The Process of Attrition in Child Sexual Assault Cases: A Case Flow Analysis of Criminal Investigations and Prosecutions

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As part of a prospective study which tracked 183 child sexual abuse cases referred to two Child Protection Units in Sydney, NSW, a search of court records was conducted to obtain criminal justice outcomes. Of the 183 cases, there were 117 cases where the name of the offender was known. Forty-five cases reached trial. Thirty-two cases resulted in a conviction. A sub-cohort of 84 of the children and their families was interviewed in detail to determine reasons why many cases did not proceed down the track of criminal investigation and prosecution and why other cases dropped out of the criminal justice system. Among this sub-cohort of 84 children, there were 67 cases where the offender was identifiable and could have been charged. There were 25 convictions. Reasons for not proceeding to trial included: the offence was not reported to police; parents wished to protect children, the perpetrator or other family members; evidence was not strong enough to warrant proceeding; the child was too young; the offender threatened the family; or the child was too distressed. The implications for criminal prosecution as a child protection strategy are considered in the light of this evidence of attrition.

As community awareness of the prevalence of child sexual abuse has increased over the last few years, there has been a substantial increase in many jurisdictions in the

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number of prosecutions for sex offences against children. This has been facilitated by law reforms which have altered the rules on admissibility of children's evidence and which have allowed alternative means for its reception, such as the use of closed circuit television and videotaped evidence from the child (Richards, 2000).

Evidence from New South Wales indicates that the increased rate of prosecutions has not led to a commensurate increase in the numbers of convictions for child sexual assault. Cashmore (1995) found that the conviction rate in New South Wales dropped sharply as the number of prosecutions increased. In 1992, the number of cases accepted for prosecution was more than four times the number in 1982 (1992, 143 cases; 1982, 34 cases). During the same period, the guilty plea rate dropped from 83.6% to 58% and the overall conviction rate fell from 92.3% to 76.5%. Thus while more prosecutions were being brought and with younger child witnesses than might have been the case 10 years earlier, defendants were less likely to plead guilty and the chances of obtaining a conviction declined. Gallagher, Hickey and Ash (1997), in a study of all child sexual assault matters in the District Court of NSW in 1994, found that the rate of convictions and guilty pleas had fallen even further since 1992. Forty-nine per cent of alleged offenders pleaded guilty. In total, 65% of alleged offenders were convicted on at least one charge.

Prosecution as a Child Protection Strategy

There has been some controversy about whether it is a desirable goal to prosecute as many cases as possible. Some have argued that prosecutions are likely to be traumatic for children and that societal benefits from successful prosecution should not occur at the child's expense (Newberger, 1987). Although not all cases are suitable for prosecution, and the wishes of children and parents need to be respected, arguably prosecution of offenders is an important strategy to combat child sexual abuse, alongside other strategies. Successful prosecution provides a means of reinforcing community condemnation of the crime, and may be a means of mandating treatment. Criminal convictions are also important to efforts at prevention of further abuse. Limited protection of the community is provided by custodial sentences.

More importantly perhaps, criminal record checks provide a basis for other prevention measures. Foster carers, youth workers, teachers, health workers, and others who have unsupervised contact with children are subject to criminal record checks in many jurisdictions, and some jurisdictions also place prohibitions on the employment of convicted sex offenders in child-related work. A criminal record for sex-offending against children also provides the basis for more controversial child protection laws, such as sex-offender registration schemes, and community notification statutes (Myers, 1996).

Given the efforts put into preparing cases for prosecution and the reliance placed upon convictions as a child protection strategy, it is important to know what proportion of cases which are considered to be substantiated on initial investigation by professionals working in child protection result in successful prosecution, and why cases do not proceed to prosecution or are dropped at various stages.

Conviction Rates and Prosecutorial Discretion

Studies of conviction rates in some jurisdictions would suggest that the "success rate" in those child sexual assault prosecutions that reach trial is very high indeed. Reviewing several American studies, De Jong (1998, p. 648) observed that studies of prosecution rates and conviction rates for child sexual abuse showed fairly consistent results. Of cases accepted for prosecution, 80–91% were carried forward, and convictions were achieved in 93–95% of those cases.

However, conviction rates in cases that proceed to trial or to a guilty plea on their own may give a misleading impression of the level of convictions for child sexual assault as a proportion of all cases considered to be substantiated by professionals working in child protection. The conviction rate in cases accepted for prosecution is likely to depend on the number of cases accepted for prosecution, which is a matter for prosecutorial discretion. The numbers of cases accepted for prosecution may in some jurisdictions be a small fraction of those in which sexual abuse was deemed to be substantiated by police, social workers or health professionals on initial investigation. Tjaden and Thoennes (1992) found in their study of substantiated child maltreatment cases in three American states that only 17% of cases of sexual abuse resulted in prosecution. Nineteen per cent of the cases where sexual abuse was found alongside other forms of abuse were also prosecuted. Only 1% of the child maltreatment cases that did not involve sexual abuse resulted in prosecution.

A similar picture emerges from three Australian studies. In an analysis of cases seen at the Royal Children's Hospital in Melbourne, Goddard and Hiller (1992) tracked 205 cases of physical and sexual abuse. Of these, 104 involved sexual abuse. They found that only 14% of the sexual abuse cases in which the police were involved resulted in a conviction. In one other case, a juvenile was cautioned. Gallagher, Hickey, and Ash (1997) analysed data for New South Wales in 1994. The Department of Community Services substantiated 3351 cases of child sexual assault, there were 2143 police reports, 630 offenders charged and in 404 cases at least one offence was proved. Hood and Boltje (1998) analysed the progress of 500 cases referred to a hospital-based child protection service in Adelaide which provides a specialist medical and psycho-social evaluation service for the state child protection system. Sixty-six per cent of the cases in the sample were sexual abuse cases. Three hundred and fifty-six of these referrals were assessed by the Service and 230 of these cases (64.6% of those assessed) were substantiated by the clinicians. Of these 230, the police investigated 144 and agreed with the assessment that there had been abuse in 135 cases. Prosecution occurred in 63 cases and there were 39 convictions. The conviction rate was 17% of the cases substantiated by the clinicians.

One reason why a case may not proceed towards prosecution is that the perpetrator cannot be identified or apprehended. Yet studies of sexual abuse cases substantiated on initial investigation and in which the alleged perpetrator has been identified also show that a substantial percentage of cases do not result in charges. In a study conducted in Chicago, Martone, Jaudes, and Cavins (1996) tracked a sample of cases where sexual abuse was diagnosed by clinicians in a hospital setting. Three hundred and twenty-four cases were regarded as being probable sexual abuse cases and 269 alleged perpetrators were identified. Of these, 136 (51%) were charged.

In a study conducted in the North of England, San Lazaro, Steele, and Donaldson (1996) tracked the cases of 160 children who were seen in a specialist pediatric facility in a public hospital and who were deemed by the researchers to have made an unequivocal allegation of sexual abuse which required police investigation. One hundred and forty-five males and 9 females were named by the children as perpetrators. None of the women were prosecuted. Of the 145 males, 124 (86%) were known to have been interviewed by the police. Fifty-four (37%) went to trial and 49 (86%) of these were convicted. Five others were cautioned. Overall, 44% of the cases in which police investigations occurred resulted in convictions or cautions.

In a national study in the United States, Cross, Whitcomb and De Vos (1995) tracked the cases of 552 alleged perpetrators. Of the cases which were referred to prosecutors, 38% were declined and 2% were diverted to an intra-familial sex offenders' treatment program, leaving 60% which were accepted for prosecution. Fifty-one per cent of cases referred for prosecution resulted in a conviction. The researchers compared their findings on the sexual abuse cases with national figures for felony arrests generally. Nationally, 18% of referrals for prosecution of felonies were declined. However, 21% were subsequently dismissed compared to 5% of the sexual abuse cases in this study.

Criminal Prosecutions and the Onus of Proof

It is hardly surprising that not all cases which are deemed substantiated on initial investigation and where the alleged perpetrator is identified, lead to prosecution or conviction. "Substantiation" of alleged sexual abuse means different things in different disciplines and professions. The child protection worker or health professional in a hospital setting who confirms a case of child abuse does not require the same level of proof as is needed in the criminal justice system. The purpose of recording a case as "substantiated" may be to provide services to the child and family such as counselling, where the provision of the services is predicated on the diagnosis of child abuse. Substantiation by a hospital child protection unit may serve as the threshold in a hospital system for notification of a case to the police or the statutory child protection authority. From that point, further inquiries would need to be undertaken to determine whether action should be taken in the Children's Court or its equivalent pursuant to child welfare legislation, or whether the matter should be referred for criminal prosecution.

Furthermore, where child sexual abuse is deemed substantiated, this is often only a conclusion that the child has been sexually abused, not that a particular person is responsible. While the one conclusion might inexorably involve the other where the child has made a specific allegation against a known individual, no conclusion concerning the responsibility of the alleged offender could reasonably be made without interviewing that person.

It follows that a conclusion that a sexual abuse allegation is substantiated by child protection workers or health professionals needs to be treated with caution. It may represent a professional assessment that a child is the victim of a crime but cannot be treated as a professional judgment of anyone's responsibility for that crime. In the criminal justice system, it is necessary to prove not only that a crime

has been committed but also that the accused person is guilty of the specific offences charged. This must be proven beyond a reasonable doubt. The question which is asked in the criminal trial is a quite different one from the question asked when a child protection professional seeks to determine whether an allegation of child sexual abuse can be substantiated.

Nonetheless, it is important to improve understanding of the reasons why certain cases proceed to trial and why others do not. Is it just a matter of sufficiency of evidence or are other factors at work as well in the process of attrition?

The Present Study

The present study developed from a larger prospective study investigating the behavioural and emotional effects of child sexual abuse (Oates, O'Toole, Lynch, Stern, & Cooney, 1994; Stern, Lynch, Oates, O'Toole & Cooney, 1995; Swanston, Tebbutt, O'Toole, & Oates, 1997; Tebbutt, Swanston, Oates, & O'Toole, 1997). Here we examine the criminal justice outcome of 183 child sexual abuse cases referred to child protection units at two children's hospitals in Sydney, New South Wales in 1988–90. We traced the court records of those cases which went to trial.

Methods

Children in the study were referred over the 2-year period 1988–1990 to two teaching hospital child protection units which are specified referral centres for the Sydney metropolitan area for the assessment of alleged sexual abuse. There were 183 children who met the study criteria of being aged between 5–15 years with no significant developmental delay. There were 143 girls and 40 boys. These children resided in the Sydney metropolitan area. All had experienced some form of physical contact of a sexual nature with the abuser (Finkelhor, 1986) and the hospital assessment teams were confident that sexual abuse had occurred. That is, there was physical evidence of child sexual assault and/or the child was able to give a clear and consistent description of the event(s). There was no restriction on the age of the abuser, although cases that involved consensual sexual activity between peers were not included in the study.

In order to trace the process of attrition in cases in which police reports had been made, we examined in detail a sub-cohort of 84 of the 183 cases. These children and young people were invited to participate in a longitudinal, prospective research program on the effects of sexual abuse. Interviews were conducted with parents and children 18 months after the abuse and then 5 years after the abuse.

There were numerous differences between those children and young people who participated in the research program and those who did not (Lynch et al., 1993). Twenty-five per cent of the non-participants declined to participate and 75% were not referred by child protection social workers for possible inclusion in the study. The reasons for not referring these families were: poor functioning of the child and family where it was felt that the research would be too stressful (39%), one-off contact, poor rapport or family resistance to further follow-up (32%), social workers' uncertainty about how to approach the family or resistance to assisting the

research team in this way (25%), and concerns about the stress on children who had already experienced a high number of interventions (4%). There was more likely to be physical evidence which was highly indicative of abuse in the cases where families chose to participate, and participating parents were more likely to blame themselves for what had happened to the child. There was more likely to be a police investigation in the study group although there was no relationship between positive physical findings and the likelihood of a police investigation.

A standardised questionnaire was completed for each child by a social worker. Data on demographic details, the child, family, the nature of the abuse, assessment at the child protection units and information about the alleged offender such as the relationship to the victim were recorded (Lynch et al., 1993).

Ten of the 183 children in the cohort reported being sexually abused by multiple offenders. Nine children alleged being abused by two offenders and one child alleged three offenders. Information collected at intake showed that 10 offenders had abused multiple victims in the study. Eight offenders were each named by two children and two offenders were named by three children. There were therefore 182 alleged offenders and 194 cases of alleged victim-offender composites. In 137 out of 183 reports of sexual abuse (75%), it was known from intake records that there was a police investigation. In 117 cases, sufficient detail was known of the identity of the alleged offender to be able to trace the case through court records.

In 1998 data on court outcome for those cases that went to trial or sentence were extracted from the Justice Information System at the Department of Public Prosecutions, District Court files held at the District Court Criminal Registry, Supreme Court files held at the Supreme Court Criminal Registry and Local Court Files held at the records departments of individual Local Courts. All court and criminal record data were collected under a signed agreement of confidentiality and analyses of data focused on group effects so that individuals could not be identified. This thorough search of all relevant court records conducted 9–10 years after the abuse was reported, was able to find evidence of 45 of these children's cases reaching trial or sentence. These cases commenced in 1989 and all prosecutions had been concluded by the end of 1993.

Out of the sample of 183 cases, there were 84 cases which were followed up for interviews within the ensuing five years. These 84 children were traced where possible after 18 months and then again after 5 years and invited to participate in a follow-up study (Lynch et al., 1993). Questions were asked at these interviews about contact with the police concerning the abuse, the progress of the case, if any, through the criminal justice system and the outcome of the trial where one was held. The interviews with the families in the sub-cohort of 84 provided a great deal of information concerning why, according to the parents, some cases were not reported to police, why the police did not lay charges when police reports were made, and why certain cases dropped out after charges were laid.

The present study gives an overview of the legal outcomes in the 183 cases, with detailed information on the group of 84 children and young people who were followed up at 18 months and 5 years. Data were analysed using SPSS for Windows Version 6.1.3 (Statistical Products and Service Solutions, 1995). Analyses were conducted using *t* tests, chi-squared analyses, Fisher's exact test or ANOVA as

appropriate. The significance level was set at $p < .05$. Statistical data is presented for the whole cohort. The analysis of the process of attrition is based upon the 84 cases followed up after 18 months and 5 years.

Results

Court Records of Convictions and Acquittals: Whole Cohort

Of the 45 cases which reached trial or sentence, there were 32 (71%) cases where offenders were convicted of child sexual abuse. This is 27% of the 117 cases in which the alleged perpetrator was identified sufficiently to trace the case through court records. In this group there were 30 offenders (across four cases two offenders had each abused two different children) and 30 child victims (across four different cases two child victims had each been abused by two offenders). In eight (18%) cases alleged offenders were found not guilty at trial, four had no further proceedings directed and in one case the alleged offender died prior to trial.

There were 136 charges of sexual offences under different provisions of the *Crimes Act 1900* (NSW) against those offenders who were subsequently convicted (32 cases). In 19 (59%) cases, offenders had between one to four charges against them, in 10 (31%) cases offenders had five to eight charges against them and in 3 (10%) cases offenders had 9–10 charges against them. The median number of charges per case was 3.5 and the mean 4.2. The three most frequent offences were sexual intercourse with a child under 10 years (22 charges, 16%) followed by indecent assault of a person less than 16 years and/or under authority (21 charges, 15%) and acts of indecency where the person was under the age of 16 years and under authority (18 charges, 13%).

Offenders were convicted of the original principal charge in 20 cases and in 12 cases were convicted on charges of less seriousness. For 9 offenders (28%) the most serious charge for which they were convicted was for sexual intercourse with a child under 10 years. For a further 9 offenders (28%) it was for sexual intercourse with a child between 10 and 16 years. For 14 offenders (44%) the principal conviction was indecent assault. The most common transition in charges was from principal charges of sexual intercourse to indecent assault.

As shown in Table 1, there was a significant linear trend in the number of charges laid when comparing a single incident of abuse with 2–5 incidents and 6 or more incidents reported by the child ($F = 18.37$, $df = 1, 29$, $p = .002$). Quadratic trend was not significant ($F = 1.10$, $df = 1, 29$, $p = .302$), and post hoc testing using

TABLE 1

Main Cohort — Frequency of Abuse by Number of Charges in Cases Where Convictions Were Secured

Abuse frequency	No. of charges		Total
	M	(*SD*)	(*n* = 32)
Single incident	1.8	(0.9)	11 (34%)
2–5 incidents	4.9	(2.6)	7 (22%)
6 + incidents	5.8	(2.7)	14 (44%)

the Scheffe procedure confirmed that the single incident group was significantly different from both of the multiple incidents group, which were not different from each other. For three children who reported over 6 incidents of abuse, only 2 charges were laid against the offender. For a further two children who reported over 6 incidents of abuse, only 4 charges were laid.

In 15 (47%) of the 32 convicted cases, offenders pleaded guilty to all offences either prior to or at trial. Seven (22%) pleaded guilty to a charge less than the original principal offence. Three (9%) pleaded not guilty and were found guilty of at least the principal charge. Five (16%) pleaded not guilty and were found guilty of a charge less than the principal offence and two (6%) offenders pleaded not guilty to all charges but were found guilty of all charges.

In 21 cases (66%), convicted offenders were given a custodial sentence (2 were given sentences of periodic detention) and 11 (34%) received other types of penalties. Although not statistically significant (Fisher's Exact Test, p =.107), extrafamilial offenders were more likely to receive a custodial sentence (80%, 12/15) compared to intrafamilial offenders (53%, 9/17). More offenders received a custodial sentence for the more severe types of abuse: sexual intercourse with a child aged 10–16 years (78%, 7/9) and sexual intercourse with a child under 10 years (78%, 7/9) compared to charges of indecent assault (50%, 7/14), although these differences were not significant (Fisher's Exact Test, p =.337). Details from police and court records indicate that fourteen convicted offenders (44%) had 67 sexual offences against them excluding the index event. Table 2 shows that those offenders with prior convictions for child sexual abuse were more likely to receive a custodial sentence than other types of sentences ($\chi^2 = 8.18$; $df = 1$; $p = .004$).

Reasons Why Cases Did Not Proceed: Sub-Cohort Interviews

In order to better understand why some cases proceeded and others did not, we analysed the cohort of 84 cases where information was available to us from the interviews about the contact between the family and the criminal justice system. Cell-sizes were too small for multivariate analysis. Table 3 gives a case-flow analysis of the 84 cases in terms of their progress (if any) through the criminal justice system. The information about trials and convictions was obtained mainly from court records but information in relation to a few cases is based on the reports of the parents at interview. These were cases in which the parents were aware of the result of the case even though we did not have the full name of the perpetrator and

TABLE 2

Main Cohort — Number of Custodial and Non-custodial Sentences by Other Child Sexual Abuse Offences in Cases Where Convictions Were Secured

Offenders with prior child sexual abuse convictions	Custodial sentences	Non-custodial sentences	Total (n = 32)
Yes	13 (93%)	1 (7%)	14 (44%)
No	8 (44%)	10 (56%)	18 (56%)

TABLE 3
Sub-Cohort — Attrition of Cases From Intake to Trial

	Number of cases	Number of cases remaining
Intake at Child Protection Unit	84	84
Did not proceed — reason unknown	6	78
No police report made	9	69
No charges laid	25	44
Withdrawn before committal	3	41
Charges dismissed at committal	5	36
Committed for trial or sentencing	36	36
Case did not proceed to trial	2	34
Trial stopped	2	32
Hung jury, no retrial	1	31
Verdict obtained	31	31
Acquitted	6	25
Guilty pleas	13	12
Found guilty	12	0

so could not trace the court records. For the purpose of simplicity, where children had been assaulted by two offenders, results are given in the table only for the case against the offender which proceeded the furthest along legal channels.

In 9 cases, no police report was made. In 3 cases the parent wanted to protect the child from the ordeal of court proceedings. In 2 cases, the mother was seeking to protect the perpetrator, and in another case, the family of the perpetrator. In one case, the child did not want a report made to the police, in another, the perpetrator was beneath the age of criminal responsibility, and in the final case the perpetrator was a juvenile with a serious developmental disability.

In 25 cases, no charges were laid. In 9 cases, the offender was unidentified. Originally, in 2 other cases the offender was unidentified, but subsequently, the police arrested a man for similar offences and as a consequence charges were laid in relation to the abuse of these two children. The other main reasons charges were not laid, according to the parental reports, were to protect the child from the distress of going through court proceedings, and because the child was too young or gave an unclear account. Other reasons given by parents in individual cases were that the perpetrator had moved interstate, the child did not want charges laid, there was insufficient evidence, the mother was not believed, and the parents wanted to give the perpetrator a second chance.

Three cases were withdrawn before committal. In one case the reason is unknown. In another case the parents were concerned for the safety of the child because the offender was on murder charges in addition to the sexual assault charges. In a third case the prosecutor persuaded the parents that it was better to drop the charges. She considered that the case was not a very serious one and that because the accused was in poor health and had sought to postpone proceedings, there was the prospect of a very long delay before the matter could come to trial.

In 5 cases, the accused was not committed for trial. This was for a variety of different reasons. In one case the magistrate considered that the father's actions were not motivated by a sexual purpose. In one case, the child's evidence was said to have been "contaminated" by the interview processes. In one case the child's statement had not been counter-signed by the police officer at the time and as a result the charges were dismissed. In the other 2 cases it was considered that there was insufficient evidence to justify committal.

Five cases did not proceed to a final determination. In one case the child refused to testify, and in another the family was intimidated by threats from the alleged offender, and the DPP decided not to proceed. In 2 cases, a trial commenced, but the child was so distressed by the experience of cross-examination that the parents asked for the trial to be stopped. In one case, there was a hung jury, and the case did not proceed to a retrial.

There were 25 convictions. Thirteen offenders pleaded guilty at the committal hearing and 12 were convicted after a trial.

In summary, in the sub-cohort of 84 cases in which the reasons for proceeding or not proceeding could be examined in detail, there were 67 cases (80%) which might have gone forward to prosecution. This excludes cases where the offender was unidentified or where no prosecution could eventuate due to the age or the capacity of the alleged offender. Only 41 out of the 67 cases (61%) reached the stage of a committal hearing and in only 31 cases out of the 67 cases (46%) was a verdict reached.

Discussion

In this study, there were 45 cases which reached trial or sentence out of 117 cases in which the alleged perpetrator was identified. This represents 38% of the cases where the alleged perpetrator was identified. Thirty-two of these cases resulted in convictions, which is 27% of the sample of cases where the alleged perpetrator was identified. If cases reach the point of trial, then the chances of conviction are high. Seventy-one per cent of the cases which reached trial resulted in a conviction.

Twenty-five out of the 32 convictions in this study were recorded in the group of 84 cases which formed the sub-cohort, the remaining 99 cases yielding only seven more convictions. There are a number of explanations for this. One is that the researchers gained more information on this cohort as a result of the interviews at 18 months and 5 years, and so were more likely to be able to identify an alleged offender sufficiently to conduct a search of criminal records. The identity of the alleged offender was known in 67 out of the 84 cases (80%) in this group and in 50 out of 99 cases (50.5%) in the other group. This group was also more likely to have a police investigation and in a higher proportion of cases there was physical evidence which was highly indicative of abuse. It may be also that other factors which differentiated the sub-cohort from the remainder had an influence on the success of prosecutions. The largest single factor which led child protection social workers not to refer families for possible participation in the longitudinal study on the effects of sexual abuse was poor functioning of the child and family leading to concerns that the research would be too stressful. This might also have made it more difficult to conduct a successful prosecution.

The examination of the sub-cohort of 84 cases indicates that the cases which reach trial are those which survive a long process of attrition. In 78 of the 84 cases, the reason for not proceeding could be identified. The process of attrition began with the decision, usually made by the parents, whether or not to report the case to the police. In 9 cases of extrafamilial abuse (11%), the parents did not report the matter to the police. While the Department of Community Services may have been notified, in this time when joint investigations of child abuse cases did not occur, this did not mean automatically that police were informed. Humphreys (1993) tracked the outcome from 155 cases of child sexual abuse which had been substantiated by the Department of Community Services in New South Wales. Of these, only 113 (73%) were referred to police, and in 94 cases the police interviewed the child. The establishment of joint investigation teams in New South Wales following the Wood Royal Commission Report on Paedophilia (Royal Commission into the New South Wales Police Service, the Paedophile Inquiry, 1997) has ensured that communication between the two agencies on such cases is more likely to occur.

Where the parents are not willing to cooperate with the police in a case of extra-familial abuse, or the child is not willing to make a statement, the police have limited options to pursue the matter further. The evidence from this study that some parents or children do not want to involve the police should be compared with the findings of Goddard and Hiller in a similar time period in Victoria. They found that in 30 out of 104 (29%) cases that involved sexual abuse, neither the police nor the statutory child protection agency was involved. At the time of this study Victoria did not have mandatory reporting laws. The smaller percentage of cases in this study in which the police were not involved may indicate the effect of mandatory reporting in ensuring referral to investigative agencies.

The police also play a significant filtering role. In this study out of 69 cases in which a report was made to the police, there were 25 cases in which no charges were laid, although in 16 of these cases an alleged perpetrator was identified. While the lack of sufficient evidence, or a sufficiently clear account from the child, was the reason given in some cases, in others, the decision not to lay charges was not based on the strength of the available evidence. The child's young age, and a concern to protect the child from distress were significant factors. The child's wishes were taken into account. While this study relies on parents' perceptions of why charges were not laid, and there may be issues about the reliability of their information or recollections, these findings are consistent with those of Hood and Boltje (1998) in South Australia. They found that more than half of the cases considered substantiated by police investigators were regarded as unsuitable for prosecution. In that study, while the main reason for not proceeding was insufficient evidence, the parents' or child's wishes were also a factor. Thirty-two out of the 51 cases in which there was considered to be insufficient evidence involved children under 7.

Humphreys (1993) also found that the police played an important filtering role. She found that of 113 cases referred to police in only 52 cases did the police take a statement from the child and in only 36 cases was the alleged offender charged. There were differences between the practices of different police areas

depending on whether the area had a specialist child abuse investigation unit (Humphreys, 1996).

This evidence suggests that there is a large element of discretion in the decision to lay charges or to prosecute cases of alleged child sexual assault. While a major consideration is whether there is a realistic prospect of a conviction, other factors such as the wishes of parents and the interests of the child victim play a role. There was a trend for cases in which convictions were recorded to contain more severe types of sexual abuse.

The findings of this study are broadly consistent with the study of Cross et al. (1994) in the United States. They found that 38% of cases referred by the police to prosecutors were declined. Case acceptance in their study was predicted by the background characteristics of victims and offenders (including race, ethnicity, age of child and relationship of victim to alleged offender), the severity of the abuse, and the nature of the evidence which was available to support the account of the child.

In many cases, the severity of principal charges was reduced, which may reflect a pattern of plea bargaining to avoid the need for a child to give evidence. In the USA, plea bargaining may be used as an incentive for cases to be settled by guilty pleas (Martone, Jaudes, & Cavins, 1996), but plea bargaining is not officially practised in Australia. Nonetheless, a study of child sexual assault cases by the Judicial Commission of NSW found that 11% of offenders had a lesser plea accepted in full discharge of the indictment (Gallagher, Hickey, & Ash, 1997).

This study was conducted on cases where the index event of sexual abuse occurred between 1988 and 1990. The criminal law and the laws of evidence and trial procedure have not remained static in the last 10 years. During the period of this study, for example, the evidence in many child sexual abuse cases was tested by cross-examination at the committal stage with a view to persuading the magistrate that the charges should be dismissed. Reforms to the law have sought to discourage this practice so that the normal course ought to be that the committal hearing is dealt with on the paper record (*Justices Act 1902* [NSW], s.48E). Changes were made to the laws of children's competency by the *Oaths* (*Children*) *Amendment Act 1990* (NSW) which made it easier for younger children to be deemed competent to testify. While closed circuit television was an option for many child witnesses in this study, the conditions of its availability became less restricted as a result of the *Evidence* (*Children*) *Act 1997* (NSW). This Act also allows a videotape of an interview with the child to be presented by way of evidence-in-chief.

While these reforms may have improved prosecution and conviction rates in child sexual assault cases since the early 1990s, it should not be assumed that if these reforms had all been in place during the period of this study it would have made a great difference to the numbers of cases reaching trial and leading to convictions. In England and Wales, the *Criminal Justice Act 1991* had the effect of allowing a child's videotaped account to be given as evidence-in-chief. The Act commenced on October 1, 1992. Between that date and June 30, 1993, the police conducted approximately 14,912 videotaped interviews of child witnesses of which 3652 (24%) were submitted to the Crown Prosecution Service. There were marked variations between areas in terms of the numbers of cases referred for prosecution. By 30 June 1994, 1199 trials had taken place involving child witnesses. In only 202

cases is it known that the video of the child's interview was shown in court (Davies, Wilson, Mitchell, & Milsom, 1995). These figures give an indication of a substantial rate of attrition even in a jurisdiction that had closed circuit television and allowed videotaped interviews to be played as evidence in chief.

Changes to the laws of evidence and technical innovations were designed to make it easier for children to give evidence and therefore to improve prosecution and conviction rates. However, the impact should not be exaggerated, and it may be offset by other changes which have the effect of reducing the numbers of cases accepted for prosecution. For example the New South Wales Director of Public Prosecutions issued instructions in a memorandum to his legal staff in 1998 expressing the view that a "significant number" of sexual assault cases should be discontinued. He listed as cases which should be subjected to particular scrutiny those matters that were based on late complaint, where there was an arguable motive for false complaint (e.g., family law proceedings or other family disputes), where different versions of events had been given, where recovered memory was involved and where therapists or others may have suggested or encouraged complaint. There are thus many factors which can affect prosecution rates in a given 5- or 10-year period apart from changes to the laws of evidence or methods of receiving evidence.

Conclusions

These findings have numerous implications for the reliance which is placed upon criminal prosecution as a child protection strategy. First, reliance upon criminal record checks in employing personnel for work with children is insufficient. In New South Wales, an employment screening system has been established by legislation (*Commission for Children and Young People Act 1998*; Parkinson, 1999). This legislation allows specialist units within government departments or agencies to screen successful applicants for child-related employment. Checks are made not only on convictions for sex offences and child abuse offences, but also on unproved charges, apprehended violence orders to protect a child and findings of child abuse in completed disciplinary proceedings. While great care needs to be taken with the use of unproven charges in deciding whether or not someone should be employed to work with children, risk assessment requires the whole picture to be examined, including the known reasons why the case did not proceed. While pieces of information in isolation from one another may not be indicative of a grave risk to children, the cumulative picture derived from a number of sources may suggest that a person poses an unacceptable risk to the safety of children if allowed to work in a position where he or she has unsupervised contact.

Second, child protection practice should not proceed on the assumption that all cases of child sexual assault will proceed down the path of criminal prosecution. For example, the practice of videotaping all interviews with children about child sexual assault matters irrespective of the likelihood that it may be used in a prosecution, is likely to be a waste of resources.

Third, the study reinforces the need for other strategies to protect children. An example is the Pre-Trial Diversion of Offenders program in NSW (*Pre-Trial Diversion of Offenders Act 1985*) which allows offenders who have committed a sex offence against their own child or the child of their spouse or de facto partner

to enter a treatment program as long as they are assessed as suitable for the program and plead guilty. While this requires a criminal process inasmuch as there must be a guilty plea, where a person enters the scheme there is no need for a trial or for the child to give evidence. Another example is the *Children and Young Persons* (*Care and Protection*) *Act 1998* (NSW). This makes it a ground for care proceedings that a child under 14 has exhibited sexually abusive behaviours. Treatment can be mandated by the Children's Court (ss.71,75). This obviates the need to prove sexual assault by a child under 14 before being able to mandate treatment for the child. The level of proof is the balance of probabilities and there is no need to satisfy the requirements of the doli incapax rule. The child's sexually abusive behaviour is treated as a welfare issue.

Finally, organisations which employ people to work with children need to have systems in place to ensure that child abuse allegations are properly investigated and that conclusions are reached about the suitability of that person to continue to work with children irrespective of the outcome of a criminal process. Reliance cannot be placed on the police and the criminal process to determine the issue of whether a person is suitable to work with children. In New South Wales, the *Ombudsman Amendment* (*Child Protection and Community Services*) *Act 1998* (NSW) gave the Ombudsman responsibility for ensuring that child abuse investigations are carried out properly by certain categories of employer. The affected employers are those who employ persons in positions where they have unsupervised contact with children, such as schools and welfare organisations. This does not only apply to government agencies. Disciplinary proceedings are not constrained by the same rules of evidence nor the same burden of proof as the criminal process and if a disciplinary process concludes that a person employed to work with children has abused a child then this must be recorded in the records of the Commission for Children and Young People. There are safeguards in the *Commission for Children and Young People Act 1998* (*NSW*) to protect the interests of accused persons.

Criminal prosecution remains an important child protection strategy. However, only a minority of cases which are substantiated by health professionals and in which the offender is identified are suitable for prosecution or likely to result in a conviction. Therefore it should be seen as just one of many strategies for addressing the issue of sex offending against children.

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References

Cashmore, J. (1995). The prosecution of child sexual assault: A survey of NSW DPP solicitors. *Australian and New Zealand Journal of Criminology*, *28*, 32–54.

Cross, T.P., De Vos, E., & Whitcomb, D. (1994). Prosecution of child sexual abuse: Which cases are accepted? *Child Abuse and Neglect, 18,* 663–677.

Cross, T.P., Whitcomb, D., & De Vos, E. (1995). Criminal Justice outcomes of prosecution of child sexual abuse: A case flow analysis. *Child Abuse and Neglect, 19,* 1431–1442.

Davies, G., Wilson C., Mitchell, R., & Milsom J. (1995). *Videotaping children's evidence: An evaluation*. London: Home Office.

De Jong, A.R. (1998). Impact of child sexual abuse medical examinations on the dependency and criminal systems. *Child Abuse and Neglect*, *22*, 645–652.

Finkelhor, D. (1986). Designing new studies. In D. Finkelhor (Ed.), *A sourcebook on child sexual abuse*. (pp. 199–223). Beverly Hills, CA: Sage Publications.

Gallagher, P., Hickey J., & Ash, D. (1997). *Child sexual assault: An analysis of matters determined in the District Court of New South Wales during 1994*. Sydney: Judicial Commission of NSW.

Goddard, C.R., & Hiller P., (1992). *Tracking physical and sexual abuse cases from a hospital setting into Victoria's criminal justice and child protection systems*: Vol 1. Victoria: Department of Social Work, Monash University.

Hood, M., & Boltje, C., (1998). The progress of 500 referrals from the child protection response system to the criminal court. *Australian and New Zealand Journal of Criminology*, *31*, 182–195.

Humphreys, C. (1993). *The referral of families associated with child sexual assault*. NSW: Department of Community Services.

Humphreys, C. (1996). Exploring new territory: Police organisational responses to child sexual abuse. *Child Abuse and Neglect*, *20*, 337–344.

Lynch, D.L., Stern, A.E., Oates, R.K., & O'Toole, B.I. (1993). Who participates in child sexual abuse research? *Journal of Child Psychology and Psychiatry*, 34, 935–944.

Martone, M., Jaudes, P.K., & Cavins, M.K. (1996). Criminal prosecution of child sexual abuse cases. *Child Abuse and Neglect, 20,* 457–463.

Myers, J.E.B. (1996). Societal self-defense: New laws to protect children from sexual abuse. *Child Abuse and Neglect*, *20*, 255–258.

Newberger, E.H. (1987). Prosecution. A problematic approach to child abuse. *Journal of Interpersonal Violence*, *March*, 112–117.

Oates, R.K., O'Toole, B.I., Lynch, D.L., Stern, A., & Cooney, G. (1994). Stability and change in outcomes for sexually abused children. *Journal of the American Academy of Child and Adolescent Psychiatry, 33,* 945–953.

Parkinson, P.N. (1999). Child protection law reforms in NSW. *Australian Journal of Family Law 13*, 1–9.

Richards, J.L. (2000). Protecting the child witness in abuse cases. *Family Law Quarterly 34*, 393–420.

Royal Commission into the New South Wales Police Service. (1997). *The Paedophile Inquiry Final Report vols IV, V and V1.*

San Lazaro, C., Steele, A. M., & Donaldson, L. J. (1996). Outcome of criminal investigation into allegations of sexual abuse. *Archives of Disease in Childhood, 75,* 149–152.

Statistical Products and Service Solutions. (1998). *SPSS Version 8.0 for Windows*. Chicago, Illinois: Author.

Stern, A.E., Lynch, D.L., Oates, R.K., O'Toole, B.I., & Cooney, G. (1995). Self-esteem, depression, behaviour and family functioning in sexually abused children. *Journal of Child Psychology and Psychiatry 36*, 1077–1089.

Swanston, H., Tebbutt, J., O'Toole, B.I. & Oates, R.K. (1997). Sexually abused children five years after presentation: A case-control study. *Pediatrics, 100,* 600–608.

Tebbutt, J., Swanston, H., Oates, R.K., & O'Toole, B.I. (1997). Five years after child sexual abuse: Persisting dysfunction and problems of prediction. *Journal of the American Academy of Child and Adolescent Psychiatry, 36, 330–339.*

Tjaden, P., & Thoennes, N., (1992). Predictors of legal intervention in child maltreatment cases. *Child Abuse and Neglect*, *16*, 807–821.