When the Victim Is a Child

30 Years of Progress for Child Victims in the Criminal Justice System

Debra Whitcomb & Theodore Cross
Recommended citation

• Originally published by Deb Whitcomb in 1985
• We are updating in 2015
## Our research methodology: 1985 v. 2015

<table>
<thead>
<tr>
<th>1985</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literature review</td>
<td>Literature review</td>
</tr>
<tr>
<td>Statutory analysis</td>
<td>Key informant interviews</td>
</tr>
<tr>
<td>Telephone survey of prosecutors</td>
<td>Online surveys</td>
</tr>
<tr>
<td>Site visits</td>
<td>Children’s Advocacy Center Directors (N=222)</td>
</tr>
<tr>
<td></td>
<td>State/local prosecutors (N=201)</td>
</tr>
<tr>
<td></td>
<td>Follow-up telephone surveys</td>
</tr>
</tbody>
</table>
30 Years Ago . . .

- Concern about child sexual abuse victims
- Sensational cases and media coverage
- Calls for courtroom reform
  - Allowing children to testify via CCTV
  - Permitting screens or other techniques to shield the child’s view of the defendant
  - Limiting the courtroom audience
  - Creating special hearsay exceptions for children’s out-of-court statements
What We Found in 1985

- Courtroom reforms were measures of last resort.
  - Live witnesses were thought to be more effective than CCTV or videotape
  - Concerns about constitutionality; convictions could be overturned

- Recommended more attention to less controversial interventions:
  - Victim assistance
  - Streamlining the investigation—nod to the first CAC in Huntsville, AL
What have we learned since 1985?
Lessons Learned from Research and Practice

- It is difficult to avoid children having to testify
- Yet children are not small adults
- Focusing attention on the investigation is important and may reduce the need for trials
- A multidisciplinary response is essential to support the criminal justice response
- Quality child interviews are essential
- It is important to pay attention to caregivers’ needs
Lesson 1:

It is difficult to avoid children having to testify in front of their abusers
Sixth Amendment of the Constitution

- Right of confrontation:

  In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him

- Makes it difficult to avoid children needing to testify in court

- Several attempts to use other child statements instead of or in addition to child testimony
Maryland v. Craig (1990)

Before the Court will allow a child to testify via CCTV, the prosecutor must show:

- The child will be traumatized by defendant’s presence (not general courtroom environment), and
- The child’s distress will be “more than de minimus”
Hearsay exceptions

- What children say outside of court may not be admissible in court, even if they do testify

- So-called *hearsay* is not allowed because it is impossible to determine if it is trustworthy
  - Can’t be observed by jury
  - Can’t be tested by defense in cross-examination

- Hearsay exceptions allow those out-of-court statements that are considered reliable

“Testimonial” out-of-court statements are not admissible at trial unless

- The witness testifies, or
- If unavailable for trial, the witness had been subject to cross-examination at a prior time

Toth, P. (2007)

- “Testimonial” out-of-court statements are:
  Statements that were made under circumstances which would lead an objective witness to reasonably believe that the statement would be available for later use at a trial.

- Courts struggle to define testimonial
  - Statements to child protective services?!
  - Statements to forensic interviewer?!
  - Statements to teacher?!

If the child testifies, then standard hearsay exceptions may apply to out-of-court statements (e.g., excited utterances)

If the child does not testify, then must determine whether the statement is testimonial

Toth, P. (2007)
Lesson 2:

Children are not small adults
Memory
Suggestibility
Truth vs. Lies
Credibility
Impact of testifying

Kids Are Not Little Adults

Child victims have unique needs. See it through their eyes.

Find special resources for kids at www.ovc.gov/throughoureyes.

#ThroughOurEyes

DEFENDING CHILDHOOD
PROTECT HEALTHRIVE
What We’ve Learned: Memory and Suggestibility

How children are questioned is key to their ability to recall and relate events accurately and completely.

- Most of this research focuses on pre-school children; school-age children generally perform on a par with adults.

- As cognitive development increases, children are better able to:
  - Provide detail on free recall
  - Place events along a specific timeline
  - Understand concepts of relativity (e.g., before/after, earlier/later)
  - Understand legal terminology

- Younger children are more susceptible to an interviewer’s style, body language, bias, or pressure.

What We’ve Learned: Credibility

“The child’s credibility is the centerpiece of the prosecution’s case and the bulls-eye for the defense.”

- Jurors evaluate credibility based on what they think they know about child victim/witnesses
- What they really “know” is quite variable
- Need to educate ➔ expert witnesses, other ways.

Myers (2010); Quas, Thompson & Clarke-Stewart (2005); McAuliff & Kovera (2007)
What We’ve Learned: Truth v. Lies

Simply asking a child to promise to tell the truth may be the most effective approach.

- “Understanding of truth and lies and the ability to lie are related to children’s cognitive development.”

- Adults are able to define truth and lies, and yet “adults are probably the best liars.”

Lyon (2011).
What We’ve Learned: Impact of Testifying

Both testifying and *not* testifying can have adverse consequences for child victim/witnesses

Factors associated with poor outcomes of testifying:

- testifying repeatedly (i.e., in several court hearings or retrials)
- lack of caregiver support
- a greater number of interviews
- long delays, repeated continuances

Quas & Goodman (2012)
Lesson 3:

Focus on the investigation
Good investigations make a difference

• Better investigations leads to better evidence

• Better evidence lead to better criminal justice outcomes
  • Confessions
  • Guilty pleas
  • Convictions

• Better investigations reduce stress on child
  • Reduce the need for child testimony
  • Shift burden from child to perpetrator
Disposition of cases referred to prosecutors across 24 studies

<table>
<thead>
<tr>
<th>Outcome</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty plea</td>
<td>43%</td>
</tr>
<tr>
<td>Not charged</td>
<td>34%</td>
</tr>
<tr>
<td>Dismissed or transferred</td>
<td>12%</td>
</tr>
<tr>
<td>Convicted at trial</td>
<td>6%</td>
</tr>
<tr>
<td>Acquitted at trial</td>
<td>3%</td>
</tr>
<tr>
<td>Diversion</td>
<td>2%</td>
</tr>
</tbody>
</table>

More than 4 guilty pleas for every case resolved by trial

Cross, Walsh, Jones & Simone, 2003
Characteristics of a good child abuse criminal investigation

- Effective suspect interrogation
- Crime scene investigation
- Seeking evidence to corroborate child’s statements in interviews
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
## Corroboration Examples

<table>
<thead>
<tr>
<th>Child Statement</th>
<th>Investigative Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Father read <em>Goodnight Moon</em> to me before he touched me.</td>
<td>Search suspect’s house and seize the book</td>
</tr>
<tr>
<td>Uncle George always took me to the blue house</td>
<td>Take photograph of the house</td>
</tr>
<tr>
<td>Grandpa pulled my pants down on our fishing trip</td>
<td>Look for campground registration, photographs of the trip, fishing equipment at Grandpa’s</td>
</tr>
<tr>
<td><em>All About the Bass</em> was playing on the radio on Jersey’s finest 99 FM</td>
<td>Obtain radio playlist</td>
</tr>
</tbody>
</table>

Source: Vieth, 1999
Research suggests ways to increase suspect confession

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 2\textsuperscript{nd} victim increased confessions but occurred rarely
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, 2000; Staller & Faller, 2010
Confession rates across studies

Bradshaw et al., 1990
Gray, 1993
Smith, et al., 1993
Cross, et al., 1994
Faller & Henry, 2000
Lippert, et al., 2010

+ polygraph
- polygraph
Lesson 4:

Multidisciplinary response is important
Multiple professions respond to child victims

- Law Enforcement
- Child Protective Services
- Prosecution
- Victim Advocacy
- Mental Health
- Health
Need for coordination across disciplines

- Reduce stress on child
  - Single forensic interviewer
  - Coordinate decisions affecting child and family

- Improve service delivery
  - Increase access to services
  - “One stop shopping”

- Improve investigation
  - Sharing of information
  - Coordinating interactions with child, family, perpetrator
Disciplines represented on MDT (pt. 1)- from CAC survey

<table>
<thead>
<tr>
<th>Discipline</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law enforcement</td>
<td>98.2</td>
</tr>
<tr>
<td>Child protection</td>
<td>97.7</td>
</tr>
<tr>
<td>Prosecutor</td>
<td>96.4</td>
</tr>
<tr>
<td>CAC staff</td>
<td>95.0</td>
</tr>
<tr>
<td>Forensic interviewer</td>
<td>88.3</td>
</tr>
<tr>
<td>Victim/witness advocate/assistant</td>
<td>86.5</td>
</tr>
<tr>
<td>Health professional</td>
<td>83.8</td>
</tr>
<tr>
<td>Mental health professional</td>
<td>91.0</td>
</tr>
<tr>
<td>Disciplines represented on MDT (pt. 2)</td>
<td>Percentage</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Juvenile court</td>
<td>38.3</td>
</tr>
<tr>
<td>Rape crisis counselor/advocate</td>
<td>27.9</td>
</tr>
<tr>
<td>DV counselor/advocate</td>
<td>22.5</td>
</tr>
<tr>
<td>Schools</td>
<td>17.6</td>
</tr>
<tr>
<td>Probation/parole</td>
<td>16.2</td>
</tr>
<tr>
<td>GAL/CASA</td>
<td>15.8</td>
</tr>
<tr>
<td>Sex offender treatment provider</td>
<td>6.3</td>
</tr>
<tr>
<td>Child’s attorney</td>
<td>3.6</td>
</tr>
</tbody>
</table>
Children’s Advocacy Centers (CACs)

- Multidisciplinary centers that provide a comprehensive and coordinated response in child abuse investigations
- Serve victims of sexual abuse, serious physical abuse, exploitation etc.
- Child forensic interviews in child-friendly facility – single interviewer
- Multidisciplinary team involved throughout, including witnessing forensic interview
CAC standards

- Multidisciplinary team (MDT)/joint investigation

- Forensic interviews
  - Child-focused setting
  - Trained interviewer
  - Legally sound and neutral
  - Coordinated to avoid duplicative interviews

- Provides or facilitates:
  - Medical exams
  - Mental health services
  - Victim support and advocacy
  - Case review

- Cultural competence and diversity
National Children’s Alliance

- Membership organization of CACs
- Accredits member CACs
- Includes associate CACs not yet accredited
- Conduit for limited Federal funding of CACs
Benefits of CACs: Findings from the Multi-site CAC Evaluation (from Cross et al., 2007, 2008)

<table>
<thead>
<tr>
<th>More child-focused interview location</th>
<th>CAC communities</th>
<th>Comparison communities</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAC facility 83%</td>
<td></td>
<td>CPS agency 22%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Police agency 18%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Home 16%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>School 10%</td>
</tr>
<tr>
<td>More coordinated investigations</td>
<td>81%</td>
<td>52%</td>
</tr>
<tr>
<td>More team interviews</td>
<td>28%</td>
<td>6%</td>
</tr>
<tr>
<td>More case reviews</td>
<td>56%</td>
<td>7%</td>
</tr>
<tr>
<td>More children received forensic medical examinations</td>
<td>48%</td>
<td>21%</td>
</tr>
<tr>
<td>More referrals for mental health services</td>
<td>60%</td>
<td>22%</td>
</tr>
<tr>
<td>Increased parent satisfaction</td>
<td>&gt;70%</td>
<td>53%</td>
</tr>
</tbody>
</table>
## Mixed results on criminal justice impact of CACs

<table>
<thead>
<tr>
<th>Study</th>
<th>Finding</th>
</tr>
</thead>
</table>
| Joa & Edelson, 2005       | • Criminal charges filed more often with more counts in CAC than comparison  
                           | • Convictions more likely in CAC cases                                                                                                  |
| Wolfteich & Loggins, 2007 | • CAC did not differ from joint CPS-police team  
                           | • Time to disposition less in CAC                                                                                                       |
| Edinburgh, et al., 2008   | No difference between CAC and comparison                                                                                               |
| Cross et al., 2008        | • 3 CACs did not differ from comparison on cj outcomes  
                           | • 1 CAC was more likely to file criminal charges but also more likely to dismiss cases                                                 |
| Walsh, et al., 2008       | Time to disposition less in CAC than comparison                                                                                         |
| Miller & Rubin, 2009      | Rate of felony prosecutions was 69% greater in district with expanded use of CACs than in comparison                                     |
# Multiple disciplines involved at every stage

<table>
<thead>
<tr>
<th>Stage</th>
<th>Multiple Disciplines</th>
<th>Coordination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigation</td>
<td>CPS, law enforcement, medical</td>
<td>Joint or coordinated CPS-LE investigation; forensic medical exam</td>
</tr>
<tr>
<td>Forensic</td>
<td>CAC forensic interviewer, CPS, law enforcement</td>
<td>Team interviews: single interview with multiple disciplines observing</td>
</tr>
<tr>
<td>Interviewing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service Response</td>
<td>CPS, victim advocate, medical, mental health</td>
<td>MDT coordinates multiple services</td>
</tr>
<tr>
<td>Pre-Trial</td>
<td>LE, victim advocate, prosecutor</td>
<td>LE &amp; prosecutor coordinate on evidence collection; LE, advocate and CAC on supporting child &amp; family</td>
</tr>
<tr>
<td>Trial</td>
<td>Medical, forensic interviewer, mental health, crime lab</td>
<td>Multiple experts assist prosecutors and testify</td>
</tr>
</tbody>
</table>
Multiple disciplines provide testimony at trial – prosecutor survey
Lesson 4:

Quality interviews are essential
Forensic Interviews

• Several structured protocols have been developed to incorporate research findings on memory and suggestibility

• Trained forensic interviewers are available in many jurisdictions

• Videos of quality interviews can be helpful in court to rebut defense challenges
## Evaluation of One Interview Protocol

Compared outcomes of child abuse cases before and after implementing the NICHD protocol

<table>
<thead>
<tr>
<th></th>
<th>Pre-protocol</th>
<th>Post-protocol</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases declined</td>
<td>28%</td>
<td>17.6%</td>
</tr>
<tr>
<td>Arrests/charges</td>
<td>42%</td>
<td>52.9%</td>
</tr>
<tr>
<td>Guilty pleas</td>
<td>52%</td>
<td>56%</td>
</tr>
<tr>
<td>Convictions at trial</td>
<td>50%</td>
<td>91%</td>
</tr>
</tbody>
</table>

Pipe et al. (2012)
Forensic interview protocols used by CACs

- NICHD
- ChildFirst
- Cornerhouse
- NCAC
- APSAC
Lesson 5:
Pay attention to caregivers’ needs
How often do CACs provide referrals for DV services?

From CAC survey
How often do CACs obtain protective orders for non-offending parents?

From CAC survey
How often do CACs provide DV risk assessment or safety planning?

From CAC survey

- Never
- Rarely
- Sometimes
- Often
- Routinely
What is the state of prosecution of child abuse in 2015?
Prosecutor responses in 2015: What is the biggest challenge?

- Lack of corroborative evidence: 35%
- Child difficulties in court: 30%
- Jury/judge beliefs and expectations: 15%
- Family non-support or interference: 10%
Examples of challenges

“Can't win and it is a waste of resource and emotional strength to try when there are not corroborators.”

“Overcoming jury expectations and need for corroboration of children's testimony when there is often little or none.”

“The fact that a child is required to testify in most cases to proceed with a case. The court system as a whole is not structured for children, particularly those who have been victimized and are forced to face the perpetrator of the abuse in an open courtroom setting. We do our best to lessen the anxiety of testifying by doing courtroom tours prior to trial, having a support person or multiple support persons present for the child, etc. but testifying is often still difficult for children.”
More examples of challenges

“Overcoming a typical juror mindset regarding ‘child molesters’ and what that term means “

“The fear and family pressure involved in prosecuting a family member. It seems to be either one extreme or the other-the family does not believe the child and is not supportive of the child's disclosure, or a child makes an ambiguous disclosure, we do an interview and there is no disclosure, and the family wants to prosecute anyway because the child clearly tells them what happened and we are asking too much of the child in a forensic interview.”
How many children testify at trial? – CAC survey

- 1-4: 30%
- 5-9: 20%
- 10+: 15%
- Don't know: 35%
- 0 or N/A: 5%
How Many Children Testify in Other Proceedings?

- Preliminary hearing: 35%
- Sentencing: 25%
- Competency: 15%
- Other pretrial: 10%
- Deposition: 5%
- Grand jury: 5%
Techniques DA offices use to prepare children for court appearances

- Coloring books: 60%
- Dollhouse courtroom: 5%
- Physical tour of courtroom: 10%
- Video tour of courtroom: 90%
- Kids' court program: 20%
- Therapy/comfort animal: 30%
Techniques used to assist children in court (Pt. 1)

- V/W asst with child: 70%
- Other support person: 60%
- Comfort item: 40%
- Hearsay exceptions: 40%
- Anatomical diagrams: 40%
- Limited audience: 30%
Techniques used to assist children in court (Pt. 2)

- Timing/breaks
- Attitude, language, behavior
- Modified oath
- Anatomical dolls
- Therapy/comfort animal
- Reconfig. Courtroom
Techniques used to assist children in court (Pt. 3)

- Video in addition: 10%
- CCTV: 10%
- Other pretrial motions: 10%
- Speedy trial instructions: 5%
- Jury instructions: 5%
- Video in lieu: 1%
Frequency of court accompaniment by MDT member (CAC survey)

“Testimonial” out-of-court statements are not admissible at trial unless

- The witness testifies, or
- If unavailable for trial, the witness had been subject to cross-examination at a prior time

Toth, P. (2007)

How has this affected prosecution?
Impact of *Crawford* on likelihood of prosecution

- Decreased greatly
- Decreased somewhat
- No difference
- Increased somewhat
- Increased greatly
Impact of *Crawford* on need for child testimony

- Decreased greatly
- Decreased somewhat
- No difference
- Increased somewhat
- Increased greatly
Impact of *Crawford* on likelihood of conviction at trial

- Decreased greatly
- Decreased somewhat
- No difference
- Increased somewhat
- Increased greatly
Ohio v. Clark (2015)

A 3-year-old child’s statement to a mandated reporter was not testimonial and did not violate the Confrontation Clause.

The child’s purpose in making a statement was not to support prosecution, but rather to end the abuse.

The teacher's purpose in questioning the child was not to support prosecution, but rather to help the child.
Concluding Thoughts

- Though prosecution remains difficult, knowledge has increased dramatically
- Many methods have been developed for improving practice and supporting children
- Training and implementation remain challenging
Concluding Thoughts

The net is wide: children are victimized in multiple ways
Polyvictimization

- Many child victims suffer multiple forms of victimization
- Children suffering sexual victimization averaged 6.4 types of victimization
- Polyvictims experience significantly more trauma symptoms

National Survey of Children’s Exposure to Violence

Finkelhor, Ormrod & Turner, 2007; Turner, Finkelhor & Ormrod, 2010
• Majorities of children experience physical abuse, exposure to DV, neglect
• Many children experience polyvictimization
Concluding Thoughts

Evidence-based treatments are available

National Child Traumatic Stress Network

www.nctsn.org
Concluding Thoughts

Research plays an important role:

- Improving practice
  - Benefits of MDTs and CACs
  - Use of forensic interview protocols
  - Treatments for children and families
- Informing decision-makers
  - Prosecutors
  - Judges
  - U.S. Supreme Court
- More research need on effectiveness of prosecution
Contact us!

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References


References (cont.)


References (cont.)


