

Handling Juvenile on Child Sexual Abuse Cases

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DISCLAIMER

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HANDLING JUVENILE ON CHILD SEXUAL ABUSE CASES



FACING THE CHALLENGE

Why are the cases important?

- Abuse has long term impacts on its victims and, therefore, their communities.
 - The low self esteem and other psychological problems brought on by abuse early in life often lead to behavioral and educational problems.
 - These children can struggle to form positive social relationships, are more likely to be involved in criminal activity as adults and suffer from learning disabilities. This not only increases stress on our child welfare and court resources but also on our educational system, all of which are overburdened.
- But the impacts don't end there.
 - Victims of child abuse are at significantly higher risk of drug and alcohol abuse and are more likely to suffer from depression, anxiety and other mental health disorders.

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Common Obstacles to Prosecution

- Delayed Disclosures/Failure to Report
 - The average age of disclosure of child sex abuse? 52 years old
 - 82% do not disclose during childhood and 1 in 5 never disclose at all
 - 42% of children who do disclose only disclose to a friend their age
 - Many victims face roadblocks from SOLs though that is changing
- Misconceptions
 - A child who is really being abused would tell someone immediately
 - A child who is being abused, especially by another child, would fight back
 - Sexual abuse of a child, especially a small child, will leave visible injuries
 - Delayed disclosures are false memories/planted memories/attempts at revenge or money
- Non-Cooperative, non-offending guardians
 - Sometimes as simple as meeting face to face
 - Sometimes may require intervention of DSS (if harmful to the child) or even law enforcement (if hiding evidence, intimidating a witness, etc.)

Obstacles Specific to Child-on-Child Sex Abuse

- It is not rare (juveniles account for more than 1/3 (35.6 %) of those known to police to have committed sex offenses against minors*)
- Failure to Report
 - It is a phase
 - Best dealt with in the family
 - The offender will grow out of it
- Juvenile sex offenders do not all come from abusive or dysfunctional homes
- Some good news: of those who receive treatment, juvenile sex offenders have a very low recidivism rate (5-17%), much lower than other delinquent behavior or adult SOs**

*U.S. Department of Justice, Federal Bureau of Investigation, National Incident-Based Reporting System, 2004.

**Worling, J. R., & Curwin, T. (2000). Adolescent sexual offender recidivism: Success of specialized treatment and implication for risk prediction. *Child Abuse and Neglect*, 24, 965-982

Abnormal Sexual Behavior

- Kids do weird stuff
- Experts know how to differentiate
- Expected behavior for 3-6 year olds
 - Exploratory touching
 - Mimicking behaviors they see
 - Play “house”, hold hands, kiss
- Expected behavior for 7-11 year olds
 - Masturbation
 - Interest in the opposite/same sex
 - Watching people undress
- Expected behavior for 12 & up
 - Full range of sexual behaviors

Case Screening

- Law enforcement/prosecution screening of juvenile sex cases is important
- Many law enforcement officers are not familiar with the juvenile court process
- Because the law in most states is very specific and can be confusing when it comes to sex offenses between juveniles, communication with prosecutors during the screening/petition process is usually essential
 - Consider creating a cheat sheet for your law enforcement, court counselors, etc. covering legal issues related to child sex crimes
- Familiarize yourself with caselaw on common charging/petition issues
- Keep your door open

General Ideas for Assessing

- Behavior
 - What was the victim's behavior before? After?
 - What was offender's behavior before? After?
 - How did others view the way the offender treated the victim?
- Other changes (for both)
 - School attendance? Grades? Participation in sports/clubs?
- Digital Data
 - Every kid on earth uses some sort of social media and texting
- MDTs
 - Bring in experts in other professions early

Building a Child Sex Abuse Case

- Have your team of experts
 - Forensic interviewers, doctors, nurses, social workers
 - Know what they can testify to
 - In many states, experts in these cases must be careful not to appear to be “vouching for the credibility of the victim”
 - HOWEVER, their testimony is invaluable to dispelling the myths of child abuse (lack of physical injuries, delayed disclosure, etc.)
 - Know where that line is in your state (specific examples) and make sure your expert knows
 - Usually something like “A lack of physical findings on an exam is not inconsistent with sexual abuse” and “The victim’s delay in disclosing abuse is consistent with the behavioral profiles of sexually abused children.”
 - Prep your team
 - Witness prep is essential
- Use your team to go on offense
 - Be ready to address common defenses on direct (delay, lack of injuries)

Multi-Disciplinary Teams

- If you have one, be involved
 - Do trainings, attend meetings
- If you don't have one, look into starting one
- Child abuse involves many agencies and professionals, many of whom do not understand what the other does or needs to do
- Working together not only strengthens the case at issue but all future cases
- Most jurisdictions have statutes or local orders that allow for information sharing



THE CHILD WITNESS

A Prosecutor's Guide to a Child-Friendly Court Process

Common Challenges

- Getting your witness comfortable pre-trial
- Proving competency, need for accommodations
- Controlling the courtroom
 - Options for making the courtroom as secure as possible
 - Providing in-courtroom support for the child
- Making your witness comfortable during trial

Study Up

- You can learn a lot about what kind of witness you will have by looking at reports
- Be prepared for the challenges you will face
- Consult an expert
- Take a lesson from the forensic interviewer

Resources

- Courts and children: https://www.americanbar.org/groups/public_interest/child_law/
- Courthouse dogs: www.courthousedogs.com
- International Forensic Interviewing Protocol: <http://nichdprotocol.com/>
- Trauma-informed courts: <https://www.nctsn.org/>
- Your local Child Advocacy Center or other child welfare organization

Basic Trial Preparation with the Child Witness

- ALWAYS meet with the child (hopefully multiple times)
 - Consider timing
- Take the child to the courtroom
 - Let him or her sit/stand/walk around
 - Explain where everyone will be and what their job is
 - Practice talking from the stand, but about something innocuous/light-hearted
- Establish a rapport but don't be a therapist
- Try to find out the child's greatest fear or concern
 - Also, find out mom/dad's greatest fear/concern
 - You might be surprised!
- Emphasize the need to tell the truth
- Check in – Don't assume the level of comfort will persist day to day/week to week

Court Rules for the Child Witness

- Always, always, always tell the truth!!!!
- If you don't know the answer, say I don't know
- Never guess
- If you don't understand, say I don't understand
- If there is an objection, that means freeze
- Wait for the judge to tell you what to do
- If you don't understand, ask the judge what to do
- If you need to go to the bathroom, tell me
- If you need some water, tell me
- If you need a break, tell me
- It's ok to disagree with an adult, or to tell them they are wrong

CLE Break

A poll question will appear on your screens. Listen for the CLE verification word and select it from the possible answers.



KNOW YOUR OPTIONS

Use Your Tools

- Know your law, know your witness
- Most states have allowances for child witnesses. Use them!
 - Remote testimony
 - Comfort Items/Support Person
 - Courthouse dog
 - Leading questions
 - Closing the courtroom/limiting courtroom audience
 - Motions in limine

A Word on Competency

- Laws in states vary as to when a witness is competent to testify
 - Some have a specific age, many make a determination on a case by case basis
- Keep in mind*:
 - Children as young as 3 have been show to reliably recall information
 - Children as young as 3 can identify between the truth and a lie (though older children are better able to differentiate between a mistake and a deliberate misrepresentation)
 - Children can be more prone to suggestibility (especially to suggestions by an authority figure)

*The Child Witness in the Courtroom, Robert H. Pantell and COMMITTEE ON PSYCHOSOCIAL ASPECTS OF CHILD AND FAMILY HEALTH, Pediatrics March 2017, 139 (3) e20164008; DOI: <https://doi.org/10.1542/peds.2016-4008>

Remote Testimony

- MARYLAND V CRAIG, 497 US 836 (1990)
 - The prosecutor who wishes to use closed circuit testimony should file a motion with the court to request a hearing, so that the court can determine based on the evidence presented whether closed circuit testimony is necessary.
 - The prosecutor must demonstrate that testifying in the presence of the defendant would **emotionally traumatize** the child to the point that the trauma flowing directly from **being in the defendant's presence** would interfere with the child's **ability to communicate**, and thus interfere with the ability of jurors to **ascertain the truth**.

Remote Testimony

- Must hold a hearing and take evidence to determine whether the use of the procedure is necessary to protect the welfare of the particular child witness;
- Need a finding that the child witness would be traumatized, not just by the courtroom generally, but by the defendant's presence;
- Need a finding that the emotional distress suffered by the child witness in the defendant's presence is "more than de minimis; i.e., more than 'mere nervousness or excitement or some reluctance to testify."

Comfort Items/Support People

- Some states allow a child witness to testify while holding a comfort item or even from the lap of a guardian
- Even if a visible comfort item is not allowed, some prosecutors have found success in asking the child to bring a small item in their pocket (a rock, a small toy) that they can rub or grip when they are nervous or upset
- Speaking with the child or caregiver about what might be most comforting can be a good way to start a conversation about options for trial

Courthouse Dogs

- Programs across the country
- Common Objection: the dog garners unfair sympathy for the victim
 - Most courts have found that the dog did not unfairly prejudice the defendant
 - In fact, one study found that the presence of a dog is less prejudicial than the use of a comfort item on the stand
 - Local caselaw or statute may give specific limitations or directions in the use of the dog
 - If you are using a dog, make sure your victim/witness/family are not fearful or allergic before introducing the dog

Leading Questions

- Some states recognize the necessity of allowing for leading questions when directing a child witness
- Leading questions can be age appropriate (young children do not do well with open ended questions)
- Leading questions can keep a child's testimony more focused, allowing the trial to proceed at a decent pace and preventing irrelevant or possibly prejudicial testimony from coming in by accident
- “Leading” does not mean suggestive
- If you want examples of leading but not suggestive questions, watch an experienced forensic interviewer

Controlling the Courtroom

- Some states allow parties to exclude “non-essential” (not the defendant, counsel, bailiff, etc.) personnel and visitors during sensitive portions of testimony
- The more people who are in a room, the more nervous a witness (especially a child witness) can become
- This can also prevent on-lookers (who may be family members or supporters of the accused) from making faces or gestures that a child might find very distracting or intimidating

Pretrial Motions

- Many motions may need to be made pretrial (remote testimony, allowing for a comfort item or dog, etc)
- Because of this, prosecutors must engage with the family and potentially the witness early in the trial prep process about what may be needed to ensure maximum comfort for the witness
- It is much easier to prepare your child witness if you know what comforts you will or will not be able to offer



PREPARING FOR TRIAL

The Decision

- If a child can/should testify at trial is often the toughest for the child abuse prosecutor
- Is there another option?
 - Many states have ruled that out of court statements by a child during a forensic interview/to a parent/to a doctor fall into a hearsay exception and are non-testimonial per Crawford
- If you can use prior statements, should you?
 - Jurors may be less willing to convict a defendant on the word of an unseen witness
 - The emotional impact of an out of court statement is limited

Trauma

- Yes. Testifying can cause trauma*.
 - Greatest fears: facing the defendant, crying in front of others, not being able to answer questions, going to jail
 - Postponement causes emotional issues
 - Testifying twice is associated with long-term mental health issues
- But so can not testifying*
 - Studies have found that when a victim does not testify AND the defendant gets a lighter sentence, the victim is also traumatized and can suffer
- Remote testimony is associated with fewer emotional problems
- Encourage support after trial
 - Children with material support after trial were less likely to suffer long term anxiety
 - Involvement of child advocates or support people was also associated with better outcome post-trial
- Study up on trauma-informed practices

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Making Contact

- When and how to initiate contact with a child victim depends on many factors
 - Age
 - Cooperation/support of non-offending guardian
 - Severity of abuse
 - Likelihood/timing of trial
 - Involvement of other support people
- First meeting
 - Keep it short and light
 - Enlist help of a trusted support person
 - Consider meeting in a place the child feels comfortable
- Subsequent meetings
 - Regular check in's = good
 - Long interrogations = bad

Talking to the Child

- Introductions
 - You, other staff, the courthouse, the courtroom
- Honesty
 - Don't ever lie to the child
- Explain certain court procedures
 - Objections
 - Recess
 - Questioning
- Reiterate at every meeting that your only expectation is the truth

Discovery

- Know your state law regarding ongoing discovery
- Prosecutor may wish to enlist a second person to sit in when speaking to the child
 - This can be more complicated with a child than an adult. Introduce the other person early.
- If the child says something that your state requires you to turn over (all, anything new, etc.), reduce it to writing ASAP and turn it over
- Make sure you never promise a child confidentiality

Use Your Resources

- A parent of guardian is your best resource
- When is the best time to talk to child?
 - Some kids are grumpy in the morning, some are unable to sit still in the afternoon
- What do they need to feel comfortable?
 - For pretrial meetings
 - For trial
- How do I know when he/she needs a break?
- What other resources might help build confidence/comfort?
 - Be ready with local options for support (therapy, advocates, shelters, BACA, etc.)



TRIAL

At Trial

- Timing
 - Get in and get out – limit a child's testimony to short lengths
 - Lots of breaks – Inform the judge prior to the testimony that the child will need regular recesses (children have shorter attention spans)
 - Ask for a recess – If a child gets upset, take a break Often, morning is best – Children are often more focused in the morning and anticipation has not had time to build
- Pay attention
 - Look for changes in tone or body language that may indicate the need for a break
- Address issues (especially trial prep, truthfulness) on direct when possible
- Be ready to protect your witness

Child Friendly Questioning

- Leading Questions
 - Remember, leading does not mean suggestive
- Use names, not titles or pronouns (Uncle Bob, not “your uncle” or “him”)
- Avoid vague language (“a couple” “several” “how did it feel when he touched you with that?”)
- Be literal (avoid cliches, colloquialisms, etc.) and direct
- Use the child’s own terms, do not correct him or her
- Make clear transitions when moving onto another incident or subject

Follow Up

- You are not a therapist or a social worker
- BUT, ensuring that a child witness feels comfortable about what happened on the stand and understands as best they can is very important
- Right now, you are the person they connect with on that issue so making sure they know they did a good job can go a long way to sooth anxiety
- Up to you how connected you stay post-trial

QUESTIONS?

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