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**Guide of good practices for
the taking witness statements in
criminal proceedings from minors
and persons with disabilities
in need of special protection:
involvement of forensic
psychology, particularly in
pre-constituted evidence**

2023



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evidence**



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List of abbreviations

APA	American Psychological Association
APSAC	The American Professional Society on the Abuse of Children
Art	Article
CNEJ	National Commission for Judicial Statistics
DI	Intellectual disability
FOCAD	Continuing Distance Learning. General Council of Psychology in Spain
IMLCF	Institutes of Legal Medicine and Forensic Sciences
LECrim	Criminal Procedure Act
LOPVI	Organic Law for the Comprehensive Protection of Children and Adolescents against Violence
LOPJ	Organic Law of the Judicial Branch
NCAC	National Children's Advocacy Center
NICHD	National Institute of Child Health and Human Development
NNA	Children and adolescents
OAVD	Office for the Assistance of Victims of Crime
IDPs	Persons with intellectual disabilities
PDNEP	Persons with disabilities in need of special protection
RATAC	Rapport, Anatomy Identification, Touch Inquiry, Abuse Scenario, and Closure
UVFI	Comprehensive Forensic Valuation Units
VIDO	Domestic violence

Submission

The modernisation of the State and its institutions aims to improve the quality of public services. Justice is a means for citizens to improve the care and protection of victims of crime, especially those considered most vulnerable, such as minors and people with disabilities in need of special protection.

The Ministry of Justice is staunchly committed not only to people's safety and well-being, but also to justice and equality. Many people are involved in this process and we must all collaborate in its transformation, implementing actions that allow us to offer a modern, accessible, agile and quality public justice service.

Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence, has introduced important modifications to the Criminal Procedure Act, including but not limited to, pre-constituted evidence, establishing its practice as a general rule in the investigation phase with expert involvement, when a statement must be given by persons under the age of fourteen or persons with disabilities in need of special protection.

Pre-constituted evidence humanises justice, contributes to the proper exercise of the fundamental right to effective judicial protection, adapting justice to the person in court and placing victims at the centre of the system to improve their protection and contribute to their prompt recovery, mitigating the effects caused by criminal proceedings, in harmony with the spirit of Law 4/2015, of 27 April, on the Standing of Victims of Crime.

This guide of good practices is a testament to the commitment assumed before the General Council of Official Psychologist Associations and the Association of Forensic Psychology at the Administration of Justice, to provide special protection to minors and people with disabilities during their involvement in criminal proceedings, in view of their particular circumstances, while also giving relevance to the role that forensic psychology plays in the Administration of Justice and to ensure the promotion and recognition of ethical and conduct values, as well as the implementation of any actions that help to improve quality.

I hope it will serve forensic psychologists as a practical guide for their daily work and make it possible to reinforce their spirit of public service.

I hope it enables the Administration of Justice and other stakeholders to improve care and respond to the specific needs of persons in need of special protection.

Pilar Llop Cuenca
Minister of Justice

1. Introduction

"Pre-constituted evidence" is the definition created in case law of a situation applicable to all cases in which certain investigation actions acquire evidential value when they are reproduced or ratified in the oral trial. In relation to personal evidence, this constitutes a perfectly defined case, which coincides with statements that cannot foreseeably be given as part of the oral trial and must be given when the impossibility or extreme difficulty of doing so is known in advance, although it will acquire evidential effectiveness as part of the trial through the documents reflecting the results obtained in its practice.

The possibility of anticipating evidence, which was only loosely provided for in our criminal procedure legislation, appears to be appropriate for the protection of particularly vulnerable victims. Under Law 4/2015 of 27 April 2015 on the Standing of Victims of Crime, this practice began to become more widespread, mainly to reduce the victim's exposure to criminal proceedings, replacing the system whereby a minor or person with a disability had to answer questions from the judicial authority and the parties present and to do so again at the trial, some time later.

The testimony of particularly vulnerable witnesses and/or victims, including children and adolescents (NNA) and persons with disabilities in need of special protection (PDNEP), as pre-constituted evidence during the pre-trial phase, allows them to be afforded special protection during their participation in the criminal proceedings in view of their particular circumstances. The aim is twofold. On the one hand, to minimise the risk of secondary victimisation by preventing them from having to testify again in court and, on the other hand, to safeguard the quality of their testimony as evidence by preventing it from being altered or contaminated over time and preserving it by recording it.

Article (Art.) 39 and Art. 49 of the Spanish Constitution establishes the obligation of the public authorities to ensure the comprehensive protection and the exercise of the rights of minors and persons with disabilities, respectively, in conditions of freedom and equality.

In this sense, Justice in Spain has been giving an increasingly active role to the victim of crime during criminal proceedings, with a view to offering an equal care and protection service, accessible and adapted to the individual needs of the defendant in order to avoid secondary victimisation, especially when it comes to particularly vulnerable people, such as children and adolescents, as recent legislative reforms have shown.

When, in the cases provided for by law, the judicial authority agrees to the use of the witness and/or victim statements as pre-constituted evidence, this must be carried out in accordance with the requirements established in art. 449 bis of the Criminal Procedure Act (LECrIm).

The wording of this precept has been introduced by Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence (LOPVI), which also introduces an article in the LECrIm (art. 449 ter.) to regulate the witness

testimony of a person under fourteen or a PDNEP in legal proceedings whose purpose is the investigation of a homicide, injury, against freedom, against moral integrity, human trafficking, against sexual freedom and indemnity, against privacy, against family relations, against the exercise of fundamental rights and public freedoms, involving criminal and terrorist organisations and groups and terrorism. In these cases, the judicial authority shall agree, in any case, to hear the child or the PDNEP as pre-constituted evidence, with all the guarantees of the taking of evidence at the oral trial.

This legislative amendment must be seen in relation to the reform that the same law has carried out with the introduction of an addendum in Art. 703 and the new wording of Arts. 707, 730 and 777 of the LECrim to enable the introduction of these statements, by means of their reading or reproduction in the plenary, considered as being fully valid as evidence.

Under the new regulation, the trial testimony of minors under the age of fourteen or PDNEPs becomes exceptional, establishing the practice of pre-constituted evidence in the pre-trial phase and its reproduction in the trial as standard practice, avoiding that the time lapse between the first statement and the date of the oral trial affecting the quality of the statement as well as the secondary victimisation of especially vulnerable victims.

The presence and active participation of experts in the deposition allows, in addition to providing technical support to the judicial examination, expert action to be taken when necessary.

Forensic psychology has been playing a fundamental role in the work of technical assistance to the judicial and prosecutorial authorities, in collaborating the taking of the statement, as well as advising on the risk of contamination of the testimony, the possible loss of information due to the passing of time, memory, maturity, injuries and the psychological footprint, competence to testify, as well as to preserve the cognitive and emotional stability of the person giving the statement.

Specialised knowledge, the application of scientific interview techniques and experience in handling interpersonal skills ensure that quality testimony valid for the legal context is obtained. It also helps to comply with the principles of equality, contradiction and immediacy, to secure evidence, and even allows other expert actions to be carried out, when required, which may facilitate judicial decision-making.

Pre-constituted evidence represents a major step forward in terms of the protection of the victim, although further development is required. Forensic psychology needs to improve its implementation, establish training requirements and strengthen teaching and research in the field. Therefore, this guide aims to meet the following objectives.

2. Objectives

- Provide forensic psychologists with recommendations for action when involved in taking a statement from children and adolescents and PDNEP, in accordance with current regulations and national and international scientific recommendations, to ensure their correct implementation.
- Improve victim care and prevent secondary victimisation throughout the procedure.
- Promote inter-institutional coordination.
- Convey the most appropriate conditions and guidelines for action to legal operators and parties involved in the trial for the benefit of the victim and the procedure.
- Contribute to humanising justice and raising awareness among stakeholders and citizens.
- Give relevance to the role that forensic psychology lends to the judicial authority when the latter agrees that the hearing should be conducted by an expert. Forensic psychologists in the administration of justice ensure that quality testimony is obtained, which is valid for the legal context, facilitate stress management for the victims and prevent deterioration of the memory by taking the statement closer to the actual events occurring.
- Promote data collection, research, training and teaching in the field.
- Ensure the promotion and recognition of ethical and conduct values.
- Implement actions to improve the quality of the public justice service.

3. Regulatory framework

The Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 and in force in Spain since 5 January 1991, is the main international legal instrument that recognises children as social agents and as active holders of their own economic, social, cultural, civil and political rights. It also defines the obligations and responsibilities of other stakeholders such as parents, educators, health professionals and legal professionals.

In Spain, Organic Law 1/1996, of 15 January, on the Legal Protection of Minors, partially amending the Civil Code and the Civil Procedure Act, builds a broad legal framework of protection that is binding upon all public authorities, institutions specifically related to children and adolescents, parents and relatives, as well as citizens in general. Art. 2 of said Law develops the guiding principle of the best interests of the child, with its first paragraph asserting that: "Every child has the right to have their best interests assessed and considered as paramount in all actions and decisions concerning him or her in both the public and private spheres". Likewise, the second and third paragraphs of the article lists the general criteria for the interpretation and application in each case of the best interests of the child and the general elements to be taken into account when weighing them, respectively:

- a) The protection of the child's right to life, survival and development and the satisfaction of their basic material, physical, educational, emotional and affective needs.
- b) Taking into account the wishes, feelings and opinions of the child, as well as their right to participate progressively, based on their age, maturity, development and personal evolution, in the process of determining their best interests.
- c) The desirability of their life and development taking place in an appropriate family environment free from violence. Priority shall be given to remaining in the child's family of origin and maintaining family relationships, whenever possible and positive for the child. In case a protective measure is agreed upon, foster care shall be prioritised over placement in a communal home. When the minor has been separated from their family, the possibilities and suitability of their return shall be assessed, taking into account the evolution of the family since the protective measure was adopted and always placing priority on the interests and needs of the minor over those of the family.
- d) The preservation of the minor's identity, culture, religion, convictions, sexual orientation and identity or language, as well as the non-discrimination of the minor on the basis of these or any other conditions, including disability, guaranteeing the harmonious development of their personality.

And the general elements to be taken into account:

- a) The age and maturity of the child.
- b) The need to guarantee their equality and non-discrimination on the basis of their special vulnerability, whether due to lack of a family environment, abuse, disability, sexual orientation and identity, refugee, asylum seeker or subsidiary protection status, membership of an ethnic minority, or any other relevant characteristic or circumstance.
- c) The irreversible effect of the passage of time on their development.
- d) The need for stability in the solutions adopted to promote the effective integration and development of the child in society, as well as to minimise the risks that any change in the material or emotional situation may cause in their personality and future development.
- e) Preparation for the transition to adulthood and independence, based on their abilities and personal circumstances.
- f) Any other weighted elements that, in the specific case, are considered relevant and respect the rights of minors.

These elements should be assessed jointly, pursuant to the principles of necessity and proportionality, in such a way that the measure adopted in the interests of the child does not restrict or limit more rights than those it protects.

Furthermore, the second subparagraph of paragraph four of the aforementioned art. 2 states that: "Where not all competing legitimate interests can be respected, the best interests of the child shall prevail over any other legitimate interests that may be involved.

And in this context, mention must be made of the due guarantees of any judicial process when they affect a minor, as established in paragraph five of Article 2:

Any decision of any court and any measure in the best interests of the minor shall be taken in accordance with due process of law and, in particular:

- a) The rights of the minor to be informed, heard and listened to, and to participate in the process pursuant to the regulations in force.
- b) The involvement of qualified professionals or experts in the process. Where necessary, these professionals should be trained to identify the specific needs of children with disabilities. In particularly relevant decisions affecting the child, the collegiate report of a technical and multidisciplinary group specialising in the appropriate fields shall be taken.
- c) The participation of parents, guardians or legal representatives of the minor or of a legal defender if there is a conflict of interest or discrepancy with them and of the Public Prosecutor's Office in the proceedings in defence of their interests. A conflict of interest shall be presumed to exist when the opinion of the minor is contrary to the measure to be taken concerning them or involves a restriction of their rights.
- d) The adoption of a decision which includes the criteria used, the elements applied when weighing the criteria against one another and against other present and future interests, and the procedural guarantees respected in the corresponding statement of reasons.
- e) The existence of remedies to review a decision that has not been taken in the child's best interests as a primary consideration, or where the child's own development or significant changes in the circumstances that led to the decision make it necessary to review the decision. Minors shall enjoy the right to free legal assistance in the cases provided for by law.

With regard to criminal proceedings, Organic Law 4/2015, of 27 April, on the Standing of Victims of Crime, sets out the guidelines for the treatment of victims of any crime and whatever the nature of the physical, moral or material harm that has been inflicted may be, notwithstanding references to special regulations on victims who are minors and PDNEP, as well as victims of gender-based violence. The Standing of Victims of Crime is intended to serve as a general catalogue of procedural and extra-procedural rights, and with regard to the former, the rights and procedural guarantees that are necessary to prevent or limit, as far as possible, the development of the investigation or the holding of the oral trial from becoming a new source of harm for the victim of the crime.

As part of the investigation, it may be necessary to involve children and adolescents, or PDNEPs, to give evidence, either as victims or as witnesses. In these cases, the principle of immediacy should apply, which generally requires that the witness statements, whether as a victim or as a witness, are given before the judge or court that is to hand down the ruling, which shall be different from the judicial body that conducted the investigation. Throughout the criminal proceedings, consideration shall be given to the protection measures employed for victims who are minors or other vulnerable people, assessing, as part of their adoption, their personal situation, immediate needs, age, gender, any disabilities and their level of maturity and shall have complete respect for their physical, mental and emotional integrity.

In this sense, Art. 26 of the Standing of the Victim of Crime establishes that:

In the case of victims who are minors or victims with disabilities in need of special protection and victims of sexual offences as well as the measures provided for in the preceding article, such measures shall be employed, in accordance with the Criminal Procedure Rules, as are necessary to avoid or limit, as far as possible, the conduct of the investigation or the trial becoming a new source of harm for the victim. In particular, the following shall apply:

- a) Statements taken during the investigation stage shall be recorded by audiovisual means and may be played in court in the cases and under the conditions determined by LECrim.
- b) Statements may be taken by experts.

It also establishes the following general criteria: where there are doubts about the age of the victim and it can be established for certain, it shall be assumed that the person is a minor for the purposes of the provisions of this Law.

In turn, one of the objectives of the LOPIVI is that the minor, or the PDNEP, should give a single account of the facts before the investigating court, without it being necessary for this to be done either before or after that moment, and it regulates pre-constituted evidence in a complete and systematic manner, establishing the necessary requirements for its validity.

With regard to the exemption from the obligation to report and declare, the new framework can be traced to the State Treaty on Gender Violence after the reform introduced under LOPIVI, in Arts. 261 and 416 of LECrim, which establish:

Article 261. Nor shall the following be required to report:

1. The spouse of the offender who is not legally separated, or de facto partner or the person living with them in a similar emotional relationship.
2. The ascendants and descendants of the offender and their blood relatives up to the second degree, inclusive.

This provision shall not apply in the case of an offence against life, homicide, injury under Articles 149 and 150 of the Criminal Code, regular abuse under Article 173.2 of the Criminal Code, an offence against liberty or against sexual freedom and indemnity or human trafficking and the victim of the offence is a minor or a person with a disability in need of special protection.

Article 416. The following are exempt from the obligation to testify:

1. Family members of the accused in direct ascendant or descendant lines, their spouse or person linked to them by a de facto relationship similar to marriage, their whole or half blood brothers and sisters and blood lines up to the second civil degree. The Examining Magistrate shall notify witnesses included in the previous paragraph that they are not obliged to testify against the defendant, but that they may make any statements they deem appropriate, and the Legal Adviser for the Administration of Justice shall record the reply given to this notice.

The provisions of the preceding paragraph shall not apply in the following cases:

1. When the witness has been granted legal representation or de facto guardianship of the victim who is a minor or a victim with a disability in need of special protection.
2. In the case of a serious crime, when the witness is of legal age and the victim is a minor or a disabled person in need of special protection.
3. When, due to age or disability, the witness is unable to understand the meaning of the waiver. To this end, the judge shall first hear the affected party and may seek the assistance of experts in order to reach a decision.
4. When the witness is or has been a party to the proceedings as a plaintiff.
5. When the witness has agreed to testify during the proceedings after having been duly informed of their right not to do so (...).

On the other hand, Art. 13 of the International Convention on the Rights of Persons with Disabilities, ratified by Spain in 2007, specifies:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Law 8/2021, of 2 June, which reforms civil and procedural legislation to support people with disabilities in the exercise of their legal capacity, introduces a new article (art. 7 bis) in the Civil Procedure Act, which applies in addition to criminal proceedings, the first section of which establishes:

As part of processes in which persons with disabilities participate, the necessary adaptations and adjustments shall be made to guarantee their participation under equal conditions. Such adaptations and adjustments shall be made, either at the request of any of the parties or the Public Prosecutor's Office, or ex officio by the

Court itself, and in all the procedural phases and proceedings in which it is necessary, including acts of communication. Adaptations may relate to communication, understanding and interaction with the environment.

Finally, Organic Law 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom, modifies the heading and section 1 of Art. 26 of Law 4/2015, of 27 April, on the Standing of Victims of Crime, so that, in the case of victims who are minors, victims with disabilities in need of special protection and victims of sexual violence, the measures required to avoid or limit, as far as possible, that the development of the investigation or the holding of the trial become a new source of harm for the victim of the crime will be adopted, pursuant to the provisions of LECrim. In particular, the following shall apply:

- a) Statements taken during the investigation stage shall be recorded by audiovisual means and may be played in court in the cases and under the conditions determined by the Criminal Procedure Rules.
- b) Statements may be taken by experts.

4. Scope of application

Who is it for?

The Institutes of Legal Medicine and Forensic Sciences (IMLCF) are technical bodies attached to the Ministry of Justice or, where appropriate, to the Autonomous Regions with powers in this area, whose main mission is to assist the Administration of Justice in the field of their scientific and technical discipline (Art. 479.1 of the Organic Law of the Judicial Branch [LOPJ]).

A total of 12 IMLCFs (12 directorates and 13 sub-directorates) form part of the Ministry of Justice, located in: Balearic Islands (directorate in Mallorca: sub-directorates in Ibiza and Menorca), Castilla-La Mancha (directorate in Albacete: sub-directorates in Cuenca and Guadalajara; directorate in Toledo: sub-directorate in Ciudad Real), Castilla y León (directorate in Burgos: sub-directorates in Ávila, Segovia and Soria; directorate in León: sub-directorates in Zamora and Ponferrada; directorate in Valladolid: sub-directorates in Salamanca and Palencia), Ceuta, Extremadura (directorates in Badajoz and Cáceres), Melilla, Murcia (directorate in Murcia: sub-directorate in Cartagena) and, with headquarters in Madrid, the IMLCF of bodies with nationwide jurisdiction.

In this Institutes work forensic professionals, whom the application of this guide is recommended when providing the functions entrusted to them in relation to pre-constituted evidence; although, as it is a technical tool, it can be extended to professionals in other territorial areas and even to other stakeholders (judicial and prosecutorial authorities, parties, offices assisting the victims of crime, translators, facilitators, etc.), as it provides guidelines for action that will undoubtedly improve the care offered to people who require special protection.

In which cases is it to be applied?

In the witness and/or victim statements when the party is aged under fourteen or a PDNEP in legal proceedings, the purpose of which is to investigate a homicide, injury, offence against liberty, against moral integrity, human trafficking, against sexual freedom and indemnity, against privacy, family relations, the exercise of fundamental rights and public freedoms, of criminal and terrorist organisations and groups and terrorism, and when so requested by the judicial authority before the IMLCF.

5. General provisions

5.1. Objectives of pre-constituted evidence

The aim is twofold: on the one hand, to minimise the risk of secondary victimisation and, on the other hand, to safeguard the quality of the testimony as evidence.

5.1.1. Preventing secondary victimisation

The impact of a traumatic event involving the victim and their environment, as well as contact with the court environment, can in itself cause serious emotional damage to people who have suffered a violent crime.

Secondary victimisation involves the negative emotional consequences of a victim's contact with the institutional system or the administration of justice. The drawn out process, repeated interrogation, overexposure to different interviews or evaluations, the fear of not being believed, the feeling of being discredited as they may consider that their statement is being questioned, etc., in addition to generating stress, can lead to feelings of guilt, the re-experiencing of negative emotions associated with the traumatic experience, affecting the victim's self-esteem and even their ability to provide valid testimony.

The effect on children and PNSDP is even more variable and complex, as it is also conditioned by age, the passage of time or their tendency to please and acquiesce to adults. Therefore, a protective space must be created to facilitate their verbalisation of the account of the violence they experienced.

Among the corresponding guidelines, the following are recommended, insofar as possible (adapted from Echeburúa and Subijana, 2008):

- Waive the duty to testify, if the victim is not required to do so and understands the meaning of the waiver.
- In case they are required to declare:
 - Inform them, according to their cognitive abilities, about the development and meaning of the evidence.
 - Reduce the number of declarations required.
 - Use a suitable space that guarantees their privacy, with appropriate audiovisual support.
 - Limit the number of spectators.
 - Avoid visual confrontation with the defendant.
 - Have an expert take the evidence at an appropriate emotional time, bearing in mind the needs of the victim.
 - Record the evidence on a suitable medium so that it can be reproduced at the oral trial.
 - Avoid the victim having to be present at oral proceedings.

5.1.2. Safeguarding the quality of testimony

The collection of testimony as soon as possible after the time of the events, without it having to be repeated several times in front of different professionals, by a forensic psychologist, in a legal context with all the guarantees and recorded, means it is possible to avoid its alteration, substitution, contamination or destruction and to guarantee its quality.

5.2. Contributions of forensic psychology to pre-constituted evidence

Forensic psychology, with the corresponding knowledge and in the framework in which the evidence is found, has to guarantee the emotional well-being of the victim at all times, seeking to obtain testimony that is framed by the current scientific knowledge of psychology, and taking into account the needs of Justice (Juárez, *et al.*, 2021).

The contribution of forensic psychology to the achievement of both objectives is evident: specialised knowledge, application of scientific interviewing techniques and experience in handling interpersonal skills. This helps to prevent victimisation and to ensure that quality testimony is obtained that is valid in the legal context.

5.2.1. In the prevention of victimisation

The intervention framework of forensic psychology is immersed in the fundamental principle of avoiding and/or minimising secondary victimisation of children and adolescents and PDNEP, seeking a protective space that facilitates their ability to verbalise the account of the violence they have experienced. The protocolisation of their action before, during and after evidence is taken, which will be developed upon later, allows for specific recommendations aimed at their prevention.

It is not possible to establish a single psychopathological pattern associated with traumatic victimisation, with different responses and imbalances appearing in the cognitive, emotional, behavioural and relational areas of victims who have suffered this type of experience, with many factors that can affect the impact of the offence on the victim, as well as on their future recovery (Echeburúa, Corral and Amor, 2002; Tamarit-Sumalla, 2017; Murillo, *et al.*, 2021).

Therefore, it is advisable to have a profile of the victim's psychological state prior to the interview to guide, based on clinical criteria, whether or not the moment chosen for the interview is suitable, and, during the interview, to pay attention to the indicators of emotional suffering in the victim to apply crisis intervention techniques that minimise the level of discomfort or to recommend that the judicial authorities suspend the test.

5.2.2. In obtaining testimony

The description of facts, of a memory, is influenced by attentional, perceptual, memory, language and thought processes. The cognitive process of memorising involves encoding information in such a way that it forms a particular mental representation (acoustic, visual or semantic) (Juárez, *et al.*, 2021). When information is stored (in the short or long term) it can later be retrieved, which makes what we refer to as a “memory”.

The system that seems to best fit the definition of "memory" would be episodic, given that it is associated with a spatio-temporal context that occurred in the past and is the one that allows us to consciously re-experience past experiences as our own (Tulving, 2002).

Episodic memory has two essential characteristics (Perner, 2000):

1. It is based on self-referential knowledge.
2. The causal link must be experiential: recall implies direct (non-inferential) access to information, and in no case is its truthfulness assessed, because it is considered that when the person consciously re-experiences a past episode, it is real.

Research into the *psychology of testimony* has defined the different factors that can affect memory, which have traditionally been organised into three groups (Manzanero, 2010). Those factors that affect the:

- a) **Information coding phase:** on the one hand, the characteristics of the criminal victimisation situation (e.g. perceptual conditions, duration, feeling of risk to life, etc.) and, on the other hand, characteristics of the victim/witness (gender, age, emotions experienced, etc.).
- b) **Information retention phase:** retention time, the number of repetitions and re-encodings.
- c) **Information retrieval phase:** number of times the victim has been approached about the alleged facts reported and the way in which the different approaches have been carried out. To this end, research indicates that the more times the victim has had to retrieve the memory, the greater the likelihood of it being distorted.

The contaminating factors affecting the encoding and retention phase are beyond any control aimed at minimising their impact. However, the factors affecting the recovery phase are avoidable, provided that the person is approached in an appropriate manner.

Moreover, the cognitive cue (memory) is in continuous transformation and is affected by deterioration processes due to the passage of time and the interference of extraneous information (Baddeley, Eysenck and Anderson, 2010).

Memory is reconstructed each time the victim or witness recalls and narrates the events, with the possibility of it being contaminated by information from the environment or by the questions asked or even by the way in which questions are asked.

The use of suggestive interview techniques can lead to false memories being sown and should be avoided. The main suggestive techniques include (Cantón and Cortes, 2000):

- **Confirmatory interviewer bias:** this involves the interviewer pursuing a preconceived hypothesis and may affect the type and manner in which questions are posed.
- **Interview atmosphere:** a tense atmosphere may result in people tending to provide less accurate and detailed information than those in which *rapportis* well established.
- **Adult status:** children and adolescents tend to consider adults as having authority and power over them, as they are taught by society to listen to them, respect them and obey them. This position may imply that, in their eagerness to please you, they become *acquiescent*, i.e. they systematically accept and confirm your proposals.
- **Stereotype induction:** use of expressions by the interviewer that suggest a position or expectation about the fact under investigation, e.g. when asking questions: "Has someone done bad things to you?"
- **Repetition of questions and interviews:** while every child reacts differently, research indicates that children's responses to the same question may nevertheless vary, and that the way and timing of rephrasing the question may also influence the answers given.

It has also been found that the younger the age, the higher the risk of suggestion during the interview (directive interview style and use of leading, leading, suggestive questions, etc.). Therefore, another key element to take into account when collecting testimony is suggestibility, which is particularly important in the field of child testimony. Good forensic interviewing requires as much control and as little suggestive influence as possible.

Elements that fall under suggestibility and should be avoided include (Bruck and Melynck, 2004; Goodman, Jones, McLeod, 2017; Lyon, 2014; Ornstein and Elischberger, 2004):

- **Interrogative suggestibility:** to consider questions that contain incorrect information as valid.
- **Incorporation of post-event information:** incorporating misinformation into later narratives.
- **Error in the attribution of the source:** failure to distinguish between the real source and the one added later.
- **Fabrication of events:** construction of stories about events that did not actually happen.

It should also be taken into account that people with intellectual disabilities (PDI) present particularities with respect to the basic learning devices: in relation to attention, as they tend to be distracted by external stimuli; perception, being better perceived visually; and in relation to memory, they present difficulties with short-term memory and declarative memory (Rincón and Linares, 2011). They also have greater difficulty in describing and expressing emotions.

5.2.3. Other possible forensic psychology expert actions

It is advisable for the judicial body to specify the purpose of the expert's action and to determine whether, in addition to assisting in the statement, it is necessary to carry out other expert actions such as the analysis of the testimony or the presence of psychological damage in the victim.

Thus, in crimes against sexual freedom, domestic violence (VIDO) and gender violence against children and adolescents or PDNEP, there are specific difficulties such as the lack of other types of evidence or testimony other than that provided by the victim, the lack of recognition of the perpetrator/s, the asymmetry and dependence of the victims on the aggressor, as well as the contamination of the story by repeated interviews or lack of training of the interviewers (Muñoz *et al.*, 2016; Juárez and Lira, 2020; Faller, 2017, 2020; Juárez, Álvarez and Catalán, 2021). Furthermore, although indicators of physical and/or psychological violence may be objectified, sometimes there may be abusive, asymmetrical situations or coercive sexual behaviours in which it is very difficult to objectify impositions, coercion, blackmail, threats, degrading practices, etc., especially when they involve highly vulnerable victims.

Therefore, in the event that, in addition to the interview, a psychological expert report is requested, the expert should use the most appropriate methodology so that the same testimony serves not only as a judicial statement, but also as the basis for the subsequent analysis of the content or the requested expertise, thus avoiding the reiteration of the testimony of the interviewee.

5.3. Action protocol for the taking of evidence

The following schematic is proposed:

5.3.1. Actions before taking evidence

- Get to know the object of the intervention.
- Analyse all the information in the judicial case file, with special attention to the information provided by the victim/witness themselves, and, if possible, analyse how this information has been collected.
- Conduct a preliminary interview with family members or persons responsible for the child or the PDNEP, where information is collected on:
 - Development, language skills, cognitive abilities, emotional state, possible impairment resulting from the events and specific difficulties. In the case of a PDNEP, the specific difficulties presented by this person (in the cognitive, expressive, storage and retrieval of information, etc.) should be recorded.
 - The surrounding circumstances.
 - Persons and number of times they have been able to provide information on the facts.

- Family or emotional relationship with the person under investigation, analysing the resulting emotional and family consequences.
- Conduct a prior psychological assessment of the victim (based on Juárez *et al.*, 2021) in order to assess the victim's competencies and willingness to testify and to be able to adapt the interview to the specific characteristics of the victim. To this end, it is necessary to:
 - Establish *rappport* and prepare them for the subsequent taking of evidence.
 - Promote attention and a sense of security.
 - Assess their level of development and evaluate their capacity to testify:
 - Primary cognitive abilities such as level of reasoning and knowledge, memory (autobiographical, episodic, semantic), perception (visual, auditory) and attention (selective, sustained).
 - Secondary capacities such as language development and communication skills, moral capacity, representational capacity or sexual knowledge and social skills.

In other words, assess the skills required to account for the spatio-temporal details of an episodic autobiographical memory. This assumes that they are able to answer the questions: who?, what happened?, where?, how?, when?, how often?, etc.

Annex 1). This assessment is especially necessary the younger the child is or when there is a DI or developmental disorder.

- Identify the emotional state and impact of the statement. Pay attention to signs of anxiety and emotional distress. Encourage them to express any doubts and concerns.
- Analyse possible factors influencing their testimony such as suggestibility and, in cases of intra-family conflict, conflict of loyalties and their desire at that moment to please or harm one parent or the other, positioning themselves in favour or against the other parent.
- Formulate the hypotheses that will guide the entire assessment process, both during the preparation of the forensic interview and during the course of the pre-constituted evidence itself, in order to maintain objectivity and avoid confirmatory bias. The following hypotheses may occur (Muñoz *et al.*, 2016):
 - **Hypothesis 1.** This corresponds to a **situation they experienced**, but may be influenced or compromised by three possible sources of influence:
 - a. Cognitive abilities: lack of episodic memory, not having acquired the temporal concept of *when*, *how often*, etc.
 - b. Alteration in the process of encoding, storing and retrieving information, e.g. excessive approaches from disclosure, repetition of the story, etc.
 - c. Type of victimisation reported: single episode or chronic situation over a period of time.

- **Hypothesis 2.** This corresponds to a **situation they have not experienced**. This can be traced to different situations:
 - a. Induced memory and the interviewee is not aware of this (**false memory**). This may be due to voluntary inducement to harm the defendant (e.g. cases of major conflict between parents, etc.), interpretative error (e.g. the child describes a care-giving action and the adult interprets this as being non-existent sexual conduct) or professional negligence (such as inadequate therapeutic interventions).
 - b. A memory that is the result of a **fabulation**, when the conviction of reality is high, similar to a false memory, such as psychopathological conditions associated with psychotic mental states, consumption of toxic substances, personality disorders, etc.
 - c. Intentionally false accounts (**lies**) guided by a secondary motivation which may be animosity towards the target, parental interference, resentment and revenge towards the target, protection of a third party, etc.
 - d. False account due to distortions caused by **forgetfulness** or memory functioning.
 - Structure the interview by considering the possible alternative hypotheses to be explored, taking care not to present information in a manner aimed at confirming or discounting previous information obtained from other sources or the interviewer's own suspicions.
 - Understand the questions that the parties have submitted to the judicial authority and that the latter has considered relevant.

5.3.2. Actions when taking evidence

The forensic psychological interview is a structured conversation, the main purpose of which is to obtain information (quality and quantity) about a possible event or series of events that the child victim/witness or PDNEP has seen or experienced, based on current scientific knowledge of psychology, but also to ensure the emotional well-being of the interviewee and to accommodate the demands of the judicial process (NCAC, 2017).

Evidence-based protocols, such as those of the National Institute of Child Health and Human Development (NICHD) and the National Children's Advocacy Center (NCAC), among others, are recommended for conducting the interview.

The technical interview takes place in different phases:

1. **Preparatory phase:** if not explained during the previous psychological assessment, an explanation will be provided about what the process consists of, that it will be recorded, the persons involved and the purpose of the assessment. The witness will be given the opportunity to ask any questions that they may have before the evidence is taken. They will be informed about the limits of confidentiality.
2. **Transition or bridging phase**

- a) Presentation of the rules of the interview: the task to be performed should be explained, with the corresponding rules and/or special conditions, so that the interviewee is informed at all times and understands the scope of the task required.

As part of these basic rules, the focus should be on the interviewee. It is necessary to explain the difference between what is true and false, focussing on current memory, since the interviewee should not be obliged to answer all the questions as if it were an exam, but should answer what they remembers; they can modify and expand on previous statements; they can provide the information in the order in which they remember it; when faced with a question, they can indicate that they do not remember it, indicate that they do not understand it, or correct the interviewer if they point out something incorrect when summarising what the interviewee has said.

- b) Creation and maintenance of *rapport*.

A climate of trust and rapport must be created between the two, and maintained, as we may find that there are ups and downs during the interview. The interviewee's possible emotional reactions should be addressed and managed throughout the process.

- c) Neutral narrative, training or focus phase.

Establish a conversation/dialogue with routine topics, not involving the incidents being investigated, to facilitate and promote accommodation and adaptation.

This stage, in addition to exemplifying an episodic narrative production of its own (a task that will be asked in the substantive phase), serves as a basis for further exploration of cognitive skills:

- Use of language and the narrative structure of their answers.
- Ability to retrieve past events and thus contrast their memory.
- Focus on the different activities requested as part of the interview, observing their attention and concentration.
- Correct perception of the context and the characteristics of the physical space.
- Level of reasoning and confirming its stage in mind theory, etc.

Narrative training will facilitate the assessment of cognitive abilities such as memory, language or attention, as well as possible suggestibility and emotional involvement.

- 3. Substantive or account taking phase.** This phase is preceded by the bridging or transition phase, in which the focus is shifted from the neutral phase to focusing and directing the interviewee's attention on the situation being investigated, so that the basic principles of forensic interviewing can be developed from this approach: invitation or free narrative, open questions, chained questions, clarifying questions and, in exceptional cases, more directed and/or focused questions.

Dissect the interviewee's episodic recollection of the event, with maximum detail and minimum contamination by the interviewer.

In this phase, certain protocols (e.g. cognitive interviewing) allow the introduction of different recall techniques to obtain maximum precision and accuracy in the recall of the investigated facts. It is at this stage that the questions formulated by the parties that have been declared "useful and relevant" by the judicial authority must be incorporated.

- 4. Closing or final stage.** This stage focuses on lowering the emotional intensity by means of activities of a playful and/or creative nature; depending on the degree of maturity, informal topics can even be discussed, such as sports, gastronomy, etc. The aim of this stage is to prevent the interviewee from ending the interview with the mental image and emotion connected with the incidents reported, allowing for a more relaxed atmosphere and a time of attention that goes beyond the judicial purpose of obtaining information.

When reviewing the scientific literature on protocols, methods and techniques of forensic interviews for child victims and testimonies, they are based on the same premise: avoiding insofar as possible any closed, suggestive or leading questions to avoid the introduction of contamination that make it difficult to obtain an account of what the child really remembers. The use of as open questions as possible and an atmosphere of calm and cordiality are the common denominator. This climate of trust, basic to the success of the interview, also requires technical knowledge of active listening and reformulations that favour the child's account (Juárez *et al.*, 2021).

The elements of active listening include the need to show real interest in what the person is explaining; interrupting as little as possible and avoiding value judgements; avoiding any kind of criticism; not giving any information that has not been previously offered by the interviewee; using rephrasing; always respecting the interviewee's pace.

Table 1. Phases of the technical interview and approximate duration

	Stage	Objectives	Content
60'	Planning and preparation of the physical space.	Understand the essential aspects of the case in order to guide the interview correctly.	Study of the file: initial statements (police, hospital, school, relatives, etc.) and substantive aspects of the incidents.
10'	Initial <i>rapport</i> and transfer of control.	Reduce the interviewee's level of uncertainty and help them adapt to the forensic task.	Clarify implicit and explicit doubts. Obtain the respondent's prior knowledge/motivation. Building and maintaining <i>rapport</i> .
10'	Regulations, interview rules and narrative training with neutral topics. Develop an evaluative and motivational <i>rapport</i> .	Allow the interviewee to anticipate the specific nature of the type of interview and train them. Ascertain the interviewee's declarative abilities and to resolve any reticence that may arise.	Basic rules: truth-lie, current recollection and permissions (do not answer without recollection, modify, expand on previous statements and elaborate). Narrative training (person, action, space) and assessment of cognitive abilities (memory, language, attention) and competence (suggestibility, emotional affect, last verbalisation).
15' 30' 45'	Transition (focus on memory) and obtaining their account. The duration of this stage will depend on the interviewee's age.	Facilitate a substantive and episodic, non-interfering and non-contaminating statement.	Switch to the scene of the incident: person, place, time. Refresh the ground rules. Free narrative, continue with open-ended and specific questions. Use of specific techniques* (cognitive interview, RATAc) to increase detail. Declarative summary.
10'	Contradiction: adaptation of defence questions.	Cross-examination: the right of the defence to cross-examine.	Refresh basic rules and permissions. Adapt the counter-questions to the language of the interviewee in order to make them easier to understand.
5'	Decompression, closure and end.	Reduce provoked <i>arousal</i> (alertness and activation).	Return to a neutral narrative theme and/or manual activity.
<p>* <i>Contextual reinstatement</i>, along with <i>reverse order</i> and <i>completion</i> are cognitive interviewing techniques that could facilitate recall and increase information volume. A <i>change of perspective</i> is discouraged.</p>			
<p>People with DI may need adaptation that involves a <i>rapport</i> and accommodation interview beforehand, along with special attention to the focus of the topic being interviewed and consideration that the response time may be longer. Particular attention should be paid to the contradiction phase and to the need to ensure understanding of cross-examination.</p>			

Adapted from Juárez and Álvarez, 2018; Juárez et al., 2021.

5.4. Expert psychological report

The forensic psychological expert report is the result of the entire assessment process. It should be organised and drafted in a clear and simple way, so as to be easily understood by the different legal operators. It shall contain all the data handled by the expert and the technical criteria used by the expert to arrive at the conclusions drawn, in a way that allows the expert's analysis and replication.

It is included as **Annex 2. General psychological expert report template.**

5.4.1. Pre-psychological assessment report: developmental level and capacity to testify

The assessment of the developmental level and the ability to testify of the interviewee is important in determining whether the interview can be conducted and to adapt the timing and content of the interview to the individual needs of the interviewee.

There are different interview protocols. For example, the CAPALIST (Capability Assessment of Ability to Testify. Contreras, Manzanero and Silva, 2018) is an important tool for the psychological assessment of the cognitive abilities of particularly vulnerable people, whose assessment is considered important prior to testing.

It is included as **Annex 3. Pre-assessment psychological expert report template: developmental level and capacity to testify.**

Table 2. Assessment of the capacity to give evidence

Primary cognitive abilities	Secondary and other cognitive abilities		
Memory Autobiographical Episodic Semantic Perception Visual Hearing Attention Selective Sustained	Cognitive		
	Space	Where? Are they able to situate themselves in today's space?	
	Time	When? Can they distinguish between different times?	
		Present	Are you able to identify the day/month/year of the interview?
		Past	Are they able to state the day/month/year of the reported event or of another event in the recent past?
	Descriptions	Who? What? How?	
		Persons	Are they able to differentiate between acquaintances and strangers?
		Places	Are they able to describe the place where they are?
		Things	Are they able to identify certain animate or inanimate objects?
		Chain of actions	Are they able to report a succession of actions in an adequate manner?
	Quantity	How many? Are they able to differentiate between the many and the few?	
	Consequences of an action	Can they list the consequence(s) of a given action?	
	Communication		
	Verbal language	Speaking comprehension	
	Non-verbal language	Expressiveness	
	Social interaction		
	Empathy	They recognise their own feelings, recognise their feelings and those of others, and finally recognises their own feelings and those of others and identifies with these.	
	Perception		
	Assertiveness	The person is assertive, passive, or aggressive.	
	Extraversion	Number and intensity of interpersonal relationships	
	Visual	Aquiescence	Referring to the tendency to answer yes or to show compliance
	Hearing	Social desirability	Tendency to give responses that are deemed socially acceptable
	Identification of mental states/emotions		
		Own	
		Outsiders (other persons)	
	Moral capacity		
		Distinguishing right from wrong, truth from lies	
	Representational capacity		
		Distinguishing reality/fantasy	
		Imaginative capacity	
		Reproducing scenes	
		Replaying conversations	
	Assigning roles (I/you/he)		
Sexual knowledge			
	Previous sexual experiences		
	Body parts (terms and area)		
	Sexual intercourse (terms)		
	Autonomy		
	Consent		
Pathologies			
	Behavioural disturbances		
	Other disability		
	Psychiatric problems		
	Psychotropic drugs		

Source: author's compilation. Adapted from Contreras, Manzanero and Silva, 2018.

The report should include the analysis of primary cognitive abilities: memory, perception and attention, as well as secondary cognitive abilities, communication, social interaction, identification of mental states/emotions, moral capacity and representational capacity.

5.4.2. Psychological expert report on the conduct and outcome of the hearing as pre-constituted evidence

The judicial authority may, after hearing the parties, request a report from the expert, giving an account of the proceedings and the outcome of the hearing.

In this case, four basic elements should be involved:

1. General analysis of competences and psycho-evolutionary development.
2. Characteristics of the interview: type of questions: suggestive, repetitive, misunderstood, etc.
3. Emotional reaction (psychological impact) on the person being assessed: how they have coped with the assessment, whether there has been any alteration in their statement due to their emotional state, or how this emotional situation is influencing their testimony.
4. Factors influencing testimony: cognitive-emotional disturbances, suggestibility, conflict of loyalties, etc.

It is included as **Annex 4. Psychological expert report template on the conduct and outcome of the hearing as pre-constituted evidence**

5.4.3. Psychological expert report on the analysis of the testimony

Forensic psychology is sometimes called upon by legal practitioners to provide an expert report on the "credibility of testimony". In this sense, it should be noted that the analysis of testimony is a psychological methodology for assessing the account of minors in cases of sexual abuse.

"The extrapolation of the use of this methodology to other areas of forensic victimology (e.g., physical abuse of children, violence against women, domestic violence, etc.) would undermine its scientific guarantees, as there is a lack of empirical data on its reliability and validity, although some proposals have been made in this regard" (Manzanero and Muñoz, 2011).

It is included as **Annex 5. Psychological expert report template on the analysis of the testimony.**

5.4.4. Psychological expert report on psychological damage

This mainly applies in cases of crimes against sexual freedom and/or VIDO involving children and adolescents and PDNEP.

The psychological disorders of the person interviewed as a result of the events reported will be subject to assessment.

The psychological impact of the crime is modulated by different factors (Ramírez and Fernández, 2011):

1. **Situational factors:** related to the situation of victimisation reported (frequency, intensity and duration; family relationship and degree of affection with the aggressor, existence or not of violence and/or threats). The exposure of the person being assessed to secondary victimisation factors (police and judicial system, socio-familial repercussions of the reported events, etc.) should also be taken into account.
2. **Vulnerability factors:** personal and contextual circumstances of the alleged victim that may *amplify* and *perpetuate* the impact of the crime on their psychological state:
 - Basic personality disorders.
 - Exposure to previous victimising experiences.
 - Poor social support network.
 - Negative environmental reaction (both in the sense of lack of credibility and support, as well as excessive overprotection).
 - Previous psychopathology.
 - Exposure to other major life stressors (death of a family member, separation of parents, etc.).
 - Use of alcohol and/or drugs as a coping strategy.
3. **Protective factors:** personal and contextual circumstances that *would cushion* the impact of the offence on their psychological state:
 - Personality variables (emotional control, adequate self-concept and self-esteem, external attributional style regarding responsibility for the crime, internal attributional style regarding ability to overcome trauma).
 - Social support and participation in social and recreational activities.
 - Receive professional psychological support.

The most severe effects are linked to a higher level of physical contact, greater frequency and duration of victimisation, the perpetrator being a significant person to the victim, and the use of force and violence. The poorer prognosis for recovery seems to be related to less support and higher levels of intrafamily conflict (Lameiras, 2002).

Forensic psychologists should always assess the basic personality structure of the person being assessed, as this has been shown to be a vulnerability/protective factor in traumatic psychopathology.

Likewise, it is necessary to differentiate between the concept of psychological damage and that of non-pecuniary damage. The first refers to the psychological consequences caused by the offence, being an empirically based, measurable and objectifiable concept and, therefore, the object of expert intervention. The second refers to all the person's suffering as a result of the damage to immaterial goods such as honour or freedom, being an imprecise, non-scientific concept without the possibility of empirical

quantification and, therefore, subject to assessment by the judge and not by the expert (Esbec, 2000).

It is included as **Annex 6. Psychological expert report template on psychological damage.**

5.5. Intervention at the oral trial

The forensic psychologist is required to attend the oral trial in court when requested to do so. Intervention in the judicial context will be carried out with a view to assisting the justice process, with the purpose of providing the information requested on the knowledge specific to their discipline. The intervention will be framed pursuant to the criteria of scientific rigour, as well as the basic principles of objectivity, impartiality and honesty.

They shall attend the oral trial to fully present their expert report, provide an explanation of specific points, as well as to answer questions and objections raised by either party; they may also make clarifications about the interview recorded that arise during the oral trial following the viewing of the evidence.

In cases in which the child or PDNEP has not been able to give valid testimony as part of pre-constituted evidence, due to their difficulties understanding or with linguistic expression, problems related to their episodic memory or there is suspicion of resistance, conflicts of loyalties, contamination of their account, due to successive previous interrogations not carried out by experts, the corresponding technical considerations will be made.

The recommendations in the guidelines shall also be applicable to the statements of minors that may be made at the trial, when under the protection of Art. 703 bis of the LECrim, it is agreed that the NNA or the PDNEP should testify at trial.

To facilitate the achievement of these objectives, four elements must concur (Subijana and Echeburúa, 2021):

- A given scenario for the expert contribution, in which scientific knowledge is provided, offering the maximum assurance with the greatest extension of legal guarantees.
- A specific qualification of the expert in the subject matter in question.
- Proper conduct on the part of the Expert, with impartiality, neutrality by taking an oath or promise to tell the truth and to act as objectively as possible.
- Rigour in the preparation of the expert opinion in terms of scientific quality. When formulating their conclusions, the expert witness should express the results of the test in a scientifically rigorous but accessible manner, helping the parties to be aware of its scope and content, which should establish as clear a link as possible between the psychological assessment carried out and the claim raised.

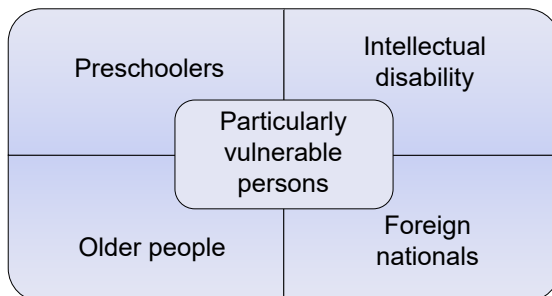
6. Special provisions

6.1. Specific features of pre-constituted evidence with particularly vulnerable persons

A particularly vulnerable person is a victim of the offence whose personal circumstances determine that they were in a situation of inferiority or defencelessness, which increases the criminal liability of the perpetrator of the offence.

People with cognitive limitations (either because of their age, pathology or because they belong to another culture and do not know the language) are particularly sensitive to influencing processes during the forensic interview, and are at a higher risk of secondary victimisation.

It is considered advisable, as a general rule, not to carry out pre-constituted evidence with pre-school children or PDNEP who do not have adequate competencies to give evidence, but may rely on collateral sources of information from family members or professionals.



6.1.1. Forensic interview of preschoolers (3-6 years)

The cognitive competences needed to meet the demands of the cognitive interview develop with age, meaning that preschool children may experience difficulties in attention, perception, memory and language. Although some authors report that the reliability of children's accounts has more to do with the interviewer's skills than with the evolutionary limitations of preschoolers' cognitive abilities (Bruck and Ceci, 1999), and that, with an appropriate method and a correct intervention by the interviewer, they are able to provide a valid and reliable account (Juárez and Sala, 2011). However, given language difficulties and cognitive immaturity, the judicial testimony of a child under three years of age is not advisable, as stated in Circular 3/2009 of the State Attorney General's Office on the protection of child victims and witnesses, which indicates that, according to the contributions of the psychology of testimony, "an age limit is established for child testimony, situated at around three years of age, a phase in which there is a very

limited cognitive-lexical capacity, and the psychological expert and testimonial reference acquires an indisputable protagonism⁹.

With a view to adapting the forensic interview and the procedure of obtaining pre-constituted evidence itself, we must assess these cognitive capacities (especially language and memory) and make a judgement of confidence about them, before asking questions about the facts under investigation (González and Manzanero, 2018).

One instrument that may be useful in assessing the skills of victims and/or witnesses, both with preschoolers and IDPs, would be the CAPALIST (Silva, Manzanero and Contreras, 2018).

6.1.2. Forensic interviewing of persons with disabilities

Intellectual disability

Numerous studies show that, with appropriate adaptations, those with a mild to moderate PDI can be valid witnesses (Manzanero *et al.*, 2012).

The DI involves a delay in cognitive development and adaptive functioning and the expression of the DI varies widely. Children with a mild to moderate DI tend to show difficulties in information processing and executive functions (Henry, 2010) as well as communication difficulties, which may influence the encoding, retrieval and communication of their experiences. Furthermore, they may be more vulnerable to suggestion, as a result of a greater tendency towards pleasing and acquiesce to adults (Henry and Gudjonsson, 2007), which increases suggestibility (Bjorklund *et al.*, 2000).

Each person with a DI has their own pattern of cognitive developmental delays and, depending on each pattern, there is an impact on how they respond to standard forensic interview formats, meaning that prior consultation with family members and professionals working with the victim/witness is recommended to assess the severity of the DI and to define what their deficits are and how they may affect their ability to testify (Wyman, Lavoie, & Talwar, 2019).

In Spain, a guide has been published (Alemany *et al.*, 2012) that provides guidance on the communication and/or memory difficulties that the interviewee may experience to adapt the forensic interview to these limitations.

Few modifications of existing protocols and more adaptations of forensic interviewing strategies are recommended, as modification implies substantial alterations to the forensic interviewing process. This can lead to the use of unreliable, untested or spontaneous strategies that may affect the reliability and validity of the pre-constituted evidence. It is best to make planned adaptations (e.g., protocol instructions and questions), as these are small adjustments to evidence-based interviewing practices to accommodate the unique development of the victim. Major modifications to the interview are therefore discouraged and should only be used if they are planned, based on evidence-based practice and made after several unsuccessful attempts to adapt the interview to the specific needs of the PDI.

The interview scenario can include small details that facilitate the interview and *rapport*. Familiar objects can be brought in, music can be played or a game can be used before the interview, all aimed at reducing the victim's anxiety and stress. However, all distractions should be removed when the interview starts (Saywitz and Camparo, 2013). In cases of sensory overload, this stress can be reduced by reducing the amount of stimuli in the environment (Baranek, 2002), e.g. by adjusting the room lighting, using sound-cancelling headphones to reduce the sound level or providing deep touch pressure through a weighted blanket.

Hearing impairment and/or speech impairment

In cases where the child or PDNEP communicates primarily in sign language, a qualified interpreter should be present to act as a facilitator of the forensic interview and to assist the interviewer in interpreting the interviewee's responses. Ideally, the interpreter should have received training in forensic interviewing so that they are aware of common practices based on standard protocols, as well as the interviewee's susceptibility to suggestive responses.

6.1.3. Forensic interviewing of older adults

The influence of age categorisation on people's perceptions must be carefully considered in order to avoid paternalistic prejudices associated with old age (López, 2019).

Physiological changes associated with normal ageing can have direct effects on cognitive functioning and indirect effects on behaviour. These are not homogeneous changes in all older people, as we may find instances of chronic illnesses, sensory loss, disabilities, etc. Gathering initial information from relatives, carers or institutions will allow us to properly assess the impact of these physiological, sensory and physical changes in the forensic interview.

As with children and adolescents, interviews with older adults should be conducted in a warm, comfortable, accessible and well-lit environment without excessive distractions. The same problems of acquiescence and pleasing seen in children are also found in older adults. Fatigue is often an important factor in planning the forensic interview. Experts agree that the interview should be conducted over several sessions.

During the interview, the older adult may be confused and react negatively, especially when the professional intrudes on painful and stressful memories. Some older people show avoidance behaviours and do not accept being reminded of traumatic experiences, manifesting depressive symptoms, fear, tension, hopelessness and helplessness (Tortosa, 2004).

Therefore, a number of considerations must be taken into account when approaching the forensic interview with older adults:

With regard to health:

- Increased number of organic and psychiatric pathologies (confusional syndromes, neurodegenerative diseases, delirium, depressive pseudodementia, infectious conditions, electrolyte disturbances, etc.).
- Sensory loss (especially visual and/or hearing loss). They will require the adaptation of *feedback* (physical rather than visual or verbal).
- Slower speed of response. This slows down decision-making in new and stressful situations, such as the taking of pre-constituted evidence (Manzanero and Álvarez, 2009).
- Attention deficit. Fewer cognitive resources make controlled recovery more difficult.
- With old age, memory for details and the identification of persons declines significantly (Lamont, Stewart-Willians and Podd, 2005).

Regarding the interview process (Fernández-Daza and Martin Carbonell, 2019):

- Increased fatigue. Special care should be taken in this regard and the need to divide the interview into shorter sessions should be considered.
- Difficulty in assessing *rapport*, as they tend to be very complacent. High social desirability (the higher the level of education, the less influence).
- Special vulnerability. The same rules apply here as for children and adolescents (no assessment of acts or competences).
- Attitude of the interviewer towards old age (stereotypes about old age, paternalistic prejudice, wrong attributions about old age behaviour, etc.).
- Unfamiliar environment that generates stress, with responses of fear, suspicion or rejection of the interview situation.

6.1.4. Forensic interviewing of people with another language and/or culture

During the intervention, the expert may encounter a double problem: on the one hand, the linguistic code and, on the other hand, the cultural issue related to values, myths, perceptions, beliefs and behaviours.

Prejudices, cultural differences and linguistic misunderstandings can exert a powerful influence on interviews with migrants, even when interviewers have the best intentions (Fontes, 2010).

This section briefly outlines the difficulties of interviewing people whose main language is not Spanish, and suggests some practices to make these interviews more effective.

If the child or PDNEP does not know the language, the following must be taken into consideration:

- Availability and experience of the translator.
- Loss of control of the interview and reliance on the translator.
- Loss of information. There is no exact translation. We tend to think of interpreters as mere transmitters of information and not as participants in conversations.

However, research shows that interpreters regularly edit, delete, emphasise, de-emphasise and embellish the statements of both parties. Interpreters not only shape the content that is conveyed, but also make decisions about when to speak, who to interrupt when they speak, and what comments they will "let slide" without interpreting (Fontes, 2005; Fontes, 2008).

- The gender of the translator may interfere with the transmission of information.
- Increased interview time.
- Difficulty in establishing *rapport*.
- Translator-NNA or PDNEP partnerships.

If they do know the language, the following must be taken into consideration:

- There are situations in which the language is learned, but there is no knowledge of the slang or the play on words with double meanings; it is believed that they are proficient in the language, but interpretation problems exist.
- "False friends": same word with different meanings.
- It is difficult to express oneself with all the same nuances in a language that you do not master, so we tend to use words that generalise a wide range of feelings and emotions.
- Limited vocabulary in Spanish may prevent the child or PDNEP from providing an accurate description of events.
- Fluency of speech may not indicate the same fluency of understanding.
- The language spoken at home (dominant language and language of cultural transmission) must be taken into account.

The following are proposed as solutions (Center for Innovation and Resources, Inc., 2011):

- Having qualified bilingual/bicultural interviewers and/or interpreters available prior to the interview. Professionals who speak some of the language spoken by the interviewee may be tempted to conduct interviews in that language, thus avoiding the need for an interpreter. Clearly, conducting a forensic interview without a thorough knowledge of the language increases the likelihood of miscommunication (Fontes, 2010).
- Instruct the translator on their role in the interview ([Annex 7](#)).
- They must limit themselves to the transmission of the forensic psychologist's questions and the interviewee's answers, avoiding the transmission of subjective content.
- They must be inside the room, next to the psychologist, when the evidence is taken.
- Understanding the interviewee's cultures and values will make us more effective when it comes to achieving positive results in forensic interviews. Familiarity with a culture can help interviewers avoid misunderstandings at all stages of the interview, meaning, insofar as possible, interviewers should collect information about their cultural background before the preliminary interview. Useful data includes

age, religion, family composition, country of origin and, where relevant, date and circumstances of migration and degree of fluency in Spanish. Seeking prior information about the subject's ethnic, cultural and religious group can improve the interviewer's understanding before first contact.

- If an interpreter is involved, the expert should be trained on how the interpreter should participate and explain their role to the interviewee.

6.2. Non-face-to-face interview: use of online media

Although the Supreme Court, in its ruling 331/2019 of 27 June, reminds us that "the use of videoconferencing in the process produces a legal equivalence of physical presence with virtual presence", we must ask ourselves whether forensic psychological assessment through online means undermines the ethical and conduct standards required in the development of our professional work.

Furthermore, pre-constituted evidence serves the objective of preserving the testimony and assessing the performance of the victim/witness while the evidence is being taken, with the aim of detecting indicators of discomfort that, in addition to affecting the victimisation process, may also affect their testimony.

While it is true that the use of new technologies is booming as a tool for assessment and intervention, it is also true that, in particularly serious cases, more complex care is required and this is difficult to achieve using online means (Bullock, 2015).

In view of the above, and following the recommendations of the Association of Forensic Psychology of the Administration of Justice (APF, 2020), the forensic interview, which is a central element of the pre-constituted evidence, cannot be carried out online, given that it does not entail trivial statement-taking or a psychological evaluation, rather it is a complex process that requires generating and maintaining an adequate *rapport* throughout the interview, analysing verbal and non-verbal responses, behaviours and attitudes during the examination, detecting indicators that may affect the testimony and/or the well-being of the interviewee, and dealing with unexpected situations that may arise in the course of this highly stressful task.

6.3. Coordination with the court authorities, the parties and the OAVD

The evidence is requested by the judicial body by means of an official letter addressed to the IMLCF, in which it is recommended that the specific subject matter be included. Also, with a view to co-ordinating with the other persons involved (court and prosecutorial authorities, legal counsel, lawyers for both parties and those under investigation), it is recommended that the expert's agenda be organised in such a way that they have at least one day a week without other appointments.

The coordination protocol between the IMLCFs and the Offices of Assistance to Victims of Crime (OAVD) at the Ministry of Justice for the care of victims of gender-based violence (Ministry of Justice, 2021), establishes that: "The IMLCFs, their UVFIs and the OAVDs are entrusted with specific functions that are different and should not overlap. However, they share a common element, which is to care for the victim, meaning that their mutual knowledge, communication and coordination must allow them to complement or improve each other with the ultimate aim of providing a quality public service.

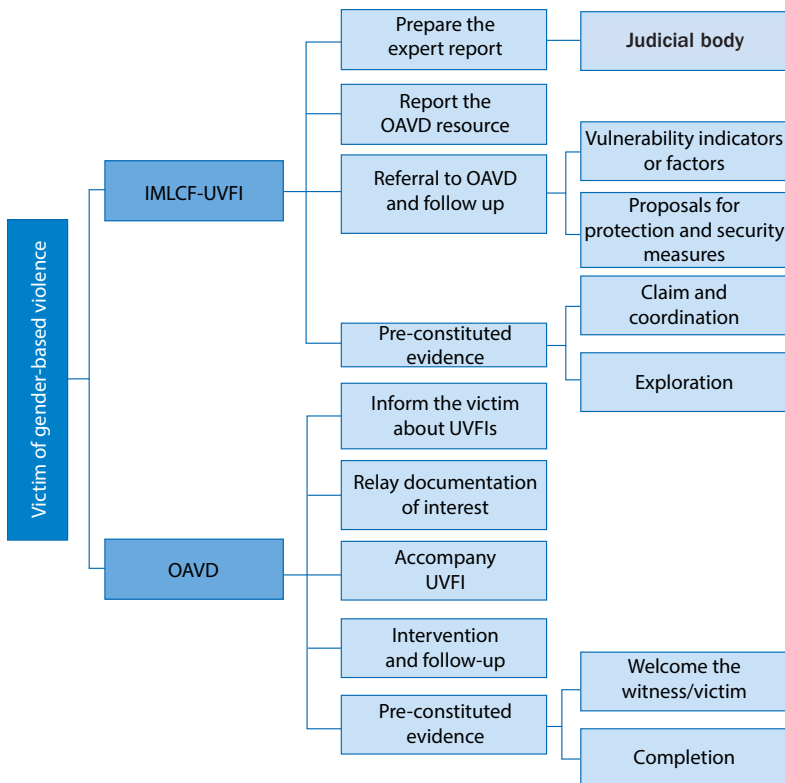
The role of the OAVD psychologist in pre-constituted evidence would be to welcome the interviewee before the test and to emotionally decompress them after the test.

They may also carry out further monitoring to assess resilience and vulnerability in view of the oral trial, minimising secondary victimisation (Fig. 1).

The protocol also provides for the possibility for the expert in charge of the interview referring vulnerable victims and/or witnesses who require specialised intervention and/or treatment to the OAVD (see OAVD referral and follow-up form in [Annex 8](#)).

A number of integrative models establish a system of access for the child or PDNEP through the so-called "one door" or "under one roof" process, meaning that the victim can be provided with the necessary services in a coordinated manner and in one place.

Figure 1. IMLCF-UVFI-OAVD coordination protocol.



Source: Coordination protocol between the IMLCFs and the Offices of Assistance to Victims of Crime (OAVD) at the Ministry of Justice for the care of victims of gender-based violence (Ministry of Justice, 2021).

With regard to coordination with the OAVDs at the Ministry of Justice, it is recommended that:

- The court **inform** the OAVD of the request for pre-constituted evidence, so that the psychologist can inform and accompany the victim and the manager can provide legal information to the victims and their families about the purpose of the evidence. It may also offer the victim's family with assistance, support and accompaniment services as indirect victim(s).
- **The family and/or professionals** who may be familiar with the case **should be informed** about the need to prevent the victim from repeating the events reported before the evidence is taken.

- **The vulnerable victim is accompanied** before, during and/or after the evidence is taken, for the purposes of collection, containment and emotional preparation in line with the vulnerability variables detected. This will reduce the stress associated with victims' contact with the courts, reduce time, facilitate coordination with the judicial commission and prevent them from coming into contact with the defendant. This accompaniment may even extend to the dates around the time of the trial.
- Technical **support and coordination** between the IMLCF forensic psychologist and the OAVD psychologist is **encouraged**. This may involve emotional containment tasks, and after a forensic-psychological assessment, referral for psychological treatment.

6.4. Use of support material

The use of support material such as free drawing, family drawings, plasticine, dolls, etc., has been shown to be effective in the pre-interview phase to facilitate *rapport* and reduce the child's anxiety, and can also be valid to provide information about the child's circumstances and developmental context. During disclosure, the use of these materials may be accessed to facilitate communication rather than to represent the facts, but keeping the focus on the child's verbal descriptions and relegating that drawing or material to the background (Juárez *et al.*, 2021).

In certain protocols (e.g. RATAAC), graphic material can even be introduced in the neutral phase to facilitate anatomical identification and thus reduce the sensitisation of children and adolescents when naming the genital parts involved in the event under investigation.

The interpretation of the interviewee's behaviour during play with dolls and toys, as well as the depiction of specific sexual behaviours by means of child dolls, anatomically correct dolls, drawings and/or handicrafts, are not reliable techniques in the forensic context to draw evidential conclusions about the occurrence of sexual abuse or violence. Or to stimulate the production of testimony by inducing the child's suggestion and the amplification of fantastic details.

The interpretation of children's drawings to reach conclusions that they are clear symptoms of sexual violence or abuse is lacking in scientific evidence.

6.5. Actions in gender-based violence, with special reference to the waiver of the right of exemption

The Integral Forensic Assessment Units (UVFI) at the IMLCFs is responsible for guaranteeing specialised technical advice on gender-based violence and sexual violence. The service charter of the UVFIs at the Ministry of Justice defines the different levels of urgent and programmed responses (Ministry of Justice, 2021).

From a forensic psychological perspective, it is considered that the presence of children and adolescents or PDNEPs in court to give statements about the family environment in contexts of gender-based violence is highly stressful. To this end, it is proposed that evaluations be requested according to the criteria of severity and chronicity, to provoke harmful effects or conflicts of loyalties in children or PDNEP immersed in cases of violence considered to be situational or occasional, with a view to avoiding the secondary victimisation of these children or PDNEP.

To avoid re-experiencing traumatic situations, a single interview should be conducted. Pinpointing the purpose of the expert involvement is therefore recommended.

In the event that there are minors who are direct victims of gender violence as the offspring of female victims, they have the right to waive their right not to testify. It is essential to assess whether they have sufficient maturity, i.e. whether the victim who is a child or PDNEP is capable of understanding what the waiver entails, an aspect which, in case of doubt, should be determined by forensic psychology.

When, on account of their age or disability, the witness is unable to understand the meaning of the waiver, the judicial authority shall first hear the person concerned, and may seek the assistance of experts in order to reach a decision.

When the witness is under 12 years of age or between 12 and 14 years of age and concerns arise, a decision must be made about whether or not the witness is capable of understanding the content and effects of the waiver, and for this purpose the presence of experts attached to the UVFI, especially trained in gender violence, sexual violence and child abuse, will be required.

7. Quality standards

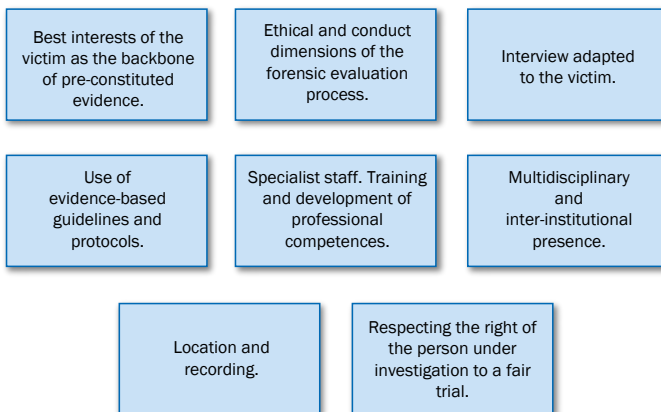
The participation of vulnerable victims in the criminal justice system, a requirement to ensure an adequate investigation and a judicial process with all the guarantees, entails a secondary victimisation process, in addition to the primary victimisation process, as a result of the interaction with different agents with whom the victims come into contact, with the quality of the judicial proceedings cushioning the re-victimisation and subsequently influences the feeling of satisfaction with the judicial system, resulting in the general well-being of the victim (Fernández, Morales and Benítez, 2021).

To this end, quality standards aim to provide a common operational and organisational framework that promotes practice and avoids re-victimisation, while providing valid testimony for courts to fulfil the rights of vulnerable victims to protection, assistance and adapted justice (PROMISE, 2019).

Among the main models that have demonstrated empirical evidence and that provide an organisational framework that guarantees the collection of legally valid testimony are the Barnahus model, in Europe, and the NCAC model, in North America.

Both models provide a friendly setting for the vulnerable victim, where re-victimisation is minimised and the rights to protection, assistance and adapted justice are guaranteed, establishing a series of minimum standards that guarantee the fulfilment of the purpose of the forensic interview and pre-constituted evidence (Juárez *et al.*, 2021).

Figure 2. Forensic interview quality standards.



Source: author's compilation. Adapted from PROMISE, 2019; National Children's Advocacy Center, 2017; Juárez *et al.*, 2021.

7.1 Best interests of the victim as the backbone of pre-constituted evidence

As is currently included in our regulatory system, the special protection of NNA or PDNEP is configured as the backbone of pre-constituted evidence (Organic Law 8/2021, of 4 June).

Placing the best interest of the victim at the centre of the intervention, and the use of standards that guide our professional work, allows us to: prevent re-victimisation, since this implies guaranteeing that their best interest is taken into account in practice and in the decisions that are made; that their right to be heard is fulfilled without repeated interviews; to be interviewed and supported by specialist and competent professionals; that the interviews are carried out in a multidisciplinary environment under a friendly premise for them, offering them a quick and coordinated response that allows them to access psychiatric/psychological care services as soon as possible, if required, and that they are properly warned and oriented on any questions that may arise during the process, so that they can decide on their right to testify (within the limitations imposed by age and/or capacity) (waiver LECrim Art. 416.1).

7.2. Ethical and conduct dimensions of the forensic evaluation process

During the forensic interview process, forensic psychologists should conform to the general ethical principles adopted by the APA in 2002: well-being and non-maleficence, responsibility, integrity, justice and respect for the rights and dignity of persons to adequately perform their work and develop best practices in the area (Juárez and Liria, 2020).

They must also comply with the principles that regulate their professional practice as set out in the Psychologist's Code of Ethics (General Council of Psychology in Spain, 2016).

Furthermore, in cases of gender-based violence and sexual violence, the members of the UVFI must observe the principles of the Code of Ethics and Good Practices of the UVFI of the Ministry of Justice (2020), and ensure the promotion and recognition of ethical and conduct values, as well as the implementation of any actions that help to improve the quality of the service.

7.3. Adapted interview

The interview should be adapted to the age and development, cognitive and social level, cultural background and emotional state of the interviewee, and take into account special needs, including language needs. Particular attention should be paid to a working knowledge of the basic aspects of the child's developmental stage at the motor, cognitive, linguistic and emotional levels, cultural differences related to language style and normative family behaviours, as well as the potential impact of traumatic experiences on the child's development.

The number of interviews is limited to the minimum necessary for the judicial investigation, guaranteeing a full and accurate account of the facts and ensuring the well-being and safety of the interviewee. If more than one interview is necessary, the same professional should conduct the interview. In addition, minimising the length of interviews is advisable, allowing for breaks and, only if strictly necessary, conducting the interview across more than one session (extended interview).

Extended interviews are a restricted practice that can be used in cases where there are significant reasons to support that sexual or other violence has occurred but the child is not able to make the disclosure in a single forensic interview, such as highly traumatising situations, very young age, DI, mental health problems or for some reason is unable to talk about what happened. These children need more time, more interview sessions and, once disclosure is initiated, the forensic interview would follow.

In adapting the forensic interview to the characteristics of the child, if the child shows limited motivation to talk or finds it difficult to broach the subject, the interviewer should respect this, without showing frustration or discomfort and without pressuring the child to talk.

7.4. Use of evidence-based guidelines and protocols

The forensic psychological interview is conducted in line with evidence-based practice and protocols, which ensure the evidential validity of the testimony obtained in terms of quality and quantity.

The main aim of the interview is to avoid re-victimisation through the repetition of emotionally unpleasant or even traumatic events and to obtain the victim's free narrative in as much detail as possible, while complying with the rules of evidence and the rights of the defence.

This should be done using the protocols that have been most widely shown to be based on scientific evidence, such as the NICHD Protocol and the NCAC Protocol. Both contain high-validity interview guidelines for children, based on the results of empirical studies and the stages of child development, adapted to their cognitive and communicative characteristics.

7.5. Specialist staff. Training and development of professional competences

Forensic and exploratory interviews should be conducted by specialised personnel who receive regular (initial and ongoing) training in the field. The figure that best fits the particularities of pre-constituted evidence is that of the forensic psychologist, who is the professional who is legally qualified to provide technical assistance by issuing psychological reports on the cognitive, emotional and behavioural aspects of the defendant, convict, witnesses, victims and other legal stakeholders in the jurisdictional

area where they are requested (National Commission for Professional Accreditation, 2020).

To undertake this task, the expert must have a thorough knowledge of the specific areas of psychology such as developmental psychology or evolutionary psychology, childhood and adolescence psychopathology, language acquisition and development, cognitive development and specific difficulties in this area, basic processes such as attention, perception, motivation and memory, and in particular, being abreast with all the advances and knowledge offered by testimony psychology. To ensure the quality of their participation, special training is recommended for the acquisition and updating of the necessary skills.

7.6. Multidisciplinary and inter-institutional presence

The judicial authority may agree that the hearing (...) be carried out by psychosocial teams that support the Court in an interdisciplinary and inter-institutional manner, encompassing the work of the professionals who have previously been involved and studying the personal, family and social circumstances of the minor or person with disabilities with a view to improving their treatment and the taking of evidence. In this case, the parties shall submit any questions they deem appropriate to the judicial authority who, after checking their relevance and usefulness, shall provide them to the experts" (Art. 449 ter. LECrim).

The Institutes are adequately staffed to carry out a specialised multidisciplinary intervention, based on the characteristics of the victims or by the nature of their intervention.

However, it is recommended that the forensic interview is conducted by a single expert (forensic psychologist) and that other professionals and the parties observe the forensic interview live, in an adjoining room, via videoconference or recorded.

It is recommended that a system of interaction (such as a headset or other device) be used between the forensic psychologist and the judicial commission, in order to establish continuous communication, ask relevant questions and fulfil the principle of immediacy.

7.6.1. Presence of companions

Article 4.c of Law 4/2015, of 27 April, on the standing of victims of crime establishes that: "Victims may be accompanied by a person of their choice from their first contact with the authorities and officials" while Article 21.c specifies that: "In addition to their procedural and, where applicable, legal representative, victims may be accompanied by a person of their choice during all proceedings in which they have to take part, unless a reasoned decision has been made to the contrary by the official or authority responsible for those proceedings, to ensure the their proper conduct".

In this regard, and to a greater extent with particularly vulnerable victims, the presence during the pre-constituted evidence of family members, carers and/or any accompanying person may interfere negatively with the taking of cognitive evidence, as the account

obtained may be distorted (e.g., feelings of shame or guilt or fear on the part of the victim).

It is therefore recommended that only the expert is present at the time of assessment. In this way, an atmosphere conducive to increasing the quality and quantity of the account shall be encouraged and induction or suggestibility by third parties shall be avoided.

In exceptional cases, a person (guardian, family member, facilitator, OAVD psychologist) may be present to provide emotional support to the child or adolescent or PDNEP but shall not intervene in the taking of evidence.

7.6.2. Presence of facilitators

For highly complex cases, such as those involving highly dependent persons (moderate intellectual impairment, autistic spectrum disorder with moderate DI, etc.), consideration may be given to the possible involvement of facilitators/mediators to support the assessment of forensic psychologists.

Facilitators are neutral professionals who provide the necessary supports and adjustments for individuals with DI or developmental disabilities to exercise their right to equal access to justice, ensuring effective communication during legal proceedings (United Nations, 2020).

In this sense, the figure of the facilitator must be defined, as they are not an expert witness, given that their report on support needs or necessary adjustments does not generate evidence as part of the proceedings (Plena Inclusión, 2020) nor does it serve any purpose in relation to obtaining testimony. The figure of the expert, a forensic psychology professional, shall conduct the interview, draw up and issue the expert report required by the authority.

7.7. Location and recording

Conducting the forensic interview in a special room that ensures a safe and neutral environment is recommended, providing privacy, informality and freedom from unnecessary distractions, equipped with camera and sound systems, allowing for high quality recording as well as live reproduction.

These recordings shall be kept safe, guaranteeing their availability for the trial and thus avoiding repetitions by the different professionals who require access to the interviewee's statement.

7.8. Respecting the right of the person under investigation to a fair trial

The parties shall submit the questions they deem appropriate to the judicial authority and, after checking their relevance and usefulness, they shall be provided to the experts. After the hearing, the parties may ask the witness for clarification in the same terms. The

statement shall always be recorded and the judge, after hearing the parties, may request a report from the expert giving an account of the development and outcome of the hearing involving the child or adolescent or the PDNEP.

The defence team of the person under investigation is allowed to put questions to the victim/witness through the forensic expert who, under the umbrella of the judicial authority, guarantees the principle of contradiction necessary for the validity of the statement as plenary evidence. This is obviously a right of all parties to the proceedings (prosecutor, private prosecution and defence).

If the person under investigation has the legal right to observe the testimony, this right must be materialised in the form audio-visual transmission to avoid possible contact between the accused and the person being interviewed.

If the person under investigation is present at the child's hearing, visual confrontation with the witness shall be avoided, if necessary by any technical means.

8. Catalogue of forensic psychology recommendations

- **Immediacy:** order to preserve the episodic memory, conducting the interview as soon as possible after the events reported is recommended.
- **Single evidence:** stress the need for the victim's statement not to be taken before the pre-constituted evidence taken and for this to be done in a single interview.
- **Expert:** the evidence should be taken by an expert (forensic psychologist at the Justice Administration) at an appropriate emotional moment, bearing in mind the needs of the victim.
- **Coordination:** with the victim, legal operators, parties and OAVD.
- **Scheduled agenda:** reserving one day a week without appointments is recommended, in anticipation of being able to carry out cases of high vulnerability and urgency, especially in relation to crimes against sexual freedom, gender violence, VIDO or human trafficking.
- **Specify the purpose of the expertise:** it is recommended that the referral letter should include the purpose of the expertise: to conduct the interview as pre-constituted evidence, to determine the level of development and capacity to testify, to analyse the testimony or to assess psychological harm.
- **Examination room:** use a suitable space that ensures privacy and avoids visual confrontation with the defendant.
- **Accompaniment:** limit the number of spectators. In exceptional cases, allow a trusted person to be present, a facilitator or translator where appropriate, who shall not intervene in the taking of the statement.
- **Audiovisual support:** ensure it is suitable, with a recording device allowing the testimony to be played back at the oral trial.
- **Communication:** permanent with the judicial authority for questions or clarifications prior to the end of the examination, using technical devices so as not to distort the atmosphere of the interview or during breaks that also allow the interviewee to rest.

9. Data. Activity and dissemination reports

The 2021-2024 Statistical Judicial Plan in the area of judicial activity (area 3), includes the activity of the IMLCFs (3006) for the purposes of information. To this end, the Institutes are required to report once a year on their activity to the National Commission of Judicial Statistics (CNEJ), filling in an activity sheet template that does not include the volume of pre-constituted evidence taken.

IMLCFs must provide access to information on their activities by means of the instrument to be adopted, pursuant to the provisions of the regulations on personal data protection. Thus, the Institute's management must submit to the Ministry of Justice or, where appropriate, the corresponding Autonomous Region, the annual report on the Institute's services, work and actions.

Currently, the activity reports of the Institutes of the Ministry of Justice do not include the pre-constituted evidence taken by their professionals. Recording a minimum set of activity data in the pre-constituted evidence is recommended, including at least gender, age, country of origin, vulnerability factors and subject matter, meaning that this data can be included into the general statistics and for these data to be included in their annual activity reports and to make them available to the CNEJ.

It is also recommended that these actions be incorporated into the Institutes' management tool and that their reporting models be adapted to the proposals in this guide.

10. Collaborations, teaching and research

The Institutes are responsible for carry out training, teaching, research or collaboration activities in the areas of their professional discipline, connected to their own functions, under the conditions determined in the regulations or for reasons of general interest, pursuant to the instructions established by the Ministry of Justice or the autonomous region with powers in matters of justice or within the framework of possible agreements or conventions.

Thus, studies, analyses and research may be carried out by the Institutes for reasons of general interest. It is therefore recommended that these functions be promoted in the subject matter of this guide.

11. Annexes

Annex 1. Age-appropriate questions in the forensic interview.

Age (years)	Who?	What?	Where?	How?	When?	How often?	Complex scenarios
3 ½	■	■	□				
4	■	■	■	□			
5-6	■	■	■	■	□		
7-8	■	■	■	■	■	□	
9-10	■	■	■	■	■	■	□
≥11	■	■	■	■	■	■	■

Source: author's compilation. Adapted from Save the Children, 2020.

- Indicates what kind of questions a child could answer at a specific age.
- Indicates what kind of questions **any** child could answer at a specific age.

Annex 2. General psychological expert report template.

1. **Title:** General psychological expert report.
2. **Identification data:** expert, person(s) assessed, procedure and judicial body.
3. **Purpose of the report:** verbatim and in quotation marks as requested in the official letter.
4. **Methodology:**
 - 4.1. Analysis of the information in the judicial case file.
 - 4.2. Interviews and observations.
 - 4.3. Tests applied.
 - 4.4. Contact with other devices/professionals.
5. **Results:** description, in which the information of interest gathered in response to subject matter will be presented in an organised manner (under different headings).
 - 5.1. Psychobiographical approach and current situation.
 - 5.2. Subjective description of the reported facts (cognitive elaboration and emotional experience).
 - 5.3. Expert assessment.
 - 5.4. Results of the tests applied.
6. **Forensic psychological considerations:**
 - 6.1. Integration and analysis of all the information collected in the description.
 - 6.2. Decision-making.
7. **Forensic psychological findings:** these should be numbered, comprehensible, brief and concise. Conclusions should flow naturally when reading the report. They should not include data that have not already been submitted and analysed.

Place, date and signature.

NOTE: This report is the result of a psychological assessment that refers only to the specific circumstances of the context in which it was requested; therefore, it should not be used in other cases or at other times. If there is a substantial change in any of the circumstances considered, a new assessment shall be carried out.

Annex 3. Pre-assessment psychological expert report template: developmental level and capacity to testify.

- 1. Title:** Pre-assessment psychological expert report: developmental level and capacity to testify.
- 2. Identification data:** expert, person(s) assessed, procedure and judicial body.
- 3. Purpose of the report:** verbatim and in quotation marks as requested in the official letter.
- 4. Methodology:**
 - 4.1. Applied assessment protocol (e.g. CAPALIST).
- 5. Results:**
 - 5.1. Primary cognitive abilities: memory, perception and attention.
 - 5.2. Secondary cognitive abilities: communication, social interaction, identification of mental states/emotions, moral capacity and representational capacity.
- 6. Forensic psychological considerations:**
- 7. Forensic psychological findings:**
 - 7.1. On the capacity to testify.
 - 7.2. On forecasting support needs.

Place, date and signature.

NOTE: This report is the result of a psychological assessment that refers only to the specific circumstances of the context in which it was requested; therefore, it should not be used in other cases or at other times. If there is a substantial change in any of the circumstances considered, a new assessment shall be carried out.

Annex 4. Psychological expert report template on the conduct and outcome of the hearing as pre-constituted evidence

- 1. Title:** Psychological expert report on the conduct and outcome of the hearing.
- 2. Identification data.**
- 3. Purpose of the report.**
- 4.- Methodology:**
 - 4.1. Interview with XX in XX conducted as pre-constituted evidence.
 - 4.2. Behavioural observation.
- 5. Results:**
 - 5.1. Characteristics and psycho-evolutionary development of the interviewee.
 - 5.2. Characteristics of the interview (type of questions: suggestive, repetitive, misunderstood, etc.; lack of depth on the part of the interviewer).
 - 5.3. Emotional reactions (psychological impact) of the interviewee.
 - 5.4. Factors influencing testimony (cognitive-emotional disturbances, suggestibility, conflict of loyalties).
- 6. Forensic psychological considerations.**
- 7. Forensic psychological findings.**

Place, date and signature.

NOTE: This report is the result of a psychological assessment that refers only to the specific circumstances of the context in which it was requested; therefore, it should not be used in other cases or at other times. If there is a substantial change in any of the circumstances considered, a new assessment shall be carried out.

Annex 5. Psychological expert report template on the analysis of the testimony.

- 1. Title:** Psychological expert report on the analysis of the testimony.
- 2. Identification data.**
- 3. Purpose of the report.**
- 4. Methodology.**
- 5. Results:**
 - 5.1. Psychobiographical approach and current situation.
 - Personal and family history.
 - Psychological and/or psychiatric history.
 - Educational/employment background.
 - Facts about the timing of the disclosure.
 - 5.2. Subjective description of the reported facts (cognitive elaboration and emotional experience).
 - 5.3. Forensic psychological expert assessment: system for analysing testimony.
 - 5.4. Results of the tests applied.
- 6. Forensic psychological considerations.**
- 7. Forensic psychological findings.**

Place, date and signature.

NOTE: This report is the result of a psychological assessment that refers only to the specific circumstances of the context in which it was requested; therefore, it should not be used in other cases or at other times. If there is a substantial change in any of the circumstances considered, a new assessment shall be carried out.

Annex 6. Psychological expert report template on psychological damage.

1. Title: Psychological expert report on psychological damage (crimes against sexual freedom, VIDO, etc.).

2. Identification data.

3. Purpose of the report.

4. Methodology:

- 4.1. Analysis of the information in the judicial case file.
- 4.2. Interviews and observations.
- 4.3. Tests applied.
- 4.4. Contact with other devices/professionals.

5. Results:

- 5.1. Psychobiographical approach and current situation.
 - Personal and family history.
 - Psychological and/or psychiatric history.
 - Educational/employment background.
- 5.2. Subjective description of the alleged facts.
- 5.3. Forensic psychological expert assessment.
- 5.4. Results of the tests applied.

6. Forensic psychological considerations:

- 6.1. Crime-related factors.
- 6.2. Protective or resilience factors.
- 6.3. Vulnerability factors.

7. Forensic psychological findings.

Place, date and signature.

NOTE: This report is the result of a psychological assessment that refers only to the specific circumstances of the context in which it was requested; therefore, it should not be used in other cases or at other times. If there is a substantial change in any of the circumstances considered, a new assessment shall be carried out.

Annex 7. Basic rules for interpreters during the forensic interview.

- Do not change the questions or answers of the forensic interviewer, the family or the NNA or PDNEP
- If one of the parties does not understand, convey the misunderstanding rather than trying to explain it yourself. Inform the interviewer if the NNA or PDNEP does not understand something.
- Do not omit parts of questions or answers; do not add to or embellish them.
- Translate in the first person, instead of adding "he said/she said".
- Do not alter the wording as the questions are translated.
- Convey the content and spirit of what has been said: the actual meaning, not just the word literally translated. Convey the cultural framework, if appropriate.
- Interpret accurately, without any comments. Even if you don't agree with what is being said, believe it is a lie or consider it immoral, don't let your prejudices show.
- Do not ask the interviewee your own questions.
- Interpreters should be aware of their tone and body language. What you hear may be shocking, so tone and body language should be neutral to maintain the integrity of the interview and not cause harm to the interviewee.

Source: author's compilation. Adapted from Kathy Burton and Martha Corona-Goldstein. Source: Guide for forensic interviewing of Spanish speaking children, 2nd edition. 2011. Center for Innovation and Resources, Inc.). Available at: <https://silo.tips/queue/guia-para-entrevistas-forenses-de-nios-de-habla-hispana>

Annex 8. OAVD referral and follow-up form.

IMLCF OF INTEGRATED FORENSIC VALUATION UNIT			
Referring professional			
E-mail			
Telephone number		Contact hours	
Court and procedure			
DETAILS OF THE VICTIM			
Name and surname			
E-mail			
Telephone number		Contact hours	
REASON FOR REFERRAL			
<p>() Vulnerability factors and/or indicators have been detected: type.</p> <p>() Safety and security measures have been proposed: (e.g. therapeutic care or referral to social services, etc.).</p> <p>() Other relevant information.</p> <p>Type of proposal: assistance, assessment, intervention or follow-up of the case, if any, by the OAVD.</p>			
Signature and date			
MONITORING FROM OAVD			
Professional			
E-mail			
Telephone number		Telephone number	
EVOLUTIONARY COMMENTARY AND RESULTS			
Signature and date			

Source: Coordination protocol between the Institutes of Legal Medicine and Forensic Sciences and the Ministry of Justice's Offices of Assistance to Victims of Crime for the care of victims of gender-based violence 2021. Madrid: Ministry of Justice, 2021.

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