



1->IR&CTRJC.E.S FP\AA REI\JOR IA  
f?EJ/1Cf1WZACJ6w t:>E IAS  
PERSONAS t-'D/ORES >f! **EbAb**  
EW PEWAL PROCESSES



Sobre el adecuado trato de niñas  
y niños en los procesos penales



un

œf



▷IRECrR/CES FOR REI)(JQR  
LA REJ/ICTIM/ZAQOH ▷E  
PFRSOWAS MD/ORfS ▷E fbAl▷  
fW PROCfSES PfWALfS

Trabaja el adecuado trato de niñas  
y niños en los procesos penales

(O.I.ABORTED IN THIS ISSUE:

Oscar Arevalo, CONAMAJ

Sara Castillo, CONAMAJ

Adriana Hidalgo, **UNICEF**

Hilda Machiori, Asociación Argentina de Victimología

National Commission for the  
Improvement of the Administration of  
Justice, CONAMAJ Tel. 295-3276, Tel/fax  
233-7776

P.O. Box 101-1003, Son Jose Costa **Rico**

E-mail: [conomoj@poderjudicial.go.cr](mailto:conomoj@poderjudicial.go.cr)

Disclaimer: This material is non-profit and for the enjoyment of  
all persons directly or indirectly involved in the  
administration of justice.

"WHY SALE IS FORBIDDEN".

Design of internal layout and diagramming for graphic TRAZOS.

Illustrations : Alejandra Acuna S.

Tel/fax. 440 0031 Tel. Cell. 386 9392

E-strap: [trazas62@yahoo.com](mailto:trazas62@yahoo.com)

## CONTENTS

PRESENTATION .....	7
GLOSARIO .....	11
AIMED AT .....	13
GUIDELINES .....	15
I.- Due process and best interests of the child.....	15
II.- Privocity of the judicial diligence and expert assistance. ....	15
III.- Right to information.....	15
IV.- Consent of the victim .....	16
V.- Interrogation form .....	16
VI.- Procedure for questions and interviews.....	16
VII.- Interview conditions .....	1. 7
VIII.- Specialized professional assistance .....	17
IX.- Conditioning of the physical space .....	17
X.- Declaration by the child or adolescent .....	18
XI.- Right to imogen .....	18
XII.- Right to confidentiality .....	19
XIII.- Jurisdictional anticipation of evidence .....	19
XIV.- Personnel Training .....	19
XV.- Waiting time .....	20
XVI.-Referencing of sexual abuse cases.....	20
XVII.-Persons under age witnesses in crimes .....	21
XVIII.-Bodily valuations in sexual offenses .....	21
XIX.-Assistance in bodily expertise .....	21
XX.- Questions and transcript of expert appraisal .....	21
XXI.- Participation in the expert appraisal .....	22
XXII.- Discussion conditions .....	22
XXIII.- File identification .....	22
XXIV.- Application of guidelines in police proceedings .....	22

In November 2000, the National Commission for the Improvement of the Administration of Justice (CONAMAJ) and the United Nations Children's Fund (UNICEF) organized a workshop entitled "The Best Interests of Child Victims in Criminal Proceedings", highlighting the position of special vulnerability to which this population is exposed during criminal proceedings.

Thus, the need arises to create a practical instrument to guide the justice operators in order to reduce the re-victimization, typical of any criminal proceeding.

For this reason, a commission was formed to analyze, from a multiple and interdisciplinary approach, the different moments and judicial proceedings in which children and adolescents were revictimized, in order to finally enumerate a series of basic provisions to help minimize such revictimization.

This commission was composed of: Ivette Aguilar Arrieta, Social Worker, Department of Social Work and Psychology; Oscar Arevalo Solorzano, Assistant Attorney of the Executive Directorate of CONAMAJ; Alvaro Burgos Mata, Judge IV a.i. Trial Court of Hatillo and Superior Juvenile Criminal Court; Mercedes Loaiza Coronado, Clinical Psychologist, Section of Psychiatry and Forensic Psychology, attached to the Department of Social Work and Psychology; Rodrigo Picado Picado, Judge III Penal, Juvenile Criminal Court of San Jose; Alejandro Rojas Aguilar, Public Defender, Department of Defense.

Public; Eugenia Salazar Elizondo, Coordinating Prosecutor a.i., Prosecutor of Sexual Crimes and Domestic Violence; Franz Vega Zuniga, Forensic Physician, Department of Legal Medicine. And in its last stage: LnlIAM Gomez, Coordinating Prosecutor of the Prosecutor's Office of Sexual Crimes and Domestic Violence.

The commission's proposal was validated at a workshop dedicated to this purpose, in which a large number of judicial officials from different disciplines and departments participated. In addition, Dr. Hilda Machiori, a renowned Argentine victimologist, kindly participated in the process of revising the guidelines.

The following objectives are pursued with the development of this instrument:

1. To give effective compliance with the principle of the "Best Interest of the Child" and the applicable legislation:

- † American Convention on Human Rights
- † Convention on the Rights of the Child
- † Political Constitution
- † (6)ódigo de la Nifiez y la Adolescencia
- † (6)riminal Code
- † (6)riminal Procedure Code
- † Ley Organicadel Patronato Nacional de la Infancia.

2. To reduce the re-victimization of children and adolescents.

3. Ensure that judicial operators apply the regulations related to the non-revictimization of minors.

4. To train and sensitize all judicial employees who, due to their functions, have contact with children and adolescents, on the issue of non-victimization of minors.

5. To develop as soon as possible the criminal proceedings in which children or adolescents are involved as victims.

6. Use available technical resources as a way to reduce the re-victimization of children and adolescents.

The provisions detailed below are intended to raise awareness among judicial officials of the importance of minimizing the degree of re-victimization of children and adolescents involved in criminal proceedings, whether they are victims of any type of assault, sexual crime or commercial sexual exploitation of children.

The guidelines were approved by the Plenary Court in session IXX-02 of May 6, 2002.



## GLOSSARY

- Revictimization: any action or omission that worsens the physical *and/or mental* condition of a person.  
psychiatric condition of the child *and* adolescent victim.
- Best interests of the child: respect for all the rights *and* guarantees of children *and* adolescents, in order to ensure their full and comprehensive development.
- Program to address sexual violence against children and adolescents: a team made up of social workers in all judicial circuits of the Pois, whose function is to support children *and* adolescents in the development of social skills to face the judicial process.



AIMED AT:

Judicial operators - in a **broad sense** - who are familiar with cases involving victims and/or witnesses who are minors, including prosecutors, defenders, judges, court officers, social workers and psychologists, investigators, court assistants, forensic doctors, custodians, court officers, court summoners, support staff of the different offices where they have to present or handle cases involving minors.

1.- Promptness of the process and Superior Interest of the Child.

The processes in which a child or adolescent appears as a victim must be attended to without any delay, implementing the resources required for their realization. At the same time, priority should be given to avoiding harm to the victim, in accordance with the principle of the best interests of the child.

II- Privacy of the judicial proceeding and expert assistance.

In any judicial proceeding in which the presence of a minor victim is required, regardless of the stage of the proceeding, it should be carried out in private and with the assistance of specialized experts, when necessary. The father and mother or a person of trust should be present during the statement, except when this constitutes a negative element that may hinder the development of the diligence.

The child or adolescent victim should indicate "who is the person to be bailed out". Your criteria will prevail.

III.- Right to information.

In simple and colloquial language, the child or adolescent must be duly informed from the beginning of the process and by all the corresponding authorities of the nature of his or her participation in all the proceedings in which he or she is required. They shall also explain to him/her, in a

The role of the judge, the defense counsel, the defendant and the rights of the accused, as well as the objective and the result of the intervention of each, must be clear and simple. During the debate, the judge must make this right effective.

#### IV - Victim's resentment.

The consent of the victim should always be obtained for any examination. Victims should be respected in their integrity, understanding that the process is not an end in itself.

#### V. - Form of the interrogation.

During the interviews with the child or adolescent victim, the following precautions shall be taken and questions asked should be done, with a simple structure. This should take into account their age, educational level, degree of maturity, capacity for discernment, as well as their personal and socio-cultural conditions, allowing them the necessary time to answer and making sure that they have understood the nature of the prevention or question.

#### VI.- Procedures for questions and interviews.

Unnecessary or inappropriate repetition of questions and interviews should be avoided, and interdisciplinary work should be promoted when circumstances permit.

## VII.- Interview conditions.

The interview should be carried out in a place that is comfortable, safe and private for the child or adolescent victim. It is recommended that, in the case of children, the physical space should be decorated with children's motifs and have some toys, and use should be made of all available support resources.

The prosecutor handling the case shall pay due attention to the conditions of the initial interview, which shall be conducted by the prosecutor and the investigator or investigator in charge, as far as possible.

## VIII.- Specialized professional assistance

In all those moments in which it is required, the corresponding authority should request, with due promptness, the collaboration of a professional in Social Work and/or Psychology from the Judiciary or, in its absence, from other institutions. Special attention should be paid to familiarizing the child or adolescent to face the process, especially the debate stage or any other oral hearing.

## IX.- Conditioning of the physical space.

The judicial officer in charge shall avoid direct contact between the victim and the accused or defendant. For this purpose, the necessary resources should be allocated to create or condition the physical spaces required, as well as to reuse the available media such as the use of screens,

especially at the trial stage, in order to prevent direct contact between the victim and the offender, guaranteeing the right of defense at all times.

Appointments at the same time and place for the offended child or adolescent and his or her offender shall be avoided, in order to prevent confrontation between them. Judicial officials may wear more informal dress, both in the courtroom and in other offices.

#### X.- Declaration of the child or adolescent.

It is recommended that during the trial or other oral hearings, the testimony of the child or adolescent victim should be the first testimony received.

#### XI.- Right to the image.

The judicial authority in charge must control that the dignity of the child or adolescent witness or victim is not injured through publications or any exhibition or reproduction of his or her image, or any other personal data that allows his or her identification. If this right is violated, it is the obligation of the official to report it in accordance with articles 27, 188 and 190 of the Code of Childhood and Adolescence.



## XII.- Right to confidentiality.

The judicial authority in charge must ensure that in the folders of the files in which child or adolescent victims appear, only their initials are recorded and never their full name and surname, nor the nickname by which they are known. Likewise, the judicial assistants, when calling them to testify or to comply with any judicial proceeding, avoid making reference to the case or the crime under investigation.

## XIII.- Jurisdictional anticipation of evidence.

Exceptionally, in cases involving minor victims, and in which there is an express recommendation from the Psychiatry and Forensic Psychology Section and/or the Department of Social Work and Psychology of the Judicial Branch, it is recommended that whoever is in charge of the case proceed, in accordance with due process, to the use of the jurisdictional advance of evidence in all cases in which, according to the law, it is appropriate. The above in order to avoid the revictimization of the child or adolescent derived from his or her testimony in the debate.

A prudent use should be made of the jurisdictional anticipation of evidence, since a greater degree of victimization may be generated if the offended child or adolescent is called again to testify in the trial.

## XIV.- Personnel training.

The judicial authorities and support personnel in charge of the process should receive due training from the Judicial School, in order to minimize the revictimization of the child or adolescent in such cases, for which purpose the necessary courses should be designed and scheduled.



XV.- Waiting time.

The operators of the judicial system must take the necessary precautions to ensure that the minor victim□ waits the shortest possible time for any procedure to be carried out.

XVI.- Technical referral in cases of sexual abuse.

In cases of sexual abuse of the offended child or adolescent, the judge or the corresponding judicial authority should refer him/her, as soon as possible, to the Program of Attention to Sexual Violence against Children and Adolescents of the Department of Social Work and Psychology of the Judiciary or, if not, consider the possibility that the minor be attended by professionals of the National Child Welfare Agency and/or the Costa Rican Social Security Fund.

In all those cases where the forensic expert recommends psychological treatment for the victims of sexual abuse of children or adolescents, the Prosecutor, when rendering his or her conclusions at the trial stage, must request the Court to order the Patronato Nacional de la Infancia to provide such treatment. The judge may also order it ex officio.

For this purpose, the Department of Social Work and Psychology of the Judiciary will conduct a study and a list of PANI and CCSS offices in the country, as well as non-governmental organizations, will be drawn up in order to provide alternative care for children and adolescents.

#### XVII.- Underage witnesses in crimes.

In crimes in which there are child or adolescent witnesses, these witnesses shall be provided with all the guarantees established in the case of underage victims.

#### XVIII.- Corporal torts in sex crimes.

The Judicial Authorities that send requests for corporal valuation of children or adolescent victims of sexual abuse, must **ensure** that they are necessary for the investigation of the real truth of the facts, in such a way that under no circumstances are they exposed to a genital examination, when the facts denounced do not warrant it.

#### XIX.- Accompaniment in bodily examinations.

In the case of physical examinations, the presence of a family member or a companion should be considered, as long as the minor victim accepts it. In the absence of these, a trusted companion may be requested, who must be in accordance with the gender of the victim.

#### XX.- Questions and description of the expert opinion.

In the case of expert appraisals, the questions necessary to clarify the truth of the facts must be asked and recorded together.

#### XXI.- Participation in the expertise.

During the examination, the prosecutor, the complainant and the defense counsel may have the opportunity to ask the questions they deem appropriate, at the time indicated. These questions will be asked through the respective reports, avoiding in any case the revictimization of the child, child or adolescent.

#### XXII.- Conditions of the debate.

In discussions and/or hearings, the judicial authority or official should handle it with the least amount of ritualism possible, trying to create a calm and welcoming environment for the child, child or adolescent. It is advisable that the parties, except for the court, appear in person prior to the trial in order to be prepared for the child, child or adolescent.

#### XXIII - File Identification.

The identification in the corotum of the file with a ticket, which refers to a case of an offended child, child or adolescent, to give it the corresponding priority in each case. It will be indicated in big letters: "NINO, NINA OR ADOLESCENTE OFENDIDO".

#### XXIV - Application of guidelines in police procedures.

The judicial police will see to it that the holding of the cases is adjusted or as provided for in the points included in this document. In addition, police personnel should be provided with the necessary and sufficient training to handle cases in a proper and professional manner, in order to comply with the objectives proposed to minimize revictimization.

This brochure was printed in June 2002 in COLOR TECH. Its edition consists of 2000 copies in bond 20, with cover in Couchet 200.