



IJM

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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.



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 272 operations, leading to the rescue of 1008 victims and arrest of 313 suspects of online sexual exploitation of children (first case dates back to 2011).

Learn more at osec.ijm.org.

Contact Information

For more information, please contact:

Atty. Nelisa Guevara – Garcia

Director, National Prosecution Development

IJM Philippines

ngarcia@ijm.org

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.



Table of Contents

Foreword	4
Current Landscape	5
Conducting VIDIs	13
Prosecution Protocol	25
Frequently Asked Questions (FAQs)	31
Annexes	38
Annex A: Rules on Examination of Child Witness (RECW)	39
Annex B: Sample Letter Request for Venue or Interviewer	51
Annex C: Directory of Organizations with Child Psychologists	52
Annex D: Directory of Possible Interview Venues	53
Annex E: IJM's VIDI Handler's Guide	54
Annex F: IJM's Child-Friendly Spaces Research: Abstract	58
Annex G: IJM's VIDI Interviewer's Guide	59
Annex H: Sample Joint Affidavits of Child Forensic Interviewers	62
Annex I: Sample Supplemental Affidavit of Interviewers	67
Annex J: Motion to Establish the Child Witness Unavailable and Admit VIDI	69

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.

CURRENT LANDSCAPE

Rationale

Legal Bases

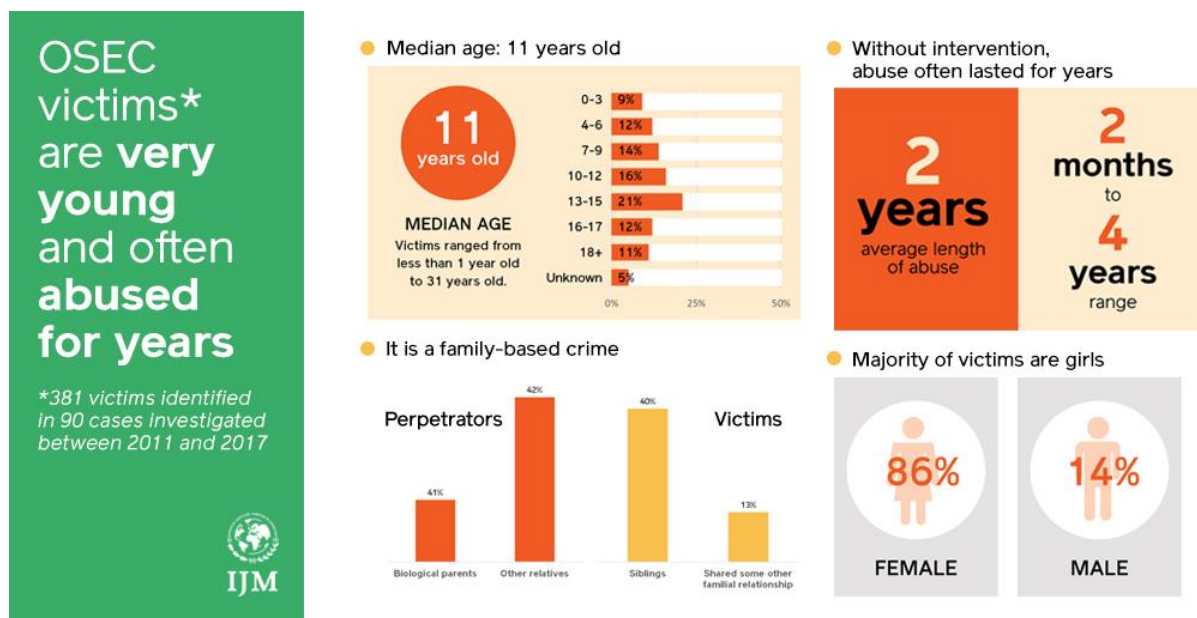
Current Landscape

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.¹ 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 distressing for the children, confirming that such court appearances cause anxiety.² They fear having to face

¹ 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>

² 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).

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.³

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.⁴

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.”⁵ 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
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.

³ 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/>

⁴ 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.

⁵ See A.M. No. 004-07-SC, Rule on Examination of a Child Witness. [hereinafter “RECW”], § 4(i) (2000).

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.

Data⁶ exhibits increased utilization of VIDIs in Luzon, Visayas, and Mindanao. As of September 2, 2022, IJM has supported 84 cases with 198 instances of video-captured child interviews. 66% of these were used by prosecutors during inquest/preliminary investigation. In other words, 131 victims no longer had to appear during these proceedings.

Further, 36 convictions were achieved; even if directly by plea bargaining, these cases still had VIDIs among its pieces of evidence.

These are outcomes directly resulting from IJM-supported casework.⁷ 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)

⁶ International Justice Mission data (IJM-supported cases) as of September 2022.

⁷ 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. Therefore, there is nothing preventing caseworkers from fully utilizing this strategy in investigating and prosecuting OSEC cases.

This section covers the Rule on Examination of a Child Witness, related domestic laws, and related international laws.

A. RULE ON EXAMINATION OF A CHILD WITNESS (A.M. NO. 004-07-SC)

VIDIs find their primary legal grounding in the Rule on Examination of a Child Witness (RECW) passed 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.⁸ 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.⁹ 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.¹⁰

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*
- 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.¹¹*

- (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.*

⁸ RECW, § 1.

⁹ *Id.*

¹⁰ *Id.* See Annex A for the entire RECW.

¹¹ RECW, § 28. (Emphasis supplied.)

(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. 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.

1987 Constitution.¹²

(a) Article II, Sec. 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.

(c) 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;

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

Statutes.

(a) Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act¹³

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; 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.

Governing Protocols.

(a) Committee for the Special Protection of Children (CSPC) Protocol on Case Management of Child Victims of Abuse, Neglect, and Exploitation (Adopted 31 May 2013)¹⁴

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.¹⁵ To minimize the number of interviews, prevent revictimization, and preserve the testimony of the child victim, the protocol mandates “audio or videotaping the same.”¹⁶

¹³ See Philippine Republic Act (R.A.) 7610, Section 2. Available at <https://gcg.gov.ph/files/dQGD5XvnYU8WtCkA3kHX.pdf>

¹⁴ See CSPC-CPN Case Management Protocol. Available at https://www.doj.gov.ph/files/transparency_seal/2016-Jan/CPN-CSPC%20Protocol%2026Nov2014.pdf

¹⁵ *Id.* at 17.

¹⁶ *Id.* at 27.

C. 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.¹⁷

UN General Comment No. 13 (2011) on UN CRC Article 19¹⁸

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.

Optional Protocol to the CRC on the sale of children, child prostitution and child pornography¹⁹

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.

¹⁷ See Convention on the Rights of the Child (1990), Articles 3, 19 and 39.

¹⁸ 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].

¹⁹ 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.

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 party²⁰ 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.²¹ 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.

²⁰ 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.

²¹ See Annex B for a Sample Letter Request for Venue or Interviewer.

B. COORDINATION AND LOGISTICS

Individuals participating in the VIDI.

(a) Interviewer

The RECW states that the interview be conducted by members of a multidisciplinary team, representatives of law enforcement, or child protective services.²²

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 VIDI 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.²³

Pertinently, steps should be taken to ensure that the child is ready to be interviewed before conducting the VIDI.²⁴ 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.²⁵ 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 VIDI by providing the child with an overview of the purpose of the interview and preliminary questions maybe asked about the circumstances of the case.²⁶

²² RECW, § 29(b).

²³ Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI Framework conducted last 6 May 2022.

²⁴ Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI Framework conducted last 6 May 2022.

²⁵ See Annex C for the Directory of Organizations with Child Psychologists.

²⁶ Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI 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.²⁷ 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.²⁸

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.²⁹

(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.

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

²⁸ *Id.*

²⁹ See Annex D for Directory of Possible Interview Venues.

The **VIDI Mobile Kit**³⁰ 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.³¹

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."³²

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.
- 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.

³⁰ See Annex E for the IJM VIDI Handler's Guide.

³¹ Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI Framework conducted last 6 May 2022.

³² See Annex F for the Abstract of IJM's Child-Friendly Spaces Research.

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.³³

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)

³³ Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI 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 15-16). 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.³⁴ 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.³⁵ 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.³⁶ See also the Dutch Scenario Model interview protocol,³⁷ PEACE Model,³⁸ and other existing interview protocols across jurisdictions.³⁹

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.⁴⁰ The interviewer should

³⁴ RECW, § 29(c)(1).

³⁵ 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.

³⁶ See Annex G for IJM VIDI Interviewer's Guide.

³⁷ 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>

³⁸ 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>

³⁹ 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.

⁴⁰ 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.⁴¹

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;⁴²
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.⁴³ Recall prompts are open-ended, inviting the child to tell everything he or she remembers in his or her own words.⁴⁴ 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.⁴⁵ However, these should be used judiciously as this might be suggestive and regarded as being leading.

⁴¹ U.S. Department of Justice Office of Juvenile Justice and Delinquency, Child Forensic Interviewing; Best Practices, p. 8 (September 2015).

⁴² Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI Framework conducted online last 6 May 2022.

⁴³ 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.

⁴⁴ U.S. Department of Justice Office of Juvenile Justice and Delinquency, Child Forensic Interviewing; Best Practices (September 2015), p. 7.

⁴⁵ *Id.*

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.⁴⁶

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.⁴⁷ 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 practice to use a second camera to zoom in on the child's drawing. However, in cases where the same

⁴⁶ Recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI Framework conducted last 6 May 2022.

⁴⁷ U.S. Department of Justice Office of Juvenile Justice and Delinquency, Child Forensic Interviewing; Best Practices (September 2015), p. 10.

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.⁴⁸

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 injury⁴⁹ the child will be exposed to if made to testify in court per **Individuals participating in the VIDI** (page 15 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 VIDI under RECW.

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.

⁴⁸ Confirmed and recommended by the Survivor Leaders during the Focus Group Discussion on the VIDI Framework conducted last 6 May 2022.

⁴⁹ See Annex C 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.⁵⁰

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.⁵¹ 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.⁵²

⁵⁰ See Annex H for a Sample Joint or Separate Affidavit/s of Child Forensic Interviewers.

⁵¹ RECW, § 29.

⁵² See Annex I 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 VIDI 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 VIDI**, page 15 of this Framework, and Annex H);
- 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 VIDI TO THE PROSECUTOR

The intention to use VIDI in lieu of the child victim's live testimony should be communicated to the prosecutor during the MDT meeting (see **Individuals participating in the VIDI**, page 15 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 VIDI in lieu of a child victim's testimony as a child protection mechanism, and that the VIDI was conducted in accordance with the rules on admissibility.

TRIAL

A. REQUIREMENTS FOR ADMISSIBILITY

For VIDI 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.⁵³**

⁵³ 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.⁵⁴

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.⁵⁵

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.⁵⁶

B. PRE-TRIAL

As part of pre-trial preparation, the VIDI, 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 VIDI has not yet been conducted or a supplemental VIDI 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 VIDI 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:

⁵⁴ RECW, § 28(c).

⁵⁵ RECW, § 29.

⁵⁶ *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.⁵⁷

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 VIDI in lieu of child testimony.⁵⁸

Severe Psychological Injury.

In the absence of other grounds for unavailability specified in the RECW, 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.⁵⁹

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 VIDI. The prosecution will then be able to present its evidence.

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

⁵⁷ RECW, § 28(c).

⁵⁸ See Annex J for the Motion to Establish the Child Witness Unavailable and Admit VIDI.

⁵⁹ Amado, Arce, Herraiz Psychological Injury in Victims of Child Abuse: A Meta-Analytic Review, *Psychosocial Intervention* 24 (2015) 49-62.

Offer

The RECW requires that before the VIDI is offered in evidence, all parties must be afforded an opportunity to view or listen to it. Parties must also be given a copy of the written transcript of the interview.⁶⁰ As such, before the hearing for the presentation of the VIDI (at the very latest), the prosecution should inform the court that the video may be viewed by the adverse party and furnish a copy of the written transcript.

It is recommended that the VIDI (and its accompanying transcript) be offered as object evidence. This is because evidence through VIDI must be corroborated by other admissible evidence and cannot stand alone. Although the VIDI would not in and of itself go towards proving the disclosed offences, offering it as object evidence better protects the child as the interviewer will be the one to testify in court. This is further elaborated in the following section.

Witnesses

In presenting the VIDI, the person who conducted the interview is required to be available at trial for examination by any party.⁶¹ 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.

⁶⁰ RECW, § 29(c).

⁶¹ *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. VIDI 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 VIDI. In the event the child needs to give evidence in court, the prosecution should ensure that all child-protective measures laid down in the RECW 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 RECW.⁶²

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.⁶³

⁶² RECW, § 25-26.

⁶³ See Philippine Republic Act (R.A.) 7610, Section 2, for the Best Interests of the Child. Available at <https://gog.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 VIDI 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 VIDI 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 VIDI*.

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 VIDI?

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 VIDI 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 VIDI to ensure that the child has gone to the toilet, is well-rested and well-fed, and has drank water.

INTERVIEWER

IS IT NECESSARY TO HAVE A PSYCHOLOGIST DURING THE VIDI 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 VIDI could obviate the need for multiple repetitive interviews with the child, which could be retraumatizing.

INTERVIEW QUESTIONS

THE VIDI IS CONDUCTED DURING THE INVESTIGATION STAGE. CAN THE INTERVIEWER USE LEADING QUESTIONS?

Section 29 (c) of the RECW specifically states that the party offering the VIDI 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 VIDI?

It is recommended that VIDIs are conducted in an existing government interview facility.⁶⁴

If a VIDI room cannot be secured and a Mobile VIDI 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 VIDI?

The VIDI 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 VIDI Mobile Kit may be used to record the interview so long as it is in line with the best interest of the child.

⁶⁴ See Annex D 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 VIDI 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 VIDI 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 VIDIS 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 VIDI be conducted in every case (subject to the readiness of the child). Conducting a VIDI 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 VIDI taken during inquest period, you have the option of conducting a supplemental VIDI at a later stage (see [Supplemental or Follow-up VIDI](#), 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 VIDI?

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

Republic of the Philippines
SUPREME COURT
Manila

A.M. NO. 004-07-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.

⁶⁵ Copy retrieved from 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 B

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 C

DIRECTORY OF ORGANIZATIONS WITH CHILD PSYCHOLOGISTS

Directory of Organizations with Child Psychologists		
Organization	Contact Details	Address
Women and Children Protection Desk <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 D

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 E

IJM'S VIDI 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)**.⁶⁶
- (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

⁶⁶ 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 VIDI 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 VIDI Kit

1. Who is a “*handler*”: A handler is any person authorized to possess, deploy, and operate the VIDI 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 VIDI 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 VIDI 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 VIDI 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 F

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 G

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], [PETSATSA]. 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], [PETA].*)

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], [PETA]. 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 gipangsayay? 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 H

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 naaayon 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 I

SAMPLE SUPPLEMENTAL AFFIDAVIT OF INTERVIEWERS

Republic of the Philippines]

City of _____.] ^{ss}

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 J

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.⁶⁷
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.⁶⁸ 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.⁶⁹
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.⁷⁰ 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.⁷¹
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,

67 A.M. NO. 004-07-SC.

68 Amado, Arce, Herraiz Psychological Injury in Victims of Child Abuse: A Meta-Analytic Review, Psychosocial Intervention 24 (2015) 49-62.

69 Jumper, 1995; Paolucci, Genuis, & Violato, 2001.

70 Ceci and Bruck, 1995; Fivush, Peterson, and Schwarzmuller, 2002; Malloy and Quas, 2009; Poole and Lamb, 1998; Poole and Lindsay, 2002.

71 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