



Research article

Prosecutors' reflections on sexually abused preschoolers and their ability to stand trial



Emelie Ernberg*, Inga Tidefors, Sara Landström

Department of Psychology, University of Gothenburg, Gothenburg, Sweden

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ABSTRACT

Child sexual abuse (CSA) cases are notoriously difficult to investigate, and less than 10% of cases are prosecuted. We aimed to investigate prosecutors' experiences of preparing for and prosecuting suspected CSA cases with preschool aged victims. Nine specialized child prosecutors (6 women, 3 men) took part either in individual interviews or in focus groups on this subject. The transcripts were analyzed thematically. The prosecutors said that children's testimony was sometimes held to an adult standard and that child complainants who expressed emotion could be perceived as more credible than their less expressive counterparts. CSA victims were identified as vulnerable victims who had difficulty telling their stories. Some of the interviewers were described as lacking in the ability to approach these children. The results imply that the reliability and credibility of sexually abused preschoolers and their testimony might be influenced by a number of verbal and non-verbal factors and that there are several obstacles preventing prosecutors from prosecuting these cases.

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In Sweden in 2015; around 2655 instances of CSA were reported to the police (BRÅ, 2016), and all of these cases were immediately handed over to a prosecutor (Prosecution Development Centre, Gothenburg, 2012). The prosecutor is in charge not only of the decision to prosecute the case, but also of the preliminary investigation, meaning they are major actors in CSA investigations. To prosecute the case, the prosecutor must make an objective judgment that there is enough evidence to show that the suspect committed the crime. In Sweden it is estimated that only 10% of reported cases are prosecuted (Diesen & Diesen, 2009). This number is relatively low compared with the United States, for example, where it is estimated that 52% of child abuse cases are carried forward (Cross, Walsh, Simone, & Jones, 2003) or Iceland, where 26.3% of CSA cases are prosecuted (Sveinsdottir, 2015). Despite this low prosecution rate and the important role the prosecutor plays in CSA investigations, to our knowledge little research has been conducted into the prosecution of CSA cases and the findings are not fully consistent. Earlier research, however, indicates that cases are less likely to be prosecuted when the victim is a preschooler (Brewer, Rowe, & Brewer, 1997; Bunting, 2008; Cross, De Vos, & Whitcomb, 1994; Patterson & Campbell, 2009) and more likely to be prosecuted when forensic evidence is available (Cross et al., 1994; Ernberg & Landström, 2016; Walsh, Jones, Cross, & Lippert, 2010). Some studies have found that when the suspect is a biological parent the case is less likely to be prosecuted (Brewer et al., 1997; Cross et al., 1994), although not all studies have found such a relationship (Hagborg, Strömwall, & Tidefors, 2012; Joa & Edelson, 2004).

The child's testimony is often the only available evidence in CSA cases (Brewer et al., 1997; Diesen & Diesen, 2009). However, there are several reasons why children might have difficulties disclosing the abuse, both initially and later in a

* Corresponding author at: Department of Psychology, University of Gothenburg, P.O. Box 500, SE 405 30 Gothenburg, Sweden. Tel.: +46 31 7861856. E-mail address: emelie.ernberg@psy.gu.se (E. Ernberg).

forensic interview. The perpetrator is often a member of the child's immediate family or is otherwise close to the child, which can delay disclosure or prevent the child entirely from disclosing the abuse, often because the child fears that disclosure might break up the family (London, Bruck, Ceci, & Shuman, 2005). Preschoolers are also less likely than older children to disclose the abuse (Cantlon, Payne, & Erbaugh, 1996; Lippert, Cross, Jones, & Walsh, 2009; Wood, Orsak, Murphy, & Cross, 1996), and they are less likely to realize that the abuse is a crime (London et al., 2005; Shannon & Törnqvist, 2011; Sjöberg & Lindblad, 2002). Furthermore, the perpetrator might tell the child that the abuse is a “secret game,” in which only the child and the perpetrator are allowed to participate. Such a claim is especially difficult for young children to question (Goodman-Brown, Edelstein, Goodman, Jones, & Gordon, 2003; Shannon & Törnqvist, 2011). These aspects might, at least in part, explain why fewer cases involving small children are reported, and why even fewer such cases are prosecuted (Brewer et al., 1997; Bunting, 2008; Cross et al., 1994; Patterson & Campbell, 2009).

CSA victims are at risk of developing several psychological and emotional problems (Pérez-Fuentes et al., 2013). In the short term, a child who is sexually abused can develop post-traumatic stress disorder, with symptoms such as flashbacks, recurring nightmares, insomnia, and difficulty concentrating (Andrews, Brewin, & Rose, 2003). Preschoolers are also more likely than older children to engage in sexualized behavior (Friedrich, 1997). In the long term, having been sexually abused as a child might cause both physical and mental illness in adults (Nelson, Baldwin, & Taylor, 2012). There is an association between sexual health problems in adults, such as sexual avoidance and sexual compulsivity, and having been a victim of CSA (Vaillancourt-Morel et al., 2015). It is also not uncommon for families in which CSA occurs to have other serious problems, including different forms of abuse, chronic health problems, and unemployment (Jones & Ramchandani, 1999).

In Sweden, children under the age of 15 do not testify in court, but are instead questioned at a Children's House or at a police station by an officer who has special training in conducting child interviews. The interview is videotaped and presented in this format to the court. This means that the court is unable to question the child directly. Because the child interview is often the only evidence available in the investigation (Brewer et al., 1997; Diesen & Diesen, 2009), the quality of the interview is vital. CSA victims often have difficulty disclosing their abuse, and preschoolers especially tend to have difficulty describing their abuse in a forensic interview and responding to open-ended questions (Ceci & Bruck, 1993). This makes the reliability of their testimony and their credibility difficult to assess. Credibility is usually assessed on the complainant's appearance, and reliability on their testimony (Landström, Willén, & Bylander, 2012). The Supreme Court of Sweden has stated that testimony from a complainant should be long, coherent, clear, detailed, consistent, and free from equivocal statements (NJA, 2010, s. 671; Schelin, 2007). Similar criteria are employed in other countries (Ellison, 2005; May & Wierda, 2002) and are used in both criminal law and asylum cases (Kagan, 2003). Such credibility criteria may be especially difficult for preschoolers to fulfill, because they tend to give briefer accounts than older children and adults (Eisen, Qin, Goodman, & Davis, 2002). Because children who have been sexually abused often do not describe sensitive details of the abuse in the forensic interview (Christianson, Azad, Leander, & Selenius, 2013; Leander, Christianson, & Granhag, 2007; Leander, Granhag, & Christianson, 2005), their testimonies may often be perceived as vague or incomplete.

CSA cases are therefore difficult for the legal system and the prosecutor to handle, especially when the victim is a preschooler. The aim of this study was to gain a better understanding of prosecutors' perceptions of preschoolers who may be victims of CSA and their ability to stand trial.

1. Method

1.1. Participants

Nine prosecutors (6 women, 3 men), all but one specialized child prosecutors, participated in the study. The one participant not formally specialized in child cases had extensive experience and education corresponding to the specialist education currently available to specialized child prosecutors. The prosecutors were from 37 to 72 years old and had 1.5–15 years of experience of working with child cases.

1.2. Procedure

The prosecutors were contacted by the second author and informed about the study either via email or in person. Those who agreed to participate were given information about the aim of the study and signed an informed consent form. Seven prosecutors participated in themed focus group sessions. To go more in depth into the topics that were discussed in the focus groups, individual interviews were held with the remaining two prosecutors. The first focus group consisted of three prosecutors who had previously worked with child cases, but who had moved on to working with other types of cases. The second focus group consisted of four prosecutors who were currently working with child cases. The first interview was held with a prosecutor who was currently working with child cases, and the second with a prosecutor who had retired from working with child cases. The study was reviewed by the Regional Ethical Committee Board in Gothenburg, Sweden.

1.3. Focus groups and interviews

Focus groups generally involve a number of participants who discuss a predetermined topic, with one or two moderators running the session. A focus group is usually an open conversation, sometimes supported by a question guide (Morgan &

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