

## Child Sexual Abuse Allegations in Custody Cases

By Hilary Vesell

Sexual abuse allegations made by barely articulate children or troubled youth, sometimes supported by an anxious parent, are rarely believed.<sup>i</sup> A child will generally need to tell approximately nine different adults before their story might be believed, requiring perseverance beyond what most adults would endure when addressing less emotionally complex issues.<sup>ii</sup> This statistic does not include emotionally disturbed and troubled children who have a history of lying, drug or alcohol abuse, as generally no one will believe them.<sup>iii</sup> Offenders also realize that if they restrict themselves to children preschool age or younger, their chances of conviction are essentially zero.<sup>iv</sup> However, it is only a minority of children who disclose abuse at the time it occurred, as many children won't even realize whether contact was sexual or not until they are much older. Predators understand that their word will almost always be taken over that of a child. Accordingly, we must look to child predator behavior and victim symptomology to understand and identify this type of sexual abuse.

A subgroup of predators target children because they are sexually attracted to children. Other predators use children for the intimacy that they are too timid or impaired to obtain from a consenting adult. Still other predators sexually abuse children because they feel entitled to do so (i.e. individuals with anti-social personality disorder). There are still others who may molest for reasons not understood, perhaps recapitulating and acting out their own sexual abuse history.

Anti-social personality disordered individuals, one subset of predators, are especially successful at taking advantage of others. This is because most people believe everyone has some good in them.<sup>v</sup> It's hard for people to imagine that some have no conscience at all, are totally devoid of normal human sympathy, don't experience shame or guilt, lie compulsively, and are never truly sorry.<sup>vi</sup> While most observers think they are good at detecting deception, research consistently shows that most people, even professional groups such as police and psychologists, are no better at detecting deception than anyone else, which is a 50% chance of detecting deception.<sup>vii</sup> Furthermore, a practiced and committed liar understands that his liberty depends on it. In summary, our assumptions that we can recognize a predator, that people are basically good, that those who are nice and likeable are also honest and good people, are the illusions of life that make predators so

successful and put children at risk.

While a predator's interest in children may be compulsive, it is always well-hidden. Accordingly, grooming is a process whereby sexual predators win the confidence of a child to maintain their silence while the abuse continues. Grooming is a pattern of behavior that teaches children to keep secrets and increasingly accept sexual behavior through incremental inappropriate touching or exposure to sexualized language and/or materials. Grooming can include flattery, increased attention, affection, touching (including kissing in non-developmentally appropriate ways) and wrestling, but could just entail a knowing or interested look. The ongoing effort required to ensure that secrets don't get leaked preoccupies the child's time and attention, isolates them from others, and impedes attending to the necessary daily, emotional, and intellectual tasks that healthy child development entails.<sup>viii</sup> This is because it may be possible for a child to keep a secret in a once a week play therapy session, but it will be more difficult in an intensive mental health treatment facility. For obvious reasons, predators often prefer little to no mental health treatment for their victims.

The internet is replete with the behavioral and emotional signs of sexual abuse. Signs of sexual abuse in children include sexually transmitted diseases/infections, signs of trauma to private areas, pregnancies, persistent or recurring pain during urination, excessive talk or knowledge of sexual topics (sexualized language or behavior that is age inappropriate), inappropriate sexual contact with other children, refusing to talk about a secret shared with an adult, not talking as much as usual, not wanting or afraid to be left alone with a certain person or people, a sudden change in eating habits, regressive behaviors or resuming outgrown behavior such as thumb sucking or bedwetting (unrelated to toilet training), overly compliant behavior, spending an unusual amount of time alone, trying to avoid removing clothing to change or bathe, child statements that he or she was abused, as well as self-harming behaviors. Emotional signs of sexual abuse include a sudden change in mood or personality (such as increased aggression, fear or withdrawal), decrease in confidence or self-image (thinks of body as repulsive, dirty or bad), excessive worry or fearfulness, increase in unexplained health problems such as stomach aches and headaches, frequent psychosomatic complaints, loss or decreased interest in school, activities, and friends, nightmare/sleep disturbance

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es, and fear of being left alone at night.

### **Children & Youth Services (CYS)**

Because sexual abuse often occurs without witnesses and little evidence outside of victim testimony, it's extremely difficult to prove and prosecute criminally, which is why most sexual predators may remain unconvicted.

When a report of sexual abuse is made, CYS will also determine if abuse or neglect is founded, indicated, or unfounded. These findings are generally limited to a parent or caretaker. CYS can conduct interviews with the child and involve the police, when necessary. CYS trumps custody. When abuse reports are indicated or founded, CYS can establish a case plan. The agency has no legal authority to compel a family to receive services, but may initiate appropriate court proceedings, when services are rejected. See 23 Pa. C.S.A. § 6370. However, if an investigation of a report of suspected child abuse does not determine within 60 days of the date of report if it is founded, indicated, or an unfounded report, and legal action has not been initiated, the report will be considered unfounded. See 23 Pa. C.S.A. § 6337(b). The service objectives of CYS include keeping children in their homes, preventing abuse, neglect and exploitation by providing services and care ordered by the court for children who have been adjudicated dependent, overcoming problems that result in dependency, providing temporary placement in a foster family home or residential child-care facility for a child in need of care, or providing a permanent, legally assured family for a child who cannot be returned to his or her own home. See 23 Pa. C.S.A. § 6373. This chapter prohibits by law disclosing the identity of any child abuse reporter.

### **Protection From Abuse Order (PFA)**

A PFA is the fastest relief available to protect a child from immediate and present danger as entailed in sexual abuse cases on behalf of a child against a household member, sexual or intimate partner or person who shares biological parenthood. See 23 Pa. C.S.A. § 6102(a). The PFA permits trial courts to suspend a respondent's rights upon a demonstration of an immediate and present danger of abuse at an ex-parte hearing. In summary, a PFA can be filed, and an ex-parte order obtained generally the same day for a period not to exceed three years. See 23 Pa. C.S.A. § 6102(a.1)(d). The terms of a PFA can vary and include no contact, peaceful contact, or peaceful contact limited to writing. A temporary PFA can be continued by agreement of the parties, but if the parties opt for a

hearing, the court decides if a finding of abuse is warranted and a permanent PFA is generally entered if there is a finding of abuse. The purpose is to forestall escalation of disputes among family members where fights can easily escalate into a dangerous situation. The court can also use its powers of equitable relief to keep people apart, where it may be prudent to do so. As the PFA is a civil remedy, it can always be withdrawn entirely.

To obtain a PFA, an objective reasonable fear of bodily harm must be proven by a preponderance of the evidence. This generally requires physical abuse, but may also include emotional abuse that results in self harm to the child.<sup>ix</sup> The statute allows a plaintiff to seek reasonable losses from the defendant as a result of the abuse such as medical, dental, relocation, moving expenses, counseling, loss of earnings or support; costs of repair or replacement of real or personal property damages, destroyed or taken by the defendant or at the direction of the defendant; and other out-of-pocket losses for injuries sustained as well as attorney fees. See 23 Pa. C.S.A. § 6108(a)(8); See also *Raker v. Raker*, 847 A.2d 720 (Pa. Super. 2004). The PFA Statute allows the plaintiff's address to stay confidential and the defendant's firearms to be taken for the duration of the active PFA. Sanctions for violation or indirect criminal contempt of a PFA include a fine of not more than \$1,000 and imprisonment of up to 6 months. See 23 Pa. C.S.A. § 6114(b)(i)

A PFA seeks to remedy the violence that can sometimes erupt in spousal, parent/child, and/or other household or similarly close situations. The PFA Act defines abuse as intentionally, knowingly, or recklessly causing bodily injury, placing another in reasonable fear of imminent bodily injury, infliction of false imprisonment, physically or sexually abusing minor children, or knowingly engaging in a course of conduct or repeatedly committing acts towards another person, including following the person, without proper authority, under circumstances that place the person in reasonable fear of bodily injury. Either party, however, may petition the court at any time to amend the order, where the court finds that the defendant committed acts of abuse subsequent to the entry of the final order, or has engaged in a pattern or practice that indicates continued risk of harm to the plaintiff. See *Dye v. McCoy*, 621 A.2d 144 (Pa. Super. 1993). Violation of the PFA established indirect criminal contempt if the order was

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sufficiently definite, clear, and specific to the contemnor activities as to leave no doubt of the conduct prohibited, the contemnor had notice of the order, the act constituting the violation was volitional, and the contemnor is found to have acted with wrongful intent. *Id.*

### **Sexual Violence of Intimidation Order (SVPO)**

A SVPO is designed to protect victims of sexual abuse and/or intimidation by their abuser. In the case of an SVPO, the abuser does not have to be a family or household member or current or former paramour. SVPOs are used in the cases of harassment and stalking where the victim is a minor and the perpetrator is an adult. An adult must file on behalf of the minor, but no relationship between the victim and perpetrator is necessary as the primary goal is the prevention of physical and sexual abuse. The victim of abuse need not suffer actual injury, but rather be in reasonable fear of imminent serious bodily injury.

An SVPO or a Protection from Intimidation Order (PFI) is the fastest relief available to protect a child from immediate and present danger of sexual violence or intimidation from a stranger. A protection order may be issued where the hearing officer deems it necessary to protect the victim upon good cause shown in an ex-parte proceeding. See 42 Pa.C.S. § 62A09(a)(ii). Plaintiff must prove by a preponderance of the evidence that the victim is at a continued risk of harm from the defendant. See 42 Pa.C.S. § 62A06(b). The order then can prohibit the defendant from having any contact with the victim for at least 36 months, with no limit as to the number of extensions that can be granted. See 42 Pa.C.S. § 62A06(b); 42 Pa.C.S. § 62A07(d)(3). Under both statutes there are penalties for not only contempt of the order, but filing any of the remedies in bad faith, where a defendant can ask for actual damages and reasonable attorney fees.

### **Petition for Special Relief & Objective Testing**

If the abuse is believed to be committed by another party to the custody case, a petition for special relief can be filed. See Pa. R.C.P. No 1915.13. This relief requires the commencement of a custody action (a custody complaint or petition to modify custody filed simultaneously with a petition for special relief), if a custody action is not already pending. The court can then grant interim relief including, but not limited to, the award of temporary legal and/or physical custody. Unlike a PFA, which can be obtained the same day, it can take several weeks or months depending on the court's calendar to schedule an individual hearing

on an emergency petition. Like a PFA, this is a civil standard, requiring a preponderance of the evidence based on the best interest of the child.

As the parent trying to protect the child may present as overly anxious, the court or opposing counsel may want a psychological evaluation for this parent to rule out mental illness connected with parental alienation.<sup>x</sup> On the other hand, this concerned parent may then be able to ask for a psychosexual examination with a polygraph of the parent suspected of child sexual abuse. While a polygraph is not admissible in court, there may be no other way to determine whether an individual is a child predator as their crimes generally occur in private. Furthermore, while many well-meaning mental health professionals may get involved, it can be relatively easy for a charming, attractive, well-dressed predator to fool even mental health professionals who claim to have expertise working with sexual offenders without these objective tests. This is because public behavior (especially public behavior that is supervised), is not necessarily an indication how someone would conduct themselves in private.

### **Conclusion**

Accordingly, to protect children and families and society from predators, the signs and symptoms of this type of abuse must be understood. This is vital where adult victims of child sexual abuse are higher utilizers of health services, more likely to rely on welfare and other social service funding, stay in abusive situations and have children who are abused.<sup>xi</sup> This is also essential where sexual abuse is a preventable public health problem and it is now widely known that a childhood history of sexual abuse is linked to a whole host of mental health issues such as depression, posttraumatic stress disorder (PTSD), substance abuse, self-injurious behavior and suicide.<sup>xii</sup> While predators thrive by confusing and silencing their young, impressionable minor victims, family law practitioners are in a position to connect vital information such as past medical, psychological, and legal histories to protect vulnerable and otherwise defenseless children.

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### Endnotes

<sup>i</sup> The Centers for Disease Control and Prevention (CDC) reports that about one in four girls and one in 13 boys experience child sexual abuse at some point in childhood. Ninety-one percent of this abuse is believed to be perpetrated by someone the child or family knows. However, statistics vary across studies as many children wait to report or never report child sexual abuse. See <https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html>.

<sup>ii</sup> See Van Dam, Carla. *Identifying Child Molesters*. Routledge, 2011.

<sup>iii</sup> There is no stage of lying that children go through. Children generally lie because they are seeking (needed) attention, modeling deceitful behavior, or asked to lie.

<sup>iv</sup> See Salter, Anna C. *Predators: Pedophiles, Rapists, and Other Sex Offenders*. Basic Books, 2003

<sup>v</sup> To get by in society we tend to default to believe that people are telling us the truth where to assume the best about others has created and driven modern society. Gladwell, Malcom.

Talking to Strangers. *Little Brown and Company*, 2019.

<sup>vi</sup> Simon Jr., George K. *Character Disturbance: the Phenomenon of Our Age*. Parkhurst Brothers Publishers, 2011.

<sup>vii</sup> Only a small number of people are capable of successfully detecting liars. See Eckman, Paul & Friesen, Wallace V., *Unmasking the Face*. Malor Books, 2003.

<sup>viii</sup> See Van Dam, Carla. *Identifying Child Molesters*. Routledge, 2011.

<sup>ix</sup> See D.J.S. v. J.D.S., No. 1445 MDA 2017 (Pa. Super. May 22, 2018). (holding that where emotional abuse encourages or immediately manifests in physical injuries, child abuse has occurred and so a PFA is justified.)

<sup>x</sup> See Vesell, H., *Parental Alienation and Reconciliation Therapy: Moving Toward Healthy Families*. The Pennsylvania Bar Association Quarterly. October 2017.

<sup>xi</sup> See Van Dam, Carla. *Identifying Child Molesters*. Routledge, 2011.

<sup>xii</sup> See <https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html>.

## We Asked for a Sliver And Got the Whole Slice: How a Parent Seeking the COVID-19 Vaccination for His Children Won the Right to Make All Medical Decisions

By Adam H. Tanker

In Pennsylvania, custody cases are governed by the “best interest of the child” standard. This means that the Court will hold a child’s best interests in the highest regard and will direct and order the parents or guardians to act in accordance with what it determines to be in the best interest of the child. Unlike physical custody, which extends to which parent has care and control over the minor child on a daily basis, ensuring they are fed, sheltered and cared for, legal custody involves the right to make major decisions on behalf of the child in regard to all medical, religious and educational aspects of their lives. In an overwhelming majority of custody cases in Pennsylvania, legal custody is “shared,” meaning that mutual agreement by both parents is required when making such decisions on behalf of the child. When one parent is unreasonably difficult with making legal custody decisions, or where one parent uses legal custody as a weapon for manipulation and control, the other parent can ask the Court for sole legal custody. When a parent has sole legal custody in general, or for specific a purpose (i.e. medical



decisions), that parent is in control with respect to that issue or course of action.

With the rise in attention to vaccinations accompanying the COVID-19 pandemic, as well as increased publicity given to the “anti-vax” movement and vaccine naysayers, disputes over child vaccination has migrated from the fringes to the mainstream as a prominent custody issue.

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