

CLI White Paper: **Investigations of Alleged Child Sex Assaults ; Defending the Wrongfully Accused**

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High-profile cases have made sexual assault on children a “hot” issue in our society. The media have created a widespread hysteria that has somehow convinced everyone that anyone is capable of being a child molester.

The numbers are sketchy at best. The Maryland Coalition Against Sexual Assault, in a training session focused on false reporting noted that “statistics vary so widely, (2-50%) that it is virtually impossible to make an accurate statement on how frequently it occurs. Since 1991, the FBI has been saying that the statistic on false reporting is a standard 8% across the country.”¹ **Regardless of the actual numbers, this is a very real and frightening event for some defendants.**

What if your client has been wrongly accused of sexual assault on a child? You and the attorney have an uphill battle ahead of you.

One unfortunate by-product of the media frenzy surrounding child abuse and sexual assault is that anyone accused of such acts must prove he is innocent—for those accused of such crimes, there is no presumption of innocence. When one has been falsely accused, this creates an odious burden that is extremely difficult to defend and overcome. There are things that we, as investigators, can do to assist these clients.

First, you should help build the case by conducting a full background investigation on the accused. It should include a full criminal history, military history (if any), education/work history and the reports from any psychological evaluations. The defense attorney should request a private polygraph examination, and assuming the results are favorable, these can be made available to the district attorney’s office. Conducting the polygraph examination privately maintains the attorney-client privilege and the results need not be disclosed to the prosecution if they are not favorable.

The attorney will ask you to read through the discovery materials and become well-versed in the elements that of the crime. Like any criminal case, you will want to become very familiar with all the witnesses and the facts surrounding the alleged crime. Expect to spend a great deal of time reading the police reports and viewing any interview tapes. Take notes, and pay attention to what the child says. Does the child actually say that sexual contact occurred? Or is the child just agreeing with what an adult interviewer is asking?

After you have learned the case, the first thing you should do is locate and interview the outcry witness, if possible. This will likely be a parent, a teacher, a baby-sitter, a family friend—this is whoever the child confided in regarding the allegation. **In any other proceeding, this would be known as “hearsay”, that is, when a witness testifies about something, he or she was told by someone else. Hearsay is normally inadmissible as evidence against the accused, but in cases related to child abuse or sexual abuse, it can be admitted as evidence.**² Ask about the details of the outcry, and try to get as much information about the child’s conversation with that witness as possible. Try to find out about the child’s demeanor, the circumstances that led to that conversation and exactly what was said. A child who is lying is apt to provide inconsistent, sparse and unrealistic details.³ Again, did the child actually say that sexual contact occurred? What exactly happened?

Next, you should talk to the child’s teachers, neighbors, friends (if they are old enough to participate) and parents of their friends. This is to find out what is going on the child’s life. You want to get a picture of the child’s daily activities and events.

This may lead to valuable information that would warrant further examination, such as a classmate who has been the victim of a similar crime, the recent viewing of a television show with sexual content or a class discussion at school regarding “good touching and bad touching.” Are there any reasons why the child would make this up? Has the child confided to anyone that nothing really happened?

The attorney is also likely to ask an investigator to look into whether the police and child protective services investigations were performed properly. An investigator must understand the effects of leading, or suggestive interview techniques. In cases where a child accuses another of sexual assault, interviews with that child should be conducted by an unbiased, trained interviewer. This may mean using a forensic interviewer, who is specifically trained to interview child crime victims. They are trained to take into account the child’s age, development and communicative skills when determining whether a crime was committed. They interview with trial preparation in mind, however, they typically work on the prosecution’s side—so the defense investigator must note whether there was any bias or leading questions. Another purpose of the forensic interviewer is to reduce the number of interviews in which a child/victim participates. Also, look for any bias in other types of interviews and medical reports. Examine the background and credentials of any experts, and learn about any advocacy groups they might support (which could indicate bias).

The next stage of the investigation involves examining why the child is making a false accusation. There

are many reasons why a child may make a false claim against an adult (or another person in a position of trust) and accuse him or her of sexual assault or abuse. Often in such cases, it is found that a parent or other adult is behind the claim and has coached the child to make such an accusation. In such instances, it is imperative that the investigator attempt to learn any motives such an adult may have, such as the desire for custody of that child or to punish an ex-spouse for leaving. This has become so common that it has become the subject of many studies and its own acronym, S.A.I.D. (Sexual Allegations in Divorce).⁴

There are other factors to consider when defending someone wrongly accused of sexual assault on a child. There have been instances where a teenager has alleged abuse in order to get rid of a disciplinarian parent.⁵ Children today know more about sex, and are constantly exposed to it through television and magazines.⁶ Sometimes, children just want attention.⁷ Careful and thorough interviews by an investigator can help reveal whether these scenarios exist.

Finally, study this topic. Learn all you can about how to defend the wrongfully accused. Study the many fields that touch this topic—psychology, child development, family law, conflict resolution, etc. The more you know, the more helpful you will be to the attorney defending such a case.

This paper is not intended to be an all-inclusive training aid to assist in defending those wrongly accused of sexual assault on a child, but rather, an introduction to what steps you and the attorney will need to take together to plan a defense strategy.

(Footnotes)

¹ Maryland Coalition Against Sexual Assault. (2004) Sexual assault in-service training for Maryland law enforcement officers. Slide 8 in presentation.

² In Colorado, this exception is noted in C.R.S. §13-25-129.

³ Jones, D. P. H., & Seig, A. (1988). Child sexual abuse allegations in custody or visitation cases: A report of 20 cases. In E. B. Nicholson (Ed.), *Sexual Abuse Allegations in Custody and Visitation Cases* (pp. 22-36). Washington, DC: American Bar Association.

⁴ This topic is deserving of more attention than this paper can cover, so it will not be discussed at length here.

⁵ Stuckle, Paul G. (2004). A criminal defense attorney’s view of false child sexual assault allegations.



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