

BACK TO BASICS: DRUG-FACILITATED SEXUAL ASSAULTS AGAINST A CHILD

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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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STANDARD FOR ALL CASES:

- Review discovery
- Check elements of your charging document for what you have to prove
- Send subpoenas
- Review testimony with all witnesses
- Prepare trial memo
- Consider motions in limine
- Prepare jury instructions

1. Meet with victim (depending on age, consider whether it's appropriate to provide them a copy of their statement and/or interview)

- Did the victim take the drug knowingly or unknowingly?
- If victim knowingly consumed – consider how to approach in voir dire?
- Put the blame on defendant – where it belongs

2. Immediately check for any available surveillance (before its gone)

3. Immediately identify any relevant electronic devices – phones, laptops, cameras looking for texts, pics, videos, social media posts

- Seize
- Search Warrants

4. Identify any third party witnesses to both victim's and defendant's demeanor – before, after or both (these individuals may/may not have been identified or interviewed by LE - make sure they are)

5. Meet with toxicologist – learn everything you can about the drug

- Methods of delivery
- Half life
- Can we extrapolate what the level of intoxication was at a specific time
- What are the expected effects
- What variables determine the speed of onset and the extent of the effects

6. Is child hearsay available in your jurisdiction?

- If so, pull relevant statutes/case law
- If not, can wanted testimony come in through other means

7. Is the forensic interview admissible?

- Under what theory
- Have theory ready

8. Was there a medical examination and if not, should there be?

- Be able to explain why not

9. Is there forensic evidence that proves sexual contact occurred?

- If not be able to explain why not - expert testimony

10. What do you know about the defendant?

- Where would the defendant have obtained the drug?
- How familiar is the defendant with the effects of the drug?

11. If the defendant claims consent (and consent would be a defense), consider whether the value of his admission regarding sexual contact outweighs the fact he/she may not have to testify if you admit the statement