

## **Prosecuting Juvenile Sex Crimes** **“Is it only me, or do others think kids shouldn’t be having sex”?**

***“Kids will be kids”!?***

Picture this scenario. A defense attorney appears at pretrial to discuss the case pending against his juvenile client. Of course he is requesting that you, The State, dismiss the case against his client shrugging off his client’s actions as “a kid just doing kid stuff”. He tells you back in the “old days” we would just take his client out to the woodshed, take a willow branch to his behind, tell him never do it again and that would be that. After you inquire whether there is any inbreeding in his family you say, “No, I guess we’ll just have to go to trial!” He asks you to reconsider considering that he has been licensed for 16 years. Calmly you tilt your head, raising your gaze to that part of nowhere that reconsiders, and after two-tenths of a second you say, “O.K., it’s still no”!

Great you stood your ground, but now you’re stuck with having to try a case that has a 50-50 chance of going either way. That is if you can get a jury to believe the testimony of a four year old child, or whether they might believe the outcry witness who “*certainly is not motivated by any vengeance towards the alleged perpetrator*”.<sup>1</sup>

***“I don’t believe it. I don’t want to believe it, and I won’t”***

As a prosecutor you will now face one of the saddest realities of trying a juvenile sex crime. Adult juries are just very reluctant to believe the offense occurred, or do they even want to believe it. Somewhere back in their subconscious they are thinking, “*What was I like when I was that juvenile’s age? What were my interests?*”? The fact of the matter is that the juvenile is not facing a jury of his peers, but a jury of sensible adults who grew up in much gentler times. Where on the other hand, if the jury were made up of teens there would be a greater possibility of securing adjudication.<sup>2</sup>

***“She’s 13 going on 24”***

It is now a reality we have to deal with. We are living in times where are children are becoming sophisticated way beyond their maturity. Media, cinema, music. You name it and it, is teaching our children how to shoot guns, how to kill, how to get high and how to have sex. No matter how much a parents try to insulate their children, their children are going to be exposed to these images and sounds at a very young age, and for the rest of their lives. Throw in the onset of puberty and the impulsiveness of youth, and now you have a juvenile sex offender.<sup>3</sup>

***“Get ready. Get set. Go”!!!***

So how do you prepare for the mess you have just gotten yourself into?

- 1. Attend the Advocacy Center interview of the victim child.** Advocacy centers afford law enforcement, social workers and prosecutors the opportunity to hear the victim” out cry once. Additionally it affords every agency to have the opportunity to have the interviewer ask questions they need answers to in order to carry out their duties. This also allows the prosecutor an opportunity to view his or her key witness. Having this opportunity will give the prosecutor a chance to evaluate the strength of the case and to have some foundation to decide whether to use the victim or outcry witness at trial. Provided the outcry statement conforms to statute.<sup>4</sup>
- 2. Make sure any forensic evidence you need tested goes out ASAP.** Considering the before mentioned problems of a jury believing the testimony of a four year old child victim. The sooner you have some other kind of physical proof against the juvenile, the better. I f you do have physical evidence to substantiate your victim’s testimony, you now have the upper hand in any plea negotiations you may have to resolve the case.

3. **Pretrial, pretrial, pretrial, pretrial and pretrial again.** This does not necessarily mean pretrialing the victim child over and over again. Instead talk to the officers who investigated the case. Call in the parents of the victim and pretrial them. Talk to any person referenced in the case because you never know what they know.<sup>5</sup>
4. **Be prepared to ask pertinent voir dire questions of your panel.** Remember you are talking to a panel of adult parents, grand parents, brothers and sisters who are accustomed to hearing the denials, fantasies and stories of young children. Be creative in your questions, but be sure to include some of the following: Is there anyone here who would not adjudicate a juvenile delinquent on the uncorroborated testimony of a child victim?<sup>6</sup> Is there anyone who believes that children are incapable of testifying competently?<sup>7</sup> Is there anyone here who believes they could not reach a verdict in a case if no physical evidence were introduced?
5. **Pretrial your victim child.** Try to pretrial your victim child as close to trial as possible. Children have a tendency to forget conversations or to at least confuse them with other events in their lives. Let the child know you are on their side and all you and she are going to do is tell some people what happened so they, “Can do the right thing”. Older children are not too difficult to pretrial, but if you are dealing with a very small child, be prepared to have lots of candies and coloring books at the ready to gain their confidence. Especially with small children it’s important to familiarize with the courtroom. Where will they sit? Why do they have to speak into the microphone, and make sure they will be able to tell the court that they know the difference between the “Truth” and a “Lie”.
6. **Do not be afraid to lose.** Of all the trials a prosecutor does not want to try, but has to, is a sexual assault. Usually there are only two witnesses to the offense. The perpetrator, and the victim, and usually the victim is chosen because of some perceived weakness or vulnerability by the assailant. Consequently you end up with a witness that may fold at the last moment, or testify so badly the jury does not believe them. However, sexual assault crimes are crimes that are committed in private. Who is to say the offense did or did not happen. As a prosecutor all you can do is try the case. Do your best to convince the jury and if you win great. However, if you lose at least you gave your victim his or her chance to tell their story, and if no one else believed their story, ***at least you did and that’s all that matters.***<sup>8</sup>

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<sup>1</sup> Texas Code of Criminal Procedure Art. 38.072 and Texas Family Code Sec. 54.031

<sup>2</sup> Don’t believe it? Just attend a Teen Court Session. Teen Juries can be brutal

<sup>3</sup> Where the victim is much younger than the juvenile is and the act is not consensual. Penal Code Sec. 22.011 (e) (1)

<sup>4</sup> Texas Code of Criminal Procedure Art. 38.072 Section 2. Among other qualifications, the statement must be found to have been reliable, and the child must be available to testify in some manner.

<sup>5</sup> One case the El Paso County Attorney’s Office handled involved a 6 year old girl that was fondled on her genitals by a 15 year old boy. The girl had been going around her neighborhood getting signatures from her neighbors in an autograph book that she had received as a gift. When she arrived at the juvenile’s house he lured her into his bedroom and then fondled her. In talking with the aunt of the girl she related that on a visit to her niece, the child was so distraught that she tore the page the juvenile had signed out of her autograph book. The aunt still had the page and it matched the signature of the juvenile on his detention order. The police never knew about the page. Needless to say, the juvenile plead true.

<sup>6</sup> Texas Code of Criminal Procedure Art. 38.07

<sup>7</sup> One example I use on voir dire is the illustration of a 5-year-old child going to a movie and he being able to remember the movie and tell family members what happened in the movie with complete accuracy. I also use this approach in qualifying the child witness for admission of the outcry witness’s testimony.

<sup>8</sup> There’s an old saying on the streets that goes something like this, “Any guy who tells you he’s never lost a fight, heck, he hasn’t been in enough fights”.