

Investigation and Prosecution of Child Abuse

THIRD EDITION



APRI

National Center for Prosecution of Child Abuse

 **SAGE Publications**



II. THE CHARGING DETERMINATION

A. Who Should Make Charging Decisions?

1. *Consultation With Experienced Prosecutors*

The good news concerning the increase in the prosecution of child abuse cases is the development of a network of experienced child abuse prosecutors throughout the country who are willing to consult on cases and offer the benefits of their many years of experience. The National Center for Prosecution of Child Abuse has senior attorneys who are available to discuss cases and put the prosecutor in touch with

other prosecutors throughout the country. This network can offer insight into everything from standards for prosecuting abuse cases to charging decisions to recommended guidelines for entry of plea bargains and disposition of cases. Although every jurisdiction has a statutory scheme that is somewhat unique, the same issues and concerns seem to be common in child abuse prosecutions nationwide. By seeking such consultation, even smaller prosecutor's offices can dramatically expand their "staff" and obtain expert assistance and guidance.

It is difficult for prosecutors handling their first cases of child abuse in any form to make appropriate decisions without consulting with others with more experience. Filing decisions are best made by, or in consultation with, prosecutors who have training and experience in child abuse cases. It is difficult, if not impossible, for the novice prosecutor to competently evaluate a child abuse case alone. This is not to say that experience alone equates expertise. New prosecutors are encouraged to use their creativity and expand the horizons of effective prosecution. On the other hand, an understanding of the underlying dynamics of child abuse takes some time to acquire, and such a basic comprehension should underlie virtually all decisions made in child abuse cases.

2. Vertical Prosecution

Vertical prosecution occurs when the same prosecutor who makes the charging decision handles all subsequent phases of the case, including pretrial motions, witness preparation, trial, and sentencing. This process is highly recommended in child abuse cases. In jurisdictions where grand juries are used or preliminary hearings are required, the same prosecutor should handle those phases of the case as well. If the prosecutor's office handles both juvenile civil court dependency/neglect/removal actions and criminal child abuse prosecutions, consideration should be given to using the same prosecutor in both the criminal and the civil court proceedings. (See *Coordinating criminal and juvenile court proceedings in child maltreatment cases*. In *National Institute of Justice Research Preview*. Washington, DC: U.S. Department of Justice, Office of Justice Programs. Oct. 1996, p. 2.) At the very least, there should be active communication and sharing of information between the attorneys handling child protection actions and those handling criminal prosecution involving the same victim or the same family.

The advantages of vertical prosecution of child abuse are numerous. The family of the victim obtains confidence in the prosecutor's skill and understanding by developing a long-term trust. All the input provided by the family about the background of the victim and the perpetrator is lost if prosecutors are switched mid-stream. It is inefficient to force a prosecutor to get up to speed on a case in the middle of the process. When prosecutors are switched, there is always some difference in the approach taken on a case. Even where office policies and procedures are clear, each prosecutor takes a different view of how to prove a case, what plea bargain to consider, and how to resolve the case. Changing prosecutors can be very disconcerting to the victim and the victim's family, especially if it causes a continuance of an important hearing or trial.

One approach to resolving the sometimes conflicting aims of having experienced prosecutors involved in charging decisions and using vertical prosecution is to create a system in which experienced prosecutors supervise newer ones. Regular training should also be required for all prosecutors handling child abuse cases. The best

approach is to create a specialized unit or have prosecutors who specialize in child abuse prosecution vertically prosecute these cases. If your jurisdiction cannot use vertical prosecution, some effort should be made to provide continuity for the child. One way is to provide a single victim-witness advocate to accompany and support the child through every stage of the process and assist each prosecutor involved in the case. In addition, procedures should be instituted to ensure that the prosecutor who charges the case communicates with others involved.

3. *Handling Sensitive Cases*

Some cases are particularly sensitive because they have generated or have the potential of generating substantial publicity. Such cases may involve well-known members of the community (police, clergy members, teachers), large numbers of child victims (day-care or school settings), novel issues (prenatal drug ingestion leading to injury or death of the child, severe neglect such as starvation), or bizarre circumstances (ritual abuse). In these situations, consult with the elected prosecutor or another individual at an appropriate supervisory level. High profile cases must be carefully managed so that office policies are consistently applied and those in charge are aware of how the case is handled. (For general information on media relations, see Fisher, D. [1992]. *Child abuse and the media: Twelve tips for dealing with the press. APSAC Advisor*, 5(1), 5; see also National District Attorneys Association. [1991]. *National Prosecution Standards* (2nd ed., Ch. 33, 34) Alexandria, VA: National District Attorneys Association.)

B. Charging Child Sexual Abuse Cases

1. *Understanding the Basic Considerations*

The child abuse prosecutor faced with deciding whether to file child sexual abuse charges must have a basic understanding of the type and quality of evidence that makes a case strong or weak. It is rare to have medical evidence that allows a qualified physician to give an opinion that the child was definitely sexually abused. Only about one third of sexual abuse cases involve a medical finding that is consistent with the child having been sexually abused. The lack of medical evidence means that the allegations made by the child and the surrounding detail provided in the child's disclosures of abuse are the most important features of a child sex abuse prosecution. That does not mean, however, that a case must be reduced to the word of the child victim against the denial of the adult perpetrator. Investigators and prosecutors must be creative in finding other forms of corroboration for the child's statements. This may include evidence of the child's behavioral changes and expert testimony explaining the dynamics of victimization. Prosecutors must become familiar with the developmental levels of children in order to apply appropriate expectations of the quality of a child victim's testimony.

The primary issue in most child sexual abuse cases is not the identity of the perpetrator, since most child sexual abuse is perpetrated by someone who is either a family member or well known to the child and family. (Finkelhor, D. [1994]. Current information on the scope and nature of child sexual abuse. *The Future of Children*, 4(2), 31 [concluding, based upon retrospective surveys, that no more than 10%–30% of abusers were strangers]. Instead, the main issue tends to be determining

what happened and what crime was committed based upon the child's allegations and the surrounding circumstances. Studies and experience establish that it is common for child victims to disclose in a piecemeal fashion, and only when the interviewer has obtained the trust of the child. (See, e.g., Bradley, A. R., & Wood, J. M. [1996]. How do children tell? The disclosure process in child sexual abuse. *Child Abuse & Neglect*, 20, 881; Sorensen, T., & Snow, B. [1991]. How children tell: The process of disclosure in child sexual abuse. *Child Welfare*, 70, 3.) It may take time and patience to determine what exactly happened to the child victim. Sometimes it appears that the child is inconsistent when in fact it is the adult interviewer who is confused about what the child is saying. Interviews with children must proceed slowly and cautiously to make sure the child is being understood.

Most individuals who develop a sexual interest in children have an extensive history of sexual acts with children, even if they have not been arrested or prosecuted. It is important to realize that the black-and-white distinctions between "preferential pedophiles," who prefer sexual relationships with children and do not have adult relationships and "regressed pedophiles," married heterosexual males not ordinarily attracted to children who relate to their young female victims in an adult manner, and between offenders who fit the category of incest and those who offend against children outside of their family are being blurred by modern research. (See Salter, A. C. [1995]. *Transforming trauma: A guide to understanding and treating adult survivors of child sexual abuse*. Thousand Oaks, CA: Sage; Becker, J. V. [1994]. Offenders: Characteristics and treatment. *The Future of Children*, 4, 176-177 [noting "it used to be assumed that incest offenders could be clearly separated from other child molesters, but current evidence indicates that a substantial percentage of child molesters offend in both spheres."] A person who has sexual relations with a child was aroused by that child at that time. Alcohol or drug abuse does not cause pedophilic interest in sex with children, although it may weaken normal inhibitions. Once a person has developed a sexual interest in children, such an interest cannot be simply altered with mental health treatment. It has been said that

Treatment is *not* a cure—rather, it provides new understanding, options, and motivations for the individual to manage that risk and avoid further abusive behavior. For some, the risk remains high despite vigorous interventions, even when the individual is motivated to change, due to the habituated nature of the pattern and/or persistent sexual arousal to children. For others, the risk may be significantly moderated by the treatment process and their own commitment to changes in lifestyle. (Ryan, G. [1997]. The sexual abuser. In M. E. Helfer et al. [Eds.], *The battered child* [5th ed., p. 342]. Chicago: University of Chicago Press.)

A great majority of those who sexually abuse children were themselves sexually or otherwise abused as children. That, of course, does not mean that all victims of childhood sexual abuse will become offenders, but the trend of creating new offenders who were once victims is disturbing. This phenomenon means that the system will continue to see geometric increases in the number of sexual offenses against children until the system effectively intervenes to eliminate the development of new offenders. Research also establishes that intervention with juvenile sex offenders tends to have a much better chance of rendering permanent changes than does treatment of adult sex offenders. (See Ryan, G. D., & Lane, S. L. [1991]. *Juvenile*

sexual offending [p. 191]. San Francisco: Jossey-Bass [noting, "It is clear to treatment providers in this field that the court's involvement is crucial in supporting the development of effective treatment resources as well as in facilitating the treatment process."] Thus, criminal prosecution of juvenile sex offenders may be a focal point to ensure that juveniles receive the treatment they need, since perpetrators must understand that there is a consequence for abusing younger children, even if the deviant cycle began with their own victimization. (See Vieth, V. [2001]. When the child abuser is a child: Investigating, prosecuting and treating juvenile sex offenders in the new millennium. *Hamline Law Review*, 25, 48.)

2. Determining the Suspect's Factual Guilt

Deciding whether charges can or should be filed requires an objective evaluation of existing evidence as well as an understanding of the dynamics of victimization and common behavioral patterns of offenders and victims. (See *National Prosecution Standards* [2nd ed., Rule 1.1]. Alexandria, VA: National District Attorneys Association.) The prosecutor must consider all available evidence, whether admissible or inadmissible, when determining what happened to the child victim, whether it constitutes a criminal act, and what crime was committed. The evidence includes all the statements made by the child, including any statements made to family, friends, teachers, therapists, counselors, and any other person; statements made in formal interviews with CPS workers and criminal investigators; the age-appropriateness of the child's statements; evidence of the defendant's opportunity to commit the crime(s); evidence of the defendant's history of sexual acts even if uncharged; family dynamics; therapist evaluations of the victim and the defendant; admissions or confessions, including partial admissions such as, "I touched her, but I had no sexual intent"; prior CPS history; polygraph or psychosexual evaluations of the defendant; evidence of the child's behavior and symptoms following the abuse; and any corroborative medical evidence. When the prosecutor is satisfied that the identity of the perpetrator is established and that the acts described constitute a crime, the next question to answer is whether the admissible evidence meets the standard established for filing a charge of sexual abuse of a child.

Cases should not be declined solely because of inadequate investigation. A prosecutor who is unsatisfied with the quality or quantity of investigative work performed should become actively involved in seeing that additional steps are taken. The best prosecution models in the country involve a team approach in which the prosecutor takes an advisory role in the criminal investigation from the beginning. This ensures that legal standards of proof are considered and the legal requirements for actions such as search warrants and interrogation of suspects are followed. A joint investigation by CPS and law enforcement has been shown to be the most effective. (Tjaden, P. G., & Anhalt, J. [1994]. *The impact of joint law enforcement-child protective services investigations on child maltreatment cases: Executive summary for Grant Number 90-CA-1446 from the National Center on Child Abuse and Neglect*. Washington, DC: National Center on Child Abuse and Neglect [detailing the authors' study of three locations over a 4-year period and their finding of a distinct benefit to joint investigations in both child protection actions and criminal prosecutions].)

Child abuse investigations are time-intensive and often demand unique skills and additional time and patience. The process is inefficient and insufficient if the investigator conducts the entire investigation, then presents the case to the prosecutor,

who decides whether to file charges based solely on the investigation already performed. A collaborative approach yields more complete and appropriate results, even if the prosecutor's office does not employ its own investigative staff. Prosecutors must not shirk their responsibility to see that justice is done by blaming their inaction on an incompetent or inadequate investigation. Achieving justice for children demands that the prosecutor ensure the quality of the investigation, including obtaining specialized training for criminal investigators and providing professional guidance as to the standards expected prior to filing charges in a case.

3. *The Standard for Charging a Case*

Although different prosecutors' offices use different standards for filing criminal cases, there are good reasons in child sexual abuse cases to establish a standard that exceeds probable cause to believe a crime was committed and that the defendant committed it. It is clear that even filing such a charge causes damage to the defendant's reputation. A person should not be charged when the prosecutor knows the case is not likely to survive a preliminary hearing or pretrial motions to dismiss. The prosecutor should be convinced that the admissible, credible evidence, considered in light of the defenses likely to be raised, is sufficient to warrant a conviction by a reasonable trier of fact. A prosecutor who is not convinced that the evidence meets that standard should either suggest more investigation to shore up weaknesses in the case or, where additional investigation is not likely to be helpful, decline to prosecute and give an appropriate explanation. The prosecutor should also consider from the beginning whether the statute of limitations has run or was tolled by other circumstances.

Most experienced child abuse prosecutors realize that a conviction can be obtained based solely upon the credible statements and/or testimony of the child victim. As law enforcement officers and prosecutors have obtained more and more experience, they have successfully handled cases involving very young victims who would have been considered incompetent witnesses just a couple of decades ago in America. Although it was assumed in the 1980s that child sexual abuse victims would be extremely traumatized by having to testify in court, recent research shows that the opposite reaction by children is sometimes true. Children are often assisted in their recovery from the offense by the experience of testifying, and that is true regardless of whether there is a conviction. (Henry, J. [1997]. System intervention trauma to child sexual abuse victims following disclosure. *Journal of Interpersonal Violence*, 12(4), 499, 510 [finding 72% of children reported positive experience with system intervention].) Most researchers agree that children provide more, and more accurate, information when the stress of testifying is minimized. This stress is minimized when the child is prepared in advance for testifying, when the child has an understanding of the process, when age-appropriate questions are asked, and when accommodations are made in the courtroom for the child. (See Whitcomb, D. [1993]. Techniques for improving children's testimony. In *Child victims as witnesses*. Washington, DC: U.S. Department of Justice.)

There is a general public abhorrence for the crime of child sexual abuse, and that translates into juries who would rather believe anything other than a seemingly normal person gratifying his sexual desires at the expense of a helpless child victim. Public education about the general dynamics of child sexual abuse can help to overcome this public attitude of disbelief. It is important to also recognize that the

public attitude has been in large part shaped by sensationalized and often inaccurate or one-sided media accounts of high-profile cases. Such cases have led people to believe that children can be coached or coerced into lying about being sexually abused. Again, prosecutors can educate the public about the reality of child sexual abuse and should make it clear that false statements are extremely rare. (Jones, D. P. H., & Melbourne McGraw, J. [1986]. Reliable and fictitious accounts of sexual abuse to children. *Journal of Interpersonal Violence*, 2(1), 27; Thoennes, N., & Tjaden, P. D. [1990]. The extent, nature and validity of sexual abuse allegations in custody/visitation disputes. *Child Abuse & Neglect*, 14, 151.) In addition, prosecutors should attempt to overcome the all too common belief that sexual abuse allegations that arise during a divorce or custody battle should be discredited. Again, common sense and the literature explain why valid accusations may be raised for the first time when the offender is out of the home and the victim is faced with visits alone with the perpetrator. (Goldstein, S. L., & Tyler, R. P. [1998]. Sorting out allegations of child sexual abuse in divorce cases. *The National Child Advocate*, Summer, 4; see also Burkhart, M.-A. R. [2000]. Child abuse allegations in the midst of divorce and custody battles: Convenience, coincidence or conspiracy? *Update*, 13(10).)

Legitimate and legally sufficient cases should be aggressively pursued. Where the best efforts to investigate a case still leave little chance of success or a slim chance of obtaining a conviction, filing charges may not be in anyone's best interest. If appropriate education of the public is done and the prosecutor spends time explaining to the victim and her family why the case cannot be pursued, including making the victim aware that the decision does not mean her statement about abuse was not believed, the chances of an appropriate resolution are better. Some families will never be satisfied with a declination to prosecute, even if they logically understand why the case is legally insufficient. The prosecutor must realize that making everyone happy is not possible in many cases.

4. Deciding What Crime to Charge

Child abuse prosecutors must become thoroughly familiar with the entire criminal code so that all options can be considered in every case. Each case presents a slightly different twist to the factual and legal issues, and charging sometimes demands creativity and logic. The guiding principle should be to charge the crime that accurately indicates both the nature and the seriousness of the criminal conduct, including whatever mental state is required to obtain a conviction. In general, the most serious offense possible should be filed, without overreaching or extending the charge beyond what the credible evidence will support. Many jurisdictions require that if two statutes apply equally to conduct of the defendant and one is more specific in its elements than the other, or one involves a lesser punishment, the more specific or lesser crime must be charged. In jurisdictions where judges generally do not allow evidence of prior uncharged sexual offenses, charge all offenses that meet the charging standards and are within the statute of limitations. It is important to be able to prove the entire context of the pattern of conduct between the offender and the victim, not just a few isolated and apparently unrelated actions that may not make sense when taken out of context.

Offenses that specify the age of the victim or are specific to children are often categorized as more serious than analogous crimes in which the victim's age is not

an element. If such statutes are available, consider implementing a policy that requires the charging of, and pleas to, crimes that are age- or child specific, except in unusual situations. For example, statutes may exist that define sexual contact between relatives, regardless of their ages, as one crime (incest) and sexual abuse of a child under the age of 10 regardless of the parties' relationship as another more serious crime. Charging under the sexual abuse rather than the incest statute would be more appropriate in a case involving a father's sexual abuse of his 8-year-old daughter. Charging under both statutes would be preferred. Consistent with filing and pursuing the most serious charge, however, egregious crimes like first-degree murder or first-degree rape are usually most suitable when a child has been the victim of force and violence. Often the victim's young age will serve as an aggravating factor at sentencing for these crimes. It is also good practice to add a child endangerment charge in jurisdictions where the primary offense such as assault, rape, or murder does not have a child-specific label.

... In every jurisdiction, children under a certain age are legally presumed incapable of consenting to sexual contact. (See Phipps, C. A. [1997]. *Children, adults, sex and the criminal law: In search of reason. Seton Hall Law Journal*, 22, 1.) Most states still retain a version of statutory rape where the victim is under a particular age and the offender is more than a certain number of years or months older than the victim. Where the victim is above the statutory age of consent, issues relating to force and resistance necessary to establish lack of consent must be considered prior to filing charges. Some legislatures have enacted statutes that recognize that adolescent victims need not resist in the same way as an adult victim. (See, e.g., Utah Code Ann. § 76-5-406(11) [lack of consent in a sexual offense occurs where the victim is between 14 and 17 years of age and the actor is more than 3 years older than the victim and "entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat" that is required for other victims].)

Prosecutors should scrupulously avoid overcharging a child sexual abuse case hoping to gain leverage for a plea bargain. Such a practice is not only unethical, but it is dangerous and it risks losing credibility with the public, the courts, and other attorneys. A consistent pattern of overcharging may lead defense attorneys to expect that the charge is inflated to allow broad room for negotiating a plea to a lesser offense. Cases that go to trial after being overcharged may result in consistent jury verdicts on the lesser, more appropriate charges. This can give the appearance that the prosecutor's office is not being aggressive in obtaining convictions.

Undercharging cases, including charging offenses that do not contain elements of sexual conduct with children, such as simple assault or endangering the welfare of a child, causes a similar problem. If such a charge is chosen, even though the facts of the case indicate that an illegal sexual act with a child occurred, the prosecutor may be seen as not being willing to prove sexual conduct against children. Alternatively, the public may interpret the prosecutor's decision as a signal that sexual abuse of children is not important enough to justify the use of felony prosecution resources in the office. Failing to charge sexual offenses also has implications for the defendant's obligation to register as a sexual offender or to provide a DNA sample.

Child sexual abuse prosecutions may evolve as cases move through the sometimes painfully delayed criminal justice process. Victims age and often feel more comfortable making additional disclosures as time goes on. If the jurisdiction allows unfettered amendment of charges up through trial, the prosecutor can easily accommodate these common changes. On the other hand, if the statutory scheme or

judicial practice puts strict limits on amending the charges, it is important to build in as much flexibility as possible by filing as many charges as are warranted once the case is ready for charging. This may require filing charges based upon alternate theories of the case or charging lesser-included offenses. The prosecutor must also be familiar with sentencing enhancements or other statutory provisions that increase the level of crime, since many of those matters require charging and adjudication before they can apply. Habitual criminal statutes, the use of weapons, and other enhancements fit within this category. If the state has a sexual predator statute that allows for the civil commitment of sexually violent predators based upon proof of a specified number of predicate offenses, the prosecutor must make sure to charge the predicate offenses whenever the evidence justifies. Keeping valid records of arrests and convictions for child sexual offenses has been difficult in the past, and prosecutors can assist by charging the appropriate offenses and refusing plea bargains that change the nature or category of the offense.

5. *The Counts Used in the Charging Process*

When charges are based upon the child's ability to remember and relate what has happened, the decision of which and how many counts to charge is never as easy as it is with crimes involving adult witnesses. Children are rarely sexually abused in a single episode. Much more commonly, they are abused frequently over a long period of time. Children, especially younger children, simply are not capable of separating the acts into individual memories. This is not surprising, since even adults have a difficult time compartmentalizing memories for routine matters, such as what they ate for breakfast every day for the past three weeks. Children up to about age nine or ten are not developmentally capable of fixing past events into any sort of chronological sequence, since time concepts for them are not very meaningful. (Myers, J. E. B., et al. [1996]. Psychological research on children witnesses: Practical implications for forensic interviews and courtroom testimony. *Pacific Law Journal*, 28, 3.) It is common for investigators to ask younger children how many times they were abused, but most of the time the answer given is a guess. It is also common for investigators to ask young children whether something happened a day before, a week before, a month before, or a year before the interview. Most children are simply incapable of answering such questions and often provide the interviewer with only a guess.

Fortunately, most courts in the country recognize the limitations of a child's ability to separate events into memories and to fix events in time. Courts allow some flexibility when child molestation extends over a long period of time and when the victim is young. Many courts have held that as long as the acts are proven to have occurred during the period of the statute of limitations, such proof comports with due process since time is not an element of most child sex offenses and, in addition, children are not capable of being more specific. (See Myers, J. E. B. [1997]. *Evidence in child abuse and neglect cases* (3rd ed., pp. 137-139.) In *In re K.A.W.*, 515 A.2d 1217, 1220 (N.J. 1986), the New Jersey Supreme Court observed,

We need no battery of experts to convince us that a child of the age of five to seven years . . . cannot recall precise dates or even approximate times the way a normal adult can do. Children of that age do not think in terms of dates or time spans. Unlike adults, their lives are not controlled by the clock or the calendar.

Often the best a prosecutor can do in charging individual counts in a sexual abuse case involving a young victim is to charge the first event and the last event, assuming the child can even recognize what happened the first or last time. Other times, the best that can be done is to charge one count for each type of conduct committed against the child, such as one count of rape, one count of sodomy, one count of molestation, even though the child indicates that each of those actions occurred more than one time. Sometimes the best young children can do in identifying time is to indicate that the conduct occurred while they were in kindergarten, or during the summer, or while they lived in a certain house or apartment. In other cases, the child may have been in the defendant's company only on occasions that can be identified by adults, such as during visitation, and this allows for more specificity. If possible, charge actions that occurred "on or about" a certain date, or "between X date and Y date."

a. The number of counts. It is appropriate to allege multiple counts against a defendant in a single charging document when a defendant has committed several separate acts in the course of a single behavioral incident. Different jurisdictions define "behavioral incident" differently. Usually, multiple acts against several different children, if connected together in time or purpose and if relatively coterminous, may be filed in the same complaint. In almost every jurisdiction, multiple crimes against the same victim can be combined into one complaint.

Prosecutors are cautioned, however, about filing a large number of counts of sexual abuse with the concomitant necessity to prove the elements of each of those crimes beyond a reasonable doubt. For instance, if the victim says that the defendant raped her 3 times a week for 3 years, filing a complaint containing 468 individual counts of rape of a child may present several difficulties. If the victim does not repeat the same number of events, the trier of fact will be left to speculate how many times the crime occurred. Second, filing so many counts may necessitate a trial that lasts many months, rather than just a few weeks, which causes confusion with juries. Third, there is a point of saturation beyond which the trier of fact may become sympathetic to the defendant and beyond which the sentencing authority is not likely to enhance punishment. A good rule of thumb is to honestly and objectively assess the culpability of the defendant's conduct, the likely punishment, and the number of counts that reflect the seriousness of the crimes.

b. Separate counts for each victim. In a case with multiple victims, file separate counts naming only one victim per count. In most jurisdictions, it is unwise or not permitted to file a single count naming multiple victims. This could create obvious difficulties at trial if the evidence regarding only one or two of multiple victims named in a count convinces the jury. In some places, it may be possible to amend charges later and combine several victims in a single count (especially for acts occurring during a single incident) for purposes of the defendant's entry of a guilty plea. This would also ensure restitution for each victim and still reflect the fact that more than one child was abused.

c. Multiple acts with a single victim. While it is often difficult to differentiate individual instances of misconduct when a child has been abused over a long period, some effort should be made to represent accurately the seriousness of the defendant's conduct. Look for ways to distinguish one incident from another by establishing

different behaviors, different times, or different locations. For example, if the victim can describe the first and last act of abuse, each could be the basis for a separate count. Individual counts could also be filed reflecting

- The nature and progression of acts recalled by the child, such as a count representing the beginning stage of fondling, another to represent the middle stage of oral sex, and another to represent vaginal intercourse
- The child's age when the abuse occurred. For example, file five counts, one for each year of abuse, if the victim was continuously sexually abused from age six to age ten.
- Different factors associated with separate incidents of abuse such as locations or times of day at which abuse happened; clothing worn by the defendant or victim during different incidents; things said by the child or offender at different times; holidays, sporting events, and other significant occasions such as births, deaths, hospitalizations, vacations, moving, graduations, visits; and any other detail that distinguishes one incident from another
- Injuries deemed by a medical expert to have been inflicted at different times or by different methods.

California's legislature creatively addressed the problem of charging ongoing sexual assaults. According to Section 288.5 of the California Penal Code, the crime of "continuous sexual abuse of a child" is committed if the offender lives with or has recurring access to a child under 14 and engages in sexual conduct with that child at least three times during a period of three months. Under this statute, the prosecutor need charge the defendant only with one count. The statute further reads that the jury need find that only three or more acts occurred to return a guilty verdict. It does not have to agree on which particular acts constituted those three or more acts.

New York amended its penal law in 1996 with two new "course of conduct" offenses. Under section 130.75 of the New York Penal Code, a person is guilty of a course of sexual conduct against a child in the first degree when, over a period of time not less than 3 months in duration, he or she engages in two or more acts of sexual conduct that include at least one act of sexual intercourse, deviate sexual intercourse, or aggravated sexual contact with a child less than 11 years old. Under section 130.80 of the New York Penal Code, a person is guilty of a course of sexual conduct against a child in the second degree when, over a period of time not less than 3 months in duration, he or she engages in two or more acts of sexual conduct with a child less than 11 years old. Under both New York sections, a person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

