

Corroborating Your Victim's Statement and Your Case

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Overview

- Why corroboration is important
- Multi-Disciplinary Approach
- Initial Disclosure, Report, and Forensic Interview
- Prior Consistent Statements, Partial Disclosures, and Recantations
- Steps in the Investigation
- Evidence Collection
- Interviews
- Electronics, Social Media, and Computer Forensics
- Possible Defenses

Why is corroboration so important?

- To show that the victim is telling the truth
- To show that the victim has a good memory
- To overcome possible recantation or victim inconsistencies

Why do jurors and others disbelieve child victims?

- Historical cases/delayed disclosures
- Child is only witness to actual abuse
- Lack of physical evidence
- Simply do not want to believe that abuse happens in our communities/homes

Multi-Disciplinary Approach

- Who and how do you communicate?
- Importance of team approach and timeline of involvement
 - Initial report of abuse (CPS, school, law enforcement, other)
 - Communication with MDT members (law enforcement, CPS, CAC, CWA)
 - Forensic Interview through charging decision

The Disclosure

- How do we get from the secret to the disclosure?
- The story of *how* the disclosure came out is just as important as *what* the child is disclosing.
- Questions to ask:
 - To whom? Under what circumstances? Why now?
- Need to explain delayed disclosures

Initial Report of Abuse

- Responding officer to conduct minimal facts interview with non-offending adult
- Recorders/body cam
- Separate parents/adults/children
- Do not ask the child any questions (listen if child talks, no leading questions) – wait for forensic interview
- Explain next step/process to non-offending parent/guardian
- Contact investigator, CPS, CWA (depending on jurisdiction and policies)

Forensic Interview: Who and Where?

- Where to interview? Do you have a CAC?
- Who will be present?
- Helpful to have a team present to make sure all necessary questions are asked and to plan for next steps in the investigation

Forensic Interview: What?

- Obviously the sexual acts, perpetrator, location, timeline, but what else?
- Description of scene
- Description of clothing, bedding
- Description of suspect, suspect's body, suspect's genitals
- Sensory details – taste, smell, etc.
- Prior grooming behavior?

Not the “Perfect FI”: partial disclosures, recantations, and not having “the perfect victim”

- Trauma to victims, fear, shame
- What the offender says will happen if V tells does actually happen... (disbelief/blame, foster care/separation from family)
- Drugs, prostitution, distrust

What can you do?

- Need corroboration even with a great disclosure, so even more important with a partial or imperfect disclosure or with a recantation...

Prior Consistent Statements of Victim

- Find and document prior consistent statements of the victim (ALL statements from crime to trial testimony are “prior”)
- Use prior consistent statements to rehabilitate an impeached witness (*McLean v. Com.*, 32 Va. App. 200), but no bolstering on direct (*Proctor v. Com.*, 40 Va. App. 233)
- Virginia Rule of Evidence 2:613

Also don't forget: Recent Complaint Hearsay Exception

- Virginia Rule of Evidence: 2:803(23): “In any prosecution for criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a violation of §§ 18.2-361, 18.2-366, 18.2-370 or § 18.2-370.1, the fact that the person injured made complaint of the offense recently after commission of the offense is admissible, not as independent evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness.”
- Interview recent complaint witnesses!

What about recantations?

- Why do children recant? – fear, shame, what the offender says will happen if V tells does actually happen... (disbelief/blame, foster care/separation from family)
- Don't give up!
- Just like with the disclosure, the story of *how* the recantation came out is important.
- Questions to ask: To whom? Under what circumstances? Who reported the recantation?
- Do not take the reporter's word about the recantation – talk with the victim!

What Else?

- Evidence collection
- SANE/medical exam
- Other witnesses
- Suspect interview
- Electronics and social media

Evidence collection

- Consent
- Search Warrant

Evidence collection

- Photographs of scene (ASAP)
- Photographs of other locations
- Clothing, bedding, unique items
- DNA – PERK (victim and suspect), buccal swabs, clothing/bedding

Evidence Collection: Crime Scene

- Don't forget there is a scene, or multiple scenes
- Pictures are so important – shows victim's accuracy, memory, consistency, AND helps jury see the scene through the child's eyes

CASE EXAMPLE

SANE/medical exam

- Should SANE be done? If not, what about medical exam or wellness check?
- Rare to have physical findings
 - Possibility of suspect DNA, injury
- Use of SANE nurse or other expert at trial to explain findings or lack of findings
 - Show that no evidence of injury is consistent with facts of disclosure (e.g. touching, oral sex)
 - Anatomy lesson for jury?
- Medical history of child (before and after abuse) – CPS helpful with gathering documentation from health care providers

Potential Other Witnesses

- First responding officer
- Siblings of abused child
- Non-offending parents
- Other family members
- Person to whom child disclosed
- Teacher, school counselor
- Recent complaint witnesses
- Child's therapist
- Medical personnel
- Other potential victims

Other Witnesses

- Prior consistent statements
- Changes in victim (behavioral, hygiene, personality/emotional, cognitive, etc.)
- Opportunity evidence – how can we put the suspect and the victim alone together at the “crime scene”?
 - Witnesses, photos, receipts, GPS, social media, other electronic evidence
- *Modus Operandi* if multiple victims

Suspect Interview

- What suspects do:
 - Refuse to talk, “lawyer up”
 - Deny
 - Minimize
 - Confess

Suspect Interview: Tips

- Build rapport
- Empathy not sympathy
- Investigator to minimize suspect's offenses
- Get suspect locked into a story/version of events

Suspect Interview – Cases when suspect refuses to talk (“Lawyers up”)

- Don't give up on the case just because the suspect doesn't talk – this is why corroboration is so important!

Suspect Interview – Cases where suspect denies or minimizes abuse

- Get the suspect locked into some version of events – you do not need a confession – it is very helpful later if you can lock the suspect into a story early
- Timeline of events, patterns, normal routines, opportunity evidence
 - Helps show two important things: 1) victim has a good memory and 2) victim is telling the truth

Suspect Interview

- Get pictures of suspect – scars, marks, tattoos, unique characteristics
 - Keep in mind that suspects change their appearance – check for old photos (jails, DOC, probation, social media, family)

CASE EXAMPLE

Suspect Interview – Cases where the suspect confesses

- Great, but do NOT stop your investigation!
 - Confessions can be suppressed
 - Victims can recant or have inconsistencies – then you need more evidence to build your case
 - Remember that you cannot get a conviction based on a confession alone

Electronics and Social Media

- Preservation letters
- Consent v. search warrants

Electronics and Social Media

- GPS, tower logs
- Cell phones
- Photographs and videos
- Text messages, emails, chats (Facebook, other chat apps)
- Pornography

Electronics and Social Media: Computer Forensics

- Computer forensics:
 - Corroboration
 - Timeframe
 - Exif data on photographs
 - Enhancement of audio and image quality of photographs and videos
 - Experts (at your law enforcement agency, ICAC task force)

CASE EXAMPLE

Anticipate Possible Defenses

- “Child is lying”
 - What is victim’s motive to lie?
 - What is the victim’s relationship with the suspect?
How has relationship changed since the abuse and since the disclosure?
 - How does victim currently feel about the suspect?
 - Disclosure brings “bad things” so why lie? (shame, change in relationships, separation from family)

Anticipate Possible Defenses

- “Child was coached”
 - Victim uses age-appropriate, developmentally-appropriate language
 - Victim describes sensory information (taste, smell)
 - Victim corrects interviewer or examiner when such person is incorrect; does not just agree
 - Victim can answer questions with some detail without a lot of “I don’t know”

Anticipate Possible Defenses

- “Someone else did it”
 - Who had access to the victim? Who did not have access to the victim?
 - Motive for victim to accuse this particular suspect?

Documentation

- Investigators, how do you compile the materials for your case file?
- Please, no opinions in reports! (except for experts)

In conclusion...

- Corroboration is important to show that the victim is telling the truth, etc. – BUT ALSO to support your victims, to get justice for your victims, and to prevent others from becoming victims.
- These cases are difficult.
- Remember why you do them.

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