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THE SEXUAL ABUSE OF CHILDREN:  
IMPROVING THE SYSTEM'S RESPONSE

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The National Council of Juvenile and Family Court Judges

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## FOREWORD

Sexual Abuse of Children is a repulsive crime. The first reaction is to punish, to throw the book, to castrate. However satisfying, it may be the wrong reaction. Three facts stand out. They are clearly proven:

- People who sexually abuse their children were probably sexually abused by their parents.
- Children who are sexually abused will probably sexually abuse their children.
- Treatment can break the cycle but usually only if the abuser is part of the treatment.

Thus the first and most difficult choice is emotional: Shall we concentrate on punishing the abuser or shall we concentrate on breaking the cycle, helping the child, with sufficient punishment to insure the abuser's participation; we cannot do both in most intra-family sex abuse situations. We need to assess each case on its own circumstances and make a decision which the police and the courts and the prosecutors and the family can all live with, and then we need to coordinate the efforts of all agencies towards this decision.

From the very beginning, we face the second problem, the need to protect the child: from further sexual abuse, from the trauma of being taken out of her home, from the guilt and retribution by her family for getting them involved, from the glare of publicity and all of its consequences. Ways have been found to provide these protections, more and better ways can be found.

The third problem is to reduce the trauma which judicial intervention causes the child-victim. There are ways of making his testimony easier and less frequent and less fearsome than sitting alone in a witness box surrounded by staring adults. We need to develop the ways which already have been found, and to use them.

This book comprises the thinking of Judges who are close to the problems, who have felt the pain, and who know the hardship a false accusation can cause. They have spent many hours, not only on their benches but in committee meetings and lecture sessions and interchanges with the best experts that could be found from all points of view. They have written this book mostly for other judges who must face the problems, to make them sensitive to the raging emotions which may be involved and to show them some options. Possibly it will be of benefit to others also.

# CHILD SEXUAL ABUSE

## Improving the System's Response

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It would be easier if it were strangers because the child would not have known a broken trust, a family would not have been torn open, a relationship would not have to be rebuilt. A child suffers far more if the abuser is someone with whom she felt secure; rehabilitation is far more complicated if the "support perimeter" is invaded. If one of those who need to be trusted cannot be trusted all others are suspect. The trust having been broken, all others who expect trust, who need trust to help the child, will also be suspect: the Policeman, the Judge, the Caseworker, the Prosecutor, the Lawyer, the CASA Volunteer.

An abuser working from within has also the time to work more subtly, to seduce rather than to force, even to persuade the child that she is seducing the abuser, to develop her participation so she will be less apt to tell. The damage is greater because it is emotional as well as physical, because guilt feelings are developed. And the guilt feelings are accentuated when the child is called upon to report on a trusted adult knowing that it may cause serious trouble for the adult and for the rest of the family.

As the public becomes aware of sexual abuse by those who work with children it becomes more suspicious: Is the Boy Scout leader really to be trusted? Can I send my child to that dancing school or theatre group? Why does the lady across the street invite the children in for cookies so often? Does the swimming teacher have to hold my son like that? An insidious suspicion can grow up. And it can work the other way: men may be unwilling to volunteer as Boy Scout leaders, schools and groups working with children may build up elaborate monitoring devices which add to costs and stiffen procedures, neighbors may get stand-offish, all to avoid suspicion. And the children suffer.

There needs to be awareness of who may be an abuser. There needs to be vigilance to detect the first approaches of abuse. There needs to be training of children to report such approaches. But there needs also to be awareness that very few people are in fact abusers.

Some of the abusers are pedophiles; psychopathic personalities who may be normal friendly people except that they can't resist sexual activities with children. There are only a few of these and they are reasonably easy to identify. Some of the abusers have sexual appetites not satisfied by their spouse and which they will not control or sublimate; and daughters are more accessible than prostitutes. Some abusers are fathers who let their daughters take showers with them when the girls were infants and never stopped and couldn't resist when the girl began to bud. Some are men who like to make ever more conquests. Some are brothers with curiosity. And some are mothers and sisters. There is no easy pattern. They are different, their motives are different. They can be handled differently.

## Chapter 2.

### TYPES OF ABUSE

The sexual abuses of children are manifold. From "just looking" to sadistic assault. As manifold as the human imagination, and seldom with the feelings of the child in mind. The abuse may be forcible or by persuasion. It may simply be experimentation between children.

In its least intrusive forms, it may be simply voyeurism: looking, without touching. It can progress to touching to find out what the parts are like. And then to fondling and to various means of gratification: vaginally, even of babies, or anally if that is possible, or orally, or between other parts of the body. It may be having the child fondle. It may involve several children at once, often passively watching them do with each other what the abuser has taught them. In its most virulent forms it may be intentionally causing the child pain, forcing intercourse despite the child's size, or simply whipping the child and listening to the screams for the abuser's satisfaction.

Abuse may start out simply: helping a child with his bath. It may start with a shared shower with a toddler on a regular basis when it is cute. It may just be the presence of opportunity. It may start out simply, but as sexual appetities are aroused, it ceases to be simple; it becomes harder to stop; cuteness becomes abuse, and grows easily in the familiar routine.

Abuse may also be exploitation, with only economic gratification for the abuser: Photographing a child or children for sale as pornography; seducing a child, male or female, into prostitution; or simply lending a child for a friend's gratification, often after a drinking bout.

The nature of the abuse and the motives of the abuser are of considerable importance to those who must determine what to do with the abuser, whether to punish or rehabilitate and the particular form of either. The nature and motives may also be helpful in working with the victim and with the family, in trying to explain to them what happened and why, and what steps can be taken to prevent a recurrence. They are certainly important to the researcher who studies not only rehabilitation and punishment but also prevention, and recognition of early indications of potential abuse.

## Chapter 3.

### FACTS AND FIGURES

"Community surveys have provided information about the distribution of sexual abuse within various socio-demographic subgroups in the communities studied. These studies consistently fail to find differences in rates among different social classes or races. Findings on urban-rural differences are inconsistent at the moment."

"However, several other factors have emerged from the community studies as being consistently associated with a higher risk for abuse: 1) when the child lives without one of the biological parents (6 out of 6 studies); 2) when the mother is unavailable to the child either as a result of employment outside the home or disability or illness (4 out of 5 studies); 3) when the child reports that the parents' marriage is unhappy or full of conflict (4 out of 4 studies); 4) when the child reports having a poor relationship with the parents or being subject to extremely punitive discipline or child abuse (7 out of 7 studies); 5) when the child reports having a step-father (4 out of 6 studies) (29). Although few studies have examined why these factors increase risk, poor supervision, emotional turmoil, neglect, and rejection may make a child vulnerable to the ploys of child molesters. In other words, as a result of conflicts and emotional deficits, the children are easier to manipulate with offers of affection, attention, and rewards in exchange for sex and secrecy. Unable to count on help and support from parents, these children may also find it harder for them to stop or terminate the abuse once it begins."

"The single most clearly established fact about offenders is that they are predominantly males. This finding has been confirmed in non-clinical studies and in large scale surveys of sexual histories undertaken to study questions other than child sexual abuse. A comprehensive review reported that women are perpetrators in no more than 5% of the abuse cases involving girls and 20% of the cases involving boys, and that these proportions are not the result of reporting or labeling biases (30). This disproportionate perpetration by men clearly distinguishes sexual abuse from other forms of child abuse and neglect."

"A wide variety of theories have been proposed to account for abusers, mostly on the bases of clinical experiences with incarcerated offenders. These theories can be organized into four categories or dynamics, according to whether they argue that abusers abuse: 1) because they get powerful, developmentally induced emotional gratification from the acts; 2) because they have deviant physiological sexual arousal patterns; 3) because they are blocked in their capacity to meet their sexual needs in more conventional ways; and 4) because they have problems in their capacity for behavioral inhibition. Although often presented as competing theories, several of these dynamics may be present simultaneously, and different dynamics may be present in different types of molesting behavior."

"Community studies are also the best sources of information about the prevalence and characteristics of different types of sexual abuse. They suggest that abuse by fathers and step-fathers, even though it dominates reports from the child welfare system, actually constitutes no more than 7% to 8% of all abuse cases. Abuse by other family members (most frequently uncles and older brothers) constitutes an additional 16% to 42%. Other non-relatives known to the child (including neighbors, family friends, child care workers and other authorities) make up 32% to 60% of offenders. Stranger abusers (the traditional stereotype of the child molester), who make up the remainder, are in almost all studies substantially less common than either family members or persons known to the child."

"The largest category of abuse in most studies involves groping or fondling of children's bodies on top of or underneath the clothing. Only 16% to 29% of the abuse involves intercourse or attempted intercourse. Another 3% to 11% of the activities involve attempted or completed oral or anal intercourse, and 13% to 33%, manual touching of the genitals."

"Community studies show the frequency of child sexual abuse victimization seems to peak between ages 9 and 12, and then declines somewhat during later adolescent years. (This distribution changes somewhat, however, depending on how much of adolescent date and acquaintance rape is included as sexual abuse). Most studies show that a quarter of the victimizations occur before age 8, and some clinicians insist that this percentage would be even greater if it were not for the occlusion of memories from these early years (26). Approximately 42% to 75% of experiences reported in the surveys are single events, which do not reoccur. Repeated abusive experiences occur at older ages and are associated with abuse within the family."

"Clinicians in the U.S. and Canada have noted many symptoms in children who have been sexually abused. These include fear, compulsivity, hyperactivity, phobias, withdrawal, guilt, depression, mood swings, suicidal ideation, fatigue, loss of appetite, somatic complaints, changes in sleeping and eating patterns, hostility, mistrust, sexual acting out, compulsive masturbation, and school problems."

"The most commonly observed symptomatic behaviors among the school-aged abused children were aggression (50%), anti-social behavior (45%), fear (45%), immaturity (40%), neurotic behavior (38%), and sexual behavior (36%). Fearfulness, anger, and hostility are the most common observations in other such studies."

"In contrast to these initial effects, the long-term impact of sexual abuse has been the subject of more sophisticated studies. Seven surveys of sexually abused women in the general population have all found significant, identifiable mental health impairment in victims compared to non-victims in the same samples. One of the best surveys to date was a survey of 344 women in Calgary using such epidemiological measures as the Middlesex Hospital Health Survey and CES-D depression scale. This study found sexually abused women to have about twice the risk for depression, psychoneurosis, somatic anxiety, psychiatric hospitalization, and suicidal gestures. Moreover, sexual abuse was demonstrated to be a major risk for such outcomes even when controlling for other negative developmental and family background factors. However, severe levels of psychopathology were apparent in less than 25% of the sexual abuse victims."

"...victims experienced more isolation, lower self-esteem, fear of men, anxiety attacks, sleeping difficulties, nightmares, alcohol and drug abuse, and were more prone to suicide and self-mutilation. Additional research suggests connections between sexual abuse and prostitution, multiple personality disorder, and eating disorders. In short, these studies contribute to very rapidly mounting evidence of negative mental health outcomes for victims of child sexual abuse. None of the studies

by themselves are definitive on this point, but the weight of the growing number of studies is impressive."

"Given such evidence of serious effects on some individuals, researchers have now begun to look at whether certain aspects of the experience or the context of the experience may explain the degree of trauma. However, this research is still very tentative. The weight of current evidence is that victims show more long-term symptoms when the abuse involves fathers and step-fathers, sexual intercourse and force. On the other hand, studies have not been able to demonstrate consistently that abuse at any particular age is more traumatic, or that longer lasting abuse is necessarily more traumatic than short-term abuse. The single best study of initial effects in children shows that the factors predictive of greater disturbance are 1) violence and physical injury in the abusive episode, 2) a mother's hostile attitude toward the child upon revelation of the abuse, and 3) removal of the child from his or her home subsequent to the abuse. Unfortunately, research to date does not yet provide the basis for designating those types of abuse that should receive priority for professional attention." 1

#### Chapter 4.

#### THE IMPACT OF ABUSE

The sexual abuse of a child can be among the most devastating of crimes. It involves not only a victim and an offender as in other crimes, it involves a child, often a helpless child. It involves siblings. It may destroy a family. Its tentacles reach out. And if there was no abuse, if the allegation was false, its victims may be just as widespread.

The physical impact on the child is obvious, it can be measured medically. The emotional impact can be defined by the experts. The child has been assaulted, its privacy invaded, often painfully, which can be the substance of nightmares. The child feels guilt for having been involved in a bad thing. The child feels guilt for telling, for causing all the stir, for causing the abuser to be jailed and the family to lose its income and losing one of its parents in many cases. Usually the physical impact is temporary, the emotional impact is permanent unless treated by experts.

The initial impact on a child who makes a false report may be the attention which the child has been seeking, it may be status among peers. The permanent impact of a false report will depend on how well the professionals analyze the motives and alter them.

The impact on the family can be great. There is publicity, however, controlled. There are intruders investigating the inner affairs of each family member's privacy. There may be stigma for the mother among her peers, for the siblings among theirs. There may be a loss of income, possibly forcing the family onto welfare. There may be a divorce, a permanent destruction of the family unit.



The impact on the family of a false report will be just as great temporarily; the same publicity, intrusions, stigmas, loss of income. And however false the report may have been, it will always be believed by some. They will always be a little bit guilty. Too many people will think that some lawyer "got them off".

The second impact of the abuse may be by the system: by police and welfare workers and lawyers and judges. The impact of investigations, depositions, appearances and appearances, waiting in a chair next to the abuser, testifying in a big, crowded, formal courtroom with all those adults staring and staring and an armed guard and a black-robed judge. These can be even more traumatic than the abuse itself.

It well behooves each person in the system to be aware of the impacts of sexual abuse of a child and of false reports. It well behooves each of us to search out ways to reduce the trauma and the permanence. It behooves us to devise ways so that the system will not be the second trauma.

## SECTION B.

### DETECTION

(start italics) Sexually abused children who are not treated will likely commit violent crimes and will probably abuse or condone the abuse of their own children. But the best of treatment programs are of no use if the abused children are not found. Reporting laws adopted in recent years, even though of somewhat limited scope, have greatly increased the number of children found and brought to treatment, and each child treated not only improves that child's pursuit of happiness, it also breaks a cycle of abuse to his children.

Reporting laws can be strengthened. They can help more children. They can cast a broader net of those who must report abuse and of those who are protected when they report. They can clarify the procedures to be taken and the agencies responsible when reports are made. They can provide for confidentiality and protective orders to save the family a second trauma during judicial and administrative procedures. They can identify public policy as to when to treat and when to punish if both cannot be done. They can encourage research for determining the truth of reports and for improving treatment methods.

There is resistance to reporting laws. Physicians are well aware that if they report an abuse they may well lose not merely that family as his patients but also their friends and relatives which can be a severe economic hardship. Lawyers and physicians resist intrusions into the confidentiality of their relations with their clients and patients. Foster homes and residential care facilities know that even a hint of impropriety may end their arrangements for payment by the public and insurance carriers. Families often resist reporting because of its embarrassment and potential impact on their jobs and on their relationships with friends. Children resist because of guilt feelings or for fear of losing a parent. Mothers resist because they fear the breakup of their homes and loss of a breadwinner.

Compulsory reporting laws may be the best means of helping sexually abused children and of breaking the cycle of sexual abuse by those who were sexually abused and even of reducing violent crime. But it is not a simple solution.

But just as we can do nothing about child abuse unless it is reported, neither can we do anything about abuse unless the reports are managed efficiently, with prompt investigation and prompt action when appropriate. A report allowed to gather dust may have cost a physician a part of his practice without protecting or helping the child. (end italics)

## Chapter 5.

### REPORTING ABUSE

All professionals working with children should be required to report evidences of sexual abuse of a child to the police, the prosecutor, or the local public welfare agency. There should be immunity from civil or criminal liability for reporting and civil and criminal liability for not reporting.

**"Professionals"** = The obvious professionals whose work brings them into contact with children in a manner conducive to observing evidences of sexual abuse are Teachers and Pediatricians. There are others. The Police investigate a large number of "domestics" in which children may be the victims of parental clashes. Public Health Nurses who visit homes, School Nurses who examine children, Nurses in hospital admissions, Nurses in Physicians' offices all are in a position to observe evidence of sexual abuse of a child. Psychologists and Psychiatrists are often involved because of a family's concern about sexual abuse of a child. Lawyers and the Clergy are consulted. Probation Officers, both Juvenile and Adult, learn of abuse indications. A suggestion has even been urged that, since most juvenile delinquents have been abused, all juvenile delinquents coming to Juvenile Court should be examined for possible abuse.

**"Immunity"** = The reports made to public agencies can be kept confidential so that, whether the report be true or false, the trauma of publicity can be avoided. To be adequate, the immunity should also include the costs of litigation: the lawyers' fees, the costs of deposition, court fees, investigators' expenses can be disastrous and should either be provided or reimbursed by the public. Conversely, provision might be made for assessing the costs of a maliciously false report.

**"Liability"** = Criminal penalties need not be harsh: a mere conviction with attendant publicity might well itself be excessive for a professional. Civil penalties would be as for malpractice, to reimburse those who are damaged by the failure to report.

**"Evidence of Sexual Abuse of a Child"** = Just as sexual abuse of a child comes in many forms, so does evidence of it. Children may report it. Their bodies may show the bruises from it. Their friends may mention it. Their personalities may change from it. They may write hints of it, or draw pictures from the experience. They may show a new and inexplicable affinity for an adult. They may have money in unusual amounts. Pornographic pictures may turn up.

A. Often the first thing that someone may notice will be that the child exhibits physical evidence. This may be observed by teachers, family members, peers, neighbors, etc. The kinds of things most often observed are:

- pain, itching, soreness and/or irritation in the genital area
- unusual bleeding or spotting on clothes or bedding
- torn or stained clothes that the child hides
- unusually frequent urination.

B. Teachers, family members, neighbors, etc. should be routinely aware of whether they observe any behavioral changes in a child. Behavioral changes strongly indicating sexual abuse are:

- child tugging at clothes, pulling at pants, etc.
- changes in toilet going patterns such as going to the bathroom more frequently
- excessive sexual play acting with peers, such as a young child simulating intercourse
- sudden withdrawal, uneasiness or discomfort around adults or peers of opposite sex
- excessive withdrawal of touching by a member of the opposite sex especially if by a particular person such as father or brother
- extreme restlessness at night, dreaming and talking about the sexual incident
- unwillingness to participate in physical activities such as pain experienced when the child sits or plays
- overprotective and possessive parents keeping the child in isolation and/or preventing the child from socializing or having friends, especially with members of the opposite sex.

The following behavioral changes may indicate the existence of sexual abuse. If present, further investigations need to be conducted to substantiate abuse. Such evidence may successfully be introduced to corroborate more direct evidence of sexual abuse as well as an adjudication of 'dependency'

(i.e. child is in need of care or control necessary for physical, mental or emotional health).

- changes in eating and/or sleeping patterns
- sudden alteration behavior such as returning to the child-like behavior of clinging to the mother
- unexplained appearance of money or gifts
- regression, retreating into a fantasy world or infantile behavior
- delinquency or aggressive behavior, acting out anger and hostility toward others
- poor peer relationships that may be the result of the child's poor self image
- running away from home in order to escape or seek attention
- use of drugs indicating the child's way of dealing with guilt and anxiety
- unexplained changes in behavior when child is in or out of home
- indirect allusions to incest such as statements made by the child: 'I'm afraid to go home' or 'I want to live with you.'"<sup>2</sup>

## Chapter 6.

### MANAGING ABUSE REPORTS

The agency receiving the report should promptly investigate the facts, preserving the evidence for possible judicial procedures, and quickly prepare an evaluation as to the credibility of the report and the further procedures indicated if any.

**"Agency Receiving the Report"** = The report should be made to an unbiased agency willing and able to investigate and act appropriately, presumably a public agency such as the Police, the Prosecutor, or the local Welfare agency.

"Promptly" = By the time the situation has developed to the extent that a professional deems a report needed, a child will be at risk. The report should thus be given priority over most other business of the agency.

"Investigate" = The records of the parents and grandparents should be checked for similar occurrences in the family. The person making the report should be asked for details. The child and the parents should be interviewed as well as others who may have information. Until the report has been evaluated, non-professionals should probably not be interviewed in order to protect the confidentiality of the family and enhance the efficacy of treatment.

"Preserving the Evidence" = Great care must be taken not to corrupt the evidence. A suggestive question may implant an untrue answer in the child's mind. Unskillful questioning may create as much trauma for the child as the incident itself, or may develop feeling of guilt or insecurity. All interviews should be tape recorded. Preferably video-recorded to answer later accusations of impropriety and to have a record of the answers before other influences have an effect. A witness is desirable. If the interviewee has a lawyer, she or he should be notified before the interview takes place.

"Credibility" = Reports of sexual abuse of a child are seldom what they first appear: they may be more serious, more complicated, they may be less. They may be exaggerated or understated. They may be false. They may be a ploy in a custody fight or the malicious accusation of a neighbor. If the report is baseless, many people will be hurt by acting on it. If the report is valid and nothing is done, a child may be permanently hurt.

"Further Proceedings" = While in most cases the abuser can readily be brought to admit the offense without violation of his constitutional rights so that a cooperative punishment therapy program can be instituted. But where the abuser is not cooperative punishment therapy program can be instituted. But where the abuser is not cooperative a major decision must be made: to seek punishment of the abuser or to offer greatly reduced punishment in exchange for his participation in treatment. There is some urgency: treatment cannot wait if that is the goal, evidence may be lost if criminal proceedings are to be brought. The decision is difficult: treatment is impaired if the abuser is in jail. Conversely, the public will be incensed if a child sexual abuser is not heavily punished. An evaluation must be made from the social point of view, from the criminal point of view, and from the political point of view. A joint decision of the Welfare Agency and the District Attorney is usually indicated.

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## SECTION C.

### Intervention

(start italics) When a child is sexually abused there are two immediate and strong reactions. The abuser must be punished, the child must be helped. If the abuser is a stranger, there is no problem, the child and her family can be worked with and the abuser can be punished or sanctioned appropriately with no one else hurt, except of course for the abuser's own wife and children. But if the abuser is a parent of the child, a choice may have to be made. Either treat the child or punish the abuser, usually not both. If the abusing parent is put in jail, the abused child will feel guilty, a parent who may be otherwise a valuable member of the family is gone, the family loses a paycheck, its standard of living tumbles, the abused child may be blamed by the rest of the family. The best treatment requires the whole family, the abuser and the abused, the mother who may be an enabler, the other children who are necessarily involved. Without the abuser, the treatment circle is not complete, the problems cannot be fully resolved, the children may yet grow up to be abusers themselves. If, as is usual, the abuser is part of the family constellation, a policy decision must be made, and early: to punish the abuser or to have adequate treatment. The sooner treatment can be started, the more effective it will be. Conversely, the sooner the abuser is jailed and charged, the fresher the evidence will be. (end italics)

## Chapter 7.

### SEVERE PUNISHMENT OR EFFECTIVE PREVENTION

The decision to punish severely or to concentrate on treatment is not simple. It requires legal input as to the probabilities of getting a conviction and what evidence is needed from the family members. It involves social input as to the possibilities and effectiveness of treatment and the impact on the family of participation in the criminal processes. It requires political input as to the demands of the public for punishment, for revenge and the political impact of not prosecuting.

Children who are abused will probably abuse their own children or stand by while others abuse them, and their children in turn will abuse or enable the abuse of their own children, and on and on. Children who are abused are likely to become status offenders, delinquents, and criminals. Children who are abused are likely to have unstable marriages with the consequent trauma to themselves and their children. But children who are abused can usually be treated. The impact of the abuse can be reduced. The cycle of abuse can be broken.

The purpose of the Intervention is to remove the guilt feelings. To remove the insecurity, to remove the anger. If the impact of abuse can be ended, if this cycle can be broken, intervention can be of major significance.

But guilt feelings may be exacerbated rather than removed if the abuser is in prison with the family blaming the victims for the abuser's absence and punishment and for the stigma if the abuse is publicized and for the family's worsened standard of living because the breadwinner is in prison, and the victim may blame herself. The insecurity may be enhanced if the economic protection is reduced. The fear may be enhanced if there is fear of reprisal by a prosecuted abuser. Anger may be kept alive if the family is forever broken up, if the wound is kept open, instead of a return to some normalcy.

The impact of the abuse can be treated, a sufficient degree of normalcy can be restored. But the treatment of intra-family abuse will usually require that the abuser, be it parent or sibling, be a part of the treatment, freely discussing what happened and why and working out understanding and relationships that can prevent a recurrence. But a man facing trial and a long term in prison is surely going to be advised by his lawyer not to discuss any part of what happened. A man facing trial and a long term in prison may harbor too much fear and resentment to truly participate in any understandings. But a man facing a short term in prison upon condition of cooperation in treatment may be more than willing to assist the rehabilitative process.

And so the problem. If the only options are either to use mild punishment in order to rehabilitate the family or to punish the abuser severely and lose his cooperation, which should it be? A decision must be made, and early, as to whether there will be treatment including abuser with her participation insured by the continuing threat of punishment, or whether there will be immediate heavy punishment of the abuser and treatment without his participation. There must be a professional assessment of both the possibilities of conviction and the possibilities of rehabilitation. All of the various options must be canvassed and weighed and a plan devised encompassing as much of every option as is appropriate. There must be coordination towards a single plan.

## Chapter 8.

### ASSESSMENT

Very early in cases of intra-family sexual abuse an assessment must be made to determine:

- \* If the evidence is sufficient for a conviction,
- \* If convicted, what is the probable sentence,
- \* How well can the family be rehabilitated if the abuser is not punished,
- \* How well can the family be rehabilitated if the abuser is punished,



\*

Is it politically possible not to punish.

It is urged that the assessment be made by an "Assessment Team" including a District Attorney and a person skilled in social work and rehabilitation.

The assessment must be made early on because treatment of remotional injuries, like treatment for physical injuries, must be started immediately, and it must be known whether the abuser is to be part of the treatment process. Treatment requires cooperation and free discussion of the event. A person facing prosecution for the event will be loathe to cooperate or participate.

There are of course numerous options: that conviction is not likely and therefore there is no point in prosecuting; that the probable sentence is consistent with rehabilitation and therefore there can be both rehabilitation prosecution; that a plea bargain might be devised which would force the abuser into cooperation with the treatment; that state prosecution becomes dependent on treatment outcome; that the family can be adequately rehabilitated, or even better rehabilitated, without the abuser; that the public outcry is so great that the image of the Justice System requires prosecution.

Making the decision will require prognostications of what juries and judges and voters will do, and how effective treatment can be with the particular individuals and circumstances involved; and making these prognostications before the case is fully developed.

Incidental to the assessment can be a consideration of what protective arrangements are necessary: should the abuser or the abused or both be removed from the home; what conditions and controls on visitation; if the child is to be removed, to whose home; with what financial arrangements.

There should also be discussion as to communicating the decision to the other social workers and lawyers involved and enlisting their cooperation.

## Chapter 9.

### OPTIONS FOR JUDICIAL INTERVENTION

There are various options. Prosecution for a felony, prosecution for a misdemeanor, prosecution in a plea bargained support of a rehabilitation process, a protective order, an action for neglect, even a civil action by the victims for damages or injunctive relief.

There are various possible felonies: Rape, Incest, Carnal Knowledge, Aggravated Assault, and their more modern and more sterile names: Criminal Sexual Conduct in the First Degree, etc. The choice depends on the credibility of the victim as a witness, the changes for conviction, the possible sentences, the public outcry, and the goals set for

final disposition of the abuser, the abused, and the family. An incidental consideration is the unwillingness of the child to testify against her parent if it may result in a prison sentence but her willingness to testify if only a short jail sentence is possible.

There are also possible misdemeanors. If a rehabilitation package is being considered, Contributing may be indicated because, in many states, venue for Contributing is in the Juvenile Courts rather than the Criminal Courts making it more feasible to work out a rehabilitation plan based on Neglect and support by the criminal sanctions of Contributing.

An increasingly common remedy is the Protective Order. It is frequently based upon a statute and is prosecuted by the District Attorney at no cost to the victim. It has the flexibility of an injunction and can usually be obtained, at least in preliminary form, in a matter of hours.

For maximum flexibility, an action for Neglect probably allows the widest possible scope in developing and monitoring a rehabilitation plan. The procedure was statutorily designed precisely for rehabilitation. The caselaw requires a preliminary plan and progress reports. It can be backed up by Contempt. And if the plan fails, it can be converted to an action to terminate parental rights.

If there is a sexual abuse, there is a possibility of a Divorce or action with the consequent powers of the court to determine and monitor custody and visitation, though the Divorce monitoring procedures are usually rather more clumsy than monitoring a Neglect rehabilitation plan. Mothers however are not usually interested in divorce even though their children have been sexually molested. They may fear the loss of income or loss of the father's companionship. They may have been enabling the abuse because of their own distaste for sexual contact with the father.

Civil actions are a possibility. Unless however it can somehow involve the family's liability insurance, there seems little point to it. Similarly actions in equity for injunctive relief seem to offer little that a protective Order cannot provide and would be at the family's expense.

## Chapter 10.

### COORDINATION OF INTERVENTION

In sexual abuse cases there are often several agencies involved, sometimes several courts. The family may have to talk about the same things to many investigators. The media may play off the differences of approach. Conflicting plans may evolve. Coordination is needed. The Prosecutor is probably in the best position to obtain it.

When abuse is reported, it is usually to the police. It may be required to notify the welfare agency. Both may send out investigators, each looking at the facts from a different perspective: the police need to decide if a crime was committed and to preserve the evidence for a prosecution; the welfare agency needs to know if a child is in danger and the steps needed to protect it. Their investigations may implant different messages with the family which will confuse future contacts. If the Prosecutor becomes involved, additional investigators may be sent out to look at the facts from their focus. The family can be overwhelmed. The memories of the witnesses may be tinkered with beyond recall.

There may be actions started in Juvenile Court, in Family Court, in Criminal Court, and some judge may be asked for a Protective Order. There may even be different lawyers for different family members, each making different motions for different purposes. In smaller communities this may present less of a problem because there may be a single judge for the various courts. In larger communities, there may be three or four judges, each unaware of what the other is doing, each getting slightly differently focused versions of the same facts, each issuing orders which may well conflict with each other.

Obviously some coordination is needed. Since usually no one has quite the authority to compel a uniform approach, tact will be needed to overcome turf protection.

The Prosecutor will usually be involved in any Neglect or Criminal procedures. The Police and the Welfare Agency are usually responsive to the Prosecutor. The Prosecutor, being usually elected, is aware of public sentiment. And the Prosecutor is usually able to communicate well with the Judges. Coordination thus seems best to lie with the Prosecutor. Supported by the rationale and decisions of an Assessment Team, a reasonable amount of coordination should be possible.

The Attorney General's Task Force on Family Violence proposes a multi-disciplinary community team.

"The needs of family violence victims are diverse and complex. Moreover, violence within the family scars not only the victim and the abuser, but all other family members. Effective community intervention that meets the needs of all family members requires the delivery of comprehensive and coordinated services."

"Most jurisdictions have a number of agencies that handle family violence cases. Among them are law enforcement, prosecutors, courts, protective service agencies, victim advocate units, and health and mental health facilities. But no agency or program can be successful working in isolation. Each must recognize the interrelationship among the legal, health, social service

and educational responses to family violence."

"To develop an effective coordinated response, each community should establish a multidisciplinary team representing all agencies involved in family violence. Working together, team members can formulate a systematic approach with defined protocols that minimize the trauma suffered by the victim and maximize the opportunity to change the abusive patterns of the offender."

"The team approach should not delay case processing nor detract from the role each agency is expected to perform. Rather, a team approach must clearly define the responsibility of each agency or organization while avoiding unnecessary duplication of effort. Recognizing that community resources may be limited, this approach will also result in more efficient use of expertise and information. Establishment of a clear performance expectation will also make the jurisdictional performance more responsive to the victim." (*italics*) Family Violence, (*end italics*) Attorney General's Task Force, Final Report, September, 1984, pg. 14.

## SECTION D.

(start italics)

### Interviewing

The first stages of an investigation will probably determine the last stages. The evidence may be preserved, or lost. *Miranda warnings* may be given at the right time, or not. The child may be further traumatized, or comforted. Her testimony may be taken in a way to save her frequent repetitions, or she may have to be questioned again and again. The family may accept the intervention of authority, or it may be 'turned off' by it. It may become possible to determine the credibility of the various witnesses, or it may not. Much can be done that is right, much can be done that is wrong. (end italics)

## Chapter 11.

### INTERVIEWING THE CHILD

The first interview with the child is crucial. The credibility of the child must be determined. The evidence must be preserved. If the interviewer comes on too strong, the child may suffer a second trauma. If the interview is hostile the child may close up. If the interview is suggestive or demanding, the child may parrot what the interview wants, then and afterwards. If the interview is too sympathetic the child may exaggerate to get more sympathy.

Children more than adults react to their questioners. They may be more concerned with what the questioner wants than they are with the actual facts. They may fear the questioner and not want to cross him. They may feel the questioner knows more of the facts than they do so they adapt their version to his. They may respect the questioner and want to help him.

Children more than adults are suggestible. Ideas can be planted in their heads. They want to help, they want to please, they want attention. If even one idea can be shown to have been planted in their heads it may render all of their subsequent testimony inadmissible. If inaccuracies can be planted, innocent people may be hurt.

"Interviewing the Child. While the child is one of the most critical sources of information and evidence, interviewing the child can be extremely difficult because of the child's limited ability to articulate as well as reluctance and fear. In order to obtain the most information with the least amount of trauma, the following are suggested:"

- "- go to the child's territory, such as his home or school
- make arrangements so that there will be no interruptions during the interview

- have someone who already has a relationship with the child such as a friend, relative or teacher to introduce you and to help facilitate the interview by asking questions, etc.
- meet the child at his level, play with the child in an informal way, have toys available, try to establish a relationship before asking any questions
- be supportive of the child, assuring her that she is okay
- tell the child of the parent's awareness of the interview and its purpose and the parent's permission (if given). explain and emphasize the confidentiality, if any, of the information, how it will be used and next steps
- use language that the child understands, using terms of genitals and sexual acts that the child uses (not ejaculation or intercourse)
- use open ended questions. Let the child tell about the abuse in his own words
- let the child talk about his concerns regarding retaliation, confidentiality, guilt, etc
- engage the child in play or drawings to allow expressions of fears or reactions, including the use of anatomically correct dolls, when appropriate.
- don't take sides against the parent. The child will become extremely defensive
- avoid repetition if possible by having joint interviews with the Prosecutor and CPS worker, but be careful not to overwhelm the child
- involve the child advocate before and after the interview to explain the process to the child and be supportive of the legal process
- interviews with the parent present should vary according to the situation. Parents should always be informed of the purpose of the interview, the confidentiality of what is said and how the information will be used."

"Interviewing the young child: Initially ask open ended questions with less structure to give wide latitude for the child's responses, such as 'tell me a story.' Don't harp on direct questions or confrontations, use indirect questions. Remember a child may avoid any sexual discussion, thus, it will be necessary to be more specific. Select colors, toys and anatomically correct dolls which lend themselves to recreating sexual scenes, such as asking the child to tell you a story about a house, bed and tree."

"Protection Against Intimidation: Between the investigation and trial, spouse as well as children may retract and change their stories due to fears and intimidations by the abuser. It is thus critical to meet with the child and/or other witnesses after the initial interview to provide support and guard against the offender intimidating or discouraging the spouse or child not to talk, testify or attend treatment."3

"It was found that general questions in an interview is apparently the optimal technique for obtaining evidence from children. Subjects interviewed with this technique had more correct points without significantly more incorrect points than other techniques, such as free report. However, free report was the most accurate, regarding people descriptions. A major factor found to effect progress of the interview was the child's fear of the consequences of talking about the sexual assault. The child is a more cooperative witness if the family system, and official agencies support the child. Language used with the child should be appropriate to the child's level of development or mental age. It is important to establish with the child, his or her understanding of the words being use. 'Why?' questions should be avoided because they are accusatory and will put the child on the defensive. Force or coercion should never be employed to obtain answers. Questions should be direct and simple, of an open-ended nature that will allow the child to talk about the assault occurred and what kind of coercion was used to keep the child from talking should be determined through the interview. Steps for closing the interview are important to have in mind."

"Trauma experienced by child victims as witnesses must be alleviated as much as possible. Even though the child witness must review the details of the assault in several separate interviews conducted by the police and the prosecuting attorney, the child should not have a parent present during the interrogations."4

"Interviewing the child witness requires a neutral setting, in which a trained evaluator interviews the child, preferably for the first time, alone in a room that is pleasant, spacious and equipped with play materials, such as blocks and an anatomically correct doll family, pencils, crayons and drawing paper. The child should be in a room that is sound proof and preferably equipped with a one-way mirror and videotape facilities. However, should that not be economically feasible, the room should be equipped with an audio cassette recorder of superior quality that is able to pick up even a whisper."

"The interview should be structured based on the child's developmental level, including intelligence and maturity or mental age. The inter-

view could proceed by asking the child if they understand the nature or purpose of this interview. If the child does not understand why they are being interviewed, it is best to explain to the child that they are here to talk about what has happened to them that they have liked and not liked."5

Tape, particularly video tape, can serve several purposes:

- It can demonstrate in the future that the child was not dominated or coerced.
- It can demonstrate that no ideas were suggested or implanted, that the child's testimony is uncorrupted.
- It may be so persuasive that the abuser will agree to admit the offense and cooperate in the rehabilitation of the family.
- It may be sufficiently complete that further interviews with the child can be obviated or at least reduced in number, reducing further trauma to the child.
- It may be sufficient to substitute for the child's appearance at preliminary hearings, again reducing trauma for the child.

Addressing the admissibility of video tape, Judge Marshall Young of South Dakota wrote in May 1985:

"In 1982 there were four states that allowed video-taped testimony, and by 1985 fourteen states have statutes permitting it. Of these fourteen, six permit the video-tape statements admissible at trial only if the court finds the child's testimony in open court would cause severe emotional trauma. Many of the statutes allow it if the child is medically unavailable, and in many states give the court discretion. Twelve states require the physical presence of the defendant in the room where the video taping takes place, although some mandate the child be hidden from the defendant's view. Three states, Kentucky, Louisiana and Texas have statutes permitting close-circuit television of a child's testimony. Issues confronted by a video-tape and close-circuit include the right to a fair trial under Due Process Clause, Fourteenth Amendment, the defendant's Sixth Amendment right to a public trial and to confront witnesses and the public and press' First Amendment right to attend criminal trials. In addition, the jury may have a problem with credibility. If the video-tape is



to be admitted in lieu of the child's personal appearance then confrontation may be a problem. Requirements of Ohio v. Roberts, 448 US 56 (1980) must be satisfied. This requires unavailability. The statement must fall within traditional hearsay exception or possess guarantees of trustworthiness."

"In U.S. v. Benfield, 593F.2d 815 (Eighth Circuit 1979), a video-taped deposition of a victim was admitted. The defendant viewed the proceeding from another room on a monitor and the victim was unaware of his presence. Court held that one-way or partial confrontation was in violation of the defendant's rights. However, the two-way participation would satisfy the confrontation clause."

"It was further held that this decision should not be regarded as prohibiting the development of the electronic video technology. The Missouri Supreme Court has approved the use of two-way closed-circuit television. In Kansas City v. McCoy, 525 S.W.2d 336 Missouri (1975). This involves the video-tape of an expert's testimony and was upheld over a Sixth Amendment challenge."

"California Appellate Court recently held that the trial court exceeded its authority by granting state's motion to allow the victim to testify at trial by the use of a close-circuit t.v., since there is no legislative authority for the procedure. In addition, the California court held the place in the screen between the victim and the defendant during a jury trial was improper."

The first interview is crucial, to the child, to the family, to the prosecution, to the social workers. It should not be done by amateurs. It should be done with at least audio tape.

## Chapter 12.

### INTERVIEWING THE ABUSER

Interviewing the abuser may require a preliminary decision whether to prosecute or whether to rehabilitate since a Miranda warning may be necessary if prosecution is anticipated.

If rehabilitation of the family is intended, the participation of the abuser is usually necessary for a full rehabilitation. Prerequisite to the abuser's participation is his acknowledgment of the act of abuse.

If he will not acknowledge the act, it is not possible to inquire why he did it and thus it is not possible to devise a rationale for preventing a recurrence. Thus for rehabilitation an early admission of guilt by the abuser is necessary. But if prosecution is anticipated, the abuser is not going to admit the act or any part of it. His lawyer will advise him to remain silent.

If the interview with the alleged abuser is a person in authority who believes the alleged abuser may be in some measure guilty, a Miranda warning is necessary, telling the alleged abuser that he has the right to an attorney, at public expense if necessary, the right to remain silent, and that anything he says may be used against him. With this kind of a warning, and realizing that he may be facing prison if convicted, he may remain silent, and would be well advised to. Thus he is not going to admit any part in any offense which makes rehabilitation less likely.

If, however, the person in authority proceeds with the interview without a Miranda warning, nothing the abuser may say can ever be used against him, nor can anything which was later discovered because of what he said. The well is poisoned. Future prosecution may be in doubt. However, by proceeding without a Miranda warning, the abuser may be lured into confessing and rehabilitation may therefore become possible.

If the interviewer is a person in authority, he cannot have it both ways: he can keep prosecution a possibility by using a Miranda warning, often substantially reducing the possibility of full rehabilitation, or he can disregard the Miranda reducing the possibility of prosecution but substantially increasing the possibilities of rehabilitation.

The 'Exclusionary Rule' provides that no evidence can be used at a trial if it was obtained by an unreasonable search, or by an unreasonable seizure, or without warning the defendant of his right to silence and his right to an attorney, the defendant's Fifth Amendment rights. The President's Task Force has recommended that this rule be disregarded in child abuse cases in order to increase the chances of finding the defendant guilty and incarcerating him for the public's safety. Since the rule has been held by the United States Supreme Court to be a basic constitutional requirement, it can only be changed by amending the Constitution or by the Supreme Court formally reversing itself and reverting to the concept that "the criminal should not go free because the constable erred". (start italics) Victims of crime, (end italics) President's Task Force, Final Report, December 1982, pg 24.

## Chapter 13.

### TESTING CREDIBILITIES

Determining the credibility of the report can be difficult. But a necessary preliminary to any responsible intervention is reliance on the report.

Testing credibility is perhaps the oldest and most important function of the judiciary system, and the least susceptible to nice formulas and explanations. Every case which goes to trial has facts in dispute, there would be no trial if everyone agreed as to what happened. The disputes have to be worked out, and they are, for better or for worse. There are some methods which may or may not work, depending on the circumstances.

There is real evidence: blood, semen, hair, wounds; or there may be none such when there should be. There may be words spoken in the excitement of the event which were consistent with the event; or inconsistent. There may be alibi: proof that the abuser was somewhere else, or was physically incapable of the alleged act. There may be torn clothing; but the tears may be inconsistent with the way the act allegedly happened.

There is circumstantial evidence: because one thing did happen, another probably happened: the vagina was torn so there probably was an assault upon it; unless the girl fell across a hard object. Or the girl is pregnant so there probably was intercourse, but with which male, and when.

There is body language. The tone of voice, the pauses. The speed of speech. The movement of hands and body. The movement of eyes. Whether someone else is being watched, in fear, or for cues. The tension, or lack of it.

There is the lie detector. It can be manipulated by adults who understand how it works and how to control their own bodily reactions. Since it is designed for adults and its experience factors are largely with adults, it has a doubtful value for children. And such depends on the person questioning and the wording of the questions and their sequence and whether the initial questions designed to establish a norm were valid.

There is a credibility factor which applies to most children: that they have no way of knowing about sexual activities except through the offense. Children are aware of course of bodily parts, they are aware of their daily bodily functions, but they are not aware of the sexual uses of their bodies or organs. Describing such functions therefore may be proof of the offense. Caution is necessary: some children are aware of sexual activities. Some cable and satellite television is completely explicit. Some are aware of their parents' activity. And, as in the Scott County cases in Minnesota, three of the principal accusers later admitted to sex play with each other before the dates of the alleged abuse. Such knowledge is, fortunately, rare, but it exists.

There is cross-examination. Is the story repeated in exactly the same words, as though memorized? Are there significant distortions? Does the witness recant part of the direct testimony, and if so did she really recant or only because of pressure?

There are profiles which various psychologists and behavior analysts have developed, checklists to determine whether the witness is to be believed under the circumstances. They are new and largely untried, they may prove to be a considerable help, particularly with child witnesses.

## SECTION E

(start italics)

### Protecting the Child

When there is an allegation that a child has been sexually abused the first concern may be the protection of the child not only from further abuse but from the consequences of reporting the abuse. It may be necessary to take protective measures even before the credibility of the allegations has been sufficiently tested, but of course some evaluation of credibility must be made: draconian steps cannot be taken simply on a statement which may be patently exaggerated or imaginative.

It may be necessary to remove the child from the home but such should be a last resort. It may be that the family's own controls will be sufficient or that protective orders will be adequate. And if removal is necessary, consideration should first be given to removing the abuser rather than the abused. In either case, as soon as removal is ordered, the prerequisites for return should be set out so that the child will not be out of his home longer than is necessary for his safety. Since rehabilitation of the family is always a primary objective, maintaining family contacts is desirable and thus visitation should be arranged, with appropriate protections.

Protective Orders are being increasingly found to be a quickly available and nicely flexible tool for the security of the child with a minimum disruption for the family. Due process is required but the orders can be designed for the individual. But they must be enforced or they will quickly become ineffective and a child may again be at risk. (end italics)

## Chapter 14

### REMOVAL

The presumption is that the child should remain in his home. Overcoming the presumption requires proof either that the child is unsafe physically or emotionally if the abuser is in the environs and that the abuser cannot practically be removed from the environs, or that the child is unsafe physically or emotionally in the home even if the abuser is removed.

"Presumption against removing the child" - If a child has been sexually abused, she has been hurt once. If she is taken away from her own bed, her own friends, her own school and put among strangers, she will be hurt again; and the second hurt may be worse than the first. Or as an exercise in basic logic, if one of them must face hardships, why should it be the victim instead of the perpetrator.

"Unsafe if the abuser is in the environs" - Often when the abuse comes to light, controls set in which will present a recurrence at least 'while the heat is on'. The family and extended family may take charge. The abuser's own conscience and guilt may assert control. The

desire to appear repentant and reformed may suffice. Protective orders may be effective. It may be simply a one-time occurrence.

**"The abuser cannot be removed"** - There may be economic reasons why the abuser cannot be removed: his job, transportation difficulties, high costs of his food and housing. There may be emotional reasons: the family's dependence on his presence, the mother's need for companionship. There may be legal reasons: he may refuse to leave and there may be no way to compel his leaving until bail conditions or a protective order require it.

**"From the environs"** - The abuser may not be a family member, often she is a neighbor or a babysitter, or a tradesman or storekeeper. Or the abuse may be in a location regularly attended by the child, such as school, or church, or a children's theatre group, or a recreation center. To remove such a person will cause such an upset that there will be arguments that it is simpler to remove the child. Similarly, it should be ascertained that if there is a removal of the abuser, it not be merely a block away, but that it be an effective distance.

**"Unsafe even if the abuser is removed"** - Even without the abuser, or maybe because of his absence, the victim may be unsafe physically or emotionally. The siblings and the mother may blame the victim for the loss of the father and the publicity and the reduced standard of living. The neighborhood may think the child was exaggerating, or it may coalesce behind the abuser as someone they have known and admired. There may be feelings that the victim just should'nt have said anything.

Judge Leonard Edwards of the Superior Court for Santa Clara County, California has developed "Five Propositions" concerning removal:

- "(1) After discovery of an abuse, the child should be placed in as familiar a setting as possible (preferably her own home) consistent with her protection from future harm.
- (2) The child's best interests are served if he is permitted to continue his family life with as little interruption as possible even if this means reuniting him, after appropriate intervention, with the offending parent.
- (3) Before and during any reconstruction of the family, therapy is necessary for both parents, the child, and often for other family members.
- (4) It is necessary to have coordination and communication between the various decision makers in the juvenile and criminal courts concerning the disposition of child abuse cases.

- (5) Therapy must be available in each community for families involved in child abuse. There should be widespread publicity in the community that therapy programs exist, that their purpose is to rehabilitate the families involved and that the legal system is utilizing them and is supportive of them."6

## Chapter 15.

### PLACEMENT

If a child must be removed, she should be placed in a safe and home-like location as close to the home neighborhood and school as possible.

**"Safe location"** - Most foster homes are warm, loving environments with foster parents who want to help children and are well able to provide them care and nurture and protection. But foster homes have abused children, sexually and physically; some people have opened foster homes for that purpose. Foster homes have neglected children: inadequate or unbalanced food, little supervision of their behavior or their personal hygiene, no insistence on school attendance, disregard of religious training. Some foster homes are ill-equipped for the number of children placed in them: there may be too many children to a room, too few toilets and baths, inadequate recreation. Some foster parents are overwhelmed by abused children and the fears and resentments and distrsts and challenges and provocations that such children bring with them.

Foster homes and foster parents need to be inspected and supervised by an objective outsider. They need to be screened for their facilities and their ability to care for the children proposed to be placed with them. They need to be visited regularly to insure the quality of the care they are rendering.

**"Home-like location"** - Children need a home, not just housing. They need more than the food and shelter of a boarding house. They need adults whom they can respect and talk to. There have been occasions when abused children have been lodged in motels, usually where there have been several abuse investigations being conducted simultaneously. It gets the children in one place which makes the investigation easier. It lets the children talk to each other which may help them to recall details they had overlooked. It's an exciting place for a child: a comfortable room with a big bath and television and sometimes a swimming pool. But it's not home-like, there is no family environment, it's sterile and artificial and often far from home. And the details they 'recall' in talking to the other children may be the details of some other child's experience, or of no one's experience.

"Close to home" - Removing a child from her own home, her own bed and dresser and the sounds and smells she knows is traumatic. To remove her from her friends and neighborhood and familiar sights and landmarks is a second trauma. To put her in a different school, with different teachers and textbooks, with different classmates and a place in the social milieu to establish and a thousand questions to answer is a third trauma. It should be recognized however that visitation in sex abuse cases has greatly different considerations than in the ordinary visitation by the out-of-custody parent with which most judges are familiar. The rehabilitation process may not start with visitation. The child typically has been under the physical and sexual domination of the perpetrator for months, sometimes for years. The relationship which has developed between them does not vanish simply because a court becomes involved. It is usually one after significant therapy that the interaction between the two can be considered healthy. Prior to this the perpetrator needs to acquire some insights about himself and his responsibility for the assault, and the child needs to learn that the sexual offense was not his fault. It all takes time. To force visitation simply because it is usually done or because it is 'the thing to do' will often be to destroy the therapeutic process.

Visitation between the abuser and the abused should be allowed if it will not be detrimental to the child. Children need both parents, even if one of them has caused pain or fear or shame. The parent may have been a valuable guide and support and companion in all other ways. There may be a relationship of love which the child needs.

The rehabilitation process can start with visitation. The long contact between them is deferred to more difficult it will be to re-establish the relationship. They are going to be seeing each other sometime, however long distant, visitation under supervision can make the contact less painful.

Protections can be devised which will not only remove the risk of additional harm but can start the process of returning to a semblance of normalcy and putting the abuse incident into its perspective. They can be controlled as to time and circumstance so that there can be no repetition of the abuse. The visits can be in a social worker's office, or with some trusted and understanding person. The conversation can be controlled so that there is no traumatic re-hash of the incident nor accusatory confrontation nor attempts to shift the guilt to the child.

A child who is removed should be returned as soon as possible. A child needs the normalcy of his home and his brothers and sisters and his neighborhood. He needs stability and a chance to grow roots. It may not meet the highest standards of housing and parental care, but it is his home; it's where he is most comfortable. But the return should only be 'as soon as possible', conditioned upon expert opinion as to when the home is ready for the child and the child is ready for the home. "As soon as possible" may often be a considerable period of time.

Just as a child should not be removed from her home unless there is a probability of physical or emotional harm, so also should she be returned as soon as that threat is gone, either because controls have been built in or because rehabilitation has progressed sufficiently.

There is a built-in caution: a certainty that she won't be abused in the foster home against a recollection that she was abused in her own home. The caution dictates leaving her in the foster home. It suppresses a continuing evaluation as to the safety of her own home. The caseworker will not get in trouble by leaving her in the foster home, she will get in trouble if she returns the girl and there is harm to her by further abuse or the actions of her siblings and others. Caution suggests leaving her in foster care, the child's interest suggests a constant re-evaluation of the home.

There may also be the desire by the authorities not to corrupt the evidence by letting the child get back with his family who may influence his testimony and reduce its effectiveness for obtaining a conviction. There may be a desire to keep the child close at hand to the investigators for their convenience.

If there are several abuse investigations underway simultaneously, as often happens, there may be a desire to lodge all of the abused children in a motel, for lack of foster homes or for simplicity of investigation, or so that they can talk amongst themselves and recall more detail. None of the reasons can justify the impact of a long term stay in the artificial and isolated life of a motel.

Concomittant with any removal should be planning for return, including a viable method of continuous re-evaluation of the child's home so that she can be returned to it as soon as possible.

## Chapter 16.

### TEMPORARY PROTECTIVE ORDERS

In most jurisdictions, the court has the power to issue orders enjoining the behavior of persons who are demonstrably a threat to a child.

**"In most jurisdictions"** - Many states have enacted statutes which authorize the courts to issue orders for the protection of children and other victims of abusive behavior. In some states the ancient action for a 'Peace Bond' is still available. Protective orders may also be based upon the neglect jurisdiction of the Juvenile Court, or upon divorce jurisdiction, or as conditions for the release of a person charged with an offense, or possibly as a matter of equity. It would be difficult not to be able to find a jurisdictional base if an order is needed.

**"To issue orders"** - As with any court order there must be a hearing. If the threat of danger is serious and imminent, an ex parte order may issue without a hearing, but only for a brief time with a



hearing at the first possible opportunity. At the hearing, the usual due process warnings and protections must be observed and there must be proof of probable danger.

"Enjoining the behavior" - The order may require the person to do, or not do. It may require moving out of the home, staying away from the home, visiting under specified conditions. It may require attendance at counselling sessions and group meetings. It may require the payment of support or other monetary arrangements.

Enforcement is an integral part of the order: if an order is issued it must be followed and enforced. The abuser will quickly test to see whether the Court means what it says and will act accordingly. There must be some kind of monitoring of the order: someone must be responsible for advising the Court when if the order is disobeyed, and if that someone has an interest in the matter, such as a wife of the abuser, her discretion for excusing violations should be very narrow or the pressure to excuse may be too much for her. Leaving enforcement to the wife not only burdens her family pressures but burdens her with the expense of prosecution and at a time when her income is probably reduced because of the abuse. Reports should come to the Court or to such as the District Attorney who will formally notify the Court and prosecute the violation. The President's Task Force (page 68) recommends that "Prosecutors should charge and pursue to the fullest extent of the law defendants who harass, threaten, injure, or otherwise attempt to intimidate or retaliate against victims or witnesses".

Enforcement measures can be innovative. They can be a night in jail or a week. They can be community service, surrender of a driver's license or of the license plates for a time, impounding a desired object such as a stereo or reporting to a Probation Officer at frequent intervals. As with all sentencing, violations of Protective Orders should find a judicial response tailored to the individual situation.

## Chapter 17.

### INTERIM COUNSELLING

Children who have been victimized and every member of the family need help. They need to learn exactly what happened and why, they need to overcome any guilt feelings for having brought the episode on and for having brought it to light, they need to understand the family dynamics involved and how the episode has changed these and where their place is in it, they need to find emotional support and security to replace what may have been lost, they may need to be brought out of the naivete of childhood into the sophistication and complexity of adulthood.

Help for the child and the family can come in many ways. There is counselling by an expert with one individual, the child, the abuser, a sibling, the mother. There is counselling by an expert with a group of individuals with similar problems, the group often becoming a support

group for each of its members, as in Alcoholics Anonymous. There is counselling by an expert with a family meeting together. There may be counselling for sex problems or for alcohol problems, or even vocational problems. One of the most effective forms of assistance has been interaction with someone who 'has been there before', another child who was victimized and has recovered, another abuser who has ended his depredations, another spouse who has weathered the crisis in her family. These forms of assistance can be started at the very outset of the matter, in the interim pending official proceedings. They can also be used as the basis for rehabilitation.

A difficulty which many judges must face is finding the experts and the persons who have had the experiences. Judges in these cases must often be far more than the fact finders and evidence rulers of civil cases, they must know what is needed and often they must take the lead in obtaining what is needed.

In order that the counselling may be free and trusting, there may be a need to make the communication between child and counsellor privileged and unavailable for use at a judicial proceedings. The President's Task Force (page 20) comments:

"Although some centers have made psychiatrists or psychologists available, the vast majority of the work has been done by social workers, nurses, or by people who have been victims themselves. During the counselling process, victims speak of their fears and feelings arising from the crime; these reactions are often related to their personal history and psychological makeup."

"Failure to extend confidentiality to crisis counselling incurs the risk of undermining the effectiveness of the counselling. Some victims who need this kind of help now fear to seek it. Without the protection of confidentiality, victims have found their files subpoenaed by the defense, and feel betrayed when thoughts and feelings that they considered private are opened to public scrutiny in a courtroom."

## Chapter 18.

### CHILD'S ADVOCATE

The child may need an advocate early on. The abuser certainly is not without a conflict of interest in protecting and counselling the child. If the abuser is the father or a brother or an uncle or the mother's boyfriend, the mother has conflicts. Other family members have separate interests. Caseworkers and police have their own foci. The child may need an advocate. A reliable friend.

The mother may have been an "enabler" to the abuse, letting the father have his fund, she may be jealous of the child, she may worry about loss of income if the father is prosecuted, she may worry about loss of companionship.

Uncles and aunts and grandparents may be affected by the stigma, by the potential economic impact on themselves.

But the child may need an advocate: someone who has no personal interest, who is sympathetic with the child, knowledgeable about the system, willing and able to take the time to explore what is best for the child and to present the child's interests. The interest may well be the same for the rest of the family, but some objective person should determine this.

Advocates need not be another layer of bureaucracy. Court Appointed Special Advocates (CASAs) should be utilized by the court at the earliest practical stage of the court process to communicate the best interests of a sexually abused child. CASAs exist in many communities and can exist in every community. The National CASA Association can assist in the initiation of a local CASA program. CASA's are usually volunteers, well trained, supervised, interested, independent. Lawyers usually do not make good CASAs: lawyers are trained to determine what their client wants, CASAs should be trained to determine what their client needs. A child needs a "next friend" more than a legal advisor or fee responsible parent. The Attorney General's Task Force (page 38) comments:

"For all court hearing and proceedings, judges should consider assigning a specially trained, volunteer advocate to represent the interests of the child. In addition, the volunteer may complete an independent investigation of the case, separate and apart from those conducted by the court or protective services. Concentrating on one child's case, the volunteer will have sufficient time to research the facts of the case. The volunteer also can facilitate communication among all elements of the system working on the case, whether it be the court, protective services, foster care, school system or health facilities, to ensure that the child receives the proper care and services."

A child will occasionally need a lawyer, or the CASA may need a lawyer to help present the child's interest. In any case, the CASA must have access to legal advice by nonconflicted legal counsel. A child may be lost in foster homes unless someone is insisting on her right to a permanent home. A child may be an unprotected, unconsulted pawn in a custody battle if divorce follows the abuse. A child may be pressured in court proceedings. A child may have a separate interest in the terms of the Protective Order.

## SECTION F.

(start italics)

### Court Procedures

It has been said that "The Court is the second trauma". It might be better to say the system, rather than the Court. The President's Task Force (page 51) recommends a federal study "to evaluate the juvenile justice system from the perspective of the victim".

The system may interview the child time and again, each time making him/her relive the experience, keeping the wound open. It may force him/her down to court waiting rooms where he/she sits uncomfortably without even the accouterments of a dentist's office for hours and then often to be told that the case was continued and to come back next week. He/she may be put on a witness stand, in a big formal room, with what seems like a thousand eyes staring at him/her, and a bailiff in full uniform ready to lock him/her up, and a judge in a black robe towering above him/her. He/she may find that the newspapers and television are full of his/her name and pictures and stories about what happened to him/her which they obtained from the official records. And this may make him/her the focus of his/her classmates with all the brutal teasing that can be involve.

The system may also suddenly arrest his father and just as suddenly release him. It may plea bargain away his future hope of rehabilitation without even talking to him, in the name of speedy justice.

The system is always more concerned with the well-being of the criminals than of the victims. When children are the victims, surely change can be made. Recommended by the President's Task Force (page 73), a starting point is to require (that judges at both the trial and appellate level(s) participate in a training program addressing the needs and legal interests of crime victims." (end italics)

## Chapter 19.

### BAIL

Bail should be determined with input from the family and not simply as an amount which will persuade the defendant to return to court but with conditions which will protect the child while defendant is at liberty and involve him in rehabilitation if such be indicated and with the Prosecutor having the right to appeal.

"Bail" is usually an amount of money which a defendant deposits with the Court, as cash or a bail bond, and which is returned to him when she appears in Court for his trial. Increasingly over the past generation substitutes have been used for money, partly because most criminals are penniless and unable to raise any amount of bail. In criminal matters, many defendants are allowed their liberty simply on their promise to return after an investigation has shown that they have sufficient roots in the community to make their return a probability. As part of such promises to return, other promises are required: to stay away from the victim, to attend counselling, etc.

The President's Task Force (page 23) argues for complete denial of bail if the defendant poses a substantial danger to the community.

"In deciding issues of bail, the court must have the authority to balance the defendant's interest in remaining free on a charge of which he is presumed innocent with the reality that many defendants have proven, by their conviction records, that they have committed and are likely to commit crimes while at large. The authority for such consideration does not now exist in many jurisdictions. In federal courts and in many state courts, the only questions that can be addressed at a bail hearing is whether the defendant will appear for his court dates. Such a policy is both foolish and shortsighted."

"This Task Force is not alone in its recommendation that the danger that a defendant poses must be considered in ruling on bail decisions. The U.S. Congress, the American Bar Association, the National Conference on Commissioners on Uniform State Laws, and the Attorney General's Task Force on Violent Crime have all reached a similar conclusion."

"Input from the family" is one of the principal complaints heard from victims: that the defendant was released without anyone asking them and often without even telling them. The victim, or the family in a child sexual abuse case, often is the best informed as to an amount that can be deposited and which will guarantee the return and as to what conditions are necessary for the family's protection. They should be consulted: they usually have good ideas and it's good public relations for the courts. The court must recognize however that the spouse, the siblings of the victim, and even the victim herself may inappropriately support the domineering perpetrator, not because they honestly believe he deserves the support, but because they are still under the domination of the offender.

"Conditions" can be those used in Protective Orders: Removal from the home, remaining away from the home, no contact with the victim except on controlled visits, rehabilitative treatment if such is indicated, interim support and financial orders. The conditions should be individualized to meet the needs of the particular abuse and abuser and abused. Quite obviously there should be effective arrangements for reporting violations of the conditions immediately and for returning the defendant to court to answer to them.

"Right to Appeal" - Normally the Prosecutor is allowed to appeal very seldom in criminal matters. It is urged however that he not only be given the right to appeal bail decisions, but that he be encouraged to. The Prosecutor is charged with protecting the public and in most states is elected for precisely that purpose. If he thinks the bail is too low or that the conditions are insufficiently protective, he

should be allowed an appeal if he notices such immediately, within a day, with the Appellate Court hearing the motion within a matter of days as with a peremptory writ so that the defendant does not lose his liberty unnecessarily long.

## Chapter 20.

### PLEA BARGAINING

Plea bargaining a sex abuse case is too important to be left to the lawyers. The child's needs should be represented, and not only by an advocate, but by the therapists who are going to help the child overcome the hurt and prevent the child from following the inexorable pattern of himself becoming a criminal and an abuser of his own children.

**Left to the Lawyers** - The function of a lawyer is to get the best possible deal for his client. The Prosecutor's client, the public, wants the longest sentence possible to allay its fears for its own children. The defense attorney wants the maximum liberty for his client, a dismissal if possible. Both may recognize the child's problems and the family's destruction, but they use these as bargaining tools. Neither lawyer is permitted by the Canons of Ethics and the structures of malpractice insurance to give anything away from his client's position in order to assist the child or the family, but nothing in the Canons of Ethics nor the realities of malpractice insurance prevent an attorney from advising his client of the consequences of taking Action A or Action B. Most incest perpetrators love their families dearly, albeit in a perverted way. Most of the perpetrators for whom there is a good prognosis want to take an action that would enhance the best interests of their families and even of the child/victim. When used properly the criminal justice system can be an inducement for this perpetrator to do some good for both himself and his family by fully cooperating. His attorney surely should advise him that the result may well be his family being reunited in the future and his spending less time in incarceration than if he is not cooperative. Ethics and malpractice may well require a responsible attorney to lay out these possibilities for her client rather than pursuing the usual goal of simply trying to get his client 'off the hook' without regard for the consequences to his family.

**"The therapists"** - The wounds of most children can be healed without scars. The cycle of abused children in turn abusing their own children can be broken. Since most criminals have been abused when they were children, crime can be significantly reduced by working with the abused children and their families to re-establish security and trust cannot be effectively done independently of the criminal procedures. The therapist must be a part of the Plea Bargain to insure that the Court will not consent to a bargain that provides less than the maximum help for the children. The impact of the sentence on the child may well be more important in the long run than its impact on the defendant.

A major criticism of the justice system is its disregard for the victims. A simple solution is to keep the victims advised of all proceedings and welcome their input. Particularly so at the Plea Bargain or sentencing the victim's input is not only advantageous to the system's image, it also will ensure that the Court has before it all aspects of the problem and not merely those of the plaintiff and defendant.

The sentence imposed upon a guilty perpetrator must take several factors into account: whether the child and the public are better served by a substantial imprisonment or by requiring the defendant's involvement in rehabilitative treatment; whether the public safety requires removal of the defendant to a secure facility, and for how long; what the feelings of the victim and the family are concerning the sentence; how vicious the abuse was and with how much disregard for the physical and emotional damage to the child. In many states, the discretion of judges is being so limited by legislative "guidelines" that the judge can only consider the matrix of offense severity and number of prior offenses with no consideration permitted for the needs of the child or of the public. The President's Task Force (page 76) takes a strong position on judicial discretion and victim participation in sentencing.

"The imposition of a criminal penalty may be the most difficult kind of decision a judge is called on to make. In addition to affecting the defendant, the sentence is a barometer of the seriousness with which the criminal conduct is viewed. It is also a statement of social disapprobation, a warning to those tempted to emulate the offender's actions, and a step that must be taken for the protection of society. Finally, it is a statement of societal concern to the victim for what he has endured."

"Victims, no less than defendants, are entitled to their day in court. Victims, no less than defendants, are entitled to have their views considered. A judge cannot evaluate the seriousness of a defendant's conduct without knowing how the crime has burdened the victim. A judge cannot reach an informed determination of the danger posed by a defendant without hearing from the person he has victimized."

## Chapter 21.

### DEPOSITIONS OF A CHILD

The trauma to the child by being deposed can be reduced if the deposition is taken in the presence of the court and on videotape so as to permit its use in lieu of testimony.

"The trauma to the child" - For a small girl to have to talk about an intimate experience is painful. To have to talk about it to strangers in a strange setting is painful. To be cross-examined by lawyers trying to discredit her, however gently, is painful. To repeat it in a large courtroom with twelve jurors staring at her, and an armed and uniformed bailiff and a judge sitting above her all in black is painful. Each of the pains may be as traumatic as the incident itself, often more so. The pains can be reduced.

"The presence of the Court" - A deposition in a lawyer's office has no controls other than transcription of the spoken word. The transcript will not show whether the lawyer was standing next to the child, towering over him, or whether he was raising his voice, or pounding on the table, or glaring or sneering. A deposition taken in the judge's chambers with a friendly adult next to the child can reduce the trauma. The judge can protect the child and insist on gentleness. Or the judge can take over the questioning. There will not only not be any unseemly pressure, there will be no possibility that anyone can later claim that there was.

"Videotape" - Videotape is being used more and more in civil trials, mostly for the testimony of physicians. It lets the physician be questioned in his office or some other convenient place and at a time which also is convenient. Children who are victims of sexual abuse should be accorded the same comforts. In addition to recording the words spoken, the videotape will show the positions and tactics and voice tones and facial expressions of the lawyers. Knowing that the tape will be seen by the jury will itself supply a control on lawyers' manners. If the videotape is in the presence of the Court in chambers, the child can be less tense, rulings can be made on objections, questions can be reframed, answers can be stricken and the tape can be edited then and there.

## Chapter 22.

### MINIMIZING THE TRAUMA OF TESTIFYING

The court can arrange its affairs to better suit the emotional needs of young witnesses. Court appearances can be numerous and oppressive. Witnesses too often are subpoenaed to arrive all at the same time. Waiting rooms can expose the victim to the abuser or his friends.

"Numerous appearances" - Criminal law gives the defendant rights to test numerous points of law and evidence. Often the victim is called down for these hearings only to find that they are perfunctory, or waived, or continued. Preliminary hearings can be continued time and again and at the last minute. The President's Task Force (page 21) proposes that hearsay be allowed at preliminary hearings so that the child would not have to appear. Hearings are largely at the convenience of the lawyers with little regard for the victims and the witnesses. The Court could insist that victim's be consulted before hearing times are set, and reset. The President's Task Force (page 64) recommends:



"The victim, not the state, is directly aggrieved by violent crime, and has an unquestionably valid interest in the prosecution his complaint initiates. Once a case is charged, the prosecutor is informed of all court dates, plea bargains, and rulings on pre-trial motions. The prosecutor is also in the best position to explain to victims the legal significance of various motions and proceedings."

"Prosecutors should keep victims informed about the status of the case from the initial decision to charge or to decline prosecution. The only time a victim should not be informed of an aspect of a case is when the sharing of such information might improperly influence the victim's testimony or expose him to unnecessary attack on cross-examination."

"The prosecutor's duty to keep a victim of violent crime advised extends from the charging decision through sentencing and any subsequent parole hearings. The advisement of parole hearing dates is particularly important. Often victims do not realize that parole is even available to their assailant. When they are aware, they are often most interested in the outcome of parole hearings not only because of their desire for the service of a just sentence, but also because of their legitimate fear of revictimization once the defendant is released."

**"Oppressive appearances"** - The Court could inquire whether procedural hearings are to be pro forma or actually contested with the need for witnesses. If the child is not needed, or if her statement or videotape will suffice, she can be saved an appearance. Lawyers are often so busy with other aspects of the case that they forget the problems of witnesses; the Court can urge them to put witnesses, particularly child witnesses, on an 'on-call' basis as recommended by the President's Task Force (page 68) which also recommends (page 75) close control by the Judge:

"Parties seek continuances for a variety of reasons. Some are justified, many are not. It is the responsibility of the Judge to ensure that criminal cases are resolved as expeditiously as possible because victims are profoundly affected by case delays. The defendant has a right to a speedy trial, not only because he may be incarcerated while it is pending, but also because of the hardship inherent in having criminal charges unresolved. Victims likewise are burdened by irresolution and the realization that they will be called upon to relieve their victimization

when the case is finally tried. The healing process cannot truly begin until the case can be put behind them. This is especially so for children and victims of sexual assault or any other case involving violence."

"In recognition of these factors, continuances should be granted sparingly and only for good cause. Lawyers must be required to conduct their practices efficiently, and courts must employ sound calendar management procedures. Judges must be aware that lawyers on both sides try to manipulate the continuance system for their own ends, ends that serve neither the victim nor the interests of justice."

**"Waiting rooms"** - A frequent complaint, particularly as to children, is that the witnesses for the prosecution are compelled to sit in the same waiting area as witnesses for the defense, making for actual and imagined harassment and tension. Most court facilities can be arranged so that in child sexual abuse cases the child can wait separately. It should even be possible to treat children like physicians: giving them a time to appear and putting them on the stand as soon as they arrive.

Dr. Gary Melton has suggested that a statute could provide for children the same protections given adults under the Federal Witness Protection Act which requires the Department of Justice to develop specific procedures to make victims more comfortable and less subject to fear and embarrassment during the legal process, such as separate waiting rooms, victim counselling services, specially trained law enforcement officers, involvement of the victim in prosecutorial decision making, reducing the size of the audience when a child is testifying, removing the defendant while the child testifies, presumably to a room with one-way glass or where he would have at least audio transmission of the proceedings, appointment of special child mental health professionals as masters to take and report the child's testimony.

## Chapter 23.

### TESTIMONY OF THE CHILD

Testifying in a full courtroom is an emotional experience for all but the most professional of witnesses. For a child it is frightening, often to the point that the testimony given is less than complete and reliable. The court can provide acceptable alternatives, and acceptable methods of testing the child's competency.

**"Frightening experience"** - A small girl is asked to talk about her private parts, or a man's, and in a large room, with twelve staring jurors, with lawyers trying to discredit her, and judge in black robes and a bailiff in full uniform, and with her father who abused her

watching her, closely. "When the child does appear at trial, the formal setting and procedures of the courtroom can be terrifying. The intimidation must be litigated greatly by special care. Prior to testimony the judge should take the child into chambers, introduce the attorneys and explain how the proceedings will be conducted. When testifying, the child should be allowed to use a smaller version of the adult witness chair or sit at a table with the judge and attorneys. The child also should be allowed to use drawings or anatomically correct dolls to describe the victimization if appropriate. Language that children can understand must be used for all questions."7

"An entirely different set of problems arises when children are called to testify in court. Judges loom large and powerful over small children isolated in the witness stand. Attorneys use language children do not understand and argue over everything the children say. Defense attorneys ask questions intended to confuse them, for reasons they cannot comprehend. Many people are watching every move they make -- especially the defendant. Under such conditions, children cannot be expected to perform on a par with adults. Again, all too often, they recant or 'freeze', refusing to answer further questions."8

"Videotape" - Physicians increasingly testify in civil trials by videotape, made at their convenience in congenial surroundings. Children should be accorded the same privilege.

"Thirteen states have adopted laws authorizing the introduction of video-taped testimony taken at a deposition or preliminary hearing. Three states explicitly prohibit the government from calling the child to testify at trial if the videotape is introduced; two states reserve this right for the government. Eleven states require the defendant to be present during the videotaping, although two of those states (Kentucky and Texas) specify that the child must not be able to hear or see the defendant. ...Six states stipulate that the defendant must be provided a full opportunity to cross-examine the child; two more states require the child's testimony to be taken under the Rules of Evidence. Eight states require a showing that testifying will be traumatic or that the witness is medically or otherwise unavailable; only Arkansas merely provides that good cause must be shown."9

The tape can be made at the child's convenience, in the judge's chambers, with a friendly adult next to him, both lawyers present for examination and cross-examination. Objections and ruling can be made at the time and the tape edited appropriately. And the child spared the rigors of an appearance in full court. Videotaping however may be more

traumatic than the courtroom in some circumstances: the judge may not be available to require restrained conduct, the child and the defendant may be in even closer proximity, the use of the tape may require traumatic psychological evaluations, the prosecutor may prefer the warmth and emotion of live testimony.

"States seem to be most interested in statutes to allow videotaping of a child's testimony. In 1982, the ABA's Child Sexual Abuse Project found that four (4) states allowed videotaped testimony. By 1985, fourteen (14) states had statutes permitting videotaped trial or preliminary hearing testimony. Six (6) of the 14 statutes permit the videotape to be made or admitted into evidence at trial only if the court finds that the child's testimony in open court would cause severe emotional trauma. Three (3) of these statutes allow either the videotape to be made or to be admitted at trial if the court finds the child to be 'medically unavailable' because testimony would cause emotional trauma, or otherwise 'unavailable' as defined in a state's evidence code sections relating to the admissibility of hearsay or prior testimony. The remaining statutes simply give the court discretion to order the making of the videotape. Thirteen (13) specifically allow cross-examination or questioning of the child by the defendant or his lawyer."

"Twelve (12) statutes require the physical presence of the defendant in the room where the videotaping takes place; the statutes in Kentucky and Texas mandate that the defendant be hidden from the child's view, although the defendant must be able to see and hear the child. The age of the child varies by statute, although all provisions allow videotaping of children under 12 years of age."<sup>10</sup>

"Closed circuit television" - The child can testify in the judge's chambers with only the lawyers present, and a friendly adult next to the child. The jury and the defendant can watch and listen to the screen in the courtroom. The child is spared full court pressure. "Closed circuit television however has been little tried. There is a possibility that it will be ruled inadequate confrontation. If that problem is overcome by having the defendant in chambers also, the child will be more drastically confronted by the defendant than if they were in the courtroom. There is also the question of whether the jury can adequately assess and savor the child's testimony from a TV screen, if only because they are used to so much make-believe from the screen."<sup>11</sup> Another adaptation of closed circuit television would be to have the child testify in the courtroom in the presence of the jurors but to place the defendant and any other threatening witnesses in another room

to watch by closed circuit television. The defendant could be equipped with a simple microphone and earphones to communicate with her lawyer in the courtroom with similar equipment.

"Three (3) states, Kentucky, Louisiana, and Texas, have statutes permitting closed-circuit television of child's testimony. During the trial, the child is questioned by the prosecutor and defense attorney (with a support person allowed to be present) in a room outside the courtroom, which is televised to the judge, jury and public in the courtroom. The defendant must be able to 'observe and hear the testimony of the child in person,' but the child may not see or hear the defendant. Only Louisiana conditions the use of this procedure 'when justice so requires.'"

"A bill in California, which has passed the state senate, proposes two-way television of the child's testimony, which may be utilized if psychological harm to the child from testimony in open court is shown. Under this bill, the child would be in a room outside the courtroom, and the judge, jury, defendant, and both attorneys would be in the courtroom. The child would be able to see the courtroom by television, and the people in the courtroom can see the child by television. The attorneys would question the child from the courtroom, and only a support person would be permitted with the child. This proposal thus differs from the other laws by allowing the child to see the courtroom and the jury, judge, public and defendant, but permits the questioning to occur by television rather than in the child's presence."<sup>12</sup>

**"Reduced visual contact"** - If the problem is the effect on the child of eye contact with the defendant, the child can be coached to look at someone else in the courtroom, or to tell the judge if the defendant is trying to harass him by grimaces or such. Counsel may try to position himself between the child and the defendant but such may be impossible, and may be contrary to the rules in court which require counsel to remain at counsel table.

**"Questioning by the judge"** - All questioning can be by the judge, based on questions submitted to him by counsel. Presumably the judge will be quite competent to follow up on answers but with ample opportunity for the submission of additional questions by counsel.

**"Use of dolls"** - Since children are embarrassed to talk about their intimate parts, and often have names for them which may be a family code not comprehended by others, it is often useful to provide the child with anatomically correct dolls to which they can point and

demonstrate. "An anatomically correct doll family should be provided in a chair between the interviewer and the victim on the side. The child should be able to have access to one of four members of the doll family: Two adults, two children (male and female). The child should be able to point to the parts of the body that they are describing to insure accuracy of detail. For example, one child called a vagina "a pizza," therefore use of the doll family insures correct understandings and is important. Anatomically correct doll families allow children to relax and to enact happenings that they cannot describe verbally such as: cunnilingus or fellatio. The doll family also allows the children to demonstrate their degree of preoccupation with sexual matters. Some children rip off the clothing from the anatomically correct doll family and are unable to remove their eyes from the genitals of the dolls and persist in having the dolls in positions of intercourse with each other. Such observations are valuable and should be stated as an observation on the record."13

"Competency of the child as a witness" - The usual method of testing a child's competency is for the judge to ask her if she knows what truth means and what happens if you don't tell the truth and whether she goes to Sunday School. The answers are sometimes comic, often bizarre, but seldom negative. And so the child is allowed to testify. The modern trend seems to be to let children testify with the same non-chalance as to competency with which we let adults testify, letting the jury decide credibilities as they do for adults. In any case, the law in some states requires an adult form oath from a child, however small, most states however allow a sincere promise to tell the truth.

"Exclusion of spectators" - While courts probably have an inherent power to exclude spectators where their presence will impede justice by inhibiting a witness, at least twenty states have passed statutes authorizing such exclusions. The exclusion of the press is of doubtful constitutionality, though clearly the press can be restrained in numbers and conduct. "In Globe Newspaper Co. v. Superior Court, 102 S.Ct. 2613 (1982), mandatory closure of the courtroom during the testimony of child sexual abuse victims in a criminal trial was held to be overly broad, since it would apply whether or not the victim sought to have closure and even if the victim would not suffer injury if the proceeding was open to the press or public. Indeed, research and clinical evidence suggests that children, like adults, react differently to being victimized and react differently to the aftermath and the judicial process. In addition, mandating an approach for all children could be interpreted as degrading. Although efforts should be made to protect children, efforts also should be directed to treating them equally as adults, where appropriate. For example, reform laws abolishing competency requirements for children reflect such an attitude."14

"Credibility of children may include such criteria as: Intelligence; mental age; memory; consistency of detail; history of comfabulation; behavior; suggestibility and susceptibility; affect; motive for disclosure; physical evidence and background documentation."

"Children (whether you believe them or not) need to be examined for all these criteria. Motive needs to be examined carefully in children."

remote from the offense that accurate testimony will be difficult, if not impossible, to elicit at trial. A child may find the courtroom setting so intimidating that she will be unable to respond to questions. If the perpetrator is a relative or close family friend, the victim may be coerced or forced to change her story between the time of the initial statement and the trial."

"Second, a need for the child's testimony arises in child sexual abuse cases, particularly when the abuser is a relative or close family friend. The abuser may have had the opportunity to get the child alone and apart from other potential witnesses. The child's statements will then constitute the only proof of the crime. In addition to the lack of witnesses, there may be no physical evidence of the sexual abuse. This absence of physical evidence may be because the abuse consists of activities other than penetration. Even if penetration occurs, there may be no apparent physical damage because the victim may not report the abuse until long after physical signs of the abuse have disappeared."16

"Disruptive defendant" - There have been situations well noted by the media where defendants on trial for civil rights matters have become so disruptive to orderly proceedings that they have been put in another room to watch through a window or by closed circuit television. Stated otherwise, where the defendant will be substantially disruptive, he can be denied his right of confrontation. Thus if the sexual abuser of a child, by his presence in the courtroom with the child will so substantially disrupt her, he can be denied confrontation. A devious argument, but possible.

"Res gestae" - An ancient rule permits statements made during the excitement of the event, on the theory that excitement prevents any assertion of self interest which might otherwise color the statements. So with a child: statements made by him to his mother or teacher or caseworker, if under control of excitement, can be admitted, making the testimony of the child possibly unnecessary. "The excited utterance exception has several disadvantages in child sex abuse cases. Courts that broadly construe the requirement usually do so based on the understanding that children may not immediately report an incident of sexual abuse because of 'threats, fear, guilt and other pressures to keep the incident a secret.' Children's statements rarely meet a strictly construed timeliness requirement because they generally do not make statements immediately after the abuse occurs. The delay may be caused by the abuser's threats, the child's confusion or fear, or reluctance to hurt the abuser, particularly if the abuser is a relative or close friend. Even if the child makes a timely statement, the statement may lack the 'excited' nature required for the spontaneous utterance exception. For example, a child may not view an incident of fondling as shocking. She may be too young to have assimilated adult tatoos. When

a child has this perspective on a sexual experience, she may not experience the shock or excitement that the law presumes exists after such an event. The absence of shock or excitement may render the statement inadmissible under the spontaneous utterance exception."17

"Many states have enacted statutes to remedy the situation. A recent example is Minn. Stats. 595.02 which is reproduced in the Appendix. Any statute of course must come within the proscriptions of the Confrontation Clause, using the standards established by (start italics) Ohio v. Roberts, (end italics) 448 U.S. 56 (1980) which held that the Clause does not require physical confrontation if the witness is unavailable despite a good faith effort to bring her to court and if there are sufficient indicia of reliability such as spontaneity, consistency, the child's truthfulness, unusual behavior tending to corroborate. In determining 'unavailability', a court may consider whether the mental trauma to the child from testifying outweighs the value to the defendant and the jury of observing the witness."18

The fact that the child is not competent to testify at the time of trial due to such as mental lapse or the mental trauma of testifying does not necessarily mean that the child was not competent at the time the hearsay statement was made; incompetency today does not of itself prohibit relating a statement made earlier.

## Chapter 25.

### CONFIDENTIALITY

So far as possible, records of the sexual abuse of a child should be available for inspection only by those who need to know.

"Rationale for confidentiality" - The details of a child's humiliation by someone else should not be available like a 'R' move for the prurient entertainment of others, even in the name of the press's vaunted right to disclose anything about anyone. The press's right is based on the need in a democracy for the public to know how government is exercising its powers, but what some adult does with a child's genitals, or forces him to do with his has little to do with the exercise of power by government so long as there is freedom to know that a child was sexually abused and to disclose what government did in response. A child who has been hurt once should not have to be hurt again, and again.

"Grand Jury testimony" - The statements of witnesses before the Grand Jury are usually considered confidential. The rationale is that the defendant should not be stigmatized unless he is to be charged. By the same rationale, the child should not be stigmatized by a disclosure of the Grand Jury evidence, whether the defendant is charged or not.

"Preliminary hearings" - The public's 'need to know' the salacious details of a child's humiliation is greatly outweighed by the trauma to the child. If there is some reason to believe the case is being mishandled, let the details be known to prove or disapprove the belief, but otherwise, spare the child.



"Trials" - The defendant has a right to a public trial. The rationale is that if the public is in attendance the trial will be fair, the government will not be oppressive. If there is no alternative to the child testifying in full court, at least he should be spared the attendance of an audience of strangers, the press will surely protect the public's right to a fair trial.

"Court Records" - The numerous documents accumulated in court files concerning the various litigations which can flow from child sexual abuse will usually disclose all the names and most of the addresses of the persons involved. The records of the adult criminal courts are public records, open for anyone's inspection, however prurient their interest. Where a child is the victim, it would seem that the court could close the files except on a "need to know" basis for the parties and responsible research persons and the press. The President's Task Force (page 19) would go considerably further in two respects: on the one hand denying to the public and even the defendant access to names and addresses of the victim and the state's witnesses "absent a clear need as determined by the court" and on the other hand (page 32) making all arrest records available to businesses and organizations employing persons who will have regular contact with children.

## SECTION G

(start italics)

### Sentence and Dispositions

When a child sexual abuse situation is first presented, it is necessary to look down the road to ascertain what can be done, and what cannot be done. The investigation, process, procedures, and court orders can then all be melded into a cohesive whole which will best accomplish what needs to be done.

Thus it is necessary at the outset to consider the disposition and to plan for it. It thus also becomes necessary at the outset to coordinate the plans and activities of all of the authorities and agencies involved, which may be a sticky invasion of various turfs.

There are numerous potential remedies, most of them currently available in most communities, are readily replicated from other communities. The problem is principally educating all of the professionals into all aspects of the problem, all potential solutions, and somehow to persuade them to coordinate their efforts. (end italics)

## Chapter 26.

### GOALS AND RESPONSIBILITIES

Before a dispositional order can be entered, the court or courts must determine and coordinate what is to be accomplished.

"Dispositional order" - The orders of the court may be a sentence in a criminal charge against the abuser, or a custody and visitation order in divorce, or the order in a neglect procedure, or the terms of a permanent protective order. Or it may be several of these, or all of them. If there is to be logic in what the Court does, there must be a coordination of whatever orders are issued. If they are at cross-purposes, neither will accomplish what was expected of it.

"Court or Courts" - If the orders have different jurisdictional bases, they may issue from different courts, possibly at different times. The parties may even maneuver to get one court's issued first so as to limit the options of other courts trying to be logical.

"To be accomplished" - Court orders can accomplish various objectives: they can punish, such as a jail sentence or a loss of custody; they can focus on the child, such as placement in a therapeutic setting or providing counselling for the child; they can focus on the family, such as custody and visitation orders or orders requiring family therapy; they can focus on the abuser, such as orders for his treatment.

"Coordination" - Emphasis must be placed on joint cooperation and coordination among the courts and various public and private agencies providing assistance to or dealing with deprived children. Lawyers need to be present to express their clients' wishes. Social workers

need to be present to analyze the problem and to propose solutions focused variously on the child, the abuser, and the family. Judges need to be present to hear what the several proposals may be and the advantages and disadvantages of each and the extent to which they can be correlated. There need to be presentations and reactions to each presentation and new presentations based on the reactions.

The judge need not take part, probably should not take part other than to ask questions and to pose possibilities. The judge should not be put into the position of taking a position and having to defend it, his or her position should be reserved until the entire presentation is completed. Then, if there is more than one judge, they should adjourn by themselves to work out a coordinated plan which will incorporate all of their jurisdictional bases into a common plan with common objectives.

It is a process without precedent. But the opportunity is to rescue an abused child, to reduce the crime which abused children commit, to break the cycle of abused children abusing their own children.

## Chapter 27.

### TREATMENT

The variety of dispositions which can be in most communities is almost as broad as the need for them.

Dr. Pamela Langelier has devised a quick checklist to assist in selecting the most appropriate, available disposition for sexually abused children:

- "1. The 'Best Interests' of the child as defined by statutes
2. Developmental needs of the child based on age and functioning
3. Nature, frequency and duration of the abuse
4. Child's behavior in foster care
5. Degree of child's emotional and behavioral disturbance
6. School reports
7. Child's counselor reports of child's needs
8. A forensic evaluation of child's needs
9. Child's treatment needs
10. Community treatment resources
11. Parental contribution to the abuse
12. Parental understanding of child's disturbance
13. Parental capacity for protection, nurturance and love
14. Parental treatment needs and willingness to accept treatment
15. Parental living arrangements and family history
16. Social service contract for improvement between state and parent
17. Periodic review (3 month) of progress
18. Statutory guidelines for termination of parental rights."
- 19

**"Offense counselling"** - Professional counselling, either individually or in groups of similar offenders, to go into causation and control of the impulses which brought about the sexual abuse.

**"Self-help groups"** - Support groups similar to Alcoholics Anonymous of similar persons who can meet frequently and talk through their experiences and their urgings and be able to call upon each other in emergencies.

**"Family counselling"** - Professional counselling for all of the members of the family singly, in various groupings, or all together, as to how the sexual abuse event impacted on each of them and how each of them can heal the wounds and restore the family to normalcy.

**"Victim counselling"** - Professional counselling of the child-victim designed to help her understand what happened, why it happened, what can be done about it, and to reduce her feelings of shame and of guilt and her desire to revenge, now or upon her own children.

"Let me be clear to state that our exception to the rule of severe punishments should apply only where to do so is highly likely to benefit the victim. Pragmatically, this applies when one or a combination of the factors listed below, exist:"

- "1. The sexual abuse was caused by a parent, parent figure or close relative living with or in close proximity to the victim.
2. The offender totally admits his crime and willingly participates in therapy and other orders of the Court.
3. The offender is not one who has previously participated in therapy and has now repeated the offense.
4. The offender is not addicted to and currently abusing drugs or alcohol.
5. The offender is not diagnosed as mentally ill.
6. The offender is not determined to be a pedophile -- one who craves sexual liaisons with children."20

**"Protective orders"** - Orders of the court designed to provide protection for the child both from the abuser and from family members vindictive towards her for reporting and causing troubles, and to require counselling of those for whom counselling is indicated and of probable help, and to provide for custody, visitation, and support until the family has rehabilitated. The order may well require the assertion of more than one jurisdictional base, eg. divorce, criminal, neglect, etc.

"Prison programs" - There are usually enough sexual abusers in a state to warrant a separate and isolated program for them in the prison system. The programs are usually intensive and long, with a high rate of success.

"A mix" - Quite obviously, a mix of programs is usually indicated in order to reach the separate problems of all the people involved. The need for the mix will also of course require a coordination of the courts and personnel designing, ordering, and carrying out the programs.

## Chapter 28.

### CIVIL ACTIONS

The victim may decide to proceed with legal self-help instead of relying on the public authorities. They have various remedies, but usually at their own expense.

"Damages" - The sexual abuse of a child is certainly a tort, assault, and therefore the abuser can be sued for such money damages as a jury may assess. Until recently such a suit, usually between family members, was unheard of. And often the abuser is 'judgment proof' in that he has no money with which to pay a judgment. But in this day of liability insurance, it may well be that the abuser's insurer can be made to make substantial amounts of money.

"Injunctive relief" - The victim may seek relief from a court of equity by way of an order enjoining the abuser to do or not to do various actions. A Protective Order will usually accomplish the same thing or more and at public expense, but some victims may prefer to have control of the litigation by investigating private litigation.

"Divorce" - The spouse may seek divorce with all of its orders for control of custody, visitation, support, spousal maintenance and property division. Again much of this may be within the range of a Protective Order, but divorce is within the spouses control at all stages and can be a final ending of the family relationship.

#### FOOTNOTES

1. Dr. David Finkelhor, Child Sexual Abuse, October 1985, pp 7, 8, 10, 11, 12, 13.
2. Carol J. Schrier & Jo Ensminger, Evidence Collection/Preparation for Court in Sexual Abuse Cases, a paper delivered at the Hersey Conference on Sexual Abuse of Children, p. 1.
3. Schrier & Ensminger, op. cit. pg 4.
4. Pamela Langelier, Interviewing the Child Witness, a paper delivered to a forum on child abuse of the National Council of Juvenile and Family Court Judges, p. 9.
5. Langelier, op. cit., p. 5.
6. Judge Leonard Edwards, Dealing with Parent and Child In Serious Abuse Cases, Institute for the Community as Extended Family.
7. Langelier, op. cit., p. 5.
8. Debra Whitcomb, Prosecution of Child Sexual Abuse: Innovations in Practice, Testimony before the Subcommittee on Children Family, Drugs, and Alcoholism, Committee on Labor and Human Services, United States Senate, May 2, 1985, p. 2.
9. Whitcomb, op. cit., p. 5.
10. Josephine A. Bulkley, Evidentiary and Procedural Trends in State Legislation and Other Emerging Legal Issues in Child Sexual Abuse Cases, a paper delivered to a forum on child abuse of the National Council of Juvenile and Family Court Judges, p. 11.
11. Whitcomb, op. cit., p. 5.
12. Bulkley, op. cit., p. 12.
13. Langelier, op. cit., p. 8.
14. Bulkley, op. cit., p. 3.
15. Langelier, op. cit., p. 11.
16. William Mitchell Law Rev. 799, 806 (1985)
17. William Mitchell Law Rev. 799, 808 (1985)
18. William Mitchell Law Rev. 799, 815 (1985)
19. Pamela Langelier, Child Sexual Abuse: Community Guidelines, a paper delivered to the 1985 Summer Colledge of the National Council of Juvenile and Family Court Judges, ...
20. Judge Randall J. Hekman, The Sexual Offender: Punishment vs. Treatment, a paper delivered to a forum on child abuse of the National Council of Juvenile and Family Court Judges, p. 2.

## Appendix A

### Y.W.C.A. CHILD SEXUAL ABUSE TREATMENT CENTER

#### Kent County

#### Grand Rapids, Michigan

- 1.00 PROGRAM DESCRIPTION
  - 1.10 Summary
  - 1.20 Purpose
  - 1.30 Goals
    - (omit 1.31 - 1.37)
  - 1.40 Treatment Sequence
  - 1.50 Support Activities
    - 1.51 Required Classes
    - 1.52 Elective Programs
    - 1.53 Support Groups
  - 1.60 Criteria for Participation
    - 1.61 Exclusions
    - 1.62 On-Going Assessment
  - 1.70 Case Coordination
- 2.00 PROGRAM DESIGN
  - 2.10 Philosophy
  - 2.20 Staffing
  - 2.30 Clinical Assessment
  - 2.40 Treatment
  - 2.50 Confidentiality
  - 2.60 Case Management
  - 2.70 Prevention
  - 2.80 Minorities
  - 2.90 Evaluation of Treatment Effectiveness
- 3.00 INTER-AGENCY COORDINATION
  - 3.10 Reporting Child Sexual Abuse Cases
  - 3.20 Investigation Validation
  - 3.30 Referral for Treatment
  - 3.40 Criminal Justice System
  - 3.50 Children's Protective Services
  - 3.60 Treatment Program
  - 3.70 Other Community Agencies
- 4.00 STATISTICS
- 5.00 FUNDING
  - 5.10 Sources Used
  - 5.20 Other Sources
  - 5.30 Advantages and Disadvantages
  - 5.40 Sources Which Have Refused
  - 5.50 Future Funding
  - 5.60 Better Approaches
  - 5.70 Funding Mistakes and Successes
  - 5.80 Effects on Program
  - 5.90 Funding Features

## 1.00 PROGRAM DESCRIPTION

### 1.10 SUMMARY

Families in which child sexual abuse has been substantiated by Children's Protective Services are treated at the YWCA Child Sexual Abuse Treatment Center, under contract with the Kent County Department of Social Services. The comprehensive treatment program includes five components:

1. THERAPY - individual, marital and group therapy;
2. PEER SUPPORT - activities for families in treatment including social and educational programs, and a sponsors' program in which graduates from the treatment program are trained to give information and support to newly referred clients;
3. ADULTS MOLESTED AS CHILDREN - support and therapy groups;
4. TRAINING - for community professionals to increase coordination and quality of services;
5. PUBLIC AWARENESS ACTIVITIES - to increase understanding of child sexual abuse and its sensitive treatment at the Child Sexual Abuse Treatment Center.

### 1.20 PURPOSE

Child sexual abuse is seen as a family system issue. The treatment sequence is directed as eliminating abuse within the family, maintaining the family unit whenever possible. Duration of treatment is nine months on average, with an additional nine months of involvement in support activities. The role is to make the family "safe", as opposed to "well."

### 1.30 GOALS

Therapy and support activities are directed at specific treatment goals. The family is considered "safe" from further abuse when the following treatment goals have been met:

- 1.31 The Perpetrator has accepted responsibility for the abuse.
- 1.32 The mother and siblings demonstrate ability to protect the child and themselves from abuse.
- 1.33 The mother-daughter relationship has improved and all family members have learned basic communication skills.
- 1.34 Family roles and generational boundaries are clear and strong.
- 1.35 The victim(s) have learned to say no and to seek immediate intervention if approached again.
- 1.36 The marital relationship is improved.
- 1.37 The therapist and all family members are reasonably convinced that the victim is safe from repeated abuse.



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1. THERAPY - individual, marital and group therapy;
2. PEER SUPPORT - activities for families in treatment including social and educational programs, and a sponsors' program in which graduates from the treatment program are trained to give information and support to newly referred clients;
3. ADULTS MOLESTED AS CHILDREN - support and therapy groups;
4. TRAINING - for community professionals to increase coordination and quality of services;
5. PUBLIC AWARENESS ACTIVITIES - to increase understanding of child sexual abuse and its sensitive treatment at the Child Sexual Abuse Treatment Center.

### 1.20 PURPOSE

Child sexual abuse is seen as a family system issue. The treatment sequence is directed as eliminating abuse within the family, maintaining the family unit whenever possible. Duration of treatment is nine months on average, with an additional nine months of involvement in support activities. The role is to make the family "safe", as opposed to "well."

### 1.30 GOALS

Therapy and support activities are directed at specific treatment goals. The family is considered "safe" from further abuse when the following treatment goals have been met:

- 1.31 The Perpetrator has accepted responsibility for the abuse.
- 1.32 The mother and siblings demonstrate ability to protect the child and themselves from abuse.
- 1.33 The mother-daughter relationship has improved and all family members have learned basic communication skills.
- 1.34 Family roles and generational boundaries are clear and strong.
- 1.35 The victim(s) have learned to say no and to seek immediate intervention if approached again.
- 1.36 The marital relationship is improved.
- 1.37 The therapist and all family members are reasonably convinced that the victim is safe from repeated abuse.

#### 1.40 TREATMENT SEQUENCE

The Family Unit is involved with the Child Sexual Abuse Treatment Center as soon as possible after the preliminary hearing. A typical treatment sequence includes family assessment, treatment in various configurations (individual therapy for victim, mother, father, marital therapy, mother-child, father-child and siblings) and finally as a family group. We project an average of fifty-five hours of clinical treatment from assessment to termination.

In addition to clinical therapy, family members are involved in group therapy. Groups for adults will include: orientation, men, women and couples. Groups for children will include: orientation, adolescent girls, adolescent boys, adolescent perpetrator, latency age children, early elementary age children, mother-daughter, and siblings groups. Each family member in treatment will be involved in group as well as clinical therapy.

#### 1.50 SUPPORT ACTIVITIES

Clients are also involved in a wide range of support activities which are designed: a) to reduce families' isolation; b) to provide modeling and support for families to enhance parenting skills and appropriate family roles; c) to reinforce client's strengths and skills acquired during therapy.

#### 1.51 REQUIRED CLASSES

Support Activities include required classes and elective activities for both children and adults. All classes are set up in three, four month terms, beginning in January 1983. Adult activities include three required classes each meeting eight times: sex education, assertiveness/communication and parenting. Required activities for children in treatment include two classes each meeting eight times: sex education and assertiveness/communication. "Required" means that clients must attend these classes upon recommendation of the therapist before being discharged from treatment.

#### 1.52 ELECTIVE PROGRAMS

Elective activities include a Sponsor's Program which trains graduates of the treatment program to offer support, encouragement and information to new families referred to the YWCA Child Sexual Abuse Treatment Center. This activity reinforces the sponsor's strengths gained in therapy while providing peer support to the newly referred client. Other elective activities include a speaker's bureau, recreational and education activities offered about a month at the YWCA.

#### 1.53 SUPPORT GROUPS

Support groups are also offered for adults who were molested as children. Research shows, and our experience bears out, that sexually abused children may grow up to become abusive parents. Some adults molested as children feel unable to lead normal lives, while others need support to work through their problems. We hope to give adult victims an awareness of how dysfunctional family dynamics may set up the circumstances for child sexual abuse. With this awareness, plus better interpersonal communication skills, we hope to interrupt the child abuse cycle and work toward the YWCA Child Sexual Abuse Treatment Center's goal: to eliminate child sexual abuse.

## 1.60 CRITERIA FOR PARTICIPATION

### 1.61 EXCLUSIONS

Individuals excluded from treatment are: current substance abusers, pedophiles, or persons needing in-patient psychiatric treatment.

### 1.62 ON-GOING ASSESSMENT

Ongoing assessment will be made about the value of continuing treatment for perpetrators denying the responsibility for sexual abuse, families denying problems identified by the therapist beyond three months, severely mentally retarded persons, families previously in treatment for child sexual abuse.

### 1.70 CASE COORDINATION

When a child is in foster care, the needs of the child and family can be met best if the foster care worker and the Child Sexual Abuse Treatment Center therapist are in regular contact. Two weeks prior to the court hearing, recommendations for court are discussed at our case conference. We invite foster care staff to be a part of this case conference. It is also possible to arrange for time during case conference regarding other areas of concern. Our case conference is held on Mondays from 1:00 pm to 3:00 pm. Arrangements for a time block (usually  $\frac{1}{2}$  hour) can be made by contacting the therapist.

## 2.00 PROGRAM DESIGN

### 2.10 PHILOSOPHY

#### 2.11 *What assumptions regarding the nature of sexual abuse or the nature of treatment of sexual abuse guide this program?*

We assume that children are to be believed when they report incidences of sexual abuse. We believe that several components must exist for successful treatment. First police, Children's Protective Services and the Court must work together to insure the safety of the child and to reduce the trauma associated with revealing sexual abuse. Second, we believe that intervention with the family must occur immediately following disclosure. Intervention by treatment staff includes early assessment, introduction to Parents United and coordination of Sponsorship for new clients with resolved clients. Treatment must involve the entire family including siblings. Treatment must include individual, conjoint and group components. Finally, we believe that sexual abuse is a crime and that the perpetrator must take responsibility for his actions and that punitive actions such as removing the perpetrator from the home and supporting jail time are an integral part of treatment. Removal from the home clearly indicates to the victim that her/his safety is of primary concern. It is more obvious to the

victim that the perpetrator is at fault when his absence is demanded. The victim is also able to maintain her normal daily routine and can begin to re-establish a relationship with the non-abusing parent. The perpetrator is immediately introduced to consequences. Removal from the home establishes boundaries that help him to understand that his behavior has been extremely harmful, that he is threat to the child and that his actions will not be tolerated.

2.12 *Who is the program designed to treat?*

The program treats the sexually abused child and all immediate members of his/her family. This program is limited to the treatment of incestuous families. Incestuous families can include a perpetrator who is a biological parent, step-parent, sibling, co-habitant or person who is assuming the role of parental authority.

2.13 *What are the critical elements in treatment?*

1) Coordination of criminal justice, juvenile justice and human services systems to reduce traumatization of the family; 2) early intervention by treatment staff following disclosure; 3) treatment that includes all family members; 4) treatment that includes individual, family, group and peer support components and 5) punitive measures that make clear to the perpetrator that s/he has committed a serious crime.

2.20 STAFFING

2.21 *What types of skills are needed in the treatment program staff?*

At present, our treatment program staff includes one PhD, two M.A.'s in Clinical Psychology, seven M.S.W.'s, one M.A. in Criminal Justice, one M.S. in Counseling, Psychology.

Beyond academic expectations, we search for clinicians who are comfortable with sexuality, who have knowledge of sexual dysfunction and experience in individual and group treatment. Additionally, we attempt to determine if they have positive methods of stress reduction and are able to give and receive support.

2.22 *Are volunteers used and how?*

Volunteers are restricted to interns who are in their second year of graduate studies; selected clients who have completed treatment and have participated in training are used as sponsors for new clients.

2.23 *How does the program protect staff morale and prevent burn out?*

We limit client contact to 18 direct service hours per week. Staff meets weekly for a two hour staff meeting and two hour case conference, both allowing for free discussion of frustrations and limitations. Each staff member meets individually with the Project Supervisor and with an outside consultant who s/he has chosen. The staff are encouraged to diversify by providing trainings at state and local level. The staff is treated with professional respect. They are free to establish their own work schedule, to chose conferences, to meet with their colleagues at any time throughout the day and to express any concerns with the administrative staff. Our staff is encouraged to clearly distinguish work time from personal time. The staff is not required to be on call. Clients are never given staff telephone numbers.

- 2.24 *Are the treatment staff involved in treating child sexual abuse on a part-time or full-time basis?*

Full-time. Staff members may, if they choose, provide group therapy for Adult Survivors of Incest.

- 2.25 *What kind of provisions are made for staff training and development?*

All staff are allocated funds to use for conferences and workshops of their choice. In-house staff training and retreats are available, but on a limited basis. Each staff member has a personal consultant.

- 2.26 *Is there emergency coverage and how is it handled?*

Clients must call the on-call Children's Protective Services worker. In cases of extreme emergency, the Protective Services worker can contact the client's therapist through a 24-hour crisis intervention service.

## 2.30 CLINICAL ASSESSMENT

- 2.31 *Does the program evaluate victims in order to validate sexual abuse allegations? If so, what types of evaluations are used, i.e., structured clinical interviews, psychiatric evaluation, psychological testing?*

The Department of Social Services, Children's Protective Services department investigates and substantiates cases prior to their referral to the Child Sexual Abuse Treatment Center. Structured interviews are the primary tool used by Children's Protective Services.

- 2.32 *Does the program participate in evaluation prior to adjudication to determine the guilt or innocence of the offender? If so, what types of evaluations are used?*

No.

- 2.33 *Does the program participate in evaluation to determine the need for treatment and the likelihood that a participant will benefit from treatment? Again, what types of evaluations are used and which members of the sexual abuse complex are evaluated, i.e., offenders, non-offending spouses, victims, siblings of victims?*

Our program assumes that all sexual offenders need treatment, however some individuals need an assessment period (up to five sessions) to determine if they are appropriate for therapy given the limitations of outpatient treatment. Psychological testing may be requested in these situations. These individuals are:

- a. Individuals who seriously minimize the abuse or the severity of the abuse.
- b. Individuals who deny sexually abusing the identified victim.
- c. Very non-supportive mothers.
- d. Individuals that displayed violent behavior toward the victim in the course of the sexual abuse.

- e. Severely disturbed families where individuals display a high degree of pervasive pathology.
- f. Perpetrator whose sexual preference is in conflict with family re-unification.
- g. Seriously retarded individuals

Assessment tools include but are not restricted to: MMPI, 16 PF, Hand Test.

- 2.34 *Does the program participate in evaluation designed to answer questions about reconstitution of families after a period of treatment? Again, what types of evaluations are conducted and who is evaluated?*

Evaluation is an ongoing part of the treatment process. All family members begin treatment in individual sessions. When it has been ascertained that the non-offending parent is able to support the victim, conjoint treatment begins. Our agency is responsible for determining visitation privileges between victim and perpetrator. Before contact is allowed the victim is expected to acknowledge and express anger toward the perpetrator. The perpetrator must acknowledge guilt and express remorse. At this point, visitation in the presence of the therapist may begin. Treatment between the offending parent and the victim takes place at the therapist's discretion.

Reconstitution is not the primary goal of the treatment program. The offending and non-offending parents determine their marital needs. Should the parents decide to maintain their marital status, treatment between parents and ultimately family treatment takes place.

#### 2.40 TREATMENT

- 2.41 *What treatment modalities are used for which members of the sexual abuse complex?*

Perpetrators and non-offending parent: individual, conjoint, sex-appropriate group and Parents United.

Victim: individual, age and sex appropriate group, conjoint.

Groups are six months in length. Occasionally, a client will join a second series of groups. Parents United meets weekly. Clients are required to attend Parents United for three sessions. Clients are not required to end Parents United at the termination of treatment.

- 2.42 *If the program does not treat all members of the sexual abuse complex, what happens to those who are not treated?*

The Child Sexual Abuse Treatment Center treats all members of the sexual abuse complex who are considered to be appropriate for treatment. Some perpetrators display such serious pathology that they will need longer term and more intensive treatment than can be provided in the present time frame and the units of service limitation. These individuals are:

- a. Current substance abusers. (Treatment may be available when the substance abuse is under control).
- b. Pedophiles

- c. Psychotic individuals who are a threat to treatment staff.
- d. Perpetrators who have received treatment for sexual abuse but who re-abused.
- e. Homicidal individuals.

2.43 *How many therapists are used in a typical client or family's treatment and how are their efforts coordinated?*

It is possible for a family to be involved with as many as seven therapists. A primary therapist is assigned to each family. Each individual within the family is assigned to a group. Groups are led by two therapists. Therapists meet weekly to coordinate services.

2.44 *Is the sex of the therapist a consideration in making treatment assignments and if so, how are their efforts coordinated?*

If the victim is an adolescent male, a male therapist is assigned to the family when possible. If the victim is an adolescent female, a female therapist is assigned to the family when possible.

2.45 *Are there written descriptions of specific treatment techniques that are useful with specific problems?*

At present, treatment for specific problems is shared verbally at case conference and in consultation. The staff has requested written descriptions of treatment techniques and are in the process of describing their individual approaches.

2.46 *Is there a list of resource material available?*

The Child Sexual Abuse Treatment Center provides a small library for the staff. Resource material is purchased at request. A Child Sexual Abuse Treatment Center consultant, Mary deYoung, PhD, has published two books, the second a bibliography of incest treatment.

## 2.50 CONFIDENTIALITY

2.51 *What is the program's policy regarding confidentiality of clinical information?*

Except as specified below, information contained in a client's record is confidential and may not be released to anyone outside the agency. Information generated by a person who is not an employee of the agency that is contained in the client record or is otherwise made available to our agency may not be released.

Confidential information may be released if such information is deemed to be germane to the treatment of the client and is approved for release by the client as evidenced by a Release of Information. Confidential information may be released to members of the child welfare system. These are: The Department of Social Services, Children's Protective Services, foster care providers, Kent County Juvenile Court.

In a life-threatening situation, if an individual's condition precludes the possibility of obtaining a written release, confidential information may be released to the medical personnel responsible for the individual's care without a written release, if such information is necessary for the individual's care and if obtaining a release would cause excessive delay in delivering essential treatment. Client-related information may be released at the discretion of the Director for the purposes of research, evaluation, accreditation or statistical computation without a release of information provided that the subject of the information cannot be identified.

#### 2.60 CASE MANAGEMENT

- 2.61 *How does the program deal with the needs of victims, perpetrators, and families which are directly related to the sexual abuse, e.g., transportation, housing, medical needs?*

Children's Protective Services coordinates services outside the treatment component.

#### 2.70 PREVENTION

- 2.71 *Is there a prevention program?*

Yes, we have a small prevention program.

- 2.72 *To what groups is the prevention addressed?*

The prevention programs trains parents and teachers of students in grades 3 through 6 in several pilot schools to identify and report abuse and learn personal safety skills. Prevention also consists of a prevention play "Little Bear" which is to be performed in 20 area schools.

- 2.73 *How is the prevention program related to the treatment program?*

The prevention program is a part of the YWCA Child Sexual Abuse Treatment Center. Children identified as victims through the prevention program are referred to Children's Protective Services and then to the Child Sexual Abuse Treatment Center.

#### 2.80 MINORITIES

- 2.81 *What minorities and what percentages are represented in the target population?*

Kent County has approximately 7% minority representation. The Child Sexual Abuse Treatment Center has less than 4% minority clients.

- 2.82 *Are any of the minority groups represented in the target population differentially responsive to the treatment program?*

Population too small to determine.



2.83 *What special techniques does the program use to engage minorities?*

Minorities are under-represented in the treatment program. Minorities are not referred to the Department of Social Services.

2.84 *Are minorities represented on the treatment staff?*

No. Administration has actively recruited minority therapists but have been unsuccessful. Minorities are under-represented in the social services field in Michigan. Our agency is not able to compete with others with more lucrative wage scales.

2.90 EVALUATION OF TREATMENT EFFECTIVENESS

2.91 *How does the program evaluate the effectiveness of its treatment?*

Long-term effectiveness is determined by the recidivism rate. At present, less than 1% of our clients have re-referred to the Department of Social Services. Short-term treatment effectiveness is determined by many factors including: client's perception of treatment progress, therapist's description of goal attainment, acknowledgement of guilt on the part of the perpetrator, reduction in number of victims in foster care and reduction in length of stay in foster care.

2.92 *How would the program like to evaluate the effectiveness of its treatment if they had adequate funding?*

This program is not presently funded to provide follow-up services or evaluation. We would like to be able to determine at:

6 months: Has the child been approached by the offending parent or anyone else? If so, how did the child and offending parent respond? Is the family reconstituted or has there been a separation or divorce since termination of treatment? Has length of treatment and type been adequate to meet their needs?

We would ask questions concerning the social skills of the victim including peer relationships. We would attempt to compare types of approaches, e.g., humanistic, behavioral, family systems.

1 year: Many of the same questions would be raised. In addition, the client might be retested using the same battery applied in intake.

5 years: Questions would be the same as at six months, but expanded. A great deal of attention would be given to the potential for abuse in sexual relationships and the choice of partners of victims and siblings.

This should be considered a very incomplete and non-specific response to the question. Follow-up evaluation has not been an option. Should it become an option, follow-up issues would become more clearly defined.

### 3.00 INTER-AGENCY COORDINATION

#### 3.10 REPORTING CHILD SEXUAL ABUSE CASES

##### 3.11 *Who receives the initial report?*

Children's Protective Services or the Police

##### 3.12 *Where do the reports go from there?*

The Police and Children's Protective Services investigate. If substantiation is likely, the family is referred to the Prosecuting Attorney, Juvenile Court and the Child Sexual Abuse Treatment Center.

#### 3.20 INVESTIGATION VALIDATION

##### 3.21 *What is the role of mental health in:*

- a. *investigations of complaints to validate or invalidate the occurrence of sexual abuse?*

None.

- b. *criminal investigation to develop evidence?*

None.

- c. *confrontation of the perpetrator?*

None.

- d. *prosecution?*

For incest, none. It should be noted that Kent County Community Mental Health does provide funds for our Non-Familial Sexual Abuse Program. That program provides referral, assessment, crisis intervention and limited treatment for victims of abuse outside of the family. If our initial assessment indicates sexual assault, the police are generally contacted. Police contact is dependent upon the support of the parents. The assessment and referral team may be called in as witnesses should the case be prosecuted.

##### 3.22 *What is the role of children's Protective Services in:*

- a. *investigations of complaints to validate or invalidate the occurrence of sexual abuse?*

Children's Protective Services and the Police work jointly on all investigations.

- b. *criminal investigation to develop evidence?*

Children's Protective Services and the Police work jointly on all investigations.

c. *confrontation of the perpetrator?*

Confrontation takes place using both police department officials and Children's Protective Services workers.

d. *prosecution?*

Children's Protective Services workers may be called in to testify for the prosecution.

3.23 *How is the investigation coordinated?*

If the police receive the initial contact, they call Children's Protective Services and vice versa.

3.24 *Are video and/or audio tapes used in the investigation?*

Only on occasion, not as a general rule.

3.25 *What happens to the family during the investigation? Is the victim or perpetrator removed? Who makes the decision?*

The perpetrator is asked to leave the home by the investigative team. If the perpetrator refuses, either the victim is removed through a Court Order or a Preliminary Hearing is held immediately and a request is made to order the perpetrator removed. If the perpetrator leaves voluntarily and the non-offending parent is supportive the victim may remain in the home. In such a case, the preliminary hearing is held 24-48 hours after the initial contact and the perpetrator is formally ordered from the home. A preliminary exam is held in District Court to determine if there is enough evidence to bind the case over to Circuit Court.

3.30 REFERRAL FOR TREATMENT

3.31 *At what point is the referral to the treatment program made?*

Either just before or immediately following the preliminary hearing.

3.32 *Who (what agency) makes the referral?*

Children's Protective Services.

3.33 *Who determines the eligibility and need for treatment?*

Children's Protective Services and the Child Sexual Abuse Treatment Center treatment staff.

3.34 *What criteria is used to determine eligibility and need for treatment?*

Clients who are clearly eligible for treatment are:

- a. Individuals who acknowledge their need for treatment and display some degree of self-responsibility.
- b. Individuals who want therapy and can identify

realistic treatment goals.

- c. There are some safety factors in place (adult ally in the home, perpetrator access to visitation at discretion of Child Sexual Abuse Treatment Center).
- d. Individual has some ability to benefit from treatment; has some insight capacity, some ability to abstract.
- e. There is present a sense of family: i.e., the ability for some understanding of other family members, some inter-familial networking.
- f. Client has an understanding of the time frames here.

Clients who require further assessment are outlined in Treatment Program Design section D, Treatment, question 2.

### 3.40 CRIMINAL JUSTICE SYSTEM

- 3.41 *What components of the Criminal Justice System, which includes Law Enforcement, State Prosecutors Office, Attorneys, Judicial System, Department of Corrections, Juvenile Justice, work with child sexual abuse cases and what is the role of each?*

Police: investigation, confrontation of perpetrator, support child, testimony

Prosecutor: determine if warrant is issued, prepares cases, tries case, prepare witnesses

Attorney: represent the defense, assume responsibility for plea bargain, defends in disputed cases

Pre-sentence Investigator: recommends sentence based on therapist's opinion, prior offenses, social/employment history

Probation Officer: monitors probation orders including no-contact when so ordered. Can be used to continue to keep perpetrator out of the home at the recommendation of the therapist.

Juvenile Court Judge: determines temporary wardship, orders perpetrator out of the home through court order of no-contact at formal hearing, orders residential placement of child, establishes financial responsibility for treatment, orders treatment.

District Court Judge: determines if there is enough evidence to bind the case over to Circuit Court.

Circuit Court Judge: presides over criminal case, accepts plea bargain, monitors trial, determines sentence.

- 3.42 *Are there child sexual abuse specialists within each component of the Criminal Justice System?*

The police department has officers specifically trained for and assigned to sexual abuse cases. The Prosecuting Attorney is generally Barb Crozier, who has specialized in child sexual abuse cases.

Two judges, one in Juvenile Court, the other in District Court, have been trained by the Institute for the Community as Extended Family. Pre-sentence investigators and probation officers are not necessarily specifically trained in sexual abuse cases.

3.43 *How are the efforts of the various components of the Criminal Justice System coordinated?*

Police department personnel and Children's Protective Services report their findings to the Prosecuting Attorney. A single prosecutor is assigned to the criminal case from preliminary exam to conviction or guilty plea. Pre-sentence Investigator receives some input from the Prosecuting Attorney and the primary therapist. Juvenile Court Judges receive quarterly reports from the primary therapist and Children's Protective Services. The Circuit Judge receives a report from the therapist at the time of sentencing.

3.44 *Are male and female officers used in the investigation of cases?*

Yes.

3.45 *How do the laws in your state effect the disposition of child sexual abuse cases in the Criminal Justice System?*

While uniform sentencing laws do exist, judges are allowed some latitude in determining plea bargain options, length and type of sentences. At present, the vast majority of our clients receive jail time that includes release time for work and treatment. A long-term probation after release from jail is usually also ordered.

3.46 *Who makes the decision to prosecute cases and on what basis is this decision made?*

The police determine whether or not to approach the prosecutor. She determines if there is enough evidence, if the victim is a good witness, if the victim's testimony can be corroborated.

Elaboration should be made by the Prosecuting Attorney.

3.47 *Do perpetrators enter treatment voluntarily or as part of a deferred prosecution, pre-trial diversion, post-plea agreement?*

Perpetrators must acknowledge guilt and meet the inclusion criteria to become ongoing clients. Should both occur, the perpetrator will be ordered into treatment through both Juvenile and Circuit Courts.

3.48 *Describe agreement procedures in detail. To what must offenders agree in order to be eligible for this program? Is treatment a condition of probation or parole?*

The offender acknowledges responsibility. The offender must make a commitment to actively participate in treatment. Participation means attending sessions, establishing treatment goals, and making progress toward treatment goals.

The therapist can terminate treatment if resistance is intense. Treatment is usually a part of the probation order. If a perpetrator is sentenced to prison, he is no longer a client of this program.

3.49 *How does the legal system deal with juvenile perpetrators regarding prosecution and diversion?*

Juvenile perpetrators are charged as delinquents through Juvenile Court and can be ordered to treatment at the Child Sexual Abuse Treatment Center if incest has occurred. If molestation has occurred outside the family, our Non-Familial Project may assess and refer to an appropriate treatment facility. Disposition might include placement of the child in foster care or an institutional setting.

3.410 *If the case goes to court, how are the following dealt with:*

a. *video and audio tape testimony?*

Not permitted.

b. *out of court testimony?*

Not permitted.

c. *expert witnesses*

Juvenile Court considers all Child Sexual Abuse Treatment Center staff witnesses. Expert witnesses are available locally and are frequently used by both sides.

Criteria for expert witnesses include being a disinterested witness; there must be a body of knowledge about the subject and the witness must have knowledge, experience and training in the area.

d. *qualification of child as witness?*

Child must be able to distinguish between truth and lies.

Further information should be received from the Prosecuting Attorney.

3.411 *How does the legal system request and utilize recommendations from the treatment program and from Children's Protective Services?*

Juvenile Court receives a report following first thirty days of treatment and at quarterly intervals. Information in these reports include: treatment goals, progress towards treatment goals and number of contacts. The Juvenile Court uses these reports to help determine continuation of temporary wardship, placement of the child in its own or foster home, contact between perpetrator and victim, and continuation in treatment. The therapist makes recommendations in each of these areas.

3.412 *How and when were linkages between the treatment program and the Criminal Justice System established?*

A coalition of social service and criminal justice personnel were instrumental in determining what type of approach would be used in the treatment of child sexual abuse. By the time treatment program was formed, Juvenile Court had established wardship and was already moving towards ordering the perpetrator out of the home even if the victim was placed outside the home.

Shortly after the inception of the Child Sexual Abuse Treatment Center, the Juvenile Court Judge met with the treatment staff and Circuit Court Judge to discuss coordination and, with discretion, uniform sentencing. Following this meeting, Judge Randall Hekman and Judge John Steketee of Juvenile Court and Emily Fuerste of the YWCA met with David Sawyer, Prosecuting Attorney, to arrange for vertical prosecution of child sexual abuse cases.

In the beginning of 1983, Judge Hekman of Juvenile Court and Judge Robert Benson of Circuit Court received training through the Institute for Community as Extended Family, through a private grant administered by the YWCA. Earlier other personnel received training through this grant, including a Prosecuting Attorney, personnel from Juvenile Court, Circuit Court, Sheriff's Department, school system, Children's Protective Services and the Child Sexual Abuse Treatment Center. Each person trained through this grant was required to provide training for others in the community. As a result, teams trained Circuit Court personnel, Department of Social Services personnel, defense attorneys, and probation officers.

Probation officers received specialized training designed to insure acceptance of pre-sentence recommendations made by the therapist and also to follow through with probation orders.

3.413 *What actions or program features have facilitated good working relationships with the Criminal Justice System?*

Communication is very open and well-established. Each component understands the role of the other and cooperates as much as possible. Each component recognizes the need to provide a coordinated, consistent response to sexual abuse. The support of the judges and prosecutor has been extremely beneficial in obtaining wide community knowledge and acceptance of our program.

3.414 *What actions or features have facilitated good working relationships with the Criminal Justice System?*

Until recently, release for treatment was difficult to obtain. As usual, the judges quickly called a meeting with treatment staff and jail administrators and the problem was resolved.

It is difficult for new treatment staff to feel comfortable with the amount of information that they provide to the court. Openness between therapists and court has not traditionally been a norm in a treatment facility.

The amount of paperwork required for each case is frequently overwhelming.

3.415 *What are the major remaining problems in working with the Criminal Justice System and how do you plan to address these?*

Very few problems remain in working with the Criminal Justice System. Perhaps the only one of significance is the desire of the Pre-sentence Investigator to have a therapist recommend specific jail or prison time. The therapists are very reluctant to go beyond safety and other treatment issues. We will resolve this problem by meeting with supervisors of the Pre-sentence Investigators and outlining specific expectations.

One additional concern is the occasion when a therapist believes that jail time would be counter-productive. At present, that recommendation may not be made without the express approval of the Child Sexual Abuse Center Director. Approval is only given on very rare occasions.

3.50 CHILDREN'S PROTECTIVE SERVICES

3.51 *What are the components of the Children's Protective Services system that work with child sexual abuse cases and what is the role of each?*

The Children's Protective Services worker investigates all reports of child abuse with a police officer. Following substantiation, the worker is responsible for monitoring all aspects of the wardship including treatment.

3.52 *Is there a specialized individual or unit to deal with child sexual abuse case?*

There is no specialized unit to deal with sexual abuse, however, certain Children's Protective Services workers are more likely to receive child sexual abuse referrals than others.

3.53 *Does one individual follow the case through its entire course and handle all aspects of the case? If more than one individual are involved, how are their efforts coordinated?*

One individual follows the case through its entire course unless foster care is ordered. At that point, a foster care worker is assigned to the child.

3.54 *How does Children's Protective Services coordinate its efforts with the treatment program?*

Children's Protective Services workers are notified whenever their case is to be discussed in case conference. Children's Protective Services receives a report on each case every three months.

3.55 *Do Children's Protective Services personnel participate in the treatment program by functioning as therapists or participating in staffings?*

Children's Protective Services workers do not act as therapists. They are, however, invited to participate in case conferences.



- 3.56 *How does Children's Protective Services request and utilize recommendations from the treatment program?*

Children's Protective Services receives reports quarterly. Reports are used to make recommendations to Juvenile Court.

- 3.57 *Do Children's Protective Services staff provide transportation to therapy sessions?*

Bus passes are occasionally provided.

- 3.58 *How and when will linkages between the treatment program and Children's Protective Services be established?*

Linkages include referral from Children's Protective Services for treatment and reimbursement for treatment.

- 3.59 *What actions or program features have facilitated good working relationships between the treatment program and Children's Protective Services?*

The request for proposal was initiated by the Department of Social Services thereby providing an obvious vehicle for establishing relationships. Both Children's Protective Services and Child Sexual Abuse Treatment Center staff understand the importance of open communication and the necessity of prompt exchange of written evaluations.

- 3.510 *What actions or program features have impeded relationships with Children's Protective Services?*

At the beginning of the treatment component, no criteria had been established for exclusion. Clients, who would presently be considered ineligible, were treated. Treatment exceeded unit limits established by the Department of Social Services. As a result, a backlog occurred and referrals were placed on a waiting list. The waiting list resulted in dissatisfaction and frustration on the part of all involved. With the ability to exclude inappropriate clients, new intakes are able to be seen within the first week of referral.

Children's Protective Services workers do not always agree with the removal of the father from home, particularly if the child is also out of the home.

Both treatment staff and Children's Protective Services staff are extremely busy. It is not unusual to have difficulty contacting each other. Patience is the only response at this point.

- 3.511 *What are the major remaining problems between the treatment program and Children's Protective Services and how do you plan to address these?*

There is some feeling at Children's Protective Services that we do not allow contact between perpetrator and victim soon enough.

There is a time lag between referral and our receipt of the Children's Protective Services report. We frequently do not see it before the intake. We will continue to monitor and discuss.

### 3.60 TREATMENT PROGRAM

- 3.61 *Is there a designated person or persons who are responsible for coordinating the treatment program with the Criminal Justice System and Children's Protective Services?*

The Director of the Child Sexual Abuse Treatment Center coordinates administrative details including funding, with Department of Social Services administrators. She is also responsible for insuring accurate data collection, and timely submission of financial reports.

The Project Supervisor coordinates services provided by our staff with the Supervisors of the Children's Protective Services staff.

The Director of the Child Sexual Abuse Treatment Center is responsible for communication, maintenance of good communication and problem resolution with all aspects of the criminal justice system.

- 3.62 *Are there guidelines for treatment program staff's interaction with the criminal justice system or Children's Protective Services, e.g., are there regular reporting schedules or forms used for inter-agency communications?*

Quarterly reports are submitted to Children's Protective Services and Juvenile Court.

### 3.70 OTHER COMMUNITY AGENCIES

- 3.71 *Are there other community agencies that the treatment program works with on a regular basis?*

Foster care agencies, Planned Parenthood, and Child and Family Living Center. Additionally, members of the staff are members of the Child Sexual Abuse Task Force, the Kent County Coalition to Prevent Sexual Abuse. Community agencies are represented in each group and provide input to the agency.

- 3.72 *What is the role of each of these agencies?*

Foster care: provides residential placement for children, transportation for treatment, case coordination.

Planned Parenthood: sexuality education on a contractual basis for adults and teens.

Child and Family Living Center: referrals are made by us. The Child and Family Living Center provides parenting classes according to the child's developmental stage.

- 3.73 *How does the treatment program coordinate its efforts with each of these agencies?*

Foster care agencies receive quarterly reports. Planned Parenthood is used as needed. Child and Family Living Center has supplied us with a referral form.

#### 4.00 STATISTICS

- 4.11 *What is your service area?*

Kent County

- 4.12 *What is the population of your service area:*

444,027 (131,473 children ages 0-17)

- a. *Is this 1980 census data?*

yes.

- 4.13 *What is the most recent year for which the information below is available on your service area?*

FY 1984

- a. *Is this a calendar year?*

No.

- b. *If this is a fiscal year, when did it begin?*

October 1, 1983 - September 30, 1984.

- c. *How many sexually abused children were reported during this year?*

237 families; 133 substantiated and fell under Children's Protective Services jurisdiction.

- d. *How many perpetrators were identified?*

Not available.

- e. *Of the victims, how many were referred to the treatment program?*

89 families (6 for group only)

f. *How many victims were seen by the treatment program*

126

g. *How many children were referred to other agencies or professionals?*

Uncertain.

h. *How many children were seen by other agencies or professionals?*

Uncertain

i. *How many perpetrators were referred to the treatment program?*

53 (Two women)

j. *How many perpetrators were seen by the treatment program?*

53

k. *How many perpetrators were referred elsewhere for treatment?*

21

Reasons some perpetrators are not referred are (in descending order):

- lives out of state or county
- whereabouts unknown
- in jail
- passed polygraph and continues to deny

l. *How many perpetrators were seen elsewhere?*

Most were referred, some went to jail, some to prison.

m. *How many perpetrators confessed?*

Majority, but to varying degrees.

n. *How many perpetrators were prosecuted?*

42

o. *How many perpetrators were convicted?*

34, with 7 pending.

Some were not prosecuted because (in descending order):

- police judged "not serious enough" or "cooperative family"
- whereabouts unknown
- abuse occurred long ago/had stopped
- victim was poor witness

- perpetrator was resident of another state
- perpetrator refused to testify
- passed polygraph
- jailed for another offense

p. *How many perpetrators left the home?*

Perpetrators ordered out of home: 38

Perpetrators already out (divorce, whereabouts unknown,  
out of state: 24

Perpetrators remaining home (passed polygraph, sibling,  
child in foster care, health of parent): 14

q. *Families where child left home to go into foster care:*

Families who had a child or children in foster care: 25

Referred from foster care (abuse discovered after placement  
for other reasons: 9

Families where children were placed with the other parent: 7

Throughout the history of this agency, about one-third of the  
families have had a child in foster care at some point in the  
treatment proces.

Usually in approximately one-third of the families, more than  
one child has been abused.

4.14 *When did the treatment program begin?*

February 1982.

a. *Total number of perpetrators who completed treatment and  
abused again?*

3 referred here, 1 referred elsewhere after discussion with  
Children's Protective Services worker. Two of these people  
were not accepted into this program under our current in-  
clusion/exclusion criteria.

## 5.00 FUNDING

### 5.10 SOURCES USED

5.11 *Incest Treatment?*

- A. Kent County In-Home Care
- B. Michigan State Department of Social Services/Protective Services
- C. Contracts with other counties
- D. Client fees for private-pay clients

Client fee reimbursement is: \$39.38/individual  
\$39.00/group

- E. Training and Consultation Fees
- F. United Way Allocation
- G. Grants from private foundations
- H. Community contributions

5.12 *Prevention Program?*

- A. Kent County Special Needs
- B. Michigan State Department of Public Health
- C. Funds from private grants

5.13 *Non-Familial Molestation Project?*

- A. Kent County Community Mental Health
- B. Client Fees

5.20 OTHER SOURCES

*What are all of the funding sources of which you are aware? How did you decide for or against each of these funding resources?*

Reimbursement through 3rd party-payments. Possible funding through local government resources. Start-up funds for new programs through local foundations; Dyer Ives Foundation. Capitol funds through the Grand Rapids Foundation, Kresge Foundation and Steelcase.

5.21 *Incest Treatment (Decision For)*

The largest portion of our funding comes through a contractual agreement with the local Department of Social Services. The Department of Social Services requested proposals from community agencies. The request outlined the type of program that they believed would best meet the needs of this community and detailed the type of reimbursement.

Contracts with other counties are limited to an additional \$4,000 in treatment fees.

Private pay clients are referred as a result of the absence of treatment programs in their community. Private pay clients are billed at the same rate as we are reimbursed by the Department of Social Services.

Training and consultation fees are used to supplement Department of Social

Services funds and to provide the agency an opportunity to train other programs throughout the state. United Way provides support for our Adult Survivors Program.

Private foundations pay for office equipment, films, staff training and capital necessities.

Special events include two in-house fund-raising events that are designed to help support the treatment programs and raise public awareness of the Counseling Center. Special events have also been initiated by groups outside of the agency. For instance, an annual softball game between judges and women attorneys and a race by the Kent County Sheriff's Department help to support our adult Survivors Program each year.

Community contributions are essential for visibility and maintaining a sense of commitment to the programs. Parents United is also encouraged to fundraise.

*(Decision Against)*

Clients are not allowed to reimburse our agency through third party pay. Clients pay for services through the order of Juvenile Court.

Community Mental Health funding is not available for clients who are under the jurisdiction of Children's Protective Services.

5.22 *Prevention Program (Decision For)*

The State Health Department requested proposals for prevention programs.

We requested funds from Kent County Discretionary Funds for prevention. Our request was denied but referred to Special Needs funding.

Private grants pay for resource materials, books, films.

Prevention is a relatively new component. Funds were originally requested through Children's Trust Fund but were denied. At present, funding meets our needs. In order to expand, we have requested the right to present a proposal through Title XX funds which would allow us to provide prevention services to day care centers.

5.23 *Non-Familial Molestation Project*

This program is six months old. Funding was requested and received through an RFP process through Community Mental Health. Additional funds will be requested from United Way and Juvenile Justice.

5.30 **ADVANTAGES AND DISADVANTAGES**

5.31 *For each possible funding source, what do you see as the short-range and long-range pluses and minuses?*

Short and long-range pluses for funding by the Department of Social Services include:

- A. A lack of reliance on client resources
- B. Less overhead by not needing to bill clients.
- C. Greater ease in community awareness and acceptance of the program.
- D. Greater ease in networking.

Minuses:

- A. Government funding is always dependent on the resources and whim of the State and the administration.
- B. Funding is not sufficient to pay for staff requirements. The potential for turnover is very great once a staff member has gained experience. In this community, that experience is valued and staff are courted by other agencies. Our funding does not allow us the financial competitive edge to retain experienced staff. At present, commitment to the program has helped us minimize turnover.

Short and long-range pluses for funding by private grants, community contributions:

- A. Provides revenue without additional client units.
- B. Maintains community visibility.
- C. Provides an opportunity for Parents United to contribute.

Minuses:

- A. Unstable.
- B. Requires a lot of research and time.

Short and long-range minuses for funding by the Michigan Department of Public Health:

- A. Short-term; start-up only.

Short and long-term pluses for funding by Kent County Community Mental Health.

- A. Add a component missing in our community.
- B. Provides us with data collection resources.
- C. Provides access to mental health networking.

Minuses:

- A. Is to be considered short-term.
- B. Is not easy to blend into other existing agency programs.
- C. Requires different financial and client reporting.



Short and long-range pluses for funding through Third Party Payments:

- A. A greater return per unit of service.
- B. An ability to provide more services to families where molestation has occurred outside the home.
- C. Allows us to move away from dependency on government resources.

5.31 *How would your program be different if you had this type of funding?*

See question I pluses for third party pay.

5.33 *If you have this type of funding, how would your program be different if you lost it?*

The loss of Department of Social Services funding would mean a tremendous reduction in staff and in our ability to provide client services. We are not yet to a point where we could rely on client fees to support an agency of this size. Loss of Department of Social Services funds without substitution by other government or private sources would essentially end the program.

Loss of Community Mental Health funding would end the Non-Familial Project, if that loss took place without enough lead time to secure funds through other government or private sources.

Loss of Michigan State Public Health funds would result in the reduction of Prevention Services. Prevention services are the most difficult component to support without government or private resources. Prevention programs receive some reimbursement from consultation and training, but not enough to support staffing.

5.34 *Given your mix of funding sources, what are the consequences of this mix?*

Our mix in funding results in an accounting nightmare. Statistics are difficult to maintain when so many resources require different reporting periods, different types of units of service and massive demographic information. Our funding mix has not resulted in the loss of one funding resource because of an increase in funding from another source. At present, we are financially stable, but with funding needs. Our funders do not yet see us as a flush program.

5.40 SOURCES WHICH HAVE REFUSED

5.41 *What sources have turned you down in requests for funding? What happened?*

Children's Trust Fund: lost in a statewide competitive bid.

Chicago Resource Center: did not adequately fit their criteria

Kresge Foundation: capital, asked to re-submit.

## 5.50 FUTURE FUNDING

5.51 *What is your expectation of your future funding situation?*

a. *In two years?*

Funding essentially will remain the same from government sources with expectation of growth in expected units of service provided and unit reimbursement.

We would like to significantly increase the number of private pay non-familial molestation clients by this time. A new Counseling Center will allow for more space for therapists. J.C.A.H. would allow for greater options in reimbursement.

b. *In five years?*

Stabilization of Department of Social Services referrals and commensurate units of service. Cost of living increases for unit reimbursement.

J.C.A.H. and third party payments a standard part of the treatment program.

c. *In ten years?*

Unknown.

## 5.60 BETTER APPROACHES

5.61 *If you were starting over, what would you do differently with respect to funding?*

Request higher units of service reimbursement and lower number of units required of each therapist.

## 5.70 FUNDING MISTAKES AND SUCCESSES

5.71 *What have been the critical choice points, with respect to funding, that resulted in:*

a. *(Biggest mistake)*

Our biggest mistake was expecting therapists to provide the same number of units of service as they would in an agency not so involved with the criminal justice system. Criminal justice and Children's Protective Services reports require many hours of preparation weekly. Collateral contacts are also greater with child sexual abuse clients. I believe that we underestimated the degree of stress seemingly inherent in treating perpetrators and young victims, contributing to an unrealistic expectation of therapist output.

b. *(Greatest successes)*

Our greatest success is the tremendous cooperation between agencies involved with child sexual abuse clients. Juvenile Court understands the need for clients to contribute to treatment, Department of Social Services understands the necessity of a variety of treatment modalities and is willing to support our approach. We believe that Department of Social Services has proven flexible in viewing our program as different than others in the community and has willingly looked at reimbursement formulas that provide a realistic response to our changing program needs.

Receiving funds to provide training for community members that represent diverse aspects in the response to child sexual abuse allowed us to develop a cadre of professionals with the knowledge and skills to provide state wide training. This group of people continue to contribute to our program by participating in the Counseling Center's Advisory Committee and advocating for prevention and treatment services throughout the city. They have a common foundation that they chose to build on which has allowed us to expand and develop our skills.

5.72 *Describe any transitions in funding patterns.*

a. *How did these come about?*

None of significance in the Incest Program.  
Funding for Non-Familial Molestation Project initiated by Community Mental Health, for prevention program initiated by agency.

b. *What was the effect on the program of the funding change?*

Both Non-Familial Project and Prevention allowed us to expand on services provided to the community.

5.80 EFFECTS ON PROGRAM

5.81 *How does funding affect eligibility, screening, and treatment?*

Department of Social Services does the initial screening for eligibility. The agency screens using its inclusion and exclusion criteria during assessment to determine continued eligibility. Both the Department of Social Services and Child Sexual Abuse Treatment Center assess children to determine if long-term foster placement is required. Should a child be placed in long-term foster care, s/he is removed from individual treatment at the agency. Foster care agencies then provide individual treatment. Foster care clients may remain in group treatment.

Funding affects treatment by limiting the number of units of service available to each family and by restricting the treatment of long-term foster care clients. Previously, long-term foster care clients were treated at the agency, but were allowed fewer units of service. The agency felt that these cases

required more treatment than in the case of families with at least one supportive parent. While the Department of Social Services agreed, they were in the position of paying both the treatment center and the foster care agencies for treatment, an untenable situation resulting in excluding long-term foster care clients from our caseload.

Court appearances are reimbursed using the client unit of service formula. Some contacts with foster care agency personnel is reimbursed. Meeting and coordination time is not provided for in our present contract.

5.82 *Are there limitations on your program imposed by funding sources?*

Funding sources determine (with the input of the treatment program) the number of units of service available for each family.

5.90 FUNDING FEATURES

5.91 *Are there features of your program that facilitate funding?*

Private pay clients in the Incest Program, Adult Survivors Program and Non-Familial Project generate some revenue.

Training and consultation revenue is considered an important contribution to our total budget.

5.92 *Are there features of your program that reduce costs?*

Interns contribute to a reduction in cost. Group treatment does not reduce our costs. We are reimbursed at the same rate as individual treatment, but staff time requirements are greater due to planning time, and the writing of process notes.

## Judicial Proof

### CHAPTER 595

### WITNESSES

595.01	Witness.	595.025	Defamation.
595.02	Testimony of witnesses.	595.04	Conversation with deceased or insane person.
595.021	News media; protection of sources; citation.	595.06	Capacity of witness.
595.022	Public policy.	595.07	Convict as witness.
595.023	Disclosure prohibited.	595.08	Committal of witness; detention of documents.
595.024	Exception and procedure.		

NOTE: For rules of civil procedure, district court, see Volume 9.

#### 595.01 WITNESS.

A witness is a person whose declaration under oath is received as evidence for any purpose, whether such declaration is made on oral examination, or by deposition or affidavit.

History: *RL s 4654 (9808)*

#### 595.02 TESTIMONY OF WITNESSES.

Subdivision 1. Competency of witnesses. Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for non-support, neglect, dependency, or termination of parental rights.

(b) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

(c) A clergyman or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs; nor shall a clergyman or other minister of any religion be examined as to any communication made to him by any person seeking religious or spiritual advice, aid, or comfort or his advice given thereon in the course of his professional character, without the consent of the person.

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of his patient, be allowed to disclose any information or any opinion based thereon which he acquired in attending the patient in a professional capacity, and which was necessary to enable him to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been

in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

(e) A public officer shall not be allowed to disclose communications made to him in official confidence when the public interest would suffer by the disclosure.

(f) Persons of unsound mind, persons intoxicated at the time of their production for examination, and children under ten years of age, if any of them lack capacity to remember or to relate truthfully facts respecting which they are examined, are not competent witnesses. A child describing any act of sexual contact or penetration performed on or with the child by another may use language appropriate for a child of that age.

(g) A registered nurse, psychologist or consulting psychologist shall not, without the consent of his client, be allowed to disclose any information or opinion based thereon which he acquired in attending the client in a professional capacity, and which was necessary to enable him to act in that capacity.

(h) An interpreter for a person handicapped in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person handicapped in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which he is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

(i) A parent or his minor child may not be examined as to any communication made in confidence by the minor to his parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication, or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of his alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.

(j) Sexual assault counselors may not be compelled to testify about any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

"Sexual assault counselor" for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling or assistance to victims of sexual assault.

(k) A person cannot be examined as to any communication or document, including worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation by the common law.

Subd. 2. Exceptions. (a) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to any testimony, records, or other evidence relating to the abuse or neglect of a minor in any proceeding under chapter 260 or any proceeding under section 245.801, to revoke a day care or foster care license, arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2.

(b) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to criminal proceedings arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2, if the court finds that:

(1) there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; and

(2) there is no other practicable way of obtaining the information or evidence. This clause shall not be construed to prohibit disclosure of the patient record when it supports the otherwise uncorroborated statements of any material fact by a minor alleged to have been abused or neglected by the patient; and

(3) the actual or potential injury to the patient-health professional relationship in the treatment program affected, and the actual or potential harm to the ability of the program to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought.

No records may be disclosed under this paragraph other than the records of the specific patient suspected of the neglect or abuse of a minor. Disclosure and dissemination of any information from a patient record shall be limited under the terms of the order to assure that no information will be disclosed unnecessarily and that dissemination will be no wider than necessary for purposes of the investigation or prosecution.

## CHAPTER 595

### WITNESSES

595.02 Testimony of witnesses

#### 595.02 TESTIMONY OF WITNESSES.

*[For text of subds 1 and 2, see M.S.1984]*

Subd. 3. Certain out-of-court statements admissible. An out-of-court statement made by a child under the age of ten years or a person who is mentally impaired as defined in section 609.341, subdivision 6, alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible in evidence if:

(a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(b) the child or person mentally impaired as defined in section 609.341, subdivision 6, either:

(i) testifies at the proceedings; or

(ii) is unavailable as a witness and there is corroborative evidence of the act; and

(c) the proponent of the statement notifies the adverse party of his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which he intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

History: 1985 c 24 s 2; 1985 c 286 s 13



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