

Understanding the Legal System When Your Child Has Been Sexually Abused



SALI

Sexual Assault Legal Institute

Post Office Box 8782
Silver Spring, Maryland 20907
301-565-2277 ■ Telephone
877-496-SALI ■ Toll-free
301-565-3619 ■ Fax

This booklet is not intended to and does not provide legal advice or representation. MCASA and all contributors to this publication specifically disclaim any liability, loss, or risk, personal or otherwise, which is incurred as a consequence, directly or indirectly, of the use and application of any of the contents of this publication.

If you have any type of case involving child sexual abuse, you are strongly encouraged to consult with an attorney.

MCASA appreciates the contributions of Lisae C. Jordan, Esq. and Melissa McDermott Lane, LCSW-C to this booklet.

This project is supported by a Family Division/Family Services Special Project Grant from the Maryland Administrative Office of the Courts, Department of Family Administration.

© Maryland Coalition Against Sexual Assault, 2005. All Rights Reserved.

Understanding the Legal System

When Your Child Has Been Sexually Abused

TABLE OF CONTENTS

Introduction	1
Emotional Recovery	2
Effects of Child Sexual Abuse	3
Who Commits Child Sexual Abuse	4
Disclosures of Child Sexual Abuse	5
Should I Question My Child About What Happened?	5
The Legal System	6
Sexual Abuse – A Legal Term	7
Child Protective Services	8
Criminal Cases	10
Peace Orders and Protective Orders	18
Family Law – Custody and Visitation	21
Family Law – Divorce	26
Tort Lawsuits	27
Concluding Thoughts	28
Resources	28

INTRODUCTION

Child sexual abuse occurs when a person engages in activity with a child to meet his or her own sexual needs. It is not a love relationship; rather the child is being used for the offender's sexual pleasure. Sexual offenders can be children, teenagers, or adults. They can be male or female and are typically not strangers to the child or his or her family. Boys and girls are both victimized. Because so many people do not report child sexual abuse, it's difficult to know how frequent it is, but most estimates are that 1 in 3 girls and 1 in 6 boys are sexually abused before they are 18 years old.

You are most likely reading this booklet because your child has been sexually abused. This may be a time full of whirling and bombarding

emotions, possibly confusion, anger, frustration, helplessness, shock, loneliness, to name but a few.

Because so many people do not report child sexual abuse, it's difficult to know how frequent it is, but most estimates are that 1 in 3 girls and 1 in 6 boys are sexually abused before they are 18 years old.

When a child discloses sexual abuse, it may throw an entire family into crisis. You and your family may be well-equipped to deal with day-to-day problems,

however you may not be as well-equipped to deal with the knowledge that your child has been abused. You may be dealing with a new system of professionals such as Child Protective Services (CPS), police, medical, and legal systems. You may also be responding to the behaviors and emotions related to your child's disclosure, the investigative and legal process, and/or the sexual abuse. Facing all this may challenge every resource you have.

This booklet gives basic information about how the legal system responds to allegations of child sexual abuse. It is important that you ask questions and find help as you and your child travel through this process.

EMOTIONAL RECOVERY

Many people prefer to take care of their own problems, worries and troubles, but when your child has been abused, the stress of the experience (disclosure and investigation), and the negative effects of the abuse, really need to be discussed with a trained counselor or therapist.

EVERY CHILD IS DIFFERENT

Not every child experiences sexual abuse the same way, some children will have a few effects, while others may experience many. Counseling is designed to resolve the problems caused by abuse and works toward preventing future problems.

Counseling may not be a “one-shot thing.” Your child may successfully work through all the current issues. However, later on, as he or she grows older and enters different developmental stages (e.g. adolescence, young adulthood, parenthood) new issues may arise and counseling should be sought again. This does not mean the initial counseling, you, or your child is a failure, rather it simply means that as your child is adjusting to this new life stage – just like his or her peers – the issues related to his or her abuse may be complicating an already rough transition and need to be addressed.

COUNSELING FOR BROTHERS AND SISTERS AND YOU

Counseling should not just be considered for your child, who has been victimized, but also for his or her siblings, and yourself. The stress of victimization and disclosure affects all members of the family.

The stress of victimization and disclosure affects all members of the family.





EFFECTS OF CHILD SEXUAL ABUSE

The degree of trauma and the effects of child sexual abuse are not the same for every child. Some typical effects include one or more of the following.

Some children experience *emotional effects*:

- feelings of guilt, shame, anxiety
- feeling depression or grief
- repressed anger
- impaired ability to trust
- blind trust—trusting anyone
- blocked feelings—feeling numb

Some children experience *behavioral effects*:

- withdrawing from friends and family
- destroying property
- using alcohol or drugs
- acting out

Some children experience *physical effects*:

- injuries
- pregnancy
- sexually transmitted diseases
- changes in eating or sleeping patterns

Some children experience *cognitive effects (effects on thinking and understanding)*:

- shortened attention span
- concentration difficulties
- school problems
- low self-esteem
- helpless victim mentality

Some children experience *sexual effects*:

- being re-victimized
- victimizing others
- being sexually overactive

WHO COMMITS SEXUAL ABUSE?

Most children are sexually abused by someone they know. Experts estimate that only 10-30% of perpetrators are strangers—the rest are family members or acquaintances.



There is NO psychological test that can tell whether someone is a child molester. John E.B. Myers, an expert on child abuse, wrote an excellent resource, *A Mother's Nightmare: Incest,*

A Practical Legal Guide for Parents and Professionals (Sage 1997). Myers quotes researchers Nicholas and Molinder who explain that “No test, no device, has the power to pick out a sexually deviant person from any other person in a crowd.” Even the clinical interviews used in some custody evaluations cannot prove or disprove someone is a molester. There simply is no “typical” child molester profile.

Perpetrators of child sexual abuse rarely abuse children in a sudden attack. Most spend time with the child—



and the child's family members—to earn their trust. This “grooming” can include giving a child gifts, sharing private secrets, tempting a child to break rules, or taking actions a child may find threatening. Grooming is designed to keep a child from disclosing the abuse and keep the molestation a secret.

DISCLOSING CHILD SEXUAL ABUSE

Most children do not report sexual abuse immediately after it happens. Child molesters manipulate victims to discourage them from telling anyone. This can be as obvious as a direct threat, such as “I’ll hurt your family if you tell” or be more subtle, such as bribing or isolating a child.

“I have something to tell you, but you have to promise not to tell anyone.”

When children do disclose, the way they tell someone varies. Some children tell a friend or adult directly, but

others reveal the abuse by accident. Other children talk about abuse indirectly. They might hint at a problem situation, but not talk about it directly. For example, they may say to an adult “Don’t let my sister wear a dress to Grandpa’s house.” Some children try to bargain with the person they are telling with a comment such as “I have something to tell you, but you have to promise not to tell anyone.”

The first time a child tells someone about abuse, she or he often does not disclose everything that happened. It is also very common for children to later retract their first statements, particularly as stress from the legal system or family disruption occurs.

SHOULD I QUESTION MY CHILD ABOUT WHAT HAPPENED?

It is natural to want to question a child about what happened to them. Do NOT do this. Parents or other caretakers who question their children about sexual abuse risk being accused of “coaching” the child.

If you suspect abuse, get your child to a neutral, objective professional as quickly as possible.



THE LEGAL SYSTEM IN CHILD SEXUAL ABUSE CASES

The legal system can be very confusing to people who don't work in it and even more confusing when child sexual abuse is involved.

As a parent or other adult who wants to protect a child victim, you may feel that the issue of abuse is clear and the perpetrator should simply have no contact with the child-victim and be jailed. The courts, however, must remain neutral until a case is decided. Courts must protect the rights of people accused of child sexual abuse and also protect victims. This can be extremely frustrating for a victim and her or his family members.

ONE CHILD, MANY CASES

Different issues are decided in different types of cases. An allegation of child sexual abuse can involve all or some of these:

- Child Protective Services (CPS) investigation—if no adult is protecting a child this can lead to a Child In Need of Assistance (CINA) case against parents or guardians.
- Criminal case
- Protective or Peace Order case
- Family Law case (custody, divorce, visitation)
- Tort case (a lawsuit seeking money or other damages)

Each of these may involve different judges, lawyers, and parties.



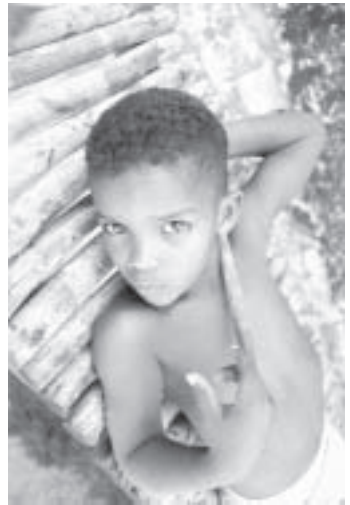
SEXUAL ABUSE – A LEGAL TERM

Courts and lawyers sometimes use words in special ways. One of the more confusing terms in the law is “**sexual abuse of a minor**” or “**child sexual abuse.**”

“**Sexual abuse**” of a child is NOT just that a person sexually molests or exploits a child. In Maryland, “sexual abuse of a minor” means that the person committing the sexual molestation was a:

- “parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child” OR
- “any household or family member”

Other types of people, such as strangers or acquaintances who are not taking care of a child, can still be charged with a crime for sexually touching a child, but the crime is not called “sexual abuse of a minor” and there are differences in how the legal system responds.



CHILD PROTECTIVE SERVICES

When Does Child Protective Services Investigate?

Child Protective Services (CPS) is part of the state government and has the authority to investigate when certain types of child abuse or neglect are suspected, including sexual abuse. If CPS finds that a child is at risk of harm, it can ask the

Court to order that a child be removed from a home and placed in foster care.

Previously, the term “sexual abuse” was defined. It is helpful to understand this special definition because when “sexual abuse” of a minor is alleged, only then will Child Protective Services become involved. In other words, if the child molester is related to, lives with, or has responsibility for the child-victim, then CPS will investigate. If they find child sexual abuse occurred, CPS will take steps to make sure that the perpetrator no longer has access to the child and the child is safe.

If the child molester is NOT someone who is related to, lives with, or has responsibility for the child-victim, then CPS will NOT become involved.

Examples: CPS would investigate if the child molester was a parent, babysitter, parent’s live-in boyfriend or girlfriend, grandparent or other family member.

Examples: CPS would not investigate if the child molester was a stranger, a neighbor who was not taking care of a child, or friend of the family who was not babysitting or supervising the child.



AFTER THE CHILD PROTECTIVE SERVICES INVESTIGATION

When CPS investigates an allegation of child sexual abuse, a social worker or other caseworker tries to determine what really happened. At the end of an investigation, CPS will make one of three statements about the abuse:



- “RULED OUT” – this means the investigation showed abuse did NOT occur. For example, CPS may have learned that the alleged abuser was out of town when the abuse supposedly occurred.
- “INDICATED” – this means there is “credible evidence” that the abuse did occur.
- “UNSUBSTANTIATED” – this is the trickiest term. It means that CPS could not determine what happened - there was “an insufficient amount of evidence” to make a finding either way. It does NOT mean that the abuse did not happen, just that at the time of the CPS investigation, they could not make a decision. Many times, more evidence will come to light later and abuse can be proved in another type of case (for example, a family law or criminal case.)

CPS AND CRIMINAL CASES

The CPS investigation is separate from any criminal case. The report that CPS believes child sexual abuse is “indicated” does not mean that perpetrator will be convicted of a crime (or vice versa).

CPS AND FAMILY LAW AND PROTECTIVE ORDER CASES

In Family Law and Protective Order Cases, the CPS report is only one piece of evidence the judge may consider when deciding whether sexual abuse occurred.

CRIMINAL CASES

This section provides a brief overview of the criminal process. For additional help understanding these issues, contact the Sexual Assault Legal Institute, 301-565-2277, the Maryland Crime Victims Resource Center, 301-952-0063, or visit the Maryland Coalition Against Sexual Assault (MCASA) at www.mcasa.org.

The Role of the Victim in Criminal Cases

Criminal cases are cases by the government against the alleged perpetrator. Prosecutors represent the State of Maryland, not the victim. Victims are witnesses in these cases, not “parties.” Good prosecutors consider the wishes of the victim-witness, but also must consider whether they can prove their case and the seriousness of the crime. This can lead prosecutors to dismiss some cases against the wishes of a victim or to go forward in cases where the victim asks to have the charges dropped.

Victims and their families are not required to speak with attorneys for the defendant (perpetrator). If you are contacted by an investigator, be sure you know who they are working for before you decide whether to speak with them. Consult with your own lawyer (or the prosecutor if you don't have a lawyer) if you have any questions.



Victim Address Confidentiality

From the very beginning of a case, ask the police, prosecutor, and court to keep your address confidential. Even if the perpetrator knows where you live, address confidentiality can help protect you from invasion of privacy.



VICTIM NOTIFICATION FORM

It is vital that you file a “Crime Victim Notification and Demand for Rights” form as soon as a case is indicted. These should be mailed to you or provided by the State’s Attorney’s office. Ask for one if you are not provided with one.

HIV TESTING

Maryland law permits sex crimes victims who were exposed to a perpetrator’s bodily fluids to request that the perpetrator be tested for HIV. This request begins with the prosecutor handling the case. Victims are strongly encouraged to seek help from one of the legal resources listed at the back of this booklet if they wish to pursue HIV testing.

PRIVACY ISSUES

Some minors, particularly teens, may have mental health or other records they wish to keep confidential. It is important to contact a victim’s attorney (such as those at the Sexual Assault Legal Institute (SALI) or the Maryland Crime Victims Resource Center) if this is a concern. Prosecutors do not represent the victim, they represent the government, so may not be able or willing to help protect these records.

ISSUING CHARGES

In criminal child sexual abuse cases, the police generally investigate and decide whether to ask the court to charge someone. However, citizens can also ask the court to charge someone by filing an “application for statement of charges” with a court commissioner.

Commissioners issue charges if there is “probable cause” to believe a crime occurred. In sex crimes cases, charges also may be presented to a grand jury. If the grand jury believes that a crime occurred, they will issue an indictment. In some cases, charges first come from the commissioner and then the prosecutor presents the case to a grand jury.



What Is Considered When Issuing Charges?

Maryland’s sex crimes laws take several things into account:

- What the sexual conduct was (vaginal intercourse, oral sex, penetration with an object, fondling)
- Age of the victim and offender
- Whether the victim was intoxicated, physically or mentally impaired, or unconscious
- Relationship between the victim and perpetrator
- Whether weapons or extreme violence was used
- Exploitation of a minor (for example, child pornography)

A list of all sex crimes can be found at www.mcasa.org under the section, Laws & Legislation.



JUVENILE OFFENDERS

When the perpetrator of a crime is a juvenile (under 18), sometimes the case starts in the juvenile justice system. However, a prosecutor may ask to move the case to adult court. In other cases, the perpetrator may be charged as an adult but ask to be “waived” into the juvenile court. The most important factors the legal system considers when deciding if an offender will be tried as a juvenile or an adult are the type of crime (for instance, rape with a weapon will be treated differently than fondling) and the record of the alleged perpetrator.

The goals of the juvenile justice system are very different than the goals of the adult criminal justice system. Juvenile court seeks to rehabilitate and reform the perpetrator, not to punish. The juvenile justice system reviews cases periodically and may change a “sentence” at any of these reviews. Perpetrators in a juvenile justice facility are released when they turn 21.

PRE-TRIAL

Most defendants charged with a serious sex crime or child sexual abuse are arrested. After arrest, a defendant may be released on bail. In a small number of cases, the courts may refuse to grant bail, but this is rare.

When a defendant is released on bail, the court may impose “conditions of release.” In child sexual abuse cases, these conditions should include that he or she stay away from the victim.

Suggestion: Talk with the prosecutor in your case about what conditions of release are needed to keep the child-victim safe.

PLEA-BARGAINS

Many criminal cases do not go to trial, they end with a “plea-bargain.” The perpetrator agrees to plead guilty in return for a deal on sentencing. In child sexual abuse cases, these types of deals can help child-victims by keeping them off the witness stand and sparing them the trauma and uncertainty of trial.

Many prosecutors will consider a victim’s wishes when deciding whether to agree to plea bargain, but the final decision is up to the prosecutor and the defendant. The victim cannot veto a plea agreement.

Suggestion: It is important to communicate with the prosecutor’s office about what you and the victim believe would be the best outcome. Most prosecutors’ offices have victim-witness coordinators who can help you with this; however, these coordinators work for the State, not for the victim-witness. You may wish to consider obtaining an attorney for the child-victim.

CRIMINAL TRIALS: STANDARD OF PROOF

In criminal cases, the State has the burden to prove that a crime occurred and the “defendant” (the alleged child molester) is presumed innocent. A jury or judge decides if the evidence proves “beyond a reasonable doubt” that the crime occurred. If this is proved, the defendant is convicted.



CRIMINAL TRIALS: TESTIMONY VIA CLOSED CIRCUIT TELEVISION

In some cases, a child would become too upset or would be emotionally harmed by being in the same room as the perpetrator. If the court finds that the child-victim would suffer “serious emotional distress such that the child victim



cannot reasonably communicate,” the court can permit the child to testify via closed circuit television. The court must hold a hearing about how a child would be harmed before ordering this type of testimony. (Criminal Procedure section 11-303.)

Criminal Trials: Hearsay – What a Child Said

One of the most frustrating aspects of criminal child sexual abuse cases has to do with “hearsay.” Rules regarding hearsay can sometimes – but not always – prevent witnesses from telling a jury what a child has said about child sexual abuse. This area of the law is complicated and changing. You may want to talk with the prosecutor about whether this is an issue in your case. Sometimes hearsay rules lead prosecutors to enter plea bargains or dismiss cases, particularly if the child-victim will not testify.

SENTENCING

Sentencing is decided by the judge who presided over the trial. Victims have the right to submit a “victim impact statement” to the court to help the judge understand the effects of the sexual abuse on the victim. These statements can be written or oral or both. A victim representative (typically a family member) can present this statement for a child. Victim impact statements are also considered if a defendant is up for parole (early release from prison).

Suggestion: Prepare a written victim impact statement to submit to the court and also attend sentencing in person to tell the court about the impact of the abuse. (See the list of Recommended Resources at the end of this booklet for help in preparing these.)

In addition to jail time or probation, sentencing can include conditions of probation such as an order that the perpetrator not contact the victim or attend sex offender treatment. Convicted perpetrators can also be ordered to pay “restitution” to victims for expenses related to the crime.



Suggestion: Keep documentation of all expenses related to the abuse (counseling, medical care, etc.) and provide copies to the prosecutor so she or he can ask for restitution. Talk to the prosecutor about this as soon as possible and definitely before a trial or plea bargain.

Suggestion: Let the prosecutor know if you want the perpetrator to be ordered to stay away or impose other conditions of release.



CRIMINAL APPEALS

After the trial in a case is completed, defendants may appeal their conviction or sentence. Appeals can be based on what evidence was or was not heard, or on a variety of other issues.

The victim will not have to testify at an appeal, but sometimes the appeals court will order that the defendant be released or the trial be done over. Most appeals must be filed 30 days after the end of a case, but some “post-conviction” proceedings do not have that time limit.

NOTIFICATION OF RELEASE FROM JAIL

Register with VINE

If a perpetrator is incarcerated, the victim (or any other person) can register with VINE (Victim Information Notification Everyday), a service that allows a victim to check on the status of the offender and notifies the victim of the offender’s release or transfer, including release pending appeal.

Call 1-866-634-8463 and press zero for an operator and ask for information about how to register for VINE in Maryland. Procedures are being changed to make it easier to register. You should also fill out a Victim Rights Notification form.

PEACE ORDERS AND PROTECTIVE ORDERS

Peace Orders and Protective Orders are both types of emergency orders that can help protect someone from certain types of crimes, including sexual offenses. Both have the same basic process:

- 1) A victim (or parent or guardian if the victim is a child) goes to court and fills out a form under oath explaining to the judge what has happened. If the courts are closed, the victim can go to the commissioner's office – they are open 24 hours a day.
- 2) If the judge finds there is reasonable cause to believe that the acts occurred, a temporary order is issued. (If the victim went to a commissioner, an "interim order" is issued and a hearing for a "temporary order" is set within a few days.)
- 3) If child sexual abuse is alleged, Child Protective Services will conduct an emergency investigation. (See previous discussion of special definition of "child sexual abuse.")
- 4) The temporary order is served on the other party.
- 5) After the temporary order is served, the court holds a hearing and the victim must prove what happened, which includes him/her testifying.
- 6) The court decides whether to issue a longer order.



COMPARING PEACE AND PROTECTIVE ORDERS

PROTECTIVE ORDERS	PEACE ORDERS
<p><i>Who is eligible?</i></p> <ul style="list-style-type: none"> • Current & former spouses • Cohabitants for 90 days • Persons related to the respondent by blood, marriage or adoption • A parent, stepparent, child or stepchild (under certain circumstances) • Vulnerable adult • Individual who has a child in common with the respondent 	<p><i>Who is eligible?</i></p> <p>Anyone who is NOT eligible for a protective order, but who is a victim of abuse.</p>
<p><i>How is abuse defined?</i></p> <ul style="list-style-type: none"> • Act that causes serious bodily harm • Act that places the petitioner in fear of imminent serious bodily harm • Assault • Rape or sexual offense • False imprisonment • Stalking (effective 10/1/05) 	<p><i>How is abuse defined?</i></p> <ul style="list-style-type: none"> • Act that causes serious bodily harm • Act that places the petitioner in fear of imminent serious bodily harm • Assault • Rape or sexual offense • False imprisonment • Harassment • Stalking • Trespass • Malicious destruction of property
<p><i>Which Court?</i></p> <p>Circuit or District Court (or commissioners if courts are closed)</p>	<p><i>Which Court?</i></p> <p>Only District Court (or commissioners if courts are closed)</p>

COMPARING PEACE AND PROTECTIVE ORDERS

PROTECTIVE ORDERS	PEACE ORDERS
<p><i>How soon after an act must a petitioner file for a protective order?</i></p> <p>There are no limits in the law, but a judge might not look favorably on a delay in reporting.</p>	<p><i>How soon after an act must a petitioner file for a protective order?</i></p> <p>The act must have occurred within 30 days of filing the petition.</p>
<p><i>What kinds of relief are available?</i></p> <ul style="list-style-type: none"> • Refrain from contacting, attempting to contact, or harassing victim • Refrain from entering the residence of the victim • Vacate family home • Remain away from victim’s employment, school, or temporary residence • Remain away from child care provider or child’s school • Award custody of minor child • Establish temporary visitation • Award emergency family maintenance • Award use and possession of a jointly titled vehicle • Counseling • Surrender firearms 	<p><i>What kinds of relief are available?</i></p> <ul style="list-style-type: none"> • Refrain from abusing or threatening victim • Refrain from contacting, attempting to contact, or harassing victim • Refrain from entering the residence of the victim • Remain away from victim’s employment, school, or temporary residence • Counseling

PEACE AND PROTECTIVE ORDERS IN SEXUAL ASSAULT CASES

Adults seeking to protect a victim of child sexual abuse may consider whether to file for a peace order or protective order.

However, these may not always be the best options because they can expose the child-victim to the perpetrator and may not provide much additional protection if a perpetrator has already been arrested.

On the other hand, if issues such as temporary custody need to be resolved or there is a risk of violence from the perpetrator, seeking an order may be a good option.

Keep in mind that if a case involves “sexual abuse” of a child as defined by the law (if the child molester is related to, lives with, or has responsibility for the child-victim), then Child Protective Services will investigate. The court will then receive a Child Protective Services Report prior to the hearing on the final Peace or Protective Order. (See previous sections on “sexual abuse” of a minor, and child protective services.)

These are complex issues and should be discussed with an attorney. (See Recommended Resources Section on page 28.)

FAMILY LAW – CUSTODY AND VISITATION

Allegations of child sexual abuse generally come up in family law cases when one parent believes the other parent or someone in the other household (such as a mother’s boyfriend) is sexually abusing their child.

Child Protective Services may be involved when the allegations first come to light, or they may stay out of the case because the child is not living with the alleged abuser and the court is already involved.

Criminal cases are often completed prior to custody determinations. There are many situations, however, where no criminal charges have been brought, but child sexual abuse is an issue for the custody case.

REQUIRED COURT DETERMINATIONS

If a court finds that there are “reasonable grounds to believe that a child has been abused,” the court is required to determine whether abuse is “likely” to occur in the future. Unless the court specifically finds that “there is no likelihood of further child abuse,” the court is required to deny custody and all unsupervised visitation. Supervised visitation may be ordered if it can assure “the safety and the physiological, psychological, and emotional well-being of the child.” (See Family Law Article section 9-101.)

Many courts, however, view allegations of child sexual abuse with suspicion. Moreover, many allegations are difficult to prove because of the age of the child or a child’s reaction to the court process and dissolution of his or her family.

PROFESSIONALS THE COURT MAY ASK FOR HELP

Courts may seek help from other professionals when deciding custody cases, and frequently do in cases involving allegations of child sexual abuse.

Custody Evaluators are mental health professionals (often social workers) who interview the parents, child, and others involved with the family and report their findings to the court. Their evaluations can be in depth or superficial. Many work on staff for the courts. Private parties and their attorneys may also hire someone to conduct a custody evaluation.

Child’s Attorneys are appointed by the court to represent the child, the child’s best interest, or both. Many legal professionals believe a child’s attorney should be routinely appointed in cases involving disputed allegations of child sexual abuse. Parties may file a motion asking that an attorney for a child be appointed even if they do not have an attorney themselves.

Other Evaluations—Other types of evaluations might also be ordered by the court or requested by attorneys. These may include a psycho-social evaluation or other tests conducted by mental health professionals.

FALSE ALLEGATIONS IN FAMILY LAW CASES

False allegations of child sexual abuse generally fall into two categories—good faith but mistaken beliefs and maliciously false.

Good faith but mistaken beliefs occur when one parent truly believes that sexual abuse happened, but the behavior was innocent or the identity of the perpetrator incorrect. In these cases, a parent who truly believed abuse occurred but did nothing should be criticized as neglectful of the child.

Maliciously false allegations are abusive to a child in and of themselves, but are also fairly infrequent.

“...litigants in cases involving child sexual abuse allegations need competent lawyers with experience handling these types of cases.”

LAWYERS FOR PARENTS

Many family law cases in Maryland involve litigants who are “pro se”—meaning they have no lawyer.

However, litigants in cases involving child sexual abuse allegations need competent lawyers with experience handling these types of cases. These cases are extremely difficult to prove

and a parent attempting to protect her or his child will be at a strong disadvantage without an attorney. (A list of resources is included at the end of this booklet.)



CUSTODY – PHYSICAL AND LEGAL

There are two parts to custody. “Physical custody” is where a child lives. “Legal custody” is who makes decisions about the major issues in a child’s life such as education, health care, religion, and discipline.

“Joint legal custody” requires that the child’s parents get along well enough to discuss these major issues and

make decisions together. In cases where one parent has accused the other of sexually abusing a child (or failing to protect a child from sexual abuse), it would be extremely rare for a joint legal custody arrangement to work. Parents in these cases should use great caution before agreeing to joint custody.

VISITATION

Parents generally have a right to have a relationship with their children. However, if both parents abuse or neglect a child, the courts may terminate parental rights. Oddly, if only one parent is abusive, that parent’s parental rights cannot be terminated – it has to be terminated for both or neither. However, courts may restrict an abuser’s visitation with his or her child by requiring that the visit be supervised or even suspended.



Keep in mind that if a court does not or is unable to find that abuse occurred, visitation will almost certainly be ordered. In these cases, it is often helpful to keep a child in counseling so she or he has a professional outside the family keeping an eye on things. This professional would then report any future abuse and help the child identify “good touch” and “bad touch.”

CUSTODY CASES

Custody cases, including divorce cases involving custody, start with one parent filing a “Complaint.” This is served on the other side, who then has 30 to 90 days to “Answer” depending on where they were served. If you do not have an attorney, there are “pro se” forms for filing a custody case available in the courthouse and at www.courts.state.md.us/family/forms/.



Emergency Custody

In cases involving child sexual abuse, the parent who is trying to protect the child often files a request for emergency custody. It is difficult to do this without a lawyer, but these requests often get a case into Court very quickly and help to stabilize a child’s home during an investigation.

Temporary or “Pendente Lite” Custody

In most counties and cities in Maryland it takes many months before a custody case goes to trial. Courts may set temporary custody and visitation orders pending a trial. This may be before or after custody evaluations or other investigations into child sexual abuse are conducted.

“Permanent” Custody and Modifying Custody

“Permanent custody” refers to a custody order created at the end of a trial on a case’s merits. However, custody is never really permanent. A parent can ask the court to modify at any time until the child turns 18 if there is a “material change in circumstances.” Sometimes children disclose sexual abuse only after her or his parents are divorced or custody has been decided. The custody case can be reopened because the disclosure of sexual abuse is a material change in circumstances.

FAMILY LAW – DIVORCE

Beginning in October 2003, cruelty of treatment or excessively vicious conduct towards a minor child of the complaining party became grounds for absolute divorce in Maryland.

Child sexual abuse is likely to be considered cruelty of treatment or excessively vicious conduct.

Consult with a competent attorney with experience in domestic violence or sexual abuse cases.



TORT LAWSUITS

Victims of child sexual abuse may wish to consider suing the perpetrator or other responsible people, businesses, or entities.

There are strict deadlines for filing these lawsuits and victims or their caretakers should consult a competent tort attorney as soon as possible. For suits based on child sexual abuse, recent changes in the law give the victims until the age of 25 to sue. For other lawsuits, the time limits may be as little as one year, although this generally starts once the victim turns 18.



If a suit will be against the government (for instance, for a school's failure to protect a student from a sexual assault), there are even shorter deadlines for giving notice of a claim as required by "tort claims acts."

There have been a number of bills introduced in recent years regarding deadlines for filing lawsuits in child sexual abuse cases, so it is important to consult with an attorney to get up-to-date information.

The Sexual Assault Legal Institute, part of the Maryland Coalition Against Sexual Assault, has a guide for victims considering civil lawsuits, *Civil Tort Lawsuits for Survivors of Sexual Assault and Child Sexual Abuse*, (MCASA 2005). Call SALI at 301-565-2277 or visit www.mcasa.org for additional information.

CONCLUDING THOUGHTS

Discovering your child may have been sexually abused is one of the most terrifying experiences a parent can have. These cases are rarely clear or easy to prove. It is difficult to even know exactly what happened.

Children, by their very nature, may be unable to clearly express to anyone what happened to them, much less able to explain the events to a judge or jury.

It is vital that you continue to seek information and knowledge about the legal system, the emotional needs of your child, and safety issues for your family. Please read this booklet and discuss its contents with the professionals with whom you are involved. However, please also find support for yourself, whether it be from a trusted family member, friend, religious leader, or a counseling professional. Your child needs your support; however, you too need to be supported so you can support your child.

Please continue to work with the legal system and challenge it to work in your child's best interests. And even if the legal system does not work as you wish it to, please continue to keep your focus on the needs of your child.

RECOMMENDED RESOURCES

A Mother's Nightmare: Incest: A Practical Guide for Parents and Professionals, John E.B. Myers, Sage Publications, 1997. This book provides excellent and practical advice for parents of incest victims.

Child Sexual Abuse—A Guide for Attorneys and Other Court Professionals, Maryland Coalition Against Sexual Assault, 2005. This guide was developed for legal professionals as a companion to this booklet. Available online at www.mcasa.org.

Civil Tort Lawsuits for Survivors of Sexual Assault and Child Sexual Abuse, Maryland Coalition Against Sexual Assault, 2005. Call SALI at 301-565-2277 or visit www.mcasa.org for additional information.

Sexual Assault Legal Institute • Maryland Coalition Against Sexual Assault
301-565-2277 or 877-496-SALI (toll-free)

Provides legal services for victims of sexual assault.

Maryland Crime Victims Resource Center
301-952-0063

Provides legal services for victims of crime.

Family Law Hotline
1-800-845-8550

A project of the Women's Law Center of Maryland & the Maryland Legal Aid Bureau.

Rape Recovery and Sexual Assault Programs

Regardless of when and where the violence occurs, help is available to every victim through the Hotlines at the 18 Rape Recovery programs that are members of the **Maryland Coalition Against Sexual Assault**.

Allegany County
Family Crisis Resource Center
301.759.9244

Anne Arundel County
Sexual Assault Crisis Center
410.222.7273

Baltimore City
TurnAround, Inc.
410.828.6390

Baltimore County
TurnAround, Inc.
410.828.6390

Calvert County
Crisis Intervention Center
410.535.1121

**Caroline, Dorchester, Kent,
Queen Anne's, Talbot Counties**
For All Seasons, Inc.
410.820.5600

Carroll County
Rape Crisis Intervention Service
410.857.7322

Cecil County
Rape Crisis Program
410.996.0333

Charles County
Center for Abused Persons
301.645.3336

Frederick County
Hearty House, Inc.
301.662.8800

Garrett County
The Dove Center
301.334.9000

Harford County
Sexual Assault/Spouse Abuse
Resource Center
410.836.8430

Howard County
STTAR Center
410.997.3292

Montgomery County
Victim Assistance & Sexual Assault
Program
240.777.1355

Prince George's County
Sexual Assault Center
301.618.3154

St. Mary's County
Walden-Sierra, Inc.
301.863.6661

**Somerset, Wicomico, Worcester
Counties**
Life Crisis Center, Inc.
410.749.4357

Washington County
CASA, Inc.
301.739.8975

SALI

Sexual Assault Legal Institute

**Post Office Box 8782
Silver Spring, Maryland 20907**

301-565-2277 ■ Telephone

877-496-SALI ■ Toll-free

301-565-3619 ■ Fax

A program of

MCASA
Maryland Coalition Against Sexual Assault