

2015 National Consortium on Racial & Ethnic Fairness in the Courts

Child Abuse Victims under New York
State Law

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Child Abuse Statistics

- Some federal, state and local child abuse statistics show that child abuse is **decreasing**.
- The National Child Abuse and Neglect Data System, (NCANDS), is sponsored by the U.S. Dept. of Health and Human Services to gather child abuse and neglect reports from the 50 states, the District of Columbia and Puerto Rico. Each year they publish a report entitled “Child Maltreatment” www.acf.hhs.gov.
- These are child welfare cases only, so in NYS the statistics **do not include** instances where the perpetrator is a non-caregiver.

National Statistics

- Between 2009-2013, neglect cases **increased** 1.3%, physical abuse cases **increased** .2%, sexual abuse cases **decreased** .5%.
- Nationally, in 2013 there were 1,520 known child fatalities, a **decrease** of 12.7% between 2009 and 2013.

State statistics

In 2013, NYS reported 64,578 child abuse victims; between 2009-2013 there was a 16.8% decrease.

- In 2013 NYS reported almost 70,000 cases of neglect, 6810 of physical abuse and 2237 of sexual abuse, (some children were victims of multiple types of maltreatment).
- Out of the total cases in NYS, 27.9% had a DV caregiver as a risk factor.
- In 2013 NYS reported 107 known child fatalities, 7 more than in 2012.

County statistics

- Erie County 2013—CPS handled 9509 reports. This is a 3.3% **decrease** over 2012.
- 15,871 children were involved; 555 reports involved abuse; a **decrease** of 1.5% over the previous year. Hopefully this trend will continue.

Child Abuse Investigations Under the Multidisciplinary Team model

- NYS Social Services Law Section 423 subparagraph 6 lays out the law establishing multidisciplinary child abuse teams (MDTS).
- Participating disciplines must include law enforcement, child protection, prosecution, victim advocacy, specialized medical and mental health and child advocacy center personnel if a CAC exists in the County.

MDTs, cont.

- Members of a MDT “shall participate in joint interviews” and conduct investigative functions consistent with the mission of the particular agency.
- Confidential information may be shared among disciplines “to facilitate the investigation of suspected child abuse or maltreatment.”

Child Advocacy Centers

- Social Services Law section 432-a sets forth the elements which constitute a child advocacy center (CAC).
- Various criteria are mentioned including:
 - Safe, comfortable private setting,
 - Culturally competent practices and procedures,
 - A Multi-Disciplinary Team,
 - Neutral and fact finding forensic interviews,

Child Advocacy Centers, cont.

- Specialized medical and mental health services,
 - Trauma focused mental health treatment
- Victim support and advocacy,
- Routine interdisciplinary case reviews for Team decision making, problem solving,
- Case tracking

The Lee Gross Anthonie Child Advocacy Center



Interview Room CAC



Expertise in Forensic Interviewing

- The prevalence of child advocacy centers and MDT model ushered in the development of specially trained forensic interviewers.
- A number of child forensic interview protocols have developed over the years; some are state specific and some are nationally recognized. In NYS it is called the Forensic Interview Best Practices.
- CACs and MDTs spend a great deal of time and resources on the proper training of child forensic interviewers.
- Some CACs/MDTs videotape child forensic interviews. It is usually a decision by the prosecutor member of the MDT.

Forensic interviewers are taught how to get information without using leading questions and/or suggestive techniques. In some jurisdictions, the forensic interviewer is routinely called as a witness at trial to defend the interview from claims of suggestibility; (usually in a criminal trial).

Child Friendly Medical exam room



Acute vs. Chronic exams for child victims of sexual abuse

- An acute exam is done where the allegation of abuse occurred within the previous 96 hours and involves a claim of genital or anal penetration, attempted penetration, or oral sex. In such a case, a trained sexual assault nurse examiner, (S.A.N.E.) performs the exam which is usually done in a hospital ER or CAC medical clinic where a colposcopic exam is performed and swabs are collected for possible DNA;
- A chronic exam is done when the alleged incident occurred prior to 96 hours of the disclosure of abuse. Pregnancy and STD testing are administered as well as a colposcopic exam. Children are reassured that their bodies are “normal.”

Disconnect in definition of child abuse in NYS civil v. criminal statutes

- The level of injury required to satisfy the definition of an abused child in NYS civil child welfare law is very high. Essentially, the level of injury must attempt or cause “...a substantial risk of death, or serious or protracted disfigurement, impairment of physical health or protracted loss or impairment of the function of a bodily organ...” NYS SSL 371 sec. 4-b

NYS Penal Law definition

While some provisions of the penal law mirror the definition of child abuse in the child welfare law, less injury (substantial pain or impairment of physical condition) is needed if a child is younger than 7, (Penal Law section 120.05 sub.9)

If convicted of this section, an offender can face up to 7 years in jail but if the same conduct is adjudicated civilly, the offender would only be charged with neglect, specifically “excessive corporal punishment” not abuse.

Joint Investigations

- Social Services law section 424 5-a **mandates** joint investigations between law enforcement and child protective services in abuse cases (serious physical abuse, sexual abuse, fatalities).
- Law mandating joint investigations arose in 2006 due to tragic child fatality case in NYC, in which a 7 year old girl was beaten to death by her stepfather.

Special treatment of child witnesses in Executive law section 642-a

- Entitled “Fair treatment of child victims as witnesses” in criminal cases and provides for:
 - “whenever practicable” a MDT and/or CAC used for investigation and/or prosecution of case;
 - Vertical prosecution;
 - Speedier trial? Court must take into account potential adverse impact delay will cause to child;
 - Support person.....support therapy dog?
 - People v. Tohom, 109 Ad2d 253 upheld Poughkeepsie trial court which allowed “Rosie” to accompany 15 yo incest victim at trial.

Violet, therapy dog



Grand jury proceedings and child witnesses

- Criminal Procedure Law section 190.32 allows a child witness 12 and under to testify via a videotaped interview which the prosecutor plays for the grand jury in lieu of child's live testimony;
- Discretionary with the district attorney;
- The taping should take place at the CAC, the same place as the forensic interview.

Closed Circuit Televised testimony of child witness

- In Canada, the U.K and Australia, it is automatic that a child witness does NOT have to appear in the courtroom; rather the child gives testimony in a separate room via closed circuit television.
- Article 65 of the NYS Criminal Procedure Law makes this a possibility for a child victim age 14 and under who is ruled to be a “vulnerable” witness.

Closed Circuit TV, Cont.

- Statute calls for “live, two-way closed-circuit television” procedure. This type of testimony has been upheld as constitutional by the U.S. Supreme Court, Maryland v Craig 497 U.S. 836 (1990);
- Party must make pre-trial motion that child witness would suffer serious mental or emotional harm that would substantially impair the child witness’ ability to communicate;
- In order to grant the motion, the Court must find clear and convincing evidence of this.
- To my knowledge this provision has never been used in Erie County, and my understanding is that is rarely, if ever used in other jurisdictions in NYS.

Family Court “validation” assessments

- Family Court Act section 1046 states that previous hearsay statements of a child can be admitted into evidence, but must be corroborated to make a fact finding of abuse or neglect.
- Family Court Act section 1038-a(c) gives a respondent or child’s attorney the right to move for an Order requiring the child be made available for examination by a physician, psychologist or social worker.
- If it is a sex abuse case the (non-physical) exam may be required to be videotaped in the

Brief history underlying sex abuse assessments in Family Court

- In Matter of Nicole 71 NY2d 112 (1987) the New York Court of Appeals upheld a lower court's finding of abuse where the Court ruled that the testimony of the child's therapist was sufficient to corroborate the child's out of court statements. The court referred to this testimony as "validation evidence."

Validation assessments, cont

- Fast forward almost thirty years from Matter of Nicole and the use of validation testimony as corroborative evidence has become controversial.
- First and foremost, there are some who argue that the validation assessment, instead of helping children, instead hurts them by subjecting the child to multiple additional interviews about the alleged abuse.
- Not all professionals used as “validators” are trained in the latest forensic interviewing techniques, as described earlier in my presentation.
- Hence this procedure is no longer used in many Counties in NYS, including Monroe County.
- It is undisputed that the “Sexually abused child syndrome” is not diagnostic or research based.

Caseloads of CPS workers must be reduced

- This time last year, our community was devastated by the recent deaths of several children at the hands of their caretakers. Public hearings were held and “The Buffalo News” ran many articles in which heavy criticism was laid against The Erie County Department of Social Services.
- A state investigation revealed that CPS workers were struggling under the weight of as many as 50-60 cases; many more than the state recommended number, 12.
- Some CPS staff were fired and 37 new CPS workers were hired including retired law enforcement investigators.
- As a community we must advocate for CPS workers to have manageable caseloads. They are on the front line saving children’s lives every day.

Closing Thoughts

- There are numerous NYS laws on the books that protect children. I've discussed several to illustrate that some of the laws that are beneficial to child witnesses simply aren't used, and that some practices that have developed may be antiquated and in need of re-examination.

PREVENTION

- Research informs us that there are ways to effectively prevent child abuse:
- 1) Home Visiting Programs: in NYS ‘Healthy Families NY’. Research shows that participation leads to reduced rates of CPS reports.
- 2) NYS Shaken Baby Prevention Project-8 Counties in WNY; videos and brochures to new parents in the hospital.....study showed 50% reduction in these cases.

Contact information

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