

Study: Supreme Court decision complicates prosecuting child abusers

July 19 2017, by Sharita Forrest

A Supreme Court decision that limits the types of statements that can be admitted as evidence unless the victim testifies in court discourages prosecutors from trying some child maltreatment cases, according to a recent national survey of more than 200 prosecutors.

Nearly 42 percent of the prosecutors who participated in the online survey reported that the U.S. Supreme Court's 2004 decision in *Crawford v. Washington* increased the need for [abuse](#) victims to testify in [court](#) and decreased their prosecutions of child abuse cases either "greatly" or "somewhat."

The prosecutors who responded to the survey reported that they had reviewed an average of about 20 sexual abuse and 10 physical abuse cases during 2014 - but had prosecuted just half of these cases.

Insufficient physical evidence to corroborate victims' allegations was the primary reason prosecutors elected not to indict, followed by child victims who were either emotionally unable to testify or to provide credible testimony.

State and local prosecutors from 37 states responded to the survey, which was conducted by University of Illinois social work senior research specialist Theodore P. Cross and independent child abuse researcher Debra Whitcomb.

The findings suggest that the Court's decision in *Crawford v.*

Washington has had a "real but limited impact... on the need for child testimony and on the decision to prosecute," the researchers wrote.

In *Crawford v. Washington*, the Supreme Court considered whether a criminal defendant's Sixth Amendment right to confront his accuser in court was violated when prosecutors presented as evidence a witness's tape-recorded statement to police. Because the witness elected not to testify during the trial, the Supreme Court ruled that admitting her statement as evidence violated the defendant's right to confront his accuser in court.

"Crawford really placed some limits on what kinds of evidence could be introduced without child testimony," Cross said. "It really complicates things for trying to prosecute [child sex abuse](#) and other forms of child abuse. In most cases, the child will be required to testify in court and face their alleged abuser, which is a frightening thing for many children.

"And when children are young, they also have trouble understanding and recounting what happened to them," Cross said. "Prosecutors need to know how to work effectively with children and families, and be knowledgeable about child development in order to phrase questions so that children understand and can give accurate answers."

Victims' testimony—and their credibility—can be particularly critical in [child sexual abuse](#) cases because oftentimes there are no eyewitnesses and there is no biological evidence or objects such as condoms or photos that would substantiate victims' allegations, Cross said.

Prosecutors cited victim testimony as the primary type of evidence they use when trying child maltreatment cases, followed by videotaped forensic interviews with victims, out-of-court statements, and DNA and other forms of physical evidence.

Fewer than half—about 42 percent—of prosecutors who responded to the survey reported that they had obtained hearsay exceptions so that victims' out-of-court statements could be admitted as evidence.

Although alternative methods are available to avoid having a child testify in the presence of the perpetrator—such as testifying by closed-circuit TV or rearranging the courtroom so the child need not face the alleged abuser while testifying—these methods are used in less than 15 percent of cases, prosecutors reported.

The majority of prosecutors reported that they called upon expert witnesses—such as sexual assault nurse examiners, forensic interviewers, medical personnel or crime laboratory professionals - to substantiate children's allegations of abuse or explain why DNA or other biological [evidence](#) was not found, Cross and Whitcomb wrote.

To soothe children's fears while testifying in court, more than 72 percent of prosecutors reported providing victim witness advocates or other support people. Fewer than half of prosecutors indicated that child victims were provided with comfort items such as a blanket, doll or a therapy/comfort animal (17 percent) to use in court.

While these supports are "an advance over what the reality was 30 years ago," Cross said, "a number of these different methods haven't been implemented with any frequency. We also have almost no research on the methods and the effectiveness of supports for children or on effective police investigations in [child abuse](#) cases. We need a lot more study of that."

The findings suggest a need to provide support and training for specialized prosecutors to pursue child maltreatment cases, Cross said.

Prosecutors need to know how to work effectively with the array of

professionals involved in the case, including the clinicians who conduct physical exams, forensic interviewers who question [child](#) victims, and victim advocates who provide emotional support.

Cross and Whitcomb's study was published recently in the journal *Child Abuse and Neglect*.

More information: *Child Abuse and Neglect* (2017). [DOI: 10.1016/j.chiabu.2017.04/007](#)

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