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UPDATE is published by the American Prosecutors Research Institute's National Center for Prosecution of Child Abuse. Items may be reprinted if attributed to APRI's National Center for Prosecution of Child Abuse. Please provide copies to NCPA. Contact us if you have inquiries or article suggestions at 703.549.9222.

Update

Key Ethical and Practical Issues in Child Abuse Case Screening

by Mary E. Sawicki¹

One of the most daunting and important of responsibilities of the child abuse unit manager or front line prosecutor is the child abuse case screening process. This article will discuss the ethical and practical challenges facing the child abuse prosecutor responsible for child abuse case screening and offers some practical tips and guidelines for handling these duties.

The Case Screening Process

Before child abuse prosecutors begin the case screening process, they should be mindful of the ethical standards that guide them as prosecutors and take the time to refresh themselves with the American Bar Association's (ABA) ethical guidelines as well as with the National District Attorney Association's (NDAA) professional standards. The foundation of the work of a prosecutor is spelled out in ABA standard 3-1.2b, entitled, *Function of a Prosecutor*: "The prosecutor is an administrator of justice, an advocate, and an Officer of the Court; the Prosecutor must exercise sound discretion in the performance of his or her functions."² All decisions concerning screening should flow from this foundation principle.

Many cases will come to the child abuse prosecutor for screening via phone, fax, mail or an in-person meeting with the investigative officer. As they speak with the investigators and victims/witnesses of these cases and read and review child abuse investigations, he/she may be urged to issue a charge on the basis of the suspect's lengthy criminal record or the impassioned pleas of the victim's family. But, NDAA standards for a prosecutor are clear—there must be sufficient evidence present before a charge is brought.³

The proper screening of cases to determine their potential for charges is crucial and should utilize a multidisciplinary approach that will offer essential information and varied viewpoints on a case. ABA Standard 3-3.4 (c) indicates that "the prosecutor should establish standard procedures for evaluating complaints to determine whether criminal procedures should be instituted."⁴ The case screening prosecutor should consider drawing up a case screening checklist to attach to each investigation that they review. This checklist will ensure a thorough screening of each case and assist in avoiding any overlooked areas. Any systematic screening checklist should include the following actions:

- Reviewing all potential evidence in the case which may include police reports, suspect statements, medical records, physical evidence and a taped forensic interview of the child.

- Conferencing the case with the investigating officer. This step is integral in the case screening process. If at all possible, the screening prosecutor should never make a final decision about charging on a case until they have conferred with the investigating officer. Utilizing the expertise of the police officer and seeking their impression of the strengths and weaknesses of the case is an essential component of the case screening process. Thrashing out the potential issues of a case with the investigating officer may often give the prosecutor a different perspective.

- Meeting with medical personnel on medically-based child abuse investigations, particularly in complicated cases such as "shaken baby syndrome." In speaking with the examining physicians or medical experts on a case, the child abuse prosecutor should make every attempt to accommodate their schedule, including interviewing the physician at their office. It is imperative that before any charge is issued in such a case that there is medical evidence to support the charge along with willingness of the medical expert to testify to those issues. The prosecutor should also seek the opinions of not only the examining physicians on the case but any potential medical experts as well, such as a pediatric radiologist and pediatric ophthalmologist. Extra legwork at this case screening phase is worth the effort to solidify future medical testimony in the case.

- Scheduling a personal interview with the child victim after a preliminary screening of the investigation if the prosecutor has determined that there are potential issues and concerns that need to be addressed before making a final charging decision. To avoid further disruptions to the child, the prosecutor should be cognizant of the victim's individual routines, such as naptime or school schedule.⁵ Working with your victim/witness advocate and having them as a third party present during the interview is imperative. In addition, when interviewing the child, the prosecutor should delve into any potential issues of competency, bias, and motive and attempt to resolve any troubling inconsistencies in the case.⁶

- Meeting with the families involved to assess the child victim's ability to testify.⁷ This family participation is especially important in child abuse cases where the child is a teenager and may have difficulties speaking with the prosecutor directly about their willingness to testify in court or the child has

certain developmental delays about which the family can educate the prosecutor. A meeting with the family and/or guardian of the child will give the case screening prosecutor valuable insight into the child. In addition, meeting with the child's child protection worker, if applicable, can often be very helpful.

- Determining if additional investigation or evidence is needed before proceeding. Oftentimes, the prosecutor will need to send the case back to law enforcement for further witness interviews or for an execution of a search warrant to gather further evidence. In some instances, the child may not be ready to testify. The prosecutor should make a note of when they send the case back and for what purpose. Flagging a future date to contact the investigative officer again to determine the status of the ongoing investigation is important. The case screening prosecutor may consider using a computer generated tickler system to docket the investigation. In addition, it is important to always be mindful of the statute of limitations as you return investigations for further work as well as the age of the child. Beware of potential emotional damage that may arise for the child the longer the case remains unresolved.⁸

As the prosecutor comes closer to making a charging decision, they should never let media or family pressures affect them. Every case deserves a thorough and objective screening. ABA ethical standard 42.4 is clear that the prosecutor executing case screening responsibilities should not allow personal or political advantage to become a factor in proceeding with any prosecution.⁹ In addition, a prosecutor's charging decision must never be the result of vindictiveness.¹⁰

If the case screening prosecutor makes a final determination that there is insufficient evidence to issue a charge, they should not delay notification to the appropriate parties.¹¹ If at all possible, they should never close out an investigation without notifying the investigating officer. The case screening prosecutor should acknowledge and thank them for their hard work on the investigation. In addition, the prosecutor should keep in mind that although they are screening many cases, the matter is often a crisis situation for the child victim and their families. Notification by phone, in person, or in writing of your case screening decision is in order in every case. The prosecutor should make themselves available to the victims and their families to review their decision and to answer any questions they may have. These discussions with family can often be tense and emotional. It is imperative for the prosecutor to explain that although their wishes for the case may differ, the prosecutor represents the state and is under an obligation to charge cases only where there is sufficient evidence to proceed.¹²

The case screening prosecutor should always remember to document in their file why the case is now closed. Years from now if another prosecutor reviews that file, it will be invaluable if there are detailed notes in the file about why the screening prosecutor chose not to issue charges.¹³

The screening prosecutor should also consider keeping screened out files in their office or a designated separate location. They may want to delineate these cases by allegations of child abuse in different areas, such as daycare, school, or clergy abuse. After many years, this may establish a pattern in some areas of their community for further action. In addition, the prosecution may want to retain files as well for civil commit-

ment cases where state law, if applicable, may allow testimony of uncharged criminal investigations to determine if the defendant is sexually dangerous.

Child abuse case screening duties are fraught with many serious practical and ethical challenges. Consistency, objectivity, and compliance with ABA and NDAA ethical standards are essential in this process. By utilizing the above suggestions and guidelines, the prosecutor who assumes this responsibility will maintain fair and ethical standards for themselves and others to follow.

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- ¹ Senior Attorney, National District Attorneys Association, American Prosecutors Research Institute's National Center for Prosecution of Child Abuse.
 - ² ABA Standards for Criminal Justice 3-1 2b "The prosecutor is an administrator of justice, an advocate, and an officer of the court; the prosecutor must exercise sound discretion in the performance of his or her functions."
 - ³ NDAA Prosecution Standards 43.3 "The prosecutor should file only those charges which he reasonably believes can be substantiated by admissible evidence at trial."
 - ⁴ ABA Standards for Criminal Justice 3-3.4 c "The prosecutor should establish standards and procedures for evaluating complaints to determine whether criminal proceedings should be issued."
 - ⁵ Investigation and Prosecution of Child Abuse, 64, Sage Publications, Inc., 3rd Ed. (2004).
 - ⁶ NDAA Prosecution Standards 42.3 "The prosecutor should exercise discretion in screening for the purpose of eliminating matters from the criminal justice system in which prosecution is not justified or not in the public interest."
 - ⁷ Id. At NDAA Prosecution Standards 42.3.
 - ⁸ Investigation and Prosecution of Child Abuse, 187, Sage Publications Inc., 3rd Ed. (2004).
 - ⁹ NDAA Prosecution Standards 42.4 "Factors which should not be considered in the decision include personal advantages which prosecution may bring to the prosecutor or political advantages which prosecution may bring to the prosecutor."
 - ¹⁰ *State v. Marti*, , 147 N.H.168 (2001).
 - ¹¹ NDAA Prosecution Standards 43.4 "The prosecutor should promptly respond to inquiries from those who feel aggrieved by the screening procedure and decision."
 - ¹² Id. At NDAA Prosecution Standards 43.4.
 - ¹³ NDAA Prosecution Standards 42.7 "A record of the screening decision and reasons for the screening disposition of each matter should be retained by the prosecutor."

The National Center for Prosecution of Child Abuse is a program of the American Prosecutors Research Institute. APRJ is the research and development division of the National District Attorneys Association. This publication was prepared under Grant No. 2003-CI-FX-R008 from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. This information is offered for educational purposes only and is not legal advice. Points of view in this publication are those of the authors and do not necessarily represent the official position of the U.S. Department of Justice, and NDAA or APRJ.



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