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Protocol for Assessing the Reliability of Child Sex Abuse Allegations

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Editor's Note: This article provides conceptual tools, a vocabulary, and a framework for assessing the reliability of child sexual abuse allegations utilizing an evidence-based review of the literature. It is consistent with best practice guidelines in forensic psychology (APA, 2013). The article is written by a board-certified forensic psychologist with several decades of experience in criminal and family court from the perspective of a defense expert, although the concepts, factors, and procedures are common to both defense and prosecution of cases.

In addition to criminal prosecutions, child sex abuse allegations commonly arise in child protection matters, divorce/custody disputes, and other civil litigation. These allegations are high stakes situations for both children and the accused.

An effective forensic analysis requires a collaboration between the forensic specialist and an attorney who is comfortable in this line of work and knowledgeable about rules of discovery and communications with the court. In many respects, the attorney must have special subject matter expertise to effectively prosecute or defend a sex abuse

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Understanding Alcohol and Sexual Offending Using the Integrated Risk Assessment and Treatment System Model

by Jeffrey Abracen, Ph.D., C.Psych., Jan Looman, Ph.D., C.Psych.,
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Authors' Note: This article reviews the association between alcohol and sexual offending and discusses the available evidence using the framework of the *Integrated Risk Assessment and Treatment System (IRATS) Model*, which was developed by Jeffrey Abracen and Jan Looman. Applying the *IRATS Model*, the evidence suggests that alcohol use and abuse interacts with other known risk factors associated with committing sexual offenses. These risk factors include negative emotionality (e.g., anger management) and attachment-related difficulties.

The notion that substance abuse is related to violent behavior is hardly new. Based on decades of research, it is fair to say that issues associated with substance abuse are well-established as relevant to the understanding of violent offending generally and sexual offending specifically. As early as 1998, Andrews and Bonta included issues associated with substance abuse as one of the “central eight” risk factors in their now ubiquitous Risk Need Responsivity (RNR) Model. These authors posited that substance abuse was related to an increased risk of recidivism among offender populations. Given the influential nature of the RNR Model, it is hardly surprising that issues associated with substance abuse have been incorporated into various well-regarded risk

assessment instruments (e.g., the Hare Psychopathy Checklist-Revised; Hare, 2003).

The purpose of this article is not to argue that substance abuse issues are relevant to understanding sexual offending, but to examine whether particular patterns of substance abuse are associated with different patterns of violent offending. If this were to be the case, then such data might offer suggestions as to how to best approach issues associated with substance abuse with different groups of violent offenders. This article argues that the available evidence suggests that individuals who commit sexual offenses demonstrate more difficulties with alcohol abuse than with drug abuse compared to groups who commit violent nonsexual offenses.

After discussing the relevant research, this article discusses how these findings may be applied in clinical practice.

Preliminary Cautions Related to Prior Research

Before discussing the research associated with differential patterns of substance abuse among individuals who commit violent nonsexual offenses—referred to in this article simply as “violent offenders”—and

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allegation case and to effectively elicit and critique testimony from the testifying expert. The forensic analysis and defense of a sex abuse case is labor intensive and expensive, often beyond the defendant's pay grade.

Forensic clinicians may be called to provide analysis of allegations and to provide testimony in family, criminal, or civil court. Given the complexity and typically fraught nature of these situations, the forensic clinician should possess advanced subject matter expertise on children's developmental abilities, contexts of allegations, forensic interviewing, workings of the legal system, and a structured protocol for organizing

analysis of competing hypotheses (ACH; Heuer, 2005), is a useful means to testing alternate hypotheses and controlling for confirmation bias.

Initial Considerations in Reviewing Data

Data typically includes reports from parents, treating clinicians, law enforcement, and child welfare; polygraph examinations; reports of guardians *ad litem*; and video forensic interviews. Transcripts and video may be used as discovery in a prosecution or defense. A high-quality analysis of the forensic interview requires specialized knowledge and is best conducted with a structured analytic protocol utilizing a transcript of the child forensic interview (commonly obtained from a court reporter) in addition to record review.

Practitioners should always organize their files with the expectation of full disclosure.

Experts will primarily focus on the video recording of the forensic interviews of the child and the associated transcripts. Transcripts of forensic interviews are necessary for a microanalysis of the disclosures and to determine whether the interview was conducted using best practice guidelines. Although a variety of schemes for the analysis of witness statements (e.g., criteria-based content analyses) have been studied for decades, these have produced mostly mediocre results (Oberlader et al., 2021).

There is a large professional literature on child forensic interviewing highlighting the need for specialized skills and continuous training and peer review. Experts necessarily have an understanding of this research and a structured methodology to assess the quality of the forensic interview.

General Considerations. When reviewing the data, the expert should consider the following.

Context. What is the family/relationship and legal context of the disclosure?

Credibility. What is the form of the disclosure—video, third-hand report, transcripts? How credible are the disclosures in terms of specific behaviors and situation?

Compromise. Often the victim of the alleged abuse will be interviewed multiple times by multiple people, including parents, therapists, and police officers. How many times has the victim been interviewed and by whom? Have alternate interviewers produced evidence such as audio or video recordings? What were the interviewer's qualifications and training?

Confirmation. The first forensic interview is usually considered the best evidence but is subject to a number of qualifications. These include the child's age and competency; period since emergence of disclosure; and pre-interview taint. Multiple forensic interviews may be necessary for children who are reluctant to disclose. Extended structured forensic interview protocols have been promulgated by the National Children's Advocacy Center (NCAC) in Huntsville, AL.

Age of Victim. The interview of young children (less than five years-of-age) is extremely challenging and requires considerable skill on the interviewer's part. Was the interview competently conducted by a qualified interviewer?

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The chain of custody is critical to determining the reliability of the disclosure and whether it has been influenced by nonprofessional interviewers or other influences, including parents.

and analyzing the data. The qualifications of the expert should be clearly presented in a curriculum vitae.

Systematic and Critical Analysis of Data

It is not the forensic evaluator's objective to decide on or testify on whether the alleged sex abuse occurred and the credibility of the complaining witness. This is properly the domain of the trier of fact. Rather, it is the forensic evaluator's role to perform a systematic and critical analysis of the evidence to determine the data's integrity and reliability and whether the data are sufficient to support the allegations. This is typically in the form of a report to the referring attorney, court, or the referring agency. In a legal proceeding, the evaluator may be called to appear at a deposition, a preliminary evidentiary hearing (e.g., a "taint" hearing on the admissibility of evidence), or a trial. Preparation with the attorney is critical for providing clear testimony on the procedures, findings, and conclusions. It is critical that the evaluator analyzes his or her sources of bias and adversarial allegiance. A methodology for analyzing competing hypotheses, such as

The NCAC's forensic interview analysis guideline serves a framework for analyzing the case history and interview. It directs a systematic review of the interview (assisted by video and transcript), including assessment of disclosure and case-related data obtained from other sources. The critical analysis guide establishes the foundation for the forensic work product. The final contents are as follows:

1. Interview data (dates, names, time, legal caption);
2. Disclosure factors;
3. Attempts were made to decrease potential coercive elements;
4. Specific details recounted;
5. Developmental assessment of disclosure;
6. Emotional content;
7. Behavioral checklist results;
8. Corroborative information/confirmatory factors;
9. Motivational factors;
10. Alternative explanations; and
11. Summary of findings and opinions.

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Was the interview protocol based on recommended guidelines (e.g., NICHD interview protocol)?

Considerations Related to Interviewer's Expertise. When untrained or inexperienced interviewers get it wrong, the consequences can be calamitous. The notorious Wee Care Nursery and McMartin Preschool cases, which involved allegations of child sexual abuse, dismemberment, animal slaughter, and satanic ritual abuse, are sobering examples. In those cases, the consensus was that untrained interviewers played a key role in those tragedies. Based on experiences like these, since the 1980s and 1990s best

Documentation. Have the allegations been properly documented according to best practice guidelines? Can taint be ruled out?

Changes to Report. Has the victim's disclosure changed over time?

Competency. Is the child a competent witness? Are the allegations plausible?

Mistake Versus Fabricated Allegations. Is the allegation based on a mistake of fact? Are the allegations fully fabricated?

Potential for Permanent Contamination. Both child and adult memories may be permanently altered due to contamination. Thus, the child may come to believe that they were abused. This poses a problem for the court and future providers since it may provoke a repetitive cycle of allegations.

interviewing children who report possible sexual abuse.

Recommended Methodology. Although a consensus on best practices remains elusive (Faller & Everson, 2012), NCAC has proposed a methodology for evaluating sex abuse allegations, including child forensic interviews and case material. A definitive discussion of this issue can be found in Everson et al. (2012), which describes the best practice in child forensic evaluations. Citing the American Professional Society on the Abuse of Children guidelines, Everson and colleagues outline the best practice methodology for the comprehensive child forensic evaluation as follows:

- Using a broad range of information sources to do a comprehensive search for evidence supporting or refuting the allegation;
- Weighting substantive evidence based on the degree of independent corroboration;
- Testing alternative hypotheses; and
- Constructing case-specific narratives to account for available evidence (APSAC, 1997, p. 76).

Other prominent theorists and researchers have proposed structured methods for analyzing the reliability of sexual abuse disclosures by children (Kuehnlé & Connell 2009; O'Donohue et al., 2010; O'Donohue et al., 2013).

Structured forensic interviews in child abuse investigations have been shown to enhance the quality ("likely accuracy") of child forensic interviews.

practice standards have been developed based on an understanding of children's memory and suggestibility for the conduct of child forensic interviews. Yet, in some jurisdictions, police officers conduct interviews, some with and some without proper qualifications in forensic interviews, often in a police station. In observing a forensic interview, the difference between a trained and untrained interviewer is immediately obvious.

Outside Influences and Chain of Custody. The chain of custody is a most critical aspect of the process in determining the reliability of the disclosure and whether it has been influenced by nonprofessional interviewers or other influences, including parents, who frequently interview and video the child themselves. It has been shown that children's disclosures may be influenced by overhearing conversations by family members or others, including rumors (Principe & Schindewolf, 2012). The examiner must first consider any potential influences on the disclosure and chain of custody.

Initial Report. To whom was the initial disclosure made? How was the disclosure reported to authorities?

Contamination. Has the chain of disclosure been contaminated? Is there evidence that others have interviewed the child? Is there evidence that the child has been videotaped by a parent or others?

Structured Forensic Interviews Using Revised Protocol

There is clear support for using structured forensic interviews in child abuse investigations sufficient to establish structured forensic interviews as a standard of care (e.g., the NICHD Protocol; Lamb et al., 2007; Lamb et al., 2008; Orbach et al., 2000). These interviews have been shown to enhance the quality ("likely accuracy") of child forensic interviews. A revision of the standard NICHD Protocol, commonly referred to as the Revised Protocol (RP), was designed to "both enhance rapport between children and interviewers and provide additional nonsuggestive support to suspected victims who might be reluctant to make allegations" (Hershkowitz & Lamb, 2020, p. 176). The RP has been shown to increase the accuracy of allegation determinations (Hershkowitz et al., 2014).

National Child Advocacy Center. Most states and U.S. territories have a mandated reporting statute, and many jurisdictions are part of the nationwide National Child Advocacy Center (called locally the Children's Justice Center), where children are interviewed by trained forensic interviewers in a child-friendly setting (typically observed by law enforcement and child welfare workers). In many jurisdictions, mental health professionals are strongly discouraged against

References

- Acklin, M.W., & Velasquez, J.P. (2021, July 13). Improving criminal responsibility determinations using structured professional judgment. *Frontiers in Psychology, 12*, 700991.
- Action for Child Protection, Inc. (2008). Child safety and substantiation of child maltreatment. Retrieved from <https://action4cp.org/>
- American Professional Society on the Abuse of Children (APSAC). (1997). *Guidelines for psychosocial evaluation of suspected sexual abuse of children* (2nd ed.).
- American Psychological Association. (2013). *Specialty guidelines for forensic psychology*. APA.
- Bartelink, C., van Yperen, T.A., & ten Berge, I.J. (2015). Deciding on child maltreatment: A literature review on methods that improve decision-making. *Child Abuse & Neglect, 49*, 142-153.
- Bond, C.F., Jr., & DePaulo, B.M. (2006). Accuracy of deception judgments. *Personality and Social Psychology Review, 10*(3), 214-234.
- Bruck, M., & Ceci, S. (2013). Expert testimony in a child sex abuse case: Translating memory development research. *Memory, 21*(5), 556-565.

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- Cash, S.J. (2001). Risk assessment in child welfare: The art and science. *Children and Youth Services Review, 23*(11), 811-830.
- Ceci, S., & Bruck, M. (1995). *Jeopardy in the courtroom: A scientific analysis of children's testimony*. APA Books.
- Cross, T.P., & Casaneuva, C. (2009). Caseworker judgments and substantiation. *Child Maltreatment, 14*(1), 38-52.
- Cyr, M., & Bruneau, G. (2008). Assessing false allegations of child sexual abuse. In M. St. Yves & M. Tanguay (Eds.), *The psychology of criminal investigations*.
- Drake, B. (1996). Unraveling "unsubstantiated." *Child Maltreatment, 1*(3), 261-271.
- Drozdz, L.M., & Olesen, N.W. (2004). Is it abuse, alienation, and/or estrangement? A decision tree. *Journal of Child Custody: Research, Issues, and Practices, 1*(3), 65-106.
- Engle, J., & O'Donohue, W. (2012). Pathways to false allegations of sexual assault. *Journal of Forensic Psychology Practice, 12*(2), 97-123.
- Everson, M.D., & Boat, B.W. (1989). False allegations of sex abuse in children and adolescents. *Journal of the American Academy of Child & Adolescent Psychiatry, 28*(2), 230-235.
- Everson, M.D., & Sandoval, J.M. (2011). Forensic child sexual abuse evaluations: Assessing subjectivity and bias in professional judgments. *Child Abuse & Neglect, 35*, 287-298.
- Everson, M.D., Sandoval, J.M., Berson, N., Crowson, M., & Robinson, H. (2012). Reliability of professional judgments in forensic child sexual abuse evaluations: Unsettled or unsettling science? *Journal of Child Sexual Abuse: Research, Treatment, & Program Innovations for Victims, Survivors, & Offenders, 21*(1), 72-90.
- Fakunmoju, S.B. (2009). Substantiation and adverse appeal outcomes: Content analysis and testing of Drapes Harm/Evidence Model. *Child Welfare, 14*(1), 53-68.
- Fakunmoju, S.B. (2013). Substantiation assessment criteria: A framework for evaluating contested substantiation in child protection practice. *Child Welfare, 92*(1), 89-114.
- Faller, K.C., & Everson, M.D. (2012). Contested issues in the evaluation of child sexual abuse allegations: Why consensus on best practice remains elusive. *Journal of Child Sexual Abuse, 21*(1), 3-18.
- Geffner, R. (2012). *Special issue on contested issues in the evaluation of child sexual abuse allegations. Journal of Child Sexual Abuse, 21*(1).
- Henrick, S. (2013, April 18). A hostile environment for student defendants: Title IX and sexual assault on college campuses. *Northern Kentucky Law Review*.
- Herman, S. (2005). Improving decision-making in forensic child sexual abuse evaluations. *Law and Human Behavior, 29*, 87-120.
- Herman, S. (2009). Forensic child sexual abuse evaluation: Accuracy, ethics, and admissibility. In K. Kuehne & M. Connell (Eds.), *The evaluation of child sexual abuse allegations: A comprehensive guide to assessment and testimony*. Wiley.
- Herman, S. (2010). Error rates in forensic child sexual abuse evaluations. *Psychological Injury and Law, 3*, 133-147.
- Hershkowitz, I., & Lamb, M.E. (2020). Allegation rates and credibility assessment in forensic interviews of alleged child abuse victims: Comparing the revised and standard NICHD protocols. *Psychology, Public Policy, and Law, 26*(2), 176-184.
- Hershkowitz, I., Lamb, M.E., & Katz, C. (2014). Allegation rates in forensic child abuse investigations: Comparing the revised and standard NICHD protocols. *Psychology, Public Policy, and Law, 20*(3), 336-344.
- Hershkowitz, I., O'Donohue, W.T., et al. (2016). Psychological and investigative pathways to untrue allegations of child sexual abuse: The role of the NICHD investigative interview protocol. *Child Abuse & Neglect, 31*, 99-110.
- Heur, R.J. (2005). How does analysis of competing hypotheses (ACH) improve intelligence analysis? Retrieved from [http://www.Pherson.org/wp-content/uploads.2013/06/04.Future of alternative analysis_Final.pdf](http://www.Pherson.org/wp-content/uploads.2013/06/04.Future%20of%20alternative%20analysis_Final.pdf)
- Jent, J.F., et al. (2011). Multidisciplinary child protection decision-making about physical abuse: Determining substantiation threshold and biases. *Child & Youth Services Review, 33*(9), 1673-1682.
- King, D.N., & Drost, M. (2005). Recantation and false allegations of child abuse: Selected bibliography. National CAC. Retrieved from <https://www.ICMEC.org/wp-content/uploads/2015/10/Recantations-and-False-Allegations-Bibliography.pdf>
- Kuehne, K., & Connell, M. (Eds.). (2009). *The evaluation of child sexual abuse allegations: A comprehensive guide to assessment and testimony*. John Wiley & Sons, Inc.
- Lamb, M.E., Hershkowitz, I., Orbach, Y., & Esplin, P. (2008). *Tell me what happened: Structured investigative interview of child victims and witnesses*. Wiley.
- Lamb, M.E., Orbach, Y., Hershkowitz, I., Esplin, P.W., & Horowitz, D. (2007). A structured forensic interview protocol improves the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol. *Child Abuse & Neglect, 31*(11-12), 1201-1203.
- McHenry, M. (2021). Litigating child sex abuse in family relations court. *Court Review: Journal of the American Judges Association*. Retrieved from <https://DigitalCommons.unl.edu/cgi/viewcontent.cgi?article=1810&context=ajacourtreview>
- Neal, T.M.S., & Grisso, T. (2014). The cognitive underpinnings of bias in forensic mental health evaluations. *Psychology, Public Policy, and Law, 20*(2), 200-211.
- Newlin, C., Cordisco Steele, L., Chamberlin, A., Anderson, J.A., Kenniston, J., Russell, A., Stewart, H., & Vaughan-Eden, V. (2015). Child forensic interviewing: Best practices. U.S. Justice Dep't, Office of Juvenile Justice Programs and Delinquency Prevention. Retrieved from <https://OJJDP.ojp.gov/sites/g/files/xyckuh176/files/pubs/248749.pdf>
- Oberlader, V.A., Quinten, L., Banse, R., Volbert, R., Schmidt, A.F., & Schönbrodt, F.D. (2021). Validity of content-based techniques for credibility assessment—How telling is an extended meta-analysis taking research bias into account? *Applied Cognitive Psychology, 35*, 393-410. Retrieved from <https://doi.org/10.1002/acp.3776>
- O'Donohue, W.T., Benuto, L., & Cirluega, O. (2013). Analyzing child sexual abuse allegations. *Journal of Forensic Psychology Practice, 13*, 296-314.
- O'Donohue, W.T., Benuto, L., & Fanelli, M. (2010). Children's allegations of sexual abuse: A model forensic assessment. *Psychological Injury and Law, 3*, 148-154.
- O'Donohue, W.T., & Cirluega, O. (2016). How often do children lie about being sexually abused? In W.T. O'Donohue & M. Finnerty (Eds.), *Forensic interviews regarding child sexual abuse: A guide to evidence-based practice*. Springer.
- O'Donohue, W.T., et al. (2016). Psychological and investigative pathways to untrue allegations of child sexual abuse. In W.T. O'Donohue & M. Finnerty (Eds.), *Forensic interviews regarding child sexual abuse: A guide to evidence-based practice*. Springer.
- Orbach, Y., Hershkowitz, I., & Lamb, M.E. (2000). Assessing the value of structured forensic interviews of alleged child abuse victims. *Child Abuse & Neglect, 24*(6), 733-752.
- Principe, G., & Schindewolf, E. (2012). Natural conversations as a source of false memories in children: Implications for the testimony of young witnesses. *Developmental Review, 32*(3), 205-223.
- Saini, M., Laajasalo, T., & Platt, S. (2020). Gatekeeping by allegations: An examination of verified, unfounded, and fabricated allegations of child maltreatment within the context of resist and refusal dynamics. *Family Court Review, 58*(2), 417-431.
- Slep, A., & Heyman, R. (2006). Creating and field-testing child maltreatment definitions: Improving the reliability of substantiation determinations. *Child Maltreatment, 11*(3), 217-236.

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