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LOOKING OUT FOR THE LITTLE GUY: PROTECTING CHILD INFORMANTS AND WITNESSES

*Sarah Glasser**

INTRODUCTION

American policy rejects endangering children; we condemn other countries that employ child soldiers¹ and glorify martyrdom.² So, it is inexplicable to many Americans that a story like that of Pavlik Morozov, a child of the Soviet era who informed on his own father, could be an exemplary model for millions of schoolchildren across the Soviet Union.³ According to the story, which may be more fable than fact, Pavlik, a polite and reliable

* J.D. Candidate, Brooklyn Law School, 2019; M.A., Teachers College, Columbia University, 2013; B.A., Indiana University, 2012. Thank you to my dad, who told me Leroy Brown Jr.'s story when I was only eight and instilled in me a passion to fight for the rights of all children. Thank you to my students who continuously reinforced that passion. Thank you also to my mom and sister who supported me through the process of writing this Note. And finally, thank you to the *Journal of Law and Policy* editors and staff for all of their thoughtful suggestions and edits.

¹ Child Soldiers Accountability Act of 2008, Pub. L. No. 110-340, 122 Stat. 3735 (2008) ("An Act [t]o prohibit the recruitment or use of child soldiers, to designate persons who recruit or use child soldiers as inadmissible aliens, to allow the deportation of persons who recruit or use child soldiers, and for other purposes.").

² See Justus Reid Weiner, *The Use of Palestinian Children in the Al-Aqsa Intifada: A Legal and Political Analysis*, 16 TEMP. INT'L & COMP. L.J. 43, 45 (2002) ("[A] coalition of American pediatricians . . . has called on the Palestinian Authority (PA) to stop broadcasting advertisements and all other programs that glorify martyrdom, and call on children to participate in violent acts.").

³ See Julius Strauss, *Squalid Truth of Stalin's Little Martyr Killed For Informing On His Father*, TELEGRAPH (Dec. 27, 2003), <http://www.telegraph.co.uk/news/worldnews/europe/russia/1450370/Squalid-truth-of-Stalins-little-martyr-killed-for-informing-on-his-father.html>.

boy from a tiny Siberian village, loved communism so much that he went to the authorities when his own father broke the law.⁴ Upon learning this, Pavlik's relatives sneaked up on him as he was "picking berries in the woods with his little brother and stabbed him to death."⁵

While convenient to assume that the death of a child informant is far in the past and impossible in the United States, this is untrue.⁶ Too often, young people who become involved in the criminal justice system as informants and witnesses are not afforded the protections they need and deserve, and instead are murdered for providing information to the authorities or at trial.⁷

The murders of seventeen-year-olds Chad MacDonald and Brenda Paz, as well as fourteen-year-old Eduardo Samaniego, and eight-year-old Leroy Brown Jr. are grim examples of children slaughtered for their cooperation with law enforcement and prosecutors.⁸ The immediate adoption of state legislation to protect children who serve as informants or are compelled to testify as witnesses in criminal cases is imperative to avoid the loss of other young lives. Such legislation should be compelled via restrictions on state access to federal funds for witness protection, law

⁴ *Id.*

⁵ *Id.*

⁶ See Mike Allen, *Decision to Testify Haunted Boy who was Later Killed*, N.Y. TIMES (Jan. 17, 1999), <http://www.nytimes.com/1999/01/17/nyregion/decision-to-testify-haunted-boy-who-was-later-killed.html>; Terry Frieden, *Two Convicted, Two Acquitted in Suburban Virginia Street Gang Trial*, CNN (May 17, 2005), <http://www.cnn.com/2005/LAW/05/17/ms13.trial.verdicts/index.html>; Richard Marosi, *3 Convicted of Killing Teen Police Informant*, L.A. TIMES (Oct. 19, 1999), <http://articles.latimes.com/1999/oct/19/news/mn-23816>; Scott Martelle & Bonnie Hayes, *Chad MacDonald's Short, Tragic Life*, L.A. TIMES (Apr. 5, 1998), <http://articles.latimes.com/1998/apr/05/news/mn-36322>; *Pomona: Teen-Ager to Stand Trial as Adult in Boy's Killing*, L.A. TIMES (Dec. 3, 1992), http://articles.latimes.com/1992-12-03/local/me-1780_1_trial-boy-teen.

⁷ See, e.g., Allen, *supra* note 6; Frieden, *supra* note 6; Marosi, *supra* note 6; Martelle, *supra* note 6; *Pomona: Teen-Ager to Stand Trial as Adult in Boy's Killing*, *supra* note 6.

⁸ See, e.g., Allen, *supra* note 6; Frieden, *supra* note 6; Marosi, *supra* note 6; Martelle, *supra* note 6; *Pomona: Teen-Ager to Stand Trial as Adult in Boy's Killing*, *supra* note 6.

enforcement, and judicial programs until appropriate legislation is enacted.

Of course, any new legislation must adhere to Sixth Amendment jurisprudence. The Sixth Amendment guarantees defendants the right “to be confronted with the witnesses against [them].”⁹ However, that right is not absolute; it must be balanced against other compelling considerations, including the court-recognized need to balance the defendant’s right against the safety of testifying witnesses.¹⁰ In the early 1990s, that balance shifted as legislators and courts recognized a pressing need to protect children serving as witnesses and informants.¹¹

The Supreme Court has attempted to address this need in several ways, including allowing children to offer their testimony through screened proceedings.¹² Tools such as screened testimony¹³ not only protect children from the psychological trauma of testifying in open court, but also protect them from would-be revenge attacks by shielding them from those they offer information against.¹⁴

This Note argues that that same level of protection should be afforded to all child¹⁵ informants and witnesses whose testimony

⁹ U.S. CONST. amend. VI.

¹⁰ *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986) (“[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, *the witness’s safety*, or interrogation that is repetitive or only marginally relevant.”) (emphasis added).

¹¹ *See Maryland v. Craig*, 497 U.S. 836, 857 (1990); Victims of Child Abuse Act of 1990 (VCAA), 18 U.S.C. § 3509 (West 2009) (enacted to ensure children’s rights in court).

¹² *Id.* at 860 (“So long as a trial court makes such a case-specific finding of necessity, the Confrontation Clause does not prohibit a State from using a one-way closed-circuit television procedure for the receipt of testimony by a child witness in a child abuse case.”).

¹³ *See id.* (explaining one screening procedure: the closed-circuit television which allows children to testify outside of the physical space occupied by the defendant creating less risk of psychological or physical trauma).

¹⁴ *See id.* at 857.

¹⁵ U.N. Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1448, 1459. The human rights treaty stated that “a child means every human

or status as a witness renders them unsafe. The Supreme Court said in *Chambers v. Mississippi* that “the right to confront and to cross-examine is not absolute and may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.”¹⁶ It has long been established that the government has a legitimate interest in protecting the safety of children.¹⁷ Given this long-held, compelling interest, the balance should shift in favor of children informants and witnesses and allow appropriate levels of screening and protection on a case-by-case basis.

Part I of this Note presents the stories of child witnesses and informants murdered as a result of their participation in the criminal justice system. Part II analyzes the history of children serving as informants and witnesses in order to understand the roots of the problem. Part III examines potential solutions for protecting children who participate in the criminal justice system. Ultimately, Part IV advocates for legislation to ensure the safety of children who become involved in the criminal justice system as informants and witnesses and recommends a three-pronged approach to achieve that goal. Every state should enact legislation ensuring that 1) handlers who work with children receive specific training; 2) witness protection programs are modified to suit the needs of children in their care, and 3) where specified requirements are satisfied, children are screened during in-court proceedings. Each prong addresses a current issue in the system and seeks to ensure that children are able to participate in the criminal justice system—to aid in the conviction of those who endanger their neighborhoods without putting themselves in grave danger.

being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” *Id.* at 1459. This Note will adopt the same language, using “child” to mean any person under eighteen-years-old.

¹⁶ *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973).

¹⁷ See *Osborne v. Ohio*, 495 U.S. 103, 109 (1990) (“It is evident beyond the need for elaboration that a State’s interest in ‘safeguarding the physical and psychological well-being of a minor’ is ‘compelling.’”); *Ginsberg v. State of N.Y.*, 390 U.S. 629, 640 (1968) (“The State also has an independent interest in the well-being of its youth.”); *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944) (“Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children.”).

I. A HISTORY OF THE CRIMINAL JUSTICE SYSTEM'S FAILURE TO PROTECT CHILD INFORMANTS AND WITNESSES

Outside the areas of domestic violence and sexual assault, very little has been done to ensure the safety of minors who serve as informants and witnesses.¹⁸ Informants such as Chad MacDonald and Brenda Paz, and witnesses such as Eduardo Samaniego and Leroy Brown Jr., have tragic stories, but their stories are far from unique.¹⁹ Their stories are representative of children who trusted the police officers in whom they confided and were subsequently murdered as a result of their participation in the criminal justice system.²⁰ As defense attorneys and law makers push for more expansive discovery,²¹ the children who appear as witnesses and informants need greater protection when balanced against the right of the defendant to confront (or prepare to confront) adverse witnesses.²² The below considers both child informants and child witnesses, and outlines why mandating protections for each group are so critical.

A. Child Informants

Police often cite the need to use juvenile offenders to infiltrate a criminal operation in which an adult would not be trusted.²³ For example, juvenile informants may be used to infiltrate juvenile crime rings, or to purchase alcohol illegally as part of sting

¹⁸ See Lisa M. Rogan, *The Price of Protecting Our Children: The Dilemma of Allowing Children to Testify as Key Witnesses to Gang Violence*, 20 J. JUV. L. 127, 134–135 (1999).

¹⁹ See, e.g., Allen, *supra* note 6; Frieden, *supra* note 6; Marosi, *supra* note 6; Martelle, *supra* note 6; *Pomona: Teen-Ager to Stand Trial as Adult in Boy's Killing*, *supra* note 6.

²⁰ See *id.*

²¹ See Mike Klinkosum, *Pursuing Discovery in Criminal Cases: Forcing Open the Prosecution's Files*, NEWS & THE CHAMPION (May 2013), <https://www.nacdl.org/Champion.aspx?id=28476>.

²² U.S. CONST. amend. VI.

²³ Darci G. Osther, Note, *Juvenile Informants—A Necessary Evil?*, 39 WASHBURN L.J. 106, 121–22 (1999).

operations.²⁴ Young people also are sent to buy drugs from midlevel suppliers as law enforcement try to work their way up the criminal ladder, matching chemical and packaging indicators from the drugs bought to larger drug cartels or organizations.²⁵ Children are most commonly persuaded to become informants as a way to avoid legal punishment.²⁶ In these situations, police offer minors the chance to serve as informants and witnesses as an alternative to incarceration or other punishment; a pattern demonstrated by both Chad MacDonald and Brenda Paz.²⁷

Because informants are put at risk of harm by the nature of their work for police, it is imperative that those officers ensure the protection of the children they work with and keep their identities concealed.²⁸ Officers must meet that obligation because a risk of harm exists while the informant participates in gathering information as well as when their real identity and purposes are exposed to those they inform against.²⁹

Following the trajectory of many child informants, seventeen-year-old Chad MacDonald was arrested for possession of methamphetamines, a crime that normally leads to six months in a high-intensity drug rehabilitation program or juvenile hall, or working with the police; instead he chose to become an informant for the Brea Police Department in Orange County, California.³⁰ When MacDonald was arrested a second time, Officer Griffin

²⁴ *Id.*

²⁵ Lesley Stahl, *Confidential Informants*, 60 MINUTES (Dec. 6, 2015), <https://www.cbsnews.com/news/confidential-informants-60-minutes-lesley-stahl/>.

²⁶ Michael R. Santiago, “*The Best Interests of the Child*”—Scrutinizing California’s Use of Minors as Police Informants in Drug Cases, 31 MCGEORGE L. REV. 777, 779 (2000).

²⁷ See *MacDonald v. City of Brea Police Dept.*, No. G028372, 2002 Cal. App. LEXIS 6793 (Cal. Ct. App. July 23, 2002); Frieden, *supra* note 6.

²⁸ Osther, *supra* note 23, at 111.

²⁹ *Id.*

³⁰ *Slain Teen Was Working Undercover, Mother Says She Says He Felt Pressured to Make Larger Drug Buys to Avoid Prosecution*, BALTIMORE SUN (Mar. 23, 1998), http://articles.baltimoresun.com/1998-03-23/news/1998082021_1_cindy-macdonald-chad-macdonald-brea-police; Marosi, *supra* note 6.

questioned whether MacDonald could continue as an informant.³¹ Chad's mother believed that Officer Griffin exhorted MacDonald "to get the final 'bust' [Griffin] needed to secure the dismissal of the charges against [MacDonald]."³² Eager to avoid confinement, MacDonald decided that in order to please Officer Griffin and avoid any punishment, he would set up a large-enough drug buy to satisfy his handlers.³³ Setting up the sting on his own, without any protection or surveillance, the drug dealers MacDonald informed against tortured and strangled him, and raped and killed his girlfriend.³⁴ His killers called him "a 'snitch' who needed to be taught a lesson."³⁵ Chad MacDonald was murdered for his cooperation with the police, who failed to provide him adequate protection after exhorting him to help the police accomplish "one more bust."³⁶

After MacDonald's murder, police received a tip stating MacDonald's killer screamed "(expletive) narc" while torturing him.³⁷ MacDonald's work with police was discovered, and MacDonald was killed despite promises by Brea officers to both MacDonald and his mother that the officer would protect MacDonald.³⁸ Had officers actually supplied MacDonald with protection rather than offering empty promises to MacDonald's mother that there was nothing to worry about, even after MacDonald's tires had been slashed, he could have been kept safe from harm caused by those he informed against.

Following MacDonald's death, the California state legislature passed legislation limiting the use of minors as informants.³⁹ While the law limited the use of minors as informants by requiring a court

³¹ *MacDonald*, No. G028372, 2002 LEXIS 6793 at *26–27.

³² *Id.*

³³ *See Slain Teen Was Working Undercover*, *supra* note 30.

³⁴ Marosi, *supra* note 6.

³⁵ *Id.*

³⁶ *See id.*; *MacDonald*, No. G028372, 2002 LEXIS 6793, at *29–30.

³⁷ Deborah Hastings, *Murder of 17-Year-Old Snitch Prompts Furious Fight Over Teen-Age Informants*, SAN DIEGO SOURCE (Apr. 9, 1998), <http://www.sddt.com/News/article.cfm?SourceCode=19980409cm#.Wen3E2hSZCS>.

³⁸ *MacDonald*, No. G028372, 2002 LEXIS 6793, at *8.

³⁹ Osther, *supra* note 23, at 122.

order and parental informed consent,⁴⁰ it did not set up protections for those minors who do become informants and are faced with dangerous tasks, people, and environments.⁴¹ Greater protections must be established in every state in order to carry out the legitimate government interest of protecting children.⁴²

In 2003, seventeen-year-old Brenda Paz⁴³ followed a similar trajectory as MacDonald. Much like MacDonald, Paz began cooperating with government authorities after police arrested her on car theft charges.⁴⁴ She informed and served as witness against the notorious MS-13 gang in Virginia.⁴⁵ Despite placement under federal witness protection after providing police and investigators in at least six states with information about crimes ranging from thefts to murders, Paz remained involved in gang life after she evaded the officer assigned to protect her.⁴⁶ Paz, sixteen weeks pregnant, was murdered by members of MS-13—a gang known for authorizing the killing of informants.⁴⁷

The protection provided to Paz was limited to that afforded to adults.⁴⁸ It did not include a handler specifically trained to work with a child, making it possible for Paz to put herself in harm's way.⁴⁹ The existing federal witness protection program failed to ensure Paz's safety. Paz's witness protection handler even said his

⁴⁰ CAL. PENAL CODE §701.5 (West 1998).

⁴¹ Santiago, *supra* note 26, at 781.

⁴² See *Osborne v. Ohio*, 495 U.S. 103, 109 (1990) ("It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is 'compelling.'"); *Ginsberg v. State of N.Y.*, 390 U.S. 629, 640 (1968) ("The State also has an independent interest in the well-being of its youth."); *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944) ("Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children.").

⁴³ See Frieden, *supra* note 6.

⁴⁴ Andrea L. Dennis, *Collateral Damage? Juvenile Snitches in America's "wars" on Drugs, Crime, and Gangs*, 46 AM. CRIM. L. REV. 1145, 1153 (2009).

⁴⁵ *Id.*; Jamie Stockwell, *In MS-13, a Culture of Brutality and Begging*, WASH. POST (May 2, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/05/01/AR2005050100814.html>.

⁴⁶ Dennis, *supra* note 44; Stockwell, *supra* note 45.

⁴⁷ See Stockwell, *supra* note 45.

⁴⁸ Dennis, *supra* note 44, at 1168.

⁴⁹ See *id.*

responsibility “was to provide her with a safe place to live and food and sustenance . . . The burden of personal responsibility for safety [fell] upon [Brenda].”⁵⁰ The officer’s statement after Paz’s death speaks to the difference between protecting adults and children. Where adults are able to take personal responsibility for their own safety, society widely recognizes that children require protection and guidance from the adults who provide them care.⁵¹

The failures of the Brea County Police Department and the Federal Witness Protection Program are indicative of the need for better, more specific training of handlers who work with children. In these and other cases, officers treating children just as they would adults places too much responsibility on those children made vulnerable by their status as informants. New legislation mandating that handlers who work with children like MacDonald and Paz are prepared for the serious task of ensuring the safety of child informants must be enacted in every state.

The federal government should promote that effort by making the distribution of law enforcement and witness protection funds contingent on adoption of specified reforms. The cases of McDonald and Paz also illustrate the need to keep the names of children informants out of court documents turned over during pre-trial discovery. In both of these cases, children were killed for “snitching.”⁵² Their premature deaths could have been avoided if the dangerous organizations against whom they offered valuable information were not provided with their names.

B. Child Witnesses

Child witnesses are exposed to many of the same dangers as child informants. Fourteen-year-old Eduardo Samaniego witnessed a murder in Los Angeles, California.⁵³ Before testifying,

⁵⁰ *Id.*

⁵¹ See U.N. Convention on the Rights of the Child, *supra* note 15, at Article 3 (“States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being.”).

⁵² *Slain Teen Was Working Undercover*, *supra* note 30; Stockwell, *supra* note 45.

⁵³ Sheryl Stolberg, *Some Crime Witnesses Pay High Price for Civic Duty: Violence: Agreeing to Testify Can Bring Threats, Even Death. L.A. Gangs Are*

Samaniego and other witnesses expressed that they did not want to testify because they “were scared [they] would be hurt or killed.”⁵⁴ A deputy district attorney assured all of the witnesses that if they or a family member were threatened they would be relocated.⁵⁵ Since none of the witnesses had been threatened directly, Samaniego testified at the preliminary hearing in February of 1992.⁵⁶ Samaniego was killed just before the murder trial was slated to begin, when a member of the gang against which Samaniego was to testify came to his house, called him outside, and shot him in the neck.⁵⁷ After Samaniego was murdered, police admitted that they did not have the manpower to provide sufficient witness protection; this lack of protection facilitated Samaniego’s execution.⁵⁸

When Samaniego’s estate sued the district attorneys with whom he had worked, the court assumed, based on the facts, that a special relationship had been established between them, and the attorneys had violated their duty to warn and care for Samaniego who was serving as a witness for the state.⁵⁹ Despite the court’s finding that the prosecutors breached their duty, they did not face any consequences because the same court determined that they were protected by absolute quasi-judicial immunity.⁶⁰

In 1997, eight-year-old Leroy Brown Jr. became a witness for the state of Connecticut after he saw Russell Peeler, a local cocaine dealer, fire a gun at Rudolph Snead Jr., the fiancé of his mother, Karen Clarke.⁶¹ Snead was later shot and killed.⁶² Clarke brought

Notorious for Intimidation Tactics, L.A. TIMES (Aug. 30, 1992), http://articles.latimes.com/1992-08-30/news/mn-8554_1_witness-intimidation.

⁵⁴ *Falls v. Superior Court*, 49 Cal. Rptr. 2d 908, 910 (Ca. Ct. App. 1996).

⁵⁵ *Id.*

⁵⁶ *See* Stolberg, *supra* note 53.

⁵⁷ *Id.*; Vicki Torres, *3 Young Murder Witnesses Learn the Price Of Courage: Violence: They Helped Convict a Killer When a Friend Was Slain Before He Could Testify. But Now They Live in Fear*, L.A. TIMES (Mar. 12, 1993), http://articles.latimes.com/1993-03-12/news/mn-10185_1_young-murder.

⁵⁸ Torres, *supra* note 57.

⁵⁹ *Falls*, 49 Cal. Rptr. 2d at 915.

⁶⁰ *Id.* at 917.

⁶¹ Daniel Tepfer, *The Murderous Saga of Russell Peeler*, CTPOST (Aug. 10, 2013), <http://www.ctpost.com/local/article/The-murderous-saga-of-Russell-Peeler-4723170.php>.

Brown to a local precinct, where he identified Peeler in a photograph as the man who shot at Snead while Brown was in the backseat of the car.⁶³ In a signed statement, Brown said that he did not know the man's name, but had been taken to his home by Snead once before.⁶⁴

The Bridgeport Police Department arranged for marked police cars to remain in front of the boy's home, knowing that Peeler posed a risk to him.⁶⁵ However, the cars were removed when Peeler was imprisoned, and were not reintroduced upon Peeler's release on bond.⁶⁶ Feeling unsafe, Brown transferred schools with the help of police who agreed that he was not safe attending the same school as Peeler's children.⁶⁷

On December 23, 1998, Peeler learned that Brown and Clarke had given sworn written statements linking him to Snead's murder.⁶⁸ "Upon learning that Brown's testimony linked him to the Lindley Street shooting and the ballistics evidence connected that shooting with the murder of Snead, Russell began to speak about killing Brown and Clarke."⁶⁹ On January 8, 1999, Peeler's brother shot and killed Brown and Clarke.⁷⁰

In that year, Connecticut's total budget for witness protection was just \$30,000.⁷¹ This limited budget was likely a contributing factor in deciding not to reinstate police protection after Peeler was

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Denise Lavoie & Jerry Schwartz, *Death of a Young Witness—A Tragedy in Three Violent Acts*, SOUTHCOASTTODAY (Jan. 17, 1999), <http://www.southcoasttoday.com/article/19990117/NEWS/301179999>.

⁶⁵ *Clarke v. Sweeney*, 312 F. Supp. 2d 277, 282 (D. Conn. 2007).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Peeler v. Warden*, 2013 Conn. Super. LEXIS 2719, at *3–4 (Nov. 14, 2013).

⁶⁹ *State v. Peeler*, 267 Conn. 611, 616 (2004).

⁷⁰ *See Peeler*, 2013 Conn. Super. LEXIS 2719, at *4–7.

⁷¹ *See John Cloud, In Silent Testimony*, TIME (Jan. 25, 1999), <http://content.time.com/time/magazine/article/0,9171,18739,00.html>.

released on bond.⁷² The lack of police protection left Brown and Clarke exposed to extreme danger.⁷³

Following the murders, state representative Chris Caruso admitted that it had been the responsibility of the state to protect Brown, and it had failed in that duty.⁷⁴ Widespread condemnation of the state's failure prompted the Connecticut legislature to rewrite its witness protection laws in 1999.⁷⁵ Unfortunately, the new legislation did more to protect the state from liability than to shield the witnesses it enlists.⁷⁶ All states would better serve their witnesses, and specifically their child witnesses, by enacting legislation requiring the training of handlers who work with child witnesses. Specifically, prosecutors should be trained to advise children and their parents about how to identify risks to safety. The prosecutors who work with children should also work closely with police to ensure that the child witnesses are receiving adequate protection when needed. The legislation should provide specific witness protection services tailored to the unique needs of minors.

It is vital that the identity of children be screened when they testify against gangs and members of organized crime. Screening child witnesses' identities to keep them out of the hands of

⁷² See *Clarke*, 312 F. Supp. 2d at 282.

⁷³ Nick Charles, *In Cold Blood*, PEOPLE (Feb. 22, 1999), <http://people.com/archive/in-cold-blood-vol-51-no-7/>.

⁷⁴ *Id.*

⁷⁵ See *id.*; CONN. GEN. STAT. ANN. § 54-82t (1999); CONN. GEN. STAT. ANN. § 54-82u (1999).

⁷⁶ See § 54-82t(g) ("If a witness declines to receive protective services under this section, the Chief State's Attorney shall request the witness to make such declination in writing."); § 54-82t(h) ("If the parent or parents or guardian of a child who is certified as a witness at risk of harm critical to a criminal investigation or prosecution as provided in subsection (b) of this section, declines the provision of protective of protective services under this section, the office of the Chief State's Attorney shall be notified within twenty-four hours after such declination. Upon receipt of such notice, the Chief State's Attorney shall make reasonable efforts to confer with a victim advocate providing services for the Office of the Victim Services and shall, not later than three days after such declination, determine if the matter should be referred to the Department of Children and Families for investigation as to whether such child is neglected . . . and whether the department should provide protective services or take other action.").

dangerous defendants is necessary to ensure that children can safely offer testimony to aid the government in taking dangerous felons off the streets. Some steps have been taken in the right direction,⁷⁷ but to ensure the safety of all children who provide valuable testimony, comprehensive legislation must be enacted in every state.

II. LEGAL CONTEXT FOR PROTECTING CHILD INFORMANTS AND WITNESSES

In the 1980s, many states abolished laws that prohibited child victims from participating in the courtroom, making it easier for children to serve as witnesses.⁷⁸ This influx of child witnesses presented a unique pair of challenges: keeping testifying children safe from physical and emotional harm, while still guaranteeing defendants their constitutional right to confront witnesses.⁷⁹ Subsequently, in the late 1990s and early 2000s, legislators and prosecutors concerned themselves with protecting child witnesses

⁷⁷ For example, twenty-six states have enacted legislation regarding child witnesses. *See* ALASKA STAT. § 12.45.046 (West 1988); CAL. HEALTH & SAFETY CODE § 1596.8871 (West 1994); CONN. GEN. STAT. ANN. § 54-86g (West 1990); FLA. STAT. ANN. § 92.53 (West 2016); IND. CODE ANN. 35-37-4-8 (West 2016); KAN. STAT. ANN. § 22-3434 (West 1985); KY. REV. STAT. ANN. § 421.350 (West 2013); LA. STAT. ANN. § 5:283 (2007); ME. REV. STAT. ANN. 22 § 4007 (2013); MD. CODE ANN., CRIMINAL PROCEDURE, §11-303 (West 2001); MINN. STAT. ANN. § 631.046 (West 1985); MISS. CODE ANN. § 13-1-405 (West 1986); MO. ANN. STAT. § 491.702 (West 1987); N.H. REV. STAT. ANN. § 169-C:11 (2017); N.J. STAT. ANN. § 2A:84A-32.4 (West 2017); N.M. STAT. ANN. § 38-6A-4 (West 2012); N.Y. CRIMINAL PROCEDURE LAW § 65.20 (McKinney 2007); OKLA. STAT. ANN. tit. 12, § 2611.5 (West 2003); OR. REV. STAT. ANN. § 44.545 (West 1991); 42 PA. STAT. AND CONS. STAT. ANN. § 5985 (West 2004); S.C. CODE ANN. § 17-23-175 (1976); TEX. CODE CRIM. PROC. ANN. art. 38.071 (2011); VA CODE ANN. § 18.2-67.9 (West 2001); WASH. REV. CODE ANN. § 9A.44.150 (West 2013); W. VA. CODE ANN. § 62-6B-3 (West 2013); WIS. STAT. ANN. § 950.055 (West 2017); 34 U.S.C.A. § 10334 (West 2017).

⁷⁸ Gail S. Goodman et al., *Innovations for Child Witnesses: A National Survey*, 5 PSYCHOL. PUB. POL'Y & L. 255, 255 (1999); *Cf.* Andrea M. Alonso & Kevin G. Faley, *Capacity of Infants to Testify*, N.Y.L.J. (Sept. 8, 2017) (noting that in New York the presumption is still that an infant under 9 is not capable of testifying unless a voir dire examination establishes otherwise).

⁷⁹ Goodman, *supra* note 78, at 257–58.

from both external dangers and psychological traumas associated with participating in trials.⁸⁰

The federal rules of evidence were written inclusively with regard to the capacity of witnesses to testify, saying, “[e]very person is competent to be a witness unless these rules provide otherwise.”⁸¹ Traditionally, a child’s competency to testify as a witness is governed by a two-pronged test to determine whether the child understands the obligation to tell the truth and whether the child is capable of observing, recollecting, and relating their experiences.⁸² Within that analysis, age is not a controlling factor if the witness passes the two-pronged competency test.⁸³

After the child witness rule change went into effect, the children called to testify were typically victims themselves.⁸⁴ To accommodate child witnesses, federal prosecutors adopted new guidelines for questioning them, in order to limit trauma.⁸⁵ The guidelines conformed to 18 U.S.C.A. Section 3509’s child victims’ and child witnesses’ rights to live in-court testimony, new competency exams, privacy protection, closed courtroom, victim impact assessments, the use of multidisciplinary child abuse teams, and guardians ad litem.⁸⁶ The guidelines adopted for child victims should be expanded to include all child witnesses, affording

⁸⁰ Thomas L. Hafemeister, *Protecting Child Witnesses: Judicial Efforts to Minimize Trauma and Reduce Evidentiary Barriers*, 11 VIOLENCE & VICTIMS 71, 71–92 (1996).

⁸¹ Fed. R. Evid. 601.

⁸² SAMUEL M. DAVIS, RIGHTS OF JUVENILES § 6:8 (Thompson Reuters, USA, 2017 ed.).

⁸³ *Id.*

⁸⁴ Stephen J. Ceci & Eduardus De Bruyn, *Child Witnesses in Court: A Growing Dilemma*, CHILDREN TODAY (1993), <https://www.pbs.org/wgbh/pages/frontline/shows/innocence/readings/childwitnesses.html>.

⁸⁵ U.S. DEP’T OF JUST., U.S. ATTY’S MANUAL, CHILD VICTIMS’ AND CHILD WITNESSES’ RIGHTS § 9-75.610, <https://www.justice.gov/usam/usam-9-75000-obscenity-sexual-exploitation-sexual-abuse-and-related-offenses#9-75.610> (last visited June 21, 2018) (“[T]he primary goal of every Justice Department law enforcement officer, investigator, prosecutor, victim/witness professional and staff member shall be to reduce the trauma to child victims and child witnesses caused by the criminal justice system.”).

⁸⁶ Victims of Child Abuse Act of 1990 (VCAA), 18 U.S.C. § 3509 (West 2009).

protection to all children who participate in the criminal justice system, particularly those who witness gang violence or other organized crime and are most susceptible to intimidation considering that, “on rare occasions, witness intimidation equals witness execution.”⁸⁷

Just as the interpretation of who is competent to serve as a witness has evolved, so has the interpretation of the Confrontation Clause of the Sixth Amendment.⁸⁸ In a series of cases dealing with the Sixth Amendment rights of alleged perpetrators of child abuse, the Supreme Court gradually identified a right of child victims to be protected from their accused abusers despite the customary confrontation right.⁸⁹ The first Supreme Court case protecting a child witness in 1987, held that a defendant’s Sixth Amendment rights are not violated when the defendant is excluded from a competency hearing since they still have the ability to confront accusers at trial.⁹⁰ Allowing the screening of children early in proceedings keeps their identities secure without infringing on the Sixth Amendment rights of defendants.

A year later, in a 1988 trial where two accusing children were blocked from the defendant’s sight through use of a screen, the Supreme Court ruled that such a maneuver violated the defendant’s right to face-to-face confrontation.⁹¹ Just two years later, in 1990, the Supreme Court granted certiorari to decide “whether the admission at trial of certain hearsay statements made by a child declarant to an examining pediatrician violates a defendant’s rights under the Confrontation Clause of the Sixth Amendment.”⁹² In that case, the Court ruled that the State had failed to show that a young girl’s incriminating statements overcame the hearsay rule and therefore violated the Confrontation Clause.⁹³

⁸⁷ Stolberg, *supra* note 53.

⁸⁸ See Bryan H. Wildenthal, *The Right of Confrontation, Justice Scalia, and the Power and Limits of Textualism*, 48 WASH. & LEE L. REV. 1323, 1324–25 (1991).

⁸⁹ *See id.*

⁹⁰ *Kentucky v. Stincer*, 482 U.S. 730, 744 (1987).

⁹¹ *Coy v. Iowa*, 487 U.S. 1012, 1014, 1021 (1988).

⁹² *Idaho v. Wright*, 497 U.S. 805, 808 (1990).

⁹³ *Id.* at 827.

The exception for abused children testifying against their attackers emerged in 1990.⁹⁴ The Supreme Court, in *Maryland v. Craig* found that “a State’s interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant’s right to face his or her accusers in court.”⁹⁵ Reliability of testimony, arguably the purpose of the confrontation clause, can be established without face-to-face confrontation by the witness’s presence before a tribunal, their sworn testimony under oath, or cross examination.⁹⁶

In addition to the Sixth Amendment’s confrontation clause, the ability of defendants to request prosecution witness and informant lists is relevant to protecting children involved in the criminal justice system.⁹⁷ Defendants in capital cases have the right to request witness lists at least three days before trial.⁹⁸ That right is balanced against the right to life and safety of the people who might be put in danger once the list is turned over.⁹⁹ Where children are offering information or testimony against dangerous criminals out on bond, or those affiliated with a gang or other organized crime entity, the factors should surely weigh in favor of protecting the child’s safety. Ultimately, there is a need for more witnesses to come forward, and one way to ensure that witnesses

⁹⁴ *Maryland v. Craig*, 497 U.S. 836, 856–57 (1990) (holding that where necessary to protect a child witness from trauma that would result from testifying in front of the defendant, the use of a screening device is not prohibited by the Confrontation Clause as long as the reliability of evidence is ensured and adversarial testing is made possible).

⁹⁵ *Id.* at 853.

⁹⁶ *Sixth Amendment at Trial*, 40 GEO. L.J. ANN. REV. CRIM. PROC. 663, 672 (2011).

⁹⁷ See 18 U.S.C.A. § 3432 (West 2009). (“A person charged with treason or other capital offense shall at least three entire days before commencement of trial . . . be furnished with a copy of the . . . witnesses to be produced on the trial for proving the indictment, stating the place and about of each . . . witness.”); *Rovario v. U.S.*, 353 U.S. 53, 65 (1957) (“[T]he trial court committed prejudicial error in permitting the Government to withhold the identity of its undercover employee in the face of repeated demands by the accused for disclosure.”).

⁹⁸ 18 U.S.C.A. § 3432 (West 2009).

⁹⁹ *Id.*

are available to aid in the prosecution of dangerous criminals is ensuring that those witnesses are kept safe, especially when they are children.¹⁰⁰

Prosecutors have already begun to independently take it upon themselves to protect their child witnesses.¹⁰¹ One prosecutor managed to both protect his witness and comply with a discovery order by simultaneously supplying the witness list and securing a protective order forbidding the requesting attorney from sharing witness information with the client.¹⁰² Allowing prosecutorial discretion and following the precedent that protection comes first could potentially provide critical protection for child witnesses; had it been in place in Connecticut in 1999, Leroy Brown Jr. might still be alive.¹⁰³

III. SOLUTIONS

The failure of law enforcement and prosecutors to protect informants like Chad MacDonald and Brenda Paz and witnesses like Eduardo Samaniego and Leroy Brown Jr. demonstrate an acute need for legislation in every state to protect children who become involved in the criminal justice system. As fewer people are willing to come forward to serve as informants and witnesses, those children who become involved in the process deserve and are entitled to protection.¹⁰⁴ If adequate protection is not granted to those children, surely others cannot be expected to come forward with information against those who endanger communities.

For children who serve as informants and witnesses in the criminal justice system, the unique set of challenges posed when protecting them demand an approach that combines training handlers, witness protection, and screening. Effective solutions to protect child witnesses and informants can be drawn from current legislation protecting child victims of sexual abuse, state

¹⁰⁰ See David Schaper, *In Chicago, Violence Soars and Witnesses Go Silent*, NPR (Nov. 13, 2012), <https://www.npr.org/2012/11/13/163242604/in-chicago-violence-soars-and-witnesses-go-silent>.

¹⁰¹ See Rogan, *supra* note 18, at 134.

¹⁰² *Id.*

¹⁰³ See *Clarke v. Sweeney*, 312 F. Supp. 2d 277, 282–83 (D. Conn. 2004).

¹⁰⁴ See Schaper, *supra* note 100.

legislation, and the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.

Children are widely regarded as particularly susceptible to intimidation, so ensuring their safety is crucial.¹⁰⁵ When more children began to testify as victims of sexual and domestic abuse, courts attempted to implement new procedures in order to make the courtroom a safer environment for those children participating.¹⁰⁶ At least twenty-six states and all federal courts wrote legislation affecting criminal procedure when children were to be called as victim witnesses.¹⁰⁷ Modifications included providing special units trained specifically to work with child witnesses, creating child advocacy centers, and finding ways for children to participate without having to appear live in court.¹⁰⁸ Although these modifications were designed to protect child victims of sexual and domestic abuse, they have the potential to save the lives of children like Chad MacDonald, Brenda Paz, Eduardo Samaniego, and Leroy Brown Jr. if they are applied more broadly to all children acting as informants and witnesses. This section begins with proposals for trained handlers, then outlines

¹⁰⁵ Michal Gilad, *Who Will Protect The Children?: The Untold Story of Unaccompanied Minors In Witness Protection Programs*, 12 WHITTIER J. CHILD & FAM. ADVOC. 43, 48 (2012).

¹⁰⁶ Goodman, *supra* note 78, at 257.

¹⁰⁷ See ALASKA STAT. § 12.45.046 (West 1988); CAL. HEALTH & SAFETY CODE § 1596.8871 (West 1994); CONN. GEN. STAT. ANN. § 54-86g (West 1990); FLA. STAT. ANN. § 92.53 (West 2016); IND. CODE ANN. 35-37-4-8 (West 2016); KAN. STAT. ANN. § 22-3434 (West 1985); KY. REV. STAT. ANN. § 421.350 (West 2013); LA. STAT. ANN. 5:283 (2007); ME. REV. STAT. ANN. 22 § 4007 (2013); MD. CODE ANN., CRIMINAL PROCEDURE, §11-303 (West 2001); MINN. STAT. ANN. § 631.046 (West 1985); MISS. CODE ANN. § 13-1-405 (West 1986); MO. ANN. STAT. § 491.702 (West 1987); N.H. REV. STAT. ANN. § 169-C:11 (2017); N.J. STAT. ANN. § 2A:84A-32.4 (West 2017); N.M. STAT. ANN. § 38-6A-4 (West 2012); N.Y. CRIMINAL PROCEDURE LAW § 65.20 (McKinney 2007); OKLA. STAT. ANN. tit. 12, § 2611.5 (West 2003); OR. REV. STAT. ANN. § 44.545 (West 1991); 42 PA. STAT. AND CONS. STAT. ANN. § 5985 (West 2004); S.C. CODE ANN. § 17-23-175 (1976); TEX. CODE CRIM. PROC. ANN. art. 38.071 (2011); VA CODE ANN. § 18.2-67.9 (West 2001); WASH. REV. CODE ANN. § 9A.44.150 (West 2013); W. VA. CODE ANN. § 62-6B-3 (West 2013); WIS. STAT. ANN. § 950.055 (West 2017). The federal government has similar legislation. 34 U.S.C.A. § 10334 (2017).

¹⁰⁸ Goodman, *supra* note 78, at 257.

child-specific protective programs, and concludes with a description of applicable screening procedures.

A. Trained Handlers

Just as teachers undergo specific training to work with children, so too should the handlers who work with child informants and witnesses.¹⁰⁹ Law enforcement literature and training guidelines, state courts, federal and state legislation have all implemented guidelines for training those who work with child informants and witnesses.¹¹⁰ Those rulings, regulations, guidelines, and statutes should be combined into comprehensive legislation governing the handling of child informants of witnesses at every stage in their involvement in the criminal justice system: by police officers, prosecutors, judges, defense attorneys, and agents assigned to protect children.

A magazine catering to police and law enforcement officials advises them to “be particularly cautious when considering the use of juvenile informants,”¹¹¹ but perhaps it is more important for informants to be careful of the officers they become involved with.¹¹² Because child informants may not have the wherewithal to

¹⁰⁹ See 20 U.S.C. § 6602 (2015) (detailing that the federal government sanctions a teacher residency program where prospective teachers teach alongside effective teachers for not less than one academic year while receiving concurrent instruction).

¹¹⁰ See FLA. STAT. ANN. § 914.28 (West 2009); Los Angeles Police Dep’t Manual 1: 544, http://www.lapdonline.org/lapd_manual/volume_1.htm#544; U.S. DEP’T OF JUST., U.S. ATT’YS MANUAL, PROTECTION OF IDENTITY OF CHILD WITNESSES AND VICTIMS CRM 1-99 § 46, <https://www.justice.gov/usam/criminal-resource-manual-46-protection-identity-child-witnesses-and-victims> (last visited June 21, 2018); Training and Education Programs Concerning Treatment of Child Witnesses, N.Y. COMP. CODES R. & REGS. tit. 22, § 35.2 (1985).

¹¹¹ Dean Scoville, *How to Develop Informants*, POLICE: THE LAW ENFORCEMENT MAGAZINE (June 21, 2007), <http://www.policemag.com/channel/patrol/articles/2007/08/how-to-develop-informants.aspx>.

¹¹² See Yudhijit Bhattacharjee, *One Drug Dealer, Two Corrupt Cops and a Risky FBI Sting*, GUARDIAN (June 21, 2017), <https://www.theguardian.com/news/2017/oct/19/one-drug-dealer-two-corrupt-cops-and-a-risky-fbi-sting>.

question such authority, it is important that someone be able to do so for the child.¹¹³

Sometimes, police officers are not fit to deal with child informants and may even contribute to the delinquency of the child.¹¹⁴ In 2004, two Baltimore Police Officers, William King and Antonio Murray, recruited sixteen-year-old Davon Mayer, a known drug dealer, to provide information about where other drug dealers hid their stashes.¹¹⁵ In exchange, the officers sold the drugs back to Davon, but threatened him, ensuring that Davon understood he was just a pawn in their operation.¹¹⁶ Fearing retribution, Davon contacted the FBI, who used him as an informant and later as a witness to bring charges against the corrupt officers.¹¹⁷ The ability of officers to recruit juvenile informants has been considered to contribute to the delinquency of minors.¹¹⁸ This was certainly the case with Davon and Officers King and Murray.¹¹⁹ Legislation enacted in each state would guarantee that officers working with children follow strict guidelines ensuring the safety of children, rather than using them for corrupt purposes.

Rachel Hoffman, a twenty-three-year-old graduate of Florida State, became a police informant after she was threatened with felony drug charges.¹²⁰ During an undercover operation gone wrong, Hoffman disappeared and was found by police two days later, fifty-miles away, apparently killed by those she was sent to

¹¹³ See Gilad, *supra* note 105, at 60.

¹¹⁴ See Bhattacharjee, *supra* note 112; Charoletta J. Ransom, *Does the End Justify the Means? Use of Juveniles as Government Informants, Helpful to Society While Harmful to the Child*, 20 J. JUV. L. 108, 109–10 (1999).

¹¹⁵ Bhattacharjee, *supra* note 112.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Ransom, *supra* note 114, at 109–10.

¹¹⁹ See Bhattacharjee, *supra* note 112.

¹²⁰ Sarah Stillman, *The Throwaways*, NEW YORKER (Sept. 3, 2012), <https://www.newyorker.com/magazine/2012/09/03/the-throwaways>.

collect information against.¹²¹ Following her death,¹²² Florida enacted a new statute to protect confidential informants.¹²³

Although Hoffman was not a child, the legislation enacted following her death should serve as a model for national legislation related to the training of officers who wish to enlist and work with child informants.¹²⁴ Florida Statute Section 914.28 requires that a person requested to serve as a confidential informant have an opportunity to consult legal counsel upon request and before agreeing to participate.¹²⁵ It also ensures that personnel involved in the use and recruitment of informants are trained in the agency's policies and procedures.¹²⁶ Law enforcement agencies are required under the statute to keep documentation related to the completion and date of training.¹²⁷ Finally, Florida Statute Section 914.28 requires supervisory review for the use of informants and specific supervisory approval before a juvenile can be used.¹²⁸ The move to put a supervisor in charge of reviewing and approving the use of juvenile informants is essential for creating accountability that has in the past been lacking.¹²⁹

Carelessness and lack of special training for officers and prosecutors who work with children pose unacceptable risk to those children.¹³⁰ In 2003, as part of a ploy to elicit a confession, police officers told Jose Ledesma, a member of the Vineland Boyz gang, that sixteen-year-old Martha Puebla had identified his photo and signed a statement identifying him as the killer of a man who

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ FLA. STAT. ANN. § 914.28 (West 2009).

¹²⁵ *Id.* § 914.28(3)(c).

¹²⁶ *Id.* § 914.28(3)(d).

¹²⁷ *Id.*

¹²⁸ *Id.* § 914.28(4)(g).

¹²⁹ See Ian Leson, *Toward Efficiency and Equity in Law Enforcement: "Rachel's Law" and the Protection of Drug Informants*, 32 B.C. J.L. & SOC. JUST. 391, 394 n.20 (2012).

¹³⁰ See Gilad, *supra* note 105, at 60. (A child witness's immaturity creates a need of guidance, supervision, and assistance by handlers who can provide an increased level of attention comparable to that of a babysitter.).

died in front of Puebla's home.¹³¹ The choice made by officers to identify Puebla to suspects of a violent crime resulted in the gang member, Catalan making a call to a fellow gang member in which he said, "[y]ou know the bitch who lives . . . by my house? . . . I need her to disappear. She's putting, she's throwing dimes. As soon as possible because she's (unintelligible) throwing dimes."¹³² In 2010, the two Los Angeles Police Department detectives involved were found partially responsible for her death.¹³³ The jury found the officers acted maliciously and recklessly when they falsely told a gang member that Puebla had implicated him in a murder.¹³⁴ Detective Dennis Kilcoyne, President of the California Homicide Investigators Association, said publicly that the other officers' carelessness and lack of common sense put Puebla's life in jeopardy.¹³⁵

In the wake of Puebla's murder, the Los Angeles Police Department said it would train its officers to be more careful about protecting witnesses.¹³⁶ Like many programs to protect witnesses and child witnesses, this new policy, while seemingly obvious, was implemented as a reactionary measure, six years after the LAPD officers were assigned to investigate the murder Puebla witnessed.¹³⁷ One specific new requirement is that officers must offer police protection to those that they have placed in danger.¹³⁸ That simple protection, while a move in the right direction, does not adequately address the need of child witnesses and informants.

¹³¹ Victoria Kim, *Jury Finds 2 LAPD Detectives Negligent in Witness' Death*, L.A. TIMES (Apr. 17, 2010), <http://articles.latimes.com/2010/apr/17/local/la-me-witness-murder17-2010apr17>.

¹³² Catalan v. Hedgepeth, 2009 U.S. Dist. Lexis 133316, *18 (C.D. Cal. Aug. 13, 2009).

¹³³ Kim, *supra* note 131.

¹³⁴ *Id.*; see also Joel Rubin & Ari B. Bloomekatz, *Interrogation, Then Revenge*, L.A. TIMES (July 2, 2008), <http://www.latimes.com/local/la-me-interrogate2-2008jul02-story.html> ("Far from helping the police, the reality was that Puebla had actually tried to protect Ledesma [the defendant gang member] in the hours after the shooting.").

¹³⁵ Rubin & Bloomekatz, *supra* note 134.

¹³⁶ Joel Rubin, *Slaying of Witness Spurs LAPD Changes*, L.A. TIMES (July 18, 2008), <http://articles.latimes.com/2008/jul/18/local/me-lapd18>.

¹³⁷ *Id.*

¹³⁸ Rubin & Bloomekatz, *supra* note 134.

While the changes made to LAPD policies are an important first step, the implementation of new policy, just like the legislation following the murder of Rachel Hoffman, demonstrates the need for more regimented and specific training for those officers and prosecutors who work with children. While both actions seek to ensure police responsibility they do not detail specific training requirements.¹³⁹ Teachers—the group of professionals who work most closely with children—are subject to rigorous certification requirements which often include course work in child psychology.¹⁴⁰ The same type of coursework should be made mandatory for those officers who will be working with child informants and witnesses.

Prosecutors should also establish protocols and training for their use of children as witnesses. On a federal level, the U.S. Attorney's manual includes a special section on the protection of child witnesses' and victims' identities.¹⁴¹ That section references 18 U.S.C. Section 3509, which requires all government employees (including prosecutors and agents) to keep all documents disclosing the name or other information concerning a child in a secure place, and reveal that information only when necessary.¹⁴² This procedure importantly places responsibility on the prosecutor to ensure the safety of the child witness.¹⁴³ It should be implemented by State's Attorney and District Attorney's offices around the country.

Another instructive model comes from New York, where Chapter 22, Section 35.2 of the judicial code mandates that the chief administrator of the courts offer educational programs to other judges about the social and psychological stages of child

¹³⁹ See FLA. STAT. ANN. § 914.28 (West 2009).

¹⁴⁰ 20 U.S.C.A. § 6602(1)(5) (West 2015). The federal government sanctions a teacher residency program where prospective teachers teach alongside effective teachers for not less than one academic year while receiving concurrent instruction.

¹⁴¹ U.S. DEP'T OF JUST., U.S. ATT'YS MANUAL, CHILD VICTIMS' AND CHILD WITNESSES' RIGHTS § 9-75.610, <https://www.justice.gov/usam/usam-9-75000-obscenity-sexual-exploitation-sexual-abuse-and-related-offenses#9-75.610> (last visited June 21, 2018).

¹⁴² 18 U.S.C. § 3509(d)(1) (West 2009).

¹⁴³ See *id.*

development in order to appropriately adapt courtroom procedures for child witnesses.¹⁴⁴ The rationale for this is that judges who understand child development are able to prevent certain questioning of the child witnesses likely to result in psychological or emotional harm.¹⁴⁵ Those courses are based on consultation with individuals, groups, and agencies concerned with child psychology and child welfare. 22 NYCRR 35.1 also requires that the Chief Administrator of the courts consult with all relevant parties periodically to review the methods and techniques implemented to reduce significant trauma to child witnesses.¹⁴⁶

Making funding for a state's witness protection, police, and judicial programs dependent on adopting comprehensive legislation will ensure the uniform safety of all children involved in the criminal justice system across the country. The legislation should require the specific education and training of police officers, prosecutors, and judges who work with child witnesses. That education should be developed in connection with child psychologists and those knowledgeable about child welfare, as well as experts on violent crime. Finally, the legislation must attach liability to police officers and prosecutors working with children, so they can be held accountable when they fail in their duty to protect children.

B. Child-Specific Witness Protection Program (for Witnesses and Informants)

Witness protection programs currently in place at both the federal and state level must be adapted to provide specific protection for child witnesses and informants. The Federal Witness Protection Program, Connecticut State Witness Protection Program named after Leroy Brown Jr., and the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime are instructive templates for implementing new effective

¹⁴⁴ Training and Education Programs Concerning Treatment of Child Witnesses, N.Y. COMP. CODES R. & REGS. tit. 22, § 35.2 (1985).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* § 35.1

programs nationwide.¹⁴⁷ Legislation in this area is necessary to combat the notion that no duty or protection is owed to the child participants in the criminal justice system. The disparity in funding between the federal and state programs is a compelling reason to attach federal funding of state witness protection programs to the adoption of new legislation protecting child witnesses and informants.

Under the Restatement (Second) of Torts, there is no general duty to control the conduct of a third person to prevent him from causing physical harm to another unless there is a relationship between the actor and other which gives the other a right to protection.¹⁴⁸ Traditionally, police have decided whether to offer protection to their informants and witnesses, notwithstanding the fact that a duty naturally arises when police ask their informants and witnesses to put themselves in harm's way.¹⁴⁹ In addition, prosecutors have immunity from suit related to an attack on a witness with whom they are working.¹⁵⁰ These practices, which effectively require some witnesses to determine and implement appropriate actions to protect themselves, should not be imposed on children.¹⁵¹

Since 1895, the Supreme Court has considered every citizen to have the duty of assisting in prosecuting and securing the punishment of criminals; and with that right, there is the reciprocal right of every citizen engaged in the administration of justice to be afforded protection from "lawless violence."¹⁵² When the Federal Witness Protection Program was established, its purpose was to ensure witness testimony and additionally ensure witness health,

¹⁴⁷ 18 U.S.C. § 3521; CONN. GEN. STAT. ANN. § 54-82s (West 1999); CONN. GEN. STAT. ANN. § 54-82t (West 1999); Economic and Social Council, Res. 2005/20 (July 22, 2005).

¹⁴⁸ RESTATEMENT (SECOND) OF TORTS § 315(b) (AM. LAW INST. 1965).

¹⁴⁹ Rogan, *supra* note 18, at 130–31.

¹⁵⁰ Ted Rohrlich & Fredric N. Tulskey, *Efforts to Protect Witnesses Fall Short in L.A. County*, L.A. TIMES (Dec. 23, 1996), http://articles.latimes.com/1996-12-23/news/mn-11951_1_witness-protection.

¹⁵¹ See Rogan, *supra* note 18, at 131–32.

¹⁵² In re Quarles, 158 U.S. 532, 535 (1895).

safety, and welfare, as well as that of their families.¹⁵³ The program has evolved over the years, and the most current iteration is the Witness Relocation and Protection Program.¹⁵⁴

Under USCA Section 3521, the Witness Relocation and Protection Program empowers the Attorney General to determine who needs protection and for how long the danger to that person exists.¹⁵⁵ For state programs that are often underfunded in comparison with the federal program, witnesses are often only temporarily relocated and protected until after they have the opportunity to provide testimony.¹⁵⁶ After that point the witnesses are discarded by the state and left to fend for themselves.¹⁵⁷

For many adults left to their own devices, moving away is the safest option.¹⁵⁸ This is more difficult when the witness is a child.¹⁵⁹ A child who moves must enroll in a new school, and parents who are separated must confront custody issues.¹⁶⁰

Following Leroy Brown Jr.'s death, the state of Connecticut created one of the most robust witness protection programs in the country.¹⁶¹ The new laws gave the chief state's attorney direct responsibility for protecting witnesses and directed that office to give special consideration to the protection of child witnesses as well as other categories of people more susceptible to intimidation.¹⁶² The law also gives prosecutors the authority to take protective action in a situation where a parent does not provide or

¹⁵³ Raneta J. Lawson, *Lying, Cheating and Stealing at Government Expense: Striking a Balance Between the Public Interest and the Interest of the Public in the Witness Protection Program*, 24 ARIZ. ST. L.J. 1429, 1429 (1992).

¹⁵⁴ See 18 U.S.C. § 3521 (2006).

¹⁵⁵ *Id.* § 3521(b)(1).

¹⁵⁶ Rogan, *supra* note 18, at 132.

¹⁵⁷ *Id.*

¹⁵⁸ See *id.* at 133.

¹⁵⁹ *Id.*

¹⁶⁰ See *id.*

¹⁶¹ David M. Herszenhorn, *Drug Dealer Found Guilty in Murder of Child Witness*, N.Y. TIMES (June 9, 2009), <http://www.nytimes.com/2000/06/09/nyregion/drug-dealer-found-guilty-in-murder-of-child-witness.html>.

¹⁶² CONN. GEN. STAT. ANN. § 54-82t(b) (West 1999); Herszenhorn, *supra* note 161.

accept adequate protection for their child witness.¹⁶³ These changes to the witness protection program and specific tailoring to the needs of children represent a framework that should be adopted across the country, especially in light of the need to protect children from intimidation to which they are susceptible.

Witness intimidation is a prevalent issue most commonly associated with gangs, organized crime, and inner-city violence.¹⁶⁴ Violence is often used in all three circumstances to deter “snitching.”¹⁶⁵ At the turn of the century, the problem became more prevalent in big cities like Los Angeles where between 1995 and 2000 twenty-five government witnesses were murdered and 1,600 were threatened.¹⁶⁶ Unlike adults, the children who serve as witnesses are generally considered less responsible, more susceptible to peer pressure, less mentally stable, and less aware of the long-term consequences of their participation in the criminal justice system.¹⁶⁷ So far, the system has failed, often treating child informants and witnesses as capable of caring for themselves as adults do despite their unique special interests.¹⁶⁸

Given the unique challenges of protecting children, the United Nations adopted a resolution¹⁶⁹ calling for the creation of a national authority to protect child victims and witnesses that would coordinate services on a national level and tailor to each child within the program.¹⁷⁰ It also requires those who provide protection to receive specific training, especially where appointed as a guardian to protect the interests of the child (in situations where there is no other guardian).¹⁷¹ The United States has yet to adopt the resolution, but should still sign on and create a national

¹⁶³ CONN. GEN. STAT. ANN. § 54-82t(b) (West 1999); Herszenhorn, *supra* note 161.

¹⁶⁴ ALEXANDRA NATAPOFF, SNITCHING: CRIMINAL INFORMANTS AND THE EROSION OF AMERICAN JUSTICE 131–34 (2009).

¹⁶⁵ *Id.* at 134.

¹⁶⁶ Tara C. Kowalski, Note, *Alvarado v. Superior Court: A Death Sentence for Government Witnesses*, 35 U.C. DAVIS L. REV. 207, 208–09 (2001).

¹⁶⁷ See Gilad, *supra* note 105, at 52.

¹⁶⁸ Dennis, *supra* note 44, at 1166.

¹⁶⁹ Gilad, *supra* note 105, at 65.

¹⁷⁰ Economic and Social Council, Res. 2005/20 (July 22, 2005).

¹⁷¹ *Id.*; Gilad, *supra* note 105, at 65.

program modeled on and in compliance with the United Nations' recommended course of action.¹⁷²

To effectively protect child witnesses and informants, current programs must be modified and adapted to the specific needs of children as a group and even further tailored to each individual child's situation. This should be modeled on the approach taken by Connecticut and comply with all United Nations guidelines.¹⁷³ These changes will ensure that those assigned to protect child witnesses are prepared to meet their needs and do not treat them as being capable of mature decisionmaking without adult guidance.¹⁷⁴

C. Screening

Screening procedures like including the use of two-way video screens, allowing for depositions to be read into the record, and allowing the screening of names from court documents, should be available procedures for all children put at risk by their participation in the criminal justice system.¹⁷⁵ In addition to proposing solutions around witness protection for child victims and witnesses, the United Nations' Justice in Matters involving Child Victims and Witnesses of Crime resolution also stipulates that "child victims and witnesses should have their privacy protected as a matter of primary importance."¹⁷⁶ The biggest challenge to implementing screening procedures that would ensure such privacy is the Sixth Amendment's provision that "the accused shall enjoy the right . . . to be confronted with the witnesses against him."¹⁷⁷ However, it has long been held that while the Sixth Amendment offers special and important protections to the accused, it "must occasionally give way to considerations of public policy and the

¹⁷² See *Gilad*, *supra* note 105, at 74–76.

¹⁷³ CONN. GENN. STAT. ANN. § 54-82t (1999); Economic and Social Council, Res. 2005/20 (July 22, 2005)..

¹⁷⁴ See *Dennis*, *supra* note 44, at 1168 (Paz's "handler expressed the position that while the government will do its best within reason to protect juvenile informants, the child assumes the risk of informing, and if harmed in the process, it is not the government's responsibility.").

¹⁷⁵ 18 U.S.C. § 3509 (2009).

¹⁷⁶ Economic and Social Council, Res. 2005/20, 26 (July 22, 2005).

¹⁷⁷ U.S. CONST. amend. VI.

necessities of the case.”¹⁷⁸ As jurisprudence evolved, it became clear that protecting the safety of children is a public policy that necessitates a limited exception to the Sixth Amendment.¹⁷⁹

The Supreme Court went so far as to say, “where face-to-face confrontation causes significant emotional distress in a child witness, there is evidence that such confrontation would in fact *disserve* the Confrontation Clause’s truth-seeking goal.”¹⁸⁰ It is clear that face-to-face confrontation does cause significant emotional distress in situations in which children testify.¹⁸¹ Illustratively, in 1988, Robbie Williams, a seventeen-year-old working as an informant for the City of Virginia Beach Police Department, committed suicide after receiving threats from “individuals upon whom he had informed.”¹⁸² If Williams’s name had been screened it is less likely that he would have received any threats and his young life could have been spared.

Since the Supreme Court ruled them permissible in 1990,¹⁸³ two-way closed circuit televisions have been used in state and federal courts.¹⁸⁴ In *United States v. Gigante*, a 1999 Second Circuit case, the court was tasked with determining the permissibility of the two-way closed circuit television by an adult, Peter Savino, testifying against the Gigante mafia family.¹⁸⁵ Savino was sick with inoperable and terminal cancer at the time of Gigante’s trial, so the government applied for the use of closed-circuit television for his testimony.¹⁸⁶ Savino was visible during the trial and the court found that the use of the screen satisfied all three salutary effects of face to face confrontation.¹⁸⁷ The court

¹⁷⁸ *Mattox v. United States*, 156 U.S. 237, 243 (1895).

¹⁷⁹ *See Maryland v. Craig*, 497 U.S. 836, 857 (1990).

¹⁸⁰ *Id.* (emphasis added).

¹⁸¹ *See State v. Chisholm*, 825 P.2d 147, 153 (Kan. 1992).

¹⁸² *Williamson v. Virginia Beach*, 786 F. Supp. 1238, 1242 (E.D. Va. 1992); Dennis, *supra* note 44, at 1152.

¹⁸³ *Craig*, 497 U.S. at 857.

¹⁸⁴ *See, e.g., United States v. Gigante*, 166 F.3d 75, 80 (2d Cir. 1999); *Chisholm*, 825 P.2d at 155–56.

¹⁸⁵ *Gigante*, 166 F.3d at 79.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 80 (“The salutary effects of face-to-face confrontation include: 1) the giving of testimony under oath; 2) the opportunity for cross-examination; 3)

held that where there were extraordinary circumstances, a trial court may allow the use of “two-way closed circuit television [for testimony] when [it] furthers the interest of justice.”¹⁸⁸ Although that case dealt with an adult, coupling it with the Supreme Court’s holding in *Maryland v. Craig*, it becomes clear that the use of two-way closed-circuit televisions for the testimony of child witnesses to gang violence or other organized crime constitutes a sufficiently extraordinary circumstance to permit the narrow exception to the Sixth Amendment.¹⁸⁹

As the Supreme Court changed its procedures around child witnesses, state courts have implemented multiple screening protections, including “courtroom closure, a special ‘child’s courtroom,’ protective evidentiary rules and hearsay exceptions, delayed discovery statutes, elimination of the marital privilege in child sexual abuse cases, videotaping, closed-circuit television, and use of a screen in the courtroom to protect child witnesses.”¹⁹⁰ Unfortunately, these changes have not been adopted by all states, necessitating further legislative action.¹⁹¹

the ability of the fact-finder to observe demeanor evidence; and 4) the reduced risk that a witness will wrongfully implicate an innocent defendant when testifying in his presence.”).

¹⁸⁸ *Id.* at 81.

¹⁸⁹ *Id.* at 79; *see also* *Maryland v. Craig*, 497 U.S. 836, 857 (1990).

¹⁹⁰ Laurie E. Martin, Note, *Child Abuse Witness Protections Confront Crawford v. Washington*, 39 IND. L. REV. 113, 113 (2005).

¹⁹¹ *Cf.* ALASKA STAT. § 12.45.046 (West 1988); CAL. HEALTH & SAFETY CODE § 1596.8871 (West 1994); CONN. GEN. STAT. ANN. § 54-86g (West 1990); FLA. STAT. ANN. § 92.53 (West 2016); IND. CODE ANN. § 35-37-4-8 (West 2016); KAN. STAT. ANN. § 22-3434 (West 1985); KY. REV. STAT. ANN. § 421.350 (West 2013); LA. STAT. ANN. § 15:283 (2007); ME. REV. STAT. ANN. tit. 22 § 4007 (2013); MD. CODE ANN., CRIMINAL PROCEDURE, §11-303 (West 2001); MINN. STAT. ANN. § 631.046 (West 1985); MISS. CODE ANN. § 13-1-405 (West 1986); MO. ANN. STAT. § 491.702 (West 1987); N.H. REV. STAT. ANN. § 169-C:11 (2017); N.J. STAT. ANN. § 2A:84A-32.4 (West 2017); N.M. STAT. ANN. 1978, § 38-6A-4 (West 2012); N.Y. CRIMINAL PROCEDURE LAW § 65.20 (McKinney 2007); OKLA. STAT. ANN. tit. 12, § 2611.5 (West 2003); OR. REV. STAT. ANN. § 44.545 (West 1991); 42 PA. STAT. AND CONS. STAT. ANN. § 5985 (West 2004); S.C. CODE ANN. § 17-23-175 (1976); TEX. CODE CRIM. PROC. ANN. art. 38.071 (2011); VA. CODE ANN. § 18.2-67.9 (West 2001); WASH. REV. CODE ANN. § 9A.44.150 (West 2013); W. VA. CODE ANN. §62-6B-3 (West 2013); WIS. STAT. ANN. § 950.055 (West 2017).

In 2009, attempting to protect child victims and witnesses, Congress passed new legislation¹⁹² providing alternatives to live in-court testimony primarily for child victims of domestic and sexual abuse crimes.¹⁹³ Those alternatives include the use of two-way closed circuit television and admission of videotaped deposition.¹⁹⁴

Outside of the courtroom setting, children can be screened in court papers by having their names omitted from witness lists or not turned over to the defense where the situation warrants those protections. Under the Federal Rules of Criminal Procedure, a “court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.”¹⁹⁵ Under Rule 16, a court may issue a protective order for a child witness upon a showing of good cause.¹⁹⁶ Although an important provision, cases have not adequately addressed the problem the rule seeks to correct in order to sufficiently protect those children who serve as witnesses against gang and other organized crime.¹⁹⁷ Good cause should be presumed in any instance in which a child is testifying against a gang or other organized crime entity or member because the state’s compelling interest in protecting children is itself good cause for issuing a protective order.

Allowing for the screened testimony of child witnesses is essential to protect children from the physical and emotional harm associated with serving as informants and witnesses screening procedures must be available. In order to change the current climate of witnesses unwilling to come forward, the government would be well advised to implement these procedures to keep the

¹⁹² 18 U.S.C. § 3509 (West 2009).

¹⁹³ *Id.* § 3509(b).

¹⁹⁴ *Id.*

¹⁹⁵ FED. R. CRIM. P. 16(d)(1)

¹⁹⁶ *See id.*

¹⁹⁷ *See id.*; *But see* *Osborne v. Ohio*, 495 U.S. 103, 109 (1990) (stating that the whole community has an interest in protecting children so they may grow into functioning members of society); *Ginsberg v. State of N.Y.*, 390 U.S. 629, 640 (1968) (noting state and federal governments have a compelling interest in protecting wellbeing of children); *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944) (supporting the contention that the government has an interest in protecting the wellbeing of children).

most vulnerable witnesses safe. Existing legislation has had limited application to child witnesses who are not themselves victims of a crime.¹⁹⁸ Legislators must learn from Robbie Williams's tragic fate and broaden the applicability of statutes that allow for screened testimony, especially to protect those who witness violent crimes.¹⁹⁹

IV. COUNTERARGUMENTS

People have argued that the legislative innovations shielding children's in-court testimony, hearsay exceptions, and permission for children to withdraw quickly from the judicial process violate defendants' right to confront adverse witnesses.²⁰⁰ They argue that the children deemed unavailable to testify are not truly unavailable and therefore the defense should have an opportunity for cross examination.²⁰¹ That argument was rejected by the Supreme Court in *Maryland v. Craig*.²⁰² The majority found that "face-to-face confrontation is not an absolute constitutional requirement" and may be abridged when there is a case-specific finding of necessity, is dispositive.²⁰³ Where there is a risk that a child will suffer as a result of his or her appearance in court, the face-to-face confrontation requirement cannot trump the safety of the child.²⁰⁴ The determination of the risk to each child should be evaluated on a case-by-case basis.²⁰⁵

Former Supreme Court Associate Justice William J. Brennan Jr. took issue with the idea of limiting disclosure of witness lists to defense counsel.²⁰⁶ When he made that claim, he was presumably

¹⁹⁸ 18 U.S.C. § 3509 (2009).

¹⁹⁹ *Williamson v. City of Virginia Beach*, 786 F. Supp. 1238, 1241 (E.D. Va. 1992), *aff'd sub nom.* 991 F.2d 793 (4th Cir. 1993).

²⁰⁰ Notes, *The Testimony of Child Victims in Sex Abuse Prosecutions: Two Legislative Innovations*, 98 HARV. L. REV. 806, 817–18 (1985).

²⁰¹ *See id.*

²⁰² *Maryland v. Craig*, 497 U.S. 836, 857 (1990).

²⁰³ *Id.* at 857–58.

²⁰⁴ *See id.* at 858.

²⁰⁵ *Id.*

²⁰⁶ William J. Brennan, Jr., *The Criminal Prosecution: Sporting Event or Quest of Truth? A Progress Report*, 68 WASH. U. L.Q. 1, 14 (1990).

writing about adult witnesses, and even conceded that “in particular [witnesses] against organized crime, have been threatened or murdered, and the federal witness protection program is clearly a very costly and disruptive method of protecting witnesses who may be in danger.”²⁰⁷ With that in mind, the Court of Appeals of California determined that where a child was a witness to a homicide and testified as a corroborating witness after being interviewed by prosecutors and defense counsel, nondisclosure of the child’s name was permissible and not in violation of the confrontation clause.²⁰⁸ The California Court’s approach should be widely adopted as it appropriately prioritizes the government’s legitimate interest in protecting children.²⁰⁹

Prominent international jurist, the former Chief Justice of England, argued that there is no reason to necessitate direct participation of children as live witnesses in court.²¹⁰ While this certainly looks out for the best interests of children, taking this approach in the United States is incompatible with the Sixth Amendment’s confrontation clause.²¹¹ By instead adopting the approaches of states and agencies, designed with guidance from child advocacy groups, and implementing procedures advised by the United Nations, children can be protected by less restrictive means than those proposed by the Chief Justice.²¹² Adopting the

²⁰⁷ *Id.*

²⁰⁸ *People v. Superior Court (Piedrahita)*, 40 Cal. Rptr. 2d 335, 343 (Cal. Dist. Ct. App. 1995).

²⁰⁹ *Osborne v. Ohio*, 495 U.S. 103, 108 (1990) (holding that a “State’s interest in ‘safeguarding the physical and psychological well-being of a minor’ is ‘compelling’”); *Ginsberg v. State of N.Y.*, 390 U.S. 629, 640 (1968) (opining that the State possesses an independent interest in the well-being of its youth); *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944) (supporting the contention that the government has an interest in protecting the wellbeing of children).

²¹⁰ Owen Bowcott, *Child Victims and Witnesses Should No Longer Appear in Court, Says Lord Judge*, *GUARDIAN* (Nov. 21, 2013), <https://www.theguardian.com/law/2013/nov/21/child-victims-witnesses-court-lord-judge>.

²¹¹ *See* U.S. CONST. amend. VI. (“In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.”).

²¹² *See* CONN. GEN. STAT. ANN. §§ 54-82s, 54-82t(a)(3)(c) (West 1999); FLA. STAT. ANN. §914.28 (West 2009); U.S. DEP’T OF JUST., U.S. ATTY’S MANUAL, WITNESS SECURITY Title 9: 9-

proposed three-pronged legislation will sufficiently protect children involved in the criminal justice system by the most narrowly tailored means possible.

Pomona Police Lieutenant Louie Hernandez similarly felt that children should not be subjected to the dangers posed by being participants in the criminal justice system as witnesses and informants.²¹³ He refused even to give the prosecutor information about a key witness to a murder, saying, “[If] I can’t make the case without a juvenile witness, I let the case go.”²¹⁴ Although there might be a case where that would be appropriate, given the nature of gang violence and organized crime the use of child informants and testimony of child witnesses is too often essential to a conviction.²¹⁵

CONCLUSION

Action must be taken to keep safe children who serve as witnesses and informants. Every person owes their state a duty to testify, despite instances in which that duty subjects the person testifying to threat of physical violence or even death.²¹⁶ In 2011, a fifteen-year-old girl was called on to testify about a shooting she witnessed two years earlier.²¹⁷ When she refused to testify, apparently out of fear, the judge ordered her to spend a night in

21.000, <https://www.justice.gov/usam/usam-9-21000-witness-security#9-21.110> (last visited June 21, 2018); Training and Education Programs Concerning Treatment of Child Witnesses, N.Y. COMP. CODES R. & REGS. tit. 22, §35.2 (1985); E.S.C. Res. 2005/20, *supra* note 147.

²¹³ Rogan, *supra* note 18, at 133.

²¹⁴ *Id.*

²¹⁵ See Mark Curriden, *Making Crime Pay: What’s the Cost of Using Paid Informer?*, 77 A.B.A. J. 42, 44 (1991) (quoting U.S. Attorney Joe Whitley saying “[i]f we could make cases without [informants], we would” and Tom Charron, president of the National District Attorneys Association referring to using informants as “a necessary evil.”).

²¹⁶ Rogan, *supra* note 18, at 128.

²¹⁷ Paul Purpura, *Scared Teen Witness Refuses to Testify in Murder Trial So Judge Sends Her to Jail*, TIMES-PICAYUNE (May 20, 2011), http://www.nola.com/crime/index.ssf/2011/05/scared_teen_witness_refuses_to.html.

jail, holding her in contempt.²¹⁸ Until more safeguards are put in place to ensure the safety of children, they should not be placed at the mercy of those they witness and inform against. The state needs to provide more protections.

Child witnesses continue to be murdered today. On January 24, 2018, Mujey Dumbuya, a sixteen-year-old high school student in Michigan, went missing.²¹⁹ After she was found dead, authorities charged Quinn Anthony James with the premeditated first-degree murder of the girl, who accused him of rape and was scheduled to testify against him.²²⁰

To avoid the murders of any more child informants and witnesses, legislation must be enacted in every state. That legislation, to be compelled by conditional federal funding for related programs, should follow examples already set forth in some state materials as well as the United Nations. Comprehensive legislation must include provisions mandating the specialized training of those handlers who work with child witnesses and informants, a specialized witness protection program designed to meet the unique needs of children, and it must allow for screening of in-court testimony and filings. Without such components, children will remain insufficiently protected.

²¹⁸ *Id.*

²¹⁹ Crimesider Staff, *Teen Found Slain was Scheduled to Testify Against Her Accused Rapist*, CBS NEWS (Feb. 8, 2018), <https://www.cbsnews.com/news/mujey-dumbuya-teen-found-slain-was-scheduled-to-testify-against-her-accused-rapist/>.

²²⁰ Matt Stevens, *Man Accused of Raping Michigan Teenager Is Now Charged with Killing Her*, N.Y. TIMES (Apr. 11, 2018), <https://www.nytimes.com/2018/04/11/us/teen-killed-michigan.html>.