Examining children in English High Courts with and without implementation of reforms authorized in Section 28 of the Youth Justice and Criminal Evidence Act

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Abstract

This study examined whether the implementation of Section 28 of the Youth Justice and Criminal Evidence Act (1999) improved lawyers’ questioning strategies when examining child witnesses in England. The government’s Section 28 pilot study involved judges holding Ground Rules Hearings, during which restrictions and limitations were placed on the duration, content, and manner of questions to be asked. Afterwards, children's cross-examinations were pre-recorded and later played as part of their evidence at trial. The current study compared cases involving 6- to 15-year-old alleged victims of sexual abuse in which Section 28 was (*n =* 43) and was not (*n =* 44) implemented. Defence lawyers in Section 28 cases asked significantly fewer suggestive questions and more option-posing questions than defence lawyers in Non-Section 28 cases. Younger children complied more with defence lawyers' suggestive questions. Ground Rules Hearings improved lawyers’ questioning strategies, regardless of the case's involvement in the Section 28 pilot study.

*Keywords: children; cross-examination; Ground Rules Hearing; special measures; Section 28*

Examining children in English High Courts with and without implementation of reforms authorised in Section 28 of the Youth Justice and Criminal Evidence Act (1999).

In 2014, several special measures linked to Section 28 of the Youth Justice and Criminal Evidence Act (1999) were pilot-tested by the government in three courthouses in England (Ministry of Justice, 2013). In an effort to improve the quality of evidence elicited from vulnerable child witnesses, the reforms involved mandatory pre-trial Ground Rules Hearings (GRHs) followed by pre-recorded cross-examinations. In the GRHs, restrictions could be imposed on traditional cross-examination practices in an effort to reduce the use of risky questions (Criminal Practice Directions, 2015; Ministry of Justice, 2013). Meanwhile, pre-recorded cross-examinations were introduced to expedite children’s evidence, thereby swiftly resolving children’s involvement and reducing the detrimental delays between forensic interviews and cross-examination (Criminal Practice Directions, 2015; Henderson & Lamb, 2017). The intention was to implement Section 28 nationally following this pilot study (Criminal Practice Directions, Amendment 5, 2017).

The current study was the first to examine whether implementation of these special measures improved lawyers’ questioning strategies. Children's participation in the legal system continues to increase (National Society for the Prevention of Cruelty to Children, 2017), and there is substantial and growing evidence that children's vulnerabilities are often exploited during courtroom questioning (Andrews & Lamb, 2016, 2018; Marchant, 2013; Plotnikoff & Woolfson, 2009). Therefore, it is crucially important to identify, adopt, and embrace changes that may result in a fairer system for all involved.

**Pitfalls of Courtroom Examinations**

International legal systems vary drastically in terms of basic legal philosophies and cultures (Bussey, 2009). Common law countries (e.g., England, Scotland, New Zealand, Australia, and the United States) employ an adversarial approach, whilst civil law countries (e.g., France, Germany, Austria, and Norway) employ an inquisitorial approach (Spencer & Lamb, 2012). While inquisitorial and adversarial systems both seek reliable evidence and must assess veracity, children in inquisitorial jurisdictions rarely testify in court or confront the defendants (Bussey, 2009). As the current study focused on the courtroom examinations of child witnesses in England, the adversarial system is considered below in greater detail.

In common law countries, the adversarial system involves prosecutors and defence lawyers who present evidence to impartial judges or jurors in several ways. Firstly, the direct-examination gives lawyers the opportunity to elicit evidence favourable to their case (Martin, 2009). This typically involves witnesses recounting details on the stand, in court, before the judge and jury. In response to a number of concerns, including the potential trauma of recounting distressing experiences on the stand (Quas et al., 2005), and threats to the witness’s reliability due to deteriorated memory (Malloy & Quas, 2009), special measures have been adopted in some jurisdictions to modify the direct-examination of vulnerable witnesses. In particular, Section 27 of the Youth Justice and Criminal Evidence Act (1999) has permitted video-recorded Achieving Best Evidence (ABE) investigative interviews to be used as the direct-examination should trials occur (Home Office, 2011). As a result of Section 27, the ABE interview constitutes almost all of the relevant direct-examination in many contemporary English cases (Henderson & Lamb, 2017). Similarly, Australia (Office of the Director of Public Prosecutions and Australian Federal Police, 2005) and New Zealand (Evidence Act, 2005) allow recorded forensic interviews to be shown in place of the direct examination. However, all witnesses, including vulnerable witnesses, have to return to court months or even years after the initial reports to be cross-examined, which can be via a live TV link in England (Henderson & Lamb, 2017; Home Office, 2011).

The cross-examination, the opportunity to confront an opposing party, is fundamental to the adversarial approach (Spencer & Lamb, 2012) and is often deemed an inherent human right (Browne v Dunn, 1894; European Convention on Human Rights, Article 6 [3d]). However, interpretations of *what* the ‘right to confront’ entails are often debated. The US Supreme Court has “never doubted that the Confrontation Clause guarantees the defendant a face to face meeting with the witnesses” (Coy v Iowa, 1988). In contrast, English law and Article 6 of the European Convention of Human Rights do not guarantee face-to-face confrontation (Dennis, 2010). The United States places significant emphasis on the rights of the defendant, as protected by the 6th Amendment of the US Constitution, whereas the United Nations Convention of the Rights of Children (1990, Article 3) states that “the best interests of the child shall be a primary consideration” in all matters, including courts of law. Therefore, while common-law countries share a basic philosophical approach, they may differ significantly in their legal cultures (Bussey, 2009) and willingness to adapt legal proceedings (Spencer & Lamb, 2012).

The cross-examination differs from the direct-examination in that, while the law of evidence generally forbids leading questions in direct-examination, lawyers are permitted, and in some cultures, encouraged, to use leading questions in cross-examinations (Criminal Procedure Rules, 2015; US Federal Rules of Evidence, 2015; see E. Henderson, 2002, 2015; Westcott & Page, 2002; Younger, 1988). Furthermore, whilst the right to cross-examination is regarded as fundamental, jurisdictions and professions differ regarding the restrictions and limitations that should be placed on cross-examination (Criminal Procedure Rules, 2015; Dennis, 2010). For example, one third of English lawyers believe it is ‘legitimate to use some suggestive questions to obtain or obstruct information’ (E. Henderson, 2015, p. 5). On the other hand, English academics write, “Although there is a right to cross-examination, there is no, and has never been, a right to lead” (Wheatcroft, Caruso, & Krumrey-Quinn, 2015, p. 8).

Internationally, legal reforms have begun to grant accommodations for vulnerable witnesses during questioning in both the direct and cross-examination (Office of the Director of Public Prosecutions and Australian Federal Police, 2005; Spencer & Lamb, 2012; Youth Justice and Criminal Evidence Act, 1999) but the granting of these accommodations does not guarantee that the relevant special measures have been effectively implemented. Training initiatives, educational outreach, and developments in legal culture may drastically affect the treatment of child witnesses and the effectiveness of legal reforms (Bussey, 2009).

**Ground Rules Hearings to Combat Risky Questioning**

To improve the treatment of vulnerable witnesses in England, Ground Rules Hearings (GRHs) were introduced to 1) restrict questioning that hinders children’s comprehension and communication and instead 2) encourage questioning that increases the quality of children’s testimony (Criminal Practice Directions, 2015; Plotnikoff & Woolfson, 2012). GRHs are attended before trial by the judge, prosecutor(s), defence lawyer(s), and if necessary, an intermediary (i.e., a court-appointed specialist responsible for facilitating communication between witnesses and lawyers).

During the GRHs, many pre-trial matters are discussed, particularly the length of the questioning and the content of questions to be asked (R v Cokesix Lubemba, R v JP, 2014; Criminal Practice Directions, 2015). The relevant Criminal Practice Directions specifically state that “over-rigorous or repetitive cross-examination of a child or vulnerable witness should be stopped…” and that “… when the witness is young or otherwise vulnerable, the court may dispense with the normal practice and impose restrictions on the advocate ‘putting his case’ where there is risk of a young or otherwise vulnerable witness failing to understand, becoming distressed, or acquiescing to leading questions” (see Criminal Practice Directions, 2015 I General Matters, 3E.1- 6). Judges may go so far as to review lawyers’ drafts of proposed questions and their specification of topics that they may wish to explore when putting their case to witnesses.

In the Section 28 pilot study, GRHs were made mandatory and took place before the pre-recorded cross-examinations. Henderson and Lamb (2017) found that, in the Section 28 pilot study, children spent nearly an hour less giving evidence under oath than child witnesses in comparable cases. They also found that, whether or not the Section 28 reforms were implemented, the bulk of children’s evidence came from the ABE forensic interviews and the cross-examinations, with little to no time spent directly examining the children (see Table 2; Henderson & Lamb, 2017). These findings suggest that GRHs and the implementation of video-recorded evidence may spare children from unnecessary involvement in the legal system and protect them from risky questioning by identifying key issues prior to trial, streamlining questioning, and scheduling the children’s examinations more effectively.

As of 2015 (Criminal Practice Directions, 2015, 3E.2), GRHs are now recommended in all cases involving vulnerable witnesses and are *mandatory* in cases using pre-recorded cross-examinations and/or cases that involve the assistance of intermediaries. Thus, whether or not the cross-examination is pre-recorded, GRHs can be used to facilitate children’s (or other vulnerable witness’s) best evidence. Ultimately, by imposing restrictions on the length and nature of questioning, it is hoped that harmful techniques can be reduced, if not eliminated entirely, from cross-examinations.

**Research on Question Types**

Researchers have demonstrated that the questioning strategies commonly employed in court, particularly during cross-examinations, reduce the productivity (Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007) and accuracy (Andrews & Lamb, 2016; Lamb & Fauchier, 2001) of children’s testimonies. Two detrimental forms of prompts are closed-ended option-posing questions (e.g., “Did it hurt when he touched you?” when the child has previously disclosed being touched) and suggestive questions (e.g., “It hurt when he touched you, right?”) (see Lamb, Malloy, Hershkowitz, & La Rooy, 2015; Melton, Ben-Arieh, Cashmore, Goodman, & Worley, 2014 for reviews; see Table 1). Closed-ended prompts have the potential to contaminate children’s evidence (Lamb et al., 2007; Melton et al., 2014) because they involve the introduction of information by the questioner. Children provide less information in response to option-posing questions (Andrews & Lamb, 2016; Lamb et al., 2007), and children more commonly contradict themselves when prompted using option-posing questions (Andrews & Lamb, 2016; Lamb & Fauchier, 2001). Suggestive prompts communicate the expected response and elicit more self-contradictions than any other prompt (Andrews & Lamb, 2016); thus, they are particularly discouraged by experts, as they further reduce the credibility of children’s testimony (Bruck & Ceci, 1999; Home Office, 2011; Lamb & Fauchier, 2001).

Researchers instead encourage the use of open-ended prompts such as free recall invitations (e.g., “Tell me what happened”) and directive prompts (e.g., “What did he do after your mum left?” when the child has previously disclosed that he did something after the mother left; see Lamb et al., 2015; Melton et al., 2014 for reviews; see Table 1), which tend to elicit more accurate (Dent, 1982, 1986; Jack, Leov, & Zajac, 2014; Lamb et al., 2007) and more detailed (e.g., Andrews & Lamb, 2016; Lamb et al., 2007; Sternberg, Lamb, Davies, & Westcott, 2001) responses. Furthermore, field studies have shown that few, if any, self-contradictions are elicited using open-ended invitations and directives (Andrews & Lamb, 2016; Fogliati & Bussey, 2014; Lamb & Fauchier, 2001). Despite these findings, lawyers predominantly use ‘risky’ option-posing and suggestive prompts when questioning children in court (e.g., Andrews & Lamb, 2016; Klemfuss, Quas, & Lyon, 2014; Zajac et al., 2017).

Research from Scotland, the United States, and New Zealand has consistently shown that defence lawyers ask fewer invitations and directives and more suggestive questions than prosecutors (Andrews & Lamb, 2016; Klemfuss et al., 2014; Stolzenberg & Lyon, 2014; Zajac & Cannan, 2009; but see Flin, Bull, Boon, & Knox, 1993). Prosecutors’ questioning strategies also appear to be problematic. Both types of lawyers use option-posing ‘yes/no’ prompts most often (Hanna, Davies, Crothers, & Henderson et al., 2012; Klemfuss et al., 2014;Zajac & Cannan, 2009). One study found that nearly all prosecutors (86%) elicited at least one self-contradiction from child witnesses (Andrews, Lamb, & Lyon, 2015). This underscores the need for significant improvements in the ways that children are questioned by *both* prosecutors and defence lawyers.

Although Andrews and Lamb (2016) and Flin et al. (1993) investigated cross-examinations of child witnesses in UK courts (Scotland), there has been no prior systematic research looking specifically at cross-examinations in England. However, there is evidence that – like their Scottish (Andrews & Lamb, 2016), American (e.g., Klemfuss et al., 2014), and New Zealander (e.g., Zajac & Cannan, 2009) counterparts - English lawyers question child witnesses inappropriately. Plotnikoff and Woolfson (2009) conducted a survey of mostly English child witnesses (89%, *n* = 162) which found that most children (91%) described the prosecutors as ‘polite’ whereas only 49% of the children described the defence lawyers as ‘polite.’ In addition, over half (58%) of the children said that the defence lawyers tried to make them say something they did not mean. It may therefore be that lawyers in England, and in particular defence lawyers, appear ‘impolite’ to children because they are using close-ended prompts that restrict children’s productivity and/or imply expected responses.

**Children’s Responsiveness and Compliance with Suggestive Questions**

Although cross-examination is an intimidating and confusing process, even for experts (Flin, 1993), children are particularly disadvantaged in the legal system. Age significantly affects the quantity and quality of details encoded into memory (Flin, Boon, Knox, & Bull, 1992; Lamb, Hershkowitz, Orbach, & Esplin, 2011), children’s resistance to suggestion (Melnyk, Crossman, & Scullin, 2007), and children’s communicative capabilities (Saywitz, 2002). Consequently, children may struggle to understand what information is being requested, access their memory for specific events, and then respond appropriately (Jack et al., 2014; Lamb, Orbach, Warren, Esplin, & Hershkowitz, 2007b).

Field research in Scotland and the United States has found that children are highly responsive in court (i.e., their responses relate to the lawyers’ previous utterances, see Table 1; Andrews & Lamb, 2016; Klemfuss et al., 2014). Younger children provide less information in response to free-recall questions, but they also answer specific questions less accurately than older children do (Andrews & Lamb, 2016; Goodman, Jones, & McLeod, 2017). Thus, best-practice guidelines encourage maximum reliance on free-recall prompts, advise against the use of close-ended ‘yes/no’ prompts, and strongly discourage the use of suggestive prompts (Home Office, 2011; Lamb et al., 2015).

 In spite of these guidelines, lawyers are permitted to ask children suggestive questions in cross-examinations (Criminal Procedure Rules, 2015). Research has consistently shown that children acquiesce more often to suggestions and are more malleable than adults (Jack et al., 2014; Paz-Alonso & Goodman, 2016; Sutherland & Hayne, 2001; Volpini, Melis, Petralia, & Roseberg, 2016). Younger children make more errors in response to suggestive questions than older children do but even very young children are able to maintain considerable accuracy (Goodman et al., 2017). Younger children may need more ‘memory cues’ than older children so interviewers may ask them leading questions, and, as a result, may elicit more erroneous information (Goodman, Ogle, McWilliams, Narr, & Paz-Alonso, 2014). Thus, experts recommend that even young children should be asked open-ended questions because they increase accuracy and informativeness and also enhance perceived credibility in legal contexts (Goodman et al., 2017).

Although previous research had generally focused on young children’s vulnerabilities (Melnyk et al., 2007), research has also shown that adolescents are susceptible to suggestion (Bruck & Ceci, 1999; Owen-Kostelnik, Reppucci, & Meyer, 2006) and that adolescents are more likely than adults to comply with authority figures (Gudjonsson, 2003; Monahan, Steinberg, & Piquero, 2015). A study by Redlich and Goodman (2003) showed that 78% of 12- and 13-year-olds, 72% of 15- and 16-year olds, and 59% of young adults all complied with interviewers by signing false confessions, likely due to the tendency to obey authority. In some instances, however, older children may provide less reliable accounts than young children due to the developmental reversal effect (i.e., because age is positively associated with greater reliance on ‘gist traces,’ older children may be at increased risks of experiencing spontaneous false memories; see Otgaar, Howe, Peters, Sauerland, & Raymaekers, 2013). Regardless of age, individuals may differ in regard to their suggestibility (i.e., ‘the tendency for an individual’s account to be altered by misleading information and interpersonal pressure’; Singh & Gudjonsson, 1992, p. 155). Thus, children of all ages may be vulnerable to suggestive questioning, and hence, such questioning should be avoided in legal contexts.

Despite the evidence regarding children’s susceptibility to suggestion (Gudjonsson, 2003; Lamb et al., 2007b; Melnyk et al., 2007), it is not clear from previous field research whether or not lawyers adapt their questioning styles for children of different ages, and if so, whether this affects children’s responses. Klemfuss et al. (2014) found that American prosecutors and defence lawyers asked older children significantly fewer option-posing questions and significantly more suggestive questions, while Stolzenberg and Lyon (2014) found that American lawyers were slightly more likely to ask younger children option-posing questions. Andrews and Lamb (2016) found that Scottish defence lawyers were most likely and Scottish prosecutors least likely to ask the youngest children option-posing questions. However, in New Zealand, Zajac, Gross, and Hayne (2003) found no significant associations between children’s ages and the types of questions asked by prosecutors or defence lawyers. Regardless, children consistently respond to almost all the questions they are asked in court and are more responsive to prosecutors than defence lawyers (Andrews & Lamb, 2016; Klemfuss et al., 2014; Zajac et al., 2003). Although Melynk et al. (2007) found that younger children complied more often with suggestive utterances, Andrews and Lamb (2016) found no such age differences. Thus, it is not clear whether lawyers generally adjust their questioning in relation to the age of the children or whether children of different ages are differentially responsive and compliant.

**Current Study**

No previous study has systematically investigated the questioning strategies employed in the Section 28 pilot study. This study investigated whether the implementation of GRHs and pre-recorded cross-examinations resulted in prosecutors and defence lawyers altering the types of questions they asked. It was predicted that: (i) Prosecutors and defence lawyers in the Section 28 condition would question children more appropriately, (i.e., by asking more free-recall invitations and directive prompts as well as fewer option-posing and suggestive prompts), (ii) Younger children would be more compliant with lawyers’ suggestive questions than older children, regardless of condition, and (iii) The occurrence of a GRH *alone* would improve lawyers’ questioning strategies, regardless of whether or not the cases were involved in the Section 28 pilot study.

**Methods**

**Sample**

Her Majesty’s Courts and Tribunals Service searched for trials that took place in England between 2012 and 2016 involving children under the age of 16 who were alleged victims of sexual abuse. They identified 138 Non-Section 28 (hereafter, NS28) cases in 7 different Crown Courts and 84 Section 28 (hereafter, S28) cases in 3 different Crown Courts. Researchers made every effort to obtain all available S28 cases for the current study. Of the 222 cases, 44 NS28 and 43 S28 cases met all the necessary research criteria in that they included complete transcripts of the ABE interviews and involved children under the age of 16 testifying as alleged victims of sexual abuse. The 44 NS28 cases came from Bradford (*n* = 6), Durham (*n* = 6), Hull (*n* = 7), Luton (*n* = 6), Newcastle (*n* = 12), Norwich (*n* = 5), and Oxford (*n* = 2), whilst the 43 S28 cases came from Kingston (*n* = 1), Leeds (*n* = 16), and Liverpool (*n* = 26). Recordings of the relevant court proceedings were transcribed and anonymised at the Ministry of Justice in London, and corresponding trial logs and ABE transcripts were also obtained. In all but 3 cases (all in the NS28 condition), the ABE interviews served as the majority of the direct-examinations at trial; in those 3 cases, there were no ABE interviews, but the alleged victims were interviewed by police officers, who then produced written statements.

Information regarding case characteristics is provided in Table 3. The sample included 69 girls and 18 boys between the ages of 6 and 15 years (*M* = 12.02, *SD* = 2.43), categorised into two age groups at the time of trial: 6- to 12-year-olds and 13- to 15-year-olds. These categories were chosen because they accord with the Sexual Offences Act (2003); 16 years is the age of sexual consent, but a person aged 16 or over can claim to be innocent of the charge of committing sexual offences with a child aged between 13 and 16 years if that person ‘reasonably believed’ that the child was over the age of 16. However, this reasonable belief provision does not apply if the offence involved a child under the age of 13. There were insufficient numbers of young children to create three groups, so the youngest children (6- to 9-year-olds; *n* = 10 in NS28, *n* = 7 in S28) were not distinguished from the pre-teens (10-to 12-year-olds; *n* = 14 in NS28, *n* = 15 in S28). Children in the selected cases reported single (*n* = 36) or multiple (*n* = 44) incidents of abuse (in 7 cases, the number of alleged incidents was unclear). Intermediaries assisted a minority of children (*n* = 14) during trial. GRHs are permitted in all cases with vulnerable witnesses, in the NS28 condition, 6 cases involved GRHs. In the S28 sample, all 43 cases had GRHs (see Table 3).

The alleged offenses were categorised based on the most severe offense as defined in the Crown Prosecution Services Sexual Offense Legislation documentation (Crown Prosecution Service, 2003). The sample included charges of rape (i.e., the intentional penetration of the child’s mouth, vagina, or anus with the penis), penetration (i.e., the intentional penetration of the vagina or anus with a part of the body or anything else), sexual assault (i.e., intentionally touching the child in a sexual way), sexual activity (i.e., intentionally causing the child to engage in sexual acts that may or may not involve the defendant; e.g., forcing the child to masturbate, forcing the child to engage in sexual activity with a third party), incitement to engage in sexual activity (i.e., encouraging the child to engage in a sexual act that did not take place), and grooming (i.e., communicating and arranging to meet with a child with the intention of committing a sexual offense against him or her) (see Table 3).

All defendants were male and were categorised as “father figures” (i.e., biological fathers, stepfathers, or mother’s boyfriends), “family members” (i.e., brothers, grandfathers, cousins, uncles, or more distant relatives), “friends/acquaintances,” or “strangers.” In five cases, the victim-defendant relationships could not be determined. At trial, over half (*n* = 49) of the defendants were found guilty while 38 were acquitted (see Table 3).

A binary logistic regression confirmed that the NS28 and S28 groups did not significantly differ with respect to key case facts, including the children’s ages, gender, frequency of alleged abuse, severity of alleged abuse, child-perpetrator relationship, verdict, and intermediary presence (see Table 3 for *p* values). The groups significantly differed only with regard to whether a GRH took place (see Table 3), because GRHs were mandatory in the S28 cases.

**Coding of Transcripts**

The transcripts could have included direct-examinations, cross-examinations, redirect-examinations, and recross-examinations (see Table 2). The substantive and non-substantive utterances of prosecutors, defence lawyers, judges, and intermediaries were coded. Only “question-response pairs” were included in these analyses.

**Substantive prompts.**

Substantive prompts were defined as prompts that elicited details about events preceding, during, and after the alleged incident(s). Substantive questions were categorised as one of 4 types (i.e., invitations, directives, option-posing prompts, and suggestive prompts; see Table 1 for definitions and examples).

**Non-substantive prompts.**

Non-substantive prompts were defined as prompts that did not elicit details about the alleged incident(s), and were coded as procedural, facilitative, or inaudible. Non-substantive prompts were only included in the initial descriptive analyses.

**Children’s responses.**

Children’s responses were coded as either responsive or unresponsive. Children’s responses to suggestive prompts were further coded as compliant or resistant (adapted from Andrews & Lamb, 2016) (see Table 1). Inaudible responses were excluded from analyses.

Only “question-response pairs” were coded.

**Inter-rater Reliability**

A second rater independently recoded a random selection of the transcripts (20%; *n =* 18), half in each trial condition. The inter-rater reliability coefficients for all variables were high, Kappa*(K)*> .90, including agreement regarding the classification of substantive and non-substantive prompts, *K* = .97 (*SE* = .01), 95% CI [.95, .99]; of specific utterances, *K* = .95 (*SE* = .01), 95% CI [.93, .97]; of children’s responsiveness, *K* = .93 (*SE* = .02), 95% CI [.89, .97]; and of compliant and resistant responses to suggestive utterances, *K* = .92 (*SE* = .01), 95% CI [.90, .94]. The second rater coded at the same time as the principal researcher’s coding, and the two raters resolved any disagreements through discussion.

**Analytical Plan**

Descriptive results are first provided for prosecutors’, defence lawyers’, judges’, and intermediaries’ substantive and non-substantive utterances. This was followed by preliminary analyses to determine whether any case facts were significantly associated with variations in the lawyers’ questioning strategies. Afterwards, parametric analyses were used to compare the questioning strategies adopted by prosecutors’ and defence lawyers’ and measures of the children’s responses (i.e., responsiveness and compliance) in the two types of trials (NS28, S28) in relation to children of different ages (6-12 years old, 13-15 years old).

All within-group variables were converted into proportional scores by dividing the cell count of interest (e.g., number of defence lawyer’s suggestive prompts) by the appropriate grouping total (e.g., total number of defence lawyers’ substantive prompts) to control for the number of questions asked by each lawyer. In analyses where Mauchly’s test of sphericity was violated, Greenhouse-Geisser estimates were used to correct results. Power analyses confirmed that all inferential tests had enough power (set at 0.8) to detect small to medium effect sizes.

**Results**

**Descriptive Information**

Table 4 describes the average, maximum, and minimum numbers of substantive and non-substantive utterances asked by prosecutors, defence lawyers, judges, and intermediaries in both trial conditions. Non-substantive utterances asked by prosecutors and defence lawyers, and all utterances asked by judges and intermediaries were excluded from all analyses reported below. Invitations were so seldom used so they were also excluded from question type analyses. Table 5 reports the average proportions of directive, option-posing, and suggestive utterance types used by prosecutors and defence lawyers in each trial condition for both age categories.

**Preliminary Analyses**

Multiple regression analyses were computed to determine whether the proportion of directive, option-posing, and suggestive prompts asked by either type of lawyer were significantly associated with any case characteristics (i.e., severity and frequency of abuse, relationship to offender, verdict, intermediary presence, GRH occurrence). The results indicated that the occurrence of a GRH was significantly associated with the proportion of defence lawyers’ option-posing prompts, *F*(7,72) = 2.44, β = .39, *p* = .001) and suggestive prompts, *F*(7,72) = 3.56, β = -.46, *p* < .001). No other case facts were significantly associated with the dependent variables and so they were not considered in subsequent analyses.

**How Did Trial Condition Affect Lawyers’ Questioning Strategies?**

Prosecutors asked substantive prompts in 45 cases, while defence lawyers asked substantive prompts in all 87 cases. Prosecutors asked few, if any, questions in the majority of cases because the ABE interviews were used as the evidence-in-chief (see Table 4), so it was not possible to treat lawyer role as an independent variable in statistical analyses. Instead, the characteristics of prosecutors’ and defence lawyers’ questions were examined separately.

To begin, paired sample t-tests (with Bonferroni corrections, *p* = .016) were conducted in cases in which prosecutors asked substantive prompts (*n* = 45) to compare the proportions of questions asked by prosecutors and defence lawyers that were directive, option-posing, and suggestive prompts. Results indicated that defence lawyers used proportionally fewer directive, *t*(44) = 2.66, *p* = .011, and option-posing, *t*(44) = 2.64, *p* = .011, prompts as well as more suggestive prompts, *t*(44) = -6.71, *p* < .001, than prosecutors.

**Prosecutors’ questions.**

A Repeated-Measures analysis (RM-ANOVA) conducted to compare the types of questions asked by prosecutors revealed a main effect for question type, *F*(1.04, 45.68) = 150.93, *p* < .001, *ηp2* = .77 Prosecutors asked proportionally more option-posing questions (*M* = .73, *SD =* .20)than directive (*M* = .26, *SD* = .19*, p* < .001) or suggestive questions (*M* = .02, *SD* = .03, *p* < .001) and more directive questions than suggestive questions *(p* < .001). Due to the small number of prosecutor utterances (see Table 4), there was not enough power to reasonably detect medium-sized effects of trial condition or children’s age, but the descriptive statistics are included in Table 5.

**Defence lawyers’ questions.**

A RM-ANOVA conducted to identify associations between trial condition and the types (proportion) of questions asked revealed a main effect for question type, *F*(1.72, 142.69) = 256.89, *p* < .001, *ηp2* = .76, with defence lawyers using option-posing prompts more frequently than any other type of question (directive, *p* < .001; suggestive, *p* < .001). In the NS28 condition, more suggestive prompts were used than directive prompts (*p* < .001) while, in the S28 condition, there was no significant difference between the relative proportions of suggestive and directive prompts posed (see Table 5).

There was also an interaction between trial condition and question type, *F*(1.72, 142.69) = 19.29, *p* < .001, *ηp2* = .19. In the S28 condition, more option-posing prompts (*p* < .001) and fewer suggestive prompts (*p* < .001) were used than in the NS28 condition. There was not enough power to reasonably detect medium-sized effects of children's age but the descriptive statistics are provided in Table 5.

**How were children’s responses affected by trial condition, children’s age, and lawyer role?**

Table 6 shows the responsiveness of children to the prosecutors’ and defence lawyers’ prompts in both trial conditions. There was not enough power to examine children’s responsiveness to different types of questions so univariate ANOVAs were used to examine the effects of trial condition, lawyer role, and children’s age on children’s overall responsiveness and children’s compliance with suggestive questions. However, there was only enough power to examine children’s responses to defence lawyers’ suggestive utterances.

**Children’s Responses to Defence Lawyers’ Suggestive Questions**

A univariate ANOVA examining associations between children’s age and the proportion of responses in which children complied with defence lawyers’ suggestions revealed a main effect for children’s age, *F*(1, 69) = 10.01, *p* = .002, *ηp2* = .13, with older children complying less than younger children (Table 7). There was not enough power to examine the effect of trial condition.

**How did GRHs affect Defence Lawyers’ Utterances?**

A RM-ANOVA conducted to identify associations between the occurrence of GRHs and the types of questions asked by defence lawyers revealed a main effect for question type, *F*(1.68, 143.10) = 236.01, *p* < .001, *ηp2* = .74: regardless of whether or not there was a GRH, defence lawyers asked more option-posing than directive (*p* < .001) or suggestive (*p* < .001) questions. Post hoc analyses showed that, when there was no GRH, more suggestive than directive prompts (*p* < .001) were used, whereas, for cases with GRHs, there was no significant difference between the relative prominence of suggestive and directive prompts (see Table 8).

There was also an interaction between the occurrence of a GRH and question type, *F*(1.68, 143.10) = 17.41, *p* < .001, *ηp2* = .17. In cases with GRHs, defense lawyers used more directive (*p* = .03) and option-posing prompts (*p* < .001) and fewer suggestive prompts (*p* < .001) than defense lawyers in cases without GRHs (see Table 8).

**Discussion**

The results of the present study demonstrate that implementation of the special measures outlined in S28 of the Youth Justice and Criminal Evidence Act were positively associated with the way child witnesses were questioned by significantly reducing the proportion of suggestive questions that were asked by defence lawyers. In addition, analyses revealed that, regardless of pre-recorded cross-examinations, GRHs were associated with improved questioning procedures, although suggestive questions were still asked with some frequency. Younger children were more compliant with defence lawyers’ suggestive questions, and, disconcertingly, risky suggestive questions were merely being replaced by risky option-posing questions in the S28 condition.

**Key Findings**

We hypothesised that prosecutors would question children more appropriately in the S28 condition than in the NS28 condition, but because the use of ABE interviews as evidence reduced the need for prosecutors to ask many questions, it was not possible to explore the effects of S28 on the prosecutors’ behaviour. However, as in previous studies (Andrews & Lamb, 2016; Hanna et al., 2012; Klemfuss et al., 2014;Stolzenberg & Lyon, 2014; Zajac & Cannan, 2009), prosecutors in both trial conditions used virtually no invitations but used more directive and option-posing prompts and fewer suggestive prompts than defence lawyers. In Scottish direct-examinations in the absence of pre-recorded evidence, by contrast, prosecutors asked, on average, 252 (*SD* = 182) substantive questions (Andrews & Lamb, 2016) whereas in the current sample, prosecutors asked 11 (*SD* = 17) substantive questions in the S28 condition and 42 (*SD* = 57) substantive questions in the NS28 condition. Similarly, in New Zealand, where pre-recorded evidence is also permitted, prosecutors asked an average of 35 (*SD* = 6) substantive questions (Zajac & Cannan, 2003). Thus, although the small sample size limited the conclusions that could be drawn with regards to prosecutors’ questioning, the findings underline the importance of high-quality forensic interviews. Not only do ABE interviews play critical roles in fact-finding investigations, but they also constitute a significant proportion of the direct-examination in court, rendering their quality especially important.

We also hypothesised that defence lawyers would question children more appropriately in the S28 than in the NS28 condition. Findings regarding defence lawyers’ questioning strategies were consistent with research in Scotland, New Zealand, and the United States (Andrews & Lamb, 2016; Hanna et al., 2012; Klemfuss et al., 2014;Stolzenberg & Lyon, 2014; Zajac & Cannan, 2009). Defence lawyers in both trial conditions used virtually no invitations and asked significantly more option-posing than suggestive or directive questions. In the S28 condition, defence lawyers asked significantly more option-posing questions and significantly fewer suggestive questions than their NS28 counterparts. Suggestive questions are significantly more likely than option-posing questions to contaminate evidence and elicit self-contradictions (Andrews & Lamb, 2016; Zajac et al., 2003). Therefore, the reduction in the numbers of suggestive questions asked in the S28 condition may help to ensure that more reliable evidence is obtained. However, while option-posing prompts do not imply an expected response like suggestive prompts do, they are still problematic because they restrict productivity and are associated with increases in the numbers of incorrect details elicited (Lamb et al., 2015). Thus, while the reduction in the number of suggestive utterances used in S28 cases is commendable, it is problematic that the majority of questions asked during cross-examination were closed-ended option-posing prompts.

Although risky prompts were not eliminated from children’s examinations, it is noteworthy that the defence lawyers in both the NS28 (*M* = .27, *SD* = .19) and S28 cases (*M* = .10, *SD* = .12) asked many fewer suggestive questions than counterparts studied in other countries. For example, in Scotland, the United States, and New Zealand, the comparable percentages were 48.6% (Andrews & Lamb, 2016), 42% (Andrews et al., 2015), and 56.5% (Hanna et al., 2012), respectively. This may reflect the impact of both relevant research and a number of educational and training programs in England for lawyers and the judiciary (see The Advocate’s Gateway, 2016), as well as interventions by intermediaries and judges (particularly in pre-trial GRHs).

Regarding children’s responses, we hypothesised that younger children would be more compliant than older children. Results demonstrated that the quality of the children’s responses was very similar in the NS28 and S28 conditions. As in other field research (Andrews et al., 2015; Andrews & Lamb, 2016; Klemfuss et al., 2014), children were highly responsive in the NS28 condition (> 90%), leaving little room for improvement in the S28 condition. Interestingly, children in the younger age group (6-12 years old) did comply with defence lawyers’ suggestions more often than the 13- to 15-year-olds did, highlighting the need for lawyers, judges, and intermediaries (if involved) to fully discuss in the GRHs how younger children will be questioned, and specifically how risky questions can be avoided. In these circumstances, having questions drafted and approved by the judge and/or intermediary might significantly enhance the quality of questioning during the cross-examination, thereby eliciting more reliable testimony.

Finally, we hypothesised that GRHs alone would be associated with more appropriate questioning strategies. Analyses revealed that children involved in cases with GRHs, whether or not they benefitted from the Section 28 special measure, were asked fewer suggestive questions and, crucially, more directive questions. Only a small number of cases that were not involved in the S28 pilot study held GRHs, so additional research is necessary to further elucidate the specific effects of GRHs on questioning although it is possible that judges and lawyers who were not implementing Section 28 still made accommodations for young witnesses. If the restrictions placed during GRHs continue to be appropriately adhered to, the use of GRHs may improve the ways in which children, as well as other vulnerable witnesses, are questioned. Critically, these hearings are already permitted in all cases involving vulnerable witnesses.

**Limitations and Future Directions**

Several limitations of the current study should be noted. Firstly, most of the children’s examinations consisted of closed-ended, option-posing prompts asked by the defence lawyers. This again emphasises the importance of using ABE forensic interviews as evidence but does limit researchers’ abilities to explore the effects of the S28 reforms on how children are questioned in court, in part because many in-court examinations were so brief. As well, because of the limited number of young children in the sample, developmental differences in children’s responsiveness could not be fully investigated. The age categories employed in this study are common practice in field research (e.g., Andrews & Lamb, 2016; Stolzenberg & Lyon, 2014) but future researchers should investigate the effect of children’s age on courtroom questioning, especially when the children are very young. However, it should be noted that *all* relevant S28 cases were included in the study. Therefore, the results have high ecological validity and reliably reflect current practices in the English legal system.

Secondly, the study did not explore the quality of questioning conducted during the ABE forensic interviews (as Lamb et al., 2009 and Sternberg et al., 2001, did). As shown in Table 2, the forensic interviews comprised most or all of the children’s direct examinations. Particularly in the English system, where the forensic interview is played as the child’s direct-examination, it is critical that interviewers elicit accurate, coherent, and complete accounts from alleged victims.

Thirdly, we examined only question types in the current study; however, several other factors, such as question content, complexity, and repetition may affect children’s testimonial accuracy. Research has shown that many lawyers’ questions focus on peripheral details that are not directly relevant to the abusive action(s) (Andrews & Lamb, 2018) even though children typically respond more accurately to questions about central elements of the relevant events (Candel, Merckelbach, Jelicic, Limpens, & Widdershoven, 2004). Furthermore, lawyers often fail to adjust the complexity of their questions depending on children’s ages (Andrews & Lamb, 2017a) even though children may not possess the necessary linguistic capabilities to effectively communicate in court (Hanna et al, 2012) and seldom ask for clarification when asked grammatically complex questions (Zajac et al., 2003). As well, lawyers commonly repeat questions, significantly increasing the likelihood that children will contradict themselves, particularly when the questions are suggestive (Andrews & Lamb, 2017b). Future research should further investigate the many ways in which S28 and GRHs may be improving conditions for child witnesses in English courts. As well, researchers may wish to investigate potential associations between case facts (e.g., relationship to offender and verdict) and questioning strategies to better understand children’s experiences in legal proceedings.

Finally, the judges in the S28 condition all volunteered to participate in the pilot study, and thus their willingness may have inflated the apparent benefits of the S28 reforms. Future research should investigate the effects that judges and intermediaries both may have on questioning strategies to fully elucidate the potentially benefits of GRHs and pre-recorded cross-examinations. However, it is promising that NS28 judges who did *not* volunteer also imposed constructive restrictions in their GRHs and/or effectively proscribed risky questioning.

**Conclusions**

In recent decades, psychological research has begun to inform public policy (e.g., Andrews & Lamb, 2016; Bull, 2010; Hanna et al., 2010; Lamb et al., 2007) contributing to significant international legal reforms. Several Australian states and territories now permit vulnerable witnesses to provide pre-recorded evidence (Office of the Director of Public Prosecutions and Australian Federal Police, 2005). In 2017, a High Court of Justiciary Practice Note was published in Scotland describing plans to improve the treatment of vulnerable witnesses by expanding the existing procedures for the taking of evidence by a commissioner (i.e., where a witness’ examination and cross-examination is recorded in advance of a trial; Dorrian, 2017). Furthermore, New Zealand has begun to consider the use of intermediaries as an additional special measure for children testifying in court (Hanna, Davies, Henderson, & Hand, 2013; Randell, 2017).

The trial implementation of the S28 reforms represented an important acknowledgement of the need to improve the treatment of vulnerable witnesses in English and Welsh courts. The present study reveals room for considerable further improvement. For example, although fewer suggestive questions were asked in the S28 condition (and in cases with GRHs), they were still asked with some frequency, and few invitations or directive questions were posed. Younger children were found to be more vulnerable to defence lawyers’ suggestive questions. It is particularly concerning that when suggestive questions were asked less often, the use of risky option-posing prompts increased.

Nevertheless, as the Lord Chief Justice Sir John Thomas said, “[T]he real need [is] – not yet more initiatives and reforms, but the cultural change that is necessary to make the new framework a reality” (Plotnikoff & Woolfson, 2009, pp. i-ii). The continuing implementation of legal reforms in many common-law countries such as England, Scotland, and Australia reflects a global recognition of the need for reform. With continued research, outreach, and education, we may contribute to the cultural shift needed to make these reforms a reality.

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Table 1

*Question Types, Definitions, and Examples*

|  |  |  |  |
| --- | --- | --- | --- |
|  | Definition | | Example |
| Question Types | | | |
| Invitation | An open-ended request that the child recall information about the incident. Can be formulated as a statement, question, or imperative. | | “Tell me everything that happened” |
| Directive | A cued-recall prompt that focuses the child’s attention on information already mentioned and requests additional specific information, typically using wh-questions (who, what, when, where, how). | | “What colour was the shirt?” (When the shirt had been mentioned) |
| Option- posing | Closed-ended questions that refocus the child’s attention on details of the allegation that they have not previously mentioned, without implying an expected response. | | “Did it hurt?”  “Were your clothes on or off when it happened?” |
| Suggestive | An utterance that assumes information not disclosed by the child or implies that a particular response is expected. | | “Did it hurt when he put his finger in you?” (When the child has not mentioned digital penetration).  “He wanted you to kiss him, didn’t he?” |
| Children’s Responses | | | |
| Responsive | Verbal and action responses related to the lawyer’s previous utterance, even if the response did not contain new  informative details, or when its meaning was unclear. | Lawyer: “Did he take your trousers off?”  Child: “Yes” [responsive]  Lawyer: “What did he do next?”  Child: “I don’t know” [responsive] | |
| Unresponsive | Responses that do not relate to the question asked in the previous utterance but provide incident-related information. These include instances when children misunderstood the lawyers’ questions. | Lawyer: “What did he say?”  Child: “I said stop!” [unresponsive] | |
| Compliance | Children’s responses that acquiesce to the suggested confrontation,  supposition, or input. | Lawyer: “It hurt when he touched you, didn’t it?” (when the child has not mentioned being hurt by the touch)  Child: “Yeah” | |
| Resistance | Children’s responses that resist the suggested confrontation, supposition, or input. | Lawyer: “You’re lying, aren’t you?”  Child: “No I’m not.” | |

*Note.* Adapted from Andrews & Lamb, 2016; Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007.

Table 2

*Breakdown of Courtroom Hearings and Examinations by Trial Condition*

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | NS28 | | |  | S28 | | |
|  | *n* | *M* (min) | *SD* (min) |  | *n* | *M* (min) | *SD* (min) |
| ABE Video-interview | 41 | 46.68 | 22.35 |  | 43 | 46.58 | 18.41 |
| Ground Rules Hearing | 6 | 23.67 | 22.67 |  | 43 | 29.12 | 39.90 |
| Additional Direct-examination *a* | 19 | 9.75 | 14.40 |  | 3 | 1.80 | 1.30 |
| Cross-examination | 44 | 27.76 | 15.47 |  | 43 | 16.30 | 12.03 |
| Redirect-examination | 29 | 4.51 | 3.40 |  | 14 | 3.51 | 4.85 |
| Recross-examination | 2 | 1.23 | 0.78 |  | 0 | - | - |
| Total Evidence b | 44 | 89.93 | 56.40 |  | 43 | 68.19 | 36.59 |

*a* “Additional Direct-examination” determined from case trial logs (see Henderson & Lamb, 2017).

b “Total Evidence” includes all variables except the Ground Rules Hearing.

Table 3

*Characteristics of Cases in the NS28 and S28 Conditions*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Variables a |  | NS28  (*44*) | S28  (*43*) | *p*b |
| Gender | Male  Female | 11  33 | 7  36 | 0.32 |
| Age | 6-12 years old  13-15 years old | 24  20 | 22  21 | 0.76 |
| Frequency | Single  Multiple  Unknown | 20  23  1 | 16  21  6 | 0.14 |
| Intermediary | Yes  No | 6  38 | 8  35 | 0.53 |
| GRH | Yes  No | 6  38 | 43  0 | 0 .00\* |
| Severity | Rape  Penetration  Sexual Assault  Sexual Activity  Inciting to Engage  Grooming | 16  3  14  7  4  0 | 16  3  13  10  0  1 | 0.85 |
| Relationship to Child | Father Figure  Family Member  Friend/Acquaintance  Stranger  Unable to determine | 10  12  21  0  1 | 12  10  13  4  4 | 0.37 |
| Verdict | Guilty  Not Guilty | 24  20 | 25  18 | 0.74 |

a Variables adapted from Andrews & Lamb, 2016; Klemfuss, Quas, & Lyon, 2014.

b Binary logistic regression was run to identify any significant differences between the conditions.

Table 4

*Non-Substantive and Substantive Questions Asked by Practitioners in S28 and NS28 Conditions*

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | NS28 | | | | |  | S28 | | | | |
|  |  | *M* | *SD* | *Min* | *Max* | *n* |  | *M* | *SD* | *Min* | *Max* | *n* |
| Prosecutor a | Substantive b | 42 | 57 | 1 | 261 | 29 |  | 11 | 17 | 2 | 72 | 17 |
|  | Non-Substantive | 6 | 11 | 1 | 59 | 31 |  | 3 | 1 | 1 | 5 | 16 |
| Defence | Substantive b | 128 | 84 | 4 | 350 | 44 |  | 73 | 55 | 11 | 328 | 43 |
|  | Non-Substantive | 10 | 9 | 1 | 50 | 43 |  | 5 | 4 | 1 | 16 | 42 |
| Judge | Substantive b | 7 | 8 | 1 | 35 | 24 |  | 3 | 1 | 1 | 6 | 14 |
|  | Non-Substantive | 12 | 8 | 1 | 37 | 44 |  | 9 | 7 | 1 | 28 | 43 |
| Intermediary a | Substantive b | 4 | 4 | 1 | 9 | 4 |  | 2 | 1 | 1 | 4 | 4 |
|  | Non-Substantive | 5 | 5 | 1 | 13 | 5 |  | 2 | 2 | 1 | 4 | 4 |

a Prosecutors and intermediaries who did not ask any questions were excluded.

b Substantive utterances included invitations, directive, option-posing, and suggestive prompts.

Table 5

*Utterance Type Proportions by Trial Condition, Lawyer Role, and Children’s Age*

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  | NS28 | | | |  | S28 | | | |
|  |  |  | *M* | *SD* | *Min* | *Max* |  | *M* | *SD* | *Min* | *Max* |
| 6-12 years | Prosecutor | Directive | .24 | .18 | .00 | .59 |  | .34 | .14 | .10 | .43 |
|  | Option-Posing | .75 | .18 | .40 | 1.00 |  | .63 | .17 | .43 | .90 |
|  | Suggestive | .01 | .02 | .00 | .08 |  | .03 | .06 | .00 | .14 |
| Defence | Directive | .15 | .14 | .00 | .53 |  | .17 | .10 | .01 | .34 |
|  | Option-Posing | .63 | .17 | .26 | 1.00 |  | .76 | .10 | .54 | .91 |
|  | Suggestive | .22 | .19 | .00 | .68 |  | .07 | .09 | .00 | .32 |
|  |  |  |  |  |  |  |  |  |  |  |  |
| 13-15 years | Prosecutor | Directive | .28 | .15 | .00 | .50 |  | .21 | .27 | .00 | .75 |
|  | Option-Posing | .69 | .16 | .50 | 1.00 |  | .78 | .28 | .25 | 1.00 |
|  | Suggestive | .02 | .03 | .00 | .08 |  | .01 | .03 | .00 | .09 |
| Defence | Directive | .11 | .08 | .00 | .26 |  | .18 | .11 | .00 | .39 |
|  | Option-Posing | .57 | .14 | .27 | .80 |  | .70 | .13 | .38 | .96 |
|  | Suggestive | .33 | .18 | .20 | .71 |  | .13 | .15 | .00 | .62 |
|  |  |  |  |  |  |  |  |  |  |  |  |
| Total | Prosecutor | Directive | .26 | .16 | .00 | .59 |  | .25 | .24 | .00 | .75 |
|  | Option-Posing | .72 | .17 | .41 | 1.00 |  | .74 | .26 | .25 | 1.00 |
|  | Suggestive | .02 | .03 | .00 | .08 |  | .01 | .04 | .00 | .14 |
| Defence | Directive | .13 | .11 | .00 | .53 |  | .18 | .10 | .00 | .39 |
|  | Option-Posing | .60 | .15 | .26 | 1.00 |  | .73 | .17 | .38 | .96 |
|  | Suggestive | .27 | .19 | .00 | .71 |  | .10 | .12 | .00 | .62 |

Table 6

*Responsiveness to different types of questions addressed to children in each age group by prosecutors and defence lawyers.*

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  | NS28 | | |  | S28 | | |
|  |  |  | *M* | *SD* | *n* |  | *M* | *SD* | *n* |
| 6-12 years | Prosecutor | Directive | .88 | .17 | 11 |  | .92 | .20 | 6 |
|  | Option-Posing | .88 | .15 | 14 |  | .90 | .22 | 5 |
|  | Suggestive | 1.0 | .00 | 2 |  | 1.0 | .00 | 2 |
| Defence | Directive | .84 | .24 | 23 |  | .88 | .19 | 22 |
|  | Option-Posing | .94 | .05 | 24 |  | .87 | .20 | 22 |
|  | Suggestive | .90 | .08 | 19 |  | .91 | .20 | 14 |
|  |  |  |  |  |  |  |  |  |  |
| 13-15 years | Prosecutor | Directive | .87 | .27 | 13 |  | .72 | .42 | 5 |
|  | Option-Posing | .94 | .11 | 15 |  | .96 | .13 | 11 |
|  | Suggestive | 1.0 | 0.0 | 8 |  | 1.0 | - | 1 |
| Defence | Directive | .89 | .10 | 19 |  | .94 | .07 | 19 |
|  | Option-Posing | .88 | .20 | 20 |  | .95 | .04 | 21 |
|  | Suggestive | .90 | .10 | 20 |  | .91 | .17 | 18 |
|  |  |  |  |  |  |  |  |  |  |
| Total | Prosecutor | Directive | .87 | .23 | 24 |  | .83 | .32 | 11 |
|  | Option-Posing | .91 | .13 | 29 |  | .94 | .16 | 16 |
|  | Suggestive | 1.0 | .00 | 10 |  | 1.0 | .00 | 3 |
| Defence | Directive | .87 | .19 | 42 |  | .91 | .15 | 41 |
|  | Option-Posing | .92 | .14 | 44 |  | .91 | .15 | 43 |
|  | Suggestive | .90 | .09 | 39 |  | .91 | .18 | 32 |

Table 7

*Compliance with Defence Lawyers’ Suggestive Utterances by Trial Condition and Children’s Age*

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | 6 to 12 years old | | | |  | 13 to 15 years old | | | |
|  | *M* | *SD* | *Min* | *Max* |  | *M* | *SD* | *Min* | *Max* |
| Non-Section 28 | .64 | .20 | .31 | 1.0 |  | .55 | .16 | .29 | .82 |
| Section 28 | .69 | .33 | .00 | 1.00 |  | .39 | .27 | .00 | .89 |
| Total | .66 | .26 | .00 | 1.0 |  | .48 | .23 | .00 | .89 |

Table 8

*Types of Questions Asked by Lawyers in Cases With and Without GRHs*

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | No GRH | | |  | GRH | | |
|  |  | *M* | *SD* | *n* |  | *M* | *SD* | *n* |
| Prosecutor | Directive | .26 | .15 | 25 |  | .25 | .24 | 20 |
|  | Option-Posing | .72 | .15 | 25 |  | .73 | .25 | 20 |
|  | Suggestive | .02 | .03 | 25 |  | .01 | .04 | 20 |
| Defence | Directive | .12 | .10 | 38 |  | .18 | .11 | 49 |
|  | Option-Posing | .60 | .16 | 38 |  | .71 | .12 | 49 |
|  | Suggestive | .28 | .19 | 38 |  | .11 | .13 | 49 |