

Considerations for Recording Human Trafficking Victim Interviews

The following guide aids multidisciplinary anti-human trafficking task forces in considering the advantages and disadvantages of recording human trafficking victim interviews when developing victim interview policies, processes, and protocols. Potential advantages can turn into disadvantages, and vice versa, depending on how the interview unfolds.

What Can We Learn from Research and Practice?

There is no existing research specific to recording human trafficking victim interviews, but research focused on victim interview recordings in sexual assault, domestic violence, and child sexual assault/abuse cases can offer lessons learned. In consultation with law enforcement, prosecutors, and victim service providers across the United States, the IACP provides the following considerations for recording human trafficking victim interviews. Many of the considerations involve how the decision to record or not record may impact the judge or jury evaluation of the case, therefore, strategies are also provided to present an effective case at trial, whether the victim’s interview is recorded or not.

Recording Versus Not Recording: Impact on Human Trafficking Victim Law Enforcement Interviews

| INTERVIEW GOAL: BUILD TRUST AND RAPPORT | | |
|--|--|---|
| Potential Advantages of Recording | Potential Disadvantages of Recording | Other Considerations |
| Captures up to two-thirds more information than written documentation, including interview questions and answers. ^{1,2,3} | <p>May lead the victim to shut down and not disclose.</p> <p>May cause the victim to distrust the interviewer.</p> <p>Consider items that may impact victim privacy and the goal of building trust and rapport:</p> <ul style="list-style-type: none"> ■ Will a recording be public record if disclosed in discovery? ■ Is the recording subject to the Freedom of Information Act and can it potentially be released to the media and/or public? ■ Does this depend on state-specific privacy statutes that may or may not apply to victims who are not explicitly victims of sexual assault? ■ Can the prosecutor ask for a protective order to limit the dissemination of recordings? | <p>Some law enforcement personnel prefer meeting several times to establish rapport and build trust before conducting and recording a victim interview. Be prepared to explain this in court.</p> <p>A victim’s feeling of autonomy increases if given the choice of whether the interview is recorded.</p> <p>Partnering with victim service providers can help to build trust and rapport by minimizing barriers to disclosure through the provision of support and services.</p> |

INTERVIEW GOAL: MINIMIZE RE-TRAUMATIZATION

| Potential Advantages of Recording | Potential Disadvantages of Recording | Other Considerations |
|--|---|---|
| <p>Provides a record of trauma-informed interview techniques used by the interviewer.</p> <p>Allows investigators to focus on the interview, instead of notetaking, lessening time spent on the interview process and the need for a victim to undergo multiple interviews.^{4,5}</p> <p>Provides an opportunity to review how trauma-informed interview techniques are implemented.</p> | <p>Recording traumatic experiences can be harmful to the victim (especially for those who had their exploitation recorded), compounded by the knowledge that it will be provided to the defense and shown during court.</p> | <p>Victims may knowingly and voluntarily agree to have an interview recorded and then experience a traumatic response and want to have the recording and/or interview ceased. Ensure you have policies and procedures in place to end the recording when this happens.</p> <p>Knowing a conversation is being recorded can impact how one may respond, even in non-traumatic situations. Using an expert witness can help explain complex human trafficking dynamics and victim responses to trauma to the court.⁶</p> |

INTERVIEW GOAL: GATHER INFORMATION AND ESTABLISH THE ELEMENTS OF THE CRIME

| Potential Advantages of Recording | Potential Disadvantages of Recording | Other Considerations |
|--|---|---|
| <p>Interviewers can limit notetaking when the interview is recorded, allowing the use of trauma-informed interview techniques, including paying attention to nonverbal cues, identifying and responding to traumatic reactions, making eye contact, and active listening. These techniques can improve the quality of the information received, including factual information and evidence of trauma, sensory information, and emotional and physiological responses.</p> <p>Memorializes potentially admissible statements should the victim later recant, minimize, or be unable to participate.</p> | <p>Victim may be less willing to share information if they know the recording will be provided to the defense.</p> <p>Victims may minimize their victimization for many reasons, including, but not limited to: fear that the offender, or others, may see the recording; fear of repercussions they may face if a criminal act was committed as part of their trafficking; and barriers faced by different cultures.</p> | <p>There are reasons why a victim's disclosure may be incomplete or inaccurate - for example, trauma, fear, mistrust, or shame. Be prepared to explain this in court.</p> <p>If a victim discloses over time and if some victims' statements are recorded and others are not, be prepared to articulate why certain statements were recorded and others were not.</p> |

INTERVIEW GOAL: DETERMINE CREDIBILITY

| Potential Advantages of Recording | Potential Disadvantages of Recording | Other Considerations |
|---|---|--|
| <p>Assists the judge or jury with making credibility determinations when able to assess verbal and nonverbal cues.</p> <p>Minimizes the effect of potential interviewer bias because the recording will show the trajectory of the questioning and fully capture the victim's description and understanding of the events.^{7,8}</p> <p>Promotes more consistency between statements and testimony because statements are in victim's own voice.⁹</p> <p>Fully captures a victim's initial reactions, feelings, and body language, which can be highly impactful in court.^{10,11}</p> | <p>Individuals who view the video without proper context and preparation, and without a trauma-informed lens, may misinterpret a victim's verbal and nonverbal cues.</p> <p>A victim may confuse timelines and explanations of events due to how traumatic experiences are stored in the brain—recordings may differ from future testimony and be used against a victim in court.¹²</p> <p>A judge or jury can incorrectly perceive a victim's credibility when their emotions do not match what is expected.^{13,14,15}</p> | <p>Investigators should be trained in trauma-informed interviewing to understand why a victim may request not to be recorded or how their ability to focus may be negatively impacted by recording.</p> <p>A victim may not consent to be recorded, which may be misinterpreted as a sign they are not being truthful or they are hiding something.</p> <p>Criminal justice/court stakeholders may have preconceived notions of how victims should react. Consider how this impacts whether recording may be an advantage or disadvantage.</p> |

INTERVIEW GOAL: SUPPORT PROSECUTION

| Potential Advantages of Recording | Potential Disadvantages of Recording | Other Considerations |
|---|--|---|
| <p>In certain circumstances, the victim's recorded statement can support human trafficking charges absent the victim's live testimony or in cases where the victim minimizes or recants on the stand.</p> <p>Where witness intimidation occurs (which is common in human trafficking cases), a victim's recorded statement may be admissible under the doctrine of Forfeiture by Wrongdoing.¹⁶</p> <p>The statement (or parts of it) may be admissible as non-hearsay, as an exception to hearsay, or as rebuttal evidence.</p> <p>Can be powerful evidence at trial by illustrating the victim's demeanor at the time of law enforcement contact.</p> | <p>Could be used by the defense to impeach the victim.</p> <p>Victim's demeanor and appearance may be questioned by the judge or jury if not presented effectively.</p> <p>If, due to trauma, the interview is not delivered in a congruent linear manner, it could be misleading and confusing to a jury.</p> | <p>Whether or not the interview is recorded, prosecutors are required to provide the defense with any evidence that is relevant, material, or exculpatory, including anything that shows that the victim has a motive to lie, a bias, or any information that could impact the victim's credibility. These are legal and ethical responsibilities under the rules of discovery and due process per <i>Brady</i>¹⁷ and <i>Giglio</i>.¹⁸</p> <p>Prosecutors must be prepared to address why a victim's statements may seem contradictory and should employ strategies to ensure the judge or jury is viewing all evidence in the context of a victim's traumatic experience.</p> <p>Education for the court will be key if using a recording.</p> |

Policies on Recording Interviews and Informed Consent

Whether or not recording victim interviews is mandated by an agency's policy, there are factors relating to victim consent to be recorded that should be considered. One example is determining when, during the interview process, an investigator should ask for consent—at the onset or after trust and rapport have been established. Promising practices relating to consent and the recording of human trafficking victim interviews align with overall promising practices for consent. These practices¹⁹ include:

- Always obtain the victim's voluntary consent before recording. Address questions such as:
 - Have confidentiality limitations been explained to the victim?
 - Who will have access to it after recording?
 - Can the interview be used against them in any criminal or civil proceeding?
 - Are they under oath and/or subject to perjury charges?
- If recording is mandated by agency policy, spend extra time explaining this requirement and answering any questions the victim may have;
- If a victim is under the influence of drugs and/or alcohol, determine if they have the capacity to provide consent. Being under the influence does not negate a victim's ability to consent to an interview or a recording.²⁰ Investigators should make a determination of whether the victim is able to reliably provide relevant information before conducting an investigatory interview. Either way, investigators should document their reasons for interviewing or for delaying an interview.

Articulating Policies and Procedures

In court, it is imperative to articulate why a victim interview was or was not recorded. The testimony, "that is our policy" may not be well-received by judges or juries when defense counsel is asking why certain statements are not recorded. Law enforcement officers should work with prosecutors to ensure they can accurately testify on policies, including the underlying rationale. Examples of possible explanations that may be used during testimony include:

- "Agency policy is to only record when a victim gives knowing consent, and the policy was developed after careful consideration of how to best protect victims' rights and to ensure that victims have autonomy over their interactions with law enforcement."
- "The law enforcement agency has a policy never to record victim statements because of the concern that any recording has a chilling effect on victims which negatively impacts their ability to identify perpetrators."
- "Initial interactions with victims are not recorded because recording the victim at that stage inhibits the ability to establish trust and rapport."
- "Law enforcement met with the victim in an informal manner to check-in, and during the interaction, the victim disclosed something unexpected when there was no recording equipment available."

Additional Tools and Resources for Victim-Centered, Trauma-informed Interviewing of Human Trafficking Victims

- [Deliberations from the IACP National Forum on Body-Worn Cameras and Violence Against Women](#)
- [IACP: Intimate Partner Violence: Body-Worn Camera Program Considerations](#)
- [Office for Victims of Crime Training and Technical Assistance Center: Human Trafficking Task Force E-guide](#)
- [End Violence Against Women International: Trauma and Implications for Interviewing Victims](#)
- [AEquitas: Interviewing Victims of Human Trafficking and Sexual Exploitation: Techniques and Tactics](#)
- [United Nations Office on Drugs and Crime: Interviewing Victims of Trafficking in Persons who are Potential Witnesses](#)

Endnotes

- 1 Lamb, M. E., Y. Orbach, K. J. Sternberg, I. Hershkowitz, and D. Horowitz. 2000. "Accuracy of Investigators' Verbatim Notes of their Forensic Interviews with Alleged Child Abuse Victims." *Law and Human Behavior* 24 (6): 699-708.
- 2 Westera, Nina J., Mark R. Kebbell, and Rebecca Milne. 2011. "Interviewing Rape Complainants: Police Officers' Perceptions of Interview Format and Quality of Evidence." *Applied Cognitive Psychology* 25 (6): 917-926. doi:10.1002/acp.1770. <https://onlinelibrary.wiley.com/doi/abs/10.1002/acp.1770>.
- 3 Westera, Nina, Mark Kebbell, and Becky Milne. 2013. "Losing Two Thirds of the Story: A Comparison of the Video-Recorded Police Interview and Live Evidence of Rape Complainants." *Criminal Law Review* 2013 (4): 290-308. <https://research-repository.griffith.edu.au/handle/10072/56006>.
- 4 Russell, A. 2009. "Electronic Recordings of Investigative Child Abuse Interviews". www.zeroabuseproject.org/wp-content/uploads/2019/02/60de9768-centerpiece-vol-1-issue-8.pdf.
- 5 Office of Juvenile Justice and Delinquency Prevention. 2015. "Child Forensic Interviewing: Best Practices" <https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248749.pdf>.
- 6 For additional advice relating to admitting expert testimony in human trafficking cases, contact [AEquitas](#).
- 7 Milne, Becky and Ray Bull. 2008. "Interviewing Victims of Crime, Including Children and People with Intellectual Disabilities." In *Practical Psychology for Forensic Investigations and Prosecutions*, 7-23.
- 8 Westera, "Losing Two Thirds," 290-308.
- 9 Milne and Bull, "Interviewing Victims," 7-23.
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- 11 Milne and Bull, "Interviewing Victims," 7-23.
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- 14 Greeson, Megan R. and Rebecca Campbell. 2011. "Rape Survivors' Agency within the Legal and Medical Systems." *Psychology of Women Quarterly* 35 (4): 582-595. doi:10.1177/0361684311418078. <https://doi.org/10.1177/0361684311418078>.
- 15 Lens, Kim M. E., Janne van Doorn, Antony Pemberton, and Stefan Bogaerts. 2014. "You Shouldn't Feel that Way! Extending the Emotional Victim Effect through the Mediating Role of Expectancy Violation." *Psychology, Crime & Law* 20 (4): 326-338. doi:10.1080/1068316X.2013.777962. <http://www.tandfonline.com/doi/abs/10.1080/1068316X.2013.777962>.
- 16 For additional advice relating to Witness Intimidation and Forfeiture by Wrongdoing in human trafficking cases, contact [AEquitas](#).
- 17 *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)
- 18 *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972)
- 19 World Health Organization, Zimmerman, Cathy & Watts, Charlotte. (2003). "WHO ethical and safety recommendations for interviewing trafficked women" / written by Cathy Zimmerman and Charlotte Watts. World Health Organization. <https://apps.who.int/iris/handle/10665/42765>.
- 20 International Association of Forensic Nurses. "Informed Consent: Common Questions" available at: <https://www.safeta.org/page/InformedConsent>

For More Information

For anti-human trafficking training and technical assistance, contact:

International Association of Chiefs of Police

www.theiacp.org/humantrafficking

humantrafficking@theIACP.org

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