

The Need for Trauma-Informed Advocacy in Civil Child Sexual Abuse Cases

by Daniel M. Kotin & Jeannie LaBarbara

As lawyers for victims in personal injury cases, we learn early on that no two cases are the same, and every client's injury calls for individualized care and attention. To that extent, every client is unique and no case can be handled in a boiler-plate fashion. This statement is most epitomized in the arena of childhood sexual abuse. Injuries in those cases are not visible, difficult to understand, and often delayed and progressive in appearance. Those factors alone make proof of the underlying tort a challenge.

Why Trauma-Informed Advocacy Matters in Civil Practice

Civil child abuse litigation demands more than technical legal skills. It requires an understanding of how trauma shapes every stage of the case. For survivors, civil claims can provide accountability and a sense of agency that criminal proceedings often cannot. For lawyers, however, these claims present hurdles that extend beyond what is encountered in other personal injury cases.

As civil trial lawyers, our primary objective is to secure financial compensation for our client's injuries. Yet, in seeking this relief, we must never cross that invisible line and make an injury worse. In sex abuse cases, this reality requires practitioners to confront a central question: *How do we pursue strong, effective advocacy without replicating or exacerbating the harm our clients have already endured?*

Trauma-informed advocacy offers a framework for answering that question, and can be used to enhance, rather than inhibit, effective representation.

Trauma and the Litigation Process

Sexual abuse trauma can complicate the proof of liability. Trauma affects survivors emotionally, cognitively, behavioral and physiologically.¹ These effects frequently surface during litigation in ways that are often misunderstood.

Common trauma-related responses include:²

- Delayed or partial disclosure of the abuse, often reflecting fear, shame or difficulty articulating traumatic experiences.
- Fragmented or non-linear memory.
- Emotional detachment or heightened emotion responses, including anxiety, agitation or dysregulated affect.
- Avoidance of confrontation or situations that may trigger traumatic memories.
- Intrusive memories and flashbacks that can linger once triggered.

These behaviors can initially strike the uninformed as an indication that the claim is not credible or that the harm is not significant.

But the truth is that none of these actions are unusual. Courts have recognized that delayed outcry for victims of sexual assault *does not* undermine a witness's credibility. *In re Marriage of Doe*³ the Illinois Appellate Court discusses:

"The fact that there was an otherwise delayed outcry is not uncommon, especially for children. See *People v. Priola*, 203 Ill. App. 3d 401, 414, 148 Ill. Dec. 776, 561 N.E.2d 82 (1990) ("[T]he failure of a young sexual assault victim to

make a prompt complaint is easily understandable because of the natural sense of shame, fear, revulsion, and embarrassment felt by children under such circumstances."); see also *People v. Duplessis*, 248 Ill. App 3d 195, 199-200, 188 Ill. Dec. 522, 618 N.E.2d 1092 (1993) ("In sexual assault cases involving family relationships, the victim's credibility is not lessened if there is no immediate outcry.").

These harms also complicate the attorney's presentation of the case. The *In re Marriage of Doe* Court goes on to discuss other trauma-informed options for a child victim:

"While the trial court's concern about protecting C.T. from reliving any trauma is understandable, it could have employed other procedures suggested by John's counsel that would have protected C.T., such as allowing her to testify remotely over the Zoom platform so that she would not have to be in the same room with John or permitting her to testify at her GAL's office, with her GAL at her side for moral support."⁴

While trauma-responses are normal, they can nonetheless create practical hurdles in litigation. Extensive and demanding discovery, depositions, lengthy court proceedings, and negotiations can place pressure on survivors. That pressure, without the proper foresight and preparation, can destabilize the client and thus jeopardize the case itself. Without a trauma-informed approach, litigation can retraumatize survivors, resulting in weakening the claim and further harming the victim.



Given the sensitive nature and uneven path of these cases, it is essential that we identify the overarching goals before proceeding:

- **Who is seeking redress?** Consider whether the case is primarily driven by the child survivor or by parents acting on their own sense of anger, frustration, or helplessness.

- **What is the ultimate objective?** Define what a successful outcome looks like for all parties involved, whether it be monetary, punitive, or something else.

- **What does justice look like?** In cases of physical injury, such as loss of a limb, the parents' interests generally align with the child's. In sexual abuse cases, however, the survivor's needs and the parents' perspective may differ and even conflict. Many abused children, adolescents and their families are worried about getting involved with the court process and want to

move forward with their lives for fear of loss of privacy, embarrassment, or shame.⁵

- **Are the parents' goals consistent with the child survivor's goals?** As lawyers, we must distinguish between outcomes that satisfy the parents' sense of justice versus what supports the survivor's long-term healing and empowerment.

Empower Your Client

Effective litigation strategy for child sexual abuse survivors should include deliberate and thoughtful communications. At the outset of representation, counsel should speak with the survivor, and when applicable, their parents, to ascertain the preferred frequency, scope and method of communication, including whether information should be relayed directly to the survivor or through another trusted individual. Some survivors find active involvement empowering, while others

experience distress, feeling as though each phone call or case updated forces them to relive the abuse.⁶

Trauma-informed practices should be intentionally incorporated to build trust, dependability and a sense of safety throughout your representation of the survivor:

- **Language:** In all phases of litigation, including discovery, depositions, and trial, use clear and accurate terminology when discussing the client's body and incidents that occurred. While such language can feel uncomfortable, speaking precisely communicates respect, transparency, and normalizes the discussion of difficult topics.⁷

- **Predictability:** Be consistent with how often and for how long you communicate with your client.

- **Collaboration:** Coordinate with therapists, advocates, treaters, and other members of the support system of the survivor.

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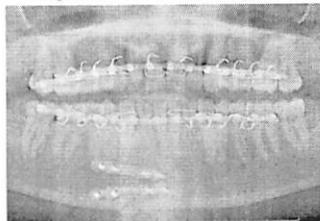
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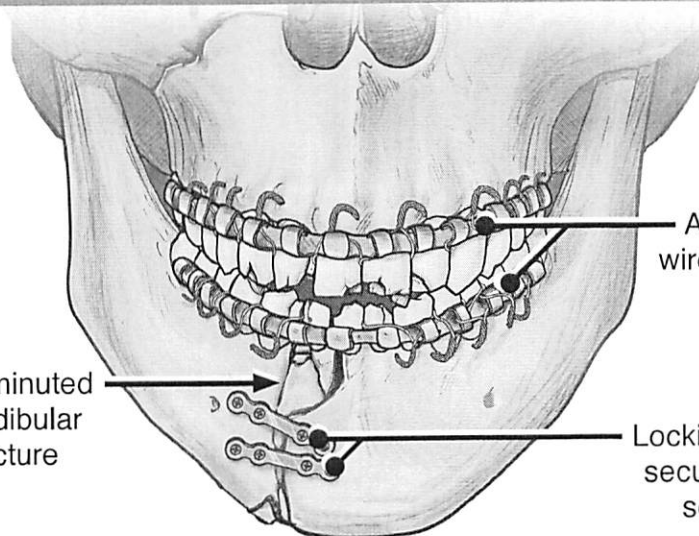
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When There's a Pending Criminal Action: Additional Tools for Civil Lawyers

When busy prosecutors are slow to return phone calls, and when survivors are unable to attend frequent or lengthy criminal court hearings, our clients may feel lost in the swirl of the criminal proceedings, and will turn to us for answers, context and reassurance. Although we have no control of the criminal prosecution, there are specific tools to use which can help us, civil lawyers, to meaningfully support and advocate for clients.

A. Marcy's Law

In 2014, Illinois voters approved Marcy's Law, a constitutional amendment to Article I of the Illinois Constitution⁸ that expands and enumerates the rights of crime victims. The amendment grants victims enforceable rights, including the right to:

- Be treated with fairness and respect for their dignity and privacy

- Communicate with prosecutors
- Receive timely notice of and be present at court proceedings
- Be heard at proceedings that involve release, plea, or sentencing
- Be reasonably protected from the accused
- Be free from harassment, intimidation and abuse
- Seek enforcement of these rights in court.

Marcy's Law does not directly govern civil discovery or procedure, but it can be a meaningful tool for civil practitioners navigating parallel criminal proceedings. When a client's interests risk being overlooked in an overburdened criminal system, civil counsel may invoke the principles underlying Marcy's Law to request information, communication, or structure from prosecutors handling the criminal matter. This amendment is both a tool and a reminder that survivors are no longer a mere witnesses or claimants: they are rights-holders.

B. Court advocates

In criminal cases, survivors are often supported by court advocates and/or victim-witness advocates.⁹ These advocates are professionally trained to help victims navigate the legal process while minimizing additional trauma. They typically assist by explaining court procedure, accompanying survivors to court appearances, and serving as a consistent, supporting presence throughout the case.

As civil trial lawyers, we often feel that we are best qualified to support our clients through a related criminal process. But sex abuse cases are different. We should ensure that our clients have access to an assigned, professional advocate and can use that advocate to gain information about the status of the criminal case.

C. Court Facility Dogs

Although this may initially seem silly or trivial, one of the most tangible examples of the growing field

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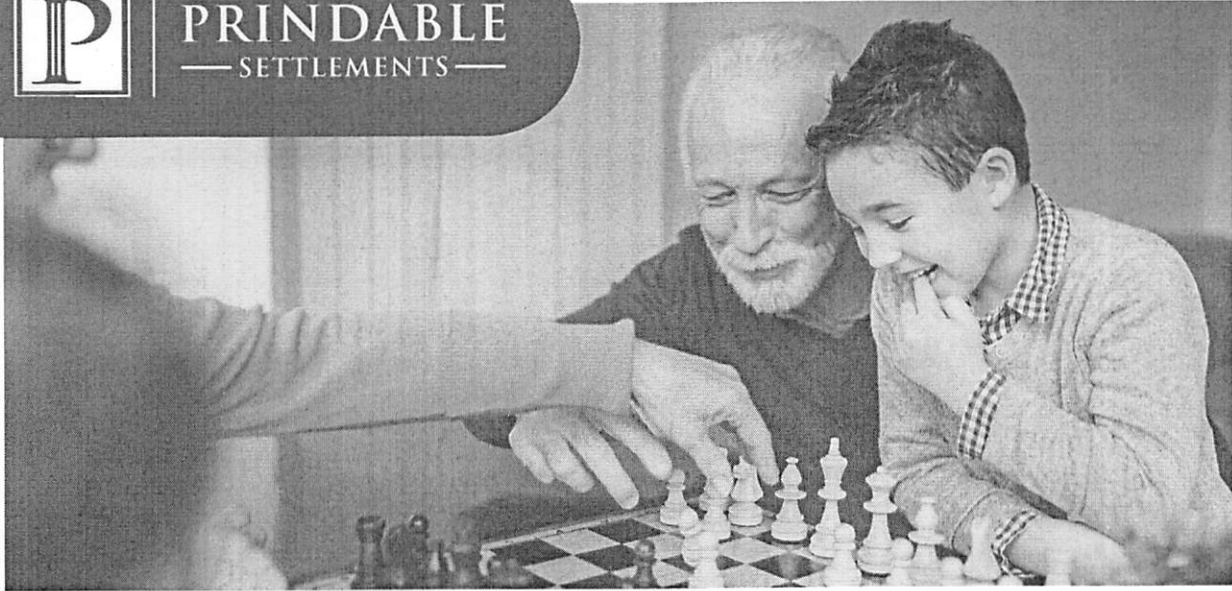
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of trauma-informed advocacy in Illinois courts is the increasing use of court facility dogs. A court facility dog is a highly trained service animal that works with a professional handler, often a victim abuse advocate. We have seen firsthand how a child's demeanor and anxiety eases almost instantly in the presence of the dog. We've seen children light up with joy and relax, making the difficult tasks at hand much easier to achieve than it would have been in the absence of the trained dog. Unlike emotional support animals, facility dogs undergo extensive training to remain calm, unobtrusive, and non-distracting in high-stress environments, including courtrooms. The role is not to influence fact-finding, but to offer quiet emotional regulation support to trauma survivors while they participate in legal proceedings such as testimony, hearings and interviews.

Illinois has formally recognized the use of facility dogs in court proceedings. Illinois law permits a judge to al-

low a facility dog to be present to assist a child or developmentally disabled person while testifying in specified criminal sexual assault and abuse prosecutions.¹⁰

As civil attorneys, we should not assume that a court facility dog will be granted simply because trauma exists. These dogs are in high demand and are not always available. Success depends on early planning, thoughtful framing, and coordination with court-approved programs.

Final Considerations for Civil Practitioners

Civil child sexual abuse cases demand a heightened level of professional judgment. Litigation decisions, which are often routine in other contexts, can carry lasting consequences for a survivor's sense of safety, agency and trust. By adopting trauma-informed practices early on, and remaining attentive to whose interests are truly being served, we can pursue accountability without sacrificing the very people the litigation

process is meant to protect.

Endnotes

¹ Center for Substance Abuse Treatment (US). Trauma-Informed Care in Behavioral Health Services. Rockville (MD): Substance Abuse and Mental Health Services Administration (US); 2014. (Treatment Improvement Protocol (TIP) Series, No. 57.) Chapter 3, Understanding the Impact of Trauma. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK207191/>.

² *Id.*

³ *In re Marriage of Joan Doe*, 2024 IL App (1st) 230935 (2024); *People v. Priola*, 203 Ill.App.3d 401 (1990); *People v. Duplessis*, 248 Ill.App.3d 195 (1993).

⁴ *Id.*

⁵ Nat'l Child Traumatic Stress Network, *Child Sexual Abuse: Coping with the Emotional Stress of the Legal System* (2009), Available from: https://www.nctsn.org/sites/default/files/resources//child_sexual_abuse_coping_emotional_stress_of_the_legal_system.pdf

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⁶ *Id.*
⁷ End Violence Against Women Int'l (EVAWI), Suggested Guidelines on Language Use for Sexual Assault Kimberly A. Lonsway, PhD & Sergeant Joanne Archambault (Ret.) (June 2013; updated Nov. 2022), Available from: https://www.evawintl.org/wp-content/uploads/2013-06_TB-Language-Use-for-Sexual-Assault-1.pdf.

⁸ Ill. Const. art. I, § 8.1.
⁹ Cook County State's Attorney's Office. *Victim Witness Unit*. Cook County State's Attorney. <https://www.cook-countystatesattorney.org/victim-witness-unit>

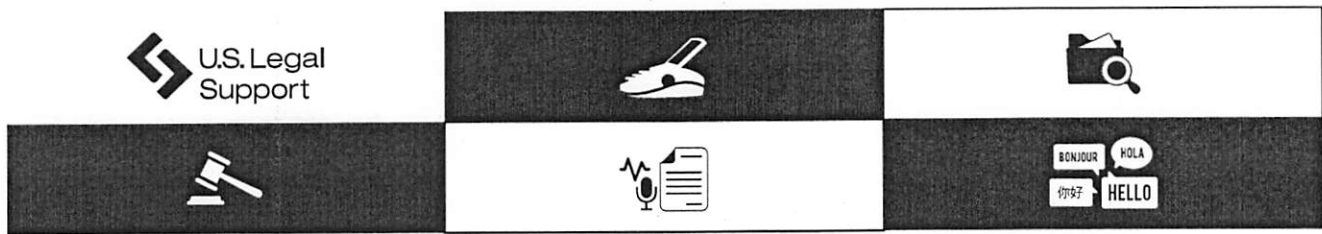
¹⁰ 725 Ill. Comp. Stat. 5/106B-10 (2025).

Daniel M. Kotin is the founding partner of *Tomasik Kotin Kasserman* and serves on the ITLA Board of Managers. He is a Past-President of the Chicago Bar Association (CBA) and the Chicago Inn of Court.



He is a fellow in the American College of Trial Lawyers (ACTL), the American Board of Trial Advocates (ABOTA) and the International Society of Barristers (ISOB). Dan is also a Trustee for the National Institute for Trial Advocacy (NITA). In addition to the sexual abuse claims, he represents plaintiffs in medical malpractice, product liability and other catastrophic personal injury and wrongful death cases.

Jeannie LaBarbara is an associate with *Tomasik Kotin Kasserman* and is a seasoned trial lawyer with over a decade of experience in high-stakes criminal and civil litigation. A former Cook County prosecutor and in-house counsel at Uber, she brings survivor-centric advocacy, extensive trial experience, and trauma-informed strategy to complex, emotionally charged cases.



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