The Continued Victimization Of Sexually Abused Children On The Stand

by Allison Arterberry

One of the most gut wrenching scenes you can ever witness is a child crying, humiliated, and demoralized, sitting on the stand while being interrogated by a defense attorney asking questions and probing for answers about the sexual assault allegedly committed by the defendant. While the 6th Amendment protects a defendant’s right to confront his accuser, children who are victims of these heinous crimes should not be torn apart on the stand or at least have some sort of comfort while they are testifying. Congress or state legislatures need to put safety measures in place to protect children who are victims of sexual assault.

The 6th amendment states that “in all criminal prosecutions, the accused shall enjoy the right… to be confronted with the witnesses against him.” The 6th amendment has been incorporated through the 14th amendment to the states which requires states to allow criminal defendants to confront their accusers in court. Therefore, children who are sexually assaulted have to go on the stand during a trial in front of the person who allegedly assaulted them and answer the questions of the defendant’s lawyer. These questions can be hurtful, spiteful, and harmful towards these victims.

1 U.S. CONST. amend. VI.

In an article by the South Eastern Centre Against Sexual Assault, Roland C. Summit, M.D. explains that:

The average child never asks and never tells. Contrary to the general expectation that the victim would normally seek help, the majority of the victims in retrospective surveys had never told anyone during their childhood. Respondents expressed fear that they would be blamed for what had happened or that a parent would not be able to protect them from retaliation. Many of those who sought help reported that parents became hysterical or punishing or pretended that nothing had happened.³

In sexual assault trials involving child victims, defense attorneys can be heard badgering the child about why he or she waited so long to tell someone what happened. Many children are too young to even understand what happened to them and only years later they may figure it or remember the details.⁴ Victims have broken down into tears on the stand explaining that they thought it was their fault and that is why they never told anyone. As a result of the brutal questioning these victims go through on the stand “children as young as seven-years-old [may] curl up in fetal positions as they’re cross-examined after implicating relatives, loved ones or complete


Some child abuse experts have the view that this cross-examination by defense lawyers can “cause true victims to endure a second, state-sanctioned instance of abuse.”

These victims are verbally assaulted on the stand in front of the person that hurt them and this should be uncalled for, but the Constitution and the Supreme Court of the United States say otherwise. Therefore, we need to have safety measures. One safety measure currently being used in some counties is having a dog in the courtroom with the victim for comfort. The child usually meets the dog before the trial to bond, then when the child is called to testify the dog sits up there on the stand with him or her. The dog helps ease the victim’s fear and comforts the child during difficult and emotional testimony. During the testimony the dog is not a distraction because they are well-trained. In many counties, the child meets the dog prior to the trial in order to acquaint him or her with the dog, allow bonding to begin, and to be certain the dog and child get along well enough to not cause any distractions in the courtroom.

Another safety measure more counties can implement is more contact and incorporation of BACA, Bikers Against Child Abuse. This group “exists with the intent to create a safer environment for abused children. [They] exist as a body of Bikers to empower children to not feel afraid of the

---


6 Id.


world in which they live.” BACA employs a four-tier support plan. BACA members begin to help child victims when the authorized county agency “determines that the child is still frightened by his or her environment” or the alleged defendant. BACA members support child victims by attending the child’s court room testimony. The purpose of their presence in the courtroom is to “assist the child in being less intimidated and frightened, and subsequently give an accurate testimony regarding his/her abuse.” BACA members are not allowed to have any physical confrontation with the defendant.

What is so great about this organization is that the children love getting to know these bikers because they see them as “cool.” Children feel supported by BACA and it makes them more comfortable on the stand. Additionally, when BACA members are in the court room the child becomes more comfortable in court in front of the person who hurt them and their ability to give accurate testimony is heightened. One child described how he was not afraid to testify in front of

12 Id.
13 Id.
14 Id.
the man that abused him because there were BACA members in the court room. While some counties have connections with BACA already, each and every county needs to work with BACA in order to help children feel safe during their testimony in court.

An additional safety measure that could be implemented is a forensic interview of the child by a forensic psychologist. This could occur as little as days before the trial starts or months before the start date. The child and forensic psychologist will be in a separate room than the prosecutor and defense attorney. The interview will be video recorded and the attorneys can either watch the recording as it is happening or watch through a glass wall, similar to those used in police interrogation rooms. At the beginning of the interview the forensic psychologist will be able to ask introductory questions in order to make the child feel comfortable talking to him or her. The attorneys can give a list of questions prior to the interview for the forensic psychologist to ask the child or he or she can use an ear piece in order for questions to be given directly to him or her during the interview. A mix of the two methods may be the best option because it would allow the forensic psychologist to know what introductory questions to ask the child at the beginning of the interview, while allowing for spontaneous questions based on the child’s answers.

The recording of this interview can be used in court in place of terrorizing the abused child on the stand. The child may not even have to appear in court this way. The recording of the interview may have some issues with hearsay in order to get into evidence, which is why to be implemented, this method in particular would require legislative action. To get around the issue of objections, the attorneys could object during the playing of the interview in court. Another possible problem with this method is getting a defense attorney to agree to this method. They will be able to

ask all the questions they want during the interview, but without the intimidation that occurs during a trial in front of the defendant. They could be planning for that intimidation to hurt the child’s live testimony in court. Therefore, as said prior, this method would require legislation not only to get around hearsay rules, but to either make it more appealing to defense attorneys by incentives or by making it a requirement for this type of testimony. Many counties have Child Assessment Centers or other centers coordinated with district attorney offices that will have rooms capable of this type of set up and forensic psychologists.

Child victims of sexual abuse need more protection in court during their testimony than they have currently. The 6th Amendment sets out the confrontation clause and criminal defendants are entitled to it.16 “It’s how the criminal justice system works, and unfortunately, it works against victims.”17 However, state legislatures and Congress have the power to protect children and to help make them more comfortable while testifying in front of their alleged sexual abuser in court. One of the methods from above, dogs, BACA, or forensic interviews, should be implemented as soon as possible in order to protect the many children that have to go through this peril every year.18

16 U.S. CONST. amend. VI.

17 Moushey, supra note 5 (quoting Jennifer Storm, executive director of the Victims/Witness Assistance Program in Harrisburg, Pennsylvania).

18 Moushey, supra note 5 (“In 2010, the latest year in which statistics are available, there were 695,000 cases of child abuse reported in the United States.”).