THE KANSAN

Finding justice: Difficulties to prosecuting child abuse cases

By Chad Frey / Newton Kansan / @ChadFrey

Posted Apr 30, 2016 at 1:01 AM

The case of Kim, first told by The Kansan Wednesday, shows some of the major difficulties when it comes to prosecuting cases. First and foremost, children struggle to testify.

“If you are going to testify, that is scary for an adult,” said Kerry Grosch, director of Heart To Heart Child Advocacy Center. “Imagine what that is like for a child.”

That is the most prominent challenge — along with corroboration, meaning there may not be someone else who is witness to the crime.

Currently there are 30 pending cases in the county attorney’s office.

“That is pretty normal,” said David Yoder, county prosecutor. “It seems like with every case we have completed, we have a case or two coming up. It never seems to end.”

Current cases involve a couple of cousins; an uncle and niece; a grandfather and grandchild; and friends of the family involved in a sexual offense.

Some of those cases have witnesses, or confessions. Others do not.

“Perpetrators do not like witnesses. They will almost always be conducting their behavior and abuse in private when there is no one else around to see it happening. You immediately have the child’s word against the perpetrator’s,” Yoder said. ”... We have to work and get whatever corroboration we can.”

That can be asking other people if they saw the accused with the child, if at a party or gathering the two “disappeared for a long time.” It can be shaky.

Medical exams can be ordered if the offense was recent enough, but again, that can be shaky when building a case.

“I have done a lot of these cases and any examiner will tell you that it is not at all unusual to not find evidence of trauma. That does not mean it did not happen. ... There just is very frequently no evidence of trauma,” Yoder said.

That leaves a child to tell the story and for trained interviewers to make sure it is told.

Simply telling the story is difficult — as it was for Kim. Kim’s parents, Jennifer and John, told their family story to the Kansan with anonymity to protect the identity of a child victim of sexual molestation.

Molested at the age of 10, Kim did not come forward for at least two years after the most recent incident. Even with that passage of time, she struggled. She stopped outside the interview room and did not want to go inside.

Grosch said Kim was blaming herself for what happened. Kim did talk to investigators. In her case, the accused confessed to the crime. From there, the case went to the county prosecutor’s office and on to the court system.

In her case, the charges were not difficult to file — but that can be the exception to the rule.

“In the case of a man who is several decades older than, for example, a 9-year-old-girl, those charges are straight forward,” Yoder said. “If you have a 17-year-old who has had relations with a 14- or 15-year-old, we have to look at the overall circumstances of things. I don’t think anyone (in Harvey County) looks at if there was a technical offense and just go file charges. We look at what is in best interest of the safety of the community, the nature of the case, the age of the parties and if it was consensual or not.”

There comes difficulty for families and victims.

“Overall, the court system and legal system is set up to prove the innocence of the perpetrator, and not the rights of the victim. Without an agency like Heart To Heart they would get lost in the legal system. We learned that the hard way. The legal system was set up for his rights,” Jennifer said.

In her daughter’s case, the accused initially faced two counts of rape and two counts of aggravated liberties with a child.

Kim thought she could testify if a jury trial were in the cards — and that could have easily become the case.

“The Supreme Court has made it very clear that the sixth amendment right of confrontation requires us to call the witnesses against the accused in open court to testify,” Yoder said. “I make it clear that if it goes to trial, the child will have to testify. I have to assess if that child is able to do it.”

However, at the end of the day, she was not able to be in the same room as the accused — or listen to some of the graphic details of the case.

“She kind of wilted, and melted,” John said. “I was not going to put her through that. Mr. Yoder helped give some feedback on that, too.”

The family opted to pursue a plea agreement. Final sentencing is set for this summer. The accused in Kim’s case pled guilty to one count of rape. The agreement calls for 93 months in prison and lifetime post-release supervision.

Kim had a voice, as did the rest of her family, in those plea negotiations.

But the case shows the biggest challenges of prosecution of child abuse cases — had the accused not admitted to the crime there would have been little to no corroboration. The victim struggled to talk about what had happened and being in the courtroom was traumatic.