

BACK TO BASICS: CHILD SEXUAL ABUSE CASES

THE CHILD ABUSE PROSECUTION PROJECTS' BACK TO BASICS SERIES

The Association of Prosecuting Attorneys, Child Abuse Prosecution Project is pleased to offer its Back-to-Basics Series, a "to-do" list for both new and experienced child abuse prosecutors and their multi-disciplinary teams.

This project was supported by Grant # 2015-CI-FX-K004 Awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this publication are those of the author and do not represent the official position or policies of the United States Department of Justice

To join our mailing list or for information on conferences and events, please contact us:

Mary-Ann Burkhart

Project Director, Child Abuse Prosecution Project, Association of Prosecuting Attorneys
maryann.burkhart@APAInc.org

Aimee Peterson

Project Associate, Child Abuse Prosecution Project, Association of Prosecuting Attorneys
aimee.peterson@APAInc.org

READ THE ENTIRE CASE FOR:

- **Likely defense** (and evidence that contradicts/supports it). Examples of potential defenses include:

- *Victim fabricated abuse*
- *Family member had victim fabricate*
- *Someone else did it*
- *Innocent touching*

- **Victim's counterintuitive behavior** (i.e., what did victim do that is inconsistent with what a juror might expect the victim to do, such as not telling right away, recantation, having mixed feelings about the defendant, blending events, describing behavior that occurred while they say they were asleep)

- **Determine the very first person the victim disclosed to** (prior consistent statement may be admissible if it predates "motive to lie" claimed by defendant)

- **Potential victims to use for 404 purposes**

DETERMINE WHETHER YOU NEED AN EXPERT ON ANY OF THE FOLLOWING:

- **Victim's counterintuitive behavior.** (This is not to diagnose that the victim IS a victim--that is an improper use of such testimony. It is to explain the reasons why a victim may behave in a way that a jury may find counterintuitive.)

- **Genital/anal injuries** (or, more likely, to explain the absence of injuries)

- **DNA** (or, more likely, to explain the absence of DNA)

- **FRE 404 and 414 Evidence.** (This expert would testify in a pretrial hearing to address the necessary findings for the admission of such evidence. For example, if the acts are dissimilar or remote in time, the expert might be able to explain that the acts are similar enough or close enough in time to admit.)

- **Defending the interview** (especially if interviewer is less-aware of relevant research on memory/suggestibility)

CONSIDER FILING THE BELOW SPECIALIZED MOTIONS:

- **To preclude introduction of other sexual behavior/victimization of the victim** (i.e., rape shield)

- **To admit victim's out of court statements**

- *Medical diagnosis/treatment (many jurisdictions also allow statements regarding the identity of the perpetrator so that appropriate steps may be taken to protect the child)*
- *To person such as teacher (see Ohio v. Clark, 135 S.Ct. 2173 (2015))*
- *Excited utterances*
- *Forfeiture by wrongdoing (especially if victim has disappeared/recanted)*
- *Admission of forensic interview*

- **404/414 motion to get in other acts of the defendant**

- *Uncharged sex acts toward the victim*
- *Uncharged relevant sex acts toward others*
- *Threats of violence toward victim or others that could explain reluctance to tell or recantation*

If possible, allege that the acts come in under BOTH 404 (e.g., to show intent, absence of mistake/accident) AND 414.

OVERCOMING THE UNTRUE DEFENSE

- **Use expert testimony**

- *Recantation*
- *Delayed reporting*
- *Lack of physical or scientific evidence*

- **Use common sense arguments**

- *Sensory detail*
- *Life of the child post*
- *Lack of physical or scientific evidence*