



**CHECKLIST ON IDENTIFYING/INTERVIEWING CHILDREN  
AS PERPETRATORS, VICTIMS AND/OR WITNESSES**

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## **CHECKLIST ON IDENTIFYING/INTERVIEWING CHILDREN AS PERPETRATORS, VICTIMS AND/OR WITNESSES**

This checklist is designed to assist news personnel in appropriately identifying/interviewing children in and for news stories. This is, however, not a substitute for pre-publication or pre-broadcast review by news media attorneys nor any given media's policies and practices. It does not reflect the many variations in local and state laws.

It does reflect, however, the Committee's view that the primary concern when identifying minors as victims/perpetrators or interviewing them, aside from any state law that may require maintaining their anonymity, is a breach of their right to privacy. This would include:

- 1) Intrusion, physically or otherwise, on their private affairs or concerns;
- 2) Publicizing a private matter;
- 3) Publicizing them in a false light; and
- 4) Misappropriating their name, likeness or personality for commercial purposes.

Other potential claims also arise including torts like intentional infliction of emotional distress.

Understanding the available defenses to these actions can reduce the exposure. Among those defenses, and certainly among those that are reflected in the checklist below, are that the story is: 1) of *legitimate interest* (sometimes characterized as *newsworthy interest*) to the public; 2) not offensive to reasonable sensibilities; 3) that the information published is not, in legal fact, private; and/or 4) that *consent* was obtained.

Children, just as adults, may unexpectedly or involuntarily become an object of legitimate news interest to the public either by participating in or fortuitously being present at a newsworthy event (*e.g.*, a victim, villain or hero). Or, they may be the intended elements or focus of a news report. Nevertheless, under the law of many, if not most, states, the unwarranted and unauthorized exposure of the private affairs of a minor which is offensive to ordinary sensibilities and which has no legitimate interest to the public invades the minor's privacy.

### **I. INTERVIEWING MINORS** **GENERAL RULES:**

The "unauthorized" aspect of the exposure of private affairs of minors is where many issues arise. This most often occurs when interviewing minors.

- Although state laws may differ on this point, "Minors" generally include persons younger than 18 years of age. Teenagers may appear to be adults and may be doing "adult" activities, but are minors (or children) under the laws of most states.
- However, a minor's consent may be effective if the minor is "capable of appreciating the nature, extent and probable consequences of the conduct (to which she consents)." Restatement (Second) of Torts, Sec. 892A. [Note: this is not a *carte blanche* exception to the general rule, above and requires a careful analysis of age and circumstances.]

**A. PRIVACY:**

- Private Facts** -- Does the information you are gathering concern the private life of the minor or the minor's family? (*e.g.* Are you interviewing about pet hamsters or parent's swinging habits at home?)
- Are the juvenile's actions out in the open and visible to the public? (*e.g.*, Can anyone who happens to walk or drive by can observe what your camera is taping?)
- Is there a reasonable "expectation of privacy" in the venue? (*e.g.* Is the minor in his/her front yard or in a hospital room?) (**Note:** Video of minors in obviously public places (*e.g.*, public streets, shopping malls, stores, public parks, sports arenas during public events, *etc.*) can be shot and generally broadcast without liability. Even if the minors are participating in embarrassing, unsavory or even illegal activities - drinking alcoholic beverages, smoking, speeding, shoplifting, *etc.*- the public nature of the location should provide protection for the media.)
- Is the minor revealing embarrassing and private information about himself/herself? (**Note:** this concern often arises in an otherwise general, non-sensitive story (*e.g.* general teen smoking story where the child admits to personal behavior; sports story where teen admits to using steroids; health story where minor admits to anorexic behavior; education story where child admits to being ADHD or having learning disabilities; family story where child admits to being adopted.)
  
- Newsworthy Event** – Is the matter being discussed one that can be said to be a matter of legitimate public interest? (**Note:** This may cover a wide range of topics, from hard news to social commentary and mores (*e.g.* child prostitution).)
- Is the identity of any individual minor in the story of legitimate public interest as opposed to the broader story itself? (**Note:** This latter issue sometimes generates more negative reaction from courts than it reasonably should, but it is an issue that, depending upon the law in the relevant state, may be worth noting as the story is being put together for publication.)
  
- Misappropriation** – Will images that are recorded be used for commercial purposes (*e.g.* use images in station image promotion or use of b-roll as background in client commercials)? (**Note:** consent from parents virtually always required in such circumstances.)

**B. PARENTAL CONSENT:** (**Note:** It is important to understand the limits and the nature of the consent and not extrapolate beyond that consent given. A parent's consent, for example, to permit the use of a child's picture taken at school for illustration of general school stories or subjects should not be taken as consent for the child to disclose private facts.)

- Does the adult have the right to give consent (*e.g.* is the adult giving consent the parent)?
- Are you certain that the adult accompanying the child is, in fact, the parent and not a grandparent, nanny or relative with no custodial rights?
- Are the parents separated/divorced?
- Do the parents live together, and with the child?
- If not, do the parents share custody of the child?

- If so, does your state law require consent of both parents? (Experience shows that the more private (intimate) the matter the more likely one of the parents could object after the fact).
- If you could only get one parent, is this parent *the* custodial parent?
- How do you know? (S/he could have recently been paroled from a child abuse sentence!)
- Does the parent have an agenda or other motivation to allow the interview?
- If the child has no custodial parents, is there a legal guardian giving consent?
- If so, how do you know the adult has guardian rights? (e.g. you should not automatically assume that because a minor is with a grandparent that disclosures upon consent of the grandparent are authorized.)

**C. CONSENT BY MINOR: (Note: The following questions are meant to insure that the minor is “capable of appreciating the nature, extent and probable consequences of the conduct.” Reliance on such consent, however, carries somewhat higher exposure to a successful privacy suit.)**

- How old is the child?
- Is s/he under 12 (virtually certain to require parental consent)?
- Is s/he in high school, middle school or elementary school?
- Is s/he an orphan or legally or clearly *de facto* emancipated? (i.e. “run-aways” or a “discarded” child).
- Does s/he have a record of exceptional or little academic achievement?
- Does the child demonstrate exceptional maturity or immaturity?
- Is the child demonstrating difficulty comprehending you?
- Does the child appear to have limited competence?
- Is the interview location the home or similar private venue? (e.g. hospital room)
- Does the location of the interview suggest to the minor that providing the information will be confidential?
- Who gave permission for entry into that venue?
- Was the child *fully* informed that the media is interviewing him and that this interview could be published/broadcast, and where it could be seen?
- Did someone explain to the minor the purpose of the interview and how the information from the interview could be used?
- Did you inform the minor that the publication or broadcast may be read or watched by parents, neighbors, their school community and employers?
- Did you discuss with the minor talking to his parents or legal guardian before agreeing to the interview?
- Did you make it clear s/he was under no obligation to give you an interview?
- Did you record the child’s consent in writing or on tape? (This may not be legally enforceable, but it might help.)
- Does the written or taped consent from the minor state how the information was collected, how it will be used and where it might be seen?
- Was there any deception to get the interview?

**D. CHILDREN AS WITNESSES TO CRIMES – CREDIBILITY:**

- Does the minor appear too willing to cooperate with the interview and talk about the crime?
- Do the child's comments defame another or admit his/her own questionable or illegal act?
- Does your juvenile witness claim to be an eyewitness or are his/her comments second-hand?
- Can you corroborate the child's information with other (adult) sources?
- Is s/he accompanied by an adult?
- Has the minor already spoken to law enforcement?
- Is this on-the-scene reporting or next day or later?
- Can the news organization articulate why the minor's statements are deemed credible or otherwise worthy of inclusion in the story?

**E. DEFAMATION CONCERNS:** (Note: There is a higher risk that defamation by implication, false light invasion of privacy or intentional infliction of emotional distress claims by other minors on the scene who may not be the direct focus of your story, but who may assert that viewers or readers assumed they were involved in the same behavior as the story subject. *e.g.*, A story on teen drinking may feature subjects who have consented to the photographs and interview, but may show teens in the background who have not consented and who may not be drinking. These secondary teens or their parents may make claims of false light invasion of privacy, libel by implication or intentional infliction claims if a viewer could infer that the secondary teen was involved in the same inappropriate or illegal activity.)

- Did you ask or encourage a child to engage in any behavior for the camera? (*e.g.* staging or encouraging illegal behavior).
- If your video shows a juvenile suspect, arrestee or perpetrator, are there other minors in the recording who may appear to be associated with the suspect?
- Are there other children in the shot/picture who may not be involved in the story or may be falsely implicated in the story?

**II. CHILDREN AS PERPETRATORS:**

- Does your state law prohibit identifying juveniles as suspects? (Note: Juvenile police, social and case records of child offenders are confidential in some states unless the child is charged as an adult. That said, if the news organization obtains and confirms from other legal means (*e.g.*, station shot video, interviews with neighbors, teachers, classmates, *etc.*) there may be no legal prohibition to identifying the child suspect.)
- Did you obtain the identification of the minor from public records?
- Was the information identifying the child otherwise obtained without unlawful acts by the news organization? (Note: As a general legal proposition, if you obtain the identity of a juvenile crime victim or suspect without violating a law (*i.e.*, no trespass, theft, *etc.*) the identification is protected.
- Was the juvenile already identified in other media?
- Was the arrest made in public?
- Has the child's family given any interviews to the media?

- Does your news organization have any policies about identifying minors accused of criminal activity?
- Can the news organization articulate the need to identify the juvenile for this story?
- Was the child formally charged? If yes, for what? (**Note:** be as precise as one reasonably can in stating the charge.)
- Was the juvenile charged as an adult or is charging the juvenile as an adult being considered?
- Is there any potential harm to the community in not identifying the juvenile? What is it?
- How many times do you want to publish/broadcast the juvenile's image? For what purpose?
- How long do you want to identify the juvenile in a broadcast? Why?
- How old is the juvenile?
- Did you ask the parents, legal guardian or the juvenile's attorney about the charges?

### **III. CHILDREN AS VICTIMS OF CRIMES:**

- Does your state law prohibit identifying juveniles as victims? (**Note:** some state statutes protect information about abused or neglected children as confidential independent of laws restricting information release of crime victims. To the extent that information is obtained from other non-governmental sources, identification may be acceptable depending on the precise nature of the state law.)
- Is the juvenile's parent/guardian present and available to consent to the interview? (*See above, GENERAL CONSIDERATIONS*).
- Does the juvenile victim appear too willing or anxious to talk about what has allegedly happened to him/her?
- Could the juvenile's comments be viewed as defamatory or admitting his/her own questionable or illegal act?
- Did the juvenile witness resist the interview or ask you not to take his/her picture? (**Caution:** If recording in a courtroom and measures are in place to make sure you do not inadvertently record the minor victims or if court rules or the judge in the given case do not allow it, take care not to side-step the preventive measures or violate the rules.)

### **IV. PRODUCTION SAFEGUARDS:**

- Make sure file video and photos of children are only used to cover stories about the subject of the original story or otherwise used with caution with regard to the subject matter (*e.g.*, video of children in a school or day care center originally used in a story about education or a flu outbreak should not be used as "generic kid video" in a story about child abuse; or prom photos in story about teenage pregnancies.)
- When shooting a story about young children with a long lead-time before broadcast, consider parent/guardian consent forms. Consent may be obtained verbally, but obviously better if written or recorded and retained.
- When shooting video of minors, particularly very young children, without specific consent of parents or guardians, consider shooting video without faces or other specifically identifiable video (*e.g.*, name tags or shirts with names or photo images of the child or family).

- Video of identifiable minors can be made liability-safer by post-production altering/obscuring of the minors' faces and other identifiable features (e.g., haircuts). (Remember, just because you cannot identify the child, the parent may be able to do so.)

#### **V. ACCESS TO SCHOOLS:**

Every day, schools are becoming less accessible to the media. For example, California's Education Code has reportedly been used by school administrations to exclude the media under the official justification of protecting against disruption.

- Does your state or school district require the media to register or obtain consent before entering a campus?
- Is the media exempted from the registration requirements?
- Does the school have to obtain releases from parents or do they have a blanket release that allows them to give the media permission to interview students?
- If school has blanket release, are you able to, and do you want to, review it in advance if possible to determine the extent of or any limitations on the release.
- Are you requesting school records to identify the child?
- What type of school records are you requesting?
- For what purpose? (**Caution:** Attempts to obtain school records may be limited by FERPA -- The Family Educational Rights and Privacy Act. Some examples of school records are transcripts, test scores, teacher recommendations. It is unclear if a school's crime records are subject to FERPA. However, some schools may attempt to use FERPA to withhold student names or photos from the media based on their interpretation of this law.)

#### **THE GOLDEN RULE:**

*"Do unto other people's children as you would have them do unto your children".* (From participants of "Children, Families, and Social Issues Seminar" The Poynter Institute, 1998.)