

V. Proving Sexual Abuse

The proof of sexual abuse involves the same basic elements of direct and circumstantial proof as those for the other forms of child abuse. However, there are enough important, though minor, differences to justify a few separate comments.

Direct Proof

Sexual abuse usually comes to light only when the child, a sibling, another family member, or a parent seeks outside help. Some cases are also discovered when trusted outsiders who, concerned about a child's apparent unhappiness or discomfort, try to find out what is bothering the child. For example, teachers often are told about sexual abuse when they try to find out why a child will not change for gym class or why the child's schoolwork has suddenly deteriorated. *In the Matter of Dawn B.*, for example:

The testimony of the teachers was that in late January, 1982 the child came to them and said "she was having problems at home. Her father was touching her and making her do things." About three weeks later, she came to the teacher again crying that the "same things are going on." The school counselor then called the child's mother and filed the child abuse complaint.¹

The child's description of being sexually abused, or those of other family members, is direct evidence of child abuse. In fact, the Legislature attached such importance to the child's claims to being sexually abused that it lifted the corroboration requirements that ordinarily apply to the proof of sex offenses.² However, the only corroboration requirements dispensed with are

those contained in the Penal Law, and any other requirement of corroboration would still be in effect. For example, if the petitioner relied on the child's out-of-court statements concerning the abuse, the statement would have to be corroborated under Family Court Act §1046(a)(vi) (1983).³

With direct evidence of sexual abuse, the methods of proof are essentially the same as those for other forms of child abuse.⁴

Circumstantial Proof

In some cases, the child is too young or is unwilling to describe what happened, and no one else steps forward to do so. There may, though, be circumstantial evidence of the sexual abuse. For example, the child's outward appearance may show the signs of a violent sexual assault. Torn or bloody clothing together with injuries that appear inflicted may, under the *res ipsa* rule, provide *prima facie* evidence of abuse.⁵

However, the great majority of sexual abuse cases do not involve violent, or forced, physical assaults on the child.⁶

Patterns of family incest usually take place over a long period of time, from six months to several years. Incestuous practices are not usually related to a single event, but follow a continuum of increased sexual involvement beginning with parental fondling and leading to overt sexual stimulation. The propriety of incest may be rationalized by parents who see their children as property. This rationalization is often reinforced by their social isolation from the community. Characteristically, the participation of children in incest is willful, resulting from learned behavior

1. *In the Matter of Dawn B.*, 114 Misc. 2d 834, 452, N.Y.S. 2d 817-818 (Fam. Ct., Queens Co., 1982).

2. Fam. Ct. Act §1012(e)(iii)(1983) expressly abrogates the corroboration requirements contained in Penal Law §§130.16 and 260.11 (1980).

3. See, e.g., *In re Hawkins*, 76 Misc.2d 738, 351 N.Y.S.2d 574 (Fam. Ct., N.Y.Co., 1974) holding that the son's sworn testimony that he observed his father commit an act of sodomy on the daughter supplied the required corroboration of the daughter's extrajudicial statement and supported a finding of abuse. See generally the section entitled "The Child's Statements," on *supra* p. 14.

4. See the chapter entitled "Direct Proof," on *supra* p. 13.

5. See the chapter entitled "Circumstantial Proof," on *supra* p. 21.

6. See generally Finkelhorn, D., *Sexually Victimized Children* (1979).

that is motivated by eagerness for acceptance and compliance with parental authority, rather than being a product of violence.⁷

Thus, it is more likely that physical evidence of sexual abuse (if there is any) will be limited to *signs of sexual activity*, such as injuries to sexual organs (caused by forced penetration or rough handling). For example, in *Matter of Cynthia V.*, the appellate court reversed a Family Court dismissal of a child protective petition because of such circumstantial evidence. The court explained that: "While the record does not establish a *prima facie* case of sexual abuse on the part of either parent, the unexplained evidence of vaginal and rectal penetration and the marks and contusions on the children's bodies overwhelmingly support a finding that they are neglected within the meaning of the Family Court Act. Several caseworkers, a doctor and a nurse observed bruises on the children's torsos and faces."⁸

Because they are hidden by the child's clothes, such injuries are usually detected only through a medical examination, either a routine one or one performed as part of a diagnostic work-up.

No child is too young to be sexually abused; physical signs of sexual abuse are even found in infants. Hence, indications of sexual abuse should not be ignored or discounted simply because the child seems too young to be the object of someone's sexual desires.

Chart #9 and Illustrations N through P depict the physical conditions suggesting that a child has been involved in sexual activity. A cautionary note concerning their use is needed, though. Some of the traumatic injuries listed are the results of violent, painful, and unpleasant sexual contacts that are unlikely to be voluntary – whatever the child's age. However, others are simply signs of sexual activity, which may or may not be related to sexual abuse. In young children, such signs of sexual activity are *prima facie* evidence of abuse because young children do not ordinarily engage in the types of sexual activities that would cause such conditions. Unless medical evidence or the parents provide a satisfactory explanation, a finding should be made. In older children, though, such conditions may just be a sign of sexual activity with peers. Whether we

Chart #9

CIRCUMSTANTIAL EVIDENCE OF SEXUAL ACTIVITY*

CAVEAT: *The following physical conditions indicate sexual activity. Whether they are prima facie evidence of sexual abuse depends on the child's apparent maturity and social situation, as well as the statements of the child and the parents.*

- *Underclothing that is torn, blood stained, or showing signs of semen.*
- *The presence of semen in oral, anal, or vaginal areas.*
- *The presence of foreign objects in rectal or vaginal cavities.*
- *Vaginas that are torn, lacerated, infected, or bloody (as well as broken hymens).*
- *Penises or scrotums that are swollen, inflamed, infected, or showing signs of internal bleeding.*
- *Bite marks on or around genitalia.*
- *Anal areas that are swollen, torn, lacerated, infected, or that have very lax muscle tone suggestive of internal stretching.*
- *Mutilation of sexual organs, or other parts of the body.*
- *Venereal diseases in oral, anal, and urogenital areas (especially in pre-pubescent children).*
- *Unusual vaginal or urethral discharges.*
- *Repeated cystitis, especially in pre-pubescent girls.*
- *Pregnancy, especially in early adolescence.*

*Quoted from: Besharov, D., *Reporting Child Abuse* (1984, in press).

7. Ruddle, R.D., ed., *Missouri Child Abuse Investigator's Manual*, p. 65, Institute of Public Safety Education, College of Public and Community Services, University of Missouri - Columbia (1981).

8. *In the Matter of Cynthia V.*, 94 A.D.2d 773, 462 N.Y.S. 2d 721, 723 (2nd Dept., 1983).

like it or not, young children today become sexually active much earlier than in past generations. Hence, for older children, signs of sexual activity should not be automatically interpreted as signs of sexual abuse. Unfortunately, there is no specific cut off between the age when one or the other is the case. Children under the age of 13 are unlikely to be involved in intimate sexual activities with their peers, but even here mores are changing. These borderline situations must be judged individually, taking into account the statements of the child and parents as well as the child's apparent maturity and social environment. In addition, certain behaviors of the child, though not an independent basis for an adjudication, can be helpful in assessing these borderline situations.⁹ (See Chart #10.) However, their absence does not necessarily mean that the child has not been abused.

Once again, it bears repeating that direct and circumstantial proof are not mutually exclusive. If both are available, both should be presented to the court.

Chart #10

BEHAVIORAL INDICATORS USED TO ASSESS SIGNS OF SEXUAL ACTIVITY*

CAVEAT: *The following behavioral clues are not sufficient reason, in themselves, for a finding. Rather, they can be used to help assess the significance of signs of sexual activity found on the child's body:*

- *Unwillingness to disrobe in the presence of others (e.g., unwillingness to change for gym class).*
- *Excessive fear of being approached or touched by persons of the opposite sex.*
- *Fear of going home.*
- *Running away from home.*
- *Adolescent prostitution.*
- *Sexual behavior or references that are bizarre or unusual for the child's age.*
- *Sexual knowledge that is too sophisticated for the child's age.*
- *Seductiveness which is not age appropriate.*
- *Behavior that is withdrawn, infantile, or filled with fantasy (the child may even appear to be retarded).*
- *Attempted suicide.*
- *Dramatic changes in behavior or school performance.*
- *Unusual accumulations of money or candy.*
- *Indirect allusions: A sexually abused child may seek out a special friend or a teacher to confide in. These confidences may frequently be vague and indirect, such as "I'm afraid to go home tonight," "I'd like to come and live with you," or "I want to live in a foster home."*

*Quoted from: Besharov, D., *Reporting Child Abuse* (1984, in press).

9. See generally the section entitled "Ambiguous Situations," on *supra* p. 43.

Illustrations N through P

Physical Injuries Associated with Sexual Abuse

Signs of Sexual Abuse

