

# There was nothing but her story

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Prosecution of alleged child sexual abuse of preschoolers

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*To Christian, who left too soon*



# ABSTRACT

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Investigating and prosecuting cases of alleged sexual abuse against young children is a challenge

for legal practitioners worldwide. In Sweden, a prosecutor is in charge of both the preliminary child sexual abuse (CSA) investigation and the decision of whether or not to prosecute the case. The aim of this thesis is to shed a light on prosecutors' experiences of and decision making in CSA cases involving preschool-aged children. **Study I** investigated prosecutors' experiences of preparing for and prosecuting such cases. Specialized child prosecutors (6 women, 3 men) took part in either individual interviews or focus groups. The transcripts were analyzed thematically. The prosecutors said that children's evidence was sometimes held to an adult standard and that children who expressed emotion could be perceived as more credible than their less expressive counterparts. Investigative interviews were reported to sometimes fail to meet the needs of the youngest children. **Study II** examined differences between prosecuted and discontinued cases of alleged sexual abuse of preschoolers. Data from Swedish criminal cases of alleged sexual abuse of children aged 2–6 were analyzed ( $N = 130$ ). Prosecuted cases were more likely to contain forensic evidence (documentation of abuse, corroborative DNA evidence, a corroborative medical examination) or a confession from the suspect, while such evidence was not available in any of the discontinued cases. Cases were also more likely to be prosecuted if they involved older children, multiple alleged victims, and forensic child interviews. Cases were more likely to be discontinued if there were ongoing custody disputes between parents, if the child, prior to the abuse, had been placed in foster care, and if the alleged victim was a boy. In **Study III** Swedish prosecutors specialized in managing cases involving children ( $N = 94$ ) took part in a national survey regarding their work with alleged sexual abuse against preschoolers and their experiences of collaborating with police and Child Protective Services (CPS). Their responses, which were analyzed using quantitative and qualitative (thematic analysis) methods, showed that cases of alleged sexual abuse against preschoolers are particularly challenging for prosecutors, mainly because they often lack corroborative evidence and eliciting and evaluating testimony from young children is problematic. Around one third of the prosecutors reported that the clash of views between CPS and prosecutors was a potential source of conflict, and that an ongoing CPS investigation could negatively affect the criminal investigation. The quality of the forensic child interview was described as paramount to the investigation and as something that could be affected both by the interviewer and by police resources. The results of these three studies suggest that prosecutors working on cases of alleged CSA against young children are faced with challenges related to obtaining evidence and evaluating testimony from preschoolers, the involvement of CPS, custody disputes, and lack of corroborating evidence. More expertise in child interviewing and in evaluating children's testimony, improved collaboration with CPS, and investigations of alleged CSA using a hypothesis-testing approach could contribute to prosecutors' work with these investigations.



## Svensk sammanfattning (Swedish summary)

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Att utreda och väcka åtal i mål som rör misstänkta sexualbrott mot barn är en stor utmaning för svenska åklagare. I Sverige ligger nämligen ansvaret för förundersökningen i dessa mål på åklagaren. Det är åklagaren som ska fatta beslut om och i så fall när ett barn skall förhöras, vilka andra eventuella vittnen som ska höras, om en misstänkt skall gripas eller anhållas, och om häktningsframställan ska påkallas. Det är också åklagaren som beslutar om fallet ska gå vidare till åtal eller ej. Att fatta dessa beslut är sällan någon enkel uppgift då det i många utredningar om misstänkta sexualbrott mot barn saknas stark bevisning såsom DNA-spår eller övergreppsrelaterade skador. Ofta är det barnets egen berättelse om det påstådda övergreppet som utgör central bevisning. Detta innebär att åklagaren behöver fatta viktiga rättsliga beslut utifrån ringa stödbevisning och från den information som barnet kan ge. I vissa utredningar är dessa barn inte mer än tre år gamla. Torts att svenska åklagare är centrala aktörer i utredningar av misstänkta sexualbrott mot barn saknas det i princip helt och hållet forskning om just åtal av misstänkta sexualbrott mot förskolebarn. Syftet med denna avhandling, som består av tre delstudier, är att bidra till att fylla denna kunskapslucka genom att undersöka och belysa åklagares upplevelser av, och beslutsfattande i, fall av misstänkta sexualbrott mot barn i förskoleåldern.

Inom ramen för *Studie I* intervjuades specialiserade barnåklagare om sina erfarenheter av misstänkta sexualbrott mot förskolebarn. Åklagarna beskrev hur domstolarnas bedömningar av förskolebarns utsagor kunde leda till att alltför höga krav ställdes på deras utsagor. Åklagarna angav också att barn som visade känslor när de berättade om sin utsatthet kunde uppfattas som mer trovärdiga än mindre uttrycksfulla barn. Vidare beskrevs förskolebarn som särskilt sårbara brottsoffer som ofta har svårt att berätta om sin utsatthet. Något som kan kompliceras ytterligare, enligt åklagarnas erfarenheter, av att vissa poliser som förhör dessa barn verkar sakna förmåga och verktyg att närma sig just de yngsta barnen. Därtill beskrevs förhör med förskolebarn som allt för långa för vad dessa små barn mäktar med.

I *Studie II* undersöktes skillnader mellan åtalade och nedlagda anmälningar av sexualbrott mot barn i förskoleåldern. En skillnad mellan dessa anmälningar var att de åtalade fallen ofta innehöll forensisk bevisning (övergreppen hade dokumenterats av förövaren, DNA-bevisning, skador som tydde på övergrepp ägt rum) eller ett erkännande från den misstänkte. Någon sådan bevisning förekom inte i något av de nedlagda fallen. Övriga skillnader bestod i att anmälningar oftare lades ned i fall där det pågick en vårdnadstvist mellan barnets föräldrar, där barnet innan brottsanmälan placerats i familje-

hem av socialtjänsten eller där anmälan rörde en pojke. Pojkar och yngre barn blev mer sällan förhörda jämfört med flickor och äldre barn.

I avhandlingens sista delstudie, *Studie III*, besvarade erfarna barnåklagare en enkät som handlade om deras erfarenheter av att arbeta med misstänkta sexualbrott mot förskolebarn och om deras upplevelser av samarbetet med polis och socialtjänst. Åklagarna lyfte unisont fram flera stora utmaningar: Misstänkta sexualbrott mot små barn är ofta svåra att utreda och åtala på grund av bristande stödbevisning och att det är svårt att få den information som krävs från förskolebarn. Att förhöra och bedöma små barns utsagor beskrevs som en av de största utmaningarna i dessa fall. Barnförhöret beskrevs därför som helt avgörande för utredningens framgång. Åklagarna ansåg att kvaliteten på förhöret kunde bero dels på den polis som håller förhöret, dels på de resurser som finns tillgängliga för polisen. Omkring en tredjedel av åklagarna berättade att det finns olika synsätt mellan rättsväsendet (polis och åklagare) och socialtjänsten, vilket kan leda till konflikter, och vissa menade att en pågående socialtjänstutredning potentiellt kan försvåra en brottsutredning.

Sammantaget visar denna avhandling att åklagare som arbetar med fall som rör misstänkta sexualbrott mot förskolebarn står inför stora och svåra utmaningar. I varje enskilt fall måste de samarbeta med polisen för att säkerställa att barnen hörs på ett sätt som möjliggör för dem att lämna en tillförlitlig utsaga. Vid sidan av detta måste de försöka få fram bevisning som styrker det lilla barnets berättelse. De kan behöva samarbeta med socialtjänsten, möta vårdnadstvister och andra faktorer runt det lilla barnet som ytterligare komplicerar dessa sedan tidigare redan svårutredda ärenden. För att underlätta åklagares arbete med, och för att höja rättssäkerheten kring, utredningar av misstänkta sexualbrott mot små barn behövs dels en ökad kunskap och förståelse för hur små barn skall förhöras och bedömas. Dels behövs en hypotesprövande ansats och ett välfungerande samarbete mellan rättsväsendet och socialtjänsten.



## Preface

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This thesis consists of a summary and the following three papers, which are referred to by their roman numerals:

- I. Ernberg, E., Tidefors, I., & Landström, S. (2016). Prosecutors' reflections on sexually abused preschoolers and their ability to stand trial. *Child Abuse & Neglect*, 57, 21–29. doi: 10.1016/j.chiabu.2016.06.00
- II. Ernberg, E., Magnusson, M., & Landström, S. (2018). Prosecution of child sexual abuse cases involving preschool-aged children: A study of Swedish cases from 2010 to 2014. *Journal of Child Sexual Abuse*, 27, 832-851. doi:10.1080/10538712.2018.1501786
- III. Ernberg E., Magnusson, M., & Landström, S., Prosecutors' experiences investigating alleged sexual abuse of preschoolers. *Manuscript submitted for publication*.

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October, 2018.



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# INTRODUCTION

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Investigating and prosecuting cases of alleged sexual abuse against young children constitutes a challenge for legal practitioners worldwide. In Sweden, a prosecutor is in charge of the preliminary child sexual abuse (CSA) investigation (Swedish Code of Judicial Procedure: SCJP; CH. 23, §3) as well as the prosecution of such cases. In CSA investigations, it is largely up to the prosecutor to decide whether and when the complainant should be interviewed, whether or not to interview any potential witnesses, if the allegations warrant an interview, detention, or arrest of the suspect, and if so, make the case for a detention request in court. In the end, it is also up to the prosecutor to decide whether or not the case should be prosecuted, and if it is, to bring the case to court.

These decisions may prove difficult in all investigations of sexual abuse, but they are often particularly challenging when the alleged victim is a preschool-aged child. The majority of CSA cases lack substantive evidence such as abuse-consistent injuries or DNA traces. Instead, the child's own testimony is often one of the most important pieces of evidence (Heger, Ticson, Velasquez, & Bernier, 2002; Walsh, Jones, Cross, & Lippert, 2010). Therefore, the prosecutor needs to (1) assist the police in planning how best to interview young children (the interview itself is conducted by the police, but the prosecutor can observe from an adjacent room) and (2) assess the child's testimony, if any was elicited during the interview. Prosecutors then, based on information elicited from children sometimes as young as three, need to make important decisions regarding the case. Thus, in Sweden, prosecutors are major actors in cases of alleged CSA. They work on the case from the preliminary investigation through any eventual trial, making important decisions along the way. Even so, relatively little research has been conducted on the prosecution of CSA cases. International research into the prosecution of CSA cases paints an especially bleak picture of investigations of alleged CSA against preschool-aged children, showing that these cases are among the least likely to be prosecuted (Brewer, Rowe, & Brewer, 1997; Bunting, 2008; Cross, De Vos, & Whitcomb, 1994; Patterson & Campbell, 2009).

The aim of this thesis is to shed light on prosecutors' experiences with, and decision making in, CSA cases involving a preschool-aged child. I begin by reviewing two cases of alleged sexual abuse against preschool-aged children, which highlight some of the difficulties faced by prosecutors in the investigation and prosecution of alleged sexual abuse against young children, as well as the possible consequences of their decisions.

In the summer of 1984, dismembered parts of a female body were found in various locations in Stockholm. These parts belonged to Catrine da Costa, a female sex worker who had gone missing some months prior. Eventually, two male doctors known as the General Practitioner (GP) and the Pathologist became the main suspects. One of the most important pieces of evidence against the doctors, the one that had led to the GP being named a suspect in the first place, was “the child’s story,” told by GP’s young daughter. The GP’s wife, who had applied for divorce, had begun to suspect that the girl had been sexually abused by her father. From the time she was two years old, her mother, preschool teachers, and two psychologists questioned the girl repeatedly. From the mother’s diary of her conversations with the girl, a horrible story began to emerge in which the girl had witnessed, at the age of one and a half, the ritualistic murder and dismemberment of Catrine da Costa at the hands of her father and someone named Uncle Tomt (believed by the investigators to refer to the Pathologist, whose name also began with the letter T). In the child’s story, her father and Uncle Tomt had been wearing long coats with wings. A lady’s head had been drilled off and thrown on the barbeque and her stomach cut open to reveal a mass of worms. During the preliminary investigation, the child (who by this time was nearly four years old) was brought to the autopsy room at the Pathologist’s workplace where it was believed Catrine’s body had been dismembered. By bringing her to the scene, the investigators and psychologists hoped that she would either recover more memories of the event or react in a way that would confirm that she had witnessed something horrible there. She did not react to the room and did not describe anything new. According to the psychologists, however, her “forced calm” indicated that she had indeed witnessed something horrible in the autopsy room. The two doctors were prosecuted and charged with the murder and dismemberment of Catrine da Costa. The GP was also charged with sexually abusing his daughter. The doctors were acquitted of the murder and sexual abuse charges, but the court stated that it had been proven beyond reasonable doubt that the two doctors had dismembered the body. Because the statute of limitations for the latter crime had passed, the doctors could not be convicted of this crime, and because their guilt was stated only in the grounds for acquittal and not in a conviction, the doctors could not appeal this decision. As a result, they lost their licenses to practice medicine and in the eyes of the public were guilty of the murder charges and the sexual abuse. At this time, the investigation in-



to who murdered and dismembered Catrine da Costa is still active. A strand of hair, believed to belong to the murderer, found on one of the plastic bags containing the body parts was DNA-tested and did not belong to either of the doctors. The doctors are no longer formally considered suspects in any of these crimes (see Lindberg, 2008 for further reading about this case).

While the prosecution of a guilty perpetrator of CSA can help protect the child and other children from further abuse, prosecuting an innocent suspect can have severe consequences (Diesen & Diesen, 2013; Kendall-Tackett, Williams, & Finkelhor, 1993; Paine & Hansen, 2002). In the case outlined above, two people were charged with murder, dismemberment, and CSA, largely on circumstantial evidence and the testimony of a four-year-old child. Not only was the testimony about the experiences of a child of only a year and a half (reasons to question such testimony are discussed later), but it was elicited through repeated, and possibly leading, questioning over a two-year period. The investigation into the murder of Catrine da Costa took place in the 1980s, and although legal professionals are now more knowledgeable about the risks of repeated and leading questioning of young children, some problems associated with eliciting and evaluating testimony from young children remain.

In the summer of 2016, a five-year-old girl (“Anna”) had spent the day at a friend’s house. During the car-ride home, Anna told her mother that she and her friend’s father (“Carl”) had a secret. Anna’s mother asked what the secret was, and Anna told her that Carl had taken her into his bedroom and touched her wee-wee. Anna’s mother reported this to the police, and Anna was interviewed at a Barnahus (Children’s House). In her interview, she told the police that Carl had touched her, and added that he had taken pictures of her wee-wee with his camera. Carl denied the allegations. His cellphone and computer were searched, but no such pictures were found. However, a forensic team examined the underwear Anna had been wearing on her visit to her friend’s house and found semen. When confronted with this evidence, Carl explained that he had masturbated in the bedroom earlier on the day that Anna had visited. The case was prosecuted and tried in a district court. The court argued that the testimony given by Anna consisted of “peculiar claims”. Upon being asked about the duration of the abuse, Anna answered that it had gone on for eight hours (she changed her mind to ten minutes after having been asked how long it took her to brush her teeth). In her interview, which took place two days after the

alleged incident, she said that the abusive incident had happened “a year or a few years ago,” that she was “locked in the bedroom until the next day when her mom came to pick her up,” and that Carl “was cross, his face went red and steam came out of his ears.” According to the district court, these claims served to impair the reliability of Anna’s testimony. The court also reasoned that Anna had described the abuse with little detail, and Carl was acquitted.

Around this time, a four-year-old girl (“Bella”), who also used to play with Carl’s child, told her parents “Carl likes pee-pees and wee-wees.” She also said that Carl had shown her a picture from his cell phone depicting an adult sexually abusing a child, and that he had touched her wee-wee. Bella’s parents reported this to the police. Bella repeated her testimony to a family friend and in an investigative interview. Carl’s cell phone was re-examined, and several pictures documenting the sexual abuse of young children were found, including pictures of Anna that depicted the abuse she had described in her interview. The case was tried in the court of appeal, where the prosecution argued that even if Anna had provided erroneous details, these details were not crucial to evaluating the reliability of her testimony. The court also reasoned that Anna had given her testimony without hesitation and that she was able to put the event into a larger context by describing when and where it had happened and why she and Carl had gone into the bedroom in the first place. In light of Anna’s testimony being considered reliable and corroborated by evidence, Carl was convicted of sexually abusing both children. (Case information was extracted from the court of appeal verdict. The case number has been omitted and all parties involved given fictitious names to protect their identities).

This case, postdating the investigation into the murder of Catrine da Costa by nearly 30 years, illustrates the continuing complexity and challenge of investigating alleged CSA and evaluating young children’s testimony. In the case above, Anna’s testimony was considered unreliable because, at the age of five, she had been unable to report the timing and duration of the abuse in minutes, hours, or days. Because the perpetrator was acquitted in court, he was able to sexually abuse another young child before his phone was re-examined and pictures confirming Anna’s testimony were found. In hindsight, it seems that Anna did have an age-appropriate ability to retell her experiences.

Legal decision making in cases of alleged CSA is challenging, perhaps even more so in cases where the complainant is very young. CSA cases often

entail very high stakes for prosecutors. Discontinuing a case of actual CSA may put the child or other children at risk of continued abuse. However, prosecuting a case where no abuse has occurred has the potential of impairing the life of an innocent suspect: in just accused of committing CSA can be enough for the suspect to be portrayed online as a pedophile and shunned by society (Diesen & Diesen, 2013).

In Sweden, children attend preschool up until age five and enter preschool class (a year within the school system before Grade 1) at age six. Thus, in this thesis, the term preschooler refers to children aged two to six. To illustrate the importance of prosecuting guilty perpetrators of CSA, I provide an overview of CSA and its potential consequences for victims. Next, to understand the laws and principles guiding prosecutors' work, I describe the conditions under which CSA cases are investigated, prosecuted, and adjudicated in Sweden, followed by an overview of international research into the prosecution of cases of alleged CSA. The cases outlined in this introduction highlight some of the difficulties associated with eliciting and evaluating testimony given by young children. To better understand these challenges, the thesis continues with an overview of research on what and how well we can expect preschoolers to remember and retell their experiences.

The thesis consists of three studies. In Study I, prosecutors specialized in working with CSA cases were interviewed about their perceptions of preschoolers alleged to be victims of CSA and their ability to remember and retell about their experiences. In Study II, prosecuted cases of CSA involving preschool-aged complaints were compared to discontinued cases. In Study III, 94 prosecutors who had experience working with child cases took part in a national survey study regarding their experiences of working with cases of alleged CSA of preschoolers. The results from these studies and their implications for practice and research are discussed at the end of this thesis.

## Child sexual abuse

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CSA is a significant problem, with worldwide prevalence rates ranging from 8% to 31% for girls and 3% to 17% for boys (Barth, Bermetz, Heim, Trelle, & Tonia, 2013). In Sweden, it is estimated that 13% of girls and 3.1% of boys fall victim to contact sexual abuse at some point during their childhood (Landberg et al., 2015). The World Health Organization defines CSA as “the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society” (World Health Organization, 1999).

CSA can have severe consequences for the victim, both short- and long-term (Pérez-Fuentes et al., 2013). It should be noted, however, that being sexually abused as a child can lead to a number of different symptoms that are by no means exclusive to CSA (Manglio, 2009) and it will not automatically lead to any symptoms or issues later in life. How an individual develops depends on an array of internal and external factors over time; if the abuse constitutes an isolated event within an otherwise supportive environment it may have no noticeable consequences on the child's development (Aydin et al., 2015; Hornor, 2010; Manglio, 2009).

CSA has, however, been associated with a number of negative outcomes. Children who are sexually abused may suffer from post-traumatic stress disorder, involving symptoms such as nightmares, flashbacks, insomnia, and difficulties concentrating (Andrews, Brewin, & Rose, 2003). It is also associated with a higher likelihood of depression, and the likelihood of these outcomes seem to increase when the abuse is incestuous, severe, and/or repeated (Aydin et al., 2015). In the long term, individuals who were sexually abused as children are at higher risk of suffering both mental and physical illness (Nelson, Baldwin, & Taylor, 2012) and of attempting suicide (Dube et al., 2005). Sexual avoidance and compulsivity are also possible long-term effects of having been sexually abused (Vaillancourt-Morel et al., 2015). Being sexually abused as a child also increases the risk of relationship problems later in life, and both males and females with a history of having been sexually abused are at higher risk of marrying an alcoholic or having problems in their marriage (Dube et al., 2005). It is important to note that the possible effects of having been sexually abused are not only psychological; victimization can have physiological consequences as well. For example, some researchers have found an association between CSA and the later development of obesity (Noll, Trickett, Harris, & Putnam, 2008).

Because CSA can negatively affect both the short- and the long-term well-being of the victim, identifying victims and prosecuting perpetrators is an important measure in treating the effects and hindering perpetrators from reoffending against the victim or other children (Kendall-Tackett et al., 1993; Paine & Hansen, 2002). In the next section I review the possibilities of prosecuting cases of alleged CSA by describing the legal framework that guides the prosecutor's work on these cases.

# Child sexual abuse investigations in Sweden

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## A brief history of the child sexual abuse legislation

Up until the 1980s, CSA was rarely reported to the authorities. There was, however, a brief period during the early 1930s when the number of reported cases of incest increased, resulting in a 1935 report that concluded that the issue existed primarily among the poor working class and was the result of cramped accommodation and alcoholism (Sutorius, 2014). Changed legislation in 1937 no longer viewed children as accessories to the crime of sexual abuse (Sutorius, 2014), but it was not until the 1980s that reported cases of CSA approached their current numbers (Diesen & Diesen, 2013). During the 1980s and 1990s, societal awareness of CSA increased, and the number of reports grew rapidly because of this awareness. It is estimated that between 1987 and 2003, the number of reported cases of CSA increased by 450%, from 83 reports in 1987 to 466 in 2003 (BRÅ, 2004). The largest increase in reported cases of CSA was for those having taken place within the family. Incest itself gained increased attention during this period, and part of the increase was due to retroactive reports from adults and teenagers. Another cause of this increase was likely the new tendency among some groups to explain mental health issues in women as the result of having been sexually abused as children and repressing these memories until adulthood. While we know that children may struggle to report abuse (London, Bruck, Ceci, & Shuman, 2005), research does not support the notion that such memories are repressed (Loftus & Davis, 2006). This will be discussed further in the section on *preschoolers' memory and testimony*.

Following its peak in the 1980s and 90s, the number of reported CSA cases decreased, only to rise again 2005, when new legislation was introduced against statutory rape (Sutorius, 2014). Under the new criminal definition of *rape of a child* (Government proposition: Prop. 2004/05:45) the new legislation stated that because of their physical and authoritarian advantage over children, no adult could force intercourse or comparable sexual acts upon a child under the age of 15. A subsidiary definition, *sexual assault of a child*, was introduced to cover sexual acts that were not comparable to intercourse (Prop. 2004/05:45). The sex crime legislation was expanded and its definitions tightened in 2013. The term “comparable to intercourse” was replaced with “that in consideration of the violation is comparable to intercourse” to better define what aspects should be considered when deciding whether a sexual act should be considered *rape of a child* or *sexual assault of a child*

(Prop. 2012/13:111). The crime *aggravated sexual abuse of a child* was extended in this update. Whether the offender was someone close to the child or someone else the child depends upon, whether multiple people abused the child, or whether the child was very young were all listed as aspects to be considered when deciding upon whether or not the crime should be classified as *aggravated*.

## The prosecutor in the preliminary investigation

In 2017, around 2825 cases of CSA (rape and/or sexual abuse of a child) were reported in Sweden (BRÅ, 2018). Preliminary investigations regarding crimes against children are handed over to a prosecutor as soon as they are reported to the police (Prosecution Development Centre, 2016). The prosecutor is then in charge of the preliminary investigation, which includes, among other things, deciding whom to interview and when, requesting detentions orders from the court, and deciding whether the case should be prosecuted. Many prosecutors who work on CSA cases work specifically on domestic abuse, and some specialize further and work exclusively on cases involving children (these prosecutors are referred to as child prosecutors). Child prosecutors are offered specialization training comprising three courses: *Child Abuse: Introductory Course*, *Child Abuse: Intermediary Course Physical Abuse*, and *Child Abuse: Intermediary Course Sexual Abuse*. Aside from relevant legal training, the courses consist of lectures on forensics, child interviewing, and developmental psychology (Prosecution Development Centre, 2016).

The prosecutor operates under the principle of objectivity (SCJP; Chap. 23, Par. 4), which means that they should be objective, impartial, and work toward equality for all under the law. This means that the prosecutor should only carry a case forward to prosecution if they believe there is objective evidence of the suspect's guilt. Most reported cases of alleged CSA are never accepted for prosecution; it is estimated that around 10% to 15% of cases are (Diesen & Diesen, 2013). Although this number may seem low, three aspects of reporting and investigating CSA in Sweden should be noted. First, school, preschool, and medical staff are required by law to report to the CPS if they are concerned about a child's welfare (Social Services Act Chap 1§); this is not mandatory in many other countries such as New Zealand, Germany, and the United Kingdom (Collin-Vézina, Daigneault, & Hébert, 2013). Second, the threshold for reporting CSA has been described as lower in Sweden than in other European countries (Diesen & Diesen, 2013). Finally, because of the central role of the prosecutor in the initial stages of Swedish CSA investigations, unlike in many other countries there is no prescreening before the case is handed over to a prosecutor to investigate. Taken together, these aspects

may increase the rate of reported cases of CSA in Sweden over that in other countries and thus explain, at least in part, why the Swedish prosecution rate is low (Diesen & Diesen, 2013).

Before discussing other factors affecting the prosecution of CSA in Sweden, the next sections review the role of the Barnahus in criminal investigations involving children, how children who are alleged victims of abuse are interviewed, the role of Child Protective Services (CPS) in these investigations, and how prosecuted cases are handled in court.

## Barnahus

Ideally, alleged CSA (and other crimes against children) are investigated at one of the over 30 Barnahus across Sweden, and most CSA cases are investigated at one of these premises (Swedish Prosecution Authority, 2018). Inspired by the American Child Advocacy Centers, the first Nordic Barnahus, introduced in Reykjavik, Iceland, served as a model for Barnahus in all the Nordic countries (Johansson, Stefansen, Bakketeig, & Kaldal, 2017). The Barnahus model aims to gather professionals involved in the investigation under the same roof to facilitate cooperation across disciplines and enhance children's experience of the legal process (Landberg & Svedin, 2013). The goal is for professionals to come to the child rather than the other way around. Barnahus has been described as having four rooms: criminal investigation, child protection, mental health, and physical health (Landberg & Svedin, 2013). Thus, prosecutors, police, CPS, psychologists, and medical doctors may all be available at the Barnahus to ensure child-friendly justice and to meet the child's need for treatment and support (Johansson et al., 2017). Sweden differs from the other Nordic countries in that the main focus of the Barnahus is collaboration between law enforcement (prosecutors and police) and CPS. Healthcare professionals (medical doctors, psychologists, psychiatrists) are not as central and not available at every Swedish Barnahus, meaning that treatment may be given elsewhere (Johansson et al., 2017).

Another important measure to ensure child-friendly justice is protecting children under 15 who are alleged victims of abuse from testifying in court. This is not regulated by law, but by practice, as it would be considered too great an ordeal for the child (Sutorius, 2014). Instead, they are interviewed by a specially trained police employee (if available) at a Barnahus (the most child-friendly environment to give their testimony; Johansson et al., 2017) during the preliminary investigation and their video-recorded testimony is presented in court.

## Investigative interviewing

If possible, children who are alleged victims of abuse are interviewed by police employees specialized in child interviewing. Police who interview children can be trained in a Swedish adaptation of the National Institute for Child Health and Development (NICHD) Protocol (Cederborg, Alm, da Silva Nises, & Lamb, 2013), but the training is not mandatory. A 2016 survey revealed that of the 306 child interviewers in the police, only a little more than a third had completed the training, meaning the ratio of police trained in interviewing children to the number of children to be interviewed is quite low (Swedish Prosecution Authority, 2016).

The NICHD protocol is used for investigative interviews in several countries including parts of the United States, Finland, Israel, and Japan (La Rooy et al., 2015) and has been shown to improve the quality of children's testimony (Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007). Although the protocol is used with children who are alleged victims of abuse in several countries, different policies and laws may mean that these interviews may still differ between countries. The Swedish police training focuses on the key concepts of the NICHD protocol (e.g., the use of open rather than closed questions and the introduction of ground rules before moving on), rather than its details (Cederborg et al., 2013). The section below, therefore, is not a specific or complete description of how Swedish police interview children, but rather an overview of the basic elements of the NICHD protocol. For a more complete review of the NICHD protocol, see Lamb, La Rooy, Malloy, & Katz (2011).

The NICHD protocol is a step-by-step guide in which the investigative interview is divided into phases. The interview starts with an *introduction* in which the interviewer introduces himself or herself and sets up the rules for the interview (e.g., that the child should say "I don't know" if they don't know the answer to a question and that it is important to tell the truth). The introduction is followed by *rapport building*, in which the interviewer should try to build a supportive environment by asking the child about their hobbies or things they enjoy doing and encouraging them to elaborate on these. This transitions to the *substantive phase*, when the interviewer begins discussing the allegations by asking the child if they know why they are being interviewed (Lamb et al., 2011).

The interview is conducted using open-ended questions and invitations (e.g., "Tell me more about what happened"), and the NICHD protocol advises postponing specific questions (e.g., "Did he do something to you?") as long as possible and avoiding leading questions (e.g., "Did he pull your pants down?"; Lamb et al., 2007) altogether. The interviewer should finish the interview by introducing a neutral topic, such as asking the child what they



will do after the interview. Although it has been shown to improve the quality of children's testimony (Lamb et al., 2007), interviewers trained to interview children using the NICHD protocol may fall out of the habit quickly if not given regular feedback (Cyr, Dion, McDuff, & Trotier-Sylvain, 2012).

While the NICHD protocol has generally been successful in eliciting testimony from children, concerns have been raised that some abused children might need more support to disclose abuse (children's disclosures of abuse are discussed further in the section on *preschoolers' memory and testimony*). A revised version of the protocol, with a larger emphasis on rapport building, was created in response to these issues but has been the subject of only a few studies (Magnusson, Ernberg, & Landström, 2016). These studies do suggest, however, that increased rapport building may decrease children's reluctance to testify (Hershkowitz, Lamb, & Katz, 2014; Hershkowitz et al., 2015; 2017).

## The role of the Child Protective Services

The CPS system in the Nordic countries differs from that in countries such as the United Kingdom, the United States, or Canada. In Sweden and the other Nordic countries, the CPS system has traditionally been "family-service" oriented rather than "child-protection" oriented as in the English-speaking countries above (Johansson et al., 2017). The focus of the Nordic CPS systems does, however, seem to be shifting toward a more child-protection orientation (Johansson et al., 2017). The focus of the Swedish CPS system is on prevention. Families in need are provided support if they request or agree to it; compulsory interventions such as the removal of the child from the home, are used only as a last resort. In Sweden, because CPS are part of municipal social services systems (Johansson et al., 2017) the organization of their work and their resources may differ between municipalities.

When cases of alleged CSA are investigated at a Barnahus, the CPS conduct their separate investigation alongside the criminal investigation to determine whether the child is currently at risk and if the child's family are in need of supportive measures from the CPS. The goals and legal framework directing CPS work thus differ from those directing the prosecutors' work. These parallel investigations and different interests (investigation and prosecution of criminality vs. child protection and child's best interest) can be the source of conflict and may adversely affect one another (Johansson, 2017).

## Child sexual abuse cases in court

Because children who are alleged victims of abuse generally do not appear in court themselves, they are represented during the trial by a claimant

counsel who serves their interests and is responsible for claiming compensation for the child. In Sweden, all complainants in sexual abuse trials have the right to such representation (Swedish Code of Claimant Counsels, 1988:609 §1). The prosecutor presents evidence, such as the complainant's video-recorded testimony. A court consisting of one judge and three lay judges (district court) decides the case. If the verdict is appealed (and the appeal is granted), a court of appeal (three judges and two lay judges), adjudicates the case. Lay judges in Sweden are appointed from the political parties represented in government. They have votes equal to those of the regular judges and are required to be objective and non-political and to follow the law in their rulings. A court of appeal decision can be appealed to the Supreme Court, in which the case will be decided upon by (typically) two of the sixteen specially appointed justices. Most cases never reach the Supreme Court, and as it only tries cases in which new precedent is needed, it grants only around 3% of appeals (Supreme Court of Sweden, 2016).

Some important principles that guide court trials in Sweden are *immediateness* and *orality* (SCJP Chap. 30 2§; Chap 43 §5; Chap 46 §5): the court is to base its decision on what has been presented during the main hearing and all testimony (from complainants, defendants, or witnesses) should be presented orally and directly to the court. Allowing children who are alleged victims of abuse to give their testimony via a pre-recorded interview is thus an exception to the principle of orality. Other important principles are *free presentation of evidence* and *free evaluation of evidence* (SCJP Chap 35 §1): no laws regulate what evidence can be presented by prosecutors or the defense or how judges evaluate the evidence they present. However, although judges are free to evaluate evidence as they see fit, the Supreme Court can advise on such matters through legal precedent. These precedents are not binding, but it is expected that they guide decision making in district courts and courts of appeal. Some precedents are specific to cases of alleged sexual assault or child abuse. For example, the Supreme Court has repeatedly advised on how to assess the reliability of testimony in sexual abuse cases. In 2010, the Supreme Court presented a set of criteria (several of which had been introduced in earlier precedents) to assess the reliability of testimony in a ruling on a case of alleged CSA against a 14-year-old boy. The Supreme Court stated:

When assessing the testimony, it is often reasonable to consider mainly those factors concerning the statement as such, for example, to what extent it is *clear, long, vivid, logical, rich in detail, confirmed to be truthful in important details*, as well as *free from error, contradictions, exaggerations, equivocal statements, lack of consistency, incoherence or hesitation in crucial parts*. On the other hand, it is often problematic to assess the testimony based

on a general impression of the complainant or on non-verbal factors in general. (NJA 2010 p. 671).

Thus, the Supreme Court advises that reliability be assessed on the verbal content of testimony rather than on the behavior or demeanor of the complainant. The criteria described above are frequently used by district courts and courts of appeal in cases of alleged CSA or sexual assault. In a study of 100 cases of alleged CSA against children aged 3 to 7 issued by district courts and courts of appeal between 2010 and 2014, at least one criterion was used in more than half of the cases (Ernberg, Magnusson, Landström, & Tidefors, 2018). The most frequently used criterion was richness of detail (33% of the children had their testimony evaluated by this criterion), followed by whether the testimony was given spontaneously in the interview, another criterion suggested by the Supreme Court in a previous precedent (NJA 1993, p. 616). In 2017, the Supreme Court granted appeals in two cases of sexual assault (NJA 2017 p. 316 I & II). One of these cases involved an adult woman, the other a 14-year-old girl. In their ruling the Supreme Court stated that one of the criteria proposed in the 2010 ruling, *lack of consistency* (such as adding or omitting information), previously described as a hallmark of an inaccurate statement, lacked scientific support. The Supreme Court suggested instead that truthful testimony is characterized by *clarity*, *richness of detail*, and *length* (NJA 2017 p. 316 I & II). Psychological research has indeed found that truthful statements tend to be clearer, longer, and richer in detail than fabricated ones. Research has also shown that truthful statements *do not* tend to be more or less consistent than deceptive ones (Granhag & Vrij, 2005; Strömwall, Granhag, & Jonsson, 2003). However, major inconsistencies such as the introduction of a major new theme in a second interview (e.g., describing in the first interview being pushed, but in the second interview also describing being stabbed), could very well indicate that the testimony is not truthful (Granhag, Landström, & Nordin, 2017).

In their 2017 ruling, the Supreme Court also stated that the proposed criteria could be less useful in assessing the testimony of a complainant who for some reason may not be fully able to express themselves orally. However, the Supreme Court still applied these criteria to the testimony of the 14-year-old girl, who had been diagnosed with attention deficit/hyperactivity and attachment disorders and had difficulty expressing herself verbally. The reasons why a complainant may not be fully able to express themselves orally were not specified in the ruling, but as will be reviewed in the subsection on *preschoolers' memory and testimony*, preschoolers' limited cognitive abilities often affect the extent to which their testimony can be considered long and rich in detail (Eisen, Goodman, Qin, & Davis, 2007; Leander, Christianson, & Granhag, 2007; Leander, Granhag, & Christianson, 2005).

Proceedings in cases of alleged CSA in Sweden may be set apart from those in many other countries by the rare use of expert witnesses (Gumpert, 2008), although this has not always been the case. During the increase of CSA reports in the 1980s, expert witnesses were frequently employed in Swedish courts, though not without controversy. Such expert witnesses were both clinical child psychologists and a group of evaluators using the much-questioned Trankell method for assessing reliability (see Strömwall, 2010, for a critical overview of the Trankell method) and which method should be used by expert witnesses was heavily debated during the early 1990s. Psychological researchers questioned the scientific basis of Trankell's method and legal scholars and expert witnesses debated whether expert witnesses were at all helpful to the court in cases of alleged sexual abuse (Strömwall, 2010). In 1992, the Supreme Court concluded that district courts and courts of appeal should "thoroughly consider whether expert testimony is really needed" (NJA 1992, p. 446). In 1996, a member of the Supreme Court published a paper in a law journal in which he argued that expert witnesses, especially in the field of psychology, rarely contributed any information beyond "common knowledge," and should thus be used rarely, if ever (Gregow, 1996). After 1992, the use of expert witnesses rapidly decreased in Sweden and in the above-mentioned study of 100 cases of alleged CSA against preschool-aged children, an expert witness from the field of psychology was employed in only five percent of the cases (Ernberg et al., 2018).

## Prosecution of alleged child sexual abuse

Prosecutors are major actors in CSA cases, but as of yet few studies have examined prosecution in CSA cases. Below, I review the findings of previous studies that have examined the prosecution of CSA cases in different legal contexts. Several of these studies were conducted in countries other than Sweden, which means that the extent to which they are applicable to the Swedish legal context may vary.

### Evidence

Prosecutors seem to base their decision to prosecute a case on whether they believe that the court will convict the suspect (Lievore, 2005). The type of evidence available in a case is therefore a very probable influence on that decision. Cross and colleagues (1994) developed a system for grading evidence in which (1) indicates no evidence other than the child's testimony, (2) indicates evidence requiring expert evaluation (such as behavioral or psychological evidence), (3) indicates physical evidence or an eyewitness, and (4)

indicates a confession from the suspect. A similar grading system was used by Walsh and colleagues (2008). Both studies showed that when the child's testimony was the only available evidence about a third of the cases were prosecuted. A witness corroborating the child's testimony increased the likelihood of prosecution significantly, cases with physical evidence were even more likely to be carried forward to prosecution. When the suspect confessed 90% of those cases were prosecuted. In a Swedish study, Ernberg and Landström (2016) found that highly corroborative evidence (a medical examination and two independent witnesses to the child's disclosure) was the only factor to significantly predict prosecution. Behavioral evidence or sexualized behavior on the part of the child were associated with reduced prosecutions, possibly because such symptoms are more frequently displayed by younger children, whose cases have lower prosecution rates overall (Cross et al., 1994; Walsh et al., 2010).

## Medical examination

Children who are alleged victims of abuse may be given a medical examination that could corroborate the sexual abuse claims. Findings from such examinations can be ambiguous, however. Brewer et al. (1997) found that cases in which the child had undergone a medical examination were just as likely to be prosecuted as cases in which no such examination had taken place. This could in part be because many medical examinations do not result in findings that corroborate the sexual abuse claims. It may also be partly due to the type of medical examination carried out. Forensic Nurse Examiners (FNEs) and Sexual Assault Nurse Examiners (SANEs) are registered nurses who have completed specialized training in medical forensic care. Children examined by such specialized staff or other medical staff who have received special training in examining children for signs of sexual abuse are more likely to have their cases carried forward to prosecution than those examined by regular medical staff (Joa & Edelson, 2004; Patterson & Campbell, 2009). In interviews, prosecutors who had worked with SANEs identified several advantages of SANEs, including their better ability to identify injuries and better credibility with jurors (Schmitt, Cross, & Alderden, 2017).

## Investigative interview

Regardless of the evidence available in a CSA investigation, an interview with the child can reveal vital information. Research on investigative interviews with children and their influence on prosecution rates has produced mixed results. Cross and colleagues (1994) found that cases were more likely to be prosecuted if at least one investigative interview had been conducted

with the child than if none had been held. Brewer and colleagues (1997), on the other hand, found that that investigative interviews did not affect prosecution rates. These mixed findings may be explained by the outcomes of the interviews. An investigative interview with a child can result in reliable testimony from the child, but if the child has not been abused, he or she will (hopefully) not describe any abusive incidents in their interview. In addition, children who have been abused may not disclose their experiences in an interview.

Because the child's testimony is often the only available evidence in CSA cases (Brewer et al., 1997), it has been suggested that cases with high-quality investigative interviews are more likely to be prosecuted than those with lower quality interviews (Diesen & Diesen, 2013). However, Hagborg, Strömwall, and Tidefors (2012) did not find such a relationship in a sample of 32 child interviews from a Swedish Barnahus. Since a high-quality investigative interview might be the only evidence in the case, this is not surprising. It is reasonable to assume that the decision to prosecute is affected by more than the mere presence or quality of an investigative interview, and the relationship may also be explained by a third factor, namely if an investigative interview is more often conducted in cases with stronger evidence (which are, in turn, more likely to be prosecuted). Burrows and Powell (2012) conducted in-depth interviews with 19 prosecutors to identify their suggestions for improving investigative interviews with children. The prosecutors recommended improved clarification of inconsistencies and ambiguities in the child's testimony, more focus on the elements of the offense, and greater consideration of how the child appears to the jury.

## Child Protective Services involvement

As outlined earlier, CPS conduct investigations when a child is believed to be at risk of harm such as abuse. Previous research shows that prosecution and child placement decisions can influence each other and that cases in which the child is placed outside the home are less likely to be prosecuted (Cross, Martell, McDonald, & Ahl, 1999). Martell (2005) offered a number of possible explanations for this relationship. For example, a prior CPS investigation can alert an offender to suspicions, giving him or her the opportunity to destroy evidence and/or pressure the victim not to talk about the abuse. Cases in which the child has already been removed from the home may also be given less attention, as they are perceived as being less urgent (Martell, 2005).

## Age of the child

Several studies have found that the likelihood of prosecution of alleged CSA depends in part on the age of the child (but see Hagborg et al., 2012 for an exception). Patterson and Campbell (2009) found that both prosecutions and convictions in cases of alleged CSA were more likely when victims were aged 11 years or older. Other studies have found that cases involving children aged seven years and older are up to three times more likely to be prosecuted than cases involving preschool victims (Brewer et al., 1997; Cross et al., 1994). However, the prosecution rate seems to decrease again for cases involving adolescents (Bunting, 2008; Walsh et al., 2010). From an extensive sample of Irish CSA cases, Bunting (2008) found that cases in which the victim was four years old or younger were the least likely to be prosecuted. Some aspects to consider about these results include the higher prevalence of CSA in school-aged and adolescent children than in preschoolers (Putnam, 2003) and possibility that reports of CSA may, for a number of reasons, be false or unfounded. Aspects of preschoolers' development may also put them at risk of being the subject of false or unfounded reports of CSA (as further discussed in the section on *preschoolers' memory and testimony*).

## Child and alleged perpetrator relationship

The relationship between the child and alleged perpetrator may affect prosecution rates. Although the results are mixed, research indicates that the closer the relationship between the child and the alleged perpetrator, the less likely the case is to be prosecuted (Brewer et al., 1997). Cross et al. (1994) found that cases in which alleged perpetrators were a biological parent or in a relationship with the child's mother were less likely to be prosecuted (41% and 48%, respectively) than when they were an adoptive or step-parent (76%) or other relative (86%). However, other studies have found no effect of the child-alleged perpetrator relationship on the prosecution rate (Hagborg et al., 2012; Joa & Edelson, 2004).

## The Emotional Victim Effect

One aspect that may influence the credibility of, and decisions in, CSA claims, is the emotional victim effect (EVE). According to the EVE, a crime victim's emotional expression affects the perceived credibility of the testimony (Ask & Landström, 2010). Originally observed in studies in adult rape victims (Kaufmann, Drevland, Wessel, Overskeid, & Magnussen, 2003), the effect has also been found to be stable in alleged child victims (Landström, Ask, Sommar, & Willén, 2015). Children who cry and behave emotionally

during disclosure of CSA (Regan & Baker, 1998), maltreatment (Wessel, Magnussen, & Melinder, 2013), or harassment (Landström et al., 2015) are perceived as more credible and reliable than those who remain calm and neutral. Research has also shown that a prosecutor who notices a child's emotional demeanor (crying and being upset) during an interview is more likely to prosecute than a prosecutor who does not (Castelli & Goodman, 2014). A recent study by Ernberg and Landström (2016), however, did not find this clear-cut link between emotional expression and the decision to prosecute in a vignette CSA case, although this difference could be the result of different research methods. The Castelli & Goodman (2014) study used video recordings of investigative interviews with children, while participants in the Ernberg & Landström (2016) study read a vignette containing testimony from an allegedly abused child. That emotional children are more readily believed is a problem, because in real life CSA cases most children disclose the abuse in a neutral, non-emotional manner (Castelli & Goodman, 2014; Sayfan, Mitchell, Goodman, Eisen, & Qin, 2008; Wood, Orsak, Murphy, & Cross, 1996).

## **Other factors associated with the likelihood of prosecution**

Cases involving allegations of more serious sexual abuse (e.g., penetration) seem more likely to be prosecuted than cases involving fondling (Brewer et al., 1997; Patterson & Campbell, 2000; Walsh et al., 2010). Another factor potentially associated with prosecution is the length of the investigation. In Sweden, it is recommended that investigations concerning child victims be carried out with urgency, but in reality these investigations often continue beyond the recommended time limit of three months (Swedish Prosecution Authority, 2016). Cross et al. (1994) found that when the preliminary investigation had lasted no longer than a month, cases were more likely to be prosecuted than when the investigation had gone on longer.

## **Attitudes, beliefs and their relation to decisions in child sexual abuse cases**

Although few studies have examined prosecution of cases of alleged CSA, a plethora of studies has been conducted in other aspects of decision making in CSA cases, including lay persons' and legal professionals' tendency to believe CSA claims based on a number of factors. According to the principle of objectivity, prosecutors should base their decisions on the objective information available, rather than on their own beliefs, but their decisions may nevertheless be influenced by these subjective beliefs. The next section therefore describes factors that do not necessarily affect prosecutors and their



work, but that have been found to affect lay persons' and legal professionals' judgments of CSA claims.

Gender has been shown to have an effect on judgments of alleged sex crimes in general and of alleged CSA in particular. The gender of the person making the judgment, of the alleged victim, and of the perpetrator have all been shown to influence judgments and decisions about credibility. In general, women are more likely than men to believe CSA allegations (Bottoms et al., 2014; McCauley & Parker, 2001; Quas, Bottoms, Haegerich, & Nysse-Carris, 2002, but see Kite & Tyson, 2004, for an exception). Bottoms and colleagues (2014) found that this relationship could be explained by women feeling more empathy toward child victims, finding children more believable in general, being more pro-women (i.e. feminist), and being more opposed to CSA (e.g., as opposed to believing that children might fantasize about or enjoy sex with an adult).

Alleged female perpetrators have also been shown to be viewed more leniently than their male counterparts, and claims against women as less credible than those against men (Kite & Tyson, 2004; O'Donohue, Smith, & Schewe, 1998; Quas et al., 2002). In a study of police officers and social workers, Hetherington and Beardsall (1998) found that both professional groups believed that action from CPS was less necessary in female-perpetrated CSA than when the perpetrator was male. Female-perpetrated sexual abuse may also be viewed as less harmful, despite the fact that both male and female victims of female perpetrators may report long-term consequences similar to those abused by a male perpetrator (Denov, 2004). In reported cases of CSA, females constitute a small portion of suspects, and 98% of all suspects are male (BRÅ, 2014). Thus, the base rate of female perpetrators is low, and the low likelihood of a female perpetrator is likely to lead to skepticism in legal professionals receiving such reports. At worst, this may lead to actual victims of female perpetrators not being believed (Denov, 2004).

The gender of the alleged victim may also affect decisions in CSA cases as cases involving boys have been found to be less likely to be prosecuted than those involving girls (Edelson, 2013). Boys who are sexually abused are less likely to disclose than girls (Hanson et al., 2003; Terry, Giotakos, Tsilia-kou, & Ackerman, 2010), and even when they do, boys may be perceived as less credible than girls (Wood et al., 1996). This might in part be because boys are less likely to be sexually abused than girls, which may produce some skepticism in investigators that could help explain why boys' cases are less likely to be prosecuted (Edelson, 2013).

Beliefs and attitudes toward CSA may thus affect decision making. A number of studies into legal professionals' beliefs about children's testimony and CSA have identified areas where legal professionals seem well-informed

and others where they tend to hold erroneous beliefs. In a study of Swedish prosecutors' perceptions of children's testimony (Azad & Leander, 2013), a majority stated that children between three and five typically did not produce detailed reports and that this criterion should not be applied to children's testimony in court. Most prosecutors also stated that repeated abuse could lead to less detailed reports, and that many children who were victims of CSA did not report this spontaneously (Azad & Leander, 2013). As will be reviewed in the section about preschoolers' memory and reporting, many of these beliefs are in line with research about how children remember and report abuse.

Looking at other groups of legal professionals, a Swedish study suggests that many judges are aware that feelings of guilt and shame can influence children's disclosures of sexual abuse (Leander, Christianson, Svedin, & Granhag, 2007). In a Finnish sample, many judges correctly estimated the frequency of CSA but incorrectly believed suggestive methods to be useful when interviewing children (Korkman, Svanbäck, Finnälä, & Santtila, 2014). Misconceptions about CSA can affect how alleged victims are perceived and how decisions are made in the case. Previous research has shown that police and prosecutors who have received specialist training are less likely to hold erroneous beliefs about, for example, the relationship between crime victim behavior and the truthfulness of their claims, highlighting the importance of specialist training for legal professionals working with children and with CSA cases (Ask, 2010).

Another factor shown to have a possible effect on investigators' decision making, that may influence prosecutors' decisions as well, is confirmation bias. Confirmation bias refers to the tendency to confirm a hypothesis by seeking evidence that is consistent with the hypothesis and minimizing evidence that is inconsistent (O'Brien, 2009). In criminal investigations, forming an early hypothesis about the alleged crime can lead investigators to overlook important pieces of evidence (O'Brien, 2009), and this risk increases if the investigator is under time pressure (Ask & Granhag, 2007a). Just as the emotional expression of an alleged crime victim may influence legal decision making (Ask & Landström, 2010; Castelli & Goodman, 2014), the emotions of investigators may affect how they process information and make decisions. In a study of experienced criminal investigators, Ask and Granhag (2007b) found that investigators who had been primed to feel angry relied only on witness variables when judging the reliability of the witness statement. Investigators who had been primed to feel sad on the other hand, relied on both witness variables and situational variables in their judgments and were more sensitive to how the witness statement related to the central hypothesis in the investigation. Working with CSA cases can undoubtedly be emotional for

investigators, and the possible impact of working with such cases is discussed in the next section.

## The impact of working with child sexual abuse cases

Individuals who work with traumatized individuals or in their daily work are exposed to stories of trauma or suffering may be negatively affected by their experiences and suffer secondary traumatization (ST; McCann & Pearlman, 1990; Pearlman & Saakvitne, 1995). In the long term, this process can cause severe psychological suffering and harm to the individual (Jenkins & Baird, 2002) with effects similar to the symptoms of PTSD, including overwhelming feelings of sadness, anxiety, depression, anger, or fear, nightmares and flashbacks, avoidance, arousal, changes in trust, and relationship problems (Lerias & Byrne 2003; McCann & Pearlman 1990). The risk of developing such symptoms, however, seem to depend upon a number of individual and situational factors such as vulnerability, trauma history, organizational support, and work life experience (Figley, 1995). Pearlman and Saakvitne (1995) theorized that being repeatedly exposed to stories of trauma and human suffering might eventually damage the recipient's view of the world as a safe place and humans as predictable and good. Traditionally, research into ST has focused on medical and mental health professionals, but more recently attention has turned to legal professionals, for example, those investigating cases of alleged CSA. In a Swedish study of nine police officers who worked on examining documented CSA (i.e., child pornography), all participants described being affected by their work and many described experiencing feelings of sadness, anger and disgust, but also feelings of desensitization (Jameson, 2007). None of the participants, however, showed symptoms of ST. Working with cases of alleged CSA may thus have an effect on the individual, but not necessarily lead to mental health problems.

In a study of nine specialized Swedish child prosecutors, the prosecutors recounted similar experiences to the police in the Jameson (2007) study. All prosecutors described taking their work home with them, some reported intrusive images of the CSA cases they had seen at work (Ernberg, Tidefors, & Landström, 2018), and some also experienced feeling desensitized after working with CSA cases for some time. A number of prosecutors reported that having children of their own affected how they felt about their work; working with children who were similar to their own or other children they knew could make working with a case especially difficult. Some of the prosecutors also stated that their work affected how they viewed their own children, making them more anxious that something might happen to them (Ernberg et al., 2018). Undoubtedly, working with potentially traumatized children and children who are victims of abuse takes its toll. However, as in the

study by Jameson (2007), the prosecutors also reported positive experiences related to their work, such as feeling they were doing important work or making a difference for a victimized child (Ernberg et al., 2018). Prosecutors' described support from their colleagues as important to their ability to cope with difficult cases (Ernberg et al., 2018), and organizational support has been reported elsewhere to be minimize symptoms in professionals who work with different aspects of trauma and human suffering (Figley, 1995; Jameson, 2007). Undoubtedly, prosecutors who work with CSA cases may be affected by their work and a number of other non-legal factors may influence their decisions. Prosecutors who work with CSA cases face a difficult challenge in remaining objective and professional in light of the emotionally difficult and often ambiguous nature of these cases.

## Preschoolers' memory and testimony

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To understand some of the challenges associated with investigating and prosecuting cases of alleged abuse against preschoolers, we need to understand why eliciting and evaluating testimony from the youngest children is often difficult. In the following brief review of research on how preschoolers remember and retell their experiences, I describe some fundamental assumptions about human memory before moving on to memory development during the preschool years.

### Fundamental assumptions about human memory

Studies on human memory have been conducted ever since psychology was established as a scientific discipline and we now have comprehensive knowledge of how our memory works. A basic, and important, insight is the reconstructive nature of human memory. Our memories of events are not perfect recordings of what actually happened, but rather recreations of these events. Consequently, our accounts will not always be complete and accurate reflections of the events and our memories will change over time (Baddeley, 2014). Another fundamental understanding is outlined in the prominent model proposed in 1968 by Atkinson and Shiffrin. In this model our memory consists of three components: the sensory register, short-term storage, and long-term storage. Information enters the sensory register, where it is briefly registered and then either discarded or transferred to short-term storage. Short-term storage, also known as working memory, encodes items for short periods of time, typically not more than a few seconds, for immediate use

(Atkinson & Shiffrin, 1968). As in the sensory register, these items are then either discarded or transferred to long-term storage.

Memory-making can therefore be divided into three phases (Baddeley, 2004): (1) *encoding* refers to the registration by the sensory register of information, which may or may not continue into working memory and finally into long-term memory; (2) *storage* refers to the storage of information in long-term memory; and (3) *retrieval* refers to the retrieval of this information. This can happen either through the largely unconscious process of *recognition*, in which a present item is associated with a previous experience, or *recall*, in which an item that is not physically present is consciously retrieved from memory (Baddeley, 2004; Gordon, Baker-Ward, & Ornstein, 2001). Thus, only part of what one experiences remains in memory, as every item to be remembered has to be fully encoded and processed and much or most of experience never passes beyond short-term memory.

As memory and language develop throughout childhood, a child's ability to recount an event generally improves with age (Gordon et al., 2001; Peterson & Whalen, 2001). Language development contributes both to the ability to encode, store, and retrieve information from memory and to children's ability to understand questions during an interview (Poole, Brubacher, & Dickinson, 2015). Children's memory and testimony are also influenced by a number of cognitive and social factors, such as the ability to pinpoint the source of a memory or the type of question asked. The term *eyewitness testimony* refers to a person's account of an event they actually experienced or observed. A vast amount of research has been conducted in the area of eyewitness memory and memory development in early childhood. This thesis does not cover all of this research (but see Lamb, 2011, for a more comprehensive overview), but rather gives an overview of the factors relevant to legal decision making, to the studies included in this thesis, and to preschoolers' ability to testify about sexual abuse.

## Early memory development

Understanding how children's memory works is vital to evaluating their testimony. We cannot expect children to recount what they do not remember (Gordon et al., 2001). Memory starts to develop before we are born; the earliest memories are implicit (i.e., cannot be described verbally), but newborns can recognize voices and sounds they heard in the womb and will prefer their mother's voice to the voice of a stranger (Parish-Morris, Golinkoff, & Hirsh-Pasek, 2013). At around six months of age, children recognize familiar faces and voices, but their ability to store information in long-term memory is limited and they therefore need to be reminded of stimuli or they will perish

from memory. Children this young have not yet developed language and are therefore unable to describe their memories.

Memory and language are not the only contributors to the ability to describe ones' experiences. A developed sense of self (i.e., the understanding of oneself as an individual to which information about experienced events can be attached) is required for the creation, storage, and ability to recount autobiographical memories of episodes experienced in life. Sense of self typically develops around age two (Courage, Edison, & Howe, 2004), when children start to recognize themselves in mirrors and photographs, but the ability to talk about memories is still developing at this time. Once they learn to speak, children will not be able to describe their early pre-verbal memories (Simcock & Hayne, 2002). Interviews with children who required emergency medical care for an accidental injury revealed that no child who was under 18 months at the time of the accident could retell their experience once they learned to talk (Peterson & Rideout, 1998). In adults, the earliest memories that remain stem from around three years of age and few memories from before the age of five last into adulthood; this phenomenon is known as *childhood amnesia* (Howe, 2013).

## Memory development during the preschool years

When children have met the several developmental prerequisites needed to retell their experiences, by around the age of three or four they can provide complete and accurate testimony under the right circumstances (Goodman & Melinder, 2007; Gordon et al., 2001). Thus, given that the questions asked are open-ended, age-appropriate, and not leading, children can be highly accurate in their accounts, although they may have difficulty providing free recall in response to open-ended questions. Research indicates that the youngest children may require additional support in the form of more focused questions (Hershkowitz, Lamb, Orbach, Katz, & Horowitz, 2012). Needless to say, young children cannot be expected to remember and recount an event the same way an adult could. Memory development does have implications for how and what we can expect children to remember and testify about.

Compared with older children and adults, preschoolers have limitations to virtually all aspects of memory (Malloy & Quas, 2009). Their limited memory capacity means that preschoolers typically give briefer testimonies that are less rich in detail than those of older children and adults (Eisen, Qin, Goodman, & Davis, 2002; Goodman & Melinder, 2007; Pipe, Lamb, Orbach, & Esplin, 2004). Regardless of age, children seem to have a better memory for central details such as the appearance of someone they have interacted with than for peripheral details such as the color of a car in the background (Peterson & Whalen, 2001). Memories of repeated events also differ from

memories of one-time events because memories of repeated events are often stored in scripts containing a general description of how they typically play out. For example, when asked, a four-year-old might describe a day in preschool by saying “we played outside, and we had fish sticks for lunch” even if they actually had meatballs on that particular day if fish sticks were the more usual meal. Script-based memories contain fewer details, especially in preschoolers (Poole et al., 2015). As preschoolers’ scripts tend to contain relatively few details, their testimonies of repeated abuse can be perceived as vague and general (Poole et al., 2015). Scripted memories also mean that young children may ascribe details to the wrong event (as in the example of fish sticks and meatballs), and children aged seven years and older typically give more correct testimony than preschoolers (Gordon et al., 2001; Poole et al., 2015). Moreover, in cases of repeated abuse, the child is likely to be asked about how many times the abuse occurred. Preschoolers also often have a limited grasp of time and numerals, which makes it very difficult to answering such questions (Saywitz, 2002).

## Trauma, stress, maltreatment and memory

According to the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), trauma arises from the experience, witnessing, or confrontation by an event that involves actual or threatened death or serious injury or a threat to the physical integrity of the self or others (American Psychiatric Association, 2013). Being sexually abused can therefore often be a traumatic experience. Given that children who testify in legal settings may need to remember and recount memories of stressful or traumatic events, understanding how such events are remembered is paramount for those who evaluate children’s testimonies. For children, high stress at the time of encoding seems to be associated with decreased memory performance, although the relationship is not entirely straightforward (Gordon et al., 2001). To understand how stressful events are remembered, researchers have studied children’s memories of painful medical procedures (Eisen et al., 2002; Goodman & Quas, 1997), which, although conducted in the child’s best interest, can be very stressful (Goodman & Quas, 1997). Eisen and colleagues (2007) found that trauma and dissociative symptoms were associated with more errors in neglected children’s recall of a medical examination. Goodman and Quas (1997) found that many children omitted details of genital touching during the medical examination from their free recall, a tendency that may be due to factors other than memory error and that will be discussed further in the next section. In a study of 96 children who had witnessed the murder or attempted murder of a parent, Christianson, Azad, Leander, and Selenius (2013) found that most children gave relatively rich accounts of the event. However, older

children gave more detailed accounts than younger children, especially regarding their own and the perpetrator's thoughts and feelings, reproductions of speech, and the reaction of the victim. Children who were close to the perpetrator or the victim, especially those who had a relationship with both, were more prone to withhold information about the event. This finding may also apply to children's testimony in CSA cases (as described below) as many sexually abused children are abused by someone known to them (London et al., 2005). This is one of many factors that may affect children's willingness to talk about abuse.

Sexually abused children may come from families in which their welfare is affected by other problems such as physical abuse and maltreatment (Arata, Langhinrichsen-Rohling, Bowers, & O'Farrill-Swails, 2005; Arata, Langhinrichsen-Rohling, Bowers, & O'Brien, 2007; Jones & Ramchandi, 1999). Such conditions can make it even more difficult for children to testify in legal settings. It is important to stress that maltreated children are by no means a homogenous group and there are individual differences in each maltreated child's testimony. While some studies reveal no differences between maltreated and non-maltreated children's memory performance (Eisen et al., 2007), other studies demonstrate that maltreated children perform more poorly than non-maltreated children on certain tasks, such as answering specific questions, picking the correct target from a photo lineup (i.e., choosing the culprit when shown photos of the culprit and innocent fillers after witnessing a crime), and recalling from words from emotional word lists. Children with a history of abuse and neglect may also provide less information in their free recall (Baugerud, Howe, Magnussen, & Melinder, 2016; Goodman, Bottoms, Rudy, Davis, & Schwartz-Kenney, 2001).

## Children's disclosures of sexual abuse

The child's testimony is often one of the few pieces of available evidence in CSA cases (Brewer, et al., 1997; Diesen & Diesen, 2013) and even in cases with plenty of corroborative evidence, testimony from the child is an important source of information to those investigating and adjudicating the case. While many children can remember and provide complete and accurate testimony of traumatic events (Christianson et al., 2013; Eisen et al., 2002; 2007), there are several reasons why children might have difficulties disclosing abuse, both initially and later in an investigative interview. First children might experience feelings of guilt and shame, leading them to omit sensitive details from the testimony (Leander et al., 2005; 2007). The perpetrator is often a family member or another person close to the child, which decreases the likelihood of the child disclosing the abuse (Christianson et al., 2013; London et al., 2005), possibly out of fear that disclosure will break up the



family (Shannon & Törnqvist, 2011). Furthermore, the perpetrator might tell the child that the abuse is a “secret game,” in which only the child and the perpetrator are allowed to participate. Such a claim is especially difficult for young children to question (Goodman-Brown, Edelstein, Goodman, Jones, & Gordon, 2003). Preschool-aged children are less likely than older children to disclose the abuse (Cantlon, Payne, & Erbaugh, 1996; Lippert, Cross, Jones, & Walsh, 2009; Wood et al., 1996) and less likely to realize that the abuse constitutes a crime (London et al., 2005; Shannon & Törnqvist, 2011; Sjöberg & Lindblad, 2002). To examine preschoolers’ disclosures of abuse more closely, Magnusson, Ernberg, and Landström (2017) studied 57 court files in corroborated cases of sexual abuse involving preschool-aged victims (i.e., cases strongly corroborated by photographic or video documentation of abuse or DNA or other medical findings). While a majority of the preschoolers were able to provide information about the abuse in the investigative interview, being asked to keep the abuse a secret, fear of upsetting a caregiver, and loyalty toward the perpetrator were all described in the verdicts as the children had delayed disclosure.

## Children’s false disclosures of sexual abuse

So far, most of the research reviewed in this thesis has focused on children’s memories and testimony of sexually abusive incidents that actually took place. In reality, however, children as well as adults may, for various reasons, describe abuse that did not happen. Children who make false allegations of CSA do so either because they are lying (either for their own reasons or because they have been coached to do so) or because they mistakenly believe (have a false memory) that the abuse was real. Such false allegations are often the result of social influence, suggestion, and inappropriate questioning by for example concerned parents (Korkman, Juusola, & Santtila, 2014) or child interviewers (Loftus, 2005; Otgaar, Candel Merckelbach, & Wade, 2009; Schreiber et al., 2006). Adults may also misinterpret the behavior or statements of young children and wrongly report CSA to the police. In the coming discussion, I distinguish between three different types of CSA reports: *founded* (the abuse actually occurred), *unfounded* because it is *intentionally false* (the individual who makes the claim knows that no abuse occurred), or *unfounded* but *unintentionally false* (the individual who makes the report has a genuine, but mistaken, concern, that the abuse has taken place; Bala et al., 2009). Below, I briefly review the research on false allegations of CSA before moving on to experimental research into children’s ability to lie and their susceptibility to suggestion.

One of the most described cases of false reports of CSA in the research literature is the McMartin preschool case. In the summer of 1983, in a Los

Angeles suburb, the police received and started to investigate an allegation of CSA at the McMartin preschool (State of California v. Buckley, 1990). During the investigation, the allegations expanded and the investigation came to last for nearly eight years and include allegations from more than three hundred children. The claims made by the children were shocking: seven preschool teachers were said to have subjected the children to bizarre and gruesome sexual acts. Some of the children's claims were also highly improbable, such as the claim that one of the accused could fly and that children had been flushed down toilets to secret rooms beneath the preschool. After six years of criminal trials, the charges were dropped, and several factors that could explain the false reports, such as the use of social pressure and highly suggestive questions, were uncovered (Schreiber et al., 2006).

Several of the allegations in the McMartin preschool case can be seen as early examples of *Satanic panic*, a phenomenon that originated in the United States in the 1980s that consisted of allegations of abuse within the context of Satanic rituals. Such allegations were not unique to the United States, and aspects of the "child's story" in the da Costa murder case are similar to allegations typical in Satanic ritual abuse cases, such as dismemberment with ritualistic overtones. The da Costa murder case is also similar to other cases where children have made allegations of CSA within a Satanic ritual abuse context in that the allegations originated in something ambiguous (the mother's feeling that the girl might have been sexually abused). Then through social pressure and repeated and leading questioning (the girl was repeatedly subjected to questioning from her mother from the time she was two up until she was nearly five years old), the allegations expanded to include gruesome claims, some of which are bizarre, such as a woman's head being drilled off, her stomach containing worms and her eyes being eaten (Lindeberg, 2008). The consensus now is that the vast majority of reported cases of ritualistic CSA could not be corroborated and that many of the allegations can be explained by social pressure, subjecting young children to leading questioning (more about suggestibility in preschoolers below), or emerging false memories in adults, either spontaneously or as the result of highly suggestive therapy practices such as regression therapy (Schreiber et al., 2006).

Another setting where there may be an increased risk of false allegations of CSA is during custody disputes. Custody disputes have been described as among the most challenging circumstances under which to conduct a CSA investigation (Korkman, Pakkanen, & Laajasalo, 2017). A custody dispute could potentially incite a parent to falsely accuse their estranged of abusing the child in order to win custody. Few studies have examined the role of custody disputes in unfounded allegations of CSA and the true proportion of such allegations is likely impossible to estimate. Even so, the rate of un-

founded allegations, especially intentionally false ones, does rise with the number of custody disputes according to estimates by child welfare workers. In one study, it was estimated that families with an ongoing custody dispute had a higher rate of intentionally false allegations of CSA (18%) than those with no ongoing custody dispute (5%; Bala et al., 2007). Because intentionally false allegations of CSA seem to rise during custody disputes, as described previously in this thesis, higher rates of ongoing custody disputes may decrease the overall likelihood of prosecution as these cases are likely to be viewed as less likely to succeed (Brewer et al., 1997).

### Suggestibility in preschoolers

As reviewed in the section on children's memory and reporting, information stored in memory is prone to change as new information enters. A potential source of such new information is leading interview questions that can contain false assumptions or suggestions. Generally speaking, misleading information impairs memory performance (Gordon et al., 2001). The term *suggestibility* refers to "the degree to which the encoding, storage, retrieval, and reporting of events can be influenced by a range of internal and external factors" (Ceci & Bruck, 1995). According to this definition, suggestibility does not necessarily refer to an impairment of memory. A child can misreport information due to, for example, social pressure during an interview, while being aware that this information is not in line with what actually happened (Goodman & Melinder, 2007).

Source monitoring is the important ability to identify the source of a memory to decide whether the information stems from firsthand experience or from the information being provided by another source (Johnson, Hashtroudi, & Lindsay, 1993). The ability to decipher *when*, *where* and *how* a memory was formed depends on the ability to connect the contextual information of an event with its encoding and retrieval. Preschoolers generally struggle with this task (Poole et al., 2015) as memory develops throughout childhood, and older children typically perform better on most memory tasks than do preschoolers. This special weakness in preschoolers' cognitive ability means that they are typically more susceptible to suggestion than older children and adults (Ceci & Bruck, 1993, Bruck & Ceci, 1999). Susceptibility to suggestion is not simply age-dependent, however, and preschoolers may sometimes resist suggestion much better than some older children (Bruck & Ceci, 1999). Susceptibility to suggestion seems to depend on a number of individual factors (Poole & Lindsay, 2001) other than age, such as source monitoring ability, self-confidence, and compliance (i.e., the tendency to go along with directions from another person; Bruck & Ceci, 1999). A recent

review showed that intellectual impairment is the most reliable predictor of susceptibility to suggestion (Klemfuss & Olaguez, 2018).

Certain interviewing styles may increase or decrease the risk of suggesting misinformation to children. Repeated specific questions during an investigative interview pose a risk, as young children might change their answer, thinking they got it wrong the first time (Bauer, 2012), and can thus increase the risk of children reporting inaccurate information (Poole & White, 1991). Age-appropriate language in interviews with preschoolers has been suggested to decrease children's susceptibility to suggestion (Imhoff & Baker-Ward, 1999). The use of option-posing, yes-no, and suggestive questioning may not only impair children's memory performance it may cause youngest children to try to answer questions they do not understand or know the answer to, which can result in them reporting unreliable information (Bauer, 2012).

Researchers have warned against repeated interviews with children, as repeated suggestive interviewing can be especially damaging to children's testimony (Melnyk & Bruck, 2004). Some children, however, are reluctant to disclose abuse and may require more time to get accustomed to the interview situation and setting, meaning that more than one interview with the child may be necessary (Korkman et al., 2017). Research shows that repeated, non-suggestive interviews can elicit more information from such children (La Rooy et al., 2008). In Sweden, prosecutors are recommended to schedule two interviews with the child initially and then to cancel the second interview if it is not deemed necessary; the extent to which this recommendation is followed, however, is unclear (Swedish Prosecution Authority, 2016). In Finland, children who are alleged victims of abuse are interviewed an average of two times (Korkman et al., 2017).

## Preschoolers' lies

Lying can be defined as making a false statement with the deliberate intention to mislead (Chisholm & Freehan, 1977). Children may start to tell lies as early as age two or three. These early lies are often intended to conceal a transgression and the youngest children usually fail to take the recipient's knowledge about the situation into account (Talwar & Lee, 2008). A two-year-old, for example, may get caught with their face covered in chocolate, but still deny having eaten any. Thus, lying behavior starts early in children, but their ability to successfully mislead others continues to develop well into middle childhood (Talwar & Lee, 2008). The development of theory of mind (ToM) is a milestone in preschoolers' cognitive development that constitutes an important contribution to the ability to tell lies (and get away with them). ToM allows children to both recognize mental states in themselves, to attribute mental states to others, and to understand that others have separate

thoughts, beliefs, and ideas (Wellman & Bartsch, 1988). This understanding is often described as paramount in the ability to lie successfully, as it allows the liar to deliberately create a false belief in another person (Talwar & Lee, 2008). First-order belief understanding (e.g., I think that she thinks) typically develops around age four and has been related to children's ability to create false beliefs in others such as falsely denying having snuck a peak at a toy (Talwar & Lee, 2002). However, the youngest children may still struggle with maintaining their lies and might reveal the identity of the toy or leak other revealing information in follow-up questions (Polak & Harris, 1999; Talwar & Lee, 2008).

To maintain their lies, children may need second-order belief understanding (e.g., she thinks that he thinks), which begins to emerge during the late preschool years, typically around age six or seven (Talwar & Lee, 2008). For example, Talwar and Lee (2002) argued that a child falsely denying peeking at a toy only needs first-order belief understanding to represent a belief inconsistent with reality. However, to maintain the lie, the child must infer what belief they ought to have given their initial denial. In the peeking scenario, this requires the child to remember to withhold information about the toy in follow-up questions, which most children aged three to five failed to do (Talwar & Lee, 2002). At age six or seven, however, half the children successfully maintained their lie, and this ability was related to their second-order belief understanding (Talwar & Lee, 2002; Talwar et al., 2007).

Thus, preschool-aged children can lie. However, they cannot fabricate beyond their understanding and thus need knowledge about the topic they are lying about (Volbert & Steller, 2014). The youngest children may also struggle with maintaining their lies and leak revealing information in response to follow-up questions, although their ability to successfully deceive others improves in the later preschool years (Polak & Harris, 1999; Talwar & Lee, 2008). It is therefore possible for a preschooler to make a false claim that is perceived by adults to describe sexual abuse, but they are not likely to understand the consequences of such a statement and would typically struggle to elaborate their claims believably in response to follow-up questions. However, if preschoolers' allegations, true or not, are met by closed, option-posing, or suggestive questioning or social pressure, there is always the risk that the final result is a report entirely different from what the child actually experienced. Spontaneous false allegations of CSA from the youngest children are rare, and false claims of CSA are more likely to be the result of misunderstandings, improper questioning, or social pressure from adults.



# SUMMARY OF THE STUDIES

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## Study I

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The prosecutor is the only actor involved from the time the case is filed with the police until the final verdict. Prosecutors are therefore major actors in CSA cases, but relatively little research efforts have been made into their decision making. They often need to base their decisions on little evidence other than the children's testimony (Heger et al., 2013). In this study, we aimed to explore prosecutors' perceptions of preschool-aged children who are alleged victims of sexual abuse and their ability to stand trial.

### Method

Nine prosecutors (6 women, 3 men) participated in the study. The participants either were interviewed individually ( $n = 2$ ) or participated in focus groups with their colleagues ( $n = 7$ ). Both the focus groups and the interviews began with a description of the study aim to elicit prosecutors' experiences of working with CSA cases involving preschool-aged victims. The participants were invited to discuss their experiences freely and were then asked follow-up questions related to the research question, for example, "How did you perceive the child?" and "How did this relate to your decision to prosecute the case?" The interviews and focus groups were audio recorded and transcribed verbatim in accordance with the recommendations by Braun and Clarke (2006). The material was read several times to arrive at a thematic structure, and then coded according to this structure and sorted into main themes. To ensure reliability of the analyses, an independent researcher read and coded the material. Inter-rater reliability was calculated at  $k = .89$ .

### Results and discussion

Two main themes were identified, and each theme was structured into two subthemes as shown in Table 1.

Table 1. *Themes and subthemes of prosecutors' perceptions of preschool-aged children who are alleged victims of sexual abuse and their ability to stand trial.*

Theme	Subtheme
<b>Preschoolers' ability to stand trial</b>	<i>The role of words</i> <i>The role of emotions</i>
<b>Preschoolers as vulnerable victims</b>	<i>Let down by the legal system</i> <i>Let down by grown-ups</i>

The first theme, *Preschoolers' ability to stand trial*, concerned factors that influence the reliability of preschoolers' testimonies and their perceived credibility. The subtheme *the role of words*, concerned the reliability of preschoolers' testimony. Children who used their own words to describe an event or included superfluous details in their testimonies were more readily believed, while cases in which children incorporated improbable details into their testimonies were seen as difficult to prosecute. In the second subtheme, *the role of emotions*, the prosecutors discussed how, even though precedent advises against it, emotional expression might still influence judges' decisions. The expressivity of an alleged crime victim can potentially influence legal decision making in their favor (Ask & Landström, 2010; Castelli & Goodman, 2014), although as one prosecutor in this study observed, many children disclose abuse with a calm and neutral demeanor (Castelli & Goodman, 2014; Sayfan et al., 2008).

In the second theme, preschoolers who figure in sexual abuse investigations were identified as vulnerable and sometimes neglected victims. The first subtheme, *let down by the legal system*, concerned deficits within the legal system. The prosecutors said that child interviews could be inadequate and that many interviewers struggled with retrieving testimony from the youngest children. Prosecutors also raised the inappropriateness of current interviewing practices for some of the youngest children. These finding highlights the need for improvements to current interviewing practices. Adapting an interview to the child's individual needs, for example if the child is very young, would require the prosecutor and police to have sufficient knowledge about the developmental underpinnings of children's testimony and how to best ask ques-



tions to, and support preschoolers in, retelling their experiences. In the second subtheme, *let down by grown-ups*, the prosecutors discussed how some children they had met in their investigations came from homes in which their guardians lacked the ability or motivation to properly care for them or they were being used as pawns in a custodial dispute. Research seems to suggest that families in which CSA allegations surface might be “multiproblem” families (Arata et al., 2005, 2007; Jones & Ramchandi, 1999), and exposure to neglect may have a negative effect on children’s ability to testify (Baugerud, Howe, Magnussen, & Melinder, 2016; Goodman et al., 2001). These results indicate that while sexual abuse investigations involving young children are likely always challenging, there are a number of circumstances surrounding the child’s home life that can contribute to the difficulty of these investigations.

## Study II

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It is estimated that around 10% to 15% of cases of alleged CSA are prosecuted in Sweden, and prosecution is even less likely if the report concerns a preschool-aged child (Brewer et al., 1997; Cross et al., 1994; Diesen & Diesen, 2013). The aim of Study II was to further our understanding of the prosecution of alleged CSA involving preschoolers by examining the differences between prosecuted and discontinued cases of alleged sexual abuse cases against preschool-aged complainants. We hypothesized that cases with highly corroborative evidence such as DNA, documentation of the abuse, or a corroborative medical investigation (Ernberg & Landström, 2016) would be more likely to be prosecuted, as would cases in which the suspect had confessed (Walsh et al., 2010). We also examined whether an ongoing custody dispute or child in foster care (Cross et al., 1999; Martell, 2005), investigative interview, the relationship between the suspect and child, or the age and gender of the child (Brewer et al., 1997; Edelson, 2013; Ernberg et al., 2016) affected whether cases were prosecuted or discontinued. Lastly, we explored prosecutors’ decisions to conduct investigative interviews with child in relation to the factors described above.

## Method

Two types of data were collected for the purposes of this study. To represent prosecuted cases, data from 97 court cases were extracted from a database used for previous research (Ernberg et al., 2018). Data on discontinued cases ( $n = 37$ ) were obtained by requesting discontinued preliminary investigations from a Swedish police district. All cases concerned children who

were 2 to 6 years old at the time of the alleged abuse and 2 to 7 years old when the case was discontinued or accepted for prosecution ( $N = 130$ ). Both types of data were coded according to a tried and tested coding manual (Magnusson et al., 2017; Magnusson, Ernberg, Landström, & Granhag, 2018; Ernberg et al., 2018). The first two authors coded 25% of the material each. The inter-rater reliability ranged from  $k = .82 - k = 1$ , indicating a strong level of agreement. The first author then coded the remaining material. The data were analyzed using Chi-Square tests and logistic regression.

## Results and discussion

In line with our hypothesis and previous research, prosecuted cases were more likely to contain forensic evidence (documentation of abuse, DNA, or a corroborative medical examination) or a confession from the suspect, while such evidence was not available in any discontinued case (Walsh et al., 2010). Furthermore, cases in which the child was older and where there was more than one child allegedly abused by the same suspect were more likely to be prosecuted. Another factor associated with a decreased likelihood of prosecution was if the report concerned a boy. The only other observable difference between cases involving boys and girls was that boys who were alleged victims of abuse were less likely to be interviewed. The gender differences observed in the present study are in line with those discovered by Edelson (2013), who also found that CSA cases involving boys were significantly less likely to be prosecuted and that boys were less likely to be interviewed about the abuse allegations. The differences in case outcome for boys and girls should be cause for concern for practitioners and researchers alike.

Cases in which there was an ongoing custody dispute were also less likely to be prosecuted, another finding in line with previous research that highlights that these are among the most challenging situations under which to investigate CSA claims (Brewer et al., 1997; Korkman et al., 2017). Cases in which the child had been placed in foster care prior to the abuse allegations were also less likely to be prosecuted, a relation previously identified in a study by Cross and colleagues (1999). This finding highlights the need for further research into the prosecution of child abuse cases to examine the working relationship between the legal system and CPS to explain the negative relationship between foster care placement and prosecution. Altogether, the results suggest that the prosecution of sexual abuse cases involving preschool-aged children remain difficult, but that there is room for improvements in these investigations. Collaboration between the legal system and CPS needs to improve. The Barnahus system could possibly allow for data collection in a continuous quality improvement program that provides reports on how often children timely interviewed, and that allows for an improved

understanding of the interplay between CPS and the criminal justice system regarding CSA.

## Study III

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In cases of alleged CSA, prosecutors are in charge of the preliminary investigation and work with police and oftentimes the CPS. Studies I and II showed that prosecutors perceive a need for improvements to investigative interviews with preschoolers and that the child's involvement with CPS (through foster care) was associated with an increased risk of the prosecutor discontinuing the case. The aim of this study was therefore to further our understanding of prosecutors' work with investigations of alleged sexual abuse against preschoolers and the challenges associated with these investigations by examining their perceptions of their collaborations with the police and the CPS and the quality of investigative interviews with preschoolers.

### Method

With the aid of the Swedish Prosecution Authority, a survey was distributed to 94 experienced child prosecutors (60 female, 34 male). The survey concerned four broad areas: (1) challenges in cases of alleged CSA involving preschoolers, (2) the child interview and the collaboration with police, (3) CPS investigations and the collaboration with the CPS, and (4) training in managing CSA cases. The survey also contained questions about the participants' experience with managing child cases and demographic questions about participant age, gender, and years of experience as a prosecutor.

The survey consisted of two types of questions. Some questions had fixed responses, in which the respondents were asked to rate items such as how well they felt collaborations went with the police or the CPS on a 5-point scale (1 = *Very poorly*, 2 = *Poorly*, 3 = *Neither poorly nor well*, 4 = *Well*, 5 = *Very well*). These questions were analyzed using t-tests. These were followed by open-ended questions, in which respondents were invited to elaborate their thoughts on such topics as the quality of investigative interviews with preschoolers or their collaboration with CPS. The prosecutors' responses were analyzed by the first two authors. The material was first read several times and initial code labels were created. The code labels were then cross-compared and the authors arrived at a thematic structure. The responses were then coded according to this structure and sorted into main themes and further categorized into subthemes (Braun & Clarke, 2005). To ensure reliability of the coding, an independent researcher analyzed 20% of the responses ac-

ording to the thematic structure. There was a strong level of agreement, ranging from  $k = .83$  to  $k = .85$ .

## Results and discussion

Three main themes emerged related to the challenges faced by prosecutors working with CSA cases involving preschoolers. The first theme concerned *the child's testimony*, and consisted of three subthemes. The first subtheme, *ability*, related to developmental aspects of the child's testimony, and several prosecutors reported challenges related to, for example, preschoolers' struggles with remembering and retelling their experiences. The second subtheme, *disclosure*, concerned feelings such as loyalty, guilt, shame that prevented young children from disclosing abuse. The third subtheme, *suggestibility*, related to preschoolers' increased vulnerability to suggestion. All in all, the prosecutors' observations about preschoolers' testimony are in line with research showing that preschoolers' still developing cognitive abilities make them generally more vulnerable to suggestion, they cannot be expected to remember and retell their experiences as well as adults, and that feelings such as guilt and shame or loyalty may make it difficult for abused children to disclose their experiences (Gordon et al., 2001; London et al., 2005; Malloy & Quas, 2009).

The second theme was *situational factors*, with the subthemes *family*, in which the prosecutors described difficulties associated with investigating CSA claims during a custody dispute in the face of other family problems (Korkman et al., 2017), and *resources*, in which they discussed challenges such as the difficulty of obtaining the services of interpreters when needed for the investigative interview. The third theme was *legal requirements*, and consisted of the subthemes *evidence* (a majority of cases lacked strong corroborative evidence) and *reliability*, in which, as in Study I, the court standards for evaluating preschoolers' testimony was described as inappropriately high.

Because the prosecutors in Study I raised concerns about the investigative interviews with preschoolers, the prosecutors in this study were also asked about their experiences of collaborating with the police and the quality of investigative interviews. The majority of prosecutors rated the collaboration as good or very good and the quality of the interviews as high. Thematic analysis of the prosecutors' responses to the open-ended question on the topic of collaboration with the police and the quality of investigative interviews resulted in two main themes. The first theme, *competent interviewers*, consisted of three subthemes. The investigative interview was described as *paramount to the investigation*, and a number of prosecutors stated that their case largely depended on the outcome of the investigative interview. *The im-*

*portance of experience* showed that, according to the prosecutors, the interviewer's skills increased with experience. In the third subtheme, *the importance of personality*, the prosecutors discussed how not everyone was suited to interviewing children and that different interviewers were more or less skilled with different children. The second theme, *organizational limitations*, described how the quality of investigative interviews with children suffered due to *a lack of resources* and *employee turnover*.

Given the finding that foster care placement (by prior CPS involvement) was so frequent in discontinued cases in Study II, the prosecutors were also asked about their experiences collaborating with CPS and the quality of CPS investigative interviews. The ratings of collaboration with CPS was significantly lower than the ratings of collaboration with the police. The thematic analysis of the prosecutors' responses to the open-ended question regarding collaboration with CPS and the quality of CPS investigations resulted in two main themes. In the first theme, *quality of CPS work*, the prosecutors either described the quality of CPS as *dependent on the CPS worker* or as *dependent on resources*. In the second theme, *effect of CPS work*, the prosecutors described the *effect of CPS actions* and some stated that CPS involvement sometimes in important information being leaked to suspects or other, forcing the prosecutor to discontinue the case (Martell, 2005). Some prosecutors also described *different views* between the legal system (prosecutor and police) and CPS, which could sometimes be a source of conflict (see also Johanson, 2017).

Finally, the prosecutors were asked about the training they had received in managing child cases. The majority of prosecutors stated that they had received sufficient training, and those who had taken the specialist courses in child cases offered by the Prosecution Authority, were more likely to agree with this statement. It should be noted however, that training only explained a small portion of the variance in the prosecutors' perceptions of whether they had received sufficient knowledge, meaning that different prosecutors might have different perceptions on how much training is enough. Investigating and prosecuting alleged sexual abuse against young children is often challenging, and likely requires further knowledge about the developmental underpinnings of children's testimony than what can be provided in a one-day lecture. Further research is needed to identify means to improve the collaboration between the legal system and the CPS. To carry out these investigations with respect for the children's well-being and rights to a fair legal trial, more resources such as trained child interviewers are likely needed.



# GENERAL DISCUSSION

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The aim of this thesis was to explore prosecutors' experiences and decision making in cases of alleged CSA against preschool-aged children. The three studies included in this thesis identified several factors that affect prosecutors in their daily work with these cases: obtaining evidence from preschoolers, evaluating the testimony of preschoolers, the involvement of the CPS, the impact of custody disputes, and the quality of the available evidence. The collective findings and possible implications and suggestions for further research are discussed below.

## Obtaining evidence from preschoolers

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Altogether, the three studies show that factors associated with obtaining, understanding, and evaluating testimony from preschoolers constitute some of the main challenges faced by prosecutors working with cases of alleged CSA against the youngest children. Many CSA cases are characterized by a lack of strong corroborative evidence (Heger et al., 2013) and high-quality testimony from the child is often paramount to the investigation. In Study I, the prosecutors discussed how testimony given by a young preschooler could be perceived as more credible if the child described the experience in their own words or included superfluous details. Children who incorporated elements that were clearly made-up though might have less of a chance to have their case tried in court. The challenge of obtaining testimony from preschoolers as among the greatest facing prosecutors investigating and prosecuting these cases was further strengthened by the findings of Study III. To an open question about the main challenges in CSA investigations involving preschool-aged complainants 58% of prosecutors identified aspects of obtaining reliable testimony from preschoolers. The most frequently cited aspect of this was the preschoolers' relative ability to describe their experiences. According to the prosecutors, preschoolers who had been abused might not understand their experiences and therefore struggle to properly retell them. Preschoolers' inability to describe the timing and duration of abuse was also an issue, particularly when the allegations concerned repeated abuse as children were often unable distinguish different events (e.g., Gordon et al., 2001).

## The investigative interview

Preschoolers *can* be reliable witnesses (Goodman & Melinder, 2007), but only if the interviews are of high quality and the interviewers avoid the use of leading questions or other techniques that can mislead or confuse children and impair their testimony. Not surprisingly, findings related to the investigative interview were central to all three studies. In Study I, current investigative interviewing methods were described as insufficient in meeting the needs of preschoolers. According to the prosecutors, police often struggled to direct children to the purpose of the interview. The interviews were described as exhausting for some children, causing them to lose focus and resulting in a lost opportunity to elicit important information. In Study II, we found that only one third of the children in the discontinued cases were interviewed. Hence, the children were not given the opportunity to talk about abuse allegations. Here, it is important to acknowledge that four of these children were only two years old and interviewing them would likely not be successful. Children under the age of three are rarely interviewed in Swedish legal proceedings (Sutorius, 2014) as these children may not have the necessary developmental prerequisites (sense of self, language skills, and memory development as reviewed in the section on *preschoolers' memory and testimony*) to provide complete and reliable testimony about their experiences (Hershkowitz et al., 2012).

The child's age was not the only factor in Study II that seemed to influence the decision not to conduct an investigative interview with the child. The child's gender also had an effect on this decision. Boys, regardless of age, were less likely to be interviewed during the preliminary investigation than girls and their cases were significantly less likely to be prosecuted. These gender differences are in line with those discovered by Edelson (2013), who also found that boys were less likely to be interviewed about the abuse allegations and CSA cases involving boys were significantly less likely to be prosecuted. This is concerning, and the question of why boys were less likely to be interviewed or have their case prosecuted was not answered by Study II. However, previous research shows that boys who disclose abuse are less likely to be believed than girls (Wood et al., 1996). The low frequency of investigative interviews in the discontinued cases can in part be seen as a result of the low standard of evidence available in these cases, but it can also be seen as a missed opportunity to elicit vital information about the allegations and potential corroborative evidence.



## The interviewer

To further our understanding of the issues associated with investigative interviews with preschoolers, we asked the prosecutors in Study III to elaborate on their thoughts about the quality of these interviews. The quality of investigative interviews with preschoolers was described as paramount to the success of the investigation, and the prosecutors identified a number of factors associated with the quality of these. Some prosecutors stated that the quality of the interview improved with the experience of the interviewer. This is an interesting finding, given that research has found that longer experience is associated with decreased adherence to the NICHD protocol (Lafontaine & Cyr, 2017), but as will be discussed next, prosecutors' and researchers' different definitions of interview quality may be one explanation to this discrepancy.

The personality of the interviewer was also described by some prosecutors as affecting the quality of the interview, and some prosecutors stated that not everyone is suited to interview children. The question of whether personal characteristics are associated with the quality of interviews with children has started to receive research attention in recent years. In a study of trained interviewers' adherence to the NICHD protocol, Lafontaine and Cyr (2017) found that a number of personality characteristics including agreeableness, conscientiousness, and emotional intelligence were associated with increased adherence to the protocol and more use of open-ended questions. Interviewers scoring high on neuroticism on the other hand, were less likely to adhere to the protocol. Given the critique of the prosecutors in Study I of investigative interviews with preschoolers, the prosecutors may not feel that adherence to an interview protocol is indicative of quality (especially since only a portion of those who interview children have been trained in using the Swedish adaption of the NICHD protocol). It is possible that the prosecutors had a different measure of quality in mind, for example, whether the interview was successful in eliciting a testimony that brought the investigation forward (as one prosecutor put it, "with time and experience they learn what works and what does not"). While it is perhaps unlikely that the prosecutors in Study III picked up on the interviewers' personality traits, further research into the relationship between personality traits and child interviewing performance may provide interesting findings for the quality of CSA investigations involving preschoolers.

According to some of the prosecutors in Study III, the police organization also struggled with a lack of resources leading to high employee turnover and the loss of skilled interviewers. This lack meant that children who are alleged victims of abuse, who should be interviewed within two weeks of the case being reported to the Swedish police (Prosecution Development Centre,

2016), often waited too long from when the crime was reported to when a skilled interviewer was available. Similar concerns were raised in an official report by the Swedish Prosecution Authority (2016), where a majority of prosecutors reported that there were not enough trained child interviewers to interview all children within the two-week time frame. Time has a detrimental effect on memory, and ideally, a victim should be interviewed as soon as possible after the crime to minimize the effect of forgetting (Rubin & Wenzel, 1996). As one prosecutor pointed out, the passage of time may especially impair young children's memory (Gordon et al., 2011). Moreover, only a third of the already too few interviewers had completed their training in child interviewing (Swedish Prosecution Authority, 2016), meaning that the number of children who were interviewed by a fully trained interviewer is even lower. This finding illustrates a serious concern in criminal investigations involving children, namely, that a lack of resources impairs the quality of these investigations to the point where it may negatively affect the prosecutors' decision to press charges.

## Evaluation of preschoolers' testimony

Not only obtaining reliable testimony from preschoolers, but evaluating it was described as challenging. In Study III, statements made by preschoolers were described as ambiguous and difficult to interpret. The prosecutors in Studies I and III also brought up court standards for evaluating testimony in sexual abuse cases. As previously described, in one frequently cited precedent in verdicts in sexual abuse cases, the Supreme Court issued recommended criteria that have since been used in evaluating testimony in sexual abuse cases (NJA 2010 p. 671), including testimony given by preschoolers (Ernberg et al., 2018). In Studies I and III, these criteria were described as difficult for preschoolers to meet, a finding in line with previous research into prosecutors' perceptions of these criteria (Azad & Leander, 2012). Although preschoolers can give reliable testimony, it may seem brief and lacking in detail when compared with that of older children and adults (Eisen et al., 2007). Important to note here is that there are no reference points for the criteria; thus, it remains unclear by what comparison the testimony should be, for example, rich in detail. Moreover, the precedent does not include clear definitions of the concepts, such as what aspects define a vivid testimony (Schelin, 2006). The extent to which judges take aspects other than veracity that can affect the level of detail in a testimony, such as age, duration of the event, type of detail and retention (just to name a few; see for example Eisen et al., 2007; Gordon et al., 2011; Vrij, 2008) into account, is unclear. The case out-

lined in the introduction, where a five-year-old girl's inability to accurately estimate the duration of the abuse, or the time that had passed between the abuse and her interview, was described as "peculiar", shows that there are instances where the child's age is not properly considered. As mentioned previously, a five-year-old child is not likely to be able to describe their memories in terms of minutes or hours (Saywitz, 2002).

The extent to which criteria such as those suggested by the Supreme Court are applied to young children's testimony in court, was examined in a study of court cases involving 100 children under the age of seven who testified about alleged sexual abuse (Ernberg et al., 2018). The most frequently cited criterion for evaluating the children's testimony was richness in detail. However, children's inability to provide detailed testimony was rarely used as an argument against the reliability of the testimony. The testimony being short on the other hand was used to argue against the reliability of the child's testimony in almost all instances. The results from the study, alongside with the concerns raised by the prosecutors in Studies I and III as well as in previous research (Azad & Leander, 2012), shows that there may be some problematic practises in court evaluations of children's testimony.

## Child Protective Services investigations

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To reiterate, alleged CSA is, if possible, investigated at a Barnahus, and the prosecutor, the police, and the CPS may all be involved in such investigations. In Study II, we found that the CPS were had more frequently placed the child in foster care in discontinued cases of alleged CSA, while this was uncommon in prosecuted cases. The prosecutors in Study III, when asked to elaborate on their experiences of collaborating with CPS helped to shed some light on why and how CPS involvement can affect a criminal investigation. Because a CPS investigation can often include an interview with the suspect, by the time the police can interview the suspect she or he has already been alerted about the allegations and had a chance to prepare a cover story or destroy evidence. The difference in goals and views between the legal system and CPS was cited as a source of conflict by some prosecutors, and as a necessity by others. CPS and the legal system are inherently different systems with different aims. The legal system investigates and prosecutes crime, while CPS aims to ensure the best interest of the child (Edvardsson & Vahlne Westerhäll, 2017; Prosecution Development Centre, 2016). Investigations of CSA are usually conducted at Barnahus where prosecutors, police, and CPS co-exist, and the findings from the current thesis do support the importance of collaboration between the legal system and CPS in these cases, but the find-

ings of Studies II and III are in line with previous research showing that when the CPS have placed a young child in foster care CSA cases are much less likely to be prosecuted than other CSA cases (Cross et al., 1999). Some prosecutors in Study III stated that the likelihood of a CPS investigation adversely affecting the criminal investigation increased when the criminal investigation was lengthy. Again, these results indicate a need for better resources, especially more trained police to interview children in a timely manner.

## Custody disputes

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All three studies showed that an ongoing custody dispute is one of the most challenging circumstances under which to investigate allegations of CSA. The prosecutors in Study I stated that a custody dispute would lead them to look at a case differently, and in Study II, we found that CSA allegations had surfaced during a custody dispute in 35% of the discontinued cases versus only 7% of the prosecuted cases. In Study III, the prosecutors once again described a custody dispute as a complicating factor in these investigations. An ongoing custody dispute was found to decrease the likelihood of prosecution in a study of cases of alleged CSA in the United States (Brewer et al., 1997) and unfounded allegations of CSA do seem to be more common during an ongoing custody dispute (Bala et al., 2009; Korkman et al., 2017). While few studies have examined the rates of unfounded CSA allegations in custody disputes, one study estimated that with an ongoing custody dispute, the rate of intentionally false allegations of CSA (as estimated by social workers) was 18% versus 5% in cases with no ongoing custody dispute (Bala et al., 2009).

## Evidence

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Last but not least, investigating alleged sexual abuse against preschool-aged children is challenging because as in investigations of sexual abuse in general, these cases are often characterized by a lack of corroborating evidence (Heger et al., 2002; Walsh et al., 2010). This was confirmed by the studies included in the thesis, and is likely the main explanation of why only 10% to 15% of reported cases of CSA are prosecuted (Diesen & Diesen, 2013). In Study II, evidence of high corroborative value (i.e., photo or video documentation of the abuse and DNA or other medical findings), along with

a confession from the suspect, was the most important predictor of prosecution. No case with any of these evidence types was discontinued. In Study III, the lack of corroborative evidence was described as the main challenge in investigating alleged CSA against preschoolers by 55% of the prosecutors.

These findings are well in line with previous research (Cross et al., 1994; Ernberg & Landström, 2016; Walsh et al., 2010), indicating that prosecutors prosecute cases they believe will result in the conviction of the suspect (Lievore, 2005) Because prosecutors should prosecute cases in which there is objective evidence of the suspect's guilt, it is hardly surprising that evidence of high corroborative value predicts this decision.

## Limitations

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In Study I, the aim was to investigate in depth the previously overlooked topic of prosecutors' reflections on their experiences of working on sexual abuse cases involving preschoolers through the use of interviews and focus groups. This method has its limitations. Individuals who are willing to take part in interviews and focus groups are often more open to volunteering than their non-participating counterparts (Rudolfsson & Tidefors, 2013). It is reasonable that this is true also for participants in this study. This voluntariness bias, along with the relatively small number of participants, limits the degree to which our findings are generalizable other prosecutors.

Study II is based on archival data, which depends on the reports of various individuals and might therefore be affected by memory errors and cognitive biases (Findley & Scott, 2006). Important information about both the discontinued and prosecuted cases might have been misreported or completely unreported. Also, two different types of archival data (court documents and preliminary investigations) were used for the purposes of the study. Because court documents contain information that is unavailable in preliminary investigations and vice versa, we chose to limit our analyses to information available in both types of files. Moreover, the court documents represent district courts from nearly all of Sweden, while the discontinued cases all came from one (albeit large) police district. All police districts in Sweden are, however, directed by the National Police Authority and all prosecutorial chambers are headed by the National Prosecution Authority. Finally, we were able to obtain relatively few discontinued cases for the purpose of this study, which limited both our ability to analyze the data using more complex models and the generalizability of the results.

Ninety-four experienced child prosecutors participated in study III. Of these, 55 were currently working with child cases and 39 had previously

worked with child cases, but had moved on to other types of work within the Prosecution Authority. Thus, our survey did not reach those prosecutors who had previously worked with child cases, but had moved on to work outside the Prosecution Authority. Moreover, there are no official statistics on how many of the prosecutors employed by the Prosecution Authority are, or have been, specialized child prosecutors, which means that we are unable to estimate what portion of the intended population actually responded to the survey. To ensure the confidentiality of the respondents, we did not include any geographical questions. Given that some prosecutors mentioned that the quality of CPS investigations, for example, was lower in smaller municipalities, it is possible that the prosecutors' responses varied geographically, but that was not captured by the study.

Even with these limitations, the studies included in this thesis are among the first to examine the prosecution of alleged CSA in a context where the prosecutor is actively involved throughout the legal process, from the initial report to the case's presentation in court. They also seem to be among the first to investigate prosecutors' experiences working with alleged CSA (see also Schmitt et al., 2017 and Martell & Powell, 2013 for more examples of this). Although some of the results are specific to the Swedish context, they can still have some important implications for practice and research both nationally and internationally.

## Implications for practice and research

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The three studies included in this thesis revealed that prosecutors who work with CSA cases involving preschoolers face challenges in obtaining and evaluating testimony from preschoolers, collaborating with the CPS, and the low standard of evidence typically available in these cases. Reports made during a custody dispute appeared to be especially challenging to investigate and especially likely to be discontinued. Altogether, the findings from the three studies highlight the need for improvements to the conduct of investigations of alleged sexual abuse of preschoolers in Swedish legal proceedings.

For the police who conduct the interviews and the prosecutors involved in planning these interviews, it is vital to understand why certain question types are preferable or should be avoided, how to best ask questions of children at different developmental levels, and how to evaluate information elicited from children. Currently, prosecutors in charge of CSA investigations are offered special training, which includes one day of child interviewing and one day developmental psychology (Prosecution Development Centre, 2016). The training for police who interview children consists of two steps. The first step

focuses on investigative procedures and the second on investigative interviewing methods and some developmental psychology. Together, these courses take approximately 15 weeks to complete (Mykleburst, 2017). However, the training is not compulsory, and the majority of child interviewers have not completed this training (Swedish Prosecution Authority, 2016). To plan, conduct, and evaluate interviews with children under challenging circumstances or with children who are very young, further expertise might be required. It can be questioned whether prosecutors based on one day of training in investigative interviewing and one day of developmental psychology, alongside with the large portion of police who have not completed the 15 week training, are up to this task. It is worth noting that two other Nordic countries, Finland and Norway, have taken measures (below) to facilitate the investigation of alleged abuse of preschoolers due to the special expertise required of those interviewing the youngest children. Looking at these neighboring countries for possible improvements to criminal investigations involving children can be especially helpful since, while there are obvious differences to their legal systems, there are also similarities.

In Finland and Norway (Mykleburst, 2017), as in Sweden, children do not testify in court in person but through a video-recorded interview. In Finland, forensic psychology experts aid the police in CSA investigations involving preschoolers and children who for other reasons, such as having a disability, may have difficulties communicating with the police (Korkman et al., 2017). These children are not interviewed by police (who do, however, monitor the interview) but at specialist units by forensic psychology experts trained in investigative interviewing using the NICHD protocol (Korkman et al., 2017). The specialist units can also aid the police not only in planning and conducting interviews but also by providing feedback on interviews. This may be an especially important contribution to the quality of these interviews, as research shows that continuous feedback is required for interviewers trained in an interviewing protocol to adhere to it (Cyr et al., 2012). Professionals who conduct investigative interviews with children receive one year's training in the NICHD protocol, which includes ten days' lectures on psychology, including memory and child development. Importantly, they are also trained in hypothesis testing (Mykleburst, 2017), which is discussed later. The students are given feedback throughout the course and the training has been associated with positive changes in those who receive it (Mykleburst, 2017).

As in Sweden, Norwegian children who are alleged victims of abuse are interviewed by the police. However, the police in Norway have at least a bachelor's level education and those who interview children continue their training at the master's level. Police can take 15 European Credit Transfer and Accumulation System Credits (ECTS: 15 credits equals a quarter year of

full-time studies) in investigative interviewing with children and then, after having conducted at least 50 interviews with children under the age of 16, can take a further 10 ECTs in interviews with vulnerable persons, an umbrella term which includes children aged six and under (Mykleburst, 2017). Moreover, the Norwegian criminal code was changed in 2015 to ensure more child-friendly investigative interviews. In Norway, this currently means that preschoolers are interviewed using the Sequential Interview method (Langballe & Danevik, 2017), which is centered on the concept of dividing the interview into phases. In the first session, the goals for the interviewer are to explain to the child the reason for the interview, build rapport with the child, introduce ground rules, and to assess the child's developmental level. The first session is followed by a break that lasts around an hour, during which the child can get something to eat, relax, or play. The interviewer uses the break to get feedback and plan the rest of the interview (Langballe & Danevik, 2017). In the second session, the interviewer reiterates the purpose of the interview and introduces the topic at hand. This session will typically last around 15 to 20 minutes and is followed by a short break before the interview ends in a final, brief session in which the interviewer may ask questions on behalf of the legal representatives in the case (Langballe & Danevik, 2017). The method is meant to be flexible and the above scenario is a simple one consisting of three sessions in one day. There is room for adaptation depending on the needs of the child and other parties and the sessions may be spread over more than one day (Langballe & Danevik, 2017).

The one-size-fits-all approach currently used in Swedish criminal investigations of alleged child abuse is therefore not the only possible solution, and there is much room for improvement here in cases involving the youngest children. The concerns raised by the findings of the three studies in this thesis, seen in light of adapted investigations in Finland and Norway, highlight the fact that professionals who plan, conduct, and evaluate interviews with the youngest children require special skills and tools. Prosecutors play the central role in heading the criminal investigations, as well as in planning and overseeing interviews with the children, but they receive very little training in vital topics such as child development to assist them with this difficult task. The prosecutors in Study I criticized investigative interviews with preschoolers for being inflexible. However, for prosecutors and police to be able to adapt interviews to each child's individual needs, both parties require more knowledge and training in children's memory, language, and cognitive development than can be achieved in a one brief course. In Finland, assistance in those areas is offered by trained forensic psychologists (Korkman et al., 2017), but Sweden currently has no specialist centers forensic psychology centers. Therefore, prosecutors and police need to have these skills them-



selves. This would likely require ensuring that all police who interview children have completed their training, and expanding the training for prosecutors who work with these cases to ensure they have the necessary training to plan and evaluate investigative interviews with preschoolers, and to be able to extend their knowledge to the court if the case is prosecuted.

Increasing the resources of CPS, described in Study III as suffering a similar lack of resources and employee turnover to the police, could possibly lead to improvements in the relationship between CPS and the legal system. Allotting the police, prosecutor, and CPS all enough time to meet and plan each investigation properly could be an important step in the right direction. This could encourage the coordination of resources, which is in the spirit of Barnahus (Landberg & Svedin, 2013), but shown in the findings of the included studies to be insufficiently utilized. CPS could, for example listen in on the investigative interview conducted by the police (Johansson, 2017), which could potentially contribute important information to their investigation, while alerting them of areas to avoid in their interviews to prevent possible detrimental effects on the criminal investigation. Again, this requires enough trained interviewers for the investigative interview to be conducted in a timely manner in all cases. Future research could focus on examining potential ways to improve the collaboration between these professions to ensure that cases of alleged CSA are investigated using the rule of law but keeping the child's best interest top of mind.

Investigating claims of CSA made during a custody dispute was shown to be especially challenging, given the increased risk that the allegation is (often deliberately) unfounded. A possible way to help prosecutors with this difficult task would be to introduce the hypothesis-testing approach to criminal investigations. In Finland, hypothesis testing is a fundamental part of CSA investigations (Korkman et al., 2017). In hypothesis testing during criminal investigations, investigators form alternative explanations for the allegations after having carefully reviewed the background information available in the case. The focus is on how the allegations might have surfaced, and potential misunderstandings, motivations to lie, possible misinterpretations, and the power and possibility of suggestion prior to the interview are all considered (Korkman et al., 2017). The hypothesis-testing approach is then incorporated into the NICHD interview, enabling the interviewer to ask the child questions that can help shed light on the different hypotheses (Korkman et al., 2017). For example, if allegations of CSA surfaced during a custody dispute, an alternative hypothesis to the presented story of how they arose is that a parent is coaching the child. To test this hypothesis, the interviewer can ask the child how the parent found out about the alleged abuse and what the child and parent have been discussing. In a study of defendants' admissions and denials in

Swedish court cases of alleged sexual abuse of preschool-aged children, the most common alternative explanation given by defendants who denied the allegations was related to misunderstandings, such as that normal caregiver actions (e.g., helping the child on the toilet) or accidentally touching the child while playing were misperceived as abuse. Other common alternative explanations were related to the child's testimony being unreliable, for example due to social pressure, or the allegations being falsely made during a custody dispute or other conflict (Magnusson et al., 2018). Examining the statements and explanations given by those who are suspected of having sexually abused a child, could be one important way of discovering alternative hypotheses, all though the investigators should adapt their hypotheses to each individual case.

Finally, regardless of the small sample size in these studies, the differences in likelihood of interviews and case outcomes for boys and girls observed in Study II should be cause for concern for practitioners and researchers alike. To better understand these gender differences, further research is encouraged to study gender differences and their relation to case outcome in larger samples including children of all ages. It has been suggested that The United Nations Convention on the Rights of the Child should be introduced as Swedish law in 2020 (SOU 2016:19; The United Nations 1989). This further highlights the importance of improving criminal investigations in cases involving children to ensure that all children are heard in issues that concern them (The United Nations 1989).

## Concluding remarks

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Few studies have examined the prosecution of cases of alleged CSA, but the results of these that have shown that prosecution was less likely in cases involving the youngest children. The aim of this thesis was to shed light on prosecutors' experiences with and decisions in cases of alleged CSA against preschoolers. Several factors affecting prosecutors' work with these cases were identified, allowing this thesis to make a unique contribution to the understanding of prosecutors' experiences and decisions and to make suggestions about future research and possible improvements to policy and practice to meet prosecutors' concerns and help improve management of cases of alleged CSA against preschoolers.

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# APPENDIX

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