Factors predicting prosecution of child maltreatment cases

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ABSTRACT

Objectives: The purpose of the current study was to examine what case characteristics increased the likelihood of a child maltreatment case being prosecuted, and upon prosecution, of being convicted.
Methods: Data came from 406 criminal court case files from nine judicial districts in North Carolina. Using logistic regression, we examined how county-level and individual characteristics of arrests predicted the probability of prosecution, and for arrests that result in prosecution, the probability of conviction.
Results: Nearly two-fifths (39%) of individuals arrested for child maltreatment were also charged with a concurrent offense. Of those with a concurrent offense, 11% had a felony charge. Of those arrested, 40% were prosecuted on at least one charge. Two case characteristics, the presence of *any* concurrent non-child maltreatment charge or a concurrent felony non-child maltreatment charge, were positively associated being prosecuted on at least one charge. Prosecution for child maltreatment was less likely when there was a concurrent felony charge, when the defendant was the father or a non-parent (relative to the mother), and if the youngest child named was between ages 2–5, or 6–12 (relative to children <2). Only 18% of cases had physical evidence available. Conviction on at least one charge was more likely when there was a concurrent felony non-child maltreatment charge. Conviction for a child maltreatment was less likely when: there was a concurrent non-child maltreatment felony charge, the defendant was not the parent or caregiver, and there was a CPS investigation or assessment for neglect within a 30 day window of the arrest relative to no investigation.
Conclusions: Prosecutors in child maltreatment cases weigh not only the admissibility of evidence in deciding whether to pursue prosecution, but also other case characteristics such as the age of the child victim, whether there is available evidence outside of victim testimony, and other concurrent crimes. The prosecutor may have a stronger case for concurrent non-child maltreatment crimes, and these will thus be more likely to result in conviction. This may also play a role in prosecutor decisions.

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1. Introduction

Rates of prosecution for cases alleging child maltreatment are low, with criminal investigations conducted in approximately 25% of cases nationally (Cross, Chuang, Helton, & Lux, 2014). This low investigation rate is in the face of a high number of children involved with Child Protective Services (CPS). In 2014, over 3.2 million children were involved in either an investigation or alternative response (U.S. Department of Health & Human Services, 2016). Criminal sanctions represent one of several policy options for reducing the frequency of child maltreatment; albeit one of the least frequently utilized. However, the quantitative importance of various factors underlying the low rates of criminal prosecution of child maltreatment crimes has not yet been established.

One potential explanation for the low number of criminally involved maltreatment cases is limitations in what evidence may be presented at trial. Federal and state statutes as well as case law govern what evidence may be admitted during the course of a criminal trial. The admissible evidence available to a prosecutor carries heavy weight in whether a case moves forward through the court system (Cross, De Vos, & Whitcomb, 1994; Peters, Dinsmore, & Toth, 1989). When making the decision to prosecute a child maltreatment offense, North Carolina prosecutors, the state on which our empirical analysis is based, weigh not only the available evidence (such as physical evidence and witnesses), but also whether the defendant has concurrent charges, severity of the crime, victim age, and the potential effect of prosecution on the child victim.[1] Prosecutors in every state do similar evaluations, though the admissibility of evidence may vary slightly by state. The potential stress and

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[1] Source: Authors' interviews with CPS caseworkers and Assistant District Attorneys in North Carolina.

trauma from putting a child on the witness stand is well documented (Brannon, 1994; Goldfarb, Goodman, & Lawler, 2015; Goodman et al., 1992). Even though efforts have been made to reduce this trauma, such as through the use of closed-circuit television (see Whitcomb & Cross, 2015), there are still traumatic effects from having the child relive the abuse in a court room.

Child Advocacy Centers (CACs) also work to conduct thorough forensic intakes with the child so as to eliminate as much court and law enforcement interaction as possible. When there are multiple offenses, plea arrangements may be made, particularly when a concurrent offense has more admissible evidence and is more likely to result in successful prosecution.

Other case characteristics may potentially explain why a child maltreatment crime is prosecuted. Of existing research examining all child maltreatment offenses,[2] predictors of prosecution include having a male perpetrator or female victim, the victim's age, the severity and type of maltreatment, presence of evidence, and if the offender had prior offenses (Cross et al., 2014; Hartley, Mullings, & Marquart, 2013; Sedlak, Doueck, Lyons, & Wells, 2005; Tjaden & Thoennes, 1992; Walsh, Jones, Cross, & Lippert, 2010). Characteristics of a community also may influence prosecution for child maltreatment offenses. For instance, in one study, in communities in which CPS and the police had a memorandum of understanding, there were higher probabilities of prosecution (Cross et al., 2014). In these situations, the memorandum of understanding outlines the responsibilities between CPS and the police for cross-reporting child maltreatment crimes. The number of cases prosecuted for felony sexual abuse increased with the presence of a CAC, but this did not impact the conviction rate (Miller & Rubin, 2009).

Using data from North Carolina, this study sought to expand on existing literature in identifying case characteristics affecting prosecution. We addressed the following issues. First, how common is prosecution and conviction on a charge of child maltreatment? Second, what is the role of physical evidence and child witnesses in securing a conviction? Third, concurrent offenses may be easier to prove because there is admissible evidence not requiring testimony of a witness. So, when there is a concurrent offense, was the defendant less likely to be prosecuted on the child maltreatment charge? Fourth, CPS is a civil agency that can operate entirely out of the criminal process, including providing services where appropriate. For this reason, when CPS is involved, are prosecution and conviction on a criminal charge of maltreatment less likely? Using administrative data, we examined roles of county-level prosecution rates, whether or not a CAC serves the county, and individual characteristics of arrests in predicting the likelihood of prosecution, and for arrests that result in prosecution, the likelihood of conviction.

2. Methods

2.1. Data

Data for this analysis came from five sources: electronic court records, child protection services records, paper court files, birth records, and Geolytics. The North Carolina Administrative Office of the Courts provided electronic court records for child maltreatment and other criminal offenses from 2005 to 2013. These data were used to select counties from which to pull paper court files based on a calculated ratio of charges filed for child maltreatment crimes to CPS reports.[3] In each judicial district, we calculated the ratio of criminal child maltreatment charges over CPS reports filed between 2008 and 2012.[4] By using this ratio, we identified counties exhibiting the greatest and the least numbers of child maltreatment cases that overlap both the court system and CPS. We acquired paper court records from counties in the two judicial districts with the highest and the two with the lowest ratios and from the four most populous counties.[5] A case was considered prosecuted if it had a method of disposition code of being dismissed by the court (meaning the prosecution was brought forward, but the court determined the case should not continue), jury trial, judge (trial by judge or entry of guilty plea before judge), magistrate (misdemeanor cases), probable cause found, remanded to district court, superseding indictment, waiver by clerk, appeal withdrawn, and waiver by magistrate. Waiver by clerk and waiver by magistrate occur when a defendant appears before the clerk or magistrate, pleads guilty, waives his right to trial, and pays the applicable fines and court costs. The administrative data provided docket identification numbers for child maltreatment cases from the 14 counties that made up these nine judicial districts during 2011.[6] Our second and primary source of data was paper court records obtained directly from courthouses in our study counties that matched our docket identification numbers. We obtained 406 court records. A lawyer on the team reviewed roughly ten case files and developed an initial coding scheme. A research analyst and two undergraduate student coders then coded each court form in the case file. Such forms included the police report of the incident of abuse (e.g., description of abuse, parties involved), notes from the clerk regarding social services contacts (e.g., request for services), plea agreements (e.g., reduced charges, plea to lesser). The lawyer went through the final coded file and paper records to spot check coding results.

Information on children who were investigated or assessed by CPS for alleged child maltreatment came from the North Carolina Division of Social Services. CPS records included information on the investigation start and end dates and the type of maltreatment for which the child was reported. Children's records in CPS were linked to their parents' records using North Carolina birth records from 1987 to 2012. Matching across data systems was based on first and last name, birth date, and gender.

Criminal court case files do not typically contain demographic information. For this reason, we approximated unemployment status, education, and median income for persons arrested for child maltreatment using data from their Census block groups. We used gender-specific estimates of educational attainment and race-specific estimates of income. A person was linked to his or her block group by geocoding the individual's residential address from administrative court data using ArcMap 10.2. Census block group data were obtained from the 2011 American Community Survey and assembled and distributed by Geolytics.

We defined child maltreatment charges using North Carolina general statute §14–318. Offenses covered by §14–318 were coded for child abuse and neglect and included misdemeanor and felony charges such as child abuse, intentional child abuse inflicting serious mental or physical injury, and willful act or omission causing serious mental or physical injury or serious bodily injury, prostitution, and sexual acts.[7]

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[2] Much of the empirical research on predictors of prosecution for child maltreatment has focused on sexual abuse cases (Brewer, Rowe, & Brewer, 1997; Cross, De Vos, & Whitcomb, 1994; Stroud, Martens, & Barker, 2000; Walsh et al., 2010).

[3] Due to resource limitations, some counties destroy paper records more quickly than others. For instance, Mecklenburg County North Carolina had destroyed most of their records for 2011 when we requested them in 2014.

[4] These ratios were quite low across the state, with every judicial district having 0–4% as many criminal child maltreatment charges as CPS reports. The two lowest ratios by judicial district were 0.008 and 0.01, while the two highest ratios were 0.035 and 0.037. For the five most populous districts, the ratios of charges were, in order from lowest to highest, 0.011, 0.017, 0.030, 0.033, and 0.033.

[5] We pulled records for the top four most populous counties plus Durham, the sixth most populous county.

[6] Records were requested from 14 counties in nine judicial districts, however three judicial districts were unable to locate any child maltreatment records. For this reason, we only include 11 counties in nine judicial districts in our sample.

[7] Exposing children to fire was excluded because we could not know whether or not the perpetrator was a parent versus another type of caregiver such as a teacher or babysitter.