SB

188

SENATE BILL NO. 188

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY SENATORS TAYLOR AND MILLER

Introduced: 1/8/96
Referred: HES, JUD

A BILL

FOR AN ACT ENTITLED

"An Act relating to reports of suspected child abuse or neglect, and requiring that, as part of the investigation of the reports of suspected child abuse or neglect, all official interviews with children who are alleged to have been abused or neglected be videotaped."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

• Section 1. AS 47.17.010 is amended to read:

Sec. 47.17.010. PURPOSE AND INTENT. (a) In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the department. It is not the intent of the legislature that persons required to report suspected child abuse or neglect under this chapter investigate the suspected child abuse or neglect before they make the required report to the department. Reports of suspected child abuse

or neglect must be made when there is a reasonable cause to suspect child abuse or neglect in order to make state investigative and social services available in a wider range of cases at an earlier point in time.

(b) It is the intent of the legislature [, TO MAKE SURE] that investigations regarding reports of suspected child abuse and neglect

(1) be [ARE] conducted by trained investigators;

(2) [, AND TO] avoid subjecting a child to multiple interviews about the abuse or neglect; and

(3) ensure that all interviews with the child concerning the alleged abuse or neglect that are made as part of the investigation of a report of harm are recorded on videotape.

(c) It is the further intent of the legislature that, as a result of requiring the making of these reports of suspected child abuse or neglect, protective services will be made available in an effort to

(1) prevent further harm to the child;

(2) safeguard and enhance the general well-being of children in this state; and

(3) preserve family life unless that effort is likely to result in physical or emotional damage to the child.

* Sec. 2. AS 47.17.025(a) is amended to read:

(a) A law enforcement agency shall immediately notify the department of the receipt of a report of harm to a child from abuse. Upon receipt from any source of a report of harm to a child from abuse, the department shall notify the Department of Law and investigate the report. However, the department may not proceed in an investigation of a report of harm to a child from abuse if the department, in interviewing the child concerning the alleged abuse, is unable to videotape or fails to videotape each interview with the child. Within [AND, WITHIN] 72 hours of the receipt of the report of harm to a child from abuse, the department [,] shall provide a written report of its investigation of the harm to a child from abuse to the Department of Law for review.

* Sec. 3. AS 47.17.027(a) is amended to read:

(a) If the department or a law enforcement agency provides written certification to the child's school officials that (1) there is reasonable cause to suspect that the child has been abused or neglected by a person responsible for the child's welfare or as a result of conditions created by a person responsible for the child's welfare; (2) an interview at school is a necessary part of an investigation to determine whether the child has been abused or neglected; and (3) the interview at school is in the best interests of the child, school officials shall permit the child to be interviewed at school by the department or a law enforcement agency before notification of, or receiving permission from, the child's parent, guardian, or custodian. A school official shall be present during an interview at the school unless the child objects or the department or law enforcement agency determines that the presence of the school official will interfere with the investigation. **The interview shall be videotaped as required by AS 47.17.035.** Immediately after conducting an interview authorized under this section, and after informing the child of the intention to notify the child's parent, guardian, or custodian, the department or agency shall make every reasonable effort to notify the child's parent, guardian, or custodian that the interview occurred unless it appears to the department or agency that notifying the child's parent, guardian, or custodian would endanger the child.

* Sec. 4. AS 47.17 is amended by adding a new section to read:

Sec. 47.17.035. VIDEOTAPING OF INTERVIEWS. An officer, employee, or agent of the department, a local government health or social services agency, a law enforcement agency, or another state or local government agency or unit who receives a report of harm to a child from abuse or neglect may not investigate the report of harm by interviewing the child concerning the alleged abuse or neglect unless the initial interview and each subsequent interview are videotaped.

DATE 2/28/96	# OF PAGES 3
TO MYRNA	FROM PAUL NELSON
CO. REP. JAMES	CO.
DEPT. HOUSE	PHONE 907 766-2458
FAX# 465-2381	FAX# 907 766-2460

Paul A. L. Nelson
Box 858
Haines, Alaska
99827

907-766-2458 Days

907-766-2460 Fax

Feb. 28, 1996

Represenative James
Room 102
Capital Building
Juneau, Alaska
99802

Honorable Represenative James,

As per our recent phone conversation I have attached a 2 page description of what happened to my Daughter and I.

I sent the description and a request for support of HB 348 and SB 188 to Represenative Mackie and Sen Zarhoff.

Thank you for your concern.

Sincerely,

Paul A. L. Nelson

Paul A. L. Nelson
Box 858
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THE DESTRUCTION OF THE PARENT-CHILD RELATIONSHIP COMPLIMENTS OF THE ALASKA JUDICIAL SYSTEM

Haines Alaska is the home of myself and my family since 1966. I graduated from Haines High School in 1970. I have no criminal record.

In 1985, during the midst of a heated divorce, 1JU-85-1188, my estranged wife, Loretto L. Jones, herafter LJ, told me "I will destroy you if you do not give me the marital property I demand".

Believing that the marital proptery should be evenly divided I refused to give give LJ the property she demanded.

Shortly thereafter, I was arrested for sexual abuse of a minor and charged with a unclassified felony. 1HAS-85-104CR.

The first doctor, Dr. Claudia Foster-Olson, who examined our daughter, hereafter T, testified before the grand jury that she had never seen a sexually abused child before seeing T.

A video tape of the interview of T, made on the day of my arrest, was not used as evidence in any case.

Two weeks before I was to go on trial for sexual abuse of a minor facing a minimum of 8 yrs to life in prision, the D.A. offered a "deal" if I would plead no contest.

I demanded a jury trial. Three days after refusing to "deal" the State dismissed the criminal charges against me.

Shortly thereafter, DFYS filed sexual abuse of a minor charges against me in a civil case, called "Child in Need of Aid", hereafter CINA. Case #1JU-86-10 CP.

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The Judge in the CINA case, Walter Carpeniti, ordered that LJ and I both be psycho-analyzed. Following psycho-analysis the CINA case was dismissed.

During the lengthy divorce trial, before Judge Roger Pegues, my attorney, Mark Rausch, told me I would not see T for a year unless I would admit that I abused her. I told Rausch that I could not admit to something I did not do.

Rausch replied, that was OK because he would do it for me. Rausch submitted a stipulation stating that I had abused T.

In Pegues court the Judge asked me if I agreed with the stipulation. Having not seen T for almost six months at that time, I replied "yes, with the understanding that it is not an admission of guilt." I have never seen this stipulation, I did not sign it and it does not exist in court records.

Judge Pegues ordered that I take weekly counseling with Dr. Mander and I be allowed weekly supervised visitation with T.

About six weeks into the counseling, Dr. Mander announced "now you will admit you abused your daughter". I replied that I could not do that because I refused to lie to him. Dr. Mander replied "if you will not admit abuse, I will tell the Judge and he will stop visitation".

Dr. Mander told Pegues. I have not seen T for 9 years.

In the Appeal to the Alaska Supreme Court, Nelson v Jones, 781 P.2d 964, 972 (Alaska 1989) Justice Rabinowitz and Matthews (in a dissenting opinion) agreed that forcing admission of guilt in exchange for visitation is an abuse of Judicial discretion. The appeal was denied.

Paul A. L. Nelson

Alaska State Legislature

SENATOR
MIKE MILLER
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Fairbanks, Alaska 99701
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Senate

Joint Sponsor Statement

Senate Bill 188

SB 188: "An Act relating to reports of suspected child abuse or neglect, and requiring that, as part of the investigation of the reports of suspected child abuse or neglect, all official interviews with children who are alleged to have been abused or neglected be videotaped."

PURPOSE: this legislation was prompted by distress from concerned parents requesting a more stringent "check and balance" accountability system for state agencies in regard to child abuse legislation.

INTENT: is that all interviews be video taped from the onset with allegedly abused or neglected children; furthermore, the interview may not proceed unless the above mentioned process is in place.

In turn this would help implement sound public policy by requiring accountability of agency action in the sensitive area of state interference in private family life; it would also provide a protection of the rights of the person conducting the interview.

I strongly urge your support of SB 188.

2/9/96

SPONSOR STATEMENT

by Scott Trafford Calder

A POSITION-PAPER ON THE PROPOSAL TO MANDATE THE VIDEO RECORDING OF INTERVIEWS WITH CHILDREN, IN EVERY CASE OF AN ACCUSATION OF ABUSE HAVING BEEN MADE

Abuse, Neglect, and Sexual Abuse of a Minor is everyone's business. No person is unaffected by the poor treatment of any child in his or her community. Healthful conditions for every child is a cultural priority, the most basic form of compelling government interest, a political yardstick, by which all other public interests may be measured.

The enforcement and promulgation of culturally defined and consistent expectations for the protection, nurture and education of children, is the natural, logical and appropriate function of the parents of children. It is within a family group that the child becomes a citizen, and learns to then become a parent, or elder, within the culture. Society can not function, nor can it exist, without natural, functional, biological families.

For these and other reasons, parents have an affirmative duty to guard, and to guide, their children. Before government and life itself, each child is born from two parents, and has two parents. Just as important as the possibility of abuse, neglect, and sexual abuse of a minor, along with the need to address that, is the possibility of incorrectly creating a destructive intrusion into a child's natural, logical, appropriate support group, based upon a false reason. In the absence of a substantial reason to act, possible threats to the families of children are threats to children. Any investigation based upon a false report, necessarily strips the child of his or her support group, the family, a means to be protected. Approximately four, out of five, investigations of this type are themselves the primary source of danger to many children. Even a legitimate investigation may be more harmful, than helpful.

No reason exists to reject the superior empirical means for documenting the manner, content, and method, of an interview with a child, during the investigation of possible abuse, following a credible report of such harm: a videotaped record of both child and interviewer. One record, not five or eleven: Every linguistic feature and item, not an expert's opinion or feeling: The thing in and of itself, not a substitute, is evidence. Why not real truth?

CAPITAL CITY WEEKLY 2/7/96

Opinion

Letters to the I

Abuse allegations nightmare for parents

A person accused of robbery is assumed innocent until he is charged, tried, and found guilty. Then he's sentenced. My husband and I find ourselves in a worse position- guilty until proved innocent — because we're suspected of child abuse.

Our Fairbanks pediatrician, Richard Reems, said to take our sons, 8 months old, to Seattle for an operation on a birth defect in the sinus of one son The doctor there found a cracked rib, a blood clot and tissue tear in the sinus. He also saw a bruise that even the social worker couldn't see. He said the injuries were "consistent with" child abuse. He didn't say there was child abuse. Dr. Reems was astonished at the allegation.

A social worker in our hometown of Delta says there's absolutely no charge against us. But we must have tests and commute 80 miles to classes and support groups. And a trooper is asking around town about us.

Social Services gave our babies to foster parents, even though the great grandmother, Mabel Olmstead, had immediately asked for custody, and she's an ideal person.

To add insult to injury, some people in Delta are copying DFYS by skipping the steps between suspicion and turning us off.

We are innocent. But even if we had abused our twins, shouldn't we be treated as innocent until we are charged, properly tried, and found guilty?

We thank our friends for being steady, and Concerned Parents for Reform in North Pole (488-0334) for their sense of America Justice as we look for an end to this nightmare.

Tammy and Carl Dedmond
Delta, AK
Jan. 18, 1996

No restrooms

Dear Legislator,

There are no Public Restrooms functioning at the Yakutat Airport. I was forced to piss in the parking lot. How long will this policy remain in effect? Are there some legal repercussions? Will you respond soon, please?

Sincerely,
George Ogle

Taping at child abuse interviews

Legislation to require the taping of all official interviews with children allegedly abused or neglected, was discussed this week in the House State Affairs Committee.

HB 348, sponsored by Representative Jeannette James (R-Fairbanks), proposes to begin recording official interviews with abused children upon commencing the interview, to record 'the entire interview and all subsequent interviews.

"When dealing with emotion-laden situations, adults' perceptions and memories are not necessarily reliable, videotaping of interviews in alleged child abuse cases can establish credibility for the child as well as the interviewer," said Representative Jeannette James.

There have been a number of recent cases in Alaska and the U.S. where decisions have been made for disposition of children which leaves the parents vexed and believing they have been wronged," said Rep. James.

James noted that children can be influenced to respond in certain ways based on the way the question is asked.

"We need to balance this issue in a way that will meet the needs of the people of Alaska. We are working seriously with the involved agencies to find an answer that will work in urban as well as bush areas. Our goal must be to find a way to increase agency accountability while maintaining the integrity of Alaska's families and the safety of Alaska's children," said James.

Fairbanks Daily News-Miner, Friday, June 23, 1995

Abuse interviews may be taped

The Associated Press

ANCHORAGE—The state agency in charge of investigating child abuse will consider videotaping its initial interviews with alleged victims following an ombudsman review.

The Department of Family and Youth Services planned to complete its study in time for the next legislative session in January. A bill requiring recorded interviews has been filed for consideration next year.

Bea Hagen, an ombudsman investigator in Fairbanks, said Thursday that the issue arose when a Bethel man complained that his 5-year-old daughter was taken into emergency custody for two hours based on abuse charges that turned out to be false.

Hagen said the ombudsman accepted the case when it turned out that agency policies had been followed and there was no requirement for video or audio recordings of initial interviews with children.

Hagen said there also was no policy requiring case workers to keep original notes made during the childrens' interviews. Alaska is among states where notes may be reconstructed later and originals may be destroyed.

The department has agreed to study whether interviews should be recorded. It has rejected a recommendation that initial interview notes be retained, Hagen said.

The ombudsman said that failing to record the interviews and permitting original notes to be discarded made it impossible to retrace steps leading up to emergency custody.

"The father was very upset," said Hagen, who said confidentiality rules barred her from identifying the family. "He wanted to know why original notes weren't kept."

Hagen said the 1993 case raised policy issues about how to hold the department more accountable for one-on-one interviews with children.

The ombudsman's office said the department had acted legally in the Bethel case. Telephone messages left with a DFYS supervisor in Fairbanks were not immediately returned Thursday.

Hagen said the case began when DFYS officials received a hot-line report claiming the 5-year-old asked if she was "pretty" and acting in a "seductive" way.

The report also said the child appeared to hate boys and was always with her father when he was not at work.

Hagen said that taken alone, the behavior seemed "fairly benign." But she said she could see how a professional could interpret the girl's actions as symptoms of abuse.

"This vague, social service jargon was used to justify interviewing the child at her preschool," Hagen said. State law permits authorities to approach a child, without a parent's knowledge, if a report of harm appears worth investigating.

But Hagen said the department had erred by failing to check with others before going ahead with an interview. Among sources available was another social worker who knew the family well, Hagen said.

The ombudsman said the child was taken into protective custody and state troopers were called when she made disturbing statements during the initial interview.

Hagen said that after questioning that same day by a trooper, the social workers concluded that the child's bottom had been touched during innocent play. She was released to her parents and remains with them today, Hagen said.

The department has resisted recording initial interviews because it would be expensive, require staff training and may intimidate a child.

Danger lurks in suggestive interviews

Judith Kleinfeld

In January, 1989, a parent charged Bob Kelly of sexually abusing her son at the Little Rascals Day Care Center in North Carolina. Panic swept the town as the police, parents, and therapists relentlessly questioned the preschoolers. After months of repeated questions, 90 children made charges not only against Bob Kelly but against dozens of people in the town. The charges included rape, sodomy, and fellatio.

Some children said that pins and magic markers were put into their vaginal and anal openings. Others claimed Bob burned a cat with a candle and murdered babies.

Some children said they were taken away on a boat and thrown into a sea of circling sharks.

The jury convicted Bob Kelly and all the other defendants. Bob Kelly was sentenced to serve 12 consecutive life terms. Last May, his conviction was overturned on appeal.

In their new book, Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony (Washington, D.C.: American Psychological Association, 1995), psychologists Stephen Ceci of Cornell University and Maggie Bruck of McGill University examine what goes wrong in such cases.

Their conclusions are the more convincing because they refuse to cash in on their expertise. They have declined hundreds of requests to serve as expert witnesses. In the five cases where they did testify, sometimes for the prosecution and sometimes for the defense, they refused any fees. Preschool children are able to provide accurate testimony about sexual abuse, Ceci and Bruck conclude, but they are also suggestible.

Aggressive interviewing about events that never happened can distort their memories to the point where the truth may be buried forever.

Researchers have devised clever experiments to examine how children react to false suggestions about being touched.

One fascinating set of studies examined children's memories of ordinary visits to the doctor. The researchers knew what had happened at the doctor's office—a routine examination. But what would children say if adults asked them leading questions with a sexual whiff, such as "Did the nurse lick your knee?"

The 7-year-old children stuck to the truth 90 percent of the time. The 3-year-old children were far less reliable, especially when asked about the doctor's visit three months later. The researchers discovered a valuable clue to the truth of children's testimony. When the event never happened, many children at first laughed at the question. This happened in the Little Rascals case. As a mother testified:

Mother: *I asked him has Mr. Bob ever touched your pee-bug...*

Attorney: *And what were his responses?*

Mother: *He thought it was funny. He was laughing at me...*

If we want accurate testimony, say Ceci and Bruck, we should watch for such clues.

We also need to watch out for the powerful impact of interviewer bias where parents or investigators think they know what has happened and attempt to get the child to confirm it.

In a dramatic experiment, Ceci and his colleagues asked preschool children to play a game a lot like "Simon Says." The children touched their stomachs and other children's noses.

A month later trained social workers interviewed them about the game. Some of the social workers were told the truth. Others were misled. They were told, for example, that the children's knees had been licked.

What the social worker believed to be true had an astonishing impact on what the children ending up saying. When the social worker knew the truth, the preschool children gave accurate reports 95 percent of the time.

When the social worker had wrong information, more than a third of the children confirmed these false beliefs. At first the children appeared hesitant when they agreed that someone had done something like licking their knees. But their confidence increased as the interview went on. When these social workers passed on their notes to other social workers, who interviewed the children again two months later, the children stuck to their errors with even greater confidence.

Ceci and Bruck do not deny the reality of sexual abuse. But they provide convincing evidence that suggestive questioning during investigation can provide confident child witnesses testifying to things that never happened.

Judith Kleinfeld is a professor of psychology at the University of Alaska Fairbanks.

Reasons for taping interviews with children

Dissent of Judge Frank Dubofsky in the Colorado Court of Appeals case, *People v. Raibon*, 843 P.2d 46 (App. 1992). This case involved interrogation of a minor child who was a suspect in a crime. Should it also apply to interrogation of a minor child who is suspected of being a victim of child abuse? In this case, the police said the minor child admitted he "shot" the victim. The minor child said that was wrong, he only "shot at" the victim, and had told that to police.

IN MY VIEW, the Due Process Clause of the Colorado Constitution requires that if, as here, a suspect is detained and questioned at a police station or similar detention place, then an electronic recording (or other comparably accurate recording process) of the conversation must be made or else the confession is inadmissible. In reaching this conclusion, I rely primarily on the reasoning of the Alaska Supreme Court in *Stephan v. State*, 711 P.2d 1156 (Alaska 1985).

The failure of the State to record and preserve a confession frequently results in losing essential parts thereof. *See Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Even a few hours after hearing a conversation, it is difficult for a person to present precise and accurate testimony about those recent statements. Therefore, testimony about confessions/interrogations made in court weeks or months afterwards is inevitably incomplete and at least partially inaccurate. *See Stephan v. State*, *supra*. This inevitable fallibility of human memory can be rectified by a contemporaneous recording of the confession and related interrogation.

The evidence indicates that small, portable, and accurate recording devices are being increasingly used by law enforcement officers when statements are taken from witnesses and suspects. *See Stephan v. State*, *supra*. The present technology exists to record readily and accurately by both video and sound tapes the statements of witnesses and suspects. Indeed, when it is to the advantage of the police to record the actions or statements of suspects or witnesses, this is often done. *See Stephan v. State*, *supra*.

The courts are therefore presented with a situation in which the State, with only a minimal expenditure of effort and money, has the technical capability to preserve vital testimony and yet, as here, it chooses not to do so.

The major objective of our criminal justice system should be to arrive at the truth so that justice is done. As our supreme court so poignantly stated in *Garcia v. District Court*, 197 Colo. 38, 589 P.2d 924 (1979), a criminal case is not a game of foxes and hounds in which the state attempts to outwit and trap a quarry.

Furthermore, by confirming the content, legality, and voluntariness of a confession, a recording will, in many cases, actually aid law enforcement officers. In many situations, a recorded confession and advisement and waiver of constitutional rights will deter a defendant from changing his testimony or making false claims that his constitutional rights were violated. Certainly, such a recording will help the trial and appellate courts determine the truth and thus make more just decisions.

The primary argument against requiring law enforcement officers to record advisements and interrogations/confessions of defendants is that use of such devices may deter the suspect from making a statement. Since, under both the state and federal constitutions, an accused has a constitutional right to remain silent, and he must be informed of that right prior to a custodial interrogation, this argument is not persuasive. If the suspect refused to make a statement because he learned it was to be electronically recorded, this would probably indicate he mistakenly did not understand that non-recorded oral statements could be used against him. Furthermore, the State's interest in ascertaining the truth in order to do justice also answers this argument.

The absence of an electronic recording of a disputed confession gives an unfair advantage to the prosecution. The courts and juries are far more apt to accept a police officer's account of an interrogation than a conflicting one provided by a defendant. *See Harris v. State*, 678 P.2d 397 (Alaska Ct. App. 1984) (Singleton, J., concurring and dissenting).

In addition to the Alaska Supreme Court in *Stephan v. State*, *supra*, others have also recognized the importance of recording custodial interrogations. *See Hendricks v. Swenson*, 456 F.2d 503 (8th Cir. 1972) (suggesting that videotapes of interrogations protected defendant's rights and are a step forward in the search for truth); *Smith v. State*, 548 So.2d 673 (Fla. Dist. Ct. App. 1987) (holding that the Due Process clause of the Florida Constitution requires a recording of custodial interviews); *Regan v. State*, 642 S.W.2d 489 (Tex. Crim. App. 1982); Tex. Code Crim. Proc. Ann. art. 38.22 § 3 (Vernon 1979) (requiring that oral statements of the accused must be recorded in order to be admissible); *A Model Code of Pre-arraignment Procedure* § 130.4 (Official Draft 1975) (requiring sound recordings of custodial interviews). *See generally* Kamisar, *Foreword: Brewer v. Williams—A Hard Look at a Disconcerting Record*, 66 Geo. L.J. 209 (1977).

In relevant part, 10 Uniform Laws, Annot., Model Penal Code § 243 (1974), states:

> *The information of rights, any waiver thereof, and any questioning shall be recorded upon a sound recording device whenever feasible and in any case where questioning occurs at a place of detention.*

The courts have recognized that Due Process requires the State to preserve essential evidence so that it can be examined, analyzed, and used by the defendant. *See California v. Trombetta*, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); *People v. Greathouse*, 742 P.2d 334 (Colo. 1987). Furthermore, the court system is enabled to receive the best evidence available in order to resolve the serious criminal matters which come before it. A logical

STATE OFFICE

ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

February 5, 1996

Senator Robin Taylor
Alaska State Legislature
State Capitol (MS 3100)
Juneau AK 99801-1182

Dear Senator Taylor,

On behalf of the Alaska Peace Officers Association, I would like to inform you of our position on Senate Bill 188. At a recent meeting of the APOA State Board, we unanimously decided to oppose this legislation. While video taping interviews has merit and should be encouraged, requiring it is not practical in all areas of the state - especially the bush. By requiring the video taping, if the equipment was not available, or if it malfunctioned, this would cause otherwise viable abuse cases to be lost or unnecessarily delayed.

Please contact me at 451-5316, if you have questions about the position the Alaska Peace Officers Association has on this issue.

Sincerely

Michael Corkill
State President

ORIGINALS IN MAIL

Post-it™ Fax Note 7671	Date 2/5	# of pages ▶ 1
To SEN. R. TAYLOR	From MIKE CORKILL	
Co./Dept. AK SENATE	Co. APOA	
Phone #	Phone # 277-0515	
Fax # 465-3922	Fax # 272-5355	

[redacted]

OPPOSING DOCUMENTS

City and Borough of Sitka

POLICE DEPARTMENT

304 Lake Street, Room 102 • Sitka, Alaska 99835

John H. Newell
Chief of Police

Business 747-3245
Fax 747-1075

February 2, 1996

Senators Taylor and Miller
Nineteenth Legislature
Second Session

RE: SB 188

With all respect for Senators Taylor and Miller, who I believe are committed to good law enforcement and healthy family units, I cannot support SB 188 in it's current form.

It is not clear to me who will be served by the changes being proposed in SB 188, but I have concern that it will not be the children who are subjected to abuse.

The investigation of child abuse, whether it is by neglect, physical abuse or sexual abuse, is difficult to investigate. It requires training, sensitivity to the individual child, development of trust to allow the child to talk about what has happened, and a lack of distractions. It is my experience that interviews with children regarding suspected abuse are now routinely videotaped. On the other hand, there may be times when the training and judgement of the investigators lead them to a decision not to tape a particular interview. There may be other times when it is just not practical.

As written, SB 188 would prohibit an investigation from proceeding if videotaping equipment was not available. The law would require videotaping even in situations where the trained investigator viewed the taping as an interference and detriment to the investigation.

I admit I don't understand the need or desirability of the changes proposed in SB 188. Without understanding the good that would be accomplished, and seeing what I believe to be detriments to the interest of our children and law enforcement, I am opposed to SB 188.

Sincerely,

John H. Newell
Chief of Police

c. Commissioner of Public Safety

NASW ALASKA CHAPTER
National Association of Social Workers
Executive Director
Angela M. Salerno, ACSW

RECEIVED
FEB 08 1996
Ans'd.....

February 8, 1996

Senator Lyda Green, Chair
Senate Health Education and Social Services Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Senator Green:

I am writing in opposition to SB 188, "Videotaping of Abused Minors" which is scheduled for a hearing in your committee tomorrow.

NASW represents 450 professional social workers statewide, many of whom practice in the field of child protection or as child and family counselors. These members report that in cases of suspected child abuse, the discretionary use of videotape is a useful tool, to both document information for accurate consideration by the courts, and to minimize the need for repeated, intrusive interviews with vulnerable children.

On the other hand, our members feel that mandatory videotaping of all interviews would constitute a serious intrusion into the life of the family. This is especially true when interviews are conducted in Native villages, where respect for the family and the culture is so important. Moreover, professionals report that children are more likely to disclose information about abuse when they feel safe, such as driving in a car, a time when videotaping would be impossible.

Finally, according to a cost analysis done by the National Child Welfare Resource Center, the financial impact of this bill would be over $3.5 million per year, funds that could be better used to improve services to families by providing regular, comprehensive training to all staff of the Division of Family and Youth Services who work with children and families.

Sincerely,

Angela M. Salerno, ACSW

1332 W. Northern Lights Blvd. Anchorage, Alaska 99503 • (907) 563-4502 • FAX (907) 561-4504 • 800-478-NASW

9-LS1225\F
Luckhaupt
2/27/96

CS FOR SENATE BILL NO. 188( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS TAYLOR AND MILLER

A BILL

FOR AN ACT ENTITLED

"An Act relating to reports of suspected child abuse or neglect, and requiring that, as part of the investigation of the reports of suspected child abuse or neglect, all official interviews with children who are alleged to have been abused or neglected be recorded."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 47.17.010 is amended to read:

Sec. 47.17.010. PURPOSE AND INTENT. (a) In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the department. It is not the intent of the legislature that persons required to report suspected child abuse or neglect under this chapter investigate the suspected child abuse or neglect before they make the required report to the department. Reports of suspected child abuse

or neglect must be made when there is a reasonable cause to suspect child abuse or neglect in order to make state investigative and social services available in a wider range of cases at an earlier point in time.

(b) It is the intent of the legislature [, TO MAKE SURE] that investigations regarding reports of suspected child abuse and neglect

(1) be [ARE] conducted by trained investigators;

(2) [, AND TO] avoid subjecting a child to multiple interviews about the abuse or neglect; and

(3) ensure that all interviews with the child concerning the alleged abuse or neglect that are made as part of the investigation of a report of harm are recorded on audiotape, or, whenever feasible, on videotape.

(c) It is the further intent of the legislature that, as a result of requiring the making of these reports of suspected child abuse or neglect, protective services will be made available in an effort to

(1) prevent further harm to the child;

(2) safeguard and enhance the general well-being of children in this state; and

(3) preserve family life unless that effort is likely to result in physical or emotional damage to the child.

* Sec. 2. AS 47.17.025(a) is amended to read:

(a) A law enforcement agency shall immediately notify the department of the receipt of a report of harm to a child from abuse. Upon receipt from any source of a report of harm to a child from abuse, the department shall notify the Department of Law and investigate the report. However, the department may not proceed in an investigation of a report of harm to a child from abuse if the department, in interviewing the child concerning the alleged abuse, is unable to record or fails to record each interview with the child. Within [AND, WITHIN] 72 hours of the receipt of the report of harm to a child from abuse, the department [,] shall provide a written report of its investigation of the harm to a child from abuse to the Department of Law for review. In this subsection, "record" means to audiotape, and, whenever circumstances permit or it is otherwise feasible, to videotape.

* Sec. 3. AS 47.17.027(a) is amended to read:

(a) If the department or a law enforcement agency provides written certification to the child's school officials that (1) there is reasonable cause to suspect that the child has been abused or neglected by a person responsible for the child's welfare or as a result of conditions created by a person responsible for the child's welfare; (2) an interview at school is a necessary part of an investigation to determine whether the child has been abused or neglected; and (3) the interview at school is in the best interests of the child, school officials shall permit the child to be interviewed at school by the department or a law enforcement agency before notification of, or receiving permission from, the child's parent, guardian, or custodian. A school official shall be present during an interview at the school unless the child objects or the department or law enforcement agency determines that the presence of the school official will interfere with the investigation. **The interview shall be recorded as required by AS 47.17.035.** Immediately after conducting an interview authorized under this section, and after informing the child of the intention to notify the child's parent, guardian, or custodian, the department or agency shall make every reasonable effort to notify the child's parent, guardian, or custodian that the interview occurred unless it appears to the department or agency that notifying the child's parent, guardian, or custodian would endanger the child.

* Sec. 4. AS 47.17 is amended by adding a new section to read:

Sec. 47.17.035. RECORDING OF INTERVIEWS. An officer, employee, or agent of the department, a local government health or social services agency, a law enforcement agency, or another state or local government agency or unit who receives a report of harm to a child from abuse or neglect may not investigate the report of harm by interviewing the child concerning the alleged abuse or neglect unless the initial interview and each subsequent interview are recorded. In this section, "recorded" means audiotaped and, whenever circumstances permit or it is otherwise feasible, videotaped.

LEGISLATIVE INFORMATION OFFICE
119 N. CUSHMAN, SUITE 101
FAIRBANKS, AK 99701
452-4448

DATE: 2/12/96

Please accept the enclosed original(s) of written testimony for the

SHFSC (SB188) teleconference scheduled on

2/9/96. A copy of this testimony was transmitted to your committee via fax.

Thank you,

Jean Fleagle

RECEIVED
FEB 14 1996
Ans'd.....

ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE SENATE SUBCOMMITTEE
COMMITTEE NAME

COMMITTEE ON H.S.S. (SB 188) "VIDEOTAPING" DATED 2-9-1996
BILL/SUBJECT

ANY DISCUSSION ABOUT THE COSTS OF THIS PIECE OF LEGISLATION SHOULD INCLUDE BOTH THE BENEFITS OF SAVINGS FROM MORE EFFICIENT AND MORE APPROPRIATE OPERATIONS. IN A SENSE, THERE ARE NO COSTS, WHEN COMPARED TO THE BENEFITS THAT WILL RESULT.

EACH ARGUMENT THAT THIS MEASURE WILL MAKE CHILD PROTECTION WORK MORE DIFFICULT OR EXPENSIVE IS AN ARGUMENT WHICH I BELIEVE SUPPORTS SENATE BILL 188. ALTHOUGH IT IS ESSENTIAL TO PROTECT CHILDREN FROM HARM, IT IS ESSENTIAL FOR PARENTS TO DO THIS, AND NOT FOR PUBLIC EMPLOYEES TO DO THIS. EVEN A "LEGITIMATE INVESTIGATION" IF IT EXISTS, MAY BE EXPECTED TO BE MORE HARMFUL THAN THE HARM POSTULATED BY THE INQUIRY.

ANY ALLEGATION, AGAINST ANY PERSON, IS SERIOUS BECAUSE OF ITS EXISTENCE, NOT JUST BECAUSE OF THE DEGREE OF ALLEGED SERIOUSNESS. THE POTENTIAL SERIOUSNESS OF A CHARGE IS NOT EVIDENCE OF ITS VERACITY, ACCURACY, OR RELEVANCE: IT IS ONLY A WAY OF FEELING, ABOUT SUCH MATTERS IN GENERAL, THAT IS A BUILT-IN PREJUDICE, WEAKENING AUTHORITY WITH LAZY EPISTEMOLOGY. THE EMOTIONAL AND CULTURAL NEEDS OF PEOPLE TO GUARD CHILDREN ARE NOT DETERMINED BY EVENTS IN POLITICAL SCIENCE LITERATURE. SUCH REPRESENTATIONS OF CONCERN ARE ADMIRABLE, WHEN PRACTICED BY PARENTS, AND SUSPECT IF PRACTICED BY OTHERS.

YET, THIS IS NOT ALL; WE CAN NOT EVEN BE DISCUSSING THE LOGIC OF PERFORMING BENEFITS OR COSTS, PUBLICLY, IN ACTS OF GOVERNMENT.

THE AVAILABLE, ELEGANTLY CODIFIED, LOGICAL METHOD OF MAKING INSPECTIONS FOR A DISCUSSION OF LOGIC OR MERIT IN CHILD PROTECTION SYSTEMS, UNDER AS47.10.400 (et.seq.), HAS BEEN DETAINED AND MISIDENTIFIED ADMINISTRATIVELY BY THE STATE.

IT'S A SORT OF CRISIS IN AND OF ITSELF, THAT WE ARE APPARENTLY EXPECTED TO BE SANGUINE IN VIEW OF THE FACT THAT PARENTS, AND "EXPERTS", AGREE HOW IMPORTANT THESE ISSUES ARE, WHILE ONLY "EXPERTS" ARE APPARENTLY SUPPOSED TO KNOW WHY, OR HOW, OR IF, OR WHEN, THIS IS THE CASE. SOPHISTICATED DESIGNS IN THE LITERATURE OF SOCIOLOGY AND JURISPRUDENCE DO NOT, THEMSELVES, DEMONSTRATE THE EXISTENCE OF PRACTICAL CONSONANCE WITH THEORETICAL DESIGN. AND, SO WHAT? IF ONLY A PROTECTED, IMMUNE, PERSON OF A SUPERIOR STATUS, ENGAGED IN A COVERT ACTIVITY, CAN KNOW ABOUT CHILDREN TAKEN FROM THEIR FAMILIES, THEN IT IS PREDATION, NOT SCIENTIFIC MERITS, WHICH MUST BE DISCUSSED.

IT IS THE UNIQUE AND PRIMARY PURPOSE OF ANY GOVERNMENT, OF, BY, AND FOR, PEOPLE, TO INCREASE, NOT DECREASE, THE SAFETY OF CITIZENS AND THEIR CHILDREN, AND THEIR OWN INHERENT RIGHTS TO BE SAFE FROM INVASION AND HARM. A CONTROVERSIAL, DESTRUCTIVE, AND EXPENSIVE SYSTEM, TO PROCESS CHILDREN, PARENTS, FAMILIES, AND CITIZENS, WHICH DOES NOT DEMONSTRATE VERACITY, METHOD, OR SUSCEPTIBILITY TO INSPECTION, CAN NOT BE MERELY ACCEPTED AS A CONVENTIONAL SOCIAL PROGRAM. THIS CONTRADICTS THE WHOLE CONCEPT OF A "SOCIAL CONTRACT", BENEFIT OF SOCIETY, OR PROTECTIVE GOVERNMENT.

(continued)

SIGNED SCOTT TRAFFORD CALDER
TESTIFIER

SCOTT CALDER; DAVID CALDER; AND, CONCERNED PARENTS FOR REFORM.
REPRESENTING (OPTIONAL)

P.O. BOX 75011-----FAIRBANKS, ALASKA 99707----(907) 474-0174
ADDRESS/PHONE NUMBER

A. C.

NO ONE SHOULD QUESTION THE IMPORTANCE OF PROTECTING CHILDREN, EXCEPT THAT A PARENT MUST ALWAYS DO THIS, EVEN IF ANOTHER PERSON CLAIMS TO DO THIS, TOO. I AM NOT IN A POSITION TO BELIEVE THAT SUCH OUTSIDE CLAIMS ARE PROPER UNDER ANY CIRCUMSTANCES, AFTER SEVERAL YEARS OF EXPERIENCE AND RESEARCH. THE UNIQUE CHARACTERISTIC OF "EXPERT SYSTEMS" WHICH WE NOW HAVE, IS THAT PARENTS ARE ALWAYS SEPARATED FROM THE CHILDREN, PRIOR TO ANY DEMONSTRATION OF MERIT OR LOGIC TO THE PARENTS, WITH THE CHILDREN ADRIFT AMONGST STRANGERS BEFORE ANY CHANCE OF BEING PROTECTED BY PARENTS IS ALLOWED TO OCCUR. CHILDREN WHO SHOULD PERHAPS NOT TRUST THEIR PARENTS ARE NOT EVER HELPED IN ANY WAY, BY HELPERS TEACHING ALL CHILDREN THAT THEY SHOULD PERHAPS NOT TRUST THEIR PARENTS.

MANY CHILDREN, INCLUDING MY SON, HAVE BEEN HARMED THROUGH BOTH SPECIFIC AND A GENERAL NEGLECT OF PARENTAL EXPERT STATUS. THAT ANYONE HAS NOTICED, THAT I HAVE NOTICED, NEGLIGENCE, INEFFICIENCY, VIOLENCE, DECEIT, MALICE, INCOMPETENCE, AND THE PHILOSOPHICALLY BANKRUPT NATURE OF THE PRESENT SYSTEM OF GOVERNMENT ADDRESSING CHILD PROTECTION, IS MORE WIDELY RECOGNIZED BY THE "EXPERTS" AS THE CAUSE, NOT A SYMPTOM, OF THE PROBLEMS TO BE DISCUSSED. THIS IS AN EVASION OF WHAT HAS BEEN NOTICED, NOT A MEANS TO CORRECTION. PROTECTING PEOPLE FROM FURTHER INJURY IS ONLY A PRELIMINARY STEP TO PROVIDING ACTUAL RESOLUTION OF THE DAMAGES. SB188 IS A PROTECTIVE MEASURE, NOT A REMEDY.

THE FULL REMEDY OF THE SITUATION WILL BE SEEN IN THE RESTRUCTURING OF ALASKAN GOVERNMENT AROUND THE CONCEPT OF PROVIDING REQUESTED SERVICES, AS REQUESTED, TO THE PEOPLE REQUESTING THEM. UNTIL CITIZENS ARE RESPECTED AS THE SOVEREIGNS OF OUR STATE, THE CONTINUANCE OF CURRENT METHODS OF PROCESSING HUMAN CHILDREN AND THEIR FAMILIES WILL LEAD TO UNACCEPTABLE COSTS OF ALL KINDS, LEADING AWAY FROM THE OPPORTUNITY TO NOT ONLY CORRECT, BUT TO PREVENT, HARM TO CITIZENS OF THE STATE. SB188 IS A MEANS TO BEGIN TO PROTECT CHILDREN, WHICH OUGHT TO BE CONTINUED THROUGHOUT GOVERNMENT OF THIS STATE.

A GENERATION OR MORE OF CHILDREN HAVE BEEN INDOCTRINATED TO ACCEPT AND BELIEVE IN "THE GOVERNMENT", FOR REASONS THAT CHILDREN ONCE THRIVED AND MATURED IN THEIR OWN FAMILIES, BUT WITHOUT BETTER SUCCEEDING THE FORMER METHOD. CHILDREN HAVE BEEN USED TO BRING OTHERS TO AN IDEOLOGY OF BENEVOLENCE, ABSENT THE POSITIVE VIRTUES WHICH ARE ADVERTISED, ONES FORMERLY ASSUMED AND NATURALLY PROVIDED. "KEEPING FAMILIES TOGETHER" IS THE ONLY SERVICE MISSING: BUT, IT IS THE ONE WHICH MAKES ANY SOCIAL SERVICE AN APPROPRIATE SERVICE. THE PRESENCE OF SERVICES TO AFFIRMATIVELY ASSIST PARENTS, NOT CHILDREN, WOULD SUPPORT THE PROPOSITION THAT SERVICES TO CHILDREN MIGHT HAVE SOME WAY TO BE FUNCTIONAL. THAT ALL SERVICES TO CHILDREN ARE CONDITIONED BY, AND UPON, THE ASSUMPTION THAT PARENTS CAN NOT OR WILL NOT NURTURE AND PROTECT THEIR CHILDREN, IS AN INDICATION OF DANGER TO EVERY FAMILY.

AS A SOCIETY, WE HAVE OUTSMARTED OURSELVES, RATHER THAN ACCOMPLISH THE BENEFITS OF PROTECTING CHILDREN. NOW, IT IS BECAUSE WE CAN NOT CONDONE OUR CHILDREN RESIDING IN AN ENVIRONMENT OF ABUSIVE GOVERNMENT, FOR ANY REASON, THAT WE MUST PREVENT, AND ALSO CORRECT, THE HARM OF THE STATE ACTING BADLY AS A PARENT. THE STATE HAS MADE AN UNCONSCIONABLY POOR PARENT. THE ONLY WAY TO EVEN ALLOW THE STATE TO CONTINUE WITH A PROGRAM TO ADDRESS CHILD ABUSE, OR OTHER SOCIAL PROBLEMS, IS TO ENFORCE STRICT, EVEN HERMENEUTICALLY RIGOROUS,STANDARDS ON PERSONNEL WHO ARE PRESENTLY ACTIVE IN THE FIELD OF CHILD PROTECTION.

WE CAN BEST HELP AND PROTECT OUR CHILDREN BY DETAINING AND MODIFYING THE WORK OF EXPERTS, UNTIL IT CAN PRODUCE AND DEMONSTRATE WHAT WE HAVE BEEN TOLD THE WORK WAS FOR. CHILDREN, AS A CLASS OF PEOPLE, AND FOR THE MOST PART, WILL BE AND FEEL SAFER IN OUR SOCIETY, IF THEIR OWN FAMILIES CONTROL AND NURTURE AND PROTECT THEM AGAINST INVASION, NOT OTHERWISE.

LET ANYONE WHO DESIRES TO "SAVE THE CHILDREN", SAVE THEM FROM GOVERNMENT, NOT FROM THEIR FAMILIES. THAT IS THE BEST THAT CAN BE DONE, AND SB188 IS A STEP IN THE RIGHT DIRECTION. THE CRITICISM THAT IT MAY BE UNREASONABLE TO, IT IS ASSERTED, PUT SANCTIONS AGAINST D.F.Y.S. AND AGENCIES FOR ITS VIOLATIONS OF THE PEOPLE OF ALASKA, IS ITSELF UNREASONABLE, BECAUSE SB188 IS ONLY EXPRESSIVE OF PRUDENCE AND PROTECTION, AND IS NOT THE REQUIRED MEANS TO APOLOGIES AND REPARATIONS WHICH ARE ALSO NEEDED.

FROM: Jodi Olmstead Delaney
P.O. Box 56054
North Pole, Alaska 99705
(907) 488-0334

February 9th, 1996
Fairbanks, Alaska

TO: Senator Robin Taylor
Alaska Legislature
State Capitol
Juneau, Alaska 99811-0001
(907) 465-4076

RE: Senate Bill 188: "Mandatory Videotaping of Child Abuse Interviews".

Dear Sir; Honourable Members,

This is my letter to you, to provide extended testimony on SB188. I would like you to consider these points:

1)***Alaska's rate of "false allegations", not "unprosecuted crimes", is 60%.
2)***It is wrong for people to be falsely accused.
3)***It costs large amounts of scarce resources to process any allegation.
4)***Experts should be able to handle technical details, not create technical details.
5)***It is inefficient to have no testable performance standard for workers.
6)***It is morally unacceptable to not have a testable standard in such allegations.
7)***There is no reason to prefer "experts", to parents and family, in Alaska.
8)***Accountability provides mutual and widespread benefits to all citizens.
9)***Citizens are experts about government, not the property of government.

The problem with resolving the technical issues inherent to the approach of this legislation, is that these are only real issues that are difficult to resolve, if one is engaged in an activity to suspend rudimentary constitutional liberties of citizens of this state and nation. Otherwise, people solve such problems every day of their lives, without that inconvenience.

With the potential expenditure of some eighty or more hours of paid staff time on the processing of a false allegation, and the effects upon the children of multiple interviews which might traumatize or indoctrinate them, there is the great likelihood that this cost could be saved, in each of the 60% of cases based upon a false allegation. No child or citizen can benefit from failing to save these costs.

The argument that opportunities will be lost to help children who need that is voided by the certainty that most will suffer because of the "help", if it is given. An abused child would have greater reason to fear systematic bungling and invasion, than reason to fear taking responsibility for telling the truth. It might be hard for a child to know the difference between a reality and an untruth, not only because of intimidation, but also because of impressionability. There is no contest between foregoing the believability of a victim, and sacrificing the vulnerable innocence of a non-victim. The victims need to know that responsible people are in charge. For the 60% of subjects, these people are their parents.

The inevitable result of establishing the most careful standards in such cases, is that more resources will be available, proportionately, to serve the needs of any person who might really have such needs. Punishing everyone to badly serve a few is no standard for anyone who recognizes and cares about protecting and nurturing children.

Respectfully submitted,

Jodi Olmstead Delaney

Jodi Olmstead Delaney, Concerned Parent.

STATE of ALASKA

RECEIVED
FEB 13 1996
Ans'd.....

Delta Junction Legislative Information Office

P.O. Box 1189
Room 210, Jarvis Office Center
Delta Junction, AK 99737
(907) 895-4236 Fax: (907) 895-5017

February 9, 1996

TO: Senate Health, Education & Social Services Committee

Please accept the enclosed originals of written testimony for the Senate Health, Education & Social Services Committee hearing that was scheduled on 2/9/96.

Copies of this testimony were transmitted by fax on 2/9/96.

Thank you,

Tammy Renee' Hall
Information Assistant

Enclosures: 2

Alaska State Legislature

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FEB 13 1996
Ans'd.....

Please enter into the record my testimony to the Senate Hear committee name

committee on SB 188 bill/ subject ~~Senate Hear~~ dated 2-9-96.

this Bill needs to be passed to help preserve the family To help keep the fact from being tampered with like it has been done in the past. I believe this bill has needs to change to say parent shall be notified before any and all interviews also this interviewing shall be done by an ~~unbiased~~ party to ensure there is no unbiased tampering done. If these changes cannot be done to this bill I will agree to pass it as it is.

Signed: Gene Ollestad
Testifier

Guardian of family right
Representing (Optional)

Fourth Judicial District
Box 10-E
Address

Delta Junction Alaska Republic
Phone No. 895 4805

Alaska State Legislature

RECEIVED
FEB 13 1996
Ans'd.....

Please enter into the record my testimony to the Senate HES
committee name

committee on SB 188 , dated 2-9-96 .
bill/ subject

I believe that the Parents must be notified First Before any investigation or Video taping is done. Video taping should be done by A third party with no vested interest in the outcome. the reason being Because school officals police and any department agencys and officals are all working together.

Signed: Jeanne' Phipps
Testifier

Coalition of Family rights
Representing (Optional)

Family Justice Project
Address

Phone No. 895 9505

1057 W. Fireweed Ln, Suite 230
Anchorage, Alaska 99503

Business 907/276-7279
24 Hour/Crisis 907/276-7273
Toll Free 1-800-478-8999
Fax 907/278-9983
TTDY 907/278-9968

February 9, 1995

Senate Bill 188 Teleconference

Susan P. Catterall
Standing Together Against Rape
Direct Services Advocate
1057 West Fireweed Lane, Suite 230
Anchorage, AK 99503

Thank you for accepting public testimony concerning the required videotaping of all official interviews with children who are alleged to have been abused or neglected. I strongly oppose **SENATE BILL NO. 188.**

I feel that taping each interview of a child who has been abused is not necessary and will only add to the child's confusion. When it comes to the alleged abuse of a child, we should be most concerned with the best interest and safety of the child. The *child* needs to be the priority, and I do not feel that **BILL NO. 188** places the child first.

I understand the concern that disclosures from children about sexual or physical abuse may be affected by the person conducting the interview. However, it is important to understand that children very rarely make up stories about sexual exploitation. Children speak from their own experience and cannot make up information unless they are exposed to it. I think that taping each interview of an abused child is not necessary to obtain the facts. Interviewing techniques of social workers should be addressed during their training, not during an interview where it can cause more harm to an already traumatized child. An abused child should not have to suffer further by invasive videotaping due to a lack of proper training in interviewing skills.

Another reason why I believe that SB 188 will not benefit children is that the initial response to a child's disclosure is vital, and while this Bill may reduce the number of interviews that a child may have to go to, the first response is what is important, and "wait" is not a supportive response. Children who have been abused need to hear that it was not their fault. Children who have been abused need to be believed. Children who have been abused need to hear that it was the right thing to do to talk to someone about what had happened to them. Children who have been abused do not need to hear "wait." It would be damaging to the child to tell them "wait" in the middle of a disclosure, because there are no video cameras present. Often a child has been silent for a long time, kept that way by the threats of the perpetrator and to continue to silence them is wrong.

It is embarrassing to talk about sexual assault. It may have taken the child a very long time to build up the courage to tell someone that she or he trusts and to silence them is to add to the message that they have already received from their perpetrator that what was done to them is a

secret and shameful. A silencing response from a trusted adult could only add to the child's shame, guilt and self-blame.

I oppose SB 188 because one in 4 girls and one in 6 boys will be sexually abused during their childhood. Investigating alleged abuse should protect children while allowing them to tell their story.

In closing, the first words of the Bill's purpose and intent are "In order to protect children...." But I oppose this Bill because SB 188 is not about protecting children, but rather, it is about protecting adults. With proper education and training, social workers, educators and health aides can improve their skills at responding to the child's disclosures in a sensitive manner while collecting all the necessary information. I urge you to provide a safe environment for children by not letting invasive video equipment interfere with finding the truth. Thank you.

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599
Telephone (907) 786-8500

Rick Mystrom, Mayor

Service since 1921

RECEIVED
FEB 15 1996
Ans'd.....

February 9, 1996

Senator Robin Taylor
State of Alaska Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Taylor,

I was present, and wishing to testify, during the Health, Education and Social Services committee meeting today; however, I was not given that opportunity. I am now conveying to you my adamant opposition to the passage of Senate Bill 188.

I am currently Captain in charge of the Anchorage Police Department, Detective Division. I have been a police officer for 20 years. I am also secretary of the Steering Committee for the Southcentral Alaska Chapter of the National Committee to Prevent Child Abuse.

Senate Bill 188 signifies a giant step backward in the protection of children who are sexually and physically abused. This bill ties the hands of law enforcement and will, if passed, prevent the investigation and prosecution of many child abusers.

Currently, detectives of the Anchorage Police Department videotape interviews with children who are victims of abuse. That is, when the children can be brought to the police department for the interview. We have had situations where the child is so traumatized by the abuse that our only option was to interview the child at the hospital, the school, the home, or the church. Forcing a child in under certain circumstances would be nothing less than cruel on our part. And to lose the ability to futher the investigation and presentation for prosecution is unthinkable. If we have an adult victim of a physical or sexual assault we are not videotaping them. We are taking great care to afford them the dignity they deserve and prevent them further trauma and humiliation by the system. Why would we want something less than that for the children?

If there is a specific problem identified I would be in favor of addressing that problem, through training, or supervision, or protocol. I can tell you when a case comes in where a custody battle rages we look very closely at why a

person is reporting. We neither assume it is a false allegation, nor do we assume it is genuine; but we do look at all possible motives. The percentage of false reporting is very low in comparison to the genuine reports of abuse we receive. These cases are identified through an in-depth, skilled and professional investigation.

Whereas, I have no objection to an expedient investigation into allegations of child abuse, I do object to potentially losing the ability to investigate and send forward for prosecution cases where the probable cause exists that a child has been abused - only because a videotaped session was not possible or practical.

Whereas, on the face this bill appears to support the interest of the children, in reality it will cause many great harm. Please do not pass SB 188. I agree with all those who testified in opposition, today. The best approach is the enhancement of training and the establishment of protocol. Thank you.

Sincerely Yours,

Shirley A. Warner

Captain Shirley A. Warner
Detective Division

cc: Deputy Chief Duane Udland, APD
Deputy Commissioner Del Smith, DPS
Dr. Charles Lester, President, Southcentral Alaska Chapter, NCPCA

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 188

Revision Date:
Title: "An Act relating to reports of suspected child abuse or neglect ...."
Sponsor: Sen. Taylor
Requestor: (S) HES

Dept. Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: $ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Public Defender Agency.

Prepared by: John Salemi, Director
Division: Public Defender Agency
Phone: 264-4400
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 1/29/96

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FISCAL NOTES

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 188

Revision Date:
Title: "An Act relating to reports of suspected child abuse or neglect...."
Sponsor: Sen. Taylor
Requestor: (S) HEs

Dept. Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: $ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Office of Public Advocacy.

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy
Phone: 274-1684
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 1/31/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB183

Revision Date:
Title: Videotape/Audiotape Interviews with Children
Sponsor: Senators Taylor, Miller
Requestor: Senate (HES)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: Northern Region
COMPONENT SERIAL NO. 255
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY[illegible]	FY02
PERSONAL SERVICES	615.0	615.0	615.0	615.0	615.0	61
TRAVEL	27.4	3.2	3.2	3.2	3.2	
CONTRACTUAL	511.3	500.2	500.2	500.2	500.2	50
SUPPLIES	32.0	22.2	22.2	22.2	22.2	2
EQUIPMENT	21.1	3.8	3.8	3.8	3.8	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1,206.8	1,144.4	1,144.4	1,144.4	1,144.4	1,14
CAPITAL EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,206.8	1,144.4	1,144.4	1,144.4	1,144.4	1,14
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other (please specify)						
TOTAL	1,206.8	1,144.4	1,144.4	1,144.4	1,144.4	1,144

POSITIONS:

FULL-TIME	15	15	15	15	15	
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: $0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would require that an interview with children alleged to have been abused or neglected be videotaped. DFYS would need to purchase video camera's for every field office, multiple cameras for larger offices such as Fairbanks where generally several interviews are occurring at the same time. DFYS would have to hire fifteen Social Service Associate III's to operate camera's and to support the cataloging and organization of tapes. There would be cleaning, repair, maintenance and replacement cost for the videotape and audiotape recorders. There would be transcription cost assuming two hours of transcription per each report of harm received by DFYS and translation cost assuming 10% of the tapes would require translation from Native languages.

5/1/96

Prepared by: L. Diane Worley
Division: Family & Youth Services
Phone: 465-3191
Date: 01/30/96

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 1/31/96

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[illegible]

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB188

Revision Date:
Title: Videotape/Audiotape Interviews with Children
Sponsor: Senators Taylor, Miller
Requestor: Senate (HES)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: Southcentral Region
COMPONENT SERIAL NO. 254
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	1,189.0	1,189.0	1,189.0	1,189.0	1,189.0	1,189.
TRAVEL	18.6	4.4	4.4	4.4	4.4	4.
CONTRACTUAL	844.1	823.5	823.5	823.5	823.5	823.
SUPPLIES	43.1	36.4	36.4	36.4	36.4	36.
EQUIPMENT	31.6	7.3	7.3	7.3	7.3	7.
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2,126.4	2,060.6	2,060.6	2,060.6	2,060.6	2,060.
CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2,126.4	2,060.6	2,060.6	2,060.6	2,060.6	2,060.
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	2,126.4	2,060.6	2,060.6	2,060.6	2,060.6	2,060.

POSITIONS:

FULL-TIME	29	29	29	29	29	2
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: 60.0

ANALYSIS: (Attach a separate page if necessary)

This bill would require that an interview with children alleged to have been abused or neglected be videotaped. DFYS would need to purchase video camera's for every field office, multiple cameras for larger offices where generally several interviews are occurring at the same time; for example, Anchorage may have four to six interviews proceeding at the same time. DFYS would have to hire 29 Social Service Associate III's to operate camera's and to support the cataloging and organization of tapes. There would be cleaning, repair, maintenance and replacement cost for the videotape and audiotape recorders. There would be transcription cost assuming two hours of transcription per each report of harm received by DFYS and translation cost assuming 10% of the tapes would require translation from Native languages.

1/31/96

Prepared by: L. Diane Worley
Division: Family & Youth Services
Phone: 465-3191
Date: 01/30/96

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 1/31/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB188

Revision Date:
Dept. Affected: Health and Social Services
Title: Videotape/Audiotape Interviews with Children
BRU: Family and Youth Services
Component: Southeastern Region
Sponsor: Senators Taylor, Miller
COMPONENT SERIAL NO. 258
Requestor: Senate (HES)
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	246.0	246.0	246.0	246.0	246.0	246.0
TRAVEL	6.5	2.0	2.0	2.0	2.0	2.0
CONTRACTUAL	185.4	181.8	181.8	181.8	181.8	181.8
SUPPLIES	11.3	9.1	9.1	9.1	9.1	9.1
EQUIPMENT	8.7	1.5	1.5	1.5	1.5	1.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	457.9	440.4	440.4	440.4	440.4	440.4
CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	457.9	440.4	440.4	440.4	440.4	440.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	457.9	440.4	440.4	440.4	440.4	440.4

POSITIONS:

FULL-TIME	6	6	6	6	6	
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: $0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would require that an interview with children alleged to have been abused or neglected be videotaped. DFYS would need to purchase video camera's for every field office and multiple cameras for larger offices where generally several interviews are occurring at the same time. DFYS would have to hire six Social Service Associate III's to operate camera's and to support the cataloging and organization of tapes. There would be cleaning, repair, maintenance and replacement cost for the videotape and audiotape recorders. There would be transcription cost assuming two hours of transcription per each report of harm received by DFYS and translation cost assuming 10% of the tapes would require translation from Native languages.

Prepared by: L. Diane Worley
Division: Family & Youth Services
Phone: 465-3191
Date: 01/30/96

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 1/31/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 188

Revision Date:
Title: "...requiring that...all interviews with children who are alleged to have been abused or neglected be videotaped."
Sponsor: Senator Taylor
Requester: Senate Judiciary Committee

Dept. Affected: Department of Law
BRU: Criminal Division
Component: Criminal Division

COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	16.3	16.3	16.3	16.3	16.3	16.3
TRAVEL	160.8	139.8	139.8	139.8	139.8	139.8
CONTRACTUAL	1.0	1.0	1.0	1.0	1.0	1.0
SUPPLIES	29.5	0.0	0.0	7.4	7.4	7.4
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	207.6	157.1	157.1	164.5	164.5	164.5
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	207.6	157.1	157.1	164.5	164.5	164.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	207.6	157.1	157.1	164.5	164.5	164.5

Estimate of any current year (FY96) cost: $ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 47.17 to provide that upon receiving a report that a child has been abused or neglected, that a government officer (including a school official) or an agent of the government may not investigate the report of harm by interviewing the child concerning the alleged abuse or neglect unless the initial interview and each subsequent interview is videotaped.

Department of Law prosecutors and the department's victim/witness paralegals routinely interview children in cases where child abuse and neglect have been alleged. About 360 of these cases are referred to the department annually, and about 200 cases are accepted for prosecution. Prosecutors conduct a prescreening interview with the children involved in about one-half of the cases that are referred to the department. This amounts to one hour each or approximately 180 hours of interview time.

Of the 200 cases that are accepted, prosecutors and paralegals spend about 2 hours in total interviewing the

Prepared by: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 1/31/96

Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 1/31/96
Agency: Department of Law

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ANALYSIS CONTINUATION:

child victim in each case. This amounts to approximately 400 hours of interview time.

The Department of Law has two concerns regarding the wholesale videotaping of children in child abuse and neglect cases. First, the expense of videotaping is prohibitive. This includes video equipment and operators. Also, in many cases interviews are scheduled in the late afternoon, in early evening hours, or on weekends because of prosecutors' trial calendars, making scheduling and logistics very difficult and expensive.

Second, the use of videotaping is invasive to victims of any age, and particularly to victims of sexual or physical abuse. It is doubtful that any adult victim of these crimes would even consider participating in such a process, if it was ever required. Therefore, we are concerned that parents would not allow their child to participate in a process that requires the child to be repeatedly placed before a video camera to relate what to most people are horrifying, traumatic experiences. If interpreted to require repeated video taping of abused children, we believe the bill would have a dramatic chilling effect on the willingness and the ability of child victims to speak out against their abusers. Furthermore, the bill's requirement for the unlimited use of recording devices, and the invasiveness of such devices, also raises the issue of whether such unlimited use is lawful under Article 1, Section 25 of Alaska's Constitution. Section 25 provides in part: "Crime victims...shall have the following rights...the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process..."

The bill will therefore require an elaborate system of two-way mirrored interview rooms be established throughout the state so that a child is not aware that videotaping is occurring. However, the costs would be significant for the Department of Law, and much higher for other departments and local agencies who do the majority of interviews. The department would have to lease additional space and bear the cost of renovating and staffing each of the state's 12 District Attorney's offices and where, in our largest office, multiple video interview rooms would be necessary.

Based on the foregoing, the department's prosecutors and paralegals will have to conduct 580 hours of interviews at 12 different locations throughout the state each year. This will require the acquisition of 16 cameras, 17 VCRs, plus an additional 13 VCRs to use as duplicators, and 17 video monitors. The department will also need 500 video tapes annually. Last, the department will require outside court reporter services to transcribe video tapes, because the recorded interviews will be discoverable by the defense. Normally, 40 pages of transcription is required for each hour of a recorded interview. The number and length of interviews to be conducted by the Department of Law will be relatively small compared to law enforcement officers and social workers, and their cost for interviews will be much higher than the department's. A summary of the Department of Law's costs is attached.

Personal Services (paralegal overtime)

75% of interviews will take place outside of normal business hours requiring overtime pay for paralegals.

580 hrs x .75 = 435 hrs x $25.03 (salary and benefits) x 1.5 = $16,332

Contractual Services

580	hours audiotape interviews
x 40	pages of transcription per hour
= 23,200	pages
x$3.75	per page court reporter fee
=$87,000	

$52,800 Additional lease cost for 2-way mirrored interview room. Approximately 200 square foot of additional space will be needed at 8 leased facilities where prosecutors are not located in a state-owned building

1,500	one-time building cost for interview room setup
x 14	
= $21,000	

Total Contractual = $160,800 (including $21,000 one-time)

Supplies

500	2 hour videotape
x $2.00	per tape
= $ 1,000	

Equipment

$ 1,000	video camera each
x 16	cameras
= $16,000	

$ 279	video recorder/player each
x 17	recorder/players
= $ 4,743	

$ 279	video tape duplicators each
x 13	duplicators
= $ 3,627	

$ 299	20 inch monitor each
x 17	monitors
= $ 5,083	

Total Equipment = $29,453

FISCAL NOTF

STATE OF ALASKA **BILL NO:** SB188

1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety

Title: Video taping of interviews with abused minors BRU: Alaska State Troopers

Component: Detachments; CIB

Sponsor: Senators Taylor and Miller

Requestor: Senate HESS **COMPONENT SERIAL NO.** 0799; 0830;

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES	6.0	6.0	6.0	6.0	6.0	6.0
EQUIPMENT	43.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	49.0	6.0	6.0	6.0	6.0	6.0
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	49.0	6.0	6.0	6.0	6.0	6.0
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	49.0	6.0	6.0	6.0	6.0	6.0

Estimate of current year (FY 95) impact: $ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

See Attached.

Prepared By: Lt. Dan Lowden Phone 465-5505

Division: Alaska State Troopers Date: January 31, 1996

Approved by Commissioner: _____ Date: 1/31/96

Agency: Ronald L. Otte, Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: SB188

Revision Date: January 31, 1996 Dept. Affected: Public Safety

ANALYSIS CONTINUED:

To have the ability to videotape the interviews as required under this bill the division would need 43 new video camera kits at about $1000.00 each ($43,000.00) and about 1,710 video tapes at 3.50 each ($5,985.00). The video tapes would have to be purchased each year as new cases would be coming in and the used tapes would be in storage as evidence.

Official Business

COMMITTEE: SENATE HEALTH, EDUCATION & SOCIAL SERVICES

DATE: February 28, 1996

SIGN-IN

Subject of meeting: SB 188 VIDEOTAPE INTERVIEW OF ABUSED MINOR

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
√ L. Diane Worley	ACB 4th floor	3191	DFYS	yes
Jayne Andreen	CDV	4352 voice	CDVSA	yes

National Child Welfare Resource Center
for Organizational Improvement
One Post Office Square • P.O. Box 15010 • Portland, Maine 04112
Tel.: 207-780-5810 • Fax: 207-780-5817
Toll Free: 1-800-HELP KID (1-800-435-7543)

Mandatory Videotaping in the Investigation of Child Abuse and Neglect: An Impact Study for the State of Alaska

January, 1996

Prepared by the National Child Welfare Resource Center
for Organizational Improvement
University of Southern Maine

Barbara Sparks, Consultant

Edmund S. Muskie Institute of Public Affairs, University of Southern Maine

Executive Summary

This paper examines benefits and drawbacks of the use of videotechnology in the investigation and prosecution of child abuse and neglect. Selective use of videotaped interviews and depositions has been promoted since the 1970s as a method for protecting child victims and witnesses by reducing the number of times a child must be interviewed and by sparing the child the trauma of testifying in open court. More recently, there has been movement to require the videotaping of all investigative interviews as a mechanism for ensuring accountability of public child welfare agencies. It is in this approach that Alaska's current proposed legislation, H.B. 348, "An Act to Require Taping of All Official Interviews with Children Who Are Alleged to Have Been Abused or Neglected," has its roots.

A. The National Perspective

Currently, no states have legislation that *requires* the videotaping of all investigative interviews with alleged child victims of abuse or neglect. At least three states—New Hampshire, Minnesota, and Ohio—have more limited statutes that require that videotaping occur under specific circumstances and/or for cases involving specific types of abuse.

Numerous states have legislation that *allows* for videotaped depositions or interviews to be admitted as evidence in court in criminal cases. There have been a number of challenges to such statutes under the 6th Amendment Confrontation Clause and the 14th Amendment Due Process Clause. Recent decisions indicate the Supreme Court prefers to allow the use of videotaped depositions or interviews on a case-by-case basis when the court deems that the protection of the child victim or witness outweighs the defendant's right to confrontation. The Supreme Court has also found that videotaping is not necessary to determine the reliability of a child's out-of-court's statements.

Experts disagree on the impact of videotaping on the legal, policy and practice aspects of child abuse investigation. In the legal arena, opponents argue that the use of videotaped statements in court shifts the focus of the trial away from the child's answers and onto the interview's technique; the proceedings may then revolve around the technicalities of the interview and taping process rather than on whether or not abuse actually occurred. Proponents, on the other hand, argue that the use of videotape can support the nonsuggestive nature of the interview by showing the questions asked and the child's responses.

The mandate to videotape all interviews also engenders debate in several areas relating to policy. Most professionals agree that child victims need to be treated differently that adult victims in some respects. However, some argue that it is unfair to require videotaping of child victims when videotaping of

adult victims is not required. They also argue that, ethically, children must be informed when they are being videotaped and that this information may inhibit some children's disclosure of abuse. In addition, they maintain that the mandate to videotape all interviews does not solve the problem it is meant to address—the public's lack of trust in the fairness of the child protection system. This concern, they argue, can be more effectively addressed through better training of child protection workers and strengthening of existing accountability measures.

Proponents, on the other hand, argue that videotaping children's interviews preserves their account of the abuse in their own words, thus allowing more accurate consideration by courts and professionals. They maintain that this is particularly important when legal proceedings stretch on for months or years, and the child changes dramatically during this interval. Proponents also argue that issues of privacy and consent can be adequately addressed by establishing protocols that specify and limit access to the tapes.

Finally, in the area of practice, experts agree that it is important to minimize the intrusiveness of protective intervention into the child's and family's life as well as to ensure the eliciting of accurate information. However, again, experts disagree on the impact of a mandate to videotape all investigative interviews on these concerns. Proponents argue that a well-done videotape can reduce the number of times a child must be interviewed, thus making intervention less traumatic. They also argue that because children's memories are suggestible, it is critical to preserve early accounts on videotape to avoid contamination of the account.

Opponents of mandatory videotaping, on the other hand, argue that the introduction of videocameras, tripods and a camera operator makes interviewing more cumbersome and, thus, more intrusive upon the child and family. They also argue that research indicates that children rarely disclose abuse by presenting a complete, comprehensive account the first time they speak to a professional; instead, children generally go through a process of "rolling disclosure," disclosing pieces of information at various times when they feel safe. Thus, a mandate to videotape all interviews may result in hours of contradictory or ambiguous statements, which could later be used to discredit the child.

One area that nearly all experts agree upon is that a mandate to videotape or audiotape all investigative interviews would produce an enormous and unworkable administrative and fiscal burden for the state. Opponents and proponents alike maintain that the fiscal impact of such a mandate would be "simply prohibitive."

B. Impact of Alaska's Proposed Legislation

An analysis of Alaska's proposed legislation indicates that its sweeping scope leaves it open to challenge in a number of areas. Areas not addressed by the legislation include: intent, definitions of key terms, limitations of scope, access to tapes, consent by child and/or family, admissibility of tapes in court, penalties for failure to comply, and exceptions.

Staff of Alaska's Division of Family and Youth Services (DFYS) can identify both positive and negative aspects of mandatory videotaping; however, they believe that the drawbacks far outweigh the potential benefits. Videotaping of interviews, they believe, may be helpful in that they can document proper interviewing when it occurs, thus relieving the public's concerns about poor technique. It can also serve as a therapeutic tool for families and as a training tool for staff: supervisors could review tapes with their staff as part of ongoing staff development activities.

On the other hand, staff expressed significant concern over the disruptive influence of introducing videotaping or audiotaping equipment during highly emotional moments when a child discloses abuse. They noted that children often disclose abuse at times when they feel safe, such as driving in a car, and that taping would be impossible at those moments. The obtrusiveness of introducing video equipment is particularly a concern, they believe, when they conduct interviews in Native villages, where they strive to be as respectful of the family and the culture as possible.

Staff also expressed concern that the inability to tape an interview or an equipment malfunction may prevent them from taking necessary protective action under the proposed mandate. This would result in children being left in unsafe situations where they might be re-victimized. They also expressed concern that the funds required to buy and maintain equipment, to provide training on its usage, and to catalog and store hundred of thousands of tapes would drain resources that could be better used to serve children and families.

A cost analysis, presented in this paper, estimates that the financial impact of Alaska's proposed legislation would be over $3.5 million per year.

In response to the above, the paper presents the following conclusions:

- A mandate to videotape all investigative interviews with victims of child abuse will contribute neither to protecting Alaska's vulnerable children nor to ensuring fair and accurate fact-finding by Alaska's courts of law.

- A mandate to videotape all investigative interviews is likely to impair services to children and families by draining limited human and fiscal

resources and putting an undue technological and administrative burden upon the State.

- The selective use of videotaped depositions and interviews can be useful in therapeutic situations and to spare children the trauma of in-court testimony and should continue to be considered on a case-by-case basis.

- The issue of trust in the fairness of the system—which seems to underlie the proposed mandate to videotape all interviews—is a valid one and must be addressed through on-going training and community dialogue. The use of videotechnology cannot substitute for the community's trust in the sensitivity, skills and motivation of child protective personnel.

Further, this paper presents the following recommendations:

- *DFYS should take concrete steps to address the issues of trust that underlie the proposed mandate for videotaping.* The agency should build upon and strengthen existing efforts to be an active partner with other community agencies that serve families.

- *DFYS, with the consultation of outside professionals, should evaluate the effectiveness of its existing accountability mechanisms.* While mandatory videotaping has been proposed as a vehicle for encouraging accountability of the child protection system, there are many mechanisms for ensuring accountability that are already in place. They include external bodies, such as the courts and the Office of the Ombudsman, as well as internal quality assurance procedures, including supervisory staffings and federally-mandated administrative review of foster care cases. These mechanisms should be examined and strengthened before introducing a new, cumbersome and untested mandate.

- *DFYS, with the consultation of outside professionals, should examine its policies and practices around the investigation of child abuse and neglect.* Many states are in the process of re-examining their "front end" services—how reports are investigated and how decisions are made—to develop more "family friendly" approaches. To the extent that this legislation has been driven by concerns about the agency's approach to families, it is appropriate to re-evaluate the agency's approach and make changes, if necessary.

- *DFYS should be adequately funded to provide regular, comprehensive training to all staff who work with children and families.* It is critical that the Division examine its initial and ongoing training program for staff, using national standards as a guide, and that it be funded to ensure an adequately trained, professional staff.

I. Introduction

A. A Brief History

In the past several years the increasing accessibility of videotechnology has exerted a dramatic impact upon many areas of our society. Whether this impact is positive or negative, however, is a subject of controversy in many professional fields.

In the field of child welfare, the impetus to use videotechnology to support the investigation and prosecution of child abuse grew out of a growing professional awareness that children were sometimes traumatized by the system that was intended protect them. Since the 1970s, it has been argued that use of carefully conducted, videotaped interviews can reduce system-induced stress on child victims by eliminating the need for them to tell their story over and over again to an array of strangers. The selective use of videotaped statements or depositions in court has also been explored as a technique for freeing children from the stressful experience of testifying in open court.

More recently, use of videotechnology has been proposed as a method for ensuring accountability of child protection agencies. Spurred by concerns about children's suggestibility, proponents have argued that use of videotechnology can assure an accurate record of what children are asked and how they respond. This approach to the use of videotechnology supports mandatory videotaping of interviews as a component of a system of checks and balances designed to protect families from abuse of power by governmental agencies.

It is in the latter approach that Alaska's current proposed legislation, H.B. 348, has its roots. The legislation grew out of concerns raised in 1993 regarding the interviewing of a preschool child who was reported to be the victim of sexual abuse. As a result, the Office of the Ombudsman conducted an extensive investigation into the manner in which the Division of Family and Youth Services (DFYS) investigated the report. The Ombudsman released his findings in June, 1995, including a recommendation that DFYS conduct a feasibility study regarding the videotaping or audiotaping of interviews with alleged victims of child abuse and neglect. The Division agreed to do so.

B. Purpose of this Paper

In response to the Ombudsman's recommendation, this paper will explore the issue of mandatory videotaping of interviews with children who are alleged to be victims of abuse or neglect. It will attempt to provide a balanced discussion of both the benefits and drawbacks of the use of videotape technology in child abuse cases. Specifically, this paper will:

- review the professional literature relating to the use of videotaping from the perspective of law, policy and practice;

- explore the impact of the proposed legislation upon Alaska's children and families, upon DFYS, and upon other professionals;
- examine the fiscal implications of the proposed legislation; and
- provide recommendations related to addressing the issues raised by the proposed legislation.

II. Review of the Literature

A. Legal Considerations

1. Statutes Regarding the Use of Videotape

Statutory authority is not necessary to videotape a statement made by an alleged victim of child abuse or neglect. However, either *to require* that statements be videotaped or *to admit* such statements as evidence in court does require legislative action.

According to the National Center for Prosecution of Child Abuse, no states currently have enacted legislation mandating the videotaping of all investigative interviews with victims of child abuse. [Avery, 1995] However, at least three states have legislation that addresses this issue in a more limited scope. A New Hampshire statute mandates that when caseworkers and law enforcement personnel "enter any public place, including but not limited to schools and child care agencies, for the purpose of conducting an interview with a child, without the consent or notification of the parents...every effort shall be made to videotape the interview with the child." The New Hampshire statute further requires, "If the interview cannot be videotaped, it shall be recorded." (New Hampshire Revised Statutes Annotated, 169-C:38.)

In 1994 the State of Minnesota passed broad legislation that addressed the investigation of child abuse reports (Chapter 187, S.F. No. 342). As part of this legislation, local child welfare agencies were required "whenever possible":

- to audiotape all interviews with witnesses and collateral sources; and
- in cases of alleged sexual abuse, to videotape each interview with the alleged victim and child witnesses.

The Minnesota legislation is currently being challenged, and it is expected that a bill to repeal it will be considered by the Legislature in its next session. [Cook, 1995]

Finally, the State of Ohio is currently beginning implementation of a pilot project in one county that would mandate the videotaping of all interviews with alleged child victims of sexual abuse. The American Bar Association is providing extensive training for both county social services personnel and members of the judiciary. It is too early to determine the impact of the pilot project. [Baker, 1995]

In addition, at least four other states—Alaska, California, Colorado, and Washington—have considered similar legislation in the past several years. In each of these instances, the proposed legislation was unsuccessful.

While no states have legislation that requires videotaping in every case, many states do have legislation that allows videotapes to be entered into evidence in court. Because videotapes are generally considered to be hearsay evidence, they—like other out-of-court statements—are inadmissible in court unless statutory authority outlines conditions for their admissibility. Statutes addressing the use of videotapes in court generally fall into two categories:

- those allowing for the use of videotaped depositions or testimony, and
- those allowing for the use of videotaped interviews or statements.

As of December 31, 1994, 35 states had enacted legislation which specifies criteria for the admissibility of videotaped depositions or testimony in criminal child abuse cases. [National Center for Prosecution of Child Abuse, 1995a] However, significant variation exists among these state laws.

Thirteen states specifically allow for the videotaping of a child's deposition. (When depositions are videotaped, the child victim is under oath and attorneys conduct the questioning, generally in an out-of-court setting.) Other state statutes allow for the videotaping of testimony presented at a preliminary hearing for use at a later hearing; still others specify that testimony may be taped to present to the grand jury.

Nineteen states require that the state must make a showing as to the need for use of videotaped rather than live testimony. These statutes generally require a finding that the child is "medically or otherwise unavailable" to testify and/or that testifying will result in emotional harm to the child.

Finally, many state statutes specify the whereabouts of the defendant while the child victim is testifying: In 13 states, statutes specify that the defendant must be able to see and hear the child and communicate with his/her attorney while the child testifies, but that the child should not be able to see and hear the defendant; in four other states, statutes require a finding of harm to the child before he/she is allowed to testify without seeing or hearing the defendant. [Toth, Whalen and Dinsmore,1989]

In contrast to depositions and testimony, videotaped interviews or statements generally are not conducted under oath and are often conducted in a less formal manner than depositions. As a result, their admissibility in court is often more limited. As of December 31, 1994, only 16 states had enacted statutes allowing a child's videotaped interview or statement to be entered into evidence in a criminal procedure. [National Center for Prosecution of Child Abuse, 1995b] As above, these statutes vary greatly: for example, Arizona's statute applies to all criminal offenses committed against or witnessed by a minor under age 15; Rhode Island's statute applies only to grand jury proceedings concerning sexual assault on a child age 13 or under.

Statutes that allow for the use of videotaped interviews or statements as evidence in court generally contain the following provisions:

- No attorney for either party shall be present when the statement is made.
- The recording must be visual and aural and made on videotape, film or by other electronic means.
- The equipment must be capable of making accurate recordings, the operator of the equipment, competent, and the recording, accurate and unaltered.
- The statement must not be made in response to leading questions.
- Every voice on the recording must be identified.
- The interviewer must be present at the proceeding and available to testify or to be cross-examined by either party.
- The defendant or his/her attorney must be given the opportunity to view the recording before it is offered into evidence.
- The child must be available to testify. [Toth, Whalen and Dinsmore, 1989]

The State of Alaska currently has no statutes that specifically address the use of either videotaped depositions of videotaped statements in court. In the absence of specific legislation, videotapes may be considered as hearsay under the Rules of Evidence and admitted in court only if the judge determines that they meet the same standards as other hearsay evidence.

2. Constitutional Questions Concerning Use of Videotapes in Court

Although many states have enacted laws allowing for the use of videotape in criminal proceedings, the constitutionality of such laws has been—and continues to be—actively challenged. Generally, challenges to statutes allowing for the use of videotape have raised questions regarding the 6th and 14th Amendment rights of

defendants: The 6th Amendment states that a person accused of a crime shall have the right "to be confronted with the witnesses against him;" the 14th Amendment guarantees that citizens shall not be deprived of life, liberty or property without due process of law.

Challenges under the 6th Amendment Confrontation Clause have focused not only on videotaping, but also on a range of other techniques that block face-to-face testimony. These include the use of closed circuit television and the use of one-way screens to shield victims from defendants. Case law is evolving quickly in this area, and a full discussion of all relevant cases is beyond the scope of this paper. However, the following cases illustrate some of the recent decisions that may have bearing on the use videotape technology in the prosecution of child abuse cases:

- *Coy v. Iowa:* In this 1988 case, the U.S. Supreme Court considered the case of an Iowa man accused of sexually assaulting two thirteen-year-old girls. During the trial, the girls testified from behind a one-way screen, which allowed the defendant to see and hear the girls but did not allow the victims to see him. Coy was convicted, but argued that his rights under the Confrontation Clause had been violated because he could not confront his accusers. The Supreme Court agreed that use of the screen was unconstitutional, and the conviction was overturned.

  Writing for the majority, Justice Scalia stated, "We have never doubted...that the Confrontation Clause guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact." This argument would appear to bring into question the use of either videotaped interviews or depositions at trial.

  However, observers note that the court left some room for further consideration of the issue. In his opinion, Justice Scalia added that, "We leave for another day...the question whether any exceptions exist."[*Coy v. Iowa*, 56 USLW 4931, (US, June 29, 1983), cited in Appelbaum, 1989]

  Similarly, in her concurring opinion, Justice O'Connor notes,

  > "...[N]othing in today's decision necessarily dooms such efforts by state legislatures to protect child witnesses...I would permit use of a particular trial procedure that called for something other than face-to-face confrontation if that procedure was necessary to further an important public policy. The protection of child witnesses is, in my view...just such a policy..."[*Coy v. Iowa*, 56 USLW 4931 (US, June 29, 1988), cited in Toth, Whalen and Dinsmore, 1989]

- *Maryland v. Craig*: In this case, a Maryland day care operator was convicted of sexually abusing a six-year-old child based upon the testimony presented by four young children via closed-circuit television. The trial judge allowed the

testimony after the children's therapists testified that face-to-face confrontation with the defendant would be so traumatic for the children that it would render them unable to communicate. The Maryland Court of Appeals overturned the conviction, based in part upon *Coy*. The court stated that the use of closed-circuit television violated the defendant's right to face-to-face confrontation. [Lipez, 1990]

In its 1990 decision, the U.S. Supreme Court upheld the use of closed-circuit television in lieu of face-to-face testimony. Writing for the majority, Justice O'Connor stated, "We have never insisted on an actual face-to-face encounter at trial in every instance in which testimony is admitted against a defendant." However, she cautioned, "That the face-to-face confrontation requirement is not absolute does not, of course, mean that it may easily be dispensed with, only where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured."[*Maryland v. Craig*, cited in Rawlings, 1991]

- *Idaho v. Wright*: In this 1990 case, the Supreme Court directly addressed the question of reliability of videotaped statements made by child victims of sexual abuse. In *Wright* the Idaho Supreme Court ruled that a child's statement to her pediatrician was unreliable and, therefore, inadmissible, for three reasons:

  (1) the interview was not videotaped,

  (2) the doctor asked leading questions, and

  (3) the doctor was aware the child may have been sexually abused.

According to an *amicus* brief submitted by the American Professional Society on the Abuse of Children (APSAC) and others, the Idaho ruling would "establish [these factors] as virtual litmus tests of reliability." [APSAC, 1989]

In reviewing *Wright*, the U.S. Supreme Court underscored the need for "particularized guarantees of trustworthiness" when admitting out-of-court statements in child abuse cases. However, the Court rejected the Idaho Court's contention that videotaping is, in fact, a prerequisite for establishing trustworthiness.

Writing for the majority, Justice O'Connor stated:

> "...we reject the apparently dispositive weight placed by [the Idaho Supreme] court on the lack of procedural safeguards at the interview. Out-of-court statements made by children regarding sexual abuse arise in a wide variety of circumstances, and we do not believe the Constitution imposes a fixed set of procedural prerequisites to the

> admission of such statements at trial. The procedural requirements identified by the [Idaho Supreme] court... to the extent regarded as conditions precedent to the admission of child hearsay statements in child sexual abuse cases, may in many instances be inappropriate or unnecessary to a determination whether a given statement is sufficiently trustworthy for Confrontation Clause purposes...We, therefore, decline to endorse a mechanical test for determining 'particularized guarantees of trustworthiness' under the Clause." [*Idaho v. Wright*, 110 Supreme Court 3139 (1990)]

Thus, it would appear that the preference of the Supreme Court is to allow the use of videotaped interviews in court on a case-by-case basis when the need to protect a child victim outweighs the defendant's right to face-to-face confrontation. However, the Court has also ruled that while videotaping may be *allowable* under certain circumstances it is not a *necessary* prerequisite for determining a child's statement to be reliable. It is equally important to note that the Constitutional status of state statutes that allow for the use of videotapes in court is still a volatile issue, and it is likely Supreme Court will continue to address this issue in the future.

It should be noted that the above-mentioned case law has developed from and applies to *criminal* cases only. Many child abuse cases, however, are tried in civil court, which may be less formal that criminal court. It is generally held that the 6th Amendment Confrontation Clause *does not* apply to civil proceedings, but the 14th Amendment Due Process Clause *does* apply. However, some judges have interpreted "Due Process" to include the right to confrontation—so the status of the use of videotaped interviews in civil court is, at present, unclear. [Baker, 1995]

3. Impact of Videotaped Interviews on Court Proceedings

Notwithstanding the Constitutional questions surrounding the use of videotaped statements in court, a variety of concerns exist regarding the impact such statements have upon the nature of the court process. Three main arguments arise; these are summarized below:

(1) The use of videotaped statements in court shifts the focus of the trial away from the child's answers and onto the interviewer's questions and the videotaping process. Many prosecutors and clinicians believe that when videotaped statements are used, the focus of the trial changes dramatically. Rather than focus on fact-finding, attorneys argue the merits, or lack thereof, of the videotape. [Berliner, 1992; Bulkely, 1992; Hindman, 1992; Ratterman, 1992; Stern, 1992c; Toth, 1992]

For example, while leading questions are clearly not best practice, experts agree that in some cases "when young children fail to respond to generic, open-ended questions, more directive questioning may be necessary..." [APSAC, 1989] The use of a leading question, however, may enable the defense to disallow or discredit an

entire videotape. In this manner, other valuable information contained in the tape may be lost.

Tapes may also be discredited for other reasons. In their paper, "How to Attack Video Evidence in the Trial of a Family Law Case," McCurley and Fuller (1985) suggest that the defense attorney discredit videotaped evidence by questioning the competence of the social worker conducting the interview. They state that this questioning should begin by addressing:

- the educational and employment background of the worker conducting the interview;
- the worker's training in the use of video equipment and the qualifications of the person who trained the worker;
- the worker's training in use of anatomically correct dolls and the qualifications of the person who trained worker; and
- the worker's expertise in conducting interviews and qualifications of the worker's trainer in this area.

The authors also suggest that defense attorneys view videotapes to determine:

- whether the interviewer nodded his/her head in a manner which could lead the child to an answer,
- whether the interviewer was off camera at any time (leaving open the possibility that the child was coached),
- whether more than one video was made, and
- to what extent any off camera interviewing was done. [McCurley and Fuller, 1985]

Thus, some argue, the use of this technology in court opens up a range of discussion which may have little relationship to the task of accurate fact-finding. According to Hindman (1992), "My experience nationally is there is much more attention placed on the interviewer's technique than on what children say on the videos."

On the other hand, proponents of videotaping argue that..."This criticism...seems to have as its premise that without videotaping, the interviewer will be free from attack." Rather, Stephenson writes, the interviewer who must report on a conversation with a child which took place weeks or months ago, using only hand-written notes or a summary report, is at a disadvantage when questioned in court. She concludes, "The videotape can speak for itself, in essence, and is the best evidence of the nonsuggestive nature of the interview." [Stephenson, 1992b]

(2) The use of videotape can unfairly influence a judge and jury. Like all media, videotape can be used to distort reality, either by design or by accident. The Supreme Court of Colorado addressed this issue in *People v. Newbrough.* (803 P.2d 155, 1990) Here the Court reversed the conviction of a woman accused of sexually abusing a six year old child, based on a finding that the trial court had improperly admitted into evidence a videotaped interview with the child conducted by a therapist. In reversing *Newbrough,* the court indicated significant concerns about the impact of videotaped interviews:

> "A videotaped interview of a child victim is undoubtedly more powerful, and thus potentially more prejudicial, than testimony of a witness about what the child said...Without the proper safeguards, a videotaped interview can also be used to present slanted or distorted testimony...Camera angles and lighting can affect the jurors' impressions of a witness' demeanor, and the use of videotape or closed-circuit television may enhance the credibility of a witness..." [*People v. Newbrough* (803 P.2d 155, 1990)]

Proponents, on the other hand, argue that videotaped interviews with child victims were never meant to be presented as the sole disclosure at trial. Rather, they must be presented along with information regarding other spontaneous declarations of the child to teachers, parents, friends, physicians and others. [Stephenson, 1992b] Further, they argue, a videotaped interview, conducted by a supportive individual in an informal atmosphere, may elicit a more complete account of the child's victimization than could be presented by a young child in a formal court hearing. [Bernstein and Claman, 1986]

(3) Use of videotape can increase the number of guilty pleas and decrease the need for trials. Some proponents argue that confronting a perpetrator with a compelling videotape will increase the likelihood of his/her entering a guilty plea, thus reducing the need to go to trial. Bernstein and Claman (1986) write:

> "When a defendant has committed an offense and only the child is a witness, viewing the tape may encourage a confession or ease the defendant toward a plea bargain. The evidence on the tape is permanent and potentially devastating. The child can neither forget, nor can he or she be intimidated or influenced. A plea of guilty might then be the common sense approach for the defendant."

However, opponents note that there are no published studies which document an increase in the number of pleas. Stern (1992c) concludes, "There is as yet an insufficient number of cases where a guilty plea was obtained only through a videotaped statement to justify routine videotaping of all investigative interviews."

B. Policy Considerations

In addition to legal considerations, the mandatory videotaping of investigative interviews in child abuse cases also raises a number of difficult social policy issues. Three main questions arise:

- To what extent should child victims of violent crime be treated differently than adult victims of violent crime?
- To what extent does mandatory videotaping impinge upon the child's right to privacy?
- To what extent does mandatory videotaping address the underlying issues of trust and fairness in the system?

1. Differential Treatment of Child Victims

As discussed above, the national movement to allow the use of videotaped interviews and depositions in child abuse cases was predicated upon the belief that investigative and court processes are particularly stressful for children and that children, accordingly, need special protections. Colby and Colby (1987) write:

> "The use and admissibility of videotaped interviews in civil and criminal court cases marks a radical and progressive step to accommodate the needs of children in the criminal justice system. A number of child welfare advocates charge that traditional investigative and court processes add to the child's psychological scars, which Conte refers to as 'system-induced trauma'...Videotaped testimony serves as a positive mechanism protecting the child from these system abuses."

While advocates have argued—and courts have upheld—that child victims need special consideration, opinions differ on whether these special considerations should include videotaping of all investigative interviews. Proponents argue that videotaping supports the child's credibility:

> "A willingness to videotape is a recognition that we find credible the complete, unaltered account of the child. Children are different than adults. Children have their own special, unique vocabulary when describing incidents of molestation. The metaphors and analogies of children are unlike those of adults, and it is imperative that they be reported accurately. Further, unlike with adults, in the several months or years between initial disclosure and trial, tremendous developmental changes can occur with the child. It is extremely helpful for the jury to see and hear the child, through videotape, closer in time to the disclosure and closer in time to the abuse." [Stephenson, 1992b]

Opponents argue that it is unfair to require videotaping of all interviews with child victims when there is no similar requirement to videotape adult victims. Such requirements, they believe, are discriminatory in that they assume that child victims are inherently unreliable. Stern (1992c) writes, "It is inappropriate to create a separate class of citizens that law enforcement can talk with only if a video camera is on."

Similarly, Toth (1992) states:

> "We treat child victims differently than adults. There's an implicit suggestion that children are so unreliable that interviewers will plant ideas in their head to get them to believe they were abused..."

Hindman (1992) concurs, "I think we should mandate videotaping of all children right after we mandate videotaping of all adults."

2. Privacy and Consent Issues

Mandatory videotaping of interviews with child victims also raises issues regarding the child's right to privacy and the issue of consent. Among these questions are:

(a) Must the child be informed that he/she is to be videotaped? Many practitioners agree that, ethically, children must be informed that they are being taped. [Burt, 1992; Ratterman, 1992; Seitz; 1992] Ratterman notes that legally the child's right to privacy is a "gray area," but cautions that legislation which does not address the issue of informing the child raises serious privacy rights concerns and would, most likely, be challenged.

(b) What happens if the child refuses to be videotaped or a parent refuses permission to videotape his or her child? What if a camera malfunctions? Ratterman and Burt also note that sound legislation requiring videotaping must address the sticky issue of consent: Can a child refuse to be videotaped or can a child be videotaped over a parent's objection? If so, under what circumstances? What is the status of information obtained in interviews that are not taped? Would there be a consequence for not videotaping interviews? If so, what?

Further, some experts argue that a requirement to videotape all interviews might result in dismissal of charges on technical grounds when there is an otherwise sound case. Addressing this issue, Stern (1992b) notes:

> "Surely, a videotape camera will sometimes malfunction...Sometimes, voices will be too soft and not audible on tape. Sometimes, the camera will be completely out of focus or shoot blackness. Sometimes, a tape will be accidentally erased or lost. The risk of dismissal of charges if any of these occurs is too great a risk to warrant routine videotaping."

(c) Who will have access to the tapes and how will confidentiality be assured? The creation of videotapes presents several issues related to confidentiality: Who will have access to the tapes and under what circumstances? How will they be stored? For how long will they be retained?

Proponents of videotaping argue that procedures can be established to ensure the security of the tapes. In San Diego County, California, for example, a protective order must be signed by a judge before a copy of a videotape may be released to an attorney representing the perpetrator or family members. [Stephenson, 1992b] Other states, such as Texas and Tennessee, have also established procedures to ensure the security of videotapes. [Colby and Colby, 1987; Wilson, 1992]

Some authors note that it is exceedingly difficult to ensure that videotapes do not wind up in the wrong hands. In its *amicus* brief to the Supreme Court, APSAC (1989) asserts,

> "In some cases, highly sensitive tapes of children have found their way onto television news programs, to the embarrassment of children and their families. Systems for protecting confidential videotapes have not been perfected."

A related question concerns who should have access to the tapes. In most states defense attorneys are allowed to view videotaped statements prior to court. However, many questions remain regarding who else should have access: For example, should the alleged abuser, non-abusing parents and expert witnesses have access to them? If so, must the child be so informed? What if this knowledge inhibits the child from making a disclosure?

3. Issues of Trust and Fairness

According to Berliner (1992), the central issue underlying efforts to require mandatory videotaping of interviews is the issue of citizens' trust in the fairness of the child welfare and law enforcement systems. The issue, observes Berliner, is a valid one—nationally, one can document cases in which parents' voices have not been heard and in which rights of the accused have not been respected. In states in which mandatory videotaping has been proposed, she believes, it has been put forward as a solution to the problem of perceived system bias against alleged perpetrators.

Before establishing a requirement for mandatory videotaping, Berliner believes, states must consider whether videotaping will solve the problem it is meant to address. She asserts that it will not; the answer, instead, lies in "better training for child protection workers and efforts to increase public confidence in their motives." She concludes, "Mandatory videotaping will not make the situation better. It is simply bad social policy." [Berliner, 1992]

While both supporters and opponents of videotaping agree that the requirement to videotape all interviews will not solve the problem of lack of trust in the system, perceptions differ on its impact on the more specific problem of poor or misleading interviews.

On this issue, Stephenson (1992b) writes:

> "If in your jurisdiction you have interviewers who are inarticulate, overbearing, intimidating, manipulative or insensitive, then I suggest you have the courage to do something about that. Get rid of them or stop using them. Please remember, though, that as prosecutors we cannot put blinders on and pretend that because they are not videotaped, the bad interviews are not happening. Videotaping can be your best tool in ensuring consistently skillful interviews."

On the other hand, Stern (1992c) contends:

> "Perhaps the most significant disadvantage to videotaping is that it does not fix any of the problems of bad interviewing...Poor, unprofessional interviewing of children needs to be addressed and corrected. Videotaping does not serve that function. If all the money that is poured into the purchase of video cameras, tapes, storage facilities, security of the tapes, and so forth was used instead to hire and properly train professional interviewers of children, we would accomplish more in terms of enhancing the quality of interviews than videotaping ever could."

C. Practice Considerations

Finally, in evaluating the mandatory videotaping of interviews with victims of child abuse, one must evaluate several practice considerations. These issues can generally be broken down into arguments relating to:

- minimizing intrusiveness into the child's life,
- eliciting and preserving accurate information concerning the abuse, and
- operational and logistical issues.

1. Minimizing Intrusiveness into the Child's Life

Both proponents and opponents of videotaping agree that child victims should not be re-victimized by the system that is designed to protect them. Accordingly, supporters of videotaping argue that the use of videotape can save an abused child from the need to tell his or her story repeatedly to a variety of strangers. Practitioners agree that a well-done videotape can be viewed by attorneys, social workers, law enforcement, and expert witnesses, all of whom would otherwise want

to interview the child. [Pense, 1992; Stephenson, 1992b; Wilson, 1992] Similarly, others argue that by showing a videotape in court, the child is freed from the stress of testifying in person and is less likely to feel personally responsible for the offender's punishment. [Bernstein and Claman, 1986]

On the other hand, Berliner (1992) argues that videotaping does not necessarily decrease the number of times a child is interviewed and that introducing videotaping equipment makes the investigative process more stressful for the child. Stern (1992) writes,

> "Place a microphone in front of an adult and ask a nonpersonal question and the adult is likely to lose some of his or her composure, become stiff and speak with more caution and hesitancy. Then ask the adult to describe, in detail, his or her last sexual encounter. Envision the response that you are likely to obtain. Yet videotape advocates seek a relaxed, fluid, and complete disclosure by a child being asked invasive and traumatic questions by a stranger before microphone and camera."

Ratterman (1992) and Sorensen (1992) further note that in some cases videotaping has been part of the child's abuse. In these instances, seeing a social worker walk in with video camera in hand may further traumatize the child and make disclosure more difficult, if not impossible. In Sorensen and Snow's study of children who had disclosed sexual abuse [Sorensen and Snow,1991], videotaping was cited fourth on a list of seven reasons why children in the study recanted their initial disclosures of sexual abuse.

2. Eliciting and Preserving Accurate Information

A second set of practice concerns center around the eliciting and preserving of accurate information about the child's abuse. Proponents of videotaping argue that the memory of a child victim is highly suggestible. Therefore, videotaping is necessary in order to preserve the integrity of the child's initial statements.

Weissman (1991) writes:

> "Leading/misleading questions may impart information that becomes incorporated into memory which can remain permanently altered. The accuracy of a child's account and the validity of a child's allegations can thus be irreparably compromised...In order to safeguard details of the initial interviews and examinations, they should be memorialized through means of audio or videotape recording. Doing so potentially limits the need for multiple and repeated examinations, which can...contaminate the data."

In its *amicus* brief, however, APSAC (1989) reviews a number of studies on suggestibility and comes to a different conclusion:

> "Overall, studies have not converged on a simple relation between age and suggestibility. It is clear, however, that children are not always more suggestible than adults. When and if a person (child or adult) is suggestible depends on cognitive, social, emotional and situational factors such as level of interest or salience of an event."

Sorensen and Snow's findings further weaken the argument for mandatory videotaping of a child's early statements about his/her abuse. Sorensen and Snow studied the cases of 116 children in which findings of sexual abuse were confirmed either by a confession, a conviction in criminal court, or medical evidence highly consistent with sexual abuse. They found that in 79% of the cases, children moved through a process of denial and tentative disclosure before they reached active disclosure—the point at which they could give a "detailed, coherent, first-person account of the abuse."

Furthermore, only 11% of the children in the Sorensen and Snow study were in active disclosure at the time of their initial interview. Thus, a mandate to videotape all interviews would, in the vast majority of cases, produce hours of tapes of children who either deny or are tentative, ambiguous or "fuzzy" regarding the details of their abuse. These tapes could then be used to discredit later tapes of the same children in active disclosure.

According to Sorensen and Snow,

> "...[V]irtually all investigative protocols are designed to respond to only those children in active disclosure. Issues of child suggestibility, contamination and false allegations have increasingly restricted the amount of support that clinical, protective, and investigative systems have made available to assist children through the disclosure process...
>
> "An illustration of this concern is the videotaping of child disclosures during the initial clinical or investigative interviews. Disclosure as a process suggests that denial and tentative features may be prominent on early interview tapes, which may then serve to impeach a child who is later capable of providing credible court testimony. An acquittal of the defendant may place the child again at risk but with fewer resources."

3. Operational and logistical issues

The one point that virtually all of the experts contacted for this study agree upon is that the mandate to videotape all investigative interviews would place an enormous and unworkable administrative and fiscal burden on the agency. Because the impact of videotaped interviews is potentially so great—they may be used as a tool to substantiate or invalidate a report of child abuse or, in court, to determine guilt or innocence in a criminal matter—tapes must consistently be of the highest quality. For this reason, sending a social worker to the field with a hand-

held camera and experience derived from filming his or her own home videos is woefully inappropriate: an inaudible or out-of-focus tape or a malfunctioning camera could have life-altering impact upon a child or family.

Therefore, supporters and opponents of videotaping alike [Berliner, 1992; Burt, 1992; New York Public Welfare Association, 1991; Pence, 1992; Ratterman, 1992; Stephenson, 1992; Toth, 1992; Wilson, 1992] were emphatic that such a mandate would require, at a minimum:

- that all social workers carry high quality videocameras (as well as back-up audio recorders, if videotaping is impossible for any reason) and be trained in their use for evidence-gathering purposes;

- that all interviews be conducted by a team of two workers (since one would always be required to operate the camera), thereby significantly decreasing the number of cases that could be seen or increasing the number of staff necessary to do the job; and

- that the agency develop and maintain a secure system for storing, cataloging, and monitoring the use of hundreds of thousands of videotapes.

The majority of experts interviewed also expressed concerns that such a mandate would result in resources being drawn away from services to children and families and spent, instead, on cameras, tapes and storage systems. Similarly, some worried that unavailability of equipment might delay response to children and families in some cases—workers might be unable to go out for lack of a camera or a colleague to operate it. [Berliner, 1992]

Since no states currently have such extensive legislation in place, it is impossible to obtain comparative data on cost. However, some available data from other states begin to hint at the potential cost to the State:

- In the State of Washington, which defeated a proposal to mandate videotaping of investigative interviews, the Snohomish County Prosecutor's Office estimated that approximately 42,000 investigative interviews were conducted with abused children in that county alone during the proceeding year. The potential cost of taping these interviews was an important factor in the defeat of the legislation. [Stern, 1992d; Berliner, 1992]

- In San Diego County, California, the Center for Child Protection is responsible for the videotaping of interviews with child victims. In 1991 the Center received approximately 100,000 referrals from social services and law enforcement. Due to limited human and fiscal resources, the Center screens referrals carefully and identified only 600 cases that were appropriate for conducting videotaped interviews. These interviews were conducted in a

> highly controlled environment, using specially trained interviewers. The cost to taxpayers was approximately $300 per interview. According to the San Diego County District Attorney's Office, the cost of taping *all* investigative interviews would be "simply prohibitive." [Stephenson, 1992c]

While these figures are not, of course, directly applicable to Alaska, they begin to illustrate the implications of a requirement to videotape all investigative interviews. In reflecting on the financial and administrative burden of a mandate to videotape all investigative interviews, one state child welfare director concluded, "The disadvantages of such a proposal far outweigh the advantages. I'm afraid (the mandate) would take on an overwhelming life of its own." [Wilson, 1992]

Costs specific to Alaska's proposed legislation are discussed below. (See Cost Analysis)

III. Impact Analysis

From the review of the literature presented above, it is clear that no overriding professional consensus exists regarding the potential benefits and/or drawbacks of videotaping interviews in cases of child abuse and neglect. For this reason, it is important to examine specifically how the proposed statute may affect Alaska's children and families as well as how it will impact upon DFYS and other professionals who service children and families. Therefore, this section will:

- analyze the contents of the proposed legislation;
- examine its likely impact upon children and families;
- examine its likely impact upon DFYS and other professionals.

A. The Proposed Legislation: An Analysis

H.B. 348, "An Act Requiring Taping of All Official Interviews with Children Who Are Alleged to Have Been Abused or Neglected," states that:

> "Upon receiving a report that a child has been abused or neglected, an officer, employee, or agent of the department, a local government health or social services agency, a law enforcement agency, or another state or local government agency or unit may not interview the child concerning the alleged abuse or neglect unless the initial interview and each subsequent interview is videotaped. If videotaping of the initial or a subsequent interview is impractical, the interview shall be audiotaped."

The bill is virtually the same as H.B. 350, defeated during the 1994 legislative session, except for the reference to audiotaping.

The most salient feature of H.B. 348 is its comprehensive scope. In contrast to the more limited statutes cited above, H.B. 348 applies to *all initial and subsequent* interviews with children who are alleged to be victims of abuse or neglect. It also applies not only to interviews conducted by employees of the Division of Family and Youth Services, but also to interviews conducted by a broad spectrum of other professionals who work with children—law enforcement, employees of local health and social services agencies, or other state or local government agencies.

While H.B. 348 is sweeping in scope, it is does not address many of the critical issues necessary to enact sound public policy. Among these are:

- Purpose: While a statement of intent is not necessary to ensure effective legislation, it is often helpful in making interpretations that are consistent with the Legislature's wishes. Although one may presume that enhancing agency accountability is a key component to legislation mandating videotaping, H.B. 348 is silent on its intent: for what purpose does the bill require the taping of interviews? It is unclear from the legislation how the Legislature wishes the tapes to be used and, if accountability underlies the legislation, who is charged with making the determination regarding the appropriateness of interviews and the reliability of the children who are taped.

- Key definitions: The legislation does not define at least two critical terms that will greatly affect implementation: "report" and "interview." One may interpret the term "report" to mean a formal "report of harm" that is made to DFYS through its normal intake procedures—of which there were approximately 15,700 during FY 1995. Alternately, a "report" may be interpreted to mean any piece of information alleging child maltreatment that is received by a professional cited in the statute—for example, a teacher, physician or law enforcement officer. This interpretation would significantly increase the number of situations requiring videotaping.

  The term "interview" is equally vague. On the one hand, it may be interpreted to mean a formal, structured conversation between an alleged child victim and a professional (often called "disclosure interviews" in the literature); on the other hand, it may mean any conversation that occurs during the course of a child abuse investigation (often called "brief field contacts" in the literature). Taken further, it can also be applied to spontaneous disclosures made to teachers, physicians or other professionals in a variety of situations as well as to telephone conversations between children and professionals.

- Limitations on scope: The legislation refers to "all initial and subsequent interviews" with children who are alleged to be victims of

abuse or neglect; however, it does not specify when the mandate to videotape *ends*. For example, does it apply only to interviews during the investigative phase of the case or throughout the life of the case? What is the status of further disclosures of abuse that may occur after a child has been adjudicated and is receiving ongoing services from the Division?

- Access: The legislation does not specify who may see the tapes and under what circumstances, nor does it discuss whether court orders are necessary to release the tapes.

- Consent: The legislation does not specify whether children must give consent to be taped nor whether parents must give consent to have their children taped. It also does not address the Division's options if consent is withheld.

- Admissibility: The legislation does not address the circumstances under which videotaped interviews may be admissible in court.

- Failure to comply: The legislation does not address the effect of failure to comply with the requirement. For example, can the Division take protective action based upon an interview that was not taped? If so, what is the consequence? Does a disclosure made when a tape is not running or when a camera malfunctions "count"?

- Exceptions: The legislation does not address emergency situations or any other conditions in which the mandate does not apply.

It is informative to contrast H.B. 348 with the model Child Witness Code developed by McGeorge School of Law Professor John Myers. The model Code is a comprehensive statute intended to protect the interests of children in the legal system while also ensuring fairness to individuals alleged to have maltreated them. While the Code strongly supports the use of videotape in the investigation and prosecution of child abuse, it also contains numerous protections that are absent in Alaska's proposed legislation. For example, the model Code addresses:

- who may have access to video or audiotapes,

- the requirement of a protective court order to access the tapes;

- a penalty for unauthorized release,

- when and how tapes may be destroyed,

- multidisciplinary interviewing and training of interviewers,

- exceptions for emergency situations,
- the distinction between "in-depth investigative interviews" and "brief field contacts,"
- the use of tapes in determination of the reliability of a child's statements, and
- the status of interviews that are not taped.

B. Impact of the Proposed Legislation on Children and Families

(1) Current status

Currently, the use of videotape and/or audiotape in the investigation of child abuse or neglect is not addressed in either law or policy in Alaska. According to DFYS staff, both occur on a limited basis. In Anchorage, for example, law enforcement and DFYS may jointly videotape selected disclosure interviews. In Kenai and Petersberg, DFYS staff report that interviews may be audiotaped jointly with law enforcement and transcribed for use in preparation for Children in Need of Aid proceedings. Military investigators may also videotape interviews in cases that fall within their jurisdiction.

(2) Positive Aspects

In a recent interview, DFYS staff representing field offices across the state identified both positive and negative aspects of a mandate to videotape or audiotape all interviews on the children and families they serve. First, they noted, to the extent that poor interviewing exists—either within the Division or among other agencies who are empowered to investigate child abuse—videotaping or audiotaping can document it. Unanimously, staff interviewed agreed that investigations should be free from leading questions and interviewer bias. While staff felt that most interviews are conducted in accordance with high professional standards, they also agreed that if *any* interviews are not conducted in this manner, it is important for the agency to be aware of poor practice and to respond with increased training and, if necessary, corrective action.

Second, staff indicated that selective videotaping or audiotaping can also be useful as a therapeutic tool and as a training tool. For example, a child who has recanted his or her disclosure of abuse due to feelings of guilt or fear may gain confidence from viewing or hearing his or her disclosure tape. Similarly, a parent who has difficulty believing that his or her child was abused may become more likely to believe the child after watching or hearing the child on tape. Additionally, workers stated that for children with speech problems, taping can be useful because it allows the worker to review the tape and, if necessary, to consult with experts in order to better understand the child. Supervisors can also review taped interviews with staff in

order to provide concrete feedback on interviewing technique as part of their ongoing staff training responsibilities.

Finally, staff agreed that if videotaping is done cooperatively with law enforcement, it can decrease the number of interviews which the child must undergo. In order for this reduction to occur, staff noted, both law enforcement and child protective personnel must be cross-trained to ensure that the interviewer asks questions necessary for both the law enforcement and child protective aspects of the investigation.

(3) Negative Aspects

DFYS staff also indicated a number of areas in which they believe a mandate to videotape or audiotape all interviews would negatively impact the children and families they serve. First, they noted, the use of videotape or audiotape equipment increases the intrusiveness of DFYS intervention into families: As noted above, producing a high-quality videotape of a young child (who is not likely to sit still nor to speak clearly) requires more than a single worker with a hand-held camera. It requires, at a minimum, a camera mounted on a tripod, operated by another worker. Depending on conditions, it may also require use of additional lighting and special microphones to ensure clarity. And if the tape is to be used in court, it also requires a number of special (and sometimes awkward) conditions: an on-camera clock (if the camera doesn't have a date-and-time setting); identification of all voices on the tape prior to the beginning of questioning; and positioning of the camera to ensure that both the worker and child are always in view.

While such conditions can be attained in specialized facilities designed for interviewing (for example, facilities with two-way mirrors, built in microphones, wall-mounted cameras, and specially-designed lighting), DFYS staff noted that they cannot be readily achieved in the field. Interviews are routinely conducted in dimly-lit family homes, in cramped school offices, and in local law enforcement or DFYS offices that were not built with videotaping in mind.

Substituting audiotaping is not a panacea either, staff noted: even under the best conditions background noise or low voice levels can interfere with the clarity of a taped interview; add to the equation a sobbing child or a pre-schooler who squirms, leaves the table or plays with the equipment and the result is far worse. Further, staff indicated, while audiotaping may appear to be less cumbersome than videotaping, it is often harder to interpret: without important cues from facial expression and body language, listeners may misinterpret taped statements. The outcome of either mandated videotaping or audiotaping, staff fear, will be that interviews will become more cumbersome to conduct and still yield a tape that is too poor in quality to accomplish its goal.

Of particular concern, staff reported, is the impact of the mandate to videotape on their relationships with the State's 254 Native villages. Staff noted that they try to be

as respectful and as unobtrusive as possible when investigating reports that affect Native children; they believe that the mandate to videotape interviews will make their intervention more cumbersome and, thus, less acceptable to the Tribes. In addition, many interviews conducted in Native villages are conducted in Native languages, such as Yupik. These interviews will require translation if the tapes are to be reviewed by individuals who do not speak the Native language.

A related concern is that the imposition of videotaping, or even audiotaping, equipment may interrupt the spontaneity of a child's response and result in the loss of important information. "When a child discloses sexual abuse, it's a monumental thing," explained one staff member. "It's like their soul is leaving." He feared that the imposition of electronic equipment at a highly emotional time may disrupt the process and prevent the child from speaking out. Staff also noted that disclosures tend to come at moments when the child feels safest or most at ease. One staff member noted, "Sometimes disclosures come when you're driving in a car or when you're just standing on the front porch talking about other things...You can't always stop and say 'wait 'til I get my recorder.' "

Staff also expressed fear that the mandate to videotape or audiotape all interviews would hamper the agency's ability to respond quickly to reports of abuse. "If there's not a camera or recorder available or a staff person to work it, then would you not go out to investigate?" asked one staff member. This is a grave concern, she noted, because "anything that slows down an investigation puts a child a greater risk." Staff also noted that if an equipment malfunction prevents the agency from recording an interview and, thus, substantiating abuse, children may remain in unsafe situations and be re-victimized.

B. Impact on DFYS

(1) Positive Aspects

DFYS staff also identified both positive and negative aspects of the proposed legislation on the agency and other professionals. Staff noted that use of videotaping would, in fact, document skillful interviewing when it occurs and decrease public questioning of their actions. They also noted that the use of video or audiotaping might free them from the need to take notes during interviews, thus allowing them to focus on the child more intently.

(2) Negative Aspects

DFYS staff expressed significant concern over using videotaped or audiotaped interviews as a "litmus test" for agency accountability. They noted that having interviews on tape does not, in itself, solve the problem of determining whether children have been "coached" and whether they are telling the truth. (In fact, one study has demonstrated that adults who watched videotapes of children could

separate children who were telling the truth from children who were lying only 58% of the time.) [Davies and Wescott, 1992]

In addition, staff noted that the proposed legislation would create significant logistical concerns for the agency, which might, in turn, drain resources that could better be used to protect children. As one staff member noted, "If it's a logistical problem anywhere else, it's a nightmare in Alaska." Among the concerns identified were:

- the likelihood of camera malfunction in extreme temperatures,
- the need for additional staff to film interviews (particularly a problem for Alaska's 18 one-person DFYS offices),
- the need for additional office space to catalog and securely store the tapes necessary to film tens of thousands of interviews per year,
- the difficulty of maintaining confidentiality of tapes, particularly in rural areas where "everyone knows everyone,"
- the cost of translating tapes that are in Native languages, and
- the cost of transcribing tapes for records and reports.

Fiscal impact of the proposed legislation is discussed in greater detail, below.

C. Impact on Other Professionals

The proposed legislation would impose the mandate to videotape or audiotape on all professionals who conduct investigations of child abuse and neglect. In addition to DFYS, this would include law enforcement, the military, and tribal social service organizations. Thus, each of these entities would have to purchase appropriate equipment and train their staff in its usage as well. Further, each entity would have to develop a system to catalog and store its own tapes as well as protocols for sharing tapes between and among agencies.

The status of other professionals is not as clear in the proposed legislation. Depending on how the law is interpreted, it is possible that physicians, teachers and contract providers who work for programs funded with government funds may also be affected. In this case, these systems, too, would be share in the requirements cited above.

Finally, it is likely that the Attorney General's Office would be profoundly affected by this legislation. First, a mandate to videotape all interviews would, undoubtedly, result in the more frequent use of tapes in court and the resultant shift in court focus, as described above. As prosecutors, they may find themselves at a

disadvantage because, while children's statements must be taped and may be viewed by the defense prior to trial, there is no parallel requirement to tape the statements of alleged perpetrators. Second, because the proposed legislation is unclear in many areas, it is likely that numerous legal challenges would arise. Responding to these challenges would may require a significant refocusing of the office's resources, perhaps resulting in fewer attorneys being available to focus on the prosecution of child abuse cases.

IV. Cost Analysis

The following cost analysis is an effort to provide a realistic appraisal of the costs of implementing the proposed legislation, H.B. 348. For each line item, the analysis provides an explanation of the basis for the calculation as well as explanatory comments, as necessary. A few introductory notes may be helpful:

- Equipment costs cited are based on phone interviews with sales personnel in three Anchorage stores: Magnum Electronics, Shimicks Audio and Sears Roebuck. Interviews were conducted during the month of December, 1995.

- In each case, the *middle* cost figure provided was used. Thus, equipment costs cited are neither top-of-the-line nor "bargain basement" prices.

- Costs for "Polar Bear Cases," specially-insulated carrying cases necessary to prevent condensation in extremely cold climates, were provided by Sony's national Customer Service and Information Center. According to Sony's customer service representative, videocameras may be unreliable at extremely cold temperatures and will not function at temperatures of -40° Fahrenheit and below.

- In an effort to be conservative, equipment costs do not include specialized microphones or additional lighting, which some experts advocated. It also includes a more limited training component than is advocated by many experts.

- Staff positions are based on utilization of Social Service Associate IIIs to operate cameras and assist with the cataloging and storage of tapes. SSA IIIs are utilized because, as described above, the production of a high-quality tape, suitable for use in court if necessary, requires a skill level that is beyond that which can be expected from entry-level personnel. In addition, the camera operator will be expected to accompany social workers into situations involving sensitive and often-emotional interactions with children and families; thus, the individual must have some knowledge of family dynamics, the dynamics of child abuse, and cultural considerations.

Cost Analysis

Item	Calculation Basis	Cost	Explanation
A. Equipment: Initial Outlay			
Videocameras	50 x $750	$37,500	50 cameras is a rounded estimate, based on the assumption of one camera for every two interviewers in the same office.
Carrying Cases	50 x $300	$15,000	Specialized "Polar Bear Cases" recommended for usage in cold climates.
Tripods	50 x $75	$7,500	Based on the assumption of one tripod per camera.
Tape recorders	34 x $50	$1,700	34 tape recorders is an estimate, based on the assumption of one per office. Price is for a portable "micro" recorder.
VCRs	34 x $300	$10,200	Based on the assumption of one per office.
Monitors	34 x $350	$11,900	18 inch, color monitors for reviewing tapes.
Total Initial Equipment Outlay		$83,800	
B. Equipment: Ongoing costs			
Videotapes	10,467 x $5	$52,335	Based on 15,700 reports of harm received by DFYS in FY '95. Assuming that 2/3 of the cases are videotaped and 1/3 are audiotaped. Also assuming 1 tape per case. (While some reports may not require a full tape, many will require more. Each case would require a separate tape, since putting more than one case on a tape could result in breaches of confidentiality.)
Audiotapes	5,233 x$2.50	$13,083	See above.
Batteries	34 x 13 weeks x $5	$2,210	Assuming 34 tape recorders, which require new batteries every 4 weeks.

Cleaning, repair, maintenance	84 x $10/mo x 12/mo.	$10,080	Based on assumption of 84 pieces of equipment requiring $10 worth of maintenance per month.
Replacement	$83,800 x 15%	$12,570	Assuming replacement of 15% of initial outlay annually.
Transcription	15,700 x $40/hr x 2 hrs/tape	$1,256,000	Assuming two hours of transcription per each report of harm received by DFYS.
Translation	1570 x $70/hr x 2 hrs/tape	$219,800	Assuming 10% of the tapes would require translation from Native languages.
Storage—videotapes	10,467 ÷ 10 x $10	$10,467	Based on assumption of 10 videotapes per square foot, stored in office space at $10 per square foot.
Storage—audiotapes	5,233 ÷ 25 x $10	$2,093	Based on assumption of 25 audiotapes per square foot, stored in office space at $10 per square foot.
Total ongoing equipment costs		**$1,578,638**	
C. Personnel: Ongoing costs			
Social Service Associate III	50 x $41,000	$2,050,000	Assuming 50 positions needed to operate cameras and to support the cataloging and organization of tapes. Cost is full cost to state per position (includes salary and fringe benefits).
Total Ongoing Personnel		**$2,050,000**	
D. Training: Initial Costs			
DFYS Training			
Trainer costs	2 trainers x 3 days training x 3 locations (Juneau, Anchorage, Fairbanks) x $1,000/day	$18,000	Includes curriculum development as well as training delivery.
Trainer travel	2 trainers x $1500 x 3 trips	$9,000	Includes air fare and per diem expenses

Staff travel	Travel to Juneau—$5,459 Travel to Anchorage—$9,637 Travel to Fairbanks—$18,351	$33,447	Includes air fare, per diem expenses, hotel and 10% Alaska Airlines discount for a total of 78 DFYS staff members.
Training for Other Professionals			
Trainer costs	2 trainers x 2 days training x 3 locations (Juneau, Anchorage, Fairbanks) x $1,000/day	$12,000	Training for judges, attorneys, and others who will be affected by this mandate. Does not assume training of all law enforcement, military or tribal social services personnel, who also must comply with the mandate.
Trainer travel	2 trainers x $1500 x 3 trips	$9,000	Includes air fare and per diem expenses.
Community Orientations	75 sites x $300	$22,500	Community meetings to introduce the new mandate to interested community members. Includes room, audiovisual, handouts
Total Initial Training Costs		**$103,947**	
E. Training Costs: Ongoing			
DFYS	1 trainer x 2 days x 1 site x 2 times a year x $1,000/day	$4,000	Semi-annual training sessions for new staff members
Staff travel	$33,447 x 15%	$5,017	Assumes 15% new staff per year.
Other professionals	1 trainer x 1 day x 3 locations x $1,000/day	$3,000	Annual training for other professionals who did not participate in the initial training.
Trainer travel	3 x $1500	$4,500	Assuming DFYS and other professional training are coordinated to save air fare.
Total Ongoing Training Costs		**$16,517**	
Cost Summary			
Initial (1-Time) Costs	A+ D	$187,747	
Ongoing Costs (Annual)	B +C+E	$3,645,155	
Total First Year		**$3 832,902**	
Subsequent Years		**$3,645,155**	

Thus, this analysis indicates that implementation of the mandate to videotape or audiotape all investigative interviews of alleged victims of child abuse and neglect would require an initial expenditure of $3,832,902 and ongoing expenditures of $3,645,155 annually. It should be noted that this expenditure represents only expenses incurred by DFYS; it does not represent costs that would be incurred by law enforcement, the military, or tribal social service organizations to purchase and maintain equipment, to store tapes, and to train their staff in compliance with the mandate.

V. Conclusion and Recommendations

Clearly, the selective use of videotape technology in child protection investigations and prosecutions engenders strong feelings—both pro and con—among nation's child welfare, legal and law enforcement communities. There are merits on both sides of this argument. However, as this study indicates, there is *virtually unanimous concern* regarding any measure that would make mandatory the videotaping of *all* investigative interviews.

Following a review of current literature, personal communication with many respected authorities in this field, and interviews with Division of Family and Youth Services personnel, I believe the following conclusions are warranted:

- A mandate to videotape all investigative interviews with victims of child abuse will contribute neither to protecting Alaska's vulnerable children nor to ensuring fair and accurate fact-finding by Alaska's courts of law.

- A mandate to videotape all investigative interviews is likely to impair services to children and families by draining limited human and fiscal resources and putting an undue technological and administrative burden upon the State.

- The selective use of videotaped depositions and interviews can be useful in therapeutic situations and to spare children the trauma of in-court testimony and should continue to be considered on a case-by-case basis.

- The issue of trust in the fairness of the system—which seems to underlie the proposed mandate to videotape all interviews—is a valid one and must be addressed through on-going training and community dialogue. The use of videotechnology cannot substitute for the community's trust in the sensitivity, skills and motivation of child protective personnel.

Further, I would make the following recommendations:

- *DFYS should take concrete steps to address the issues of trust that underlie the proposed mandate for videotaping.* The agency should build upon and strengthen existing efforts to be an active partner with other community agencies that serve families. For example, since early 1994 the agency has been collaborating with tribal organizations, other state and non-profit agencies, and representative of local communities (including parents and consumers of service) in planning and implementing federal Family Preservation and Family Support legislation. These forums began at the state level and have expanded to include more local and regional planning. Continued local forums are an excellent vehicle for the agency to receive ongoing community input on improving the child protection system and to address the issues of trust that underlie the proposed legislation.

  Similarly, many communities have local multi-disciplinary child protection teams or provider groups that ensure collaboration among entities to meet clients' needs. Where they exist, DFYS should continue to take an active role in the activities of these teams; in areas where no teams exist, the agency should take a leadership role in developing them.

  The agency should also examine and enhance its communication program to ensure that the public receives accurate information about the agency's mission and activities.

- *DFYS, with the consultation of outside professionals, should evaluate the effectiveness of its existing accountability mechanisms.* When dealing with sensitive and emotion-laden issues, such as child abuse, a climate of open, healthy professional debate is often the best method for ensuring that what is best and fairest will prevail. Because child protection is, ultimately, a community responsibility, all communities should have a system of checks and balances to assure that critical decisions affecting children and families are never made in a vacuum.

  While mandatory videotaping has been proposed as a vehicle for encouraging accountability of the child protection system, there are several mechanisms already in place that should be examined and strengthened before introducing a new, cumbersome and untested mandate. The courts, for example, are an entity that has the power to provide strong oversight of the actions of DFYS. However, in many states, judges and attorneys lack the comprehensive training and support to effectively fulfill that role. To address the effectiveness of the court system, Alaska has recently undertaken a Court

Improvement Project. This effort should be supported as a critical mechanism for heightening DFYS accountability.

Other outside entities that should help ensure accountability of DFYS include guardians ad litem (attorneys appointed by the court to represent the child's best interests in child protection proceedings), tribal entities (which under federal law can intervene in cases involving Native American children) and the Office of the Ombudsman (which has the power to investigate consumer concerns regarding the agency's actions). Each of these mechanism should be examined to see whether it serves an a component of an effective checks-and-balances system.

In addition, the agency should look at the extent to which its internal quality assurance procedures provide rigorous checks and balances. For example, supervisory staffings should provide regular oversight of each case worker's activities and decisions. Federally-mandated administrative review procedures should provide a thorough examination of each foster care case every six months and must, by law, be open to participation of parents and include an outside individual who does not provide services or case management to the child or family. Information systems should provide managers with critical process and outcome indicators to evaluation the "big picture" of the Division's performance. As indicated above, each of these mechanisms is already in place within the agency. They should be carefully examined and, if necessary, strengthened to ensure that the Division adequately monitors its own performance to the greatest possible extent.

- *DFYS, with the consultation of outside professionals, should examine its policies and practices around the investigation of child abuse and neglect.* The field of child protection has undergone significant changes within the last several years: As a result, many states are in the process of re-examining their "front end" services: how reports are received, screened, and investigated and how key decisions regarding the provision of services are made. The goal is often to facilitate a more "family-friendly" approach, an approach that empowers families to solve problems and ensure their children's safety with less intrusive government intervention into family life. To the extent that this legislation has been driven by concerns about the agency's approach to families, it is appropriate to re-evaluate the agency's approach and make changes, if necessary. Any changes, of course, must be accompanied by development and delivery of regular staff training to reinforce good practice standards.

- *DFYS should be adequately funded to provide regular, comprehensive training to all staff who work with children and families.* Protecting children while respecting the rights of families is, undeniably, one of the most critical and difficult jobs an individual can undertake—and, certainly, the crux of the concerns that led to the proposed legislation. Doing the job well takes a special individual who is sensitive, astute, courageous—and highly trained. Yet when budgets are tight, training dollars are often the first to be cut.

  While an analysis of DFYS' existing staff development program is outside the scope of this paper, the importance of continued, comprehensive training cannot be understated. As in many fields, the state of the art in child protection is changing, and even experienced staff need assistance in incorporating new principles, in learning new techniques and in adopting the new collaborative role that the community expects them to fulfill. It is critical that the Division examine its initial and ongoing training program for staff, using national standards as a guide, and that it be funded to ensure an adequately trained, professional staff.

Implementations of these strategies, I believe, will enable the agency to achieve the intent of the proposed legislation—ensuring that DFYS respects the rights of families while protecting the safety of children—without creating an unnecessary burden for Alaska's citizens.

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State of Alaska
Ombudsman
A Legislative Service Agency

LEGISLATIVE INFORMA

FAX TRANSMITTAL MEMO

TO: Bra Hayes

DEPT: _____ FAX #: _____

FROM Stuart PHONE _____

CO. _____ FAX # _____

NO. OF PAGES 4

Date: June 21, 1995

From: Stuart C. Hall, Ombudsman

Subject: Division of Family and Youth Services ~~accountability hearing~~ initial interviews with children who are subjects of child abuse reports.

Summary of the Complaint

On February 22, 1993, the Bethel field office of the Division of Family and Youth Services (DFYS) received a telephone call ("report of harm") reporting possible mental and/or sexual abuse of a five year old child. The "reporter" named the child's father as the alleged abuser. The reporter based the allegations upon the reporter's observations of the child and the child's family some months previously, viewed in light of a booklet the reporter had recently received regarding reporting child sexual abuse.

To investigate the report, two social workers interviewed the child at her preschool. As a result of what the child allegedly said in that interview, the social workers stopped the interview, took the child into emergency custody, and sat in while the child was interviewed again, this time by an Alaska State Trooper. During the second interview the trooper determined that the child's father's wrist had accidentally touched the child's bottom during play. After having been in emergency custody for approximately two hours, the child was returned to her parents' home. The DFYS case was closed as invalid.

The child's father complained to the Ombudsman that the whole experience was extremely upsetting and that the family now lives in fear that DFYS might return on any pretext and take the child. The father alleged that interviewing the child and taking emergency custody of her was unreasonable because the particular "report of harm" was insubstantial and because what went on in the initial interview was unreasonably shielded from review. In response to the father's complaint to them, DFYS said "participating Division personnel acted within full scope of the law and in accordance with Division policy and procedure."

The father was not satisfied with this answer and complained to the Ombudsman that if social workers actually acted within DFYS policy and procedure in this case, then the policy and procedures should be changed. After an extensive review of the circumstances of the incident, the Ombudsman agreed with the father in several respects.

Summary of Findings

Although the Ombudsman agreed with DFYS that the social workers acted lawfully, the Ombudsman found partially justified under its own standards the overall allegation: *the Division of Family and Youth Services abused its discretion by deciding to interview complainant's child based on an insubstantial report of harm and by thereafter taking complainant's child into emergency custody.* DFYS did not accept the Ombudsman's finding.

The Ombudsman investigation found that, standing alone, the initial report of harm did not provide sufficient basis to launch a child support investigation. The social worker's intake notes left unanswered fundamental questions about the basis for the reporter's conclusions. For example, although the reporter alleged the child's actions were "seductive", the caseworker failed to support that value judgment with examples indicating the "seductive" nature of the behavior. In addition, although the social workers had available information which would have lessened the credibility of the report, that information was

apparently not used to determine whether the interview should take place. Finally, uninvolved pro from child protective services in Washington and Oregon, as well as an experienced teacher in d child protection, regarded DFYS' written report of harm as borderline, vague, and lacking f factual observations which would back up the jargon used on the intake notes.

However, from a public policy perspective, the Ombudsman found another issue even more compelling: the only persons present during the interview were the social workers and the young child. As a result, the Ombudsman was unable to independently review the social workers' decision to take emergency custody because (1) DFYS policy does not require caseworkers to keep their original notes, (2) the interview was not audio or video recorded, and (3) the child's teacher was excluded from witnessing the interview without sufficient basis.

Given these circumstances, the Ombudsman was forced to find indeterminate, the allegation that the agency abused its discretion by taking emergency custody based upon the interview at the preschool. The Ombudsman believes an indeterminate finding is unacceptable when it is based on an insufficiency of agency accountability.

Summary of Recommendations

In the belief that sound public policy supports accountability of agency action, especially in the sensitive area of state interference in private family life, the Ombudsman made the following recommendations:

(1) Caseworkers should never dispose of their original file notes, but should retain them as part of the case file at issue.

(2) DFYS should conduct a feasibility study regarding audiotaping/videotaping of initial interviews with alleged victims of child abuse and neglect. The study will include a cost analysis, review of appropriate literature, pros and cons related to Child Protective Services (CPS) investigations, training needs legal issues and specified situations that would benefit from taping. This study should be completed by the start of the January 1996 Alaska legislative session.

(3) DFYS policy makers and trainers should continue their efforts to improve social workers' skills, competence and casework knowledge through comprehensive, consistent and timely training opportunities for all DFYS staff.

Agency Response: Ombudsman Disposition

The agency has accepted final recommendations 2 and 3. The agency has refused to accept final recommendation 1. As a result this complaint was closed as partially justified and partially rectified.

The recommendations in this case were a compromise between the Ombudsman's Office and DFYS. DFYS continues to support the actions of its social workers and the Ombudsman continues to believe the agency made several errors in this case. The agency was unwilling to make a commitment to routinely audio or videotape interviews with children based purely on an Ombudsman recommendation. However, the agency recognizes that whether interviews with children should be recorded in some fashion is an important public concern. Therefore, the agency committed to do a timely review of the issue prior to the upcoming legislative session. HB 348, which would require videotaping of interviews with children was introduced at the end of the first session of the 1995 Nineteenth Alaska Legislature. The Ombudsman hopes that this investigation will be helpful in legislative consideration of the issues that are the subject matter of HB 348.

A full public version of the Ombudsman report of this investigation is available upon request.

This report is available to the public upon request

(2) **DFYS Accountability regarding Initial Interviews with Children who are Subjects of Child Abuse Reports.** The Legislature has under consideration House Bill 348 that would require videotaping of interviews with children who are subjects of child abuse reports. In an investigation of alleged abuse of discretion by Division of Family & Youth Services staff in interviewing a child and thereafter taking that child into emergency custody, the Ombudsman initially recommended that when children are interviewed with no other persons present but DFYS employees and the interviewee(s), the interviews either should be audio recorded, or, when possible, video recorded. DFYS proposed a modified recommendation that further research into this subject be conducted; the Ombudsman believed that a promise to "do more research" would not be convincing. In a compromise recommendation, DFYS agreed to conduct a study analyzing the effect of audio/video recording on the state's child protective services program by the time the Legislature convened its 1996 session; accordingly, the Ombudsman modified its recommendation. The Ombudsman still believes the audio/videotaping of DFYS staff's initial child interviews has merit. However, the Legislature should obtain and carefully review the DFYS study of this issue -- "Mandatory Videotaping in the Investigation of Child Abuse and Neglect: An Impact Study for the State of Alaska," prepared by the National Child Welfare Resource Center for Organizational Improvement, Edmund S. Muskie Institute of Public Affairs, University of Southern Maine -- as it further considers HB 348. (Ombudsman Complaint A093-6593, Division of Family & Youth Services.)

We reaffirm several 1995 legislative recommendations that we believe still merit your favorable consideration:

(1) **Procurement Practices.** As in 1995, we again urge the Legislature to revisit this subject. Procurement practices, particularly small procurements, continue to be troubling problems the Ombudsman is asked to examine. On the basis of a formal investigation conducted by this office, the Ombudsman recommends that a training and certification program for state employees performing the procurement function be enacted. Also, that legislation should strengthen the position of Chief Procurement Officer. The Ombudsman believes that position should oversee, supervise, monitor, audit, and train staff in the procurement function, not merely provide procurement services or serve as Deputy Director, Division of General Services (DGS) in the Department of Administration. In short, we believe the Chief Procurement Officer position should involve a level of "separateness" from the DGS; that is not currently the case. (Ombudsman Complaint J093-1475, Department of Education.)

(2) **Public Records Act (AS 09.25.120).** The Legislature should review the subject matter of this statute and consider if legislation should be enacted clarifying whether the public will have access to reports of criminal investigations where no prosecution occurs. (Ombudsman Complaint J092-1562, Department of Public Safety; see also, Opinion of the Attorney General, Public Release of Police Records, File 663-93-0339; Opinion No. 1, Nov. 25, 1994.)

(3) **Abatement of Electrical Hazards.** Legislation should be enacted modifying AS 18.60.630 granting inspectors authority to issue orders to abate electrical hazards discovered during an inspection that pose an immediate danger to life or safety. (Ombudsman Complaint A091-2030, Division of Labor Standards & Safety, Department of Labor.)

(4) **Agency Policies and Procedures.** The Legislature should insist, either by enacting a statute or adopting a resolution, that state agencies "unwritten policies" be set out either in statute, regulation or in department policy and procedures manuals so that affected members of the public are informed of the policies and procedures that apply to them when dealing with a state agency. As a veteran state employee recently observed, "An 'unwritten policy' isn't worth the paper it isn't written on." We concur. Perhaps this topic usefully might be examined by the Legislature's Administrative Regulation Review Committee in a legislative oversight hearing. (Ombudsman Complaints: J093-2030, Department of Environmental Conservation; A092-0128, Anchorage Pioneers Home, Division of Senior Services, Department of Administration; A093-4506, Division of Oil & Gas, Department of Natural Resources; A094-0668, Alaska Public Utilities Commission.)

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STATE OF ALASKA
OFFICE OF THE OMBUDSMAN

INVESTIGATIVE REPORT

Department of Health & Social Services
Division of Family and Youth Services
Ombudsman Complaint A093-6593

June 21, 1995

Stuart C. Hall
Ombudsman

State of Alaska
Ombudsman
A Legislative Service Agency

INVESTIGATIVE REPORT

(Finding of Record and Closure)
(Publicly-released report. Edited to remove confidential information per AS 24.55.160)
Ombudsman Complaint A093-6593
June 21, 1995

SUMMARY OF THE COMPLAINT

On February 22, 1993, the Bethel field office of the Division of Family and Youth Services (DFYS) received a telephone call (hereafter, "referral" or "report of harm") reporting possible mental and/or sexual abuse of a five year old child. The "reporter" named the child's father, "Mr. X", as the "alleged abuser." The reporter based the allegations upon the reporter's observations of the child and the child's family some months previously, viewed in light of a booklet the reporter had recently received regarding reporting child sexual abuse.

Two social workers interviewed the child at her preschool to investigate the report of harm on February 26, 1993. As a result of what the child allegedly said in that interview, the social workers stopped the interview, took the child into emergency custody, took her to DFYS offices, and sat in while the child was interviewed again, this time by an Alaska State Trooper. After approximately 20 minutes in the second interview, the trooper determined Mr. X's wrist had touched the child's bottom during play, "accidentally." After having been in emergency custody for approximately two hours, the child was returned to her parents' home. The DFYS case was closed as "invalid."

Mr. X said the whole experience was extremely upsetting, especially for the child's mother, Ms. X. He alleged his family now lives in fear that DFYS might return on any pretext and take the child. Mr. X complained to the Ombudsman's office on July 16, 1993, that interviewing the child and taking emergency custody of her was unreasonable under the circumstances. Assistant Ombudsman Emily Read responded by asking the agency to conduct an internal investigation into its actions. Regional Program Auditor Gary Neubauer conducted the review and concluded in a letter to Ms. Read that, "participating Division personnel acted within full scope of the law and in accordance with Division policy and procedure."

Mr. X was not satisfied with this answer and returned to the Ombudsman for further review. Mr. X alleged that if the social workers actually acted within DFYS policy and procedure in this case, then the policy and procedures should be changed.

Specifically, Mr. X alleged that:

- The report of harm the agency received concerning the child did not justify embarking on an investigation. He analogizes to police procedures, where "probable cause" is necessary to obtain a search warrant for police investigations. In contrast [redacted]

[redacted]

- The evidence the social workers had in this case did not justify taking the child into emergency custody. Mr. X believes the [redacted]

- The Bethel DFYS office is a "loose canon" [redacted] In support of this allegation, Mr. X said he has heard that the Bethel DFYS office took emergency custody of children numerous times in the two and a half years prior to this incident, yet only a few court ordered custody actions have taken place in the same time period.

- DFYS could not have legitimately taken "emergency" custody of the child when it waited four days after receiving the report of harm before it interviewed the child.

- Under AS 47.17.027, the child's preschool teacher should have been present during the caseworkers' interview with the child. DFYS erred procedurally [redacted]

- If DFYS is not required to audio or video record its initial interviews with children, the agency actions of taking emergency custody based on those interviews is unreasonably shielded from review.

Rephrased to fit within the Ombudsman's statutory framework this office investigated the following allegation:

> *The Division of Family and Youth Services abused its discretion by deciding to interview complainant's child based on an insubstantial report of harm and by thereafter taking complainant's child into emergency custody.*

Regional Director, then Assistant Ombudsman, Bea Hagen investigated this complaint. She reviewed the DFYS case file, applicable statutes, regulations, and policies and procedures. In addition, she deposed or interviewed the following persons:

- Mr. X, complainant
- Trooper Terry Asberry, Alaska State Troopers, Bethel
- Elsie Francis, former DFYS caseworker, Bethel
- Mercedes Jewett, DFYS caseworker, Bethel
- Georgina Kacyon, DFYS Intake Supervisor, Bethel
- Gary Neubauer, DFYS Northern Regional Program Auditor, Fairbanks

- Richard Winters, Program Manager, Child Protective Services, Olympia, Washington
- "Susan", Intake Screener, Children's Services Division, Department of Human Resources, Portland, Oregon
- Vickie Koehler, Acting Intake Supervisor, DFYS, Fairbanks
- David Herringshaw, former Bethel DFYS Social Services Associate
- Ron Parker, former DFYS Northern Regional Administrator
- Eva Kopacz, Assistant Professor, University of Alaska, Fairbanks, social work faculty
- Steve Emerson, Social Worker IV, DFYS Staff Training Center, Fairbanks
- Julie Miller, pre-school teacher, Bethel
- Kathy Tibbles, DFYS Social Services Program Officer, Juneau
- Cathleen Connolly, pre-school board member, Bethel
- Barbara Cotting, Aide to Representative Jeannette James

EDITING OF THIS REPORT

Ombudsman investigators had access to statutorily confidential DFYS files and deposed or interviewed DFYS personnel about confidential information. AS 24.55.160 gives the Ombudsman "access at all times to records of every state agency, including confidential records" and provides that "the ombudsman may not disclose a confidential record obtained from an agency. Because legislators and numerous complainants have raised the public policy issue of whether DFYS interviews with children should be videotaped or audiotaped, the Ombudsman decided to release an edited public version of this report.

Confidential information to which the ombudsman investigator had access was included in a preliminary confidential report to the agency. Information from DFYS records and interviews that would identify the child involved or that is otherwise confidential and not directly relevant to the issues raised by the allegations has been removed from this version of the report. The child which was the subject of the report of harm is referred to as "the child." The complainant is identified as "Mr. X" and his spouse as "Ms. X". DFYS was provided with a draft copy of the final public report so that the agency could review it for confidentiality prior to release.

BACKGROUND

The X family consists of both parents, the child and a sibling. The child was five at the time of the incident at issue. Both parents had been employed professionals in Bethel for several years prior to the events at issue.

On Monday, February 22, 1993, at 2:40 p.m., social worker Elsie Francis received a telephone call at the Bethel DFYS office from a person who wished to remain anonymous (hereafter identified as "reporter"). The reporter gave his or her name to Ms.

Francis and stated a non-familial relationship to the child. The reporter apparently last had contact with the child approximately six months earlier.

A handwritten narrative on a standard DFYS form entitled, "Family Service Report of Contact" (ROC) and signed by Ms. Francis, described the allegations. The report said in pertinent part:

> [Reporter] said that a St. Trooper gave [reporter] a booklet on reporting child SA [sexual abuse] as [portion deleted].
>
> Symptoms the child/family - Father gets really annoyed by children's develop. delayes [sic]. He calls them stupid; his anger seems out of proportion to the situation. -
>
> - Child is seductive. "Don't I look pretty" Reporter feels uncomfortable.
>
> - Father always has his daughter w/him when he's not at work.
>
> - They've had her thru 5 diff. providers in the last 5 yrs. [portion deleted].
>
> - Child is interested in sexual things.
>
> - Child hates boys to the pt. of strange.
>
> - child is a manipulative liar
>
> - mother is very passive - [Reporter] questions whether mother is afraid of father. -
>
> - Other child: [portion deleted] victim of family dog bit[e]. . . .
>
> - Child always wants to look sexy. She would wear strapless gowns: "Don't I look pretty." she only wanted to be w/adults; not w/other [children]. Child hates her [sibling].
>
> - [Reporter] feels that parents took child from [care provider] when child was getting too comfortable.
>
> - Child cannot remember simple things. She tells parents what to do - role reversal.
>
> -[sibling] - unusually passive. Displays nervous behavior - neurosis. [sibling] bites other children
>
> Father would call them stupid - "How are these little brats doing?" [Reporter] started telling him what good kids he had. He just would laugh it off. Mother would say, "How are you doing sugar puss, bear, Big . . . [sic] Bear." Everything was puss to her daughter. Mother from [another state].
>
> -[Reporter] was apologetic - felt bad.

On the basis of this intake information, Ms. Francis called the Alaska State Troopers to set up an investigation plan. She spoke with Trooper Rosemary Decker.

Ms. Francis next consulted with Intake Supervisor Georgina Kacyon. Ms. Francis later wrote on her ROC form, "She [Trooper Decker] agreed that it might be better for the Troopers to handle situation [rather than the Bethel City Police]."

The notes continued, "[Trooper Decker] said to do a further invest. by interviewing the child & if it is determined that the child is at risk, to call the Troopers. Informed her that [the child] attends school at [deleted] & I would conduct interview on Wed. or Fri."

On Friday, February 26 at 11:00 a.m., Ms. Francis and another social worker, Mercedes Jewett, went to the child's preschool where the child was in class during the day. Prior to interviewing the child, the social workers interviewed the child's teacher, Julie Miller. In pertinent part, the file notes indicate that Ms. Miller said:

> "She's right about where she needs to be & socially she's fine." Julie stated [the child's] father usually picks her up from school. Julie also stated, [the child] did not seem to have problems relating to male children and she plays w/male and female children.

Mr. and Ms. X were both notified that the child would be interviewed. Both parents came to the school. Mr. X questioned the social workers' qualifications to investigate the allegations, but nevertheless agreed that the social workers could interview the child.

Ms. Jewett and Ms. Francis interviewed the child alone in a "cloakroom" at the preschool. Each later signed notes to the DFYS file which summarize the interview with the child at her preschool. Ms. Jewett's typewritten notes about the interview stated in pertinent part:

> During this interview [the child] stated her father "touches" her "private parts . . . sometimes on Saturday or Sunday." The child identified the areas of her vagina and her bottom on the drawn outline picture of a female child's body. When asked what her reaction to this occurrence was [the child] stated, "I said no."

Ms. Jewett's handwritten notes signed by both workers, and also transcribed at some later time from earlier notes, stated in pertinent part about the interview:

> [The child] was informed by worker Elsie Francis that she would be asked to answer some questions and she could ask questions if she did not understand and stop the interview at anytime.
>
> Child stated she was 5 & her birthday is [deleted]. Child stated she understood the difference between truth & lies. Child stated she understood the difference between good touch, bad touch & secret touch. Child stated "once" her friend [deleted] touched her "private parts" at school & she told her mother. Child also stated "Sometimes my Dad touches my private parts on Saturday or Sunday - ~~accidentaly~~ [sic].[1]

[1] The word "accidentaly" [sic] was crossed out in the notes and initialed by Ms. Francis. A separate typewritten note in the file signed by Ms. Jewett and Ms. Francis states, "Point of Clarification in regard to the notes of the interview with [the child] on 2/26/93 at 11:25 at the [preschool] with Elsie Francis and Mercedes Jewett. The word "accidently" [sic] was included on the report as the notes from the above interview were being transferred to an Abuse/Neglect Investigation Sheet while [the child] was talking to

The transferred interview notes go on:

> Child stated, the last time this happened was "Saturday," while her mother was in the kitchen & her [sibling] was sleeping. "I was sitting on my dad's lap . . . he touched me the wrong way & I said no." Child identified the areas of her vagina & her bottom on the picture. Child further stated "my dad really did it." Child stated "I feel sad when he touches me" and "he touched me w/his hand."

On the basis of this alleged interchange Ms. Francis stopped the interview and called Ms. Kacyon who advised her that assumption of emergency custody was appropriate under the circumstances. Ms. Francis called the Alaska State Troopers as she had prearranged with Trooper Decker pending the contingency that the interview would produce evidence that sexual abuse had taken place.

Ms. Francis also notified Mr. and Ms. X at that point that the results of the interview made it necessary to assume emergency custody pending further investigation. The social workers then took the child to the DFYS office.

Trooper Terry Asberry came to the DFYS office to conduct another interview with the child. The second interview was tape recorded. In the course of the interview, the child indicated that it was in play that her father touched her private parts. As a result of the trooper interview, DFYS workers returned the child to her parents at home and dropped the emergency custody about two hours after it had begun.

Under section 2.214 of the DFYS child protective services policy manual, an "invalid" case is one, "where there are no facts to support the allegation that a child has suffered abuse or neglect." This type of finding is to be made at the "conclusion of the investigation." The final assessment in the child's case was that the allegation was invalid.

INVESTIGATION

Was the report of harm substantial enough in this case to justify the decision to interview the child at her preschool?

Alaska Statute 47.17.030 provides that DFYS must "investigate" each report of harm to some degree. The law says:

> [T]he department shall, for each report received, investigate and take action, in accordance with law, that may be necessary to prevent further harm of the child or to ensure the proper care and protection of the child.

Gary Neubauer, DFYS Regional Program Auditor in Fairbanks, stated that all reports of harm alleging possible physical abuse, sexual abuse or neglect communicated to DFYS are "screened" to determine the need for Division intervention. He said that all screenings do not result in investigations or resulting interviews. If the intake supervisor decides that the report does not justify intervention, it is not assigned to a caseworker for investigation, but is kept for future reference to help evaluate other reports which might be made about the same child or family.

---

the state trooper. During the interview with the state trooper [the child] did state, "my dad touches my private parts. . . accidently" [sic]. However during the earlier interview she did not use the word "accidently."[sic]

DFYS has general policies and procedures for suspected child sexual abuse cases which were developed in accord with an 1984 Child Sexual Abuse Agreement signed by the governor. This agreement states that the Departments of Health and Social Services, Law, Public Safety and Corrections must develop general policies and procedures concerning interaction between agencies.

According to Section E-1 of the policy, concerning Intra-Family Child Sexual Abuse, the order of investigation should proceed as follows: the worker should speak to the referring person to obtain as complete information as is available. *The worker should call any other collateral people that are appropriate to contact, "before first visit with child and family,"* and look[s] at any previous records. [Emphasis added.] Then, the worker immediately contacts the appropriate law enforcement agency to jointly develop a plan of investigation. The procedure states, "in the majority of cases, the child will be interviewed first.... This preferably will be accomplished through joint interviews." The procedure also provides that the "worker and/or law enforcement" will "make direct contact with [the] child," and "interview the child and secure a statement regarding inappropriate sexual activity -- also expected family reaction...."

Mr. Neubauer noted that the credibility of the reporter and history of false reports would be considered in the decision about whether to assign the case for investigation. The worker would consider behavioral indicators that sexual abuse had occurred as part of the overall analysis. CPS Manual Appendix N-2 contains a "summary chart" of behavioral indicators of sexual abuse. Listed are:

Unwilling to Participate in Certain Physical Activities

Withdrawal, Fantasy or Unusually Infantile Behavior

Bizarre, Sophisticated, or Unusual Sexual Behavior or Knowledge

Poor Peer Relationships

Reports of Sexual Assault by Caretaker

The DFYS Child Protective Services policy manual CPS 2.14, Priority Rating Scale, states that "Each case accepted for investigation will be assigned a priority rating of "Priority 1," "Priority 2" or "Priority 3" contingent on the severity of the reported risk of harm to the child.

DFYS assigned the report of harm concerning this child a "priority 3." Section 2.1.4 of the Child Protective Services Manual defines this as follows: "Priority Three will be assigned to those referrals which indicate that a delay in assessing the situation will not result in significant additional harm to the child."

Mr. Neubauer said a priority rating of 3 for the report about the child was appropriate because the information provided by the reporter did not indicate that the child was in immediate danger, or subject to imminent danger of physical harm, or had suffered serious physical injury as a result of abuse or neglect, or in need of medical attention. He emphasized that although the report made allegations that indicated *possible* sexual abuse, "at the time of receipt of the referral, the child in question had not yet disclosed sexual abuse." If she had, the report would have been rated as a priority 1.

Under procedures in the CPS manual, an interview with the child must be conducted for non emergency priority 1's within 24 hours of the report. A priority 2

interview must be within 72 hours and a priority 3 interview should take place within seven calendar days of the report of harm.

Kathy Tibbles, DFYS Social Services Program Officer, said that when a report of harm alleges "behavioral indicators" of sexual and emotional abuse, it should be ranked as a priority 2. However, she said, "The priority system is supposed to be fluid. After the interview, a case could become a high risk case. Technically, priority doesn't matter [except as a framework for response time]." She said that the priority system is a method of handling caseload. When the workload gets too high, the policy is usually to not investigate priority 3 reports until there are three reports about the same family or child. But, she cautioned that even this policy would be a fluid one.

Once a local supervisor determines that a referral, or report of harm, is appropriate for Division intervention and it is given a priority rating, the intake referral is assigned for investigation. Under CPS 2.2.3, minimum standards once an investigation is undertaken are:

a. One face to face contact with the child.

b. One face to face contact with the parent/caretaker.

c. All siblings who live in the same household should be interviewed.

d. Any collateral contacts as necessary to reach a decision on the report. A collateral contact is any person who is not directly a part of the situation but may have significant information which will aid in determining whether the report is substantiated, unconfirmed or invalid.

e. Any exceptions to the minimum standards require review and approval by the supervisor.

In other words, once the report of harm about the child was assigned a priority and assigned an investigator, an interview was technically required unless the supervisor, Ms. Kacyon in this case, decided otherwise.

To obtain uninvolved professional viewpoints about whether the report about the child justified launching an investigation, the ombudsman investigator read the referral report in this case to various professionals, excluding names and other identifying material.

Vickie Koehler, Acting Intake Supervisor for the Fairbanks DFYS office said, "I would struggle over that one. There appear to be some things of concern, but there is nothing clear." She continued, "It wouldn't be a priority 1." Ms. Koehler said that the Fairbanks office might do some "collateral contact" if it had a reason to be suspicious of the report. For example, "Often we call the school to see if they have concerns too." She said that the existence of prior reports is important to the decision about whether to investigate. She said a major problem for her is the fact that the report was made so long after the reporter's last contact with the child at issue. However, she said that sexual abuse gets a lot more attention, even in Fairbanks, than other kinds of reports of harm.

At Mr. X's suggestion, the ombudsman investigator interviewed David Herringshaw. Mr. Herringshaw is Mr. X's personal friend, but also worked in the Bethel DFYS office for four and one half years. At the time of the child's interview, Mr. Herringshaw was a Social Services Associate, a position somewhat lower in the hierarchy than a Social Worker. Mr. Herringshaw stated he has a degree in Health Care

Administration and six to seven years background working with abused or wayward children. He said that to be a good social worker, one has to, "Think like a cop with the sensitivity of a pastor."

He said that in general, he believes that, "all reports [of harm] in Bethel [were] incompetently handled" by the Bethel office. He said, "It is not just the X case. That office is out of control." He continued, "You mention sexual abuse in that office [and] it is like a whirlwind - an extreme, gross reaction. If you want to destroy someone's life in Bethel, you turn them in for child sexual abuse."

Mr. Herringshaw opined that the child, "probably made some innocent comment," during the interview which was misinterpreted, and led to the taking of emergency custody. He added, "These people don't know how to ask non-leading questions."

Mr. Herringshaw said that after Ms. Francis received the report of harm concerning the child, but before the interview took place, the report came across his desk in the course of his job duties. He told the ombudsman investigator, "You gotta understand, these people were in my house all the time. I intimately knew the [X] family."

He said he went to Ms. Francis and told her, "I know these people - I know the situation. I know [the child]. She is not a victim. This is a bogus claim. You need to go do some research with the reporter." Mr. Herringshaw said he told Ms. Francis that contrary to what the reporter said, the child was, "just a little girl that loved to dress up and wear makeup." Her sibling was an "aggressive little [child], not a whimpering little thing. [Ms. X] was anything but browbeaten."

Mr. Herringshaw said, "Somehow, this got pushed to the point Elsie *had* to investigate." Mr. Herringshaw said that Ms. Francis normally attended to licensing issues at DFYS. She, "didn't hardly ever do intakes. She didn't want to do the interview." He said, "Elsie is a kind, warm person, but she is not street smart. She would have made a phenomenal social worker, but she quit because of this case."

He said collateral contacts should have been made with the child's current caretakers before interviewing the child. He said that if he had been the screener, he would have taken all the information the reporter offered during the referral call. Then, he would have asked questions. He would have "circumspectly" contacted [deleted] day care workers, and he would have found out the reporter's relationship with the family. He would, he said, "Find out more than what the [reporter] *thinks*, I would find out what [the reporter] has *seen*."

Finally, he said he didn't think the report of harm in the child's case had enough information in it to justify an interview. He said, "Elsie's supervisor [Ms. Kacyon] should have recognized a weak report and required some follow up before deciding to proceed with an interview."

Ms. Francis told the ombudsman investigator, "We did this case by the book. I consulted with my supervisor, Georgina [Kacyon], at every step."

Ms. Francis said that in the small Bethel office, every worker "got a turn as screener, mixed with their other caseload duties." Ms. Francis said, "This one was an unusual report" in that the reporter had had no contact with the child for six months. She said, "I think that's why I didn't go out right away."

Ms. Francis said she remembers speaking about the intake report with Mr. Herringshaw and that she knew Mr. Herringshaw was Mr. X's friend. However, she said she did not discuss her conversation with Mr. Herringshaw with Ms. Kacyon when they conferred about the intake. Ms. Francis said she did not know Mr. X, but she was aware of his [employment position] in Bethel. She also did not know the reporter.

The ombudsman investigator asked Ms. Francis if, in her opinion, the report of harm justified going on the interview. She said, "I don't think it was enough to do an interview. I remember feeling uncomfortable about it. I basically didn't want to do it [the interview]. Ms. Francis said two things that made her uncomfortable were that Mr. X was a former [professional worker] and his was a "white family." She said she, "knew from talking with Georgina [Kacyon] they could turn around and sue [us]."

She said, "In hindsight, I would have wanted to talk to the reporter some more, and I would have wanted to see the book that [the reporter] referred to."

Ms. Francis said she wonders now how many intake calls in Bethel were taken to the interview stage. She suspects that all calls were. Ms. Francis said, "In Bethel, interviews come of every allegation of sexual abuse. . . . [I] think the practice is excessive at times. . . . Any sex abuse allegation in that office is treated as an emergency."

She said that she now believes the screening process in Bethel isn't done properly. She said, "The problem is how the system is set up. The system is wrong in Bethel - we [went] out and interview[ed] on anything."

Ms. Francis opined that the screening process should be changed, "because now, it results in, people getting back at other people." She said, "Right now the law reads if you 'suspect' [abuse] you have to report it." But, she said the screening process should better screen out false reports. She added that Ms. Kacyon was a "relatively new intake supervisor at the time of the child's interview. She was still learning her job." Ms. Francis suggested that to improve the system, DFYS should have people who "do only one job." She said the screener should be separate from the investigator, and that the screener and a supervisor should make the decision to interview a child after they conduct more research into the complaint, if necessary.

In spite of these problems, Ms. Francis said that, "I think I was acting professionally at the time." However, she said that the case was "one of the reasons," she stopped working at Bethel DFYS. She said, "[It was] seeing how it affected the Xs. They were very upset." She continued, "The aftermath was horrible. I felt horrible."

The investigator asked Ms. Francis why she called the Alaska State Troopers rather than the Bethel police to set up an investigation plan. She said the call was a "true accident." She had only remembered at the time that she had worked before with the Alaska State Troopers on such investigations, so she called the Alaska State Troopers.

As intake supervisor, and a Social Worker IV, it was Georgina Kacyon's job to oversee the intake and to review the referrals (reports of harm) and assign them for investigation when appropriate. Ms. Kacyon had been in the child protection field for 10 years prior to this incident. She had been working in Bethel since October 1989.

Ms. Kacyon said that she knew Mr. X only as a professional acquaintance. She knew his position of employment. She said she knew Ms. X's professional status and had talked with her professionally in situations similar to the one involving Ms. X's child. She said that the allegation about the child was awkward because "I was sensitive to, you

know, they were both high profile community members and that this would be very delicate - in dealing with them." Ms. Kacyon said she did not know the reporter.

Ms. Kacyon went on to say:

> I remember her [Ms. Francis] saying that the reporter was a [job status] and that she had . . . a presentation on child abuse and had been given a booklet by one of the troopers and she had just picked up on some behavior indicators that [the child] was exhibiting that caused her to suspect that . . . [the child] may be being sexually abused and she had reason to believe it was the father. . . . I remember that we did talk about that to determine whether there was enough to assign it for investigation, and we felt that it did [warrant an investigation].

Ms. Kacyon said that the elapse of time since the reporter observed the behavior did not make a difference in her evaluation about whether to assign the report for investigation. She said, "We often investigate reports that may have had years gone by since someone had observed it and they're just coming forward to report it. . . . We would investigate it even if it occurred several years ago."

In this child's case, Ms. Kacyon said the basis of her screening decision to investigate was," [T]he reporter . . . suspected on . . . observations that there may be some sexual abuse of the child. Based on her behavior . . . and . . . other factors of how the father treated her and her [sibling]. There was more than just the sexual abuse. There was some mental injury there that needed to be addressed."

The ombudsman investigator also contacted child protection workers in Washington and Oregon, who had the following comments after being read, verbatim - excluding names or other identifying material - what Ms. Francis wrote on her ROC form from the intake interview.

Richard Winters, Program Manager, Child Protective Services, in Olympia, Washington said, "This report calls for collateral contact prior to an interview." He said, "It is one person's opinion and observations. They needed a more recent contact and a second opinion before calling in the troops. This was a vague concern [on the part of the reporter] and a vague suspicion doesn't cut it." He added, "In Washington, I would hope that [the agency] wouldn't do [an interview] on this report without collateral contact supporting it." As an example of the kind of collateral contact which should have been done, he cited contacting the present daycare provider or doing a background check on the alleged abuser.

The ombudsman investigator also spoke with "Susan," an intake screener with the Oregon DFYS equivalent agency, the Children's Services Division of the Department of Human Resources. Susan said that the report about the child was a "borderline case." Depending on which office or supervisor might be consulted, the decision to investigate in Oregon, "might go either way."

However, Susan said that in her opinion, the report would have called for some "follow up." She, "would have needed more information than [the report of harm] to decide to go on an interview." She said she would have asked more questions of the reporter, because, for example, "What one person thinks is seductive, in and of itself, might not be enough [to justify an interview]."

She said she would ask questions regarding the reporter's motive for making the report. She might contact the child's recent daycare provider and see if the provider had similar concerns; if the daycare provider had not noticed anything with the child, the report might not have been investigated. She said that if the report wasn't investigated, her agency would probably have written a letter to the family informing them that concerns about their child had been reported.

The ombudsman investigator also read the report of harm - excluding confidential information - to Eva Kopacz, an assistant professor on the faculty of the University of Alaska, Fairbanks, Behavioral Sciences and Human Services Department. Ms. Kopacz teaches "applied" classes -- how to be a social worker. She came to the University with 18 years prior experience as a licensed clinical social worker. She also has 18 years in clinical practice as a social worker, including experience as an intake screener in states other than Alaska, as well as experience providing inpatient and outpatient psychological services to child victims of sexual abuse. The investigator asked Ms. Kopacz to evaluate the report as if she were the screener.

She said, "I wouldn't feel like this [report] was enough for an interview. I probably wouldn't do an investigation . . . Behaviors have so many possible factors - this behavior could be normal." She said that she would have filed the report and waited to see if there were other complaints. Or, she might have done some follow up questioning of the reporter before deciding to do an interview.

She said, "Essentially, based on what's written in the report, there is no distinction between observed behavior and the meaning ascribed to the behavior. The report is empty of observations and data. There are no facts. There is no factual information in it that tells you how to come to a reasonable conclusion. I would have a million questions."

For example, she said that some of the behaviors mentioned, such as the child's tendency to dress up, "could be meaningful," but her age, five, "is a dress up age." She said, "We shouldn't attribute adult attitudes and motives to children." She said she would have wanted to know more about the nature of the child's interaction with her father. Ms. Kopacz noted, "You can find 'warning signals" in almost anything." As an example, she said that if one went down a "checklist" for "warning signs" of codependency, "almost everyone would be codependent."

Ms. Kopacz said that after hearing the report of harm from Ms. Francis' notes, her recommendation to DFYS would be to advise intake workers that their notes should describe *behavior* rather than the worker's or the reporter's *conclusions* about the behavior. She said, "I have seen reports with a lot more than this that weren't investigated."

Ms. Kopacz said, "[The report about the child is] full of powerfully loaded conclusions. . . . It is devoid of solid observations, [so] there is no data on which to base conclusions." For example, Ms. Kopacz said that instead of the word, "manipulative", the worker might say, "When Suzy hit Johnny, the following happened. . . . " She said that in this particular report, she would want the reporter to say, "This is why I felt that the child's behavior was seductive."

Ms. Kopacz also said that Ms. Francis' report contained, "Lots of jargon but not much description. What bothers me, the jargon is not descriptive of behavior." She said, "Increasingly, the whole message in the field is: don't make conclusions -- describe the behavior." A worker should say, "It is my impression that. . . . " and, "the impression is

based upon . . . " The worker should clearly differentiate the source of the report, such as, "Per report of the mother. . . . "

However, Ms. Kopacz added, "Often, the decision to investigate is based on subjective impressions rather than factual data. There is a place in [such a] decision for judgment calls."

The ombudsman investigator also read the report of harm text to Stephen Emerson, Social Worker IV, Staff Training Center, DFYS, Fairbanks. It is Mr. Emerson's job to train caseworkers on agency policy and procedure. He said, "There's a lot there. [Based upon that report] I would assign someone to talk to the child because of the possible emotional abuse that was alleged." He noted, for example, the allegation that Mr. X called his children "stupid." In addition, he said the report contained, "a billion red flags for sex abuse." He cited, for example, that common themes in sexual abuse are that the parent always has the child with him, and that care providers are changed frequently. He said that in his opinion, the report did not sound inordinately vague. He said, "Each allegation [in this report] alone, out of context, may not have resulted in an [interview]. It was the number and the overall flavor of the allegations which justifies concern."

He said that even if an investigation isn't geared toward sexual abuse but is the result of a neglect report, for instance, he has found it best to ask the child about sexual abuse in the initial interview. Mr. Emerson said that the younger the child at issue, the greater the chances that the report would be assigned for investigation. He added that in the case of this report, "I would want to know if there had been other reports about this family." He said, "If [a supervisor] is on the fence, assign. It is better to err on the side of safety for a child."

Did the interview justify the emergency custody decision?

The only available evidence about what transpired in the child's interview comes from the two social workers who were present and their transcribed notes in the DFYS file.

CPS Manual Policy and Procedure 2.2.5, Investigation Child/Victim, includes guidelines for social workers to follow when interviewing children. There are also comprehensive interviewing guidelines in Appendices 0-1, Interviewing General Guidelines in 0-2, and Interviewing the Young Sex Abuse Victim with the Aid of Dolls. Upon hire, each caseworker accomplishes a Pre-Service Orientation through division policies and procedures in the form of a self-study guide and test.

During their first months of hire, all child protective service workers receive what is called CORE training in four increments. Mr. Neubauer said the first three increments relate to child sexual abuse:

> The first increment, CORE Training 101, lasts three days (18 hours) and consists of a variety of topics including Introduction to Sexual Abuse, The Spectrum and Dynamics of Sexual Abuse, and Indicators of Sexual Abuse. The second increment, CORE 102, lasts five days (30 hours) and consists of a variety of topics including Characteristics of the Casework Interview, Interviewing Strategies and Their Utility, Building Trainee Skills in Interviewing and The Dynamics of Resistance: Implications for the Casework Interview. The third increment, CORE Training 103, lasts three days (18 hours) and consists of topics including The Effects of Abuse and Neglect on Infants and Toddlers, The Effects of Abuse and Neglect on

Preschool Children, The Effects of Abuse and Neglect on School Age Children, The Effects of Abuse and Neglect on the Development of Adolescents

Ms. Francis told the ombudsman investigator she had conducted sex abuse interviews with children prior to the child's. She said she had participated in DFYS CORE training before the interview, and she had been with DFYS about two and a half years prior to this incident.

Ms. Francis said she went to the interview, "with a neutral perspective -- [I] didn't know if sexual abuse had happened or not." She said that she was deliberately trying not to ask "yes and no" questions or "leading questions" during the interview. Ms. Jewett, the other social worker present in the room with the child, was silent during the interview, but took notes. Ms. Francis did not take any notes.

Ms. Francis said that during the interview, the child "showed" where she was "touched" by "pointing" at locations on her body. She also pointed to parts of an outline picture of a little girl. Ms. Francis said that as soon as the child indicated her father had touched her inappropriately, "I stopped the interview right there." Ms. Francis said she didn't want to ask the child any more questions because she didn't want the child to have to describe the incident twice.

Ms. Francis said that when Ms. Jewett was *rewriting* her notes of the preschool interview, she mistakenly inserted the word, "accidentally," because the child hadn't said that the touching was accidental until the second interview, the one with Trooper Asberry. Ms. Francis said she noticed the error when she read Ms. Jewett's transcription, so she crossed out the inaccurate word, initialed the change, and the two social workers made a separate memorandum explaining the change.

Ms. Francis said she doesn't remember what was done with Ms. Jewett's original notes, which she believes were also written on DFYS Report of Contact forms. Ms. Francis said it was not a "general practice" to rewrite notes for the file, but it was not uncommon. Ms. Francis said she did not keep the outline drawing she used during the interview in the file because the child had made no marks upon it.

Ms. Jewett said that although she has a bachelor's degree in social work and had been working in jobs connected with social services since 1986, the child's interview was her first experience with child protection because she had only been employed with DFYS for about four days previously. She had not yet had any of the CORE training, but had reviewed the CPS manual. She went with Ms. Francis to observe the interview as part of her on-the-job training. Ms. Francis asked her to take notes.

Ms. Jewett remembers that the interview took place in, "kind of like a . . . cloak room. Elsie explained things to her [the child]. Like, did she know the difference between good touch and bad touch and telling a lie and telling the truth, and that type of thing." Ms. Jewett said, " [The child] said her father had touched her private parts. . . . Actually, it seems like she may have said something like, 'My Dad really did it.' Or, 'He really did that,' or something. She was not upset through the interview at all. She was really calm. You know, just talking matter-of-factly, and didn't seem upset at all."

When asked if she remembers the exact words the child used in the interview, Ms. Jewett said, "The one I do remember is that she said her dad touched her 'private parts.' That's the word, that's the way I remember it because I remember I had thought about it after and that's what she said. In just those words."

Ms. Jewett remembers taking notes on a ROC form during the interview. She remembers typing the notes over, "so that they would be readable." She said she is sure the original notes were thrown away.

Ms. Jewett also remembers writing "accidentally," in error, on other transcribed notes which Ms. Francis and she both signed. She said, "I remember that, I did that. I took notes when she [the child] was talking to Elsie [Francis], then I also took notes when the child was talking to the trooper. You know, when she was talking to the trooper she said, "accidentally." And then . . . I put that in on the wrong sheet, because as it turned out I didn't need to take notes when she talked to the trooper at all."

Ms. Jewett said she typed an addendum to the file explaining the error on the ROCS rather than simply rewriting the notes accurately because, "We had already given it [the ROC containing the error] to the troopers."

Ms. Jewett said that the trooper interview was "longer" than Ms. Francis'. She said, "You know you don't want to grill them [the child] unnecessarily, since it was known that after you talk with the child, then somebody else has to talk to them again." She noted that compared to the interviews she has done since the one at issue, "[the child] was really articulate. . . . Usually, the kids that I've dealt with, they're a lot less willing to talk about things. A lot of the kids -- I guess not all of the[m] -- but now, that kind of stands out."

Concerning the interview with Trooper Asberry, Ms. Jewett said, "I remember him demonstrating, like picking somebody up . . . which is what was determined to have happened in this case is that her dad picked her up with his hands on bottom. Picked her up in the air. And I remember him demonstrating that to her, and she was saying, 'Yeah, you know, like that.'"

Is DFYS sufficiently accountable for what transpires in initial interviews with children who are the subject of child abuse investigations? Should DFYS tape record or video tape its initial interviews with children who are interviewed as the result of reports of harm?

Ms. Kacyon said that there is no office policy about whether to keep a social worker's original working notes in the file or to throw them away after they are rewritten on ROC forms. She said that it is routine to throw them away.

After Mr. X consulted an attorney about the incident concerning the child, Ms. Kacyon forwarded a copy of a letter from that attorney to the Attorney General's office in Anchorage by facsimile transmittal on March 10, 1993. She wrote on the transmittal cover sheet, "We are completing our documentation of our investigation and will be forwarding a copy to Julie & Gail for Torts Review." When the ombudsman investigator asked what documentation was being "completed" at that time, Ms. Kacyon said, "I think Elsie was completing her investigation. Writing up her investigation."

When the ombudsman investigator pointed out that the facsimile was dated almost three weeks after the incident, Ms. Kacyon said she remembers reminding Ms. Francis "several times" that she needed to get her investigation written up. She noted that Ms. Francis was also the licensing specialist in the office and had other responsibilities then, when the office was also short staffed. "That was the reason," she said.

CPS Policy and Procedure Manual Section 1.5 deals with "case recording." It states in pertinent part that the "purpose and intent" of proper record keeping is to provide

"a clear account of the need for service and the Divisions' response." Proper record keeping also "serve[s] to meet the Division's responsibility to be accountable for services delivered."

The manual provides, "The case record is the basic tool required to prepare and present a case for court. The worker should remember that every case of child abuse and/or neglect has the potential of going to court. Complete and proper records can also be an aid in defense in lawsuits against the agency and/or worker." The policy is for "Case recording [to be] maintained on the Report of Contact (ROC) sheets." Nothing in the manual addresses whether the case recording notes are to be original notes or notes transcribed from original notes. Nothing in the manual addresses keeping original notes.

CPS 1.5, Case Recording, provides in pertinent part:

> d. The record should be specific on who, what, when, where, why and how . . .
>
> Examples:
>
> A. "John is a very frightened boy." Frightened how? About what? In which situation?
>
> B. "He was abusive to his child." Abusive how, when, to what extent?
>
> C. "Mrs. N says she can no longer cope." Says to whom? No longer cope with what?
>
> D. Debbie and her mother have a communication problem." A Communication problem with whom? Communicating what?
>
> • • •
>
> G. Subjective words such as "the house was filthy" should be avoided. Use descriptive observations, such as "dirty dishes were piled all over the counter and table, there were several piles of dirty clothing on the floor and there were old scraps of food on the floor throughout the kitchen and living room."

Assistant Professor Kopacz said, "One of the purposes of notes is to be able to substantiate the reasons for intervention." She said it is common for social service agencies to destroy original notes because otherwise, such notes can be subpoenaed in court. However, she said she believes it would be appropriate to say that original notes should be kept until a case is closed. Finally, she said, "In my opinion, it would be a good idea to keep original critical notes in a file, and in a protective setting, if we were not taping an interview, I would keep my original notes, for reasons of accountability, self-protection, and for doing a good job. I might want to look back at my original notes."

When asked why DFYS does not audio record its interviews with children as do the Alaska State Troopers, Mr. Neubauer said, "It has been discussed," within the agency. However, he said that one reason against such recording is "the interview process is intimidating enough."

Ms. Jewett remembers that the tape recorder was located on the desk during Trooper Asberry's interview and that its presence did not seem to distract the child. She said that she does not see how it would be any problem to record social workers' interviews similarly. She said, "I don't see how it would be a problem, and it would be a lot easier than taking notes."

Ms. Kacyon said that there has been "some discussion" about taping initial interviews with children but, "[T]here's been some reluctance to do that because of not having the training to do that within the division. I know that the police have the training to do that." She added that on one occasion, a new Bethel social worker taped an interview. "She wasn't aware that it wasn't done and she just taped an interview and then it was used in the [court] case." Ms. Kacyon said that she's been told that "training" is an issue. "You know, we have different attorneys representing us so every time we get a new attorney there's a different opinion too . . . I've been told that there can be some legal problems with [taping] and I've just been given different explanations."

Appendix 0-3 to the CPS manual concerns interviewing techniques for incest cases when interviewing the victim. Page 8 of that section provides that when the interviewer makes a transition in the interview from general questions to more direct questions, like "Is someone bothering you," or "Is that person in your family," the interview "(*should be taped*)." [Emphasis added.]

In 1994, the second session of the Eighteenth Alaska Legislature failed to consider House Bill 350 which would have required that all official interviews with children who are alleged to have been abused or neglected be videotaped. The bill's prime sponsor was Representative Jeannette James and was co-sponsored by Representative Gene Therriault, both of North Pole. The bill was introduced at the request of a group of her constituents. Senator Mike Miller of North Pole also introduced a companion bill, Senate Bill 323. According to Representative James' aide, Barbara Cotting, HB 350 "died" in the House Judiciary Committee, the first committee to which it was referred; SB 323 died in the Senate Health, Education & Social Services Committee.

Ms. Cotting told the ombudsman investigator, "I thought this bill would be easy to get through, but the agencies were all up in arms [about it]." She continued, "I'd never seen anything like it, it got incredible resistance, mainly on the grounds of expense and what it would do to children who were already afraid." She said it would be fair to say that it, "Got complete resistance from all state agencies that would have been affected." She said the resistance included comments that taping initial interviews would also be an invasion of the privacy of the children at issue.

DFYS set out the reasons it opposed HB 350 in its bill analysis for the Office of the Governor. The bill analysis said in pertinent part:

> This bill would require the Department to videotape all interviews with children. Since the majority of initial interviews do not occur in the office, the Department would have to obtain cameras and hire additional staff in order to comply with the requirement that all interviews be videotaped. In FY93 . . . 9,323 investigations were completed. In many cases, more than one interview is conducted with a child before the investigation is complete. Thus this bill would require that all interviews that comprise these investigations would have to be videotaped.
>
> Interviews with children occur in schools, hospitals, the homes of friends, or the children's homes. They may be conducted in the same setting as

other children or adults who may be upset by the proceedings. The logistics of arranging to take a videocamera along on these interviews, when sometimes they are arranged on short or no notice, would complicate investigations considerably. In addition, tact, sensitivity and considerable skill are required on the part of interviewers in alleged child abuse and neglect investigations. Therefore, it would be unrealistic for the interviewer to simultaneously conduct the interview and tape the proceedings. An aide would need to be available to operate the cameras, as they would need to be able to participate in the process with sensitivity and protection to the child's and the family's confidentiality.

Social Workers and police officers are intimidating to children when investigations are being conducted. Cameras will make the process even more intimidating, and are likely to cause many children to refuse to discuss abuse or neglect which legitimately needs to be investigated. One way to mitigate the threatening nature of the videotaping would be to remodel offices with one-way mirrors and hidden cameras in each office. However, the costs of renovation would also be significant. In addition, to remove a child to an office for an interview would require the Division to assume emergency custody, which is not advisable in many cases, and is another cost to the child welfare and legal systems.

• • •

Other solutions might better address the concerns raised by the sponsor of this bill. Training of police officers and of investigating social workers are important elements . . . Interviews that police agencies conduct with alleged perpetrators are, to our knowledge, routinely audiotaped. . . .

This bill could have some negative unintended consequences. One is that children could be at risk if interviews were delayed due to lack of, or malfunctioning, equipment. It is often essential that children be interviewed as quickly as possible to take appropriate action to protect them.

Another concern is that DFYS would have to maintain a chain of evidence on the taped interview if it were to be used by law enforcement agencies. DFYS does not have the staff, facilities, or expertise to adequately track or store tapes for that purpose. In addition, there is the possibility of equipment failure leading to "gaps in tapes" which could lead to genuine cases of abuse not being prosecuted because the problems in taping could be used by the defense as a reason to drop the case altogether.

Kathy Tibbles, DFYS Social Services Program Officer in Juneau, said that in spite of its opposition to HB 350, the division has no policy against tape recording or video recording initial interviews with children. She said, "It is a recommended practice in sexual abuse allegations, but there is no policy to do so."

She said that agency workers need room to apply discretion about whether to record an interview. An important reason the agency opposed HB 350 is because it would have required videotaping *all* interviews and the discretion of professionals would have been lost. She said that in many reports of harm which lead to interviews with children, the allegation does not involve sexual abuse. However, even reports of neglect are

capable of provoking interviews which might lead to disclosures by the child of sexual abuse.

Other states also have resisted taping interviews at the initial stages. Mr. Winters (with CPS in Washington) said that in Washington, "We have avoided video and audio taping initial interviews with children like the plague." He said there were two main reasons for the agency position. First, having possession of tapes "sets up a whole new requirement for record keeping." He indicated that this record keeping would be administratively burdensome for reasons of cost, space and security. Second, he said that the Washington attorney general's office decided that the existence of such tapes set the stage for defense challenges which "avoid the real issue," which is whether or not there was abuse. He indicated that potential questions by defense attorneys about interviewing technique, and phrasing, or eye contact, "open the agency up to additional elements of challenge."

However, he said that personally he has always been in favor of taping initial interviews. Not only for reasons of agency accountability, but for the protection of children. He said, "Not infrequently, a child recants a first disclosure."

Mr. Winters said that Washington caseworkers are not required to keep original notes of interviews in their files. A caseworker usually will transcribe a narrative of the interview into their computer and may not necessarily take notes during an interview.

"Susan," the Oregon intake screener consulted by the ombudsman investigator, said that Oregon social workers work so closely with law enforcement that a policeperson would have been present at the initial interview. However, these initial interviews are not tape recorded. Susan said that in Oregon, interviews with children are not videotaped until after a court decides there is "reasonable cause" to take a child into protective custody. She continued, "People have to trust we're doing our jobs regarding accountability for first interviews." She said that caseworkers have no motive to make up disclosures of sexual abuse, and that they are "neutral observers."

Susan uses yellow pads on which to record her original notes from interviews. She then transfers the notes as a narrative to agency forms, and shreds her original notes.

Ms. Kopacz said that the controversy surrounding whether to tape record or videotape initial interviews with children calls into play "a balance between wanting to protect the family and providing safety for children."

She said that in a child protection case, "the only way to review a case is to tape it." She said that more and more, professionals are saying that the first interview with a child is critical and should only be done by the very skilled with that particular age group. She said, "It is so easy to suggest and reinforce things with children." She noted that false reports alleging sexual abuse are becoming common in custody battles between separating parents.

Ms. Kopacz said that a video tape is a much better source for review than an audio tape. She said that research indicates that 80 to 95 percent of what people respond to is visual or non-verbal, and that whenever there is a conflict between verbal and non-verbal messages, people will pay more attention to the non-verbal messages. She said that videotaping of interviews would not require skilled personnel. "It is possible to get a wide angle lens which will cover the entire room." She concluded, "but audio taping is better than nothing."

Should the child's preschool teacher have been present during the child's interview with the social workers?

AS 47.17.027 provides in pertinent part:

> (a) If the department . . . provides written certification to the child's school officials that (1) there is reasonable cause to suspect that the child has been abused or neglected . . . school officials shall permit the child to be interviewed . . . before . . . receiving permission from, the child's parent . . . A school official *shall be present* during an interview at the school *unless* the child objects or the department or law enforcement agency determines that the presence of the school official will interfere with the investigation. [Emphasis added.]

Mr. X alleged that the social workers never told his child's preschool teacher that she could, or should, be present during the interview. The DFYS case file contains a copy of a form document signed by Ms. Francis which was given to Ms. Miller when the caseworkers arrived at the preschool. The name of the preschool is handwritten in a blank on the form. In addition to other language apparently crafted to comply with the "certification" required by AS 47.17.027, it "certifies" that, "[an] interview is necessary to determine whether abuse or neglect has occurred." One sentence reads, "In the opinion of the Division, the presence of a district representative *will/will not* be detrimental to the interview." [Emphasis added.] That sentence was not modified by Ms. Francis to clarify whether or not the division made a decision about the propriety of a teacher's presence during the child's interview.

Ms. Miller told the ombudsman investigator that when the two social workers came in the preschool the day of the interview, Ms. Francis, "looked and acted uncomfortable." Ms. Miller said that she knew Ms. Francis, and later thought Ms. Francis was uncomfortable either because she, "wasn't sure of the complaint," or simply because she knew Ms. Miller. The social workers told Ms. Miller they, "needed to interview [the child]," but didn't tell Ms. Miller what the complaint was. Ms. Miller said she remembers that the social workers asked her "If the parents had 'put her [the child] down' or called her dumb." Ms. Miller told them that she had not observed behavior like that.

Ms. Miller said she asked the social workers, "if I needed to be with them when they talked to the child." She said one of the workers told her, "No, the interview needs to be private." Ms. Miller said that the social workers did not point out to her that there was a statute which said the teacher should be at the interview unless there was a determination the teacher's presence would interfere with investigation.

Ms. Miller said that the issue of whether a teacher should be present during DFYS interviews has been "grappled with" since the child's interview. Cathleen Connolly, a former preschool board president who is also an attorney with Alaska Legal Services in Bethel, told the ombudsman investigator that she understood that "They waved some paper at Ms. Miller that was an agreement with another school district, and not our preschool."

Ms. Francis' file notes state that she discussed with the child's teacher the fact that the school had no existing protocol about interviewing children. The notes reflect that because the school did not have a protocol, it requested that the caseworkers contact the child's parents before the interview. Both Ms. Francis' notes and Ms. Jewett's notes indicate that Mr. X gave them permission to interview the child when he arrived at the preschool prior to the interview.

A letter from Assistant Attorney General Julie E. Bryant dated March 24, 1993, to Mr. X's attorney said, "[T]he department presented the preschool with the proper certification to interview the child as indicated by AS 47.17.027 However, that statute does not mandate a school official to be present during the interview." It went on, "Before the interview with the child was conducted, both parents were informed and Mr. X gave his permission for the interview to take place. At that point, based on that permission, a school official's presence was not needed to conduct the investigation."

Is the Bethel DFYS office too aggressive in taking emergency custody or conducting sexual abuse investigations?

Mr. X alleged that a secretary to Bethel Judge Dale Curda told him that in the 2 1/2 year period prior to his complaint, the Bethel DFYS office took numerous emergency custodies, but only a few custodies were ordered by the court in the same time period. This indicated to Mr. X that DFYS must be taking too many emergency custody actions He reasoned that if the emergency custody actions were really necessary, more would go further, to the court ordered stage, and the court would support DFYS's action.

Under CINA statutes at AS 47.10.142 and AS 47.10.010, DFYS may take emergency custody of children, "upon discovering" that a child has been sexually abused or is in imminent and substantial danger of being sexually abused by the child's parent. However, those emergency custodies may never be scrutinized in a court proceeding. Only if the agency decides custody longer than 12 hours is necessary to protect the child, must the agency file a petition with the court alleging that the child is a child in need of aid. The statute provides this must be done within 12 hours after custody is assumed. However, if the child is released from emergency custody within 12 hours the agency must merely file a "report" with the court within 12 hours of release of custody, explaining why the child was taken into emergency custody.

In this child's case, a "report" was filed with the court in the form of an affidavit of Elsie Francis, dated March 8, 1993. The affidavit said the report of harm was determined "invalid" when the child was questioned by the Alaska State Troopers. The affidavit was dated March 8, 1993, about 10 days after the emergency custody was terminated.

Mr. Neubauer had an explanation for why DFYS typically might assume emergency custody but drop it before formally petitioning the court for continued custody. He said that in his opinion, the DFYS policy of "family centered services" promotes a reluctance of social workers not to take long term custody of children when it can be avoided. Instead, social workers attempt to return children to their parents as soon as possible, or to place children with close family relations.

Mr. Neubauer said he suspects that most often, emergency custody actions are taken then dropped without a court hearing when social workers perceive children to be at risk, but parents then voluntarily allow their children to stay with a relative temporarily. This situation would not require a court petition. Mr. Neubauer said this scenario would likely be particularly true in village areas where there are often many relatives in the vicinity. The idea would be that the child would be out of the home only temporarily, for a night or a week or two and then would go home when the situation there had improved. Social workers would regard this as an "open intake" which would be informally monitored and which would not require court participation.

To explore Mr. X's allegation the Bethel DFYS takes too many emergency custodies, the ombudsman investigator looked at DFYS statistics. DFYS offices record their statistics on PROBER, a computerized data base. Those statistics indicate for FY93

that the Bethel district had intakes for 259 families alleging various harms, including sexual abuse, neglect, runaways and mental injury. Of those families, 50 had children taken into emergency custody (approximately 19 percent). Barrow had intakes for 76 families with eight families having children taken into emergency custody (approximately 10 percent). Nome had 111 families with intakes involving their children, and 28 of those families had emergency custody taken (approximately 25 percent). In Kotzebue, 102 families had intakes, 11 families had children taken into emergency custody (approximately 11 percent). Accordingly, the Bethel office has neither the highest nor the lowest percentages of emergency custody actions per intake among the four presumably similarly situated areas.

DFYS statistics indicate that statewide in FY93, there were 2,249 referrals for sexual abuse. These amounted to 15.4 percent of all types of reports of harm. Other types include neglect, physical abuse, mental injury and abandonment. Of the 2,249 referrals for sexual abuse, 1,586, or 70.5 percent were assigned for investigation statewide.

In FY93, Bethel investigated 67 of 157 sexual abuse referrals, or 42.5 percent. Barrow investigated 55 of 96 sexual abuse referrals, or 57.3 percent. Nome investigated 21 of 35 sexual abuse referrals, or 60 percent. Kotzebue investigated 21 of 21 sexual abuse referrals, or 100 percent. These statistics indicate that compared with the three other offices, Bethel DFYS investigated the lowest percentage of its sexual abuse referrals, and far fewer than the 70.5 percent investigated statewide.

Of the investigated sexual abuse referrals in Bethel, five percent were found invalid, 47.5 percent were substantiated, and 47.5 percent were found unconfirmed. In Barrow, 10 percent were found invalid, 75 percent were substantiated, and 15 percent were unconfirmed. In Nome, 5.3 percent were found invalid, 31.6 percent were substantiated and 63.2 percent were unconfirmed. In Kotzebue, 87 percent were found substantiated and 12.5 percent were unconfirmed. Statewide, six percent were found invalid, 35.8 percent were found unsubstantiated, and 57.9 percent were unconfirmed. These statistics indicate that Bethel social workers found second fewest substantiated allegations in the four areas.

ANALYSIS AND PROPOSED FINDINGS

Mr. X believes the social workers embarked on their investigation assuming that he was guilty of abusing his child. He believes this attitude was unfair and was directed personally against him. He stated that it is his understanding that even police need "probable cause" to obtain a search warrant. In contrast, he said, practically no evidence is apparently needed to launch an investigation for child abuse and so interfere in a family's private life.

None of the three social workers involved in this incident knew Mr. X more than casually. Both Ms. Francis and Ms. Kacyon said they were relieved when the interview with Trooper Asberry showed that if Mr. X had touched the child in an improper place, it had been accidental, and in play. Investigation indicated that none of the social workers displayed any animosity toward Mr. X concerning this event. There is no evidence that any social worker treated this report more harshly than others. Under AS 47.17.030, DFYS is required to investigate each report of harm as much as "necessary" to protect the child.

For the most part, the workers in this case followed procedure. After she took the telephone call from the reporter, Ms. Francis properly consulted her intake supervisor,

Ms. Kacyon, who decided the allegations warranted an investigation. She assigned the investigation tc Ms. Francis. Because the allegations were based on behavioral indicators and not observed or disclosed sexual abuse, the report was given a priority 3. Although Ms. Tibbles would arguably have assigned the report a priority 2, Mr. Neubauer gave reasonable arguments for why a priority 3 was also appropriate. Accordingly, DFYS had 7 days in which to investigate the allegation. Ms. Francis interviewed the child four days after the report, which is within procedural timelines.

The primary issues from Mr. X's perspective are: 1) did the initial report of harm justify the interview, and 2) did the interview justify the emergency custody? DFYS employees are vested by law with the discretion to make these difficult decisions. In this case the Ombudsman must determine whether an abuse of that discretion has occurred. The Ombudsman's policy and procedures manual states that to make a finding of abuse of discretion the evidence must show that, in the exercise of its judgment, the agency:

(A) did not proceed according to law;

(B) based its decision on an erroneous choice of standards or principles;

(C) based its decision on considerations not supported by evidence;

(D) based its decision on considerations that are not relevant; or

(E) made a decision that is clearly contrary to the reasonable inferences or deductions to be made from the evidence.

The Decision to Assign and Interview

While the report of harm was primarily conclusory in nature rather than factual, it did invoke possible "red flags" for child abuse as indicated by the DFYS manual summary chart of behavioral indicators of sexual abuse. The reporter's allegations in this case could arguably be interpreted as touching upon three of five indicators. The reporter indicated the child wore strapless gowns and allegedly said, "Don't I look pretty," in a seductive manner. This could be regarded as either "fantasy" or "sophisticated, unusual sexual behavior or knowledge." Granted, other interpretations are quite possible and may even be more likely, but the inference drawn by DFYS is plausible and supported by agency standards.

Similarly, the fact that the reporter said the child "hates boys to the point of strange" could be an indicator of "poor peer relationships," if accurate. In addition, as Mr. Emerson said, a trained social worker is taught that a parent's pattern of changing caretakers frequently can be a sign of ongoing sexual abuse. Whether the reported five caretakers over five years was accurate or if so, constitutes "frequent" changes, are separate questions.

As a result, the decision to assign the report of harm and conduct the interview was clearly in accordance with law. Nor were the standards or principles applied or the inferences drawn from the evidence clearly erroneous.

However, the most reasonable inferences are only as good as the evidence from which they are drawn. Likewise, correct standards applied to faulty facts will yield problematic results. At the extreme, if a reporter simply alleged that he or she "felt" that sexual abuse was occurring, or simply stated that "the red flags were all there," without offering supporting facts, a conclusion that an abuse investigation was warranted would

not be supported by the evidence. Put another way, the fact that behavioral indicators of sexual abuse have been alleged does not mean that the existence of the indicators was supported by relevant evidence, or that contrary evidence can be ignored. The same can be said for red flags of mental injury.

As a result, analysis must still determine whether DFYS' conclusion that indicators of abuse were present (the "considerations" referenced in Ombudsman standards) was supported by evidence.

Ms. Francis' intake notes memorializing the report of harm do not conform to the case recording policy at CPS 1.5 requiring who, what, when, where, why, and how specifics in the record. For the most part, Ms. Francis' notes describe the reporter's *conclusions* about the child's alleged behavior rather than the behavior itself. These conclusions were filtered through the reporter's imagination and Ms. Francis' mental translation.

The intake notes left unanswered fundamental questions about the basis for the reporter's conclusions. For example:

- what behavior indicated that the child was "seductive?"
- where did the strapless gown come from and what was the context in which it was worn?
- what "sexual things" was the child "interested" in?
- why did the reporter think it suggestive that Mr. X "[had] his daughter w/him when he's not at work?"
- how did the child indicate hatred of boys?
- in what context did Mr. X call his children "stupid?" who else was present?
- who were the alleged five different day care providers?

If Ms. Francis did elicit more specific facts from the reporter, she could not remember them when she spoke with the ombudsman investigator and her case notes were not helpful.

Uninvolved professionals from child protective services in Washington and Oregon, as well as an experienced teacher in the field, regarded Ms. Francis' written report of harm as borderline, vague, and lacking in specific factual observations which would back up the jargon used on the intake notes.

Further, it is disturbing that collateral contacts were not used in the decision making process in this case although collateral contacts *prior* to the initial interview are suggested by the 1984 Child Sexual Abuse Agreement and were named as important steps in light of this particular report of harm by Washington and Oregon caseworkers as well as by an assistant professor of social work.

Two "collateral contacts" in fact occurred and could have been considered in deciding whether to assign the report of harm or go ahead with the interview

First, Mr. Herringshaw, a DFYS employee, knew the X family on a personal basis and told Ms. Francis that the report should be checked out further because it did not match what he knew about the family dynamics. He said that in his observation, the children were not timid and that Ms. X was not the "browbeaten" person" hinted at by the reporter.

However, Ms. Kacyon, the agency decision-maker, was not aware of Mr. Herringshaw's information because Ms. Francis did not mention it to her. The fact that the report was assigned a priority 3 shows that Ms. Kacyon did not regard it as an emergency; Ms. Francis should have given Ms. Kacyon the opportunity to use Mr. Herringshaw's information to provoke further inquiry before she made a decision to investigate.

Even absent that information, given the borderline nature of the information and suggested agency procedure, Ms. Kacyon arguably should have instructed Ms. Francis to recontact the reporter as well as other collateral contacts prior to assigning the report for investigation.

The second collateral contact was with the child's preschool teacher at the time of the interview. However, she was not contacted until the investigators arrived to conduct the interview. Nevertheless, the teacher also contradicted the reporter's observations. She told caseworkers that the parent did not "put down" the children, the child was socially "fine," and that she did not seem to have problems relating to male children. Presumably she would have provided the same information had she been contacted by phone, prior to the decision to investigate. Both collateral contacts lessened the credibility of the intake report. Ms. Francis should have conveyed them to Ms. Kacyon and allowed her to reconsider the investigation decision even at that point.

Although CPS 2.2.3 states that an investigation "requires" one face to face contact with the child, it also states, "any exceptions to the minimum standards require review and approval by the supervisor." This seems to indicate that once a case is assigned for investigation, it is not necessarily an irreversible process. Ms. Kacyon could have reconsidered her decision to investigate and interview the child in light of Mr. Herringshaw's comments about the family and Ms. Miller's comments that the child was socially right on target.

It must be remembered that the first question here is whether the agency inappropriately launched an in-school interview to determine whether abuse had occurred, not whether the agency reached inappropriate conclusions after investigation. Clearly, an investigative agency cannot be required to demonstrate that allegations are true before an investigation is undertaken. Yet even investigative efforts resulting in exoneration can harm those under investigation. As a result, some minimal threshold of factual support for allegations should be required before steps which may cause harm or embarrassment are undertaken.

While the reporter's initial allegations did conclusorily invoke *possible indicators* of child abuse, they contained few specific *facts supporting the existence of those indicators*. Even those few facts were refuted by other observers, including an agency staffer and a current day care teacher. Ms. Kacyon, the decision-maker, was not given the opportunity to consider relevant information in making the decision to interview the child, and should herself have ordered further collateral contacts.

Although it is a close call, the considerations (behavioral indicators) cited by the agency to defend its decision to interview the child were not sufficiently supported by the

evidence. While the agency did not base its decision on irrelevancies, it failed to consider relevant and material information available to it. As a result, the Ombudsman proposed to find the allegation justified, that DFYS abused its discretion when it decided to interview Mr. X's child based upon the report of harm.

The Decision to Take Custody

Mr. X also alleged that the evidence the social workers found upon investigation did not justify taking emergency custody of the child and that his case is a prime example of how the Bethel office is a "loose cannon" in general, investigating too many sexual abuse allegations and taking emergency custody too frequently.

The ombudsman investigator compared DFYS statistical information about reports of child sexual abuse in four similar population areas. Compared to Nome, Kotzebue, and Barrow offices, Bethel DFYS is the most conservative as to the number of sexual abuse referrals investigated. Bethel DFYS is in the middle as to percentages of emergency custody actions taken per number of intakes. Assuming that the other three offices are not out of line, the weight of the evidence is that the Bethel office is not "out of control," in this respect.

While these statistical manipulations do not account for all variables, they do indicate that Bethel is performing comparably to other DFYS districts similarly situated. This indicates that while there is a perception even among some social work professionals that the Bethel DFYS office is not properly screening reports of sexual abuse, DFYS statistics refute the allegation.

However, investigation of Mr. X's allegation raised an additional question: as a broad policy matter, is DFYS being held sufficiently accountable for its actions in making emergency custody decisions? Mr. X's complaint illustrates the issues: does the DFYS file in the child's case contain enough information so that the caseworker's actions are fairly reviewable?

Mr. X believes that because the agency does not routinely tape record its initial interviews with children, the emergency custody decisions based on those interviews are unreasonably shielded from review.

Although the agency might argue that the state interest in protecting children overcomes an interest in accountability at the initial interview level, Mr. X raises a good point. A point which was supported by the difficulty the ombudsman investigator faced in attempting to effectively review the discretionary decision-making in this case.

The child's file did not contain original notes, so nothing but potentially self-serving testimony and after-the-fact transcribed notes from the persons whose discretion was being questioned were available as a review tool. Though Bethel DFYS's interest in protecting the child would certainly overcome her parents' right to noninterference by DFYS, the agency action should not be so shielded from scrutiny.

The Department of Health and Social Services's Bill Analysis for HB 350 gave many reasons DFYS did not support videotaping initial interviews. Among these were many addressing administrative convenience. For example, the agency does not want to worry about tracking chains of custody or storing tapes; it does not want to "train" its workers to use video cameras. The agency doesn't want the expense of video cameras. Other reasons included that children might be intimidated by the camera, and that defense lawyers would have more to question in court cases if tapes exist. On the other hand,

Ms. Tibbles told the ombudsman investigator that DFYS is not necessarily adverse to taping some initial interviews, but simply wants to retain discretion in the matter.

Social workers questioned by the ombudsman investigator, however, either said that audio taping would not be a problem and might be easier than note taking, or said that a videotape would be the best way to review a case. Mr. Winters even said that a taped initial interview might capture a disclosure which might otherwise be recanted, adding that children frequently recant at a second interview. Finally, even DFYS's own policy and procedure manual provides that interviews concerning incest cases "should be taped."

The Ombudsman finds that, as a policy matter, administrative convenience does not justify lack of agency accountability in this sensitive area. From the perspective of effective child protection, the arguments for videotaping, or at least audio taping initial interviews, are as powerful as those against it. Further, agency argument that "training" would be excessively burdensome in either an audio or video scenario is unconvincing in this technological age when even three year olds run recording devices and many families already own camcorders. Similarly, where video and tape recorders might have intimidated children of the 1960's, the same likely cannot be said for children of the 1990's. While video cameras are admittedly expensive, audiotape recorders are not.

In this case, if the child's preschool teacher nad been present during the interview, at least some accountability would also have been present. There would have been a non-agency witness to what the child said during the interview.

It appears that there is some confusion in the Bethel office about the statutory requirement to include a school official in most DFYS interviews of children at schools. In this case, Ms. Francis should have required that a school official attend the interview unless there was some reason a school official's presence would have been detrimental. Instead, the social workers actively excluded the teacher.

Assistant Attorney General Julie Bryant argued that in a technically legal sense Ms. Miller's presence was not necessary because Mr. X gave prior permission for the interview. The Ombudsman finds that whether or not the assistant attorney general's interpretation of the statute is correct, the agency's procedures were improper because the teacher was told she could not attend *without any apparent basis for the exclusion*. If Ms. Miller had been present, an important check and balance upon the caseworker's interviewing technique would have been in place. While the investigator did not research the legislative intent for including the mandatory "shall be present" language in AS 47.17.027, the plain language is there and should have been obeyed.

The Ombudsman concludes that Ms. Francis' failure to include Ms. Miller as a witness to the interview was an error. Compounding the error was the fact that the caseworkers did not memorialize the interview with their original notes. That transcribed notes can be unreliable is clear by the facts of this case: e.g. Ms. Jewett's insertion and later redaction of the word "accidentally" in her transcription.

Unfortunately, due to this combination of circumstances, it was impossible in this complaint independently to review the critical issue of whether the workers abused their discretion by taking the child into emergency custody.

Therefore, the Ombudsman proposed to find this portion of Mr. X's allegation indeterminate.

Proposed Overall Finding

Under Ombudsman regulations, when one allegation or portion thereof is found indeterminate and another is found justified, the overall allegation is found partially justified. As a result, the Ombudsman proposed to find partially justified the allegation that:

> *The Division of Family and Youth Services abused its discretion by deciding to interview complainant's child based on an insubstantial report of harm and by thereafter taking complainant's child into emergency custody.*

PROPOSED RECOMMENDATIONS

The Ombudsman proposed to find part of this allegation indeterminate because agency practices made the allegation incapable of adequate investigation. The Ombudsman proposed the following recommendations:

(1) Caseworkers should never dispose of their original file notes, but should retain them as part of the case file at issue.

(2) DFYS should adopt a policy that interviews with children, during which no other persons are present but agency employees and the interviewee(s), should be audio recorded. When possible, such interviews should be videotaped. The agency should consult with the Alaska State Troopers to learn how similar interviews are recorded as a regular practice of that agency.

(3) The division should consult with the Department of Law, in particular the assistant attorney general assigned to it, and then review with all division social workers their obligation under AS 47.17.027 to have a school official present during school interviews.

(4) DFYS policy makers and trainers should work together with Bethel caseworkers to tighten up existing procedures in the Bethel office so that record keeping is accomplished timely and is more fact oriented, affidavits to the court are filed on time, screening decisions are made critically, and persons whom the Bethel social workers contact are made aware of their rights and responsibilities concerning child protection.

AGENCY RESPONSE TO OMBUDSMAN'S PRELIMINARY REPORT

Under AS 24.55.180, "Before giving an opinion or recommendation that is critical of an agency or person, the ombudsman shall consult with that agency or person." This is done to give the agency an opportunity to tell the Ombudsman's Office if the report contains errors of any kind and to provide any response it wishes to be included in the final report. The agency responded to this preliminary report by letter dated April 28, 1995.

The Commissioner stated, "After reviewing this investigative report, it is the general opinion of the Department of Health and Social Services that appropriate judgment and discretion were exercised by the DFYS Bethel field office." In other words, the agency did not accept the Ombudsman's finding that the Bethel DFYS office should have conducted further research or made collateral contacts before social workers interviewed the X's child.

However, the Commissioner also wrote, "In general, we conclude that a thorough, detailed and objective investigation was conducted." In other words, the agency did not dispute the facts found in the Ombudsman's investigation.

Regardless of what the Ombudsman and the agency could further argue to justify their opposing points of view regarding whether the social workers abused their discretion in this case, there is no individualized remedy the Ombudsman is prepared to suggest for Mr. X and his family. Each discretionary decision made by DFYS social workers in the future must be made on its own merits. Even if the agency were to agree with the Ombudsman's finding in this case, the interview with this child already has been conducted. The report of harm ultimately was determined invalid. Investigation *did not find* that the social workers *deliberately* abused their discretion.

Therefore, because the agency response offers nothing which changes the Ombudsman's opinion regarding the facts of this particular case, the proposed finding stands: the Ombudsman agrees with Mr. X that the decision to interview his child solely on the basis of the particular report of harm was an error.

Because of the paucity of available objective evidence, the Ombudsman was unable to evaluate the social workers' decision to take emergency custody. As a result, the Ombudsman was forced to find indeterminate, the allegation that the agency abused its discretion by taking emergency custody based upon the interview at the preschool.

As a public policy matter an indeterminate finding is unacceptable when it is based on an insufficiency of agency accountability. Accordingly, two of the Ombudsman's proposed recommendations addressed accountability issues for the future.

The first proposed recommendation was that caseworkers should never dispose of their original file notes, but should retain them as part of the case file at issue. The agency response requested that the Ombudsman modify the recommendation to read, "DFYS should train staff in effective investigative note-taking and record entries so that critical information is properly recorded in case files." The agency director wrote, "I believe doing a good job and knowing what information should go into notes makes the work more accountable."

The agency's proposed modification is unacceptable because, in the Ombudsman's opinion, it insufficiently addresses the accountability issue. While, of course, further and continued staff training is a laudable goal, this does not adequately resolve the point of the recommendation which is to assure that social workers' *original* impressions are retained in the file. Accordingly, the Ombudsman retains its proposed recommendation as the final recommendation on this issue.

The second proposed recommendation was that initial DFYS interviews with children be either audio or videotaped. The agency agreed that this important issue must be addressed. However, rather than make a policy change based on the Ombudsman's recommendation, the agency proposed the recommendation be modified to provide for further research on the issue as a "first step" toward reconsideration of its present policy allowing discretionary audio recording of child protection interviews. A generalized promise to "do more research" would not have been convincing. But, the agency has committed to concluding such a study by the time the legislature convenes in January 1996. Because, as the agency states, "no thorough study has been completed to analyze the issue and its effects on child protective services in this state," the Ombudsman will modify the recommendation as requested by the agency.

The Ombudsman's third proposed recommendation asked that all social workers be specifically retrained in their obligations under AS 47.17.027 to have a school official present during school interviews. The agency responded, "[W]e believe that the social workers [in this case] acted appropriately, due to the fact that the father came to the school prior to the interview and had given his permission for the interview to be conducted." Stated otherwise, the agency continued to characterize as a deliberate one, the social workers' decision not to have a teacher present at the child's interview.

The Ombudsman's investigation indicated, however, that if the social workers knew of the statutory requirement to have a school official present unless that presence would interfere with the investigation, they did not express that knowledge to either Julie Miller, the preschool teacher, or Mr. and Ms. X. Those witnesses said they did not know of the requirement and were not informed of it at the scene. In addition, there was no evidence the social workers had any basis for believing a teacher's presence might interfere with the interview. Investigation could not definitively determine whether the social workers knew of the requirement, decided not to mention it, or had forgotten it.

However, the Ombudsman's reading of AS 47.17.027 is that DFYS social workers should interpret the statute to mean exactly what it says: "a school official *shall be present* during an interview at the school unless the child objects or the Department or law enforcement agency determines that the presence of the school official will *interfere* with the investigation." [Emphasis added.] This was not done in the child's interview and the agency did not satisfactorily explain the omission. Therefore, the Ombudsman continues to believe the agency erred in this respect in this case.

The Ombudsman's proposed recommendation on this issue suggested that the requirements of AS 47.17.027 be reviewed with the agency's attorney and with all social workers. The agency responded, "Knowledge and protocol related to statutes and regulations should be clearly covered in our CORE training components." In this case, however, both social workers had completed the CORE training components.

The agency suggested modifying the proposed recommendation by including it within recommendation 4 which addresses further training of social workers. As set out below, DFYS has retrained its Bethel social workers in their responsibilities under AS 47.17.027. Therefore, the Ombudsman agreed to modify the recommendation as requested.

Finally, the Ombudsman's proposed recommendation number 4 was directed specifically at retraining the Bethel DFYS office concerning several other issues which arose during investigation of this complaint. The agency responded that in summer 1993 the Bethel office actually underwent further training as a regular part of agency procedures. The agency said, "At the request of then Director, Deborah Wing, a Training Plan was established for the Bethel Family Services office last summer following a July visit to Bethel by Steve Emerson, Staff Training Center. During this visit Individual Training Needs Assessments (ITNA) were completed for each staff member and a plan was established to meet those training needs, as identified. During the past six (6) months the Bethel field office has received 69 hours of training including CORE training..."

In conclusion, while not admitting any errors on the part of the DFYS Bethel staff concerning this situation, the agency has in fact retrained its Bethel staff in CORE issues (including AS 47.17.027) and the other issues addressed by the Ombudsman's proposed recommendation. Accordingly, the Ombudsman will modify its final recommendation 4 as requested by the agency.

FINAL FINDING

The Ombudsman finds that DFYS social workers in Bethel abused their discretion in this case when deciding to interview the X's child based upon a particularly weak report of harm without considering available collateral information. In addition, the Ombudsman was unable to reach a conclusion independently regarding the allegation that the workers abused their discretion when taking the child into emergency custody because the initial interview was not audio or video recorded and original notes of the interview were not retained by the agency. Therefore, the Ombudsman finds partially justified the overall allegation that:

The Division of Family and Youth Services abused its discretion by deciding to interview complainant's child based on an insubstantial report of harm and by thereafter taking complainant's child into emergency custody.

FINAL RECOMMENDATIONS

In the belief that sound public policy supports accountability of agency action, the Ombudsman makes the following recommendations:

(1) Caseworkers should never dispose of their original file notes, but should retain them as part of the case file at issue.

(2) DFYS should conduct a feasibility study regarding audiotaping/videotaping of initial interviews with alleged victims of child abuse and neglect. The study will include a cost analysis, review of appropriate literature, pros and cons related to CPS investigations, training needs, legal issues and specified situations that would benefit from taping. This study should be completed by the start of the January 1996 Alaska legislative session.

(3) DFYS policy makers and trainers should continue their efforts to improve social workers' skills, competence and casework knowledge through comprehensive, consistent and timely training opportunities for all DFYS staff.

The agency has accepted final recommendations 2 and 3. The agency has refused to accept final recommendation 1. As a result this complaint will be closed as partially justified and partially rectified.