

## BULLYING: CURRENT ISSUES OF COMMISSIONING AND CARRYING OUT OF EXPERT PSYCHOLOGICAL EVIDENCE IN COURT

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**Abstract:** The relevance of the problem under research is due to a significant increase in the number of forensic psychological examinations during considering administrative cases and criminal proceedings in issues of bullying, the conduct of which clearly demonstrates the presence of a number of defects in the theoretical justification of this type of examination. The purpose of the study is to try to solve the problems of forensic psychological examination of bullying, the need for which arises in administrative and criminal proceedings. The methodological basis of forensic psychological examination of bullying is made up of general psychological scientific principles: termism,

development of the human psyche in the unity of its consciousness and activity, systematic nature, which involves the study of mental activity as a whole. The study found that the current stage of development of forensic psychological examination of bullying is characterized by unequal treatment of both lawyers and psychologists. Forensic psychological examination of bullying requires the development of an appropriate methodology for its implementation, based on the use of a significant number of general psychological and special methods. The materials in this article may be useful for law enforcement personnel, legal proceedings, psychology specialists, and research

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workers focused on conducting research on bullying problems.

**Keywords:** research methods, judicial-psychological examination, bullying, delinquent behavior, adolescence.

### Introduction

The problem of child abuse in the civilized world is given the closest attention in the humanistic era. It is well known in the scientific fields, art, and in the media. In many countries of Europe and in the USA, it is associated with state interests. You should also not forget about the vastness of the space of child cruelty. This social phenomenon is mostly latent until it manifests itself distinctly, often in severe forms and with serious consequences. Millions of children and adolescents suffer from cruelty on the part of other people (both strangers and relatives), and these manifestations are very diverse: from harmless jokes to bullying and heavy violent acts, which can end with an assassination attempt and murder. Therefore, the problem of countering bullying affects all sectors of society: from the highest state power to the institution of the family. In Europe and America, the term “bullying” has taken

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root, associated with the fighting games of young bulls. It implies literally bullying one child by another. Less well known is the term mobbing, which refers to the case of a group attack on one or more children. In the scientific and practical community, the term “bullying” is used as a broader and covering various cases of bullying.

In a broad sense, bullying is a special type of violence when one person (or group) physically attacks, or threatens another, weaker physically and morally person (or group of people). Bullying differs from a random fight in the systematic and regular repetition (Aptikieva, 2018). Today this term has acquired a social, psychological character and has become an international term for psychologists, lawyers, and educators. Indeed, this problem is interdisciplinary and, first of all, it should be of interest to lawyers, as the law must guarantee the safety of children from all forms of violence. Legal psychologists and criminologists should study and implement methodological developments for practitioners regarding the occurrence and diagnosis of child cruelty and violence. Practical psychologists should diagnose and provide assistance to



children affected by abuse and violence, as well as work with young aggressors. Educators and mentors should be aware of what to do in situations of child cruelty and violence.

Bullying is a social interaction, as a result of which one person (sometimes several) experiences a regular attack of another person (sometimes several) for a long period (several months), which causes the victim a feeling of helplessness and exclusion from the social group. Among the socio-psychological causes of bullying in the school environment, scientists distinguish the following: the struggle for leadership; clashes of different subcultures, values, views and inability to tolerate them; aggressiveness and victimization; the presence of mental and physical disabilities in the child; envy; lack of leisure activities (Grishina, 2019).

The authors of this article believe that bullying is not just a complex socio-pedagogical, psychological phenomenon, not just a conflict, it is essentially violence. Psychologists draw attention to the fact that bullying is a manifestation of violence, cruelty and aggressiveness in a teenage environment, which injures the

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victim and negatively affects the development of its personality. Acting as premorbid (“prae” – before and “morbus” – disease), bullying can lead to the formation of an asocial orientation, both in the victim and in the subject of bullying. So, according to a study by D. Olweus (1993), from 35% to 40% of adolescents who were aggressors at the age of 13-16 years old were convicted of criminal offenses at the age of 24 years. In addition, they, like their victims, also had a high level of neuropsychiatric disorders.

### **Materials and Methods**

In the research process, the following methods were used: theoretical (analysis; synthesis; concretization; generalization; method of analogies; modeling); diagnostic (questionnaire; interviewing; testing); empirical (study of the experience of forensic organizations, regulatory and educational documentation; observation); general psychological methods and principles (a systematic approach to the study of mental phenomena; the development of the psyche in the process of a child’s life; the principle of determinism; the principle of consciousness and activity); methods of



mathematical statistics and graphic representation of the results.

The study of the problem was carried out in three stages. At the first stage, a theoretical analysis of the existing methodological approaches in the psychological, legal and pedagogical scientific literature, dissertations on the problem, as well as the theory and methodology of psychological research; the problem, purpose, and research methods are highlighted, a research plan is drawn up. At the second stage, a model for the formation of monitoring skills of teachers was developed; a set of pedagogical conditions for the effective formation of monitoring skills of teachers was identified and justified; experimental work was carried out, the conclusions obtained in the course of the experimental work were analyzed, verified and clarified. At the third stage, research work was completed, theoretical and practical conclusions were clarified, and the results obtained were generalized and systematized.

The study of legal, psychological and pedagogical literature, as well as domestic judicial practice in cases of bullying, allows us to state the absence of special studies on the problem of forensic psychological

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examination of bullying. The expert psychologist is faced with the task of professionally assessing the mental processes, mental states and properties of the person as a whole, a psychological analysis of the person's attitude to the situation, as well as analyzing the influence of the revealed mental characteristics of the behavior on the tort under the expert in a specific situation.

These issues are considered quite fully in the scientific works of O.A. Belobrykina and Yu.Yu. Ivanko (2011), O.A. Belobrykina et al. (2016), devoted to the consideration of forensic psychological issues examination of psychological influence and psychological violence. Other scientific works, although they are devoted to the forensic psychological examination of bullying (Freeman et al., 2012; Bostic and Brunt, 2011), at the same time, consider the problems through the prism of civil law relations, or describe the obligations of other subjects to combat bullying (for example, schools) in resolving these problems.

There are practically no separate works affecting the issues of forensic psychological examination of bullying in administrative or criminal cases. Thus, an analysis of the literature

and legal practice allowed us to conclude that the problems of the appointment and conduct of forensic psychological examination are not given due attention.

## **Results and Discussion**

### **Features of the Carrying Out of Expert Psychological Evidence in Court During Examination of Administrative Cases and Criminal Procedures on Bullying**

The child, due to the incompleteness of the process of his physiological, mental and personal development, is a special object to protection of his/her rights. In practice, this is manifested, inter alia, in the implementation of the principles of “juvenile justice” in the justice of minors. Many scientists and practitioners look at this problem ambiguously, however, they draw attention to the fact that, on the one hand, this allows not only to change attitudes towards the process of pre-trial investigation and trial, but also to more effectively carry out the process of resocialization of a teenager who has come into conflict with the law.

With this approach, those offenders who, by virtue of age, are not subject to liability or have committed insignificant (in terms of criminal,

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administrative law), but already offenses, will not leave the attention of law enforcement agencies. The introduction of the principles of juvenile justice allows focusing not only on the subject of responsibility, but also on the victim as an object of protection of his/her rights, i.e. the principles of juvenile justice allow us to simultaneously consider a child as a special subject of responsibility, and as a special object of protection of his/her rights (Shipshin, 2008).

Given the complexity and criticality of this problem in Ukraine, on December 18, 2018, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine regarding Countering Bullying” (2019). According to the level of social danger, this offense was attributed to administrative, having provided for the corresponding composition in the Code of Ukraine on Administrative Offenses (1984). So, in accordance with Art. 173-4 of the Code on Administrative Offenses (1984), bullying is defined as the act of the participants in the educational process, consisting of psychological, physical, economic, sexual violence, including using electronic communications made



with respect to a minor or underage person or by such a person in relation to other participants in the educational process, as a result of which the mental or physical health of the victim could or was harmed. Persons from 16 years of age are brought to administrative responsibility, and before that, their parents are responsible for the actions.

According to the Unified State Register of Court Decisions (2019), as of December 2019, the courts examined 316 cases of bullying, of which: in 123 administrative cases, a decision was imposed on a fine; 88 cases (28% of the total number of cases) were sent for revision to the National Police; 84 cases (26%) were closed for lack of corpus delicti or in connection with the expiration of the limitation period; in 21 cases (6%) the court limited itself to an oral observation. As regards criminal liability for committing offenses related to bullying, there is no special article in the Criminal Code of Ukraine (2001), and offenses related to committing bullying are qualified by the relevant articles of the Criminal Code, in particular – bodily harm of varying severity; threat of murder, if there were real grounds for fear of this threat; hooliganism, that is, a gross violation of

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public order with the motives of obvious disrespect for society, which is accompanied by special arrogance or exceptional cynicism.

Some legal scholars draw attention to the small number of administrative and criminal cases involving bullying examined by the courts. We consider this state of affairs to be normal, because the number of cases should not be large, since in the situation with bullying, the main efforts should be directed towards the prevention of this phenomenon, and the legislation on criminal and administrative responsibility should bear, first of all, a preventive rather than punitive function.

In accordance with the Article 72 of the Code of Administrative Procedure of Ukraine (2005), evidence in administrative proceedings is any information on the basis of which the court establishes the presence or absence of circumstances (facts) that substantiate the claims and disagreements of the participants in the case, and other circumstances that are important for its proper resolution. These data are established by such means: written, physical and electronic evidence; findings of experts; witness statements.



It is necessary to take into account that the expert's conclusion will have evidentiary value if the scientific data are explained by the facts of observation, the expert's conclusions are properly motivated, the expert's research is consistent with the available materials, and the facts established by the expert, as well as the conclusions drawn from them, are correlated. Forensics plays a critical role in obtaining evidence that can assist in establishing the desired legal facts related to bullying. This is evidenced by the extensive practice of appointing and conducting forensic examinations by courts of both administrative and criminal jurisdictions. The grounds for the appointment of a forensic psychological examination in administrative proceedings are: the court has reasonable doubts about the ability of a person (a specific participant in the process) to correctly reflect the external and internal sides of events, circumstances that are important for the proper consideration and resolution of the case.

Forensic psychological expert research, as a rule, is based on a certain technique, which has its own scientific and methodological status. The technique may be traditional, i.e.

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generally accepted. Due to many years of practice, its scientific foundations do not require special confirmation. Techniques may be certified and not certified; they are generally accepted, and in practice their strict observance is necessary. However, with respect to forensic research techniques, scientific recognition and certification are essential. Each expert technique is designed to study a certain type of objects and solve a specific typical problem.

In addition, its use may be subject to certain conditions. Each methodology has its own criteria for assessing the need and sufficiency (significance) of information obtained as a result of a study to make certain decisions. The question of the degree of reliability (trustworthiness) of the results of a specific study requires an expert to answer in all cases, regardless of whether the study was conducted at a qualitatively descriptive or quantitative level. If the methodology used by the expert is of a qualitatively descriptive nature, the expert answers the question based on the general criteria for the formation of a conclusion on this type of examination and the materials of a



specific case – how informative are they for giving an opinion (Zhizhina, 2016).

When conducting a forensic psychological examination of bullying, both laboratory and natural experiments can be carried out, and methods can also be used: observation, which consists in studying of a person's behavior, his/her condition and reactions in certain situations; interview, with the help of which the level of development, the circle of interests, the nature of the assessment of one's and others' actions, the results of the individual's observation of his/her own mental processes, the study of the case materials, which determine the nature of the offense, information about the identity of the subject, his/her role in the event and his position; testing, which involves solving verbal and non-verbal tasks and performing other tasks, the results of which will make it possible to determine some mental characteristics of the face and more.

The phenomenon of bullying has the following specific features: the manifestation of violent, aggressive actions; actions have a long context; actions are aimed at a person who is not able to protect himself (power imbalance); bullying actions are quite

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conscious. This is just conscious violence, the aggressor is well aware and fully aware of what he is doing, what he is doing and what the consequences may be, that is, bullying is the conscious infliction of pain and suffering to another person. Conditionally, the following components are present in bullying: negative aggressive violent behavior; regularity of actions taken; different degrees of power in the victim and the aggressor, whose behavior is conscious, intentional. There are two types of bullying: direct (physical aggression) and indirect (social aggression); bullying criteria: purposefulness, regularity, inequality of power/authority. The assessment of unlawful behavior in case of bullying depends, first of all, on whether this behavior is recognized by society as unlawful and whether the person committing this act is aware of it. Based on the foregoing, a purely legal definition of the unlawful behavior of a "buller" is not possible.

An expert study of bullying is a complex process, because the psychology of bullying has not been studied enough in modern practice. Scientists consider this problem from different perspectives: the individual psychological characteristics of the



participants in the bullying (bullies, victims and bullies initiators); socio-psychological conditions for the occurrence and spread of bullying; micro- and macrosocial patterns of various social groups where bullying exists. From the very beginning, one of the foreground areas of forensic psychological examination was forensic examination of juvenile offenders, singled out as an independent type of forensic psychological examination. It is the psyche of a minor that is the central object of research during the examination of victims of bullying.

When appointing such an examination in administrative cases of bullying, it is advisable to put the following questions to the expert for permission:

- does the minor have individual psychological characteristics of personality traits that allow him to judge the pattern or randomness of what he did;

- whether the minor has personality traits, personality traits that negatively affect the ability to regulate behavior;

- whether the socio-psychological situation in which he is influenced the commission of the offense by minors;

- does a minor have individual psychological characteristics, personality traits, as well as situational factors that are significant for predicting the risk of relapse and determining a corrective action program and more.

In cases where a minor becomes a victim of a bullying crime, a forensic psychological examination is also prescribed. Its purpose is advisable when the child is clearly inflicted (or may be inflicted) a mental trauma on the child with a perfect crime. The use of the results of forensic psychological examination in proving moral harm is possible, since an unlawful act when bullying is one of the varieties of the external arbitrary behavior of a minor. The separation of bullying as a special category of arbitrary behavior into a separate group is due to the existence of certain norms in society. The complexity of this type of forensic psychological examination is due to the fact that the question remains unclear whether the degree of change in mental activity is really a key criterion in determining its presence.

In order for the court to take into account, when determining the amount of compensation for moral harm, the degree of physical and moral



suffering associated with the individual characteristics of the person who has been harmed, psychology experts must determine the following circumstances: the mental state of the subject, individual psychological characteristics of the subject, the degree of severity of the changes mental activity (persistence, reversibility, duration), a causal relationship between harm (psycho-traumatic impact) and the emergence and development of mental changes (Safuanov et al., 2005). The definition of the essence of moral harm as suffering means that the actions of the buller must necessarily be reflected in the consciousness of the victim, cause a certain mental reaction. At the same time, adverse changes are reflected in the victim's consciousness in the form of negative feelings (physical suffering) or experiences (moral suffering). The essence of such sensations may be fear, shame, or another unfavorable condition in the psychological aspect.

Obviously, any unlawful act or omission can cause the victim moral suffering of varying degrees and deprive her completely or partially of mental well-being. Knowledge in the field of psychology makes it possible to note that the victim's description of his suffering

should be regarded as a hypothesis: it can fully correspond to reality, partially or completely differ from it. Of course, it is difficult to challenge a person's assertion about his suffering, since experiences are the subjective experience that the individual has. At the same time, modern methods of psychodiagnostics make it possible to determine the characteristics of mental experiences and to objectify subjective statements about them (Engalychev and Yuzhaninova, 2007).

Parents of a bullying victim who witnessed the child's experience can only make assumptions about his mental state. They observe external manifestations of emotions, which are better than other emotional components amenable to conscious control, therefore – they do not always correspond unambiguously to the internal state of the bullying victim. In this regard, the appointment and conduct of a forensic psychological expert examination of the mental state of the victim of bullying allows you to obtain information that can be difficult to obtain in other ways.

**Theoretical and Methodological Approach to Solving the Problems of Forensic Psychological Examination in Cases of Bullying**



The main objective of this type of examination is not to establish the fact of the presence/absence of “harm”, but to identify the necessary cause and effect relationships between the impact and its result. This view focuses on the analysis of the behavior of the causer of the “harm” and does not exclude taking into account the degree of changes in the mental activity of the victim. This approach (Karmanova, 2013) will enable judges to consider compensation for non-pecuniary damage as a certain degree of “punishment” for the guilty, and not as “compensation” for the victim.

Taking into account the tasks posed by the expert-psychologist, the initiator of the examination, conducting a forensic psychological examination in each case involves an extensive selection of different research methods, which in psychology are conditionally divided into: “personal” (identifying stable and situationally determined motives of behavior, character traits, features of the emotional-volitional sphere) and “intellectual” (identifying the individual characteristics of the cognitive sphere in a sub-expert person). In any case, the choice of methods is constructed in such a way as to optimally obtain data on the

dynamics and content of the overall mental development. A set of methods for studying bullying is not standard and involves taking into account the individual characteristics of victims of bullying and bullers.

Important for a successful psychological research is the choice of a method. Such a choice takes into account the specifics of the tasks set during the study, and not by simply sorting out a large arsenal of known methods of psychological research. The psychologist should have a good idea of the advantages and disadvantages of each of the methods, the possibility of their joint application, their acceptability for solving the posed problem. Based on the system-activity approach, a basic algorithm was developed for conducting forensic psychological examination when considering administrative cases and criminal proceedings on bullying, we consider it possible to propose the following (Fig. 1).

The presented algorithm was taken as a basis during forensic psychological studies in the cases of the above categories, which allowed us to structure the study in a certain way, minimize certain negative factors

affecting both the expert and the expert,  
and shorten the examination time.

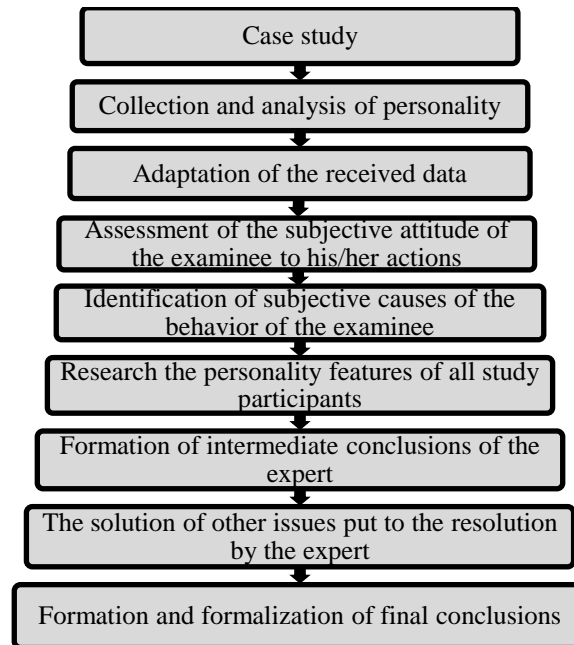


Figure 1. The forensic psychological examination algorithm about bullying

### **The Use of Psychological Research Methods in the Context of the Use of the Algorithm**

The first thing an expert is confronted with is the case file. The objective side of the actions of the subject is described in the materials of the administrative case or criminal proceedings. The study of the case materials helps to establish the nature of the offense, information about the identity of the subject, his role in the event and his position. In addition to legal supporting documents and protocols, an expert can use the

biographical method, which operates with data on objective events and subjective experiences of a person in different life circumstances, on the basis of which allows making inferences about the character, self-awareness, life orientation, talent and life experience of a person. All of the above structures are personal-biographical and cannot be understood in isolation from the real life path of a person, and, therefore, without a biographical method – collecting and analyzing data on the life path of a person as a person and subject of activity (analysis of human documentation,



testimonies of contemporaries, products of the activity of man himself, etc.).

Separately, we want to pay attention to the method of analysis of activity products, as especially relevant in the study of the personality of a child. In order to overcome the subjectivity of a forensic expert when studying documents, to identify reliable information regarding the bullying situation under study and to register it accurately enough, we used a special method – content analysis. Its main procedure was to translate quality information into the language of the account. For this purpose, two types of units were distinguished: semantic (qualitative), units of analysis and units of account (quantitative). The main difficulty when working with documentary sources is the ability to conduct a qualitative analysis, i.e., to distinguish semantic units. This largely depends on the personal competence of the forensic expert and the level of his creative abilities.

Specifically, content analysis can be used in the processing of data obtained by projective methods (for example, Thematic apperception test, Completion of sentences), interviews, content of conversations, other speech

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and written products of the test subject, open-ended questionnaire questions, etc. For example, in diagnostic methods personal characteristics (anxiety, neuroticism, etc.) a content analysis of the grammatical and stylistic structures of the teste's speech is carried out: the number of "thematic" statements (illness, fear, uncertainty, etc.), verbs, logical blocks, etc. Such an analysis often allows you to identify and objectify a hidden tendency in the answers of the subject.

The subjective assessment by minors of their actions is determined through focused conversation. The form of the conversation is individual, in the absence of third parties. If the age of the interviewee requires the presence of the parents (guardian), it is necessary to correctly place all those present in the space of the forensic office (to minimize the influence of third parties on the child's testimony). The purpose of a clinical (deep) conversation is to obtain information about the motives, deep motives, inclinations of the interviewee. To ensure a successful conversation, it is necessary to develop a conversation plan, take into account the characteristics of the respondents, and also determine the way of recording the results of the

conversation, etc. Direct contact with the interviewee and the relationship that is established between him and the researcher create many advantages for obtaining information about the interlocutor. But, unfortunately, these same advantages turn into new difficulties. The main problem is to minimize the “disturbing” influence of the researcher’s personality.

The next group of methods that help to reveal the thoughts and attitudes of the researcher at a subconscious level, when participants cannot control their thoughts, feelings and emotions, are projective techniques. Their feature is the ability to reveal the possible subjective causes of human behavior. Among them: the test “Drawing a house”, the test Goodinaf and Machover (“Human Figure”), the test “Drawing a tree”, the technique of T.P. Repnova “Lamb in a bottle”, etc. To study the personality characteristics of all participants in the study, it is necessary first of all to focus on the questions posed by the expert study, as well as the age of the examinee (Kremlyakova, 2017).

Other methods that are most often used in forensic psychological examination in cases of bullying include the following: methods for studying

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memory, attention, thinking, emotional intelligence (“Pictogram”, “Exclusion of superfluous objects”, “Classification”, “Comparison of concepts”, “The sequence of plot drawings”) – they are used to study the intellectual sphere. Characterological properties, especially emotional responses and the motivational sphere can be investigated using personal questionnaires. To conduct a psychodiagnostics study of bullying and determine the likely profiles of participants, as a rule, such methods are used as: R. Kettel’s questionnaire, anxiety research methods, methods for diagnosing forms of aggressive behavior, methods for studying self-esteem and level of achievements according to T. Dembo and S. Rubinshtein, methods diagnosis of parental relationships A. Varga and V. Stolin (1988) and others (Prikhozhan, 1988; Aleksandrovskaya and Gilyasheva, 1995; Khodanovych, 2019).

## Conclusions

In the course of the study, it was found that the current stage in the development of forensic psychological examination of bullying is characterized by an unequal attitude towards it by both lawyers and psychologists. In the



Ukrainian legal system, there are a number of problems in the appointment and conduct of the above examination. Most of them are associated with the poor development of its theoretical foundations. The following elements are important for conducting a forensic psychological examination of bullying: deciding on the purpose and conduct of this examination, correctly determining the type of examination and subject of research, choosing an expert or expert institution, asking questions to an expert psychologist within his competence.

The algorithm of forensic psychological examination proposed in the article when considering administrative cases and criminal proceedings on bullying is an authoring development aimed at improving the activities of experts, minimizing possible negative factors, such as, for example, the subjectivity of a forensic expert, and does not claim to be exclusive. On the contrary, by publishing their approach, the authors want to draw the attention of the scientific community to the problems of this type of forensic examination, then to encourage scientists to intensify scientific research in this area.

The materials in this article may be useful for employees of law

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enforcement agencies, legal proceedings, and scientific workers oriented toward conducting forensic psychological expert studies. In the process of studying the problems, new questions and problems have arisen that need to be addressed. It is necessary to continue research on the development of forensic psychological examination techniques when considering cases of bullying.

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