

## Ten Strategies for Prosecuting Child Sexual Abuse at the Hands of a Family Member

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### INTRODUCTION

The impact of sexual assault on a victim is devastating and the effects are long lasting. Victims of child sexual abuse may suffer physical injury, depression, self-destructive behavior, anxiety, feelings of isolation and stigma, shame, poor self-esteem, difficulty in trusting others, a tendency toward re-victimization, substance abuse, and sexual maladjustment.<sup>1</sup> When the perpetrator is a family member, victims often suffer the emotional scars of guilt, betrayal, and fear as well.

Despite the volume of research and literature addressing sexual abuse perpetrated against a child by a family member,<sup>2</sup> individuals inside and outside of the criminal justice system continue to misperceive common dynamics, misunderstand victim behavior, and minimize offender dangerousness. Judges and juries unfamiliar with the dynamics of sexual assault may overlook offenders' grooming tactics or misperceive common victim reactions to abuse as evidence of the victim's lack of credibility. Prosecutors handling these cases face unique challenges. The following ten strategies will help prosecutors prepare and litigate cases of sexual abuse perpetrated against a child by a family member.<sup>3</sup>

#### 1. Understand Offender Grooming Techniques

An offender's primary weapons in the commission of a child sexual assault are the victims' and other family members' trust and love of him or her. Often minimized, in-home offenders are frequently perceived as less dangerous. However, they are "more experienced; more invested; cross more boundaries; are safer from exposure; create more betrayal and family conflict; and are more psychologically/emotionally involved in offending."<sup>4</sup> It is essential to recognize that the offender grooms both the victim as well as the victim's family members. In addition to trust and love, the offender uses other nontraditional weapons. For example, "[nice-ness] is a powerful weapon. When someone is nice, it is difficult to confront him, set limits on him, or mistrust him. . . . The [offender] is counting on society to perpetuate the belief that niceness cannot co-exist with violence, evil, or deviance."<sup>5</sup> Abusers within the family use the trust and love which is already built into the relationship to break down all boundaries and turn what should be a nurturing role into an opportunity for exploitation. For example, abusers use special secrets, gifts, or special attention to gain access to their victims. All of these tactics are designed to strengthen loyalty of the victim.

Offenders exploit their caretaker roles to progressively normalize sexual behavior and content. For example, otherwise appropriate nudity, such as during bathing, may be used as a grooming tool by the offender to facilitate inappropriate touching or exposure to pornographic material. Significantly, the progression of abusive contact is also a component of the offender's sexual gratification.<sup>6</sup>

## 2. Recognize Disclosures are Often Delayed and That the Vast Majority of Victims Never Report

The majority of child sexual abuse victims do not immediately report their abuse;<sup>7</sup> some disclose prior child sexual abuse during their reporting of a subsequent assault at the hands of a different perpetrator. Others never report their abuse to anyone.

There are countless reasons why victims delay or refuse to report their sexual abuse.<sup>8</sup> Many fear their abusers, who have either threatened them directly or a member of their family, including pets.<sup>9</sup> Others face disbelief when they disclose to the non-offending caregiver, often the abuser's spouse or paramour. Still others may not disclose out of fear that they will not be believed, an idea often suggested and reinforced by the offender. Sometimes, although the child is uncomfortable with the abuse, the abuser may have convinced the child that abuse – although secretive – is “normal” or “good.”<sup>10</sup> Other reasons children delay or do not disclose their abuse include fear of getting in trouble, shame, and even love of the abuser.

Prosecutors should try to discern, understand, and explain the victim's reason for delaying or deciding not to disclose their abuse, where the disclosure is made by a third party. First, understanding a victim's barrier to disclosing his or her abuse is critical to understanding the dynamics of the abuse and developing an accurate theory of the case. Second, despite the considerable research on the dynamics of child sexual abuse and the reasons why victims do not report their abuse, considerable misperceptions remain.<sup>11</sup> A judge or jury confused by the delay or lack of disclosure may require an explanation in order to hold an offender accountable, *e.g.*, if the victim's love for the offender prompted her to remain silent about the abuse. Finally, the prosecutor may be able to use the victim's delay to bolster his or her credibility by demonstrating to the jury that the victim has nothing to gain— and in the victim's mind, much to lose — by speaking out and telling the truth about the abuse.

## 3. Create a Coordinated, Multidisciplinary (MDT) Approach to Child Sexual Assault and Work with Advocates to Keep Victims Safe and Help Them Participate in the Prosecution of a Case

Sexual violence usually occurs in private, but like all crime, it impacts victims and entire communities.<sup>12</sup> Perpetrators of sexual assault against children within their family create collateral consequences for the victim relevant to the assault. Prosecutors who approach intrafamilial sexual assaults in a multidisciplinary manner minimize these consequences.

Many communities understand the need for collaboration among social systems and have created Sexual Assault Response Teams (SART) to provide coordinated responses to sexual violence. These SARTs aim to provide victim-centered support and services to survivors. Hospital emergency departments and sexual assault nurse examiner (SANE) programs can examine, document, and treat injuries; provide information about and prophylaxis for pregnancy and sexually transmitted infections; collect forensic evidence; provide mental health treatment and referrals; and offer discharge instructions.<sup>13</sup> Sexual assault counselors/advocates can provide a survivor with medical and court advocacy, provide crisis intervention, and offer counseling. Child advocates who concentrate on legal advocacy can help address a survivor's immediate safety concerns, inform them of their legal rights, and protect them and the community by seeking to hold offenders accountable in court.<sup>14</sup>

Sexual assault counselors/advocates provide critical emotional and psychological support to child sexual abuse victims during investigations and prosecutions. Even where non-offending caregivers are supportive of the victim, advocates are necessary partners to ensure a victim's safety and provide continued support throughout the trial and beyond. Legal advocates can help navigate any legal proceedings associated with family court dependency proceed-

ings that may arise from the abuse. Prosecutors, therefore, should make it a top priority to develop relationships with community-based sexual assault services' organizations and involve sexual assault counselors/advocates immediately in the earliest stages of investigations and prosecutions. Advocates can provide courtroom accompaniment and explain the court process to victims and their families, providing a critical link between the victim and the criminal justice system. They also provide counseling services for child victims that are important to their recovery and that can prepare them to testify at trial in the presence of the abuser.<sup>15</sup>

When the key players are working together in a SART, victims receive a coordinated community response from a network of interrelated professionals instead of piecemeal services from separate, independent systems. This coordination promotes interagency networking and encourages victim cooperation in investigations and prosecutions.

#### **4. Employ Forensic Interviews and Prepare for Common Challenges**

Prosecutors must ensure that their jurisdictions are employing competent, established forensic interviewing techniques to avoid any possibility of tainting the disclosure and interview by improper suggestivity. The Zero Abuse Project works with states to implement forensic interviewing courses utilizing the ChildFirst® forensic interviewing protocol.<sup>16</sup> The Zero Abuse Project is the leading national organization for training and resources on forensic interviewing techniques. Effective forensic interviews are conducted by:

[F]orensic interviewers [who are] well trained in memory and suggestibility issues, child development, cognitive development, the usage of anatomical diagrams and dolls, and must use a forensic interviewing protocol rooted in research. The forensic interviewer must also participate in peer review, attend basic and advanced trainings and otherwise stay abreast of the field.<sup>17</sup>

Defense attorneys frequently challenge the format and content of the forensic interview as well as the expertise and approach of the interviewer.<sup>18</sup> Prosecutors should be prepared to file appropriate pre-trial motions designed to limit defense attorneys' access to irrelevant material and to respond to common objections surrounding a forensic interview.<sup>19</sup> For example, defense attorneys commonly file objections to the interview and try to secure video recordings of interviews. These recordings contain sensitive, private information with child victims describing the abuse they endured. They should never find their way into the hands of sex offenders where they could become a source of sexual arousal.

Additionally, it is critical to remember that there is always more evidence to corroborate the child's report. Part of effective prosecution is introducing evidence that corroborates what might be perceived as a collateral detail in a victim's interview but which cumulatively demonstrates victim credibility. The Zero Abuse Project has volumes of resources to assist prosecutors available at <https://www.zeroabuseproject.org>.

#### **5. Explain and Address Recantation**

Those who perpetrate sex offenses and, unfortunately, sometimes non-offending caregivers, place extraordinary pressure on child victims after they disclose sexual abuse. These pressures can be overt, *e.g.*, rejection, intimidation or witness tampering, including forcing a child to write a recantation letter. They may also be subtle, such as the non-offending parent's continued contact or relationship with the perpetrator or the perpetrator's continued access to the child through the non-offending parent. Regardless of the method of pressure, the impact is the same: the child victim feels pressure to "take back" the allegation in order to keep the family together.

When faced with a victim's recantation, prosecutors should seek out evidence that will rehabilitate and corroborate the victim's initial truthful disclosure. It is critical to introduce evidence that explains the context of the child's recantation. For instance, did the victim's mother say she did not believe the victim or that the family would be destroyed if the perpetrator went to jail? Such a threat takes on even greater significance in the life of a child if a child protective services agency seeks to remove a child from their home and family.

When a victim recants, prosecutors may respond by introducing the testimony of witnesses and any admissible evidence that supports the truthfulness of the victim's original disclosures of abuse. Prosecutors can also seek to introduce statements that the child made to friends, siblings, relatives, medical professionals, child protective service workers and the police.

Prosecutors should be familiar with the relevant rules of evidence. In some jurisdictions, hearsay statements might be admissible as substantive evidence of the reliability of the victim's initial disclosures of abuse. Every disclosure made prior to the extraordinary pressure placed upon the victim by the father and mother to recant is compelling evidence that the initial disclosure is true and accurate.<sup>20</sup>

## **6. Respond to Intimidation, Witness Tampering, and Obstruction**

In child sexual abuse cases, where the perpetrator is a family member, intimidation, witness tampering and obstruction is accomplished through both traditional and nontraditional methods. Offending and non-offending caregivers often directly threaten child victims, direct them to recant, or otherwise interfere with their ability to participate in the prosecution of the perpetrator.<sup>21</sup> As discussed above, non-offending caregivers may remain in close communication with offenders—including those who are in custody. In many jurisdictions, telephone calls initiated by inmates are recorded, and recordings of the calls can be requested. These recordings often contain compelling evidence of intimidation, witness tampering, or obstruction of justice and serve as persuasive evidence of guilt at trial.

Perpetrators who are related to the victim have broad access to—and information about—the victim, which they use to compel the victim's cooperation. One common tactic of offenders is to use the victim's own misconduct, *e.g.*, teen drug use or underage drinking, to commit their crimes. Offenders use threats to disclose the victim's illegal conduct or other misbehavior to continue perpetrating abuse as well as to discourage the disclosure of the abuse. Another common intimidation tactic, which is often the hardest to detect and respond to, is the abuser's exploitation of the victim's fear of destroying the family, to prevent the victim from reporting the abuse.

Prosecutors can work with advocates to educate victims about offender intimidation tactics. This will enable victims to detect abusers' efforts to intimidate them and to retain evidence of the intimidation.<sup>22</sup> Prosecutors should also evaluate the evidence of intimidation to determine if it supports additional charges against the perpetrators.<sup>23</sup> Prosecutors may wish to file intimidation and witness tampering charges while the abuse case is pending. This may provide additional protection for the victim and can collaterally create compelling evidence for a potential motion for forfeiture by wrongdoing.<sup>24</sup> While evidence of the intimidation behavior alone is enough for a forfeiture motion, a conviction for a forfeiture crime such as witness intimidation, suborning perjury, or obstructing justice can have a powerful impact with the Court in determining whether the defendant has forfeited his right to confront the witness.

## 7. Understand the Impact of Crawford and its Progeny on Child Sexual Abuse Prosecutions

One of the most common legal issues in child sexual abuse cases is the admissibility of the child victim's out-of-court statements. Child sexual abuse victims commonly disclose their abuse first to a friend or family member. In some jurisdictions, statements made by a child victim concerning sexual or physical abuse are admissible in the prosecution's case in chief under the tender years doctrine.<sup>25</sup> Where the abuse is reported to law enforcement, the child is interviewed by law enforcement, perhaps through the use of a forensic child interview specialist. In each of these settings — to the friend, family member, and forensic interviewer — the child's statements might be admissible as substantive evidence.

In order to be admissible, the prosecution is usually required to proffer the testimony of the witnesses from whom it will offer child hearsay testimony. A pre-trial hearing, where the witnesses are called to testify to the child hearsay statements, is also required.

Where the child is unavailable for cross-examination at trial, his or her testimony to law enforcement, the forensic interviewer and in some cases the Sexual Assault Forensic Examiner (SAFE) may be objected to as "testimonial" under *Crawford v. Washington*,<sup>26</sup> *Davis v. Washington*,<sup>27</sup> and *Michigan v. Bryant*.<sup>28</sup> In *Crawford*, the Court held that testimonial statements of an unavailable witness could be admitted at trial only when the defendant has had a prior opportunity to cross-examine that witness. Although the *Crawford* holding offers examples of both testimonial and non-testimonial statements, it did not include a specific definition.

In *Davis*, the Court defined statements made to government agents for the primary purpose of receiving assistance in an ongoing emergency as non-testimonial. It defined statements made under circumstances that objectively indicate there is no ongoing emergency and the primary purpose of the interrogation is to establish or prove past events potentially relevant to a later criminal prosecution as testimonial.

In *Bryant*, the Court reaffirmed the primary purpose test in *Davis* as an objective test and instructed to look at the totality of the circumstances in determining whether statements to police were made to meet an ongoing emergency or to establish or prove past facts.

If the statements are made to a SAFE, the defense might also object on hearsay grounds, claiming that the statement does not fall within the medical hearsay exception under the theory that the SAFE was acting as an arm of law enforcement. To avoid and respond to these objections, it is important that the SAFE be able to articulate and practice philosophy that is focused not on law enforcement, but on providing appropriate specialty medical care to victims of sexual violence. In cases where it is established that the victim's lack of cooperation is the result of a defendant's actions that are designed to cause the unavailability of the victim in order to prevent that victim from testifying in a current or future prosecution, the prosecution may introduce a witness' hearsay statements, subject to hearsay objections, in a prosecution based on the doctrine of forfeiture by wrongdoing.<sup>29</sup> Forfeiture by wrongdoing is the legal rule under which prosecutors may introduce at trial a victim's or witness' testimonial statements. In order to establish forfeiture by wrongdoing, the prosecution must demonstrate that a victim's or witness' absence was caused by the defendant's wrongful act intended to prevent that victim or witness from testifying at a trial.<sup>30</sup>

If a victim is unavailable at trial, the prosecutor must determine whether the abuser caused their unavailability. If this is the case, prosecutors must prepare for a forfeiture hearing.<sup>31</sup> The prosecutor can introduce the history of abuse

between the defendant and the victim; prior charges filed, even if they were withdrawn; testimony from prior cases; evidence from police, a prior prosecutor, family, or friends about the victim's fear of the defendant; evidence about the victim's fear of testifying in prior cases; and anything else that shows the defendant did something to prevent the victim from testifying. Establishing a coordinated community response can help a prosecutor uncover any threats or intimidation directed at a victim by ensuring that all of the allied professionals who work with victims are trained to recognize and preserve evidence of intimidation. Significantly, hearsay is permissible at a forfeiture hearing. If the prosecution successfully establishes forfeiture by wrongdoing, the defendant is precluded from objecting to the introduction of the victim's testimonial statements based on the constitutional right to confront witnesses.

## 8. Counter Challenges to Competency

Under Fed. R. Evid. 601, which outlines the general rule of competency, “[e]very person is competent to be a witness except as otherwise provided by statute or court rule.” As the rule states, the reader should refer to the court rule and/or statutes in their individual jurisdictions governing the factors for determining the competency of a child witness. It is critical that prosecutors prevent the competency hearing from devolving into a hearing on whether the child's anticipated testimony is believable. The purpose of the hearing is simply to determine whether the child knows the difference between the truth and a lie, the consequences of taking an oath, and whether they can accurately recount the details of the event to the judge or jury.<sup>32</sup> Prosecutors should also file motions to ensure defense questions are developmentally appropriate.<sup>33</sup>

In many jurisdictions, prosecutors should be prepared to address competency pre-trial. Prior to calling the child to testify for the limited purpose of determining competency to testify, the prosecution should consider whether, for example, the child's guardian, school teacher, babysitter, or grandparent should also be called to testify. An adult with a close relationship to the child will often be able to testify in a pre-trial setting that the child knows the difference between the truth and a lie; that punishment or discipline is a consequence for failure to tell the truth; whether the child understands the importance of telling the truth; and if the child's general character is one of truthfulness.<sup>34</sup>

These same witnesses can be asked to testify about a past event that the child experienced (*e.g.*, the child's birthday, Halloween, or another holiday significant to the child). With this information in hand, when the child later testifies at the competency hearing, the prosecution can then ask the child about this same event, providing the trial court with assurances that the child can recall a past event and truthfully present a past fact to the jury. Often, a child forensic interview covers these same areas of concern, and this information can also be put before the court to aid the trial judge in making a finding of competency.

## 9. Effectively Use Experts to Prepare Your Case and Persuade Juries

In certain cases, the prosecutor may want to consider introducing expert testimony on child sexual abuse to explain victim behaviors: *e.g.*, delays in reporting, continuing to “love” an abuser despite the abuse, common features of grooming behavior by perpetrators and their effects on children. Prosecutors should consult the case law in their jurisdictions to determine which professionals have been qualified to testify on these issues.<sup>35</sup>

In lieu of — or in addition to — introducing expert testimony, prosecutors may also be able to elicit testimony regarding common behaviors exhibited by child victims through fact witnesses, such as medical professionals, counselors, or case detectives. For example, case detectives may be able to testify that in their experience, it is common or un-

common for child victims to delay reporting the sexual abuse. The medical provider who conducted the sexual assault examination may be able to testify that in her experience, it is common for child sexual abuse victims to report to her that they love their abusers. Prosecutors should talk with professional fact witnesses prior to trial to determine if the witness is comfortable proffering such testimony. It is powerful for jurors to hear from a variety of sources that the victim's behavior is, in fact, normal.

Evidence of a defendant's prior sexual assaults can also assist in explaining victim behaviors. In many cases, the investigation reveals that the defendant has committed one or more prior sexual offenses. These offenses may be admissible as "other bad acts"<sup>36</sup> or as evidence of "propensity",<sup>37</sup> but prosecutors must consult the case law in their jurisdictions to determine the admissibility of this evidence. As set forth in the evidence rules, the prosecution is required to provide advance notice to defense counsel along with any statements made by the prior victim.

The testimony of prior victims — victims who were children at the time of the abuse and are now adults — is another way in which to explain to the jury that the charged victim's behavior is not unusual. When an adult testifies to the victimization they suffered as a child by the defendant, they are often able to express in words what a young victim in the case on trial cannot. As an adult, the prior victim can articulate how ashamed or confused she felt as a result of the abuse, whereas a seven-year-old victim may not be able to put those feelings into words. Not only does the prior victim's testimony provide evidence of a defendant's pattern and propensity to commit sexual offenses, but the prior victim is also able to validate the child victim's behavior for the jury.

Prosecutors and other allied professionals understand that victims respond to assaults in different ways; there is no "right way" or "wrong way" for a child victim to respond to sexual abuse. It is imperative to underscore this fact throughout the entire trial: from jury selection, opening statement, witnesses, and closing argument.

## **10. Believe Unless and Until Evidence Proves Otherwise**

Child sexual abuse cases, like each sexual assault case, must be prosecuted with a victim-centered, offender-focused approach. The circumstances of these crimes and prevalence of myths surrounding child sexual abuse often combine to cause jurors, judges, and, at times, members of the criminal justice system to search for reasons to doubt, rather than reasons to believe, reports of sexual abuse. It is important, however, to recognize that although an initial disclosure may seem implausible, "truth is stranger than fiction"<sup>38</sup> and prosecutors should appreciate how difficult it is for a child sexual assault victim to come forward. Give the victim the benefit of the doubt and conduct a thorough investigation. Believe the victim, unless and until the investigation shows otherwise.

## **Conclusion**

A prosecutor's responsibility is to achieve justice.<sup>39</sup> Achieving justice in a child sexual abuse case where the perpetrator is a family member requires a coordinated multi-disciplinary approach, an understanding of the unique dynamics present in these cases, and the ability to explain them to a juror so that they can properly evaluate the evidence in a case. The strategies outlined above will help prosecutors and other allied professionals build a foundation from which justice can be achieved.

## Endnotes

- 1 MELISSA HALL & JOSHUA HALL, THE LONG-TERM EFFECTS OF CHILDHOOD SEXUAL ABUSE: COUNSELING IMPLICATIONS 2 (2011), [https://www.counseling.org/docs/disaster-and-trauma\\_sexual-abuse/long-term-effects-of-childhood-sexual-abuse.pdf?sfvrsn=2](https://www.counseling.org/docs/disaster-and-trauma_sexual-abuse/long-term-effects-of-childhood-sexual-abuse.pdf?sfvrsn=2) (“Childhood sexual abuse has been correlated with higher levels of depression, guilt, shame, self-blame, eating disorders, somatic concerns, anxiety, dissociative patterns, repression, denial, sexual problems, and relationship problems.”); NAT’L SEXUAL VIOLENCE RES. CTR., THE IMPACT OF SEXUAL VIOLENCE (2016), [https://www.nsvrc.org/sites/default/files/2016-01/saam\\_2016\\_impact-of-sexual-violence.pdf](https://www.nsvrc.org/sites/default/files/2016-01/saam_2016_impact-of-sexual-violence.pdf) (outlining the impact of sexual assault on survivors, loved ones, communities, and society); Shanta R. Dube, *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28(5) AM. J. PREVENTATIVE MED. 430, 434 (2005), [https://www.researchgate.net/profile/David-Brown-48/publication/7847543\\_Long-Term\\_Consequences\\_of\\_Childhood\\_Sexual\\_Abuse\\_by\\_Gender\\_of\\_Victim/links/5a0796c2aca272ed279e5b27/Long-Term-Consequences-of-Childhood-Sexual-Abuse-by-Gender-of-Victim.pdf](https://www.researchgate.net/profile/David-Brown-48/publication/7847543_Long-Term_Consequences_of_Childhood_Sexual_Abuse_by_Gender_of_Victim/links/5a0796c2aca272ed279e5b27/Long-Term-Consequences-of-Childhood-Sexual-Abuse-by-Gender-of-Victim.pdf) (“It was found that the magnitude of the increased risk of alcohol problems, illicit drug use, suicide attempts, marrying an alcoholic, and current marital and family problems associated with CSA, was similar for both male and female respondents. Furthermore, severity of the CSA consistently showed that intercourse CSA was associated with an elevated risk for the outcomes among both genders. Thus, the data provide strong evidence that exposure to CSA among both genders is common, and acts as a strong risk factor for multiple types of mental health, behavioral, and social outcomes similarly for adult men and women.”).
- 2 The definition of the term “family member” includes romantic partners whether or not they live in the home.
- 3 Additional resources and assistance relevant to the prosecution of child sexual abuse are available at: [www.AEQuitasResource.org](http://www.AEQuitasResource.org) and [www.ZeroAbuseProject.org](http://www.ZeroAbuseProject.org).
- 4 Veronique N. Valliere, *Understanding the Non-Stranger Rapist*, 1(11) THE VOICE (2007). See also Laura Tarzia, “*It Went to the Very Heart of Who I Was as a Woman*”: *The Invisible Impacts of Intimate Partner Sexual Violence*, 31(2) QUALITATIVE HEALTH RES. 287 (2021), [https://minerva-access.unimelb.edu.au/bitstream/handle/11343/248536/QHR\\_Accepted%20Manuscript\\_FINAL.pdf;jsessionid=1C1390CE921E745EA735DFB24578600E?sequence=2](https://minerva-access.unimelb.edu.au/bitstream/handle/11343/248536/QHR_Accepted%20Manuscript_FINAL.pdf;jsessionid=1C1390CE921E745EA735DFB24578600E?sequence=2) (“The findings suggest that the experience of IPSV can be understood as “Being attacked from the inside out”, characterized by a devastating sense of betrayal, a unique form of psychic damage, a feeling that something has been killed inside them and the perception of being left with a lingering scar tissue that affected intimacy and relationships for years to come... One of the major invisible impacts of IPSV articulated by the women in this study was the deep sense of betrayal they felt at being sexually assaulted by someone who was supposed to love and care for them. This element of betrayal sets IPSV firmly apart from SV perpetrated by a stranger.”); EVAN STARK, RE-PRESENTING BATTERED WOMEN: COERCIVE CONTROL AND THE DEFENSE OF LIBERTY (2012), [HTTPS://WWW.STOPVAW.ORG/UPLOADS/EVAN\\_STARK\\_ARTICLE\\_FINAL\\_100812.PDF](https://www.stopvaw.org/uploads/evan_stark_article_final_100812.pdf) (“There is mounting evidence that the level of “control” in abusive relationships is a better predictor than prior assaults of future sexual assault and of severe and fatal violence. This is because coercive control targets a victim’s autonomy, equality, liberty, social supports and dignity in ways that compromise the capacity for independent, self-interested decision making vital to escape and effective resistance to abuse.”).
- 5 Valliere, *supra* note 5. See also KELLEY SWEENEY, FACTORS CONTRIBUTING TO THE SOCIAL ACCEPTANCE OF DOMESTIC VIOLENCE: A SYSTEMATIC REVIEW (2016), [https://sophia.stkate.edu/cgi/viewcontent.cgi?article=1681&context=msw\\_papers/](https://sophia.stkate.edu/cgi/viewcontent.cgi?article=1681&context=msw_papers/) (Analyzing recent research to show how the social acceptance of domestic is influenced by: religious beliefs, patriarchal ideals, past exposure to abuse, and media portrayal).
- 6 NAT’L CTR. FOR MISSING & EXPLOITED CHILD, ET AL., CHILD MOLESTERS: A BEHAVIORAL ANALYSIS FOR PROFESSIONALS INVESTIGATING THE SEXUAL EXPLOITATION OF CHILDREN 73 (2010), <https://www.icmec.org/wp-content/uploads/2015/10/US-NCMEC-Child-Molesters-A-Behavioral-Analysis-Lanning-2010.pdf> (“The next step in the seduction process is the lowering of inhibitions... The lowering of sexual inhibitions is usually done so gradually and skillfully the victim does not realize he or she is a victim until it is too late. It may begin with simple affection such as a pat, hug, or kiss on the cheek. In addition to being part of the seduction process, such activity can also be sexual acts themselves... The activity can progress to fondling while wrestling, playing hide-and seek in the dark, playing strip poker, swimming nude in the pool, drying the child with a towel, massaging an injury, giving a back rub, tickling, playing a physical game, or cuddling in bed.”).
- 7 Laura K. Murray et al., *Child Sexual Abuse*, 23(2) CHILD ADOLESCENT PSYCHIATRIC CLINICS N. AM. 321 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4413451/pdf/nihms-666885.pdf> (“Experiences of childhood CSA often go undisclosed and unrecognized . . . In addition to being developmentally vulnerable, children are often manipulated to feel guilty or responsible for the abuse. These children may fear the disclosure will not be believed, or that it will negatively affect their own well-being and that of their families. Moreover, they may be concerned about consequences for the perpetrator, as often the perpetrators are familiar figures who develop complex, confusing, and ambivalent relationships with the child.”).
- 8 See *id.*
- 9 See *id.*; see also Allie Phillips, *How the Dynamics Between Child Abuse and Animal Abuse Affect the Forensic Interview Process*, 1(4) REASONABLE EFFORTS (2004) (“An abusive parent or member of the household may exploit the loving bond between child and companion



animal to threaten the child into silence regarding the abuse, or to compel compliance from the child. The abuser may threaten to harm or kill the family pet to ensure the child's silence or compliance. By silencing the child, the abuser also seeks compliance with future occurrences of abuse. Some children may even allow themselves to be victimized to save their companion animal from being harmed or killed.”).

- 10 Murray, *supra* note 8, at 4.
- 11 See, e.g., Sarah Ben-David & Ofra Schneider, *Rape Perceptions, Gender Role Attitudes, and Victim-Perpetrator Acquaintance*, 53 *SEX ROLES* 385 (2005); Fiona Leverick, *What do we know about rape myths and juror decision making?*, 24(3) *INT'L J. EVIDENCE & PROOF* 255, 273 (2020), <https://journals.sagepub.com/doi/pdf/10.1177/1365712720923157> (Summarizing a variety of studies on rape perceptions and juror attitudes: “[T]here is overwhelming evidence that jurors take into the deliberation room false and prejudicial beliefs about what rape looks like and what genuine rape victims would do and that these beliefs affect attitudes and verdict choices in concrete cases. This evidence is both quantitative and qualitative.”).
- 12 NAT'L ALL. TO END SEXUAL VIOLENCE, *THE COSTS AND CONSEQUENCES OF SEXUAL VIOLENCE AND COST-EFFECTIVE SOLUTIONS* (2011), <https://www.nsvrc.org/sites/default/files/CostsConsequencesSV.pdf>; Rachel Lovell et al., *Testing Sexual Assault Kits Saves Money and Prevents Future Sexual Assaults*, *TRANSNATIONAL CRIMINOLOGY* 15-16 (2019), <https://cebc.org/wp-content/uploads/2020/04/TC16x-Winter2019.pdf>; NAT'L SEXUAL VIOLENCE RES. CTR., *THE IMPACT OF SEXUAL VIOLENCE* (2016), [https://www.nsvrc.org/sites/default/files/2016-01/saam\\_2016\\_impact-of-sexual-violence.pdf](https://www.nsvrc.org/sites/default/files/2016-01/saam_2016_impact-of-sexual-violence.pdf) (“Schools, workplaces, neighborhoods, campuses, and cultural or religious communities may feel fear, anger, or disbelief if a sexual assault happened in their community. Additionally, there are financial costs to communities. These costs include medical services, criminal justice expenses, crisis and mental health service fees, and the lost contributions of individuals affected by sexual violence.”); Cora Peterson et al., *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults*, 55(4) *AM. J. PREVENTATIVE MED* 433 (2018), <https://www.sciencedirect.com/science/article/abs/pii/S0749379718319044> (The lifetime cost of intimate partner violence is \$103,767 per female and \$23,414 per male—including medical costs, lost productivity, criminal justice activities, and residual economic burden.).
- 13 *SANE Program Development and Operation Guide*, OFF. FOR VICTIMS OF CRIME, <https://www.ovcttac.gov/saneguide/introduction/what-is-a-sane/> (last visited Mar. 3, 2022) (“The role of the SANE includes evaluating and treating the patient in a holistic way, being mindful of both the acute and long-term consequences of sexual violence victimization. The SANE can gather a culturally and developmentally appropriate medical history and a history of the assault, with an essential understanding of the medical and legal implications of both. Gathering this history lays a foundation to offer the patient suitable options in care, which may include forensic evidence collection, testing and treatment or prevention of sexually transmitted diseases and the human immunodeficiency virus (HIV), pregnancy prevention, and immediate and follow-up services with community-based sexual assault advocacy, and medical and law enforcement partners. The SANE ultimately provides culturally sensitive, developmentally appropriate, trauma-informed, and patient-specific evaluation and treatment. SANEs are also prepared to testify in a criminal or civil trial as a fact or expert witness when necessary, and understand the ethical obligations of their testimony and the limitations as well.”); Nursing@Georgetown, *From Forensics to Advocacy: The Importance of Sexual Assault Nurse Examiners*, GEO. UNIV. SCH. OF NURSING & HEALTH STUD. (Sep. 16, 2019), <https://online.nursing.georgetown.edu/blog/sane-nurse-guide/>.
- 14 Adapted from Jennifer Long and Jennifer Markowitz, *Intimate Partner Sexual Assault –Prosecution Issues* (GW Publ'g 2011).
- 15 The Support Center for Child Advocates (SCCA) in Philadelphia, Pennsylvania is an excellent model of volunteer child advocates providing legal assistance and social service advocacy for abused and neglected children. SCCA's mission is “[t]o advocate for victims of child abuse and neglect in with the goal of securing a safety, justice, and a permanent, nurturing environment for every child.” Please visit <https://sccalaw.org> for more information.
- 16 For resources and information on training and resources on ChildFirst and forensic interviewing please visit About ChildFirst, ZERO ABUSE PROJECT (last visited Mar. 3, 2021), <https://www.zeroabuseproject.org/for-professionals/childfirst-forensic-interview-training/>. More information about forensic interviewing can be found at the following resources: Jennifer Anderson et al., *The CornerHouse Forensic Interview Protocol RATA<sup>®</sup>*, 12(2) *THOMAS M. COOLEY J. PRAC. & CLINICAL L.* 193 (2010); Gwendolyn D. Anderson et al., *The Influence of Narrative Practice Techniques on Child Behaviors in Forensic Interviews*, 23(6) *J. CHILD SEXUAL ABUSE* 615 (2014), [https://www.researchgate.net/publication/264796837\\_The\\_Influence\\_of\\_Narrative\\_Practice\\_Techniques\\_on\\_Child\\_Behaviors\\_in\\_Forensic\\_Interviews](https://www.researchgate.net/publication/264796837_The_Influence_of_Narrative_Practice_Techniques_on_Child_Behaviors_in_Forensic_Interviews) ; Jennifer N. Anderson, *The CornerHouse Forensic Interview Protocol: An Evolution in Practice for Almost 25 Years*, 4 *APSAC ADVISOR* 1 (2014), [https://static1.squarespace.com/static/5da61df2de233e586746cdfef/t/5e3da17caafa9459cfd2ad23/1581097340449/Anderson\\_2013\\_CornerHouse\\_Forensic\\_Interview\\_Protocol&hx002B;%282%29.pdf](https://static1.squarespace.com/static/5da61df2de233e586746cdfef/t/5e3da17caafa9459cfd2ad23/1581097340449/Anderson_2013_CornerHouse_Forensic_Interview_Protocol&hx002B;%282%29.pdf); Kathleen Coulborn Faller, *The Cutting Edge of Forensic Interviewing*, 29(2) *J. CHILD SEXUAL ABUSE* 129-137 (2020).
- 17 Victor I. Vieth, *The Forensic Interviewer at Trial: Guidelines for the Admission and Scope of Expert Testimony Concerning a Forensic Interview in a Case of Child Abuse (Revised and Expanded)*, 47(3) *MITCHELL HAMLINE L. REV.* 847 (2021), <https://open.mitchellhamline.edu/mhlr/vol47/iss3/1> (discussing forensic interviews and training requirements); Victor I. Vieth, *Anatomical Diagrams and Dolls: Guidelines for Their Usage in Forensic Interviews and Courts of Law*, 48(1) *MITCHELL HAMLINE L. REV.* 84 (2022), <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1274&context=mhlr/>.

- 18 See Vieth, *The Forensic Interviewer at Trial*, *supra* note 20.
- 19 See Victor I. Vieth et al., *Conducting and Defending a Pandemic-Era Forensic Interview*, ZERO ABUSE PROJECT 2-3 (2020), <https://cdn2.zeroabuseproject.org/wp-content/uploads/2020/05/Conducting-and-Defending-Pandemic-Era-Forensic-Interview-FINAL-1.pdf> (“As the COVID-19 pandemic produces quarantines, school closures, and limited interactions between children and mandated reporters, prosecutors and other members of a multi-disciplinary team (MDT) will likely be confronted with two challenges. First, there will likely be an increase in child abuse cases. Second, adjustments to forensic interviews will eventually result in defense attorneys and defense experts challenging the method in which the forensic interview was conducted... [P]rosecutors should be proactive in advising the MDT to take steps in conducting pandemic-era forensic interviews in a manner that will help the prosecutor to defend the practice should the interview be challenged in court either in an effort to exclude the interview from evidence as being unreliable or simply as a new avenue to cross-examining the interviewer or the child victim.”).
- 20 Fed. R. Evid. 807.
- 21 See Lindsay Mallory et al., *Familial Influences on Recantation in Substantiated Child Sexual Abuse Cases*, 21(3) CHILD MALTREATMENT 256 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6353559/pdf/nihms-1004645.pdf>. (“Results suggest that exposure to familial pressures influences recantation, at least among children whose cases resulted in a dependency court filing. Specifically, children’s removal from home, including whether they are separated from siblings, and allowing visitation with the alleged perpetrator may be important to consider when evaluating the risk for recantation. Also, the multivariate findings suggest that family members who believe children’s allegations may provide a buffer, potentially preventing children from recanting—even when their nonoffending caregiver is unsupportive, whereas disbelief from other family members is associated with recantation, controlling for nonoffending caregiver unsupportiveness.”); Lindsay Malloy et al., *Children’s recantation of adult wrongdoing: An experimental investigation*, 145 J. EXPERIMENTAL CHILD PSYCH. 11 (2016), <https://www.sciencedirect.com/science/article/abs/pii/S0022096515003045> (“46% of the children recant[ed] their prior disclosure when mothers merely suggested that they should. In contrast, no children in the supportive condition recanted, implying that children are unlikely to make spontaneous recantations following supportive caregiver reactions – at least when it comes to minor acts of wrongdoing committed by adults.”); see generally Thomas D. Lyon, *Filial Dependency and Recantation of Child Sexual Abuse Allegations*, 46(2) J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 162 (2007), <https://www.icmec.org/wp-content/uploads/2015/10/Filial-Dependency-and-Recantations-of-CSA-Allegations-Malloy-2007.pdf> (observing a 23.1% recantation rate among participants and finding that those victims who were more vulnerable to familial adult influences were more likely to recant); Thomas D. Lyon et al., *Child Witnesses And The Confrontation Clause*, 102(4) J. CRIM. L. & CRIMINOLOGY 1181 (2012), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7443&context=jclc>. (“If the perpetrator has selected a child within his family or under his care, he can rely on the natural bonds between child and family to prevent disclosure. The most common factor that predicts delay in reporting abuse is the relationship between the perpetrator and the child: the closer the relationship, the longer the delay. This is true in population surveys, clinical samples, and criminal samples. The relationship also affects the likelihood that the child will be inconsistent in her reports and ultimately recant the allegation of abuse. Indeed, when asked, children endorse different rates of disclosure against parents and against strangers.”).
- 22 For more information on witness intimidation and strategies for effectively responding, please visit [www.AEquitasResource.org](http://www.AEquitasResource.org) for information.
- 23 In some jurisdictions witness tampering is an offense triggering jurisdictions’ mandatory reporting laws.
- 24 The doctrine of forfeiture by wrongdoing and related cases will be discussed further in the next section.
- 25 See e.g., 42 Pa. Stat. & Cons. Stat. Ann. § 5985.1 (West 2021); Wash. Rev. Code Ann. § 9A.44.120 (West 2019).
- 26 Crawford v. Washington, 541 U.S. 36 (2004).
- 27 Davis v. Washington, 547 U.S. 813 (2006).
- 28 Michigan v. Bryant, 562 U. S. 344 (2011).
- 29 Giles v. California 554 U.S. 353 (2008); Victor Vieth & Tom Harbinson, *Using the Forfeiture by Wrongdoing Exception in Child and Domestic Abuse Cases after Giles v. California*, 1(1) CENTERPIECE (2008).
- 30 *Id.*
- 31 AEQUITAS, THE PROSECUTORS’ RESOURCE, FORFEITURE BY WRONGDOING (2012), [https://aequitasresource.org/wp-content/uploads/2018/09/The\\_Prosecutors\\_Resource\\_Forfeiture\\_by\\_Wrongdoing.pdf](https://aequitasresource.org/wp-content/uploads/2018/09/The_Prosecutors_Resource_Forfeiture_by_Wrongdoing.pdf).
- 32 See generally NAT’L DIST. ATTORNEYS ASS’N, LEGISLATION AND CASE LAW REGARDING THE COMPETENCY OF CHILD WITNESSES TO TESTIFY IN CRIMINAL PROCEEDINGS, NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE (2011), <https://ndaa.org/wp-content/uploads/Competency-of-Child-Witnesses2011.pdf> (breaking down competency hearing statutes by jurisdiction). While outdated, the compilation provides readily available citations to each jurisdiction’s statutes.
- 33 VICTOR I. VEITH, ZERO ABUSE PROJECT, SEVEN PRE-TRIAL MOTIONS CHILD ABUSE PROSECUTORS SHOULD ROUTINELY FILE (2021), [https://www.zeroabuseproject.org/wp-content/uploads/2021/09/A-Trauma-Informed-Courtroom\\_Seven-Pre-Trial-Moti-](https://www.zeroabuseproject.org/wp-content/uploads/2021/09/A-Trauma-Informed-Courtroom_Seven-Pre-Trial-Moti-)

nos-Child-Abuse-Prosecutors-Should-Routinely-File-12.2021.pdf?utm\_source=rss&utm\_medium=rss&utm\_campaign=a-trauma-informed-courtroom-seven-pre-trial-motions-child-abuse-protectors-should-routinely-file (“To protect children from confusing, even abusive practices while testifying, and to facilitate testimony that is fair and accurate, there are seven pre-trial motions prosecutors should file in most, if not every, case of child maltreatment. Some of these “children’s courtroom rights” have been codified into law in one or more states, but no state has codified all seven of these rights.”).

- 34 See Fed. R. Evid. 1101(d)(1) (evidentiary rules, other than with respect to privileges do not apply to preliminary questions of fact).
- 35 Fed. R. Evid. 701, 702, 703 (governing the admissibility of expert testimony).
- 36 Fed. R. Evid. 404(b).
- 37 Fed R. Evid 413, 414.
- 38 Mark Twain, *Following the Equator: A Journey Around the World*, 156 (The Am. Publ’g Co. 1879).
- 39 *Berger v. U.S.*, 295 U.S. 78, 88 (1935) (“The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done...”).

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