

Original Article

# Age differences in the prosecution of child abuse cases

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## Abstract

**INTRODUCTION.** Evidence in child abuse cases can be scarce and is often centred around the child's testimony. However, child testimony varies with the child's development. Here, an overview of suspects, case decisions and court verdicts from a cohort of children is presented, stratified across children aged 0-3, 4-7, 8-11, and 12-15 years.

**METHODS.** Children seen at the Department of Forensic Medicine, Aarhus University, Denmark, in 2001-2013 were analysed, including all case files from the police, courts and healthcare services.

**RESULTS.** A total of 647 cases were presented. The most frequent suspect was the child's parents. The police referred to the prosecutor in 69% of all cases, and 37% were tried in court. The lowest proportion of cases of tried cases was found among children aged 0-3 years (20%) and the highest among children aged 8-11 years (57%). Across ages, no corroborating evidence, the accused's refusal of guilt and no case to pursue (insufficient strong evidence) were the most frequent reasons for case closure. Cases relating to children aged 0-3 years were frequently dismissed because the fault could not be placed, whereas cases relating to children aged 12-15 were frequently rejected because of lacking evidence of compulsion (non-consent).

**CONCLUSION.** Results show variations across ages regarding children tried in court and case dismissal. A dedicated child court may be considered to ensure equal access to justice. Questioning during the forensic examination and the use of psychologists may strengthen the available evidence.

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**TRIAL REGISTRATION.** Not relevant.

In suspected physical and sexual child abuse, evidence can be scarce. Lack of corroborating evidence makes the child's disclosure of important evidence, and the credibility of the disclosure may be decisive for the case outcome [1].

In children, however, the ability to recall events, distinguish experiences as one's own or someone else's, and contextualize these events evolves throughout childhood [2]. The child's age also affects the risk of testimonial bias introduced by an interviewer [3].

Most suspected child abuse does not lead to prosecution. However, most prosecuted cases lead to conviction [4, 5]. In a Danish study on child sexual abuse, 43% of the cases were prosecuted, and 87% of those prosecuted were convicted [6].

Prosecutorial decision-making has been studied [1, 4], but not in Denmark. Cases with children who never go beyond police investigation are an understudied field, despite the potential need to ensure child access to justice [7].

Our aim was to analyse and describe the judicial case proceedings, from allegation to judicial resolution, focusing on prosecutorial arguments and age differences among the children.

We hypothesised that case decisions would vary with the age of the child.

## Methods

### The Danish judicial system

In Denmark, all citizens are obliged to report child abuse to the social services. Within 24 hours, the social services must assess the need for emergency measures. They must also notify the police immediately upon obvious signs of abuse [8]. If the police are notified about possible abuse, they must notify the social services.

During police investigation, the child is interviewed by the police. Children under the age of 13 are interviewed on video to avoid the need for a court appearance [9].

The police can request a forensic examination. In Denmark, forensic medicine is a board-certified speciality that documents and assesses biological evidence, including physical manifestations of abuse. Treatment of abuse sequelae is referred to other medical specialities [10], and the forensic interview is performed by the police.

The police decide if the case should be referred to a prosecutor. The prosecutor will look for evidence that can lead to a court conviction.

### The present study

The data analysed herein have previously been studied [11]. All children < 15 years of age with a forensic evaluation and suspicion of child abuse were included. Evaluations made by the Department of Forensic Medicine, Aarhus, Denmark, between 1 November 2001 and 31 October 2013 were included.

Each child was reviewed by the first author, including medical records, forensic evaluation documents, police reports, court documents, expert opinions, forensic psychiatric evaluations and court proceedings.

Child abuse was classified according to the Danish Penal Code as *child physical abuse*, including *child abuse homicide* and *child sexual abuse* [12].

Four age groups were used: 0-3, 4-7, 8-11 and 12-15 years of age. The rationale for these groups was the child's assumed ability to account for exposure to child abuse and age-related differences in the Danish Penal Code [12].

### Statistical analyses

Data were entered into REDCap and analysed using R [13]. The chi-squared and Wilcoxon rank-sum tests, both with cluster corrections, were performed using the Survey package. Results with  $p < 0.05$  were considered statistically significant.

*Trial registration:* not relevant.

## Results

In total, 647 cases were included after excluding 109 incomplete cases (14%), [see Appendix 1](#). These cases

represent 635 unique children. Children and suspects in included and excluded cases did not differ in gender or ethnicity; see [Appendix 2](#) for an analysis of non-missing values among those not included. Children also did not differ in age groups. Excluded children's mothers had a higher rate of employment than those included,  $p = 0.005$ . Excluded suspects were older, with a median 36.3 years of age compared with 25.7 years of age for those included,  $p = 0.001$ . Excluded suspects also tended to have a higher employment rate than those included, but differences were not significant,  $p = 0.073$ . Most cases were reported to the police by the child's parents (43%) or the social services (36%). The social services were notified primarily by teachers (15%), and for children < 4 years, by doctors (36%), see [Table 1](#).

**TABLE 1** The child victim's disclosure and the subsequent notification of authorities. The values are n (%).

	0-3 yrs (n = 149)	4-7 yrs (n = 128)	8-11 yrs (n = 111)	12-15 yrs (n = 259)	The cohort (N = 647)	p value
<i>Child confided in</i>						
Parent	31 (21)	56 (43)	45 (41)	101 (39)	233 (36)	< 0.001
Family member/friend	0	4 (3)	10 (9)	52 (20)	66 (10)	
Teacher/coach	7 (4)	16 (12)	19 (17)	55 (21)	97 (15)	
Doctor: hospital/general practitioner	1 (1)	2 (2)	0	3 (1)	6 (1)	
Foster family/social services	0	2 (2)	5 (4)	8 (3)	15 (2)	
Not relevant: child dead/too little	82 (55)	2 (2)	3 (3)	0	87 (14)	
None/unknown	28 (19)	46 (36)	29 (26)	40 (16)	143 (22)	
<i>Police report filed by</i>						
Parent	52 (35)	54 (42)	43 (39)	129 (50)	278 (43)	< 0.001
Family member/friend	5 (3)	8 (7)	9 (8)	23 (9)	45 (7)	
Teacher/coach	2 (1)	3 (2)	3 (3)	24 (9)	32 (5)	
Doctor: hospital/general practitioner	14 (10)	5 (4)	6 (5)	7 (3)	32 (5)	
Foster family/social services	75 (50)	55 (43)	45 (41)	59 (23)	234 (36)	
The child itself/other	1 (1)	3 (2)	5 (4)	17 (6)	26 (4)	
<i>Social services notified by</i>						
Parent	7 (5)	11 (9)	6 (5)	9 (4)	33 (5)	< 0.001
Family member/friend	3 (2)	4 (3)	2 (2)	4 (1)	13 (2)	
Teacher/coach	18 (12)	30 (23)	17 (15)	30 (12)	95 (15)	
Doctor: hospital/general practitioner	54 (36)	9 (7)	6 (5)	4 (1)	73 (11)	
Foster family/social services	0	2 (2)	8 (7)	7 (3)	17 (3)	
The child itself/other	0	1 (1)	4 (4)	3 (1)	8 (1)	
Not notified	67 (45)	71 (55)	68 (62)	202 (78)	408 (63)	

## Results by suspect and case flow

### The case suspect

A suspect was identified in 580 cases (90%). In each case, analyses were performed only on the main suspect. However, more than one suspect was mentioned in 35 cases (5%). Reversal of a verdict by appeal was not considered since it occurred in less than five cases (< 0.8%). The child's biological parent was most often the suspect. For three-quarters of the children < 4 years old, the suspect was either the biological father (45%) or the biological mother (28%). With increasing child age, parental involvement in abuse declined and was replaced by a friend of the family or child, see [Appendix 3](#).

### The case flow

Out of 647 cases, the police referred to the prosecutor in 449 cases (69%). The proportion of referrals increased with child age, from 46% among children < 4 years to 81% among children > 12 years, see [Appendix 4](#). The prosecutor prosecuted 254 cases (39%), equivalent to about 50% of referred cases in each age group, except among children 8-11-year-old children, where 75% of cases were prosecuted. A total of 239 cases (37%) were tried by the courts, corresponding to 20% of cases with children aged < 4 years, 23% of children aged 4-7 years,

57% of children aged 8-11 years, and 41% of children aged 12-15 years,  $p < 0.001$  for group differences.

Across child ages, the main arguments for case dismissal were no corroborating evidence, including lack of physical findings at the forensic medical examination, the accused's denial of guilt and no case to pursue, including insufficient evidence indicating child abuse. For children  $< 4$  years, the argument of fault impossible to place was used, whereas no evidence of compulsion (no signs of non-consent) was used mainly among children aged 12-15 years, see **Figure 1** and **Appendix 5**.

**FIGURE 1** The most frequent arguments for case dismissal by age of the child victim.

	Police investigation discontinued, n	Police did not refer for prosecution, n	Prosecution dropped, n	Acquittal, n
Children 0-3 years	No corroborating evidence, 45 No case to pursue, 29 The accused's denial, 19	No corroborating evidence, 24 The accused's denial, 13 No case to pursue, 12	Expert opinion, 2 Fault cannot be placed, 1	No corroborating evidence, 5 The accused's denial, 4 Fault cannot be placed, 2
Children 4-7 years	No corroborating evidence, 26 No case to pursue, 21 The accused's denial, 5	No corroborating evidence, 33 The accused's denial, 20 Lack of credibility (child), 16	No corroborating evidence, 1 The accused's confession, 1 Alleviating circumstances (accused), 1	The accused's denial, 3 Lack of credibility (child), 3 No corroborating evidence, 3
Children 8-11 years	No corroborating evidence, 11 No case to pursue, 5 The accused's denial, 4	No corroborating evidence, 14 No case to pursue, 11 The accused's denial, 7	The accused's confession, 1 No evidence of compulsion, 1 Alleviating circumstances (accused), 1	Lack of credibility (child), 2 No evidence of compulsion, 2 No corroborating evidence, 1
Children 12-15 years	No corroborating evidence, 13 The accused's denial, 6 No case to pursue, 2	No corroborating evidence, 68 The accused's denial, 44 No evidence of compulsion, 41	No evidence of compulsion, 13 Alleviating circumstances (accused), 7 No corroborating evidence, 1	No corroborating evidence, 10 Lack of credibility (child), 8 No evidence of compulsion, 8

The child stating the disclosure as false was the main reason for case dismissal in 25 (6%) of the 408 cases not reaching court. Most were children 12-15 years old.

## Court proceedings

In total, 156 cases (65%) went to court once, with 154 cases (99%) being processed by the District Court and two cases (1%) by the High Court. The remaining 83 cases (35%) went to court twice, with 78 cases (94%) initially being processed by the District Court and subsequently before the High Court. Five (6%) cases reached the Supreme Court. No age-related differences were discovered.

The 239 cases tried in court were brought as 41 (17%) confessional trials, 188 (79%) lay assessor trials and 10 (4%) jury trials.

Among the 232 cases processed in the District Court, a forensic medical examiner testified in 23 cases (10%), primarily in cases involving children  $< 4$  years of age. Among the 85 cases processed in the High Court, a forensic medical examiner testified in 16 cases (19%), regardless of child age.

Statements from the Danish National Medico-Legal Council were requested in 59 (25%) of 232 cases in the District Court, mainly for children  $< 4$  years old.

## The judicial resolution

A total of 206 cases (32%) led to a conviction, corresponding to 15% of children aged  $< 4$  years, 25% of children aged 4-7 years, 53% of children aged 8-11 old, and 36% of children aged 12-15 years old,  $p < 0.001$  for group differences.

The main specific arguments for conviction were credibility surrounding the child, corroborating evidence and the accused's confession of guilt. For general categories of arguments, see **Figure 2** and **Appendix 6**.

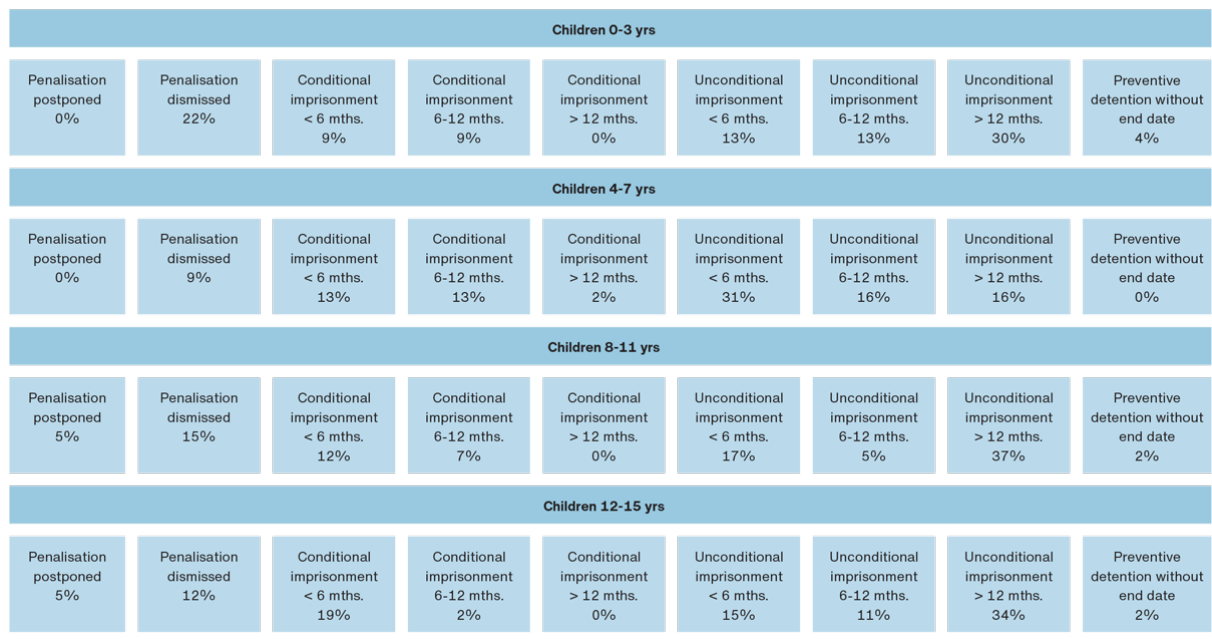
**FIGURE 2** The most frequent arguments for sentencing by age of the child victim.

	Penalization dismissed, n	Conditional imprisonment, n	Unconditional imprisonment, n
Children 0-3 years	Aggravating circumstances (abuse), 1 Alleviating circumstances (abuse), 1 Serious breach of trust, 1	Alleviating circumstances (accused), 5 Aggravating circumstances (abuse), 4 Alleviating circumstances (abuse), 2	Aggravating circumstances (abuse), 10 Alleviating circumstances (abuse), 3 Aggravating circumstances (accused), 2
Children 4-7 years	Aggravating circumstances (abuse), 1 Alleviating circumstances (accused), 1	Alleviating circumstances (accused), 7 Aggravating circumstances (abuse), 7 Alleviating circumstances (abuse), 4	Aggravating circumstances (abuse), 12 Serious breach of trust, 4 Aggravating circumstances (accused), 4
Children 8-11 years	Aggravating circumstances (abuse), 7 Legislative changes, 2	Alleviating circumstances (accused), 11 Aggravating circumstances (abuse), 6 Alleviating circumstances (abuse), 4	Aggravating circumstances (abuse), 22 Serious breach of trust, 15 Alleviating circumstances (accused), 7
Children 12-15 years	Aggravating circumstances (abuse), 4 No evidence of compulsion, 2 Alleviating circumstances (abuse), 1	Alleviating circumstances (accused), 12 Aggravating circumstances (abuse), 7 Alleviating circumstances (abuse), 7	Aggravating circumstances (abuse), 44 Serious breach of trust, 22 Alleviating circumstances (accused), 7

## The sentencing

Unconditional imprisonment was the main punishment, given in 123 cases (60%), see **Figure 3**.

**FIGURE 3** The judicial sentencing by age of the child victim, specifying the distribution of cases.



The main arguments for unconditional imprisonment were aggravating circumstances and severe breach of trust. Conditional imprisonment was justified by alleviating circumstances relating to the accused and aggravating circumstances relating to the abuse.

## Results by age groups

### *Children < 4 years old*

Most (80%) children aged < 4 years had cases dismissed before the court, most frequently by the police. The main arguments for case dismissal were no corroborating evidence, including lack of physical findings at the forensic medical examination, the accused's refusal of guilt, fault impossible to place, and no case to pursue, including insufficient evidence.

### *Children aged 8-11 years and 12-15 years*

Among the cases with children aged 8-11 years, 43% were dismissed before the court, as were 59% of cases with children aged 12-15 years. The main arguments were no corroborating evidence, no case to pursue, including insufficient evidence, and the accused's refusal of guilt. For children aged 12-15 years, many cases were dismissed by the prosecutor due to a lack of evidence of compulsion.

## Discussion

This study reviewed 647 child abuse cases from the initial allegation to the final judicial resolution. Legal reasoning and age-related differences were scrutinised to provide an overview of challenges. Mainly children aged < 4 years and 12-15 years had cases closed without charges. A total of 408 cases (63%) never reached the court.

Children < 4 years of age are challenging for police and lawyers as the children cannot account for possible exposure to child abuse. This is due to their age-related lack of mental development, as described by Pantell et al. [2].

The child's biological father was the most frequent suspect (45%) among children aged < 4 years, followed by the child's biological mother (28%). This resembles Swedish studies focusing on child physical abuse [14, 15]. Consequently, even with strong evidence, guilt can be impossible to place without witnesses to intimate family life.

Most children aged eight years or older had cases with suspicions of child sexual abuse, ranging from 88% of children aged 8-11 years to 93% of children aged 12-15 years. Children with cases including intercourse increased with child age. Any sexual engagement between a preadolescent and an adult is difficult to vindicate. In contrast, authorities might presume consent if it occurs in adolescence and with a peer, especially if there is no evidence of compulsion.

Police questioning differs between age groups. Children aged < 13 years are usually interviewed in child-friendly environments, whereas older children are questioned like adults [9]. This may affect a child's disclosure.

### Presentation of child abuse cases in court

Among the 239 cases tried in court, 206 cases (86%) resulted in convictions, corresponding to 32% of the study cohort. These findings are similar to those of previous studies, with 74-87% of cases in court resulting in convictions, representing 31-34% of the study cohort [6, 16].

Age-related differences were also present in court, with 94% of cases with children aged 8-11 years being convicted, but only 77% of cases with children aged < 4 years and 87% with children aged 12-15 years.

Unconditional imprisonment was the main punishment, and > 12 months was the most frequent duration. Unconditional imprisonment was used in 123 (60%) of the 206 cases with a conviction. This is slightly lower than the 78% observed in an American study [17].

The main arguments for unconditional imprisonment were aggravating circumstances and serious breach of trust.

### Perspectives to maintain care for justice

Significant differences were found between age groups. Differences between child ages might be better accommodated in an independent court dedicated to child victims, ensuring equal access to justice. In only 37% of cases, the social services were notified of the case before police involvement. The use of parallel initial investigations by the police and the social services would inform a case's criminal and social aspects.

Child testimony is central to the fate of a case, especially when no corroborating evidence is available. To support such cases with expert opinions, questioning of the child on how the body felt during the assault could be introduced during the forensic examination. This would allow for correlation of the child's description of the suspected abuse with an expert testimony and aligns with recommendations by Adams et al. [18]. The use of child psychologists specialised in child abuse may also potentially strengthen expert testimony.

Our results reveal the central role of corroborating evidence on the case flow and court outcome. The impact and interpretation of existing corroborating evidence may be strengthened by the routine addition of multidisciplinary assessment of child health as part of the evaluation. The use of more than one speciality is recommended elsewhere [19].

Overall, our results stress the importance of both child testimony and corroborating evidence. This underlines that professions interacting with children should remain open to spontaneous information on abuse from children but avoid suggestive questions to avoid influencing child narratives. Disclosure should trigger swift referral to the social services and the police, as needed, to enable evaluation of physical findings while they are still present.

## Limitations

All arguments presented are based on subjective decisions guided by the Danish Penal Code. Our grouping of arguments, as seen in [Appendices 5-6](#), is further based on our subjective assessment, and others might have categorised these differently.

The 109 excluded cases may originate from families in which the mothers are more often employed. Similarly, the suspects of the excluded cases are older and tend to be more often employed. This may indicate that these cases concern privileged children and suspects, who may more often have their cases forwarded. Consequently, our results might not fully represent privileged children and suspects.

The data presented here were collected in a time series that concluded ten years ago. Judicial practice may have changed since the collection of these data. In 2013, a series of legal changes were introduced that likely affected reports made to social services, possibly both in terms of quality and frequency [20]. However, the authors are unaware of any changes in law or practice in the cases referred to the police or in the practice of forensic evaluations. Although not new, to the best of our knowledge, the data presented here are the largest and most recent cohort of Danish cases on this subject.

## Conclusion

Age-related differences in the prosecution of child abuse were revealed, and adjustments of the judicial system towards an enhanced focus on child victims and their developmental stages are warranted. Mandatory use of medical and psychological expertise may potentially facilitate investigation and facilitate sufficient access to justice for the child after abuse.

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Supplementary file <https://content.ugeskriftet.dk/sites/default/files/2024-06/a07230437-supplementary.pdf>

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