

**A CHILD'S DEATH:
The Legal System Responds**

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Child Abuse Unit

Two General Forums

Criminal

- ◆ Identify and punish the perpetrator

Civil

- ◆ Protect siblings (family court)
- ◆ Recover damages (suit for money)

Evidentiary Considerations

- ◆ Hearsay
- ◆ Excited utterance
- ◆ Dying declaration
- ◆ Statement for medical diagnosis

Hearsay

The general rule is, a person cannot repeat in court what he or she heard someone say outside of court

Michigan Rules of Evidence

- ◆ Excited utterances are not hearsay
- ◆ MRE 803(2)
 - “A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.”

MI Rules of Evidence – Dying Declarations

- Dying declarations are not hearsay
- MRE 804(b)(2)
 - “In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant’s death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.”

MI Rules of Evidence – Statement for Medical Diagnosis

- ♦ MRE 803(4) – **Statement Made for Purpose of Medical Treatment or Medical Diagnosis in Connection With Treatment:** Statements made for purpose of medical treatment or medical diagnosis in connection with treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably necessary to such diagnosis and treatment.

MI Rules of Evidence – Other Acts of Evidence

- ♦ MRE 404(b)
 - “Motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident”

Also use MCL 768.27(a)(b)

- ♦ Ask witnesses about other acts of child abuse or domestic violence against our victim and others

Spousal Privilege

- ◆ There is NO spousal privilege in child abuse cases.
 - Thus, if a spouse witnesses the abuse of a child, that spouse MUST testify.

Mens Rea - State of Mind

- ◆ **Intentional**
- ◆ **Negligent**
- ◆ **Reckless**
- ◆ **Accidental**

“Intentional” = Murder

- ◆ First Degree - Premeditated Murder
- ◆ First Degree - Felony Murder
- ◆ Second Degree Murder

Premeditated Murder

- ♦ The killing was *Premeditated* and *Deliberate*
- Consider the pros and cons of actions
- Time to think twice about the intent to kill
- Not the result of a sudden impulse

Felony Murder

- ♦ Defendant caused the death of the child
- ♦ With one of three states of mind
 - Intended to kill
 - Intended to commit great bodily harm
 - Knowingly created a very high risk of death or great bodily harm, knowing that death or great bodily harm would be the likely result
- ♦ While was committing, attempting to commit or helping someone else to commit a specified felony

Felony Murder

♦ Felony Murder =
Second Degree Murder
+
First Degree Child Abuse

Child Abuse First Degree

- ◆ Defendant knowingly or intentionally causes serious physical harm
- ◆ Abusive head trauma, Suffocation, burns, broken bones, etc.

Manslaughter

- ◆ Voluntary vs. Involuntary
- ◆ Act or Failure to Act

Manslaughter - Act

Gross Negligence:

- Defendant knew of danger to another
- Use of ordinary care would have avoided injury
- Defendant failed to use ordinary care when a reasonable person would have

Manslaughter - Failure to Act

- ◆ Legal duty to the child
- ◆ Defendant knew of facts that gave rise to the duty
- ◆ Willful neglect or refusal to perform duty
- ◆ Failure to act causes death

What to collect when you're investigating

- ◆ 1. Statements from people the suspects called
- ◆ 2. 911 recording
- ◆ 3. EMS report
- ◆ 4. Hospital records/social work records
- ◆ 5. CPS investigative report
- ◆ 6. multiple police statements
- ◆ *GOAL: TO COMPARE THE SUSPECTS' STORIES OVER TIME

Investigation

Red Flags:

- ◆ Delay in seeking medical attention
- ◆ Presence of pattern injuries
- ◆ Old and new injuries (visible or x-ray)
- ◆ History inconsistent with clinical finding
- ◆ History inconsistent with development
- ◆ History changes over time

Investigative Tools

- ♦ Polygraphs
- ♦ Investigative Subpoenas

Necessities

- ♦ Assume every child death is a homicide until you know otherwise
- ♦ Videotape interviews of suspect
- ♦ Write down what the witness/suspect says even if it's a denial or doesn't seem important at the time
- ♦ Keep parents separate and document separately what each parent says

Miranda Warnings

- ♦ Warnings are needed **only** if:
 - In Custody; and
 - Interrogation

Notify Child Protective Services
1-855-444-3911

- ◆ You are a mandated reporter
- ◆ Siblings deserve protection

Interesting issues in Wayne County

Unsafe sleep prosecutions

Charging mothers for crimes when they "allow" abuse to happen to their children

Thank You!

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