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U.S. Department of Justice
National Institute of Justice

NIJ Reports

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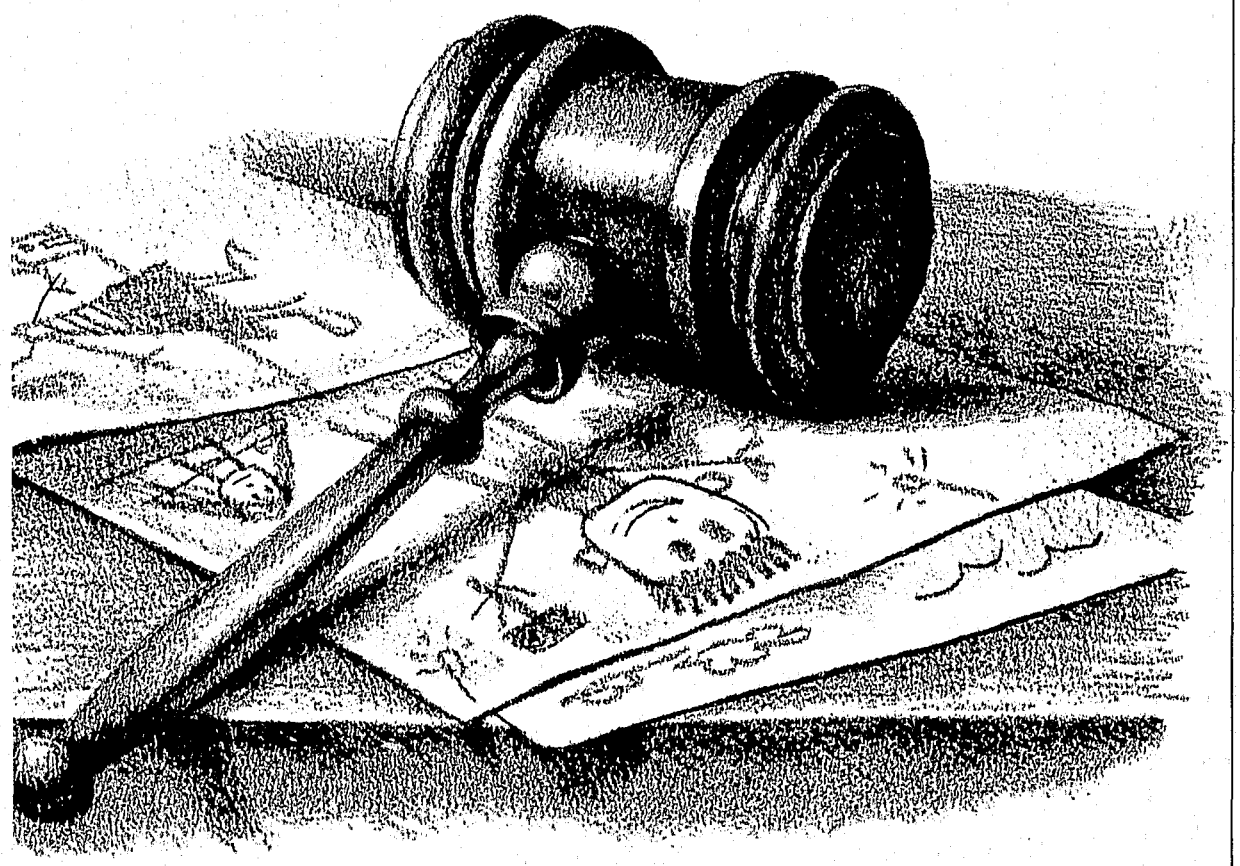
Prosecuting child sexual abuse—new approaches



Director's notes

The National Institute of Justice, through its research, is in the forefront of efforts to add greater balance to our criminal justice system, thus promoting fairer and more sensitive treatment of victims. Out of the range of victim needs that we are working on, however, there is one area that deserves our special care and concern.

Children, the most vulnerable victims, are often forced to run the gauntlet of complex and frightening procedures when they, through no fault of their own, become enmeshed in our criminal justice system. The very nature of our adversary system means that the child's statement is going to be attacked. Sophisticated and subtle legal skills are pitted against the child's simple statement. Lacking skill in describing events in careful detail, the child is at an enormous disadvantage.

It's not surprising, then, that in many instances cases are not prosecuted, often because of concern about the child's ability to testify convincingly or out of fear for the child's well-being. In fact, national statistics have shown that the overwhelming majority of reported child abuse and neglect cases do not proceed to criminal prosecution. Even in cases of sexual assault of children, Institute research in progress in several jurisdictions confirms the low prosecution rate—less than 10 percent of sexual abuse cases reported to police and social service agencies in the study jurisdictions are criminally prosecuted.

Our criminal justice system is not dealing adequately with these difficult cases. Many prosecutors and judges are unsure about techniques to reduce stress on child victims. As a former police official, I know from experience the uneasiness and uncertainties officials confront in dealing with sexually abused children. Very often victimized by those they love, these innocent children are often reluctant to speak out against those upon whom they depend both emotionally and physically.

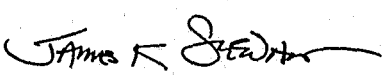
Failure to prosecute these crimes puts more children at risk by giving the appearance of immunity from punishment for those who commit such damaging acts. The tragic, long-term effects of physical and sexual abuse of children are increasingly well documented. We know, too, that abuse tends to become a terrible "family tradition," with the cycle of violence repeating as abused individuals in turn abuse their own children.

If we are to begin to avert some of these huge social costs now and for the future, we need to redirect our policies and procedures so that victims of child abuse do not also become victims of the criminal justice system.

This month's feature article describes new research by the National Institute of Justice that suggests ways in which these difficulties can be eliminated or at least ameliorated—ways that at the same time preserve constitutional safeguards for alleged offenders.

Laws governing procedures for child victims are changing rapidly. The article, by Debra Whitcomb of Abt Associates, who conducted the research for the National Institute, is a helpful summary of new techniques and a review of procedures that are both effective and do not require statutory reforms or major changes in courtroom traditions.

The article, and the research it reports on, offer enlightening new ideas for individuals faced with handling these especially delicate matters. The article also suggests options for legislators, other officials, and members of the general public interested in improving their communities' treatment of crime's young victims.



James K. Stewart
Director
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Prosecuting child sexual abuse—new approaches

by Debra Whitcomb

Child sexual abuse occurs with alarming frequency. The National Center on Child Abuse and Neglect (a division of the U.S. Department of Health and Human Services) estimates that in 1983 nearly 72,000 children were reported as sexually maltreated by a parent or household member.[1] Local law enforcement agencies also receive a large and growing number of reports of child sexual abuse although the FBI's Uniform Crime Reports do not tabulate sexual assaults by age of victim.

Perhaps even more disturbing is that an unknown number of similar cases never reach the attention of authorities. Very young children may lack the verbal capacity to report an incident or the knowledge that an incident is inappropriate or criminal; older children may be too embarrassed. Many child victims are threatened into silence. When they do confide in a trusted adult, their reports may be dismissed as fantasy or outright lies.

Even if the child's story is believed, parents and health and social service professionals have been reluctant to enlist the aid of enforcement agencies, largely for fear of the adverse effects of the criminal justice process on child victims and their families.

Cases that are filed with police may not result in prosecution for a variety of reasons. These include inability to establish the crime, insufficient evidence, unwillingness to expose the child to additional trauma, and the belief that child victims are incompetent, unreliable, or not credible as witnesses. Yet, public sentiment increasingly favors criminal justice intervention in these cases.

This article summarizes a recent study conducted for the National Institute of Justice on the problems faced and posed by child victims in the criminal justice system. The research reviews legislative revisions, local reforms, and new techniques to alleviate these problems.

Child victims in the criminal justice system

By definition, children are immature in their physical, cognitive, and emotional development. This immaturity takes its toll when children are involved in court proceedings. From the time an incident of child sexual abuse is revealed, the victim is interviewed repeatedly by adults representing different agencies with overlapping information needs. Continuances are freely granted, causing delays that erode the children's memories and undermine therapeutic efforts to help them get on with their lives.

Children often do not understand the reasons for repeated interviews and delays. Many choose to end the process by recanting the accusation before their cases can be adjudicated.

When these cases do go to court, an entirely different set of problems arises for children who are called to testify. Judges may seem to loom large and powerful over small children who may feel isolated in the witness stand. Attorneys often use language children do not understand and seem to argue over everything the children say. Defense attorneys ask questions intended to confuse them for reasons children cannot comprehend. Many people are watching every move the child witness makes—especially the defendant.

Under such conditions, children cannot be expected to behave on a par with adults. It is not unusual for them to recant or freeze on the witness stand, refusing to answer further questions. At best, this behavior weakens the government's case; at worst, it leads to dismissals for lack of evidence.

The problems of immaturity are compounded when the child is a victim of sexual abuse. Generally, the child is the only witness to this abuse, and often there is no physical evidence. Consequently, the case becomes a matter of the child's word against the adult's. This fact is all too obvious to offenders and is very simple for defense attorneys to exploit.

Incest, in particular, traps the child in an extremely precarious position. Children are taught to obey and respect their elders, and incestuous offenders often command secrecy with threats that range from withdrawal of love to death of the child, mother, or other loved ones.

Visions of the father in jail, the mother distraught, the family on welfare, and the children placed in foster care typically suffice to prevent a victim from divulging the incestuous situation, often for years, sometimes forever. A child who reports promptly is by far the exception, not the rule.

If the child's situation becomes known and the child protection or law enforcement authorities intervene in the family, the child may be under intense pressure to retract the allegation. Regardless of whether the father or the child is removed from the home, dissolution of the family appears imminent and the child may shoulder the blame. Such pressure to recant is further intensified the longer the case is delayed, becoming strongest when the child faces the defendant from the witness stand.

Debra Whitcomb of Abt Associates, a research firm in Cambridge, Massachusetts, was principal investigator for the study discussed in this article.

1. U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *National Study on Child Neglect and Abuse Reporting* (Denver: American Humane Association, 1984).

A call for change

If child victims are treated insensitively while their allegations are investigated and adjudicated, their participation in the process is likely to suffer, in turn weakening the government's case.

Victim advocates and prosecutors across the country are experimenting with a variety of measures intended to reduce the stress on child victims who become entangled in the complexities of the child protection and criminal justice systems. Several States have already adopted legislative reforms that permit alternative—and some very controversial—techniques.

The reforms fall into two categories: (1) those seeking to alleviate the perceived trauma of giving live, in-court testimony (hearsay exceptions, exclusion of spectators); and (2) those authorizing mechanical interventions to obtain the child's testimony (videotape and closed circuit television).

The National Institute of Justice research examined some practical concerns surrounding the actual implementation of the proposed reforms. The findings are based largely on interviews with judges, prosecutors, victim advocates, protective services workers, and law enforcement officers in Des Moines, Iowa; Milwaukee, Wisconsin; Orlando, Florida; and Ventura, California. Each jurisdiction possessed a different array of innovative statutes and procedures, thereby permitting examination of a broad range of alternative techniques.

The results suggest that many of the new reforms have rarely been used. Many unresolved questions about their ability to withstand judicial scrutiny (not addressed by the study), in addition to a number of practical concerns, tend to dissuade prosecutors from taking full advantage of the measures.

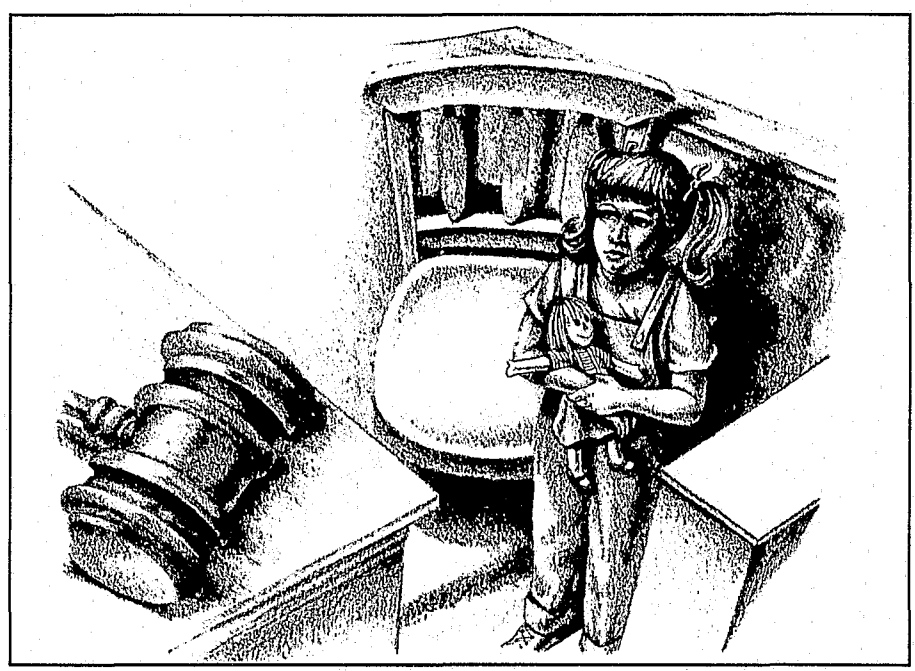


Illustration by Phyllis Saroff

A courtroom can be intimidating to a child who may feel so much pressure he or she may freeze on the witness stand.

Practical concerns with the new techniques

The plight of child victims in the courtroom has generated considerable media attention, much of it focused on the potential of modern technology to alleviate the stress of testifying. Videotape and closed circuit television, in particular, have received much media coverage, and legislators have felt pressured to adopt these controversial measures with limited opportunity for reflection and study.

Our findings suggest that these techniques can be used only in a small fraction of child sexual abuse cases and that there are less obtrusive, and less controversial, ways of achieving similar effects for all but the most seriously traumatized children.

Perhaps the most radical of the proposed reform measures is the use of closed circuit television to broadcast the child's live testimony from a room adjacent to the courtroom. As of December 1984, this technique was statutorily authorized in only four States: Kentucky, Louisiana, Oklahoma, and Texas.

These laws permit the attorneys and a supportive adult (e.g., victim assistant or close relative) to be present with the child during the broadcast. The defendant and equipment operators may also be present, but the child is not allowed to see or hear them.

Whether the use of closed circuit television satisfies the defendant's constitutional right of confronting his or her accuser has not yet been resolved. But prosecutors and judges question the value of this technique from another standpoint: What effect does the new medium have on jurors' perceptions?

Although there is some empirical evidence to suggest that televised trial materials have no markedly negative effect on courtroom communication between trial participants and jurors,[2] these findings are far from conclusive.

The primary purpose of closed circuit television is to avoid direct confrontation between the child and the defendant, but there are other means to this end. Some prosecutors use their own bodies to block the victim's view of the defendant during the direct examinations. Others simply instruct children to look elsewhere while they testify, or to look for a supportive family member or victim advocate in the courtroom audience. One victim advocate encourages children to tell the judge if the defendant is making faces.

2. Gerald R. Miller, "The Effects of Videotaped Trial Materials on Juror Responses," in *Psychology and the Law*, ed. Gordon Bermant, Charles Nemeth, and Neil Vidmar (Lexington, Massachusetts: Lexington Books, 1976), 205.

Such instructions may not completely eradicate the child's fear of seeing the defendant in court, but at least they impart a small sense of control in a situation that may seem overpowering to a child.

Videotaping testimony is another technique that is highly praised, yet seldom used where it is authorized. At the end of 1984, at least 14 States had adopted laws authorizing the introduction of videotaped testimony taken at a deposition or preliminary hearing in lieu of live testimony at trial.

But some prosecutors point out that the environment at a deposition can be more traumatic than that of a trial courtroom. Depositions take place in small rooms, bringing the child and the defendant into closer physical proximity than in the trial courtroom. The judge may not be there to monitor the behavior of the defendant or his counsel, and victim advocates may not be permitted to attend.

If a court finding of emotional trauma or unavailability is prerequisite to a videotape substitution for live testimony, the child may be subjected to a battery of medical and/or psychiatric tests by examiners for the State and the defense. Some prosecutors also believe that a child who successfully endures all the proceedings leading up to the deposition or preliminary hearing can succeed at trial as well; indeed, by that point the videotaped deposition merely substitutes one formal proceeding for another.

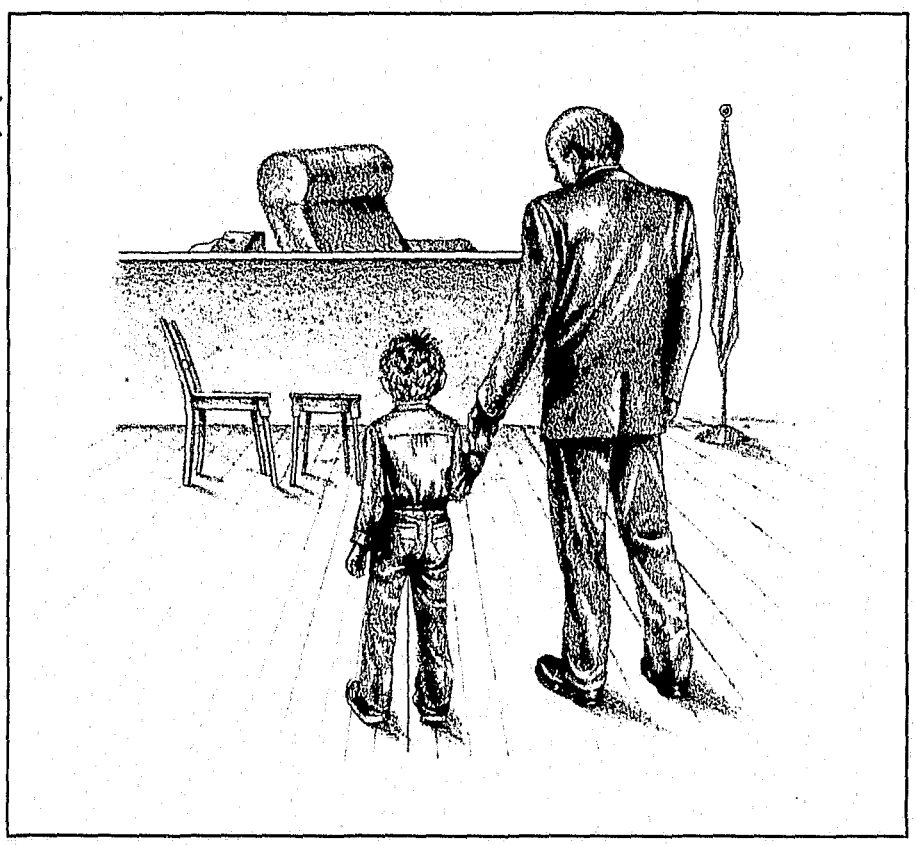
The purpose of the videotape statutes is to spare the child the presumed trauma of a public appearance in court. Yet, many interview respondents observed that the courtroom audience is not a major concern for most children. They also noted that there rarely is a general audience; when spectators are present, they can often be persuaded to leave voluntarily by simple request of the prosecutor. Existing statutes for closing courtrooms—another popular remedial technique—are seldom invoked.

At least three States—Texas, Louisiana, and Kentucky—have adopted laws permitting a videotape taken of the child's first statement to be introduced into evidence. For the taping, the child must have been questioned by a nonattorney, and both the interviewer and child must be available for cross-examination. The principal goal is to reduce the number of interviews the child must give, but they allow for other benefits as well.

Videotaping the child's first statement can capture the child's most candid reaction to the incident. Prosecutors and victim advocates report that the technique encourages guilty pleas.[3] Police, social workers, and prosecutors in many jurisdictions are already using videotape to achieve these goals, even in the absence of laws authorizing introduction into evidence at trial.

There are drawbacks to these videotape statutes, however. Since child victims must be available for cross-examination, the laws do not protect them from the presumed trauma of testifying at trial and confronting the defendant. And, unless the court places them under a protective order, the videotapes may become public property, perhaps even appear on media broadcasts, causing incalculable trauma for the child and family. Also, the tapes become a liability if the child volunteers contradictory information, or if improper questioning techniques were used to elicit responses.

Illustration by Phyllis Saroff



A simple tour of an empty courtroom can help alleviate the fear of the unknown that makes it difficult for children to testify accurately.

Useful and effective techniques

Much attention has been focused on technological aids intended to help child victims in the adjudication process. Some of the most useful and effective techniques, however, do not involve advanced technology. Statutes creating special exceptions to hearsay for certain out-of-court statements of child sexual abuse victims fall into this category.

Child sexual abuse victims sometimes make innocent remarks that are quite explicit in their portrayal of sexual activities that should be unknown to a child. For example, when a 7-year-old

3. This effect was reported to us in telephone interviews with prosecutors across the country. See also, Reinhardt Krause, "Videotape, CCTV Help Child Abuse Victims Tell Their Story but Legal Problems Remain," in *Law Enforcement Technology* (November 1984), 16–18.

girl spontaneously asks her father, in child's language, about details of erection and ejaculation, there can be little doubt that this child was sexually abused in some way. Yet this kind of statement does not fit into traditional hearsay exceptions and would be inadmissible in most States. The new laws would admit such a statement, provided that certain indicia of reliability are met, even when the child is unavailable as a witness.

Many effective innovations do not require statutory reform at all. These include the following:

- Enhancing the child's communication skills through dolls, artwork, and simplified vocabulary.
- Modifying the physical environment—providing a small chair for the child, having the judge sit on a level with the child or wear business clothes instead of a judicial robe.
- Preparing child victims before their courtroom appearances—briefing them on the roles of people in the courtroom, introducing them to the judge, taking them for a tour of the courtroom, and allowing them to sit in the witness chair and speak into the microphone.

By demystifying the courtroom, these techniques help to alleviate children's fear of the unknown, thereby enhancing the accuracy and efficiency of their recall abilities.[4]

Most of the legislative reforms address only the trial experience and therefore benefit only those children whose cases go to trial. However, the trial is only the culmination of a long series of stressful events that the child endures as the case is adjudicated. Some States have adopted laws intended to ease the child's anxiety throughout the criminal justice process. Such legislation includes the following:

- Laws permitting child witnesses to have a supportive person present during court proceedings, and offering the services of the court to explain the proceedings to the child, assist the family and child, and advise the court and prosecutor.
- Laws directing law enforcement, social service agencies, and prosecutors to conduct joint investigations in child sexual abuse cases, using a single trained interviewer.
- Laws attempting to expedite the adjudication process by giving precedence in trial scheduling to sexual offense cases or to cases in which the victim is a minor.

These laws reflect the legislatures' concern for child victims and, for maximum effect, they require the personal commitment of the individuals handling these cases. Indeed, dedicated people in many jurisdictions have introduced these innovations successfully even without legislation. These precautions can and should be provided to every child coming into the system, not only to those whose cases actually come to trial or whose emotional well-being is severely threatened by the prospect of testifying.

Conclusions and recommendations

There are two areas of statutory reform that appear to be necessary and beneficial to many child witnesses. The first is abolishing special competency requirements for children, preferably by establishing a presumption that every witness is competent (as in the Federal Rules of Evidence), and leaving the determination of credibility to the trier of fact.

By the close of 1984, some 20 States had adopted this standard; 3 more waived their competency requirements in cases of child sexual abuse. Since psychological research on children's memory and morality suggests that all but the youngest children (i.e., age 3 and under) can testify as truthfully and accurately as adults,[5] it seems unfair to impose a special requirement on children.

Secondly, legislatures should adopt special hearsay exceptions to admit certain out-of-court statements that do not fall within the existing exceptions to hearsay. These exceptions will not apply in every prosecution, but they are useful when a child freezes or recants on the witness stand, or when the defense asserts special exceptions for child sexual abuse victims; other States that lack residual hearsay exceptions should consider adopting similar laws.

Regardless of the existing statutory structure in a given State, there is much that can be done to ease the child victim's trauma. Each prosecutor's office should designate at least one attorney to receive training or specialize in child sexual abuse cases. Training should be provided, not only in general concepts of child development and family dynamics, but also in the specifics of State law and case precedent.

Child development and mental health professionals should be tapped for assistance in interviewing children, selecting potential jurors, and formulating opening and closing statements. Above all, prosecutors should work to improve communication and coordination among the several agencies responsible for child welfare. A concentrated team effort is necessary to develop a more rational, cohesive approach to the adjudication of crimes against children.

Each child should have a victim advocate or other supportive adult for assistance and accompaniment throughout the investigation and adjudication processes. Where prosecutors lack access to a victim assistance unit, provision should be made for volunteer support or for carrying over the guardian ad litem function from juvenile court proceedings. (The Child Abuse Prevention and Treatment Act of 1974 requires States to appoint a guardian ad litem to represent the best interests of children involved in abuse and neglect proceedings.)

Support persons should receive the same specialized training given to prosecutors so that they can advocate for the child's best interests from a knowledgeable standpoint.

Judges, especially, should be aware of a child's unique situation in the criminal court setting. Some persons interviewed

4. Helen E. Dent and Geoffrey M. Stephenson, "An Experimental Study of the Effectiveness of Different Techniques of Questioning Child Witnesses," in *British Journal of Social and Clinical Psychology* (1979): 41; citing W. Stern, "The Psychology of Testimony," in *Journal of Abnormal and Social Psychology*, Vol. 34 (1939): 3–20; E. Lord, "Experimentally Induced Variations in Rorschach Performance," in *Psychological Monograph*, Vol. 64 (1950): 10; and C. Zimmerman and R.A. Bauer, "Effect of an Audience on What Is Remembered," in *Public Opinion Quarterly*, Vol. 20 (1956): 238–248.

5. For an excellent overview of research on children's capabilities as witnesses, see the *Journal of Social Issues*, Vol. 40 (1984).

Summary of Proposed Reform Measures

Cause of stress	Suggested procedure	Necessary conditions
Pretrial period		
Repeated interviews	Videotaping of first statement	Discretion
	Coordination of court proceedings	Discretion
	Joint interviews/one-way glass	Discretion
Time to disposition	Priority scheduling	Discretion, statute
Repeated schedule changes	Limitation of continuances	Discretion
Removal of child from home, retaliation	No contact orders or removal of offender	Statute
Fear of unknown	Thorough preparation	Discretion
	Tour of courtroom	Discretion
Victim/family exposed in media	Media cooperation in suppressing identifying information	Discretion
Court proceedings		
Physical attributes of courtroom	Alternative setting for child's testimony	Statute
	Tour of courtroom	Discretion
	Small witness chair	Discretion
	Judge sitting at witness' level	Discretion
Audience, jury	Exclusion of spectators	Statute
	Videotaped deposition	Statute
	Closed circuit television	Statute
	Spectators asked to leave	Discretion
Defendant's presence	Closed circuit television	Statute
	Blackboard as screen	Case law
	Alternative seating arrangements	Case law
	Instruction to child to look elsewhere, to tell the judge if the defendant "makes faces"	Discretion
Description of events	*Res gestae*	Case law
	Expert witnesses to explain apparent lapses in child's testimony	Case law
	Presence of victim advocate	Statute, discretion
	Dolls, artwork	Discretion

in the study objected to any intervention on behalf of a witness in the courtroom on grounds that it prejudices the jury to believe the allegation of victimization. Certain departures, however, are necessary for child witnesses simply because they are children.

At a minimum, judges should be alert to lines or forms of questioning that confuse or intimidate the child. They should recognize signs of discomfort or embarrassment that may cloud or distort the child's testimony, and then take the initiative, for example, to call a recess to identify and remedy the source of the child's distress.

Whenever possible, and where the prosecutor fails to file a motion, judges should order alternative procedures on their own motion. They should avoid granting continuances unless absolutely necessary, and they should ensure that every child has a supportive friend or advocate in court.

There are many ways to relieve the child's anxiety and elicit effective testimony. Drastic interventions—such as closed circuit television and videotaped depositions in lieu of live testimony—should be used only in extraordinary cases.

Sensitive treatment of the child throughout the pretrial period, along with creative interpretations of available statutes and case law precedent, may be no less effective in most cases. These measures should not be overlooked in our desire to aid child victims.

The full report of the study has been published as *When the Victim Is a Child—Issues for Judges and Prosecutors*, which may be obtained for $3.25 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock no. 027-000-01248-5. For free microfiche, order NCJ 97664 from NCJRS.

The Research in Brief entitled "Prosecution of Child Sexual Abuse: Innovations in Practice," presents highlights of the full study. The Brief contains a chart analyzing selected provisions of pertinent legislation enacted by each of the 50 States as of December 1984. To obtain this publication, check no. 38 on the back cover.