ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672
8868 SENATE HEALTH EDUCATION & SOCIAL SERVICES

- Alaska's Immunization Program, operated by the Division of Public Health, requires all providers participating in the state's Universal Vaccine Distribution System to report adverse events using Vaccine Adverse Events Reporting System (VAERS) reports.

- All deaths reported to the national Vaccine Adverse Events Reporting System are evaluated and additional information is sought by the Food and Drug Administration (FDA) which assesses vaccine risk before and after licensure.

- The number of adverse reactions associated with vaccine administration in Alaska are few, particularly when viewed in relation to the number of vaccine doses administered. The following tables present information on vaccine doses administered, number of adverse reactions reported, and detailed information on serious adverse reactions in Alaska during the past two years.

Vaccine Doses Administered to Alaska Children (0-9 years of age), 1994-95

Year	Total Doses Administered
1994	67,117
1995	49,216

Number of Reports to the Vaccine Adverse Event Reporting System (VAERS) for Children <age 7, Alaska, 1994-95

Year	Minor or Transient Reaction	Serious* or >1 month Duration
1994	20	3
1995	12	2

* Serious event = requires hospitalization or medical follow-up

Review of "Serious" Adverse Events

Year	Age of Child	Vaccines Received	Event	Outcome
1994	8 weeks	OPV Hib DTP	9 hours after vaccination - became limp and cyanotic; hospitalized for observation	Fully recovered
	2 months	OPV Hib DTP	6 hours after vaccination - continuous crying, 102° fever; observed overnight	Fully recovered
1995	18 months	OPV DTP	18.5 hours after vaccination - 1 seizure, fever > 100° ; not hospitalized	Fully recovered
	16 months	MMR DTP	9 days after vaccination - seizures for 2 hours; hospitalized	Fully recovered
	2 months	OPV Hib DTP	27 hours after vaccination - afebrile seizures, 5-6/day; hospitalized	Not resolved

Some background information on the VAERS may help the committee understand its strengths and limitations.

- The Vaccine Adverse Events Reporting System (VAERS) was created as part of the National Childhood Injury Act of 1986 and is one method of monitoring vaccine safety nationwide.

- Since 1990 VAERS report forms and information about VAERS have been mailed annually to all U.S. physicians who are likely to administer vaccines.

- Strengths of VAERS:
  - provides information on the number of adverse events reported nationwide,
  - permits collection and analyses of vaccine-specific and lot-specific information,
  - potentially identifies risk factors for adverse events that may be contraindications to additional doses,
  - **serves as a sentinel for the detection of either previously unreported vaccine adverse events or unusual increases in reported events.**

- Limitations of VAERS:
  - describes only the number of events reported, without placing in context of number of vaccines given,
  - cannot track the rate of similar events occurring in individuals who were not recently vaccinated,
  - cannot in itself establish causation.

- **A VAERS report does NOT mean that the vaccine caused the adverse event.**
  - The reporting system is "open" to all reports that an individual/provider wishes to make.
  - **The report indicates simply that an event was temporally associated with receipt of a vaccine -- NOT that the vaccine necessarily caused the event.**

In addition to specific questions arising at the recent hearing additional information to place the issue of general vaccine risk, and DTP vaccine risk particularly, in context with scientific knowledge about these risks might prove of value to the committee. The following provides a brief summary I hope will be of use to committee members.

- Infants, unfortunately die for many reasons such as infectious diseases, congenital defects and metabolic disorders which are unrelated to vaccination. However, chance alone dictates that infant deaths will occur from these, and other causes, following a vaccination. Almost all infants are vaccinated during the first year of life. Therefore, **any infant who develops a medical illness or dies is likely to have been vaccinated earlier in life.** Since vaccinations are usually administered three times during infancy (at ages 2, 4, and 6 months) there is an increased chance that any event, including illness or death, can occur within 24 hours of vaccination by coincidence alone.

- The vast majority of vaccine adverse events are minor and temporary, like a sore arm or mild fever. More serious adverse events occur rarely; some are so rare that risk cannot be accurately assessed. There are **so few deaths that could plausibly be attributed to vaccines that it is hard to assess the risk statistically.**

- The concept that DTP causes Sudden Infant Death Syndrome (SIDS) is a myth which developed because a moderate proportion of SIDS deaths occur in children who have recently been vaccinated with DTP. On the surface, this seems to point toward a causal connection. Nearness in time of two events is a common sense reason to examine the potential of a causal relationship. But it does not establish that the first event caused the second. If this logic were applied in a common sense way without scientific investigation **one might conclude that eating bread causes car crashes, since most drivers who crash their cars could probably be shown to have eaten bread within the past 24 hours.**

Because most SIDS deaths occur during the same range of ages when 3 shots of DTP are given, it is inevitable that DTP shots will precede a fair number of SIDS deaths simply by chance. In fact, a number of well-controlled studies have indicated that the SIDS deaths (within the study populations) would have occurred even if no vaccinations had been given. **In fact, in several of the studies children who had recently gotten a DTP shot were *less* likely to get SIDS.**

- **No deaths caused by anaphylaxis following DTP vaccination** have been reported to CDC since the inception of vaccine-adverse-events reporting began in 1978, a period during which more than 80 million doses of publicly purchased DTP vaccine were administered.

- All deaths reported to the national Vaccine Adverse Events Reporting System (VAERS) are evaluated and additional information is sought by the FDA. The deaths have been found to be related to a wide variety of causes. Most importantly, **no specific, clinical syndrome has been identified as would be expected if these deaths had the same cause, i.e., a vaccine reaction.** In consideration of this, a 1994 Institute of Medicine report indicated that the "vast majority of deaths reported to VAERS are temporally but not causally related to vaccination."

- Although no one can guarantee that the vaccines (or any medications) are totally without risk, it is important to look at both the risks and the benefits of vaccine use. **The risks of NOT being vaccinated are much greater than the risks associated with a vaccination.** If there were no vaccines, there would be many more cases of disease, and along with them, more serious side effects, including death.

- **A child is far more likely to be seriously injured by a vaccine preventable disease than by any vaccine.** While any serious injury or death caused by vaccines is too many, it is also clear that the benefits of vaccination greatly outweigh the slight risk, and that many, many more injuries and deaths would occur without them. The table below compares the risk from disease with the risk from the vaccines that protect against them. It illustrates the benefit we get from vaccinating our children.

- Even one serious adverse effect in a million doses of vaccine cannot be justified if there is no benefit from the vaccination. But an analysis of the benefit and risk of DTP immunization, for example, has shown that **without an immunization program there could be a 71-fold increase in cases of pertussis and a nearly 4-fold increase in deaths due to pertussis in the United States.**

Risk from Disease vs. Risk from Vaccines	
Disease	**Vaccines**
Measles Pneumonia = 1 in 20 Encephalitis = 1 in 2,000 Death = 1 in 3,000 **Mumps** Encephalitis = 1 in 300 **Rubella** Congenital Rubella Syndrome = 1 in 4	**MMR** Encephalitis or severe allergic reaction = 1 in 1,000,000
Diphtheria Death = 1 in 20 **Tetanus** Death = 3 in 100 **Pertussis** Pneumonia = 1 in 8 Encephalitis = 1 in 20 Death = 1 in 200	**DTP** Continuous crying, then full recovery = 1 in 100 Convulsions or shock, then full recovery = 1 in 1,750 Acute encephalopathy = 0-10.5 in 1,000,000 Death = None proven Information compiled by the Centers for Disease Control & Prevention (CDC, Atlanta)

- A **risk-benefit analysis** has been performed for the U.S. to compare the outcomes with or without a vaccination program using a hypothetical cohort of 1 million children from birth to 6 years of age who received and did not receive pertussis vaccination. Without a program, the estimated annual number of residual defects from encephalitis (both vaccine and disease induced) would decrease from 54 to 29 cases. However, **the estimated annual deaths from pertussis would increase more than 10-fold, from 44 to 457.**

- The **experiences of other countries** are also useful in evaluating the value of vaccination.

  In the mid-70s, the use of pertussis vaccine was greatly reduced in **Great Britain** because of fear about the vaccine. The effect was dramatic and immediate. A drop in pertussis vaccination in 1974 was followed by an epidemic of more than 100,000 cases of pertussis and **36 deaths** by 1978.

  In **Japan**, pertussis vaccination was used nationwide by 1950. By 1974, pertussis incidence had dropped from 100 cases to 1 case per 100,000 population. However, in the last half of the 1970s, vaccine utilization in Japan markedly decreased after two deaths occurred following pertussis immunization. A major epidemic of pertussis ensued, with an increase in incidence rate to 11.5 per 100,000 in 1977, and an **increase in the annual number of deaths from an average of less than 5 for the years 1970-1974 to an average of 32 during 1977-1979.**

I hope this information is useful to committee members in considering the value of activities proposed in SB 185. Department of Health and Social Services staff will gladly answer additional questions that may arise as members consider this bill.

Sincerely,

Karen Perdue
Commissioner

SB

188

SENATE BILL NO. 188

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY SENATORS TAYLOR AND MILLER

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

A BILL

FOR AN ACT ENTITLED

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

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

• Section 1. AS 47.17.010 is amended to read:

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

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

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

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

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

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

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

(1) prevent further harm to the child;

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

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

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

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

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

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

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

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

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

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

907-766-2458 Days

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Feb. 28, 1996

Represenative James
Room 102
Capital Building
Juneau, Alaska
99802

Honorable Represenative James,

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

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

Thank you for your concern.

Sincerely,

Paul A. L. Nelson

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paul A. L. Nelson

Alaska State Legislature

SENATOR
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Senate

Joint Sponsor Statement

Senate Bill 188

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

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

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

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

I strongly urge your support of SB 188.

2/9/96

SPONSOR STATEMENT

by Scott Trafford Calder

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

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

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

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

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

CAPITAL CITY WEEKLY 2/7/96

Opinion

Letters to the I

Abuse allegations nightmare for parents

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

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

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

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

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

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

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

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

No restrooms

Dear Legislator,

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

Sincerely,
George Ogle

Taping at child abuse interviews

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

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

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

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

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

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

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

Abuse interviews may be taped

The Associated Press

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Danger lurks in suggestive interviews

Judith Kleinfeld

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

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

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

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

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

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

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

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

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

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

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

Attorney: *And what were his responses?*

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

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

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

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

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

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

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

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

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

Reasons for taping interviews with children

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OFFICE

ALASKA PEACE OFFICERS ASSOCIATION

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

February 5, 1996

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

Dear Senator Taylor,

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

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

Sincerely

Michael Corkill
State President

ORIGINALS IN MAIL

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

[redacted]

OPPOSING DOCUMENTS

City and Borough of Sitka

POLICE DEPARTMENT

304 Lake Street, Room 102 • Sitka, Alaska 99835

John H. Newell
Chief of Police

Business 747-3245
Fax 747-1075

February 2, 1996

Senators Taylor and Miller
Nineteenth Legislature
Second Session

RE: SB 188

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

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

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

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

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

Sincerely,

John H. Newell
Chief of Police

c. Commissioner of Public Safety

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

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

February 8, 1996

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

Dear Senator Green:

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

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

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

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

Sincerely,

Angela M. Salerno, ACSW

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

9-LS1225\F
Luckhaupt
2/27/96

CS FOR SENATE BILL NO. 188( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS TAYLOR AND MILLER

A BILL

FOR AN ACT ENTITLED

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

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

* Section 1. AS 47.17.010 is amended to read:

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

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

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

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

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

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

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

(1) prevent further harm to the child;

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

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

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

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

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

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

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

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

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

DATE: 2/12/96

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

SHFSC (SB188) teleconference scheduled on

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

Thank you,

Jean Fleagle

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

ALASKA STATE LEGISLATURE

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

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

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

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

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

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

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

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

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

(continued)

SIGNED SCOTT TRAFFORD CALDER
TESTIFIER

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

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

A. C.

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

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

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

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

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

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

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

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

February 9th, 1996
Fairbanks, Alaska

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

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

Dear Sir; Honourable Members,

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

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

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

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

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

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

Respectfully submitted,

Jodi Olmstead Delaney

Jodi Olmstead Delaney, Concerned Parent.

STATE of ALASKA

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

Delta Junction Legislative Information Office

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

February 9, 1996

TO: Senate Health, Education & Social Services Committee

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

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

Thank you,

Tammy Renee' Hall
Information Assistant

Enclosures: 2

Alaska State Legislature

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FEB 13 1996
Ans'd.....

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

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

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

Signed: Gene Ollestad
Testifier

Guardian of family right
Representing (Optional)

Fourth Judicial District
Box 10-E
Address

Delta Junction Alaska Republic
Phone No. 895 4805

Alaska State Legislature

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

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

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

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

Signed: Jeanne' Phipps
Testifier

Coalition of Family rights
Representing (Optional)

Family Justice Project
Address

Phone No. 895 9505

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

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

February 9, 1995

Senate Bill 188 Teleconference

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

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

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

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

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

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

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

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

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

ANCHORAGE POLICE DEPARTMENT

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

Rick Mystrom, Mayor

Service since 1921

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

February 9, 1996

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

Dear Senator Taylor,

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

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

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

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

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

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

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

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

Sincerely Yours,

Shirley A. Warner

Captain Shirley A. Warner
Detective Division

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

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 188

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

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

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Public Defender Agency.

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

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

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 188

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

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

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

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

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

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB188

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

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

Expenditures/Revenues: (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,206.8	1,144.4	1,144.4	1,144.4	1,144.4	1,14
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	1,206.8	1,144.4	1,144.4	1,144.4	1,144.4	1,144

POSITIONS:

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

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

ANALYSIS: (Attach a separate page if necessary)

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

1/31/96

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

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

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB188

Revision Date:
Dept. Affected: Health and Social Services
Title: Videotape/Audiotape Interviews with Children
BRU: Family and Youth Services
Component: Southcentral Region
Sponsor: Senators Taylor, Miller
COMPONENT SERIAL NO. 254
Requestor: Senate (HES)
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

POSITIONS:

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

Estimate of any current year (FY96) cost: 60.0

ANALYSIS: (Attach a separate page if necessary)

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

1/31/96

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

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

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STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB188

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

Expenditures/Revenues: (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

POSITIONS:

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

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

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 188

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

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

COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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

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

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ANALYSIS CONTINUATION:

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

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

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

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

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

Personal Services (paralegal overtime)

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

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

Contractual Services

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

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

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

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

Supplies

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

Equipment

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

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

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

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

Total Equipment = $29,453

FISCAL NOTF

STATE OF ALASKA **BILL NO:** SB188

1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety

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

Component: Detachments; CIB

Sponsor: Senators Taylor and Miller

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

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

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

FUNDING: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See Attached.

Prepared By: Lt. Dan Lowden Phone 465-5505

Division: Alaska State Troopers Date: January 31, 1996

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

Agency: Ronald L. Otte, Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: SB188

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

ANALYSIS CONTINUED:

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

Official Business

COMMITTEE: SENATE HEALTH, EDUCATION & SOCIAL SERVICES

DATE: February 28, 1996

SIGN-IN

Subject of meeting: SB 188 VIDEOTAPE INTERVIEW OF ABUSED MINOR

PLEASE PRINT!

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

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

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

January, 1996

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

Barbara Sparks, Consultant

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

Executive Summary

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

A. The National Perspective

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

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

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

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

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

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

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

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

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

B. Impact of Alaska's Proposed Legislation

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

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

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

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

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

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

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

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

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

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

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

Further, this paper presents the following recommendations:

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

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

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

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

I. Introduction

A. A Brief History

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

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

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

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

B. Purpose of this Paper

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

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

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

II. Review of the Literature

A. Legal Considerations

1. Statutes Regarding the Use of Videotape

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Constitutional Questions Concerning Use of Videotapes in Court

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

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

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

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

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

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

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

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

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

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

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

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

  (1) the interview was not videotaped,

  (2) the doctor asked leading questions, and

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

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

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

Writing for the majority, Justice O'Connor stated:

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

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

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

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

3. Impact of Videotaped Interviews on Court Proceedings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Policy Considerations

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

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

1. Differential Treatment of Child Victims

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

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

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

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

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

Similarly, Toth (1992) states:

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

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

2. Privacy and Consent Issues

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

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

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

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

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

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

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

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

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

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

3. Issues of Trust and Fairness

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

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

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

On this issue, Stephenson (1992b) writes:

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

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

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

C. Practice Considerations

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

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

1. Minimizing Intrusiveness into the Child's Life

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

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

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

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

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

2. Eliciting and Preserving Accurate Information

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

Weissman (1991) writes:

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

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

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

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

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

According to Sorensen and Snow,

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

3. Operational and logistical issues

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Impact Analysis

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

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

A. The Proposed Legislation: An Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- who may have access to video or audiotapes,

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

- a penalty for unauthorized release,

- when and how tapes may be destroyed,

- multidisciplinary interviewing and training of interviewers,

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

B. Impact of the Proposed Legislation on Children and Families

(1) Current status

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

(2) Positive Aspects

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

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

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

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

(3) Negative Aspects

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

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

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

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

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

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

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

B. Impact on DFYS

(1) Positive Aspects

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

(2) Negative Aspects

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

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

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

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

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

C. Impact on Other Professionals

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

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

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

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

IV. Cost Analysis

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

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

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

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

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

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

Cost Analysis

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

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

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

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

V. Conclusion and Recommendations

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

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

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

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

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

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

Further, I would make the following recommendations:

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

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

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

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

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

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

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

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

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

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

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

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

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