How Can We Be Effective in Pursuing Justice in Child Abuse Cases?
Lessons from Twenty Years of Research

Theodore P. Cross
Importance of research

• Prosecution of child abuse is important but complex
• Need data to understand it and inform policy
• However, development of policy and practice has not been data driven
• This presentation a review of a wide range of data relevant to policy and practice
What happens to child abuse cases in the criminal justice system?
Criminal Justice Case Flow Analysis

1. Investigated
2. Referred to prosecutors
3. Charges filed
4. Carried Forward
   - Tried
     - Guilty Plea
     - Acquitted
6. Not Referred
   - Charges NotFiled
   - Dismissed or Diverted
7. Convicted
Criminal investigation (CI) rates for CPS cases

<table>
<thead>
<tr>
<th>NSCAW 1 (1999-2000 cases)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Group</td>
<td>N</td>
<td>Rate</td>
</tr>
<tr>
<td>All investigations</td>
<td>5097</td>
<td>24.0%</td>
</tr>
<tr>
<td>Sexual abuse</td>
<td>582</td>
<td>46.6%</td>
</tr>
<tr>
<td>Physical abuse</td>
<td>1142</td>
<td>27.5%</td>
</tr>
<tr>
<td>Neglect</td>
<td>2375</td>
<td>17.5%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NSCAW 2 (2008-2009 cases)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Group</td>
<td>N</td>
<td>Rate</td>
</tr>
<tr>
<td>All investigations</td>
<td>4939</td>
<td>21.0%</td>
</tr>
<tr>
<td>Sexual abuse</td>
<td>296</td>
<td>55.7%</td>
</tr>
<tr>
<td>Physical abuse</td>
<td>818</td>
<td>24.6%</td>
</tr>
<tr>
<td>Neglect</td>
<td>1398</td>
<td>11.2%</td>
</tr>
</tbody>
</table>
Significant variation in CI rate across communities

NSCAW 1 (1999-2000 cases)

Minimum = 01.4%
Maximum= 75.4%

NSCAW 2, (2008-2009 cases)

Minimum = 00.3%
Maximum= 63.8%
# Significant predictors of CI in a logistic regression of NSCAW 2

<table>
<thead>
<tr>
<th>Factor</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual abuse</td>
<td>8.03</td>
</tr>
<tr>
<td>Neglect</td>
<td>0.77</td>
</tr>
<tr>
<td>Level of harm to child</td>
<td>1.35</td>
</tr>
<tr>
<td>Level of evidence of maltreatment</td>
<td>1.30</td>
</tr>
<tr>
<td>CPS-Police memorandum of understanding</td>
<td>1.92</td>
</tr>
<tr>
<td>Community (Level 2 unit)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>An odds ratio could not be calculated but this variable explained 7% of the variation in criminal investigation over and above case factors</td>
</tr>
</tbody>
</table>

Preliminary analysis pending multilevel weights.
Data on 5 other criminal justice decisions come from a meta-analysis of multiple studies.

<table>
<thead>
<tr>
<th>Decision</th>
<th>Number of Studies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referral to Prosecutors</td>
<td>3</td>
</tr>
<tr>
<td>Criminal Charges Filed</td>
<td>13</td>
</tr>
<tr>
<td>Carried Forward vs. Dismissed</td>
<td>18</td>
</tr>
<tr>
<td>Guilty Plea</td>
<td>19</td>
</tr>
<tr>
<td>Incarceration</td>
<td>14</td>
</tr>
</tbody>
</table>

Average Rates of Criminal Justice Decisions

- 21% of CPS cases
- 79% Carried Forward
- 82% Guilty Plea
- 94% Acquitted
- 66% Charges filed
- 51% Tried
- 94% Not Referred
- 66% Charges Not Filed
- 79% Dismissed or Diverted
### Rates of Criminal Justice Action on Investigated Cases

<table>
<thead>
<tr>
<th>Study</th>
<th>Sample</th>
<th>N</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tjaden &amp; Thoennes, 1992</td>
<td>CPS</td>
<td>833</td>
<td>4% prosecuted</td>
</tr>
<tr>
<td>Finkelhor, 1983</td>
<td>State clearing-house data</td>
<td>6096</td>
<td>24% criminal justice action taken</td>
</tr>
<tr>
<td>Stroud, Martens &amp; Barker, 2000</td>
<td>Children’s Advocacy Center</td>
<td>1043</td>
<td>56% referred to prosecutors</td>
</tr>
<tr>
<td>Rogers, 1982</td>
<td>Investigative center cases with police involvement</td>
<td>265</td>
<td>85% referred to prosecutors</td>
</tr>
</tbody>
</table>
Data on trials

- Trials are uncommon
- Conviction at trial rates vary across studies
- Maybe 2/3 of trial lead to conviction—small n’s make estimation difficult
Variation in CJ decisions
Contrast between front, middle and end of process

- Investigated
- Referred to prosecutors
- Charges filed
- Carried Forward
- Tried
- Convicted
- Guilty Plea
- Acquitted
- Not Referred
- Charges Not Filed
- Dismissed or Diverted

Generally low rates, jurisdictions vary a lot
Higher rates, jurisdictions vary a lot
High rates, considerable consistency across jurisdictions
Average Breakdown of Outcomes for 100 Cases Referred to Prosecutors

100
Referred to prosecutors

Charges filed

Carried Forward

Tried

Convicted

Guilty Plea

Acquitted

Charges Not Filed

Dismissed or Diverted

34
14
43

3
6
Comparison to other felonies

• Child abuse cases are somewhat less likely to get charged than other felonies
• More likely to be carried forward than other violent offenses or rapes
• Guilty plea rates are comparable to other felonies and conviction rates are almost identical
Summary of case flow analysis

- Modest percentages of child abuse cases flow in on the front end of the process
- Much larger percentages are charged and carried forward once they reach prosecutor
- High rates of plea and conviction of cases carried forward
- Communities vary a lot on front and middle of process
- Comparison to other felonies
  - Less likely to be charged
  - More likely to be carried forward
  - Guilty plea and conviction of carried forward the same
- Prosecution of child abuse is neither reckless nor feckless
Do CACs and MDTs impact prosecution?
Do CACs and MDTs impact prosecution?

• Compared charging and conviction rates of CAC/MDT samples and comparison samples

• Because of the effect of sample source on outcome, separate analyses for:
  – Child protective services samples
  – Law enforcement samples
  – Combination samples
  – Prosecution samples
Results on charging and conviction rates

• Specialized programs MAY have higher charging rates depending on the program and type of sample

• No systematic difference on % of investigated cases that are convicted (fewer studies)

• Problems with the research: few studies, small samples, threats to validity

• Any impact depends on the specific specialized program – no “across the board” effect
Comparison on charging rates
Comparison on % of investigated cases convicted
Reasons why specialized programs may not show prosecution advantages

• Specialized programs have multiple goals, vary in their investment in prosecution
• Impact of specialized programs on prosecution depends on the commitment and skills of prosecutor and police
Additional reasons why specialized programs may not show prosecution advantages

• Many agencies have elements of specialized programming, e.g., joint investigations, child forensic interviewing specialists
• Many experienced investigators may approximate specialized methods informally
• Effects may be modest given the wide range of factors influencing prosecution
Faller and colleagues case study of effective Michigan county

- Close-knit multidisciplinary team and
- Child interviewed quickly
- Suspect interrogated quickly
- Suspects showed videotape of child interview
- Suspects still denying abuse were offered a polygraph test
- 64% of suspects confessed in cases in which children disclosed sexual abuse

Faller, et al., 2001; Faller & Henry, 2001; Staller & Faller, 2010
What is the impact of prosecution on children?
Psychological impact of prosecution on children

• Children are stressed and anxious at outset
• Children tend to improve with time, regardless of their experiences in court
• Maternal support a major factor in children’s improvement
• Delay in case resolution negatively affected children’s mental health in study of juvenile court, but not in a study of criminal court

Effect of testifying on children’s mental health

- Study of child protection proceedings in juvenile court: children who testified had better mental health outcomes
- One study in criminal court:
  - Children who testified had poorer mental health 7 months later
  - No differences between testifiers and non-testifiers at case disposition, though some testifiers showed negative effects
  - Repeated testifying associated with poorer mental health
- Another study in criminal court found poorer mental health when:
  - Children testified more than once
  - Children experienced severe cross-examination
Study of child victims 12 years after court case (Quas et al., 2005)

• Testifying was associated with poorer mental health outcomes 12 years later

• *Not* testifying also associated with negative outcomes:
  – Higher levels of defensive avoidance in less severe abuse cases
  – More negative attitudes toward the legal system
  – Feeling that system was not harsh enough if defendant received lenient sentence
What do we know about obtaining evidence and suspect confessions?
Method I developed for ranking level of evidence

<table>
<thead>
<tr>
<th>Level</th>
<th>Types of Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>No evidence or victim report only</td>
</tr>
</tbody>
</table>
| II    | • Psychological  
       | • Medical  
       | • Behavioral evidence  
       | • Additional child abuse report against offender  
       | • Corroborating witness |
| III   | • Physical evidence  
       | • Eyewitness |
| IV    | • Offender confession |
Level of evidence and % charged

- Level I
- Level II
- Level III
- Level IV

Cross et al., 1994
Walsh et al., 2010
Corroborating witness a key factor in Walsh et al., 2010

- 46% of cases had a corroborating witness
- 85% of cases with a corroborating witness had criminal charges filed
- Corroborating witness variable was the biggest independent predictor of filing criminal charges in a logistic regression statistical model (relative risk ratio=1.71)
Methods for obtaining corroborative evidence

- Enhanced crime scene evaluation, esp. photos
- Seek corroboration for every detail provided by child
- Seek to corroborate child’s credibility as well as abuse
- Training in interviewing suspects and obtaining self-incriminating statements
- See National Child Protection Training Center at ncptc.org
Confession Study: Questions

• What is the confession rate for CSA cases referred to prosecutors?
• What variables predict confession?
• What can jurisdictions do to increase true confessions?

Lippert, et al., 2010
Methods

• 4 communities
• Cases referred to CAC (CAC community) or prosecutors offices (non-CAC communities)
• Limited to adult suspects known to have been investigated or interrogated
• N=282
Overall Confession Rate

• 30% across four communities
• Ranged from 28% to 35% -- not much variation
Significant predictors in terms of confession rates

- Child full disclosure
- Suspect age 18-30
- Sexual abuse against another child
- Corroborative witness

[Bar chart showing comparison of "Yes" and "No" for each category]
Implications of data on evidence and confession

• Helping children disclose is even more important because of its link to suspect confession

• Seeking corroborative evidence is promising in terms of number of cases affected and impact on confession as well as filing charges

• Evidence from a report on a 2nd victim increased confessions but occurred rarely
Workshop conclusions

• Tremendous variation across jurisdictions in cases getting to prosecutors
• Cases tend to drop out in the front end of the process
• Prosecution is neither reckless nor feckless – case flow and outcomes of cases resemble those of other felonies once charges are filed
• Testifying is stressful for children but that can be mitigated with parental support and management of the experience
Workshop conclusions (cont).

• **Not** testifying can be negative for children
• Evidence suggests that CACs and MDTs do not automatically increase prosecution
• In my opinion, MDT is necessary but not sufficient condition for effective prosecution
• Enhanced corroborative evidence increases likelihood of criminal charges and suspect confession; may help avoid trial and child need to testify
References


