

INNOVATIVE MOTIONS IN CHILD ABUSE CASES

Overview

Child abuse prosecutions are obviously very emotional and challenging. The dynamics of sexual and physical abuse are quite complicated and sensitive. These cases often involve long term abuse, secrecy, threats and abuse by family members and authority figures. It is no wonder that oftentimes a child victim/witness in these types of cases feels ashamed, confused, and embarrassed.



In addition, the courtroom can be a very scary and intimidating place for a child victim/witness. The prosecutor has an opportunity to attempt to alleviate some of the apprehension that a child may have about testifying by filing certain pre-trial motions to empower and protect the child victim/witness.

It is important for the prosecutor to be proactive in the motion session. The worst that can happen is that a judge denies the request of the prosecutor. It is important that a prosecutor always remember never to promise a child victim/witness something like the child can bring a teddy bear to the witness stand before receiving the Court's approval.

Preparation of proper and relevant pre-trial motions is essential. Know as much as you can about the child victim/witness involved in your case to assess what, if any, motions need to be filed. Discussions with caregivers would be essential here. Prosecutors also may benefit with discussions with the child's educators or physicians. Prosecutors should check their jurisdictional rules to determine if such pre-trial motions can be made orally by the prosecutor or must be in writing. Always check jurisdictional rules for requirements on notice to the defense of pre-trial motions.

Pre-Trial Motions Child Abuse Prosecutors Should Consider Filing:

Child friendly oath

It is essential that the child victim/witness understand the oath. Depending on the age and developmental abilities of the child victim/witness the prosecutor should evaluate whether the child will be able to comprehend the traditional oath. If warranted, the prosecutor should consider motioning the Court for a more child -friendly oath where the child promises to tell what really happened.



Reconfiguration of the courtroom

Prosecutors should always be mindful of the Confrontation Clause protections afforded the Defendant when requesting the Court reconfigure the courtroom for the child's testimony. Be creative in assessing how the courtroom in question could be reconfigured for the comfort of the child. For example, consider that the child sits in a comfortable chair in front of the witness stand.

Scheduled recesses

The child victim/witness will certainly benefit from scheduled recesses. This will prevent lengthy direct and cross-examination which can be unduly tiring and stressful for the child. Depending on the age of the child and any other particular behavioral or physical challenges that the child may have, determine whether scheduled recesses every 30 minutes, for example, would be appropriate. The prosecutor should involve the child's caregiver and/or any other professional that cares for the child to determine the appropriate schedule. If the child takes a particular medication at certain times that would be a factor in scheduling appropriate recesses during the child's testimony.

Comfort item

Consider filing a pre-trial motion with the court to allow the child to bring with them to the witness stand a favorite toy or stuffed animal that gives the child comfort. Prosecutors should always remember never to promise a child that they can bring a comfort item with them to the stand until the Court has ruled on that motion. No prosecutor ever wants to be in the position of telling a child on the day of the trial that the beloved teddy bear they brought with them for comfort to the trial cannot be brought into the courtroom.



Courtroom/Facility dogs

Professionally trained facility dogs can provide a supportive environment for the child victim/witness during the child's testimony. These facility dogs are often housed at the local children's advocacy center or at the prosecutor's office.



Limit Examination of child witness to age appropriate language, grammar and sentence structure

Use of legal jargon with a child witness can be confusing and frustrating for the child. Consider filing a motion to eschew legal jargon in favor of short sentences and action verbs. Consider further requesting that the Court rule that pronouns and compound sentences should be avoided as use of such can easily confuse a child.

Scheduled testimony

No prosecutor wants to call a child victim/witness to the witness stand to testify after the child has waited all day at the courthouse. Consider filing a motion to allow the child to testify when they are rested and fed. Morning testimony may benefit younger children, but the prosecutor should assess the most appropriate time of day for the child to testify based on the child's unique characteristics.

Support person

A person the child feels secure with sitting in the courtroom as the child testifies can be comforting for the child. The prosecutor should always instruct the support person they are prohibited from communicating with the child verbally or non-verbally as they watch the child testify.



Silent objections

Consider filing a motion that changes the traditional procedures for objections. For example, the attorneys raising a pencil or index card to signal an objection. That signal will notify the Court that the objection can then be ruled upon at sidebar. Loud and frequent objections can be distracting and confusing to the child witness.

References

- Andrews, S. J., Ahern, E. A., Stolzenberg, S. N., & Lyon, T. D. (2015). The productivity of wh- prompts when children testify. *Applied Cognitive Psychology, 30*(3), 341-349.
- Andrews, S. J., Lamb, M. E., & Lyon, T. D. (2015). Question types, responsiveness and self-contradictions when prosecutors and defense attorneys question alleged victims of child sexual abuse. *Applied Cognitive Psychology, 29*, 253-261.
- Andrews, S. J., & Lamb, M. E. (2017). The structural linguistic complexity of lawyers' questions and children's responses in Scottish criminal courts. *Child Abuse & Neglect, 5*, 182-193.
- Evans, A. D., & Lyon, T. D. (2012). Assessing children's competency to take the oath in court: The influence of question type on children's accuracy. *Law and Human Behavior, 36*(3), 195-205.
- Lamb, M. E., Malloy, L. C., Hershkowitz, I., & La Rooy, D. (2015). Children and the Law. In R. M. Lerner and M. E. Lamb (Eds.), *Handbook of child psychology and developmental science (7th edition)*, Vol. 3, *Social, emotional and personality development*. Hoboken, NJ: Wiley.
- Newlin, C., Cordisco Steele, L., Chamberlin, A., Anderson, J., Kenninston, J., Russell, A., Stewart, H., & Vaughn-Eden, V. (2015). Child Forensic Interviewing: Best Practices. *Juvenile Justice Bulletin, NCJ 248749*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
- Steele, L. C., & Sawicki, M. (2018). *Forensic interviewing: What every prosecutor needs to know*. Washington, DC: Child Abuse Prosecution Project, Association of Prosecuting Attorneys.
- Vieth, V. I. (2008). A children's courtroom bill of rights: Seven pre-trial motions prosecutors should routinely file in cases of child maltreatment. *Centerpiece, 1*(2), 1-4.

Contact the Association of Prosecuting Attorney's Child Abuse Prosecution Project at www.APAInc.org or at www.childabuseprosecution.org for additional information concerning child abuse prosecution training and materials.