell, 2014). Children can regain concentration by taking some rest. However, investigators can use the break as an opportunity to review what information they need to get from children (Lamb et al., 2007). The next interview session continues after the break, and interviewers, in this phase, should use more specific and focused questions to obtain the necessary information. Next, interviewers ask the interviewee if they have any questions to ask concerning the interview. The interviewer should thank the child for cooperation. Finally, the interviewer talks briefly about a neutral topic (e.g., what to do after the investigation is finished) before ending the interview.

### Difficulties in police interviews

Despite the standardized structure of rapport-building, investigative interviewers may still face some major hurdles in reality. One of the biggest challenges is how interviewers should respond to children who are extremely uncooperative in their interviews (Lee, 2012). In spite of interviewers' continued efforts to build sufficient rapport, the interviewer may become frustrated if the child is too passive or uncooperative in the interview. However, research showed that if the interviewer pre-examined the information about the causes of anxiety and stress experienced by the child, the interviewer better understood the child's emotional state and thus paid more attention to social support during the interview (Lamb et al., 2011). Another difficulty that investigative interviewers face is whether their social support or emotional empathy could stimulate children's social motivation such that the child is more likely to make statements to meet interviewers' expectancy excessively rather than to tell the truth. Therefore, rather than just giving feedback to a specific fact, the interviewer should attempt to facilitate the child's willingness and effort to recall—to enhance the child's emotional comfort of the unfamiliar interviewing environment and internal motivation to talk, so that contaminating the child's overall statements can be prevented (Hershkowitz, 2009). Lastly, the effect of the NICHD protocol gradually decreases when there is no consistent feedback (Cyr, Dion, McDuff, & Trotier-Sylvain, 2012).

### Conclusion

The NICHD protocol is a suitable technique for investigative interviews with children. As evident in existing literature, this protocol can be useful for the police when they interview child eyewitnesses and victims of alleged sexual abuse cases. The NICHD is extensively accepted as a reliable technique and used by many countries around the world, and the protocol is also highly systemized with science-based research. Some argue that it also has some drawbacks: the fatigue of long interviews, children's reluctance and desire to meet the expectancy, the long period of training, and the dishabituation of using the protocol without consistent feedback. Nevertheless, previous research shows that the NICHD protocol can secure more accurate and voluntary information from children; its non-coercive information elicitation, specifically the use of rapport-building to encourage positive interaction between the interviewer and child, is a key element for legal systems. Moreover, the protocol is well structured, making it easier to organize and conduct official training for police practitioners than any other technique existing in the literature.

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## Part 2:

# Children in the Legal System

# Children and the Legal System in Ghana

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## Children as suspects

The criminal code of Ghana makes provision for child suspects to be treated differently from adults. Individuals below 18 years of age who commit a crime are treated differently. There are procedures for the arrest, investigation, detention, and sentencing of such child suspects. The law does not hold children below age 12 criminally responsible when they commit a crime (Criminal Code, Article 26). The child is deemed to lack the capacity to understand the consequences of his or her actions.

When a child suspect is arrested, the law requires that an adult is present during the police interview. According to the Juvenile Justice Act of Ghana (Section 13), the police shall not interview a child suspect without the presence of a parent, close relative of the juvenile, guardian or a lawyer. In the absence of any of these individuals, a probation officer is required to be present. The police shall also request a probation officer to sit in the interview, where the police consider the presence of any of the adult relatives of the child or lawyer as not in the child's best interest. However, these requirements are not always reflected in practice. Child suspects in Ghana are often interviewed without the presence of a parent, guardian or lawyer (Hoffman & Baerg, 2011).

The legal system also gives time restrictions on the trial and remand of child suspects. The trial of a child suspect should not exceed six months from the time an arrest is made. In situations where the juvenile is sent on remand, the remand period is not to exceed three months. This, however, does not include offenses for which if an adult committed, was punishable by death. With such offenses, the remand period shall not exceed six months. Hoffman and Baerg (2011), however, observed that the remand period usually goes beyond six months before children are trialed in courts.

Special courts are designated to child suspects. Such trials are held in juvenile courts, which is required to provide child-friendly environments. Measures to ensure child-friendly and less intimidating environments in juvenile courts include making the trial informal, as well as limiting who should be present during trials. For example, the judge in a juvenile court does not have to put on a robe, as is the case for adult courts. The law also requires that police officers present at the trial be in plain clothing. Attendance at the juvenile courts is also restricted. The Juvenile Justice Act (Section 16) stipulates that persons to be present at a sitting involving a child suspect are the judge, other officers of the court, the lawyer, witnesses and parties to the case. Other persons that could also be allowed to be present in the trial hearing are any person to whom the case directly relates, and any other person authorised by the court to be present.

There are situations where a child suspect is trialed at an adult court. First, if the charge involved is made against a child together with a person above 18 years old, the case shall be heard by an adult court. Second, charges against a child which if it was committed by an adult, the sentence would have been death are also to be trialed at adult courts. However, in both situations, if the juvenile is found guilty, the sentence would not be heard at the adult court but would be remitted to a juvenile court.

If a child suspect is found guilty, a social worker attached to the court prepares and submits a Social Enquiry report to the court. The social worker goes to the juvenile's community where he or she speaks with the juvenile's parents, guardians, teachers or people in the community who knows the juvenile to gather information. The information gathered by the social worker on the juvenile is used to prepare the report. The report covers information about the juvenile's background, his or her current situation, circumstances that led to the offense, as well as a sentencing recommendation. The report is presented to the court and also made available to the juvenile and his or her attorney.

## Children as victims and witnesses

There is no age limit for children to testify in court under the Ghanaian legal system. Children are deemed, competent witnesses except they lack the capacity to express themselves. Child witnesses can testify without giving an oath, but instead, are made to affirm that they will tell the truth. Under Section 62 of the Courts Act, on witness examination, people the court deem immature in age can be exempted from giving an oath. Notwithstanding, such evidence is recorded in the court's proceedings and accorded the same weight as evidence under oath.

Currently, there is no comprehensive victim and witness support programme for children in place. There is, however, some form of pre-trial preparation provided by the Domestic Violence and Victims Support Unit of the Ghana Police Service. No victim support volunteer or social worker is attached to the courts to offer the needed support for child victims and witnesses. Social workers working at the courts are with the juvenile courts where they serve as probation officers. There is no structured mechanism in place to ensure that the trial process, as well as the child's role as witnesses or victims in the court, is explained to them. Notwithstanding, some prosecutors have pre-trial meetings with child victims and witnesses, and also review the evidence in such meetings (Judicial Service of Ghana, 2018).

There are no special measures in place for taking evidence from children. There are currently no provisions in the law about testifying behind a screen or the use of videotape evidence. Thus, child victims sometimes have to testify in the presence of the accused, which can be traumatising. No restrictions are also in place on the duration and nature of the cross-examination of child witnesses. Also, it is not clearly stipulated in the law on the use of a registered intermediary. There have been concerns about asking children developmentally inappropriate questions during cross-examinations (Judicial Service of Ghana, 2018). There have also been some concerns that child victims of sexual abuse are hesitant to describe sexual activities in court, as some sexual expressions are regarded as culturally inappropriate for children to use.

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# Juveniles in the U.S. Criminal Legal System

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Currently, 44 states permit juvenile court jurisdiction for juveniles under the age of 18. As of July 1, 2020, that number will increase to 45, excluding five states that cap the age of juvenile jurisdiction at age 16 (National Center for Juvenile Justice, 2016). However, in the District of Columbia and 21 states, there is no minimum age at which children can be transferred to the adult system (Inter-American Commission on Human Rights, 2018). Furthermore, the minimum age for transfer is between 10-15 years in the remaining states (Office of Juvenile Justice and Delinquency Prevention, 2018).

## Juveniles Tried in the Adult Criminal System

In 2015, approximately 921,600 juveniles were arrested (Ehrmann, Hyland, & Puzzanchera, 2019). Yet, despite its long history of a separate criminal legal system for juveniles in the United States, thousands of children and adolescents under the age of 18 are prosecuted in adult courts every year. However, exact numbers of those arrested who are prosecuted in adult courts are unknown because there is no requirement for states to track or report this data (Inter-American Commission on Human Rights, 2018). A 2010 estimate from the National Institute of Corrections places this number at 250,000 youths involved in the adult criminal justice system every year (Ziedenberg, 2011).

There are several ways in which juveniles enter the adult system, including automatic transfer laws, judicial waiver, prosecutorial transfer, and so-called “one an adult, always an adult” transfers, which bar any juvenile who was previously prosecuted as an adult to be tried in the juvenile system for any subsequent offense (Teigen, 2019). Automatic transfer laws prohibit certain offenses (for example, homicide or other serious violent felonies) from being prosecuted in the juvenile system. Judicial waiver permits a juvenile court judge to waive jurisdiction over a case so that the juvenile can be prosecuted in adult court. A 2014 report indicates that approximately 6,000 discretionary judicial transfers to adult court were made in a single year (Puzzanchera & Addie, 2014). Prosecutorial transfer occurs when an offense is permitted to be tried in juvenile or adult court and the prosecutor has the sole discretion to determine in which court the charges will be filed (Teigen, 2019).

There is also a strong racial component to juvenile transfers to adult criminal court. Black youths are more likely than their white counterparts to have their cases transferred to adult court (Ziedenberg, 2011). Furthermore, research indicates that black youths who are sentenced in adult court are significantly more likely to be sentenced to jail or prison, and they tend to receive longer prison sentences than white youths (Lehmann, Chiricos, & Bales, 2017).

## Juveniles in the Adult Corrections System

Juveniles who are held in adult jails and prisons are at significant risk of having long-lasting harm inflicted upon them. In 2011, an estimated 95,000 juveniles under the age of 18 were held in jails or prisons (Kysel, 2012). This practice is deeply problematic as youths in adult prisons are at much higher risk to be victims of violence and sexual assault by guards or other inmates. As a result, youths are frequently placed in solitary confinement as a “protective” measure, the psychological devastation of which is well-documented (Cloud, Drucker, Browne, & Parsons, 2015; Giannetti, 2011; Kysel, 2012).

Finally, the United States is one of the few countries that permits juveniles to be sentenced to life in prison without the possibility of parole (JLWOP; Armstrong, 2016). There are as many as 2,500 people in prison for life for crimes they committed while under the age of 18. Further evidence of racial disparities in juvenile justice may be seen in the fact that approximately 60% of people serving JLWOP sentences are black (Armstrong, 2016).

## Conclusion

There are a number of ways in which juveniles end up in the adult criminal legal system in the United States. Once in the adult legal system, a juvenile will be prosecuted as an adult for any subsequent offense, not matter how minor. Furthermore, the presence of youths in adult correctional facilities represents increased risks to their health and well-being. Juveniles who commit a violent crime can also be sentenced to JLWOP, which contravenes the underlying rehabilitative premise of a separate juvenile justice system altogether. Juveniles who end up in the adult legal system are also disproportionately young black males who are also more likely than white youths to be sentenced to adult jail or prison. Most crimes committed by juveniles are dealt with by juvenile courts. However, the way that juveniles are often treated like adults in the U.S. criminal legal system is an affront to well-established scientific facts about the cognitive capacity of children and adolescents.

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# Child Interviewing in The Netherlands

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## Witnesses and victims

In the Netherlands, children who are interviewed by the police as witnesses or victims will usually be interviewed in a child-friendly studio. The studios are used for children between the ages of 4 and 12. The interview studios are equipped with a so-called listening room. From there, other people can follow the interview, including the director of the interview, a scribe, and possibly the prosecutor or the suspect's lawyer. Both the director and the person interviewing the child should have followed specialised training for interviewing vulnerable witnesses (Van der Sleen, 2015). Most interviews with children between the ages of 4 and 12 are conducted because they are thought to have been a victim of sexual abuse (Horselenberg & Van Koppen, 2017).

The scenario model is used to interview children. Although members of the police academy acknowledge the lack of research on the model, they emphasise that it has scientific roots, and has been updated in accordance with new research findings (Rispen, Dekens, & Haak, 2019). The scenario model consists of three stages: an introduction, a case-oriented interview, and a closure phase. During the introduction, the interviewer tries to build rapport, trains episodic memory, and discusses the ground rules with the child. The child's understanding of the rules is also checked. The interviewer starts with a neutral opening question and asks the child to, in his own words, report as much as possible. If the child gives reports, this approach (scenario A) should be continued. Scenario B involves indirect questioning of the child about neutral events. In scenario C, some information about the allegation is disclosed to the child (Otgaar et al., 2019). Cued invitations or directives can be used for a more extensive account (Rispen et al., 2019). The interviewer should react in a neutral way and should avoid giving feedback on the child's answers. According to Rispen et al. (2019), training for the scenario model emphasises the effect of different question types on children's memory and retrieval. The studio is equipped with audiovisual recording material (Van der Sleen, 2015). The recording can be used in subsequent proceedings and the interview can be transcribed so the child does not have to be interviewed again (Horselenberg & Van Koppen, 2017).

## Suspects

Based on a number of murder and manslaughter investigations where the suspect was a minor, it seems the way in which such suspect interviews are conducted are largely shaped by the investigators themselves. For instance, the availability of team members can have an influence. However, there seems to be no desire for more regulations. As every case is different, the approach also differs between cases (Siemerink & Van der Laan, 2016). There are no guidelines on how to interview a child suspect. It has been argued that the lack of procedural safeguards for suspects under the age of 12 do not weigh up against the possible investigative measures (Van Oosterhout & De Vocht, 2015). Recently, it has become impossible for juveniles to waive their right to have a lawyer present during the interview (Özsüren & De Haas, 2019). Children under the age of 12 cannot be prosecuted, but they can be searched or interviewed by the police. Children should be kept out of criminal law

procedures as much as possible, for instance by trying to resolve matters outside of court ("Toelichting jeugdstrafrecht", 2018).

### Concluding Remarks

For children in the Dutch legal system, it appears improvements can be made for witnesses and victims, as well as for suspects. The scenario model should be subjected to research. For the interviewing of suspects, the current situation should be critically examined to determine whether, and what, further regulations could ensure the best possible situation, both for the child and for the information gathered.

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# Children in the Legal System in Australia: A Summary

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In this summary overview, I will discuss the experiences of children in the Australian legal system. I will focus on the special protections for child witnesses, victims, and suspects that exist in the Australian legal system. In general, children in Australia are considered to be vulnerable, and thus are entitled to special protections across the board.

A recent Royal Commission into Institutional Responses to Child Sexual Abuse exposed several limitations for child sexual abuse witnesses and victims, including issues such as multiple interviews from several different people, difficult or complicated questions inappropriate for children, long waiting times, and having to face the accused in court (Wahlquist, 2017). Over the years, the Australian legal system has attempted to ease such demands on vulnerable witnesses and victims such as children. For example, Vulnerable Witness Provisions include offering some child witnesses options like video technology to pre-record their testimony or use CCTV in court and to provide a Witness Assistance Service officer to assist the child when meeting the prosecutor or to join them in the courtroom (Blewer, 2017). Specific legal limitations now protect victims of sexual abuse or serious violence by ensuring these children only need to give evidence once, do not have to appear at hearings before a trial, and can pre-record their evidence (NT Gov, 2019).

Other research specifically examines an important subgroup of child witnesses or victims who are often caught in the legal system: those from different cultural backgrounds, particularly those from Aboriginal or Torres Strait Islander backgrounds (Eades, 1994). These children are often not used to some of the particularities of the English language or of question-answer settings. Research suggests that in many Indigenous cultures, there are inherent linguistic differences that may change the norms of conversation or interview. For example, silence is used more often and positively valued, either-or questions are not a common part of the linguistic structure, agreement is often a normal part of Indigenous conversational patterns, and social rules exist about what topics are appropriate to speak about or not (Walsh, 1994). Thus, familiarity with different cultural customs is valuable when interviewing children from Aboriginal or Torres Strait Islander backgrounds.

Protections are also in place for child suspects. In Australia, the age of criminal responsibility is 10. However, children ages 10 to 13 cannot be found guilty unless there is evidence showing that they know that what they were doing was wrong. Except for serious offenses, those convicted who are 21 and under may serve as juvenile offenders. However, if it is a serious offense, children who are 16 or older may enter the adult prison process, though some states are trying to reduce this premature engagement with the adult justice system by transferring 17-year-olds to the youth systems instead (Queensland Courts, 2018).

Those below 18 years of age are considered children and thus counted as vulnerable suspects in most Australian states (e.g., NSW Police Code of Practice for CRIME). Therefore, they are entitled to extra assistance during police interviews, including a support person (i.e., a parent, guardian, or other trusted adult for older children). Suspects who are children also have some protections in court, including private proceedings and prohibition of publishing the names of those in trial. If the suspect is an Aboriginal or Torres Strait Islander, additional protections apply, such that a representative from an Aboriginal Legal Aid group must also be contacted in addition to the support person. Finally, for children who commit non-serious offenses, the Children's Court can choose to take on their cases, which result in less serious sentences with an aim to focus on rehabilitation rather than retribution (Sheehan & Borowski, 2013).

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# Children in the South Korean Legal System

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## Children as suspects

In South Korea, three major acts govern child and juvenile cases: the Korean Criminal Code, the Juvenile Act, and the Act on the Protection of Children and Youth against Sex Offenses. According to the South Korean Criminal Code, criminal responsibility refers to a person's ability to act according to the law or to discern or adjust his or her actions accordingly. When a person's committed crime meets the objective elements of a crime and is lawful, the law usually regards the person as holding criminal responsibility. Article 9 of the South Korean Criminal Code stipulates that the act of a person under 14 years shall not be punished. The South Korean Juvenile Act defines the term juveniles as persons under 19 years of age.

Legal juveniles in South Korea can be classified into three categories (South Korean Juvenile Act; for the details of the types, see Table 1). Depending on the severity of the crime a child commits and the age, children can be liable to criminal responsibility or protective detention. For juvenile criminal offenders, the Juvenile Act precedes the Criminal Procedural Act and the Criminal Code in two ways. First, the police should transfer juvenile cases directly to the court of the Juvenile Department, and only one judge is in charge of leading an additional investigation and making the final decision. One advantage of the one-judge system is that the judge can deeply involve her/himself from the investigation stage to the sentencing stage. Second, the judge can carry out his or her own investigation, which is distinct from the police investigation. For the extra investigation or the main trial, the Juvenile Department judge can ask for any assistance from experts in various academic fields (e.g., psychiatric practitioners, psychologists, social workers, educators, and other experts' reviews and opinions in the Juvenile Classification Review Board) and even from the Probation Office for the research results and opinions. The judge can take into consideration all types of expert diagnosis reports and opinions whenever necessary (Korean Juvenile Act, 2018).

Table 1. Types of Juvenile Offender in South Korea

Type	Age	Criminal responsibility	Protective detention <sup>a</sup>
1. Criminal offender	14 - 19	Yes	Yes
2. Offender without criminal responsibility	10 -14	No	Yes
3. Status offender	10 - 19	No	No

<sup>a</sup> Judges can make decisions of protective detention based on the severity of the crime committed by juveniles such as forcing juveniles to a penitential lecture or a community service.

## Children as victims and eyewitnesses

For minors under 19, child witness experts must take part in child investigations as a statement assistant. Furthermore, a trained investigator for child interviewing will conduct an in-depth interview based on the PEACE model interviewing technique, the Criteria-Based Content Analysis (CBCA) and the National Institute of Child Health and Human Development protocol (NICHD). More than 30 Sunflower Child Care Centers are operated by the Ministry of Gender Equality and Family. All the Sunflower Child Care Centers are located in general hospitals over the peninsula, providing medical and psychological services to child victims and eyewitnesses. It is compulsory by the law that the police should take them to the Flower centers for their child investigation cases. In the centers, specially trained police officers and social security service operators should work on shifts. One investigator and one social service worker as a team collaborate when handling child-related investigations.

Based on the laws, when investigating, examining, or judging a victim of the sex offense against child or youth, each investigation agency and the court must provide to child victims and their guardians an environment where victims can feel comfortable and safe so that they can make more voluntary and less suggested statements. In addition, the authority should also minimize the number of investigations, examinations, and other legal processes because of the psychological or physical burdens that juveniles should bear. All the statements from child or youth victims of a sex offense need to be recorded and preserved with an electronic recording device (e.g., video camera). Child case investigators should make sure that the entire process of a child investigation is documented as well.

The court should appoint a person who is in a reliable relationship with a victim. So the guardian can sit next to the child victim during an interview. Any individual who is involved in a child case should not make public or divulge to any third person any crime-relevant or personal information that may lead to the identification of the victim. Child victims, offenders, and witnesses have all the equivalent rights as adults such as the right to have legal assistance for free.

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