

Welcome to Marion County District Attorney's Office quarterly newsletter, *CAIR (Child Abuse Issue Review)*.

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Marion County District Attorney's Office | 1st Quarter 2017



2017: Full Speed Ahead

Busy, busy! The 2017 legislative session has seen lots of legislation that affects criminal law. This is especially true for child abuse. The following provides a snapshot of the legislation we're currently watching:

SB 496: Requires recordation of grand jury proceedings. This bill would have a significant impact on current systems, process, and case filings. (MCDA contact: Walt Beglau/TTLs)

SB 819: Requires law enforcement to engage in DHS' internal critical response team (CIRT). DHS uses CIRTs to review child deaths or significant cases where the child has recently been in agency care. (MCDA contact: Brendan Murphy)



The 2017 legislative session is in full swing. Many of our deputy district attorneys are actively involved in the legislative process, whether it be suggesting and drafting legislation, testifying at the legislature, or meeting with elected officials and community partners to discuss

SB 900: Allows a court to impose consecutive sentences for touching separate intimate parts of a child, even if there is not a sufficient pause between incidents (see case law updates for more information regarding this change in standard). (MCDA contact: Gillian Fischer)

SB 795: Requires medical personnel to offer a victim an advocate when a victim receives a sexual assault exam. (MCDA contact: Kim Larsen)

HB 2603: Changes the definition of physical injury to include evidence of injury such as bruising, rather than requiring verbal expression of pain. (See *State v. Wright*, 253 Or App 401 (2012)) (MCDA contact: Brendan Murphy)

There are many, many more bills pending. Please contact us if you have more specific questions.

Also, should you need to access previous newsletters and case law updates, please be sure to click [here](#). Thank you again for all that you do.

--Team Y

pending legislation.

I encourage you to engage in this process as well. It is critical that lawmakers understand the incredibly difficult work that you do. If you have specific questions about how to engage, or ideas for legislation, you can contact our office and anyone can give you the names of those DDAs involved. Your engagement is another opportunity to help keep kids safe.

Thank you.

Walter M. Beglau
District Attorney

Forensic Interviews:

Best Practices for this Critical Process

National standards require "Forensic interviews [to be] conducted in a manner that is legally sound, of a neutral, fact-finding nature, and coordinated to avoid duplicative interviewing." As such, the best practice is for children to be interviewed one time at Liberty House.

The following provides best practice expectations for child forensic

interviews:

Make sure DHS is involved or aware. We have to collaborate and coordinate with DHS.

Child friendly setting. Use child-friendly furniture, neutral to age and gender. Limit distractions, use tools for the interview (i.e., anatomically detailed drawings and dolls), and proper use of audio/video technology.

Role of supportive caregivers. The best practice prevents parents, school personnel, private therapists and caretakers from being in the interview room (with some exceptions on a case-by-case basis). Even the most well intentioned adults can intentionally or unintentionally coach the child.

Documentation. Record the interview. For example, make sure to include the child's name, date of birth, date of interview, interviewer, and the location of the interview.

Question types. Throughout the interview, the interviewer should move from open-ended questions to more focused and direct questions:

- Open-ended questions encourage a free narrative response (i.e., what happened? Can you tell me more about that? What happened next?).
- Focused questions can be asked when the child has exhausted recall of open-ended narrative (i.e., how did that make your body feel? What were your thoughts?).
- Direct questions can be used to clarify/confirm information (i.e., you said daddy spanked you, did he use anything to spank?).

Nonverbal Language. Be aware of and note nonverbal communication (i.e., gestures, facial expressions, vocal tones and

spatial distance).

FAQs

Q: Are there certain types of questions that a responding officer should avoid when interviewing a child victim?

A: When speaking with a child victim avoid the following:

- “Hard eyes” -- Remember, you're the first contact that a child has with an entire system. They are assessing you (i.e. discerning if disclosing is safe and if you believe them). If you appear skeptical, doubtful, or simply fail to make a child comfortable, you're making the case unnecessarily more difficult.
- Suggestive, tag, or coercive questions. For example:
Suggestive questions (i.e., did daddy hit your mommy?). Tag questions (i.e., daddy hit your mommy, didn't he?). Coercive questions (i.e., if you don't tell me about daddy hitting your mommy, he could hurt someone else. You don't want that to happen, do you?).

Q: What should a responding officer do if he is unclear if a crime has occurred after interviewing a child victim?

A: Keep going.

- Continue to conduct a complete investigation that includes collateral witness interviews and documentation of physical evidence.
- Work with DHS to ensure that all steps are taken so that the children present are safe (even if they do not appear to be victims).
- If the children are safe, complete a report and forward that report to the District Attorney's Office for review. Once received, a Deputy District Attorney (DDA) will review the report and make the final charging decision. If the DDA

needs more information, they may contact the officer regarding a follow up investigation.

- DO NOT put opinions in a report. Rather, state the facts.

Case Law Updates

State v. Nelson, 282 Or. App. 427, Nov. 2016

Held: The court should have merged three counts of sexual abuse into one conviction because there was no evidence to support that each instance of sexual contact was separated from the other instances of sexual contact by a "sufficient pause" in defendant's criminal conduct to afford defendant an opportunity to renounce his criminal intent. See ORS 161.067(3).

State v. Dugan, 282 Or App 768 December 2016

Held: Defendant's sequential and uninterrupted touching of various parts of victim's body over course of 15-minute assault, despite her objection, results in only one conviction for first-degree sexual abuse, ORS 163.427 (1); his ability to terminate the assault and to retreat were not enough of itself to establish a "sufficient pause" under ORS 161.067(3).

State v. Avila, 283 Or App 262 December 2016

Held: [1] Guilty verdicts on separate counts of sexual abuse based on defendant's touching of different parts of the victim's body merge into a single conviction under ORS 161.067(1). [2] The mere passage of time and sequential touching are not enough to establish a "sufficient pause," for purposes of ORS 161.067(3), such that two convictions are appropriate.

TIP: What is required to show “sufficient pause” as to avoid merger is ambiguous, but the court in *Nelson* and the subsequent cases provides some guidance on what does NOT constitute sufficient pause: “Neither the defendant’s ability to retreat during the episode, nor the fact that the acts occurred in sequence is sufficient to establish the requisite ‘sufficient pause’ between the acts. Instead, the state must present evidence that ‘something of significance’ occurred between the sequential acts.”

SB 900 Legislative Amendment: In response to these recent Court of Appeals rulings the ODAA legislative committee introduced *SB 900* to include language in the “anti-merger statute” preventing merger of convictions resulting from the touching of separate intimate parts during a single criminal episode. You can read the bill in its entirety [here](#).

Additional Case Law Updates:

Additional updates are available on our website located [here](#).

Cases by the Number

The following provides a snapshot of case filings by category between December and March 15, for 2014, 2015, 2016, and 2017, respectively.

	2017	2016	2015	2014
Child Abuse - Sexual Assault	44	57	46	23
Child Abuse - "Other"	41	35	33	22
All Child Deaths (including non-criminal)	5	1	2	5
Delinquency Petitions	165	167	206	192
Dependency Petitions	129	127	133	123
Domestic Violence	367	347	369	312
Elder Abuse	15	2	7	7

CART: FAQs



Q: Do officers have to wait for a Secret Indictment to be filed and warrant issued before picking up an indicted defendant?

A: No. An officer can always arrest on probable cause. Sometimes a grand jury indictment is a significant factor in reaching probable cause. There are times when the defendant is made aware by witnesses (or even victims) that grand jury was held, and waiting those extra couple days for

the Secret Indictment to be filed and a warrant to be issued could increase the possibility of the defendant becoming a flight risk. If this is the case or if the defendant presents danger to the victim or public, work with your DDA to get the defendant picked up as soon as possible.

Q: Is it necessary for the investigating officer in a case involving a minor victim to attend the Liberty House forensic review?

A: Best practice is yes. The investigating officer in a case involving a minor victim should make best efforts to attend the Liberty House forensic interview of that victim. The most important reason for this is that the victim may disclose additional information during the interview that could require immediate follow-up by the officer.

Furthermore, there are times when victims disclose additional abuse by a completely different suspect while being interviewed at Liberty House, which may require another case to be opened for another suspect with immediate investigation. We receive officer reports faster than Liberty House reports. Therefore, the more information we can receive from officers regarding Liberty House interviews, the quicker we can do our job as well when it comes to charging decisions.

Suggested Reading

To be a great child abuse investigator, it is critical to understand child welfare policy and procedure. Department of Health Services' safety model as well as frequently asked questions can be found [here](#).



Success! Let's Celebrate.

Congratulations to the Woodburn Police Department on the numerous promotions. A hearty congrats to Sergeants Altabef, Araiza, and Hershberger. Also, welcome back to Sergeant Shadrin on his transfer back to Investigations. Congratulations to Lieutenant Millican and a warm welcome to Lieutenant Pilcher and Deputy Chief Boyd.

We also welcome Deputy Chief G. Burke at the Salem Police Department.

DDA Gillian Fischer was half way through a criminal jury trial when a defendant decided to plead guilty. The defendant had acted as a pastor to the victim and her family for most of her childhood. He received 450 months in prison for multiple incidents of sexual assault.

Dates to Remember

April 7 | CART Meeting

9 a.m.

Keizer Police Department

April 11-14 | Child Abuse & Family Summit

Red Lion Hotel on the River, Portland

April 25 | Liberty House Ribbon Cutting

5:30 - 7:00 p.m.

385 Taylor Street NE, Salem

Who We Are

Please feel free to reach out to us with any questions.

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