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**POLICY VARIES IN CHILD DEATH CASES / DAs have great discretion in bringing charges
against parents in tragic accidents**

By PEGGY O'HARE, MIKE TOLSON
STAFF

Tammie Sharma worked nights, her common-law husband days. Between their shifts fell a period of 30 minutes or so, which might have been a matter of small consequence but for one thing: the two small children left at home by themselves.

Those few minutes made all the difference two weeks ago when a fire broke out shortly before Sharma arrived home. Despite the best efforts of an older sister, 3-year-old Dazzalena Escobedo could not make it out of their apartment before smoke overcame her.

To local prosecutors, however, Dazzalena's death was more than a tragic accident. Sharma and Adrian Gonzales were arrested and charged with injury to a child by omission, a first-degree felony that could put them in prison for the rest of their lives.

"It's a disgrace and sickening that they charged this couple," said Gonzales' attorney, Samuel Cammack. "These were not drug dealers. They are a good, hard-working couple. The DA's office is out of control. This never would have happened in any outlying county."

Cammack may have a point, at least with respect to the vagaries of jurisdiction. Last year in Victoria, a single mother of four whose children perished in a house fire when she was not at home was not charged in their deaths. The local district attorney said that her efforts to keep in touch with the children, ages 13 to 3, by phone were enough to show that the children were not in imminent danger.

Harris County District Attorney Chuck Rosenthal said there is no set policy on how to pursue these cases, regardless of the extent of injury to the child. But he acknowledges his office is more aggressive than many other jurisdictions, and he makes no apologies for it.

"I've got better lawyers and a better staff to review these kinds of things," Rosenthal said. "We're not as reticent to take cases, unlike some other jurisdictions that feel like they have to win if they take it to trial. There are a lot of cases where we feel 12 people from the community ought to decide."

Supervision question

Whether lack of parental supervision rises to the level of criminal negligence is an invariably gray and subjective matter. Even similar incidents can yield significantly different treatment of parents. And fatalities alone are no guarantee of prosecution.

Two Houston-area toddlers drowned last week when no adults were paying attention. Neither case has resulted in charges so far, and officials with the Harris County Sheriff's Office privately expressed doubt that they will.

Prosecutors have great discretion in bringing a charge, said Pat McCann, president of the Harris County Criminal Lawyers Association. "What may look like negligence to one prosecutor that's worthy of a criminal charge may look to another prosecutor like a tragedy that is best left alone. I can tell you from the outside, a lot of us scratch our heads and wonder why certain cases are charged at all."

If children were without adult supervision when a tragedy occurred, Harris County prosecutor Murray Newman said he typically will consider the age of the oldest child present, how long the children were left alone and whether the lack of supervision was a regular practice or a one-time miscommunication.

In the case of Sharma's young daughters, Newman said, "It was a regularly occurring practice for those children to be left alone."



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Newman said he also looks at whether the children had access to emergency phone numbers; whether there was anyone they could approach for help, such as a next-door neighbor; whether they were locked inside the house and whether they were confined by burglar bars.

"These cases do get tricky when you analyze them," Newman said. "There's a difference between a child left in a car seat for three minutes while Mom runs in to pick up the cleaning and a child who is left in the care of a 5-year-old."

The 'reasonable' standard

True, Cammack responded, but he insists a neighbor was supposed to keep an eye on the two girls until Sharma got home, and a grandparent lived nearby. The older girl called the grandparent when the fire broke out, he added.

"Why did they bring this case?" he said. "Because they can."

The laws addressing endangerment or abandonment of children require parents or guardians to consider what a reasonable person would do, said investigator Catheryn Gardner-Sanders of the Houston Police Department's physical child-abuse unit.

However, a generally accepted threshold is that children younger than 10 should not baby-sit or watch over youths younger than themselves, she said.

Baby-sitters 11 or older might be a different matter, based on their intelligence level, maturity and capability.

One of the toddlers who drowned recently, 2-year-old Darius Allen, was left by his working parents in the care of his 11-year-old sister and 7-year-old brother. If authorities think that she was a capable caregiver, or could reasonably be thought of as such, then the investigation likely would go no further.

One case that Gardner-Sanders thought clearly violated the law was that of baby-sitter Rachael Marie Green, 27, who was arrested in January after she was accused of leaving four young children alone with tragic results.

Green was charged with abandoning a child after she was accused of leaving a 4-month-old boy with three children, ages 8, 5 and 4, at her apartment in the 3800 block of Synott, records show.

During Green's absence, the older children played roughly with the infant, Gardner-Sanders said. The baby was badly injured and is now blind and brain-damaged as a result of being shaken and suffering bleeding in his brain, she said.

Many cases, perhaps the majority, are not clear-cut. Many drownings, for instance, occur while parents are nearby and become distracted or lose track of their children for just a few minutes. Charges may not be filed in those cases because the police realize accidents do happen, Gardner-Sanders said.

Accidental shooting cases frequently result in charges against parents because there is a state law that specifically addresses leaving firearms accessible to children. Fatal fires also draw serious scrutiny.

A deadly fire

In 2005, Royshunda Page and her boyfriend, Kelvin Lamone Rucker, were charged with felony murder when they went out to eat and shop while leaving her three daughters - ages 6, 5 and 2 - alone in a Spring apartment with a burning candle. A fire ignited, killing all three children as they slept.

Rucker pleaded guilty and cooperated with prosecutors without a promise of leniency. He was sentenced to 10 years' deferred adjudication and ordered to spend six months in jail. Page took her case to a jury and was sentenced to 15 years in prison.

Records show Rucker's deferred adjudication was later revoked after he was arrested on New Year's Eve 2006 for driving while intoxicated. He was then sentenced to six years in prison for his murder conviction.

When a 7-year-old boy in east Houston died in an apartment fire in 2004, the charge against his grandmother was less severe. Myra Martin Page was charged only with abandoning a child. Prosecutor Paul Doyle noted there were several mitigating factors in her case: She was at work trying to provide for her grandson because the boy's mother was not part of his life, and she said her adult son was supposed to return to the apartment shortly after she left for work.

The son denied that, but prosecutors had to consider how such conflicting stories would look to a jury.

Myra Page ultimately pleaded no contest to the abandonment charge and was sentenced to a year in jail.

Under consideration

"We look to see if there is a pattern of conduct," said John Jordan, a Harris County prosecutor who in



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2005 went after the parents of a 6-year-old boy injured when they allowed him to ride a motorized minibike. "Are the defendants remorseful? Do they want help? A lot of it has to do with their history, not always a legal history but sometimes a history with (Child Protective Services)."

Which helps explain the seven-year prison sentence slapped on Wade Brandon Wilson, whose 1-year-old daughter died in a bathtub last year. He had left water running and gone to a store for milk, his attorney said, leaving five children alone. He was on probation for a drug conviction, his wife was in jail, and the two had been visited previously by CPS.

"He was very remorseful - he cried at the scene when it happened and in court," attorney Danny Easterling said. "But he never should have left those kids alone. Everyone recognized that."

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