

## When a Child Takes it Back:

#### It takes a Team – Successfully Prosecuting a Case with a Recanting Victim

This Presentation was Developed by Mary-Ann Burkhart Child Abuse Prosecution Project Director Association of Prosecuting Attorneys



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## Percentages?



Fewer studies on recantation than on disclosure ...

Rates vary –

From 4% (Bradley & Wood, 1996)

To 22% (Sorenson & Snow, 1991)

To 27% (Lyon, 2007)



## Percentages?



McElvaney (2013): Gradual disclosure, recantation and other inconsistencies are common

London (2008): Most adult respondents reporting CSA never disclosed as a child

Lyon (2007): <50% of children seen at hospital with genital gonorrhea without prior suspicion made outcry of abuse.





## Does it Matter if There's Corroboration?

Cases with corroborating evidence had about the same rate of recantation as cases without corroborating evidence – approximately 25% (Hershkowitz, Lamb & Katz, 2014)



## Lawson and Chaffin Study

#### 7 Journal of Interpersonal Violence 352-542 (1992)

#### Studied 28 children with STD's to find the following disclosure process:





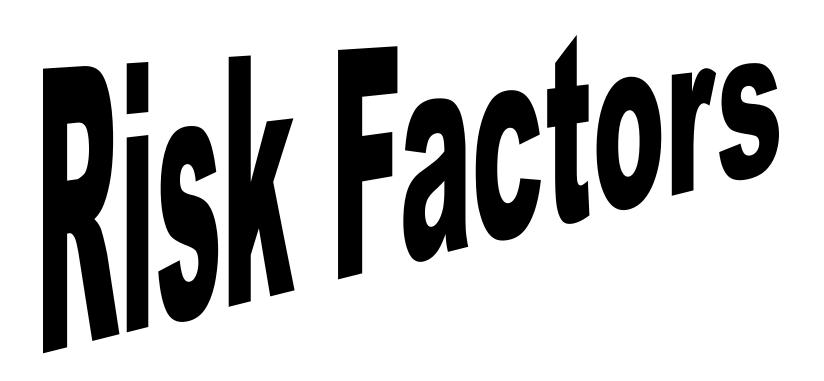
#### 43% disclosed

## 57% denied and/or refused to disclose

3.5% greater probability that child would disclose if caretakers accepted the possibility that it had occurred











Abuse by a family member  $\checkmark$  Family's response?  $\checkmark$  History of threats by abuser  $\checkmark$  Hostility to disclose by family Lack of family support ✓ Offender denial Continued contact with offender ✓ Evidence of pressure Other forms of family violence Lack of court orders



✓ Lack of system intervention ✓ System delays ✓ Lack of therapist Child's placement post-disclosure ✓ Cultural stigmas  $\checkmark$  Lack of professionalism by investigators and prosecutors ✓ Victim self-blame ✓ Victim ambivalence ✓ Isolation ✓ Fear ✓ Financial hardship







#### Younger children

## Children alleging abuse against a parental figure

## Children with a non-supportive caregiver

#### (Malloy & Mungo, 2016)



# New Study (Malloy, Lyon, Quas, et al. 2016)

## Children are LESS likely to recant when:

- (1) They were initially removed from the home postdisclosure;
- (2) They were initially separated from siblings postdisclosure;
- (3) Family members (including and other than the NOCG) expressed belief in the allegations; and
  - (4) Visitation with the perpetrator was NOT recommended



## What this Means -

Must consider more fully the social context of a child's postdisclosure experience:

Familial belief, including extended family members

Contact with siblings and the alleged offender









## Why?

#### Child is an essential witness (Crawford) Credibility....

Child returns to the offender Only a short-term resolution Perpetrator is reinforced No therapy intervention No further disclosures



## **Prepare the Child For Court**

#### **Court School**

### **One-on-One prep**

# Meet early in the case, and often



## **Use Pretrial Motions**

Using proactive pretrial motions will ease a child's fears and concerns

Talk to caregiver, therapist, teachers, everyone with knowledge – find out child's particular fears or apprehension regarding court





## Making the Child Comfortable in Court

Child Friendly Oath
Using Demonstrative Aids
Altering Courtroom Layout
Periodic Recesses
Turning Witness Chair
Scheduling Testimony



## Making the Child Comfortable in Court

Allowing a Comfort Item
Questioning by the Court
Support Person
Controlling Courtroom Behavior
Tone of Voice/Objections



## Making the Child Comfortable in Court

#### Asking Developmentally Appropriate Questions

- Child Friendly Courtroom
- CCTV (only if necessary)

#### Get Creative .... Be a Mover and a Shaker ☺



## **Demonstrative Aids**

### Assist the jury

#### Assist the child

#### How did the child initially disclose?





#### **Screens/Shields**

#### **Closed Courtrooms**

# Primarily because of Appellate challenges



## How else? Five Ways....

- 1. Minimize Trauma
- 2. Minimize Disruption
  - 3. Support Victim
- 4. Corroborate Victim
- 5. Effective Interviewing



## Minimize Trauma

Resolve the case Coordinate proceedings Child Advocate/GAL Meet early and often Courtroom modifications MDT approach



## **Minimize Disruption**

Remember the child's hours.... Is it OK to skip school? Coordinate proceedings Is the child embarrassed... will he/she want to keep this private?



## **Support Victim**

Provide for child's safety Protective orders Enforcement!!! Placement of victim Available therapy Education for child/family



## **Corroborate Victim**

**Detailed** statements Sensory details Note circumstances and demeanor Defendant's statement **History check** Use those search warrants!



## Search Warrants

Any/all corroborate evidence, however small Grooming materials Incriminating information Other victims.....





## **Effective Interviewing**

Videotape Protocol Open ended questions "You said X... tell me more about X" "What happened next"









## **Assess Report of Recantation**

 $\checkmark$  To whom did the child recart? **MDT member?** Defense attorney?  $\checkmark$  How did the notifier react?  $\checkmark$  What were the child's words?  $\checkmark$  What was the child's demeanor? ✓What were the circumstances surrounding the recantation?  $\checkmark$  To whom was it first reported?  $\checkmark$  Obviously false statements?  $\checkmark$  How have things been since?



### **Interview Witnesses**

✓Therapist/CPS Home situation/level of support Compliance with court orders **CPS** plans? Witnesses to recantation Witnesses to original statement  $\checkmark$  Child: "I don't want him to go to jail - I just want it to stop".



## Assess the Case

- Continuance Therapy Speedy trial issues
  - Go forward

• Dismiss Therapist involvement Safety of the child



## Going Forward with the Case

# Evaluate the admissibility of child's original statement ...

### Hearsay Exceptions Tender Years Doctrines Case law?









## Generally

No matter when it happens, you MUST deal with it Recantations create obstacles Aggressively explore creative ways to proceed with criminal case Child friendly courtrooms Potential tampering charges?



## What to do??

#### Recess

## Try to determine the reason for the recantation...

## Consistency Fabrication/coaching

#### Fear Ambivalence toward perpetrator





## What to do??

Gentle impeachment Prior inconsistent statement Direct examination ... include as much information as possible in leading up to recantation (e.g., level of support, lifestyle, etc.)



## What to do??

#### Testimony from the person(s) you believe exerted pressure on the child to recant? Expert testimony re CSAAS characteristics

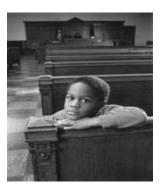




## **Rehabilitate Credibility**

#### Common sense arguments Expert testimony





## Balance the Scales for Kids







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