

Child Sexual Abuse Cases

Best Practices Committee of Kansas
Kansas County & District Attorney's Association

August 2018

A PROSECUTOR'S
GUIDE TO CHILD
SEX CRIMES.

FOREWARD

A best practices recommendation of the Kansas County and District Attorneys Association is the product of careful consideration by experienced prosecuting attorneys. However, it is only a recommendation. A best practices recommendation may or may not be feasible in every case or in every county. There may be other methods in local jurisdictions to reach the same or similar objectives.



As some of the most heinous types of crimes that can occur in our communities, prosecutors should endeavor to file child sex crime cases based on the ethical application of relevant facts to applicable case law. These cases are prosecuted most effectively when the entire timespan of the matter, from investigation to disposition, is as short as practically and ethically possible. A shortened timeframe in cases with child victims is in the best interests of both the victim and the State. Shorter timespans are more likely to avoid uncooperative, recanting witnesses/victims. Also, as with any witness, the closer in time to the perceived event the more likely details are to be readily recalled.

Definition of Child Victims: Child victims are those persons under the age of 18 that are victims of physical and sexual abuse, internet crimes against children, and human trafficking.



Recommendation #1

Prosecutors should have sufficient knowledge of the special issues related to child sexual abuse cases to make informed charging decisions. To obtain this knowledge, prosecutors should:

- 1) Attend at least one comprehensive training on prosecuting child sexual abuse cases.
- 2) Second chair at least one child sexual abuse case with a prosecutor experienced in this type of case before having primary responsibility for a child sexual abuse case.
- 3) Become familiar with the following:
 - K.S.A. Chapter 21 Article 55 et al
 - K.S.A. 22-2902 (3) which makes admissible out of court statements of witnesses under the age of 13 for the purposes of a probable cause finding at a preliminary hearing
 - K.S.A. 21-6626 and K.S.A. 21-6627 for sentencing considerations
 - K.S.A. 60-455 (d), with close attention given to the case annotations
 - K.S.A. 60-460 (dd)
 - K.S.A. 21-5502, understand the protections of the Rape Shield law
- 4) Understand the role played by each member of the Multi-Disciplinary Team (MDT), and how to best contribute to, and lead, aspects of the MDT.

Commentary: Child sexual abuse cases are highly complex and present issues that are unique to this field such that special training is necessary to effectively prosecute these cases. The National District Attorneys Association and other organizations frequently provide specialized training related to child sexual abuse. Scholarships and other financial assistance are often available to attend these trainings. After completing a comprehensive initial training, prosecutors should continue to hone their craft by seeking out Continuing Legal Education opportunities related to the prosecution of child sexual abuse cases.

To achieve second chair trial experience, prosecutors in small offices should consider partnering with a more experienced prosecutor in a nearby county. KCDA and the Kansas Attorney General's Office can assist less experienced prosecutors in connecting with a more experienced prosecutor/mentor. This area of practice is constantly evolving. Even highly experienced prosecutors will benefit from close collaboration with other prosecutors specializing in this area. Legally and factually sound cases should never go unfiled because a prosecutor lacks experience. KCDA stands ready to assist.

RECOMMENDATION #2

Child sexual abuse crimes, by their nature, often are committed without witnesses other than the victim. While these cases can be successfully prosecuted based on the testimony of the child victim alone, prosecutors should do everything possible to ensure that the victim does not stand alone. In cases based largely on the child victim's testimony, prosecutors should:

- 1) Understand the special issues related to child sexual abuse cases, such as:
 - a) Physical evidence is rare in child sexual abuse cases – familiarize yourself with sexual assault exam protocols and procedures and communicate with your Sexual Assault Nurse Examiner (SANE). If your jurisdiction does not have a SANE program reach out to a larger jurisdiction and utilize their SANE's to assist in your understanding.
 - b) Disclosure is a process. Incomplete, inconsistent or delayed disclosure is consistent with child sexual abuse. Traumatized victims often do not disclose in a chronological, linear fashion.
- 2) Ensure that the suspect either gives a recorded statement or invokes his Miranda rights.
- 3) Work with law enforcement to ensure that as much of the victim's testimony is corroborated as possible, even "innocent" details.
- 4) Obtain information related to changes in behavior that coincide with the sexual abuse. This may require interviewing and meeting with teachers, therapists, non-offending family members, caregivers, and others.
- 5) Obtain information related to grooming behavior by the suspect.
- 6) Prosecutors should carefully balance the desire for a full and complete investigation with safety and well-being concerns of the victim when deciding when to issue a criminal complaint in a child sexual abuse case.
- 7) Seek out relevant evidence of prior criminal acts, charged or uncharged, beyond the offender's known criminal history. Prosecutors should seek information from the family history, child protection records, other police reports, information from other jurisdictions and any other possible source. K.S.A. 60-455(d)

Commentary: Prosecutors should be sensitive to the confidentiality inherent to the therapist/patient relationship when deciding whether to seek information from a therapist. Prosecutors should understand that confidentiality of the therapeutic relationship may be integral to the victim's healing process.

Recommendation #3

Once a case has been charged or accepted for charging, as soon as circumstances allow, prosecutors should personally meet with the victim. In this meeting, prosecutors should:

- 1) Take time to build rapport and trust with the victim.
- 2) Assess the expectations of the victim and the victim's family.
- 3) Convey a reasonable timeline for the resolution of the case by explaining the typical steps in the court process and emphasizing the expected duration of a case of this type in the jurisdiction. Prosecutors should track the duration of child sexual abuse cases and compile statistics so that estimated timelines can be as accurate as possible.
- 4) Assess the credibility of victim.
- 5) Assess the ability of the victim to withstand the rigors of the case.
- 6) Evaluate the victim's support system.
- 7) Explain services available to the victim.
- 8) Explain the role of the prosecutor, and the prosecutor's staff, including the victim advocate. The discussion should include the prosecutor's responsibility of disclosure to the defense. A victim advocate, if available, should participate in this meeting. However, the victim advocate should not substitute for the prosecutor.

Commentary: Absent extraordinary circumstances, the allegations of abuse would not normally be discussed until further into the rapport-building process. Available services might include counseling, medical treatment, victim's compensation and other resources available locally, regionally, or state-wide.

Recommendation #4

Prosecutors should be aware of ethical considerations related to meeting with the victim or any other witness. Specifically:

- 1) Meeting with a victim or witness alone has the potential to make the prosecutor a witness in the case. To the extent practical, when meeting with a victim or witness an appropriate third party should be included in the meeting.
- 2) When a prosecutor meets with a victim or witness, he should be sufficiently familiar with the facts of the case to recognize material inconsistencies. Prosecutors should be familiar with *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972) and their progeny.
- 3) Prosecutors must disclose witnesses' written or recorded statements, and existing memoranda, reporting or summarizing part or all of their oral statements related to the case. Notes taken by the prosecutor or members of the prosecutor's office may be summaries of witness statements and thus discoverable.

Commentary: Prosecutors have an affirmative responsibility to disclose exculpatory information and information that is relevant to the impeachment of the State's witnesses. When it is unclear if information is exculpatory or relevant to impeachment, prosecutors should err on the side of disclosure.

Recommendation #5

Multi-Disciplinary Teams (MDTs) are a valuable tool in the successful investigation and prosecution of child sexual abuse. Prosecutors should maintain open and cooperative relationships with the other members of their MDT. Prosecutors and members of allied professions should jointly develop a written protocol for the investigation of child sexual abuse cases. If your jurisdiction does not have a formalized MDT in place, you should take affirmative steps to create an MDT with the relevant community partners.

Recommendation #6

The timing and substance of the charging decision should protect the victim's identity to the extent it is consistent with seeking justice in the case.

Commentary: For example, certain charges, such as Incest, may give clues to the victim's identity, gender or relationship to the defendant. Prosecutors should work with law enforcement to ensure that the Probable Cause Statement does not give gratuitous clues to the victim's identity, gender or relationship to the defendant. Unnecessary detail may lead to negative victim publicity, bullying and additional trauma.

A prosecutor should request a Protective Order be issued at the time of charging prohibiting contact between the Defendant and the victim as well as any endorsed witnesses.

Recommendation #7

A prosecutor should, in making charging decisions consistent with a prosecutor's ethical obligations, consider:

1) Case themes.

Example: Where the child sexual abuse was facilitated by alcohol, a prosecutor might consider an additional charge of Furnishing Alcohol to a Minor for illicit Purposes, K.S.A. 21-5607. This additional charge will reinforce the age disparity between the defendant and the victim and the fact that the abuse was substance-facilitated.

2) Enhanced punishment based on the age of the victim.

Example: K.S.A. 21-6627, the first conviction for a sex offense against a child under the age of 14 by an offender 18 years of age or older carries a presumptive life sentence with parole eligibility after 25 years.

3) Enhanced punishment for offenders with prior convictions.

Example: An offender's sentence can be enhanced if the offender is an aggravated habitual sex Offender pursuant to K.S.A. 21-6626. K.S.A. 21-6627, the second conviction for a sex offense against a child under the age of 14 by an offender 18 years of age or older carries a presumptive life sentence with parole eligibility after 40 years. The third conviction is life without parole.

4) Admission of additional evidence.

Example: Where the defendant has sexually abused multiple victims, prosecutors should consider charging crimes against multiple victims in a single case, depending on the circumstances of the crimes.

Recommendation #8

If law enforcement will not, then prosecutors should personally notify a victim of child sexual abuse, or the child's non-offending caregiver, that a decision has been made not to charge the case. The notification should occur promptly and if possible before the defendant is notified.



Thanks and appreciation to the Missouri Association of Prosecuting Attorneys for the source material utilized in this guide.

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