

CONSIDERATIONS FOR TENDER-AGED* CHILDREN IN IMMIGRATION COURT PROCEEDINGS



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**Tender-aged is a term of art used in immigration circles to describe children under the age of 13 years.
The propriety of the continued use of this term is discussed within.*



AMERICAN BAR ASSOCIATION

CILA Children's Immigration Law Academy



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About Loyola's Center for the Human Rights of Children (CHRC)

Loyola School of Law's Center for the Human Rights of Children ([CHRC](#)) is an interdisciplinary center committed to protecting and advancing the human rights of children. Guided by the belief that children's rights are human rights, the CHRC is engaged in research, scholarship, advocacy, and outreach programs to address critical issues affecting the lives of children. The CHRC strives to honor and advance the principles derived from the U.N. Convention on the Rights of the Child and believes that a child's survival and healthy future is dependent on family, community, civil society, and government working toward a shared vision that protects their fundamental human rights.

About CILA

The Children's Immigration Law Academy ([CILA](#)) is an expert legal resource center created by the American Bar Association's Commission on Immigration. CILA is funded by the Vera Institute of Justice. CILA's mission is to empower advocates who guide immigrant youth through complex legal procedures, to do so with courage, competency, compassion, and creativity. CILA builds capacity for those working to advance the rights of immigrant youth seeking protection through trainings, technical assistance, resource development, and collaboration. CILA serves nonprofit, pro bono, and private sector legal advocates who work with children in immigration-related proceedings. Through our work, we hope to ensure more immigrant youth are represented and to provide the resources and expertise needed to support those who endeavor to represent them. Complementary and critical to our capacity-building efforts for legal advocates, CILA's social services program aims to increase capacity for social workers and social services providers serving immigrant youth at legal services organizations, thereby ensuring stability in the lives of youth so that they may meaningfully participate in their immigration cases.

About This Project

This project developed organically after a conversation about collaboration opportunities between Loyola's CHRC and CILA, as well as resource needs for advocates working with migrant children. The CILA team identified the need for more resources for advocates working with young children. The experience and expertise of those at Loyola CHRC were well suited for this project. CILA is very grateful to the authors for their time, energy, and dedication and for making this resource possible. This resource is intended for attorneys, legal staff, and social services staff working with migrant children. This project was spearheaded by the authors at CHRC. CILA team members contributed by brainstorming for the project, reviewing and editing, and adding some limited content. Thank you to CILA team member, Sachika Denham-Hand, for providing the artwork for the cover.

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*****This is not legal advice. This is for informational purposes only and should not substitute your own research and analysis.*****

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I. Introduction and Purpose

This document should be considered a **research resource** which compiles an array of social science and legal research from other child-serving fields for immigration practitioners working with children under 13 years of age. This resource is not comprehensive. It provides a starting point for advocates working with young children. The purpose of this document is not to provide guidance, but to provide considerations as extrapolated from interdisciplinary research. The effort is designed to shed light on the milestones and development of younger children as they pass through different ages and stages of child development, particularly with regards to their cognitive and decision-making abilities. Because most migrant children have endured trauma of some kind, this article will also provide context on the impact of trauma on children’s memory and development. Pulling from forensic practices, this article will provide comparative information on how to interview children as well as ethical considerations in representing and working with young children. Finally, this article will discuss the differences in how children are treated in the immigration court versus other domestic child-serving court settings, how children may react and behave in courtroom settings, and how those experiences may shape the outcome of a child’s ability to provide information to a decisionmaker.

In immigration, we often hear children under the age of 13 years referred to as “tender-age” children.ⁱ “Tender age” does not exist as a category of child development in social sciences or other child-serving systems. This broad categorization of all children under age 13 is unique to immigration law and was developed under agency policy by the Office of Refugee Resettlement (ORR). In this document, we will use the terms outlined in the table in [Section II, Defining the Stages of Child Development](#), to make research-informed, age- and stage-appropriate references. We strongly recommend that immigration practitioners develop a working understanding of the terminology of childhood in order to bring immigration practice in line with scientific, research-informed nomenclature.

As a final note, much of the information and guidance in this article has been imported from social science research done with children outside the immigration context. This is a significant consideration, since migrant children present with additional, complicating factors—especially as they contend with a new and foreign environment after having lost their former home, culture, and/or identity. Moreover, unlike other child-serving systems, migrant children find themselves in an adversarial setting in which access to counsel is not guaranteed and through which best interests are not considered. Because science is a moving target, advancing with each passing day, we urge practitioners to keep abreast of new research in the realms of child development, particularly as it relates to children in the immigration context. Please do not hesitate to contact CILA and the CHRC for additional guidance as you navigate this complex world with your young client. You can reach out to CILA at cila@abacila.org and CHRC at chrc@luc.edu to learn more about our work.

II. Defining the Stages of Child Development

As children mature from infancy onward, they pass through several broad stages of development before reaching young adulthood.ⁱⁱ Researchers and scholars who study child development roughly break down the stages of development as follows (with some variation in ages):

CATEGORIZATION	AGE	DEFINING CHARACTERISTICS
Newborn	0-3 mos.	Developing bond with primary caregiver; physical reflexes; total reliance on caretakers
Infancy	3-12 mos.	Gross and fine motor skills; learning cause and effect; language and social development; total reliance on caretakers
Toddler	1-3 years	Language; combining words; peer play; scribbling; total reliance on caretakers
Early Childhood	3-6 years	Copy figures on a piece of paper; use scissors; have daily activities; begin to read and write; answer why questions; total reliance on caretakers
Middle Childhood/Early Adolescence	6-12 years	Complex activities (sports, music); reading as a learning activity; concrete thinking; identity building; pubertal changes; may manage some life issues on their own
Middle Adolescence	12-17 years	Egocentricity; emotional liability; social development; abstract thinking; search for autonomy; interests shift away from family; sexual relationships; increasing independence
Late Adolescence	17-22 years ⁱⁱⁱ	Gaining maximum independence; interests stabilize and interests in future plans; establishing serious relationships; well-formed identity

Notably, these stages attempt to demarcate the skills and cognitive abilities that are gradually gained by children over time, rather than a rigid progression whereby children abruptly develop behaviors in accordance with their chronological age.^{iv} The capacities and development of individuals is “endlessly complicated and incompletely studied.”^v Relying on scientific research in child development is helpful, but we caution legal practitioners against shoehorning individual children into any category of expectation simply on the basis of age. Child development is further affected by biology, environment, culture, societal background, educational experience, physical and emotional health, and family.^{vi} Children who endured adverse experiences, including trauma, malnutrition, or illness, may present with developmental delays, some of which can affect the child permanently.^{vii} There continues to be a dearth of research on how factors beyond age—such as society or culture—affect child development.

III. Child Development from Infancy Through Middle Childhood & Early Adolescence

Brain architecture is the foundation of how humans think, feel, react, and interact with the world around them. Understanding how brain architecture evolves as individuals age provides insight into how children at different stages of development might answer questions, articulate their wishes, make decisions, and respond to the immigration system.

In the newborn through toddler stages of growth, the brain develops “more than 1 million new neural connections” every second.^{viii} After this period of rapid growth, the brain reduces the number of connections in a process known as pruning, increasing the brain’s efficiency.^{ix} Healthy child development relies heavily on the child’s ability to bond and interact with their parents and other caregivers, whose reactions serve to reinforce the child’s brain circuitry. As children develop, they take on more and more cognitive, emotional, and social capacities, all three of which are “inextricably intertwined” and work together as an integrated system within the brain.^x And, of course, the brain’s processes and capacities will be impacted by complex trauma or disabilities, if present.

In the following section, we will describe linguistic and emotional milestones that are related to each developmental stage from newborn through age 12.

A. Language Development

Newborn (0-3 mos.), Infancy (3-12 mos.), Toddler (1-3 years)

According to the National Institute of Health, “the first 3 years of life, when the brain is developing and maturing, is the most intensive period for acquiring speech and language skills.”^{xi} Language development begins in newborns, in which “the first signs of communication occur when an infant learns that a cry will bring food, comfort, and companionship[;] [n]ewborns also begin to recognize important sounds in their environment, such as the voice of their mother or primary caretaker.”^{xii} As they grow and develop, “babies begin to sort out the speech sounds that compose the words of their language, and by 6 months of age, most babies recognize the basic sounds of their native language.”^{xiii}

In toddlers, language can vary tremendously. Some two-year-old children will speak in complete paragraphs, while others may only string two words together, pointing and using gestures to communicate. Toddlers may be able to use simple phrases, like “more water,” or ask one to two- word questions, like “go home?,” and may communicate well enough for a primary caregiver to understand them at least half the time.^{xiv} It is normal for toddlers to pronounce words differently than adults, sometimes swapping consonants or leaving off the ends of words together.^{xv}

By 30 months, most toddlers can respond to simple yes/no questions, to “what” and “where” questions (“what are you wearing?” or “where is the dog?”), and questions that ask them to choose between two concrete options (“do you want an apple or a banana?”).^{xvi}

Early Childhood (3-6 years)

By the beginning of early childhood, children should be able to engage in limited conversation “using at least two back-and-forth exchanges.”^{xxvii} Three-year-old children should be able to speak well enough for others to understand and “ask ‘who,’ ‘what,’ ‘where,’ or ‘why’ questions.”^{xxviii} By the end of early childhood, children should be able to “tell[] a story she heard or made up with at least two events. For example, a cat was stuck in a tree and a firefighter saved it.”^{xxix} For a comprehensive hearing and communications checklist by early childhood age, see [Appendix 1](#).

Middle Childhood to Early Adolescence (7-12 years)

The American Speech-Language-Hearing Association provides information on social communication benchmarks for different ages. Between the ages of 6-12 years, children begin to demonstrate an “increased understanding of theory of mind (predict[s] what one person is thinking about [or] what another person is thinking or feeling; understands strategies to hide deceit, recognizes sarcasm), provides assistance and demonstrates altruism, uses narrative development characterized by causally sequenced events using ‘story grammar,’ demonstrates improved conversational skills (e.g., topic maintenance, repair, and increased number of turns), extends topic of conversation, demonstrates refined social conventions, demonstrates metapragmatic skills—child is able to think about social and conversational rules, uses language for varied functions, including persuading and advancing one’s opinion, understands that people can feel multiple emotions at the same time, practices increased self-regulation, uses indirect requests, uses inferential language, uses ambiguous language (figurative), uses sarcasm, uses double meanings (puns).”^{xxx}

B. Emotion Regulation

Newborn (0-3 mos.), Infancy (3-12 mos.), Toddler (1-3 years)

Emotion regulation is the ability to identify and regulate one’s emotions. Emotion regulation also depends on the development of other cognitive abilities such as attentional processes, which help the individual attend to different stimuli, even in infancy.^{xxxi} Emotion regulation is dependent on the context of culture as children learn how to meet “emotional goals” in the context of the environments in their families.^{xxxi} Thus, the development of emotion regulation begins in infancy and is learned through observation and modeling of caregivers, in addition to co-regulation. Co-regulation refers to the soothing and distress management caregivers do to help calm a distressed child.

At birth to nine months, infants depend on their parents to teach them emotion regulation through observation.^{xxiii} Infants are guided by the instinct to avoid “unpleasant stimuli or to move towards pleasant stimuli (food, touch, hugs),” which is usually done through crying or by turning the head and gaze aversion.^{xxiv} Infants also use self-soothing behaviors such as hand sucking or holding items for comfort. By 7-18 months, infants and toddlers more effectively use self-soothing behaviors and social referencing (i.e., observing caregivers’ affect to understand the environment, people, and situations).^{xxv}

In the stage of 16-24 months, toddlers begin to identify some emotions and use more advanced soothing strategies.^{xxvi} At ages 21-36 months, toddlers are more able to express their emotions and use their burgeoning emotion regulation skills.^{xxvii} Toddlers also begin to engage in pretend play that helps them express certain emotions, such as fear, while distancing themselves from it, in order to deal with difficult emotions.

Early Childhood (3-6 years)

As children enter early childhood, there is less exclusive reliance on external support of caregivers for emotion regulation, and they begin to employ their own internal skills of regulation more. Generally, as children reach early childhood the effectiveness of their emotion regulation skills should increase, such as their abilities to distract themselves to minimize distress.^{xxxviii} Nonetheless, children in early childhood still have very little impulse control.^{xxix}

During ages 2-4, children do not yet have a firm grasp on appropriate versus inappropriate behavior nor the language to express emotions as a mechanism for resolving conflict.^{xxx} As a result, children in early childhood are prone to tantrums for a myriad of reasons, consequential or not—a characteristic undoubtedly familiar to their caregivers. Immigration attorneys and other advocates should not draw inferences about a child’s well-being based on the exhibition of tantrums or dysregulation. For example, an immigration practitioner does not have the expertise to determine whether a child this age is “decompensating” in custody or with a sponsor. Instead, we urge immigration practitioners to be alert to behaviors, elicit additional information from caregivers when possible, and to seek expert assistance if they suspect a child is experiencing difficulty in custody or with their sponsor placement.

Middle Childhood to Early Adolescence (7-12 years)

Emotion regulation remains important even into middle childhood, as children’s social worlds expand and there is evidence of the prosocial and mental health benefits of developed emotion regulation skills.^{xxxi} “Middle childhood represents an important period of change for both attachment and emotion regulation.”^{xxxii} A secure attachment in childhood is believed to prepare a child for social challenges and impacts development by placing a child on a more positive trajectory.^{xxxiii} Children in middle childhood are increasingly self-reliant in regulating emotion.^{xxxiv} Research suggests that more securely attached children achieve more effective emotional competence and are able to rely on coping strategies that help them problem solve or otherwise regulate difficult emotions, like anger or sadness.^{xxxv}

C. A Note on the Impact of Trauma on Emotion Regulation

The processes outlined above highlight the typical progression of emotion regulation development when children do not experience trauma. Children who are exposed to trauma are likely to experience challenges in managing their emotional responses.^{xxxvi} This dysregulation reverberates throughout their childhood, and it can cause conflict in their environments and contribute to further distress and potentially retraumatize them.^{xxxvii}

Immigration practitioners are encouraged not to make quick judgments about a child’s behavior without understanding its connection to the child’s trauma history. Even seemingly innocuous emotional reactions such as “tuning out” or “numbing” can be mistaken for a child who is inattentive or aloof.^{xxxviii} Moreover, children subjected to family separation may experience difficulty with reaching the emotional regulation appropriate for their age.^{xxxix} Even in cases where family separation has not occurred, “children who have experienced complex trauma often have difficulty identifying, expressing, and managing emotions, and may have limited language for feeling states.”^{xl} Reactive interactions such as explosive anger, trembling, sadness, or even simply avoidance, can be cues that a child is experiencing or reacting to past trauma.^{xli}

D. Decision-Making in Childhood

Children face decisions every day, but the way children collect and process information and understand probabilities develop and gain wider range as they age. Decision-making requires a high level of cognitive control and processing, since it requires a child to “perform multiple cognitive processes,” including information processing.^{xlii} According to research, children can master some of these cognitive processes early on, but “they spectacularly fail at others until the age of 12.”^{xliii} In other words, children at the end of middle childhood are still developing the skills to make decisions based on relevant information.

Children have different capabilities for processing events and information at different stages of development. Cognitive development is “growth of thinking processes and the understanding of the rules that govern the physical world in which we live.”^{xliv} Information processing is linked to cognitive development, as it requires the ability to pay attention to an event, to understand an event, and to remember an event.^{xlv} This complex cognitive ability may express itself differently, depending on the age at which an event occurs.

Even when given child-friendly decision tasks, children in early childhood struggle to make successful decisions.^{xlvi} Children under age 10 are extremely unfocused in their search for information, and they are unable to differentiate relevant from irrelevant data.^{xlvii} At this age, as soon as a child identifies a potential negative in assessing an option, they will dismiss the option, even if that negative is relatively unimportant.^{xlviii} Young children asked to make decisions in new, unfamiliar contexts do poorly, even when those contexts are not adversarial or intimidating.^{xlix}

The ability to weigh probabilities in decision making does not coalesce until after age 12. Children in middle childhood struggle to understand probabilistic outcomes when choosing between two or more risky options, e.g., a lottery with probable outcomes attached.¹ In some studies, preschoolers showed a propensity towards choosing a riskier option in a gambling game, in part because the children felt it was more exciting.^{li}

As social creatures, children also gather information from people around them, grown-ups and other children, by eavesdropping or asking questions or simply observing.^{lii} But younger children (preschoolers 4 years and under) are indiscriminate in following advice.^{liii} Only when children reach the end of early childhood (towards age 7) do they develop the ability to discern “good” advice (information from an advice-giver who has demonstrated accuracy in the past), versus “bad” advice (information from an advice-giver who has previously given them inaccurate information).^{liv} Furthermore, context is crucial to children’s ability to weigh advice. Five- and 6-year-olds were more likely to weigh advice based on their experience of the advice-giver’s accuracy when the decision took place in a familiar and everyday context, (e.g., in a game played over several weeks with their teachers and peers at their day care center).^{lv}

Towards the end of middle childhood (around age 12), children begin to prioritize relevant information and make choices using a more systemic approach that is closer to an adult’s decision-making process.^{lvi} Even so, while 12-year-olds understand that some information is more relevant than others, they still struggle to effectively apply and weigh that relevance in decision making.^{lvii}

IV. Impact of Trauma on Child Development and Memory

Trauma sabotages the natural course of child development. The effects of trauma and mistreatment disrupt not only a child's current developmental stage but also have negative consequences for all future developmental stages.^{lviii}

Some researchers propose that complex trauma exposure (multiple or chronic events) in childhood should better recognize the long-term effects on trauma development. Thus, more studies are being conducted on Developmental Trauma Disorder (DTD),^{lix} which addresses the effects of trauma on development such as the domains of emotion-regulation, cognition, behavior, relationships, and attachment. Furthermore, there is evidence that demonstrates interpersonal traumas and attachment adversity (e.g., community violence, caregiver separation, etc.), are associated with DTD.^{lx}

Most—if not all—children who enter the immigration system will have experienced at least one traumatic event in their short lives.

Most—if not all—children who enter the immigration system will have experienced at least one traumatic event in their short lives. The most ubiquitous forms of trauma for these children are rooted in the very nature of their contact with the immigration system: (1) forced displacement and relocation from their home, (2) separation from parent or caregiver, and (3) system-induced trauma in the form of forced placement in an institutional, carceral setting, such as a Department of Homeland Security (DHS) holding facility or an ORR custodial placement.^{lxi} Indeed, even short periods of detention impose “profound and negative impact[s] on child health and development.”^{lxii}

A high percentage of children who are unaccompanied or separated from their families also report having experienced or witnessed violence by gangs or cartels, government actors, and/or their caretakers.^{lxiii} Trauma can pass from parent to child, and that intergenerational trauma can alter children's responses to stress as well as their mood and behavior, even when they are toddlers.^{lxiv}

Many experiences can be traumatic, and the experiences are very individualized. Additionally, situations that may not be traumatic for adults might be for children.

Potentially traumatic childhood experiences

From: *About Child Trauma*, The Nat'l Child Traumatic Stress Network,
<https://www.nctsn.org/what-is-child-trauma/about-child-trauma> (last visited Jun. 20, 2023).

- Physical, sexual, or psychological abuse and neglect (including trafficking)
- Natural and technological disasters or terrorism
- Family or community violence
- Sudden or violent loss of a loved one
- Substance use disorder (personal or familial)
- Refugee and war experiences (including torture)
- Serious accidents or life-threatening illness
- Military family-related stressors (e.g., parental loss or injury)

**The list is not exhaustive, and unfortunately, there are many situations a child may face that are traumatic, such as poverty-related conditions and grief.*

As discussed above, child survivors of trauma may have disruption in the typical development of healthy attachment and may present with signs of disruption to healthy attachment.^{lxv} These signs may include the failure of the child to create appropriate boundaries demonstrated by, for example, the oversharing of information in order to please the interviewer or inappropriate attachment as demonstrated by requests that the advocates “take them home” or children may refer to advocates as “mom” or “dad.” Some children may require re-directing or require appropriate boundary setting. Advocates are encouraged to seek professional recommendations if they believe that a child is experiencing difficulty with attachment. For children for whom it is appropriate to consider referral to a mental health therapist, please refer to [Appendix 4](#) regarding “tips to help the child through a mental health challenge.”

The younger a child is when they experience trauma, the harder it will be for them to regenerate and heal from that trauma.^{lxvi} Adults and adolescents who were mistreated or neglected when they were children have less volume in their hippocampus (learning and memory), their corpus callosum (communication, emotion, and higher cognitive abilities), their cerebellum (motor and executive functioning), and their prefrontal cortex (behavior, cognition, and emotional regulation).^{lxvii} Identification of child trauma and appropriate services is critical to ensuring that resilient children rebound successfully from traumatic experiences.

Children who have been severely neglected in the early stages of life, including those who spent time in institutional settings, often show decreased brain activity and poor connection in the areas of the brain responsible for higher information processing.^{lxviii} If a child experiences multiple chronic traumatic events, they will suffer from deficits in language, cognition, experience issues with their emotional and behavioral regulation, and their ability to function socially.^{lxix}

Mistreatment, severe neglect, and trauma also lead to the following issues in children's behavior and development^{lxx}:

- Persistent Fear Response: child loses their ability to differentiate between danger and safety and may develop Post Traumatic Stress Disorder (PTSD) and other anxiety disorders
- Hyperarousal: child becomes hyperaware and over-sensitized to nonverbal cues in order to protect themselves from harm, limiting their ability to understand verbal cues, even in everyday scenarios, like school^{lxxi}
- Delayed Developmental Milestones: child who is not given stimulation and support during their early years and infancy may not reach the expected developmental milestones
- Diminished Executive Functioning: child experiences shortfalls in their working memory (ability to use information), inhibitory control (ability to control thoughts and impulses), and cognitive flexibility (ability to adjust to changes in environment)
- Weakened Response to Positive Feedback: child has a dampened response to positive stimuli and potential rewards
- Complicated Social Interactions: child struggles to navigate social situations and new social contexts with adults and peers

Young children who have been forcibly separated from their parents experience significant damage to their brains due to the stress of the removal, a harmful process which begins within minutes of the separation. This particular kind of trauma can “compromise the child's ability to evaluate risks and make good decisions” and cripples their social and cognitive development.^{lxxii}

Children who have disabilities are at greater risk of experiencing trauma, with some studies showing that children with disabilities are more than 3 times as likely to be sexually and physically abused.^{lxxiii}

It is important for advocates to have an understanding of the different types of trauma a child may go through and how it impacts them. It is also important for advocates to know that by working with a child-centered and strength-based approach, advocates have an opportunity to be a part of the healing process.^{lxxiv} Advocates can be a protective factor for children, really listen to their needs, and empower them by focusing on their strengths and needs.

V. Interviewing Young Children

Interviewing young children is an enormous challenge. In non-immigration contexts, such as forensic interviewing in domestic abuse cases, interviews of children are conducted by trained investigators who undergo specialized training and may have a background in child development and psychology.^{lxxv} Children who are interviewed in the immigration context, either by their attorney, a legal service provider, or a judge or other decision-maker, are forced to engage at an extraordinary level of effort with strangers in an unfamiliar, adult, and often fear or anxiety-inducing context.^{lxxvi}

All too often, immigration practitioners face the daunting obstacle of interviewing young children regarding difficult or traumatic events in their lives while hampered by lack of time, lack of access to the child, and lack of specialized training and education.

This section provides some practical guidance for those practitioners who work with young children under 13 years of age, pulling heavily from empirical research and best practices for carrying out forensic interviews of children. For a list of best practices, interviewer attributes, and behaviors developed from forensic interviewing standards, *see* [Appendix 2](#).

Keep in mind that there is no one “right way” to interview children and no “perfect interview” that will yield all the information necessary to support a case. On the contrary, practitioners should always seek other sources of information to corroborate, clarify, or add to what they glean from a child’s responses. In particular, when a child’s answers are limited, additional information should be sought from other parties (e.g., adults or relatives who have more knowledge of the child’s circumstances), news articles, country condition reports, or subject matter experts. When a child has undergone extreme trauma, or when a child has or is suspected to have mental health issues or disabilities that prevent them from engaging in an interview with their attorney, it may be necessary for an expert to weigh in, either through an expert forensic interview, or a mental health evaluation. This will limit exposing the child to additional trauma as part of the interview process.

Additionally, it is important that advocates practice with cultural competency and humility when interviewing children. It is important to consider cultural considerations specific to the child when talking with them as this can greatly impact the substance of the conversation, communication styles, and how advocates will address or raise information.^{lxxvii} It is also necessary to ensure that you know the child’s best language and are prepared to work with an interpreter if necessary.^{lxxviii}

A. Rapport Building

Best practices for interviewing children are nearly ubiquitous in recommending that the interviewer develop rapport with the child before and during the interview. Successful rapport building leads children to feel more at ease, and they are more likely to provide accurate answers and complete answers.^{lxxix} Rapport-building is particularly crucial to supporting children’s trust and comfort in legal settings, which are unfamiliar, adult-centric by nature, and require them to respond to questions both difficult and personal.^{lxxx}

Asking open-ended questions about a child's recent, neutral or positive experiences can aid in rapport building, especially with children who have reached middle childhood.^{lxxxix} Open-ended questions in this genre should be invitational and signal the interviewer's interest in the child. An example of an open-ended, invitational question might be: "What happened in class today?" rather than "Who is your teacher?" since the latter question is an inquiry which seeks a specific answer and that can be interpreted as demanding or challenging to a child.^{lxxxix} Asking for demographic information or yes/no questions have not been shown to elicit lengthy or descriptive answers from children in courtroom settings. In contrast, asking questions that start with "what" or "how" elicit more details from children ages 6 to 12.^{lxxxiii}

Research shows that holding multiple interviews can help with rapport building, as this structure allows children to develop a relationship with the interviewer at their own pace.^{lxxxiv} Thus, it may be necessary for an attorney to arrange for a second interview with a child if they are reluctant to answer substantive questions in the first session, and to use the first interview to attempt to gain the child's trust and cooperation.^{lxxxv}

B. Providing Instructions and Guidance on Answering Questions

Along with building rapport, research shows that children respond more productively in interviews if they are given adequate and age-appropriate guidance regarding the "purpose and method of an interview."^{lxxxvi} Generally, very young children may be accustomed to having an adult that speaks for them, so they may not be used to speaking for themselves, and they may need more encouragement to facilitate the conversation. It may be appropriate in some cases to check for understanding by gently asking the child to explain something back to you in their own words.^{lxxxvii}

Allowing a child time to practice responding to practice questions in a neutral setting will also help the child understand when it is appropriate for them to respond with "I don't know" or "I don't remember." Note that children in early childhood may not benefit from as much initial instruction and practice, but they may be able to better understand if instructions are given as the opportunity arises during the interview. For a general guide on offering interview instructions *see* [Appendix 3](#).

Attempting to explain immigration relief to a child, even in its barest forms, is an immense, sometimes insurmountable challenge, which so often depends on the child, time and other constraints, and the relationship, or lack thereof, between the child and their interlocutor. It is outside the scope of this paper to provide best practices guidance on how to explain immigration law to a child under 13.

TIPS FOR INTERVIEWING YOUNGER CHILDREN^{lxxxviii}

- Build rapport with the child by asking about the child's interests, friends, and positive recent events. Gather personal information about a child from a third-party to help inform these conversations and be sensitive to seemingly neutral questions that may actually trigger a negative response in a child.
 - Evaluate the child's ability to communicate by asking open-ended and invitational questions to inform your substantive questioning.
- Be prepared to move to the substantive part of the interview if a child mentions such topics or makes mention of past harm or trauma.
- You may need to let the child know that they are not "in trouble" about anything, and that you are not there to judge or make decisions for them.
- Avoid legal terms unless you have clearly established that the child understands the term.
- Ask open-ended and invitational questions, including "what" and "how" questions while avoiding closed-ended, presumptive, or suggestive questions.
- Keep in mind that extensive pre-interview instructions may be detrimental to children who are very young, have limited attention spans, and/or cognitive skills.
- For younger children, interview instructions may be best employed as the situation presents itself during an interview (e.g., if a child says they do not remember an event, the interviewer might reply: "Thank you for telling me you don't remember. I only want to know what you remember.")
- As a rule of thumb, a child with no disabilities or mental health issues should have an attention span of about three to five minutes per year of their age. So, a perfectly healthy five-year-old should have an attention span of about fifteen to twenty-five minutes. Remember that this time will include any pre-interview instructions and practice.
- Children, especially younger children, do better in answering questions when you present them in a more natural, less scripted conversation.
- If a child is not forthcoming with verbal communication, try exploring activities that do not require talking like building Legos, puzzles, dolls, or arts and crafts. You can ask them questions about what they are building in order to begin to develop rapport. You can also get a sense of their skills and understanding.
- Always remember to thank the child for sharing information with you and talking with you.

RECOMMENDATIONS TO PREVENT RE-TRAUMATIZATION^{lxxxix}

Awareness of the traumatic events and their effects on a child's wellbeing can help the advocate tailor a holistic approach to working with the child that focuses on strengths, safety, trust, and hope. Building trust takes time, especially with children. It is important to avoid rushing the process or skipping critical rapport building steps.

- It can be scary and intimidating to be approached by an unknown person for anyone let alone a child. When meeting with a child for the first time, explain to the child in a child-friendly way, your role and the purpose of your visit. A young child might not understand certain terms, such as attorney, therapist, or case manager. Avoid big words and focus on the concepts you are trying to communicate.
- If a child does not want to or is not ready to talk to you, respect that. Let the child know that you are available to talk to them whenever they are ready, and focus on building rapport instead. For example, if the child is interested, offer an age-appropriate activity, such as playing a board game, drawing, or coloring.
- Provide a physically and emotionally safe space for your meetings with the child.
 - Be mindful of potential triggers, such as smells, sounds, and visuals, when choosing a place to meet. Ensure the temperature is comfortable.
 - Consider scheduling a brief introductory meeting during which you allow the child to explore the space where the meeting will occur and ask you questions about the upcoming interview/assessment.
- Children who have experienced trauma have difficulty self-regulating feelings, emotions, and behaviors. Be proactive and keep in mind the following:
 - Before diving into an assessment or interview, explore coping or grounding skills and encourage self-regulation.
 - Collaborate with the child in developing an action plan in case they are triggered during your meeting with them. Plan together what your role will be by confirming with them whether they want your help during this time. If they do not want your help but may change their mind, come up with a word/sign/cue that will tell you they need your help and determine what that help will look like. That help could be, for example, guiding them in breathing exercises or a grounding technique.

VI. How Children Respond to Courtroom Settings

Attending court is stressful for everyone, with reason: courts have embraced the assumption that a tense, formal, and procedurally complicated process is the better at eliciting the truth.^{xc} The following information is drawn from child responses to courtroom settings that are often designed to mitigate trauma as compared to the immigration court context, where there is limited guidance regarding child friendly practices.

A courtroom setting can exacerbate trauma in children who have suffered or witnessed abuse. Children placed in court-settings do not feel safe, and their neurobiological survival response to these feelings of stress and fear prevents them from accessing the parts of their brain that are necessary for communication.^{xci} Often, children “shut down” and may be unable to speak at all.^{xcii} A study of transcripts of sexual abuse cases involving 6- to 12-year-olds showed that 95% of the children contradicted themselves at some point during questioning.^{xciii} Research indicates that it is “not uncommon for child witnesses to express fears of real and imagined negative consequences that may hamper motivation and cooperation, increase anxiety or mistrust, and lead to delays, recantations, and nondisclosure.”^{xciv}

If one set out intentionally to design a system for provoking symptoms of posttraumatic disorder, it might look very much like a court of law.

—Judith Herman

Justice from the Victim’s Perspective

Cross-disciplinary guidance suggests that “[i]n general, 4- to 7-year-olds know many aspects of the legal system exist but may treat them as rituals without understanding their purpose.”^{xcv} For example, their reasoning is said to be “driven by fear of a punishment... [t]hey may begin to think they did something wrong” as a result of the court process.^{xcvi} Children ages 8- to 11-years old begin to demonstrate “an emergent understanding of the adversarial nature of the process (e.g., “The lawyer is on your side.”)^{xcvii} However they are often taken by surprise when they encounter the adversarial tone of a cross-examination.^{xcviii} “Children 12- to 14- years old come to understand that the judgment is made through the process of a trial with roles for attorneys, witnesses, and laws, rather than at the whim of the judge.” Nonetheless, “an incomplete understanding of the purpose of judicial proceedings and the people involved may heighten a child’s fear unnecessarily, interfere with the child’s ability to cope, and potentially compromise certain aspects of the child’s testimony.”^{xcix}

Questioning children in a child-centered space and manner may lead to far better results in their testimony.^c Children respond better to familiar contexts and trusted adults.^{ci} The simple fact of being in a strange setting will heighten stress, and therefore going to court, or attending an asylum interview, will be a stressful event for a child.^{cii} Children also suffer heightened anxiety when they do not understand court proceedings or legal terminology well.^{ciii} All these stressors impair children’s ability to give accurate or reliable testimony.^{civ} Children questioned in court-settings are prone to give less information, make more errors when answering direct questions, and are more likely to concede to misleading questioning.^{cv}

Finally, studies on child abuse survivors who have given testimony in court indicate that children can suffer both short- and long-term consequences due to their experiences. Children who testified were subject to anxiety, which did not abate after the trial completed if the child had no maternal, or other familial, support. Over a decade after testifying as children, individuals experienced “more severe

externalizing symptoms” the younger they were during the time of the trial.^{cvi} “Testifying repeatedly was associated with worse mental health outcomes and testifying about severe abuse had higher levels of trauma-related problems.”^{cvi} While other systems have set out to mitigate the traumatic effects of court on children, immigration law has not. More information on other court systems is elaborated upon in the next section, [VIII. A Cross Disciplinary Review of Treatment of Children in Courtrooms](#).

Young children may have a trauma response when working with advocates on a legal matter. This can happen in various ways and in different settings. See some tips on how to help a child during an emotional breakdown in the box below and view additional tips at [Appendix 4](#).

DEESCALATING SITUATIONS^{cvi}

Generally, it is easier to prevent an escalation than to deescalate a situation. Plan for breaks, snacks, and drinks during your meetings with a child.

What to do if the child you are working with has an emotional breakdown:

- The first thing to do is to assess and establish safety. If there is no real risk for their safety or the safety of others, then perhaps the best thing you can do is let them calm down on their own. This does not mean you should leave the child alone without any support, but you should be mindful of your approach. When a child is experiencing an emotional crisis, it can be counterproductive to try to reason with a child, teach them a new skill, tell them to calm down, or threaten them with consequences.
- Instead, provide the child with a safe space and the time to navigate this emotionally and physically difficult moment by using their personal coping resources. It is important to validate the child’s feelings and emotions as well as respect their time and space.
 - *Example: It’s okay if you don’t want to talk about this. I am here to listen when you are ready.*
- You can provide positive reinforcement or help if you see that the child is demonstrating positive coping skills, and are able to engage, or if they ask for support. You might engage the child as follows:
 - *I see that you are trying to make yourself feel better by taking deep breaths. This is great, keep doing that.*
 - *Older child: Let’s try to get your mind and body to come back to the here and now. Can you name 5 things you can see, 4 things you can feel, 3 things you can hear, 2 things you can smell, and 1 thing you can taste?*
 - *Younger child: Do you think you can help me list 5 things we can see around us? Great. How about helping me list 4 things we can smell?*
- Helping the child process the emotional event is crucial. This can be done once the child has come to their emotional baseline, and they have had time to rest, physically and emotionally. Remember to highlight any positive behaviors they may have demonstrated, including showing restraint.

VII. A Cross Disciplinary Review of Child Treatment in the Courtroom

In courtrooms across the country, there is an ongoing effort to incorporate emerging developmental research that decreases the harm inflicted on children.^{cxix} Immigration courts are the only courtrooms where children—regardless of age—regularly must defend themselves in non-criminal matters.^{cx} The results of which have significant and long-term consequences for their life, health, and safety.

Unaccompanied children go through removal proceedings in immigration court to seek protection and legal relief to help them stay in the United States. Many children qualify for legal relief, but they must navigate complex procedures and submit applications to seek protection. The process varies depending on the type of relief that they seek. If an unaccompanied child seeks asylum, their application should be filed with the U.S. Citizenship and Immigration Services (USCIS). This protection was provided for by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to allow unaccompanied children to go through a non-adversarial process by interviewing with an asylum officer instead of presenting their asylum case in court.^{cxii} If the child is seeking Special Immigrant Juvenile Status (SIJS), then they must obtain a custody or dependency order from a state court and then submit a Special Immigrant Juvenile petition with USCIS, before seeking adjustment of status from either USCIS or the immigration court. There are other forms of relief a child may also be seeking, but asylum and SIJS are the two most common. Many times, children must navigate immigration court proceedings at the same time that they are seeking a state court order or submitting an application or petition to USCIS. There are usually several processes happening concurrently. There is a right to counsel in immigration proceedings, but not appointed counsel, so many children do not have full representation in their cases.^{cxii}

A. Children as Witnesses

“Children’s knowledge of the legal system is limited and replete with misconceptions □. They do not have a context for understanding the purpose of the various people, their functions, or the rules by which people interact in the legal setting. Their misunderstandings can result in heightened and unrealistic fears, failure to recognize the significance or consequences of their testimony, and failure to use the ‘big picture’ to put their feelings in perspective and cope with the stress of testifying.”

- Vera Institute of Justice

^{cxiii}

In domestic courts, children often serve as witnesses in cases where they are victims. Starting in the 1980s, research regarding the psychological study of children as witnesses gained traction yielding impactful insights for people in the legal profession.^{cxiv} Acknowledging the reality that more children were taking the witness stand, the U.S. Attorney General issued Guidelines for Victim and Witness Assistance in 2005 that stressed that the primary goal of the justice department “shall be to reduce the trauma to child victims and witnesses caused by their contact with the criminal justice system.”^{cxv}

Recognizing the extreme levels of stress and trauma these children endure in retelling traumatic experiences, many courts and legislators have enacted accommodations for children who provide testimony in court.^{cxvi} These protections^{cxvii} range from allowing children to bring a comforting toy or object, to being accompanied by a trusted adult while testifying,^{cxviii} to providing access to specially trained dogs to offer calm and solace.^{cxix} All states have laws to minimize the impact on children of appearing in court through allowing support people or comfort objects or provisions for excluding the press.^{cxx}

Some of these protections (allowing the child to have a comforting object or to be accompanied by a trust adult) are accommodations that may be granted before an asylum interview before USCIS.^{cxxi} However, USCIS offers these only as guidelines, meaning that while individual asylum officers can allow for them on a case-by-case basis, there is no built-in right to these procedural protections.^{cxii} Similar options are available in immigration court, yet these protections are again discretionary and depend upon the adjudicator and particulars of the case.^{cxiii} Still, based on the experience of practitioners, unaccompanied immigrant children may appear in immigration court without a trusted adult, and their cases are often rushed without consideration of their complexity and sensitivity nor the needs or stage of development of the child.^{cxiv} Efficiency often trumps child-friendly practices in proceedings, and even the limited options to make a hearing more child friendly are not consistently used. Immigration court is adversarial by nature, and many times children are expected to testify while having limited to no support. Interviews before USCIS vary greatly depending on the adjudicator, and again, many times the interviews do not involve child friendly practices. In many instances, practitioners report long interviews with minimal breaks, combative or aggressive questioning regarding trauma-sensitive material, and a general lack of consideration that the individual seeking protection is a child.

The lack of protections for children, specifically tender-aged children in immigration court, is problematic because “young children have problems conceptualizing many aspects of the legal system,” therefore “likely adding to the stress that they experience when they testify.”^{cxv}

Naturally, depending on their age, young children understand the legal system differently. As mentioned previously, young children between ages 4 to 7 years old, struggle the most in understanding the role of different actors, and the purpose of “ritual aspects of the system.”^{cxvi} For children 4 to 7 years old, “fear of punishment by authority figures underlies the reasoning process at this age.”^{cxvii} For children in this age group in immigration court, the fear is likely linked to deportation of themselves or their relatives, family separation, and/or continued detention. Young children ages 8 to 11 years old have a better understanding of “the court and of legal roles,” but it is not until young children are 12 years and older that they have a better grasp and a “more accurate sense of the societal role of the legal system.”^{cxviii} Factoring in for language barriers, cultural differences, and trauma, a migrant child’s understanding of the immigration court, legal roles, and legal processes is likely greatly diminished.^{cxix} The level of understanding varies per child, and there are other factors involved as well such as the child’s education level and cognitive abilities.

Lastly, guardian ad litem (GAL) and court appointed special advocates (CASAs) are also provided in domestic courtrooms in the cases where children are witnesses, to ensure that the child’s *best interests* are heard and protected. In most situations, rather than have the child bear witness or otherwise provide testimony, a GAL provides an account or report on behalf of the child. The TVPRA allows for the appointment of a best interests Child Advocate, but children are not guaranteed a Child Advocate. They are only present in a limited number of cases.^{cxx} Moreover, Child Advocates are

appointed under the ORR,^{cxxxix} rather than through the Executive Office for Immigration Review (EOIR), and thus, have less capacity and visibility within the courtroom.^{cxxxix} Child Advocates' reports can be considered; however, the *best interests* of a child are generally not determinative in the legal analysis for children in immigration court.^{cxxxix}

Child Advocates are provided through the services of the Young Center for Immigrant Children's Rights (Young Center.) As a practical matter and tip for advocates, it is beneficial and appropriate to request a Child Advocate when working with children in tender age. Advocates can contact the Young Center to refer^{cxxxix} a child for the appointment of a Child Advocate. The Young Center provides services to a wide range of vulnerable children, especially children in tender age; some examples on their website of children they have served include: "children who have been abused, infants who are the subject of international custody battles, children who have developmental disabilities, young girls who want to live with their traffickers, those who have lost their parents to violence, and more."^{cxxxix} The Young Center is routinely appointed to pre-verbal and non-verbal children to assist identifying the child's best interests.

B. Treatment of Children in Adversarial Legal Settings

There are also substantive and procedural protections for children who come into conflict with domestic criminal law.^{cxxxix} At least 26 states have a minimum age of prosecution for juvenile matters as of October 2022.^{cxxxix} The United Nations (U.N.) Convention on the Rights of the Child (CRC), the most substantive international treaty regarding children's rights, recommends a minimum age of criminal responsibility of 12, meaning children under that age are not prosecuted for violating the law.^{cxxxix} Furthermore, children in juvenile proceedings have the right to counsel regardless of economic ability, the right to remain silent, and the right against self-incrimination.^{cxxxix}

None of these rights appear in immigration proceedings for migrant children. Children in immigration proceedings do not have the right to appointed counsel.^{cxli} Migrant children are interrogated at the border by the Customs and Border Protection (CBP) without access to counsel, and their statements are used against them to process their removal in immigration court. Moreover, not all children are provided an attorney at government expense to represent them through the full course of their case.^{cxli}

These Constitutional rights fail to extend to immigration court because immigration hearings are civil, rather than criminal.^{cxlii} Children who must appear before immigration court therefore fall into the absurd category of having none of these rights while being held to an adult standard of proof and credibility for their legal claims. The American Academy of Pediatrics (AAP) "asserts that no child, under any circumstance, should be required to represent himself or herself in an immigration proceeding. However, by some estimates, nearly 70% of unaccompanied children and >70% of families with children must represent themselves, without attorneys, in immigration court.^{cxliii} Not surprisingly, children without counsel are far more likely to be deported."^{cxliii}

In an individual hearing (aka merits hearing) before EOIR, a child must undergo direct examination and cross-examination by an adversarial DHS attorney, along with any re-direct. The judge may interject at any point in the proceeding to ask the child additional questions. Information extracted from the child by DHS at the border or an ORR-contracted staff member can sometimes be used against the child in immigration proceedings, in some cases. Additionally, hearings are not generally private.^{cxliv}

VIII. Ethical Considerations when Representing Young Children

An attorney has the same ethical duties, whether they serve an adult or child client including regarding confidentiality, loyalty, and competent representation. However, an attorney for a child—particularly a very young child, or a pre-verbal child—needs a more nuanced approach to representing their client.

When considering the ethical ramifications of representing children under 13, attorneys ought to be guided by the American Bar Association’s (*ABA Model Rules of Professional Conduct* (or their state bar’s ethics rules), and in particular, Rule 1.14, Client with Diminished Capacity, which provides:

When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.^{cxlvi}

Per the ABA, “children as young as five or six years of age . . . are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.”^{cxlvii} It is useful to distinguish capacity from competency. Capacity can be considered a “broad concept that refers to an individual’s ability to make a decision or perform a task in a given context. A child is presumed to have capacity and to be capable of expressing their point of view and wishes.”^{cxlviii} Competency has a specific legal meaning within the immigration context and carries with it the onus of a legal finding and attendant due process considerations.^{cxlix} The ABA Standards on unaccompanied children stressed that there is no presumption that “children below a certain age lack competence to determine their wishes in litigation. Competence is contextual and incremental and may also be intermittent.”^{cl}

ABA Model Rule of Professional Conduct Rule 1.14 thus allows a lawyer to engage with a child who has limited capacity. Even if a child falls short of being able to direct the representation, a lawyer is not barred from taking legal action on the child’s behalf. In fact, an attorney may take on a child with seriously diminished capacity where (1) “the health, safety or a financial interest of [the child] is threatened with imminent and irreparable harm,” (2) “the person or another acting in good faith on that person’s behalf has consulted with the lawyer,” and (3) “the lawyer reasonably believes that the person has no other lawyer, agent or other representative available.”^{cli}

Where a client with diminished capacity “is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client’s own interests, the lawyer may take reasonably protective action” including “seeking appointment of a guardian ad litem.”^{clii} In such cases, attorneys should consider requesting a Child Advocate through the services of the Young Center.^{cliii} Crucially, if a lawyer takes on a child client with seriously diminished capacity, that lawyer must ensure that they “keep the confidences” of the child, as they would with any other client.^{cliv} In an emergency disclosing private information should only occur to the “extent necessary to accomplish protective action” and the lawyer should be transparent about their role as their attorney before the court or other counsel.^{clv}

While the *ABA Model Rules of Professional Conduct* outline the parameters of these instances of emergency assistance, it is perhaps important to acknowledge that there are unprecedented ethical considerations at work here. There is no analogous ethical situation for immigration attorneys: infants, toddlers, and other young children are made to face adversarial legal processes and their attorneys are forced to make decisions for infant clients in a way that does not take shape in any other court of law. These attorneys are made to balance ethical obligations with the very real dangers facing migrant children should they be returned to their home country.

Attorneys who represent child migrants are on the front lines of upholding an awesome amount of responsibility to their clients: to protect them without devaluing them, to recognize that children retain their rights despite their diminished capacity, and to help the youngest and most vulnerable navigate a system with impossible burdens.

Children do not *per se* lack the capacity to determine their wishes in immigration proceedings. Thus, an attorney has the same ethical duties to any child they serve as they would to an adult, namely:^{clvi}

- provide competent representation (Rule 1.1),
- be diligent (Rule 1.3),
- communicate promptly (Rule 1.4),
- maintain client confidentiality (Rule 1.6),
- handle conflicts of interests properly (Rule 1.7),
- withdraw from representation when appropriate (Rule 1.16).

Furthermore, there is no minimum age set regarding a child's ability to understand and consent to sign an engagement letter. Instead, it is the purview of the attorney to determine whether informed consent is practicable. It is also important for practitioners to keep in mind that many immigration cases have long timelines, so it is very likely that a child's ability to understand information and be engaged will vary over time, and this will impact their ability to participate in the process overall.

IX. Concluding Thoughts on Working with Migrant Children of Tender Age

For any advocate, working with very young children in a legal matter presents an array of challenges. At base, working with young children requires a high and complex level of engagement with clients who are still in the process of developing language and communication skills. Many of these children are also experiencing the intersection of additional vulnerabilities from complex trauma. Immigration advocates are even more precariously situated when working with very young clients because they are tasked with assisting their young clients through a complex, highly adversarial legal system. It is the goal of this document to provide some tools and considerations that can assist advocates through this seemingly impossible task.

Advocates working with young children in the immigration context should use this document as a starting point. However, further guidance is always available, and we strongly encourage attorneys and other advocates to reach out to CILA and the CHRC in these cases. Building a network of experts will ease the burden of navigating these complex issues alone and increase the likelihood that your child client's rights and personhood are protected.

X. APPENDICES

A. Appendix 1: Hearing and Communicative Development Checklist

HEARING AND COMMUNICATIVE DEVELOPMENT CHECKLIST

*From National Institute on Deafness and Other Communication
Disorders^{clvii}*

Birth to 3 Months

Reacts to loud sounds	YES/NO
Calms down or smiles when spoken to	YES/NO
Recognizes your voice and calms down if crying	YES/NO
When feeding, starts or stops sucking in response to sound	YES/NO
Coos and makes pleasure sounds	YES/NO
Has a special way of crying for different needs	YES/NO
Smiles when he or she sees you	YES/NO

4 to 6 Months

Follows sounds with his or her eyes	YES/NO
Responds to changes in the tone of your voice	YES/NO
Notices toys that make sounds	YES/NO
Pays attention to music	YES/NO
Babbles in a speech-like way and uses many different sounds, including sounds that begin with p, b, and m	YES/NO
Laughs	YES/NO
Babbles when excited or unhappy	YES/NO
Makes gurgling sounds when alone or playing with you	YES/NO

7 Months to 1 Year

Enjoys playing peek-a-boo and pat-a-cake	YES/NO
Turns and looks in the direction of sounds	YES/NO
Listens when spoken to	YES/NO
Understands words for common items such as “cup,” “shoe,” or “juice”	YES/NO
Responds to requests (“Come here”)	YES/NO
Babbles using long and short groups of sounds (“tata, upup, bibibi”)	YES/NO
Babbles to get and keep attention	YES/NO
Communicates using gestures such as waving or holding up arms	YES/NO
Imitates different speech sounds	YES/NO
Has one or two words (“Hi,” “dog,” “Dada,” or “Mama”) by first birthday	YES/NO

1 to 2 Years

Knows a few parts of the body and can point to them when asked	YES/NO
Follows simple commands (“Roll the ball”) and understands simple	

questions (“Where’s your shoe?”)	YES/NO
Enjoys simple stories, songs, and rhymes	YES/NO
Points to pictures, when named, in books	YES/NO
Acquires new words on a regular basis	YES/NO
Uses some one- or two-word questions (“Where kitty?” or “Go bye-bye?”)	YES/NO
Puts two words together (“More cookie”)	YES/NO
Uses many different consonant sounds at the beginning of words	YES/NO

2 to 3 Years

Has a word for almost everything	YES/NO
Uses two- or three-word phrases to talk about and ask for things	YES/NO
Uses k, g, f, t, d, and n sounds	YES/NO
Speaks in a way that is understood by family members and friends	YES/NO
Names objects to ask for them or to direct attention to them	YES/NO

3 to 4 Years

Hears you when you call from another room	YES/NO
Hears the television or radio at the same sound level as other family members	YES/NO
Answers simple “Who?” “What?” “Where?” and “Why?” questions	YES/NO
Talks about activities at daycare, preschool, or friends’ homes	YES/NO
Uses sentences with four or more words	YES/NO
Speaks easily without having to repeat syllables or words	YES/NO

4 to 5 Years

Pays attention to a short story and answers simple questions about it	YES/NO
Hears and understands most of what is said at home and in school	YES/NO
Uses sentences that give many details	YES/NO
Tells stories that stay on topic	YES/NO
Communicates easily with other children and adults	YES/NO
Says most sounds correctly except for a few (l, s, r, v, z, ch, sh, and th)	YES/NO
Uses rhyming words	YES/NO
Names some letters and numbers	YES/NO
Uses adult grammar	YES/NO

**This checklist is based upon How Does Your Child Hear and Talk?, courtesy of the American Speech–Language–Hearing Association.*

B. Appendix 2: Interviewer Attributes, Competencies, and Behaviors

Interviewer Attributes, Competencies, and Behaviors^{clviii}

A note on gender: The gender of the interviewer should be taken into account if the child shows a strong preference for a male or female interviewer, but this is usually less important than an interviewer's skills.

1. **Engage in Practice that is Research Informed**
2. **Participate in Ongoing Training and Review by Peers and Experienced Colleagues**
 - A. Stay up to date with the latest research in child trauma and development.
 - B. Seek periodic review and consultation from peers and more experienced colleagues in order to enhance skills.
3. **Exhibit an Interviewer Stance Aimed at Eliciting Accurate and Reliable Information**
 - A. Convey a warm, friendly, and respectful manner.
 - B. Be open-minded and explore known reasonable alternative explanations.
 - C. Attempt to equalize power and de-emphasize authority.
 - D. Provide non-contingent supportive comments and behaviors.
 - E. Avoid stereotype induction (negative or positive characterizations of suspected abusers or the events disclosed).
 - F. Be patient and comfortable with silence.
 - G. Consider plausible explanations for unusual or seemingly inexplicable elements in the child's account; do not automatically dismiss the child's report when these are present.
4. **Use Language that is Developmentally Appropriate**
 - A. Tailor vocabulary, sentence structure, and complexity of prompts to the child's developmental level.
 - B. Continue to assess and clarify the child's understanding and use of language throughout the interview.
5. **Adapt to the Individual Child**
 - A. If possible, find out what the child was told and how the child is reacting prior to the interview.
 - B. Let the child set the pace for the interview and adjust accordingly.
 - C. Listen to the child; allow the child's responses to guide the questioning process and use the child's words whenever possible in follow-up questioning.
6. **Respect Cultural Diversity and Strive to be Culturally Informed**
 - A. Interviewers and interviewees who share the same race, ethnicity, gender expression or identity, or other similarities, do not necessarily share cultural norms; however, observable differences between an interviewer and a child may present an initial barrier.
 1. Culturally informed interviewing, whether from a perspective of cultural competence or cultural humility, requires openness, respect for each person's

- uniqueness, and recognition that people can best define the meaning of their own cultural views and experiences.
2. Be aware of cultural biases in your own interviewing practices and interview setting (such as artwork or materials used in the interview).
 3. Develop the ability to accommodate children with diverse needs.
 4. Do not rely on stereotypical notions about members of any cultural group; rather, expect that members of groups manifest their culture in a wide variety of ways.
 5. Remember cultures are in flux; how individuals and groups live their culture regularly changes in the larger context of societal change.
 6. Engage in an ongoing process of self-reflection regarding personal responses and possible biases in order to cultivate greater cultural awareness and avoid stereotyping.
 7. Remember that interviewers, children, and their families are all cultural beings who bring their own definitions, nonverbal behavior, preferred phrasing, and habits of formality/informality to the interview process. Culturally informed interviewing is essential to interviewing competence.
 8. Interviewers who fail to connect with the children they are interviewing or who unwittingly offend the child or their families, are less likely to conduct a successful interview.
- B. Learn as much as possible about the child's cultural background, practices, and language proficiency prior to the interview, and adapt the interview accordingly.
1. If the child's family has recently immigrated, try to ascertain the degree to which the child and family have assimilated into the dominant culture.
 2. Learn about relevant cultural values such as parenting practices related to child discipline, hygiene, and sleeping and bathing arrangements; cultural definitions and expectations regarding child maltreatment, violence, and sexual assault; and actions that might be expected when maltreatment, violence, or sexual assault is suspected.
 3. Determine whether the child is a native speaker of English. If not, find out their level of English proficiency and primary language. Provide an interviewer who can conduct the interview in the child's primary language whenever possible.
 4. Note any cultural or family norms that may inhibit reporting of maltreatment or impede the interviewer's ability to develop rapport with the child.
 5. Cultural practices related to eye contact and pacing (e.g., longer pauses and more silences, or rapid overlapping speech) may vary and be apparent during the interview.
7. **Be aware of potential barriers when there are religious, ethnic, social class, and/or linguistic differences between the child and interviewer.**
- A. Establishing rapport and trust may require more time and effort.
 - B. Kinship terms may not have the same meaning to the child as they do for the interviewer.
 - C. The child's culture may strongly discourage disagreement with or correction of adults; thus, the child may agree more readily with suggestive questioning. Giving permission to correct interviewer mistakes and testing the child's willingness to do

so, as well as asking open-ended questions and encouraging narrative responses becomes even more crucial in such circumstances.

- D. The child's cultural norms may prohibit revealing sensitive, family-related information to a stranger.
- 8. Use Qualified Bilingual Interviewers Who Are Able to Accommodate the Child's Primary or Preferred Language Whenever Possible**
- A. An experienced professional interpreter should interpret interview questions and responses for the interviewer and child.
 - B. The interpreter should be forewarned about the sensitive nature of the information that might be disclosed and instructed to interpret verbatim everything said by the interviewer and child.
 - C. As much as possible, the child's attention should be focused on communication with the interviewer, and not the interpreter, and vice versa. A sign language interpreter should sit next to the interviewer. It may be helpful to have a spoken language interpreter sit behind or beside the child with the interviewer facing the child.
 - D. As a general rule, family and friends should not be used as interpreters.
- 9. Accommodate Any Special Needs the Child May Have, Including Physical and Developmental Disabilities**
- A. Find out whether the child has any special needs that should be taken into account before the interview begins.
 - B. Ascertain if any medications the child may be taking are likely to affect the child's behavior, communication, and/or ability to relate, perhaps in consultation with medical personnel and schedule the interview accordingly.
 - C. Because adaptive equipment (e.g., wheelchair, helmet, hearing aid, computer) is typically regarded as an extension of the child's body, ask permission before attempting to touch or adjust the equipment. Evaluate how, if at all, this may affect the interview; ideally in consultation with others who know the child (e.g., medical and school personnel, case managers, non-offending caregivers).
 - D. If a child has developmental delays or disabilities, consult with teachers, parents, physicians, or others familiar with the child whenever possible to determine the child's level of functioning. During the initial stages of the interview, carefully assess whether the interviewer and child are communicating effectively.
 - E. Be aware that some children with developmental delays may aim to please and reply to questions in a manner they believe the interviewer desires.
- 10. Actively Participate as Part of a Multidisciplinary Team, If Available**
- Whenever possible, the interviewer should consult with other professionals involved with the child, including the Child Advocate, if available, and the child's physical and mental health team.

C. Appendix 3: 10-Step Investigative Interview

Ten Step Investigative Interview

*Adapted from Ten Step Investigative Interview by Thomas D. Lyon, J.D., Ph.D. © 2005
(Adaptation of the NICHD Investigative Interview Protocol)*

1. DON'T KNOW instruction
 - a. Instruction: If I ask you a question and you don't know the answer, then just say, "I don't know."
 - b. Provide Example:
 - i. Let's practice. If I ask you "How old am I?" what do you say? [Elicit "I don't know" from child] That's right, because you don't know how old I am. But what if I ask you "What did you have for breakfast?" [Elicit response from child] That's right, because you do know.
2. DON'T UNDERSTAND instruction
 - a. Instruction: If I ask you a question and you don't know what I mean or what I'm saying, you can say, "I don't know what you mean." I will ask it with words you understand.
 - b. Provide example: Let's practice. So if I ask you "What is your country of origin?" [Ensure child does not understand the term.] That's right, because you don't understand what "country of origin" means. So I would ask it this way: "Where are you from?"
3. YOU'RE WRONG instruction
 - a. Instruction: Sometimes I make mistakes or say the wrong thing. When I do, you can tell me that I am wrong. I will not be upset.
 - b. Provide example: So if I say, "You are thirty years old," what do you say? [Ensure child feel comfortable saying you are wrong.] OK, thank you for telling me. So how old are you?
4. IGNORANT INTERVIEWER instruction
 - a. Instruction: I don't know what's happened to you. I won't be able to tell you the answers to my questions.
5. PROMISE TO TELL THE TRUTH
 - a. It's really important that you tell me the truth. Can you promise that you will tell me the truth? Will you tell me any lies?
6. PRACTICE NARRATIVES
 - a. LIKE TO DO/DON'T LIKE TO DO:
 - i. First, I'd like you to tell me about things you LIKE to do.
 - ii. Follow up with TELL ME MORE questions. e.g., "You said you like to play soccer. Tell me more about soccer."
 - iii. Now tell me about the things you DON'T LIKE to do.
 - iv. Follow up with TELL ME MORE questions.
 1. SCHOOL: Now tell me about your school. When was the last time you went to school. Tell me everything that happened. FOLLOW UP with WHAT HAPPENED NEXT questions. e.g., "You said you played during recess. What did you do?"

7. ALLEGATION (If child discloses abuse or trauma, go directly to ALLEGATION FOLLOW UP. Determine IN ADVANCE which allegation questions you will ask.)
 - a. Tell me why I came to talk to you. It is really important for me to know why I came to talk to you/you came to talk to me.
 - i. Someone's worried e.g., "Is your mom worried that something may have happened to you? Tell me what she is worried about."
 - ii. Something happened in home country e.g., "I heard that something happened to you when you were still in Guatemala. Tell me everything about that."
 - iii. Something wasn't right e.g., "I heard that someone may have done something to you that wasn't right. Tell me everything about that."
8. ALLEGATION FOLLOW UP You said that (repeat allegation). Tell me everything that happened. e.g., "You said that you were scared when you lived with your uncle. Tell me everything that was scary about it."
9. Follow up with TELL ME MORE and WHAT HAPPENED NEXT questions
 - a. Avoid yes/no and forced-choice questions.
10. MULTIPLE INCIDENTS
 - a. Did (repeat allegation) happen one time or more than one time? Tell me everything that happened the time you remember the most... Tell me everything that happened the first time... Tell me everything that happened the last time... Was there another time...

D. Appendix 4: CILA Considerations & Resources

Practical Tips: Working with Tender-Aged Children in Immigration Court Proceedings

Recommendations to Prevent Re-Traumatization

TIPS:

- Many unaccompanied immigrant children experience life changing events before, during, and after their journey to the United States. Often these events have been emotionally traumatic. Awareness of the traumatic events and their effects on a child's wellbeing can help the advocate tailor a holistic approach to working with the child that focuses on strengths, safety, trust, and hope. These are the key components for creating a healing-centered environment.
- Building trust takes time, especially with children. It is important to avoid rushing the process or skipping critical rapport building steps. A child needs safety and to find an adult to be trustworthy before they can engage and disclose painful information. This is especially true for a child who has endured trauma.
 - If they do not want to or are not ready to talk to you, the best you can do is respect their decision. However, you can let the child know that you are available to talk to them whenever they are ready.
 - In the meantime, you can try to build rapport and engage with the child through an activity that they might find interesting, such as playing a board game, drawing, or coloring. Activities like this can bring forth opportunities for natural and spontaneous conversation. You might raise the possibility in the following ways, depending on the age of the child:

Child (approximately 5 to 10 years) *I know you do not know me very well and you might be scared/embarrassed/doubtful to talk to me. How about instead of talking we do a fun activity together if you want? Would you be willing to color/draw/play a game (offer choices and let them choose), with me?*

Note: If they do not want to, that is ok, you can try next time or ask them if there is anything else they would be willing to do with you.

Child (10 to 13 years) *I understand that what I am asking can be very difficult to talk about, especially with someone you just met. I respect your choice to not talk about it. How about instead of talking about very serious stuff, we do a fun activity together, like drawing, coloring, building a puzzle or playing a game (offer choices and let them choose.)*

Note: If they do not want to, that is ok, you should honor their choice and you can try next time. You can always offer to play some music. Let them choose the music, and maybe they will be willing to talk to you about that song.

- It can be scary and intimidating to be approached by an unknown person for anyone let alone a child.
 - To help the child feel safer and more willing to meet with someone they have never met, like an advocate, it can help if the advocate is introduced to the child by someone the child knows and trusts already. If necessary, maybe this trusting adult can act as a bridge and possibly be present for some or all of the first meeting.
 - When meeting with a child for the first time, explain to the child in a child-friendly way, your role and the purpose of your visit. A young child might not understand certain terms, such as attorney, therapist, or case manager. Avoid big words and focus on the concepts you are trying to communicate. For example:

My name is Mary. You may hear others refer to me as Mary, the Child Advocate. That just means that my job is to make sure that children who are in this shelter without their family are receiving good care and treatment and that they feel heard. I would like to do that for you.

- Provide a physically and emotionally safe space for your meetings with the child.
 - Be mindful of potential triggers, such as smells, sounds, and visuals, when choosing a place to meet.
 - Familiarizing the child with the space you will be meeting in beforehand will help the child feel more comfortable and safer when the meeting occurs. If possible, you should consider scheduling a brief introductory meeting during which you allow the child to explore the space where the meeting will occur and ask you questions about the upcoming interview/assessment.
 - Familiarizing yourself with the place can also help prevent certain interruptions or challenges. For example, if you know beforehand that the room will be either too cold or too hot, you can prepare by making sure the child has a sweater handy, or for a hot room, you can make sure to lower the air conditioning to cool off the room or have water handy in case the child gets thirsty. These details may seem insignificant, but they can easily derail a meeting with a child who is feeling uncomfortable.
- Children who have experienced trauma have difficulty self-regulating feelings, emotions, and behaviors. A proactive and not reactive approach is best in these situations. In aiming to be proactive, keep in mind the following:
 - It is very difficult for anyone, especially a child, to process more than one thing during an emotional overload/crisis. When a child becomes dysregulated (dealing or responding to a situation emotionally poorly with anger, irritability, mood swings, or tantrums), often it is because they are having an emotional or sensory overload and they are not able to access helpful positive coping or grounding skills to help them handle the situation. It could be that this is an unexplored situation for them or maybe they have not learned these skills previously. Before diving into an assessment

or interview, explore coping or grounding skills and encourage emotional self-regulation. For example:

We are going to be talking about some serious stuff, and it is possible this will make you feel uncomfortable, scared, or sad. When you feel (insert emotion or feeling), what helps you feel better? When was the last time you felt like (insert emotion or feeling)? Was there anything that made you feel or could have made you feel safe/secure? How about if we explore some things that might help, and we can practice them together?

- Emotional self-regulation for children refers to the ability to understand, manage, and control their own emotions. It helps them navigate challenges, handle stress, and maintain a sense of emotional balance as they grow and face different situations. For young children who are still developing their self-regulation skills, or for those who are struggling with it, emotional co-regulation can be immensely helpful.
- Emotional co-regulation when working with children involves creating an environment where supportive and trusted adults, such as parents, teachers, or advocates, guide and assist children in understanding and managing their emotions. This interaction helps children develop healthy emotional responses, learn from their feelings, and build strong emotional connections with trusted adults. Co-regulation is crucial in helping children learn how to handle emotions effectively and establish positive emotional patterns. **Co-regulation can be helpful in various situations, but it is particularly beneficial in the following scenarios:**
 - Children who are still developing their self-regulation skills often benefit from co-regulation. Supportive adults can provide guidance, emotional support, and modeling of appropriate emotional responses, which helps children learn how to manage their emotions effectively. They can help children identify and label their emotions by providing the appropriate words to express what they are feeling. For instance, if a child is feeling frustrated but cannot quite articulate it, an advocate can identify the feeling and name that for that child.
 - Co-regulation is especially useful during times of stress, such as major life changes. Having a supportive adult can offer reassurance, perspective, and coping strategies, assisting in emotional regulation and reducing anxiety. Advocates can model healthy emotion regulation strategies themselves. If a child witnesses an advocate taking deep breaths or using calming techniques when they are stressed, they are more likely to learn and adopt those strategies themselves.
 - Children dealing with trauma or grief may struggle to manage their emotions alone. Co-regulation provides a safe space to express feelings and process experiences, often in the company of a counselor, therapist, or trusted person, aiding in healing and recovery.
 - Children facing mental health challenges like anxiety or depression can find co-regulation invaluable. Supportive adults can help them identify triggers, manage

symptoms, and access appropriate resources. They can also validate children's emotions by acknowledging their feelings as legitimate.

- Children with behavioral difficulties can benefit from co-regulation strategies. Caregivers or advocates can employ techniques to address outbursts, encourage self-control, and teach alternative ways of responding to frustration. They can teach children various coping strategies to manage their emotions. This could involve teaching them techniques such as deep breathing, counting and naming things around their surroundings, or engaging in a creative activity when they feel upset or overwhelmed.
- Emotional self-regulation and co-regulation are two interlinked concepts crucial for emotional and behavioral management, especially among children. While self-regulation focuses on an individual's internal ability to manage emotions, co-regulation acknowledges the role of external support. Advocates, through co-regulation, can guide youth in understanding and navigating their emotions, fostering emotional intelligence, and promoting healthier coping mechanisms, all of which are essential for their overall emotional well-being and personal growth.
- Collaborate with the child in developing an action plan in case they are triggered during your meeting with them. Plan together what your role will be by confirming with them whether they want your help during this time. If they do not want your help but may change their mind, come up with a word/sign/cue that will tell you they need your help and determine what that help will look like. That help could be, for example, guiding them in breathing exercises or a grounding technique. You might approach the conversation as follows:

Sometimes when someone is afraid or sad it can be hard for them to tell someone how they are feeling at that particular moment. Has that ever happened to you? Our body can sometimes speak for us, even when the words do not come out. If you are not able to tell me that you are feeling (insert feeling) during our conversation, how will I know that you are (insert feeling)? How will that look on you (a frown, teary eyes, crying)? What can I do, or what can we do together, to ease the discomfort/fear/sadness?

- Always remember to thank the child for sharing information with you and talking with you.

Other Forms of Communication

TIPS:

- Children, especially younger children, do better in answering questions when you present them in a more natural, less scripted conversation. This means providing them with open-ended questions. Let the conversation develop more spontaneously and flow freely. Open-ended questions like those provided below can help you get at the information you need through a free-flowing conversation:
 - *Can you describe your home or family?*
 - *Can you tell me about your home?*
 - *Can you tell me about your family?*

- *What do you like about living at your home?*
 - *What do you like about living with your family?*
 - *What don't you like about your home or family?*
 - *What are some things that make you feel happy?*
 - *What are some things that make you feel sad?*
 - *What are some things that make you feel hurt?*
- If their vocabulary is limited or they are not forthcoming, you can try drawing. You might explain what you are doing as follows:
 - *How about if you draw me a picture of your home or family? (Let the child take their time.)*
 - *Thank you for the drawing. This gives me an idea of what your family looks like. Can you tell me how each person is feeling in the drawing? (If the child struggles with words, you can offer them some adjectives by asking, "Are they happy, sad, or angry?")*

- If the child is not opening up, you can help get the conversation started through the use of storytelling. You might try the following approach:

I would like to tell you a story about you. But since I know so little about you, I was thinking that you could help me fill in the parts I do not know. How does that sound? I'll start with what I know. Once upon a time seven-year-old Jose lived in a beautiful country called Guatemala. Jose was living with... Now it is your turn to continue this part of the story. (Allow the child to provide details you then incorporate into the story.) Jose lived with his grandmother, aunt, and cousin. Jose's favorite parts of living with his family were... Your turn again. (Continue to build Jose's story in this way together.)

- You can also explore the child's feelings and emotions around praise and punishment. The following questions might get you started:
 - *How do you feel when you get praise for doing something good at home?*
 - *Can you tell me when was the last time this happened?*
 - *How do you feel when your (caregiver) thinks you misbehaved or did something wrong?*
 - *What happens when they think you have misbehaved?*
 - *Can you tell me what happened the last time this happened?*
- These are just a few examples on how to engage a child in conversation. If a child is not forthcoming with verbal communication, try exploring activities that do not require talking like building Legos, puzzles, dolls, or arts and crafts. You can ask them questions about what they are building in order to begin to develop rapport. You can also get a sense of their skills and understanding as they build.
- When choosing an activity it would be best to take into consideration their age and developmental level, keeping in mind that these two sometimes might not match. It is important to explore what can help a particular child, if possible, by getting as much information about this child from those who know them. This will help create an approach that is more in tune with the child's abilities.

How To Identify Warning Signs or Cues that Child is not Handling the Interview Well

TIPS:

- Some children can often communicate their feelings or needs effectively by using words. For a myriad of reasons, other children might not be able to, or in a particular moment, might struggle to do so. Instead, their body sends non-verbal cues/signs to communicate. Some of these nonverbal cues can easily be spotted and interpreted. For example, if a child is crying, or screaming, we can deduce that they are not feeling well, physically, or emotionally. The crying or screaming is their way to communicate that they need support.
- Some nonverbal cues are not as easily spotted, or they are not as easy to understand. Below are some examples to keep in mind:
 - A child who “spaces-out” is there physically but not necessarily emotionally. It may be that the child is uncomfortable or has been activated or triggered by something. The child has gone somewhere else in their mind—perhaps right back to a traumatic memory, or perhaps instead to a place in their mind where they feel safe.
 - A child with a flat or blunted affect may not make eye contact or display any or much emotion. Some might describe such a child as looking uninterested, bored, or interpret the behavior as rude on the child’s part. In fact, this flat or blunted affect can be a sign that a child might be dealing with a mental health challenge or disorder, such as depression, autism spectrum disorder, or PTSD.
 - A child who is blinking excessively, tapping/kicking, fist clenching, and/or finger popping may just be nervous, but these behaviors can also be a cue that something is really making this child feel quite uncomfortable. It is important not to ignore these cues and instead explore them with the child. Take a break to explore how the child is feeling. You can also use the break to ground the child and yourself before returning to the conversation. A stretching and deep breathing exercise are good options to consider.

Tips to Deescalate Situations

TIPS:

- Generally, it is easier to prevent an escalation than to deescalate a situation. Plan for breaks during your meetings with a child. If you know that you will be having a potentially emotionally-charged interview, plan for multiple breaks, or divide the interview into parts to be conducted on different days so as not to overwhelm the child.

What to do if the child you are working with has an emotional breakdown:

- The first thing to do is to access and establish safety. If there is no real risk for their safety or the safety of others, then perhaps the best thing you can do is let them calm down on their own. When a child is emotionally overwhelmed, their brain might not be able to process,

understand, or handle new information. This does not mean you should leave the child alone without any support, but you should be mindful of your approach. When a child is experiencing an emotional crisis, it can be counterproductive to try to reason with a child, teach them a new skill, tell them to calm down, or threaten them with consequences.

- Instead, provide the child with a safe space and the time to navigate this emotionally and physically difficult moment by using their personal coping resources. The child's coping skills may not be the most effective, but as long as these are not potentially life threatening to them or others, it may be best to let them use what they know. Again, this is not an ideal time to be teaching a new skill. You can offer that later. In the moment, let them know they are not alone and that they are safe.
- It is important to validate the child's feelings and emotions as well as respect their time and space. You might let them know, *"It's okay if you don't want to talk about this. I am here to listen when you are ready."*
- In the event that the situation escalates to a dangerous or life-threatening level, alternative forms of intervention may become necessary. Be proactive and ready by familiarizing yourself with your organization's policies/guidelines for this type of situation, as well as the policies/guidelines of a shelter in which the child may be staying.
- You can provide positive reinforcement or help if you see that the child is demonstrating positive coping skills, and are able to engage, or if they ask for support. You might engage the child in this way:
 - *I see that you are trying to make yourself feel better by taking deep breaths. This is great, keep doing that.*
 - *Older child: Let's try to get your mind and body to come back to the here and now. Can you name 5 things you can see, 4 things you can feel, 3 things you can hear, 2 things you can smell, and 1 thing you can taste?*
 - *Younger child: Do you think you can help me list 5 things we can see around us? Great. How about helping me list 4 things we can smell?*
- Helping the child process the emotional event is crucial. This can be done once the child has come to their emotional baseline, and they have had time to rest, physically and emotionally. Processing with the child can help them address the following:
 - Try to identify the feelings and emotions that surfaced and understand them.
 - What activated/triggered the emotional or sensory overload? This will help them learn what can be done to prevent it in the future.
 - What did or did not help to deescalate? This will help to highlight what helped or what needs to be avoided next time.

- What lines were crossed? Maybe the child got physically aggressive, or they used harsh words. It is important not to ignore these facts and to have a conversation about them. To try to prevent re-escalation, the approach might be something like:
 - *Let's have a conversation about what happened earlier, what we can learn, and how we can prevent it from happening again. Let's talk about the consequences of the actions that were taken and how we can grow from this experience.*

- What positive behaviors did they demonstrate? Always try to mention something positive or highlight a growth. This can even include showing restraint. Maybe in the past this child has demonstrated physical violence or destruction of property, and this time, they did not. You might acknowledge the restraint shown as follows:
 - *I think you should feel proud that you were able to refrain from using physical force to express what you were feeling.*

What if this is a situation that requires follow up from a mental health expert:

- It can be challenging to distinguish between signs of a mental health challenge and typical behaviors, especially in young children. The key is to pay attention to behaviors that suddenly appear or are not within the “normal” behavior range for this child. For example:
 - The child goes from usually being in a positive mood, socializing with friends, and doing well overall, to other behavior, such as being irritable, experiencing changes in sleeping and/or eating habits, experiencing hyperactivity, and/or demonstrating persistent disobedience or aggression or frequent temper tantrums. The child showing some of these indicators or symptoms does not necessarily mean they have a mental health disorder. It could mean that the child is facing a mental health challenge.

Tips to help the child through a mental health challenge:

- Avoid phrases that can make the child feel as though they are not capable or strong enough to deal with the situation at hand. These include:
 - *You need to put effort on your part.*
 - *Don't worry, it's nothing.*
 - *Cheer up, it is not that bad.*

- Help the child explore and recognize the sources of stress and find a way to positively cope. This can be done by talking and using exploratory questions, such as:
 - *How do you feel here at (insert where they live—home, shelter, foster home)?*
 - *Do you feel comfortable? Safe here?*
 - *Are you liking the food they are providing? Do you feel that you are getting enough?*
 - *Do you feel cared for?*
 - *Is there anything that is worrying you? Anything making you feel uncomfortable?*

- Take their concerns seriously and recognize and validate any feelings that they are experiencing. Offer plenty of positive reinforcement, such as:
 - *Thank you for sharing. I understand that this is difficult for you.*
 - *I can see that this means so much to you.*

- It is possible that even with the best of intentions, your help and guidance might not be enough. You may need help yourself and need not handle everything on your own. If you are unsure as to whether the child is showing concerning behavior, it is a great idea to reach out for extra support. You may need to seek help from another professional such as a clinical social worker, psychologist, counselor, or primary care doctor. If this is the case, you should explore with the child the need to seek the support and guidance of a professional explaining that this could help them and you navigate this challenging time. It is important to keep the child informed of your intentions. More information can be found in CILA's resource, [*Working with Unaccompanied Children: Mental and Behavioral Health Toolkit*](#), regarding seeking help from a mental health professional and contextual issues related to discussing mental health with a child.

- Educate and explain the roles of those that will be helping. For example, if a psychologist will be seeing the child and conducting a psychological evaluation, then explain that to the child. If the child is too young to understand, do your best to help them understand in terms that a child their age can grasp.

Tips for talking about mental health with the child:

- Do your best to stay calm. Start the conversation with the child with compassion and care by stating, *"I care about you and what happens to you."*

- State your observations and your concerns without judgement.
 - *I've noticed that you don't talk to your friends anymore, and I was wondering if something happened between you and them. Is there anything I can support you with?*
 - *I've noticed you seem tired. Are you having trouble falling asleep or staying asleep? Is there something keeping you awake?"*

- If information is shared by other stakeholders, such as shelter staff, letting the child know that they have this information can be misinterpreted. The child may also assume that the legal service provider shares information with the shelter staff without their consent as well. This may negatively impact the trust already built with the client. For example, if an ORR facility staff member has shared that the child is having fights with other children, this could be addressed like this:
 - *How are you doing today?*
 - *Are you liking your classes?*
 - *Have you talked to other kids? How is that going?*
 - *Have there been any problems with classmates?*

If the child shares information, then you can follow up based on the information that has been shared.

- Remember to keep your own emotions in check throughout the conversation. Allow the child to express themselves completely, even if this is altering your own emotions. Refrain from showing your surprise or shock. Remember to use encouraging words and phrases like, "*That seems hard.*" or "*This is something important to you, and I want to learn and help.*"
- Children's brains are still developing. They feel deeply and they have many emotions, but sometimes they may not know how to express them, or they may not have the words to tell you how they feel. You can help them by exploring their thoughts/feelings with them. If they are not ready to talk to you, do not pressure them. Let them know that you respect their decision. Still, do remind them that you are available to talk to them if/when they are ready. Let them know that you will continue checking in with them. Reinforce the idea that asking for help is okay and that doing so is never a sign of weakness. Everyone experiences times where they need help from others.

Tips for dealing with urgent/emergency situations:

- Suicide for children before puberty is not as common as it is with teens and adults. However, suicide does occur in preteens, and awareness is key. Resources such as [*Understanding the Characteristics of Suicide In Young Children*](#) posted on the National Institute of Mental Health's website are helpful to read to understand risk factors. Discussing suicide or self-harm can be a difficult conversation to navigate. However, it is critical that you have the conversation when called for, and the guidance below may be helpful.
- If you suspect that the child might be thinking about suicide, talk to them immediately. Do not be afraid to use the word "suicide." Talking about suicide will not plant ideas in the child's head.
- Children are able to understand everything if we adapt our language to their level of age and maturity. Younger children might not understand the word "suicide," but you can use words they are using. For example, a child may say, "*I wish I could disappear forever,*" or "*I wish I could sleep forever,*" or "*I do not want to feel like this anymore.*" In response, you might say:
 - *What do you mean by you want to disappear forever? Are you saying you want to die?*
 - *Do you have a plan or have you imagined how it would happen and when?"*
- Familiarize yourself with your organization's guidelines regarding this subject matter. Have a plan in place for who to contact for help, what can help, and what to say.
- If you think the child is in immediate danger, call 911, your local emergency number, or a suicide hotline number, such as the **National Suicide Prevention Lifeline:** <https://988lifeline.org/> or call 988 Suicide & Crisis Lifeline. Do not leave the child alone physically or emotionally. Find support for them and yourself.

How Advocates Can Reduce Risks for Secondary Trauma

Risks for Secondary Traumatic Stress

- Who is at risk?
 - Anyone who is exposed to second-hand images or stories traumatic in nature, especially if this is a constant exposure, can develop secondary traumatic stress.
 - Someone with history of trauma.
 - Someone that avoids social situations—withdrawn both on and off the job.
 - Someone with difficulty expressing feelings.
 - Someone who does not debrief/reflect/process their feelings/emotions from the second-hand trauma exposure.
 - Someone without support in their workplace or no training and no supportive process.
- Some signs/symptoms of Secondary Traumatic Stress:
 - Physiological symptoms: headaches, digestive issues, body aches.
 - Emotional symptoms: anxiety, sadness, guilt, fear, irritability, mood swings, insecurity, and helplessness.
 - Cognitive symptoms: memory failures, confusion, lack of concentration, hypervigilance, presence of intrusive or recurring thoughts, and difficulty making decisions or solving problems.
 - Behavioral symptoms: social isolation, withdrawn, sleep disturbance, and problems with eating or alcohol/substance consumption.

Self-Care Tips to Reduce Risks for Secondary Traumatic Stress

TIPS:

- Practice grounding/centering yourself before and after an interaction with a client or a difficult moment.
 - This will allow you to wind down from whatever you were doing previously. It will also allow you to fully be present and prepare yourself for the emotions/feelings that a certain situation might bring up, for you and those involved.
 - Setting time for centering and grounding yourself will also allow you to identify and practice coping and grounding skills that might help you/them during this possible challenging time.
- Take time for self-reflection daily. Self-reflection can help you make sense of what you have experienced. It will help you understand the way you respond to situations.
 - Self-reflection offers you the opportunity to challenge your own mind, your habitual way of thinking.
 - Self-reflection allows you to look back and see where you are coming from.

- How to reflect and how this might look:
 - Daily reflection is best but doing it after an emotionally intense moment can be key.
 - Self-reflection does not have to be complicated or take a long time.
 - Pick a quiet place, away from distractions or interruptions. Take several deep nourishing breaths before starting. Use the time for inner reflection to process what just occurred by reflecting on the following:
 - How did this make you feel and why?
 - What worked and what did not?
 - What would you do differently if you had this conversation again (or if you were in this situation again)?
 - Identify coping or grounding skills that might help you if you were to find yourself in a similar situation.
 - What were the lessons learned and how you can grow from this?

CILA Resources

Many of these topics and issues are further discussed in additional CILA resources. If you need access to any of the below resources, contact CILA at cila@abacila.org.

- [CILA: A Toolkit for Navigating Difficult Conversations with Child Clients: Guidance & Examples](#)
- [CILA: Tips for Working with Migrant Children and Trauma-Informed Lawyering](#)
- [CILA: Working with Unaccompanied Children: Mental and Behavioral Health Toolkit](#)
- [CILA: Pro Bono Guide: Working with Children and Youth in Immigration Cases](#)
- [CILA: Resources for Working with Indigenous Individuals](#)
- [CILA: Practical and Ethical Considerations and Reminders when Working with Translators and Interpreters](#)
- [CILA recorded Boot Camp presentation: Child Interviewing Techniques](#)
- [CILA Symposium presentation: Legal Services for Tender-Age Children and Best Practices When Providing Services Remotely](#)
- [CILA Symposium presentation: Innovative Communication Tools and Resources – Using Play, Active Engagement, and Trust Building with Unaccompanied Children](#)
- [CILA Symposium presentation: Vicarious Trauma: Best Practices for Serving and Honoring Sexual Abuse Victims](#)
- [CILA webinar: Secondary Traumatic Stress and Self-Care](#)

E. Appendix 5: Additional Resources

Additional Resources: Vulnerabilities of Childhood & Social Science

Additional Resources: Vulnerabilities of Childhood *Developed by Joanne Curley, J.D.

Government, NGO, and Other Reports

- **Source: Child Welfare Information Gateway, *Understanding the Effects of Maltreatment on Brain Development*, Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau (2015)**
https://www.childwelfare.gov/pubPDFs/brain_development.pdf
 - “[C]hildren’s experiences with child maltreatment or other forms of toxic stress, such as domestic violence or disasters, can negatively affect brain development. This includes changes to the structure and chemical activity of the brain (e.g., decreased size or connectivity in some parts of the brain) and in the emotional and behavioral functioning of the child (e.g., over-sensitivity to stressful situations).” [page 5]
- **Source: *ABA Policy on Trauma-Informed Advocacy for Children and Youth*, AMERICAN BAR ASSOCIATION HOUSE OF DELEGATES, (2014)**
https://www.americanbar.org/content/dam/aba/administrative/child_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.authcheckdam.pdf
 - “Trauma can disrupt a child’s current as well as subsequent developmental phases. The younger a child is, the greater the risk that the traumatic experience will become a central aspect of the child’s identity and the more difficult it will be for the child to address the trauma and overcome it.” [page 5-6]
 - “Multiple chronic traumatic events can result in deficits with language and cognition, emotional and behavioral impairments, and social and emotional disturbances.” [page 6]
 - “The negative effects and outcomes of childhood trauma can be reduced by appropriate responses to and treatment of trauma during the childhood period. . . . Children and youth have the capacity for resilience and can overcome the negative impacts of trauma if they receive proper help and care. A trauma-informed system of care is the best possible means of providing children and youth with the services they need to be resilient. The foundation for any system of trauma-informed care is an acknowledgement that experiencing trauma can result in negative effects, often manifested as behavioral problems, that may persist long after the initial traumatic incident.” [page 7]
- **Source: Committee on Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States, *Confronting commercial sexual exploitation and sex trafficking of minors in the United States*, INSTITUTE OF MEDICINE & NATIONAL**

RESEARCH COUNCIL, (2013).

<http://www.iom.edu/Reports/2013/Confronting-Commercial-Sexual-Exploitation-and-Sex-Trafficking-of-Minors-in-the-United-States.aspx>

- “Victims and survivors may be distrustful of law enforcement, may not view themselves as ‘victims,’ or may be too traumatized to report or disclose the crimes committed against them.” [page 20]
- “[V]ictims, even when located, may not cooperate with officials, service providers, and others who can assist them. They may provide false information about themselves, their ages, and their activities. They themselves often fail to recognize that they are victims. Their lack of cooperation can be due to a myriad of reasons, such as fear of retaliation, abuse, or force; language barriers; coercion; and fear of arrest, deportation, or entrance into the criminal justice system as an offender.” [page 56-57].
- “A 1996 report resulting from the first World Congress Against Commercial Sexual Exploitation of Children points out that, although direct scientific data are sparse, there is little doubt that the sexual exploitation of children results in serious, often life-long, and sometimes life-threatening consequences for the physical, psychological, and social health and development of the child (see World Congress Against Commercial Sexual Exploitation of Children, 2002). [page 115]
- “Adolescent victims . . . experience more emotional and mental health problems than nonvictims, and several studies indicate that victims of commercial sexual exploitation have long-term psychological sequelae that persist into adulthood, such as low self-esteem, affective disorders (including depression, trauma, anxiety, and panic attacks), suicidality, and attempted suicide. In addition, . . . victims . . . show extremely high rates of fear and anxiety; altered relationships with others, including the inability to trust others; and self destructive behaviors, including suicidality (Willis and Levy, 2002). They report that victims of commercial sexual exploitation also show changed feelings about themselves, including “profound guilt and shame.” [page 115]

Additional Resources: Social Science

- **Source: J. Cohen, & the Work Group on AACP Quality Issues, *Practice Parameter for the Assessment and Treatment of Children and Adolescents With Posttraumatic Stress Disorder*, 49 JOURNAL OF THE AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY, 414-430, (2010)**
<https://www.sciencedirect.com/science/article/pii/S0890856710000821>
 - “Female gender, previous trauma exposure, multiple traumas, greater exposure to the index trauma, presence of a preexisting psychiatric disorder (particularly an anxiety disorder), parental psychopathology, and lack of social support are risk factors for a child developing PTSD after trauma exposure.” [page 416]
 - “Childhood PTSD confers increased risk for a number of problems in later childhood, adolescence, and adulthood. PTSD related to child abuse or domestic violence is associated with smaller cerebral volume and smaller corpora colossa, with the severity of these changes being proportional to the duration of the children’s trauma exposure.” [page 416]

- “[I]n a study comparing child-centered therapy sessions with trauma-focused treatment, i.e., children in child centered therapy rarely spontaneously mentioned their personal traumatic experiences. Timing and pacing of trauma-focused therapies are guided in part by children’s responses that therapists and parents monitor during the course of treatment. Clinical worsening may suggest the need to strengthen mastery of previous treatment components through a variety of interventions, rather than abandoning a trauma-focused approach.” [page 421-22]
- “Children with significant PTSD symptoms may have impaired academic functioning. This is often due to hypervigilance to real or perceived threats in the environment and may be a particular issue if trauma reminders are present in the school setting.” [page 425]

ⁱ Colin Kalmbacher, *‘Tender Age’ Terminology for Child Detention is Product of Obama Era Immigration Policy*, LAW AND CRIME, (Jun. 20, 2018, 2:13pm), <https://lawandcrime.com/immigration/tender-age-terminology-for-child-detention-is-product-of-obama-era-immigration-policy/>.

ⁱⁱ Note that as research has developed over the past few decades, these stages and their demarcations have shifted and changed. As child development research continues to expand, expect these categorizations and characteristics of development to gain more detail, shift, and/or change from our current understanding.

ⁱⁱⁱ In fact, the brain continues to develop until approximately age 25. Up until the age of 25, the development of the prefrontal cortex (which occurs primarily during adolescence) is ongoing. This region of the brain helps accomplish executive functions, including an individual’s ability to form strategies and plan, make predictions, and foresee possible consequences to their behavior. See Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRY DIS. TREAT. 449 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/>.

^{iv} ANDREW W. COLLINS, DEVELOPMENT DURING MIDDLE CHILDHOOD: THE YEARS FROM SIX TO TWELVE, 2 (1984).

^v Emily Buss, *What the Law Should (And Should Not) Learn from Child Development Research*, 38 HOFSTRA LAW REVIEW 13, 14 (2009), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2085&context=journal_articles.

^{vi} See e.g., GABRIELA BELTRE & MAGDA D. MENDEZ, CHILD DEVELOPMENT, (2022) <https://www.ncbi.nlm.nih.gov/books/NBK564386/>; RAI0 Directorate, *RAIO Combined Training Program Children’s Claims Training Module*, USCIS (Dec. 20, 2019) at 22-24, https://www.uscis.gov/sites/default/files/document/foia/Childrens_Claims_LP_RAIO.pdf.

^{vii} RAI0 Directorate, *supra* note vi.

^{viii} CENTER ON THE DEVELOPING CHILD, HARVARD UNIV., (last visited Jun. 19, 2023) <https://developingchild.harvard.edu/science/key-concepts/brain-architecture/>.

^{ix} *Id.*

^x *Id.*

^{xi} Nat’l Inst. on Deafness and Other Comm’n Disorders, *Speech and Language Developmental Milestones*, (Oct. 13, 2022), <https://www.nidcd.nih.gov/health/speech-and-language>.

^{xii} *Id.*

^{xiii} *Id.*

^{xiv} Mayo Clinic, *Language Development: Speech Milestones for babies*, (last visited Jun. 23, 2023), <https://www.mayoclinic.org/healthy-lifestyle/infant-and-toddler-health/in-depth/language-development/art-20045163>.

^{xv} Raisingchildren.net.au, *Language development: 1-2 years*, (last visited Jun. 23, 2023), <https://raisingchildren.net.au/toddlers/development/language-development/language-1-2-years#:~:text=At%201%2D2%20years%2C%20your,big%20and%20'blue'>.

^{xvi} Laura Mize, *Teaching Your Toddler to Answer Questions—Receptive and Expressive Language Delay Issues*, (Feb. 26, 2008), <https://teachmetotalk.com/2008/02/26/techniques-to-work-on-answering-questions-with-language-delayed-toddlers/>.

^{xvii} CTR. FOR DISEASE CONTROL & THE AM. ACAD. OF PEDIATRICS, DEVELOPMENTAL MILESTONE CHECKLIST FOR WIC, 19, [cdc.gov/ncbddd/actearly/pdf/FULL-LIST-CDC_LTSAE-Checklists2021_Eng_FNL2_508.pdf](https://www.cdc.gov/ncbddd/actearly/pdf/FULL-LIST-CDC_LTSAE-Checklists2021_Eng_FNL2_508.pdf) at page 19.

^{xviii} *Id.*

^{xix} *Id.* at 23.

- ^{xx} Am. Speech-Language-Hearing Assoc., *Social Communication Benchmarks*, (last visited Jun. 19, 2023), <https://www.asha.org/practice-portal/clinical-topics/social-communication-disorder/social-communication-benchmarks/>.
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- ^{xxii} Ellie M. Harrington et al, *Emotion regulation in early childhood: Implications for socioemotional and academic components of school readiness*, EMOTION, 2020, at 48–53; *see also*, Thompson, *supra* note xxi.
- ^{xxiii} Illinois Early Learning Proj., *Self-Regulation: Emotional Regulation*, (last visited Jun. 23, 2023), <https://illinoisearlylearning.org/ielg/emotional/>.
- ^{xxiv} Sanya Pelini, The Gottman Inst., *An Age-By-Age Guide to Helping Kids Manage Emotions*, (last visited Jun. 19, 2023), <https://www.gottman.com/blog/age-age-guide-helping-kids-manage-emotions/>.
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- ^{xxvii} *Id.*
- ^{xxviii} Pamela M. Cole et al., *Development of Emotion Regulation Dynamics Across Early Childhood: a Multiple Time-Scale Approach*, AFFECTIVE SCIENCE, 2020, at 28.
- ^{xxix} Florence Byrd, WEBMD, *Preschooler Emotional Development*, (Dec. 9, 2022), <https://www.webmd.com/parenting/preschooler-emotional-development#:~:text=They%20are%20getting%20better%20at,rather%20than%20having%20a%20meltdown.>
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- ^{lxxiv} See CILA, *Working with Unaccompanied Children: Mental and Behavioral Health Toolkit*, Section 3, May 2022, <https://cilacademy.org/wp-content/uploads/2022/05/FINAL-Unaccompanied-Children-Mental-and-Behavioral-Health-toolkit-1.pdf>.
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- ^{lxxvii} While covering all aspects of cultural competency and humility is outside the scope of this resource, CILA has created a resource that provides a good starting point for information on this topic: “Cultural Competency and Humility When Representing UCs.” CILA, “Cultural Competency and Humility When Representing UCs,” Nov. 2019, <https://www.cilacademy.org/wp-content/uploads/2019/11/Cultural-Competency-Resource-Final.pdf>.
- ^{lxxviii} Many unaccompanied children are Indigenous. According to data from the Office of Refugee Resettlement (ORR), in FY 2022, 47% of unaccompanied children were originally from Guatemala; 29% of children were from Honduras, 13% from El Salvador, and 11% were from other countries. *Fact Sheet Unaccompanied Children (UC) Program*, (Apr. 17, 2023), <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>. For example, a significant portion of Guatemala’s population are Indigenous peoples, and there are over twenty languages spoken. See “Indigenous Peoples’ rights to Exist, Self Determination, and Due Process in Migration,” May 2020, https://www.indigenousalliance.org/_files/ugd/7c2cd7_8fba30c64dd8470a900718d182b629d8.pdf. The International Work Group for Indigenous Affairs, *The Indigenous World 2023*, <https://iwgia.org/en/resources/indigenous-world>. For Indigenous children and many others, it will likely be necessary to seek the assistance of an interpreter. CILA has created a resource on working with interpreters that may be helpful: “Practical and Ethical Considerations and Reminders when Working with Translators and Interpreters.” CILA also created a resource to help advocates get started on research to learn more about working with Indigenous clients: “Resources for Working with Indigenous Individuals,” which is available on CILA’s website, <https://cilacademy.org/resources/>. CILA, “Practical and Ethical Considerations and Reminders when Working with Translators and Interpreters,” Apr. 2023, <https://cilacademy.org/wp-content/uploads/2023/08/2023.08.23-Tips-and-Ethics-Handout.pdf>. CILA, “Resources for Working with Indigenous Individuals,” Jun. 2022, <https://cilacademy.org/resources/>.
- ^{lxxix} *Id.* Note that research on what factors encourage successful rapport building is still in its infancy.
- ^{lxxx} Eleanor A. Price et al., *Rapport-Building in Investigative Interviews of Alleged Child Sexual Abuse Victims*, 30 APPLIED COGNITIVE PSYCH. 743, 743-5; see also, Saywitz, *supra* note lxxvii.
- ^{lxxxi} Eight- to 9-year-olds gave three times more information when responding to invitational questions versus yes/no questions, while children aged 4- to 5-years gave twice as much information. See Price, *supra* note lxxx.
- ^{lxxxii} See Price, *supra* note lxxx.
- ^{lxxxiii} Samantha J. Andrews et al., *The Productivity of Wh- Prompts when Children Testify*, 30 APPLIED COGNITIVE PSYCH. 341, 342 (2016).
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- ^{lxxxv} *Id.*
- ^{lxxxvi} Thomas D. Lyon, *Interviewing Children*, 10 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 73, 74 (2014).
- ^{lxxxvii} KIDS IN NEED OF DEFENSE, REPRESENTING CHILDREN IN IMMIGRATION MATTERS 7, available at <https://supportkind.org/wp-content/uploads/2015/04/Representing-Children-In-Immigration-Matters-FULL-VERSION.pdf>.
- ^{lxxxviii} Amy Russell, *Best Practices in Child Forensic Interviews: Interview Instructions and Truth-Lie Discussions* (2019), <https://www.zeroabuseproject.org/wp-content/uploads/2019/02/NCPTC-Best-Practices-in-Child-Forensic-Interviews.pdf>. A full discussion on linguistics and child development is beyond the scope of this article. For a more in-depth discussion on this topic, see Anne Graffam Walker, HANDBOOK ON QUESTIONING CHILDREN (1999). See also CILA “Practical Tips: Working with Tender-Aged Children in Immigration Court Proceedings” at [Appendix 4](#).
- ^{lxxxix} Excerpt from CILA “Practical Tips: Working with Tender-Aged Children in Immigration Court Proceedings” at [Appendix 4](#).
- ^{xc} Judith Herman, *Justice from the Victim’s Perspective*, 11 *Violence Against Women*, Nov. 2003 at 6, <https://dash.harvard.edu/bitstream/handle/1/34961943/Justice%20from%20the%20Victim.pdf?sequence=4&is>.
- ^{xci} David A. Crenshaw et al., *Developmentally and Trauma-Sensitive Courtrooms*, 59 J. OF HUMANISTIC PSYCH. 781 (2019).
- ^{xcii} *Id.*

xciii *Id.*

xciv JUD. COUNCIL OF CAL., BENCH HANDBOOK: THE CHILD WITNESS, 7 (2016), http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/cwhb_2016pt.pdf.

xcv *Id.* at 9 (note that in an immigration setting, all children—regardless of their age or stage of development—must appear in court for their legal proceedings. Cross-disciplinary research and best practices for working with children in a courtroom setting only address children ages four and older.)

xcvi *Id.*

xcvii *Id.* at 6.

xcviii *Id.*

xcix *Id.*

^c Crenshaw, *supra* note xci.

ci *Id.*

cii Rebecca Nathanson & Karen J. Saywitz, *The Effects of the Courtroom Context on Children's Memory and Anxiety*, 31 J. OF PSYCHIATRY & LAW 67-98 (2003).

ciii Jodi A. Quas & Gail S. Goodman, Consequences of Criminal Court Involvement for Child Victims, 18 PSYCH., PUBLIC POLICY, AND LAW 394 (2012).

civ Nathanson, *supra* note cii, at 91.

cv In a study involving 8- to 10-year old children. Karen J. Saywitz & Rebecca Nathanson, *Children's testimony and their perceptions of stress in and out of the courtroom*, 17 CHILD ABUSE & NEGLECT, 613, (Sept.-Oct. 1993).

cvi Quas, *supra* note ciii, at 398.

cvii *Id.*

cviii Excerpt from CILA “Practical Tips: Working with Tender-Aged Children in Immigration Court Proceedings” at [Appendix 4](#).

cix Juvenile Law Center, *Youth in the Justice System: An Overview*, (last visited on Jun. 23, 2023) <https://jlc.org/youth-justice-system-overview>; see also Elizabeth Cauffman, et al., *How Developmental Science Influences Juvenile Justice Reform*, 8 U.C. IRVINE L. REV. 21 (2018), <https://scholarship.law.uci.edu/cgi/viewcontent.cgi?article=1306&context=ucilr>; Richard M. Lerner & Michael E. Lamb, *Handbook of Child Psychology and Developmental Science*, (Apr. 2015).

cx Stephanie L. Canizales, *Advocating for Asylum-Seeking Children is Traumatic, New Research Finds*, THE WASHINGTON POST (Mar. 18, 2021) <https://www.washingtonpost.com/politics/2021/03/18/advocating-detained-migrant-children-is-traumatic-new-research-finds/>.

cxii William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044, 5080 (Dec. 23, 2008); 8 U.S.C. § 1232.

cxiii 8 U.S.C. § 1229a(b)(4)(A). See Vera, “Representation Matters: No Child Should Appear in Immigration Proceedings Alone,” Dec. 2021, <https://www.vera.org/downloads/publications/representation-matters.pdf>.

cxiiii JUD. COUNCIL OF CAL., BENCH HANDBOOK: THE CHILD WITNESS, 7 (2016), http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/cwhb_2016pt.pdf.

cxv John E. B. Myers et al., *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 28 PAC. L. J. 3 (1996).

cxvi OFF. FOR VICTIMS OF CRIMES, OFF. OF JUST. PROG., U.S. DEP’T OF J., ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE 13, (2012).

cxvii Myers, *supra* note cxiv. (Describing a Massachusetts Supreme Judicial Court case from 1989 and a Florida Supreme Court case from 1993 where the courts ruled that protections permitted by the trial judges that altered the courtroom setting and procedures to accommodate child witnesses were permissible).

cxviii A mitigation strategy employed in other courtrooms to prevent a child from having to face their abuser is closed-circuit televised testimony. The Supreme Court has ruled that closed-circuit televised testimony is an acceptable form of evidence in federal cases. *Maryland v. Craig*, 497 U.S. 836 (1990). Over time, many states have adopted procedures that allow children to testify through closed-circuit television or other alternative means. The National Center for Prosecution of Child Abuse has documented a list of states with such protective procedures. NAT’L CENTER FOR PROSECUTION OF CHILD ABUSE, NAT’L DISTRICT ATTORNEYS ASS’N, *Closed Circuit Television Statutes* (2012), <https://ndaa.org/wp-content/uploads/CCTV-2012.pdf>. The Department of Justice, the very same administrative body that adjudicates immigration court cases, funded the development of closed-circuit televising and videotaping of testimony for child victims of abuse in order to “reduce the trauma related to testifying at a hearing or trial by these children.” BUREAU OF JUST. ASSISTANCE, OFFICE OF JUST. PROGRAMS, US. DEP’T OF JUST., *Closed-Circuit Televising of Testimony of Children Who Are Victims of Abuse Grant Program 1* (1998), <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/sl000287.pdf>. To learn more about some considerations relevant to remote hearings, consult CILA’s resource “Tips for Working with Children and Youth Remotely

in a Hearing or USCIS Asylum Office Interview,” which is available on CILA’s website at <https://cilacademy.org/resources/>.

^{cxviii} See, e.g., *People v. Adams*, 19 Cal. App. 4th 412 (1993); *State v. Menzies*, 603 A.2d 419 (Conn. App. Ct. 1992).

^{cxix} Myers, *supra* note cxiv.

^{cxx} Robert H. Pantell et al., Am. Academy of Pediatrics, *The Child Witness in the Courtroom*, 139 PEDIATRICS, Mar. 2017 at 1.

^{cxxi} RAI0 Directorate *supra* note vi.

^{cxxii} *Id.*

^{cxxiii} Executive Office for Immigration Review (EOIR) Operating Policies and Procedures Memorandum (OPPM) 17-03 provides guidance to immigration judges for adjudicating cases with a child respondent or witness, including that judges “should employ age-appropriate procedures,” and provides several options such as allowing children to explore the courtroom in advance, to bring a toy, to sit next to an adult or friend, and that the judge can remove their robe, to name a few. “Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children,” EOIR OPPM 17-03 (Dec. 20, 2017), <https://www.justice.gov/eoir/file/oppm17-03/download>. See also EOIR, *Immigration Court Practice Manual* Ch. 4.22 – Juveniles, <https://www.justice.gov/eoir/reference-materials/ic/chapter-4/22>.

^{cxxiv} Christine M. Hernandez, *Unaccompanied Alien Children: A Crisis in Our Immigration Courts*, 45 COLO. LAW REV. 35 (2016).

^{cxxv} Gail D. Cecchetti-Whaley, *Children as Witnesses after Maryland v. Craig*, 65 S. CAL. L. REV. 1993 (1992).

^{cxxvi} *Id.*

^{cxxvii} *Id.*

^{cxxviii} *Id.*

^{cxxix} ORR requires that a legal service provide a “Know Your Rights” presentation to unaccompanied children where a child may be presented with information about the structure of an immigration courtroom, the role of the various actors, and immigration case procedures (i.e., length of cases and potential outcomes).

^{xxx} The TVPRA 2008 authorizes the Department of Health and Human Services (HHS) to appoint Child Advocates only for child trafficking victims and other vulnerable unaccompanied children—not for all unaccompanied children.

^{xxxi} ORR Unaccompanied Children Program Policy Guide: Section 2.3.4 Child Advocates, <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2>.

^{xxxii} The Young Center for Immigrant Children’s Rights (Young Center) is the only Child Advocate Program in the country: <https://www.theyoungcenter.org/child-advocate-program>.

^{xxxiii} EOIR’s OPPM 17-03 states, “Although 8 U.S.C. § 1232(c)(2) contains provisions for the Department of Health and Human Services (HHS) to consider ‘the best interest of the child’ in certain circumstances, no similar provision exists in the INA directing Immigration Judges to consider the concept of ‘the best interest of the child’ as a legal standard for determining removability for eligibility for relief or protection from removal. Therefore, this concept alone cannot provide a legal basis for granting relief or protection not otherwise sanctioned by law.” EOIR OPPM 17-03 (Dec. 20, 2017), <https://www.justice.gov/eoir/file/oppm17-03/download>.

^{xxxiv} Individuals can refer a child to the Young Center on their website at this link: <https://clienttrack.eccovia.com/portal/default.aspx?CustomerID=TY>.

^{xxxv} THE YOUNG CENTER FOR IMMIGRANT CHILDREN’S RIGHTS, *Child Advocate Program*, <https://www.theyoungcenter.org/child-advocate-program> (last visited Jun. 23, 2023).

^{xxxvi} Sarah Diaz & Lisa Jacobs, *The Inappropriate Use of Juvenile Records in Immigration Discretion*, (Loyola Center for the Human Rights of Children, Academic Research & Position Brief), <https://www.luc.edu/media/lucedu/law/centers/chrc/pdfs/The-Inappropriate-Use-of-Juvenile-Records-in-Immigration-Discretion.pdf>.

^{xxxvii} NAT’L JUVENILE JUST. NETWORK, *Raising the Minimum Age for Prosecuting Children* (Jun. 2023), [https://www.njjn.org/our-work/raising-the-minimum-age-for-prosecuting-children#:~:text=Disruptions%20to%20mental%20and%20physical,of%20the%20Child%20\(CRC\)](https://www.njjn.org/our-work/raising-the-minimum-age-for-prosecuting-children#:~:text=Disruptions%20to%20mental%20and%20physical,of%20the%20Child%20(CRC)).

^{xxxviii} In 2019, the United Nations (U.N.) Committee on the Rights of the Child updated its recommended minimum age of criminal responsibility to 14. See UNCHR, *General Comment no. 24 (2019) on children’s rights in the child justice system*, CRC/C/GC/24, 2019. Though the United States is the only U.N. member state never ratified the Convention on the Rights of the Child (CRC), it is a signatory to the CRC, and thus U.S. actors must refrain from acts that would defeat the object and purpose of the Convention.

^{xxxix} *In re Gault*, 387 U.S. 1 (1967).

^{cxl} 8 U.S.C. § 1229a(b)(4)(A).

^{cxli} There are limited government-funded legal services for unaccompanied children, such as providing legal orientations and screenings for children who are in the custody of ORR, and representation while children are detained. You can learn

more about the services provided from ORR's website under *Services Provided*, at <https://www.acf.hhs.gov/orr/about/ucs/services-provided>.

^{cxlii} Erica Bryant, et al., *No Child Should Appear in Immigration Court Alone*, VERA INSTITUTE, (Jan. 28, 2022), <https://www.vera.org/news/no-child-should-appear-in-immigration-court-alone>.

^{cxliii} *Id.*

^{cxliv} Robert H. Pantell, *The Child Witness in the Courtroom*, 139 *Pediatrics* 5, (Mar. 2017), <https://publications.aap.org/pediatrics/article/139/3/e20164008/53469/The-Child-Witness-in-the-Courtroom?autologincheck=redirected>.

^{cxlv} Hearings are generally open to the public, except for limited circumstances such as a proceeding regarding an abused non-citizen child, information subject to a protective order which has been filed under seal, or upon the judge's discretion. 8 C.F.R. §§ 1003.27, 1240.10(b).

^{cxlvi} MODEL RULES OF PRO. CONDUCT r. 1.14 (Am. Bar Ass'n 1983).

^{cxlvii} AM. BAR ASS'N, *Comment to Rule 1.14, Client with Diminished Capacity*, (last visited Jun. 23, 2023), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_14_client_with_diminished_capacity/comment_on_rule_1_14/.

^{cxlviii} Aryah Somers, *Children in Immigration Proceedings: Concepts of Capacity and Mental Competency*, (May 2015), https://www.vera.org/downloads/children-in-immigration-proceedings-child-capacities-and-mental-competency-in-immigration-law-and-policy/Vera-Child-Capacities-and-Mental-Competency-in-Immigration-Law-and-Policy_Somers_May-2015_FINAL.pdf.

^{cxlix} In *Matter of M-A-M*, the Board of Immigration Appeals created a test for determining mental incompetency in the case of an adult respondent who was diagnosed with schizophrenia and outlined how the courts might ensure adequate safeguards for individuals deemed to be incompetent.

^{cl} AM. BAR ASS'N COMM'N ON IMMIGRATION, *Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States*, (Aug. 2018), https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2018_standards_for_children.pdf.

^{cli} AM. BAR ASS'N, *Comment to Rule 1.14, Client with Diminished Capacity*, (last visited Jun. 23, 2023), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_14_client_with_diminished_capacity/comment_on_rule_1_14/.

^{clii} MODEL RULES OF PRO. CONDUCT r. 1.14 (Am. Bar Ass'n 1983).

^{cliii} Individuals can refer a child to the Young Center on their website at this link: <https://clienttrack.eccovia.com/portal/default.aspx?CustomerID=TY>.

^{cliv} AM. BAR ASS'N, *Comment to Rule 1.14, Client with Diminished Capacity*, (last visited Jun. 23, 2023), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_14_client_with_diminished_capacity/comment_on_rule_1_14/.

^{clv} *Id.*

^{clvi} For a more in-depth discussion of ethical considerations when working with young children in the immigration context, see Memorandum from Catherine Weiss & Sarah Scott to the Vera Inst. of Just., *Ethical Obligations in Representing Children Without Capacity in Immigration Proceedings*, (Dec. 13, 2018), <https://www.lowenstein.com/media/4775/ethics-memo-on-representing-immigrant-children-who-lack-capacity.pdf>.

^{clvii} NAT'L INST. ON DEAFNESS AND OTHER COMM'N DISORDERS, *Your Baby's Hearing and Communicative Development Checklist* (2017), <https://www.nidcd.nih.gov/health/your-babys-hearing-and-communicative-development-checklist>.

^{clviii} Adapted from the 2023 APSAC Practice Guidelines for Forensic Interviewers, <https://www.apsac.org/9235fgnl8>.