ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

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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.

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.

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.

Kertuda had bill last yr. Dept. resistant to limit indicators there a list. Preferred training employees.

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

if on probation or parole, already must register. what about right to privacy?

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:

Currently done by Dept Law as long as keep provide current address.

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. already available.
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 courtroom. 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.

6th am? Ours limits to trial. Not being used.

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 determir d. Videotaping may not provide a comprehensive answer to the plight of the child victim.

Svobodny wants to use in Juneau soon.

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:

Already have allowed exclusion of others from trial. Not being used.

of those not essential to conduct of trial.

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.

Law not using tools to protect child now.

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.

AK doesn't have any

Anatomically Correct Dolls

We use already

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 case nd 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 adop 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.

juvenile proceedings automatically confidential
But is an issue over whether name of adult offender (who offended against victim) is withheld. And where place restraint? DA's office — don't keep name from public.
Can't restrain news media!

Problem if victim related to offender.

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 infor mation 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:

> 22-32-109. 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.

Is being done now on case by case basis. does Office of Public Advocacy handle now?

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 punished 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.

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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 justice 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.

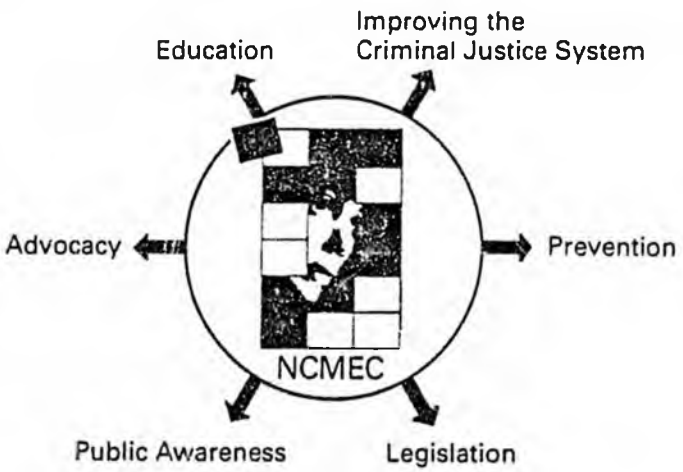
Index

The National Center for Missing and Exploited Children

- provides training assistance to law-enforcement and child protection agencies to develop effective procedures to investigate and prosecute cases of missing and exploited children
- assists individuals, groups, agencies, and state and local governments involved in investigating and prosecuting cases of criminally or sexually exploited children
- provides information and advice on effective state legislation to assure the safety and protection of children
- provides prevention and education programs for parents, schools, action groups, agencies, communities, volunteer organizations, law enforcement, and local, state, and federal institutions
- distributes comprehensive instruction packages to aid communities in protecting children
- organizes networks of information among school systems, school boards, parent-teacher organizations, and community organizations about proven techniques for implementing educational programs
- conducts an outreach program to alert families, communities, the criminal justice system, and concerned organizations about the nature and extent of child victimization and exploitation
- ensures coordination among parents, missing children groups, and the media to distribute photos and descriptions of missing children
- coordinates the exchange of information regarding child exploitation

. . . Is at the Center of the Problem

The Center is a primary resource for assistance and expertise in all these areas:



Information Please

The National Center for Missing and Exploited Children offers a national clearinghouse that collects, compiles, exchanges, and disseminates information. Anyone who is seeking information or who wishes to contribute information about the problem should write to the following address:

The National Center for Missing and Exploited Children
1835 K Street, N.W.
Suite 700
Washington, D.C. 20006

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THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM March 28, 1985

SUBJECT: Sections 13 and 17 of CSHB 88 (HESS)
(3/27/85 draft)

TO: Representative Max Gruenberg
Co-Chairman, House Health,
Education and Social Services Committee

FROM: Edward H. Hein EH
Legislative Counsel

You have asked two questions about CSHB 88 (HESS). I address them in the order asked.

1. Is section 13 unconstitutional in that it allows seizure of property without a search warrant?

Section 13 requires photo processors who come across pornographic pictures of children to report that fact to the police and to provide police with copies of the pictures and any information they have about the origin of the pictures.

Article I, section 14 of the Alaska Constitution prohibits unreasonable searches and seizures of property by law enforcement agents. This protection extends only to situations in which the property owner has an actual, subjective expectation of privacy and one that society is prepared to recognize as reasonable. Smith v. State, 510 P.2d 793, 797 (Alaska, 1973). There is no reasonable expectation of privacy in an object if the owner knowingly exposes the object to strangers. By providing in the statutes that photo processors must report and turnover to police evidence of child pornography, the public is put on notice that they cannot expect such photos to remain private. In addition, section 13 expresses society's view that such an expectation is unreasonable.

Without a reasonable expectation of privacy, a search is not unreasonable and the constitutional provision does not

protect the property from search by law enforcement agents. Once police lawfully view evidence of a crime they are entitled to seize it without a warrant. Thus, the search and seizure provided for in section 13 is not unreasonable and does not violate the search and seizure provisions of the constitution.

I note that the second sentence of section 13 is somewhat ambiguous and may present some problems of interpretation. The sentence requires processors to provide police with "copies" of the pornography. It is not clear whether this means the processor must make duplicates prints for the police or whether the processor is to send negatives and prints to police and refuse to return any of it to the customer. It may avoid legal and practical problems to rephrase this sentence to require the processor to allow the police access to the photos and let the police decide whether they constitute evidence of a crime and whether they should be seized. The police presumably are better trained than processors to make this initial legal determination.

2. Does section 17 change Rules of Evidence 504 and 505? (It states "a child's harm", not necessarily a child in the family of a husband/wife). Do we need a title change?

Section 17 amends AS 47.17.060 by changing the phrase "judicial proceeding" to "civil or criminal proceeding". The Alaska Court of Appeals in State v. R. H. and Mitchell Wetherhorn, 683 P.2d 269 (1984), held that the phrase "judicial proceeding" in that statute refers only to child protection proceedings under AS 47.10.010. Therefore, the amendment in section 17 extends the applicability of AS 47.17.060 to additional proceedings, such as criminal prosecutions of sexual abusers that arise from reports submitted under the child abuse reporting statutes. Extending the applicability of AS 47.17.060 would change Evidence Rules 504 and 505 only if it changed the applicability of the physician- patient privilege or the husband-wife privileges as they are currently provided for in those court rules. I conclude that the amendment does change both Evidence Rules by further restricting the applicability of the privileges. Therefore both a title change and the insertion of a new section in the bill explaining the changes is required.

The physician-patient privilege of Evidence Rule 504 is changed by section 17 because it would make the privilege

inapplicable not only in child protection proceedings under AS 47.10.010, but also in other proceedings that might arise from those reports, such as a tort action brought by an abuse victim. The amendment of section 17 has no effect on the physician-patient privilege in criminal proceedings, since the privilege is already excluded in all criminal proceedings by subsection (d)(7) of Evidence Rule 504.

Evidence Rule 505 contains two husband-wife privileges, both of which are changed by the amendment of section 17. The amendment would further restrict the applicability of both the spousal immunity and the confidential marital communications privilege by expanding the coverage of AS 47.17.060 to criminal and civil proceedings other than child protection proceedings under AS 47.10.010. Both husband-wife privileges may not be invoked in certain civil and criminal proceedings specified in subsection (a)(2) and (b)(2) of Evidence Rule 505. But section 17 would make the privileges inapplicable in civil and criminal cases not specified in the exceptions to the rule. Therefore, the amendment changes the evidence rule.

If you have any questions or comments, feel free to contact me at your convenience.

EHH:ojb
J13/039

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
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Senate
Committee on
Health, Education and Social Services

M E M O R A N D U M

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, February 12, 1985

DATE: February 8, 1985

On Tuesday, February 12 at 1:30 pm in the Beltz Room, the Senate Committee on Health, Education and Social Services will take testimony on a proposed committee substitute for SB 21 (copy attached). The committee substitute contains the language of HB 88, the Governor's child abuse legislation, with the addition of a new Section 26 dealing with background checks on employees who work with young children.

In brief, proposed CS SB 21 (HESS) makes numerous changes to existing civil and criminal laws in an effort to enhance the state's ability to protect children who have been the victims of child abuse or neglect. A detailed sectional analysis provided by the Office of the Governor is attached.

Section 1 and 2	endangering the welfare of a minor
Section 3	child pornography
Section 4	statute of limitations for sex crimes against children
Section 5	hearsay evidence
Section 6	admittance of a victims's previous sexual conduct
Section 7 - 9	conviction records for persons working with children
Section 10 and 11	curfews for minors
Section 12	predisposition report
Section 13	emergency custody in neglect cases
Section 14	time frame for emergency custody petitions
Section 15	definition of sexual abuse

Section 16	mental injury
Section 17 - 21	reporting requirements
Section 22	protective injunctions
Section 23	mental injury
Section 24	definition of "practitioners of the healing arts"
Section 25	definitions - child care provider, human services provider, mental injury, organization
Section 26	background checks
Section 27	license violations
Section 28 and 29	applicable court rules
Section 30	effective date

Alaska State Legislature

1024 W. 6th Avenue, Suite 203
Anchorage, Alaska 99501
Phone: (907) 274-1426

SENATE ADVISORY COUNCIL

M E M O R A N D U M

TO: SENATOR JAN FAIKS

FROM: ELIZABETH J. HICKERSON EJH

SUBJECT: CHILD AND FAMILY PROTECTION LEGISLATIVE PACKET

DATE: MARCH 25, 1985

In the last month, at your request, I have been involved in the meetings held by the Senate and House HESS and Judiciary Committees regarding the overall needs in Alaska concerning child and family protection. The Committee reviewed all recommendations presented by John Walsh and pending legislation. Sandra Schubert did an excellent job in providing a comparison between what Mr. Walsh suggested and the existing conditions in Alaska. A number of bills have been recommended for the legislature's consideration. During the committee's review of these various bills, numerous concerns were raised. Many of these concerns are not reflected in the various bills. Because of this, I would like to take this opportunity to inform you on the specific concerns raised.

SB 3/HB 67, Hearsay Evidence

In the discussions regarding hearsay evidence and its admission at the grand jury, several concerns were raised. These I will summarize as follows.

1. Whether or not there is a need to expand our present hearsay exceptions to provide for this particular type of evidence to be presented to the grand jury was questioned. It is felt, by some, that under our present rules of evidence, this type of hearsay is already admissible.

2. If a hearsay exemption is adopted, many feel that this should be limited to admissions or statements of the child victim only. As presently drafted, SB 3 provides for the statement of any child, not necessarily the victim of a sexual assault. Dana Fabe, the Public

Defender, is very concerned that this exception be narrowly drawn and only apply to the child victim.

SB 8, School curriculum

This bill reflects the need by the local school districts to adopt a personal safety curriculum. Teaching children the difference between good touch and bad touch, what to do in case of a personal emergency situation, and what protections are available to children, is an initial step in the prevention of child abuse. This is particularly true in the event that families are not teaching personal safety to children. Since most child abuse occurs in the home it is doubtful that those parents and relatives teach children that this is improper behavior. This bill or similar legislation is definitely needed. In Alaska, some school districts presently provide this type of program, however, it is usually provided on an intermittent basis and is not a part of the ongoing curriculum.

SB 21/HB 308, Background Checks

These bills provide that interested persons may request a list reflecting all convictions of an individual for crimes that might cause a risk of harm to children, if the individual holds or applies for a position in which the individual has or would have a supervisory or disciplinary power over a minor. Crimes that might pose a risk of harm to children are defined and are numerous. There may be some opposition to the individual crimes that are included in this definition. There may also be concern that the existence of an outstanding warrant will be available for release. Concerns were raised that this type of a background check on an individual does not take into consideration that person who has been convicted has served his or her time and should not face reprimand from society. Also regarding the outstanding warrants, people are concerned that an outstanding warrant is not based on a conviction and thus persons that have not been proven guilty will be subjected to possible retaliation through unemployment.

In addition to these concerns, people have stated that background checks should not be optional but should be mandatory. When I attended the Anchorage Crime Commission, the issue was raised that persons that contract with the Anchorage School District are not covered under this bill. It was particularly felt that school bus drivers and other persons under contract in direct association with children should be subject to background checks.

SB 27, Community Training

This bill provides funds for the training of local persons who are involved in the prevention, intervention, investigation and counseling of child victims of sexual assault. The persons

reviewing this bill consistently felt that this was a high priority.

SB 28, Reporting Incidents of Abuse

This bill has passed the Senate. It requires the training of state employees who are required to report the instances of child abuse as well as employees of school districts. This bill also received high priority by the committee. Concern has been voiced that children should be able to petition the court by themselves, and not limited through a parent, guardian or custodian. I support the limiting provision.

SB 88/HB 19, Missing and Runaway Children

Presently law enforcement agencies may detain runaways. These two bills do provide that the agencies shall transmit a runaway report into the Alaska Public Safety Network and the National Crime Information Center Computer System. In regard to the issue of runaways, it should be noted that there is an inadequate number of foster homes and group homes for these children. While everyone realizes that we have a problem with runaways, most people in the field believe that children are running away for reasons. Many of the runaways have been abused at home and thus returning them to an unsafe situation may not be in the best interest of the children. Without adequate facilities for housing runaways it is unclear where these children will be detained since the bills prohibit housing runaways in jails or detention facilities.

SCR 3/HCR 2, School Teacher Background Checks

These bills urge local school districts to implement background checks or all school district employees who come into contact with children. The issue has been raised that school districts should be required to provide background checks for all persons employed and persons under contract.

SCR 5, Missing Children on Milk Cartons

This resolution has already been read by the Governor.

SB 243/HB 88, The Omnibus Bill

These bills make several changes to civil and criminal laws. Most of the time was spent by the committee on these bills, and therefore, I would like to provide you with a list of concerns associated with each section.

Sec. 1 and Sec. 2 expand the current law regarding endangering the welfare of a minor. Two degrees for endangering the welfare of a minor are created. Presently we have only one law regarding endangering the welfare of a

minor. These sections were introduced by the Governor in a response to child care workers who endanger children. Under existing law a child care worker who physically or sexually abuses a child may be prosecuted. However, it was felt by the Department of Law, Criminal Division, that an additional law needed to be enacted to cover other forms of endangerment of minors by a child care provider. The expansion of the law as provided under Section 2 has been highly criticized by the Public Defender's Office. It is their concern that parents will be subject to criminal prosecution for injuries sustained by their children which are often beyond their control.

Sec. 3 and 4 provides a new definition for the distribution of child pornography. Kevin Bruce and I developed this definition based on a recent Supreme Court decision. The expanded definition of distribution provides that people can be prosecuted for the distribution of child pornography if they deliver, sell, rent, lease, lend, give, circulate, exhibit, present or buy or exchange these types of items, whether or not it was done for monetary or other consideration. I feel strongly that this provision is constitutional and leaves no legal loopholes.

Sec. 5 extends the statute of limitation for prosecution of sexual offenses against minors. No one objected to this provision.

Sec. 6 specifically provides that evidence of past sexual conduct of child victims of sexual assault will not be admissible prior to an in camera hearing. The judge would weigh the probative value of the evidence against the probability that undue prejudice, confusion of the issues or invasion of privacy of the victim will result. Presently our law provides this for victims of sexual assault. While no evidence was presented that child victims are being treated differently then adult victims, the Department of Law, Criminal Division, felt that the legislature should express its intent that children are to come under the protections of this section. My concern is that we may be setting a bad precedent whereby sections not so modified so as to particularly relate to children may be later interpreted as an intent not applied to children.

Sec. 7 provides for a reduction in time for a predisposition report involving a delinquent minor to be made available to the child, the child's parents, attorneys representing the parties, and the guardian ad litem. Presently this must be made available not less than ten days before the disposition hearing. Great discussion was involved on this section.

Originally HB 88 reduced the time to two days, and therefore, six days reflects a compromise that will be acceptable to most. The reason this time period should not be reduced to two days is the importance that is placed on a predisposition report. Because of this, sufficient time should be available to review the report and investigate alternatives that may not have been recommended.

Sec. 8 provides more discretion for taking emergency custody of a minor by the Department of Health and Social Services. The expanded authority is subtle under these changes. Numerous people including the Public Defender, guardians ad litem, and parents have stated that the Department has wide discretion to take emergency custody of a child presently. I believe that the problem concerning custody is a problem associated with inadequately trained social workers who do not have the necessary skills to determine when a child should be taken into emergency custody. While abuses of the system are few, there have been situations where children have been taken by the Department and lengthy and costly time has been spent in retrieving the children. This poses one of the main problems with child protection. We should provide adequate laws and properly trained people in order to be able to intervene in dangerous situations. However, given the nature of these situations, zealots and incompetents can cause tremendous hardships for families where abuse does not exist. In addition, there is still a problem with an inadequate number of foster homes to care for the children taken into custody.

Sec. 9 is very controversial. This allows the Department additional time to notify the court after the child has been taken into their custody. Presently the court must be notified within 12 hours through a petition filed alleging that a child is in need of aid. A hearing must be held 48 hours after the petition is filed. The proposed change provides that the court will be notified within 24 hours after custody is assumed and then must hold a hearing within 48 hours after that. Therefore, we are extending the time that probable cause hearing must be held. This can be very dangerous, particularly in cases where children were taken without probable cause.

Another issue focuses on notice to parents. Judge Victor Carlson stated in a memo to Carla Forsythe of the Court System, that a letter indicating legislative intent should be attached to any revision concerning this statute. In part, his letter stated the following:

> A note expressing the legislative intent that every effort be made to notify the custodian when a child has been taken into custody including the leaving of a note

at the place where custody was taken, informing a neighbor or relative and anything else that will help to inform the custodian should be appended. I believe the court should be informed each time a child has been taken into custody without a court order and a sworn statement of probable cause should made to the court. Requiring a report to the court with a statement of probable cause will tend to police the discretion of the social workers. The only other policing technique is the civil suit for damages which is generally ineffective.

In addition it has been raised by guardians ad litem that more teeth are needed in this statute for violations by social workers. It has been suggested that civil penalties be imposed for failure to notify the parents or custodians within the time specified.

Sec. 10 expands the definition of sexual abuse. This definition has been criticized by many. The arguments can be summarized in one question: what is the definition of "normal caretaker interactions"? It is feared that actions of parents who have a healthy relationship with their children which includes normal touching, caressing and general loving will fall within the definition of sexual abuse.

Sec. 11 changes the present purpose statement regarding protective services for children. Presently, the Department is to provide protective services, and do so in an effort to prevent future harm to the child, to safeguard and enhance the general well being of the children in this state, and to preserve family life whenever possible. The change advocated here is that the Department will act to preserve family life whenever preserving it is in the best interest of the children. This change was in response to the suggestion that the Department often puts children back into harmful environments which is contrary to the best interest of the child. The Department has stated that this is done because the intent of the legislation governing their action has been to preserve the family unit. I support this change since all protective service should be done in the best interest of the child.

Sec. 12 modifies our reporting statute on child abuse and neglect cases. The persons required to report have been expanded. There may be some opposition to some of the persons required to report under this section, particularly volunteers and counselors. It suggested that guardians and conservators also be required to report these instances, however, SB 243 does not reflect that.

This section changes the procedures to be followed in reporting instances of child abuse and neglect. Presently

no! Existing law only addresses harm by family members.

all reports are to be made to the nearest office of the Department, if that is not available, then people are to contact the nearest office of law enforcement. In reality, cases of abuse or neglect can be reported to either, and in many situations the first agency notified is law enforcement. SB 243, changes this procedure, and in my opinion makes it more difficult for people to report. I base this on the fact that the bill specifies that persons required to report these instances should report instances of harm believed to be caused by a person responsible for the child's welfare to the Department. However, if a person believes that the harm has been caused by a person not responsible for the child's welfare, or is unable to determine who caused the harm to the child, the local law enforcement agency is to be notified. I feel that this change creates an additional burden for persons required to report instances of child abuse and neglect and also imposes a burden on those persons to determine who caused the injury. This can particularly be bad public policy when we are requiring individuals who are not trained in counseling to make the initial inquiry with the child. According to Don Edwards, at the Division of Human Services of the AG's Office, he prefers the existing law which requires that all reports to be made to the Department of Health and Social Services.

Sec. 13 requires that persons who, in the course of processing or producing printed matter, be required to report materials which depict a minor engaged in activity that is defined as pornography. I think that this is a very needed provision in order to stop the processing of child pornography.

Sec. 14 describes the procedure that must be followed by the Department of Health and Social Services once a report of harm is received.

Sec. 15 clarifies that investigation reports may be used by appropriate governmental agencies inside and outside the state.

Sec. 16 clarifies that civil or criminal immunity will be given a person who, in good faith, makes a report of child abuse or neglect.

Sec. 17 provides that the physician/patient and the husband/wife privileges are not grounds for excluding evidence of a child's harm in a civil or criminal preceding.

Sec. 18 allows the Department or a practitioner of the healing arts, without the permission of the parent, to take photographs or perform radiological examinations of a child

believed to have suffered physical harm as a result of abuse or neglect by a person responsible for the child's welfare.

Sec. 19 deletes the wording "who willfully fails to report" from the statute. Willfully has been determined to be archaic language and thus, is removed from this section. Therefore, the penalty reads, "a person who knowingly fails or refuses to report is guilty of a Class B misdemeanor in cases of suspected cases of child abuse or neglect."

Sec. 19 gives the Attorney General the right to seek a protective injunction. The injunction may limit a person from contact with a child not related to the person, if the person has sexually abused a child; has physically abused a child; has failed, without lawful excuse, to provide necessary food, clothing, care, shelter, supervision or medical attention for a child entrusted to the care of the person; or otherwise constitute substantial danger to the mental, emotional or physical welfare of a child. The intent of this section is to bring injunctions against child care providers. Some criticism was raised that this is subject to abuse by the system.

Sec. 21 redefines abuse and is necessary according to the Department of Health and Social Services.

Sec. 22 expands the persons that are included under the definition of practitioner of the healing arts, and did not receive any criticism.

Sec. 23 expands the definition of sexual exploitation, and did not receive any criticism.

Sec. 24 provides additional definitions for child care provider, human services provider, organization and person responsible for the child's welfare. These definitions are important because they expand the numbers of individuals that are required by law to report suspected cases of child abuse and neglect. I have heard some criticism that these definitions are overly broad.

Sec. 25 provides that a person who violates a provision of this chapter or regulation adopted under this chapter is guilty of a Class B misdemeanor. The civil fine is removed.

Sec. 26 provides that the Department may devise a system of citations for enforcement of this chapter. It is the feeling that civil penalties are more of a deterrent for violations of the chapter and, therefore, a system of enforcement should be created. This section may carry a large fiscal note.

I will be available to discuss these bills and any other legislation concerning child protection.

TO: BETTYE 2/12/85
FROM: SANDRA

SB 243 / HB 88
CSSB 21 (HESS) RELATING TO THE PROTECTION OF CHILDREN.

MY INITIAL READING IS THAT THE BILL WILL REQUIRE MODIFICATION. EVERYONE I'VE TALKED TO HAS SOME RECOMMENDATION FOR CHANGE. SIMILAR TO OUR TITLE 38 REWRITE LAST YEAR, THE BILL CONTAINS 30 SECTIONS AND ADDRESSES ALMOST THAT MANY DIFFERENT ISSUES.

IN GENERAL, IT ENHANCES THE STATE'S ABILITY TO PROTECT CHILDREN BY STRENGTHENING LAWS RELATING TO PROSECUTION. NOT EVERYONE WHO WOULD LIKE TO TESTIFY ON THE BILL IS HERE TODAY. COMMENTS FROM THE ALASKA COURT SYSTEM AND THE PUBLIC DEFENDER'S AGENCY ARE IN THE COMMITTEE PACKETS. SEVERAL INDIVIDUALS HAVE ASKED FOR A TELECONFERENCED HEARING AT A LATER DATE. WE SENT COPIES OF THE BILL TO A VARIETY OF ORGANIZATIONS AND INDIVIDUALS LAST WEEK, AND ARE STILL AWAITING FEEDBACK FROM THEM.

FISCAL NOTES HAVE BEEN RECEIVED FROM THE FOLLOWING:
(ALL ARE TO HANDLE INCREASED NUMBERS OF CASES)

PUBLIC DEFENDER	437.2	(6 POSITIONS)
COURT SYSTEM	123.9	(3 JUDGES)
HEALTH AND SOCIAL SERVICES	0.0	
PUBLIC SAFETY		
LAW	0.0	(BUT OPERATING BUDGET $)

REMEMBER THIS BILL IS IDENTICAL TO THE GOVERNOR'S HB 88, WITH SOME REVISED LANGUAGE ON MANDATORY BACKGROUND CHECKS ROLLED IN (SECTION 26) PER SENATOR FERGUSON. AN ADDITIONAL AMENDMENT THAT CLARIFIES THE BACKGROUND CHECK SECTION IS IN THE PACKETS.

MEMORANDUM State of Alaska

TO: Gayle Horetski
Assistant Attorney General

DATE: August 6, 1984

FILE NO:

TELEPHONE NO:

FROM: Julie Werner-Simon
Assistant District Attorney

SUBJECT:

AUG 0 8 1984
DEPT. OF LAW
CRIMINAL DIVISION

At the District Attorney's Conference we briefly discussed a problem I had with the criminal non-support statute, AS 11.51.120.

In May, 1984, I prosecuted Mamie Alexander a day care home operator, for criminal non-support; I lost. The jurors reported to me that they could not find the non-parent Mamie Alexander "legally charged" with the support of a child in her care under the statute as it exists.

The criminal non-support statute seems to be as we discussed, specifically tailored to parents, who neglect children not to non-parents who care for other peoples' children.

In State v. Alexander, the only reason we were able to charge under the criminal non-support statute was because the defendant had a license to operate a facility in her home. Our expectation was that the license would constitute legal responsibility. Under the existing regulations at Health & Social Services that is a flawed assumption.

At trial I requested the following instruction:

> If you find that the child was in the home of the defendant and that the defendant is a (sic) licensed day care home, then the defendant is legally charged with the child's support.

Judge Fuld would not give me that instruction because it was not supported by the law. Since we have no criminal neglect statute, babysitters who fail to provide necessities for the children in their care commit no crime. Under the law they are not legally charged for that which occurs in their home.

Mrs. Alexander operated a day care home at her residence. On Thursday, November 3, 1983 Mrs. Collins dropped off her two children for a four day stay with Mrs. Alexander. It was the mother's expectation that Mrs. Alexander who ran the day care home would be caring for the

children with some assistance from Alexander's teenage daughters. When Mrs. Collins arrived at the Alexander home/center on Sunday, November 6th she found her children in the care of Mrs. Alexander's teenagers, Mrs. Alexander was not at home. The two year old's hand was swollen and appeared to be severely burnt. Mrs. Collins took her child to the nearest hospital. Doctors diagnosed the child's hand to have been intentionally immersed by another in scalding water within the preceding 48 hours. Hospital staff also noted that red nail polish was painted over her child's burnt fingernails.

Mrs. Alexander when questioned by the police told them that the child's hand was not burnt and could not have been burnt in her home. She stated that the child's hand had been caught in a door.

At trial the medical testimony refuted Alexander's claim and the issue became was Mrs. Alexander "legally charged" with what happened to the child in her home. Mrs. Alexander claimed that although she had taken the child into her home she was not legally responsible for that child because she was not operating a day care home at the time the child was allegedly injured. Further she stated that it was her teenage daughter who was responsible for the child over the weekend.

After two days of deliberation the jury determined that Mrs. Alexander was not legally charged with the support of the child under the statute.

Several jurors upset with what they felt was a moral injustice, contacted me. One of them said it best and I quote:

> Following the strict letter of the law [as it was defined to us] our jury issued a "not guilty" decision for the charge of criminal non-support. As jurors, we were most disturbed by our decision since we were convinced a small childs hand had indeed been burnt. We could not, however, affect a guilty charge due to the technical interpretation of the law.
>
> When in agreement is made to watch a child after business hours [i.e. to babysit] with

someone other than the family registered as the licensed owner of the families home/day care center the laws governing such centers do not extend protection to that child. This condition exists despite the fact that a child may stay at the same home licensed as a family/home day care center, and despite the fact that the licensed day care owner may be involved with a major part of the care of that child. This was the inevitable outcome of our decision.

For example, the child whose hand was burnt was legally left under the care of the teenage daughter of the licensed owner of the family/home day care center. Since it could not be proved that the mother and the licensed owner of the center had legal charge of the child in question, the laws governing criminal non-support, as they apply to family/home day care centers, could not be enforced. The sad irony of this case was that the overwhelming evidence was submitted to show that the young childs hand was indeed burned during her weekend stay at the Alexander home.

Health & Social Services regulations 7 AAC 50.125 (see enclosed) entitled "Family Day Care" do not address the issue of legal responsibility for children left in the care of day care operators. No where in the regulations is it stated that the regulations apply "after hours". It should be noted that day care hours are not set by the state, rather the individual day care operator determines his own hours. A day care operator providing care can easily assert that he was not in operation. The regulations make no provision requiring the day care operator to be responsible for "babysitting" by others that takes place in his facility/home.

I've enclosed (1) a letter from juror Charles Turner which articulates his frustration with the existing law, (2) jury questions from trial (3) a copy of the existing law, (4) a copy of the law which preceded the existing criminal non-support law, (5) a packet of the existing Health & Social Services regulations, (6) neglect

statutes from four other jurisdictions, (7) my letter to Health & Social Services which evaluates the existing Health & Social Services regulations, (8) xerox photo of child's hand.

I would like to see a criminal neglect statute enacted. Let me know what I can do to be of assistance.

JWS:sa

July 19, 1984

State of Alaska
Department of Law
Anchorage, Alaska

To whom it may concern:

During the week of May 28, 1984 I was summoned and subsequently served as a juror in a very interesting but disturbing case-- State of Alaska v. Marie Alexander.

Following the strict letter of the law (as it was defined to us) our jury issued a "not guilty" decision for the charge of criminal non-support. As jurors, we were most disturbed by our decision since we were convinced a small child's hand had indeed been burned. We could not, however, effect a guilty charge due to the technical interpretation of the law.

When an agreement is made to watch a child after business hours (i.e., to babysit) with someone other than the family member registered as the licensed owner of a family/home day care center, the laws governing such centers do not extend protection to that child. This condition exists despite the fact that a child may stay at the same home licensed as a family/home day care center, and despite the fact that the licensed day care owner may be involved with a major part of the care of that child. This was the inevitable outcome of our decision.

For example, the child whose hand was burned, was legally left under the care of the teenage daughter of the licensed owner of the family/home day care center. Since it could not be proved that the mother and licensed owner of the center had legal charge of the child in question, the laws governing criminal non-support, as they apply to family/home day care centers, could not be enforced.

The sad irony of this case was that overwhelming evidence was submitted to show that the young child's hand was indeed burned during her weekend stay at the Alexander home. In fact, the defense did not argue that the child's hand was burned. They simply stated they didn't know how it was burned.

Despite who had legal charge however, it was not unreasonable for the mother of the small child to assume that the same regulations governing family/home day care centers would apply afterhours and during weekends since it was, in fact, the same individuals who normally

cared for her children during business hours and it was the same home or center. It also was not unreasonable for the mother to assume that Mrs. Alexander was the responsible adult present to make decisions regarding medical care and treatment since it was Mrs. Alexander who accepted the care of her children (albeit on behalf of her teenage daughter), and it was Mrs. Alexander who provided consent for the use of her home. The laws however, do not reflect these assumptions.

In light of a decision that, in my opinion, was legally correct but morally wrong, I strongly recommend review of the regulations and laws governing family/home day care centers.

Such a travesty of justice should not occur again.

Sincerely,

Charles A Turner

Charles A. Turner
Juror

5/31/84 · 5:00 pm

CAN A MINOR BE "LEGALLY CHARGED" WITH THE SUPPORT OF A CHILD?

YES

505 -

#2 Jury questions

DISTRICT ATTORNEY

DISTRICT ATTORNEY

6/1/84 10:00

IF PARENT X IS LEGALLY CHARGED WITH MINOR CHILD Y, AND MINOR CHILD Y IS LEGALLY CHARGED WITH UNRELATED MINOR CHILD Z, IS PARENT X LEGALLY CHARGED WITH CHILD Z?

11:10 — THIS IS A FACTUAL DECISION. THE LEAVE TO YOU TO DECIDE UNDER THE EVIDENCE AND THE INSTRUCTIONS.

6/1/04 11:04

QUESTION:

CAN A PARENT ACCEPT A LEGAL CHARGE OF SUPPORT ON BEHALF OF, AND FOR, THEIR MINOR CHILD WITHOUT THEIR CHILDS KNOWLEDGE OR CONSENT.

YES - 11:10

DISTRICT ATTORNEY

Title 11 Criminal Law

Chapter 50. Syndicalism.

[Repealed, § 21, ch. 166, SLA 1978. For Law on terroristic threatening, see AS 11.56.810.]

Chapter 51. Offenses Against the Family.

Collateral references. — 10 Am. Jur. 2d, Bigamy, § 1 et seq.; 42 Am. Jur. 2d, Infants, §§ 16, 17, 55, 65-74; 47 Am. Jur. 2d, Juvenile Courts, Etc., §§ 63-70; 59 Am. Jur. 2d, Parent and Child, §§ 45, 50-87. 10 C.J.S., Bigamy, § 1 et seq.; 43 C.J.S., Infants, §§ 10, 24, 98; 67 C.J.S., Parent and Child, §§ 41, 165-178.

Sec. 11.51.100. Endangering the welfare of a minor. (a) A person commits the crime of endangering the welfare of a minor if, being a parent, guardian, or other person legally charged with the care of a child under 10 years of age, the person intentionally deserts the child in any place under circumstances creating a substantial risk of physical injury to the child.

(b) Endangering the welfare of a minor is a class C felony. (§ 5 ch 166 SLA 1978)

Collateral references. — Liability of parent for injury to unemancipated child caused by parent's negligence — modern cases, 6 ALR4th 1066.

Sec. 11.51.120. Criminal nonsupport. (a) A person commits the crime of criminal nonsupport if, being a person legally charged with the support of a child under 18 years of age, the person fails without lawful excuse to provide support for the child.

(b) As used in this section "support" includes necessary food, care, clothing, shelter, medical attention, and education. There is no failure to provide medical attention to a child if the child is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

(c) Criminal nonsupport is a class A misdemeanor. (§ 5 ch 166 SLA 1978)

#3 Existing law

DISTRICT ATTOR

Washington

Key Number Digests:
Infants ⇦16.

NOTES OF DECISIONS

On dismissal of delinquency proceeding under Juvenile Court Act, costs were improperly allowed against county, being unauthorized by that act. Pierce County v Magnuson (1912) 70 Wn 639, 127 P 302, Ann Cas 1914B 889.

13.04.170 Contributing to delinquency—Penalty—Bond. In all cases where any child is dependent or delinquent under the terms of this title, the parent or parents, legal guardian, or person having custody of such child or any other person, who, by any act or omission, encourages, causes or contributes to the dependency or delinquency of such child shall be guilty of a misdemeanor, and upon conviction thereof, be punished by fine not exceeding one thousand dollars, or imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and the juvenile court shall have jurisdiction of all such misdemeanors. The court may suspend sentence for a violation of the provisions of this section and impose conditions as to conduct in the premises of any person so convicted, and make such suspension depend upon the fulfillment by such person of the conditions, and, in case of the breach of the conditions, or any thereof, the court may impose sentence as though there had been no suspension. The court may also, as a condition of such suspension, require a bond in such sum as it may designate, to be approved by the court, to secure the performance by such persons of the conditions imposed by the court on such suspension. The bond shall, by its terms, be made payable to the state, and any moneys received for a breach thereof shall be paid into the county treasury.

LEGISLATIVE HISTORY

1. Enacted Laws 1913 ch 160 § 17 p 531.

2. Amended by Laws 1953 ch 116 § 1 p 229, (1) substituting "is" for "shall be" after first "child"; (2) substituting "title" for "act" after "terms of"; (3) substituting "the" for "such" before "conditions" throughout the section; (4) substituting "court" for "judge requiring same" before "to secure performance"; and (5) omitting "of Washington" after "State" in the last sentence.

See RRS § 1987-17.

#6 Other approaches

Notes of Decisions

Evidence 2

1. In general

Where parent is not deprived of custody in favor of nonparent, correct standard of proof for both jurisdiction and dispositional purposes is proof by preponderance of evidence. Matter of Nicole B. (1979) 155 Cal.Rptr. 916, 93 C.A.3d 874.

In civil dependency proceeding in which children are not removed from parental custody, proper standard of proof is by a preponderance of evidence. In re pher B. (1978) 147 Cal.Rptr. 390, 82 C.A.3d 608.

Standard of proof necessary to support factual allegations of dependency under § 300 is proof by preponderance of evidence, legally admissible in trial of civil cases. In re Lisa D. (1978) 146 Cal.Rptr. 178, 81 C.A.3d 192.

2. Evidence

In child dependency hearing, statement of mother's boyfriend that he was "high" when he burned baby was admissible as adoptive admission where mother was present when statement was made and made no effort to refute it. In re Amos L. (1981) 177 Cal.Rptr. 783, 124 C.A.3d 1031.

§ 355.1. Injuries or detriment to minor; need of proper and effective parental care; findings; prima facie evidence

Where the court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a minor, of such a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent, the guardian, or other person who has the care or custody of the minor, such evidence shall be prima facie evidence of the minor's need of proper and effective parental care, and such proof shall be sufficient to support a finding that the minor is described by subdivision (a) of Section 300.

(Formerly § 701.1, added by Stats.1976, c. 89, p. 146, § 1. Amended by Stats.1977, c. 579, p. 1922, § 197. Renumbered § 355.1 and amended by Stats.1977, c. 910, p. 2783, § 8; Stats.1978, c. 380, p. 1211, § 158.)

1977 Legislation.

Subordination of amendment by Stats.1977, c. 579, to other legislation enacted during the 1977 portion of the 1977–78 Regular Session and taking effect on or before Jan. 1, 1978, see note under Bus. & Prof.C. § 1202.

Subordination of renumbering and amendment of this section by Stats.1977, c. 910 to other legislation affecting this section in the 1977 portion of the 1977–78 regular session and taking effect on or before Jan. 1, 1978, see note under § 202.

Law Review Commentaries

Dependency proceedings: Standard of proof. (1977) 14 San Diego L.Rev. 1155.

Library References

Infants ⇨171 to 181.
C.J.S. Infants §§ 58 to 61.

Notes of Decisions

1. In general

Evidence that parent possessed cocaine and marijuana at their residence was insufficient to justify removal of minor children from home. In re W. O. (1979) 152 Cal.Rptr. 130, 88 C.A.3d 906.

§ 355.2. Injuries or detriment to minor; unfit home by reason of neglect; findings; prima facie evidence

Where the court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a minor, of such a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent, the guardian, or other person who has the care or custody of the minor, such evidence shall be prima facie evidence that the minor's home is an unfit place for him by reason of the neglect of either of his parents, his guardian, or other person who has the care or custody of said minor, and such proof shall be sufficient to support a finding that the minor is described by subdivision (d) of Section 300.

(Formerly § 701.2, added by Stats.1976, c. 89, p. 146, § 2. Amended by Stats.1977, c. 579, p. 1922, § 198. Renumbered § 355.2 and amended by Stats.1977, c. 910, p. 2784, § 9; Stats.1978, c. 380, p. 1211, § 159.)

1977 Legislation.

Subordination of amendment by Stats.1977, c. 579, to other legislation enacted during the 1977 portion of the 1977–78 Regular Session and taking effect on or before Jan. 1, 1978, see notes under Bus. & Prof.C. § 1202.

Subordination of renumbering and amendment of this section by Stats.1977, c. 910 to other legislation affecting this section in the 1977 portion of the 1977–78 regular session and taking effect on or before Jan. 1, 1978, see note under § 202.

Law Review Commentaries

Independent representation for the abused and neglected child: The guardian ad litem. Brian G. Fraser (1976–77) 13 C.W.L.R. 16.

Wisconsin

947.15 Contributing to the delinquency of children; neglect; neglect contributing to death

(1) The following persons are guilty of a Class A misdemeanor, and if death is a consequence are guilty of a Class D felony:

(a) Any person 18 or older who intentionally encourages or contributes to the delinquency of any child as defined in s. 48.02(3m) or the neglect of any child. This subsection includes intentionally encouraging or contributing to an act by a child under the age of 12 which would be a delinquent act if committed by a child 12 years of age or older; or

(b) Any parent, guardian or legal custodian who by neglect, or disregard of the morals, health or welfare of his or her child contributes to the delinquency of that child. This subsection includes neglect or disregard on the part of the parents which results in the commission or probable commission by a child under the age of 12 of an act which would be a delinquent act if committed by a child 12 years of age or older.

(2) An act or failure to act contributes to the delinquency or neglect of a child, although the child does not actually become neglected or delinquent, if the natural and probable consequences of that act or failure to act would be to cause the child to become delinquent or neglected.

Historical Note

Source:

L.1955, c. 575, § 7.
St.1955, § 48.45(a).
L.1957, c. 38, §§ 2, 3.
L.1961, c. 485.
L.1977, c. 173, § 163, eff. June 1, 1978.
L.1979, c. 135, § 3, eff. March 13, 1980.

Cross References

Abandonment of young child, see § 940.28.
Abduction, see § 940.32.
Abuse of children, see § 940.201.
Alcohol beverages, sales to minors or presence of minors in places of sale, see § 125.07.
Enticing a child for immoral purposes, see § 944.12.
Exhibition of explicit sexual material at outdoor theater, see § 134.46.
Exposing minors to harmful materials, see § 944.25.
Felony classifications, see § 939.50.
Reports, abused or neglected children, see § 48.981.
Sale, loan or gift of pistol to minor, see § 941.22.
Sexual exploitation of children, see § 940.203.

Law Review Commentaries

Abrogation of parental-immunity rule. 1964 Wis.L.Rev. 714.

Defense of alleged misdemeananants. James J. Murphy. 27 Gavel 11 (1966).

Pretrial release—bail procedures. Michael D. Guolee. 32 Gavel No. 4, p. 23 (Spring 1972).

Infants 20.

In general 2
Admissibility of evi
Amended charge 7
Attorney disciplina
Complaints 5
Defenses 8
Double jeopardy c 4
Preliminary examir
Sentence and punis
Sufficiency of evidc
Validity 1

1. Validity

This section is vague, nor uncons any other respect. 201 N.W.2d 58, 55 W

Imposition of offense of contribu a child if a dentl quence of the deli and not arbitrary, unintended or un Schulter v. Roraft 39 Wis.2d 342, cer 716, 393 U.S. 1066,

This section i contributing to d from that of a mi ishment of a felo quence of the deli overbroad or indef

2. In general

Sections 947.15, ing to delinquenc tributing thereto pari materia. Ju N.W.2d 58, 55 Wis

A "child," for governing crime delinquency of a under 18 years Schulter v. Roraf 39 Wis.2d 342, Ct. 716, 393 U.S.

©for GH

BILL SHEFFIELD, GOVERNOR

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DEPARTMENT OF LAW

CRIMINAL DIVISION/THIRD JUDICIAL DISTRICT

OFFICE OF THE DISTRICT ATTORNEY

August 2, 1984

Frank Dalley
Frontier Building
3601 "C" Street
Pouch 6333
Anchorage, Alaska 99502-0333

Dear Mr. Dalley:

On May 25, 1984 the trial of State v. Mamie Alexander began. Alexander, a family day care provider, was charged under the existing criminal non-support statute for failing to render necessary medical assistance to a child in her care. AS 11.51.120.

The facts elicited at trial were as follows: M.C., 2 years old, was left by her mother Mrs. Collins at the Alexander day care home from Thursday, November 3 through Sunday November 6, 1983. Mrs. Collins, relinquished her two children to the custody of Mrs. Alexander at the day care facility on Thursday November 3 during its hours of operation. The expectation of Mrs. Collins was that Mrs. Alexander and Alexander's 16 year old daughter would care for the two children over the weekend. On Sunday when Mrs. Collins returned to the day care home Mrs. Alexander was not present. M.C. and her sister were in the care of Mrs. Alexander's two teenage daughters. The 2 year old's hand was inflamed and swollen. (See attached photo). Mrs. Collins rushed her child to the nearest hospital. Examination at the hospital revealed that the child's hand had been intentionally immersed by another in hot liquid during the preceding 48 hours. The child remained at the hospital burn unit for 11 days.

At trial the state had to prove:

(1) that on or about the 4th of November, 1983,
(2) the defendant, Mrs. Alexander, was legally charged with the support of a child under 18 years of age,
(3) that she failed to knowingly provide medical attention for the child,
(4) and that this failure was without lawful excuse.

#7 Letter from J.W-S to DFYS*HSS re: change in regulations

DISTRICT ATTORNEY

After 5 days of trial and lengthy deliberation the defendant was acquitted. Several jurors contacted the prosecutor because they were distressed with their decision. They believed that the child's hand had been burnt at the Alexander home but felt bound by "the strict letter of the law". Jurors related that the state had proven elements one, three, and four but had not proved and could not prove under the existing law element two, specifically: that Mrs. Alexander had been "legally charged" with the support of the child. Jurors stated that the criminal non-support statute as well as the health and social service regulations: 7 AAC 50.125, were defective. They felt the law allowed a person such as Mrs. Alexander to merely assert that she was not "in operation of a day care home at a specific time"; it enabled her to delegate day care duties to another, thus shielding her from legal responsibility or wrong doing in her home.

The defense in his closing argument pointed out that even the two individuals, Gwen McAlpin and Michelle Decker who testified at trial and who work for Health & Social Services have distinct interpretations of the law. Counsel queried "how can a criminal court hold Mrs. Alexander to knowledge of legal responsibility that even department members do not share?"

The regulations as they exist are flawed. Illegal activity can be easily explained away through an interpretational loop hole. For example:

(1) 7AAC 50.145 stands for the proposition that if four or fewer children are being cared for in a home then a day care license is not needed. To the lay person operator that regulation could be interpreted to mean that even if licensed, when four or fewer children are in the home, the Health & Social Services regulations are no longer in effect.

(2) 7AAC 50.175(d) mentions the term "hours of operation", in the context of visits by licensing representatives. Testimony at trial revealed that hours of operation are set by the individual home care provider and are not regulated by Health & Social Services. Health & Social Services merely keeps a record of the hours the provid sets.

An interpretational problem arises in the following hypothetical: Suppose an individual says his hours of operation are 8:00 to 6:00. At 6:05 a child is injured but the individual, believes he is no longer operating. Since the individual is not operating a day care home an argument can be successfully made that the individual is not legally charged with the care of those children present in his home. Nowhere in the existing regulations does it say otherwise.

(3) 7AAC 50.195(6) asserts that the day care provider is responsible for screening staff: "for designation of an adult care giver to be in charge of the facility in the operator's absence."

The issue once again becomes when is a facility in operation? When is the day care operator held to the standards of Health & Social Services? The regulations in their present form enable an operator to shield himself from legal responsibility by altering hours of operation. 7AAC50.275(2) states: "a caregiver means a person whose duties include direct care, supervision and guidance of children in a day care facility"; 7AAC50.195(10) requires that any staff who works at the facility in the operator's absence be 19 years of age or older. Under the existing regulations a person under the age of 19 could care for or supervise children at the day care home if the operator asserted that he was not operating at the time the youth was taking care of other children within the home.

(4) 7 AAC 50.275(3) states: day care is "the care, supervision and guidance of a child or children unaccompanied by a parent or legal guardian on a regular basis for periods of less than 24 hours a day." Since under the regulations "day care" means periods of care less than 24 hours, then if a child remains in a day care home for more than 24 hours even if by agreement

> between the parties, the person caring for the child can assert that they are no longer caring for the child in the capacity of licensed day care home and are not held to Health & Social Services regulations.

The criminal non-support statute and the Health & Social Services licensing regulations relating to children services are inadequate when it comes to protecting a child who is cared for by a non-parent. Both the statute and the Health & Social Services regulations must be revised to address the issue of criminal neglect by a non-parent.

If the inadequacies persist the State, and specifically the the Department of Health & Social Services may be faced with a civil suit, by a parent whose child has been harmed. The parent who leaves his child in a day care home licensed by the State of Alaska and who finds that the law does not make the care giver criminally responsible for conduct that takes place in his home, will seek recourse in the civil courts.

The Health & Social Services regulations must incorporate the expectations of the parents who utilize family day care homes and centers.

The regulations should specifically address the issue of who is "legally charged for the support of the child." The regulations should impose a duty on the provider as follows:

> You are a day care provider licensed by the state. As such your home becomes a facility where children are cared for. You are legally charged for any child care that occurs within your home by yourself or others.

Something needs to be done and soon so that another child will not suffer from the inadequacies of the existing law.

I have enclosed a letter from a juror who served on the State v. Alexander trial. Mr. Turner says it best.

> ... it was not unreasonable for the mother of the small child to assume that the same regulations governing family/home day care centers would apply after hours and during weekends since it was, in fact, the same

individuals who normally cared for her children during business hours and it was the same home or center. It also was not unreasonable for the mother to assume that Mrs. Alexander was the responsible adult present to make decisions regarding medical care and treatment since it was Mrs. Alexander who accepted the care of her children (albeit on behalf of her teenage daughter), and it was Mrs. Alexander who provided consent for the use of her home. The laws however, do not reflect these assumptions.

I am equally troubled by the existing state of the law. Please contact me if I can be of any assistance in the revising of the regulations.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

VICTOR C. KRUMM
DISTRICT ATTORNEY

By: Julie Werner-Simon
Assistant District Attorney

JWS:sa

Enclosures

cc: Gwen McAlpin - DFYS
Michelle Decker - HSS
Dorcas Lewis - HSS
Kathleen Shaw - DFYS
Sue Harris - DFYS
Pat O'Brien - HSS

#8 xerox of child's hand

CHILD PROTECTION PACKAGE

Background

In [illegible]ber, Gov. Sheffield targeted child abuse as Alaska's [illegible] critical social problem."

Reports of child abuse and neglect more than doubled between FY 1978 and FY 1983. During the same period, reports of child sexual abuse increased well over 200 percent, and substantiated reports of sexual abuse skyrocketed by nearly 600 percent - probably due to increased awareness of the problem and better investigative techniques. (More details can be found in "Child Abuse and Neglect in Alaska," a report presented by the Department of Health and Social Services to Gov. Sheffield on Aug. 28, 1984.)

As the caseloads increased dramatically, staffing at the Division of Family and Youth Services did not. In one three-week period in 1983, for example, four social workers received 78 new cases - on top of an already dangerous backlog. In all regions, social workers had to do much of their own clerical work, which further reduced the amount of time spent with abused children and their parents.

Gov. Sheffield took some emergency steps on Sept. 6 of this year: $90,000 from the Governor's Contingency Fund, $214,000 from the DYFS, and $195,000 in "rollover money" from FY 83 (SB 409) went for increased staff and training in the Northern, Southcentral and Southeastern regions. However, he said at the time that the issue must be addressed in the FY 86 budget.

The child protection package proposed by Gov. Sheffield in the Executive Budget Bill draws on resources from two

departments: Health and Social Services ($1.87 million) and Law ($1.3 million).

Health and Social Services

* $732,000 for staff, legal services and training for the Northern Region based in Fairbanks. This would add five social workers (Delta Junction, Galena, Nenana and Fairbanks) and ~~seven~~ administrative support positions (Barrow, Galena, Fort Yukon and Fairbanks). It represents an increase of about 45 percent over the region's current budget.

* $324,000 for the same purposes in the Southeastern Region based in Juneau. This would add three social workers (Juneau and Ketchikan), three administrative support positions (Craig and Ketchikan) and one community care licensing specialist (Ketchikan). This represents an increase of almost 30 percent over the region's current budget.

* $817,600 for the same purposes in the Southcentral Region based in Anchorage. This would add seven social workers (Homer, Kenai and Anchorage), six parttime clerk-typists in one-person offices (Glennallen, Cordova, Dillingham, Valdez, Wasilla and Unalaska), two community care licensing specialists (Anchorage) and five administrative support positions (Homer and Anchorage). This represents an increase of almost 30 percent over the region's current budget.

Department of Law

As child abuse reports have risen, so have related criminal and civil actions. The Governor proposes the addition of new attorneys devoted solely to criminal prosecution of accused child abusers in Anchorage and Fairbanks. The attorneys and paralegals added in other areas of the state would also handle civil actions.