

LEX ENFANTS

QUARTERLY NEWSLETTER | WINTER 2018

BETTER TOGETHER:
CHILDREN'S ADVOCACY CENTERS



ASSOCIATION OF
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LEX ENFANTS

Quarterly Newsletter
Winter 2018

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DIRECTORS MESSAGE:

Welcome to the Winter, 2018 Edition of Lex Enfants.

We are excited to bring you this edition, which focuses on the necessity of working together with Children's Advocacy Centers to do the best we can for the children entrusted to us through the criminal justice process. We are also thrilled to offer this information as a collaborative partnership with our friends at the National Children's Advocacy Center and the National Children's Alliance, as well as the wonderful Children's Advocacy Centers and prosecution offices featured in this edition. Together, we do make a difference in the lives of children; and by working together, we can ease our victims' fears and concerns.

Please join us at one of our four regional conferences or our 3rd Prosecutors' Summit on Child Abuse and Neglect scheduled for this year! Watch our website at www.childabuseprosecution.org as more information becomes available and our registration links open. We would love to hear from you regarding topics and workshop ideas for any of our tuition free conferences or webinars.

Thanks for all that you do –

Kind regards,

Mary-Ann Burkhart

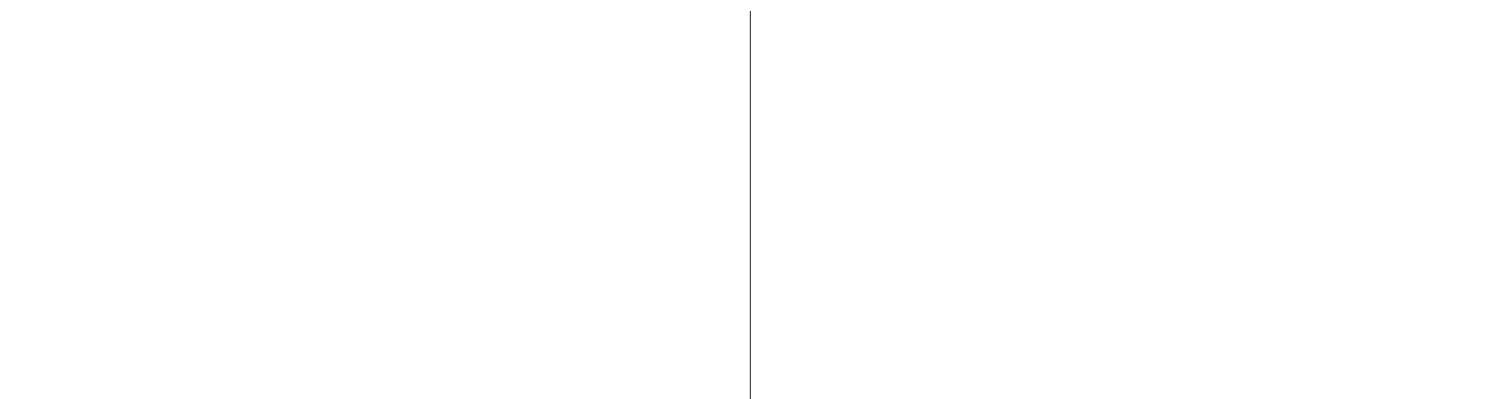
Director, Child Abuse Prosecution Project



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IN THIS ISSUE:

- 04.....Primer on the CAC Movement
- 05.....Spotlight on Waterloo, Iowa
- 06.....Co-Location at the National Children’s Advocacy Center:
A Prosecutor’s Perspective
- 08.....Monmouth County Children’s Advocacy Center:
A Prosecutor-Based CAC
- 10.....Project Harmony:
Child Advocacy Center
- 12.....What We Hear and How Prosecutors Respond
- 15.....Physical Child Abuse Legislation:
Past, Present & Future Trends Regarding Enhanced Penalties
- 18.....Benchmarks





SPOTLIGHT ON WATERLOO, IOWA

The **Allen Child Protection Center**, located in Waterloo, Iowa, is a hospital-based Children's Advocacy Center serving twenty-seven northeastern counties in Iowa. Allen CPC, a department of UnityPoint Health - Allen Hospital, serves approximately five hundred children and dependent adults each year. In 2017, Allen CPC opened a second location in Mason City, a community approximately 90 miles from Waterloo, and provides forensic interviewing, family advocacy, and medical evaluations there one day per week and established a separate case review team for that county.

Allen CPC opened in May 2010, with just one forensic interviewer and administrator. Today, Allen CPC employs ten staff members and provides forensic interviews, medical evaluations, family advocacy and mental health services.

Allen CPC enjoys collaborative, supportive relationships with the Iowa Department of Human Services, many law enforcement agencies and many prosecutors throughout the state. In addition Allen CPC is lucky to have extra support from five other accredited Children's Advocacy Centers and the Iowa Chapter of Children's Advocacy Centers.

"The Allen Child Protection Center is a tremendous resource for law enforcement. Their forensic interviews and accompanying physical exams are essential elements in our child abuse investigations. The reports are professional, accurate and timely. The staff makes every effort to accommodate erratic and emergency scheduling. They have provided compelling testimony in criminal cases that judges and juries trust and believe. I know that taking victims to the Allen Child Protection Center gives me the greatest chance of finding out the truth."

- Special Agent Chris Callaway, Major Crimes Unit, Iowa Division of Criminal Investigation

CO-LOCATION AT THE NATIONAL CHILDREN'S ADVOCACY CENTER: A Prosecutor's Perspective

By: Gabrielle Helix & Anna Stinson

It's Monday and it's trial day. Excited and nervously drinking coffee probably isn't the best thing to do but it is part of a routine. On trial days, 6:30 a.m. is the target arrival time, but there's always wiggle room for a stop at Starbucks. I keep my clothing simple, but in child victim cases I wear a bit of color. This week we are trying a sodomy of a child less than 12 case. Our victim is 9 years old. I do my best to wear the child's favorite color. I tell the kids to wear it also. "It's because we are team", we like to say. She likes blue, so my for uniform today is a freshly pressed white shirt and blue pin-striped suit. As an aside, it's remarkably absent of dog hair.

In my office building, there are three prosecutors with the Family Violence and Sexual Unit of the Madison County District Attorney's office. Each of us carry about 200 cases, comprised of felony domestic violence, sexual assaults, child abuse and child sexual abuse cases. We also prosecute child pornography and any domestic or child homicide cases. We aren't housed with our other county prosecutors but rather grouped with all of our local law enforcement agency investigators, therapists, forensic interviewers, prevention team, and support folks including a paralegal and a victim's advocate for the District Attorney's office. We comprise a co-located Children's Advocacy Center. We have city, county, and federal investigators offices down one hallway and the next. The forensic interviewer and therapists are right next door on the same campus. The campus is the National Children's Advocacy Center in Huntsville, Alabama. It's the original, the model for others to look to and copy or take ideas from.

Back in the 80's then District Attorney Bud Cramer became frustrated while investigating and prosecuting child abuse cases. He found that children had to tell their history of abuse over and over again before it ever got to the official investigation stage. The child's first disclosure was never the last. For example, a child's disclosure to a teacher would make its way to the counselor, where the child had to re-tell. The counselor would then have that child repeat to the principal. The principal would have that child repeat to a patrol officer, then an investigator, then a nurse, then a prosecutor, then a courtroom, if it even got that far. Imagine having to tell someone about a traumatic event over and over again – watching the faces of the receiver, and then telling it again. Pretty soon, I would imagine, much like these kids often would, you either, a) downplay the events, b) change the facts around based upon reactions, or c) shut down or stop talking. DA Cramer innovatively realized that if children only had to give their history of abuse once, trauma would be

lessened, the outcry would be cleaner and all the receiving parties would hear the same set of circumstances. Those ideas became what is now the National Children's Advocacy Center (NCAC). The premise was teamwork. It was children telling once, minimizing suffering by having professionals work together for the benefit of the child.

In most offices, getting a group of strong willed, independent people together is a lot like herding cats. A herd of cats moving together in our kid-case world requires colocation. Actual colocation might not have been in Bud Cramer's original sight but it is certainly the natural progression of his vision of teamwork. Working from home, portable offices and flexible hours is what's hot in business now. With the ability to keep everyone connected through remote log ins, skype and google docs, businesses can slash their overhead costs, lure talented employees in all areas of the country without physically moving them and keep everyone happy working from home, or a coffee shop or during personal travel. In business, forcing a colocation isn't cool. However, child abuse isn't a business. I grab my files, my laptop, my exhibits and my binder of jury instructions, predicate questions and my cup of joe. I shove all this awkwardness into a rolling briefcase. Court appearances require our team to drive to the courthouse and find parking in a lot or garage. It's the biggest inconvenience of colocation. Our main DA's office is inside the courthouse and I envy the ease with which my fellow prosecutors are able to go to court. I pack and start down the hallway. The lead investigator on my case is 4 doors down and as I pass his office I notice he is packing his things as well. As court is often unpredictable, he will wait for my 'go ahead' text before he leaves. The victim's advocate checked in earlier and is already at the courthouse awaiting the victim and her family. She will make sure they are comfortable and settled before I arrive. I stop and speak to another investigator who worked on this case and who I might call, if necessary. His quick hug and wish of luck turns sour as he points out the coffee spill on my shirt.

Anna, also a child abuse prosecutor, is helping me with voir dire, note taking and keeping me sane. Her office is two doors from mine and she hasn't left yet plus there's the added benefit of the Tide Stick she always has in her desk. With a Tide stick my problem is addressed and solved with one swift swipe. A Tide stick is neat little thing; convenient and efficient, it solves the problem it is tasked to do.

As Anna and I sit to discuss the purpose of this article, the pros and cons of colocation, we realize this Tide Stick embodies what colocation really is. The stain remover is quick, easy, responsive, convenient and available; however, it doesn't work on all stains – the ones that sit too long or are permanent no matter how many pokes of the stick you take it's going to be there forever. But, when it works it's expedient as it has all the ingredients to get the job done.

Our Children's Advocacy Center has all the ingredients.

Colocation calms crisis. When prosecutors, investigators and other child welfare professionals are collocated, they can coordinate their talents and focus on a crisis when it emerges. Colocation is a one-stop shop for the victim and their family and justice. We evaluate emergent cases as a team. When a child comes for a forensic interview, a prosecutor and an investigator can immediately start a case working together, even if they aren't eventually "assigned" to this particular case. We watch in real time, and assist the forensic interviewer in nailing down timelines and clearing up details. Colocation is invaluable in times like these. When time is of the essence, all of the resources and people are available to properly evaluate the case, and ensure the safety of the child and of the community.

Colocation promotes teamwork. In our location, an interrogation room sits in the middle of the building. If a person is in the unit for questioning, any prosecutor can step in to give advice or share opinions. A caseworker can sit and take notes to compare to the statement of the victim in real time. The victim could be in one building and the alleged offender in the other, and the team can work together between offices providing information and pinning down the facts. The downside? Colocation promotes teamwork, and most prosecutors and attorneys are control freaks. There are many times, I really don't want to work in a team. I just want to do it my way. All this to say, sometimes there can be too much discussion, and it can be exhausting.

Colocation is convenient. There's no planning, no scheduling, no collaboration issues. If something is convenient most likely it will be used. I use my coworkers like the Tide stick, and solve the issue. Convenience promotes action. Being collocated means we don't use voicemail to contact each other. I can drop by, yell or grab them as they walk by. All my professional witnesses are within walking distance. We have a receptionist in the middle of our building who will also point us in the direction of the person who just walked past. The downside? Sometimes issues can be resolved on your own. It is too easy not to put in the effort before bothering or interrupting someone else.

Colocation is efficient. Prosecutors can quickly get the items needed for files from law enforcement. We can get medical reports from our medical professionals across campus, or speak to the victim's therapist with a just walk down the

way. The downside? My timeline isn't always everyone else's and vice versa. The need for immediacy sometimes interrupts the processes of another. Just because a report is in the computer, it doesn't mean it's necessarily finished, and there might be a problem with me looking at information prematurely, before the investigator is finished. It is the same for medical or forensic interviewers. I can get it quickly, but it may not be their finished product. Efficiency shouldn't be a rush completion.

Colocation means distractions. Lots and lots of distractions.

If my door is open, there are people in the doorway. In this unit there is rarely a crime that doesn't bother you, so when your main focus involves concentrating on the significant trauma of children and families, distractions are welcomed. Distractions take your mind off the horrible crime scene images and child pornography. They stop by, pop in, wave, yell, whisper – all of which require a response. We celebrate birthdays, guilty verdicts, great investigations, Fridays and half-days with baked goods in our kitchen. We play jokes on each other, tease each other and sometimes argue. We are like a family and with families come fun and drama. The downside? Distractions break concentration. When you are in the middle of something, like court prep or victim prep, distractions can take up time and steer you off-course. Repeated distractions of multiple emergent cases a day, constant interruptions for advice, or a couple of co-workers with too much time on their hands who lure you into their issues can cause you to work extra hours and weekends unnecessarily.

Colocation means "no one answers to anyone". We work independently of each other. Each of us has our own objective, our own discretion and our own way of looking at cases. It's a great arena for "trying out" your ideas, cases or methods. Viewpoints and opinions are varied creating options and alternative probably not otherwise considered if you were grouped with people who only do what you do. The downside? If you really want something done a certain way, sometimes it just can't happen. Each agency works under its own rules and guidelines. We have no say over one another. There really is no boss of all of us. It can be chaotic and messy as most relationships are so power plays are not well received but those who compromise come out ahead.

The trial presentation took three days and the jury was out for two. We got a guilty verdict, and as predicted a baked good appeared in the kitchen the next morning. I say "we" because we are collocated. A win for justice is a win for all of us. Had it been not guilty? Well, we are collocated.

Gabrielle Helix is a prosecutor in the Madison County District Attorney's Family and Sexual Assault Unit. She is a graduate of Birmingham School of Law. Prior to joining the DA's office, Gabrielle was a criminal defense attorney.

Anna Stinson is a prosecutor in the Madison County District Attorney's Office Family Violence and Sexual Assault unit. She is a graduate of Birmingham-Southern College and the University of Alabama School of Law.



MONMOUTH COUNTY CHILDREN'S ADVOCACY CENTER:

A Prosecutor-Based CAC

This Article was a Multi-Disciplinary Endeavor

The Monmouth County Child Advocacy Center (MCCAC) provides a singular location, team, and coordinated response to embrace victims of child abuse. The MCCAC is a Prosecutor-Based child advocacy center operated as a part of the Monmouth County Prosecutor's Office. Having the MCCAC under the Prosecutor's Office's purview enhances the overall mission of the intervention, investigation, and prosecution of child abuse and neglect cases, while placing the needs of the children and their families first. According to Debbie Riveros, the MDT Coordinator of the MCCAC, "the 'all under one roof' approach enhances the safety of the children that we serve, and reduces trauma for the most vulnerable victims by promoting the healing of child abuse victims and their non-offending family members." This process is formally known as the Multidisciplinary Team (MDT) approach and takes place at the MCCAC, in a truly child friendly, confidential, and neutral setting.

The Monmouth County Prosecutor's Office pioneered this interagency cooperation more than 17 years ago by establishing a MDT to respond to reports of child abuse. Along with the MDT, a MDT Advisory Board was established to provide guidance and assist in the development of the MDT process. The MDT Advisory Board was comprised of community leaders and representatives from the MDT participating disciplines. The MDT Advisory Board believed that a Child Advocacy Center was necessary to fully serve victims of child abuse and took on the project of developing a Child Advocacy Center for Monmouth County.

In June of 2009, construction was completed on the first phase of the MCCAC and its doors were opened to provide critical services to child abuse victims. All forensic interviews of child victims and witnesses are now conducted in under the MCCAC's child friendly roof. The space also permits vital services such as victim advocacy and mental health counseling on-site. Children and non-offending parents are also able to meet with child protection workers and other professionals involved with their cases to be prepared for upcoming court proceedings. The warmth of the space is palpable to all who enter the MCCAC. Countless victims and their families have conveyed that coming to the MCCAC and meeting with everyone associated with their cases in one location has helped them immensely, not just logistically by only traveling to one destination, but emotionally, because the space is designed with kids in mind.

According to Monmouth County Prosecutor Christopher Gramiccioni, it was one of his goals to have construction completed on the second phase of the MCCAC. "It was an honor to cut the ribbon on the expansion of the MCCAC in August 2015. We increased the space for mental health,

medical, child protection, and other MDT professionals to co-locate, and broadened the scope and breadth of services the MCCAC is able to provide."

The completion of the MCCAC in 2015 has further strengthened the collaborative community relationships that already existed. Current team members involved in the response to any reported child abuse in Monmouth County include: the Monmouth County Prosecutor's Office, local law enforcement, child protective services, medical, mental health, and victim witness advocacy. In all cases of reported child abuse, law enforcement, child protective services and any other professionals involved in the case respond to the MCCAC to coordinate their work in a multidisciplinary fashion. The MCCAC is the focal point and location for Monmouth County's coordinated community response to child abuse. In 2016, 387 children/ families received services coordinated through the MCCAC.

All forensic interviews of children aged 12 and under, or an older child with developmental and psychiatric disabilities, are conducted at the MCCAC. In 2016, 139 forensic interviews were conducted at the MCCAC. In addition, the Special Victims Bureau (SVB) of the Monmouth County Prosecutor's Office is notified of any investigation involving a child victim, age 12 to 18, of sexual and / or physical abuse, serious neglect or witness to domestic violence.

The SVB is comprised of four assistant prosecutors and a Director who work closely with the lieutenant, sergeant, and five detectives assigned to the Unit. Involvement at the preliminary stages of an investigation enhances the overall quality of the investigation, avoids duplication of law enforcement efforts and increases the ability for a successful prosecution. In 2016, detectives of the SVB conducted or assisted in 695 investigative activities, either initiated within this Office or handled as cooperative investigations with local police departments and child protective services. While not all of the investigations involved the filing of charges, these investigations led to over 180 successful prosecutions.

With the opening of the MCCAC, coordination of the Monmouth County's MDT approach to child abuse investigations has continued to evolve in a positive trajectory. Improved outcomes across all disciplines, including more successful prosecutions, have been noted by many of the long established MDT team members.

While the MDT process continues to evolve, the one constant goal of the MCCAC has been, and always will be, putting the needs of the children it serves first.

"The 'all under one roof' approach enhances the safety of the children that we serve, and reduces trauma for the most vulnerable victims by promoting the healing of child abuse victims and their non-offending family members."



PROJECT HARMONY:

Child Advocacy Center

Project Harmony is a child advocacy center with a mission to protect and support children, collaborate with professionals and engage the community to end child abuse and neglect. This has become a national model of public and private collaboration. This organization has established, on one campus, efficient and effective collaboration that has dramatically improved how the community responds to child abuse.

Today, Project Harmony is one of the largest Child Advocacy Centers in the country. This is not due to an overwhelming volume of child abuse, but due to the level of collaboration that comes together to address the issue collectively. The Child Advocacy Center model has been replicated to impact child abuse as a best practice community response. Today there are more than 800 centers Accredited by the National Children's Alliance, serving a collective 325,000 children each year.

More than 240 professionals are co-located on Project Harmony's campus and are working together to provide abused children the best possible community response. The sharing of critical information across the disciplines is being coordinated and orchestrated by Project Harmony staff and everyone is working closely with each other.

Child Protective Services is on site along with the Omaha Police Department Child Victim/Sexual Assault Unit and Domestic Violence Unit. Essentially all forms of government (city, county, state and federal) are coming together with collaborative nonprofit agencies – all working to respond from one location, addressing one issue – one child at a time.

Prior to 1996 the child welfare system in the metro area was in a relatively primitive phase of development. Agencies involved in child abuse investigations worked in virtual silos and information was normally shared only when it benefited the originating agency. Prosecution of criminal cases was infrequent and outcomes for children were mixed.

Project Harmony grew out of the vision of several Omaha community professionals and advocates to create a better system of protection for abused and neglected children. The vision was to not only create an integrated response system but also to develop a single child friendly location where all the professionals would come together to serve each child. They envisioned a system of joint accountability where no child would fall through the cracks.

"From where we were at a little over 20 years ago to now, it's a tremendous difference," said Douglas County attorney Don Kleine. "The level of talent and professionalism of all involved

– collaborating together – allows us to move cases forward easier. Which, in turn, has helped bring justice to a lot more families."

When Project Harmony first opened, they saw roughly 156 children during that year. In 2016, Project Harmony provided services to 4,200 children and by the end of 2017 it is estimated that they will have helped provide services to over 5,000 children. In the last year 27% of these child victims were under the age of six and another 46% were between six and 12 years of age. These children come from the Omaha Metro Area and 16 counties in southwest Iowa. More than 80% of these children are living in families with poverty. Fifty-three percent of the children served were alleged victims of sexual abuse; 31% were victims of neglect, 12% were victims of physical abuse and 4% were witnesses to violent crimes. In 98% of the cases, the alleged perpetrator was known to the family, with more than 70% being parents or other family members.

"My office has seen enormous benefits as a result of our close relationship with Project Harmony," says Pottawattamie County attorney Matt Wilber. "The quality of justice has improved for child victims because of the professional interviews, examinations, and testimony we receive from the trained experts at Project Harmony. Perhaps even more importantly, the children are treated with sensitivity and respect throughout the process which helps them to start the healing process as quickly as possible – which ultimately is everyone's goal."



Project Harmony's innovative model also includes training and case coordination. In 2017, the Training Institute has trained more than 12,000 professionals, 354 courses and 975 training hours. Their training facility allows for training to be delivered in a "live" simulated environment - focusing on role playing and assisting professionals in field interviewing, safety assessment, and managing the environment during a child abuse assessment.

Project Harmony has 12 multi-disciplinary teams composed of members representing juvenile county attorneys, Health and Human Services, school systems, mental health therapists, law enforcement, etc. The teams ensure that communication is clear, decision making on child safety and treatment interventions are best practice and that any system issues are addressed.

Henry Ford once said,

*"Coming together is a beginning;
keeping together is progress;
working together is success."*

WHAT WE HEAR AND HOW PROSECUTORS RESPOND

Case review meetings are not valuable and I am not needed.

On the contrary, case review meetings play a valuable role in the effective functioning of a strong multidisciplinary team. First and foremost, the prosecutor, along with the other members of the MDT, bring with them specific responsibilities, insight and experience in child abuse investigation and prosecution. Through a sharing of information and valued discussion and review, case review meetings serve the valued purpose of offering to the child victim and their family the optimal services available to participate in the criminal justice system. For the prosecutor specifically, engaging with MDT members in the case review process can often uncover issues that may affect the prosecutor's charging decision responsibilities as well as provide consistent and continued review of pending investigations.

Forensic interviews should not be recorded because it does not show the child as a credible witness.

Forensic interviews should be recorded so that the interview can be accurately documented. By recording the interview, both the interviewer's and child's words and non-verbal communications are preserved. Recording provides the most complete and accurate account of the interview. For prosecutorial purposes, a recording is the best evidence against defense attacks of suggestibility by the interviewer or what exactly was communicated by the child. The recording provides documentation of the interview in a clear, concise manner that cannot be duplicated by contemporaneous or post-interview note taking by the interviewer or other MDT members. See Position Paper on Documenting Forensic Interviews, NCAC, October 2016.

Forensic interviews should not be recorded because interviewers quite often make mistakes.

For prosecutors to assess the quality of a forensic interview, they need to learn as much as possible about forensic interviewing and the professional education and training that forensic interviewers participate in. Forensic interviewers are trained on one and sometimes more than one forensic interview structure. Forensic interviewers do not decide to interview a child based on personal factors, they are trained as neutral professionals to interview the child in a non-suggestive and legally sound manner. In addition, forensic interviewers continue to develop their professional forensic interview skills by continual peer review, participation in local, statewide, regional and national training and continued review of peer reviewed articles and research in the field of forensic interviewing.

For prosecutors specifically, get to know the forensic interviewers that you work with. The deeper the knowledge of the prosecutor concerning forensic interview protocol, will better enhance the prosecutor's ability to evaluate the forensic interview, present an effective direct examination of the forensic interviewer at trial, and more effectively cross-examine a defense expert forensic interviewer. Prosecutors need to keep in mind though, that just like there is no perfect direct examination, there is no perfect forensic interview.

Obviously, because I am prosecution, I limit my involvement with the CAC to maintain neutrality.

For the MDT to function in an effective manner, all disciplines must participate fully. Participation by the prosecution in the MDT process of the forensic interview and case review does not negate neutrality. A healthy, functional MDT recognizes the unique roles and responsibilities of each member and respects those professional boundaries. The prosecutor's participation in the MDT process and their working relationship with the CAC staff, provides to all MDT members an integral criminal legal vantage point not provided by other MDT members who have different, but equally important roles and responsibilities. The prosecutor's participation enhances the process and provides invaluable insight to the MDT into the nuances of investigation, case charging and trial strategy decisions.

My role is not to provide input into the forensic interviewing process.

Prosecutors need not shy away from attendance at and participation in the forensic interviewing process. The prosecutor's presence at the forensic interview (usually behind a one-way glass or in another room via closed-circuit TV) is extremely valuable in that the prosecutor is involved in the case from the early interview stage and has the ability to speak with other MDT members about the case as well as the family of the child victim at the post-interview meeting. The prosecutor's attendance at the forensic interview streamlines effective communication with MDT members concerning further investigation steps such as witness statements, a medical examination and search warrants. It also allows the family of the child to meet the prosecutor who may be eventually handling their child's case in court and for the prosecutor to answer any questions the family may have about the criminal justice system.

What the prosecutor must keep in mind though is that it is only the forensic interviewer who will conduct the interview. The prosecutor can and should suggest relevant questions that the forensic interviewer should ask during the interview. This will usually occur during the latter part of the interview where the forensic interviewer pauses the interview and asks the MDT if they have any suggestions for relevant questions. Though a prosecutor may suggest a question to the forensic interviewer, it is the decision of the trained forensic interviewer if that particular question is appropriate relevant to their training and experience in forensic interviewing.

It is hard to be away from the office for whole length of case review.

Though case review meetings do require a significant time commitment, it is essential that the prosecutor participate. Case review meetings ensure that cases do not fall through the cracks and that everything is being done to properly investigate the matter and provide the necessary services to the child and their family.

Some suggestions for managing the time commitment required for case review would be for the prosecutor to co-locate at the Children's Advocacy Center. By having an office at the CAC, the prosecutor can more easily manage to attend case review meetings as well as handle their other prosecution work responsibilities. In addition, setting clear goals concerning case review with MDT members that require prompt attendance, high level of preparedness, convenient scheduling and time limits will result in a professional and effective case review meeting.

The new accrediting requirement that we meet monthly is too frequent because very little happens with filed cases from month to month.

The time between formal charging and trial can be filled with long periods of inactivity. But to view the monthly meetings as a burden because nothing may have changed with the criminal case is a narrow view of the multidisciplinary approach. The MDT seeks to address all the needs of the child victim, not just the criminal matter. But the meetings can be invaluable to the criminal case as well. The team may have information about the ever-changing family dynamics that could mitigate a possible recantation. Or they may be aware of familial or social pressures being placed on the child that may affect testimony at trial. While every case may not have an update at each meeting, the lack of continual communication will undoubtedly lead to missed information, some of which could be critical to the prosecution.

Based on my role in the prosecution some of the discussions regarding the dependency issues are not relevant to my case or what needs to be done.

There will oftentimes be information discussed at the monthly meetings that don't directly affect the prosecutor's role in the MDT. But as discussed, there could be valuable information learned from the dependency matters that may affect the testimony of the victim or other family members. Learning that information as it happens, versus at or before trial, could make all the difference in the success of the prosecution.

I don't feel I need to explain my decisions for each case.

The law provides a prosecutor's office with enormous power and autonomy, and it is technically true that individual decisions do not mandate an explanation. However, the multidisciplinary team cannot grow and learn without feedback from all the partners. If there are reasons why a case cannot proceed, or a rationale for certain legal decisions that were made, learning the details could help with future investigations. It's important to always remember that the goal of the team is to not only work individual cases, but to continue to become stronger and more effective. Additionally, the increased communication will be motivating for the individual team members, leading to more positive results going forward.

As a prosecutor, I prefer not to discuss my open cases.

A prosecutor could have a reason for not discussing an open case, especially trial strategy. But this shouldn't prevent a prosecutor from engaging in at least some aspect of the MDT meetings. Again, the team's goals reach beyond the criminal case, and the prosecutor can offer assistance to that end. And as previously discussed, the prosecutor may gain real-time information that will ultimately aid the criminal case.

The only resource of value is the video-taped interview

Beyond the tangible benefit of the video-taped interview, the CAC itself and the MDT model provide many other valuable resources. Children and families can receive mental health services at many CACs, and medical services are also part of a full-service CAC. The child's mental and physical well-being matter not only to case outcomes but to child outcomes as well.

Oftentimes, advocates are available through the CAC to assist the children through the criminal justice process. Children who are supported in this manner undoubtedly fare better, both at trial and in their personal lives.

CACs also continue to support the MDT with their expertise in not just interviewing, but to the extent relevant, the treatment of child victims. This can aid the prosecutor in developing rapport with the child, and approaching the interactions with the child in a trauma-informed way. The forensic interview is just the beginning of the services that the CAC can provide both to the child and the entire multidisciplinary team.



PHYSICAL CHILD ABUSE LEGISLATION:

Past, Present & Future Trends
Regarding Enhanced Penalties

Kilah Davenport

Kilah Davenport, of Concord, North Carolina was born on April 3, 2009. Kilah was a healthy, happy, energetic and thriving three-year-old when she was left alone with her stepfather as her mother went to work. Mere hours later, she was in the hospital, beaten so severely, that she was not expected to live. Kilah's fight for survival was full of ups and downs. She made strides in recovery, in the beginning, that doctors said would never happen. Although Kilah survived for 22 months after her abuse, sadly, she succumbed to her injuries on March 13, 2014, just three weeks shy of her fifth birthday.

Kilah Davenport Child Protection Act of 2013:

Directs the Attorney General to report every three years to the congressional judiciary committees on the penalties for violations of laws prohibiting child abuse in each of the 50 states, the District of Columbia and each U.S. territory, including whether the laws of that jurisdiction provide for enhanced penalties when the victim has suffered serious bodily injury or permanent or protracted loss or impairment of any mental or emotional function.¹



What is an Enhanced Penalty?

An enhanced sentence typically means a sentence which is increased by a prior conviction or the serious nature of the circumstances involved from one classification of offense to another higher-level classification of offense. Enhanced sentence laws are governed by federal and state laws, which vary by state.²

Introduction/Overview:

It is unclear exactly how many children are physically abused, but official statistics, research studies and what children tell us, gives us a good idea about the abuse they are experiencing.³ We do know that children are suffering from a hidden epidemic of child abuse and neglect. Every year more than 3.6 million referrals are made to child protection agencies, involving more than 6.6 million children (a referral can include multiple children), in the United States alone.⁴ The United States has one of the worst records among industrialized nations – losing, on average, four and seven children every day to child abuse and neglect.⁵ In fact, in the time it took for you to read the previous four sentences of this paragraph, three or more reports of child abuse were made in the United States, as a report of child abuse is made every ten seconds.⁶

In 2012, Kilah Davenport, a four-year-old, suffered a fractured skull and damage to 90 percent of her brain following abuse at the hands of her stepfather, Joshua Houser. Kilah, just three weeks prior to turning five, passed due to severe complications from the brain damage she received from the beating by her stepfather.⁷ In light of the tragic event of Kilah's struggle with brain damage, and passing, The Kilah Davenport Child Protection Act of 2013, newly required anyone convicted of a felony child abuse to face 25 years to life in prison.⁸

The question remains, where do we go from here? Is the enhancement of penalties in child abuse cases the new trend, and how will this help end child abuse? This article will discuss the past penalties for physical child abuse, prior to Kilah's Law, the present application of Kilah's Law, and also a look forward into what could be next in the solvency in child abuse.

Child Abuse Legislation and Protection Institutions – Prior to Kilah's Law:

Throughout history, parents have had primary responsibility for their child and the right to raise them as they see fit. In the United States, this right is codified in the fourteenth Amendment to the Constitution, which includes the statement that "no states [shall] deprive any person of life, liberty or property, without due process of law." The Supreme Court has affirmed the principle that "liberty" referred to in the amendment "denotes not merely freedom from bodily restraint but also the right of the individual to... establish a home and bring up children... according to the dictates of his own conscience..." Meyer v. Nebraska (1923). "Reasonable" corporal punishment was widespread, and rarely did the government interfere with the parental prerogative to punish their children as they saw fit.

Organized child protection in the United States can trace its origins to the late 19th century, when the high-profile case of Mary Ellen Wilson led to the creation in 1874 of the Society for the Prevention of Cruelty to Children (SPCC) in New York. The movement to establish non-government child protection organizations spread throughout the country. By 1880, there were 37 such organizations in the United States. By 1922, the number of non-governmental charities dedicated to protecting children reached an all-time high of over 300.⁹

Penalties for Physical Child Abuse and the Transition to Enhanced Penalties:

In most states, child abuse may be charged as either a felony or a less serious offense, depending on the circumstances. The most severe cases of child abuse can carry felony lifetime sentences, while the least serious cases are considered gross misdemeanors which could potentially result in no prison time. Punishment will typically be more severe if the offender has a prior record of criminal child abuse activity and greatly reduced if there is no prior record.

In a large number of cases, sentencing can include probation or a prison term of up to five years. Sentencing in more serious cases may include a longer prison term.¹⁰ Other possible penalties and/or consequences can include:

- Termination of parental rights
- Ruined reputation
- Criminal record
- Supervised access to the child
- Continual involvement with a child protective services agency

The transition to the increased use of enhanced penalties for physical child abuse cases began after the December 2013 enactment of Kilah's Law. As of November 2017, out of 5 United States Territories and 50 States, 35 have passed legislation regarding enhanced penalties for physical child abuse.

The states with enhanced penalties for child abuse include:¹¹

Alabama, Arizona, **Arkansas**, Colorado, **Delaware**, Florida, **Illinois**, Indiana, **Iowa**, Kentucky, **Maryland**, Massachusetts, **Michigan**, Minnesota, **Mississippi**, Missouri, **Montana**, Nebraska, **Nevada**, New Hampshire, **New Mexico**, North Carolina, **North Dakota**, Ohio, **Pennsylvania**, Rhode Island, **South Carolina**, South Dakota, **Tennessee**, Texas, **Utah**, Virginia, **Virgin Islands**, Washington, **West Virginia**, Wisconsin, **Wyoming**

What the Future Looks Like for Physical Child Abuse Penalties:

The Healthy People 2020 initiative has set a goal to reduce rates of non-fatal child maltreatment and abuse (from 9.4 per thousand in 2008, to 8.5 per thousand by 2020) and abuse fatalities in children (from 2.3 per thousand in 2008, to 2.1 per thousand by 2020). The following programs have proven to be effective in reducing these fatal and non-fatal abuse cases, such as; Early Start, Parent-Child Interaction Therapy, Nurse-Family Partnership, and Triple-P Positive Parenting Program.¹² While the push for Child Advocacy Centers, and Child Protective Organizations will prevail as a preventative to child abuse, the increase in enhanced penalties will continue in order to demand the abuse of children to decrease. All in all, these goals are achievable, and while these statistics seem promising for the protection of our world's children we look forward to continuing legislative and legal work to ensure child abuse continues to decline.

Endnotes:

1. *Kilah Davenport Child Protection Act of 2013, Public Law 113-104, U.S. House of Representatives 113, (2013): 1-4.*
2. *US Legal Definitions, Last Updated: 2016, Date Accessed: November 8, 2017, <https://definitions.uslegal.com/e/enhanced-sentence/>.*
3. *NSPCC, Last Updated: 2017, Date Accessed: 2017, National Society for the Prevention of Cruelty to Children, <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/physical-abuse/physical-abuse-facts-statistics/>.*
4. *Child Help, Last Updated: 2016, Date Accessed: November 8, 2017, Prevention and Treatment of Child Abuse, <https://www.childhelp.org/child-abuse-statistics/>.*
5. *Child Help, Last Updated: 2016, Date Accessed: November 8, 2017, Prevention and Treatment of Child Abuse, <https://www.childhelp.org/child-abuse-statistics/>.*
6. *Child Help, Last Updated: 2016, Date Accessed: November 8, 2017, Prevention and Treatment of Child Abuse, <https://www.childhelp.org/child-abuse-statistics/>.*
7. *Cleve R. Wootson Jr., "Kilah Davenport, Who Sparked Child Abuse Legislation, Dies at 4," The Charlotte Observer, March 13, 2014, <http://www.charlotteobserver.com/news/local/article9103841.html>.*
8. *Jenna Deery, "Kilah Davenport, Victim of Child Abuse, Dies at Age 4," WSOC-TV, March 13, 2014, <http://www.wsoc.com/news/local/family-member-kilah-davenport-victim-child-abuse-d/113069084>.*
9. *National Child Abuse and Neglect Training and Publications Project at Paltech, Inc., "The Child Abuse Prevention and Treatment Act," CAPTA, Published: April 2014, Date Accessed: November 8, 2017, https://www.acf.hhs.gov/sites/default/files/cb/capta_40yrs.pdf.*
10. *Find Law, "Child Abuse Penalties and Sentencing," Thomson Reuters, Last Updated: 2017, Date Accessed: November 8, 2017, <http://criminal.findlaw.com/criminal-charges/child-abuse-penalties-and-sentencing.html>.*
11. *Association of Prosecuting Attorneys Child Abuse Prosecution Project, "Kilah Davenport Child Protection Act of 2013: Report to Congress," Last Updated: November 2017, Date Accessed: November 8, 2017.*
12. *Child Trends, "Child Maltreatment," Child Trends – DataBank Indicator – Child Maltreatment, Last Updated: 2014, Date Accessed, November 8, 2017.*



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BENCHMARKS

EXPERT OPINION BASED ON WITNESS ACCOUNTS IN ABSENCE OF PHYSICAL EVIDENCE RULED INADMISSIBLE

The Supreme Court of Pennsylvania held that an “expert witness may not express an opinion that a particular complainant was a victim of sexual assault based upon witness accounts couched as a history, at least in the absence of physical evidence of abuse. We find that such testimony intrudes into the province of the jury relative to determining credibility”.

Commonwealth vs. Kenneth Maconeghy, 2017 Pa. LEXIS 2466

PROSECUTOR’S CLOSING ARGUMENT STATEMENTS ABOUT DEFENSE ATTORNEY’S ACTIONS HELD TO BE REASONABLE

The Washington Court of Appeals ruled that rebuttal closing statements of the prosecutor that “It’s not really a fair fight for a defense attorney to parse out a child’s words with such great specificity. ... She’s only in the fifth grade” and that asking the child “more questions would be difficult because “[y]ou know”, (the child) “had to get in here and testify, at ten years old, about being raped, in front of the man who did it. How difficult would that be? So Defense complains we didn’t ask her about her nightmares she was having about it. I think she was in here long enough.” were not improper because they reasonably responded to defense counsel’s attack on the delay in reporting the 2008 incident. The Court further reasoned that “comments on what” the child “was capable of, given her age, were reasonable inferences from the record”.

State v. Wilkins, 2017 Wash. App. LEXIS 2371

COURT RULES ENHANCED SENTENCES UNDER DANGEROUS CRIMES AGAINST CHILDREN STATUTE NOT UPHELD DUE TO FICTITIOUS CHILDREN

The Supreme Court of Arizona found that “the court of appeals erred in upholding the trial court’s denial of defendant’s request to dismiss his enhanced sentences under the dangerous crimes against children statute, Ariz. Rev. Stat. § 13-705(P)(1), because, even if the offense were preparatory (i.e., a solicitation), it must have been committed against an actual child where the purpose of the statute was to provide enhanced punishment for offenders who harmed actual—not fictitious—children, and the woman defendant spoke to about allowing him to engage in sexual acts with her two young children was actually a postal inspector and her children were fictitious”.

Wright v. Gates, 2017 Ariz. LEXIS 287, 775 Ariz. Adv. Rep. 6

COURT RULES PARENT’S DISCIPLINE OF CHILD UNREASONABLE PURSUANT TO PARENTAL DISCIPLINE PRIVILEGE

The Appeals Court of Massachusetts upheld Appellant’s conviction for assault and battery with a dangerous weapon, for striking her five-year-old with a leather belt for “unspecified behavior in his kindergarten classroom”. The Appeals Court held that “we are satisfied that the evidence was sufficient to prove that the Defendant’s use of force was unreasonable, thus negating the first prong of the parental discipline privilege”.

Commonwealth vs. Dobson, 92 Mass. App. Ct. 355, 2017 Mass. App. LEXIS 135

COURT REVERSES CHILD ABUSE CONVICTIONS DUE TO ERROR IN ADMITTING PREJUDICIAL EVIDENCE

The United States Court of Appeals for the Ninth Circuit reversed Appellant’s convictions for sexual abuse of a child due to a number of trial errors which included, at trial, “evidence of a subsequent masturbation incident linked to child-incest fantasy” which the Court held is “highly prejudicial to a defendant charged with child molestation; a jury confronted with such disgusting evidence is likely to conclude that the defendant “is the type” to molest a child”. The Court further determined that “here, the “visceral impact” of this evidence “far exceeds [its] probative value”.

United States vs. Preston, 2017 U.S. App. LEXIS 20301, 873 F.2d 829.

WITNESS TESTIMONY THAT DEFENDANT DESIRED TO SEXUALLY ABUSE CHILDREN HELD ADMISSIBLE

The Supreme Court of Idaho upheld Appellant’s convictions of sexual abuse of a child and ruled that the trial court’s admittance of a “witness’s testimony that defendant indicated that he desired to sexually abuse children had a tendency to make it more likely defendant’s admitted contact with the victim was not innocent, but was rather done for the purpose of gratifying defendant’s sexual desires; thus, the witness’s testimony was relevant under Idaho R. Evid. 401 and admissible.”

State v. Folk, 2017 Ida. LEXIS 271, 2017 WL 4159196

BENCHMARKS

COURT FINDS STATE'S EXPERT TESTIMONY BY NINE WITNESSES IN CHILD DEATH CASE NOT IMPERMISSIBLY INTRUSIVE

The Supreme Court of South Dakota rejected Appellant's argument that the allowance of expert witness testimony by nine witnesses at trial in a child death case was impermissibly intrusive. The Court found that "a full review of the trial transcript does not reveal any instances where the nine challenged experts improperly expressed what conclusions the jury should reach. Each expert consistently stated their expertise and training, their involvement in the case, and their diagnosis or opinion. It was clear that the experts' conclusions were merely the opinion of that particular physician". The Court further determined that "the province of the jury was not invaded, and the circuit court did not err in allowing the State to present testimony from its multiple expert witnesses".

State v. Patterson, 2017 SD 64, 2017 S.D. LEXIS 134

ADMITTANCE OF VIDEOTAPED STATEMENTS OF CHILD VICTIM RULED NOT A VIOLATION OF CONFRONTATION CLAUSE

The Appellate Court of Illinois found that Appellant's rights under the Confrontation Clause were not violated when the trial court allowed the videotaped statements of the child victim into evidence. The Court determined that after a review of the record, that the child "was available for cross-examination at defendant's jury trial as necessary to satisfy the confrontation clause" and that the child "took the witness stand and testified that, on the date in question, defendant had touched her breasts and bottom (buttocks) with his hands". The Court further reasoned that "while it is true that" the child "did not testify in court that defendant had also touched her vagina with his hands and her buttocks with his penis, that testimony was not required under the confrontation clause for" the child's "video recorded statement to be admissible". The Court noted that "Defense counsel was given the opportunity to cross-examine" the child and the child "answered all of the questions that were asked of her by defense counsel. Therefore, under the established law on this issue" the child "was present for cross-examination as to her out of court statement".

People v. Dabney, 2017 II App (3d) 140915, 2017 Ill. App. LEXIS 636

COURT RULES STATEMENTS OF IDENTITY OF PERPETRATOR NOT ADMISSIBLE AS HEARSAY EXCEPTION FOR MEDICAL DIAGNOSIS AND TREATMENT.

The Court of Appeals of Georgia, "in a child molestation, incest, aggravated sexual battery, statutory rape, and aggravated child molestation case, in which the victim and the victim's mother could not be located for the trial", ruled that "the trial court did not err when it found that those portions of the mother's statements to two doctors that identified defendant as the perpetrator of the alleged crimes did not fall within the hearsay exception for medical diagnosis or treatment found in O.C.G.A. § 24- 8-803(4) because the statements to the doctors regarding the identity of the assailant were not reasonably pertinent to the victim's diagnosis or treatment."

State v. Almanza, 2017 Ga. App. LEXIS 570

COURT FINDS DURESS EXISTED IN CHILD ABUSE CASE

The Court of Appeal in California found that in a trial for child sexual assault under Pen. Code, § 269, "substantial evidence supported a finding of duress, menace, or fear, even though the victim did not expressly resist and even if defendant never expressly threatened her, because the victim was between four and 14 years old, defendant was her father, the incidents occurred when they were alone at home, and defendant's ongoing violent conduct terrified the victim". The Court further found that "the jury could reasonably have found that his continual beatings constituted an implied threat of violence or danger if she did not submit to his sexual abuse".

People v. Thomas, 15 Cal. App. 5th 1063, 2017 Cal. App. LEXIS 847

EXPERT WITNESS DELAYED DISCLOSURE TESTIMONY IN CHILD ABUSE CASE UPHELD

The Court of Appeals in North Carolina held that the expert witness testimony concerning delayed disclosure at trial was both reliable and admissible. At trial "the expert testified that her testimony on delayed disclosures was grounded in her 200 hours of training, 11 years of forensic interviewing experience, conducting over 1,200 forensic interviews with 90% of those focusing on sex abuse allegations, and reviewing over 20 articles on delayed disclosures". The Court concluded that the "testimony on delayed disclosures was clearly based upon facts or data sufficient to satisfy the first prong of Rule 702(a), and the trial court did not abuse its discretion in admitting this testimony".

State v. Shore, 804 S.E. 2d 606, 2017 N.C. App. LEXIS 743



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