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AUG 1 1988

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MARCH 1988

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# Child Sexual Abusers and Sentencing Severity

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## Introduction

IT IS well-known that the *Uniform Crime Reports* published annually by the U.S. Department of Justice are considered significant underestimates of the actual amount of crime that exists in the United States (U.S. Department of Justice, 1983). By the same token, the actual incidence of all forms of child abuse is currently unknown (U.S. Department of Justice, 1981). National agencies such as the National Center on Child Abuse and Neglect (NCCAN) which is a division of the Department of Health and Human Services have compiled extensive information about how much child abuse occurs annually. Reporting agencies revealed that as many as 1.5 million children were the victims of child abuse in 1983, for instance (Finkelhor, 1984). But these figures are most likely substantial underestimates as well.

Complicating an accurate assessment of the extent of child sexual abuse is the fact that over 90 percent of reported child abuse cases never advance to the prosecution stage (Whitcomb, Shapiro, and Stellwagen, 1985:i). And a significant number of child sexual abuse cases are never reported to appropriate community agencies for investigation. Many child sexual abuse cases involve family members or relatives, and those persons involved are inclined to deal with their problems privately without official intervention of any kind (Finkelhor, 1984; U.S. Department of Health and Human Services, 1984; Woodling, 1984).

This research focuses upon judicial reaction to the disposition of child sexual abuse cases and examines several issues related to the matter of disparity in the administration of justice in such cases. When child sexual abusers are charged or indicted with various offenses, are subsequent plea bargain agreements deliberately rendered more severe by the very nature of the act of child sexual abuse, regardless of its form? In those cases where plea bargain agreements are rejected and trials result, can alleged child sexual abusers receive a fair trial from an impartial, objective jury of peers who must listen to each and every emotionally charged detail of the acts alleged? Does it profit an alleged child sexual abuser to forego a jury trial and rely on supposed judicial impartiality in such sensitive cases?

## Child Sexual Abuse Statutorily Defined

Federal statutes radically extend child sexual abuse beyond the more general catch-all, "child abuse and neglect," which refers to physical and/or mental injury, negligent treatment, or maltreatment of a child under the age of eighteen. Child sexual abuse includes:

- (1) the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct, or
- (2) the rape, molestation, prostitution, or other such form of sexual exploitation of children, or incest with children, under such circumstances which indicate that the child's health or welfare is harmed or threatened thereby. (USCA, Title 42, Section 5102, 1986).

All states have similar statutes addressing child sexual abuse, and most consider it a felony which carries severe penalties. Some of the more common types of child sexual abuse encountered in criminal litigation involve oral-genital contact between an adult (either male or female) and a child (either male or female), pornographic activities involving sodomy and other illicit sexual acts between children or involving such interactions between an adult or adults and children, and incestuous relations between adults and children involving various forms of sexual molestation.

## The Sample and Findings

In an effort to determine whether child sexual abusers are dealt with more harshly compared with other types of offenders, a survey was conducted of a random sample of 260 city and county prosecutors in three different state jurisdictions including Tennessee, Kentucky, and Virginia. Questionnaires were hand-delivered to these prosecutors, and a sample of 166 usable questionnaires was returned, for a 64 percent response rate. No particular pattern emerged to suspect the nonrespondents as seriously different in composition compared with the respondents.

Additionally, court records of criminal convictions and plea bargain agreements were examined in these participating jurisdictions, and 18,493 felony convic-

tions were identified for the period 1981-84. Further analysis revealed that of these convictions, 15,522 were obtained through plea bargaining, while the rest resulted from trial proceedings. A further feature of this study was the inclusion of 20 criminal court judges, principally from Tennessee, who furnished information concerning their own felony convictions covering a 2-year period, 1983-84. There were 3,688 felony convictions during this period, with 3,024 of these (82 percent) settled through plea bargaining negotiations.

An inspection of court records in these jurisdictions revealed the actual numbers of child sexual abuse convictions involved in both aggregates. Table 1 shows the proportionate distribution of child sexual abuse convictions both for the Kentucky, Tennessee, and Virginia jurisdictions handled by the 166 city/county prosecutors and the same kinds of convictions by the 20 criminal court judges.

TABLE 1. THE DISTRIBUTION OF CHILD ABUSE CONVICTIONS IN PARTICIPATING JURISDICTIONS OF KENTUCKY, TENNESSEE, AND VIRGINIA, 1981-84, AND SIMILAR OFFENSES BEFORE CRIMINAL COURT JUDGES, 1983-84

| Participating Jurisdictions | Total Convictions | Child Sexual Abuse Convictions N | Proportion |
|-----------------------------|-------------------|----------------------------------|------------|
| KY, TN, VA ..               | 18,493            | 203                              | .011       |
| Criminal Court Judges ..... | 3,688             | 73                               | .020       |
| Totals .....                | 22,181            | 276                              | .012       |

It is clear from the information provided in table 1 that relatively few felony convictions in the participating jurisdictions involved incidents of child sexual abuse. For the 166 city/county prosecutors and their jurisdictions for the years 1981-84, for instance, 203 convictions out of 18,493, or only 1.1 percent, were for charges of child sexual abuse. For the criminal court judges, a similar figure was obtained. In their jurisdictions for the years 1983-84, there were 73 felony convictions for child sexual abuse out of 3,688 felony convictions, or 2 percent. These small numbers of convictions for child sexual abuse offenses parallel national figures for the same kinds of offenses relative to other types of felonies. Therefore, caution should be used in interpreting the significance of these findings and the generalizability of the study to larger, different populations.

Table 2 shows the proportion of convictions resolved through plea bargaining negotiations in both sets of jurisdictions. A comparison is drawn between those convictions involving other felonious acts and those incidents of child sexual abuse.

TABLE 2. CONVICTIONS IN BOTH SETS OF JURISDICTIONS PLEA BARGAINED—CHILD SEXUAL ABUSE CASES COMPARED WITH OTHER FELONIES

| Participating Jurisdictions | Total Convictions | Convictions Plea Bargained |                     |
|-----------------------------|-------------------|----------------------------|---------------------|
|                             |                   | Other Felonies N Prop.     | Child Abuse N Prop. |
| KY, TN, VA ..               | 18,493            | 15,522 .84***              | 191* .94            |
| Criminal Court Judges ..... | 3,688             | 3,024 .82***               | 65** .89            |

\*Original Child Sexual Abuse N = 203

\*\*Original Child Sexual Abuse N = 73

\*\*\*Z test for significance of difference between proportions significant,  $P < .001$ .

It is interesting to compare the proportions of convictions obtained through plea bargaining negotiations with felonies generally, disregarding type of felony involved, and those child sexual abuse convictions obtained through plea bargaining. In those jurisdictions involving 16 city/county prosecutors, 84 percent of all felony convictions were obtained through plea bargaining, whereas 94 percent of the child sexual abuse convictions were resolved through plea bargaining. In the sample of participating criminal court judges, 82 percent of all felony convictions were concluded through plea agreements, compared with 89 percent of those convictions for child sexual abuse (significant at  $P < .001$ , Z test).

This finding suggests a greater inclination on the part of alleged child sexual abusers to complete satisfactory plea bargain negotiations with prosecutors rather than permit their cases to go to trial. Only 20 child sexual abuse convictions out of a total of 22,181 felony convictions were obtained through trial proceedings. This lends credence to the notion that charges of child sexual abuse frequently cause alleged offenders to seriously consider plea bargaining in lieu of potentially emotionally charged trial litigation as a means of resolving these sensitive matters.

Does it profit a child sexual abuser to forego a jury trial and negotiate with prosecutors in plea bargain agreements? Do judges and prosecutors deal evenly with child sexual abusers compared with other felons in punishment proscriptions?

In order to portray accurately some sentencing distinctions between child sexual abusers and other felons according to severity of punishment through plea bargaining or courtroom action, a ratio was determined by computing the actual sentence imposed (AS) against the maximum possible sentence (MS) which could be levied statutorily considering the crimes involved. For instance, if an offender received

a sentence of 1 year in a plea bargain agreement where the maximum possible sentence could conceivably be 5 years, casting these figures in terms of months, the AS/MS ratio would become  $12/60 = .20$ , and so on. AS/MS ratios were determined for all child sexual convictions. These ratios were also calculated for a random sample of other felony convictions unrelated to child sexual abuse. Table 3 shows AS/MS ratios for 274 child sexual abuse cases compared with a sample of 1,000 randomly selected felonies, 800 from the Kentucky, Tennessee, and Virginia participating jurisdictions and 200 from the criminal court judicial records for the years reported above.

TABLE 3. AS/MS RATIOS FOR 274 CHILD SEXUAL ABUSE FELONIES COMPARED WITH 1,000 RANDOMLY SELECTED FELONIES FROM PARTICIPATING JURISDICTIONS\*\*\*

| Participating Jurisdictions<br>N = 1,000     | AS/MS Ratios              |                                |
|--|---------------------------|--------------------------------|
|  | Other Felonies<br>N = 274 | Child Sexual Abuse Convictions |
| KY, TN, VA . . . . .                         | .22                       | .31*                           |
| Criminal Court Judges' Convictions . . . . . | .24                       | .33**                          |

\*Involves 202 convictions

\*\*Involves 72 convictions

\*\*\*P < .001, Z test for significance of difference between proportions

The figures in table 3 reveal the fact that sentencing severity in child sexual abuse convictions in these participating jurisdictions is significantly greater ( $P < .001$ ) than sentencing severity for other felonies, regardless of whether the sentence results from plea bargaining negotiations or trial proceedings. Sentencing severity averages about one-fifth of the maximum possible sentence that could be imposed for non-child sexual abuse felonies compared with one-third of the maximum possible sentence for child sexual abuse convictions.

An additional comparison was made in the participating jurisdictions. Child sexual abusers were compared with violent offenders (e.g., felons convicted of crimes including homicide, aggravated assault, robbery, and rape), and their sentencing severity ratios were contrasted. The AS/MS ratios for violent offenders were .26 and .27 for the Kentucky, Virginia, and Tennessee jurisdictions and the sample of 20 criminal court judges. Again, child sexual abusers received significantly more severe sentences with an average AS/MS ratio of .32.

Finally, incarceration rates were examined for all felony convictions, including the child sexual abuse

cases. Table 4 shows incarceration rates for property offenders, violent offenders (excluding child sexual abusers), and child sexual abusers.

TABLE 4. INCARCERATION RATES FOR ALL FELONY CONVICTIONS BY TYPE OF OFFENSE, 1981-1984 (N = 22,181)\*

| Type of Offense                           | Incarceration Rate** |
|---|----------------------|
| Property Offenders (N = 16,416) . . . . . | .23                  |
| Violent Offenders (N = 5,491) . . . . .   | .36                  |
| Child Sexual Abusers (N = 274) . . . . .  | .39                  |

\*All proportion differences significant at  $P < .001$ , Z test for differences between proportions.

\*\*Incarceration rate = proportion of felons actually incarcerated for specified periods.

Table 4 discloses that property offenders are incarcerated least frequently, with an incarceration rate of .23. Looking at this finding another way, about 77 percent of the property offenders included in the present research were given probation in lieu of incarceration. In contrast, violent offenders were only given probation in 64 percent of the cases. And child sexual abusers were given probation in only 61 percent of the cases. These proportionate differences were significant at  $P < .001$ .

An examination of incarceration lengths (the actual amount of time served in prisons or jails) for the different offender categories revealed that the average incarceration length for property offenders was 8.4 months. For violent offenders, the average incarceration length was 13.3 months.

But for child sexual abusers, the average incarceration length was 16.4 months. Briefly summarizing, child sexual abusers are sentenced more severely compared with property offenders and violent crime offenders, at least in the jurisdictions examined here. Furthermore, they receive sentences of incarceration more frequently, and the length of their incarceration is longer, contrasted with other felony categories.

### Discussion and Summary

In almost all cases where prosecutors were interviewed involving their sentiments concerning child sexual abusers, they were quite adamant about their feelings concerning incarceration. One prosecutor said that it (child sexual abuse) wasn't reported

enough and that they needed to deal hard with offenders whenever it *did* get reported and indictments were obtained.

It is clear from the data examined here that, at least for the present participating jurisdictions, child sexual abusers receive harsher sentences compared with other felons, even for crimes involving bodily injury including aggravated assault and attempted murder. Judges as well as prosecutors perceive child sexual abusers in a class by themselves. Even reports from prison officials indicate that child sexual abusers are physically assaulted by other prisoners because of their child molestation convictions. Considering these attitudes regarding child sexual abuse offenses, it is not surprising that defendants would want to avoid a detailed exposure of the offense in a public trial. Plea bargaining seems to be the more advantageous alternative for an alleged child sexual offender, but sentencing severity ratios indicate that even plea bargaining fails to save child sexual abusers from more severe sentences compared with their other felon counterparts.

Many states have moved from indeterminate to determinate sentencing practices. Also, in states such as Michigan and California, mandatory sentences for particular types of offenses including the use of a firearm during the commission of a felony are also used in the sentencing guidelines followed by judges. Some leeway is extended to judges which permits them to enhance or mitigate the sentences they impose in certain situations, however. But the child sexual abuser appears to be in a totally different crime classification.

State statutes specify the maximum sentences which may be imposed upon conviction. In past years, it has been customary for judges to impose sentences which reflect only a portion of the maximum sentence. Then, depending upon good behavior and other circumstances such as jail or prison overcrowding, a convict may be released early from the system to serve his or her remaining time on parole under some degree of official supervision.

Sentence lengths are usually designed to reflect the seriousness of the crime in society's view. Property or nonviolent types of crimes typically result in short incarceration periods or immediate probation, while violent offenders anticipate longer incarceration periods and less likelihood for probation. The first-offender stands the greatest chance for receiving probation rather than incarceration. It is believed by some researchers that direct exposure to other criminals in the prison environment detracts significantly from any possible rehabilitative value incarceration might serve. Thus, significant efforts are

made by prosecutors and judges alike to grant probation as an alternative to incarceration. Even Federal and state sentencing reforms have provided judges with the necessary statutory ammunition to apply probation in a wide variety of cases, even some of those involving the commission of violent offenses.

But the child sexual abuser, regardless of whether or not he or she is a first-offender, is quite likely to receive incarceration rather than probation. And if the child sexual offender is incarcerated, he or she is likely to be incarcerated for longer periods than other types of criminals. Research indicates in particular that sentencing severity of child sexual abusers is increasing in certain jurisdictions such as Florida, Georgia, and Alabama.

Why do the courts impose harsher sentences on child sexual abusers compared with other violent felons? The answer may be that judges' sentences are reflecting society's opinion that crimes by adults against children are particularly heinous. Children are viewed as the most vulnerable social category, likely to be particularly traumatized by the acts of child sexual abusers. Certainly, the significant amount of media attention given to child abuse in recent years has helped mold public sentiment.

The fact that only about 1 percent of the convictions surveyed in the present research were child abuse convictions suggests that such felonies are infrequent compared with other series offenses. However—even though much child sexual abuse remains unreported—the number of child sexual abuse reports is increasing. Courts are now beginning to see a general increase in the number of cases brought to trial. Will the sentencing patterns described here continue in future years as more child sexual abuse cases reach the courtroom?

More research is needed in other jurisdictions, particularly with different kinds of child sexual abusers, to delineate more clearly those factors influencing judicial actions and prosecutorial discretion in configuring plea bargain agreements and the sentencing of child sexual abuse offenders. Whether or not these harsher sentences change the child sexual abuse offender must eventually be addressed.

#### REFERENCES

- Armstrong, James J. "The Criminal Videotape Trial: Serious Constitutional Questions." *Oregon Law Review*, 55, 1976, pp. 567-585.
- Berliner, Lucy and Doris Stevens. "Advocating for Sexually Abused Children in the Criminal Justice System." In *Sexual Abuse of Children*, U.S. Department of Human Services. Washington, DC: U.S. Government Printing Office, 1982.
- Berliner, Lucy and Mary Kay Barbieri. "The Testimony of the Child Victim of Sexual Assault." *The Journal of Social Issues*, 40, 1984, p. 132.



- Brakel, S. "Videotape in Trial Proceedings: A Technological Obsession." *American Bar Association Journal*, 1975, p. 61.
- Bross, Donald C. *Multidisciplinary Advocacy for Mistreated Children*. Denver: National Association of Counsel for Children, 1984.
- Cohen, Ronald L. and Mary Ann Harnick. "The Susceptibility of Child Witnesses to Suggestion." *Law and Human Behavior*, 4, 1980, pp. 201-215.
- Davidson, Howard A. and Josephine Bulkley. *Child Sexual Abuse—Legal Issues and Approaches*. Washington, DC: American Bar Association, 1980.
- Dent, Helen E. and Geoffrey M. Stephenson. "An Experimental Study of the Effectiveness of Different Techniques of Questioning Child Witnesses." *British Journal of Sociology and Clinical Psychology*, 41, 1979.
- Devine, Rayline A. "Sexual Abuse of Children: An Overview of the Problem." U.S. Department of Health and Human Services. Washington, DC: U.S. Government Printing Office, 1980.
- Finkelhor, David. "Child Sexual Abuse in a Sample of Boston Families." In *Child Sexual Abuse: New Theory and Research* (ed. D. Finkelhor). New York: Free Press, 1984.
- Finkelhor, David. "How Widespread is Child Sexual Abuse?" *Children Today*, 13, 1984, pp. 18-20.
- Finkelhor, David. "Removing the Child—Prosecuting the Offender in Cases of Sexual Abuse." *Child Abuse and Neglect*, 7, 1983, pp. 203-204.
- Galante, Mary Ann. "New War on Child Abuse." *National Law Journal*, 14, 1984, pp. 26-32.
- Goodman, Gail S. "Children's Testimony in Historical Perspective." *Journal of Social Issues*, 40, 1984, p. 12.
- Goodman, Gail S. and Joseph A. Michelli. "Would You Believe a Child Witness?" *Psychology Today*, November 1981, p. 81.
- Goodman, Gail S. and R. S. Reed. "Age Differences in Eyewitness Testimony." Unpublished manuscript, 1984.
- Heifer, R. "The Epidemiology of Child Abuse and Neglect." *Pediatric Annals*, 10, 1984, pp. 745-751.
- James, J. and J. Womack. "Physician Reporting of Child Sexual Abuse." *Journal of the American Medical Association*, 240, 1978, pp. 1145-1146.
- Johnson, Marcia K. and Mary Ann Foley. "Differentiating Fact from Fantasy: The Reliability of Children's Memory." *Journal of Social Issues*, 40, 1984, pp. 33-50.
- Katz, S. and M. Mazur. *Understanding the Rape Victim*. New York: Wiley, 1979.
- Libai, David. "The Protection of the Child Victim of a Sexual Offense in the Criminal Justice System." *Wayne Law Review*, 15, 1969, pp. 977-1032.
- Marquis, K. H., J. Marshall, and S. Oskamp. "Testimony Validity as a Function of Question Form, Atmosphere, and Item Difficulty." *Journal of Applied Social Psychology*, 2, 1972, pp. 167-186.
- McNeese, Margaret and Jean Hebel. "The Abused Child: A Clinical Approach to Identification." *Clinical Symposia*, 29, 1977, pp. 2-36.
- Mele, Sue. "Frequently Litigated Issues in Criminal Cases Involving Family Violence." In *Multidisciplinary Advocacy for Mistreated Children*, Denver: D.C. Bross, 1984.
- National Legal Resource Center for Child Advocacy and Protection, *Innovations in the Prosecution of Child Sexual Abuse*. Washington, DC: American Bar Association, 1981.
- Parker, Jacqueline Y. "Rights of Child Witnesses: Is the Court a Protector or Perpetrator?" *New England Law Review*, 16, 1982, pp. 643-717.
- Peterson, Sheryl K. "Sexual Abuse of Children: Washington's New Hearsay Exception." *Washington Law Review*, 58, 1983, p. 827.
- Plum, Henry. "Prosecuting a Case with Child Witnesses." Paper presented at Protecting Our Children, A National Symposium. Washington, DC October 1984.
- Pynoos, Robert and Spencer Eth. "The Child Witness to Homicide." *Journal of Social Issues*, 40, 1984, p. 98.
- Redeker, James R. "The Right of an Abused Child to Independent Counsel and the Role of the Child Advocate in Child Abuse Cases." *Villanova Law Review*, 23, 1978, pp. 527-530.