ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8072

3275 HJUD HB 88 (FILE 1)

151

services to battered women and children, and to survivors of sexual assault. The client population is primarily from Oneida County although not limited to that area. Hall House provided shelter services to 267 women and children during program year 1983. Rape Crisis Services provided services to 120 victims and family members during program year 1983.

Although there is no formal statistical account, we estimate that at least 25 percent of Hall House clients have indicated being sexually assaulted by a spouse. Many of these women have received counseling as a result of the physical assault; counseling was the only remedy for the sexual assault. Many of these women became pregnant as a result of the attacks. Many of the sexual assault episodes occurred after other forms of physical violence; in other cases the episodes of rape were isolated events. Some clients were living apart from their husbands at the time of the attacks, but remained legally married because they were unable to afford divorce proceedings.

YWCA of Buffalo and Erie County

The YWCA of Buffalo and Erie County is a not-for-profit association dedicated to the drawing together into responsible membership women and girls of diverse experiences and faiths. We represent 4,000 members and associates. This YWCA was founded in 1870 and has conducted programs of research, education and advocacy on social issues with special impact on women and children. Through this work, the YWCA has been increasingly

concerned with the issue of family violence. We are especially concerned by the discriminatory attitude toward marital rape victims.

Address to the New York County Lawyer's Association,
May 1, 1984

MV 3

May, 1984

MARITAL RAPE: THE MISUNDERSTOOD CRIME

David Finkelhor, Ph.D.
Associate Director
Family Violence Research Program
University of New Hampshire
Durham, NH 03824

Marital rape is a crime with a name, but without a reality. Even where it exists in our legislation, it does not exist in our imagination. Despite debates in the congress and in the courts, people have only the vaguest and most misleading picture of what it is. The stories of the victims of this crime -- victims humiliated by their assailants, ashamed among their closest friends, deprived of the protection of the law, and ignored by the professionals -- those stories have not yet touched the conscience of the community.

It was to hasten this process that my colleague Kersti Yllo and I recruited and interviewed fifty women who had been sexually assaulted by their husbands. The women were ordinary women, most of them clients at family planning agencies who were asked as part of their regular medical history if they had ever been sexually assaulted by their partner. Many were telling their stories for the first time.

The depth of popular ignorance about the problem of marital rape runs deep. When we asked groups of students, for example, to invent vignettes of marital rape, one wrote, "He wants to. She doesn't. He wins". Can you imagine a stranger rape so described: "He wants to. She doesn't. He wins." No, the imagery of stranger rape has knives and dark alleys and terror and violence and degradation.

So does marital rape! People are apt to think of marital rape, if they think of anything at all, as a bedroom squabble over whether to have sex tonight. No wonder they rate it in surveys as being about as serious an offense as driving while drunk. But marital rape does have brutality and terror and violence and humiliation to rival the most graphic stranger rape.

Among the fifty women we interviewed:

--one had been raped at knifepoint by a husband who held her up against the wall and threatened to kill her.

--one was jumped in the dark by her husband and raped in the anus while slumped over a toilet.

--one was gang raped by her husband and his friend holding blackjacks after they surprised her alone in a vacant apartment.

--one had her baby kidnapped by an estranged husband who compelled her to have sex as a condition for returning the child.

--one had a 6 centimeter gash ripped in her vagina by a husband who was trying "to pull her vagina out".

None of these atrocities (and there were others of equal brutality) were ever reported to the police or to a newspaper. Some were never reported to anybody.

And these were marital rapes. If other people had these images inscribed in their memories when they thought of marital rape in the same indelible way that my colleague and I do, I do not think we would hear nearly so much nonsense about this problem.

However, this imagery of marital rape is not the whole reality either. From a survey we did of 521 women in Boston and from one Diana Russell did of 930 women in San Francisco, we estimate that marital rape is amazingly frequent -- occurring to as many as 10 to 14% of all married women. When talking about a problem of these dimensions, it is no more fair to say that marital rape is always a savage attack than it is to say that it is always a bedroom squabble. We are talking about a spectrum of which both of these are a part.

To make some sense of this spectrum, my colleague and I, after carefully analyzing the cases of the women we interviewed, found that it was useful to divide them into three broad categories. We decided to call these three categories battering rapes, non-battering rapes and obsessive rapes.

Battering rapes were the most brutal and included most of the incidents I listed earlier. They occurred in relationships where, in addition to the sexual abuse, there was a large amount of physical abuse. These husbands tended to have problems with alcohol and drugs. They had enormous reservoirs of anger which they vented on their wives and often other people in their environment. The rapes tended to take place in capricious and unpredictable circumstances, much like the other violence. They seemed to have little to do with sexual issues per se. In fact, many of these women said they made themselves sexually available whenever their husband wanted them. Rather, these men seemed to be motivated by an intense desire to punish, humiliate, degrade, and retaliate against their wives using rape as the vehicle. (About forty-five percent of the women we interviewed suffered from battering rapes.)

The non-battering rapes were substantially different. They occurred in more middle class marriages where there was much less of a history of violence and abuse. The immediate precipitant of these rapes was more likely to be a specifically sexual grievance, for example, over how often to have sex or what kinds of sex. The force involved was often more restrained, enough to gain sexual access, but not enough to cause severe injury. These rapes seemed to be motivated less by anger than by a desire to assert power, establish control, teach a lesson, show who was boss. (Another forty-five percent of the rapes were of this sort.)

Finally, there was a third kind of marital rape we uncovered in about 10% of the situations that we called obsessive rapes. In these relationships, the husbands had unusual sexual preoccupations. Most were obsessed with pornography; they wanted their wives to help them make it. Most were obsessed with their sexual problems; they were afraid of being impotent or homosexual. Often they had highly structured rituals about sex. They could only get aroused if their wives were in a certain position, or if they touched them in a certain way, or if they "staged" a rape, there was a sense that many of these men needed violence or struggle in order to have sex. They found the humiliation very stimulating. The women felt as though they were being used as masturbatory objects. There was a definite sadistic component to some.

These three -- battering, non-battering and obsessive -- were the types of rape we identified from our interviews with marital rape victims. There may be other types; we may need to refine our conceptions. The important point is that marital rape happens in a wide variety of contexts. We need an imagery that encompasses this variety, and we can only get it by listening to the stories of the women it happens to.

The absence of these stories from the consciences of the community results in another misunderstanding about marital rape -- this one concerning its impact. People do not believe that marital rape hurts. In 1979, a nationally syndicated columnist invented some experts to bolster his own prejudices and wrote that "many U.S. jurists agree that when a husband compels his wife to engage in sex relations, she suffers relatively little of the psychological trauma incurred in rape by a stranger" (Lloyd Shearer, Parade Magazine, April 22, 1979).

(Notice how the husband only "compels his wife" while what the stranger does is rape.)

"This isn't like he's grabbing some lady off the street", argued John Rideout's defense attorney Charles Burt. "This is a woman he may have made love to hundreds of times before." In other words, if he had made love to her hundreds of times before, how traumatic could one more time be?

Opinions like this betray a fundamental misunderstanding of the trauma of rape in general as well as the trauma of marital rape in particular. Rape is traumatic not because it is with someone you don't know, but because it is with someone you don't want -- whether stranger, friend or husband.

Burt's idea is akin to saying that if your business partner empties your joint account and runs off to Venezuela, it shouldn't hurt, because after all, you'd written him hundreds of checks before.

Rape is the intimate violation of a person's trust and autonomy. Prior intimate contact only makes the violation that much more so.

In fact the studies that have looked at this question empirically have indeed found that the victims of marital rape do suffer greater and longer term trauma than other rape victims. This finding is not surprising to those who have talked to marital rape victims and have come to recognize the three special injuries of marital rape: the betrayal, the entrapment and the isolation.

Here so than victims of any other kind of rape, the victims of marital rape suffer a profound betrayal. Among the women we interviewed, the fact that someone whom they had loved and needed could violate them in such an intimate way destroyed their ability to trust others. "I thought so highly of him and he turned out to be a rapist," said one woman. The experience also zapped their confidence in themselves and their faith that they had the capacity to choose trustworthy companions. Years later, many of these women found it impossible to contemplate intimacy with a man. This is a component to marital rape that has no parallel in stranger rape.

A second component that makes marital rape different and more traumatic than other forms of rape is the entrapment. Most marital rape victims are raped not just once but many times. Half of our interviewees had been sexually assaulted twenty times or more by their husbands. They lived for months, sometimes years, with ongoing violation. Many grappled with never-ending anxiety about when the next forced sex episode might occur. This took its toll in the form of chronic terror, emotional numbing, involuntary panics, and repetitive nightmares that often lasted for years after the relationship had ended and the threat of rape had gone. In the sexual sphere, victims suffered from flashbacks and inability to engage in sex. The corrosive impact of marital rape could be summed up thus: when you are raped by a stranger you have to live with a frightening memory. When you are raped by your husband you have to live with your rapist.

Finally, while all rape victims suffer shame and stigma, few suffer the total isolation of marital rape. No relatives or friends commiserated with these women about the pain. No police or court confirmed the judgement that they had been wronged. In their isolation they usually blamed themselves, and saw themselves as inadequate and different. It was a profound psychological scar that was difficult to erase.

It is to erase this scar of isolation that I think we owe our first priority. The debate about criminalizing marital rape speaks to many issues: justice, fairness, equality, deterrence of crime, and retribution against offenders. Yet the issue that is paramount for me is compassion for victims.

We must reach out to the victim of marital rape and extend legitimacy to and compassion for what they have suffered. Doctors need to be aware, for example, that it is not a simple matter for some women to avoid sex post-operatively, even though their recovery urgently requires it. Family planning agencies need to take into account that in some women's marriages, contraceptives like a diaphragm will not be adequate protection.

Attorneys need to recognize and alert divorcing women to the particular vulnerability they face from embittered husbands during the period following a separation. Marriage counselors need to know that the unspoken and unacknowledged, grievance plaguing many wives is that their husbands sexually assaults them.

(Incidentally, it is interesting to note that in the whole 25 year literature on sex therapy and marital sex, one can search in vain for any reference to the problem of marital rape, an experience that may be occurring to one in ten wives.)

Marital rape has been a non-problem for too long. Unfortunately, when people suffer from non-problems, they tend to become non-persons, both in their own eyes and in the eyes of others. Making marital rape a crime will put a few husbands out of our community, but it will bring a whole lot of victims back. The invitation is long overdue.

C '35

THE SENATE
STATE OF NEW YORK

MANFRED ORRENSTEIN
MINORITY LEADER
270 BROADWAY
NEW YORK, N. Y. 10007

AUG 10 1978

August 8, 1978

RECEIVED AFTER ACTION BY GOVERNOR

Honorable Hugh L. Carey
Governor of the State of New York
Executive Chamber
State Capitol
Albany, New York 12221

Re: Senate Bill Number 7666-C

Attention: Honorable Judah Gribetz
Counsel to the Governor

Dear Governor Carey:

You have asked that I communicate my views as the sponsor of the above legislation now pending before you.

This bill removes the bar to criminal prosecution of a husband who sexually assaults his wife while they are legally separated. It is a change in the law that has been long overdue. It is a change that is demanded by the growing recognition of the equality of men and women. Our state, like many others, still clings to the common law rule that a man cannot be guilty of sexually abusing his wife. That rule rests upon the view that a wife is merely the property of her husband and like his other property he is free to do with her as he pleases. J. S. Mill noted that,

> "[A] female slave has (in Christian countries) an admitted right, and is considered under a moral obligation, to refuse to her master the last familiarity. Not so the wife: however brutal a tyrant she may unfortunately be chained to - though she may know that he hates her, though it may be his daily pleasure to torture her, and though she may feel it impossible not to loathe him - he can

EXHIBIT C

> claim from her and enforce the lowest degradation of a human being, that of being made the instrument of an animal function contrary to her inclinations."
> J. S. Mill, "The Subjection of Women," in On Liberty and Other Essays (E. Neff ed. 1926) p. 226.

The property concept was supplemented by the view that a man and wife were legally the same person. Upon this premise rested rules barring women from holding and conveying property. The view that the legal identity of the wife merged into that of her husband also was the basis for holding that a man could not be guilty of raping his wife because a man cannot rape himself. Both of those concepts have been abandoned in large measure since the enactment in England and the United States of the Married Woman's Property Acts which permitted wives to hold and convey property. As pointed out in a recent law review article:

> "today a man does not have license by way of marriage to do with his wife's property what he will. Public policy seeking to uphold the marital relationship does not see as detrimental to that relationship the recognition of rights in married women over their property. The feasibility of a contention that there should be a rule to give a husband a license to do with his wife's person as he pleases is thus brought into question."
> Jocelynne A. Scutt, "Consent in Rape: The Problem of the Marriage Contract," Monash University Law Review, Vol. 3, June 1977, p. 270.

Since the basis for the rape exemption has fallen, it seems anomalous that the ancient structure should remain standing. Two states, that once expressly provided for a husband's exemption from the rape laws, have recently abolished exemption. S. D. Compiled Laws. Ann. § 22-22-1 (Supp. 1976); Del. Code Tit. 11 §763 (Supp. 1976). Other states have made partial retreats from the exemption rule. Hawaii does not provide an exemption for husbands either statutorily or by common law, but its rape statute requires that the victim must not have permitted sexual contact by the aggressor in the previous 12 months. HAW. Penal Code

•730-732 (1972). Therefore, a husband who was not permitted sexual contact with his wife for 12 months can be liable for rape, if it occurs. The statute also provided that regardless of previous social relationship, an aggressor is guilty if he inflicts serious bodily injury. Nine states that have the statutory exemption limit its application. Colorado, New Hampshire and Oregon bar the exemption if the couple are living apart. Michigan, Minnesota and Nevada bar the rule if the couple are living apart and one has filed for divorce or separate maintenance. Finally, Louisiana, Maryland and North Dakota require that there be a court ordered separation.

S-7666-C does not go as far as South Dakota and Delaware in removing the exemption completely. Rather it is in line with the nine states that place restrictions upon the exemption. A recent article noted that,

> "In view of some recent abortive attempts to abrogate or modify the immunity, it is unlikely that many legislators would repeal it altogether. A suitable compromise might be to eliminate the exemption for husbands and wives who are living apart. This proposal has the advantage of allaying evidentiary fears and of attracting the support of even those who believe a wife has a duty to have sex with her husband upon his request." "The Marital Rape Exemption," N.Y.U. Law Review (Vol. 52:2, May 1977) p. 323.

This is precisely what this bill achieves in barring the exemption when the parties are living apart pursuant to a legal separation and the attack has been forcible.

I respectfully urge your approval of this bill so that this outdated vestige of discarded legal concepts can be removed from our statutes.

Sincerely,

Manfred Ohrenstein

REMARKS OF ATTORNEY GENERAL ROBERT ABRAMS

BEFORE

NEW YORK COUNTY LAWYERS ASSOCIATION

MAY 3, 1984

IT IS ALWAYS AN HONOR TO APPEAR BEFORE THE NEW YORK COUNTY LAWYER'S ASSOCIATION. AS ON OTHER OCCASIONS WHEN I HAVE SPOKEN HERE, WE HAVE A KNOWLEDGEABLE PANEL AND AN IMPORTANT SUBJECT TO ADDRESS.

THE PROBLEM OF MARITAL RAPE IS AN OLD ONE. WHAT IS NEW AND DIFFERENT IS THE PUBLIC PRESSURE TO IMPOSE CRIMINAL SANCTIONS ON HUSBANDS WHO RAPE THEIR WIVES, A PRESSURE THAT IS REFLECTED NATIONALLY IN SOME 16 STATES THAT, BY STATUTE OR CASE LAW, HAVE NOW MADE MARITAL RAPE A CRIME. NEW YORK IS <u>NOT</u> ONE OF THOSE STATES. THE TIME HAS COME FOR NEW YORK TO REPEAL THE MARITAL EXEMPTION TO OUR RAPE AND SEXUAL ABUSE STATUTES. THE REASONS TRADITIONALLY GIVEN FOR NOT PROSECUTING HUSBANDS WHO RAPE THEIR WIVES SIMPLY DO NOT HOLD UP.

THE IDEA THAT THE WIFE BY SIGNING THE MARRIAGE CONTRACT CONSENTS TO SEX ON ANY OCCASION AND UNDER ANY CONDITIONS IS ARCHAIC - - INDEED, LITERALLY SO. IT WAS MORE THAN 300 YEARS AGO IN ENGLAND THAT THE MARITAL EXEMPTION FROM RAPE WAS FIRST

RECOGNIZED. THE WORDS...

RECOGNIZED. THE WORDS ARE THOSE OF SIR MATTHEW HALE (WHO I WOULD ADD PARENTHETICALLY WAS ALSO KNOWN FOR HIS OVERZEALOUS HANGING OF WITCHES):

> ". . . THE HUSBAND CANNOT BE GUILTY OF RAPE COMMITTED BY HIMSELF UPON HIS LAWFUL WIFE, FOR BY THEIR MUTUAL MATRIMONIAL CONSENT AND CONTRACT, THE WIFE HATH GIVEN UP HERSELF . . . UNTO HER HUSBAND. . . ."

CERTAINLY, WE HAVE GONE FAR BEYOND THE POINT WHERE WE SAY THAT WHEN A WOMAN MARRIES SHE GIVES UP THE RIGHT TO WITHHOLD CONSENT, OR MERGES INTO THE PERSON OF HER HUSBAND, OR BECOMES THE PROPERTY OF HER HUSBAND, HAVING PREVIOUSLY BEEN THE PROPERTY OF HER FATHER.

NONETHELESS, NEW YORK HAS MADE RAPE IN MARRIAGE A CRIME ONLY UNDER EXTREMELY LIMITED CIRCUMSTANCES. THE FIRST IS IF THE MARRIAGE IS NOT VALID UNDER OUR LAWS. THE SECOND IS IF THE HUSBAND AND WIFE ARE LIVING APART PURSUANT TO A COURT ORDER "WHICH BY ITS TERMS OR IN ITS EFFECT REQUIRES SUCH LIVING APART", OR IF THEY ARE LIVING APART PURSUANT TO A JUDGMENT OF SEPARATION OR A SEPARATION AGREEMENT SPECIFICALLY ACKNOWLEDGING POTENTIAL LIABILITY FOR MARITAL RAPE.

THESE LIMITATIONS ON..

THESE LIMITATIONS ON NEW YORK'S MARITAL RAPE EXEMPTION ARE WRITTEN INTO PENAL LAW §130.00 BY A PROCESS THAT IS SO IRONIC AS TO REFLECT A DEEP SEATED CHAUVINISM ON THE PART OF THE LEGISLATURE. SECTION 130 DEFINES "FEMALE" FOR THE PURPOSE OF SEX OFFENSES AS "ANY FEMALE PERSON WHO IS NOT MARRIED TO THE ACTOR" AND THEN DEFINES "NOT MARRIED" TO ENCOMPASS THE CIRCUMSTANCES I HAVE JUST DESCRIBED. AS A RESULT, ACCORDING TO THE NEW YORK CRIMINAL LAW, A WIFE WHO IS LIVING TOGETHER WITH HER HUSBAND IS NOT A FEMALE, AND ANY RAPE OR SEXUAL ABUSE OF HER BY HER HUSBAND CAN BE COMMITTED WITHOUT RISK OF CRIMINAL PENALTY.

NOT SURPRISINGLY THERE HAVE BEEN EXTREMELY FEW -- LESS THAN A HALF DOZEN -- PROSECUTIONS UNDER THIS LAW. THE BEST KNOWN ARE PEOPLE V. LIBERTA AND PEOPLE V. DE STEFANO.

IN LIBERTA, A HUSBAND, REQUIRED TO MOVE OUT OF THE HOUSE AND STAY AWAY FROM HIS WIFE UNDER A FAMILY COURT ORDER OF PROTECTION, CAME BACK AND RAPED HER. TO AVOID PROSECUTION HE MADE A NUMBER OF CLAIMS INCLUDING THAT THE "ORDER OF PROTECTION" WAS NOT AN ORDER "REQUIRING LIVING APART" AS CONTEMPLATED BY PENAL LAW §130.00, AND THAT, IN ANY CASE, THE EXCLUSION OF SEPARATED COUPLES FROM THE MARITAL RAPE EXEMPTION PUT HIM IN A SPECIAL AND IRRATIONAL CLASS OF MARRIED PEOPLE. THE APPELLATE DIVISION IN ROCHESTER REJECTED HIS CHALLENGE AND, JUST LAST YEAR,

THE COURT OF APPEALS DENIED LEAVE TO APPEAL. FOLLOWING TRIAL BY JURY, MR. LIBERTA WAS CONVICTED OF RAPE IN THE FIRST DEGREE AND SODOMY IN THE FIRST DEGREE. THE FOURTH DEPARTMENT AFFIRMED THE CONVICTION IN MARCH.

IN PEOPLE V. DE STEFANO, THE HUSBAND WAS SUBJECT TO AN ORDER OF PROTECTION REQUIRING HIM TO STAY AWAY FROM HIS WIFE. IGNORING THE ORDER HE RETURNED TO HIS HOME AND ALLEGEDLY RAPED HIS WIFE. JUDGE ROHL OF THE SUFFOLK COUNTY COURT USED THE HUSBAND'S CHALLENGE TO HIS INDICTMENT FOR RAPE AND BURGLARY AS AN OPPORTUNITY TO EXAMINE THE CONSTITUTIONALITY OF THE MARITAL RAPE EXEMPTION. HE CONCLUDED THAT THE EXEMPTION VIOLATES THE EQUAL PROTECTION RIGHTS OF MARRIED WOMEN. THERE WAS NO APPEAL. FOLLOWING A JURY TRIAL, THE HUSBAND WAS CONVICTED OF CRIMINAL TRESPASS IN THE SECOND DEGREE.

TO THE BEST OF MY KNOWLEDGE, ONLY ONE OTHER MARITAL RAPE CASE IN THE HISTORY OF THE STATE HAS GOTTEN AS FAR AS INDICTMENT. I WILL LEAVE IT FOR MR. ADAMS, THE PROSECUTOR IN THAT CASE, TO DISCUSS IT.

ONE THING THAT THE SHORT LIST OF CASES SHOWS IS THAT MARITAL RAPE CASES ARE NOT BEING PROSECUTED IN THIS STATE. IN LARGE MEASURE THAT IS DUE TO THE LIMITED SITUATIONS IN WHICH RAPE

MAY BE CHARGED..

MAY BE CHARGED DURING MARRIAGE. I DO NOT THINK THAT THE LACK OF PROSECUTION IS BECAUSE NO ONE CARES. IN 1981, I CONDUCTED A SERIES OF MEETINGS ON THE LEGAL RIGHTS OF WOMEN IN NEW YORK. REPEATEDLY, THE PEOPLE WHO ATTENDED WANTED TO KNOW MORE ABOUT THE PROGRESS OF LEGISLATION TO ELIMINATE THE EXEMPTION FROM PROSECUTION FOR MARITAL RAPE. THEY WERE CONCERNED THAT, AS THE TITLE OF PROFESSOR FINKELHOR'S BOOK SUGGESTS, A NEW YORK MARRIAGE LICENSE IS A LICENSE TO RAPE.

THE QUESTION THEN IS WHAT SOCIETY CONSIDERS THE APPROPRIATE REMEDY TO DETER AND TO PUNISH MARITAL RAPE. THE POSSIBILITY OF TORT ACTIONS HAS HAD LITTLE EFFECT IN THE PAST. A FEW LAWSUITS HAVE BEEN BROUGHT AND A FEW HEADLINES GAINED BY LARGE VERDICTS IN OTHER STATES. WHETHER SUCH LAWSUITS WILL BE VIABLE IN NEW YORK IS AN OPEN QUESTION. BUT THE HUSBAND WHO IS ANGRY ENOUGH TO RAPE IS UNLIKELY TO BE DETERRED AT THE PROSPECT OF PAYING DAMAGES. NOR WILL THE PROSPECT OF DAMAGES SERIOUSLY DETER A PERSON WHO HAS NO ASSETS.

SOME ARGUE THAT MARITAL RAPE NEED NOT BE CHARGED, FOR THERE WILL BE ADEQUATE DETERENCE AND PUNISHMENT FROM THE CRIMINAL PENALTIES AVAILABLE FOR THE ACTS OF ASSAULT THAT ARE PART OF THE RAPE. THE LEGAL THEORY IS SOUND, BUT THE PRACTICE IS OFTEN TO THE CONTRARY. FOR EXAMPLE, IN LIBERTA, IT WAS UNDISPUTED THAT

THE HUSBAND PHYSICALLY..

THE HUSBAND PHYSICALLY ABUSED THE WIFE IN THE PRESENCE OF THEIR CHILD, AN ACT SEPARATE FROM THE ACTUAL RAPE. BUT THE ASSAULT WAS NOT CHARGED. PEOPLE V. MACK, 53 NY2D 803, DECIDED LAST YEAR BY THE COURT OF APPEALS, IS ONE OF THE FEW CASES IN WHICH A HUSBAND WAS CHARGED CRIMINALLY FOR ASSAULT WHERE SEXUAL ABUSE WAS ALSO INVOLVED. OF COURSE, THE CONVICTION WAS FOR ASSAULT ONLY; THE HUSBAND'S ALLEGED SEXUAL ABUSE OF HIS WIFE WAS PERFECTLY LEGAL.

THE MARITAL RAPE EXEMPTION HAS NO PLACE IN TODAY'S LEGAL SYSTEM. IT IS TIME TO BURY, ONCE AND FOR ALL, THE ANTIQUATED NOTION THAT A MARRIAGE LICENSE IS A LICENSE TO RAPE.

* * *

COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, -against- MARIO LIBERTA, Defendant-Appellant.	NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

PLEASE TAKE NOTICE that upon the annexed affirmation of SARAH WUNSCH, dated September 18, 1984, the Statements of Interest of Amici Curiae (Exhibit A attached to the proposed Brief Amicus Curiae), and the Brief Amicus Curiae, the undersigned will move this Court at the Courthouse at Court of Appeals Hall, 20 Eagle Street, Albany, New York, on the 1st day of October, 1984, at 2 p.m., or as soon thereafter as counsel may be heard, for an order granting permission to file a brief amicus curiae in this matter and for oral argument on behalf of the interested organizations and individual whose Statements of Interest are attached.

Dated: September 18, 1984
New York, New York

Sarah Wunsch

SARAH WUNSCH
ANNE E. SIMON
CENTER FOR CONSTITUTIONAL RIGHTS
853 Broadway, 14th Floor
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Attorneys for Amici Curiae

TO: RICHARD J. ARCARA
District Attorney of Erie County
200 Erie County Hall
25 Delaware Avenue
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Attn: Jo W. Faber
Attorney for Respondent
(716) 855-2424

ROSE H. SCONIERS
Legal Aid Bureau of Buffalo
205 Convention Tower
Buffalo, NY 14202
Attn: Barbara Howe
Attorney for Appellant
(716) 853-9555

COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, -against- MARIO LIBERTA, Defendant-Appellant.	AFFIRMATION

SARAH WUNSCH, an attorney duly licensed to practice law before the Courts of the State of New York, hereby affirms under the penalty of perjury:

1. I am one of the attorneys for the 36 organizations and individual whose statements of interest are attached to the proposed Brief Amicus Curiae and who represent the interests of married women whose constitutional rights are at stake in this case. I submit this affirmation in support of their request for permission to file a brief amicus curiae and participate in oral argument.

2. Amici invite the Court's attention to arguments which neither appellant nor respondent has presented: the argument for the complainant rape victim.

3. Neither party is capable of presentation of the interests of the marital rape victim. Movant would remedy this deficiency. Without presentation of the concerns of the marital rape victim, the Court will not hear a full and adequate presentation of the issues.

4. Amici argue that many women are injured physically and emotionally as a result of forcible rape and sodomy by their husbands. The marital forcible rape and sodomy exemptions contained in Penal Law §§130.00(4) and 130.00(2) are based on anachronistic and discriminatory legal and social concepts. They are based on discarded notions of wives as the property of their husbands. These concepts violate current constitutional rights of privacy and bodily integrity accorded to wives, even against invasion by husbands. Amici further urge that the marital forcible rape and sodomy exemptions from prosecution violate wives' right of equal protection, as well as the Thirteenth Amendment prohibition against involuntary servitude. Finally amici argue that this Court may affirm defendant's conviction while striking the marital rape exemption because defendant is deemed unmarried under the present definition in Penal Law §130.00(4).

5. The defendant-appellant argues that the marital rape exemption is unconstitutional because it permits prosecution of some husbands who rape their wives while barring prosecution of others, and that the rape statute is unconstitutional because it is not gender-neutral.

6. The District Attorney on behalf of Respondent argues that the statutory scheme is constitutional and rationally related to the state's important objective to preserve marriage, and the reality that rape is a crime committed almost exclusively by men against women.

7. The Appellate Division held that the gender classification and marital exemption serve important governmental interests and are substantially related to the achievement of those objectives.

8. Amici present aspects of these constitutional issues not presented by the parties. This presentation is essential because this is a case of first impression in this Court. This is the first time this Court is asked to rule on the constitutionality of New York's marital forcible rape and sodomy exemption from prosecution. There is a recent body of case law from the highest courts of other states, holding the marital rape exemption to be in violation of the U.S. Constitution, which amici seek to present from the perspective of the raped wife. Neither respondent nor appellant is capable of representing the concerns of the marital rape victim whose interests are different from those of each party.

9. Complainant in this matter is the wife of defendant-appellant. She is within the class of married women rape victims which most of amici assist. Complainant's interests are identical to the interests of the raped wives aided by the amici. As appears from the attached Statements of Interest, the amici's clients or constituents have sought relief from forcible rape by their husbands but have found no protection through criminal prosecution.

10. Thus, the amici seek to present their argument to the Court because their clients or constituents need the protection available through the criminal process. These women have been

harmed seriously by the denial of this protection. This Court is requested to grant to raped wives the equal protection of the law.

11. Amici request twenty minutes for oral argument. Leave for amici to argue has been granted in other criminal cases which have a serious impact on the rights of women. See State of New Jersey v. Kelly, A-99 (N.J., July 24, 1984) (amici N.J. Coalition for Battered Women and ACLU); State of Washington v. Allery, 101 Wash.2d 591 (1984) (amicus Northwest Women's Law Center).

12. No previous request has been made for the relief requested herein.

WHEREFORE, I request that the amici be granted permission to file a brief amicus curiae and to participate in oral argument.

Affirmed: New York, New York
September 18, 1984

Sarah Wunsch

SARAH WUNSCH

STATE OF NEW YORK
COURT OF APPEALS

PEOPLE OF THE STATE OF NEW YORK, Respondent, vs. MARIO LIBERTA, Defendant-Appellant.	AFFIRMATION OF SERVICE

SARAH WUNSCH, an attorney duly admitted to practice in the courts of the State of New York, hereby affirms under penalty of perjury:

1. On September 18, 1984, I served a copy of the within Notice of Motion, Affirmation, and Proposed Brief Amicus Curiae on each of the following:

Rose H. Sconiers
Attorney for Appellant
The Legal Aid Bureau of Buffalo, Inc.
205 Convention Tower
Buffalo, New York 14202
Attn: Barbara Howe

Richard J. Arcara
District Attorney
200 Erie County Hall
25 Delaware Avenue
Buffalo, New York 14202
Attn: John J. DeFranks
Jo W. Faber

by depositing true copies of the same, with first class postage affixed, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Dated: September 18, 1984
New York, New York

Sarah Wunsch
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Item 95

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Thank you.

4 March 85

Dear Ms Miller,

the reason I have taken this opportunity to write is because I strongly oppose the "presumptive sentencing for first offenders. The only thing the statute has done for the correctional system is to over-crowd it.

In 1982 the Edna McConnell Clark Foundation did a nation wide study and discovered the "Rockerfeller Drug Laws" of New York and the "Use a Gun Increase the Time Law" of California only became a tool in the hands of the District Attorney to obtain a plea bargain. These same things are being used here.

There is a program well known throughout the United States, Canada, and Australia that deals with oneof the presumptive laws here: (Sexual Assault and Abuse of Children) within the family to include a live in boyfriend. This program ia Parents United. The person responsible for it is Dr Hank Giaretto, Ph D., who is world renowned for the program.

I am quite certain that if requested he would come to Alaska to speak with all of you.

There is a Parents United in Anchorage but it is lacking in support probably because of the laws themselves. Even if a person commits only one offense then seeks help, he still gets eight years. The fact that he is seeking help in itself should be a mitigator.

I just ask that you review the Parents United Program along with the other material I have sent to the Judicary Committee and what is happening in other states then see if the merits are worthy of a change in the statutes.

P.S. Please Respond?

Respectfully,

Alvin Sharp

Alvin Sharp

Box 103155

Anchorage, Ak

99510

JOHN WALSH PRESENTATION
JOINT HOUSE/SENATE JUDICIARY COMMITTEE MEETING
FEBRUARY 12, 1985

My name is John Walsh, I am an administration-appointed special consultant to the National Center for Missing and Exploited Children. I appreciate the opportunity to be here today to address this special joint committee. There has been a tremendous reception and overture from legislators, from the Governor on down, to both houses of this legislature to deal with much-needed legislation in Alaska. That sometimes isn't the case in other states, but I am warmed and surprised and encouraged by the response and the treatment I've gotten so far in Alaska in my two days here.

My son was murdered in 1981, and after his murder, we tried to become actively involved in doing something to prevent the exploitation and what happened to my son. I've testified before the U.S. Congress nine times. I've testified before I don't know how many joint legislative sessions of states. From here I'm on my way to Alabama and to Nevada to address a joint legislative session there. I've met with I don't know how many Governors as it relates to this issue, and I always have had a difficult time putting together statistics. I'm going to go over some statistics for about five minutes to give you an idea and an overview of the exploitation of America's children and how poor of a job we have done as adults, legislators, individuals in the criminal justice system, any form of government bodies in protecting our children.

When I researched the F.B.I. Uniform Crime Report in 1981 it did not even keep statistics of crimes against children. Crimes against adults were the main categories, and homicides of children were lumped in with homicides of adults. I then went to the Uniform Crime Reports of each individual state, such as Alaska. Only one state mandated that rapes, molestations, physical abuse, kidnappings, non-custodial parental kidnappings, and homicides and deaths of children be kept in separate statistics. That state was Texas, the only state that thought enough of the crimes against their children. I've been in this state, trying to garner statistics of the exploitation of Alaska's children. I've talked to individuals from the F.B.I., from your exploited child units, from your law enforcement, both state and local agencies, and have been unable to garner any accurate statistics on what's happening to Alaska's children.

But I'll tell you what's happening to <u>America's</u> children. In 1981, there were 1.8 million children reported missing in this country, and 1.5 to 1.8 million every year since then.

The question has been how does this break down. It breaks down into this: this was put together by a Senate investigation in an oversight committee who was trying to garner statistics. They didn't get good cooperation from cities or states, but this is the best that they could manage. Of the 1.8 million missing children, about 20,000 to 50,000 of those children are suspected victims of foul play. Their cases are not solved at the end of the year, no one seems to know what's happened to those children.

On top of that, we have between 50,000 to high-end estimate of 300,000 and now with recent investigations the feeling by the F.B.I. and state authorities is the higher end is closer to 300,000, of children that are victims of non-custodial parental abduction. That's an act of violence, an act of vengeance, where the left-behind parent without custody takes the child not in an act of love again, but an act of vengeance from the left-behind parent. Runs around the country, changing the identity of the child, hiding out, registering them in schools, in many cases abusing the children. I could go on and on about statistics of children that have been murdered by their own non-custodial parents, physically, sexually abused. We retrieved 22 children from the roll-call of Adam. Most of those were non-custodial parental abductions, and several of those children had been horribly abused by their own parents. States have not deemed those children important enough to legislate for them. Many states do not even consider it a felony to run within the state with your child and hide out within the state. Some states even don't even consider it a felony to cross the state line.

On top of those non-custodial missing children, the suspected victims of foul play. We do know that about 10,000 children are murdered each year in this country, either by their own parents, by live-in relatives, step-daddys, boyfriends, distraught mommys, pedophiles - people who prefer sex with children, child pornographers, people who use children in child prostitution, and mobile and serial murderers, a recent phenomena which has escalated from 1966 when there were about 600 women and children murdered by mobile and serial murderers, to last year there were over 5,000 women alone in this country murdered by mobile and serial murderers. This state suffers from some of those murderers coming up into here.

We also are still burying hundreds of unidentified dead children in this country. We bury between 3,000 to 5,000 unidentified dead persons in this country every year, any given year hundreds of those are children, because states such as Alaska, even with the passage of the federal missing children's bill that we fought for and they made the movie Adam about, created a special division for unidentified dead in the National Crime Information Computer, and a special

division for missing children, Alaska does not mandate that all your missing children be put into the NCIC. Those of you that are parents, imagine the nightmare of your child become missing, and because law enforcement did not put it in the NCIC, never knowing that your child was buried in Oregon or Washington or Nevada, and spending the rest of your life and all the money you can borrow searching for that child and never knowing. You had a missing children's bill last year that was a pretty weak one. Most states have mandated that there be no waiting period. You have a bill before you now that would allow a waiting period. We discussed the waiting period. Many states have passed and abolished the arbitrary waiting period. Every report of a missing child should be taken immediately by law enforcement. We know that they are understaffed, underfunded, but no parent should be turned away to wait 24, 48, 72, whatever the arbitrary waiting period, and law enforcement in many areas won't tell you. The report should be taken immediately, and entered into the NCIC. That at least gives the parents a chance if they have fingerprints or dental records of their child to get the body back. I don't think that's too much to ask.

Of all those children that I talked about we roll into the category of about a half million, the question keeps coming up from legislators, what happened to the other million missing children in the United States. They are arbitrarily listed by the misnomer as runaways by law enforcement agencies. In many cases those children are not runaways. The first 17 of the 29 children that were murdered in Atlanta were listed by the Atlanta police as runaways even though some of the children were as young as 6 years old and gifted students. John Wayne Gasey, a long-time convicted child molester on parole from Iowa killed 33 boys in Chicago. One of those boys was the son of Sgt. Robert Gilroy of the Chicago police. Because the boy was 15} years old the Chicago police assumed he was a runaway and listed him. Gilroy couldn't convince his own peers in the Chicago police department that his son wasn't a runaway. He spent two years and his life savings searching for the boy when the boy's body was buried four blocks from his home in Gasey's basement - Gasey had picked him up on the way home. No police agency has the arbitrary right to sign the death warrant of your child by listing him as a runaway. We have new statistics on the runaways. 80% - 85% of the children that are listed by law enforcement and thrown away and disregarded by this society and legislators were either physically or sexually abused in the home. New startling statistics are that 30% of runaways are throw-away children. They often are children of a single parent family, usually a welfare mother with smaller children, who says I can no longer care for you because you are 12 years old now - you have to leave. Or a drunken father, live-in boyfriend, or someone who says "Out on the street." Those children are

involuntary runaways, labeled as throw-aways. Imagine particularly this lady right here. If your husband or boyfriend threw you out on the streets of Anchorage tonight without your credit cards, without your money with nowhere to go, how do you think you'd fare on the streets? You wouldn't fare very well, but imagine being a 12 year old girl, or 11 year old boy, or 13 year old boy being throw out in society. We have to change our attitudes towards those runaways.

Those are some of the statistics on missing children. On top of that, there is an estimated 1 million children physically abused in the home each year. I have talked to your law enforcement agencies here, and they have almost no ability whatsoever to deal with physically abused. The state and local authorities I've talked to have, in your small, understaffed exploited unit are working as many as 70 cases. I defy you to work on 70 bills in one day and get anything done. They have told me they cannot even investigate the physical abuse cases because they're dealing and overloaded with the sexual abuse cases. So what happens to that child when the social worker or that policeman doesn't get out there for upwards of 2 months, and I asked them what the waiting period on some of the sexual assault cases were. That child is abused and abused and winds up in a morgue in Anchorage or Fairbanks or somewhere because you haven't been able to respond as a legislature to that problem.

On top of the physically abused, the missing children, the F.B.I. statistics because of legislatures such as California, Michigan, Florida which have mandated education on the curriculums in schools, children are coming forward in ever-increasing numbers reporting sexual abuse, physical abuse at home. Between 1 million and 3 million sexually molested in this country. I've only been in this state 2 days, and I have seen your newspapers full of it. Day-care centers' sex abuses. The citizen of the year in 1970, the boy scout leader who was just sentenced to 31 years in prison for molesting 20 children in Homer, wherever that is. The children that are brought up here like the man who brought the little girl up here. You suffer the same fate that some other states do such as Florida, my home state. You get a lot of the trash from other parts of the country, who come up here and think this is the wild west and they can change their name and hide out in Alaska, and commit crimes against your children and do whatever they want to do in Alaska. I don't think that should be the case. Florida has to suffer through that, some sun-belt states have seen that phenomenon, and you're seeing that phenomenon here.

I think the statistics that I've quoted are unacceptable, they're overwhelming. I don't think anyone ever realized the extent of the exploitation of America's children. I

think that a society that can put a spacecraft on the moon, and has the money that certain states do, including this state, should do a better job of protecting its children. I also learned in the last 3] years that the real battle is on the state level. This country is comprised of 50 little feudal kingdoms called states, and I've often said that Alaska might as well be Austria, Nevada might as well be Switzerland, because the quality of children's lives is determined by the state legislature, and the quality of children's lives in some states is far superior to others. You've done some excellent things for your children, you have. I've looked at some of your laws that you've passed in the past. In some areas you're 3 and 4 years behind other states in meaningful legislation. I think in a way that's an advantage, because some states have passed bad bills, poorly written bills, ineffective bills, bills with no fiscal appropriations. I think you have the opportunity to pass the Rolls Royce bills. This packet of legislation, selected state legislation, has been comprised over the last couple of years, by individuals in Washington, that we put together - the American Bar, the National Association of District Attorneys, Nova, different groups that have compared model legislation in states and made recommendations. And I want to talk about the areas here of children's legislation that could impact the future of your state. And I say consider this: those of you who are parents who love children have a vested interest. Those of you who don't have children, and really aren't concerned with children, but won't admit it publicly consider this: 80% of the convicted felons in federal prisons, by an F.B.I. survey, were physically or sexually abused as children. 75% of the violently mental ill in state institutions were physically or sexually assaulted as children. If you want to deal with the problem now, you won't have to pay later, because the 12 year old on the streets of Anchorage tonight, or the sexually or physically abused child in your schools today may become the rapist murderer in Alaska's future and you'll have to deal with that with a much larger appropriation and much bigger cells. So there's a way to break the chain, and that's by protecting children now, and helping the victim, and stopping them from becoming the future criminal.

There are 13 areas - Missing Children; The state of Florida, New Jersey, Kentucky, numerous states have created missing children's clearinghouses, and missing and unidentified dead clearinghouses. The state of Florida has an $87,000 appropriation. They have a 24 hour toll-free hotline that any law enforcement agency or citizen can use to call the missing children's clearinghouse in Florida. By state mandate they have a bulletin that they distribute to every school listing pictures of missing children, every law enforcement agency, every coroner throughout the state on a monthly basis. They do prevention programs and train other

law enforcement agencies throughout the state of Florida, and Florida, along with numerous other states, have abolished the arbitrary waiting period and mandated that all reports of missing children be put into the national crime information computer immediately.

Sexual Abuse and Exploitation; Many states, including Kentucky, have wonderful sexploitation units to deal with the child as the victim. They're primarily comprised of a social worker, someone from the court, possibly someone as a guardian ad litum, someone from the district attorney's office, and someone from the law enforcement agency. They get to the problem immediately, they give the child some justice in the courtroom. They prepare the case, and they get conviction. I was speaking to your two representatives from your major law enforcements yesterday, and they said that because they are so back-logged there are pedophiles that have possibly as many as 20 suspected cases of sexual abuse of children on the streets right now because they feel they can't even get to investigate those cases for a month. So those people are walking around looking for new victims, possibly your children, within the system right now because of the inability of your exploitation units to deal with the problem of sexual and physical abuse in the state of Alaska.

Criminal Codes; Too complicated to get into right here and take up the time, but I give you this: criminal codes need to be upgraded constantly. Some of your criminal codes are excellent, some of them haven't been looked at in 10 years or so. You need to look at your criminal codes as it relates to statute of limitations for crimes against children, and penalties. You have some excellent penalties for repeat offenders in this state. I just came back from a big psychiatric convention where 20 psychologists and psychiatrists admitted that they had used everything from shock therapy to Deproprevara to try to treat the hard-core, repeat, fixated pedophile, and they all agreed conclusively that all they could recommend was incarceration or separation of the individuals from children. They said we have failed - they made the analogy - it's difficult to take a man that's a heterosexual, or a woman, and try to treat them for 5 or 6 years and convince them that they enjoy sex with goats - that's about the success that we've had with hard-core pedophiles.

Child in the Courtroom; Videotaping of children's testimony. Lots of states have passed lousy videotaping bills. The videotaping is primarily to spare the child the trauma of being interviewed 16 and 17 times. We studied 20 sexual assault cases in 20 states. The average continuance was 250 times. Some of these children don't get to their trial for 2 years. Some of them are interviewed 16, 17 times. You take the child after the assault, put them behind a one-way mirror. You bring the defendant, the

defense counsel, the pediatrician, the social worker, the assistant district attorney, whomever you want there to witness it, and take the videotape of the child. Hold it, let the child psychologically repair until the time of the trial. We are not suggesting the videotaping be used in lieu of the 6th amendment rights of the defendant of the accused to confront the accuser. Videotaping is shown during the trial so the jury can get an idea of what was in the child's mind when the assault was fresh. Children have a hard time remembering what day it was, especially if they're 6 or 7, what the date was, and defense attorneys treat children just as they do adults in the courtroom. Now, what is the humane way to do it? Many states have closed-circuit monitoring, live television monitoring. Yes, the defendant should have the right to confront the accused. The child is put i another room with a live, closed-circuit monitor, and the defense is allowed to cross-examine the child. I make this analogy, and it was done by the National Association of District Attorneys. It happens we have only one woman here. Say that you were raped. I cross-examined you on the stand. We expect in the courtroom that I am allowed to ask you any detail, the most intimate detail of that sexual assault in a roomful of strangers. Imagine a 6 year old child. I defy any man to come up here and relate to this room his most intimate sexual experience with his wife or girlfriend, his last one, detail by detail. I doubt if there's a man in the room who could do it. We expect children to do it in the courtroom. I think our treatment of them is barbaric. Competency of the witness; federal rules of evidence in any federal courtroom, criminal or civil, presume that every witness is competent. You car be a pathological liar and convicted murder and testify in a trial in Alaska as long as you're an adult. Do not leave it up to these archaic laws allowing the judge, a judge who may not have been to a continuing education seminar for 10 or 15 years, to qualify a child witness. Children should be presumed competent. If they want to testify, let the jury decide whether they're telling the truth or not. Many small children may not be able to remember all the details, but they have no point of reference to fantasize or imagine sexual intercourse such as anal or oral intercourse. Children are excellent witnesses when given the opportunity to testify. You should not throw it out of the courtroom by allowing a judge to qualify the competency of a child.

Protection of the Privacy of the Child Victim; 3 states have prohibited by misdemeanor penalty the media, electronic or print, from portraying or putting forward a picture or the name of a woman or a child in a sexual assault. It has been upheld in a 1975 Supreme Court decision, saying that states have the right by legislature, and not a violation of the 1st amendment rights of the media, to prohibit the name or picture of the sexual assault victim being used in the media. It's tough enough to get over sexual trauma, or

rape, without everyone in your neighborhood, at your job, in your school knowing that you were raped by a motorcycle gang and sodomized 27 times. That's not necessary that we portray the names of the victims. It's a simple law that can be passed easily.

Education and Prevention; California has mandated $11 million for prevention and education in the state of California. They have mandated that those pompous principals and board of supervisors who say that it borders too much on sex education, that psychologically approved programs to teach your children how to resist molesters and abductors are on the curriculum twice a year. I asked the entire Florida legislature how many of you parents have told your children the private parts of their body are sacred to them alone, that they can resist molesters, if they are molested they can tell you and you will do something about it. Three quarters of the Florida legislature stood up and said they had never told their children. I said, case in point, it needs to be taught to all of Alaska's children. Latchkey, poor, white, red, native, black, rich or poor all need to know in a psychologically approved program how to resist molesters. We had one of those pompous principals who refused to use the program in south Florida. He had an 8 year old girl raped on the school grounds. They had to remove her entire uterus. The parents sued them, the school board settled for $4 million out of court. That man will be regretting the rest of his life that he didn't have a program in that school to teach that little girl how to resist molesters and abductors. It's the obligation of the state to teach your children how to protect themselves.

Schools; Lists of missing children should be sent to schools on a monthly basis. In this state, you can't get into school unless you have proof of a small pox vaccine, but known pedophiles can register strange or abducted kids, or non-custodial parents can put their children in school as easy as I'm talking to you right now without any verification that those children belong to them.

Licensing and Criminal History; Many states have passed background checks. You have some pretty wimpy, weak background check bills before your legislature. Number one, you passed a voluntary background check bill. I talked to your law enforcement agencies. They said those agencies that have requested background checks, because of the lack of appropriation of funds and our inability to deal with it, we can't even process them for 6 months. So a child molester has at least a 6 month jump on Alaska to molest children before he's even checked. The states that have passed them have mandated that school teachers, day care center workers, Big Brothers, Boy Scout leaders, certain child protection, day center workers, and the day care center organizations and associations throughout the country

support this legislation because they would like to run background checks, they don't want to be sued by employing a molester. They mandate that the background check be taken on a state and federal level. There is no fiscal appropriation to it - the person applying for the job must pay for the application. Question - is it a violation of civil liberties? In every state, including Alaska, there are at least 30 - 50, in some states 100 occupations that are mandated to have background checks. You cannot be a doctor, a lawyer, you cannot be a police officer, in 30 some states you cannot be a hairdresser. You cannot be a groom. In any state that has paramutuel betting in this country, you cannot be a groom without a state and federal background check - you cannot rub down a horse. But in Alaska you can be a convicted child murderer or child molester and teach school or run a day care center. It's food for thought.

Most of the people who work with children are not into molesting children, but many people gravitate to it. Florida had 300 sexual assaults of children by teachers - the first state to keep statistics. 37 of those teachers were convicted felons. One of them was a child murderer who was put on parole from Illinois after 11 years, 3 of them were child pornographers who set up a child pornography ring. Since Florida passed the background checks of teachers, sexual assaults of children have been reduced by 500%. Florida and other states have sent a message: if you're a convicted child molester, don't come into my state. Where do they go? Maybe to Alaska, I don't know.

Training for Youth System, Social Services and Criminal Justice Professionals; I and many people believe that the real key to this whole issue is prevention awareness training. We need to train your District Attorneys. I spoke to your District Attorneys in Anchorage. They are so overworked, wish they were able to be trained in sexual assaults and physical abuse cases, wish they could get more convictions, wish that they had the benefit of outside expertise. That needs to be mandated. Law enforcement needs continual training. Law enforcement will readily admit, and candidly admit, that they know very little about dealing with the child victim in the courtroom. That needs to be mandated and monies need to be spent as a relation to that.

Treatment and Rehabilitation of the Child Victim; Most states, of course, pay for rehabilitation or psychological counseling of the convicted perpetrator. Many states have allocated that the perpetrator reimburse the child, reimburse the victim, pay for the psychological counseling. Parents spend upwards of tens of thousands of dollars to try to treat their children out of their own pockets for psychological counseling.

Court-Appointed Special Advocates; That may be the only help of the child until we do change the system. In some states it has to be an attorney, in other states it's a qualified individual who is appointed by the court to liaison between the social worker, who may not know what they're doing, or be suffering from burn-out because they're handling 75 cases, between the law enforcement officer who's frustrated and wants to choke the D.A., or doesn't show up for 2 hearings, the D.A. who says I just got out of law school and I've got 45 cases and I want to plea-bargain this one. The parents are saying, "The child wants justice. we want to prosecute." That court-appointed special advocate acts for liaison in the system and gives that child some odds in our unfair criminal justice system. And they're are federal funds that will match what you allocate in this state for court-appointed special advocates programs, and for background checks of day care center workers - there are matching federal funds for that.

Parental Kidnapping; it needs to be a felony intra-state because some parents know that once they cross the state line they can be pursued by the F.B.I. as a felony, but they can stay within the borders of certain states and hide out, and that parent has no recourse. I don't know how many destroyed, heartbroken parents I talked to in the two days I was here, that are victims of non-custodial parental abduction that the law enforcement agencies are so overworked that will even barely talk to them.

Child Pornography and Child Prostitution; Those statutes need to be upgraded. Don't get caught in the bind of lumping child pornography with adult pornography - it's apples and oranges. Children are not allowed by federal statutes or any state statutes to be used in child pornography. You need to look at some of your statutes as it relates to commercial distribution. Many pedophiles never sell the child pornography. They're collectors and they exchange it without any exchange. Many that we have caught have kept diaries, and Polaroid pictures. The man who was just caught in Rhode Island with the little boy who happened to be in the NCIC, and we got back, was a long-time collector of child pornography. In certain states you can't prosecute pedophiles for just commercial distribution. In certain states they don't allow you to prosecute because you can't determine the age of the child. In many states they have passed rules where experts are allowed to testified in the trial, determining the age of the child - that it is 12-year-old boy that may look like he's 16. It is a 14-year-old girl that looks like she's 18, by expert testimony, and you can get some of the child pornographers. Child prostitution statutes are complicated. There's a whole 3-page section in this book telling you how to upgrade your child prostitution statutes.

Those are some of the areas of protection that you need to do for Alaska's children. I think you have a good opportunity here to leave a lasting monument to your children. I know that I've heard a lot of rhetoric here about the children of Alaska being the future, or oil being the future. I really think the children of Alaska are the future, because without those well-intended, well brought up children, we won't have an oil future, or a mining future, or whatever. I don't live in this state, I don't vote in this state, my children won't be raised in this state, but your children will. I believe that what I have learned is that law is permanent. You can impact the future of Alaska by what you pass this session. You can force agencies that don't want to respond to the problem of child molestation, abduction, missing children, to respond. And you can empower and give money to agencies that want to, that need just a few more dollars, just need a little bit of direction. I think you can tip the scales for your children in Alaska. I'll be glad to work with you, I've come back into many states to testify, we have a full-time legislative person at the National Center for Missing and Exploited Children by the name of Janet Kossett. We review bills from every state. We say what you've left out. We tell you what we think you should put in. We tell you what wording you need to do. It's a bi-partisan issue - this is wonderful to see people of both parties, both houses, here thinking about this. Children's legislation traditionally moves very slowly through legislatures, because there are $150,000 a year paid oil lobbyists banking you up to get the bills out. People say, well it's in somebody else's committee. I would hope because of your concern and your overture that you would monitor these bills and see they don't get caught in that long, tedious process of getting something onto the floor. And I think there's a tremendous amount of community awareness and support from the people I've met in the state of Alaska who've said we want to see some changes. And I know you're ready to make the changes, and I just look forward to working with you, and I appreciate the time you gave me today.

Selected State Legislation

A Guide for Effective State Laws to Protect Children

January 1985

National Center for Missing & Exploited Children

The resources to print this guide were generously provided by people who care about children: Commtron Corporation and video software dealers from around the country.

Prepared under Cooperative Agreement #84-JS-AX-K016 from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Assistance, Research, and Statistics, U.S. Department of Justice.

Points of view or opinions in this brochure are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Contents

Foreword

Each year in this country hundreds of thousands of children disappear, and thousands more become the victims of criminal and sexual exploitation. Our efforts to prevent crimes against children and to treat cases of child victimization have not been adequate to assure the safety and protection of all children.

There has been an urgent demand from all walks of American life that initiatives be undertaken to address the problem of missing and exploited children. Effective legislation at the state level will have a dramatic impact on our society's ability to prevent crimes against children and to deal with the child victim of abduction or exploitation.

Is Your State Legislation Adequate?

The professionals who deal with cases of missing and exploited children have learned that it is critical that methods for dealing with child victimization be updated and improved. New programs are desperately needed to educate children and their families on prevention techniques. We have made good progress, but in every state we can do more to protect our children.

Some states have passed laws to meet the growing need for comprehensive legislation to address the issue of child victimization. Some state codes, however, remain seriously deficient in provisions protecting children. There is a critical need for state and local agencies to share information about the most effective and innovative child protection programs, many of which were made law in 1984.

By comparing the examples of legislation in this book with your own state code, you will be able to see where your statutes may need improvement. Each state, however, has its own system for criminal, youth, and social services. Users of this selection should recognize that existing legislation serves a particular jurisdiction and that the examples and model legislation must be modified to meet each state's special needs.

The National Center for Missing and Exploited Children

The National Center for Missing and Exploited Children, in cooperative agreement with the U.S. Department of Justice, was chartered as a clearinghouse of information and assistance on the issues of missing children and the criminal and sexual exploitation of children. The Center's staff is made up of professionals and experts trained in the treatment of missing and exploited children.

The Center has received thousands of letters and calls from governors, legislators, concerned organizations, and citizens requesting information about legislative measures that can be taken to protect our children. To develop this legislation package, the Center obtained copies of the existing effective state legislation and then analyzed and summarized it. In instances where there is no legislation addressing a certain child protection issue, this package includes basic principles or models for guidance.

The professionals who screened and analyzed this legislation constitute a multidisciplinary team of attorneys, prosecutors, youth service providers, child advocates, law-enforcement officers, and others interested in the welfare and protection of children.

The Purpose of This Selection of State Legislation

This information package is designed to highlight some of the most effective state laws that concern child victimization. It is a resource intended for use by state legislators, governors, and state officials as well as all citizens concerned about protecting children.

This legislation package is not comprehensive. For example, it does not include any statistical data, nor does it cover all child protective issues or all existing state legislation in these areas. Rather, it contains a sampling of varied legislation from a number of states around the country. The samples chosen demonstrate how the complex issues of missing and exploited children are treated most effectively in each state.

How You Can Contribute

The National Center for Missing and Exploited Children will be expanding this legislation package as more information becomes available. We urge you to submit any information you may have about child protection issues and actions. Even if only a small part of the legislation seems new or worthwhile, please send it to the Center. We intend to act as a central resource in this area and would greatly appreciate any and all contributions.

A Message to the Citizen

There are a number of different ways in which you can be instrumental in effecting new laws in your state. The most common approach is to contact your state representatives or state senators and explain what provisions you feel are needed. Give them a copy of this selection of state laws. If they support the concepts in the laws, they will introduce a bill in your state legislature.

A second approach is to contact your governor, who can, in many instances, initiate legislation. Even when your state representative is introducing a bill, it is helpful to secure the backing of the governor. Remember, the governor is definitely in a position to influence legislation.

No matter which approach you take, though, it is wise to solicit the support of community organizations and local interest groups. You may want to organize a meeting between your state representatives and senators and those individuals and organizations that are working for the safety and protection of children.

Getting a bill through the state legislature is not a mystery. A few general rules apply. You should contact elected representatives from both sides of the legislature if your state has a two-part legislature. It is also wise to contact members of both parties: Laws to protect children should transcend party affiliation. In addition, bills that are cosponsored and have bipartisan support are the most likely to succeed.

Finally, you should make an effort to track the bill throughout the legislative process. Citizens can attend hearings, assess the bill's problems, and lobby for its passage by contacting state representatives who seem undecided about the issue. Furthermore, some states have provisions that allow citizens to comment directly on pending bills.

1. Missing Children

The problem of missing children is one of the most pressing concerns in our country today. While no one is sure of the exact numbers, it is estimated that at least 1,500,000 children are missing from their homes each year, many of whom end up abused or even victims of homicide.

The U.S. Congress highlighted this problem and took important steps to resolve it by passing the Missing Children Act in 1982 and, later, the Missing Children Assistance Act in 1984. Establishment of the National Center for Missing and Exploited Children is another example of the federal government's commitment to solving the problem of missing and exploited children.

Much more can be done on the state level, however. Comprehensive state legislation is critically needed to address the particular needs of missing and exploited children and to help solve problems that are unique to the state level.

State Boards and Clearinghouses

Several states have enacted important legislation to address the problem of missing and criminally or sexually exploited children. Such legislation includes creating a *state board or commission* with a variety of responsibilities, or establishing a *clearinghouse* or central registry for the state.

Kentucky The State of Kentucky (1984, H.B. 486) recently enacted comprehensive legislation addressing the problem of missing and exploited children in the state. The Kentucky statute creates a special state child abuse and exploitation prevention board within the office of the attorney general that does the following:

1. Coordinates and exchanges information on prevention programs.
2. Provides educational and public information seminars on prevention of child sexual abuse and exploitation.
3. Encourages the development of community prevention programs.
4. Recommends to the governor and the state assembly changes in state programs and policies that will reduce the problem of child sexual abuse and exploitation.
5. Provides prevention services to children and parents or guardians.
6. Authorizes a trust fund as a resource for a private nonprofit or public organization to develop or operate a prevention program.
7. Funds local task forces.

One of the most important provisions of the Kentucky statute is the creation of a state clearinghouse on missing children. Kentucky established a Kentucky Missing Child Information Center that serves as a central repository, or clearinghouse, of information about Kentucky children believed to be missing and children from other states believed to be located in Kentucky. The Missing Child Information Center is required to issue flyers with descriptive information about these children. And, a very important provision of this law is that within 24 hours after completing a missing chil-

dren report, the local law-enforcement agency is required to send the report to the Kentucky Missing Child Information Center and, from there, to the National Crime Information Center computer at the FBI.

The provisions of the Kentucky legislation on this state board appear on pages 4-7.

New Jersey Like Kentucky, the State of New Jersey (1984, Com. Sub. A. 1121, 1647) recently established a State Commission on Missing Persons. This Commission is mandated to provide state action plans and guidance for future legislation to address the problem of missing and exploited children. The New Jersey statute also establishes a Missing Persons Unit in the Department of Law and Public Safety, which does the following:

1. Coordinates, files, and investigates all missing children cases in the state and creates a central office on missing children.
2. Collects and maintains data on missing children and unidentified bodies in New Jersey and throughout the United States.
3. Coordinates with other states and with the federal government in investigating cases of missing children and unidentified bodies.
4. Provides special training to law-enforcement officers and medical examiners to help them handle cases of missing children and unidentified bodies.

Illinois The State of Illinois (1984, S.B. 1655) has also passed comprehensive legislation addressing the problem of missing and exploited children. The Illinois legislation established local units that do the following:

1. Establish a data system to collect and disseminate information that can assist agencies in recovering missing children.
2. Require law-enforcement agencies to furnish to the Department of Law Enforcement any information relating to sex crimes in their areas.
3. Set up education and prevention programs and provide prevention guidelines for children.

Florida, Kansas, and Minnesota Both Florida (§937.033) and Kansas (1984, S.B. 803) have established clearinghouses that allow parents to report cases of missing children to a central file. Florida has created a Missing Children Information Clearinghouse within the Department of Law Enforcement. The clearinghouse is a centralized file of information on missing children that allows any parent, guardian, or legal custodian to submit a missing children report. It requires all state and local law-enforcement agencies to submit a missing children report to the clearinghouse—information which is then transmitted to the National Crime Information Center of the FBI. Florida has also set up a statewide 1-800 telephone line to receive reports on missing children.

The clearinghouse maintained by the State of Kansas allows for the comparison of reports of unidentified deceased persons with reports of missing children. In addition, the Kansas statute mandates that any law-enforcement agency that fails to make reports of missing children is liable to pay a civil penalty.

The State of Minnesota (1984, H.F. 1428) has placed the responsibility upon the Commissioner of Public Safety to perform a variety of services, including the following:

1. Compiling annual statistics on the number of missing children.
2. Developing recommendations for better reporting and use of computer systems.
3. Providing the necessary equipment for the use of the National Crime Information Center by all local law-enforcement agencies.

Unidentified Deceased Persons

In addition to clearinghouses, there is a great need for state legislation to address the problem of *unidentified deceased persons*. These are people, many of whom are children, who are buried nameless in "John Doe" or "Jane Doe" graves each year.

The Missing Children Act, mentioned above, provides for a nationwide system to identify deceased persons. As a result, the FBI established an extremely sophisticated and comprehensive tracking system both for missing persons and for the unidentified dead. The section of the FBI that houses this operation is called the National Crime Information Center (NCIC). Each year the Center locates thousands of missing children and has also begun to identify deceased individuals who were buried as unknowns. It is critical that the federal systems have the support of each state.

Several states have enacted legislation to set up a centralized file of information crucial to identifying missing and deceased persons. The state file operates on the same principle as the National Crime Information Center computer. The reason for having such a file at the state level, however, is to ensure that all state and local agencies participate in this important program. The National Crime Information Center is an excellent resource, but states and communities must be required to *use* it, by state legislative mandate.

California (§11113, 11114), Michigan (1980, S.B. 961), and Georgia (Act 980) provide that dental records and other descriptive information on missing children be collected at the state level. In addition, the medical examiners and coroners in those states are required to report descriptive information concerning deceased persons who remain unidentified. This information is then correlated with the missing children information. State law, in addition, should require that this information be forwarded to the NCIC national files on missing or deceased individuals.

Eliminating Waiting Periods

A continuing problem with missing children cases is that official action is sometimes delayed because of 24-, 48-, or 72-hour *waiting periods* before an investigation is undertaken. As a result, precious hours are lost—often the most important hours in the investigation. Because of the critical nature of the first few hours of an investigation, some states, such as Iowa (1984, S.F. 517) and Kentucky (1984, H.B. 486), require prompt reporting and *investigating* procedures. Following is an excerpt from the Iowa legislation:

> Sec. [illegible]eport on a Missing Person
>
> 1. A law enforcement agency in which a complaint of a missing person has been filed shall prepare, as soon as practicable, a report on a missing person. That report shall include, but is not limited to, the following:
>
> a. All information contained in the complaint on a missing person.
>
> b. All information or evidence gathered by a preliminary investigation, if one was made.
>
> c. A statement, by the law enforcement officer in charge, setting forth that officer's assessment of the case based upon all evidence and information received.
>
> d. An explanation of the next steps to be taken by the law enforcement agency filing the report.
>
> Sec. 4. [illegible]semination of Report. Upon completion of the report, a copy of the report shall be forwarded to:
>
> 1. All law enforcement agencies having jurisdiction of the location in which the missing person lives or was last seen.
>
> 2. All law enforcement agencies considered to be potentially involved by the law enforcement agency filing the report.
>
> 3. All law enforcement agencies which the complainant requests the report to be sent to, if the request is reasonable in light of the information contained in the report.

4. Any law enforcement agency requesting a copy of the missing person report.

Requiring Data Entry into the National Computer

Nationwide surveys indicate that not all law-enforcement agencies regularly relay descriptive information about missing children to the appropriate state agency or enter it into the National Crime Information Center (NCIC) computer operated by the FBI. Such data entry into the NCIC computer is critical to ensure an effective nationwide distribution of information on a missing child and to compare missing children data with the records of the unidentified dead.

Both Texas (1983, H.B. 2333) and Minnesota (1984, H.F. 1428) have mandated that appropriate information about missing persons be shared promptly with the FBI National Crime Information Center computer. Minnesota requires that law-enforcement agencies, after a preliminary investigation, immediately enter descriptive information on missing children into the NCIC computer and also requires prompt notification to NCIC when the child is located. Following is an excerpt from the Minnesota legislation:

> Sec. 3. [299C.53]
>
> Subdivision 1. Upon receiving a report of a child believed to be missing, a law enforcement agency shall conduct a preliminary investigation to determine whether the child is missing. If the child is determined to be missing, the agency shall immediately enter identifying and descriptive information about the child through the CJIS into the NCIC computer. Law enforcement agencies having direct access to the CJIS and the NCIC computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies which do not have direct access to the systems.
>
> Subd. 2. Immediately after a missing child is located, the law enforcement agency which located or returned the missing child shall notify the law enforcement agency having jurisdiction over the investigation, and that agency shall cancel the entry from the NCIC computer.

The Texas legislation also requires that every law-enforcement agency provide to the FBI any information that would assist in locating and identifying missing children.

Kentucky Legislation

Following are sections of the Kentucky legislation referred to in the text.

> (H.B. 486)
>
> ACT relating to sexually abused, missing and exploited children, including those persons who commit offenses relating thereto.
>
> Be it enacted by the General Assembly of the Commonwealth of Kentucky:
>
> SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:
>
> (1) As used in Section 1 through 9 of this Act:
>
> (a) "Child" means a person under eighteen (18) years of age;
>
> (b) "Child sexual abuse and exploitation" means harm to a child's health or welfare by any person, responsible or not for the child's health or welfare, which harm occurs or is threatened through nonaccidental sexual contact which includes violations of KRS 510.040 to 510.150, 530.020, 530.070, 531.310, 531.320 and 531.370;
>
> (c) "Local task force" means an organization which meets the criteria described in Section 9 of this Act;
>
> (d) "State board" means the state child sexual abuse and exploitation prevention board created in Section 3 of this Act;

(e) "Prevention program" means a system of direct provision of child sexual abuse and exploitation prevention services to a child, parent, or guardian, but shall not include research programs related to prevention of child sexual abuse and exploitation; and

(f) "Trust fund" means the child victims' trust fund established in the office of the state treasurer.

SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The state child sexual abuse and exploitation prevention board is created as an autonomous agency within the office of the attorney general.

(2) The state board may appoint an executive director of the state board to exercise the powers and carry out the duties of the state board.

SECTION 3. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The state board shall be composed of the following members:

(a) The secretary of the human resources cabinet, the secretary of finance and administration cabinet, the superintendent of public instruction, the commissioner of the state police, and the attorney general, or designees authorized to speak on their behalf; and

(b) Ten (10) public members appointed by the governor. It is recommended that, as a group, the public members shall demonstrate knowledge in the area of child sexual abuse and exploitation prevention; shall be representative of the demographic composition of this state; and, to the extent practicable, shall be representative of all the following categories: parents, school administrators, law enforcement, the religious community, the legal community, the medical community, professional providers of child sexual abuse and exploitation prevention services, and volunteers in child sexual abuse and exploitation prevention services

(2) The term of each public member shall be three (3) years, except that of the public members first appointed, three (3) shall serve for three (3) years, three (3) for two (2) years, and four (4) for one (1) year. A public member shall not serve more than two (2) consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(3) The attorney general shall serve as chairman or designate a chairperson of the state board in which case the chairperson shall serve in that position at the pleasure of the attorney general. The state board may elect other officers and committees as it considers appropriate.

(4) There shall be no per diem compensation; however, the schedule for reimbursement of expenses for the public members of the state board shall be the same as for state employes. The reimbursement, executive director and staff salaries, and all actual and necessary operating expenses of the state board shall be paid from the trust fund, pursuant to an authorization as provided in Section 8 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The business which the state performs shall be conducted at a public meeting of the state board held in compliance with the open meetings act.

(2) A writing prepared, owned, used, in the possession of, or retained by the state board in the performance in an official function shall be made available to the public in compliance with the open records act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The state board shall do all of the following:

(a) Meet not less than twice annually at the call of the chairperson;

(b) One (1) year after the original appointment of the state board, and biennially thereafter, develop a state plan for the distribution of funds from the trust fund. In developing the plan, the state board shall review already existing prevention programs. The plan shall assure that an equal opportunity exists for establishment of prevention programs and receipt of trust fund money among all geographic areas in this state. The plan shall be transmitted to the clerk of the house of representatives, to the clerk of the senate, and to the governor;

(c) Provide for the coordination and exchange of information on the establishment and maintenance of prevention programs;

(d) Develop and publicize criteria for the receipt of trust fund money by eligible local task forces and eligible prevention programs;

(e) Review, approve, and monitor the expenditure of trust fund money by local task forces and prevention programs;

(f) Provide statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the prevention of child sexual abuse and exploitation; encourage professional persons and groups to recognize and deal with prevention of child sexual abuse and exploitation; encourage and coordinate the development of local task forces; make information about the prevention of child sexual abuse and exploitation available to the public and organizations and agencies which deal with problems of child sexual abuse and exploitation; and encourage the development of community prevention programs; and

(g) Establish a procedure for an annual, internal evaluation of the functions, responsibilities, and performance of the state board. In a year in which the biennial state plan is prepared, the evaluation shall be coordinated with the preparation of the state plan.

(2) The state board may enter into contracts with public or private agencies to fulfill the requirements of this section. The state board shall utilize existing state resources and staff of participating departments whenever practicable.

SECTION 6. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The state board may recommend to the governor and the general assembly changes in state programs, statutes, policies, budgets, and standards which will reduce the problem of child sexual abuse and exploitation, improve coordination among state agencies that provide prevention services and improve the condition of children and parents or guardians who are in need of prevention program services.

SECTION 7. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The state board may accept federal funds granted by the Congress or executive order for the purposes of this Act as well as gifts and donations from individuals, private organizations, or foundations. All funds received in the manner described in this section shall be transmitted to the state treasurer for deposit in the trust fund, and shall be made available for expenditure as appropriated by the general assembly.

SECTION 8. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The state board may authorize the disbursement of available money from the trust fund, upon legislative appropriations, for exclusively the following purposes, which are listed in the order of preference for expenditure:

(a) To fund a private nonprofit or public organization in the development or operation of a prevention program if at least all of the following conditions are met:

1. The appropriate local task force has reviewed and approved the program. This subparagraph does not apply if a local task force does not exist for the geographic area to be served by the program;

2. The organization demonstrates an ability to match through money fifty percent (50%) of the amount of any trust fund money received;

3. The organization demonstrates a willingness and ability to provide program models and consultation to organizations and communities regarding program development and maintenance; and

4. Other conditions that the state board may deem appropriate.

(b) To fund local task forces; and

(c) To fund the state board created in Section 2 of this Act for the actual and necessary operating expenses that the board incurs in performing its duties.

(2) Authorizations for disbursement of trust fund money under subsection (1)(c) of this section shall be kept at a minimum in furtherance of the primary purpose of the trust fund which is to disburse money under subsec-

tions (1)(a) and (b) of this section to encourage the direct provision of services to prevent child abuse and exploitation.

SECTION 9. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

In making grants to a local task force, the state board shall consider the degree to which the local task force meets the following criteria:

(1) Has as its primary purpose the development and facilitation of a collaborative community prevention program in a specific geographical area. The prevention program shall utilize trained volunteers and existing community resources wherever practicable;

(2) Is comprised of local law enforcement and social services representatives and does not exclude any organization or person that the state board deems necessary;

(3) Demonstrates a willingness and ability to provide prevention program models and consultation to organizations and communities regarding prevention program development and maintenance;

(4) Demonstrates an ability to match through money fifty percent (50%) of the amount of any trust fund money received. The amount and types of in-kind services are subject to the approval of the state board; and

(5) Other criteria that the state board deems appropriate.

. . .

SECTION 11. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) The justice cabinet shall establish within the cabinet a "Kentucky Missing Child Information Center," which shall serve as a central repository of and clearinghouse for information about Kentucky children believed to be missing and children from other states believed to be missing in Kentucky.

(2) The cabinet shall provide the missing child information center with computer equipment and a computer program which shall list and be capable of immediately retrieving the name and complete description of any missing Kentucky child referred to in subsection (1) of this section.

(3) The cabinet shall design the computer program so as to accept and generate complete information on a missing child, which information shall be retrievable by the child's name and date of birth, social security number, fingerprint classification, any number of physical descriptions, including hair and eye color and body marks, and known associates and locations.

(4) Only law enforcement agencies shall be authorized to order missing child information entered into or retrieved from the missing child information center computer, except that a parent or guardian may order from the state police information on his or her child to be entered or retrieved when another law enforcement agency has refused to enter or retrieve such missing child information.

(5) The cabinet, through the Kentucky missing child information center, shall regularly issue flyers containing physical and situational descriptions of missing children when requested by a law enforcement agency or when determined by the cabinet.

(6) For purposes of this Act, child shall mean any person under eighteen (18) years of age or any person certified or known to be mentally incompetent or disabled.

(7) A complete written report shall be issued annually by the cabinet, which report shall include statistical information on the numbers of missing children entered on the computer and located and recommendations for more accurate and timely reports and better usage of the computer.

(8) The cabinet may issue regulations in conformance with this section which provide for the orderly receipt of missing child information and requests for retrieval of missing child information.

(9) The Kentucky state police and each city, county, and urban county police department and each sheriff's office shall fingerprint children without charge on forms provided by the cabinet. The completed fingerprint forms shall be delivered to the child's parent or guardian and no copy of the fingerprint form shall be retained by the police department or sheriff's office.

SECTION 12. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) Upon notification by a parent or guardian that a child is missing, the law enforcement agency receiving notification shall immediately complete a missing person's report in a form prescribed by the justice cabinet and which shall include such information as the cabinet deems necessary for the identification of the missing child, including the child's physical description, last known location and known associates.

(2) Within twenty-four (24) hours after completion of the missing person's report form, the law enforcement agency shall transmit the report for inclusion within the Kentucky missing child information center computer and shall cause the report to be entered into the national crime information center computer.

(3) Within twenty-four (24) hours thereafter, the law enforcement agency shall investigate the report, shall inform all appropriate law enforcement officers of the existence of the missing child report, and shall communicate the report to every other law enforcement agency having jurisdiction in the area.

(4) Within twenty-four (24) hours after a missing child is located and returned to his parent, guardian or to the state, if a ward of the state, the law enforcement agency which found or returned the missing child shall notify both the missing child information center and the national crime information center of that fact.

2. Sexual Abuse and Exploitation

The National Center for Missing and Exploited Children is chartered to address the problem of children who are criminally or sexually exploited, which includes child molestation, child prostitution, and child pornography. State legislation can be effectively used to improve many laws regarding the treatment of criminally or sexually exploited children. The state legislation referred to in this section has proved highly successful in addressing the problems of exploited children. (See also "Child Pornography and Child Prostitution," pages 45-47.)

Reporting and Investigating Cases of Child Sexual Exploitation

Who Must Report? In order to ensure that all cases of child abuse or exploitation are indeed reported, some states include a broad category of citizens who are required to report.

The State of Delaware (§16-903) has mandated that reports are required from physicians, persons in the healing arts, school employees, social workers, psychologists, medical examiners, and *any other person*.

The State of Kentucky (§199.335) requires reports from many of the same professions as the Delaware statute and adds child care personnel as well. Virginia (§63.1-248.3) specifies social workers, nurses, probation officers, mental health professionals, and law-enforcement officers as well. Both the Delaware and Kentucky laws are significant because they include the words *or any other person* to include all citizens in general. It is not appropriate, however, to penalize citizens in the same way that professionals are penalized for failure to report.

North Carolina (§7A-543) requires "any person or institution that has cause to suspect that any juvenile is abused or neglected" to report such cases. South Dakota (§26-10-11) specifically requires abuse reports by hospital and school personnel and notification of the officials in charge. An excerpt from the South Dakota statute follows:

> 26-10-11. Child abuse reports by hospital personnel—Failure as misdemeanor—Written policy required as to reporting. When the attendance of any person under §26-10-10 with respect to a child is pursuant to the performance of services as a member of a staff of a hospital or similar institution, such person shall, in addition to the report required by §26-10-10, forthwith notify the person in charge of the institution or his designated delegate, who shall report or cause reports to be made in accordance with the provisions of §26-10-12. Any such person in charge or delegate who knowingly and intentionally fails to make a report required of him is guilty of a Class 1 misdemeanor. Each hospital or similar institution shall have a written policy on reporting of child abuse and neglect.
>
> 26-10-11.1. Child abuse reports by school personnel—Failure as misdemeanor—Written policy required as to reporting. When the presence of any person under §26-10-10 is pursuant to the performance of services as a teacher, school nurse, school counselor, school official or administrator, such person shall, in addition to the report required by §26-10-10, notify the school principal or school superintendent or his designate who shall report or cause reports to be made in accordance with the provisions of §26-10-12.

> Any such school principal or superintendent or their delegate, who knowingly and intentionally fails to make a report required of him is guilty of a Class 1 misdemeanor. Each school district shall have a written school district policy on reporting of child abuse and neglect.

What Kinds of Abuse Must Be Reported? It is critical that state legislation require that cases of *sexual assault* and *exploitation* be included in the definition of child abuse. The State of Delaware (§16-903) defines child abuse and neglect to include physical injury or mental and emotional injury resulting from abuse, neglect, sexual abuse, or exploitation. This definition of child abuse includes *exploitation*—which would encompass sexual exploitation, as in child pornography. Therefore, in Delaware, child pornography would constitute child abuse even though the child was not physically harmed or even touched. Louisiana (1984, H.B. 1206) recently enacted legislation that includes sexual exploitation in the definition of abuse. It is critical that sexual abuse and exploitation be subject to abuse reporting requirements.

To Whom Are the Reports Made? Many communities have had difficulties in handling cases of child sexual assault because not all the appropriate agencies are notified. The District of Columbia (§6-2102) provides that, upon receipt of a report, the social services division immediately inform the police. Following is an excerpt from the District of Columbia statute:

> § 6-2102. Handling of reports—By Division.
> (a) Upon the receipt of an oral report, the Division shall immediately inform the police of the contents of the report, if it alleges a child is or may have been an abused child.

Some states, such as New Mexico (§32-1-15), require that the report be made to the proper social services agency *or* to the local district attorney. The State of Kentucky (§199.335) mandates that the person making the report also make an oral report to a law-enforcement agency.

The State of Florida (1984, Com. Sub., H.B. 988) has taken important action to ensure that reports of child abuse or neglect by school employees be immediately reported to the school board itself. In addition, Florida requires that the Social Services Department make a full written report to the local prosecutor within three days of receiving the oral report.

Sharing Information Among Agencies Law-enforcement and social service agencies are often unable or are not required to *share information* about cases of child exploitation. Kentucky (§199.335) has solved this problem by mandating that social service agencies report cases of child abuse to other medical, psychological, social service, or law-enforcement agencies. Florida (1984, Com. Sub., H.B. 988) requires a joint criminal investigation conducted by both law-enforcement authorities and social service agencies in cases involving sexual assault, abuse, or death of a child.

Temporary Protection for the Child Simply because a case of child abuse or exploitation has been reported does not mean that the child is not still in grave danger. The State of Alabama (§26-14-6) addressed this problem by ensuring *temporary protection* for the child. In Alabama, in a case of child abuse, a law-enforcement officer, state or county employee, hospital official, or physician may keep the child in his or her custody without the consent of the parent or guardian. The State of Kentucky (§199.335) allows similar procedures for hospitals and physicians.

Kentucky's legislation also allows for a *search warrant* to be issued if there is cause to suspect child abuse or neglect. If the child is indeed in danger, he or she may be removed by a police officer. Following is an excerpt from the Kentucky statute:

> (4) A search warrant shall be issued upon a showing of probable cause that a child is being abused or neglected. If, pursuant to a search under a

> warrant a child is discovered and appears to be in imminent danger, the child may be removed by the local law enforcement officer. In the event a child who is in a hospital or under the immediate care of a physician appears to be in such certain danger of injury or death if he is returned to the persons having custody of him, the physician or hospital administrator may hold a child in the physician's office or the hospital without court order provided that an attempt is made to obtain such court order at the earliest practicable time not to exceed seventy-two (72) hours. Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person responsible for such child, if the officer has reasonable cause to believe that there exists an imminent danger to the child's life or health.

Protecting Individuals or Institutions That Report Many cases of child abuse may go unreported because people are afraid that they will be penalized in some way. Therefore, a number of states have instituted *immunity* and *protective measures* for those who report. The following examples of state legislation provide critical support and protection measures for those who report child abuse, neglect, and exploitation.

The states of Mississippi (§43-21-355) and South Dakota (§26-10-14) protect those who report "in good faith." The State of Kentucky (§199.335) protects those who report based upon a "reasonable cause." Further, Mississippi law (§43-21-355) provides for *immunity from liability*, civil or criminal, for individuals who are acting "in good faith." That means that a civil or criminal suit cannot be brought against those who report. Criminal liability can mean a possible jail sentence or fine.

The State of Vermont (T.33§683) provides for the *confidentiality of the name* of the person making the report or any person mentioned in the report. The State of Colorado (§19-10-110) ensures that the person reporting "in good faith" is immune from civil or criminal liability or termination of employment that otherwise might result. Following is an excerpt from the Colorado statute:

> 19-10-110. Immunity from liability—persons reporting. Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this title, the taking of photographs or X rays, or the placing in temporary protective custody of a child pursuant to this article or otherwise performing his duties or acting pursuant to this article shall be immune from any liability, civil or criminal, or termination of employment that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking photographs or X rays, and any person who has legal authority to place a child in protective custody shall be presumed.

Kentucky (§199.335) provides for immunity from liability for photographs, x-rays and other appropriate medical procedures taken without the consent of the parent as part of an investigation. Finally, Rhode Island (1984, H. 7519) recently provided that those who report child abuse be advised about the agency efforts that may have taken place because of the report.

Penalties for Failure to Report Many states impose criminal sanctions or fines upon those professionals who do not report cases of child abuse, neglect, or exploitation. For example, the State of Michigan (§722.633) provides that a person required to report an instance of child abuse is civilly liable for the damages caused by the failure. Of course, this kind of penalty should apply only to professionals required to report.

But in states requiring regular citizens to report such cases, it is not fair to make the penalties as high for the ordinary citizen as they are for the trained professional. A civil fine is as serious as the penalty should be for a citizen. And, certain protections, such as immunity from liability, should also apply to the average individual who reports child abuse, neglect, and exploitation.

Child Protection Teams

Child abuse, neglect, and exploitation are highly complicated cases involving many different interests—the child's physical, mental, and emotional health, the family, and the legal concerns. Therefore, a few states have mandated the use of *child protection teams* to handle such reports. The child protection team concept ensures that, at the community level, a seasoned group of professionals from different disciplines will handle the cases. The team concept, however, can only benefit child victims if *exploitation* is included in the state's definition of child abuse.

Tennessee (§37-1-407) has mandated a multi-disciplinary advisory team that is composed of representatives from the following:

1. Department of Human Services
2. Physicians
3. Psychologists or psychiatrists
4. Social workers
5. Local juvenile court
6. Local law-enforcement agency

Following is an excerpt from the Tennessee statute:

> 37-1-407. Child abuse review teams.—(a) The department shall make available to each community a multi-disciplinary advisory team to be known as the child abuse review team.
>
> (b) The team shall be composed of at least the following persons: a representative of the department of human services who shall serve as team coordinator, a physician, a psychologist or psychiatrist, and a social worker. A representative of the local juvenile court may participate if desired by the juvenile judge, and a representative of the local law-enforcement agency may participate if requested by the district attorney general. . . . The department shall choose its representative and all other persons on the team with the exception of the representatives of the local law-enforcement agency and the local juvenile court who shall be chosen by the chief officer of their respective operating units.

Indiana (§31-6-11-14) has added a requirement that local law-enforcement agencies participate as well as persons from local schools, nurses, attorneys, and those trained in mental health and mental retardation. Indiana's child protection team is required to be supplied with copies of reports of child abuse and neglect. This ensures that all reports are received and reviewed by the entire team.

The Florida (Chapter 84-226) team concept includes a variety of responsibilities, which are listed in the statute below:

> Section 9. Section 415.5055, Florida Statutes, is created to read:
>
> 415.5055 Child protection teams; services; eligible cases.—The department shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the department's service districts. Such teams may be composed of representatives of appropriate health, mental health, social service, legal service, and law enforcement agencies.
>
> (1) The department shall utilize and convene the teams to supplement the single intake and protective services activities of the children, youth, and families program of the department. Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report all suspected or actual cases of child abuse or neglect or sexual abuse of a child pursuant to s. 415.504. The role of the teams shall be to support activities of the program and to provide services to abused and neglected children upon referral as deemed by the teams to be necessary and appropriate for such children. The specialized diagnostic assessment, evaluation, co-

ordination, consultation, and other supportive services that the teams shall be capable of providing include, but are not limited to, the following:

(a) Medical diagnosis and evaluation services, including provision or interpretation of X-rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.

(b) Telephone consultation services in emergencies and in other situations.

(c) Medical evaluation related to abuse or neglect, as defined by department policy or rule.

(d) Such psychological and psychiatric diagnosis and evaluation services for the child, parent or parents, guardian or guardians, or other care givers, or any other individual involved in a child abuse or neglect case, as a child protection team may determine to be needed.

(e) Short-term psychological treatment. It is the intent of the Legislature that short-term psychological treatment be limited to no more than 6 months' duration after treatment is initiated, except that the appropriate district administrator may authorize such treatment for individual children beyond this limitation if he deems it appropriate.

(f) Expert medical, psychological, and related professional testimony in court cases.

(g) Case staffings to develop, implement, and monitor treatment plans for a child whose case has been referred to a child protection team. A child protection team may provide consultation on any other child who has not been referred to a team, but who is alleged or is shown to be abused, which consultation shall be provided at the request of a representative of the children, youth, and families program or at the request of any other professional involved with a child, his parent or parents, guardian or guardians, or other care givers. In all such child protection team case staffings, consultations, or staff activities involving a child, a children, youth, and families program representative shall attend and participate.

(h) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(i) Such training services for program and other department employees as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse and neglect cases.

(j) Educational and community awareness campaigns on child abuse and neglect in a effort to enable citizens more successfully to prevent, identify, and treat child abuse and neglect in the community.

(2) Child abuse and neglect cases that are appropriate referrals by the children, youth, and families program to child protection teams for support services as set forth in subsection (1) include, but are not limited to, cases involving:

(a) Bruises, burns, or fractures in a child under the age of 3 years and in a nonambulatory child of any age.

(b) Unexplained or implausibly explained bruises, burns, fractures, or other injuries in a child of any age.

(c) Sexual abuse of a child in which vaginal or anal penetration is alleged, or in which other unlawful sexual conduct has been determined to have occurred.

(d) Venereal disease, or any other sexually transmitted disease, in a prepubescent child.

(e) Reported malnutrition of a child and failure of a child to thrive.

(f) Reported medical, physical, or emotional neglect of a child.

(g) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected abuse or neglect, where any sibling or other child remains in the home.

(h) Symptoms of serious emotional problems in a child where emotional or other abuse or neglect is suspected.

In all instances where a child protection team is providing certain services to abused or neglected children, other offices and units of the department shall avoid duplicating the provision of those services.

Payment for Physical Exams

Unfortunately, in many states, the victim of a sexual assault must, in addition to suffering from the effects of the crime, pay for the required medical examination. Some states have protected the victim by mandating that such exams be paid for out of social services, law enforcement, or other community funds. Following is a Montana statute (§46-15-411) that requires the local law-enforcement agency to pay for the required exam.

> 46-15-411. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent when the examination is directed by such agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.
>
> (2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

Also, the State of Minnesota (§609.35) has mandated that the cost of the examination of the victim of a sexual assault will not be charged to the victim.

Emergency Protection for the Child

Because of the unique nature of child sexual assault and exploitation, special measures are often necessary to provide immediate protection for the child. The State of Colorado (§19-10-116) has allowed its juvenile courts to issue *restraining orders* to prevent sexual offenses. This emergency protection includes preventing anyone from threatening, molesting, or injuring a child. It also can exclude someone from the family home or prevent someone from contacting the child elsewhere. An excerpt from the Colorado statute follows:

> 19-10-116. Restraining orders and emergency protection orders.
>
> (1) (a) The juvenile court and the district court shall have authority to issue restraining orders to prevent an unlawful sexual offense . . . when requested by the local law enforcement agency, county department, or a responsible person who asserts, in a verified petition supported by affidavit, that there are reasonable grounds to believe that a child is in danger in the reasonably foreseeable future of being the victim of an unlawful sexual offense, based upon an allegation of a recent actual unlawful sexual offense or threat of the same.

The Colorado law also provides that the person who disobeys the restraining order can be held in contempt of court.

Limiting the Number of Interviews

The demands of the social services and criminal justice system often mean that a child victim of a sexual assault may be interviewed about the assault as many as a dozen times—by a social services investigator, the police, the local prosecutor's office, therapists, and many others. This would be a great strain on any adult, let alone a child already under extreme stress.

The State of Florida (1984, S.B. 890) recently considered a bill that would require the chief judge of each local circuit to provide for *reasonable limits on the number of interviews* a child victim would have to undergo. An excerpt from the Florida legislation is reproduced below:

> Section 1. Child abuse and sexual abuse victims under age 12; limits on interviews.—The chief judge of each judicial circuit, after consultation with

the state attorney for the judicial circuit and the sheriff of each county within the judicial circuit, shall provide by rule for reasonable limits on the number of interviews a victim of a violation of s. 794.011, s. 827.03, or s. 827.04, Florida Statutes, who is under 12 years of age must submit to for law enforcement or discovery purposes. The rule shall, to the extent possible, protect the victim from the psychological damage of repeated interrogation while preserving the rights of the public, the victim, and the person charged with the violation.

3. Criminal Code Provisions

The provisions of state *criminal codes* dealing with child abuse, sexual offenses, and kidnapping directly affect the issue of missing and exploited children. State criminal codes determine what acts are considered crimes and how these crimes are punished. In addition, criminal code provisions determine who is released early from prison (paroled) and under what circumstances. State legislation can be used to strengthen state criminal codes to protect missing and exploited children.

Time Limits (Statute of Limitations)

A recurring difficulty in prosecuting cases of child victimization is the fact that many cases go unreported for years. Because the children are often very young, confused, and feel responsible for the act, they are afraid to report or may not even know that what happened is indeed a crime. This is especially true in incest cases, but it also occurs in cases involving molestation by those other than family members. As a result, many cases of child victimization cannot be prosecuted simply because the child did not report it until years later and the *statute of limitations* had expired.

Many states, therefore, are extending their statute of limitations for crimes involving children. These extensions ensure that crimes against children can be prosecuted even several years after the offense has occurred. The State of Minnesota (Chapter 496) recently lengthened its statute of limitations from three years to seven years for any criminal or sexual conduct involving a minor. Utah (1984 H.B. 209) extended this time limitation to eight years. Florida (Chapter 84-86) took a different approach and mandated that if the victim is under the age of 16, the time limitation does not begin until the victim has reached the age of 16 or until the violation is reported, whichever is earlier. Actually, the statute of limitations in these cases should be at least 15 years.

"Consent" and Past Sexual Experiences of the Child Victim

Two obstacles sometimes encountered in prosecuting child victimization cases are 1) a requirement to prove that the child did not consent to the act, and 2) an inquiry into the child's prior sexual experiences. The State of Florida (Chapter 84-86) now requires that neither the victim's lack of chastity nor the victim's consent is a defense for certain sexual offenses committed against children. Utah (1984. H.B. 209) provides that a seizure, confinement, detention, or transportation is considered against the will of any victim under 14, if it is without the consent of the parent or guardian. Of course, this provision was not intended to apply to cases of parental kidnapping.

Mandatory Prison Sentences for Sexual Offenders

Some states have enacted legislation that provides for mandatory prison sentences for those convicted of certain specified sexual crimes against children (California Penal Code §1203.066; Kentucky, 1984, Chapter 382; Utah, 1984, H.B. 209). While these statutes do address the critical problem of the serious or repeat offender who does not have to serve any time in jail or prison, they do raise two issues that will need to be

addressed. Both issues concern the unique nature of cases of incest or intrafamily sexual abuse. If the child who is a victim of these particular intrafamily crimes learns that his or her father or stepfather faces an automatic prison sentence, it often makes the child reluctant to report the crime or to continue to tell the truth throughout the investigation and court procedures. In addition, family members and friends may put significant pressure upon the child to recant a truthful account of the crime so that the defendant does not have to serve any period of imprisonment.

What this means is that any state law that includes mandatory imprisonment should also include provisions that allow the judge, at his or her discretion, to impose a probated (no incarceration) or suspended sentence if there are specific findings, which follow:

1. The defendant is a natural parent, stepparent, adoptive parent, relative, other legal guardian, or a member of the victim's household who has lived in the household.
2. It is in the victim's best interest that the defendant not be incarcerated.
3. There is no continuing threat of physical harm to the child if the defendant is not incarcerated.
4. The defendant has been accepted for mental health treatment in a recognized center that deals with therapy for the kind of offense committed.

These provisions are an attempt to deal with the conflicting interests of the required incarceration of a child molester and the needs of the child who is a victim of intrafamily sexual abuse. Also, the judge is still free to impose a mandatory jail sentence if it is in the best interest of the child.

Registering Sexual Offenders

In order to know the whereabouts of those convicted of sex offenses, the State of Ohio (§2950.02) and the State of Utah (1984, H.B. 209) have mandated that sex offenders register with local or state officials in that state. The Utah provisions are comprehensive and also require that notice be given to the victim before the offender is released from prison. Both provisions are significant.

Paroling Sexual Offenders

Because many sexual offenders repeat their crimes against children, some states have legislated specific provisions to guarantee more protection for children. Legislation in Utah (1984, H.B. 209) is an excellent answer to the problem of repeat offenders. The Utah legislation includes the following:

1. A requirement that the prosecutor inform the parole board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and other background information.
2. Provisions for notifying the local prosecutor and the victim concerning a parole hearing on an individual convicted of certain specified offenses against children.
3. An examination before parole by a disinterested third party to determine whether or not the individual is a continuing danger to children.
4. Requirement for three years of outpatient treatment for paroled individuals convicted of certain crimes against children.

The above recently enacted state laws regarding parole are innovative steps to protect children that all states should consider.

4. The Child in the Courtroom

The child victim or witness faces a particularly difficult time in the courtoom. Various criminal justice system procedures subject the child to repeated interrogation and a traumatic ordeal that some experts refer to as a second victimization. Some procedures and laws make it difficult or impossible for the child victim to have his or her story heard in the courtroom by a judge or jury. In addition, the formal procedures in the criminal courtroom force the child to relive the episode of exploitation or abuse in a public setting. State legislation addressing these difficult issues is described in this chapter.

Courtroom Procedures Protecting the Child Victim or Witness

Some states have adopted certain courtroom procedures that make it less traumatic for the child victim or witness to testify, such as allowing the child to testify, permitting leading questions, allowing additional evidence, using videotapes and closed-circuit television to record testimony, and removing corroboration rules.

Allowing the Child to Testify Many state laws require that the child pass a specific set of threshold inquiries before he or she is allowed to testify. The child may have to show an understanding of the difference between a true statement and an untrue statement and an appreciation of the nature of the oath to tell the truth. Also included are requirements that the child have an ability to sufficiently recall and relate the details of the incident of abuse or exploitation. Some scholars of law have characterized this kind of prejudice against a child's testimony as "archaic." It is important to note, however, that fewer than half the states in the United States have these provisions, and the Federal Rules of Evidence, applicable in federal courtrooms, presume that every person is competent to be a witness.

If the child is allowed to testify, it is still up to the trier of fact (the judge or the jury) to determine if the child's ability to recall and relate the incidents and his or her understanding of the oath to tell the truth is sufficient to make the testimony convincing. This is a guarantee that the child's testimony will be appropriately evaluated in the trial.

The State of Utah (1984, H.B. 209) recently attempted to address the problem of prejudice against the child's testimony by enacting the following provisions:

> Notwithstanding any other provision of law or rule of evidence, a child victim of sexual abuse, under the age of ten, shall be considered a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding. The trier of fact shall be permitted to determine the weight and credibility to be given to the testimony.

The age of ten is included in the Utah statute because of particular provisions of that state's laws. Actually, any child victim of sexual assault should be accorded this protection.

Permitting Leading Questions In most courtroom situations, *leading questions* (those simply requiring a yes or no answer) are prohibited. A child, however, obviously

has difficulty in articulating complete and detailed sentences. Therefore, several states, including California (1984, S.B. 1899) allow that, in certain kinds of crimes, "the court may in the interests of justice permit a leading question to be asked of a child under ten years of age."

Allowing Additional Evidence Traditionally, the criminal justice system excludes as evidence any statements made outside the courtroom. To make it easier for the child, however, Colorado (§18-3-411, §19-1-107) recently enacted provisions that would allow as evidence any out-of-court statements made by a child describing any act of sexual contact, intrusion, or penetration. Most states that have enacted this kind of legislation have also included provisions such as those required by Minnesota (Chapter 588), which ensure the reliability of out-of-court statements. This is a determination made by the judge in the case. Such a specific evaluation of the reliability of the statement is critical.

Similar legislation has been enacted in Indiana (1984, H. 1205) and Utah (1984, H.B. 209). The Utah legislation contains the following provisions:

> (1.) Notwithstanding any other provision of law or rule of evidence, a child victim's out of court statement regarding sexual abuse of the child is admissible into evidence although it does not qualify under an existing hearsay exception so long as; (1) the child testifies; or (2) in the event that the child does not testify, there is other corroborative evidence of the abuse. Before admitting such a statement into evidence, the judge shall determine whether the general purposes of the evidence are such that the interest of justice will best be served by admission of the statement into evidence. In addition, the court shall consider the age and maturity of the child, the nature and duration of the abuse, the relationship of the child to the offender, the reliability of the assertion, and the reliability of the child witness in deciding whether to admit such a statement.

Some states have required that out-of-court statements by children will be admissible if the judge finds, among other conclusions, that "the emotional or psychological well-being of the child would be impaired" by testifying. Maine (§1205) has such a law. CAUTION: These innovative attempts to address the needs of the child victim are being tested by the courts.

Videotaping the Child's Testimony Some state legislatures have attempted to lessen the child victim's ordeal of testifying in the courtroom about a sexual assault. The State of New Mexico (§30-9-17) mandated that *videotaping* may be used to record the child's testimony:

> A. In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, upon motion of the district attorney and after notice to the opposing counsel, the district court may, for a good cause shown, order the taking of a videotaped deposition of any alleged victim under the age of sixteen years. The videotaped deposition shall be taken before the judge in chambers in the presence of the district attorney, the defendant and his attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the videotaped deposition in the same manner as permitted in a trial under the provisions of Rule 611 of the New Mexico Rules of Evidence. Any videotaped deposition taken under the provisions of this act (this section) shall be viewed and heard at the trial and entered into the record in lieu of the direct testimony of the alleged victim.
>
> B. For the purposes of this section, "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.
>
> C. The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of this act.

D. The cost of such videotaping shall be paid for by the state.

E. Videotapes which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

For examples of similar legislation, see the statutes enacted in Arkansas (§43-2036), Colorado (§18-3-411), Iowa (§232.96), Kentucky (Chapter 382), Ohio (1984, H.B. 555), Florida (1984, S.B. 140), and Wisconsin (Act 197). CAUTION: These procedures are currently being tested in the state courts. Their constitutionality has not yet been determined. Videotaping may not provide a comprehensive answer to the plight of the child victim.

Closed-Circuit Television Another alternative considerd by some state legislatures is the use of *closed-circuit television* to record the child's testimony. The following excerpt from Texas law (§38.071) is an example:

Section 3. The court may, on the motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom and be televised by the closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

Note: The Sixth Amendment to the United States Constitution guarantees that the accused person shall enjoy the right to be confronted with the witnesses against him. The use of videotaping or closed-circuit television will be a subject of state court decisions in the months ahead. The validity of a provision that prevents the child from hearing or seeing the defendant has not yet been ruled upon by the courts.

Removing Corroboration Rules Several states have requirements that make it extremely difficult for the child victim or witness to testify. These are called *corroboration rules*, which require that 1) the child cannot simply testify as to the sexual assault without other evidence to substantiate the child's story, or 2) if the child is allowed to testify, as soon as that testimony is questioned, attacked, or impeached, then it is required that additional evidence be introduced to substantiate the child's story. Obviously, these kinds of procedures interfere with the child's ability to seek justice in the courtroom. If these corroboration rules exist by statute or court decision, state legislators should carefully consider removing or eliminating them.

Anatomically Correct Dolls

The child victim of a sexual assault usually finds it very difficult to tell the story in adult language. Therefore, some states have tried to make this procedure easier for the child. Pennsylvania (1984, S.B. 1361) recently passed a provision that allows for the use of *anatomically correct dolls* to assist a child victim in testifying in the courtroom. An excerpt from the Pennsylvania statute follows:

§ 5986. Use of anatomically correct dolls.

In any criminal proceeding charging unlawful sexual contact or penetration with or on a child, the court shall permit the use of anatomically correct dolls or mannequins to assist an alleged victim in testifying on direct and cross-examination.

Prompt Disposition

Because the trial process is extremely stressful for a child, the State of Pennsylvania (1984, S.B. 1361) recently passed legislation that would require the court and the prosecuting attorney to ensure a *prompt disposition* of a case of a child victim. This also assists the young child who may not remember the details of the offense itself for an extended period of time. An excerpt from the Pennsylvania statute follows:

> § 5983. Duty to expedite proceedings.
>
> In all criminal cases and juvenile proceedings involving a child victim or witness, the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

The Rights of Child Victims or Witnesses

At least two states have adopted a specific listing of victims' rights—in particular, child victims. This "bill of rights" assures that children will be given certain assistance during the course of a criminal proceeding. An excellent example of this kind of legislation is the Wisconsin Bill of Rights for Children (§950.055), which is reproduced below:

> 950.055 Child victims and witnesses; rights and services
>
> (1) Legislative intent. The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually afforded to adults. The legislature intends, in this section, to provide these children with additional rights and protections during their involvement with the criminal justice system. The legislature urges the news media to use restraint in revealing the identity of child victims or witnesses, especially in sensitive cases.
>
> (2) Additional services. In addition to all rights afforded to victims and witnesses under s. 950.04 and services provided under s. 950.05, counties are encouraged to provide the following additional services on behalf of children who are involved in criminal proceedings as victims or witnesses:
>
> (a) Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.
>
> (b) Advice to the judge, when appropriate and as a friend of the court, regarding the child's ability to understand proceedings and questions. The services may include providing assistance in determinations concerning the taking of videotaped depositions under s. 967.04 (7) and the duty to expedite proceedings under s. 971.105.
>
> (c) Advice to the district attorney concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.
>
> (d) Information about and referrals to appropriate social services programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.
>
> (3) Program responsibility. In each county, the county board is responsible for the enforcement of rights and the provision of services under this section. A county may seek reimbursement for services provided under this section as part of its program plan submitted to the department under s. 950.06. To the extent possible, counties shall utilize volunteers and existing public resources for the provision of these services.

5. Protecting the Privacy of the Child Victim

The child victim often faces the additional ordeal of the release and publication of highly personal information, including his or her name and the nature of the acts committed. Public release of the victim's name, address, picture, and the details of the assault violates the child's privacy. It is not only embarrassing and traumatic for the child and the family, but it can result in severe psychological and emotional harm.

The issue of the victim's privacy is not a simple one, however. Freedom of the press is guaranteed by the First Amendment and is applied to the states through the Fourteenth Amendment. In order to protect the child victim from undergoing the stress and stigma associated with publicity, it is critical that states enact legislation to protect the privacy of the child.

Protecting the Child's Identity

Traditionally, all fifty states have protected the identity of children *accused of* crimes for the reason that publicity interferes with the child's rehabilitation. Publicizing the names of juvenile defendants may hinder their adjustment in society and acceptance by the public. Protecting the child's identity also guards against embarrassment to the child's family. Unfortunately, though, while the privacy of juvenile offenders is protected in our court system, the privacy of child victims is not.

Several states have enacted legislation to attempt to protect the privacy of the sexual assault victim. The State of Minnesota (Chapter 573) has recently enacted legislation that keeps the name of the victim confidential in the court records and reports related to complaints or indictments of sexual abusers of children. The State of Connecticut (§54-46) exempts from public access official records containing the name and address of the victim of a sexual assault. In addition, the Connecticut statute provides for the use of a fictitious name for the child or no name at all in the indictment. Further, the defendant cannot learn the victim's name if it has been omitted from the documents.

Oregon's statute (§192.500) prevents disclosure of biographical information concerning both the complaining party and the victim. Nevada (§48.071) provides that the district attorney may exclude the victim's address and telephone number in any prosecution for sexual assault.

Criminal Penalties for Disclosing Information In the past, Florida (§794.03), South Carolina (§16-3-730), and Georgia (§26-9901) ruled it a misdemeanor for the news media or private person to publish the name of a sexual assault victim. Following is an excerpt from the Florida statute:

> 794.03 Unlawful to publish or broadcast information identifying sexual offense victim.— No person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense within this chapter. An offense under this section shall constitute a misdemeanor of the second degree.

In 1975, in *Cox Broadcasting Corp.* v. *Cohn* 420 U.S. 469 (1975), the Supreme Court of the United States ruled that states could prohibit, by criminal sanction, the disclosure of victims' names before they become part of the public record in a hearing or trial. After the name is part of the public record, however, the penalty cannot apply. Thus, the child's identity would be protected only before the record was made public.

In the *Cox* v. *Cohn* decision, however, the Supreme Court did authorize states to further protect sexual assault victims by keeping the victim's identity from becoming part of the public record in the first place. The Court stated the following:

> The First and Fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records. If there are privacy interests to be protected in judicial proceedings, the States must respond by means which avoid public documentation or other exposure of private information.

Model State Legislation for Protecting the Privacy of Child Victims of Sexual Assault

Because of the severe emotional and psychological trauma associated with sexual assaults, child victims need even stronger privacy protections. Because we could find no comprehensive protection for the child sexual assault victim, however, we have included an example of provisions that can be enacted by state legislatures. The following example was proposed by attorney Jacqueline Parker for an article appearing in the *Albany Law Review*, 1983 (Vol. 47).

> a) In order to protect the child from possible trauma resulting from publicity, the name of the child victim and identifying biographical information shall not appear on the indictment or any other public record. Instead, a Jane Doe or John Doe designation shall appear in all public records. Sealed non-public records containing the child's name and necessary biographical information shall be kept in order to insure that no defendant is indicted twice.
>
> b) In order to protect the child from stigma and trauma, no person shall disseminate via the print or broadcast media, the name, address, or other identifying information concerning the victim of any sexual offense. With the trial judge's approval, the victim's guardian, parent, or attorney may consent to release some or all of the identifying biographical information, unless the parent or guardian is involved in the alleged offense. This section does not apply to truthful information disclosed in court documents open to public inspection.
>
> c) Upon the request of the victim of a sexual offense, a judge may order that the name of the victim, and the details of the offense obtained by government agencies, be under protective order unless there is a demonstration of a need for disclosure. If the defendant demonstrates a need for disclosure in order to prepare his defense, dissemination of the identity of the child, or other biographical information, by the defendant or his agents, other than for the purpose of preparing his defense, will constitute contempt.

Note: If this model is used, the judge must consider the best interests of the child before releasing identifying information, even if the victim's guardian, parent or attorney consents. An alternative solution providing the same protection would be a two-part state legislative approach consisting of the following:

1. The prohibitions against disclosure identified in the Florida statute (page 23).
2. A state law providing that the court records concerning the identity of a child in a criminal or juvenile proceeding wherein the child is the victim of specified crimes will not be public. (This is the same kind of protection now accorded in all states to children who are accused of committing a crime.)

6. Education and Prevention

Educating children, families, and professionals about abduction, sexual exploitation, and child abuse is the best way to reduce crime against children. The schools are a good place to begin. The National Center for Missing and Exploited Children in late 1985 will provide information on effective training and education programs for the schools.

State legislation may be used to mandate that education and prevention programs for children be available throughout the state. In addition, state legislation may be used to set up community programs to educate professionals about child abuse and exploitation. It is important to note that these programs should be directed toward sexual abuse, exploitation, and abduction as well as child abuse.

State Programs

California (1984, A.B. 2443) recently passed a comprehensive education and training proposal to establish two state education centers and local prevention programs to address the issues of child abuse, sexual assault and, in general, the vulnerability of children. In enacting this important law, the legislature issued findings that included the following assessments of the school's unique ability to be the appropriate setting for the prevention program:

1. Child abuse and neglect is a severe and increasing problem in California.
2. School districts and preschools are able to provide an environment for training of children, parents, and all school district staff.
3. Primary prevention programs in the school districts are an effective and cost-efficient method of reducing the incidence of child abuse and neglect and for promoting a healthy family environment.
4. To ensure comprehensive and effective primary prevention education to all of California's public school children, it is the intent of the legislature to provide adequate funding for training for children four times in their school career, including once in preschool, elementary school, junior high school, and senior high school.

The legislature was careful to define the goal of the new initiative as one that included preventing physical abuse, sexual assault, neglect, and reducing the general vulnerability of children.

California established two distinct kinds of programs. The first is a primary prevention program that provides workshops for parents, teachers, and children. These workshops are designed to counteract common stereotypes about victims and offenders, provide parents and school staff personnel the proper training on child safety, how to detect abuse victims, what to do in a crisis, and how to report the information to the proper agencies.

In addition, the legislature had the foresight to provide for a period of counseling and reporting for the children after each children's workshop.

The second program provides for two Prevention Training Centers, which will act as state clearinghouses to provide information on prevention curriculums and technical assistance to local programs.

Kentucky (1984, H.B. 486) has established a child victims' trust fund that allows residents of that state to make a tax refund donation election of two dollars for individuals or four dollars for joint returns. One of the primary purposes of the trust fund is to help organizations in developing or operating prevention programs.

Regional or Community Programs

Illinois (1984, S.B. 1655), as part of its comprehensive missing children legislation, included education and prevention programs to be directed by its regional I-SEARCH units. These programs will do the following:

1. Establish and conduct programs to educate parents, children, and communities in ways to prevent the abduction of children.
2. Conduct training programs and distribute materials providing guidelines for children when dealing with strangers, casual acquaintances, or non-custodial parents, in order to avoid abduction or kidnapping situations.

The State of Utah (1984, H.B. 58) has specifically provided for community-based education and prevention efforts that include programs to prevent sexual molestation and exploitation. This is an important step because these kinds of programs are often most effective at the community level. The Utah legislation provides that the duties of the Director of the Division of Family Services include the following:

> (1) Contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to establish community-based educational and service programs designed to reduce the occurrence or recurrence of child abuse and neglect.

For more information on school-based programs, see "Schools," pages 27-29.

7. Schools

Schools provide a unique setting for child protection efforts. The school is an appropriate environment in which children can be calmly taught about child abuse, exploitation, and abduction. Lists of missing children may be circulated and compared with lists of enrolled students to identify victims of abduction or kidnapping. The school is an excellent center for the distribution of critical information and descriptive data on abducted children. Finally, the school should be made aware of the arrest of any school employees who have been charged with sexual offenses.

Protection and Other Programs in the Schools

One of the best ways to prevent the victimization of children is to set up in schools effective training procedures for child safety. These self-protection programs can be designed for the child from kindergarten all the way through high school.

State legislators should consider a mandate that education and prevention programs become a regular part of the school curriculum. Otherwise, there are no guarantees that all children will learn how to protect themselves. The State of California (1984, A.B. 2443) has designed a two-part prevention program that is described in "Education and Prevention," pages 25-26. The State of California (1984, S. Con. Res. 83) has also proposed legislation that would require yearly education programs and establish procedures for new students who cannot provide previous school records when enrolling. Following is an excerpt from the California legislation:

> (a) Any information regarding missing children submitted to the Superintendent of Public Instruction by their parents shall be distributed to the schools by the superintendent on a monthly basis.
>
> (b) Each school shall post the information distributed pursuant to subdivision (a), and other flyers and information concerning missing children provided by parents, law enforcement agencies, or volunteer groups, in an area accessible to both faculty and students, and shall update the posted information regularly.
>
> (c) Crisis information, including, but not limited to, phone numbers for local counseling, shelters, and runaway hotlines, shall be openly posted at schools.
>
> (d) Schools shall work with parent groups and law enforcement personnel to implement a voluntary child fingerprinting program, to provide participating parents with a set of their child's fingerprints.
>
> *(e) Schools shall provide at least one annual presentation focusing on consequences leading to, and prevention of, abduction and runaways to pupils in kindergarten and grades 1 to 12, inclusive.*
>
> *(f) The Superintendent of Public Instruction shall develop procedures to be followed by school personnel in cases where new students are unable to provide complete school records when enrolling for classes.* The procedures shall include, but not be limited to, notification of agencies or groups involved with the recovery of missing children. All school personnel responsible for registering students shall receive information regarding these procedures. [italics ours]

Some states have mandated by law or regulation that any new student should have appropriate records from parents or previous schools. Many states require such evidence as birth certificates or other permanent records. In practice, however, these rules are not strictly followed, and many children are registered in school without proper documentation. State legislation can be used to step up enforcement of these laws.

Lists of Missing Children

Many missing children end up enrolled under their proper names in schools far from where they may have been kidnapped. A comparison of lists is an effective way to determine the location of missing children. Florida and Kentucky have enacted legislation that would require that *lists of missing children* at the state clearinghouse be circulated to all school districts and individual schools within the state. These lists of missing children would be compared with the rolls of students currently in school. Florida (1983, Com. Sub., H.B. 452) and Kentucky (1984, H.B. 486) require that lists of missing children be compared with lists of children currently in school. Following is an excerpt from the Florida statute:

> Section 1. Department of Education to compile list of missing Florida school children: forms; notification.—The Department of Education shall provide, by rule, for a program to identify and locate missing Florida school children who are enrolled in Florida public school districts in kindergarten through grade 12. Pursuant to such program, the department shall:
>
> (1) Collect each month a list of missing Florida school children as provided by the Florida Crime Information Center. A missing Florida school child shall be defined for the purposes of this section as a child 18 years or younger whose whereabouts are unknown. The list shall be designed to include such information as the department deems necessary for the identification of the missing school child.
>
> (2) Compile from the information collected pursuant to subsection (1) a list of missing Florida school children, to be distributed monthly to all public school districts admitting children to kindergarten through grade 12. The list shall include the names of all such missing children, together with such other information as the department deems necessary. The school districts shall distribute this information to the public schools in the district by whatever manner each district deems appropriate.
>
> Section 2. Duty of public school districts.—Every public school district in this state shall notify the Department of Education at its earliest known contact with any child whose name appears on the department's list of missing Florida school children.

The State of New Jersey (1984, A.B. 2024) provides that, in addition to comparison of lists, the withdrawal of children from school be noted in particular. A reproduction of the New Jersey legislation follows:

> 2. A board of education shall furnish to the Missing Persons Unit of the Division of State Police within the Department of Law and Public Safety and to the Department of Education the name of, and other pertinent information about, any child enrolled in a school administered by that board if either:
>
> a. The child's parent or guardian withdraws the child from school and the school does not receive an official request for the child's records from another school within 15 school days if the withdrawal occurs during the school term or within 60 calendar days if the withdrawal occurs at the end of the school term; or
>
> b. The child does not attend school for 5 consecutive school days and school officials are unable to locate or otherwise account for the student.

Report of Arrest of School Employee

The State of Utah (1984, H.B. 209) has recently enacted legislation that requires a sheriff or chief of police to notify the school district, the department of public safety, and the superintendent of schools if a public school teacher is arrested for offenses involving sexual conduct. In addition, if the school employee is a non-teacher, the sheriff or police chief shall notify the superintendent of schools concerning information about the arrest.

In late 1985, the National Center for Missing and Exploited Children will be distributing information on the most effective programs for safety, training, and education in the schools. Any request for this kind of information should be sent to the National Center for Missing and Exploited Children. For additional information about education and prevention programs, see "Education and Prevention," pages 25-26.

8. Licensing and Criminal History Information

Unfortunately, many child sexual assault victims are molested by those in a position of trust and authority over them. And, it is a sad fact that many dedicated and sincere professionals who are deeply concerned about the welfare of children are working in organizations and institutions with those who would seek to harm or exploit children. The vast majority of those who work with children, however, are dedicated people who would *never* seek to harm a child in any way.

It is important to note that criminal history checks will *not* be a complete or thorough solution to the problem of child exploitation in specific institutions and child activities. It is one important step that many states have undertaken to protect children from criminal and sexual exploitation.

Criminal History Information

One step that many states have undertaken to protect children from criminal and sexual exploitation is a check on an individual's criminal record. While some states have focused their attention on particular professions, such as school employees or day care personnel, it is more appropriate to consider all individuals who work with or volunteer to assist children in a variety of occupations and activities. The scope of the problem goes far beyond one or two institutions and activities.

A *criminal history check* is a two-part process:

1. A check through the state law-enforcement system to determine if there have been any particular kinds of offenses committed by that individual in the state.
2. A check through the federal law-enforcement information system to determine if other states have records of the criminal history of the individual. A record check through both systems will cost between $20 and $25.

Some of the state statutes providing for a criminal history authorize access by prospective employers; other statutes allow access to the information by authorizing or licensing an agency of the state government. Also, some states authorize a check by the individual's name and Social Security number, while others use fingerprints as well.

Federal Law Requiring Background Information and Criminal Histories In 1984 a federal law was passed that requires that any state wishing to receive certain specific funds under Title XX of the Social Security Act to enact, by September 1985, the following:

> A state law or regulation to provide for employment history, background checks, and nationwide criminal record checks for all "existing and prospective operators, staff, or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction, or treatment facilities." (P.L. 98-473)

State Laws Requiring a Criminal History Inquiry Checking criminal histories is not an unusual procedure in some states. For example, one state allows such checks for a total of over 65 occupations or professional licenses, including licenses for acupuncture, automobile dealerships, barber shops, bingo operators, funeral directors, engineers, nurses, plumbers, public accountants, school bus drivers, and many others. Another source for background information is the state child abuse and neglect registry, which identifies abusers. Care must be taken to exclude those individuals who were referred to the registry but who were never proved to be abusers.

Criminal History Information on Those Supervising Children At least three states have enacted legislation to allow an employer to request information about convictions of sex crimes for *any person* who would have supervisory or disciplinary power over a minor. Kentucky (1984, H.B. 486) recently enacted such a law, an excerpt of which is reproduced below:

> SECTION 10.
>
> (1) Notwithstanding any other provisions of law, an employer may request from justice cabinet records of all available convictions involving any sex crimes of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The cabinet shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.
>
> (2) Any request for records under subsection (1) of this section shall be on a form approved by the cabinet, and the cabinet may charge a fee to be paid by the employer for the actual cost of processing the request.
>
> (3) The cabinet shall adopt regulations to implement the provisions of this section.
>
> (4) As used in this section "employer" means any organization specified by the attorney general which employs or uses the services of volunteers or paid employes in positions in which the volunteer or employe has supervisory or disciplinary power over a child or children.
>
> (5) As used in this section "sex crimes" means a conviction for a violation or attempted violation of KRS 510.040 to 510.150, 529.020 to 529.050, 529.070, 539.020, 530.020, 531.310, 531.320, 531.340, to 531.370, and the criminal offense of unlawful transaction with a minor. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky.

Alaska (§ 12.62.035) and California (Penal Code, §11105.2) have enacted legislation similar to Kentucky's. An excerpt from the California statute follows:

> §11105.2. Record of conviction involving sex crime; availability to employer for applicant for position with supervisory or disciplinary power over minor.
>
> (a) Notwithstanding any other provisions of law, an employer may request from the Department of Justice records of all convictions involving any sex crimes of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

New York law (§ 378-a) also provides an authorized agency access to records in the Criminal Justice Division to determine the qualifications of persons who will care for and supervise children. An excerpt from the New York statute follows:

> §378-a. Access to conviction records by authorized agencies.
>
> Subject to rules and regulations of the division of criminal justice services, an authorized agency shall have access to conviction records maintained by state law enforcement agencies pertaining to persons who have applied for and are under active consideration for employment by such authorized

agency in positions where such persons will be engaged directly in the care and supervision of children.

Criminal History Information on Foster and Adoptive Parents Connecticut legislation (§ 54-142K) provides for criminal conviction checks on prospective foster or adoptive parents. This statute, a portion of which is reproduced below, also provides for the Department of Children and Youth Services to obtain criminal conviction records for those working with children:

> (f) Notwithstanding any other provisions of law to the contrary, upon request to a criminal justice agency by the department of children and youth services or by any other youth service agency approved by the department such criminal justice agency shall provide information to the department or youth service agency concerning the criminal conviction record of an applicant for a paid or voluntary position, including one established by contract, whose primary duty is the care or treatment of children, including applicants for adoption or foster parents. All information, including any criminal conviction record, procured by the department of children and youth services or any other youth service agency shall be confidential and shall not be further disclosed by such agencies or their representatives. Any violation of the provisions of this subsection relative to the confidentiality of information received by the department of children and youth services or other youth service agencies shall be punishable by a fine of not more than one thousand dollars.

Criminal History Information on School Employees Three states have enacted legislation that would require criminal history inquiries for anyone connected with the school system. California (Education Code, 45123) has mandated that no person who has been convicted of a sex offense may be employed by a school district. Following is an excerpt from the California statute:

> 45123. Employment after conviction of sex offense or narcotics offense.
> No person shall be employed or retained in employment by a school district who has been convicted of any sex offense.

Florida (1984, H.B. 969) has also recently mandated that applicants for teacher certification be subject to both state and federal criminal history checks to determine if the applicant had been convicted of a misdemeanor, felony, or other criminal charge.

The State of Nevada (391.020) requires that an applicant for teacher certification submit fingerprints and written permission authorizing a criminal history check:

> 391.020 Certificates granted by superintendent of public instruction; fingerprinting of applicants.
>
> 1. All certificates for teachers and other educational personnel are granted by the superintendent of public instruction. He may issue certificates to all qualified persons under the regulations of the state board of education.
>
> 2. Every applicant for a certificate shall submit with his application a complete set of his fingerprints and written permission authorizing the superintendent to forward such fingerprints to the Federal Bureau of Investigation for its report. The superintendent may issue a provisional certificate pending receipt of such report if he determines that the applicant is otherwise qualified.
>
> 3. Upon receipt of the report referred to in subsection 2 and a determination by the superintendent that the applicant is qualified, a certificate must be issued to the applicant.

Licensing Child Care Institutions

Several states have enacted legislation requiring criminal record information on those connected specifically with *child care institutions*. New Hampshire (§170-E:4) requires investigations of all those dealing with children at particular child care facilities. An excerpt from the New Hampshire statute is reproduced below:

> 170-E:4 Applications.
>
> I. Any person who intends to receive children, or arranges for care or placement of one or more children unrelated to the operator, shall apply for a license to operate one or more of the types of facilities for child care. Application for a license to operate a child care facility shall be made to the department in the manner and on forms prescribed by rule by the commissioner under RSA 541-A. In cooperation with the operator, there shall be an examination of the facility, an investigation of the program and person responsible for the care of children.
>
> II. Upon receipt of any application, the department shall in every case examine the child abuse records of the division of welfare and the criminal conviction records of the state police to determine whether the applicant is of proper character. If the applicant is found to have any record in either the child abuse or the state police files, the department shall indicate that the record exists in its files on the applicant. If the applicant is found to have been convicted of child abuse, he shall not be issued a license.

Colorado (§26-6-104) has enacted legislation for screening the administrator, the applicant, an employee, or applicant for a license of a child care facility. The Colorado legislation, which follows, includes the stipulation that no license to operate a family care home or child care center will be issued to anyone convicted of child abuse or an unlawful sexual offense:

> 26-6-104. Licenses, out-of-state notices, and consent.
>
> No license or certificate to operate a family care home or child care center shall be issued by the department, a county department, or a child placement agency licensed under the provisions of this article if:
>
> (a) The person applying for such a license or certificate has been convicted of an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S. 1973, according to the records of the Colorado bureau of investigation; or
>
> (b) The person applying for a license or certificate has not consulted with the Colorado bureau of investigation, as defined in section 13-21-115 (1) (c), C.R.S. 1973, to determine whether any employee of the family care home or child care center has, according to the bureau's records, been convicted of an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S. 1973.

9. Training for Youth System, Social Services, and Criminal Justice Professionals

While many states specifically mandate training and instructional courses for social services professionals or criminal justice system investigators, few states mandate sufficient training and education in the critical area of child victimization and sexual assault. Professionals who regularly address cases of child victimization need to be prepared for the unique demands that this responsibility places upon them. The basic understanding of the child abuse, child sexual assault, and incest victim is critical to the successful processing of these cases through the social services and criminal justice systems. Sophisticated and effective techniques for understanding the particular needs of the child victim, interviewing the child victim or witness, and investigating these difficult cases is critically needed. Investigators need to understand the use of the National Crime Information Center and Federal Parent Locator systems. State requirements should be examined to ensure that this type of training is specifically included in educational and training programs for these professionals and that a sufficient number of hours are devoted to these types of cases.

The State of New Jersey addressed one part of this need for education and training in its recently created Commission on Missing Persons. New Jersey (1983, Chapter 467) directed its training specifically to cases of missing persons and unidentified bodies. The New Jersey Commission on Missing Persons will do the following:

> e. Provide specialized training to law enforcement officers and medical examiners in this State, in conjunction with the Police Training Commission, which would enable them to more efficiently handle the tracing of missing persons and unidentified bodies on the local level.

It is essential that each state consider mandating *pre-service and in-service training* for law enforcement and social services professionals. In addition, each state should require an additional one-week in-service training program for those investigators who deal specifically with cases of child victimization.

Each state may also want to consider legislative provisions that include in-service educational programs for prosecutors and judges. The State of Colorado (1984, Chapter 157) recently set up a teacher education and training program about laws concerning child abuse and exploitation and how to report such cases. Following is an excerpt from the Colorado statute:

> 22-3.-109. Board of education- specific duties. (1) (z) To provide for a periodic in-service program for all district teachers which shall provide information about the "Child Protection Act of 1975," article 10 of title 19, C.R.S., instruction designed to assist teachers in recognizing child abuse or neglect, and instruction designed to provide teachers with information on how to report suspected incidents of child abuse or neglect and how to assist the child victim and his family.

10. Treatment and Rehabilitation of the Child Victim

It is a harsh reality that the person convicted of child victimization or child molestation is often not required to pay for the treatment and rehabilitation of the child. And, unfortunately, most of the social services and state and local programs do not automatically provide these services to the child victim. As a result, many children who are the victims of sexual assault, incest, child molestation, and other crimes are never effectively treated, counseled, or rehabilitated to give them the opportunity for a normal childhood.

Some states do provide that the person convicted of the assault pay for treatment and rehabilitation of the victim. For example, Colorado (§18-3-414) allows the judge to require the defendant to pay for rehabilitation and counseling of the child victim. Following is an excerpt from the Colorado statute:

> 18-3-414. Payment of treatment costs for the victim or victims of a sexual offense against a child. (1) In addition to any other penalty provided by law, the court may order any person who is convicted of an unlawful sexual offense, as defined in section 18-3-411 (1), to meet all or any portion of the financial obligations of treatment prescribed for the victim or victims of his offense.
>
> (2) At the time of sentencing, the court may order that an offender described in subsection (1) of this section be put on a period of probation for the purpose of paying the treatment costs of the victim or victims, which, when added to any time served, does not exceed the maximum sentence imposable for the offense.

In South Dakota (1984, H.B. 1097), a similar bill provides that the cost of treatment be paid for by the defendant. An excerpt from the South Dakota statute is reproduced below:

> Anyone convicted under §§ 26-10-1, 22-22-7, 22-22-19 or 22-22-19.1, or subdivision (4) or (5) of § 22-22-1, may be required as part of the sentence imposed by the court to pay the cost of any necessary medical, psychological or psychiatric treatment of the minor resulting from the act or acts for which the defendant is convicted.

11. Court-Appointed Advocates

In many states, abandoned, abused, or neglected children in juvenile family court proceedings receive special treatment by the court. In order to ensure that the specific needs of the child are met and his or her rights fully protected, some states appoint a special attorney to represent the child. This special attorney may be called a *guardian ad litem*.

The guardian ad litem represents only the child and is independent of the state prosecutor and the attorneys representing the parents. The guardian ad litem has full access to all evidence and reports; and he or she may interview witnesses, make recommendations to the court, and request additional examinations by doctors, psychologists, and psychiatrists. The appointment of the guardian ad litem ensures that the child will be effectively represented and his or her best interests protected.

In some states, a guardian ad litem can be a trained volunteer lay person, often called a *court-appointed special advocate*. Nevertheless, this representative of the child has the same privileges to receive notices and pleadings similar to others involved in the juvenile proceedings, such as parents, counselors, and attorneys.

The Guardian Ad Litem in Criminal Proceedings

Traditionally, the guardian ad litem has been appointed to represent abandoned, neglected, or abused children in the special juvenile or family court proceedings. Children who are the victims of crimes, such as physical or sexual assault, rarely have the support and protection of a guardian ad litem. A constructive addition to any state legislation would be to provide for the services of a guardian ad litem—who may or may not be an attorney—for the child who is simply the victim of a crime.

Two states have passed legislation that would expand the protection of the child victim in two ways:

1. Provide for a person to act on behalf of the child victim in criminal cases.
2. Permit a supporting person to assist the child.

Pennsylvania (1984, S.B. 1361) has recently enacted legislation that would provide for a person to act in the best interests of the child involved in juvenile proceedings *or* criminal proceedings. Following is an excerpt from the Pennsylvania legislation:

> §5982. Rights and services.
>
> (a) Designation of persons to act on behalf of children.—Courts of common pleas are directed to designate one or more persons to act in the best interest of the child and provide the following services on behalf of children who are involved in criminal proceedings or juvenile proceedings as victims or witnesses:
>
> (1) To explain, in language understood by the child, all legal proceedings in which the child will be involved.
>
> (2) To act, as a friend of the court, to advise the judge, whenever appropriate, of the child's ability to understand and cooperate with any court proceedings.
>
> (3) To assist the child and the child's family in coping with the emotional impact of the crime and subsequent criminal proceedings in which the child is involved.

The State of California (Penal Code §868.5) provides that victim witnesses under 16 years of age be accompanied by a parent, guardian, or sibling at hearings and during the trial. The child can choose who will attend and, of course, the person attending need not be an attorney. Part of the California statute is reproduced below:

> §868.5 Sex offense cases; attendance of supporting person at testimony of prosecuting witness 16 years of age or under.
>
> (a) Notwithstanding any other provision of law, a prosecuting witness 16 years of age or under in a case involving a violation of Section 243.4, 261, 285, 286, 288, 288a, 289 or 647a, or a violation of subdivision (1) of Section 314, shall be entitled for support to the attendance of a parent, guardian or sibling of his or her own choosing, whether or not a witness, at the preliminary hearing and at the trial, during the testimony of the prosecuting witness. The person so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person *** is related to the prosecuting witness as a parent, guardian or sibling and does not make notes during the hearing. ***
>
> (b) If the person so chosen is also a prosecuting witness, the prosecution shall present, on noticed motion, evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court must grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony.
>
> (c) The testimony of the person so chosen who is also a prosecuting witness shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during the person's testimony. Whenever the evidence given by the person would be subject to exclusion because given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

In the area of court-appointed advocates for the child, state legislation can accomplish two crucial goals:

1. Appointing a representative for children who are simply the victims of crimes.
2. Permitting the representative to be a trained lay person, not necessarily an attorney.

Those states interested in more information about the court-appointed special advocate program should contact the following:

The National Council of Juvenile and Family Court Judges
P.O. Box 8970
Reno, Nevada 89507
(702) 784-6012

12. Parental Kidnapping

A difficult problem encountered by the criminal and civil justice systems is *parental kidnapping*, in which a non-custodial spouse abducts a child. These abducted children are definitely at risk and often are the victims of physical abuse and emotional trauma. Estimates of the annual incidence of parental kidnapping range between 25,000 and 500,000 cases a year. No one knows the exact dimensions of the problem, but they are significant. In recent years, many states have sought to close the traditional loopholes in statutes dealing with parental kidnapping.

Traditional Problems in Enforcement

States differ on the question of whether the taking of a child is in fact a felony crime. Most states consider this offense a felony because of the grave risk and danger to the child. In addition, parental kidnapping is generally considered an interstate crime, which requires extradition (the return of the defendant to the state where the crime was committed). Normally, there is no extradition for minor offenses or misdemeanors. It is important to mandate that this crime will be a felony offense. A federal warrant for unlawful flight can only be issued if the crime is a felony for which extradition is assured.

There are several problems in enforcing the laws against parental kidnapping. Many states restrict enforcement by limiting the children protected to those below a certain age, instead of the traditional limitation being the age of emancipation (18 years in most states).

Many state statutes make parental kidnapping a felony crime only if the child is taken out of the state. In many cases, there is simply no proof of the child's whereabouts, and so it is impossible to establish the fact that the child was actually taken across state lines.

To address this problem, some states do allow enforcement of the law if the child is taken or simply concealed. The concealment provision is effective and should be included in every state statute. It also allows the crime to be regarded as a continuing offense. Therefore, state laws should be strengthened to make it a felony crime not only for taking a child but also for concealment of that child at any later date.

In many cases of parental kidnapping, the offending spouse uses other people to help kidnap the child. States may want to consider legislation that would make the crime applicable to any individual who assists or aids in the kidnapping of the child.

State Legislation for Protecting the Child Against Parental Kidnapping

There are many complex issues that must be considered when enacting legislation that concerns the crime of parental kidnapping. California (Penal Code §§ 277, 278, 278.5, 279, and 784.5) has recently made an attempt to deal with these difficult issues within the framework of a criminal statute. While no law effectively addresses all the issues concerned, the California statute below is a step in the right direction:

> 277. In the absence of a court order determining rights of custody or visitation to a minor child, every person having a right of custody of the child

who maliciously takes, detains, conceals, or entices away that child within or *without the state, without good cause, and with the intent to deprive the custody right of another person or a public agency also having a custody right to that child, shall be punisl ed by* imprisonment in the county jail for a period of not more than one year, a fine of one thousand dollars ($1,000), or both, or by imprisonment in the state prison for a period of *one year and one day*, a fine of five thousand dollars ($5,000), or both.

A subsequently obtained court order for custody or visitation shall not affect the application of this section.

For the purposes of this section, "a person having a right of custody" means the legal guardian of the child or a person who has a parent and child relationship with the child pursuant to Part 7 (commencing with Section 7000) of Division 4 of the Civil Code.

278. Every person, not having a right of custody, who maliciously takes, detains, conceals, or entices away, any minor child with intent to detain or conceal that child from a person, guardian, or public agency having the lawful charge of the child shall be punished by imprisonment in the state prison for two, three or four years, a fine of not more than ten thousand dollars ($10,000), or both, or imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both.

278.5. (a) Every person who in violation of the physical custody or visitation provisions of a custody order, judgment, or decree takes, detains, conceals, or retains the child with the intent to deprive another person of his or her rights to physical custody or visitation shall be punished by imprisonment in the state prison for 16 months, or two or three years, a fine of not more than ten thousand dollars ($10,000), or both; or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both.

(b) Every person who has a right to physical custody of or visitation with a child pursuant to an order, judgment or decree of any court which grants another person, guardian or public agency right to physical custody of or visitation with that child, and who within or without the state detains, conceals, takes, or entices away that child with the intent to deprive the other person of that right to custody or visitation shall be punished by imprisonment in the state prison for 16 months, or two or three years, a fine of not more than ten thousand dollars ($10,000), or both; or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both.

279. (a) A peace officer investigating a report of a violation of Section 277, 278, or 278.5 may take a minor child into protective custody if it reasonably appears to the officer that any person unlawfully will flee the jurisdictional territory with the minor child.

(b) A child who has been detained or concealed shall be returned to the person, guardian, or public agency having lawful charge of the child, or to the court in which a custody proceeding is pending, or to the probation department of the juvenile court in the county in which the victim resides.

(c) The offenses enumerated in Sections 277, 278, and 278.5 are continuous in nature, and continue for so long as the minor child is concealed or detained.

(d) Any expenses incurred in returning the child shall be reimbursed as provided in Section 4605 of the Civil Code. Those expenses, and costs reasonably incurred by the victim, shall be assessed against any defendant convicted of a violation of Section 277, 278, or 278.5.

(e) Pursuant to Sections 27 and 778, violation of Section 277, 278, or 278.5 is punishable in California, whether the intent to commit the offense is formed within or without the state, if the child was a resident of California or present in California at the time of the taking, or if the child thereafter is found in California.

784.5. The jurisdiction of a criminal action for a violation of Section 277, 278, or 278.5 shall be in any one of the following jurisdictional territories:

(a) Any jurisdictional territory in which the victimized person resides, or where the agency deprived of custody is located, *at the time of taking or deprivation.*

(b) The jurisdictional territory in which the minor child was taken, detained, or concealed.

(c) The jurisdictional territory in which the minor child is found.

When the jurisdiction lies in more than one jurisdictional territory, the district attorneys concerned may agree which of them will prosecute the case.

The enactment of these laws is significant because they address these issues:

1. The cases where no court order regarding custody or visitation has been issued.
2. Concealment of the child.
3. The individual who is outside the state but who entices or takes a child away from the lawful custodian.
4. The ability of a police officer to take a child into protective custody.
5. The continuing nature of the crime.
6. Reimbursement of the costs of returning the child.

Civil Provisions

Following is an important provision of civil law that may help to deter the incidence of parental kidnapping: Any parent who unlawfully takes or conceals a minor child, or any other person who knowingly aids the parent in the unlawful abduction or concealment of such a child, from the parent or legal guardian with the right to custody shall be liable for civil damages.

Finally, an important provision of state legislation would be to require that the state enter into an agreement with the Federal Parent Locator Service, a federal and state search system to locate the offending spouse. States should, by mandate of state law or by executive order, enter into an agreement with the federal government to use its service. Illinois (§10.3.2) has such a provision in its state law, which follows:

Sec. 10-3.2. Parent Locator Service. The Illinois Department through its Child and Spouse Support Unit shall enter into agreements with the Secretary of Health and Human Services or his designee under which the services of the Federal Parent Locator Service established by the Social Security Act are made available to this State and the Illinois Department for the purpose of locating an absent parent or child when the child has been abducted or otherwise improperly removed or retained from the physical custody of a parent or other person entitled to custody of the child, or in connection with the making or enforcing of a child custody determination in custody proceedings instituted under the Uniform Child Custody Jurisdiction Act, or otherwise in accordance with law. The Illinois Department shall provide general information to the public about the availability and use of the Parent Locator Service in relation to child abduction and custody determination proceedings, shall promptly respond to inquiries made by those parties specified by federal regulations upon receipt of information as to the location of an absent parent or child from the Federal Parent Locator Service and shall maintain accurate records as to the number of such inquiries received and processed by the Department.

13. Child Pornography and Child Prostitution

Recent Congressional inquiries have indicated that both the exploitation of children in pornography and the issue of child prostitution are critical problems that can be addressed at the state level. Traditionally, there have been significant obstacles to the effective investigation and prosecution of these cases because of the difficulties in enforcing particular state statutes.

The issue of child pornography is complex, involving both the issue of obscenity as well as the power of the First Amendment. Child prostitution has in some cases been a difficult crime to prevent because of relevant conduct that is not proscribed in the particular state law and because of the fact that many of these offenses are treated as misdemeanors or lesser crimes.

Because of the complexity of each issue and the wide variety of state laws impacting upon these crimes, the text of this section contains specific recommended principles for state legislation.

Child Pornography

New York v. Ferber In the summer of 1982, the United States Supreme Court decided a case, *New York* v. *Ferber*, 458 U.S. 747 (1982), that allowed the individual states to constitutionally regulate the production and distribution of material that depicts children engaged in sexual activity even when the material is not legally obscene. This opened the door for the federal government (the Child Protection Act of 1984, P.L. 98-292), as well as the states, to expand coverage of the proscribed conduct under the topic of child pornography. As a result, many states adopted legislation similar to Georgia's 1983 Sexual Exploitation of Children legislation (§16-12-100), which follows:

> 16-12-100. Sexual exploitation of children.
> (a) As used in the Code section, the term:
> (1) "Minor" means any person under the age of 18 years.
> (2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.
> (3) "Producing" means producing, directing, manufacturing, issuing, publishing, or advertising.
> (4) "Sexually explicit conduct" means actual or simulated:
> (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
> (B) Bestiality;
> (C) Masturbation;
> (D) Sadomasochistic abuse for the purpose of sexual stimulation; or
> (E) Lewd exhibition of the genitals or pubic area of any person.
> (5) "Visual or print medium" means any film, photograph, negative, slide, book, magazine, or other visual or print medium.
> (b) (1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to

engage in any sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(c) Any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 20 years or by a fine not more than $20,000.00, or both.

Enactment of this kind of statute is significant for the following reasons:

1. It protects children by allowing sexually explicit conduct to be defined as, among other things, "masturbation," or the "lewd exhibition of the genitals or pubic area" of any person. This is significant because much trading and exchange in child pornography is done with "mere nudes," which may involve an exhibition of the genital area.
2. A child or minor is defined to be any person under the age of 18 years. This is significant because in many statutes the protection for children only extends to age 14 or 16.
3. The statute penalizes individuals who use or entice children to engage in sexually explicit conduct as well as parents or individuals having custody or control of a minor who knowingly permit the child to engage in this kind of activity.

The Georgia statute could be improved by what California (Penal Code, § 11166) did when it defined "sexual conduct" to include "exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer." This definition would assist in covering many of the materials that are traded or exchanged in child pornography.

Of course, the additional provisions of the Penal Code in Georgia prohibit the *sale, loan, and exhibition* of this kind of child pornography.

Commercial Purpose A different kind of legislative improvement to restrict pornography was adopted by Colorado (1984, H.B. 1018). Colorado removed the requirement of a commercial purpose from the offense of sexual exploitation. This is critical because many of the transactions that occur in the world of child pornography are not done for commercial purposes or profit but rather as a straight exchange or trade.

Report by Processors A critical provision enacted by the State of California (Penal Code, § 11166) requires commercial film and photographic processors to report items that they observe in their professional capacity depicting a child under the age of 14 years engaged in the act of sexual conduct.

RICO It will be important for states to consider the use of the RICO (Racketeering Influenced Corrupt Organizations) provisions, which some states currently have and which allow for a judge or jury to be shown evidence of additional acts of a child pornography scheme. The RICO provisions are often used for such offenses as drug dealing, burglary, and car theft. The unique nature of child pornography means that the RICO provisions would give an added advantage to the investigation and prosecution

of these cases. Also, the provisions of these statutes often provide for seizure and forfeiture of the sources used to further the criminal activity.

Basic Principles It is recommended that any child pornography statute include provisions that will accomplish the following:

1. Cover the production, distribution, financing, and reproduction of such pornography, as well as pornographic modeling and performances in shows.
2. Provide for criminal penalties, regardless of whether the material is considered legally obscene.
3. Provide for criminal penalties regardless of whether or not there is any anticipation of profit or other commercial gain. Any distribution of child pornography should be prohibited.
4. Apply to all children through their eighteenth birthday.
5. Provide for the age of the child portrayed in the material to be established by expert testimony.
6. Include penalties for parents or custodians who knowingly allow their children to be used in child pornography.

Proof of Age of the Victim The State of New York has a law that allows the age of the child to be proved by an expert—for example, a physician or sociologist. This is critical because many times investigators have no knowledge of the identity of the child portrayed. That statute is as follows:

> §263.25 Proof of age of child—When it becomes necessary for the purposes of this article to determine whether a child who participated in a sexual performance was under the age of sixteen years the court or jury may make such determination by any of the following: personal inspection of the child; inspection of a photograph or motion picture which constituted the sexual performance; oral testimony by a witness to the sexual performance as to the age of the child based upon the child's appearance; expert medical testimony based upon the appearance of the child in the sexual performance; and any other method authorized by any applicable provision of law or by the rules of evidence at common law.

Child Prostitution

Because of the extremely diverse nature and variety of state laws affecting child prostitution, this section will include principles that address some of the typical problems. Each state should consider legislation that accomplishes the following:

1. Creates a separate offense for aiding, assisting, or promoting the prostitution of children, which has criminal penalties greater than those for promoting prostitution generally.
2. Provides for specific penalties for parents, guardians, or custodians who knowingly permit their children to engage in prostitution.
3. Defines a child as anyone under the age of 18.
4. Eliminates any existing statutory language that may require the children involved in prostitution to be of "previously chaste character."
5. Makes the act of patronizing a child prostitute a criminal offense and provides greater penalties where younger children are involved.

Finally, runaway and homeless youth programs like New York's (§ 532) have provided alternatives to the children on the street who often turn to prostitution.

Additional Sources

Because this legislation package is not comprehensive, additional sources of information are listed below. These agencies and organizations are working diligently in the areas of child abuse, victims' assistance, education, restitution, and parental kidnapping.

American Humane Association
9725 East Hampden Avenue
Denver, Colorado 80231
(303) 695-0811

American Humane offers expertise, technical assistance, training, advocacy, and information on child welfare, child protection, and related areas. While American Humane has published legislative analyses and has been involved in legislative advocacy, its efforts are now directed more toward continuing the compilation of national statistics on intrafamily child abuse and neglect and toward training of child welfare personnel and technical assistance to involved agencies.

Council of State Governments
P.O. Box 11910
Iron Works Pike
Lexington, Kentucky 40578
(606) 252-2291

The Council of State Governments is a nonprofit, state-supported service organization of all fifty states and the U.S. territories. The Council collects and distributes information, promotes interstate cooperation, and works to improve state administration and management on both a national and regional basis.

Juvenile Justice Clearinghouse
National Criminal Justice Reference Service
P.O. Box 6000
Rockville, Maryland 20850
(301) 251-5500
(800) 638-8736

The Clearinghouse, as part of the NCJRS, maintains and will access on request a data base containing information and research on all juvenile justice issues, including missing children and child exploitation. The data base includes, but is not a comprehensive source of, state and federal legislation and related materials. The Clearinghouse also provides information on current programs, policy issues, and other areas, and can refer callers to other sources.

National Association of Counsel for Children
1205 Oneida Street
Denver, Colorado 80220
(303) 321-3963

The Association, which serves attorneys representing children, guardians ad litem, juvenile court judges, and other advocates of children, has expertise in legislative developments in the states and litigation related to such areas as child abuse, child protection, children's rights, child prostitution and pornography, and child custody disputes. The Association publishes a newsletter with a section on state legislation, has assisted in the development of relevant state laws, and can make referrals to members throughout the country with expertise on specific legal issues.

National Clearinghouse on Child Abuse and Neglect Information
U.S. Department of Health and Human Services
P.O. Box 1182
Washington, D.C. 20013
(301) 251-5157

The Clearinghouse is a national resource for information on child abuse and child neglect, including medical neglect of handicapped infants and abuse in out-of-home day care facilities. The Clearinghouse disseminates model child protection legislation developed by the National Center on Child Abuse and Neglect and maintains a searchable data base available through DIALOG Information Services that contains, among other materials, portions of state laws relevant to child protection, child exploitation, and related issues. The Clearinghouse distributes several analyses based upon its collection.

National Committee for the Prevention of Child Abuse
332 South Michigan Avenue
Suite 1250
Chicago, Illinois 60604-4357
(312) 663-3520

The National Committee works for the prevention of child abuse and child neglect through state and national public awareness programs, a network of state chapters, and through advocacy and information dissemination. The National Committee supports, with the efforts of the National Child Abuse Coalition, an advocate in Washington, D.C., who tracks state child abuse legislation and lobbies for and monitors federal child abuse legislation. The National Committee publishes a newsletter and a variety of informational materials on child abuse, child neglect, and related issues.

National Conference of State Legislatures
1125 17th Street
Suite 1500
Denver, Colorado 80202
(303) 292-6600

The National Conference of State Legislatures is a nonpartisan organization that provides a wide range of services to the nation's 7,500 state legislators and their staffs. Its Children and Youth Program produces publications, responds to requests for information, conducts research, and provides technical assistance and seminars on child support and child welfare reform.

National Council of Juvenile and Family Court Judges
P.O. Box 8970
Reno, Nevada 89507
(702) 784-6012

The National Council, through its training arm, the National College of Juvenile Justice, provides membership services and training for judges and others involved in juvenile and family courts. Areas of interest include child support enforcement, permanency planning, and child advocacy. The Council's research arm, the National Center for Juvenile Justice, collects and analyzes juvenile court data and conducts statutory analyses in such areas as confidentiality, fingerprinting of juvenile offenders, waiver, and transfer. The Council publishes a newsletter, a quarterly journal, and a monthly digest of juvenile court decisions.

National District Attorneys Association
1033 North Fairfax Street
Suite 200
Alexandria, Virginia 22314
(703) 549-9222

The Association serves the nation's prosecuting attorneys and works to improve the ad-

ministration of j. through educational and informational programs for its members. The Association prepares amicus briefs to assist the court, conducts surveys of prosecuting attorneys, awards scholarships to prosecuting attorneys, and publishes a variety of educational and resource materials, including a national directory of prosecuting attorneys. The Association has information and expertise on juvenile justice, juvenile delinquency, child welfare, and the prosecution of child sexual offenders, and can make referrals through its committees and its membership.

National Governors Association
444 North Capitol Street, N.W.
Washington, D.C. 20001
(202) 624-5300

The National Governors Association, founded in 1908, represents the governors of the fifty states, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the territories of the Virgin Islands, Guam, and American Samoa. Its missions are to influence the shaping and implementation of national policy and to apply creative leadership to the solution of state problems. The Association's operations are supported by member jurisdictions, and its policies and programs are formulated by the governors.

National Legal Resources Center for Child Advocacy and Protection
American Bar Association
1800 M Street, N.W.
Washington, D.C. 20036
(202) 331-2250

The Legal Resource Center provides technical assistance, consulting, and training on legal issues related to child welfare and child protection. The Center, through these activities and through dissemination of publications and analyses, promotes the reform of child welfare laws and administrative and judicial procedures. The Center produces publications and has expertise in the areas of parental kidnapping, missing children, and child sexual and criminal exploitation.

National Organization for Victim Assistance (NOVA)
1757 Park Road, N.W.
Washington, D.C. 20010
(202) 232-8560

NOVA, which recently established a child victimization committee, tracks victim-related state legislation and publishes a directory of legislation that reviews and gives citations for state laws related to victim rights and services. The directory includes, in an appendix, some model pieces of legislation. The 1985 edition, which will be available in January 1985, will include new legislative developments relevant to child sexual assault and exploitation. NOVA also publishes a victim service program directory.

National Victim Resource Center
Suite 1342
633 Indiana Avenue, N.W.
Washington, D.C. 20531
(202) 724-6134

The Center is a national clearinghouse of information on victim assistance and compensation and relevant legislation, programs, and organizations. A computerized data base of state laws concerning victimization includes some legislation on child victims of sexual assault and sexual exploitation, as well as videotaping of child victims for use in legal proceedings. The file tracks pending as well as enacted legislation and includes citations and summaries. The Center also maintains a computerized file of descriptions of national victim assistance programs.

Index