

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

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intelligence guessing as to what conduct will render them liable to criminal sanctions under AS 47.17.068.^{21/} Sheriff, Washoe County v. Sferrazza, 766 P.2d 896, 897-98 (Nev. 1988).

In the absence of legislative provisions, the decision as to what reports are quick enough to meet the "immediately" or "promptly" standard is left solely to the prosecutors. "This illustrates clearly that the word 'immediately' vests in the prosecuting authorities unbridled discretion to determine whether a report of suspected child abuse was made quickly enough to satisfy the mandate . . ." Sferrazza, supra, 766 P.2d, at 897-98 (two-week delay) (emphasis added).

The dangers of abuse are far from hypothetical. In the present case, School District officials reported to DFYS within three weeks of receiving S1's admission that her prior denials were false and that she had engaged in sex with T1. In the interim, the District had prevented T1 from returning to school and had forced his resignation. The Iditarod School District is currently being investigated for reporting possible abuse eight days after the first report.

Such lack of notice and unbridled discretion in the hands of prosecutors, necessarily deny due process, and render the terms void for vagueness.^{22/} The penalty provisions of AS 47.17.068, which allow imposition of criminal sanctions against persons

^{21/}See text on void for vagueness standard, Section III.A.1., supra, and cases cited therein.

^{22/}Id.

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failing to report "immediately" or "promptly," are unconstitutional as presently enacted.^{23/} Sheriff, Washoe Co. v. Sferrazza, supra.

b. The "Cause to Believe" Standard Is Unconstitutionally Vague.

"Immediately" and "promptly" do not fully explain when a report is to be made under the Statute. These terms are not triggered unless and until there is "cause to believe" that some form of child abuse or neglect has occurred. This phrase in and of itself is vague, and creates unconstitutional ambiguity in the reporting statute. "Cause to believe" is nowhere defined in Title 47. No guidelines are given to persons under the compulsion of the reporting statute as to the meaning of "cause to believe."

23/AS 01.10.030 provides that provisions of a statute that are unconstitutional may be ^{severed} served from provisions that are constitutional in order that the constitutional provision may be enforced. The test for determining severability is twofold:

A provision will not be deemed severable unless it appears both that, standing alone, legal effect can be given to it and that the legislature intended the provision to stand.

Lynden Transport, Inc. v. State, 532 P.2d 700, 713 (Alaska 1985).

The general statutory severability clause creates a presumption in favor of severability. Id. at 712. In Speidel v. State, the Alaska Supreme Court invoked AS 01.10.030 to delete overbroad language from the Statute. 460 P.2d 77 (Alaska 1969); cited favorably in Lynden, 532 P.2d 700. The purpose of a general severability clause is to preserve valid portions of the state legislatures enactments. Lynden, 532 P.2d at 713.

In State v. Lara, the Oregon Appellate Court applied a general severability clause in the Oregon Statutes to remove overbroad or vague phrases from a statute. 682 P.2d 173 (Or. App. 1984).

Therefore, there is ambiguity in deciding when one has information sufficient to require a report. This vagueness vests a corresponding and impermissible discretion in the prosecuting authority to make ex post facto decisions regarding the reporter's fact-specific judgment calls.^{24/}

Just what does the phrase "cause to believe" mean? According to the Attorney General, who rendered his opinion in an effort to demonstrate that Title 47 was comparable to federal law and that the state therefore should not lose federal funding, "cause to believe" means exactly the same thing as "suspect." Appendix A, Memorandum from Attorney General Harold M. Brown to John R. Pugh, Commissioner, Department of Health and Social Services, No. 366-186-86, December 5, 1985, pp. 6-7 (hereinafter "A.G. Memo"). Relying upon dictionary definitions, the Attorney General observed that "suspect" means "to imagine one to be guilty or culpable on slight evidence or without proof . . . have a suspicion, intimation, or inkling . . ." Id., at 6 (emphasis added). This, in turn, was equated with "cause to believe" under AS 47.17. According to the Attorney General's position,

A person can only suspect that which he or she has some cause or reason to suspect. Something, however nebulous, must trigger a suspicion. A suspicion is not a fantasy.

Id., at 7 (emphasis added). Apparently, therefore, persons required to report under Title 47 are subject to criminal

^{24/}See text and authorities on void for vagueness, Section III.A.1., pp. 17-20, supra.

prosecution if they fail to inform the state of any "inkling" they may have concerning possible child abuse or neglect based on, "something however, nebulous," other than their own personal fantasies. Id. This is truly an amorphous standard.

However understandable, and perhaps commendable, the Attorney General's desire to insure continued federal funding may be, his interpretation of the "cause to believe" standard does violence to the plain language used by the legislature, and, given the attachment of a criminal penalty for failing to comply, renders the requirement violative of due process. With respect to plain meaning, the Attorney General's own review of the dictionary reveals that "cause" means "a good or adequate reason" and "a ground for legal action . . .". A.G. Memo, at 6. If there is any validity to the theory that language has common meanings for people who understand it, "a good or adequate reason" cannot be construed as being the same as "to imagine one to be guilty . . . without proof" or "an inkling suspicion, intimation or inkling. . .". A good or adequate reason provides substantially more content than "something, however nebulous . . .". Accordingly, the plain language used by the legislature indicates that persons who were required to report, now on pain of prosecution, are to exercise some independent judgment in determining whether there is a "good or adequate reason" to support their belief of possible child abuse or neglect.

Additionally, and contrary to the suggestion of the Attorney General, "suspect" does not mean the same as "believe."

If one believes a fact, one takes it to be "true, valid, or honest . . ." A.G. Memo, at 7. On the other hand, if one merely "suspects," one is entertaining a hypothesis or, "intimation or inkling," perhaps an intuition, which may, upon further inquiry, prove to be true, false, or whose truth may be unable to be determined. The plain language used by the legislature indicates that persons are not to report their inklings, suspicions, or intimations. Rather, they are to report when they have "a good or adequate reason" to take possible child abuse or neglect as being "true or valid" in a particular situation.

Not only does the Attorney General's attempt to equate cause to believe with suspicion torture the plain meaning of the statutory terms, but it also deprives them of whatever content they might otherwise have had. If "cause to believe" means a suspicion based on something, however nebulous as the Attorney General asserts, then people of ordinary intelligence are wholly unable to understand the limits of the requirement to report. This, in turn, renders the entire statute, not only its criminal sanction, unconstitutionally vague. See text and cases in Section III.A.1.

Reasonably intelligent citizens, concerned not only with the preservation of federal funding but also with the preservation of the basic liberties which are our birthright, would attribute a very different meaning to the phrase "cause to believe." They might well conclude that standard is the same, or more exacting, as the basis required before the state can directly intrude upon the privacy of its citizens. That standard, at minimum, depends

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upon whether the actor has sufficient articulable facts available to warrant a person of reasonable caution in the belief that abuse has occurred. State v. Grover, 437 N.W.2d 60, 63 (Minn. 1989); State v. Hurd, 400 N.W.2d 42 (Wis. App. 1986). Cf. Terry v. Ohio, 392 U.S. 1, 22 (1968). Cause for such a belief, reasonable people could conclude, requires more than "something, however nebulous," and must rest instead upon "specific and articulable facts" necessitating that a report be made. Allen v. State, ____ P.2d ____, Slip Op. 976 (Alaska App., decided October 25, 1989). Accord Coleman v. State, 553 P.2d 40, 46 (Alaska 1976). Reasonable Alaskans trying to understand the statute might agree with the United States Supreme Court, instead of with the Attorney General, and conclude that requiring reports on less than a reasonable belief supported by specific and articulable facts "would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result [the Supreme Court] has consistently refused to sanction." Terry v. Ohio, supra., 392 U.S., at 22. Moreover, given that the primary purpose of the statute, one would hope, is still to protect children and not to prosecute teachers and educators, reasonable people might conclude that "cause to believe" for purposes of the reporting statute includes not only the objective reasonable belief test which is necessary to conform police conduct to constitutional limits, but also a subjective requirement that educators believe the validity of the reports before they are obligated under the statute. Terry v. Ohio, supra, 392 U.S. at 22 (rejecting

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subjective good faith test in order to effectuate deterrent purpose of Fourth Amendment.

The net result of the Attorney General's effort to describe the state standard as comparable to the federal standard has been to radically expand when reports are required in terms so broad and contentless that reasonable people cannot begin to assess their reporting obligations. Reporters, and people who provide legal advice to reporters, who rely upon accepted standards, such as reasonable belief in the search and seizure context, do so at their peril according to the Attorney General's declarations. The questions which are arising daily in the Anchorage School District, and other school districts around the state, require immediate answers. Yet no direction is provided by the very authority which will prosecute teachers and educators if it later determines they have failed to act appropriately. Telling teachers and educators that they must report child abuse or neglect based upon something, however nebulous, provides no meaningful assistance.

"Cause to believe" necessarily requires persons in the listed professions to make a judgment call. "Cause to believe" means that they have a "reason to believe."^{25/} If the person compelled to report child abuse does not believe or suspect that child abuse or neglect has occurred, they do not have "cause to believe." Or, will the state claim the educator is judged after-

^{25/}"Reason" and "cause" in this case are synonymous. The relevant definition for "reason" is the cause of something. Oxford American Dictionary (1980), p. 559. The relevant definition for "cause" is "a reason." Oxford American Dictionary (1980), p. 98.

the-fact under an objective test? The reporter must weigh the facts and circumstances of each particular case to determine if there are sufficient articulable facts to suspect child abuse. He or she must consider the "totality of the circumstances." State v. Grover, 437 N.W.2d 60, 63 (Minn. 1989). There is no requirement that every bruise be reported. Mattingly v. Casey, 509 N.E.2d 1220, 1222 (Mass. 1987). Or is there? Will defendants argue that even a single new bruise is more than a "fantasy" based on "something, however nebulous"? Because the reporting statute gives no guidance concerning what cause/reason is required, it is unconstitutionally vague. That inherent vagueness, in turn, is greatly exacerbated by the Attorney General's musings.

It would be intolerable for the state to require an educator, or any of the named professionals, to make a pure judgment call under such a discretionary standard, and then to punish him criminally if a prosecutor later disagreed with the judgment made. Yet, that is what defendants are threatening to do here.^{26/} By contrast, police and prosecutors are constantly, and successfully, arguing to courts that it is unfair to suppress

^{26/} The mens rea required for actual conviction is a "knowing" failure or refusal to report, "knowing" one has cause to believe abuse or neglect has occurred. AS 47.17.068. However, the command of the statute is to report simply upon cause to believe which may be objective, subjective or both. Prospective reporters will make their determinations under the cause standard, not by attempting to predict the sufficiency of potential proof mens rea. Moreover, the mens rea requirement will not protect reporters from improvident prosecutions, as opposed to convictions, since law enforcers will invariably infer the requisite knowledge from the mere making of reports they deem to be deficient.

evidence by second-guessing an officer's or magistrate's probable cause determinations. See, e.g., Illinois v. Gates, 462 U.S. 213, 231-32, 235-36 (1983); United States v. Ventresca, 380 U.S. 102, 108-09 (1965); United States v. Leon, 468 U.S. 897, 914 (1984). The very reasoning which counsels deference to initial police and/or judicial judgment calls as to the sufficiency of probable cause in the totality of circumstances, renders horrific the idea of jailing an educator because a prosecutor concludes that a mistake was made in not reporting sooner.

c. The Combination of These Vague Terms, Used In The Statute to Define When a Report Must Be Made, Exacerbates the Due Process Concerns.

The constitutional infirmities in "immediately" or "promptly" and "cause to believe" are compounded because these terms are used in combination to define the duty of the potential reporter. This is best illustrated by the absurd scenarios that necessarily arise when the standard is "immediately" report once there is "cause to believe" the existence of child abuse or neglect. See AS 47.17.020(a)(e).

A teacher observes a bruise, hears a rumor, notices depression, sees an angry glance between parent and child, observes falling grades, observes loss of weight, observes poor grooming, receives a defensive responses from student to questioning, or observes unsocial behavior. In and of themselves, none of these rises to the level of "cause to believe." Or do they? A number of these observations in conjunction may create "cause to believe." Which are sufficient? No one knows. The nature of the

teacher/student relationship is that these factors will be observed over a period of time. However, defendants say that the statute does not allow for its reporters to use their own professional judgment. Even though the teacher must weigh these factors over time, he is obligated to report "immediately" when he should know there is "cause to believe." The opportunities for second-guessing, by prosecution, the timeliness of every report are endless.

Unfortunately, if the statute stands as written, the teacher has subjected himself, by reporting, to criminal penalties and stigma for even a minor error in judgment as to when the "cause to believe" arose. If the teacher makes the report after observing the third bruise or hearing the second rumor, and the prosecutor thinks he was too slow, then criminal liability results. Such criminalization of standardless conduct violates due process.

d. Imposition of Penal Consequences Under This Statute Violates Substantive Due Process.

We are not a nation of informers. We are, instead, a free society which has due regard not only for enactment and enforcement of laws, but also for the inviolability of the human spirit, entitlement to privacy, enjoyment of liberty, and the right, with minimal governmental interference, to define one's relations with others. There are societies, real and imagined, where the state imposes a general obligation upon its citizens to be informers and to report the least suspected transgression of fellow citizens to the police agents of the state. Our country is

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founded on premises irreconcilable with such a system. And the Alaska Constitution, as construed by the Alaska Supreme Court, has repeatedly and clearly been interpreted to provide even more protection against government overreaching and interference with the individual than the Constitution itself.

Into this scheme of values drops a statute, which, since 1982, has made it a crime for certain categories of citizens, numbering in the thousands, to fail to report possible child abuse or neglect. According to the Attorney General, these individuals must choose between reporting all inklings, based on "something, however nebulous" that their friends, fellows, or colleagues may have committed acts against children, or face imprisonment themselves. The goal of protecting children is a laudable one. Ironically, no group in our society subscribes to it more strongly than the educators against whom prosecution is now threatened, and the teachers whose files defendants rifled in an unsuccessful effort to find evidence of crime. But however important the goal, the means employed to achieve it must be consistent with those constitutional concepts implicit in our notion of ordered liberty.

If T1 committed a crime under Title 11, successful prosecution of him is of great societal importance. Nonetheless, that prosecution may not include use of confessions coerced from him or evidence otherwise obtained in violation of his constitutional rights. The laudable end does not justify constitutionally unacceptable means. Similarly, the laudable end of child protection cannot justify employment of legislative means

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which force an individual member of a free society to the following choice -- either report every inkling and intimation that a fellow citizen may have abused or neglected a child, irrespective of how nebulous the basis and notwithstanding the fact that you, based on your personal and professional observations, do not believe your fellow has committed such abuse, or subject yourself to criminal prosecution.

It is the irony of the twentieth century that today, as largely peaceful and increasingly successful demands for more human rights from, and for less control over individual lives by, totalitarian regimes are occurring in Eastern Europe and throughout the world, in our country, and in our state, individuals committed to the well-being and education of children are increasingly being threatened with prosecution if they fail to report unreliable, likely false, and baseless inklings or intimations of misconduct by another, to state investigators.

e. The Statute Violates Substantive Due Process Because It Compels Citizens to Violate the Privacy of Other Citizens or Face Criminal Charges.

Additionally, and independently, Alaskan citizens enjoy constitutionally protected liberty, privacy, and substantive due process rights not to be compelled, on pain of possible prosecution, to violate the constitutional and legal rights of others. If the Attorney General's definition of "cause to believe" is accepted, then the reporting statute operates to require citizens, on pain of prosecution, to commit gross violations of the privacy rights of their fellow citizens.

Courts have repeatedly refused to accept the proposition that constitutional guarantees can be construed in a way which permits the state to intrude into individual lives "based on nothing more substantial than inarticulate hunches . . .". Terry v. Ohio, 392 U.S. 122 (1968). Even the Attorney General acknowledges that "a requirement that the state investigate persons based on nothing but unfounded fantasies might violate such person's rights of privacy. Nowhere in the law is the state free to intrude into the lives of its citizens without some cause or reason." A. G. Memo, supra, at 7, citing Terry v. Ohio, supra. The Attorney General's agreement in principle, however, cannot diminish the fact that he has drawn the line in a constitutionally unacceptable place. By requiring thousands of individuals in the identified categories to report every inkling, intimation, and suspicion based on "something, however nebulous," the legislation fails the minimal standard identified in Terry and Coleman. It launches this state on a course where criminal laws are enforced by requiring citizens to choose between their own liberty and the "obligation" to report everything that is not a fantasy about others to law enforcers.

The magnitude of the invasion of privacy is enormous. The School District alone has some 2,700 individuals who are required reporters under the Act. Reporters in the entire state probably run into the tens of thousands. Obviously, if all of these individuals reported all suspicions based on "something, however nebulous" police and prosecutors would have thousands of

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investigative leads, almost all of which, if fairly investigated, would lead to no child abuse or neglect at all. Nonetheless, the mere fact of an investigation can ruin an individual's life. And, uncomfortable as police and prosecutors are with this fact, it is a basic constitutional premise that police and prosecutors cannot be presumed to avoid arbitrary, unfair, and discriminatory exercise of power. Indeed, the constitutional premise is that they will, thus necessitating articulation and application of constitutional limits on their conduct.

Moreover, there are serious ramifications for those who report every suspicion based on "something, however nebulous," to the authorities. If this standard is interpreted to require application of an objective, reasonable person test, then individuals are required, on pain of prosecution, to make reports which they do not personally believe. For example, a teacher observes new bruises on a child's legs twice over a period of four weeks. The child attributes the bruises to falling down at home. The teacher has no other basis to think that the child is being abused or neglected. Another teacher is told by one student that another student told her that the gym teacher touched her "fanny." The teacher knows that the reporting student has a reputation for lying and for trying to cause trouble for her classmates and teachers. The teacher inquires of the student who was supposedly touched, and the student says the report is false. The teacher has no other information. Assume that the teachers in both cases do not believe the reports which they have received. Under the

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standard as articulated by the Attorney General, it could be argued that both of these teachers must report the possibility of child abuse or neglect because they are in possession of "something, however nebulous" which could intimate that such abuse has occurred. Accordingly, if they do not report they run the risk of being subjected to later prosecution because police and prosecutors conclude, in retrospect, that a reasonable person would have had cause to believe under these circumstances. On the other hand, if the teachers in these situations inform the authorities, they are making reports which they do not believe to be true. Accordingly, they may be civilly liable for damages to the persons who end up being investigated as a result of their reports. The immunity provisions of AS 47.17.050 purportedly apply only to "good faith" reports.

Thus, the statute creates an obligation on individuals to violate the privacy rights of fellow citizens on a wholly insufficient basis, then refuses to immunize them from possible civil or criminal liability. A teacher can be prosecuted for not reporting if no report is made. A teacher can be prosecuted for reporting a report believed to be false. Indeed, teachers who feel obliged to make reports which they do not believe out of concern that they will be prosecuted for failing to meet an objective standard of reporting may also be prosecuted for interfering with the constitutional rights of those they report. AS 11.76.110. A report may very well not confer immunity, hence, as already noted,

the statute requires that such reports be made in "good faith."
AS 47.17.050.

f. Conclusion.

Finally, it is worth considering the kind of society that this sort of statute seeks. Educators who must work together for the good of their students will be chilled in their interaction, for fear some comment may be misinterpreted as "something, however nebulous," which require a colleague to make a report of suspected abuse. Mistaken and false reports will be made with great frequency. Since the standard is so low and so vague, educators will have to turn in any intimations or inklings concerning their fellows or face prosecution themselves. What educator in his or her right mind would meet with a student alone for individual instruction, tutoring, or therapy given the substanceless standard which his or her colleagues must apply in deciding whether to report allegations against them?

And why stop here? Why not add lawyers to the list of those who must report, assuming the information is not gained in attorney-client communications? States have done so. Why stop with professionals? No goal could be more commendable than protection of our children. Why not impose a duty on all members of society to report suspected child abuse and neglect? And to enforce it, add a criminal penalty.

It may be understandable that police officers and prosecutors, in their zeal and self-righteousness, believe that they are the only people capable of addressing problems in our

society, and that they will have the lack of prospective to believe that the criminal law is the only way to achieve social goals. But our country was born of a revolution, and our state was founded on a Constitution which shows that we know better. Obtaining and preserving liberty is never easy. A statute, such as this, which throws all of these hard won liberties aside in the name of accomplishing a legitimate end, is the most dangerous form of encroachment on fundamental freedoms that we will face. The goal is desirable. The means are constitutionally intolerable. The imposition of a criminal penalty is unconstitutional.

IV.

EITHER AS 47.17.010 ET. SEQ. UNCONSTITUTIONALLY
COMPELS PLAINTIFFS TO INCRIMINATE THEMSELVES
OR THEIR PROSECUTION UNDER THAT SECTION IS
BARRED BY AS 47.17.050.

A. Compelled Self-Incrimination Is Prohibited.

Article I, § 9, of the Alaska Constitution provides in part "No person shall be compelled in any criminal proceeding to be a witness against himself." The language of this section is virtually identical to the language of the Fifth Amendment of the United States Constitution. Biele v. State, 371 P.2d 811 (Alaska 1962). However, the Alaska Supreme Court has construed the state self-incrimination clause to provide much broader protection than its federal counterpart. Scott v. State, 519 P.2d 774 (Alaska 1974). The privilege extends not only to statements which are in and of themselves incriminating, but also to any assertions which might furnish "a link in the chain of evidence" leading to

prosecution, irrespective of the guilt or innocence of the declarant. McCracken v. Corey, 612 P.2d 990, 993 (Alaska 1980); McConkey v. State, 504 P.2d 823, 826 (Alaska 1972); E.L.L. v. State, 572 P.2d 786, 788 (Alaska 1977).

The significance of the privilege against self-incrimination in the American and Alaskan constitutional law cannot be overstated. As the United States Supreme Court observed with respect to the federal clause,

The privilege against self-incrimination "registers an important advance in the development of our liberty -- " 'one of the great landmarks in man's struggle to make himself civilized.'" . . . it reflects many of our fundamental values and most noble aspirations: our unwillingness to subject those suspected of crime to the cruel trilema of self-accusation, perjury or contempt; our preference for an accusatorial rather than an inquisitorial system of criminal justice; our fear that self-incriminating statements will be elicited by inhuman treatment and abuses; our sense of fair play which dictates "a fair state-individual balance by requiring the government to leave the individual alone until good cause is shown for disturbing him and by requiring the government in its contest with the individual to shoulder the entire load," . . .; our respect for the inviolability of the human personality and of the right of each individual "to a private enclave where he may lead a private life," . . . ; our distrust of self-deprecatory statement; and our realization that the privilege, while sometimes "a shelter for the guilty" is often "a protection for the innocent."

Murphy v. Waterfront Commission of New York, 378 U.S. 52, 55 (1964). This basic privilege applies not only in the secrecy of the police interrogation room, but in the political halls of the state legislature. For almost one hundred years it has been clear

that "legislation cannot abridge a constitutional privilege, and . . . it cannot replace or supply one, at least unless it is so broad as to have the same extent in scope and effect." Councilman v. Hitchcock, 142 U.S. 547, 585 (1892) (invalidating legislation purporting to authorize compelling testimony for exchange for simple use immunity). While it is well-established that individuals can be compelled to provide information and to make statements which may tend to incriminate them, the quid pro quo for the exercise of that executive or legislative power is a grant of immunity which is co-extensive with the scope of the constitutional privilege against self-incrimination. Kastigar v. United States, 406 U.S. 441, 448-49, 458 (1972); Murphy v. Waterfront Commission, supra, 378 U.S. at 54, 78; Albertson v. SACB, 382 U.S. 70 (1965); Marchetti v. United States, 390 U.S. 39 (1968); Leary v. United States, 395 U.S. 6 (1969). If a purported grant of immunity is not as comprehensive as the protection afforded by the privilege against self-incrimination, then the legislation which purports to compel statements is constitutionally invalid. Kastigar v. United States, supra, 406 U.S., at 449; McCarthy v. Arndstein, 266 U.S. 34, 42 (1924).

AS 47.17.020 purports to impose a legal obligation upon persons, including educators, to make a report when they have cause to believe that child abuse has occurred. Failure to report may result in prosecution under AS 47.17.068. By reporting, however, the defendants claim that the individual subjects him or herself to possible prosecution if police and/or prosecutors conclude that

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the report was not made soon enough to be "immediate" or "prompt." Accordingly, the statute purports to require individuals to make reports which, in turn, may be used as the first, and often indispensable,^{27/} link in a chain of evidence ultimately used to prosecute them for failing to report in what prosecutors decide to be a timely fashion. Thus, a report of suspicion of child abuse also constitutes a self-report by the reporter as to his compliance -- or alleged non-compliance with the requirements of Title 47.

Such required self-reporting, which may have criminal consequences, constitutes compulsory self-incrimination within the meaning of Article I, § 9 of the Alaska Constitution. See, e.g., Leary v. United States, 395 U.S. 6, 12-29 (1969) (Marihuana Tax Act); Marchetti v. United States, 390 U.S. 39 (1967) (occupational taxes on wagering); Albertson v. S.A.C.B., 382 U.S. 70 (1965) (communist party registration requirement); Ward v. Coleman, 598 F.2d 1187, 1190 (10th Cir. 1979), reversed on other grounds, United States v. Ward, 448 U.S. 242 (1980) (required self-reporting of oil spills under 33 U.S.C. 1321(b)(5)); United States v. General American Transportation Corp., 367 F.Supp. 1284, 1290 (D.N.J. 1973); United States v. United States Steel, 4 E.R.C. 1641-42 (W.D.Pa. 1972). Another federal reporting statute is misprison of felony. 18 U.S.C. § 4. Under this statute, federal courts have

^{27/}The irony of defendants enforcement plan is that so far they have only threatened to charge individuals who have reported. Presumably, this is because they cannot identify non-reporters, if there are any. Apparently, defendants seek to encourage non-reporting by pursuing those who do report.

consistently held that a party may not be prosecuted for concealing a crime if the reporting of that crime would implicate them in any criminal activity or furnish a possible link in the chain of evidence that could lead to prosecution. United States v. Graham, 487 F.Supp. 1317, 1318-19 (W.D. Ky. 1980); United States v. Jennings, 603 F.2d 650, 652 (7th Cir. 1979).

The United States Supreme Court has recognized, in interpreting the narrower federal privilege against self-incrimination, that "[t]estimony given in response to a grant of legislative immunity is the essence of coerced testimony. In such cases there is no question whether physical or psychological pressures overrode the defendant's will; the witness is told to talk or face the government's coercive sanctions, notably, a conviction for contempt." New Jersey v. Portash, 440 U.S. 450, 459 (1979). In the present case, the risk is not a citation for contempt, but a separate criminal prosecution based upon some law enforcement agency's second-guessing the speed with which an individual made a report required by law. In such circumstances, there is no need or justification for "balancing" the rights of the reporter against any other interests. Since the reporting requirements of Title 47 implicate "the constitutional privilege against compulsory self-incrimination in its most pristine form, balancing, therefore, is not simply unnecessary; it is impermissible." New Jersey v. Portash, supra, 440 U.S., at 459.

The foregoing analysis demonstrates that the requirements of AS 47.17.020 render the statute unconstitutional unless it is

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construed to provide immunity for the reporter which is co-extensive with the state constitutional privilege against self-incrimination. Article I, § 9 of the Alaska Constitution requires that individuals be given "transactional immunity" before they may be validly compelled to make a report which could lead to their own prosecution. Where a witness is compelled to report pursuant to a statutory grant of "transactional immunity,"^{28/} the witness "may not be prosecuted or subjected to criminal penalty in the courts of this state for or on account of any transaction or matter concerning which, in compliance with the order, [he] gave answer or produced information." Uniform Rule of Criminal Procedure 732, 10 U.L.A. 340 (1974), adopted as a rule of practice in State v. Serdahely, 635 P.2d 1182 (Alaska 1981) (per curiam).

Such transactional immunity suffices to override any claim to the privilege against self-incrimination under Article I, § 9 of the Alaska Constitution, State v. Serdahely, supra; Surina v. Buckalew, 629 P.2d 969, 980 (Alaska 1981); and under the Fifth Amendment to the United States Constitution. Ullmann v. United States, 350 U.S. 422 (1956); Brown v. Walker, 161 U.S. 591 (1896). Conversely, an immunity grant which prohibits no more than the use of the witness's own words against him is constitutionally

^{28/}"Transactional immunity absolutely precludes prosecution of a witness for crimes [referred to in compelled testimony] as long as the testimony is in response to a question rather than unsolicited but intentionally given in an effort to frustrate and prevent prosecution." Surina v. Buckalew, 629 P.2d 969, 971 n. 2 (Alaska 1981).

deficient, and thus incapable of overriding the privilege.
Counselman v. Hitchcock, 142 U.S. 547 (1892).

In the middle of these provisions lies "use/derivative use" immunity.^{29/} This immunity protects the witness from any direct use of his statements against him, and further prohibits the use of any other evidence derived directly or indirectly from such

^{29/} The mandatory report in the present circumstance is the event which triggered the whole investigation, and it cannot be used in any fashion to create or prosecute a criminal case against plaintiffs, even if the less stringent use derivative use immunity were applicable.

Use and derivative use immunity is the minimum immunity required by the United States Constitution. Kastigar, supra, 406 U.S. at 453. Accord, Murphy v. Waterfront Commission of New York, 378 U.S. 52, 79 (1964). Federal use and derivative use immunity not only prevents use of compelled disclosures at trial, but also

provides a comprehensive safe guard, barring the use of compelled testimony as an "investigatory lead," and also barring the use of any evidence obtained by focusing investigation on a witness as a result of his compelled disclosures.

Kastigar, supra, 406 U.S. at 460 (footnote omitted).

The government is prohibited from using compelled testimony "in any respect." 406 U.S. at 453 (emphasis in original). This means it may not be used as an "investigatory lead" to help a prosecutor prepare for grand jury, United States v. Dornau, 359 F.Supp. 684, 687 (S.D.N.Y. 1973), in grand jury proceedings, United States v. Gregory, 730 F.2d 692, 697 (11th Cir. 1984), to convince a witness to testify against the immunized witness, United states v. Kurzer, 534 F.2d 511, 517 (2nd Cir. 1976), to impeach the witness at a later criminal trial, New Jersey v. Portash, 440 U.S. 450, 459 (1979) to assist in "focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 311 (8th Cir. 1973).

testimony.^{30/} This is the type of immunity generally provided for in the federal system. 18 U.S.C. § 6002. In a radical departure from almost uniform prior federal practice, the United States Supreme Court held the use/derivative use immunity statute constitutional in Kastigar v. United States, supra, 406 U.S. at 441 (1972).

Several other states have refused to follow Kastigar, and have interpreted their state constitutional privileges against self-incrimination to require transactional immunity. See, e.g., State v. Soriano, 684 P.2d 1220 (Or. App.), aff'd, 693 P.2d 26 (Or. 1984); Attorney General v. Colleton, 444 N.E.2d 915 (Mass. 1982); State v. Mivasaki, 614 P.2d 915 (Hawaii 1980).

Article I, § 9 of the Alaska Constitution requires that transactional immunity be conferred before testimony may be

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^{30/}It matters not whether the immunized testimony is basically inculpatory or exculpatory. United States v. Cortese, 568 F.Supp. 119, 131-32 (D.C. Pa. 1983). A person cannot be compelled to provide even apparently innocuous links in an inferential chain which may lead to his prosecution. McCracken v. Corey, 612 P.2d 990, 993 (Alaska 1980), and cases cited therein.

compelled.^{31/} In Scott v. State, 519 P.2d 774 (Alaska 1974), the Alaska Supreme Court specifically held that the scope of the privilege against self-incrimination guaranteed by the Alaska Constitution provided significantly greater protection to an accused defendant from compelled prosecutorial discovery than did the Fifth Amendment. All of the concerns identified in Scott are present, but in even greater force, in the context of compelling an initial self-report. Taken together, the history of the adoption of the Alaska privilege against self-incrimination and the direction provided by the Supreme Court in Surina v. Buckalew, State v. Serdahely, and Scott v. State, demonstrate that the Alaska Constitution, like the state constitutions in Oregon, Hawaii and Massachusetts, requires that transactional immunity be provided before a witness may be compelled to testify. Feldman & Ollanik, supra, n. _____, 3 Alaska Law Review, at 241-67.

^{31/} Additionally and independently, the Alaska Supreme Court has adopted a transactional immunity requirement as a rule of practice. State v. Serdahely, 635 P.2d 1182 (Alaska 1981) (per curiam); see also Article I, § 15 of the Alaska Constitution; Alaska Rule of Civil Procedure 03. Subsequently, the legislature enacted a use/derivative use immunity procedure, AS 12.50.101. However, the legislature did not follow the procedural prerequisites to a valid legislative override of a rule adopted by the Supreme Court. Accordingly, the transactional immunity provision remains in effect and the deficient statutory effort to authorize use/derivative use immunity is invalid. Feldman & Ollanik, Compelling Testimony in Alaska; The Coming Rejection of Use and Derivative Use Immunity, 3 Alaska Law Review 229, 264-66 (1986).

B. The Immunity Provided In AS 47.17.050 is Constitutionally Deficient.

AS 47.17.050 provides that "a person who, in good faith, makes a report under this chapter . . . is immune from any civil or criminal liability which might otherwise be incurred or imposed." This immunity provision was included in Title 47 in 1971, some eleven years prior to the addition of subsection 47.17.068, which prescribed criminal penalties for persons who fail or refuse to report as required. Accordingly, it appears that no additional thought was given by the legislature to the self-incrimination ramifications of criminalizing the reporting requirement in 1982.

The immunity provided in AS 47.17.050 provides transactional immunity from "any . . . criminal liability which might otherwise incurred or imposed." Such transactional immunity could validly supplant the privilege against self-incrimination except for the fact that the legislature added a "good faith" proviso to the immunity provision.

Nowhere in the well-established and detailed constitutional doctrine which surrounds the privilege against self-incrimination, either in Alaska or under the Fifth Amendment, does there appear any suggestion that the privilege only applies to compelled, self-incriminating statements which are made "in good faith." The good faith requirement was in all likelihood intended to describe the outer reach of immunity from civil suit which might

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be brought^{32/} against persons making reports and to exclude those who knowingly made false reports. As noted above, it was included in the statutory scheme more than a decade before persons were subjected to criminal prosecution for failing to report as required, and thus could not have been intended to address that self-reporting issue. Whether or not the good faith limitation is an acceptable means of circumscribing immunity from civil suit, it would be unprecedented and unconstitutional to graft such a requirement onto legislative immunity which purports to supplant the constitutional privilege against self-incrimination.

Moreover, given the other constitutional problems with this statute, the legislative limitation of immunity to "good faith" reports creates a serious risk of fundamental unfairness. If by "good faith" the legislature means reports which are actually believed by the reporter, then reporters may face an unconstitutional dilemma. On the one hand, if "cause to believe" is interpreted to mean that a report must be made whenever there is any inkling, intimation or suggestion of child abuse based on "something, however nebulous," and if it is further construed to be an objective, as opposed to subjective standard, then Title 47 would require educators and others to make immediate reports of bare suspicions which they did not personally believe. A person making such a report could not claim to be acting in "good faith," and therefore would be unable to avail him or herself of the

32/Cf. Section IV.E., infra.

statutory immunity. If some prosecutor later decided that the report not only should have been made, but should have been made sooner, then the individual could be subject to prosecution for failing immediately to report. Prosecution could then be brought under the statute. Since the individual did not actually believe his or her own report to be true, the defendants would argue that prosecution is not barred by immunity. Such an absurd result violates constitutional guarantees to be free from compulsory self-incrimination as well as the guarantees of Article I, § 7, to due process and fair and just treatment in executive investigations.

As noted in Section IV.A., supra, if self-incriminating statements are to be compelled by legislative enactment, that compulsion must be accompanied by a legislative grant of immunity which is co-extensive with the constitutional privilege against self-incrimination. A "good faith" limitation is not included within the constitutional scheme. If the legislature were to include such a limit purporting to authorize grants of immunity to compel testimony of witnesses, so long, and only so long, as the testimony was given in "good faith," such statutes would be stricken down before they could even be printed. Yet, this is precisely the effect which has been accomplished by the legislature's adding criminal penalties for failing to report to a statute whose provision of immunity is limited to "good faith" reports.

If the criminally enforceable reporting requirement is to be saved, the "good faith" limitation on immunity must be stricken and severed from AS 47.17.050. See n. 22, p. 64, supra.

C. Due Process Precludes The Limitation of Immunity To Plaintiffs By Some After-The-Fact Narrowing Of The Term "Good Faith".

A narrow construction of the phrase "good faith," and the accompanying narrowing of the immunity provided by AS 47.17.050, would not only endanger the constitutionality of the statute in light of the privilege against self-incrimination, but would also render the provision inconsistent with the requirements of the state due process clause.

Persons, like plaintiffs, who made reports under the statute, on the advice of counsel, and believing that they were required to do so by the statute, are entitled to the immunity which the statute appears, on its face, to guarantee them. An after-the-fact narrowing of that immunity by a constriction of the class of "good faith" report, would violate due process for two separate reasons. First, such an unexpected construction of the statute would operate like a judicially created ex post facto law in violation of the due process clause. M.O.W. v. State, 645 P.2d 1229, 1233, n. 8 (Alaska App. 1982), citing Bouie v. City of Columbia, 378 U.S. 347, 353-54 (1965). Accord Marks v. United States, 430 U.S. 188, 191-92 (1977). Second, due process precludes the state from inducing reliance by a person upon a certain description of his legal rights and obligations, only later to penalize him for exercising those rights or fulfilling those

obligations consistent with the way he reasonably understood the state to have explained them. For example, the state cannot advise an accused of his right to remain silent at the time of his arrest, and then turn around at his trial and point to post-arrest silence as an indicia of guilt. Stork v. State, 559 P.2d 99, 103 (Alaska 1977); Dovle v. Ohio, 426 U.S. 610 (1976). Similarly, it is fundamentally unfair to subject persons, such as plaintiffs, to the threat of criminal prosecution if they fail to report, while promising them immunity from civil and criminal consequences if they do indeed report, and then to turn around and deny them the promised immunity on the claim that the report was not soon enough and/or was not within some narrow definition of "good faith."

- D. If the Court Concludes that Immunity May Be Constitutionally Limited to Good Faith Reports, Then the Court Should Declare that "Good Faith" Means Any Report Other Than One Which the Reporter Knows to be False.

As indicated above, courts strive to construe statutes in a way that avoids the necessity of declaring them unconstitutional. See, Section III.A.3., supra. This principle has been used by courts in other states to save reporting statutes whose literal terms provided constitutionally insufficient immunity. See, e.g., State v. Durrant, 769 P.2d 1174, 1183 (Kan. 1989) (where reporting statute provided only use immunity, court read constitutionally required use/derivative use immunity into statute).

If the court were to take the unprecedented step of providing that self-incriminatory reports could be compelled from

individuals whose only immunity was for making a "good faith" report, the constitutionality of such an order would have to depend upon an extremely broad construction of the "good faith" requirement. The only exception which has been recognized in the context of compelling testimony of witnesses on a grant of immunity that is absolute and co-extensive with the constitutional right is that a grant of immunity will not protect a witness from providing perjured testimony. If this very narrow exception were to be expanded by analogy to reporting statutes, one might argue that reports which are made by a person who knows -- as opposed to believes -- them to be false at the time he makes the report are not protected by the immunity clause. Certainly no further exceptions are constitutionally tolerable. All other reports must be considered to be in "good faith" if AS 47.17.050 is to save AS 47.17.068.

E. The Constitutionally Required Procedure For Implementing the Immunity Provision of Title 47 Necessitates that An Adversary Hearing and Judicial Determination As to the Applicability of The Statutory Immunity Occur Prior to Charging Any Individual Who Made a Report.

If the immunity provision of Title 47 is broadly construed in order to save the statute's constitutionality, then there will be virtually no cases in which individuals who have made a report may be constitutionally prosecuted under AS 47.17.068. Given that the statutorily provided immunity is transactional, virtually absolute in its scope, and arises at the moment of the report, that immunity necessarily exists prior to the time that any state agent is contemplating prosecution of the individual who

reported. Considering the importance of the privilege, the virtual inconceivability of circumstances in which a prosecution could constitutionally be implemented against an individual who has reported, and the state constitutional rights of reporters to freedom from self-incrimination, to due process, and to "fair and just treatment in . . . executive investigations,"^{33/} Article I, §§ 7 and 9 necessitate that the judicial branch intervene between the making of a report and the initiation of any contemplated prosecution of the reporter for failing to report as required. Given this balance of interests, procedural due process requires that a reporter be given notice and an opportunity to be heard prior to charges being filed under AS 47.17.068. Cf. Wickersham v. State Commercial Fisheries Entry Com'n., 680 P.2d 1135 (Alaska 1984); Nichols v. Eckert, 1359 (Alaska 1973; Goldberg v. Kelly, 397 U.S. 254 (1970).

The constitutionally required process should consist of a requirement that the prosecuting authority make an application to the court for a determination of the immunity issue prior to the filing of any charges. The application should set forth the basic facts alleged by the prosecution and an explanation as to why in the prosecution's view the reporter is not absolutely immune from prosecution. The application should be served upon the reporter when prosecution is contemplated. An adversary hearing should be held on the immunity issue at which the reporter shall enjoy the

^{33/}Article I, § 7, Alaska Constitution.

rights to counsel, compulsory process, due process, confrontation, and to testify or not to testify as he elects. Prior to the hearing, the reporter should be entitled to receive discovery as he would if already charged under Alaska Criminal Rule 16.

In determining the existence of an immunity bar, the "heavy burden" of demonstrating that immunity does not apply must remain upon the prosecution. Kastigar v. United States, supra, 406 U.S., at 461-62. Since the right implicated is the state constitutional privilege against self-incrimination, which is given a broader meaning under the Alaska Constitution than under its federal counterpart, the burden should be upon the state to prove beyond a reasonable doubt that immunity does not bar prosecution. If the court rules that the state has not met its burden, it must enter an order declaring that prosecution is absolutely barred by AS 47.17.050 and by Article I, §§ 7 and 9 of the Alaska Constitution. If the court concludes that the prosecution has somehow proven that immunity does not bar prosecution, it must also enter specific findings of fact and conclusions of law in a written order. Prior to the initiation of any charges, the reporter must have the right to seek appellate review of this decision.

V.

CONCLUSION

For the reasons stated above, plaintiffs ask the Court to grant appropriate relief by declaration and/or summary judgment. Proposed orders are attached.

DATED this 27th day of November, 1989, at Anchorage,
Alaska.

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4 AAC 06.025. STANDARDS FOR SECONDARY EDUCATION PROGRAM LEVELS. Repealed 9/20/74.

4 AAC 06.027. ESTABLISHMENT OF ATTENDANCE AREAS. (a) The board may establish attendance areas without respect to district lines.

(b) Pupils may be required to attend schools in other districts, subject to the provisions of 4 AAC 05, when, in the judgment of the commissioner, the best interests of the state will be served. Either the district of residence or the district named as the attendance area may appeal the commissioner's decision to the state board. The decision of the state board will be final.

(c) An attendance area directive shall include grade levels and any specific agreements pertaining to educational programs offered by the involved schools.

(d) Repealed 12/13/87.

(Eff. 7/9/72, Register 42; am 9/3/76, Register 59; am 1/15/87, Register 101; am 12/13/87, Register 104)

Authority: AS 14.07.020 AS 14.14.110
AS 14.07.060 AS 14.17.200

4 AAC 06.030. SCHOOL CONSTRUCTION. Repealed 3/1/78.

4 AAC 06.040. PHYSICAL EXAMINATION OF SCHOOL CHILDREN. Repealed 9/2/82.

4 AAC 06.045. TRAINING REQUIRED. (a) Within one year after August 29, 1985, a school district shall provide its employees with training to detect and report child abuse and neglect, and sexual abuse of children.

(b) After the one-year period, described in (a) of this section, a school district must provide the training required by (a) of this section to a new employee of the district within 45 days after the first day the employee begins to work.

(c) The training required by this section must be provided to the persons required by AS 47.17.020 to report child abuse or neglect, and to other persons as determined by the district. (Eff. 8/29/85, Register 95)

Authority: AS 14.07.020(a)
AS 14.07.060

4 AAC 06.050. PHYSICAL EXAMINATIONS OF SCHOOL EMPLOYEES. (a) Physical examinations shall be required for all regularly employed teachers, other employees, custodians, and clerical personnel, except those whose work does not bring them into close

20 AAC 10.020(b) is amended by adding a new paragraph to read:

(8) shall not engage in physical abuse of a student or sexual conduct with a student and shall report knowledge of such an act by an educator to the Commission. (Eff. / / ; Register)

Authority: AS 14.20.460(1)

20 AAC 10 is amended by adding a new section to read:

20 AAC 10.400 DEFINITIONS. As used in this chapter

(1) "sexual conduct" includes "sexual penetration" and "sexual contact" as those terms are defined in AS 11.81.900. (Eff. / / ; Register)

(2) "physical abuse" is an action beyond reasonable discipline that results in an adverse physical effect upon a student. (Eff. / / ; Register)

Authority: AS 14.20.460(1)

diction the institution is operated, or whose department or agency is charged with performing the service. (§ 3 ch 88 SLA 1960)

Sec. 47.15.040. Financial arrangements. The compact administrator, subject to the approval of the commissioner of administration, may make or arrange for the payments necessary to discharge the financial obligations imposed upon this state by the compact or by a supplementary agreement made under the compact. (§ 4 ch 88 SLA 1960)

Sec. 47.15.050. Appointment of attorney or guardian. Appointment of an attorney or guardian ad litem under the provisions of this compact shall be made in accordance with AS 25.24.310 or AS 44.21.400 — 44.21.440. (§ 5 ch 88 SLA 1960; am § 55 ch 94 SLA 1980; am § 16 ch 55 SLA 1984)

Cross references. — See Admin. R. 13, Alaska Rules of Court.

Effect of amendments. — The 1984 amendment rewrote this section, which formerly read "A council or guardian ad

litem appointed under the provisions of this compact may be paid as provided in the Rules Governing the Administration of all Courts."

Sec. 47.15.060. Enforcement. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which are within their respective jurisdiction. (§ 6 ch 88 SLA 1960)

Sec. 47.15.070. Additional procedures not precluded. In addition to the procedures provided in articles IV and VI of the compact for the return of a runaway juvenile, the particular states, the juvenile or the juvenile's parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile. (§ 7 ch 88 SLA 1960)

Sec. 47.15.080. Short title. This chapter may be cited as the Uniform Interstate Compact on Juveniles. (§ 8 ch 88 SLA 1960)

Chapter 17. Child Protection.

Section

- 10. Purpose
- 20. Persons required to report
- 25. Duties of public authorities
- 30. Action on reports; termination of parental rights
- 40. Central registry; confidentiality

Section

- 50. Immunity
- 60. Evidence not privileged
- 64. Photographs and x-rays
- 68. Penalty for failure to report
- 70. Definitions

Sec. 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by

other than accidental means, of harm through physical abuse or neglect or sexual abuse or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further 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. (§ 1 ch 100 SLA 1971; am § 3 ch 104 SLA 1982)

Effect of amendments. — The 1982 amendment, in the first sentence, substituted "neglect or sexual abuse or sexual exploitation" for "neglect requiring the attention of a practitioner of the healing arts" and inserted "of the healing arts."

NOTES TO DECISIONS

Use of reports. — The reports of child abuse and neglect required by this section are intended for use in child protection proceedings and are not intended for use in criminal proceedings. *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984). See also notes to AS 47.17.060, under catchline "Judicial proceeding."

Collateral references. — 42 Am. Jur. 2d, *Infants*, §§ 16, 17.
43 C.J.S., *Infants*, §§ 36 to 39, 70 to 75, 94.

Medical attention, criminal neglect by failure to provide, 12 ALR2d 1047.

Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR3d 904.

Validity and construction of penal statute prohibiting child abuse, 1 ALR4th 38.

Sec. 47.17.020. Persons required to report. (a) The following persons who, in the performance of their professional duties, have cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the department:

- (1) practitioners of the healing arts;
- (2) school teachers and school administrative staff members;
- (3) social workers;
- (4) peace officers, and officers of the Department of Corrections;
- (5) administrative officers of institutions;
- (6) licensed day care providers and paid staff;
- (7) licensed foster care providers.

(b) This section does not prohibit the named persons from reporting cases which have come to their attention in their nonprofessional capacities nor does it prohibit any other person from reporting a child's harm which the person has cause to believe is a result of abuse or neglect. These reports shall be made to the nearest office of the department.

Sec. 47.17.010. Purpose.

NOTES TO DECISIONS

Cited in *Gerlach v. State*, 699 P.2d 358
(Alaska Ct. App. 1985).

Sec. 47.17.020. Persons required to report. (a) The following persons who, in the performance of their occupational duties, have cause to believe that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department:

- (1) practitioners of the healing arts;
- (2) school teachers and school administrative staff members of public and private schools;
- (3) social workers;
- (4) peace officers, and officers of the Department of Corrections;
- (5) administrative officers of institutions;
- (6) child care providers;
- (7) paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.900.

(b) This section does not prohibit the named persons from reporting cases that have come to their attention in their nonoccupational capacities, nor does it prohibit any other person from reporting a child's harm that the person has cause to believe is a result of child abuse or neglect. These reports shall be made to the nearest office of the department.

(c) If the person making a report of harm under this section cannot reasonably contact the nearest office of the department and immediate action is necessary for the well-being of the child, the person shall make the report to a peace officer. The peace officer shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest office of the department.

(d) This section does not require a religious healing practitioner to report as neglect of a child the failure to provide medical attention to the 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.

(e) A person listed in (a) of this section, who in the performance of the person's occupational duties has cause to believe that a child has suffered harm as a result of abuse, shall promptly report the harm to the nearest law enforcement agency if the person making the report (1) has cause to believe that the harm was caused by a person who is not responsible for the child's welfare; or (2) is unable to determine (A) who caused the harm to the child; or (B) whether the person who is

believed to have caused the harm has responsibility for the child's welfare. If a person making a report under this subsection cannot reasonably contact the nearest law enforcement agency, and immediate action appears necessary for the well-being of the child, the person shall make the report to the nearest office of the department. The department shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest law enforcement agency. In this subsection, "abuse" means the physical injury, sexual abuse, sexual exploitation, or maltreatment of a child by any person under circumstances that indicate that the child's health or welfare is harmed or threatened. (§ 1 ch 100 SLA 1971; am §§ 4, 5 ch 104 SLA 1982; am E.O. No. 55, § 42 (1984); am §§ 8 — 10 ch 39 SLA 1985; am § 2 ch 114 SLA 1986)

Effect of amendments. — The 1985 amendment rewrote subsections (a) and (b) and added subsection (d). The 1986 amendment added subsection (c).

Sec. 47.17.022. Training. (a) A person employed by the state who is required under this chapter to report abuse or neglect of children shall receive training on the recognition and reporting of child abuse and neglect.

(b) Each department of the state that employs persons required to report abuse or neglect of children shall provide

(1) initial training required by this section to each new employee during the employee's first six months of employment, and to any existing employee who has not received equivalent training; and

(2) appropriate in-service training required by this section as determined by the department.

(c) Each department that must comply with (b) of this section shall develop a training curriculum that acquaints its employees with

(1) laws relating to child abuse and neglect;

(2) techniques for recognition and detection of child abuse and neglect;

(3) agencies and organizations within the state that offer aid or shelter to victims and the families of victims of child abuse or neglect; and

(4) procedures for required notification of suspected abuse or neglect.

(d) Each department that must comply with (b) of this section shall file a current copy of its training curriculum and materials, with the Council on Domestic Violence and Sexual Assault. A department may seek the technical assistance of the council or the Department of Health and Social Services in the development of its training program. (§ 1 ch 1 SLA 1986)

Sec. 47.17.023. Reports regarding child pornography. A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reason to believe that the matter visually depicts a child engaged in conduct described in AS 11.41.455(a) shall promptly report this to the nearest law enforcement agency, and provide the law enforcement agency with all information known about the nature and origin of the matter. (§ 11 ch 39 SLA 1985)

Sec. 47.17.025. Duties of public authorities.

NOTES TO DECISIONS

Reliance on sexual abuse report for purposes of initiating prosecution is not prohibited by this section. *Strehl v. State*, 722 P.2d 226 (Alaska Ct. App. 1986).

Summary judgment for failure to state a claim was properly granted where the only allegation that was di-

rected at the intake officers of the Division of Family and Youth Services was that they participated in reporting an anonymous "hot line" tip of sexual abuse, as such reporting of all tips is mandated by this section. *Bauman v. State*, 768 P.2d 1097 (Alaska 1989).

Sec. 47.17.030. Action on reports; termination of parental rights.

NOTES TO DECISIONS

Cited in *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Sec. 47.17.040. Central registry; confidentiality.

NOTES TO DECISIONS

Cited in *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Sec. 47.17.060. Evidence not privileged.

NOTES TO DECISIONS

"Judicial proceeding". The phrase "judicial proceeding related to a report made under this chapter" in this section

only refers to child protection proceedings under AS 47.10.010. *State v. Wetherhorn*, 683 P.2d 269 (Alaska Ct. App. 1984).

Sec. 47.17.064. Photographs and x-rays. (a) The department or a practitioner of the healing arts may, without the permission of the parents, guardian, or custodian, take the following actions with regard to a child believed to have suffered physical harm as a result of child abuse or neglect:

(c) If the person making a report of harm under this section cannot reasonably contact the nearest office of the department and immediate action is necessary for the well-being of the child, the person shall make the report to a peace officer. The peace officer shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest office of the department. (§ 1 ch 100 SLA 1971; am §§ 4, 5 ch 104 SLA 1982; am E.O. No. 55, § 42 (1984))

Effect of amendments. — The 1982 amendment, in subsection (a), added "and school administrative staff members" at the end of paragraph (2) and added paragraphs (6) and (7). The 1984 amendment substituted "Department of Corrections" for "division of corrections" in paragraph (4) of subsection (a).

NOTES TO DECISIONS

Cited in *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Collateral references. — Civil liability report battered child syndrome, 97 ALR3d of physician for failure to diagnose or 338.

Sec. 47.17.025. Duties of public authorities. (a) A law enforcement agency shall immediately notify the department of the receipt of a report of harm to a child from abuse. Upon receipt from any source of a report of harm to a child from abuse, the department shall notify the Department of Law and investigate the report and, within 72 hours of the receipt of the report, shall provide a written report of its investigation of the harm to a child from abuse to the Department of Law for review.

(b) The report of harm to a child from abuse required from the department by this section shall include:

- (1) the names and addresses of the child and the child's parent or other persons responsible for the child's care, if known;
- (2) the age and sex of the child;
- (3) the nature and extent of the harm to the child from abuse;
- (4) the name and age and address of the person known or believed to be responsible for the harm to the child from abuse, if known;
- (5) information that the department believes may be helpful in establishing the identity of the person believed to have caused the harm to the child from abuse. (§ 6 ch 104 SLA 1982)

NOTES TO DECISIONS

Applied in *State v. R.H.*, Ct. App. Op.
No. 375 (File No. 7768), P.2d
(1984).

Sec. 47.17.030. Action on reports; termination of parental rights. (a) If a child, concerning whom a report of harm is made, is believed to reside within the boundaries of a local government exercising health functions for the area in which the child is believed to reside, the department may, upon receipt of the report, refer the matter to the appropriate health or social services agency of that local government. For cases not referred to an agency of a local government, the department shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child.

(b) A local government health or social services agency receiving a report of harm shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child. In addition, the agency receiving a report of harm shall forward a copy of its report of the investigation, including information the department requires by regulation, to the department.

(c) Action shall be taken regardless of whether the identity of the person making the report of harm is known.

(d) Before the department or a local government health or social services agency may seek the termination of parental rights, under AS 47.10.080(c)(3), it shall offer protective social services and pursue all other reasonable means of protecting the child.

(e) In all actions taken by the department or a health and social services agency of a local government under this chapter that result in a judicial proceeding, the child shall be represented by a guardian ad litem in that proceeding. Appointment of a guardian ad litem shall be made in accordance with AS 25.24.310. (§ 1 ch 100 SLA 1971; am § 1 ch 222 SLA 1976; am § 17 ch 55 SLA 1984)

Effect of amendments. — The 1984 amendment added the second sentence in subsection (e).

NOTES TO DECISIONS

Effect of subsection (d). — Subsection (d) of this section is clearly intended to prevent further abuse by providing protective services to the child, and it does not place a mandatory duty on the state to pro-

vide counseling and other support services to the family prior to seeking termination of parental rights. *E.A. v. State*, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Applied in *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Quoted in *Granato v. Occhipinti*, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Collateral references. — 43 C.J.S., Infants, §§ 71, 72.
 Physical abuse of child by parent as ground for termination of parent's right to child, 53 ALR3d 605.
 Sexual abuse of child by parent as

ground for termination of parent's right to child, 58 ALR3d 1074.
 Validity of state statute providing for termination of parental rights, 22 ALR4th 774.

Sec. 47.17.040. Central registry; confidentiality. (a) The department shall maintain a central registry of all investigation reports but not of the reports of harm.

(b) Investigation reports and reports of harm filed under this chapter are considered confidential and are not subject to public inspection and copying under AS 09.25.110 and 09.25.120. However, in accordance with department regulations, investigation reports may be used by appropriate governmental agencies with child-protection functions, inside and outside Alaska, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody. A person, not acting in accordance with department regulations, who makes public information contained in confidential reports is guilty of a misdemeanor. (§ 1 ch 100 SLA 1971; am § 2 ch 222 SLA 1976)

NOTES TO DECISIONS

Psychotherapist/patient privilege. — Child abuse reports are not open to the public, and are therefore not within A.R.E.R. 504(d)(5), which provides that there is no physician or psychotherapist/patient privilege "as to information that the physician or

psychotherapist is required to report to a public employee or as to information required to be recorded in a public office, if such report or record is open to public inspection." *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Sec. 47.17.050. Immunity. A person who, in good faith, makes a report under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability which might otherwise be incurred or imposed. (§ 1 ch 100 SLA 1971)

Sec. 47.17.060. Evidence not privileged. Neither the physician-patient nor the husband-wife privilege is a ground for excluding evidence regarding a child's harm, or its cause, in a judicial proceeding related to a report made under this chapter. (§ 1 ch 100 SLA 1971)

§ 47.17.023 WELFARE, SOCIAL SERVICES & INSTITUTIONS § 47.17.064

~~Sec. 47.17.023. Reports regarding child pornography. A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reason to believe that the matter visually depicts a child engaged in conduct described in AS 11.41.455(a) shall promptly report this to the nearest law enforcement agency, and provide the law enforcement agency with all information known about the nature and origin of the matter. (§ 11 ch 39 SLA 1985)~~

~~Sec. 47.17.025. Duties of public authorities.~~

~~NOTES TO DECISIONS~~

~~Reliance on sexual abuse report for purposes of initiating prosecution is not prohibited by this section. Strehl v. State, 722 P.2d 226 (Alaska Ct. App. 1986).~~

~~Summary judgment for failure to state a claim was properly granted where the only allegation that was di-~~

~~rected at the intake officers of the Division of Family and Youth Services was that they participated in reporting an anonymous "hot line" tip of sexual abuse, as such reporting of all tips is mandated by this section. Bauman v. State, 768 P.2d 1097 (Alaska 1989).~~

~~Sec. 47.17.030. Action on reports; termination of parental rights.~~

~~NOTES TO DECISIONS~~

~~Cited in Gerlach v. State, 699 P.2d 358 (Alaska Ct. App. 1985).~~

~~Sec. 47.17.040. Central registry; confidentiality.~~

~~NOTES TO DECISIONS~~

~~Cited in Gerlach v. State, 699 P.2d 358 (Alaska Ct. App. 1985).~~

~~Sec. 47.17.060. Evidence not privileged.~~

~~NOTES TO DECISIONS~~

~~"Judicial proceeding". The phrase "judicial proceeding related to a report made under this chapter" in this section~~

~~only refers to child protection proceedings under AS 47.10.010. State v. Wetherhorn, 683 P.2d 269 (Alaska Ct. App. 1984).~~

~~Sec. 47.17.064. Photographs and x-rays. (a) The department or a practitioner of the healing arts may, without the permission of the parents, guardian, or custodian, take the following actions with regard to a child believed to have suffered physical harm as a result of child abuse or neglect:~~

(1) take or have taken photographs of the areas of trauma visible on the child; and

(2) if medically indicated, have a radiological examination of the child performed by a person who is licensed to administer a radiological examination.

(b) The department or a practitioner of the healing arts shall notify the parents, guardian, or custodian of a child as soon as possible after taking action under (a) of this section with regard to the child. (§ 7 ch 104 SLA 1982; am § 12 ch 39 SLA 1985)

Effect of amendments. — The 1985 amendment rewrote this section.

Sec. 47.17.068. Penalty for failure to report. A person who knowingly fails or refuses to report as required under AS 47.17.020 or 47.17.023 is guilty of a class B misdemeanor. (§ 7 ch 104 SLA 1982; am § 13 ch 39 SLA 1985)

Effect of amendments. — The 1985 amendment rewrote this section.

Sec. 47.17.069. Protective injunctions. (a) A court may enjoin or limit a person from contact with a child if the attorney general establishes by a preponderance of the evidence that the person

(1) has sexually abused a child;

(2) has physically abused a child; or

(3) has engaged in conduct that constitutes a clear and present danger to the mental, emotional, or physical welfare of a child.

(b) This section does not limit the authority of the attorney general or the court to act to protect a child. (§ 14 ch 39 SLA 1985)

Sec. 47.17.070. Definitions. In this chapter

(1) "child" means a person under 18 years of age;

(2) "child abuse or neglect" means the physical injury or neglect, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

(3) "child care provider" means an adult individual, or an employee of an organization, who provides care and supervision to a child for compensation;

(4) "department" means the Department of Health and Social Services;

(5) "institution" means a private or public hospital or other facility providing medical diagnosis, treatment, or care;

(6) "neglect" means the failure to provide necessary food, care, clothing, shelter, or medical attention for a child;

(7) "organization" means a group or entity that provides care and supervision for compensation to a child not related to the caregiver, and includes a child care facility, pre-elementary school, head start center, child foster home, residential child care facility, recreation program, children's camp, and children's club;

(8) "person responsible for the child's welfare" means the child's parent, guardian, foster parent, a person responsible for the child's care at the time of the alleged child abuse or neglect, or a person responsible for the child's welfare in a public or private residential agency or institution;

(9) "practitioner of the healing arts" includes chiropractors, dental hygienists, dentists, health aides, nurses, nurse practitioners, occupational therapists, occupational therapy assistants, optometrists, osteopaths, naturopaths, physical therapists, physical therapy assistants, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55, religious healing practitioners, and surgeons;

(10) "sexual exploitation" includes

(A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100 — 11.66.150, by a person responsible for the child's welfare;

(B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a), by a person responsible for the child's welfare. (§ 1 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 3 ch 222 SLA 1976; am §§ 56, 57 ch 94 SLA 1980; am §§ 8, 9 ch 104 SLA 1982; am §§ 15, 16 ch 39 SLA 1985; am § 8 ch 56 SLA 1986; am § 3 ch 114 SLA 1986; am § 14 ch 131 SLA 1986; am § 31 ch 2 FSSLA 1987)

Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms.

Effect of amendments. — The 1985 amendment rewrote paragraph (9) and added paragraphs (3), (7), and (8).

The first 1986 amendment in paragraph (9) inserted "naturopaths."

The second 1986 amendment rewrote paragraph (10).

The third 1986 amendment inserted "audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55," near the end of paragraph (9).

The 1987 amendment, effective January 1, 1988, in paragraph (9) inserted "occupational therapists, occupational therapy assistants" and "physical therapy assistants."

...to chapter 6, which deals with sibling incest. Few clinicians can match the expertise of Dr. A. Nicholas Groth, who is well known for his work with incest offenders and has made another valuable contribution in chapter 8, which deals with the incest offender. Natalie T. Dana, also a former child-protective-services worker, has contributed her treatment experience with mothers of sexually abused children to chapter 7. An overview of family treatment is presented in chapter 9. Connie E. Naitove, a leading proponent of the arts therapies, has a very special contribution in chapter 10, which describes the work of Robert Stember, a pioneer in using art therapy to help sexually abused children. In chapter 11, Lieutenant Patricia A. Graves has contributed the law-enforcement perspective on child sexual abuse—another essential element in intervention. Chapter 12 presents my own perspective on multidisciplinary team intervention based on five years of child-protection team experience. In chapter 13, Karen W. Bander, Edith Fein, and Gerrie Bishop discuss program evaluation and present data collected from the child-sexual-abuse intervention program in which most of us participated. The "how to" of starting a community child-sexual-abuse program and recommendations for staffing are covered in chapter 14.

To reiterate, professional readers of this book must judge for themselves the credibility of the expertise contained herein. No one is likely to read a handbook on child sexual abuse unless he or she is genuinely concerned about the problem and wishes to expand his or her knowledge base in the field of helping clients. Undoubtedly, the state of the art will change and we must recognize this fact. In any event, it is the responsibility of all professionals to make a critical assessment of proffered information and advice and to adapt what is learned to their own case experience. I salute you for your interest, concern, and critical appraisal. Keep them active as knowledge and advance in the years to come!

1

A Conceptual Framework for Child Sexual Abuse

*Suzanne M. Sgrol,
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and Frances Sarnacki Porter*

Clinical intervention in child sexual abuse requires a basic understanding of the phenomenon—what it is, how it happens, when it is likely to occur and why, what circumstances determine disclosure of the activity, how participants may be expected to react, and so forth.

Effective investigation, validation, child-protection assessment, crisis intervention, planned intervention, and treatment all depend on a working knowledge of the mechanics and dynamics. This chapter will present a basic conceptual framework for child sexual abuse.

Definitions

What Is Child Sexual Abuse?

Child sexual abuse is a sexual act imposed on a child who lacks emotional, maturational, and cognitive development. The ability to lure a child into a sexual relationship is based upon the all-powerful and dominant position of the adult or older adolescent perpetrator, which is in sharp contrast to the child's age, dependency, and subordinate position. Authority and power enable the perpetrator, implicitly or directly, to coerce the child into sexual compliance.

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Frances Sarnacki Porter, A.C.S.W., presently does program planning and policy development for the Connecticut Department of Children and Youth Services and from 1977–1979 was a staff member in its Sexual Trauma Treatment Program, working predominantly with sexually victimized children and adolescents, and serving as coleader of an adolescent-therapy group. Mrs. Porter provides training and consultation for child-sexual-abuse workers and treats adult and child victims in a private clinical practice.

What Is Incest?

Incest

Defined from a psychosocial perspective, incestuous child sexual abuse encompasses any form of sexual activity between a child and a parent or stepparent or extended family member (for example, grandparent, aunt, or uncle) or surrogate parent figure (for example, common-law spouse or foster parent). Incest is variously defined by statute as specific sexual acts (usually involving some type of intercourse) performed between persons who are prohibited to marry. In general, persons are not permitted to marry their parents, grandparents, aunts, uncles, siblings, or steprelatives. The crucial psychosocial dynamic is the familial relationship between the incest participants. This is especially important when the incestuous sexual relationship involves a child. The presence or absence of a blood relationship between incest participants is of far less significance than the kinship roles they occupy.

Mechanics

A Spectrum of Sexually Abusive Behaviors

Sexual activity between an adult and a child may range from exhibitionism to intercourse, often progressing through the following spectrum of behavior:

1. **Nudity:** The adult parades nude around the house in front of all or some of the family members.
Stepfather paraded around the house nude in front of his 16-year-old stepdaughter despite protests from her mother that his behavior was provocative and seductive. He claimed that the mother had a "dirty mind," but later on the child revealed the secret of a 3-year sexual relationship with the stepfather.
2. **Disrobing:** The adult disrobes in front of the child. This generally occurs when the child and the adult are alone.
Twice a week, while viewing television, father allowed his bathrobe to slip open, which exposed his naked body to his preadolescent daughter while her mother was attending a regularly scheduled meeting out of the home.
3. **Genital Exposure:** The adult exposes his or her genitals to the child. Here the perpetrator directs the child's attention to the genitals.
Father came into his 11-year-old daughter's bedroom where he opened the front of his pants. He exposed his penis to her and requested that she "rub it."

4. **Observation of the Child:** The adult surreptitiously or overtly watches the child undress, bathe, excrete, urinate.
Several times a week over a period of 8 to 10 years, the parents of an adolescent son and daughter gave their children enemas and then watched them excrete.
5. **Kissing:** The adult kisses the child in a lingering and intimate way. This type of kissing should be reserved for adults. Even very young children sense the inappropriateness of this behavior and may experience discomfort about it.
During the interview, the adolescent reported to the clinician, "my father tried to French kiss me."
6. **Fondling:** The adult fondles the child's breasts, abdomen, genital area, inner thighs, or buttocks. The child may similarly fondle the adult at his or her request.
"When I was eight years old, I was sleeping in my bedroom and woke up because my father was rubbing me all over."
7. **Masturbation:** The adult masturbates while the child observes; the adult observes the child masturbating; the adult and child observe each other while masturbating themselves; or the adult and child masturbate each other (mutual masturbation).
A 16-year-old adolescent discussed her 9-year history of sexual abuse. Several times a week she masturbated her stepfather to ejaculation. Although he attempted mutual masturbation, she refused.
8. **Fellatio:** The adult has the child fellate him or the adult will fellate the child. This type of oral-genital contact requires the child to take a male perpetrator's penis into his or her mouth or the adult to take the male child's penis into his or her mouth.
Nine-year old Jimmy told his mother, "Uncle Mark made me suck on his thing" [penis] and then he ". . . suck on mine."
9. **Cunnilingus:** This type of oral-genital contact requires the child to place mouth and tongue on the vulva or in the vaginal area of an adult female or the adult will place his or her mouth on the vulva or in the vaginal area of the female child.
The police officer asked 6-year old Tommy to draw a picture of his mother and place X's where she made him kiss her. The child marked X's on the stomach, chest, and "pussy" (child's own word), making the largest X in the genital area.
10. **Digital (finger) Penetration of the Anus or Rectal Opening:** This involves penetration of the anus or rectal opening by a finger. Perpetrators may thrust inanimate objects such as crayons or pencils inside as well. Preadolescent children often report a fear about "things being inside them" and

"broke

Christopher, a small child, revealed to his therapist that his mother had put her fingers into his rectum. He drew a picture describing this.

11. *Penile Penetration of the Anus or Rectal Opening*: This involves penetration of the anus or rectal opening by a male perpetrator's penis. A child can often be rectally penetrated without injury due to the flexibility of child's rectal opening.

Fourteen-year old Steve was sexually abused by his father on numerous occasions. This included the father penetrating Steve's rectum with his penis.

12. *Digital (finger) Penetration of the Vagina*: This involves penetration of the vagina by a finger. Inanimate objects may also be inserted.

When questioned by the clinician, four-year-old Barbara said that mother's boyfriend put ". . . a pen in my pookie." (vagina)

13. *Penile Penetration of the Vagina*: This involves penetration of the vagina by a male perpetrator's penis.

Thirteen-year-old Jennifer was taken to a doctor by her mother for an examination due to several missed menstrual cycles. Upon examination it was discovered that Jennifer was five months pregnant. She then disclosed that father had "been having sex with me."

14. *"Dry Intercourse"*: This is a slang term describing an interaction in which the adult rubs his penis against the child's genital-rectal area or inner thighs or buttocks.

Sally's mother told the clinician that her husband was "dry screwing" her daughter. He rubbed his penis against her buttocks but did not penetrate.

The typical scenario is a progression from less intimate types of sexual activity (such as exposure and self-masturbation) to actual body contact (such as fondling), and then to some form of penetration. Oral penetration may be expected to occur early in this progression, which is often followed by digital penetration of the anus or vagina. Ejaculation by a male perpetrator, sometimes against the child's body can occur at any time in this progression.

Dynamics

The dynamics of sexual encounters between adults and children usually fall within a predictable pattern. This is particularly true of those cases of intrafamily child sexual abuse that come to light and are reported. The activity usually occurs in five separate phases: the engagement phase; the sexual interaction phase; the secrecy phase; the disclosure phase; and often a suppression phase following disclosure.

Engagement Phase

Access and Opportunity. Child sexual abuse is not a capricious, unplanned, unpredictable phenomenon. For the most part, the perpetrator is someone who is known to the child and who has ready access to the child. Opportunity to engage in sexual activity is essential and can usually be equated with privacy. The perpetrator and the child need to be alone with each other—in a room, in a house, or in some secluded place out of doors. Although these circumstances of access and opportunity may be accidental on their first encounter, the perpetrator can be expected to watch for, or to create, opportunities for private interaction with the child thereafter.

Relationship of Participants. Who is the perpetrator likely to be? Almost always it is someone in the child's own family who has access and opportunity by residing in the home or family circle. If not a relative, the perpetrator may be someone given access to the child by the parents or guardian—again someone within the child's daily sphere of activities. Where do we allow little children to be? And with whom? We let them be at home or in the homes of relatives, friends, and neighbors. We also let them go to school and permit them to engage in age-appropriate group activity—boy scouts, girl scouts, clubs, church-related activity, and so forth. Children outside their own homes are usually under the authority of adults who temporarily occupy caretaking or guardianship roles. Thus the dynamics of child sexual abuse most often involve a known adult who is in a legitimate power position over a child and who exploits accepted societal patterns of dominance and authority to engage the child in sexual activity. It is impossible to overemphasize the significance of the exploitation and misuse of accepted power relationships when assessing the impact of sexual abuse on the child.

Inducements. How does the perpetrator engage the child? How does he or she get the child to participate in some type of sexual behavior? Usually in a low-key nonforcible fashion, possibly by presenting the activity as a game or something that is "special" and fun. This always entails misrepresentation of moral standards, either verbally or implicitly (Burgess and Holmstrom, 1975). The power and authority of adulthood conveys to the child that the proposed behavior is acceptable and sanctioned. The perpetrator usually knows something about what children like and how to get children to fall in with some activity. Perhaps rewards or bribes will be offered. More often than not, the opportunity to engage in activity with a known and favored adult is sufficient incentive for the child to participate.

The successful perpetrator will manage to be coercive in a subtle fashion. The more adept the perpetrator, the less likelihood that threats will be used to induce compliance. Although physical force is rarely used to engage a child in

the intrafamily situation, it is important, nevertheless, to assess the context of the overall family dynamics in which the sexual abuse occurs. In many of these families, force or threat of use of force are the most common mode of interaction between family members. When sexual abuse of a child occurs within the context of the violent family, implied force or threat of use of force if the child fails to comply may be an important aspect of the engagement process.

Sexual Interaction Phase

A list of sexually abusive behaviors has already been presented. The perpetrator exposed himself or herself, wholly or in part. The perpetrator then persuades the child to undress partially or completely and to expose his or her genitals. Then they look at each other. What comes next? On the first encounter, perhaps nothing. They may look at each other and stop there.

After exposure, what comes next? The activity may progress to autostimulation or masturbation. The perpetrator masturbates himself or herself and encourages the child to imitate the behavior. They may masturbate themselves at the same time or at different times in each other's presence. They may still never touch each other.

The activity may, however, progress to fondling. The perpetrator may fondle the child, touching him or her in a gentle stroking fashion. The fondling initially may involve the entire body but eventually focuses on body parts with erotic significance—breasts, buttocks, genitals, lower abdomen, inner thighs. The perpetrator may persuade the child to mimic this activity and fondle him or her.

Fondling is often accompanied by kissing. This can be generalized or limited to kissing on the mouth. The perpetrator may introduce the child to so-called French kissing, exploration of the other person's open mouth with the tongue.

The activity may also progress to penetration of the child's body in a variety of ways. Oral penetration occurs frequently since a child's mouth is the opening most amenable to penetration. A male perpetrator will persuade the child to take the perpetrator's penis into the child's mouth. Often the child will be invited to lick or suck the penis. This activity is termed fellatio. Alternately, a male or female perpetrator may fellate a male child, taking the child's penis into the perpetrator's mouth.

If another area of the child's body is to be penetrated, the next most likely opening is the anal or rectal opening. Penetration of the anal or rectal opening usually begins with finger penetration. It may progress to penile penetration if the perpetrator is a male. Or there may be penetration of the anal or rectal opening by an object. The essential elements are the size of the child, his or her previous sexual experience, and the degree of force used. If the child is carefully

prepared and not hurt, an extensive level of anal or rectal penetration can occur without residual signs of trauma or abnormal dilation.

Vaginal penetration is, of course, limited to female children. All of the previous sexual behaviors could occur equally as readily with male or female victims. The perpetrator usually penetrates the vulvo-vaginal opening with a finger tip. A thin membrane of tissue, the hymen, extends over the vaginal opening. This usually is a ring of tissue with a central opening. Over time, the opening in the hymenal ring will enlarge until an adult's finger can be inserted entirely. Progressive dilatation will permit penile penetration by the male perpetrator. Penetration of the vulvo-vaginal region by the perpetrator's lips and tongue is called cunnilingus. Again, the extent of penetration will depend on the degree of dilatation. If the dilatation is gentle and occurs over time, it is unlikely to be painful or result in trauma. The only physical evidence that is likely to result is absence of the hymenal ring and a degree of vaginal dilation that is inappropriate for the age of the child.

Sometimes the male perpetrator will not attempt vulvo-vaginal penetration but instead will rub his penis against the genito-rectal region of the female child. This behavior is sometimes called "dry intercourse." Girls who are sexually inexperienced are likely to confuse dry intercourse with penile penetration of the vagina. These girls will sometimes tell investigators that vaginal penetration has occurred when, in fact, it did not. The child's mistake may later undermine her credibility if a physical examination fails to elicit signs of vaginal penetration.

Any of these sexual behaviors may be accompanied by ejaculation, sometimes into a body opening.

Although no one should expect a slavish adherence to this list of sexual behaviors in the exact order described, the engagement phase does encompass a progression of sexual activity. The progression of exposure to fondling to some form of penetration is very predictable. The interviewer can expect to elicit a similar progression of sexual activity in most intrafamily cases.

Secrecy Phase

After engaging the child in some form of sexual behavior, the activity then enters a secrecy phase (Burgess and Holmstrom, 1975). The primary task for the perpetrator after the sexual behavior has taken place is to impose secrecy. Why? Secrecy eliminates accountability—the perpetrator is unlikely to wish to be caught and held responsible for the sexual abuse. Secrecy also enables repetition of the behavior. The perpetrator, in all likelihood, is sexually abusing the child in order to meet nonsexual needs (Groth and Burgess, 1977). Desiring to feel important, powerful, dominant, knowledgeable, admired, wanted—all of these needs are likely to be recurrent. If the perpetrator can satisfy these

needs easily . . . a readily accessible child who is unlikely to be very demanding and without the necessity of addressing the mutuality required by an adult relationship, he or she may be powerfully motivated to continue the behavior. Thus secrecy is essential. The perpetrator must persuade or pressure the child to keep their activity a secret over time.

The child usually *does* keep the secret. Some children never tell anyone. Others keep the secret throughout their childhood and only disclose the sexual behavior many years later. Why? Rewards have probably been offered and given. More important, the child may keep the secret because he or she enjoyed the activity and wants the behavior to continue. This premature introduction to sexuality by a known and valued perpetrator, a person who is a "significant other" for the child, may feel good on several levels—pleasurable sexual stimulation, enhancement of self-esteem, feeling important to another person in a special grown-up fashion, and so forth. Although not especially pleasing to contemplate, to deny that the pleasurable aspects of the sexual behavior may be self-reinforcing for the child, is to ignore the obvious and neglect to consider one of the most important dynamics.

Threats may have been used to reinforce secrecy—in general, the less adept the perpetrator, the more likely he or she is to threaten the child. If threats were used, they should be carefully assessed for the degree of physical violence proposed, if any. Of course, many compelling threats made to a child do not include physical violence. For example, the threat of anger by a third party ("If you tell mommy, she'll be awfully mad!"). Separation is a potent threat, especially for a young child. A perpetrator might say to the child, "If you tell anyone, mommy may divorce me or I may be sent to jail." A threat of personal separation for the child may be particularly anxiety-provoking; for example, "If you tell anyone, they'll send you away." Or the threat may involve self-harm by the perpetrator ("If you tell anybody, I'll kill myself."). A variation might involve threat of harm to someone else ("If you tell anybody, I'll hurt your sister."). Finally the threat may entail violence against the child, ("If you tell anybody, I'll hurt you or kill you."). In assessing these threats, two elements deserve particular attention: [ⓐ] the degree of physical violence involved and the extent to which any part of the threat was carried out.

The issue of implied threat by virtue of the overall context of family dynamics again deserves mention. Is this a family whose members routinely interact by use of physical force or threat of use of force against each other? If so, threat of forcible reprisal if the child fails to comply with the request (or order) for secrecy may well be implied without ever being verbalized. For some children, the sexual activity may be virtually the only interaction they ever have with an adult family member in the absence of overt physical force or threat of use of force. This sexual attention is frequently the only form of affectionate physical intimacy experienced by the child in the home. Although the mother may provide the child with discipline and physical necessities, there is often an

absence of affection and emotional bonding between them. This void may be partially filled by the perpetrator by kissing, fondling, and other sexual activity.

For some combination of the foregoing reasons, the secrecy phase often lasts for months and years, especially in intrafamily child sexual abuse. The sexual behavior progresses over time, usually in the direction of greater intimacy. As the child grows older there may be a parallel increase in the frequency of incestuous sexual activity. It is helpful to think of child sexual abuse on a continuum over time. The chances are very great that the incident of sexual behavior that occurred at the time a case came to attention is unlikely to be the first incident of sexual activity for that child. Many situations of child sexual abuse remain secret forever. By definition, for the case to be reported, someone or something must interrupt the secrecy phase.

Disclosure Phase

There are two types of disclosure of child sexual abuse: accidental and purposeful. Each type of disclosure will be described.

Accidental Disclosure. In this type of disclosure, the secret was revealed accidentally, because of external circumstances. The key factor here is that none of the participants decided to tell the secret. Instead the secret was revealed in one of the following ways.

1. Observation by a third party. Someone else observes the participants and tells someone else.

Betty walked into her parents' bedroom looking for her sister. As she entered, Betty saw her father fondling her sister's buttocks. Betty quickly reported this to her mother.

2. Physical injury to the child. When this occurs it is usually not intentional. However, the signs of the injury then draw outside attention to the sexual behavior.

Five-year-old Carmen was taken to the hospital emergency room because her mother noticed vaginal bleeding. The examination revealed vaginal tearing due to trauma. When questioned, Carmen said, "My daddy did it."

3. Sexually transmitted disease in the pediatric age group. Sometimes sexual abuse is discovered because the child acquired a symptomatic infection.

Four-year-old Joey developed a pus-like discharge from his penis. Cultures revealed a gonorrhea infection of the urethra and throat. During a play interview, Joey said, "Sammy played with my pec-pec and I played with his and I sucked him." Sammy, Joey's 14-year-old cousin, had been babysitting for the younger boy after school.

4. Pregnancy. Sometimes the child becomes impregnated accidentally because the perpetrator did not take appropriate precautions or thought the girl

was too young to be impregnated. Occasionally, a perpetrator may withhold contraceptives to "punish" the child.

Marilyn, age 12 years, was brought to a clinic for recurrent stomach ache. On examination, she was found to be eight weeks pregnant. Although she did not understand the connection between vaginal intercourse and pregnancy, Marilyn named her stepfather when she was asked with whom she had vaginal intercourse.

5. Precocious sexual activity initiated by the child. This most often is seen when young children display precocious knowledge of sexual behavior with peers and/or adults.

Three-year old Tommy's mother became alarmed when her son began to fondle her breasts and try to suckle her, although he had never been breast fed. He also crawled on top of her while she was lying on the couch and began posturing and mimicking mounting behavior. Investigation revealed that Tommy's babysitter, an emotionally disturbed adolescent girl, had introduced him to this behavior.

Crisis Intervention. Accidental disclosure of child sexual abuse also means that none of the participants are prepared for the secret to be revealed. Since most professional people are equally unprepared to cope with sexual abuse on an emergency basis, the accidental disclosure most often precipitates a crisis. The first task of the clinician will frequently be crisis intervention. He or she can be most helpful by immediately going to the scene as soon as the referral is received.

In this situation, the clinician will have little prior information about the sexual abuse or the family. Depending upon the skills and attitudes of the individuals involved, a state of chaos, high anxiety, feelings of professional inadequacy, hostility, and even fear may predominate. The immediate tasks of the clinician skilled in child-sexual-abuse intervention are to diffuse the anxiety, reinforce the reality that sexual abuse does exist, participate in fact-finding, direct the validation process, and assist in initial intervention planning. The following case example demonstrates how a clinician responded during the crisis stage of an accidental disclosure of child sexual abuse.

Eleven-year-old Tricia was in the emergency room of a community hospital for evaluation of abdominal pain when the case was reported. Upon arrival at the hospital, the clinician was greeted by the medical staff and a police officer. They explained that the child's mother had just been sedated for a hysterical reaction upon learning that Tricia's discomfort was due to suspected pregnancy by her stepfather.

It was necessary for the clinician to offer some guidance, as no one knew how to handle the child's information. To minimize repetition of the story, a nurse, police officer, and the clinician were all present while Tricia explained the

details of her sexual relationship with her stepfather. The police officer, although very supportive, kept using terms that Tricia did not understand (for example, intercourse). The clinician's sensitivity to this situation enabled her to clarify the meaning of several words for Tricia and to explain the child's level of understanding to the police officer.

This team approach under the clinician's direction during the crisis resulted in the immediate arrest of the stepfather, emergency-shelter placement of mother and all her children and much support for the family members. An initially chaotic situation, with proper direction, resulted in coordination of all the essential services: medical, law enforcement, child protective, and therapeutic.

In spite of the confusion and anxiety, several advantages may be derived from the crisis situation. First, it may enable the clinician quickly to establish a relationship with the child by presenting the concrete services of a skilled supportive advocate. Second, the clinician's entry at this stage reduces the number of times that the child must recite the story of sexual abuse. Finally, the clinician's skills may serve as role-modeling tools and teaching aids for the other professionals involved.

Purposeful Disclosure. In this type of disclosure, a participant consciously decides to tell an outsider about sexual abuse. In the cases that come to the attention of helping professionals, it is most often the child who decides to reveal the secret. Why might a child decide to disclose the secret? A young child may tell the secret to share it. The activity was so exciting or so stimulating that it simply must be shared with someone. An older child usually tells the secret for very different reasons. Often he or she is trying to escape or modify some family pressure situation. For example, in father-daughter incest, the sexual behavior usually begins early and extends into adolescence. The youngster who used to regard father as a warm, loving, and giving person may view him very differently when she reaches adolescence; now she sees him as a narcissistic, controlling individual. In earlier years she could be totally preoccupied by his attentions. Now she is more interested in peer and group relationships outside the family circle. She wants to have friends, to participate in social activities, to date, to stay out late. Her father, however, limits her peer and social activities and pressures her to continue to stay within the family circle and meet his needs. Now she feels imprisoned by, and angry at, her father for these restrictions; she senses that his restrictions are aimed at keeping her for himself.

As her frustration mounts, she may finally reveal the secret of their incestuous relationship. The aim of the disclosure may not be primarily toward stopping the incest, but rather toward attaining more freedom. This adolescent may be willing to continue the incestuous relationship with her father as a trade-

off for being permitted to form peer relationships, to date, to socialize outside the family circle, and so forth. After the disclosure, the child may initially experience a sense of relief in discharging the burden of a long-kept secret. However, she may also experience guilt for having enjoyed the sexual relationship and perhaps feelings of disloyalty for betraying her father.

Darlene's story emphasizes these dynamics as she reveals the progressive nature of her relationship with her father and her final ambivalent feelings toward him:

At age 14, Darlene described herself as being close to her father for as long as she could remember. She never felt she could turn to her mother who had not hugged or kissed her since before she was age 5. Father was always physically affectionate with her. She had especially enjoyed their tickling and wrestling matches which started at age 8 and occurred until she was age 11. Even though mother disapproved of her frequent sitting in father's lap, he felt it was appropriate and accused mother of having a "dirty mind." Shortly after her 11th birthday, father would go into the bathroom whenever Darlene was bathing. By the time she was age 12, he would go into her bedroom late at night to fondle her breasts and genitals. Although she initially enjoyed the attention, by the time she was 13 and started to menstruate, she began to worry that father would press her further. Indeed he did and when she resisted he would physically abuse her into compliance. A year later, after an intense argument with father, she disclosed the incestuous secret. During a session with her clinician two weeks later, an emotionally distraught and very tearful Darlene said, "I feel like I lost my best friend. I miss him. . . . What am I going to do?"

Children sometimes decide to reveal the sexual abuse for other reasons. One girl finally told a school counselor about her incestuous relationship with her father because, at age 14 years, she was fearful of becoming pregnant. Although she had shared these fears with her father, he minimized the risk and refused to use any protection, saying "Don't worry honey, I'll take care of you if you do." Another girl revealed the secret to protect her younger sister.

Lucy and Ann, sisters, were involved in a sexual relationship with their stepfather for approximately six years. Lucy age 17 years, learned her retarded sister Ann, age 15 years, was pregnant. Both girls had known about the other's sexual relationship with their stepfather, but had been afraid to seek help or even to discuss it with each other. When Lucy learned of her sister's pregnancy, she immediately reported the sexual abuse to the police. The pregnancy helped Lucy decide to risk the consequences of disclosure to protect Ann.

The clinician must determine the reason underlying a child's purposeful disclosure of sexual abuse. Failure to do so can be disastrous. The child who discloses sexual abuse may have completely unrealistic expectations of the person who received the information. He or she is frequently looking for a magical solution to the problem at home. The child usually wants the situation

to change without confrontation, without outside interference, frequently without separation. Unless the clinician takes the time to find out why the child told and attempt to modify the youngster's expectations if they are indeed unrealistic, in all likelihood, the child will recant the story as soon as the threat of outside interference is identified. Whenever possible, it helps enormously if even a small request can be granted for the child.

Planned Intervention. Purposeful disclosure of sexual abuse by a child, fortunately, often permits the case to be handled by planned intervention. When the child decides to share the secret with a professional person or supportive adult, a report should then be transmitted to the statutory child protection agency. If that agency utilizes clinicians who are knowledgeable about child sexual abuse, an opportunity exists to capitalize on the child's conscious decision to seek help from a trusted person. Instead of precipitating an immediate crisis, the clinician can meet with the child and the reporter in a calm, relaxed atmosphere and proceed with fact-finding and validation. This gives the child an opportunity to express his or her concerns, and together they may explore alternatives which are of the least detriment to the entire family system.

Planned intervention as a result of purposeful disclosure may occur in the following manner:

Jodi, a bright girl who had done well academically, was age 15 years when she was referred to the school guidance counselor because her grades were declining. Her parents were divorced three years earlier, and for the last year she had been living with her father and three brothers. After a while, Jodi formed a trusting relationship with the guidance counselor who filled the void left by her absent mother. Several months went by before Jodi told her guidance counselor about her father's sexual molestation of her and her desire to have him stop.

The guidance counselor contacted Child Protective Services immediately. The assigned social worker, who was skilled in child-sexual-abuse intervention, had a joint meeting with Jodi and the guidance counselor at Jodi's request. Because of this interview and a second one which transpired several days later, the social worker was able to validate that sexual abuse had occurred. During this process, the social worker encouraged Jodi to express her fears and concerns about the situation. A plan was then made with Jodi regarding how and when the incestuous relationship would be revealed to the family.

In this case, the purposeful disclosure to her guidance counselor provided the victim with an opportunity to express her anxieties, as well as to prepare her emotionally for the anticipated familial disruption. It also allowed her to discuss with the social worker the circumstances by which her family would be told about the sexual abuse. And finally, this process enabled her to determine with whom she could live if she needed protection from her father and her mother was not available as an ally. Planned intervention rather than crisis intervention was thus possible in this case.

Family Reactions to Disclosure. Clinicians should anticipate a wide range of

family reactions when sexual abuse of a child residing within the family circle is disclosed. What is happening? What are the reactions to disclosure? What are some of the motivations for the behavior that follows?

Perpetrators are likely to react to disclosure with alarm. Child sexual abuse is a crime and criminal penalties could ensue if the case finds its way into the legal justice system. Societal attitudes make exposure and publicity very threatening as well. The perpetrator must also fear loss of social status in the community and possibly loss of job, especially if he or she works in a field involving some type of care or supervision of children. Accordingly, he or she can be expected to react defensively to disclosure with self-protection as the primary goal. At the same time, the perpetrator can be expected to react with hostility toward the child and anyone else inside or outside the family who is supporting the child and acting as a child advocate. After disclosure, the perpetrator can be expected to exploit his or her power position to the fullest to control the child and other family members while undermining the credibility of the allegation and or neutralize negative effects or consequences that may ensue. The intra-family perpetrator will, of course, be able to control the child far more effectively because of the likelihood of ongoing access to the child.

* Parents of a child who has been sexually abused by someone other than a parent are likely to react in a more protective fashion toward the victim. The degree of protectiveness toward the child will depend in part on the identity of the perpetrator. If he or she was a family member (grandparent, uncle, aunt, older sibling or cousin), there may be conflicting loyalties involved as well. This issue has been thoroughly addressed by Burgess and Holmstrom (1979). In extrafamily child sexual abuse, there may be no conflicting loyalties involved. Nevertheless, the parents may fear the possibly negative consequences of publicity and exposure. They may also feel guilty about their own failure to protect the child and wish to deny or cover up their own culpability. Parents may also be exceedingly reluctant to address the issues of the child's premature introduction to sexuality and the negative impact of the sexual abuse upon him or her. Many parents prefer to handle these problems with denial. For all of these reasons, parents may refuse to cooperate with child protective services or the police. Instead, they may assert that they need no assistance in protecting the child from future sexual abuse and in dealing with the consequences to the victim. Also, parents often refuse to assist the legal justice system to deal with perpetrators, both in intrafamily and extrafamily cases, for many of the same self-protective reasons.

Mothers of victims of intrafamily child sexual abuse may initially react to disclosure by expressing many concerns for the child. They may cooperate fully in processes aimed toward child protection and helping the victim to recover from the effects of the sexual abuse. Clinicians should not, however, expect that all mothers will react in this way, nor should they expect that mothers whose initial reaction is protective will be able to sustain a posture of protection

and concern without much support and encouragement from others. Self-interest and self-protection are powerful human responses that must be acknowledged. Some mothers may already be aware of the sexual abuse and may even have encouraged the activity or participated in it. Other mothers may have been previously told about the sexual abuse but failed to believe the child or to move effectively to stop the activity. If they fit within either of these categories, mothers may also react to disclosure with guilt and a desire to protect themselves. Even if there was no direct culpability, mothers of victims of intrafamily child sexual abuse must face the consequences of siding with the child, sooner or later. Often they must choose between protecting the child or protecting the perpetrator. If the perpetrator provides the mother with economic support, social status or emotional support, this choice may be painful indeed. If the perpetrator has been violent or abusive toward the mother in the past, she must fear physical retribution as well as loss of all the previously mentioned supports. If the perpetrator reacts to disclosure by exerting pressure on the child's mother, her reaction will also be affected by the type of pressure exerted. It is not at all unusual for mothers to collapse under these combined pressures, abandon responsibility, avoid decision making and withdraw as much as possible from the activities following disclosure, thereby affording more opportunity for the perpetrator to exert control over the family's response.

Siblings of victims may react protectively and with concern but they may also react defensively. Children fear disruption of family life, even if that has been traumatic and problematic for them. For children, especially, fear of the unknown and fear of separation usually outweigh their negative responses to a known situation. In extrafamily child sexual abuse, siblings of the victim may be angry at the perpetrator but may also be resentful of the disruption of family life, exposure, and publicity resulting from disclosure. In intrafamily child sexual abuse, siblings may also be forced to choose between siding with the perpetrator or siding with the victim. In either situation, the sibling who reacts with concern for the victim and anger at the perpetrator may still feel stigmatized or with reduced self-esteem or social status because at least one family member has been victimized and perhaps another family member has been revealed to be an abuser. Clinicians should remember that in some cases siblings of the victims may have previously been victimized themselves or may even have participated in the abuse or "set up" the victim. The following case example illustrates this point:

Shirley, age 15 years, was being examined for child sexual abuse. Her mother had reported her father to the police 48 hours earlier, for sexual abuse of a sister, Angela, age 13 years. Shirley was sullen and hostile when interviewed. She reluctantly admitted that she also had been fondled by her father and had vaginal intercourse with him beginning when she was 11 years old. When she was 13 years old, Shirley volunteered to trade bedrooms with Angela, thereby placing Angela in a bedroom by herself while Shirley assumed Angela's bed

In the same room with their younger sister. Shirley further admitted that she switched bedrooms with Angela after telling her mother about the father's sexual advances and receiving a hostile response from her mother. At the time of the examination, Shirley expressed only anger about the events following disclosure. She had been forced, along with her mother and sisters to move into an emergency shelter and was missing school and the junior prom because the father's arrest had been reported in the newspapers and she was ashamed to face her friends. Shirley said of her sister Angela, "Why did she have to go and say something? If she had kept her mouth shut a little longer, there was always Susie."

In this case, the eldest daughter had extricated herself from the incestuous sexual abuse by her father by "setting up" her sister in the bedroom by herself. She was angry at her mother for failing to respond to her appeal for help but for responding positively to her younger sister's appeal. She was also angered by the disruption to *her* life that ensued after disclosure. She had fully expected that her sister Angela would extricate herself from the sexual abuse by substituting their younger sister instead.

Other extended family members may be expected to have the same combination of reactions to disclosure with protection and concern for the child vying with self-protective and defensive reactions. In-laws, brothers, sisters, and grandparents may also place pressure on the target family to react with denial and fail to cooperate with child-protective services and law-enforcement authorities. Such reactions are seen in both intrafamily and extrafamily child sexual abuse cases.

In summary, all family members can be expected to react to disclosure of child sexual abuse within the framework of a response to the question, "How will this affect me?" Only those who have great ego strength and security can be expected to sustain a posture of protection and concern toward the victim. All others will require enormous support and some pressure to maintain a victim-oriented response. In some cases, family members will not be able to react with support or concern for the victim, regardless of the circumstances.

Suppression Phase

Following disclosure, either accidental or purposeful, the dynamics of most child-sexual-abuse cases tend to enter a suppression phase. Even when the perpetrator is outside the family circle, the child's immediate and extended family are likely to react by trying to suppress publicity, information, and intervention. Sometimes this suppression may extend to denial of the significance of disturbances suffered by the child victim as a result of the sexual abuse in order to discourage further intervention by outsiders. The following case example illustrates such suppression in a case of extrafamily sexual abuse.

Ronnie, a 6-year-old boy, was lured into a vacant building by two adolescent boys and forced into sexual activity. Ronnie was forced to fellate one of his abusers while the other boy performed forced rectal penetration upon him. After repeated slapping and many threats, the older boys let Ronnie go. The child's physical injuries quickly drew attention to the sexual abuse and both the abusers were arrested. Although initially grateful for assistance from child protective services in the first 48 hours, Ronnie's parents withdrew and became hostile after medical attention had been rendered and depositions to the police were finished. Ronnie had a severe reaction to the incident—he had nightmares every night, developed a school phobia, and refused to go outside the house unless accompanied by his mother. Nevertheless, his parents refused to permit access to the child for individual and art therapy. When his obviously negative reaction to the sexual abuse was pointed out, his parents replied, "It's nothing to worry about—he'll forget about it soon."

A clue to the motivation for Ronnie's parents to suppress the sexual abuse incident can be found in their expressed determination that the child will "forget" about the sexual abuse. One interpretation of their behavior is that it is the parents themselves who wish to forget about the incident—perhaps in part because they feel guilty for real or imagined culpability in the sexual abuse of their child by outsiders. Their denial of their son's obviously disturbed behavior is a manifestation of their desire to forget or suppress the incident. Another possible explanation is that these people were themselves under pressure from neighbors or perhaps from relatives of the adolescent perpetrators to withdraw the sexual assault charges.

When the sexual abuse has occurred within the family circle, suppression is likely to be intense. The perpetrator can be expected further to exploit his or her power position by pressuring the child and any other family members who appear to be cooperating with outside authority figures. Sometimes the suppression is limited to verbal pressure calculated to induce feelings of guilt in the child for his or her part in the disclosure. Other family members may join in this process and "gang up" on the child. Feeling isolated and perhaps even ostracized, the child may give in and withdraw the complaint or simply stop cooperating with those who are trying to assist him or her.

Grace, age 13 years, told her mother that her grandfather had masturbated and fondled her on numerous occasions when she had stayed with him on summer vacations. On their last encounter, he had attempted vaginal penetration but failed. The mother initially reacted with concern for her daughter and with anger toward her own father for his behavior. After the mother realized, however, that addressing the impact on Grace would inevitably lead to examination of her own role in "setting up" the sexual abuse, she quickly lost interest in therapy for her daughter. The girl missed several sessions because her mother failed to provide transportation at the last minute. After the child declined to read several letters sent by the grandfather which explained the allegation of sexual abuse by describing Grace as "insane," mother then permitted a telephone confrontation to take place between the girl and her

grandfather. When Grace asked her mother if she still believed that the sexual abuse had occurred, the mother replied that she "refused to take sides." Finally Grace told her therapist that she "didn't need" any more therapy and declined to return.

In the foregoing example, the behavior of Grace's mother suggests that her own needs were not being met after the disclosure when intervenors focused concern on the child. She at first attempted to sabotage her daughter's treatment program by last-minute failures to give her a ride. When this failed, she joined forces with the grandfather in suppressing Grace's allegation by reinforcing his attacks on the girl and withdrawing her support.

Sometimes the suppression phase is characterized by verbal pressure that is abusive or threatening. Threats may be similar to those described in the secrecy phase, variously invoking anger from a third party, separation, physical harm to the perpetrator, to a third party, or to the child. Again, the aim of the verbal abuse or threats is to pressure the child to recant or to stop complying with the intervention process. In some cases, children and compliant family members may be subjected to physical abuse as part of the suppression phase.

Jolene, age 16 years, made a complaint to the police in which she stated that her father had fondled her breasts and genitals. At the hearing for probable cause, she refused to speak, remaining silent in response to all questions. Charges against her father were dropped. Jolene later revealed that her mother, brothers, and sister all told her that they would refuse to live in the same house with her if she persisted in her complaint.

Regardless of the type of pressure employed, the primary aim of the perpetrator during the suppression phase is to undermine the credibility of the child and the allegation of sexual abuse. One obvious result may be for the child to withdraw the complaint or falsely declare that the complaint was a lie.

Eleven-year-old Tricia told investigators that she had been impregnated by her stepfather. When the case came to trial, the girl perjured herself on the witness stand by telling the judge that she had lied and that she had really been impregnated by her 15-year-old stepbrother. Later she revealed to peers in a support group that she had perjured herself because of repeated physical assaults by her stepfather during the period of time prior to the trial.

Sometimes the child stubbornly withstands pressure to withdraw the complaint. The suppression phase may also be characterized by various attempts to undermine the child's credibility. The child may be described by other family members as a pathological liar or as mentally disturbed or "crazy." Previous school problems or difficulties in interpersonal relationships may be cited as evidence that the child is untrustworthy or disturbed. If an adolescent victim has ever run away from home, skipped school, stayed out too late, or engaged

in peer sexual activity, these behaviors may be cited to support the family's contention that the child's allegation of sexual abuse is untrue.

A Profile of Participants

Perpetrators. Psychological motivations of perpetrators of child sexual abuse are discussed in detail in chapter 8, "The Incest Offender." In general, perpetrators are likely to be "me-first" individuals who satisfy many nonsexual needs when they engage a child in sexual behavior. For a variety of reasons, the sexual relationship with a child feels safer, less threatening, less demanding, less problematic than a relationship with an adult. Gratification may be enhanced by the child's accessibility, naïveté, trust, affection, and compliance. Although some perpetrators enjoy being in control to the extent of being gratified by overpowering a resistant victim, most are content to persuade or entice the child into sexual behavior with their own position of power and dominance remaining implicit rather than directly expressed. A few perpetrators enjoy the process of forcibly overpowering the victim, terrifying him or her, and inflicting pain. Fortunately, the last group are in the minority.

Incest perpetrators tend to perceive the outside world as hostile and convey this perception to the child as both a reason and an excuse for the incestuous sexual behavior. The child is encouraged to trust only family members; interpersonal relationships with outsiders are discouraged and often severely limited. Incestuous families, at the behest of the perpetrator, are frequently very isolated. Family members tend to have few friends and few peer activities. The perpetrator often sets the style of family interaction by encouraging or even requiring all family members to meet their social needs within the family circle. This may even extend to use of the telephone. In one incestuous family, the father refused to permit any family member to place or receive telephone calls while he was at home. When the telephone rang in his presence, he answered it. If the call was for some other family member he immediately hung up. Consequently most telephone calls were for him. The perpetrator often dominates all family decision making and is the sole authority on where the family lives, how much is spent for clothing, food and household needs, vacation planning, part-time jobs for family members, contributions to charity, participation of the children in school activities, and so forth. Although physical force is rarely used to engage the child in sexual activity, force or threat of use of force may be used to maintain the perpetrator's authority over everyone else.

Although rarely psychotic, perpetrators frequently exhibit personality disorders. Alcohol abuse is common although few are frank alcoholics. Perpetrators are likely to appear to outsiders as quiet, unassertive, emotionally colorless individuals. An underlying core of rigid and dysfunctional behavior patterns can usually be discerned. However, since perpetrators tend to be hostile, mistrustful,

and suspicious of outside authority, there is little chance that any clinician will have taken a good look.

Mothers. The incest victim's mother is usually in a subordinate position to the perpetrator since incest perpetrators in known cases are most frequently male power figures (for example, father, stepfather, uncle, grandfather, mother's boyfriend) in the home. A rare incest case will involve a mother as the sole sexual abuser of her own children or perhaps as a copерpetrator of child sexual abuse (usually with a male copерpetrator). In the copерpetrator situation, the mother nonetheless is still usually cast in a subordinate role.

Mothers can perhaps be most generally described as failing to protect the child victim. Assessment of Connecticut's Sexual Trauma Treatment Program (see chapter 13, "Evaluation of Child Sexual Abuse Program") showed that the extrafamily cases almost always involved single-parent families headed by mothers who failed to protect by exercising poor supervision or directly or indirectly exposed the victim to sexual risk. Mothers of incest victims fail to protect on several levels. Sometimes the mother is physically absent on a regular and predictable basis, thereby affording the opportunity for incest to occur. The classic example of this situation involves a mother who works a night or evening shift. Sometimes mother is psychologically absent, often ignoring overt seductive behavior between the incest participants that she should be curbing and redirecting and setting limits on at a very early stage. Some mothers fail to protect in a very direct fashion by deliberately setting up situations in which the incest participants are encouraged to engage in sexual behavior.

Nancy, a 35-year-old mother of four girls, regularly encouraged her husband to go to her daughters' bedrooms late at night and "cover them up." One night when Nancy knew Cindy, her 14-year old daughter was sleeping in the nude, she nevertheless sent her husband into Cindy's bedroom, "to be sure she doesn't get cold."

The above case example illustrates a mother's intentional maneuver to encourage sexual behavior between her husband and daughter.

Although it is tempting to think of all mothers of incest victims as women who deliberately encourage their spouses to turn to their children for sexual gratification, this pattern probably occurs less often than we believe. Most mothers of incest victims are married to men who have unrealistic expectations of them. The "dependent husband" wants his wife to prop him up on every level; the "dominant husband" wants his wife to be so dependent that his own needs for power and control are continuously satisfied (see chapter 8, "The Incest Offender"). Wives who stay with such husbands may accept either the dependent or dominant role that is assigned to them. The likelihood that these women will seek relief from duress or boredom or frustration and meet their own needs elsewhere (by becoming psychologically absent or physically absent

or both) is very great. In both patterns of husband-wife interaction, the wife frequently eschews a true maternal role with her children. She may often view the children as competitors and rivals while simultaneously meeting some of her own social needs by interacting with the children on a peer level.

Often mother escapes responsibility by being ill or by complaining that she does not "feel good." Indeed she does not feel good and one can anticipate a high level of functional physical complaints, often with no organic basis, from these mothers. Depression, either overt or masked, is also very common. Many of these women have poorly developed social skills, few friends or outside interests and in general, little aptitude for developing and maintaining a relationship. More often than not, they lack everyday living skills as well and cannot drive, handle money, balance a checkbook, interact with the retail business world as consumers, and so forth.

Most mothers of incest victims are aware, consciously or unconsciously, that the incest exists. Many of the mothers have been told by the children that the incestuous sexual behavior is occurring. Some of the mothers respond to this revelation with immediate hostility and disbelief and warn the child never to mention the matter again. Some make no response and discourage the child from pursuing the issue by their silence. Some mothers respond by initially believing the child, promising to intervene and protect the youngster, and then neglect to do so. Still others sincerely try to prevent further sexual abuse by "running interference" and attempting never to permit an opportunity for the perpetrator to be alone with the child again. This method is rarely successful, especially if the perpetrator is a dominant figure in the home. A few mothers respond to the child's complaint by taking immediate action, notifying outside authorities, separating from the perpetrator if necessary and preventing further sexual exploitation of the child either by prolonged separation or by setting limits and forcing the perpetrator to adhere to them. Few mothers have the strength or resources to accomplish this by themselves. Many mothers fear change, shrink from separation, dread retribution by the perpetrator, and shirk or feel inadequate to perform the tasks and fulfill the responsibilities required to stop the incest.

Child Victim. To refer to the child who is the subject of sexual attentions by an adult or "bigger person" as a victim reflects our view that children are always victimized by sexual abuse, even when they are willing and enthusiastic participants in the sexual behavior. Children lack the emotional, maturational, and cognitive development to assimilate or withstand premature introduction to sexuality by an adult. Although frequently described by the perpetrators as seductive ("She kept trying to turn me on, your Honor; I just couldn't help myself"), children who become incest victims have usually displayed no more than the usual degree of age appropriate exploratory or acting out behavior.

Infants explore their own bodies and quickly discover their genitals. Tod-

dlers have usually discovered self-stimulation and masturbate freely unless limited by their caretakers. By ages two-and-one-half to three years, children begin to appreciate differences between males and females and be curious about their sex and genitalia. Their ever-expanding perceptions about the world around them (mostly stimulated by observing their own home life and viewing the television set) include an increasing awareness of sexuality tied to male-female roles. Slightly older children may see and mimic behavior that has sexual overtones, especially posturing and touching, in a disconcertingly accurate fashion. Although these actions may be aimed toward attracting attention and favor, it is unlikely that the young child conceptualizes their sexual connotations. By the same token, the child is unlikely to appreciate any relationship between affectionate or affection-seeking behavior and sexuality.

Despite society's tendency to blame the victim, even when the victim is a young child, it is not appropriate to hold a child responsible for exploratory behavior that stimulates an adult. The appropriate adult response is to acknowledge stimulation, deal with his or her own reactions on a personal level, and respond to the child by setting limits on or redirecting the child's behavior. It is never appropriate for adults to respond by engaging the child in a sexual relationship, even when the child appears willing and eager for the behavior to progress. The grossly seductive child who overwhelms the helpless adult with a degree of sensuality that cannot be ignored or denied and thereby stimulates a compulsive response from the adult that inevitably ends in a sexual relationship is a myth existing only in the minds of perpetrators and some defense attorneys. In fact, most victims do not behave in a seductive fashion. The attraction for the perpetrator is much more likely to be some combination of qualities that can best be termed childlike: immaturity; inexperience; defencelessness; and affectionate, trusting, confiding, playful behavior.

If the sexual abuse does not frighten or injure the victim, he or she will probably willingly engage in a progression of sexual behavior, repeatedly over time. As the child grows older and more experienced, he or she may perceive that the sexual behavior meets the perpetrator's needs at some level. The child may come to occupy a favored position vis-à-vis the perpetrator. If not intimidated, he or she may even attempt to manipulate that position of favor and limited power to some degree by withholding or avoiding participation in the sexual behavior or threatening to disclose the secret to outsiders. If other family members are involved in the sexual activity, the child may variously be intimidated by them or angry at them or regard them as fellow conspirators or perhaps even be contemptuous of them. An older child will probably eventually see the perpetrator as a narcissistic individual who exploited him or her. If the older child victim is being limited in peer activities or forced to remain within the family circle rather than develop and enjoy outside relationships and activities, he or she may be very resentful and frustrated indeed. The child victim who disclosed the sexual abuse secret to someone in authority (for example, mother)

and received an inappropriate response can be expected to feel betrayed by that person.

Adolescent girls who are incest victims are frequently described as "pseudomature." Physically they may be fully developed by age twelve or thirteen years. These girls often assume much responsibility for management of domestic tasks: preparing meals, caring for younger children, and so forth. They often have special responsibilities to their fathers which are acknowledged by everyone else: bringing in his beer while he watches television, straightening his tools, preparing dad's favorite dessert, and so forth. In many ways, these girls function in quasimaternal, quasispousal roles at home. Nevertheless the girls are expected to eschew independent and "grownup" activities at school and outside the home.

The adolescent male victim of incest is a shadowy figure who has rarely been described. We have seen adolescent males, who were themselves previous victims of sexual abuse by a male perpetrator, engaging their sisters and younger children, both male and female, in sexual behavior. Much of this sexual behavior appeared to be in the service of a need to control or dominate another person, rather than to satisfy a sexual need. Much of this type of sexual behavior was abusive in fact as well as in name; force or intimidation was used with agemates as well as with younger children and trauma to the victim would often result. (See chapter 6, "Sibling Incest"). On the other hand, little information exists about adolescent males, who are being or have been victimized by women, especially in the mother-son incest situation. How do they appear to the clinician? It has been suggested that the impact of mother-son incest is the most pathological of all types of incest. We can neither confirm nor challenge this impression.

Other Family Members. With the social decline of large extended families living under one roof, pertinent other family members are usually children other than the child victim of incest. Frequently they also are aware of the incestuous sexual behavior. Sometimes other children are or were themselves victims of sexual abuse. By definition, such multiple incest victims will be siblings or stepsiblings. When more than one child is a victim, any of several patterns may emerge. First, the victims may be unaware that the incestuous behavior has involved another child in the family. Or they may be aware of other victims but be unwilling or afraid to discuss the situation with them. Or multiple victims may discuss their situations with each other and give mutual support or assistance. Sometimes, one child victim will "set up" or deliberately arrange the sexual victimization of another child in the family, usually with the aim of extricating himself or herself from the incestuous sexual relationship.

Even when they are not aware of the incestuous sexual behavior, other children in the family may discern a special or favored position of the child victim. This special position or privileges may serve to attract resentment from siblings toward the victim. Much sibling rivalry may be present.

Family Interaction. The incestuous family very closely resembles the pathological family described by Beavers (1976). It is a closed and generally pathological system, constantly draining more and more energy from the individuals who comprise the family and offering little that is positive in return. At the same time the individual family member's dependence on this pathological system is enormous and the difficulty in extricating himself or herself and maintaining a healthy independent existence is equally great. These families and their members develop few skills for coping with the outside world that are effective or adequate to meet the complex demands of daily living. The outside world is perceived as hostile; individuals outside the family are "out to get you" and not to be trusted. Any attempt by outsiders to interact with family members is viewed as intrusion that is threatening to everyone at home. Such attempts are greeted with hostility, suspicion, and fear. Family members who overcome their own hesitation and anxiety and attempt to interact with outsiders are greeted with hostility, scorn, and reprisals from those within.

Although power is often exerted within incestuous families in a predictable fashion as described above, it is also exerted capriciously at times. Powerful individuals within incestuous families are variously so ambivalent about their feelings and so unlikely to be able to move effectively to satisfy a conflicted need that they may rigidly demand a certain type of behavior on one day only to abandon that expectation and substitute another (usually without prior notice) on the next. Power is generally exercised by physical force or by intimidation. Children learn that power is all-important in human relationships and that powerful people can make their own rules and change them without warning. Instead of observing the legitimate use of power in conjunction with responsibility and the benevolent exercise of power for the common good, children in incestuous families tend to see power exercised irresponsibly and solely to meet the needs of the person who is in power. They tend to role model this behavior, especially with each other and often with mother acting as a peer participant in family battle.

In incestuous families when a father figure is the perpetrator, he may stand aside and observe the other family members as they act out with each other and maneuver for power. Sometimes the father may even initiate or "set up" such a battle and then withdraw to the sidelines. Eventually, he will take command of the situation, by out-shouting or out-punching all the other participants or perhaps by engaging in behavior that startles the others into quiescence or submission (for example, brandishing or firing a gun, breaking a window or a piece of furniture, or the like). With a fraction of the unbearable tension released, the family may then settle temporarily into a deceptively tranquil routine. Sooner or later, however, the tension can be expected to erupt again.

Sometimes power is exercised by withdrawal. The powerful individual ignores or refuses to speak to one or all family members.

George, an incestuous father, punished his wife and attempted to prevent her from participating in therapy by giving her the "silent treatment." On the night she would return from her group therapy session, he would refuse to acknowledge her return in any way or even speak to her. He would, however, sit across from her in the living room and openly masturbate himself for hours. Although they slept in the same bed he would continue to ignore her. The "silent treatment" would continue for several days and then he would begin to speak to her again. By the end of the week, their interactions were "normal" but as soon as she went to the next therapy session, the silent treatment would resume.

Power may also be exercised by belittling others and their efforts, often by previously setting up a situation in which the person would be likely to fail.

Jack had incestuous relationships with his two older daughters, ages 16 and 14 years. Angry with his 16-year-old daughter, he sent her on an errand in the family car when he knew the gas tank was nearly empty and with little money. When he finally "rescued" her he criticized her for calling him for help, saying "If you are old enough to drive, you should be able to take care of yourself."

Another way in which the perpetrator may keep family members in line is to react unexpectedly, catching the other person off balance.

Patricia stayed married to a man who had sexually molested her daughter for many years. Before the disclosure of incest occurred, Patricia decided to surprise her husband with a fancy dinner on the occasion of their wedding anniversary. She made other arrangements to feed the children and was alone in the house when her husband came home, table elegantly set, candles lit, and a roast beef dinner (his favorite meal) ready to be served. Her husband responded by slamming his fist on the table and yelling, "How dare you behave like a whore with me?" He refused to eat any of the dinner and prepared himself a hot dog instead.

Any permutation of the exercise of power can be seen within the incestuous family. The overriding theme, however, for the person in power is to meet his or her own needs first and to maintain control within a closed family system.

Denial is overused as a defense mechanism in incestuous families and frequently is the only coping skill available to family members. An enormous degree of denial is required, for example, for mothers to overlook the incestuous sexual behavior and the "special" positions occupied by the participants in relation to each other. Denial may actually be an extension of the secrecy phase of sexual abuse and even an expression of the secrecy. In other words, the sexual abuse is so secret that the participants deny its existence even to themselves. Father may think of the activity as "sex education"; the victim may call it "helping dad." Family members routinely deny their real feelings, especially when feeling angry or hurt or disappointed or frustrated. Projection of these feelings on others is very common. They tend to be concrete in the extreme.

especially on a verbal level. Much denial is also used to maintain the false image that the incestuous home is a blissful haven of security and freedom in comparison to the hostile outside world.

Incestuous families are sometimes described as having no role boundaries. Because family members behave in a manner that is not in keeping with their traditional roles of father, mother, and child, and because they may temporarily exchange roles, the boundaries separating them are said to be blurred. Actually, the blurring of boundaries and lack of limits is likely to pervade every aspect of family life. Individuals are not often permitted to set limits on other family members with respect to their bodies, belongings, or personal space. People wander into bedrooms or bathrooms, opening closed doors, and walking in on others while they bathe, go to the toilet, and undress. Bedrooms, beds, closets, drawers, and clothing tend to be used interchangeably by everyone. In particular, parents have little respect for the privacy of the children or siblings for each others' privacy. Powerful family members have, in effect, no limits on observing less powerful individuals, or on touching their bodies or their belongings. Children and less powerful individuals usually have the benefit only of those limits that they can enforce themselves.

Recent papers have described the incestuous family as the multiproblem family or character-disordered family. This description certainly fits for the majority of incestuous families that we have seen. Despite internal tensions and flawed familial interpersonal relationships, these individuals seem to exhibit an array of dysfunctional behavior and methods of coping with stress that causes them to be viewed as a unit or entity. The multiplicity of problems and acting out behavior makes it tempting for the clinician to view the incestuous behavior as "only a symptom" and as one of a variety of problems that compete for attention. In reality, the incestuous family is most often a "nonfamily" in the cultural sense: a group of individuals of varying ages and sexes live under one roof, have a biological relationship with each other, and may even call each other by familial role labels (mother, father, daughter, son, sister, brother). However the real ties between them at the time of disclosure are the sharing of interdependent dysfunctional behavior patterns rather than traditional or functional intrafamily relationships. The existence of the abusive incestuous behavior is a reflection of their nonfamily status and usually serves as the sole leverage point for bringing about changes in the direction of healthier and more effective coping patterns.

Impact on the Child

In discussing the impact of sexual abuse upon the target child, it is necessary to make the distinction between known cases and cases in which the secret was

never disclosed. It is possible that there are children who are not adversely affected by sexual abuse. Indeed, the absence of adverse effects upon the child may be related to the frequency of disclosure: that is, perhaps situations involving little or no psychological or physical trauma to the child are less likely to be disclosed to anyone else. Although cases are now being disclosed or identified with greater frequency, we cannot know the outcome unless someone reveals the secret or discloses the sexual abuse accidentally.

Ultimately, people who make judgments about the impact of sexual abuse upon the child must do so based upon their own clinical experience with known cases. We believe sexual abuse is nearly always a profoundly disruptive, disorienting, and destructive experience for the child with a degree of stimulation that is far beyond his or her capacity to encompass and assimilate. Consequently, there is interference with the accomplishment of normal developmental tasks. The progression of mastery of one's self, environment, and relationship with others is significantly disrupted by the child's permanently altered awareness and new role vis-à-vis the perpetrator.

Child sexual abuse is disorienting because profound blurring of boundaries inevitably follows when someone in a power position exploits the child by making him or her a sexual partner. These children cannot avoid questioning limits set for them and for others. They must be confused about the appropriate uses of power and authority. Their very identities are at issue as they ask: "Who am I, that I am both a child and a sexual partner of someone who is supposed to be parenting or nurturing or protecting me?"

Destructive effects of sexual abuse are readily identifiable. Most of the children we encountered seemed to have a very poor self-image. Strikingly attractive youngsters would describe themselves as ugly and express great doubt that they could appear attractive or appealing to others. Although some of the children displayed much pseudomaturity, they frequently possessed very poor social skills. Seductiveness was often displayed inappropriately and as a substitute for other social skills that were lacking. Victims tended to be isolated socially with poor peer relationships as well as unsatisfying social relationships. Many were hostile or depressed, and some were even suicidal. They commonly expressed reluctance or inability to trust any other human being.

Data on long-term impact of child sexual abuse are sadly lacking. Some individuals disclose the secret years later after reaching adulthood. We have not encountered anyone who has reported that a sexual abuse experience in childhood had a neutral effect upon their lives. On the contrary, many *bill* *ii* *#27 20* difficulty in attaining a satisfactory level of competence as adults. Nearly all attribute a great deal of their psychosomatic problems often resulting in

S B

457

Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 486-0862



MEMORANDUM

DATE: January 25, 1990

TO: Tamara Cook
LAA/Legal Services

FROM: Senator Jack Coghill

SUBJECT: Drafting Request

Attached you will find a draft bill that I would like put in the proper form and delivered to my office in a working draft.

This bill concerns the return of property seized under criminal warrant.

SENATE BILL _____

For an Act entitled: "An Act providing for the return of property seized under criminal warrant."
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 12.36.020 is amended by adding a new subsection to read:

(d) A law enforcement agency, including the State of Alaska Department of Law shall return property in its custody to the owner or the agent of the owner if

(1) the return is authorized under subsection (a) of this section; and

(2) the owner or agent of the owner makes demand for said return in writing delivered to the agency having custody of the property.

* Section 2. AS 12.36.090 is amended by adding new subsections to read:

(4) "in connection with" means while the proceedings described are ongoing and once the described proceedings have terminated continued custody is no longer in connection with said proceedings;

(5) "criminal proceeding" means an ongoing criminal action filed pursuant to the Alaska Rules of Criminal Procedure or the Alaska District Court Rules of Criminal Procedure through the final disposition of the case only;

(6) "official investigation of a crime" means a probe into alleged criminal conduct prior to the filing of any criminal charges by a state or municipal agency authorized to conduct such a probe.

* Section 3. AS 12.36 is amended by adding a new section to read:

Sec. 12.36.050. Procedure for claiming property. (a) No less than thirty days after the final disposition of all criminal proceedings the claimant shall file a notice of claim with the Department of Law stating the items demanded to be returned, the basis for the claim of ownership, the case numbers of all proceedings involving the articles, and the date of the final termination of such proceedings.

(b) Return of claimed property under this chapter relieves the State of any obligation to preserve or maintain the claimed evidence.

(c) The Department of Law is responsible for returning the claimed property and must return same in accordance with this chapter within thirty days of receipt of the notice described herein excepting those instances where the Department believes that the seized property is contraband that can not be returned or where the Department has reason to believe that the claimant is not the sole or true owner of the property in which case the Department shall, within the thirty days set forth serve written notice of its intention not to return the property together with the basis under this section for such refusal, upon the claimant.

(d) Upon receipt of a notice of refusal or failure of the Department to timely return the property the claimant may file a civil action against the State in a court of appropriate jurisdiction for the return of the property.

Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
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(907) 488-0862



MEMORANDUM

DATE: February 15, 1990

TO: Senator Jan Faiks
Chairman Judiciary Committee

FROM: Senator Jack Coghill *Jack*

SUBJECT: Hearing for SB 457

SB 457 has been in your committee since February 8, 1990. SB 457 creates a mechanism where people falsely accused of a criminal offense can regain their property.

We have received a number of requests by innocent people who have had trouble getting their property back. At your convenience, I would appreciate holding a public hearing on SB 457.

This bill has a lot of merit, and we need to start the hearing process.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 26, 1990

The Honorable John B. (Jack) Coghill
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Re: SB 457

Dear Senator Coghill:

You have asked our opinion of SB 457, a bill relating to the return of property in the custody of law enforcement agencies. In its present form, we believe that the legislation presents a high risk of interfering with the ability of the Department of Law and other prosecuting authorities to successfully prosecute criminal violations. One of the reasons the legislation presents this risk is that it does not clearly tie return of property, in cases where judicial proceedings have not been initiated, to a decision by the prosecuting attorney to decline prosecution of a case.

The bill will also create serious problems in pursuing homicide cases (in which the statute of limitations does not apply) that may be solved years after the death occurred. For example, this year we instituted prosecution against a man who committed a murder in Fairbanks in 1975. If important evidence in that case been returned, it is likely that we would not have been able to pursue the prosecution.

We understand from your staff that the bill is designed to require the return of property in situations where a person has been found not guilty following a trial. Attached you will find a proposed committee substitute designed to protect prosecution interests, while still providing a clear mechanism for return of property to persons acquitted of criminal charges.

The Honorable John B. (Jack) Coghill

February 26, 1990
Page 2

If you have any questions about the proposed committee substitute, please let me know.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 

Laurie H. Otto
Assistant Attorney General

Attachment

✓cc: The Honorable Jan Faiks
Gayle Horetski

*Section 1. AS 12.36.020 is amended by adding new subsections to read:

(d) Except as provided in AS 12.36.070, a law enforcement agency shall return property in its custody that is not the subject of forfeiture proceedings to the owner of the property or to the agent of the owner following the entry of a not guilty verdict if the owner makes a written demand for return of the property under AS 12.36.070 and delivers the demand to the agency having custody of the property.

*Sec. 2. AS 12.36 is amended by adding a new section to read:

Sec. 12.36.070. PROCEDURE FOR CLAIMING UNFORFEITED PROPERTY. (a) A person claiming unforfeited property under this chapter shall file a notice of claim with the law enforcement agency having custody of the property. The notice must include a list of the items of property whose return is sought, the basis for the claimant's claim of ownership, the case numbers of all judicial proceedings involving the items, and the date of final disposition of the case. The notice may not be filed until 30 days after the final disposition of the case that resulted in the agency's custody of the property.

(b) The law enforcement agency having custody of property that has been taken into custody in connection with a case in which a not guilty verdict is entered shall return the property within 45 days of the receipt of the claim unless

(1) the claim does not meet the requirements of (a) of this section;

(2) the property is not subject to return under this chapter;

(3) the property is a prohibited weapon as defined in AS 11.61.200, a controlled substance as defined in AS 11.71.900, or an alcoholic beverage as defined in AS 04.21.080; or

(4) the person claiming the property does not present satisfactory proof of ownership; if the agency determines that the proof of ownership is unsatisfactory, it shall, within 30 days of the receipt of the claim, notify the claimant in writing of the reasons for not returning the property.

(c) If a law enforcement agency is aware that more than one person claims an ownership interest in the property, the law enforcement agency shall determine which person has the superior claim to the property, and shall provide written notification of this determination to all claimants of which the agency has knowledge ten days prior to releasing custody of the property. If the law enforcement agency provides the notification required under this subsection, the agency is immune from liability for releasing the property.

LAW OFFICES OF MARC GROBER
BOX 467
NENANA, ALASKA 99760
(907) 832-5227

April 25, 1990

Senator Jack Coghill
Fax: 907-465-3922
Re: Senate Bill 457

Dear Senator Coghill,

Please forward a copy of your proposed CSSB457 together with my previous testimony, the Connecticut statute and the following comments to the Senate Judiciary committee for its hearing on the bill scheduled for April 25, 1990. When I spoke to you last I had not understood that your proposed committee substitute had as yet not been presented to the Committee. Thank you.

TESTIMONY

As I have noted before in a letter which I understand this committee was provided some months ago by Senator Coghill, the purpose of this bill is to cure the abuses inherent in the current practice involving return of property seized by law enforcement officials. Briefly, the Department of Law has attempted to bar the filing of civil actions to obtain return of property seized under warrant and has requested and obtained orders allowing it to continue holding property seized under a warrant even after a criminal action that was subsequently filed was dismissed.

These abuses have been on the increase with the rise of so-called "white-collar" prosecutions. These prosecutions regularly involve expansive "fishing expeditions" through the business records of "suspects" in the hope that some kind of case can be made against the defendant. In a recent matter it was discovered by the defendants after seizure of the records that the judge issuing the warrants had not read the subject regulations and was not conversant with them and relied solely on the officer's representations that the alleged regulation prohibited what the officer said it did, or that the evidence to be seized would demonstrate such a violation. Business records for some seven years were seized and the department of Law continues to retain the documents even after the District Attorney was forced to dismiss the case because the crime alleged did not exist!

The holding of property seized under a warrant after the final disposition of that action (whether by conviction, acquittal, dismissal or appeal) constitutes a violation of several constitutional provisions; the rights to property, due process and privacy. In holding property after the only lawful basis for its retention (a warrant) is rendered moot (final disposition of the criminal proceeding) places the property in the status of having been illegally seized and held from that point on. The department of Law has expressed its intent to hold such property for circulation among various other agencies for the purpose of concocting some form of further proceedings against the property owners. This is certainly not the type of conduct that should be endorsed by this legislature.

The Department of Law raises only one objection to Senate Bill 457. Though the argument is akin to the ballyhoo raised over

Willie Horton, the issue raised is very real. So real that Senator Coghill had a draft CSSB457 prepared that recognizes the problem and addresses it squarely. The proposed Committee substitute offered by Senator Coghill (Sec. 2, amending AS 12.36.70 by adding subparagraph (b)(5)) acknowledges the Department of Law's need to retain evidence if there is an outstanding crime (but not once a dismissal has been entered.)

I would also like to point out that a similar statute which served as the model for the bill before you has been in place in Connecticut for over fifteen years without any serious breakdown in the public order there.

The problem that is not addressed as yet is the poor victim whose brand new automobile is stolen and becomes the scene of an unsolved murder. Is the owner going to be required to continue to make \$500 per month payments on an automobile that the State refuses to release? Eminent domain might resolve this problem only if the State were required to return the property.

The Department's proposed substitute totally fails to meet the appropriate needs and is based upon a misconception that SB 457 was designed to deal only with situations in which there has been an acquittal. The Department attempts to address only the tip of the iceberg and essentially relegates defendants whose cases have been dismissed to second class citizens.

Lastly I wish to address the fiscal question raised by the department of Law. Presently, the Department spends thousands of hidden dollars attempting to block the return of property improperly held by law enforcement agencies, and this expense is more than matched by the thousands of dollars and inconvenience to the property owners, not to mention the clear violation of their rights. The proposed procedure will streamline this entire process and will thereby result in a potential savings to the State as the Department applies its resources to matters of substance.

Thank you for your consideration.

Sincerely,
Marc Grober

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 29, 1990

SUBJECT: Bill on return of seized property
(Work Order No. 6-2030)

TO: Senator Jack Coghill

FROM: John B. Gaguine ~~786~~
Legislative Counsel

Enclosed is a bill on the return of property seized during a criminal investigation. It differs in a few ways from the rough draft you sent over:

- I did not include the Department of Law either in AS 12.36.020(d) or in the definition of law enforcement agency in AS 12.36.090. I think it clear that Law is a "public agency that performs as one of its principal functions an activity relating to . . . the enforcement of the criminal law"; hence it does not need to be named specifically.

- I deleted all three of the proposed definitions. It seemed to me that the definitions of "in connection with" and "criminal proceeding" were included only to stress that a law enforcement agency's right to hold onto seized property ceases when the investigation or criminal proceedings are over, and I think that the other provisions of this bill make that quite clear. It also seemed to me that including the proposed definition of "official investigation of a crime" might create a problem during the period between the end of an investigation and the decision by the prosecutor whether or not to file charges.

- I broadened new section AS 12.36.070 (there is already a 12.36.050) to cover all law enforcement agencies, and not just the Department of Law. If criminal charges are never brought after an investigation, Law will never obtain custody of seized property, and the proper entity to file a claim with would be the Department of Public Safety or a municipal police department. Also, if property is seized in

Senator Jack Coghill
Page 2
January 29, 1990

a misdemeanor case in a municipality that prosecutes its own misdemeanors (such as Anchorage or Juneau), it may be the municipal prosecutor that has custody of the evidence.

- I left in the provision of the rough draft stating that return of claimed property relieves the state or political subdivision of any obligation to preserve or maintain the property claimed, although I do not understand what the point of this provision is. I left it in because I assume that whoever prepared the rough draft had a specific purpose in mind. I would be interested in knowing the purpose.

- I changed the title of the bill, since I assume it is intended to apply (as I believe current law does) to all property seizures by law enforcement agencies, and not just those done pursuant to warrants. Many seizures can be made without warrants, such as items seized during searches of automobiles or during searches of persons incident to arrest. Moreover, AS 12.36 probably applies to property obtained by law enforcement agencies in other ways, such as property stolen during a burglary and abandoned by the burglar. See AS 12.36.010 (chapter governs disposal of property coming into custody of law enforcement agency and not belonging to agency).

- I added a provision repealing current AS 12.36.-020(c), since it seemed to conflict with new AS 12.36.-020(d).

If I may be of further assistance, please advise.

JBG:pl
WKP1/050

Enclosure

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

FEB 17 1990

~~FEB 11 1990~~

POUCH Y STATE CAPITOL

JUNEAU ALASKA 99811

907 465 3800

M E M O R A N D U M

February 15, 1990

SUBJECT: Sectional analysis of SB 457
(Work Order No. 6-2030)

TO: Senator Jack Coghill

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of SB 457 adds two new subsections to AS 12.36.-020. Subsection (d) makes it mandatory for a law enforcement agency to return unforfeited property in its custody to the owner if the property is subject to discretionary return by the agency under AS 12.36.020(a) and if the owner makes a proper written demand for the return. Subsection (e) notes that property is no longer to be considered in the custody of an agency when the criminal or children's case has reached final disposition, or when the agency has completed its investigation and no prosecution has resulted.

Section 2 adds a new section, AS 12.36.070, setting forth the procedure for an owner to claim property in the custody of a law enforcement agency. It requires the agency to return claimed property unless the claim is not sufficiently complete, the property is not subject to return under AS 12.36, or the agency believes that the claimant is not the real owner, or there is more than one owner. The new section also authorizes an aggrieved claimant to sue the agency.

Senator Jack Coghill
Page 2
February 15, 1990

Section 3 repeals an existing section of AS 12.36.020 that is superseded by the enactment of AS 12.36.020(d).

JBG:pl
WKP2/047

Senator John B. (Jack) Coghill

Alaska State Legislature

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Juneau, Alaska 99811
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Box 55028
North Pole, Alaska 99705
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SPONSOR STATEMENT ON SB 457

SB 457 CREATES A MECHANISM WHERE PEOPLE FALSELY ACCUSED OF A CRIMINAL OFFENSE CAN REGAIN THEIR PROPERTY. THE PROBLEM WE HAVE IS THAT ENFORCEMENT AGENCIES WILL NOT RETURN PEOPLE'S PROPERTY AFTER THEY HAVE BEEN FOUND INNOCENT.

ORIGINALLY THE PROPERTY IS SEIZED BECAUSE IT'S PART OF THE EVIDENCE THAT IS USED IN COURT. WHEN OUR BILL BECOMES LAW IT WILL BE MANDATORY FOR THE AGENCY TO RETURN SEIZED PROPERTY. ONCE SOMEONE HAS BEEN FOUND INNOCENT, THERE IS NO REASON NOT TO RETURN THEIR PROPERTY.

SB 457 ALSO CREATES THE PROCESS UNDER WHICH SOMEONE CAN PETITION TO HAVE THEIR PROPERTY RETURNED. WHEN A PETITION HAS BEEN RECEIVED THE AGENCY WOULD HAVE TO RETURN PROPERTY UNLESS THERE WAS AN INCOMPLETE APPLICATION MADE.

SB 457 IS RATHER CLEAR AND ITS INTENT IS TO ALLOW PEOPLE FOUND INNOCENT TO REGAIN THEIR PROPERTY AND TO BEGIN TO REBUILD THEIR LIVES. ITS PASSAGE IS ONE OF SIMPLE FAIRNESS TO PEOPLE WHO HAVE HAD TO GO TO TRIAL TWICE: ONCE TO ESTABLISH THEIR INNOCENCE, AND ONCE AGAIN TO REGAIN WHAT IS RIGHTFULLY THEIRS.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Alaska Court System
 Title: An Act relating to the return of property in the custody of law enforcement... BRU: Trial Courts
 Sponsor: Coghill Components: _____
 Requestor: Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 02/23/90
 Date: 02/23/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating... property in
 the custody of law enforcement agencies."
 Sponsor: Senator Cochill
 Requestor: Senator Cochill

Agency Affected: Department of Law
 BRU: Prosecution
 Components: Criminal Justice Litigation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 26, 1990
 Approved by Commissioner: Douglas B. Baily, Attorney General Date: February 26, 1990
 Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 457

This bill amends AS 12.36 to make it mandatory for a law enforcement agency to return forfeited property in its custody to the owner, when a criminal or children's case has reached final disposition or when the agency has complete its investigation and no prosecution has resulted, if the property is subject to discretionary return by the agency, and if the owner makes a proper written demand for the return.

The bill specifies that property is no longer to be considered in the custody of a law enforcement agency when the criminal or children's case has reached final disposition, or when the agency has completed its investigation and the investigation report has been filed with the appropriate authority, except that custody is considered to have ended if the report has not been filed within 30 days of the completion of the investigation.

Lastly, the bill provides a procedure for an owner to claim property in the custody of a law enforcement agency. The bill requires an agency to return claimed property unless the claim is not sufficiently complete, the property is not subject to return under AS 12.36, the agency believes that the claimant is not the real owner, or there is more than one owner. The bill also authorizes a claimant to file a civil action if a law enforcement agency fails to return claimed property in a timely manner, or refuses to return claimed property as prescribed by the bill.

It is not possible to accurately predict costs that might result for the Department of Law, if it is required to defend state law enforcement agencies in civil actions brought by claimants for the return of property in the custody of the state. Consequently, no costs are being shown at this time. Because of concerns the department has with certain provisions in the bill, mentioned briefly below, the eventual cost to the state could be considerable.

First, it will be very difficult for a law enforcement agency to determine when a final disposition of any particular case has occurred. All criminal and children's court proceedings are subject to appeal. This process may even include collateral appeals to the Federal courts in major cases such as First Degree Murder or other unclassified felonies. If a retrial was ordered by an appellate court, it might be impossible to have a retrial if key evidence, in the form of private property, was returned to the owner of the property. Not only would the required chain of custody have been broken, but the evidence might simply be no longer available.

Second the provision that property is no longer in custody in connection with an official investigation of a crime when the investigation is complete and the investigation report has been filed with the appropriate authority, appears to have the effect of forcing prosecutors to make immediate screening and charging decisions without benefit of proper research. A prosecutor must often conduct extensive reviews of relevant caselaw, examine evidence for sufficiency and admissibility, and interview witnesses before screening and charge decisions can be made. Moreover, it is important to understand that the screening of cases is an ongoing process subject to continuing review as cases are developed. Consequently, as new information comes to light, previous screening or charging decisions are often justified or reversed.

During the past fiscal year, more than 24,000 criminal offenses were referred to state prosecutors for prosecution or for assistance in investigation. This is a horrendous caseload that must be shouldered by about 60 criminal prosecutors, after accounting for forced salary vacancy and staff assigned to prisoners' rights cases. Imposition of an arbitrarily short screening period, either immediate or 30 days depending upon how the bill is read, will result in prosecutors being forced to decline to prosecute large numbers of offenses or being forced to bring charges that may not be appropriate under the circumstances.

NOTES TO DECISIONS

AS 12.25.100, in conjunction with this section, establishes the procedure for forcing entry in executing both a search warrant and an arrest warrant. *Davis v. State*, Sup. Ct. Op. No. 1070 (File No. 1973), 525 P.2d 541 (1974).

AS 12.25.100 and this section operate jointly to establish the procedure required

for the lawful execution of a search warrant. *Lockwood v. State*, Sup. Ct. Op. No. 1809 (File No. 3356), 791 P.2d 969 (1979).

Quoted in *Sandland v. State*, Ct. App. Op. No. 59 (File No. 4960), 636 P.2d 1196 (1981).

Sec. 12.35.050. Disposition of property taken. [Repealed, § 42 ch 143 SLA 1982. For present provisions, see AS 12.36.]

Sec. 12.35.060. Malicious procurement of search warrant. A person who maliciously and without probable cause causes a search warrant to be issued and executed is guilty of a misdemeanor. (§ 4.06 ch 34 SLA 1962)

Sec. 12.35.070. Search of defendant in presence of judge or magistrate. When a person charged with a crime is believed by the judge or magistrate before whom that person is brought to have on the person a dangerous weapon, or anything which may be used as evidence of the commission of the crime, the judge or magistrate may direct the accused to be searched in the presence of the judge or magistrate, and the weapon or other thing be retained subject to the order of the judge or magistrate or the order of the court in which the defendant may be tried. (§ 4.07 ch 34 SLA 1962)

Secs. 12.35.080 — 12.35.110. Disposition of stolen property. [Repealed, § 42 ch 143 SLA 1982. For present provisions, see AS 12.36.]

Sec. 12.35.120. Definition of search warrant. A search warrant is an order in writing, signed by a judge or magistrate or signed at the direction of a judicial officer in accordance with AS 12.35.015, directed to a peace officer, commanding the peace officer to search for personal property and bring it before the judge or magistrate. (§ 4.01 ch 34 SLA 1962; am § 14 ch 8 SLA 1971; am § 20 ch 143 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "or signed at the direction of a judicial officer in accordance with AS 12.35.015."

Chapter 36. Disposition of Recovered or Seized Property.

<p>Section</p> <p>10. Property disposition</p> <p>20. Return of property</p> <p>30. Disposal of unclaimed property used as evidence</p>	<p>Section</p> <p>40. Disposal of property when owner unknown</p> <p>90. Definitions</p>
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Collateral references. — 68 Am. Jur. 79 C.J.S., Searches and Seizures, §§ 115
2d, Searches and Seizures, §§ 116 — 119. — 117.

Sec. 12.36.010. Property disposition. When property not belonging to a law enforcement agency comes into the custody of the agency, the property shall be disposed of in accordance with this chapter. (§ 21 ch 143 SLA 1982)

Sec. 12.36.020. Return of property. (a) A law enforcement agency may return property in its custody to the owner or the agent of the owner if

(1) the property is not in custody in connection with a children's court proceeding, a criminal proceeding, or an official investigation of a crime; and

(2) the property in custody is not subject to forfeiture under the laws of the state.

(b) In a criminal proceeding or a children's court proceeding involving the wrongful taking or damaging of property where photographs of the property are used as evidence in place of the property, the prosecuting attorney may release the property to the owner upon presentation of satisfactory proof of ownership.

(c) If wrongfully taken or damaged property is not photographed and authenticated under AS 12.80.050 and the property is used as evidence in a criminal proceeding or a children's court proceeding, the law enforcement agency in possession of the property shall return it to the owner upon presentation of satisfactory proof of ownership within 60 days after the final disposition of the case. (§ 21 ch 143 SLA 1982)

~~**Sec. 12.36.030. Disposal of unclaimed property used as evidence.** (a) If property that is used as evidence in a criminal proceeding or a children's court proceeding, including wrongfully taken or damaged property, is not claimed by the owner within one year after the final disposition of the case, the law enforcement agency having custody of the property shall dispose of it under (b) of this section.~~

~~(b) If the property to be disposed of is money, the law enforcement agency shall deposit it in the court or, if it is property other than money, sell it in the same manner as a sale upon execution. After paying the expenses of the sale and the preservation of the property, the law enforcement agency shall dispose of the proceeds of the sale in the same manner as money collected upon a judgment in favor of the state. (§ 21 ch 143 SLA 1982)~~

Sec. 12.36.040. Disposal of property when owner unknown. When the owner of property is unknown and the property comes into

the possession of a law enforcement agency as suspected evidence of a crime but is not used in a criminal proceeding or a children's court proceeding, or when the property comes into the possession of a law enforcement agency by other means, the property shall be held for two years. If the property is not claimed within two years of the date it comes into the possession of a law enforcement agency, the property shall be disposed of as provided in AS 12.36.030(b). (§ 21 ch 143 SLA 1982)

Sec. 12.36.090. Definitions. In this chapter,

(1) "final disposition of a case" means the time when all appeals have been exhausted or the time when all appeals that could have been taken has expired;

(2) "law enforcement agency" means a public agency that performs as one of its principal functions an activity relating to crime prevention, control, or reduction or relating to the enforcement of the criminal law; "law enforcement agency" does not include a court;

(3) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders. (§ 21 ch 143 SLA 1982)

Chapter 40. Grand Jury.

Section	Section
10. Qualifications and manner of drawing grand jurors	60. Access to public jails, prisons, and public records
20. Number of jurors	70. Duty of prosecuting attorney
30. Duty of inquiry into crimes and general powers	80. Effect of failure to return indictment
40. Juror to disclose knowledge of crime	90. Questioning juror for conduct
50. Holding to answer as affecting indictment or presentment	100. Contents of indictment

Cross references. — For court rules on grand juries, see Cr. R. 6; for constitutional provisions see art. I, sec. 8, Alaska Constitution.

Sec. 12.40.010. Qualifications and manner of drawing grand jurors. Grand jurors shall have the qualifications and be drawn as are trial jurors under AS 09.20.010 — 09.20.080. (§ 5.01 ch 34 SLA 1962)

NOTES TO DECISIONS

Exclusionary method of jury selection held invalid. — Any method of jury selection which is in reality a subterfuge to exclude from juries systematically and intentionally some cognizable group or class of citizens in the community must be held

(4) public interest in ensuring the appearance. *Adkerson v. State*, 731 P.2d 1218 (Alaska 1987).

Applied in *Ashton v. State*, 737 P.2d 1365 (Alaska Ct. App. 1987).

Cited in *Lipscomb v. State*, 700 P.2d

1298 (Alaska Ct. App. 1985); *Dunlop v. State*, 721 P.2d 604 (Alaska 1986); *Patterson v. State*, 747 P.2d 535 (Alaska Ct. App. 1987); *Cannizzaro v. State*, 765 P.2d 110 (Alaska Ct. App. 1988).

Chapter 35. Search and Seizure.

Sec. 12.35.015. Issuance of search warrant upon testimony communicated by telephone or other means.

Revisor's notes. — Criminal Rule 38.1(b), effective June 15, 1985, provides

that AS 12.35.015 governs the issuance of search warrants by telephone.

Sec. 12.35.040. Authority of officer executing warrant.

NOTES TO DECISIONS

Standing to complain of violation. — A person who is not present when a search warrant is executed does not have standing to complain of the state's failure to comply with the "knock and announce" requirements of Alaska law. *State v. Johnson*, 716 P.2d 1006 (Alaska Ct. App. 1986).

Burden of proof. — A defendant complaining of a violation of the knock and announce statutes must make a prima fa-

cie showing that the statutes were not complied with; the state then bears the burden of persuasion to show that the requirements were met, or that exigent circumstances existed. *State v. Johnson*, 716 P.2d 1006 (Alaska Ct. App. 1986).

Applied in *Fleener v. State*, 686 P.2d 730 (Alaska Ct. App. 1984).

Quoted in *Sandland v. State*, 636 P.2d 1196 (Alaska Ct. App. 1981).

Chapter 36. Disposition of Recovered or Seized Property.

Section

30. Disposal of unclaimed property used as evidence

Section

50. Remission of forfeited property

60. Disposal of forfeited deadly weapons

Sec. 12.36.030. Disposal of unclaimed property used as evidence. (a) If property that is used as evidence in a criminal proceeding or a children's court proceeding, including wrongfully taken or damaged property, is not claimed by the owner within one year after the final disposition of the case, the law enforcement agency having custody of the property shall dispose of it under (b) of this section.

(b) The law enforcement agency shall dispose of that part of the property referenced in (a) of this section that is

(1) subject to AS 34.45.110 — 34.45.780 in accordance with AS 34.45.110 — 34.45.780;

(2) not subject to AS 34.45.110 — 34.45.780 by selling the property in the same manner as a sale upon execution; after paying the expenses for the preservation and sale of the property, the law enforcement agency shall dispose of the proceeds of the sale in the same

manner as money collected upon a judgment. (§ 21 ch 143 SLA 1982; am § 4 ch 133 SLA 1986)

Effect of amendments. — The 1986 amendment rewrote subsection (b).

Sec. 12.36.040. Disposal of property when owner unknown.

NOTES TO DECISIONS

Quoted in *Wilson v. State*, 756 P.2d 307 (Alaska Ct. App. 1988).

Sec. 12.36.050. Remission of forfeited property. (a) A claimant seeking remission of the claimant's interest in a weapon ordered forfeited under AS 12.55.015(a)(9) shall prove to the court by a preponderance of evidence that the claimant

(1) has a valid interest in the weapon, acquired in good faith;
(2) did not knowingly participate in the commission of the crime in which the weapon was used; and

(3) did not know or have reasonable cause to believe that the weapon was used or would be used to commit a crime.

(b) Upon a showing that a claimant is entitled to relief under (a) of this section, the court may order that the weapon be released to the claimant.

(c) A claim may not be filed under this section more than 120 days after the entry of the last final judgment in the case in which the weapon was ordered forfeited. (§ 1 ch 169 SLA 1988; am § 29 ch 50 SLA 1989)

Effect of amendments. — The 1989 amendment, effective May 27, 1989, deleted "or remittance of the value of" following "remission of" near the beginning of subsection (a).

Legislative history reports. — For an analysis of the 1989 amendment to (a) of this section, see Senate-House Joint Journal Supplement No. 10, May 5, 1989, p. 5, under "Sec. 29."

Sec. 12.36.060. Disposal of forfeited deadly weapons. (a) A deadly weapon forfeited under AS 12.55.015(a)(9), unless remitted under AS 12.36.050, shall be disposed of by the commissioner of public safety under this section. The commissioner of public safety may declare a weapon surplus and transfer it to the commissioner of administration. A weapon suitable for law enforcement purposes, ballistics testing, training, or identification may be retained by the Department of Public Safety or transferred to the municipal law enforcement agency making the arrest that led to the forfeiture. A weapon that is unsafe or unlawful shall be destroyed.

(b) The commissioner of public safety may adopt regulations necessary to carry out the provisions of this section. (§ 1 ch 169 SLA 1988)