

PROJECT EFFECTIVE JUSTICE

International and Comparative Approaches

**Children and adolescents'
testimony as victims or
witnesses of violence in the
brazilian criminal system**

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Summary

**Children and adolescents' testimony as victims or witnesses of violence in the
brazilian criminal system**



1. Child and Adolescent Protection Legislation in Brazil

- Federal Constitution (1988)
- International Convention Child Rights (1990) - Federal Decree 99.710 (1990)
- Child and Adolescent Act - Federal Law n° 8.069 (1990)
- Federal Law n° 13.257 (2016) – Early Childhood Law
- Federal Law n° 13.431 (2017) – Protect listening Child and Adolescent
- Federal Decree n° 9.603 (2018) - Regulate Law n° 13.431 (2017)
- Federal Law n° 14.321 (2022) - Create criminal classification – Institutional Violence

All, despite being protectice laws, causes reflexes in the criminal area

2. Purpose of the Federal Law nº 13.431(2017) and Federal Decree nº 9.603(2018)



**Reducing secondary
victimization**

Providing integral care approach

**Create strategies to prevent
violence and reduce
consequences**

**Establish Intersectoral
governmental intervention**

**Establish a new methodology
for listening to the testimony of
children and adolescents**

3. Children and adolescents' witness



- **Spontaneous Disclosure:** first moment when the child or adolescent reports the situation of violence. Usually to someone they trust. (Article 4, §3, Law nº 13.431/2017)
- **Specialized listening:** is the procedure of interviewing a child or an adolescent about a situation of violence for an organ of the protection network, limiting the report strictly to what is necessary to fulfill its purpose. (Article 7, Law No. 13,431/2017). The objective is the protection of children and adolescents.
- **Special testimony:** is the procedure of hearing a child or adolescent victim or witness of violence by the police or the judicial authorities. (Article 8, Law No. 13,431/2017). The scope is the production of evidence and requires the use of a specific protocol for the collection of testimony.



4. Criminal Procedure – Special testimony:

- **Police authority:** police authority should seek other evidence in addition to the special testimony.

When there is no evidence of authorship, materiality or description of the criminal fact.

- **Prosecutor office:** There is no provision in Law nº 13.431/17. Although in the extrajudicial phase Special Testimony would be possible in Criminal Investigation Process.

- **Justice:** The Special Testimony will always be required when a child or adolescent testifies in a criminal proceeding as a victim or witness of a crime. The special testimony will be collected only once, but may be repeated when necessary, with justification from the judge and with the consent of the child and his/her legal representative.

4. Criminal Procedure – Special testimony

COURTROOM



SPECIAL
TESTIMONY
COURTROOM



5.Precautionary action for anticipation of the production of evidence

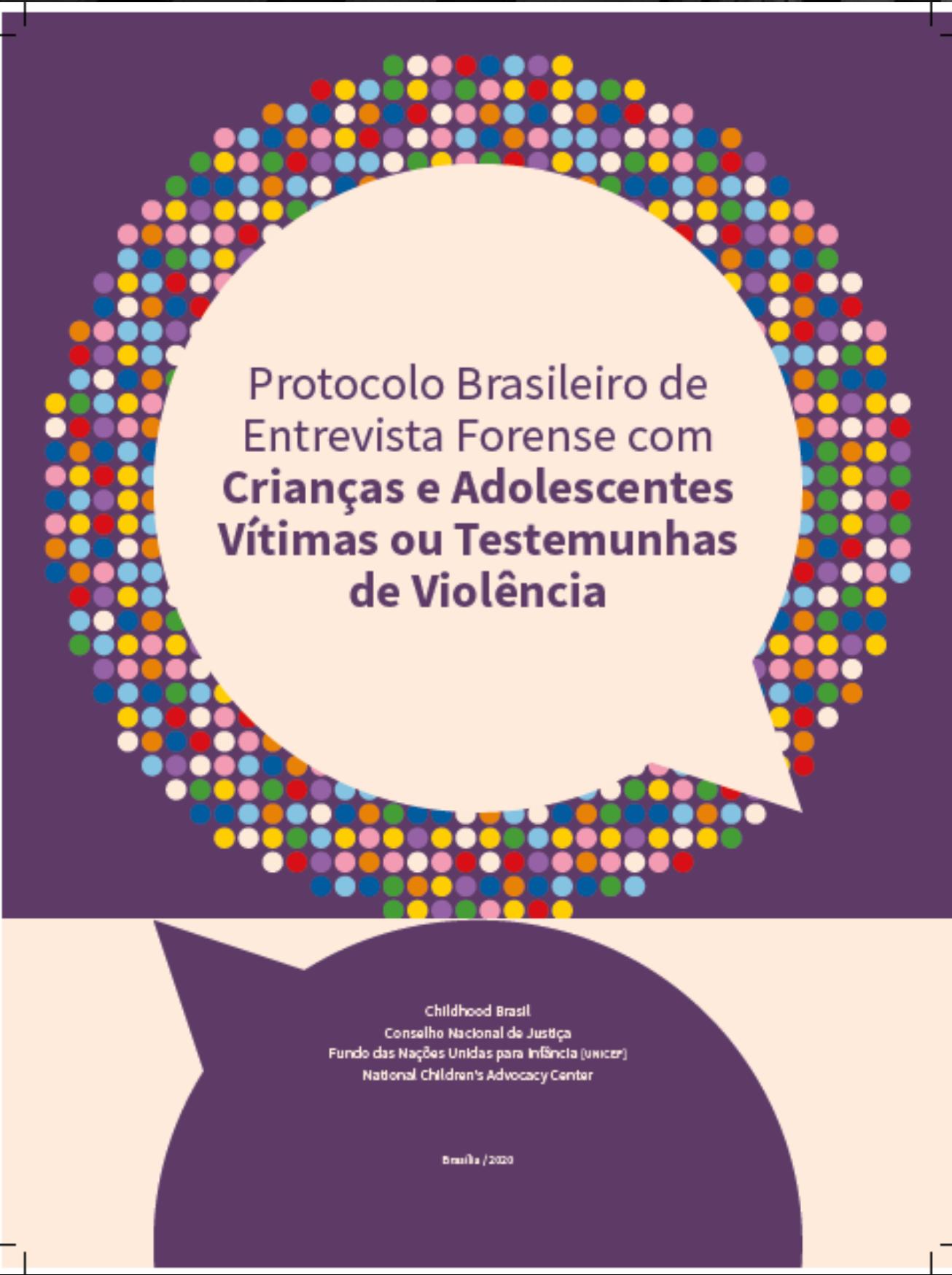
Precautionary rite of anticipation of evidence (article 11, §1, of Law No. 13.431/17).
Applies when:

I - the child under 7 years old (age criteria, due to the fragility of the child's memory)

II - cases of sexual violence (considers the severity of the crime and the dynamics of the incestuous family)

It is important that you have an identification of the author of the crime and the way in which the crime occurred, as it is a legal action.





Protocolo Brasileiro de
Entrevista Forense com
Crianças e Adolescentes
Vítimas ou Testemunhas
de Violência

Childhood Brasil
Conselho Nacional de Justiça
Fundo das Nações Unidas para Infância (UNICEF)
National Children's Advocacy Center

Brasília / 2020

6. Brazilian forensic interviews with children and adolescents who are victims or witnesses of violence

6. Brazilian protocol for forensic interviews with children and adolescents who are victims or witnesses of violence

- The time lapse between the special testimony and the criminal fact must be as short as possible.
- Reduction in the number of children or adolescents heard to avoid suggestibility or inducing false memories

**Memory right
after the fact**



**Memory after a
long time lapse**

6. Brazilian protocol for forensic interviews with children and adolescents who are victims or witnesses of violence

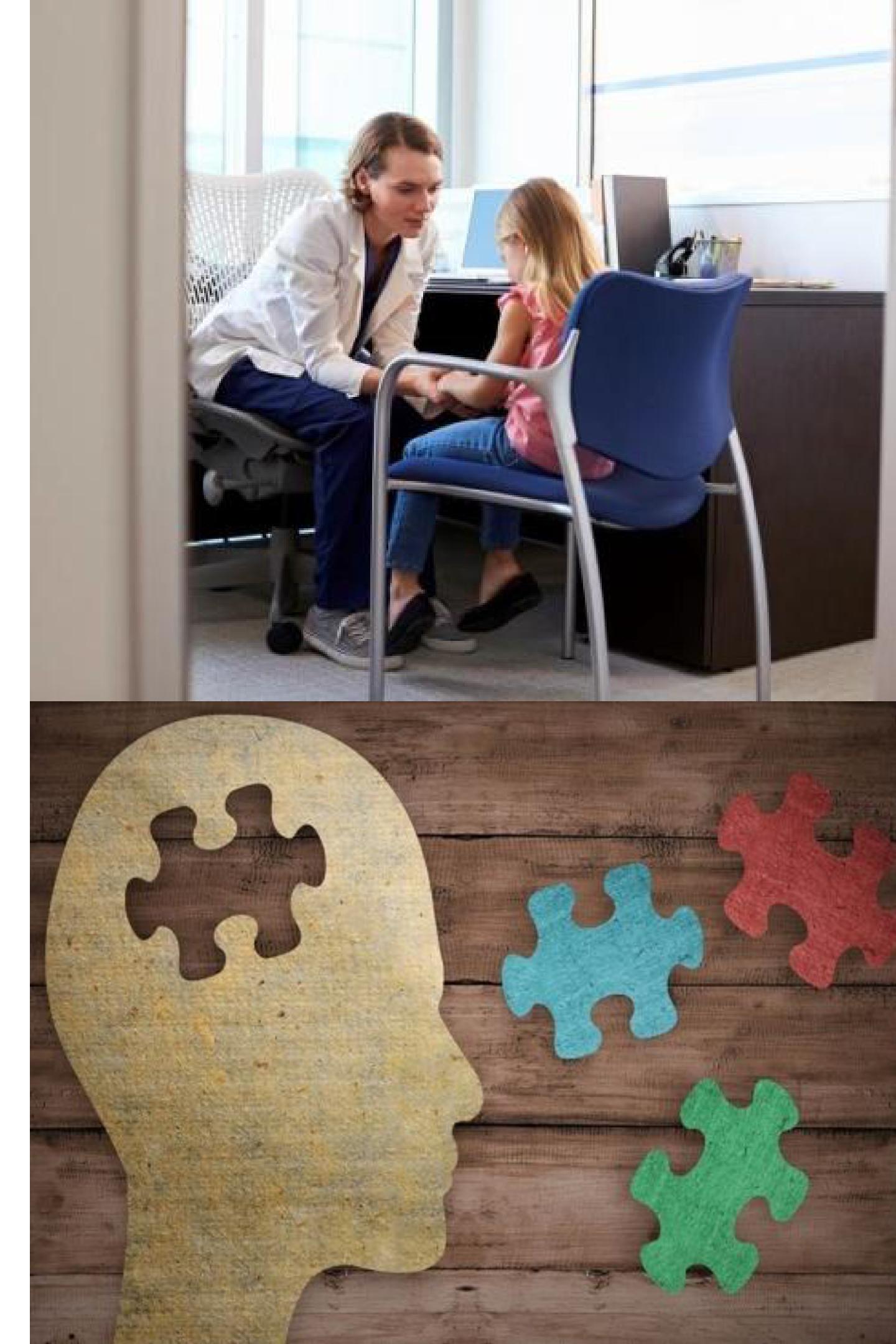
The interviewer must explain to the child the roles of each one, the objective and the basic rules of the interview

Remembering that open stimuli have a high level of precision in the answers

(example: tell me more about what happened – ask about who, where, when, what and how – WH Clues, except for why)

and that closed questions (yes/no answers) cause a high level of distortion in the answers
(example: he hit you?)

In relation to Brazilian traditional people and communities (= immigrants) - translators and cultural interpreters



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“There can be no keener
revelation of a society's soul
than the way in which it treats
its children.”

Nelson Mandela

Thank you!

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