



**NOVA SCOTIA
DEPARTMENT OF JUSTICE
VICTIMS' SERVICES DIVISION**

Child Victims and the Criminal Justice System

**Child Victim Witness Program
(March, 1993 – June, 1999)**

Overview Document

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“A hundred years from now it will not matter
what my bank account was,
the sort of house I lived in, or the kind of car I drove....
But the world may be different because I was important
in the life of a child”

On a card received from a client,
Victims' Services Regional Office, New Glasgow

EXECUTIVE SUMMARY

The following document provides an overview of the complete report, *Child Victims and the Criminal Justice System; Study Report* which may be obtained on the Nova Scotia Department of Justice web site at www.gov.ns.ca/just/.

This research on the experience of child victims in the criminal justice system in Nova Scotia has contributed to a body of research both in Canada and internationally that has examined ways to minimize the trauma to children that is associated with testifying about their own victimization.

There is valid reason to continue to examine the experience of child victims and the services currently available to them within the criminal justice system. Research has revealed ways to improve children's experience so they can provide accurate evidence. At the same time there are continuing calls for a consideration of "the best interests of the child" which may conflict with the prosecution of the case. For example, one of the most difficult decisions from a Crown's perspective is often whether to call a youthful witness at all, due to their level of anxiety or reluctance to testify (*Viva Voce*, Summer, 2000, p. 4).

The means of examining children's experience in the criminal justice system in Nova Scotia was to look at data compiled by the Child Victim Witness Program (CVWP) since its inception in 1994, with specific focus on those cases where children testified before the courts.

Objectives of the CVWP are to increase the child's knowledge about court procedures and the roles of key players, address the child's fears and reduce the anxiety associated with giving evidence, provide specific assistance in building communication skills with a particular focus on the need to be acquainted with the kinds of questions associated with cross-examination, and offer emotional support to the child and family.

The research examined demographics for the total of 1,682 child victim cases¹ referred to the Victims' Services Division from March 1, 1993² to June 30, 1999, services provided and court process on 453 cases closed between April 1, 1998 and June 30, 1999, and information obtained from interviews with parents as well as Victims' Services Support Workers who had provided a variety of support services to child victims during the period under study.

Results echoed earlier research studies in many ways.

Over two-thirds of the total sample involved female children. Where information was available, 81% of children knew the accused either as a family member, a trusted adult, or a

¹ The CVWP has a mandate to serve children who are either direct victims of a crime or witnesses to another person's victimization. A total of 2,050 cases were referred. This study is limited to those 84% of cases where children were direct victims.

² The study includes 62 cases that were opened prior to the establishment of the CVWP, and were transferred to the program for ongoing service.

peer. Girls were nearly twice as likely as boys to be victims of sexual assaults, while boys were much more likely than girls to be victims of physical assaults.

Adolescents have consistently formed the largest group of service users; just over half of children were between the ages of 12-15 years of age at the time of intake. There is a continuing challenge to adequately serve older adolescents, as the research literature and available resources focus particularly on the needs and vulnerabilities of young children.

The following findings are related to the 453 cases closed between April 1, 1998 and June 30, 1999. In 251 cases (60% of cases cleared by charge) children received court preparation. From information available on these 251 cases:

- the average time from date of arraignment to preliminary or trial was 8.7 months; cases remained in the criminal justice system, on average for 9.3 months from arraignment date to final disposition;
- while each of the children lived with mounting anxiety over a lengthy period of time at the prospect of testifying, just over half actually testified;
- just over half of cases resulted in a finding of guilt, either through guilty plea or conviction; nearly one-quarter of cases were either stayed, withdrawn, or dismissed;
- on average, those cases that were stayed, withdrawn or dismissed took 10.9 months to reach their final determination;
- convictions occurred in just over half of cases where a verdict was obtained at trial;
- 42% of all guilty pleas were entered after the child had been prepared to testify; in some of these cases the guilty plea was entered on the day of trial;
- probation was the most common disposition, ordered in 80% of cases; a term of custody was handed down in 25% of cases;
- application was made to the Criminal Injuries Compensation Program in only 30% of cases where children received court preparation.

Interviews with seven Support Workers who provided service to children in the majority of cases during the time period, and with a limited sample of 19 parents, provided qualitative information on children's experience prior to, and on the day of trial. Most children met with the Support Worker at least three times, and nearly half met with the Crown more than once before going to court. It was further determined that:

- there are areas specifically related to the CVWP that require further improvement: curriculum resources, Support Worker training, and follow-up services;

- there are only four courthouses in the province where separate, child-appropriate waiting areas are available as they are only provided where Victims' Services offices are located,
- children are asked to be at the courthouse for 9:30 am although other items on the court docket are often dealt with prior to hearing the case in which the child is to testify, thus children must often wait to testify for lengthy periods at the courthouse before being called to testify;
- many police, Crown attorneys, and judges are aware of, and sensitive to the difficulties children experience; defence lawyers are viewed as much less sensitive;
- the currently required competency hearing is reported as awkward and confusing for children;
- testimonial aids are seldom used in Nova Scotia; children's greatest fear of having to face the accused in the courtroom is thus often realized.

Parents and Support Workers offered clear suggestions for changes to increase children's comfort and lessen their trauma while participating in the adult environment of criminal court. To best serve the administration of justice, these, and other considerations emerging from the study were considered in the context of examining the conditions under which children may be expected to provide the most accurate testimony.

The report advances several recommendations and suggests implementation by a committee representing the Department of Justice, the Public Prosecution Service, and child welfare agencies. The report concludes that it is the responsibility of the criminal justice system to continue to grapple with the "twin, but potentially opposed aims" (Wachtel, 1997, p. xiii) of supporting child witnesses and ensuring the right of the accused to a fair hearing.

Context

The Child Victim Witness Program (CVWP) is one of the core programs offered through the four regional offices of the Victims' Services Division in Nova Scotia. As well as providing general information and support to child victims of crime and their supportive adults, the program provides a specialized, non-evidentiary court preparation curriculum to prepare and support child victims or child witnesses who testify in criminal court proceedings.

The overall objectives of the program, which was launched as a pilot (January, 1994 - March, 1996) are to:

- increase the child's knowledge about court proceedings and roles of the key players and to assist the child's understanding of how the court process unfolds;
- address the child's fears and reduce the anxiety associated with giving evidence;
- provide specific assistance in building communication skills with a particular focus on the need to be acquainted with the kinds of questions associated with cross-examination;
- offer emotional support to the child victim/witness and family.

Several modifications were made at the conclusion of the pilot program in March, 1996, and in response to the recommendations of an independent evaluation conducted in the same year. The program, now fully integrated as a core service of the regional Victims' Services offices, serves children province-wide.

The Court Preparation Curriculum

Services include:

- a) Information about the criminal justice system
- b) Assistance with application to the Criminal Injuries Compensation Program (CIC)³
- c) Support to parent/legal guardian/supportive adult
- d) Referrals to other services in the community
- e) Liaison with the Crown attorney
- f) Witness preparation
- g) Assistance with filing of Victim Impact Statements

Children referred to the program are either direct victims or witnesses of a crime and are under the age of 16 years, to reflect the age of a child as defined by the Children and Family Services

³Effective June 8, 2000, this program provides financial assistance for counselling only, and has changed in name to the Criminal Injuries Counselling Program.

Act⁴. Service is provided by fee-for-service Support Workers.

The first component of court preparation is implemented approximately six (6) weeks prior to the actual date of testimony, and consists of an information and rapport-building session in the child's home, in the company of the parent/supportive adult. The content tools have been adapted from those originally used in the pilot, to adjust to the average age of children found to participate in the program. The second session is conducted in the courtroom. The session may be held in consultation with the Crown attorney, and involves a courtroom tour and a role play giving the child the opportunity to listen to complex questions about a neutral topic such as a day at school or weekend activity. Liaison with the Crown attorney is arranged and a meeting is scheduled. An additional booster session may be offered when a child is experiencing significant stress at the prospect of giving testimony. Court accompaniment is offered to each child. Following the child's actual testimony, a debriefing session occurs within forty-eight (48) hours, either by telephone or a face-to-face interview. Additionally, the child may be provided assistance in making application to the Criminal Injuries Compensation Program or in preparing a Victim Impact Statement at the conclusion of the trial and prior to sentencing. The final component of the program is a closure session to identify and address any outstanding issues and unmet needs.

Research Question

The current study continues the preliminary examination of cases begun during the pilot phase of the program. It was noted then that the increased numbers of child complainants in Nova Scotia suggests the Criminal Code amendments intended to facilitate children's testimony have been effective. The associated risk inherent is that without an ongoing assessment of current practice, children may become revictimized in an adult court process. In keeping with the mandate of the Victims' Services Division, an anticipated outcome of the current study is to propose recommendations for policy formulation/revision related to children in the justice system.

The research design permitted an examination of the following general research questions:

1. What does the current literature contribute to an understanding of the experience of children in the justice system?
2. What can we know of the experience of children who have participated in the Child Victim Witness Program in Nova Scotia through analysis of data collected by the program?
3. What is the status of other specialized child victim witness service programs in Canada?
4. What are the needs of child victims in relation to the services available to them within the criminal justice system?

⁴During the pilot program children under the age of 18 were eligible to participate in the program. The age of eligibility was reduced to under 16 during the 97/98 fiscal year.

A complete report that addresses each of the research questions may be found on the Nova Scotia Department of Justice web site. This report focuses specifically on the second and fourth research questions. The pilot had told us that the program needed to be adjusted to reflect the age of the primary service group, which was well above the resource materials then available. It is clear that there is a continuous need to monitor key trends in relation to client profile, to contribute to a determination if services available to child victims within the criminal justice system are in fact meeting their needs. It is expected that the analysis of findings will be used to impact program content and data collection, case management within the criminal justice system, and future policy initiatives in the province.

Methodology

The study was structured in four components:

- a) information on demographics for the total of 2,050 files opened during the period March, 1993 - June 30, 1999;⁵
- b) detailed information on services provided and court process on a data subset of 453 cases closed between April 1, 1998 - June 30, 1999, where children were alleged victims of an offence;
- c) information obtained from 19 parent interviews, from a random sample of 60% of parents/guardians of the 130 alleged child victims who testified on files closed between April 1, 1998 and June 30, 1999;
- d) information obtained from interviews with a sample of seven Support Workers who had provided the majority of service to clients during the time period under study.

The usual ethical precautions to ensure client confidentiality and informed consent were employed during the study.

Limitations of the Study

The data is only reflective of those cases involving alleged child victims of crime who had been referred to the Victims' Services Division during the period March, 1993 to June 30, 1999 and received services of the CVWP. The numbers of children who could have been referred but were not is unknown. The sample is therefore not representative of the complete population of children in Nova Scotia who were victims of a crime within that time period. While it is recognized children who witness crime but are themselves not the primary victims may be equally traumatized by the experience, with the exception of noting cases by region, the study was limited to children who were direct victims.

It should be noted that data was analyzed by categorizing by age and gender, sexual and physical offences, and relationship of the child to the accused. Further examination is necessary

⁵Note: This study includes 62 cases that were opened prior to the establishment of the CVWP, and were transferred to the program for ongoing service.

by *Criminal Code* offence to determine the relevance of these findings.

Due to the extremely small sample size and the high refusal rate, care should be made in making generalizations based on parent interviews conducted. It cannot be assured that the sample is representative of the total group of child victims who testified during this time period. It should be recognized also that as all interviews, with the exception of one, were conducted with parents/legal guardians, responses reflect parental perception of their child's experience. These recorded responses may differ from the child's actual experience or perception.

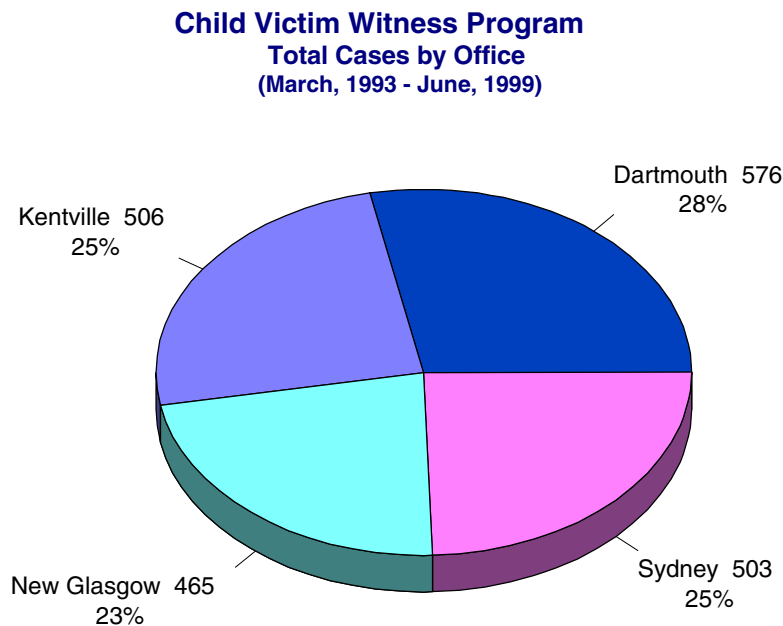
Interviews were conducted with seven of the complete roster of 22 Support Workers. Interviewees were selected based on the percentage of clients to whom they had offered service during the time period under study. The interviews therefore reflect a large percentage, but not the total files during this time period.

Key Findings

DEMOGRAPHICS

A total of 2,050 children who were either direct victims of a crime or witnesses to another person's victimization were served by the Victims' Services Division in the province of Nova Scotia during the period, March, 1993 - June 30, 1999. Cases were equally distributed throughout the province, with services provided from four regional offices, in two rural and two urban settings.

Chart 1: Total Cases by Office

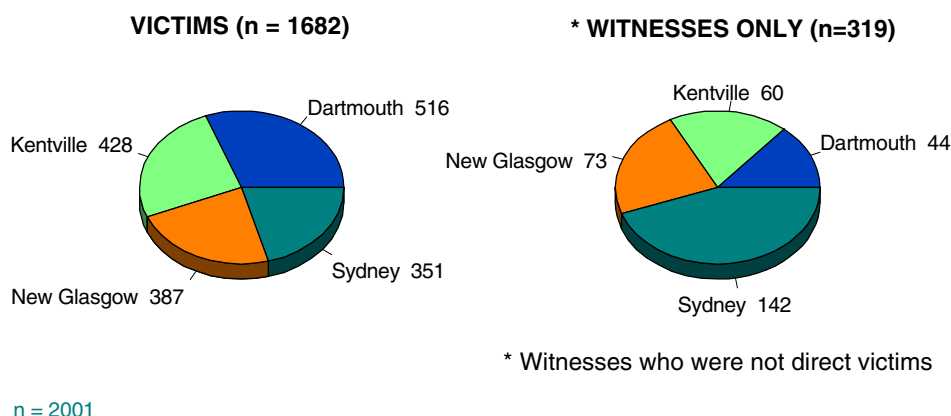


n = 2050

Overall, 84% of cases involved direct victims of a crime.

Chart 2: Cases by Office - Excluding brief contacts

**Child Victim Witness Program
Cases by Office, Excluding Brief Contacts
(March, 1993 - June, 1999)**



We have found an increase in the number of children who are witnesses but not direct victims of a crime during the review period. In order to contribute to the literature on child victims who come before the criminal courts however, the remainder of this report focuses on the 1,682 children who were direct victims of crime.

Referrals

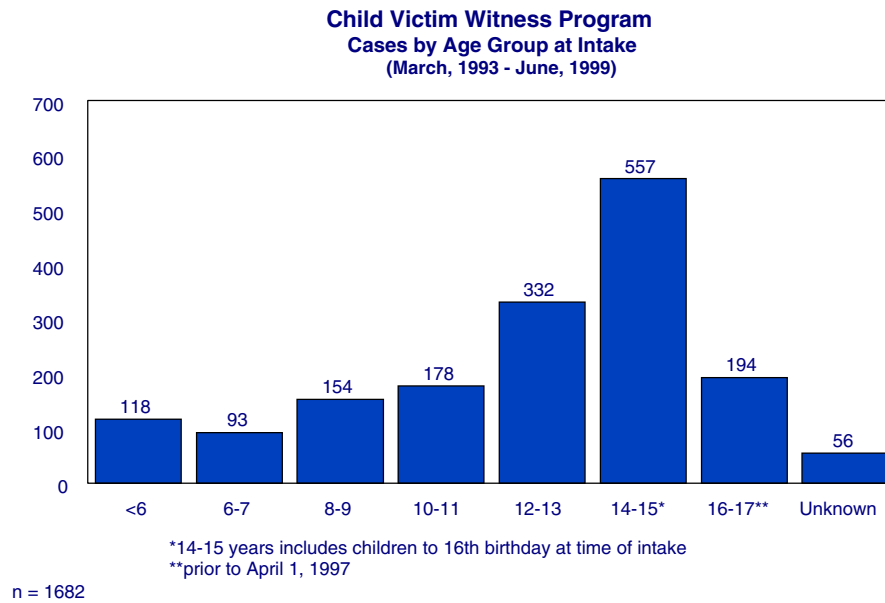
From information on 887 cases where referral source is known, between March, 1993 and June 30, 1999, just over half (53.9%) were referred from either a Crown attorney or directly from police. Conversations with staff reveal that a greater number of referrals were received from Crown attorneys than is indicated in the statistics, as one referral only per case is recorded. In some cases a file has already been opened at the time a Crown referral is received.

The information on referral source has relevance within this study with reference to the stage of the criminal proceedings when the referral is received. Information was available in 860 cases involving victims on the stage in the criminal justice process that the referral was made to the CVWP. A child is eligible to receive the court preparation curriculum after the criminal investigation is completed, a charge has been laid, and a court date scheduled. Of the 860 cases reporting referral stage, 91% of children were referred either before the preliminary hearing or trial, making possible the provision of a full array of services to the child victim.

Client Profile

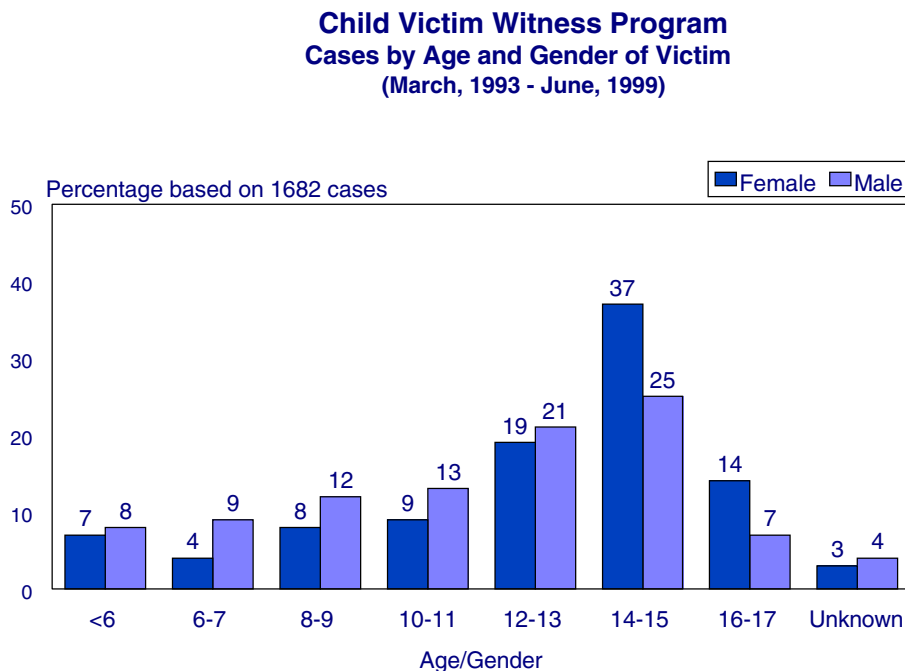
From information on 1,626 cases where age is known, just over 50% of children were 12-15 years of age at the time of intake. Seventy-three percent of this age group however, were female.

Chart 3: Cases by Age Group at Intake



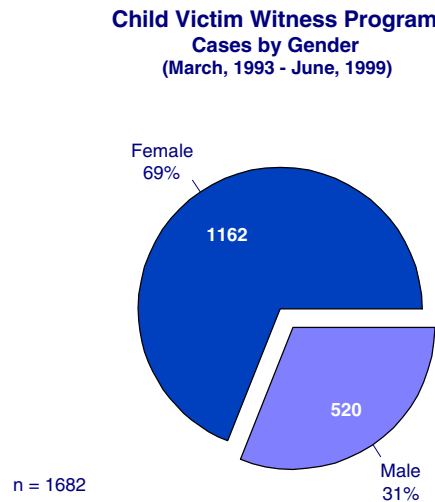
Considering only children under 16 years of age (i.e., excluding children aged 16-17, prior to April 1, 1997), the average age was 11.6; the median age was 13. The average age was slightly older for girls (12.0) than boys (10.8).

Chart 4: Cases by Age and Gender of Victim



Just over two-thirds of the total sample of cases involved female children.

Chart 5: Cases by Gender

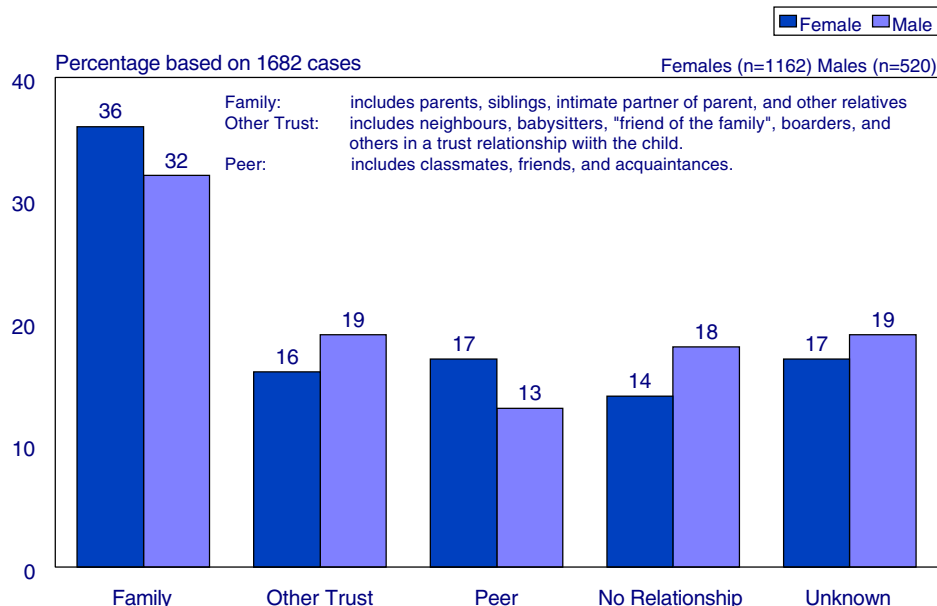


Relationship of Client/Accused

In 1,383 cases where relationship to the accused is known, 81% of children knew the accused, either as a family member (42%), a trusted adult (20%), or a peer (19%). Girls were slightly more likely than boys to be victims of a crime within the family or within a peer relationship; boys were slightly more likely than girls to be victimized by a trusted adult or a stranger.

Chart 6: Relationship of Child Victim to Accused by Gender of Client

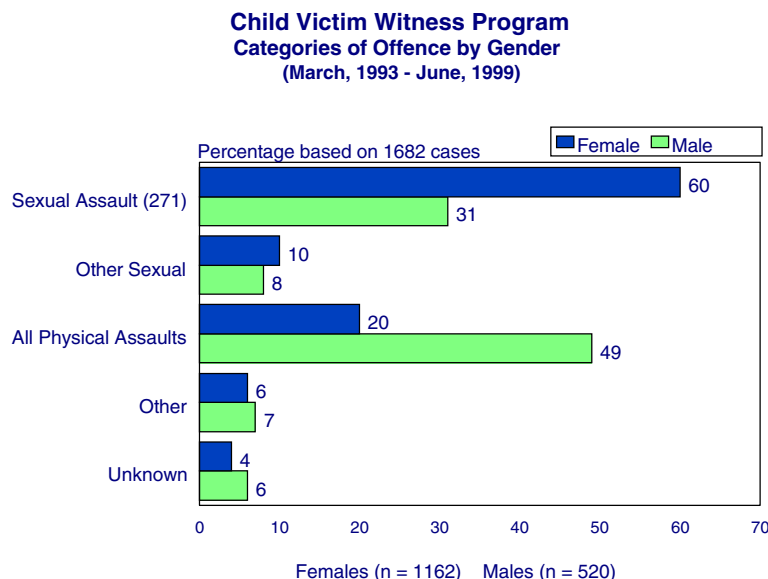
**Child Victim Witness Program
Relationship of Child Victim to Accused by Gender of Client
(March, 1993 - June, 1999)**



Categories of Offences

Female children were nearly twice as likely as male children to be victims of sexual offences; male children were much more likely than females to be victims of physical assaults.

Chart 7: Categories of Offence by Gender



Within the family, within peer relationships, and in cases involving abuse by a stranger, girls were more likely to be victims of sexual offences, and boys were more likely to be physically assaulted. Sexual victimization within a trust relationship was similar for both genders.

Chart 8: Relationship by Offence and Gender

Percentage based on numbers of female and male clients.

n = 1347	Female : n = 936			Male: n = 411		
	Sexual	Physical	Other	Sexual	Physical	Other
Family	31%	12%	1%	13%	24%	3%
Other Trust	17%	2%	1%	17%	5%	1%
Peer	13%	6%	2%	5%	9%	2%
Stranger	11%	3%	2%	8%	12%	2%

Demographics: Implications of Key Findings

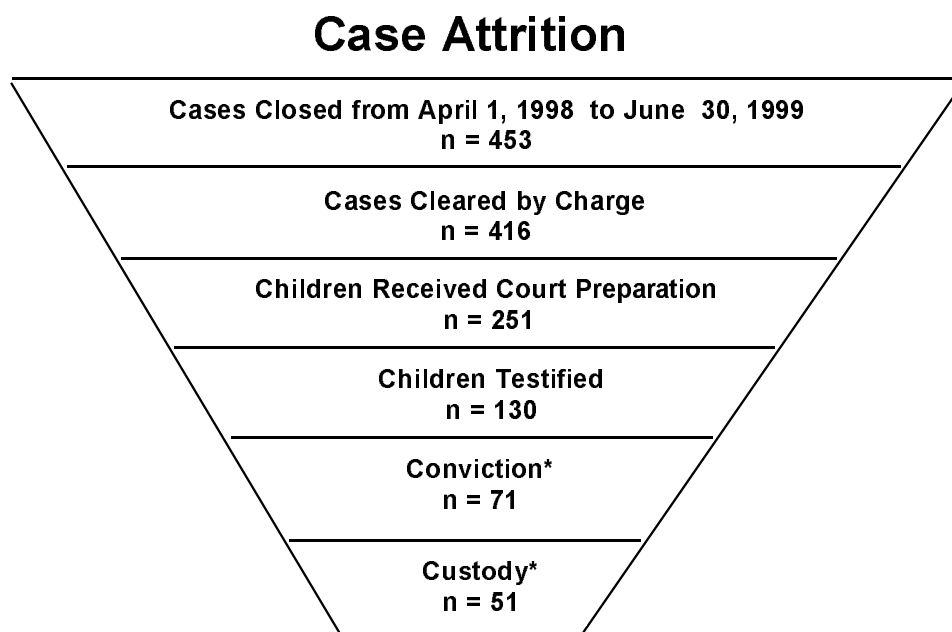
From demographic information detailed above, for children served by the CVWP from March, 1993 - June, 1999, it is determined that, though this study has focused on children who are direct victims of crime, the age and gender breakdown is consistent with that of the pilot program that included both victims and witnesses.

COURT PROCESS

Study Sample

Figure 1 provides an overview of the flow of cases closed for the sample period of April 1, 1998 - June 30, 1999. The total number of cases that resulted in a conviction (n = 78), and in which the offender was committed to custody (n = 55), was slightly larger. This report focuses on court process in those cases where children received court preparation.

Figure 1: Case Attrition



*in cases where children received court

This subsample of cases (n = 453) is demographically similar to the total 1,682 cases involving child victims. Two-thirds of the child victims whose cases were closed between April 1, 1998 - June 30, 1999 were girls; one-third were boys. The majority of children (60%) were between the ages of 12-15; 30% were ages 6-11; 8% were younger than 6 years-old.

The gender difference was roughly the same for the total cases cleared by charge (n = 416), although slightly fewer sexual offence cases proceeded. The following provides a profile:

- Profile of Cases Cleared by Charge (n = 416)**
- 65% involved female children, and 35% involved male children;
 - 56% of cases involved sexual offences; 36% involved physical offences; 8% other;
 - girls were more likely to be victims of sexual than physical offences (64% versus 28%);
 - boys were more likely to be victims of physical than sexual offences (52% versus 41%);
 - in cases where relationship is known (n = 342), 37% involved an accused within the family; 63% involved an extr afamilial accused.

In 19% of cases guilty pleas were entered (n = 68) or charges were withdrawn (n = 12) before a preliminary hearing or trial date was set.

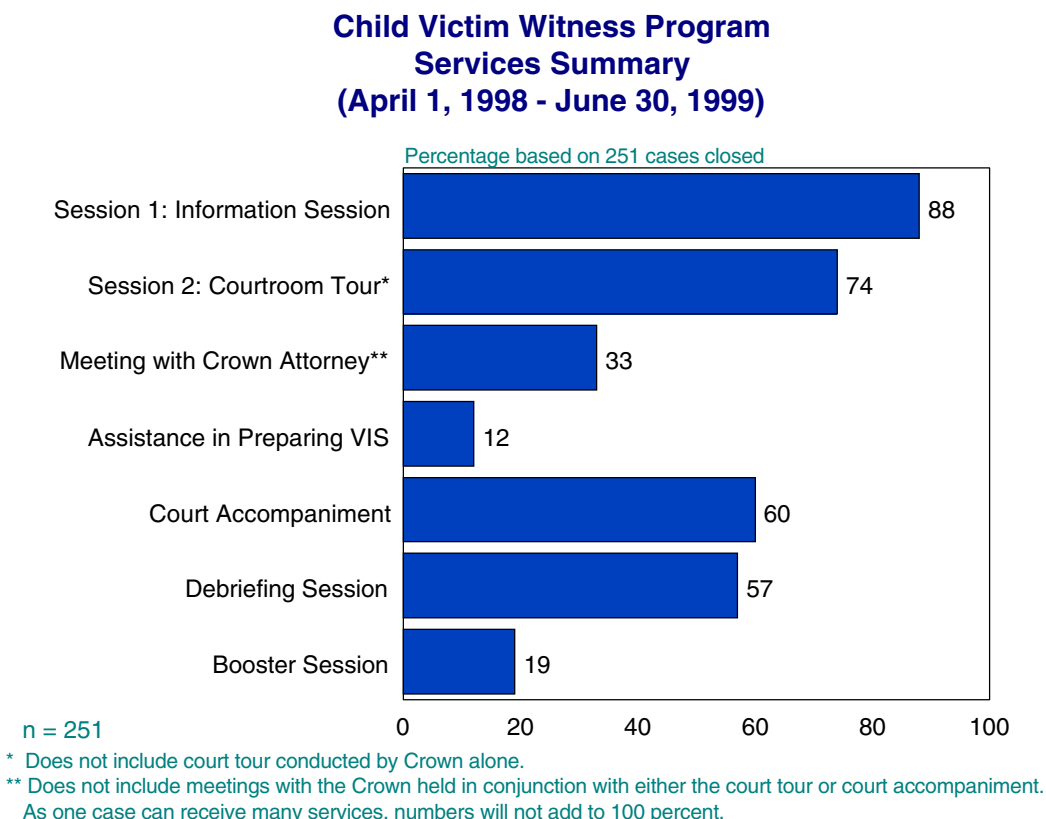
Court Preparation/Service Provision

Court preparation was provided to children in 60% of cases cleared by charge (n = 251). In nearly half of these cases children would ultimately not be called upon to testify either because a guilty plea would be entered just prior to, or the day of the trial, or their case was stayed, withdrawn, or dismissed. We know that for the latter group, on average, it took 10.9 months for these outcomes to be reached. These are the number of months on average that the children would have experienced the mounting anxiety of a pre-trial wait, prior to learning their testimony would not be required.

In only 30% of cases where children received court preparation, were applications made to the Criminal Injuries Compensation Program. Although counselling was awarded in nearly all of the approved applications, less than half (43%) of children who were awarded counselling actually accessed the award.

Chart 9: Service Provision

Profile of Children Testifying



Just over half of those who received court preparation actually testified; an additional two children who did not receive court preparation were called upon to testify.

Profile of Children Testifying (n = 130)

- just over two-thirds were girls;
- most testified only once.

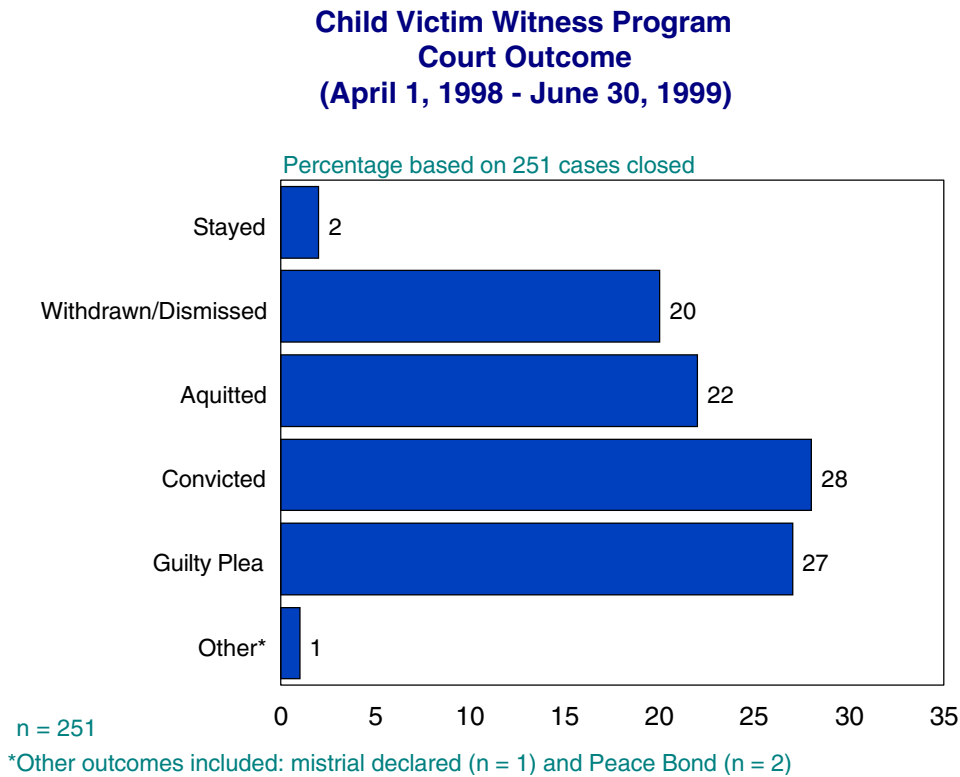
Children were more likely to testify if:

- they were between the ages of 12-15 (more likely for girls);
- the offence was sexual (much more likely for girls);
- the accused was someone outside the family (slightly more likely for boys).

Court Outcomes

Just over half the cases in which children received court preparation resulted in a finding of guilt, either through guilty plea or conviction; 22% of cases were either stayed, withdrawn, or dismissed; the accused was acquitted in 22% of cases.

Chart 10: Court Outcomes on Cases Where Children Received Court Preparation



Forty-two percent of all guilty pleas were entered after the child had been prepared to testify. In considering findings of guilt by either guilty plea or conviction, we found that:

Findings of Guilt in Cases Where Children Received Court Preparation (n = 139)

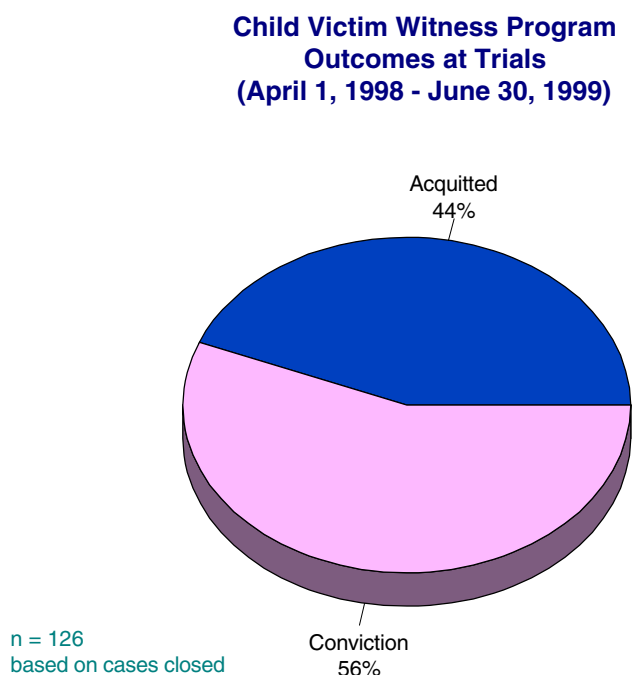
A finding of guilt, equally likely for girls and boys, was more likely in cases involving:

- children between the ages of 12-15;
- a physical versus sexual offence;
- an accused outside the family.

When the accused was someone within the family, girls were slightly more likely than boys to see their case result in a guilty finding.

Cases involving sexual offences were less likely than cases involving physical offences to result in a guilty plea, and more likely to be acquitted at trial.

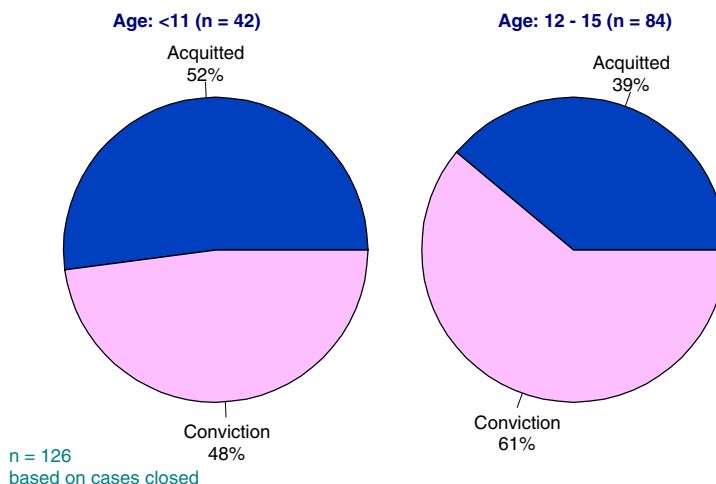
Chart 11: Outcomes in Cases Where Trials Were Held, and Children Received Court Preparation



Convictions, which occurred in just over half of the cases that went to trial, were somewhat more likely for boys than for girls, and more likely for older children (12-15). Each of the four cases involving children under the age of six resulted in an acquittal.

Chart 12: Outcomes at Trial by Age

**Child Victim Witness Program
Outcomes at Trial by Age
(April 1, 1998 - June 30, 1999)**

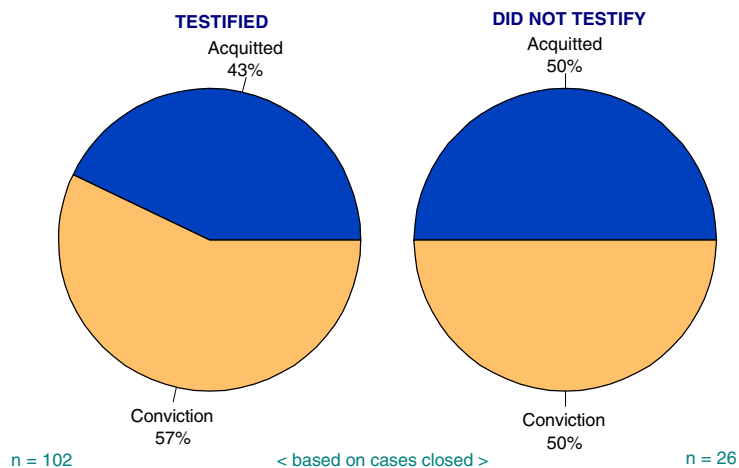


In 57% of cases where children testified the accused was convicted, compared to 50% of cases where children did not testify. When children testified the accused was convicted more frequently when the relationship was extrafamilial (64%) than intrafamilial (46%); convictions were equally likely for sexual and physical offences.

It is noted that further examination is necessary by *Criminal Code* offence to determine the relevance of these findings.

Chart 13: Outcomes When Children Testified

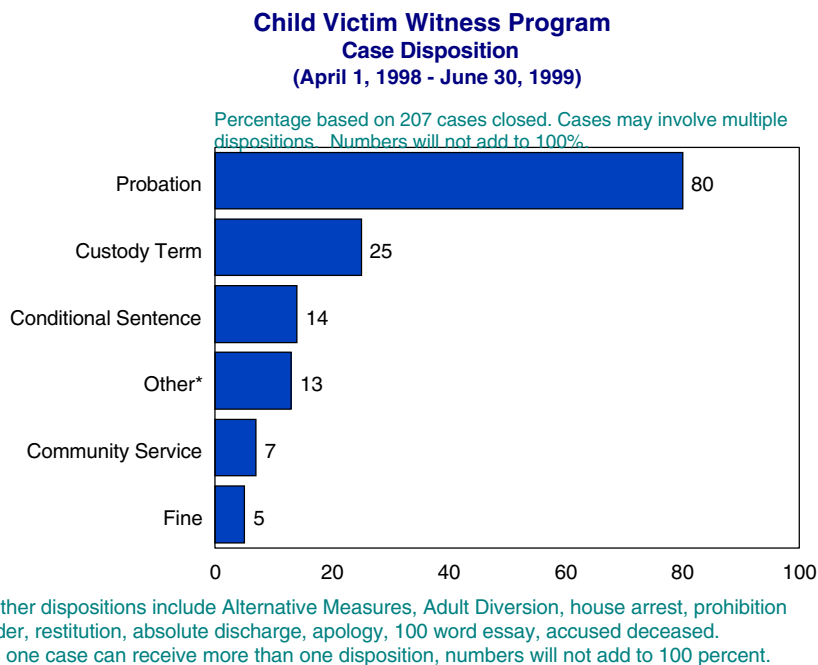
**Child Victim Witness Program
Outcomes when Childred Did/Did Not Testify
(April 1, 1998 - June 30, 1999)**



Case Dispositions

From information available on 219 cases where children received court preparation, on average it took 9.3 months for the case to be resolved⁶. It took longer than this on average when only cases that were stayed, withdrawn, or dismissed are considered (10.9 months).

Chart 14: Case Dispositions



By far, the most common disposition was probation, ordered in 80% of cases; the offender was committed to custody in 25% of cases. Both dispositions were more likely for cases involving girls than for cases involving boys. It is noted that further examination is necessary by *Criminal Code* offence to determine the relevance of these findings.

Custody (n = 51)

A term of custody was more likely when:

- the offender was inside rather than outside the family (32% versus 21%);
- the offence was sexual rather than physical (31% versus 16%);
- the child testified (15% versus 12%).

Sentence length varied from one day to life (murder) , with an average (excluding the life term) of 17 months.

⁶As it is understood the arraignment date can follow the date of charge by from 6 weeks to 2 months, this length of time will be increased by that amount.

Sentence Length (n = 43)

Sentences, on average were longer when:

- the victim was a boy rather than a girl (19.5 months versus 16.2 months);
- the offence was sexual rather than physical (22.6 months versus 4.9 months);
- the offender was within the family (26.4 months versus 14.5 months);
- the child testified (31.3 months versus 7.5 months);
- a Victim Impact Statement was submitted (23.4 months versus 5.4 months).

Court**Process: Implications of Key Findings**

An examination of data on cases closed between April 1, 1998 - June 30, 1999 reveals that this subsample of cases is demographically similar to the total 1,682 cases involving child victims that were opened between March, 1993 - June 30, 1999.

While the majority (60%) of child victims were between the ages of 12-15, 38% (n = 171) were younger than 11 years-old; 36 children were younger than six years-old. This trend has remained consistent since the program's inception. As noted earlier, program resources were modified to reflect the predominantly older age group served than that for which printed materials had been available. It remains the case that the research literature focuses particularly on the needs and vulnerabilities of young children. The continuing challenge for program staff is to accurately anticipate and provide for the needs of, particularly, older adolescents.

The fact that girls were victims in roughly two-thirds of all cases continues to have implications both for service provision within the CVWP and for the choice of Crown when cases are prosecuted. The pilot project had concluded that the gender of the Crown could have a significant bearing on the ability of the child to be an effective witness.

Over two-thirds of cases involved extrafamilial abuse, suggesting perhaps that children are most at risk outside the family. However, this report concurs with the alternative explanation offered by Sas (1999); that is, as a society there may continue to be a reluctance to charge family members.

In 60% of cases that were cleared by charge children were still facing the prospect of testifying six weeks prior to a preliminary hearing or trial date, at which time the court preparation process normally begins. While just over half of those children who received court preparation actually testified, each of these 251 children would have experienced increasing anxiety at the prospect of testifying over a sometimes lengthy period of time. It is well known that pre-trial waiting is one of the most stressful times for children (Sas et al., 1993).

The finding that in only 65% of cases in which children testified after receiving court preparation a meeting with the Crown was scheduled, is inconsistent with anecdotal information from each of the regional offices, and from information gained from parent interviews, both of which suggest the meeting with the Crown is a standard practice in all cases

involving child victims. A possible explanation may relate to the timing of meetings with the Crown. Very often the Crown meeting is done in conjunction with the court tour. Statistics taken from Support Worker billings may not reflect these meetings as they would reflect the court tour only. Similarly, if meetings with the Crown occur on the actual day of the court hearing when the Support Worker accompanies the child to court, statistics may reflect court accompaniment only. This may be an area for program follow-up with regard to standardized recording.

The fact that in only 30% of cases where children received court preparation applications were made to the Criminal Injuries Compensation Program, comprises another area for program follow-up, to ensure the application process is explained and understood. The low number of applications received from parents/guardians of children who received court preparation may possibly be explained by the fact that some children will undoubtedly have accessed counselling earlier in the process either through contact with a child protection agency or through individual initiative. It is recognized also that the need or desire for counselling or others forms of compensation may not be recognized by some parents/guardians.

The further finding that though counselling was awarded to nearly all children whose Criminal Injuries Compensation application was approved, less than half actually accessed the award, may speak to the specific needs that children experience throughout the court process. Children will have been referred to the Victims' Services Division, in most cases no sooner than ten weeks prior to the preliminary hearing or trial date. By this time the immediate emotional response the child experienced as a result of being victimized may have receded somewhat as the child has had to develop a means of coping with the trauma of the event. Though the ability to access the counselling award remains intact for a five year period, there may be a reluctance to bring these highly emotional issues to the forefront once again. It should be noted as well, that this five year period will still be in effect for a number of these children, and the counselling award may yet be accessed.

Forty-two percent of all guilty pleas were entered after the child had been prepared to testify. These 68 children could have been spared the anxiety of an upcoming trial if the accused had made an earlier admission of guilt. In some of these cases the guilty plea would have been entered on the day of trial. In each of these cases hours of preparation with the Support Worker would have been involved, as well at least one, and possibly more, meetings with the Crown.

In this sample, convictions occurred in just over half of cases (56%) that proceeded to trial. This finding is identical to that of Sas (1999), who raises the question of whether the emotional stress of court involvement is worth the effort, when the prospect of conviction is so low. Slightly more cases resulted in convictions when the child gave evidence compared to those when the child was not called upon to testify. It should be noted however, that it is possible that children were only called upon to testify in cases where their evidence was essential, so care should be taken in comparing these results. It is notable in this sample as well that when children testified in cases involving an intrafamilial accused, convictions occurred in less than half of the cases (46%). The implications for children are sobering. Not only must they face the reality that their disclosure has resulted in exposure of the abuse with its accompanying public recognition and breakup of the family, but they must contend as well with the possible

internal belief that acquittal of the accused means they were not believed.

The finding that cases involving sexual offences were less likely than cases involving physical offences to result in guilty pleas and more likely to be acquitted at trial, is consistent with earlier studies that speak to “the clandestine nature of sexual abuse, and lack of corroborating evidence [that] continues to present a challenge to the courts” (Sas, 1999, p. 65).

This study determined that cases closed between April 1, 1998 - June 30, 1999 involving child victims remained in the criminal justice system, on average for 9.3 months from arraignment date to final disposition. Considering that arraignment date can follow the date of charge by from six weeks to two months, this calculation of average time is understood to be conservative. Both the literature and practitioners draw clear implications for memory retention, the quality of truth that is possible with an increase in the passage of time, and the resulting possibility of the creation of reasonable doubt.

This study further determined that cases that were stayed, withdrawn or dismissed after children had received court preparation took slightly longer on average to reach their final determination than the average time for all cases. In addition to children associating the outcome with an understanding that their testimony was not believed, is the compounding factor of the passage of time.

Though convictions occurred in fewer than half of cases involving an intrafamilial accused, it is notable that when convictions did occur in intrafamilial cases, not only was the offender more likely to be committed to custody, but also received, on average, a sentence nearly twice as long as did extrafamilial offenders. This finding is consistent with earlier studies. Though intrafamilial abuse may remain less visible in our society, the occurrence of more intrusive acts (Sas, 1999) in these cases is reflected in sentences handed down. Similarly, this study’s finding that sentence lengths were much longer for sexual versus physical offences is consistent with earlier studies.

This study’s finding that sentence lengths were longer when the child testified and when a Victim Impact Statement was submitted has distinct program implications. While it is interesting to note that convictions were only slightly more likely when children testified, sentence lengths on average in these cases were much longer.

While this study examined findings by grouping age and gender, sexual and physical offences, and relationship of the child to the accused, further exploration by specific *Criminal Code* offence is necessary to determine the relevance of findings in relation to outcome and disposition.

CHILDREN’S NEEDS IN RELATION TO CURRENT SERVICES WITHIN THE CRIMINAL JUSTICE SYSTEM

Client Expectations

In interviews conducted with the 19 parents in our study, in relation to service needs we learned:

- Service Needs**
- the majority of parents did not know about the CVWP prior to their contact with the Victims’ Services Division;
 - the primary need was for information;
 - other services became important as parents learned about the service;
 - the two most important services received were information and support;
 - follow-up after the trial was the most critical area where service was sometimes not received.

Waiting for the Court Day to Arrive

In the months leading up to the day of court, we learned that:

- Waiting for the Day of Court**
- most children met with the Support Worker at least three times;
 - in nearly half of the cases children met with the Crown attorney more than one time;
 - the majority of the children first met with the Crown less than one week, or one-two weeks before court;
 - most children were described as highly anxious; behaviours included fear of going out alone, nightmares, moodiness, withdrawal from family and friends, and thoughts of suicide;
 - children’s four most common fears were associated with:
 - ÷ the accused being in the courtroom
 - ÷ not knowing what was going to happen
 - ÷ parents being present (teen s)
 - ÷ wondering if they would be believed
 - parents were most fearful of their child being revictimized by the presence of the accused in the court.

Service Gaps and Barriers

Service gaps and barriers were identified by six of the seven Support Workers who were interviewed.

Service Gaps and Barriers

- the present activity-based service delivery does not permit Support Workers to provide as complete a service as they would desire, in relation to:
 - ÷ ongoing support through the process,
 - ÷ follow-up services particularly when the accused is acquitted,
 - ÷ children with special needs, and
 - ÷ young children;
- in family violence cases where both mother and child are victims, it is sometimes difficult to focus on the needs of the child;
- interim counselling (prior to CIC funded counselling) is perceived to be necessary to facilitate children's "immediate need totell";
- when applications for CIC counselling are denied (approval is based on sufficient evidence to determine that on a balance of probabilities a violent crime has been committed), children may still be traumatized and require counselling;
- the child's right to support is still perceived to be at the discretion of the judge;
- a review of the curriculum tools is suggested to accommodate greater flexibility;
- diverse client population groups are under-represented;
- the complement of Support Workers is perceived to be top heavy with females.

The Day of Court

We learned a great deal from parents and Support Workers about the experience of children on the day of court that confirmed earlier findings and provided new information on the court process for children in Nova Scotia. We learned that:

The Day of Court

- though children generally arrive at the courthouse between 9 and 10 am they usually had to wait between one to three hours prior to testifying;
- children typically waited in a little room just outside the courtroom, where no activities were provided other than what the Support Worker supplied;
- children's greatest fear was of having to face the accused; in nearly all of the cases the children saw the accused while they testified;
- testimonial aids were rarely used;
- most children reportedly agree with defence lawyers; most will not be able to ask for a break;
- many children did not say everything in their testimony that they had wanted to say;
- parents thought the worst part was their child seeing the accused; Support Workers believe it is talking about the incident itself;
- one-third of the parents did not identify a "best part of testifying" other than their child "getting it over with";
- though Crown attorneys and judges were seen as generally sensitive to the difficulties children experience, there is sometimes a failure to recognize:
 - < children's need for a break,
 - < the desirability of a closed courtroom, and
 - < the implications of rescheduling cases to a future date;

After

The Day of Court cont'd

- defence lawyers received lower ratings for sensitivity, reportedly asking leading questions, “pouncing” on children, or being sarcastic;
- appreciation was expressed for the efforts of the Crown to use language children can understand;
- the competency hearing is reportedly awkward and confusing for children;
- there continues to be need expressed for increased knowledge about the CVWP among justice personnel.

After Testifying

- support and information provided by the CVWP prior to, and during the trial process was viewed as critical by the majority of parents;
- although two-thirds of parents disagreed with the outcome of the trial, more than two-thirds did not regret reporting the crime;
- in more than three-quarters of the cases parents reported their children were glad they testified; in the majority of these cases children felt vindicated in knowing they had fought back.

Testifying

Parents’ Recommendations for Change

- ⇒ shorten the time frame of investigation, or from investigation to trial;
- ⇒ explore options, e.g., videotaping, so children would not have to see the accused while testifying;
- ⇒ increase follow-up services after testifying.

Recommendations for Change

Parents offered several recommendations for changes to the justice system to make it easier for children while waiting for court, the day of court, and after testifying. Most frequently noted were:

Support Workers’ Recommendations for Change

- ⇒ improve resource material, to assist children to understand and talk about their feelings;
- ⇒ increase opportunities for contact with children prior to court; increase follow-up after court;
- ⇒ schedule, and hear cases earlier in the day;
- ⇒ increase comfort of waiting areas, with age-appropriate activities, particularly in satellite courts.

Recommendations most frequently provided by Support Workers included:

Three of the seven Support Workers noted the risk to children of revictimization through their involvement with the criminal justice system.

**Children's Needs in Relation to Current Services Within the Criminal Justice System:
Implications of Key Findings**

From interviews with parents and Support Workers we are able to gain a picture of the experience of children who testify about their own victimization in criminal courts in Nova Scotia.

Children experience significant anxiety leading up to the day of court, apprehension that is most often displayed in behaviours that cause them to withdraw from others. Their main fear is of having to face the accused in the courtroom; most in fact do.

Our data suggests there is an under-recording of meetings with Crown attorneys, raising implications for program follow-up to ensure this data is captured. Alternatively, the data may suggest that either not all children in this sample met with the Crown attorney prior to the day of court, or the first and only meeting was on the day of court itself. Either possibility raises clear implications for future practice. Sas (1999) notes that in prior meetings Crown attorneys can learn about young witnesses' verbal comprehension, level of anxiety, fears, maturity, distractibility, and concentration. Without this information the ability of the child to convey the truth of her/his experience in an adult environment is jeopardized. Further, children's level of anxiety may be expected to diminish considerably when adequate rapport is built with the Crown who will have a most intimate knowledge of their victimization.

The lack of a child-appropriate waiting area in all cases was made evident, particularly in satellite courts. While the waiting room in each of the regional offices, located in the court facility, is equipped with children's activities, this is not the case on a province-wide basis. The fact that children could sometimes see the accused while waiting, and that there were typically no age-appropriate activities present beyond what was provided by the Support Worker, reminds us that children are participating in an adult environment where their needs are yet to be fully incorporated.

Support Workers have identified areas specifically related to the CVWP that require further improvement: curriculum resources, training, and follow-up sessions.

The practice of dispensing with other items on the court docket prior to hearing the case in which the child is to testify, while intended to assist children by having fewer people present

when they testify, has the detrimental effect of increasing the time children must wait. Regardless of age, pre-trial waiting beyond one hour is perceived as agonizing for children.

Children experience significant stress while testifying about their own victimization. This study has determined that many police, Crown attorneys and judges are aware of, and sensitive to the difficulties children experience; though recognizing the differing role of defence lawyers, interviewees gauged them as much less sensitive. This study has also determined that further work is necessary in relation to children's examination on the stand, to ensure their appropriate treatment.

The provisions of Bill C-15 more than a decade ago, for the use of testimonial aids when children testify, are not widely used in Nova Scotia. Appropriate use of the screen requires further study that incorporates individual children's needs and consequences of its use.

Parents and Support Workers have offered clear recommendations for changes to increase children's comfort and lessen their trauma while participating in the adult environment of criminal court. To best serve the administration of justice, these, and other considerations emerging from the study will be considered in the context of examining the conditions under which children may be expected to provide the most accurate testimony.

DISCUSSION AND RECOMMENDATIONS

The work of Regan and Baker (1998) raises the dilemma that remains current for those who bear the responsibility of providing the critical service of court preparation to children who will be called to testify in criminal court. They note that the very techniques employed to help children to cope with the trauma associated with testifying may increase the likelihood that the manner in which they deliver their testimony will raise doubts about their credibility in the minds of jurors. This finding led to two suggested options to increase the likelihood that the demeanor of children would correspond with what they determined jurors expect to see:

- reduce the delay between the reported offence and the trial date; reduce the number of interview sessions; reduce the amount of preparation children receive prior to testifying, or
- increase reliance by the courts on measures that would prevent the child's face-to-face confrontation with the accused, e.g., videotaped testimony, closed-circuit television, or screens.

Further, the literature suggests that convictions are more likely (Hamblen & Levine, 1997), as are longer sentences (Sas et al., 1993) when live testimony is heard.

The "twin, but potentially opposed aims" discussed by Wachtel (1997) further illuminate the continuing dilemma of how best to support the needs of children in an existing adult system, and whether the particular needs of children can coexist with the requirement of ensuring a fair hearing for the accused. Wachtel also proposes two streams of change, emphasizing:

- physical changes to courtroom layout to better accommodate children, and
- changes in practice that progressively remove the child from the courtroom and potentially from the courthouse.

While both streams identified by these studies focus on the needs of children, following the former suggestions leads to changes that focus on legal intervention and prosecution in accommodating children to an existing justice process designed for adults. Following the latter suggestions constitutes changes that, it may be argued, focus primarily on helping children deal with their victimization. While it is evident that both streams of change are necessary, the risk of retraumatizing children in an adult justice process remains. Empirical study on the long term effects of testifying is an area for continued research, as is the unexplored effect of "the legal system's involvement on the victim's treatment", i.e., disruption of therapeutic interventions (Levesque, 1995, p. 76).

Recommendations have been formulated in six key areas: program operation, waiting for the day of court, the day of court, after testifying, professional training, and implementation. This report concurs with Sas (1999), that many recommendations are not new, but have not yet been routinely implemented.

Program Operation

Interviews with parents and Support Workers revealed important areas for program consideration:

- 1) the curriculum tools, modified at the conclusion of the pilot program to accommodate the primary age group of children served, are still perceived to inadequately serve older adolescents;
- 2) in recognition that individual client circumstances often do not fit within a prescribed program format, the number of allowable sessions and fee structure is perceived to be limiting, particularly in cases involving young children, children with special needs, and in cases resulting in acquittal. While it is recognized that the program permits extra client sessions upon approval, this policy appears to be unclear in practice, as Support Workers are regularly providing services for which they are not being remunerated;
- 3) the program is not presently representative of the diversity of cultural and linguistic groups in Nova Scotia. It is anticipated an Aboriginal Outreach Project (six month pilot) will begin in Halifax and the central region in the near future, and the Victims' Services Division would like to conduct a similar project in the Black community. The intent is to provide education about the CVWP, liaison, and develop culturally sensitive materials;
- 4) given that the complement of Support Workers is primarily female, the program does not have the ability to provide services by male workers if requested by clients. While it is recognized the majority of clients request a female Support Worker, the program currently does not have the capacity to offer a Support Worker of either gender.

It is recommended that the Victims' Services Division develop a process to review curriculum tools and fee structure, examine and address service gaps and barriers identified, and maintain efforts to serve a diverse population of children, with sensitivity to culture and gender.

While it is evident from our data that not all parents perceive their children require counselling or other compensation previously provided by the Criminal Injuries Compensation Program, it is also apparent that where parents indicated they did need assistance in completing an application, they did not always receive this service. Further, it may be that parents were not always told about the services available through the Criminal Injuries Compensation Program, as in only 30% of cases application was made.

Support Workers' recognition of children's need for counselling, coupled with the relatively small number of applications received for CIC funded counselling may point to the dilemma inherent in the present system. Children are encouraged to report abuse, but in reporting, a therapeutic intervention they may require may be disrupted or delayed while the case proceeds

through the criminal justice system. Therapy at that stage, with the associated possibility of contamination of evidence or witness suggestibility, risks compromising the outcome of the case. It may be argued that both the therapeutic intervention and a guilty finding are in “the best interests of the child”. It is clear that an answer to this dilemma remains to be found.

It is recommended that the Victims’ Services Division develop a process to investigate if children who require counselling are adequately being served, reasons why more children are not applying to the Criminal Injuries Counselling Program, and what would make the application process more accessible when families want to apply.

It is recommended that applications to the Criminal Injuries Counselling Program be encouraged in every case, and that applications involving children have priority for immediate processing.

Waiting for the Court Day to Arrive

Data from this study reveal that meetings with the Crown may, in some cases, occur just before court, and children may meet with the Crown attorney only once before testifying. As noted earlier, this may leave insufficient time to learn essential information about the child’s demeanor, emotional condition, and ability to provide accurate testimony. Further, rapport building is considered a critical component of supporting child witnesses, to reduce their fear and lessen their anxiety.

This study concurs with the recommendation of Sas (1999) who states that: “[c]hildren should have the benefit of at least three meetings with their Crown Attorney; the first to build rapport, the second to review their evidence and the third as a follow-up, before testifying in court. This should be offered not only to child victims, but also to children who are witnesses. Crowns should re-meet children before the trial, even if they have already met with them several times before the preliminary hearing” (p. 75).

It is recommended that Crown attorneys meet with child victim witnesses at least three times before they are required to testify, for the purposes described by Sas (1999).

One of the critical findings of this study was the average length of time taken for cases to proceed through the system. It is noted that one of the 19 cases selected in the study for parental interview was postponed three times over a “couple of years”. The most frequent suggestion received from parents was that this time frame from investigation to trial be shortened. Further, the finding that the average time was longer for cases that were stayed, withdrawn, or dismissed suggests that there is insufficient examination of cases early enough to determine if there is enough evidence to proceed. The passage of time can have a negative impact for children’s psychological well-being, for the quality of children’s memory recall, and ultimately for the Crown’s case. In the words of one Support Worker, “six months to a child is

forever They can't even comprehend sometimes ... kids that age trying to remember It's pretty easy to create reasonable doubt".

During this time of waiting children's "immediate need to tell" is denied, creating one of the most disturbing aspects of their revictimization. They may have been told by their abuser over a period of months or years, not to tell "the secret". Having made the secret known, they may be again denied the opportunity to speak. Therapy may be delayed until the outcome of the case. The Support Worker, providing a non-evidentiary service, must take care to avoid speaking with the child of details of her or his victimization. The child's parent or supportive adult may be instructed also to avoid discussions with the child of the details of the incident(s).

It is recommended that cases involving children be given priority attention for Crown review, that Crown pursue the earliest possible trial dates, and that cases be moved through the court system as quickly as possible.

The Day of Court

In addition to lessening the time from investigation to trial, this study concurs with earlier reports that advocate a decrease in the time children wait on the day of trial. The well-intentioned practice of dispensing with other items on the court docket prior to hearing the cases in which children are scheduled to testify, extends the pre-trial wait and creates an uncertainty that compounds the anxiety children are already experiencing.

Several options might be considered to avoid a sometimes lengthy wait for children following the usual 9:30 am sitting of court:

- 1) schedule children's cases at 2 pm. While this might be a valid option for adolescents, for very young children this is clearly not an optimum time;
- 2) provide a more realistic time for children to arrive, e.g., 11 am after other items on the docket have been addressed. This however, could recognizably create scheduling difficulties;
- 3) hear cases in which children are scheduled to testify at the beginning of the day. This option however, would require other cases to be scheduled later to avoid the presence in the courtroom of those unrelated to the case, when the child testifies;
- 4) schedule special times or sittings to accommodate the special needs of children.

It is clearly evident that Crown recognize the necessity of accommodating the special needs of children. The degree of accommodation necessary however to integrate children within the time frame of regular sittings of court is evident as well. This report questions if the necessary degree of accommodation is possible without a significant scheduling change.

It is recommended that special times or sittings of court be scheduled to reduce or eliminate pre-trial waiting for child victims.

There are only four courthouses in the province where Victims' Services offices, equipped with child-friendly waiting rooms, are located. There are many other courthouses where a separate waiting area, with age-appropriate activities is currently unavailable to children who are scheduled to give evidence. It is recommended that this deficit be remedied as quickly as possible. *The Victims' Rights and Services Act* (1989) provides this as a right to victims of crime, subject to availability of resources. Both parents and Support Workers, in addition to describing the discomfort of "dingy" waiting areas, spoke of children experiencing subtle threats and intimidation from the accused or the accused's family while they were waiting to testify. In some instances where a separate waiting area was arranged, the child was forced to encounter the accused in the hallway leading to the wash room.

It is recommended that child-friendly waiting areas be made available in every court where children are scheduled to testify, that age-appropriate activities be available, and that while waiting, children have access to washroom facilities without having to encounter the accused or the accused's family.

Support Workers who have dealt with the majority of cases involving child victims during the time period of this study described the competency hearing as confusing and awkward for children. Though judges were recognized to be generally sensitive to children's needs, examples were cited of instances where language used was well beyond children's comprehension.

The Nova Scotia Department of Justice's response to the recent federal consultation paper, *Child Victims and the Criminal Justice System* (1999), supported the elimination of the requirement for a competency hearing. It was suggested the hearing not only delays court proceedings unnecessarily, as the competence of children has, in most cases, been tested before the trial through conversations with the police and Crown attorney, but it is also wrong in principle to make competency contingent on or influenced by age.

Until possible changes are considered, and while present practice continues, guidelines for questioning children are supported.

It is recommended that guidelines of prepared questions offered by Sas (1999) (included as Appendix A) be widely distributed among the judiciary within Nova Scotia.

It is recommended that the Nova Scotia Department of Justice continue to support the elimination of the requirement for a competency hearing.

This study revealed that several parents assessed defence lawyers as showing little consideration for the difficulties children experience while testifying. Though recognition was stated for their differing role, examples were cited of behaviour during cross-examination that was highly intimidating for children. One parent strongly believed her child “was put on trial”; others believed that defence lawyers used their understanding of children’s vulnerability to their advantage. Parents expressed distress at having to watch, and not being able to protect their children on the stand. At times judges reportedly intervened to ensure children’s fair treatment. Support Workers also noted insensitive behaviour by defence lawyers toward children on the stand, with recognition stated that “sensitivity conflicts with their job”. This study strongly concurs with earlier reports (Sas, 1999) in stating there can be no justification for such treatment. The purpose of the court is to serve the administration of justice. Apart from the fact that justice cannot be seen to be served when child victims experience intimidation, is the reality that *The Victims’ Rights and Services Act* (1989, 3(1) (a)) has afforded to victims of crime the absolute right to be treated with courtesy, compassion and dignity.

It is recommended that standards be developed for defence lawyers regarding cross-examination of children. Standards should include age-appropriate questioning, and respect for, and sensitivity to children’s inherent vulnerability.

Earlier reports have emphasized the importance of the use of the testimonial aids stipulated in Bill C-15. It is clear from our study that those aids are seldom used within Nova Scotia. The Nova Scotia Department of Justice’s response to the federal consultation paper, *Child Victims and the Criminal Justice System* (1999), supported testimonial aids such as screens and closed-circuit television being more widely available. In addition to recognizing the request must not be contrary to the interests of the accused, that response advocated that “[i]nclusion of ‘the best interests of the child’ in the grounds to be satisfied in assessing use of a testimonial aid is considered to be beneficial as it recognizes that minimizing the witness’ stress was not an objective of the previous legislation” (The Nova Scotia Department of Justice, 2000).

This study reveals however, that not only are testimonial aids seldom used within this province, it is evident that the benefit, particularly of the screen and videotaped investigative interviews as they are presently used, is in question. In addition to logistical considerations, it is the perception of some Support Workers that Crown attorneys believe the screen impedes an accurate assessment of how the child will respond to the accused. Inherent is the expectation of

a certain demeanor associated with truth, which Regan and Baker (1998) had identified. Further, Support Workers perceive the screen, in some cases, actually compounds rather than reduces children's fear, by removing what minimal control the child has in the situation, i.e., visual confirmation of the accused's position within the courtroom. Support Workers also questioned the value of videotaped investigative interviews, for their poor audio quality, the increase in time required for children on the stand necessary to review and adopt the tape, and for the defence lawyer's ability to use it as a tool to discredit the child's earlier testimony.

Results of this study suggest that there is a nearly equivalent likelihood of conviction whether or not children testify, though caution is expressed about the validity of this comparison. Our finding in relation to outcomes at trial confirms that of earlier studies (Sas, 1999), i.e., the probability of a finding of guilt is only slightly better than chance. There is clear reason to question the participation of already vulnerable children in a process that is known to cause them considerable stress, when their participation may not be a determining factor in the outcome.

Based on these results, it is evident that further investigation of alternative means of protecting "the best interests of the child" is required. It is recognized that provisions are available in other countries (United States, Scotland, Israel) that allow for video depositions to be used instead of children having to testify at trial (*Technical Background Paper*, p. 52). Such a provision might alleviate the singularly most stressful component of children's participation in the criminal justice system, that of once again facing the accused. Further thought would have to be given to find a way to ensure the rights of the accused within Canada. This exploration is encouraged.

It is recommended that alternative means continue to be explored to gain "a full and candid account" C.C. s 486 (2.1) while safeguarding the best interests of the child, by preventing the child's face-to-face confrontation with the accused. Where children choose to personally give evidence, the opportunity for courtroom testimony should be provided.

After Testifying

One of the clear findings of this study was the need identified by both parents and Support Workers to increase follow-up services after children testify. This was a critical area noted by parents where needed service was sometimes not received. Three of the seven Support Workers expressed a concern that the allowable time for follow-up with children is insufficient. Current debriefing sessions are, in some instances understood to focus on reinforcing to the child that s/he did a good job while testifying. In some instances when the case has been held over for sentencing the child has not been informed of the outcome.

It is recommended that the court preparation curriculum be expanded to enhance the debriefing and follow-up component, to provide children with an opportunity, not only to know they have done a good job in testifying, but to express their feelings about what happened during the court process. It is further recommended that when cases are held over for sentencing, Support Workers be in attendance whether or not the child is present, and communicate the results to the child and her/his supportive adult.

This follow-up role, important for all children, is particularly critical in cases resulting in acquittal, when children may be coping with significant issues associated with grief and loss. Both the literature and response in parent interviews clearly confirms this is a particular area of need. Some of the Support Workers indicated that they do not have a sufficient level of comfort to confidently address the variety of issues that may be expected to arise. A specific request was made for further training.

It is recommended that the Victims' Services Division provide training for Support Workers in providing assistance to children when cases result in acquittal.

Support Workers noted that counselling through the Criminal Injuries Compensation Program is sometimes denied in cases resulting in acquittal, leaving the child's possible need for counselling unmet. It should be noted that, within the context of the criminal justice system the Criminal Injuries Counselling Program, as it is now termed, provides funding for counselling where, on a balance of probabilities, a violent crime has been committed. An inability to provide funding in those cases where there is not sufficient evidence to determine on a balance of probabilities that a violent crime has been committed, does not however, deny the fact of the child's emotional or psychological need. It is clearly recognized that a service gap may exist, and the child's need for counselling must be addressed.

It is recommended that Regional Victims' Services Offices explore every avenue to access counselling for children who do not qualify to receive counselling through the Criminal Injuries Counselling Program.

Professional Training

Earlier studies have recommended, as Support Workers have identified in this study, that the onus is on justice personnel to convey sensitivity to child victims. As children will, in many cases, not be able, nor should they be expected to, take the initiative to ask permission to ask questions, or to disagree with the claims and statements of adults, it is imperative that justice personnel extend themselves in relation to children. Even small gestures are known to make a considerable difference. Within the courtroom, the judiciary bear the responsibility of

intervening to ensure the appropriate treatment of children.

Further, information and awareness in relation to the variety of children's emotional responses to their victimization may be critical in relation to three areas: 1) to assist Crown in assessing children's level of anxiety and ability to be reliable witnesses, 2) to alleviate possible reluctance by Crown to request the use of the screen where it could benefit the child, due to the perception that not using it provides a truer sense of how the child responds to the accused, i.e., children are perceived to be more credible when they break down, and 3) to assist judges' charge to juries, to offset the possible assumption that expected displays of emotion equate with truth.

For the role of child victim witnesses to be fully integrated within the criminal justice system, it is vital that police, Crown attorneys, judiciary, defence lawyers, as well as courtroom personnel, receive ongoing training in the stages of child development, age-appropriate questioning, and children's emotional response to victimization.

It is recommended that ongoing professional training be provided to justice personnel involved in cases with child witnesses, in relation to sensitivity to children's developmental needs, and appropriate methods of communication.

Finally, it is evident from this study that an ongoing need exists for greater awareness of the Child Victim Witness Program among justice personnel. The program is still relatively new within the Department of Justice, and the need for ongoing promotion is not unexpected. Though Support Workers indicated that a collaborative process has developed in many cases with the Crown, increased public and professional awareness was advocated to ensure all children are referred early in the criminal justice process so they receive the support available to them through the program.

It is recommended that the Victims' Services Division increase efforts to promote the services of the Child Victim Witness Program to police and Crown attorneys, and to the general public.

Implementation

It is recognized that the implementation of these recommendations can best be accomplished through the joint efforts of many partners who currently provide services to children both within government and community, throughout the various phases of investigation, prosecution, and treatment. The perception of all partners is critical in determining the implications for children of the courtroom experience on efforts to deal with their victimization, and in identifying present obstacles and the best processes for change.

It is recommended that a committee be established consisting of representatives of the Department of Justice, the Public Prosecution Service, and child welfare agencies, to explore implementation of the issues identified in this report.

Future Research

Each of these recommendations has addressed specific components of current practice that are believed to promote conditions under which children may be expected to provide the most accurate testimony. As such, they largely represent a focus on interventions to accommodate children to an existing justice process designed for adults. These recommendations however, have also sought to address “the best interests of the child”, through a focus on helping children deal with their victimization.

This study echoes earlier reports in suggesting that changes to date to accommodate children within the criminal justice system, though beneficial, have not gone far enough. It is evident that the risk to children of their trauma being relived in the courtroom is reason alone to validate a differing approach to their participation.

Prior to becoming Chief Justice of The Supreme Court of Canada, The Honourable Beverley McLachlin, in a presentation at a training session for all Nova Scotia judges in 1998, stated that “impartiality does not require indifference to the needs of victims”. When child victims are involved in a justice system created for adults, and where their needs are yet to be fully integrated, that caution is particularly critical. Sas et al. (1993), despite finding that child victims held negative perceptions of their court experience, did not conclude that children should not be called upon to testify. Sas et al. compared children’s experience to the poor treatment of rape victims and battered women by the courts that researchers had previously documented, suggesting their findings had led to advances in how these groups had been received in the justice system. The more strongly worded conclusion of Sas (1999) cites the Victoria Child Abuse Prevention and Counselling Society’s brief to the British Columbia Attorney General Department that suggests children’s treatment in the courtroom violates their rights to protection from abuse (based on the U.N. Convention on the Rights of the Child). Sas concludes “[i]f we are sincere in our efforts to protect children from victimization, we **must** accept responsibility for their victimization in the courtroom and make the necessary changes” (p. 86).

This report concurs. Children do not have the cognitive ability to understand or defend against their victimization and their subsequent treatment when that victimization is examined in the courts. Their situation is not comparable to that of adult victims. As such, it is the responsibility of adults, not only to protect them from victimization, and to protect their right to respectful treatment in determining if a crime has been committed, but also, to ensure that the experience itself does not inflict further harm. It is the responsibility of the criminal justice system to continue to grapple with the “twin, but potentially opposed aims” of supporting child witnesses and ensuring the accused of a fair hearing.

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An extensive bibliography may be found in the complete study report, on the Nova Scotia Department of Justice web site.

APPENDIX A

**SAMPLE QUESTIONS FOR A JUDGE CONDUCTING
AN INQUIRY INTO THE OATH**

1. Could you please tell me your name?
2. How old are you?
3. When is your birthday?
4. How old will you be on your next birthday?
5. Do you go to school?
6. What grade are you in?
7. What do you like best at school?
8. What don't you like at school?
9. What is your favourite television show to watch?
10. What is your favourite food?
11. Do you have any pets?
12. Do you know why you are here today?
13. Do you know what my job is?
14. People come here to tell me things that happened or things that they saw, I would like your help?
15. When people come to court, it is very important that they tell the truth. Tell me something that is true.
16. Why is it important to tell the truth in court?
17. If I said that my robes are green, is that a truth or a lie?
18. Is it a good thing to tell the truth?
19. Is it a bad thing to tell a lie?
20. Is it better to tell the truth or better to lie?
21. If you told a lie at school and the teacher found out, what could happen?
22. Do you know what a promise is?
23. Have you ever made a promise? Have you ever broken a promise?
24. Do you know what a bible is?
25. Have you ever learned about God?
26. If someone promises to do something, do you think they should do it?
27. If you made a promise to tell the truth to God, would that be a big promise or a little promise?
28. What would happen if you broke your promise?
29. What do you think might happen if people do not tell the truth in court?
30. Do you know what an oath is?
31. If you put your hand on the bible and made a promise to tell the truth, would that be a special promise?
32. What does it mean when you "swear to tell the truth"?