

# Working with Minor Victims of Sexual Assault: Best Practices and Strategies

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Sexual Assault Legal Institute (SALI)

Maryland Coalition Against of Sexual Assault (MCASA)

# Who are we?

## ▶ SALI

- ▶ Direct legal services including representation, advice and referrals for adult and child victim/survivors of sexual assault
- ▶ Training and technical assistance for professionals working with victims/survivors

# DISCLAIMER:

- ▶ The information in these slides do not constitute legal advice.
- ▶ The information and suggestions in these slides are not based upon any scientific or empirical research. This is solely based upon the experiences of the attorneys of the Sexual Assault Legal Institute in representing victims of sexual assault who are minors.

# Today

- ▶ Who is the Client? - Victim Centered Representation
- ▶ Client Competency
- ▶ Developing an Attorney-Client Relationship with a Minor Victim
- ▶ Addressing Parental Concerns while Protecting the Minor's Interests
- ▶ Informed Decision-Making
- ▶ Joint Representation
- ▶ Consent to Disclosure
- ▶ How to Prepare a Minor Victim for Trial

# Who is the Client?

## Victim Centered Representation

- ▶ The VICTIM is your client
- ▶ The victim signs the retainer with the attorney and is retaining the attorney to assist them on a clearly delineated issue
- ▶ Attorney ethics governing the attorney client relationship still apply:
  - ▶ Diligence
  - ▶ Confidentiality
  - ▶ Zealous Advocacy
  - ▶ Informed Consent

# Client Competency

## ▶ Case-by-case basis

Toddler to  
Kindergarten

Elementary School

Middle School

High School +

# Developing an Attorney Client Relationship

- ▶ Set the stage from the inception of the case:
  - ▶ Speak to the child outside of the presence of the parent (unless child requests otherwise!)
  - ▶ Explain what an attorney is
  - ▶ Explain what your responsibilities are to the child
- ▶ Determine the minor's level of involvement:
  - ▶ “Do you know who I am?”
  - ▶ “Do you know why I am here / why your parent asked me to speak to you?”

*Meet with a fellow staff member, NEVER meet with a child alone!*

# Developing an Attorney Client Relationship

- ▶ Ask if they want your help
  - ▶ “I am YOUR attorney. Not your parent’s attorney.”
- ▶ Establish a focus on the child’s perspective and express needs
- ▶ Use developmentally appropriate language - don’t patronize a teenage client!
- ▶ Use age appropriate analogizes:
  - ▶ Court is like a game, the judge is the referee, the attorneys are the players
  - ▶ Law & Order / JAG / other TV shows

# Developing an Attorney Client Relationship

- ▶ Why is this important?
  - ▶ Provides the child with a safe space to disclose important information
  - ▶ Provides the child with a sense of empowerment after they've been victimized
  - ▶ Ensures compliance with ethics rules
- ▶ What this does NOT mean:
  - ▶ Criticizing a parent
  - ▶ Influencing the child's relationship with a non-offending guardian

*Respect the Boundaries Set by Your Client!*

# Addressing Parental Concerns While Protecting the Minors Interests

- ▶ **With the Parent:**
  - ▶ Explain your role as the child's attorney
  - ▶ Explain your duty of loyalty
  - ▶ Respect and acknowledge their position of concern
  - ▶ Offer to answer questions
  - ▶ Set clear boundaries

# Addressing Parental Concerns While Protecting the Minors Interests

## ▶ With the Child:

- ▶ Discuss how the child would like their parent involved in the representation
- ▶ It's ok to acknowledge that a parent may be concerned
- ▶ “Do you want me to help your mommy/daddy with something?”
- ▶ “How would you feel if I did xxx for your parent?”
- ▶ “Do you want me to explain this to your mother?”

# Informed Decision-Making

- ▶ Applies equally to a minor client as to an adult:
  - ▶ They set the goals, you determine how to get there
    - ▶ “I can help you decide where to go, but I can’t tell you where to go.”
  - ▶ Attorney can assist a child in determining the best course of action
    - ▶ “It’s my job to figure out if we can get there, and then how to get there!”

*Talking through the pros and cons of a decision is the attorney’s job!*

# Joint Representation

- ▶ Can arise between siblings in the family
- ▶ Treat each child as a separate client:
  - ▶ Separate retainers
  - ▶ Explain confidentiality between family members
  - ▶ Explain what happens in the event of a future conflict i.e. you may be obligated to terminate representation

*Consult your local ethics rules!*

# Informed Consent to Disclosures

- ▶ As with adult clients, a minor client can consent to disclosure of privileged information to a parent or other family member
- ▶ Minors can consent to disclosure of information to third parties
- ▶ The Attorney **MUST** equally advise the minor client about the consequences of waiving confidentiality / privilege

# Preparing a Minor Victim for Trial

- ▶ Talk to the prosecutor - sometimes they will prepare a child
- ▶ Schedule a lengthy amount of time to meet with the client
- ▶ Discuss who will be in the courtroom; include any staff
- ▶ Show the child the courtroom; let them explore
- ▶ Tell the child who they can focus on during the hearing; they do not have to look at the defendant
- ▶ Explore accommodations: service animals, a comforting, non-distracting toy;

# Contact SALI

## ▶ Victim/Survivors can call:

- ▶ 301-565-2277
- ▶ 877-496-SALI (toll-free)
- ▶ Generally speak with paralegal/advocate and an attorney calls them back
- ▶ Arrangements made for languages other than English (including for deaf and hard of hearing)