

***Integrating the NICHD Forensic Investigative Interview Protocol in the Biopsychosocial-Spiritual Model of Care for Victims of CSA and CSE***

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**Abstract**

Child sexual abuse (CSA) and child sexual exploitation (CSE) exist globally and are therefore a global concern. Psychological rehabilitation centers that make use of the biopsychosocial-spiritual model do not necessarily incorporate the child victims' need for justice. And although a number of these institutions allow and even support the filing of criminal cases against the perpetrators, they have not incorporated definitive protocols that will ensure the success of the cases and prevent, as well, the inflation and deflation of the accounts of the child victims, including their possible retraumatization.

This concept paper proposed the integration of the NICHD Forensic Investigative Interview Protocol that would prepare psychologists and other stakeholders in the various facilities, including those in the administration of justice, to ask the right questions without leading these victims to inflate or deflate their accounts. It would similarly ensure that these stakeholders do the proper documentation of the accounts made by these child victims to serve the purpose of corroborating their court testimonies. The required video recording in the protocol would also bolster the cases of abuse and exploitation and would prevent possible retraumatization.

Philippine laws, meanwhile, have underscored the competency doctrine of the child victims as the *stare decisis* in these cases, as these laws have likewise guaranteed the constitutional right of these perpetrators. The use of this protocol balances the equation by guaranteeing the protection of these child victims and by similarly shielding the innocently accused perpetrators from criminal liability.

Keywords: NICHD Forensic Investigative Interview Protocol, child sexual abuse, child sexual exploitation, biopsychosocial-spiritual model of care, retraumatization, competency doctrine

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## **Introduction**

Gap exists in the literature and in the actual rehabilitative and legal practices for the required standard of care for the child victims of sexual abuse and sexual exploitation in the country. Although psychological rehabilitation centers, psychological treatment facilities, and other similar institutions in the Philippines have clearly followed the biopsychosocial-spiritual model of care, a number of them have yet to incorporate the child victims' need for justice and vindication. Those that have done so, in the meantime, have not also considered integrating definitive forensic investigative interview protocols that will ensure the success of the cases that have been filed against these child abusers and that will prevent, as well, the inflation and deflation of the accounts of the child victims, including their possible retraumatization.

In instances of sexual assault, Rossetti (1995) pointed out that beneath the façade of sexual gratification is the sexual violator's abusive use of power vis-à-vis the child victim's sense of powerlessness. The World Health Organization (1999) defined child sexual abuse as an act in which an adult uses a child for sexual gratification. Accordingly, the gratification by this adult would come from the child's inappropriate exposure to adult sexuality, his or her direct sexual contact with the child, and his or her act of making the child available to others, directly or indirectly, for immoral or illegal acts, such as through pornography.

In the Philippines, Republic Act No. 7610 (17 June 1992), otherwise known as "The Act Providing A Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Such Other Purposes" defined child sexual abuse or CSA as the act of employing, using, persuading, inducing, enticing, or coercing a child to engage in sexual intercourse or lascivious conduct. It likewise refers to the molestation, prostitution, or incest with children.

This law, which similarly included child sexual exploitation or CSE, pointed to child prostitution as an example of that act that is committed by an adult, syndicate, or group on children, whether male or female, who for money, profit, or any other consideration or due coercion or influence, indulge in sexual intercourse or lascivious conduct with these children.

The law then identified who are considered as children by Philippine legal standards to include those individuals who are below eighteen years of age and those who although eighteen years old and above are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

Now, most of the psychological rehabilitation centers and treatment facilities and similar institutions in and out of the country have made use of the so-called biopsychosocial model as their standard of care for the victims of CSA and CSE. Brown (2008), for instance, pointed to the three phases of trauma treatment and collaboration for these victims to include: establishing safety, remembering and mourning, and reconnecting with others. Meanwhile, Bhagwan (2009) highlighted the spirituality of children as a pathway to healing, transformation and growth. In practice then, most of these rehabilitation centers and treatment facilities, and other similar

institutions have actually employed the biopsychosocial-spiritual model of care for the child victims.

Cody (2010) included a wide range of support services for these child victims. They include basic material assistance, health care, professional psychological services, education and training, and legal assistance, among others. There are many, of course, that have already incorporated all these needs using the biopsychosocial-spiritual model, including the need for legal assistance, whether such need is for punitive or for restorative purposes, Doan (2004) pointed out. The study of Malloy, Brubacher and Lamb (2011) on the expected consequences of disclosure of child sexual abuse, meanwhile, included physical harm and negative emotions that the child victims expected for their perpetrators. They similarly expected jailing and/or other legal consequences for the perpetrators of child sexual abuse.

### **The NICHD Forensic Investigative Interview Protocol**

The National Institute of Justice (n.d.) developed the NICHD or the National Institute of Child Health and Human Development Forensic Investigative Interview Protocol based on the advances in the scientific understanding of children’s memory. Accordingly, the free recall and the use of prompts to recall information were likely to elicit accurate information from these children.

With the expectation that this protocol would produce a higher quality of extracted information from the child victims, Harris (2010) identified the three phases involved, to include the following: an introduction phase, a rapport-building phase, and a substantive free recall phase.

In the intro phase, the forensic interview introduces himself or herself, sets the ground rules, and identifies what he or she expects from the child. In the rapport-building phase, the forensic interviewer asks the child to talk about events unrelated to the sexual abuse and familiarizes the child with open-ended techniques. Then in the substantive free recall phase, the forensic interview shifts to the use of an increasingly more focused prompt until the child identifies the targeted event. It is only upon the identification by the child victim of the targeted information that the forensic interviewer prompts the child with cued invitations to obtain incident-specific information.



**Figure 1: The Biopsychosocial-Spiritual Model of Care for the Child Victims with the Integration of the NICHD Forensic Investigative Interview Protocol**

## **Competency Doctrine as Stare Decisis in Philippine Jurisdiction**

There is the so-called presumption of competence on the part of the victims of child sexual abuse and child sexual exploitation when they testify before the courts against their perpetrators. Muyot (2004) claimed that the burden of proof rests on the party who challenges the child victim's competency. He added that the child victim is presumed competent to testify against his or her perpetrator because it is very unlikely that this child, in the natural course of things, will ever concoct or invent such story of abuse at a tender age.

Meanwhile, a child victim's statement outside of the court hearing is generally inadmissible in evidence because every accused, including the perpetrator of child sexual assault, has the constitutional right to confront his or her accuser during the trial through the cross-examination that will be conducted by his or her legal counsel on the child victim. In the Philippine jurisdiction, the statement outside of the court is generally considered hearsay and is therefore inadmissible in evidence in any trial court.

But because of the existing doctrine of competency on the part of the child victim of sexual assault, a videotaped or audiotaped disclosure interview may be admitted in evidence in criminal proceedings. Weiner and Hess (2006), in fact, pointed out that in cases of child sexual abuse, a statement of this child's sexual assault outside of the court hearing by the child himself or herself would serve as the most convincing evidence that could readily be used at hand.

By the same token, Herrera (2008) claimed that the competency doctrine in Philippine jurisdiction invited danger because it practically allowed suggestive interviews and biased interviewers, which quality of interviews could actually impair the reliability and validity of the child victim's disclosure.

Under the Rule on Examination of a Child Witness (21 November 2000), Philippine courts clearly allowed leading questions to be asked from a child victim in all stages of the trial court examination. Consciously or unconsciously then, a forensic interviewer could readily prompt a child to come up with an artificial story of this child's experience to the point that this experience could actually result in being inflated or deflated.

Studies by Heshkowitz and Terner (2007) revealed that the combination of repeated and leading questions (citing Quas, Goodman, Ghetti, & Redlich, 2000) actually caused more harm to the child's memory. The repeated interviews in forensic settings then could create and preserve erroneous accounts and inaccurate details (citing Warren and Lane, 1995).

Krähenbühl, Blades, and Wescott (2010) also supported the findings that question repetitions in forensic investigative protocols only encourage detrimental changes in the accuracy of the child's responses. Hughes-Scholes and Powell (2013) then aptly captured the main idea in any forensic investigative interview and that is to get the child to narrate the story in his or her own words with the forensic interviewer refraining from asking leading questions. Accordingly, the forensic interviewer can simply probe using open-ended questions to ferret out the truth.

## **Conclusion**

Under Philippine laws and jurisprudence, the doctrine of competency in the examination of a child witness, including the competency of a child victim of sexual abuse and/or sexual exploitation to testify in the open court, is quite commendable, as this sits well to approximate the dynamics of power between the child victim and the perpetrator of the sexual abuse. However, problem in the application of the doctrine sets in when you have a perpetrator who is wrongly accused because of the repetitive leading questions posed by the various stakeholders in the psychological rehabilitation centers and psychological treatment facilities, and other similar institutions in and out of the Philippine jurisdiction that practically made the child to believe that an abuse has taken place when no such sexual abuse or exploitation actually happened.

Without the integration of a definitive forensic investigative interview protocol, such as the NICHD Forensic Investigative Interview Protocol, this child victim may not actually be protected despite the heavy reliance on the aforementioned doctrine. The ultimate goal to ferret out the truth from the child's traumatic experience and to prosecute the criminal perpetrator of child sexual abuse and/or child sexual exploitation will simply be defeated because the method used to do the same does not appropriately and reasonably provide for such avenue. The use of this protocol then balances the equation by guaranteeing the protection of these child victims and by similarly shielding the innocently accused perpetrators from criminal liability.

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