

BACK TO BASICS: CHILD PHYSICAL ABUSE CASES

THE CHILD ABUSE PROSECUTION PROJECTS' BACK TO BASICS SERIES

The Association of Prosecuting Attorneys, Child Abuse Prosecution Project is pleased to offer its Back-to-Basics Series, a "to-do" list for both new and experienced child abuse prosecutors and their multi-disciplinary teams.

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1. Determine whether you need an expert to prove that injuries were caused by abuse (and not accidental trauma) and identify who you will use – get CV and expert report, if needed. If the child is too young to provide an explanation for their injuries or they are not competent to testify, you will likely need an expert to testify that the child's injuries are not consistent with histories provided by the defendant and not consistent with accidental trauma. If you have a confession or admission, or even an eyewitness, you may still want to use an expert to refute any attempts by the defense to minimize the statement or the eyewitness testimony.

2. Prepare with expert to explain injuries AND potential mechanism. In addition to having the expert testify that the child's injuries were caused by abuse, you will need the jury to understand HOW the injuries could have occurred and WHY the explanations given by the defendant are not true. With an understanding of the mechanism of injury, you can easily explain away or refute new theories put forth by the defense and better explain your case to the jury. At some point, the hospital will likely also have explained some of this to the defendant or caregiver during the course of treatment. With this understanding, you can better explain the changing histories to the jury, as defendants often add and change their initial statements when they realize people aren't believing them.

3. Read ALL of the medical records – particularly looking at any statements made and histories given by the caregivers/perpetrators and any information that could assist in them in formulating a defense. Often child abuse cases involve several hundred pages of medical records and this task

can be tedious but it is critical. Generally, medical professionals document any information provided by the parents or caregivers during the hospital stay and will also note any suspicious or concerning behavior. These notes can be critical in arguing consciousness of guilt to the jury and explaining the evolution of the defendant's story, as explained above.

4. If child is non-verbal or otherwise unable to provide information, establish exclusive custody. Make sure all other caregivers or potential caregivers of the child have been identified, and interviewed if necessary. When an infant or otherwise non-verbal child is seriously injured, you will likely need to prove your case via circumstantial evidence (if the defendant does not admit). After determining the timeframe for the injuries from your expert, make sure that the investigation includes accounting for anyone else who might have cared for the child during that period and eliminating them as a possible source for the injuries.

5. If other children were present in the home when the child was injured, make sure those children are interviewed about the child's injuries and any prior abuse or violence in the home. This step should be done as early in the investigation as possible and can often be done in conjunction with CPS. While these types of crimes are rarely committed in the presence of other adults, they are often done when there are multiple young children in the home. These children, if they are verbal, should be interviewed to assess their safety and to determine whether they saw any abuse or mistreatment of the victim.

6. Utilize cell phone and social media technology, including pretext calls and recorded jail calls where possible,

to obtain additional explanations proffered by the defendant and possible admissions. Obtaining any text (or other) messages sent by the perpetrator(s) after the child presented to the hospital is critical to your case. Often as the authorities (medical, CPS, police) confront the offender caregiver about the injuries/inconsistencies, the offender will communicate with the other caregivers and family members and try out different explanations or try to plead their case. These real-time communications can be critical in rebutting a defense of mistake or accident. Where possible, a consensual call should be utilized. After the arrest, if the defendant is incarcerated, efforts should be made to obtain and listen to the defendant's calls for admissions, apologies, or additional inconsistent statements.

7. Chart ALL histories and explanations for injuries provided by the perpetrator and/or caregivers and discuss them with your expert.. As the investigation into the injuries progresses, the offender will gain information on the mechanism of injury and how authorities know their initial account was untrue. As this information is provided, offenders often change and adjust their accounts in response to this information. Many will "remember" an additional fall or incident that closely corresponds to the mechanism explained by the doctors. These inconsistencies can be used as consciousness of guilt at trial and you will need to review them with your expert so they can directly refute them during testimony.

8. Try to determine the defense, i.e. are they arguing that the child was not abused or that the defendant is not the person who harmed the child, and whether they will be calling an expert.

Research their expert, try to get notes of testimony from similar cases and review their CV and report with your expert. The defense is really forced to choose between defenses and, if there are a number of caregivers and no admissions, arguing that someone else did it can be easier. Regardless of whether the defense is arguing the science, an expert should be utilized to explain the severity and nature of the injuries and refute accidental causes.

9. File pre-trial motions to admit prior domestic violence or physical abuse of other children (or in prior homes of the defendant) to rebut defenses. This 404(b), or prior bad acts, evidence may be admissible to rebut a defense of mistake or accident and may also be admissible to explain a constellation of injuries that occurred over a period of time and should have been noted by the other caregivers but were not reported.

10. Pull and prepare (if standard charges do not exist) to explain the specific issues in your trial – i.e. exclusive custody, consciousness of guilt and 404(B) evidence.