

Prosecuting or Defending Custody Cases Involving Sex Abuse Allegations

Children fear being ostracized by their family if they make sex abuse allegations involving a family member. Here's how to ensure you have the right evaluator for your case.

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When child sexual abuse allegations arise during custody disputes, matters can become complicated very quickly. Rightfully, such allegations must be taken seriously and addressed immediately. Should courts and Child Protective Services be more skeptical of sexual abuse allegations simply because there is an active custody dispute? Should any weight be given to the fact that the allegations of abuse were first raised only upon the initiation of divorce proceedings or a custody dispute?

Mental health professionals who perform custody evaluations may be generally qualified. However, the key question is whether the evaluator is specifically trained in trauma assessment such that the evaluator is qualified and experienced in performing evaluations in child custody cases involving sexual abuse allegations.

Choosing the Right Evaluator is Crucial in Custody Cases Involving Sex Abuse Allegations

Following an accusation of sexual abuse, component parts of an investigative interview should include the evaluator's ability to:

1. Have honest, open interaction between the child interviewee and the evaluator;
2. Be appreciative of nonverbal cues;
3. Listen to the language used by the child, and whether that language is age appropriate;
4. Have an attitude of comfort, calm, and an appreciation of the distress for the child by calling out improper behavior by a perpetrator – particularly if the perpetrator is a family member or someone in a position of trust.

How does an interviewer obtain and maintain trust?

1. Maintain good eye contact;
2. Be perceptive of nonverbal cues such as open body language;
3. Be able to provide verbal feedback via open-ended questions;
4. Acknowledge that:
 - The victim may at times have limited ability or inability to express themselves;
 - The victim's attention to detail may not be precise or robust. Given the traumatic nature of abuse, children often do not remember the dates when they were abused.
 - The victim may not trust the interviewer enough to impart full details, especially in an initial interview;

- Because of trauma, a child's demeanor may not match what the child is saying.

Protocols for Forensic Interviews in Child Sex Abuse Cases

A recently [revised protocol](#), set out in *Examining reluctance and emotional support in forensic interviews with child victims of substantiated physical abuse*, examined reluctance versus emotional support in the context of forensic interviews.

The standard protocol endorses:

1. Open-ended prompts seeking narrative responses;
2. Interview phases, including advising the child victim that it is permissible to respond, "I don't know";
3. Building rapport by asking the child what he or she likes;
4. Asking the child to extrapolate on the outcry ("Tell me everything that happened"), moving from general to specifics; and
5. Grappling with a child's reluctance to add specifics with little guidance.

By contrast, the revised protocol tries to give the interviewer a means of giving increased support to the child, by:

1. Increasing the child's comfort level by first discussing neutral topics such as the child's hobbies, therefore building rapport, even before discussing ground rules for the interview;
2. Asking the child about the child's feelings on the day of the interview;
3. Being more sensitive to signs of the child's reluctance to make an outcry;
4. Making the child feel more at ease via episodic memory training ("How are you today?" "You mentioned feeling sad." "What makes you feel sad?").
5. Being mindful of the need for the interviewer to support the child – eye contact, posture (facing the child), offering goodwill by asking how the child is doing, or inquiring if the child needs anything to drink or to eat.

[When transitioning from the general to the specific](#), interviewers are encouraged to make supportive observations to help children who are reluctant to open up. “Can you tell me why you came here today?” “It’s really important to know when things happen to children. That’s what I am here for.” Simply letting the child know that they are in a safe place is important, as is asking them to identify what might have happened to them: “People are worried about you, and I want to know if something may have happened to *you*.”

What constitutes disclosure? When a child reports abuse and identifies a perpetrator. Are there occasions when Child Protective Services, and/or the police, and/or a Child Advocacy Center may choose not to prosecute, but where abuse may have nonetheless occurred? Absolutely. [“When children do not disclose despite strong evidence that they have been abused, additional interview sessions may be needed to develop rapport.”](#) The younger the child, the more likely the child will be to substantiate an outcry. A younger child may be nonverbal, or simply fearful of repercussions that could flow from being brave enough to report abuse – particularly when a family member is involved. For instance, [“\[s\]ibling sexual abuse is estimated to be the most common form of intra-familial sexual abuse, yet remains an under-researched phenomenon.”](#)

Sexual and physical abuse is not restricted to concerns about “stranger danger”; instead [“most child sexual abuse is carried out by people well-known to the child, and often by other family members.”](#) Sibling sexual abuse is often unreported, despite being three times more likely to occur than abuse by a parent. Dr. Peter Yates and Stuart Allardyce, the authors of *Abuse at the Heart of the Family: The Challenges and Complexities of Sibling Sexual Abuse*, conclude that: [“We often see confused responses](#) by the professionals involved, binary thinking, minimization of the abuse, or responses derived from adult sex offending. In particular, the significance of the children being siblings is often overlooked.”

How the Failure to Prosecute Impacts Child Sex Abuse Victims

Looking at the notion of an investigator, a police department, and the CAC deciding that a given case does not merit criminal prosecution, what might be the potential impact on the child victim?

[In the short term:](#)

1. The child could suffer an unwanted pregnancy;

2. The child could suffer from STDs;
3. The child could be the victim of physical injury;
4. The child could suffer PTSD symptoms and/or emotional and behavioral problems.

Long-term issues could include:

1. Depression and/or thoughts of suicide;
2. Diminished self-esteem;
3. Difficulties in bonding, including forming healthy relationships;
4. Discord that increases the likelihood of physical violence if counseling is not implemented;
5. Self-medication through addictive behavior and related substance abuse issues;
6. Hyper-eroticism.

Children, like elderly individuals who suffer abuse, fear being ostracized by their own family if they make sex abuse allegations involving a family member. How to protect these children? By being vigilant. Sometimes danger comes not from strangers, but from those we know best.

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