

## FACING THE FACTS

### Criminal Consequences of Child Abuse Homicides

#### The Take Home Points

- Tragically, a child abuse homicide has occurred about every two weeks in North Carolina for almost two decades.
- The criminal consequences of child abuse homicide are extremely varied, even when the cases are eerily similar.
- In 1998, for example, there were 24 suspected perpetrators of 23 child abuse homicides. Of the 24 perpetrators:
  - 5 were never charged
  - 3 received probation
  - 3 received less than 2 years
  - 2 received 2-5 years
  - 2 received 5-10 years
  - 5 received 10-25 years
  - 2 received 40 years
  - 2 received life sentences
- Though prosecution and sentencing processes have built-in discretion to accommodate the circumstances of each case, prosecutors, judges, and other experts in criminal justice believe that the wide variation in the outcomes listed above is beyond the expected bounds of discretion, and occurs primarily for two reasons.
- First, it is important to recognize that successful prosecution requires sufficient evidence, which requires excellent investigation, which requires a secure crime scene, which requires quick identification of the crime. Thus, many systems — emergency medical services, medical/hospital providers, law enforcement, medical examiners, social services — must collaborate effectively for prosecutors to present a case. Regrettably, such collaboration is often lacking.
- Second, there is a societal perception, represented by juries, that a caregiver would never intentionally kill a child. This is compounded by the fact that it is not uncommon for there to be no external, obvious injuries that could have caused the death, and — as above — the evidence may be compromised. Having little chance in succeeding with a murder conviction, in many cases prosecutors find it more feasible to plead to a lesser charge. Regrettably, the only available charge is involuntary manslaughter, which results in a light sentence.
- The following recommendations are made to achieve a balance between equity in cases that have similar circumstances, justice for the victims, and protection for other children that may be under the perpetrator's sphere of influence.

#### Recommendations

- **Uniform policies and protocols should be considered for use by all involved agencies in the investigation of unexpected, unexplained child deaths, along with training in this regard. Consideration should be given to ensuring automatic and routine investigation by law enforcement in these cases.** This would enhance understanding of the causes of these deaths, would include potential child abuse homicides without creating the stigma of singling out some parents/caregivers, and would enhance the prosecution of those cases in which a crime has occurred.
- **The addition of a new statute — Child Abuse Homicide or Felony Child Abuse Resulting in Death — should be considered as part of the homicide statutes.** This would give prosecutors, judges and juries an option between murder and involuntary manslaughter, and would facilitate pleas and judgments that more appropriately reflect the circumstances of the crime. Special training in this regard for prosecutors and judges should also be considered.

## Young Victim, No Consequence

A three year-old girl was pronounced dead shortly after her father brought her to a North Carolina hospital. He reported that she was being disciplined with a hickory stick. He also reported that she had a history of holding her breath, and on this occasion had become unresponsive. The post-mortem exam revealed contusions over much of her body and head, as well as indications of chronic sexual abuse. The medical examiner ruled the case a probable homicide. Though the father admitted to hitting the child and was the only one present when she became unresponsive, no charges have been filed in this case. The homicide occurred in 1997.

## Similar Victims, Vastly Different Consequences

### **Case 1:**

A NC woman gives birth alone at home. The baby, whom she asphyxiates, is discovered by a family member. Her sentence is 7 years 10 months to 10 years 2 months. (2000)

### **Case 2:**

A NC woman gives birth alone at home. The baby, whom she asphyxiates, is discovered by a family member. Her sentence is 36 months probation, and no active jail time. (1998)

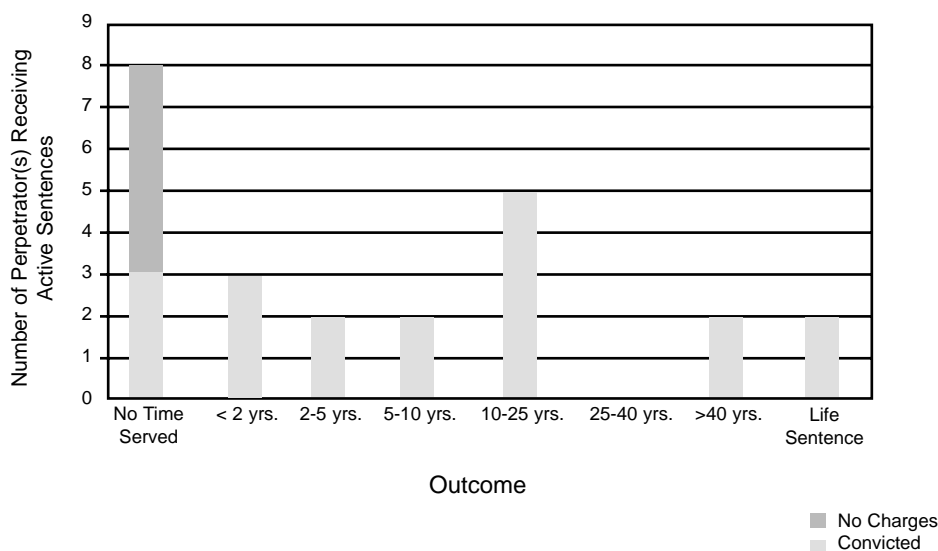
For several years, researchers at the NC Child Advocacy Institute had heard anecdotal allegations that the criminal outcomes of child abuse homicides in the state were seemingly varied and inconsistent. The cases noted above, as well as many other individual cases, seemed to support those allegations. This led the researchers to consider the issue more comprehensively.

## The Study and Its Findings

The result was a study of the final criminal justice outcomes for all child abuse homicides (as determined by the Office of the Chief Medical Examiner) that occurred in 1998. This was the most recent year likely to have final outcomes decided for all cases. The decision to limit case research to a one-year period was based on the previously known difficulties in determining criminal outcomes for child abuse homicide cases. While the criminal justice system is designed to track cases based on the perpetrator's name, the records of the medical examiner system are based on victim's name. Since it is not uncommon for the perpetrator to have a different last name than the victim, matching the two record systems is very time consuming and, in some cases, impossible. Thus, it was most efficient to limit the study to one complete year.

The results of the study were highly instructive, and confirmed the anecdotal allegations that the criminal justice outcomes of child abuse homicides are quite variable. During 1998, there were 23 child abuse homicides confirmed by the Office of the Chief Medical Examiner, and criminal justice records linked 24 perpetrators to these homicides. The criminal consequences for these cases are presented in Chart 1.

**Chart 1: Consequence Range  
for the 23 Child Abuse Homicides in 1998**



The wide range in outcomes is quite evident. Of the 24 perpetrators:

- 5 were never charged
- 3 received probation
- 3 received less than 2 years
- 2 received 2-5 years
- 2 received 5-10 years
- 5 received 10-25 years
- 2 received 40 years
- 2 received life sentences

With these results in hand, researchers sought to determine what accounts for the wide variability in criminal justice outcomes. This included extensive public record reviews, as well as interviews with individuals representing the many human service and criminal justice agencies that are involved with and respond to child maltreatment deaths. A consensus developed that the wide variation in outcomes occurs primarily for two reasons: first, these cases need excellent investigation, but it appears that the evidence is often compromised; second, prosecutors have limited options with regard to charges. These important areas are explored below, and recommendations are presented.

### **The Need for Better Investigations**

It is important to recognize that successful prosecution requires sufficient evidence, which requires excellent investigation, which requires a secure crime scene, which requires quick identification of the crime. Meeting this standard is particularly challenging in the case of the unexpected, unexplained death of a child. It is easy for the tragedy of a death to obscure the fact that a crime might have occurred. Thus, it is critical that many systems - emergency medical services, medical/hospital providers, law enforcement, medical examiners, social services - collaborate effectively for prosecutors to present a case.

Perhaps the most serious problem with the current system is the lack of an overall protocol for involving law enforcement in the initial response to a child's severe injury or death. First responders are most often medical providers — emergency medical services, physicians, hospitals. If the death does not occur immediately, and the child is transported to a hospital, there may be delays in notifying law enforcement. When the initial supposition is that the injury or death was accidental, law enforcement may not be notified at all. Under this

circumstance, it is possible that such notification may not occur until the final cause and manner of death is determined by the medical examiner. This may be weeks, days, and sometimes months later.

Medical providers are obviously trained to focus on saving the life of the child, and do not focus on the concept of a "crime scene". Even when presented with an apparent death, efforts to resuscitate often compromise the area. Thus, it is critical that law enforcement be involved as early as possible to ensure immediate investigation.

Child abuse homicides are most often successfully prosecuted with medical evidence combined with inconsistencies in the statements of parents/caregivers and other witnesses. Thus, failure to investigate or obtain statements as soon as possible may allow for the opportunity to create stories that seem to support the injuries that the child sustained. Delay may even result in the intimidation of other witnesses or permit witnesses to coordinate accounts. Typically, there are no weapons, no apparent external injuries or other obvious forensic evidence, and delays can mean that any evidence that may have been at the scene is compromised or gone.

### **Recommendation**

*Uniform policies and protocols should be considered for use by all agencies involved in the investigation of all unexpected, unexplained child deaths in North Carolina, along with training in this regard. Consideration should be given to ensure automatic and routine investigation by law enforcement in these cases.* This would enhance understanding of the causes of these deaths, would include potential child abuse homicides without creating the stigma of singling some out parents/caregivers, and would enhance prosecution of those cases in which a crime occurred.

## The Need for an Additional Homicide Statute

Certainly, some of the most difficult cases a prosecutor may handle are child maltreatment homicides. There are many reasons for this, not the least of which is the emotional and horrific nature of the crime. The prosecutor has many hurdles to overcome to ensure a just and appropriate outcome. First, he/she must make sure that all the criminal elements are present for a specific charge to be made, and that there is enough evidence (given the concerns addressed above) to prove the charge beyond a reasonable doubt. Second is the perception that no one, especially parents/caregivers, would intentionally harm a child to the point of death.

These factors can make it more feasible for a prosecutor to plead a case down to assure at least some level of conviction. In fact, while studies indicate that about 20% of all felony charges are reduced from the original charge, 41% of the felony charges were reduced in the child abuse homicide cases that occurred in 1998. The problem is that, when prosecutors feel they have little chance of obtaining a murder conviction, the only available charge is involuntary manslaughter, which results in a light sentence. (This is especially true since perpetrators are rarely repeat offenders.) Thus, there is the perception that parents/caregivers receive a "break" when convicted of child abuse homicide.

The chart below lists the possible charges in these cases, and demonstrates the enormous difference in the sentence ranges between murder and involuntary manslaughter.

### NORTH CAROLINA MURDER LAWS

Offense	Statute	Class	Sentence Range	Active Sentence Mandatory
First Degree Murder	N.C.G.S.§14-17	A	Death or Life WithoutParole	Yes
Felony Murder	N.C.G.S.§14-17	A	Death or Life WithoutParole	Yes
Second Degree Murder	N.C.G.S.§14-17	B2	125-313 months (10-26 years)	Yes
Voluntary Manslaugther (Intentional)	N.C.G.S.§14-18	D	51-146 months (4-12 years)	Yes
Involuntary Manslaughter (Unitentional)	N.C.G.S.§14-18	F	13-39 months (1-3 years)	Yes

To address this problem, 36 states have adopted a specific child abuse homicide statute. Many of these statutes appear to have been passed quickly in reaction to a particular, horrific child abuse homicide. Perhaps this accounts for the wide variability in these statutes.

Several states have adopted a completely separate offense which might be described as "felony child abuse resulting in death". These statutes contain three basic elements: (1) the actor kills a child while engaged in child abuse; (2) the circumstances manifest an extreme indifference to human life; (3) the victim is a child under a specified age. This model appears to be the most appropriate solution for North Carolina, for it allows the prosecution to focus a trial on the objective facts surrounding the act of killing a child by violent means, rather than the more subjective element of whether a person intends death to result.

If a separate child abuse homicide statute were adopted, one could imagine it at the level between felony murder and voluntary manslaughter, with a sentence range also somewhere between the ranges of those two categories. This would provide prosecutors with an additional option when a murder conviction is uncertain. The option would be available not only in a trial, but also as a plea bargain. Thus, the presence of this option would lead to sentences that more appropriately reflect the circumstances of the crime.

## **Recommendation**

*The addition of a new charge — Child Abuse Homicide or Child Abuse Homicide Resulting in Death — should be considered as part of the homicide statutes.* This would give prosecutors, judges and juries an option between murder and in voluntary manslaughter, and would facilitate pleas and judgments that more appropriately reflect the circumstances of the crime. Special training in this regard for prosecutors and judges would also need to be considered.

### **Summary**

A child abuse homicide occurs in North Carolina about every two weeks, and has done so for almost two decades. The recommendations from this study are not directly intended to reduce the occurrence of these tragedies. The recommendations focus on the response to the homicides; perpetrators are not likely to change their behavior based on the possibility of criminal justice consequences. The reduction in child abuse homicides will come only from better prevention and intervention initiatives, such as parenting education, family support services, and earlier identification and intervention when the first signs of child maltreatment occur.

The recommendations, however, are intended to substantially improve the balance between equity in cases that have similar circumstances, justice for the victims, and protection for other children that may be under the perpetrator's sphere of influence. Moreover, a thoughtful, coherent process by agencies (with regard to uniform protocols for investigation) and the legislature (with regard to additional options for charges) can send a powerful message. It would be a clear public policy expression that the state considers child abuse homicide to be a serious evil. A carefully coordinated administrative and legislative response would be more than symbolic in addressing the current impression that the lives of children are simply not valued as much as the lives of adults. Hopefully, the resulting change in the "cultural norm" would lead to the goal to which everyone should aspire: the reduction of child abuse homicides in North Carolina.

**Dedication:**

*This report is dedicated to all the children in North Carolina who were killed by their parents or other caregivers.*



<i>Savanna</i>	<i>6 months</i>	<i>Colton</i>	<i>3 years</i>
<i>Amanda</i>	<i>2 years</i>	<i>Deshawn</i>	<i>7 months</i>
<i>Alexander</i>	<i>2 years</i>	<i>Keith</i>	<i>8 years</i>
<i>Sarah</i>	<i>1 year</i>	<i>Mariana</i>	<i>1 year</i>
<i>Mitah</i>	<i>3 months</i>	<i>Marquise</i>	<i>3 months</i>
<i>Antoniaysia</i>	<i>1 year</i>	<i>Baby Boy J.</i>	<i>1 day</i>
<i>Eric</i>	<i>1 day</i>	<i>Channing</i>	<i>2 years</i>
<i>Hallye</i>	<i>5 weeks</i>	<i>Baby Boy Doe</i>	<i>1 day</i>
<i>Alexis</i>	<i>2 months</i>	<i>Kaleah</i>	<i>1 year</i>
<i>Brandon</i>	<i>6 years</i>	<i>Baby Girl L.</i>	<i>4 days</i>
<i>Christina</i>	<i>4 years</i>	<i>Adesha</i>	<i>2 years</i>
<i>Christian</i>	<i>5 weeks</i>		

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