

**Child Abuse and Neglect:  
A Professional's Guide to  
Identification, Reporting,  
Investigation and Treatment**

**Prepared By**

**Governor's Task Force  
On Child Abuse and Neglect**

**Protection Subcommittee**

**John H. Stamler, Chairperson**

**October 1988**

## **NEW JERSEY GOVERNOR'S TASK FORCE ON CHILD ABUSE AND NEGLECT**

On November 17, 1983, Governor Thomas H. Kean created the Governor's Task Force on Child Abuse and Neglect. In the Executive Order, the Governor charged the Task Force to work with local children's services, health and education agencies, the courts, business and labor unions, religious organizations, child advocacy groups, and state, county and municipal governments to:

1. Study the problem of child abuse and neglect in New Jersey and make recommendations for corrective action;
2. Mobilize citizens and community agencies in a strong, prevention-oriented, pro-active effort to address child abuse and neglect;
3. Develop mechanisms to facilitate early detection and appropriate services to the victims of child abuse and neglect and their families, and foster cooperative working relationships among responsible agencies; and
4. Provide other information on child abuse and neglect as the Governor might request.

# MEMBERSHIP OF THE GOVERNOR'S TASK FORCE ON CHILD ABUSE AND NEGLECT

## CO-CHAIRPERSONS

**Drew Altman**  
Commissioner  
Department of Human Services

**Joyce E. Munkacsi**  
Assistant Prosecutor  
Middlesex County

## STAFF

**Donna M. Pincavage**  
Executive Director

## STATE GOVERNMENT MEMBERS

Attorney General

**Cary Edwards**

Designee:

**James F. Mulvihill**

Department of Community Affairs

**Anthony M. Villane, Jr., DDS**

Commissioner

Designee:

**Mary Singletary**

Department of Corrections

**William H. Fauver, Jr.**

Commissioner

Designee:

**Priscilla Knight**

Department of Education

**Saul Cooperman**

Commissioner

Designee:

**Dr. Jacqueline Cusack**

Department of Health

**Molly Joel Coye, MD, MPH**

Commissioner

Designee:

**Lourdes M. Frau, MD**

Department of Public Advocate

**Alfred A. Slocum**

Commissioner

Designee:

**James Louis**

New Jersey State Police

**Col. Clinton L. Pagano**

Superintendent

Designee:

**Sgt. Joseph Kirchhofer**

New Jersey Supreme Court

**Robert N. Wilentz**

Chief Justice

Designee:

**Steve Yoslov**

## PUBLIC MEMBERS

**Catherine N. Anderson**  
AT&T

**Cecile Dickey**  
Concerned Parents for Head Start

**Martin A. Finkel, D.O.**  
University of Medicine and  
Dentistry of New Jersey

**Peter Gold, Esq.**  
Private Attorney

**Glenna W. Gundell**  
New Jersey Parent Teachers Association

**Karen M. Ingram, MD**  
American Academy of Pediatrics

**Paul S. Jellinek**  
Robert Wood Johnson Foundation

**Catherine O. Nicolo**  
Stockton State College

**Penny C. Pinsker**  
WWOR-TV

**Richard Roper**  
Woodrow Wilson School of  
Public and International Affairs  
Princeton University

**Carmen L. Solis**  
John Jay College of  
Criminal Justice

**John H. Stamler**  
Union County Prosecutor

**Joseph T. Tarquini, Jr.**  
Private Industry

**Isabel Wolock, Ph.D.**  
Rutgers Graduate School of  
Social Work

## PROTECTION SUBCOMMITTEE

### CHAIRMAN

**John H. Stamler**  
Union County Prosecutor

### STAFF

**Donna M. Pincavage**  
Executive Director

### MEMBERS

**Catherine Anderson**  
AT & T

**Melanie B. Campbell, Esq.**  
Hunterdon County Prosecutor's Office

**Marc Cherna**  
Division of Youth and Family  
Services

**Margaret Clune, M.S.W.**  
Private Practitioner

**Mary Cupo-Cruz**  
Division of Criminal Justice

**Tony D'Urso**  
Family Enrichment Program  
Morristown Memorial Hospital

**Martin A. Finkel, DO**  
University of Medicine and  
Dentistry of New Jersey

**Pamela Fisher**  
Office of Victim-Witness  
Advocacy

**Mary Guess Flamer**  
New Jersey  
Department of Education

**Sandra Freeman**  
Department of Health

**Dr. Vito Gagliardi**  
Union County Superintendent  
of Schools

**George J. Halpin, MD, MPH**  
Department of Health

**Marsha Heiman, Ph.D.**  
Clinical Psychologist

**Thomas Isenhour**  
Union County Prosecutor's Office

**Barry Jacobson**  
Department of Public  
Advocate

**Cathy Jakubowski**  
Division of Youth and  
Family Services

**Martin E. Johnson**  
Medical Society of New Jersey

**Sergeant Joseph Kirchhofer**  
New Jersey State Police

**Steve Klein**  
Division of Law

**James Louis**  
Department of Public Advocate

**Susan Mai**  
Division of Youth and  
Family Services

**Detective Sergeant Milton  
T. Mason**  
Cranford Police Department

**Sara Sencer-McArdle, Esq.**  
Essex County Prosecutor's  
Office

**Geraldine Moon**  
New Jersey Hospital Association

**Jesse Moskowitz**  
Division of Youth and  
Family Services

**James Mulvihill**  
Division of Criminal Justice

**Margaret Nigro**  
Union County Superintendent  
of Schools Office

**Diane Richardson**  
Kimble Medical Center

**Irving Robinson, MD**  
Division of Youth and  
Family Services

**Mark Singer**  
Burlington County Prosecutor's  
Office

**Trudy Thornton**  
New Jersey Education  
Association

**Irene Webber**  
Jersey Shore Medical Center

**Steve Yoslov**  
Administrative Office  
of the Courts

## ACKNOWLEDGEMENTS

Looking back to the day that the Protection Subcommittee decided to prepare this guide, it was clear that this could not be accomplished by subcommittee members alone. We gratefully acknowledge the personal and professional contributions of the following people who made this Guide possible.

Michael D'Agnes, Olivia Belfatto-Crisp, Carol Berger, Shirley Birafka, Joseph Bogden, M.D., Marilyn Burrows, Dr. Alan Cabasso, Marion Campbell, Joanne Carrocino, Regina Caulfield, Marianne Davis, Evelyn Dillon, Ashley Edwards, Daniel Fife, M.D., Michael Fiore, Thomas Fiskin, Vivian Fixter, Dana Freck, Debra Casadonte Gelson, Martha Haldapoulus, Pamela Hamilton, Christian Hansen M.D., Aline Holmes, Vincent Joseph, William J. Kennedy, Alton Kenney, Dottie Larkin, Sharon Vona-Leary, Yvonne Legan, Margo Limmer, Claire Lindgren, Margaret Livingston, George Malast, Steven McGettigan, Susan McGrory Manion, Geraldine Moore, Lynn Moryan, Gordon Parker, Cheryl Resnick, Mike Richman, Budd Robertson, Eileen Rogelle, Jean Ross, Connie Ryan, Dr. Nancy Sesso, Dorothy Shafer, Daria Smith, Celeste Spetaccino, Laurie Sternlieb, Debra L. Stone, Karen Testa, William Ulrich, Phyllis Warren, Lynn Wasserman, Linda Williams, Cecilia Zalkind.

Special thanks are extended to the Chairpersons of each Working Group who were responsible for developing a chapter in the Guide.

Mary Cupo-Cruz  
Pamela Fisher  
James Mulvihill  
Division of Criminal Justice

James Louis  
Department of the Public Advocate

Martin A. Finkel, D.O.  
University of Medicine & Dentistry  
School of Osteopathic Medicine

Vito Gagliardi  
Union County Superintendent of Schools

Thomas Isenhour  
Union County Prosecutor's Office

Tony D'Urso  
Family Enrichment Program  
Morristown Memorial Hospital

Susan Mai  
Division of Youth & Family Services

Irene Webber  
Jersey Shore Medical Center

Sincere appreciation is also expressed to the DYFS Community Education Office, Office of Facilities Management and Development, the Department of Human Services Graphic Arts Unit and to the following people who edited, proofread, typeset and arranged production of the Guide.

Mary Bonard, Jane Cox, Brenda Dixon, Celeste Foden, Cheryl Jones, Robert Miller, Phyllis Schnall, Ginny Smolenski, Don Vannozzi, Bob Zotta.

Special thanks are also extended to the staff of the DYFS Office of Policy, Planning and Support and Office of Information Services who assembled the Guide.

Karen Beckmeyer, Kathy Buchanan, Jeff Butler, Mollie Caruso, Jeanette Clay, Janice Cubberley, Terry Dorrall, Josh Gathara, Terry Groome, Toni Gudger, Kate Hudak, Florence Kelly-Dailey, Karen Lashutka, Grace Malave, Sylvia Maloney, Candy McCullough, Catherine Mudrak, Shelia Nelson, Donna Perna, Theresa Quarino, Edith Robinson, Reginald Rogers, Chris Santin, Sue Shoemaker, John Silvia, Mary Ann Stamm, Sonia Sternberger, Gladys Steward, Jen Ping Wang, Aretta Warren, Lorene Wilkerson.

# TABLE OF CONTENTS

## I. Introduction

## II. A Model For Joint Investigation By Law Enforcement and Child Protective Services

I. INTRODUCTION .....	1
A. Overview .....	1
B. The Law .....	1
C. Burden of Proof .....	2
II. CHILD PROTECTIVE SERVICES AND LAW ENFORCEMENT: FUNCTIONS AND PROCEDURES .....	3
A. The DYFS Investigation .....	3
1. 24-Hour Availability .....	4
2. Removal From The Home .....	4
3. Evidence Gathering And Photographing .....	5
4. Undressing A Child .....	6
B. Law Enforcement .....	6
1. Reporting Child Abuse/Neglect .....	6
2. Who Reports .....	6
3. What To Report .....	7
4. Where To Report .....	7
5. How To Report .....	7
6. Referral Sources .....	8
7. Referral To County Prosecutors .....	9
8. Disagreement Between Law Enforcement And DYFS .....	9
9. Local Policy .....	10
10. Child Abuse And Neglect Intervention .....	11
11. Receipt Of The Report .....	11
12. Records Check .....	12
13. Investigation .....	12
14. Conducting The Investigation .....	13
15. Visiting The Home .....	13
16. Interviewing The Parents .....	13
17. Interviewing The Child .....	14
18. Interviewing The Witnesses .....	15
19. Gathering Evidence .....	15
20. Photographic Evidence .....	16
21. Physical Evidence .....	17
22. Disposition .....	17
23. Protective Custody .....	17
24. Referral To Social Service Agency .....	18
25. Arrest .....	19
26. Does A Report Mean A Child Will Be Taken Away? .....	19
27. Court Referral .....	20
28. Juvenile Court .....	20
29. Juvenile Family Crisis Intervention Unit/Involvement With Child Abuse And Neglect Cases .....	20

III.	THE JOINT INVESTIGATION .....	21
	A. The Benefits Of Joint Investigations .....	21
	B. Strategizing The Investigation .....	22
	C. The Interviews .....	23
	D. The Referral Source .....	23
	E. The Medical Professional As Referral Source .....	25
	F. The Educational Professional As Referral Source .....	26
	G. The Mental Health Professional As Referral Source .....	26
	H. Collateral Contacts .....	27
	I. The Interview With The Child Victim: .....	28
	1. The Setting .....	28
	2. The Child Interview Process (10 yr. olds and younger) .....	28
	3. The Child Interview Process (11 yr. olds, plus) .....	29
	4. Presence Of Support Person .....	29
	5. "Mandatory" Support Person .....	30
	6. Content Of The Interview With The Child .....	31
	J. Interview With Siblings .....	32
	K. Interview With Non-Offending Parent .....	32
	L. Interview With The Offender .....	34
IV.	FOLLOW-UP TO THE INVESTIGATION: .....	36
	A. Law Enforcement .....	36
	B. DYFS .....	37
	C. Information Sharing .....	38
V.	THE NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES .....	38
	A. An Introduction To DYFS .....	38

#### APPENDICES

I.	USE OF ANATOMICALLY DETAILED DOLLS .....	1
II.	DEMONSTRATION PICTURES (SEXUAL ABUSE INVESTIGATIONS) .....	3
III.	1987 ABUSE/NEGLECT STATISTICS FOR NEW JERSEY .....	36
IV.	CITATIONS FROM THE DYFS FIELD OPERATIONS, CASEWORK, POLICY AND PROCEDURES MANUAL .....	37
	A. Legal Authority And Responsibilities Of DYFS .....	37
	B. Legal Provisions For Court Intervention .....	40
	C. Time Frames For Initial Field Investigation .....	43
	D. Protective Custody Or "Hospital Hold" .....	45
	E. Removal From The Home .....	47
	F. DYFS/Prosecutor Office Disagreement .....	52
V.	STATE BOARD OF EDUCATION RESOLUTION ON CHILD ABUSE AND NEGLECT ..	55
VI.	MIRANDA WARNINGS .....	57

**III. Recognizing and Reporting Institutional Abuse**

I. OVERVIEW ..... 1

II. INSTITUTIONAL ABUSE—Reviewed At A Glance ..... 4

A. What Is An INSTITUTION? ..... 4

B. What Constitutes INSTITUTIONAL ABUSE Or NEGLECT Of A Child? ..... 4

C. Who Is A CARETAKER? ..... 5

D. WHEN Should A Report Of Institutional Child Abuse Be Made? ..... 5

E. WHO Should Report Institutional Child Abuse? ..... 5

F. HOW Is An Institutional Child Abuse Report Made? ..... 6

G. What INVESTIGATING AGENCY Will Respond To The Report Of Institutional Child Abuse? ..... 7

H. What TO DO Within The Institution After Reporting The Report To DYFS Or Upon Becoming Aware Of A Report Of Institutional Child Abuse? ..... 7

I. What NOT TO DO Within The Institution After Reporting Or Becoming Aware Of A Report Of Institutional Child Abuse ..... 8

J. What TO DO Within The Family Upon Reporting To DYFS Suspected Institutional Abuse Or Upon Becoming Aware Of An Institutional Abuse Report Involving A Child Within The Family ..... 8

K. What NOT TO DO Within The Family After Reporting Or Becoming Aware Of A Report Of Institutional Child Abuse ..... 8

**IV. Guidelines on the Management of Child Abuse & Neglect Cases in Hospitals**

I. ACKNOWLEDGEMENT ..... 1

II. INTRODUCTION ..... 2

III. A COORDINATED TEAM APPROACH TO CHILD ABUSE & NEGLECT ..... 3

IV. CHILD ABUSE TEAM COMPOSITION ..... 4

A. Child Abuse Liaison ..... 4

B. Hospital Social Worker ..... 4

C. Primary Physician ..... 4

D. Nurse ..... 4

E. Child Protective Services Worker ..... 4

F. Law Enforcement Staff ..... 5

V. GUIDELINES FOR THE IDENTIFICATION OF CHILD ABUSE & NEGLECT ..... 5

A. Characteristics Of The Child ..... 5

B. History ..... 5

C. Physical Examination ..... 6

D. Physical & Behavioral Indicators Of Child Abuse & Neglect ..... 7

1. Physical Abuse ..... 7

2. Sexual Abuse ..... 8

3. Types Of Child Neglect ..... 8

4. Physical Neglect ..... 9

5. Emotional Maltreatment ..... 9

6. Identification Of High-Risk Families ..... 9

VI. TREATMENT PROTOCOL FOR THE MANAGEMENT OF CHILD ABUSE & NEGLECT ..... 10

A. Reporting Suspected Child Abuse & Neglect ..... 10

B. Expediting the Evaluations Of Suspected Child Abuse & Neglect Patients .....	10
C. Treatment Of The Children .....	11
D. Treatment Of Parents/Caretakers .....	11
E. Confidentiality .....	11
F. Interviewing & Examining The Child/Family .....	11
G. Child Abuse Team Conference .....	12
H. Treatment/Hospitalization Of Selected Cases .....	12
I. Consent For Treatment .....	13
<b>VII. ROLES AND RESPONSIBILITIES OF TEAM MEMBERS .....</b>	<b>13</b>
A. Role Of The Hospital Social Worker/Child Abuse Liaison .....	16
B. Role Of The Physician .....	18
C. Role Of The Nurse .....	21
D. Role Of The Division Of Youth & Family Services (DYFS) Worker .....	23
E. Role Of Law Enforcement .....	25
1. Notification To Prosecutor's Office .....	25
2. Notification To Local Police Jurisdiction .....	25
3. Investigation .....	25
4. Resources For Statements .....	25
5. Physical Evidence .....	26
6. Documentary Evidence .....	27
7. Identification & Arrest Of The Offender .....	28
8. Prosecution Of The Offender .....	28
F. Rights Of Parents To Visit .....	28
G. Protective Custody/Hospital Hold Procedures .....	28
<b>VIII. DOCUMENTATION OF SUSPECTED CHILD ABUSE &amp; NEGLECT ON THE MEDICAL CHART .....</b>	<b>29</b>
<b>IX. PROVIDING MEDICAL TESTIMONY FOR COURT CASES .....</b>	<b>32</b>
<b>X. STAFF EDUCATION .....</b>	<b>32</b>
<b>XI. EVALUATION .....</b>	<b>32</b>
<b>XII. CONCLUSION .....</b>	<b>33</b>
<b>XIII. APPENDICES</b>	
A. Appendix A: Child Abuse Consultation Form .....	1
B. Appendix B: Body Diagram Form .....	3
C. Appendix C: Hospital Hold Warning Form .....	4
<b>XIV. BIBLIOGRAPHY .....</b>	<b>5</b>
<b>V. Medical Examinations of the Sexually Abused Child</b>	
I. INTRODUCTION .....	1
II. DETERMINING THE URGENCY OF EXAMINATION .....	1
III. PREPARING THE CHILD FOR EXAMINATION .....	2
IV. EXAMINING THE CHILD .....	2

V.	DIFFERENTIAL OF TRAUMA IN SEXUAL ABUSE .....	4
	A. Extragenital Trauma .....	4
	B. Oral-Genital Trauma .....	4
	C. Manual Stimulation Of Offender's Genitalia .....	4
	D. Fondling, Introduction Of Foreign Body Non-Penile .....	5
	E. Penile Stimulation Without Penetration .....	5
	F. Penile Penetration—Vagina Or Anus .....	6
	G. Accidental Trauma .....	6
VI.	EVALUATION FOR SEXUALLY TRANSMITTED DISEASES .....	7
VII.	EVIDENCE COLLECTION IN THE FORENSIC EVALUATION OF THE SEXUALLY ABUSED CHILD .....	7
	A. Clothing Collection .....	8
	B. Dried And Moist Secretions .....	8
	C. Examination For Motile Sperm .....	8
	D. Obtaining Photographs .....	9
VIII.	THE MEDICAL RECORD .....	9
	Documentation And Formulation Of Conclusion .....	9
APPENDICES:		
	Appendix 1. Female Genital Anatomy .....	1
	Appendix 2. Sexually Transmitted Diseases .....	2
	A. Guidelines For Management—Laboratory .....	2
	B. Treatment Guidelines—Vulvovaginitis .....	5
	C. Office Laboratory Diagnosis Of Sexually Transmitted Diseases .....	7
	Appendix 3. Evidence Collection And Secretion Analysis .....	19
	Appendix 4. Guidelines For Interviewing—Developmental .....	23
	Appendix 5. Traumatic Impact Of Child Sexual Abuse .....	28
	Appendix 6. Physician As Expert Witness—Introductory Article .....	39
	Appendix 7. Bibliography—Suggested Readings On Sexual Abuse .....	42
	Appendix 8. Bibliography—Suggested Readings On Physical Abuse .....	44
 <b>VI. The Educator's Role in Child Abuse and Neglect Cases</b>		
I.	INTRODUCTION .....	1
II.	BOARD OF EDUCATION POLICY ON CHILD ABUSE AND NEGLECT—SAMPLE .....	2
III.	BOARD OF EDUCATION PROCEDURES ON CHILD ABUSE AND NEGLECT—SAMPLE .....	3
IV.	AN AFFILIATION AGREEMENT ON THE INVESTIGATION OF CHILD ABUSE FOR USE BY THE SCHOOL DISTRICTS AND THE DIVISION OF YOUTH AND FAMILY SERVICES—SAMPLE .....	7
 <b>VII. The Prosecution of Child Abuse and Neglect Cases</b>		
I.	INTRODUCTION .....	1
II.	GENERAL APPROACH .....	1
	A. Introduction .....	1

B.	Experienced And Specialized Assistant Prosecutors .....	2
C.	Experienced And Specialized Investigators .....	2
D.	Vertical Prosecution .....	3
E.	Cooperation Between Law Enforcement And The Division Of Youth And Family Services—Joint Investigations .....	4
F.	Utilization Of All Techniques Available .....	6
III.	TOOLS .....	7
A.	Closed Circuit Television Testimony .....	7
B.	Anatomically Detailed Dolls .....	9
C.	Videotaped Interviews .....	10
D.	Use Of Expert Witnesses .....	11
E.	The Rape Shield Statute .....	12
F.	Prompt Disposition Statute .....	14
IV.	LEGAL ISSUES .....	14
A.	Introduction .....	14
B.	<i>K.A.W.</i> .....	15
C.	Fresh Complaint Testimony .....	19
D.	Extended Statute Of Limitations .....	22
E.	<i>State v. Fraction</i> And <i>State v. Miller</i> .....	23
F.	<i>State v. Bowens</i> .....	24
G.	<i>Miranda</i> Warnings By DYFS Case Workers .....	25
H.	Rule 55 .....	25
I.	Defense Discovery Of Reports Prepared By The Division Of Youth And Family Services .....	30
J.	Competency .....	31
K.	Hearsay Exceptions .....	33
L.	Sentencing .....	35
V.	PRACTICAL CONSIDERATIONS .....	37
A.	The Child Witness At Trial .....	37
B.	Supervising Investigations .....	39
C.	Convincing The Jury .....	41
	APPENDICES	
	Appendix I. Child Abuse Syndrome Brief .....	1
	Appendix II. Legal Analysis Of The Retrospective Application of <i>N.J.S.A. 2C:1-6(b)(4)</i> .....	6
<b>VIII.</b>	<b>Victim-Witness Advocacy</b>	
I.	INTRODUCTION .....	1
II.	INFORMATION SERVICES .....	2
A.	Orientation To The Criminal Justice System .....	2
B.	Notification Of Case Status .....	2
C.	Victim's Bill Of Rights .....	3
D.	Crime Prevention .....	4
E.	Property Return .....	4
F.	Court Offices .....	4
III.	ADVOCACY AND SUPPORT SERVICES .....	4
A.	Restitution .....	4

B. Intimidation .....	5
C. Plea Negotiation .....	5
D. Court Appearance .....	5
E. Sentencing .....	5
F. Post-Sentence .....	6
G. Parole .....	6
H. Crisis Intervention, Counseling And Referrals For Other Needed Services .....	6
I. Crisis Intervention .....	7
J. Needs Assessment .....	8
K. Counseling And Referral .....	9
 IV. CONCLUSION .....	 10
 APPENDICES	
Appendix I Promises, Promises ... A Child's View of Incest .....	1
Appendix II County Offices Of Victim-Witness Advocacy .....	2
Appendix III Glossary Of Terms .....	4
Appendix IV Footnotes .....	5
 <b>IX. Child Abuse &amp; Neglect in the Family Court</b>	
I. INTRODUCTION .....	1
II. CHILD ABUSE AND/OR NEGLECT PROCEEDINGS .....	2
A. Representation Of Parties .....	2
B. Definition .....	2
C. Jurisdiction .....	3
D. Temporary Removal Of The Child .....	3
E. Hearings .....	4
1. Preliminary Hearing .....	4
2. Fact Finding Hearing To Determine Abuse Or Neglect .....	5
3. Dispositional Hearing .....	5
F. Notice .....	6
G. Evidence .....	6
III. CHILD PLACEMENT REVIEW PROCEEDINGS .....	8
A. Representation Of Parties .....	8
B. Jurisdiction .....	8
C. Reviews .....	8
D. Notice Of Reviews .....	8
E. Summary Hearings .....	8
F. Notice Of Hearing .....	9
G. Special Reviews .....	9
IV. TERMINATION OF PARENTAL RIGHTS AND GUARDIANSHIP PROCEEDINGS .....	10
A. Representation Of Parties .....	10
B. Grounds For Termination Of Parental Rights and Guardianship .....	10
1. Voluntary Surrender Of Custody .....	10
2. Statutory Involuntary Termination Of Parental Rights .....	10
3. Case Law Defining Best Interest For Termination Of Parental Rights .....	11
C. Persons Who May Originate Proceedings .....	12
D. Notice Of Proceedings .....	12
E. Discovery .....	12

F. Interlocutory Orders .....	13
G. Standard Of Proof .....	13
H. Evidence .....	13
I. Disposition .....	14
<b>X. Guidelines in Conducting Mental Health Evaluation of Child Sexual Abuse</b>	
I. INTRODUCTION .....	1
II. MULTIDISCIPLINARY APPROACHES TO THE VALIDATION, PROSECUTION AND TREATMENT OF CHILD SEXUAL ABUSE .....	1
III. FORENSIC PSYCHOLOGICAL ASSESSMENT .....	2
IV. THE CHILD/FAMILY ASSESSMENT .....	2
A. Evaluation Issues .....	2
B. Evaluation Procedures .....	5
C. Children's Interview .....	6
D. Validation Criteria For The Child .....	10
E. Family Assessment .....	12
V. FORMAL PSYCHOLOGICAL TESTING .....	13
A. Assessment Process .....	13
VI. CLINICAL VALIDATION OF CHILD SEXUAL ABUSE .....	15
VII. REPORT WRITING .....	18
VIII. PREPARING THE CHILD VICTIM AND FAMILY FOR TREATMENT .....	20
IX. EXPERT TESTIMONY .....	20
X. CREDENTIALING .....	24
XI. BIBLIOGRAPHY .....	24
<b>XI. Civil and Criminal Statutes, Rules and Regulations Regarding Child Abuse and Neglect</b>	
<i>N.J.S.A. 9:2-9 et seq.</i> Care, Custody, and Support of Children .....	1
<i>N.J.S.A. 9:3-37 et seq.</i> Adoption .....	4
<i>N.J.S.A. 9:6-1 et seq.</i> Abuse, Abandonment, Cruelty and Neglect .....	14
<i>N.J.S.A. 9:6A-1 et seq.</i> Child Life Protection .....	38
<i>N.J.S.A. 2A:84A-16.1.</i> Use of Anatomically Correct Dolls .....	41
<i>N.J.S.A. 2A:84A-32.4.</i> Closed Circuit Testimony of Child Victim at Trial .....	42
<i>N.J.S.A. 2A:163-4; N.J.S.A. 2A:163-5.</i> Prompt Disposition of Criminal Cases Involving Child Victims .....	43
<i>N.J.S.A. 18A:6-7.1.</i> Requirement for Criminal History Record Checks for Candidates Seeking Employment in Public Schools .....	44
<i>N.J.S.A. 30:4C-1 et seq.</i> Dependent and Neglected Children .....	45
<i>N.J.S.A. 30:5B-1 et seq.</i> Child Care Center Licensing Act .....	78
<i>N.J.S.A. 2C:1-6.</i> Extends Statute of Limitations for Child Victims of Sexual Assault .....	83
<i>N.J.S.A. 2C:12-1.</i> Criminal Offenses .....	84
<i>N.J.S.A. 2C:13-4.</i> Interference With Custody .....	86

<i>N.J.S.A.</i> 2C:14-1. Definitions .....	87
<i>N.J.S.A.</i> 2C:14-2. Sexual Assault .....	88
<i>N.J.S.A.</i> 2C:14-3. Criminal Sexual Contact .....	90
<i>N.J.S.A.</i> 2C:14-4. Lewdness .....	91
<i>N.J.S.A.</i> 2C:24-4. Endangering the Welfare of Children .....	92

**REGULATIONS**

45 <i>C.F.R.</i> sec. 1340 (1985). Child Abuse Prevention and Treatment .....	93
<i>N.J. Admin. Code</i> tit. 10 sec. 129-1.1 (1974) <i>et seq.</i> Policy Concerning the Referral and Investigation of Child Abuse and Neglect Cases .....	101

## INTRODUCTION

**Child Abuse and Neglect: A Professional's Guide to Identification, Reporting, Investigation and Treatment** is believed to be the first of its kind in the country. Written by and for New Jersey professionals, the guide is a comprehensive, practical and easy-to-use resource for anyone who works with suspected child abuse victims and their families. It is the culmination of more than a year's work by some of the most knowledgeable and experienced professionals in New Jersey.

The welfare of children, families and communities depends on a child protection system which acts responsibly, compassionately and decisively, basing sound judgments on the most current knowledge in the field. The Governor's Task Force on Child Abuse and Neglect and its Protection Subcommittee developed the guide as part of our continuing efforts to strengthen this system.

The best interests and safety of children demand that all involved professionals acquire a clear understanding of their cooperative roles and responsibilities. While each reader might pay particular attention to the section devoted to his or her profession, the guide should be read in its entirety to gain a complete understanding.

This first edition will be updated periodically based on new knowledge, new models of practice, and feedback from our readers. We hope that the guide will become a valuable reference in your day-to-day practice. You can help keep it current by sending your comments and suggestions on the evaluation form provided at the end of the guide.

**Model for Joint  
Child Abuse Investigations  
By  
Law Enforcement and  
Child Protective Services**

**Prepared For  
Governor's Task Force  
On Child Abuse and Neglect**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
	A. Overview .....	1
	B. The Law .....	1
	C. Burden Of Proof .....	2
II.	CHILD PROTECTIVE SERVICES AND LAW ENFORCEMENT: FUNCTIONS AND PROCEDURES .....	3
	A. The DYFS Investigation .....	3
	1. 24-Hour Availability .....	4
	2. Removal From The Home .....	4
	3. Evidence Gathering And Photographing .....	5
	4. Undressing A Child .....	6
	B. Law Enforcement .....	6
	1. Reporting Child Abuse/Neglect .....	6
	2. Who Reports .....	6
	3. What To Report .....	7
	4. Where To Report .....	7
	5. How To Report .....	7
	6. Referral Sources .....	8
	7. Referral To County Prosecutors .....	9
	8. Disagreement Between Law Enforcement And DYFS .....	9
	9. Local Policy .....	10
	10. Child Abuse And Neglect Intervention .....	11
	11. Receipt Of The Report .....	11
	12. Records Check .....	12
	13. Investigation .....	12
	14. Conducting The Investigation .....	13
	15. Visiting The Home .....	13
	16. Interviewing The Parents .....	13
	17. Interviewing The Child .....	14
	18. Interviewing The Witnesses .....	15
	19. Gathering Evidence .....	15
	20. Photographic Evidence .....	16
	21. Physical Evidence .....	17
	22. Disposition .....	17
	23. Protective Custody .....	17
	24. Referral To Social Service Agency .....	18
	25. Arrest .....	19
	26. Does A Report Mean A Child Will Be Taken Away? .....	19
	27. Court Referral .....	20
	28. Juvenile Court .....	20
	29. Juvenile Family Crisis Intervention Unit/Involvement With Child Abuse And Neglect Cases .....	20

III.	THE JOINT INVESTIGATION .....	21
	A. The Benefits Of Joint Investigations .....	21
	B. Strategizing The Investigation .....	22
	C. The Interviews .....	23
	D. The Referral Source .....	23
	E. The Medical Professional As Referral Source .....	25
	F. The Educational Professional As Referral Source .....	26
	G. The Mental Health Professional As Referral Source .....	26
	H. Collateral Contacts .....	27
	I. The Interview With The Child Victim: .....	28
	1. The Setting .....	28
	2. The Child Interview Process (10 yr. olds and younger) .....	28
	3. The Child Interview Process (11 yr. olds, plus) .....	29
	4. Presence Of Support Person .....	29
	5. "Mandatory" Support Person .....	30
	6. Content Of The Interview With The Child .....	31
	J. Interview With Siblings .....	32
	K. Interview With Non-Offending Parent .....	32
	L. Interview With The Offender .....	34
IV.	FOLLOW-UP TO THE INVESTIGATION .....	36
	A. Law Enforcement .....	36
	B. DYFS .....	37
	C. Information Sharing .....	38
V.	THE NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES .....	38
	A. An Introduction To DYFS .....	38

## I. INTRODUCTION

### A. Overview

Child abuse is a significant problem facing today's society. In New Jersey alone in 1987, 50,250 cases of child abuse and neglect were reported to the Division of Youth and Family Services, the State's Child Protective Service (CPS) agency legally mandated to investigate reports of child abuse and neglect. After investigation, 19,288 of these reports were substantiated. Society has chosen to recognize the phenomenon of child abuse and to combat it.

The sheer volume and complexity of these reports requires cooperative efforts by all professionals in the community not only to investigate reports but to treat those referred and in need of supportive intervention. The federal government has supported the establishment of CPS agencies in the 50 states. No one person or agency alone can effectively deal with the problem of child abuse/neglect.

It is with this recognition of the problem in mind that the following guide to the joint investigation of child physical abuse and child sexual abuse reports is being written. It aims to serve as a guide to both the Division of Youth and Family Services (DYFS) and law enforcement, as well as to helping professionals, educators, medical staff, therapists, etc., and others concerned about the care provided to children.

The criminal justice system, in particular, state and local law enforcement and county prosecutors' offices, has the responsibility of investigating specific/serious types of child abuse reports, to determine whether a crime has been committed and whether to bring charges against the offender.

It is the role of the Division of Youth and Family Services to investigate all presented reports of child abuse/neglect and to take whatever steps are necessary to protect the child from the risk of further or potential harm. DYFS acts under civil law. Its thrust is not to prosecute or to punish individuals found to be responsible for the maltreatment of children, but rather to protect the child by providing help, support and service to children and families within the community.

There are additional members of the community who become involved in the investigation and treatment of matters of child abuse. This manual, however, focuses specifically on child protective service workers and law enforcement officials, the procedures necessary to successfully investigate reports of child abuse, the different roles of the two systems, and encourages their joint/cooperative intervention. Recognition of diversity of responsibilities and philosophies, coupled with cooperation, mutual respect and understanding, can result in professional, conclusionary investigations by both disciplines with the least amount of additional trauma being placed on the children and families involved.

This document represents a model—an ideal—for joint DYFS/law enforcement investigations of child abuse allegations.

### B. The Law

The law enforcement investigation of physical child abuse is often based on Criminal Law NJSA 2C:24-4, Endangering the Welfare of Children, which depicts crimes committed against children by their parents or caretakers (see section entitled Statutes, Rules and Regulations).

Civil Law NJSA 9:6-3, Cruelty and Neglect of Children, etc., also provides that

parents/caretakers/others who abuse, abandon, are cruel to or neglect children shall be deemed guilty of a misdemeanor and, upon conviction, fined up to \$500 or imprisoned up to three years, or both (see section entitled Statutes, Rules and Regulations).

These laws are unique in that they address violations of a person's rights by his custodian (parent/guardian/caretaker).

The above charges may be merged with larger offenses based on presenting situations (i.e., assault, murder).

Law enforcement cites 2C:14-1, 2, 3 and 4 for sexual offenses committed against children and others (see section entitled Statutes, Rules and Regulations).

Sexual offenses cited and defined therein include:

- aggravated sexual assault, a crime of the first degree
- sexual assault, a crime of the second degree
- aggravated criminal sexual contact, a crime of the third degree
- criminal sexual contact, a crime of the fourth degree, and
- lewdness, disorderly persons offenses.

Both Title 9 and Title 30 of the New Jersey statutes require DYFS to investigate allegations of abuse or neglect or requests for services made either by clients themselves or on behalf of others. P.L. 98-457, a federal statute, requires each state child protective services agency which receives federal funds when responding to reports of medical neglect, to utilize its authority under state law as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

Once the investigation has been completed, DYFS must be able to identify the conditions in the family which authorize continued agency intervention. DYFS' authority to provide services is found in Title 9 and Title 30. These statutes set forth conditions under which DYFS may provide services and identifies those conditions for which DYFS is authorized to seek court relief.

Criminal Law, in essence, looks to Civil Law for a working definition of child abuse/neglect/maltreatment/exploitation.

### **C. Burden of Proof**

There is a significant difference between the burden of proof in Civil (DYFS) vs Criminal (law enforcement) court matters. For this reason, a criminal matter can be dismissed for lack of evidence or inadmissible evidence, lack of suitable testimony (a child/victim is seen to be too frightened, too inconsistent to testify in court), or for other reasons. The burden of proof in criminal matters is "beyond a reasonable doubt," a 99% confidence that an identified offender committed the identified crime.

Civil matters, on the other hand, require as a burden of proof only a "preponderance of the evidence," a 51% confidence that an incident occurred and an identified individual was responsible ("more likely than not ...").

Because of these differing burdens of proof, an individual could be completely exonerated from all criminal charges and proceedings, yet be found responsible for the alleged act by DYFS or in Civil Court.

The reciprocal cooperation of DYFS and law enforcement is vital to enhance the opportunity for both disciplines to fulfill their respective responsibilities.

The Civil (Family) Court can order social services such as counseling, homemaker services, psychological evaluations, placement of children, alcohol drug, or other treatment, etc.

Criminal Court is empowered to punish convicted offenders by sentencing them to terms of incarceration, issuing fines, placing them on probation/supervision, etc.

## **II. Child Protective Services And Law Enforcement: Functions And Procedures**

### **A. The DYFS Investigation**

Matters are referred to DYFS by telephone, letter/report or in-person/walk-in to the agency office. After regular business hours, matters may be referred to a centrally located hotline. Referrers include immediate and/or extended family members, neighbors, medical and educational professionals, law enforcement, anonymous callers, etc.

The intake screener who receives the referral tries to gather as much information as possible from the referral source, in order to determine the presence of risk, the degree of that impending risk, what has occurred or what may occur to negatively affect a child or family, presence of injuries, who may have caused those injuries, family dynamics, dysfunctions, etc.

Once a referral is accepted by DYFS, it is recorded or documented and categorized according to the type of trauma to the child, e.g., physical/emotional/sexual/institutional abuse, and/or physical/educational/emotional/medical neglect. The referral is assigned to a case worker for prompt investigation. The time frame within which the investigation begins is based upon the probable extent of risk to the child (see appendice).

Elements of a Child Protective Service investigation include:

- making contact with the identified child(ren) to insure his safety, determine what happened, assess the need for medical/psychological attention, document any injuries present
- making contact with the parent or caretaker to: assess his willingness and ability to protect the child or his propensity to harm, determine his version of what, if anything, occurred, seek to establish rapport, offer services
- making contact with any siblings or other children in the household to ensure their safety, determine if they were involved in, or witness to, the incident
- interviewing the offender to determine his version of the story and assess the potential threat of harm he poses or could pose to the child and/or other family members (a decision to interview an offender who is a family member should not be made until there is a consultation with the appropriate law enforcement agency)

- gathering available relevant documents/reports such as police, probation, hospital and/or school records, psychological evaluations, etc.
- contacting individuals who can provide additional information/insights because they know the family, either personally or professionally (this includes extended family members, church members, physicians, therapists, teachers, county welfare workers, probation officers, local police, etc.).

Based on information gathered from any of the above sources, as applicable, not necessarily seen in the above sequence, DYFS makes determinations re the following:

- Was abuse/neglect substantiated and who was responsible?
- Is the child safe at home or in his current setting or must a placement/removal be considered?
- Can/will the parent/caretaker protect the child from additional harm?

## **1. 24 Hour Availability**

In New Jersey as in most states, DYFS is available 24 hours a day, by law, every day. On regular work days, DYFS offices are in operation from 9:00 a.m. to 5:00 p.m. (8:30 a.m. to 4:30 p.m. in some counties). Any matter which comes to the attention of DYFS before the close of the work day is the responsibility of the respective county office to address and settle. Staff members frequently work overtime. Referrals that are phoned in after 5:00 p.m., or weekends and holidays are directed to a centralized hotline for screening and processing. Presenting situations in need of prompt attention or intervention **before** the next work day are then referred to on-call emergency response workers, serving each county throughout the state. The emergency response can be in-person or by telephone, depending on the severity of the presenting situation.

Law enforcement serves the community 24 hours a day. Municipal and state police officers serve on shifts, etc.

Each county prosecutor's office has implemented a system where at least one investigator is on call and available for consultation or direct intervention at all times.

Each municipal police department has the toll free phone number of the DYFS hotline, and is encouraged to use it after hours for crisis, risk and emergency situations concerning children and families.

## **2. Removal From the Home**

Under certain circumstances, law enforcement and/or DYFS is authorized by law to remove a child from his parent's physical care and custody to ensure his immediate safety and protection.

DYFS is specifically authorized to remove children under the following conditions:

- with consent of the parents/caretakers (preferably obtained in writing); or
- without parental consent but with a court order (DYFS petitions the court (civil court),

providing details and documentation of the need to remove the child. The judge either signs the order authorizing prompt removal and schedules the matter for a subsequent court hearing or he schedules a hearing prior to authorizing the action to remove); or

—without parental consent and without a court order when a child is in imminent danger. (DYFS must file a complaint at court as soon as possible but no later than the next work day, to enable a hearing to be scheduled).

In New Jersey only—the police,  
—designated probation officers, or  
—DYFS

may remove a child from his home without the consent of the parents and without a court order. Such an action may occur only when there is **imminent danger** to the life or health of the child. The decision to remove a child without a court order is a serious one. A wrong decision could yield negative impact to the child, the family, and/or the police/DYFS investigator.

Individuals—DYFS workers or law enforcement officers—are advised to consult with their superiors and review all other alternative actions or potential provision of services first, before taking such an extreme action.

(See appendices section IV).

### 3. Evidence Gathering and Photographing

All evidence gathering in physical or sexual abuse matters is to be conducted exclusively by law enforcement. DYFS is not to touch, handle or process physical evidence in any way. Evidence gathering is part of the criminal case preparation and processing. If, during the course of its work, DYFS comes upon an item which it believes could be evidential—i.e., a bloodied garment—law enforcement should be contacted immediately to appropriately handle and document the evidence. Hospital emergency room staffs should be familiar with or be made aware of the specialized handling of potential evidence in criminal matters. Hospitals may compile a "rape kit" at the request of law enforcement in sexual abuse matters.

A photograph or series of photographs taken by a DYFS representative could later be used as evidence in a criminal matter. All photographs taken by DYFS should be carefully labeled to indicate:

- identity of victim/scene photographed (i.e. photograph of injured child, hazardous housing condition, etc.)
- date and time of photograph
- identity of person who took the photograph
- type of camera, lens, film speed used, when possible.

The DYFS worker taking the photograph should insure that at least one photograph is taken which shows a full length depiction of the child, to clearly establish his identity and clothing worn. Any close ups of injuries/studied conditions could be later compared against the full length photograph to prove that the photographs depict the same subject child.

Burn victims should always be photographed on color film.

#### **4. Undressing A Child**

When DYFS is presented with allegations or has suspicions that a child has injuries on those parts of his body covered by clothing, the child must be undressed and examined for injuries. When the child is undressed, either the parent or at least one other adult of the same gender as the child should be present. The investigators should explain to the child what is happening and why, and ask for the child's cooperation. When the child may be upset by undressing in front of an investigator of the opposite gender, the child should be examined by a health professional. In any case, undressing the child must be done in a way least detrimental to the child.

If the injuries are severe, questionable as to seriousness or if medical attention is indicated the child should be seen by a doctor and the results of that examination duly documented. If medical attention is not warranted, the injuries on the child should be meticulously documented by the observing investigator as to their relative size, location on the body, shape, configuration. Indicating injuries on a full body diagram (drawing) should be considered, as should photographing the injuries. (See full figure diagrams in appendices).

When the allegations indicate injuries to a child's genitals the subject child should be examined by a medical doctor.

### **B. LAW ENFORCEMENT**

#### **1. REPORTING CHILD ABUSE AND NEGLECT**

The involvement of law enforcement in child abuse and neglect is supported by federal standards, state laws, and local policies and procedures. Each authorizes, encourages, and sometimes mandates law enforcement involvement in the reporting-investigative process by stating what is required of the officer and how that duty is to be fulfilled.

The law enforcement officer may be involved in three ways:

- as a reporter of suspected child abuse or neglect
- as a recipient of a report of suspected child abuse or neglect
- as an investigator of a report of suspected child abuse and neglect, either alone or jointly with the local DYFS unit or another agency.

A review of major points covered by most state reporting statutes follows. Receiving and investigating reports will be included in subsequent sections.

#### **2. WHO REPORTS**

Most states mandate reporting of suspected child abuse and neglect by professionals who work with or are in contact with children. These include medical personnel, social workers, educators, and law enforcement officers. Most states and jurisdictions specifically require law enforcement officers to report. New Jersey requires that "any person" report, this includes law enforcement officers. Law enforcement officers vary somewhat from state to state, but among those included are police officers at the municipal, county and state levels, peace officers, sheriffs and their deputies, corrections officers, and in some states, district attorneys and prosecuting attorneys.

### **3. WHAT TO REPORT**

It is necessary to consult state statutes to be certain what is considered child abuse and neglect in a particular jurisdiction.

Most states include in their definition of child abuse and neglect some form of non-accidental physical injury, neglect, sexual abuse and emotional maltreatment (sometimes called emotional neglect or mental injury).

Most states require the reporting of suspected child abuse and neglect; no state requires the reporter to have absolute proof of child abuse and neglect before reporting. The law may specify reporting of "suspected" incidents. The intent of the law is clear: a reporter need not be "certain" before reporting. If officers are not certain as to whether or not to report and are concerned about the legal consequences of their action they should "error in favor of the child" and report. New Jersey statutes provide protection against civil liability if the report is unfounded. Waiting for proof may involve grave risk to the child. It may take a long time to get; witnesses to child abuse and neglect are rare, and the child's testimony may be disbelieved or inadmissible.

### **4. WHERE TO REPORT**

The receiving agency may maintain a special child abuse and neglect unit, often called CPS. This unit receives and often investigates all reports of suspected child abuse and neglect. Staff are specially selected and trained for this demanding task.

In a growing number of states a 24-hour toll-free telephone list is used for reporting suspected child abuse and neglect. This "hot-line" may be used by anyone to report an incident of suspected child abuse and neglect anywhere in the state. In New Jersey, the hotline number is 1-800-792-8610.

It is important to be certain just who is empowered to receive and respond to reports of suspected child abuse and neglect in a particular jurisdiction. The state reporting statute will provide this information. In New Jersey the Division of Youth and Family Services is the agency which receives calls of suspected child abuse and neglect.

### **5. HOW TO REPORT**

State statutes vary with regard to the form and content of reports required. Each state requires that an oral report, a written report, or both be made to the agency or agencies specified as responsible for child abuse and neglect. Where written and oral reports are required, the oral report is usually required immediately, with the written report following in 24 to 48 hours.

Individual statutes specify the information that must be submitted in a report of suspected child abuse and neglect. Usually this includes:

- child's name, age and address
- child's present location
- parents' names and addresses

- nature and extent of injury or condition observed
- reporter's name and location

In some states, additional information is required. This may include evidence of previous injury to this child or to another child in the same family, information which would help to establish the cause of the injury or condition, and information which would help to identify the person responsible.

## 6. REFERRAL SOURCES

Most states have laws that stipulate who is required to report suspected incidents of abuse/neglect. In New Jersey, the law, N.J.S.A. 9:6-8.10, requires all persons to report (see section on Statutes, Rules and Regulations). Child abuse/neglect referrals may come to the attention of DYFS through its referral screening process in the form of phoned in, written, or in-person referrals to one of its offices or to the centralized hotline.

Referrals come to the attention of law enforcement through concerned citizen call-ins to the main desk of a local police station, to its patrol squads while in the course of pursuing other police work, to its detectives or juvenile officers based on criminal complaints filed, or directly from DYFS. The county operated units, such as the prosecutors office investigators, usually learn of child abuse matters from more localized law enforcement agencies such as municipal police departments or from DYFS.

Matters to be referred by DYFS to law enforcement reflect the occurrence or possible occurrence of a crime or criminal activity on the part of a child's parent, caretaker, or any person. In New Jersey, activities based on suspected child abuse/neglect to be referred include:

- death of a child
- the subjecting or exposing of a child to unusual or inappropriate sexual activity
- any type of injury or condition resulting in hospitalization or more than superficial emergency room treatment
- any type of injury or condition that requires more than superficial medical attention (e.g., treatment for a broken bone at physician's office)
- repeated instances of physical violence committed against a child
- substantially depriving a child of necessary care over a period of time
- abandonment of a child
- sexual advances or activity between a caretaker and a child.

Suspicion must exist that the presented or found injuries were non-accidental. Law enforcement should refer any child abuse/neglect concerns, family violence situations, potential risk to children by their parents or caretakers directly to DYFS. Law enforcement should make such referrals whether it is planning to intervene or not, as follow up to police intervention, or as initial professional intervention (example: The police may not act on a "dirty house" complaint, but may refer the potential neglect situation to DYFS).

## **7. REFERRAL TO COUNTY PROSECUTORS**

In New Jersey, DYFS must contact the county prosecutor when certain conditions exist, according to law (see appendices—Section IV). DYFS does not, by policy or practice, sign criminal complaints; the prosecutor takes that action when necessary and appropriate.

When DYFS refers a matter to the prosecutor for immediate intervention, he may choose to:

- conduct an investigation and work together with DYFS or
- conduct an investigation on his own, independent of DYFS or
- refer to the local police department to conduct a joint investigation with DYFS or
- advise DYFS to proceed with its investigation and keep the county prosecutor abreast of all findings, newly discovered facts and/or the outcome of the investigation.

The county prosecutor may have different investigatory units under his direction. Often one such unit, of one or more specified investigators, is assigned to child abuse/assault investigations and sex crimes.

As is the case with DYFS, municipal police are required to notify the county prosecutor of child physical or sexual abuse complaints. The prosecutor may join the investigation, replace the investigating municipal police officer with one of his own staff, or instruct the municipal police department to proceed with the investigation and advise him of the results.

The county prosecutor gathers evidence and establishes facts to determine if there are grounds for a criminal case, to identify a responsible party and to prosecute.

A significant percentage of DYFS investigations are conducted independently, not requiring the involvement of, or notification to, law enforcement.

In New Jersey, DYFS workers must first contact the county prosecutors and secure his approval **before** conducting an independent interview or being present during a joint DYFS/law enforcement interview/interrogation of a person who is being held in jail or has been taken into police custody. These precautions are taken to ensure that the interview will not interfere with a criminal investigation and/or violate the person's Fifth Amendment rights against self incrimination. Once the approval of the prosecutor is obtained, or conditions prescribed by the prosecutor are met, DYFS may be present during, or conduct the interview.

When presenting allegations do not mandate a referral to the county prosecutor but the investigation findings do require the contact, DYFS sends a written report to the prosecutor as soon as possible but no later than five days from the completion of its child abuse/neglect investigation. A verbal report is telephoned to the prosecutor if the case situation warrants immediate attention.

## **8. DISAGREEMENT BETWEEN LAW ENFORCEMENT AND DYFS**

A disagreement may arise concerning the timing of the DYFS field investigation: DYFS may feel compelled to initiate contact with the child or family while law enforcement may request that the intervention be purposefully postponed until its own investigation can begin.

Whenever there is a question about the child's welfare or physical safety, the child's needs must take precedence over the conduct and procedures of a criminal investigation.

To address the potential for disagreement between the two disciplines and to encourage timely decision making, a mechanism for resolution is set down, in writing, and practiced statewide. (For N.J. procedures see appendices—Section IV, which details the agreement between the Director of Criminal Justice and the Commissioner of the Department of Human Services).

## 9. LOCAL POLICY

In many jurisdictions, law enforcement agencies have issued regulations, policies or memoranda from headquarters outlining the officer's responsibilities when a case of child abuse and neglect is discovered. These policies may deal with reporting, receipt or reports, and/or with investigation. They may spell out procedures to be followed, specify which division has lead responsibility, or outline steps to be taken to notify other agencies that a case has been received or is under investigation.

At times, the investigation of a child abuse/neglect allegation is conducted primarily by DYFS with police assistance when necessary or requested. Such an investigation is not delegated to the police unless the situation requires reporting.

The DYFS worker may, however, request police assistance:

- for personal safety/protection
- if the nature of the case suggests it (i.e. death of a child, children alone, locked in an apartment, etc.)
- when past experience indicates that a client responds only to the authority of the law.

Police should be requested to precede DYFS:

- in an immediately life-threatening situation and the police can reach the family home first (DYFS makes arrangements to meet the police at the home as soon as possible);
- in any case when violence is believed to be occurring concurrent with the referral (shooting, drunken brawls, etc.).

Local policies may go beyond mandated duties specified in state law. For example, a policy may specify that the agency will participate in a multidisciplinary child abuse and neglect case consultation team or in community programs designed to deal with child abuse and neglect. Policies may state that child abuse and neglect will be addressed in recruit training, or in periodic staff development or in-service programs.

Written child abuse and neglect guidelines are a good idea for any law enforcement agency. They should clearly delineate duties and responsibilities, and specify the steps necessary in reporting and investigating child abuse and neglect. In addition, they provide administrative backup for line staff who handle most of the cases. Also, because of the importance of the District Attorney in criminal prosecutions, the policies of the D.A.'s office should be similarly developed and disseminated to the line officer.

- Is the purpose of the discipline to correct the child's behavior, or primarily to punish or hurt?

- Is the discipline appropriate to the child's age?
- Is the discipline appropriate to the child's condition?
- Is the discipline appropriate to the child's transgression (does the "punishment fit the crime")?

## **10. CHILD ABUSE AND NEGLECT INTERVENTION**

In most jurisdictions, the Child Protective Services unit as part of the public social service agency is the key agent in the community's child abuse and neglect response system. It has the legally mandated responsibility for ensuring that preventive, investigative, evaluative, and treatment programs are first responsive to the needs of abused and/or neglected children and then to the needs of their families.

While in most communities law enforcement plays a support role to child protective services, in some jurisdictions the investigations are conducted jointly from receipt of the referral. Increasingly, law enforcement officers are part of a highly skilled specialized team of professionals who work across agency lines to provide efficient, effective case handling. This section deals with the law enforcement officer's responsibilities for receiving reports and for intervention into child abuse and neglect situations.

## **11. RECEIPT OF THE REPORT**

The report may come from a variety of sources: hospital staff, teachers, another police officer, a neighbor. The report may come directly to the law enforcement officer, over the phone or in person. Or the officer may be sent to the home after a report has been received by another agency or by the police dispatcher. In the latter case, the officer will interview the reporter in the field.

In New Jersey under any circumstances, all reports of suspected child abuse must be referred immediately to DYFS. The officer should concentrate on obtaining the following critical information:

- the name, age, sex, ethnic background and permanent address of the child
- present location of the child and location where incidents occurred if different from permanent address
- name of person or institution responsible for the child's welfare (and address, if different from the permanent address of the child)
- name and address of the person alleged to be responsible for the abuse and/or neglect
- the family composition (e.g., names, sex, ages of siblings and other adults normally present)
- the nature and extent of the suspected abuse or neglect, including any available information on prior injury to the child or siblings
- the action taken by the reporting source or others including whether or not the child has been placed in protective custody

- the reporter's name, telephone number, and address, if he/she is willing to provide this information
- the type of reporting source (i.e., mandatory, anonymous)
- the relationship of the reporter to the child and family
- the willingness of the reporter to share with the family his/her role in initiating the report, and his/her willingness to participate in the assessment process if appropriate
- the motives of the report, if possible to evaluate
- possible witnesses to the incident which caused the child's condition
- the date and time the oral report was received.

The report itself does not prove the existence of child abuse and neglect. Sometimes false reports of suspected child abuse and neglect are made deliberately. The investigators may suspect the reporter's motives and they must check further to be certain if the report itself is unsubstantiated.

## **12. RECORDS CHECK**

A routine records check involving the family should be the first step after receipt of the oral report. This check may include internal departmental records, court or DYFS records. In some areas, central registers on reports of actual or suspected child abuse and neglect are maintained, often on a statewide basis. These central registers may be accessed directly by the law enforcement agency itself, or, in some jurisdictions, indirectly through the local DYFS office.

Information which may be revealed through a records check includes the following:

- prior reports of suspected child abuse and neglect for this family and their outcome
- services already being provided to the family because of a previous report
- information on the reporter's reliability based on prior reports by him/her.

## **13. INVESTIGATION**

When investigating cases of child abuse and neglect, the law enforcement officer's primary concern is the protection of the child. Thus, the investigator must determine:

- whether child abuse or neglect is occurring
- whether the child is at risk in the home
- whether immediate intervention is necessary to ensure the child's safety.

Once this immediate concern has been addressed, the investigator must determine whether further police action is indicated, whether the case should be referred to DYFS or to some other agency better able to handle the particular problems involved, or, in the case of a false report, whether no further action is required.

#### **14. CONDUCTING THE INVESTIGATION**

To conduct an effective investigation, law enforcement officers will visit the home, see the child, interview the parents, and collect evidence. There are two types of information that need to be gathered in order to corroborate or dismiss a report. Primary information includes records of the investigator's interviews and observations, photographs, and physical evidence. Secondary information includes that which has been gathered from collateral sources, such as medical records, school records, and other agency records.

#### **15. VISITING THE HOME**

In every state, the officer will have the right of forcible entry if:

- there is probable cause to believe a child in the home is in imminent danger
- there is probable cause to believe that a crime is being committed in the home.

If the investigator feels entry is necessary but the family will not allow it and it does not appear that there is an emergency situation, a court order or search warrant may be advisable.

#### **16. INTERVIEWING THE PARENTS**

The interview should be conducted privately, away from curious neighbors, relatives, and the child. The parents should be interviewed separately. The parents should be told the reason for the interview, given the legal authority for the investigation, and treated with respect. If parents offer explanations, the officer should listen carefully and sympathetically. The officer must avoid passing judgment before all the facts are known.

The officer should not accede to any demands by the parents to be told who reported them. By law, reporters and witnesses may have their identities kept in confidence, if they request confidentiality.

In conducting these interviews, officers must consider how their individual actions impact on the family. A harsh, judgmental attitude on the part of an officer will likely be met with hostility and anger from the family in return. A cool professional attitude, on the other hand, can keep from igniting an already volatile situation. Officers who make light of complaints may alienate reporters. Those who reinforce questionable actions by such statements as, "If he were mine, I'd hit him too," may be giving a disturbed parent license to increase the assaults upon the child.

Certainly, it is possible to be understanding and sympathetic to the parent without necessarily approving of their actions. Child abuse and neglect—especially in its severe forms—can make investigators angry and desirous of revenge on the child's behalf. But the skilled investigator realizes that such feelings impair professional judgment.

It is important to remember that abusive and neglectful parents have difficulty trusting others and are fearful of authority. Regardless of how skilled the investigator is, it is unlikely that the parents will admit to abusing or neglecting their child(ren). Attempting to coerce a confession from the parents may make a future treatment relationship difficult to establish.

## 17. INTERVIEWING THE CHILD

The abused or neglected child, and any other child in the home, is a proper subject for observation and interview by investigating officers. The purpose of the initial contact with the child is to assess the validity of the report and to determine if the child is in imminent danger. This contact may take place in a variety of settings such as a medical facility, school, or child care facility.

Whether the child is interviewed, however, depends upon:

- the child's age
- the child's ability to evaluate what has happened
- the possible impact of the interview upon the child
- the possibility of retaliation by a parent against a child who has "told."

Usually, parents should not be present while the child is being interviewed. Many children are afraid to speak in front of those who have hurt them. The parents should be informed of the need for the interview. If they object strongly, it may be necessary to place the child in protective custody before proceeding, to assure that the parents will not retaliate against the child.

When it is necessary to interview the child concerning possible inflicted injury or condition of neglect, the interviewer must keep in mind that the child may be hurt, in pain, confused, or apprehensive. The child must be made as comfortable as possible under the circumstances.

Children should be assured that they are not in trouble and have done nothing wrong. Children often feel or are told that they are to blame for their own maltreatment and for bringing "trouble", in the form of authorities, to the family. Therefore, it is important to reassure the child that he or she is not at fault. Interviewing children in sexual abuse cases calls for particular sensitivity and skill. In addition to feeling confused and afraid, these children may also feel guilt. Even though they could not have prevented the sexual activity, they often feel they are to blame. The interviewer must convey to the child that he or she has done nothing wrong.

It might be noted that in many documented child abuse cases requiring hospitalization where the parent(s) was the abuser(s), the first person the child asks for is the abusing parent, since many children in this position have known no rational home environment.

The following guidelines can be helpful when interviewing a child:

- At the very beginning of the interview, the interviewer must try to determine the emotional state of the child. Is fear, hatred, defiance, shock, confusion, love, jealousy, or anger apparent? Is the child ready to tell the truth, lie or exaggerate?
- The interviewers should attempt to gain the child's confidence. The interview should be conducted on a friend-to-friend basis rather than as police officer to child.
- The investigator should not appear to take sides against the parents. Under no circumstances should the interviewer indicate horror, disgust, anger, or disapproval of parents, child, or the situation. Children will often become defensive if they feel outsiders are critical of their parents, even if they feel the same way.

- The interview should be conducted in language the child clearly understands. Particularly in cases of sexual abuse, the officer should accept and use whatever terms for genitals and sexual acts the child uses while also asking for clarification and eliciting specific information regarding what has occurred.
- Children should be permitted to tell about incidents in their own way. They should not be pressed for details they may be unwilling or unable to give. The officer should limit questions to necessary information and should use open-ended questions whenever possible. Younger children may be more at ease if the situation is discussed in terms of fantasy.
- The interview should include a discussion of what will happen next and how the officer will use the information the child has given.
- If the child is an adolescent and the officer feels a "person in need of supervision" petition or a similar order will be necessary, the officer should so inform the child. The officer should also inform adolescents of their Miranda rights.

## 18. INTERVIEWING THE WITNESSES

Witnesses to actual incidents of child abuse and neglect are rather rare. Most incidents occur within the confines of the home, and outside observers are few. However, there are persons who can furnish corroborative evidence of a child's condition, the home situation, or the family life. These persons might include the child's teachers, siblings (in or out of the home), relatives, neighbors or the family physician.

Witnesses may be reluctant to discuss a family with the law enforcement officer, either because they fear retaliation, or in the case of agency or school staff, because they feel it would violate guarantees of confidentiality. Witnesses who are fearful of becoming involved should be allowed to express any concerns they may have about their participation in the investigation. They should be reassured and told what use will be made of the information, and that every effort will be made to keep their identity in confidence.

For those bound by agency confidentiality rules, it may be necessary to follow a specific agency procedure in order to gain the information required. In some cases a court order or subpoena will be necessary if information is to be released from agency files.

## 19. GATHERING EVIDENCE

Evidence gathered during a child abuse and neglect investigation is important and may include the investigating officer's observations, photographic evidence, (color photos preferably), videotaping of the child's interview and physical evidence. Even hearsay evidence can be of value, especially to a social agency in its subsequent effort to serve the family; such evidence may even be admissible in later court actions. Thus, any background family or social history obtained (e.g., the parents' admission that they were abused as children) can be extremely useful later.

**Observation:** Observation is an integral part of the interview but is more subjective than verbal information. There are two types of observable data: physical and emotional. The officers should record their observations accurately and in detail so that they will be able to testify effectively if the case goes to trial later. Note should be taken of:

- physical condition of all children, including their general appearance and any observable injuries or conditions
- safety of surroundings—are there unprotected open windows, exposed wiring, vermin, human or animal waste, etc.?
- general condition of the home, including degree of cleanliness and adequacy of sleeping, eating, and washing areas
- availability of food and water
- adequacy of heat, light, and space.

Experienced officers will also observe and record the behavior of parents and child(ren), including their reaction to the officers' presence. These observations can be used to confirm or cast doubts upon the parents' statements. For example, if a mother described her relationship with her husband as supportive and positive, yet the officer observes that the husband responds to his wife's distress by leaving the room or verbally attacking her, there is reason to doubt the accuracy of what the mother has said about her emotional relationship with her husband.

Other nonverbal messages that can be observed include eye contact between family members, facial expressions of love, support, anger, distrust, and rejection, tones of voice that communicate various emotions, the presence or absence of communication, the willingness to listen, to express feelings, to conceptualize feelings or to engage in physical closeness.

## **20. PHOTOGRAPHIC EVIDENCE**

Photographs are an important step in gathering evidence. They may be the best means of documenting child abuse and neglect involving serious injury or of showing the condition of a home. Photographs should be taken as soon as possible, as bruises and contusions heal and vanish very quickly on young children. For the child, photos in both black and white and color should be taken of all bruises, marks, lesions, burns, or areas requiring medical treatment. A full length photo of the child should also be included. The investigator should remain while the photos are being taken and should assist the photographer by pointing out the marks and bruises that need to be recorded. Most photographs of children are taken in hospitals or doctors' offices while the child is undergoing treatment. Therefore, the officer will have to use the procedures of that institution or doctor to obtain permission to photograph the child, unless there is independent legal authority.

The officer should be sure to instruct the photographer about the need for sensitivity while photographing an abused or neglected child. The child is already in a traumatic situation and great care should be taken by both the photographer and the law enforcement officer to prevent the child from becoming more alarmed.

Photographs of the home should also be taken at once. They can be used to document conditions in the home such as filth, exposed wiring, or inadequate plumbing. If it is claimed that the child injured him/herself in a fall, the area where the injury is alleged to have occurred should also be photographed.

As in all other police photographic evidence, it is important to properly identify and mark photographs. It is generally required that the witness who testifies be able to establish that the photographs are a true, fair, and accurate representation of the condition they intend to portray.

## **21. PHYSICAL EVIDENCE**

The officers should collect any physical evidence of child abuse and neglect as soon as possible. Evidence might include the instrument used to inflict injury, or guns or poison found within reach of unsupervised children. In cases of sexual abuse, most physical evidence is derived from laboratory tests or physical examination. Evidence of sexual abuse might include pubic hair, blood on clothing of the victim or suspect, semen or sperm on mouth, genitalia, or clothing of victim.

When it is necessary to obtain evidence for laboratory examination from a suspect, it may be necessary to obtain a search warrant or to place the suspect under arrest.

## **22. DISPOSITION**

Law enforcement disposition of child abuse and neglect cases may take several forms. These range from temporary measures, such as taking the child into protective custody, to more permanent ones, such as referral to a social services agency for treatment and arrest of the caretaker/parent.

## **23. PROTECTIVE CUSTODY**

In cases of child abuse and neglect, the law enforcement officer should keep in mind that the first priority is protection of the child. In a case of clear and present danger, it may be necessary to place the child in protective custody to ensure the child's safety and well-being. Protective custody is only a temporary measure, however. Other arrangements will have to be made for long-term care of the child, treatment for the family, or prosecution of the adults responsible for the abuse or neglect.

In every state, law enforcement officers have the right to place a child in protective custody if there is imminent danger to the child should the child remain in the custody of the parents or caretakers. Under protective custody, law officers may detain the child in a medical facility or place the child in an emergency foster home through the appropriate child protective service agency. In some cases, the officer may be able to arrange for a temporary homemaker to come into the home to care for the child. Children should not be placed in adult detention facilities while in protective custody.

Whenever protective custody authority is exercised, the caretakers should receive written notice of this action and should be advised of their legal rights.

If a child is placed in protective custody, all states require that a child abuse and neglect petition be filed in juvenile court, usually within 24 hours, and that a custody hearing be held soon after. At the hearing, the custody status will be reviewed and either continued, pending an adjudicatory hearing, or revoked and the child returned home.

Deciding whether a child is safe in the home may be the most crucial step in the investigation. Information influencing this decision can be gained through a review of past parental behavior, statements and behaviors during an investigation interview, or from reports by others who know the family. If the child is in imminent danger, the officer must take whatever steps are necessary to ensure the child's safety before proceeding with the investigation.

Whenever possible, the decision to remove a child from his or her home should be made jointly by the investigating officer, the chief juvenile division officer, and DYFS. It may also be necessary to have medical approval or cooperation.

In determining whether protective custody is indicated, the officer should consider whether any of the following conditions exist:

- The maltreatment in the home, present or potential, is such that a child could suffer permanent damage to body or mind if left there.
- Although a child is in immediate need of medical or psychiatric care, the parents refuse to obtain it.
- A child's physical and/or emotional damage is such that the child needs an extremely supportive environment in which to recuperate.
- A child's sex, age, physical or mental condition renders the child incapable of self-protection or for some reason constitutes a characteristic the parents find completely intolerable.
- Evidence suggests that the parents are torturing the child or systematically resorting to physical force which bears no relation to reasonable discipline.
- The physical environment of the home poses an immediate threat to the child.
- Evidence suggests that parental anger and discomfort with the investigation will be directed toward the child in the form of severe retaliation against him or her.
- Evidence suggests that the parent or parents are so out of touch with reality that they cannot provide basic needs for the child.
- Evidence suggests that the parent or parent's physical condition poses a threat to the child.
- The family has a history of hiding the child from outsiders.
- The parents are completely unwilling to cooperate in the investigation or to maintain contact with any social agency, and may flee the jurisdiction.
- The Parent or parents abandon the child.

Officers should also consider their personal liability. A careful judgment regarding protection of the child is crucial; otherwise law enforcement officers may be civilly or criminally liable if they leave the child alone in a dangerous situation or with a caretaker incapable of responsibly caring for him/her.

#### **24. REFERRAL TO SOCIAL SERVICES AGENCY**

The most common disposition of child abuse and neglect cases is referral to DYFS. Child abuse and neglect is complex; treatment is often long term, involving many services and programs. The agency best equipped to handle this is the local DYFS. Only in the most serious cases is further police or court action contemplated.

If resources of several community agencies, including the court, are necessary to deal with the case, referral to DYFS may be made along with a referral to juvenile or criminal court.

Forward-looking communities have established guidelines and liaison for law enforcement

referral of child abuse and neglect cases to DYFS. Such guidelines are a good idea for any community and should be part of the procedures manual for law enforcement officers.

## **25. ARREST**

In most communities, only a very small proportion of child abuse and neglect cases result in arrest. Arrest usually means prosecution. Help to change parent's behavior is usually the best alternative. The desired result is not to punish the parent; rather it is to protect the child from further harm and to teach the parents to be adequate caretakers.

Prosecution of persons who abuse or neglect children can be difficult in all but the most serious cases. It may be very hard to prove who was responsible for an incident of child abuse or neglect which occurred in the absence of witnesses and in the privacy of the home.

There are times when arrest of the parent or caretaker is indicated. Arrest may be made immediately, particularly when the incident is severe or it may be delayed, pending consultation with DYFS and others. Arrest may be indicated when:

- injury to the child is extremely severe
- evidence exists that a serious crime has been committed
- there is reason to believe that the parent or caretaker will flee the jurisdiction if given the opportunity
- it is necessary to preserve the peace
- the person believed responsible presents an immediate danger to others.

## **26. DOES A REPORT MEAN A CHILD WILL BE TAKEN AWAY?**

Most reports of child abuse do not result in children being removed from their families. The first goal is to enable the child to remain safely in his or her own home. If this is not possible, the worker must protect the child's safety by removing him or her to foster care. If it is necessary in order to protect the child, the agency is also authorized to arrange for emergency, temporary foster care.

Findings of child abuse do not automatically mean that children will be removed from their homes. A child cannot be removed without the parent's consent or a court order, unless the child is at risk of imminent harm and there is not time to secure a court order. In such a case, a court order must be sought the next court day.

Of the 57,000 children under DYFS supervision, only about 16% live outside of their homes. Every effort is made to help resolve the problems that resulted in abuse without disrupting family life.

If a child must be separated from his family, the priority is to return the child to the family as soon as possible. The service plan for every child placed outside his/her home must be reviewed by a Family Court judge and a citizen Child Placement Review Board (CPRB) as an arm of the court.

The CPRB reviews the need for and appropriateness of the placement and makes a final recommendation to the court, which issues a formal order.

## **27. COURT REFERRAL**

It will most likely be the juvenile court that intervenes in cases of child abuse and neglect.

## **28. JUVENILE COURT**

A law enforcement officer may choose to refer certain cases to juvenile court. When a child has been taken into protective custody, the officer will be required to appear in juvenile court to have the custody order considered. The juvenile court provides a coercive but nonpunitive authority to function in cooperation with DYFS. It may succeed in getting parents to cooperate where no other resource can.

Juvenile courts can perform a variety of important functions:

- ordering services for the family in which child abuse or neglect has occurred
- protecting a child from further injury
- providing fair and impartial review of agency decisions
- protecting the constitutional rights of parents and child(ren)
- freeing the child for adoption and placement in a permanent, safe environment in cases where it has been proven that parents are unable to care for their child(ren).

## **29. JUVENILE-FAMILY CRISIS INTERVENTION UNIT INVOLVEMENT WITH CHILD ABUSE AND NEGLECT CASES**

In 1982, New Jersey enacted a series of laws bringing about the establishment of a family court and a new code of juvenile justice. Integral to this effort was the recognition of a type of family court matter to be known as a "juvenile-family crisis." The law defined this new concept:

"Juvenile-family crisis" means behavior, conduct or a condition of a juvenile, parent or guardian or other family member which presents or results in (1) a serious threat to the well-being and physical safety of a juvenile, or (2) a serious conflict between a parent or guardian and a juvenile regarding rules of conduct which has been manifested by repeated disregard for lawful parental authority by a juvenile or misuse of lawful parental authority by a parent or guardian, or (3) unauthorized absence by a juvenile for more than 24 hours from his home, or (4) a pattern of repeated unauthorized absences from school by a juvenile subject to the compulsory education provision of Title 18A of the New Jersey Statutes (N.J.S.A. 2A:4A-22).

At the same time, every county established a formal agency responsible for attempting to resolve situations of crisis amicably among the family members without having to resort to petitioning the court for a hearing. This entity, known as the Crisis Intervention Unit (CIU), exists in every county either within the court structure or under the auspices of another agency. All CIUs are subject to guidelines for their operations promulgated by the New Jersey Supreme Court. Even a cursory review of the definition of juvenile-family crisis makes clear that there can be significant overlaps between the types of matters covered by that definition and the problems generally known as child abuse and neglect. It is immediately apparent that cases may come to the attention of either the CIU or a local DYFS office which could

be dealt with more appropriately by the other. Note that DYFS is the only agency designated as responsible for investigating reports of child abuse and neglect. The CIU is the appropriate place for referring a broad range of family crisis situations. To assure clarity and smooth functioning, it was necessary for a formal understanding of how the two agencies on a local level were to operate.

In 1985, the Administrative Office of the Courts issued a crisis intervention manual, as approved by the Supreme Court. That manual, in addition to describing internal procedures for CIU operations also outlined the nature of relationships between the CIU and DYFS as well as other agencies. Prominent in the CIU/DYFS agreement is a clear statement that the CIU must refer cases alleging child abuse or neglect to DYFS. By the same token, it indicates that DYFS is not to refer juvenile-family crisis to the CIU if allegations of abuse or neglect are central to the crisis.

### **III. THE JOINT INVESTIGATION**

#### **A. The Benefits of Joint Investigations**

When DYFS must investigate reports of child abuse/neglect/maltreatment and law enforcement has determined to investigate the same matter because a report of endangering the welfare of a child or assault has been received, then a **joint** investigation may best serve the needs of all parties, particularly the subject child and family.

The benefits of a joint DYFS and law enforcement investigation include the following:

- Questioning is done together and thus the child and family are spared the hardship of repeated interviews by each agency separately.
- Joint questioning eliminates the chance of agencies obtaining contradictory statements/stories/details, which would only serve to confuse and lessen credibility in both investigations.
- Two investigators serve to better insure that all necessary questions are asked, observe interactions, body language and presenting conditions. They are able to share and test impressions, observations, and theories during the hands-on investigation process.

Law Enforcement benefits by the joint investigation in that:

- An investigation by DYFS does not, inadvertently, serve to "tip off" the offender or any potential witnesses to details known or questions to be anticipated by the criminal investigation.
- The social service approach of DYFS provides support and reassurance to the child and other family members throughout the investigation process which may put family members more at ease and thus more willing to speak.
- DYFS can offer treatment services, placement options and community referrals to family members, as warranted.

DYFS benefits by the joint investigation in that:

- Paperwork is reduced as law enforcement obtains formal statements, commits these to typing, to then be provided to DYFS.

- The quality of the documentation of interviews is greatly increased by obtaining copies of law enforcement statements (taken on the scene instead of being re-constructed later at the office).
- Law enforcement provides a sense of authority and power (the threat of imprisonment, criminal charges, the presence of a uniformed officer, etc.) to the DYFS intervention.
- Law enforcement can be effectively utilized to interview (interrogate if necessary) the suspect.
- Law enforcement can play the role of the investigator in the process, allowing DYFS to present itself as the "helping" professional (as opposed to being viewed by clients as part of the prosecution effort).

It is vital that professionals from both disciplines be specifically trained in interviewing physical and sexual abuse victims and their families, as well as becoming competent and comfortable at interviewing various aged children. Ideally each investigator will have a sense of dedication toward their work and a true caring about the health and well-being of children.

If the investigators lack specialized training and adequate skills (i.e., interview children as if they were adults, use terms for body parts which children do not comprehend, etc.) or lack sensitivity toward the unique dynamics of intra-family violence or incest, or do not care about or feel for child victims, then the resultant investigation could be hindered, inaccurate or crippled.

If a separation between parent/perpetrator and child/victim is warranted, DYFS and law enforcement agree that it is the parent—not the child—who should be asked to leave, or be removed from the home. This allows the child to remain in familiar surroundings and thus be spared additional emotional trauma, sense of loss, separation anxiety, alienation from the family, feelings of being sent away or punished for a wrongdoing, etc. Unfortunately there are times, however, when the only way to insure the safety and protection of the child is to remove him from the home.

## **B. Strategizing the Investigation**

Once the referral/allegations are shared and a determination has been made that a Joint DYFS-law enforcement investigation is to be conducted, the assigned investigators from both disciplines meet and plan a strategy. Matters discussed might include:

- available evidence/reports, and how to gather
- individuals involved (doctors, helping professionals, family members, the referrer, the offender) and the order in which to interview these persons
- location options for interviews (at DYFS offices, specially designed law enforcement interview rooms, at the school, the hospital, etc.)
- roles to be played during interviews, if applicable (perhaps DYFS as the "support," law enforcement as the investigator)
- follow up procedures such as establishing a protocol for post investigation information sharing.

### **C. The Interviews**

In the conduct of child abuse investigations thorough interviews must be accomplished to capture all necessary information. Following are the recommended contacts and the areas to be covered.

- The referral source: to establish and clarify allegation(s)
- Collateral sources: to obtain background and additional details
- The child/victim: to observe and document any injuries and to obtain the child's version of the incident/abuse
- The sibling(s) or other children in the household: to learn of other involvement and/or knowledge
- The non-offending parent: to determine whether he/she knew and can protect the child from further harm
- The offender: to address all allegations, obtain his/her version of the incident and to assess future risk to the child/family

Depending on the circumstances of the abuse the sequence of the interviews may vary. Ideally the child is seen/interviewed before the offender to obtain a first hand account of the injury/incident. After injuries are observed and documented, opinions as to cause and severity may be obtained from treating professionals (i.e. examining physicians or hospital emergency room staff). The non-offending parent/caretakers may be asked by law enforcement investigators to sign a complaint. Once the immediate safety of the child is secured the offender can be interviewed/confronted to learn his/her version of the incident. Actions are then initiated by each agency, based on information gathered.

### **D. The Referral Source**

Ideally the investigators should meet with the referral source in person to gather available evidence/reports (e.g., if the referrer of a sexual abuse matter is the emergency room doctor, the necessity of a rape kit should be discussed and instructions exchanged. In cases of physical abuse, a copy of the medical chart should be sought as evidence/documentation of the injury. The doctor should be advised to enter his professional observations and opinions into the medical chart).

Details of the abuse and complete identifying information of the child victim and family should be sought from the referrer, including:

#### **1) Content of the Report**

- Who was involved?
- What happened?
- Where did it occur?
- When? How often?
- Number of incidents?
- Degree of current risk?

- Child's need for medical attention?
- How do you know?

## 2) The Child-Victim:

- What is the child's Full name, D.O.B., religion, gender?
- Where is child **now**?
- With whom does child live?
- How long will child be at that location?
- Is the child in school or other daytime program?
- School, grade what is name & address of the program/school?
- What is child's home address and phone number?
- What is the child's relationship to offender?
- Any handicaps (physical, mental, etc.) or special needs? What is child's level of maturity?
- Are there extended family/friends/religious institutions available as supports?

## 3) The offender:

- What is offender's full name, age (approximate), religion, gender?
- Where can offender be reached, **now**?
- What is offender's place of employment and phone number?
- What is offender's home address and phone number?
- What is offender's current relationship to child/subject of the report?
- When and how does offender have access to the child?
- Does the offender have access to other children?
- What is offender's personal history and personality? Is there a history of mental/emotional handicaps or drug/alcohol abuse?
- What is offender's physical description (height, weight, hair color, distinct features, etc.)?
- Any history of violent or criminal behavior?
- Is the offender aware of the referral?
- Who else can provide information on this person?

## 4) The Parent/Caretaker:

- What is his/her full name, age, religion, gender?
- What is his/her place of employment/phone number?
- Where can he/she be contacted now?
- What is his/her current relationship to the offender?
- Any knowledge of abusive occurrences?
- What is parents' actions or lack of actions (if aware of abusive interactions)?

- Does parent demonstrate ability to protect child from offender (referrer's opinion)?
- Are there extended family/friends/religious institutions available as supports?

**5) The Other Parent (if not the offender)**

- What is his/her full name, age, religion, gender?
- What is his/her place of employment/phone?
- Where can he/she be contacted now?
- What is his/her current relationship to the offender?
- Does parent have any knowledge of abusive occurrences?
- If aware of abusive interactions, did parent take any actions? What?
- Does parent have ability to protect child from the offender (referrer's opinion)?
- Are there extended family/friends/religious institutions available as supports?

**6) Siblings/Other Children in the Home:**

- What are names, dates of birth, genders?
- What school (grade) or day programs are attended?
- What are current whereabouts?
- Have siblings been victimized also?
- Are siblings aware of abuse?
- Is there anything else about this child (children) that concerns the referrer? (e.g. unusual behavior observed?)

**7) Others in Home:**

- What are name(s), age(s), gender(s), relationship(s), involvement in/knowledge of abuse?

**8) Referral Source:**

- What is his/her name, address, phone number?
- What is his/her relationship to family?
- How does source know of physical/sexual abuse? Was it observed directly?
- How does source think family will react to investigation?
- Does referrer have any recommendations on how to proceed with investigation?
- Why was referral made **now**?
- Any other individuals who know of situation and would be willing to talk to investigators? How to contact?
- Can referrer add additional insights concerning family relationships, interactions?

**E. The Medical Professional as Referral Source**

When the referrer is a physician, additional information might include:

- a complete medical description of sustained injuries—location, size, severity

- explanations provided by family members (child, the offender, others) as to injuries
- the credibility and feasibility of explanations provided by family members (do the injuries match the explanation provided?)
- the physician's opinion as to how the injuries might actually have occurred
- direct observations of parent-child interactions (while in hospital emergency room, physician's office, etc.)
- professional concerns, recommendations
- availability of medical reports, hospital charts.

#### **F. The Educational Professional as Referral Source**

Teachers and other education professionals may be key contacts in that they interact with children on a daily basis (5 days per week) over an extensive period of time (approximately ten months per year). A child's behavior one school year can be compared to his behavior during the previous school year (e.g., child's school record indicates last year he was motivated and earned good grades, while this year he is frequently absent, acts anti-socially, quiet, seems pre-occupied and depressed). These behaviors can be compared to events in the child's life in an effort to better understand what is happening in the home (e.g., mother recently remarried, child may be reacting to stepfather's presence/influence). An observant teacher will be aware of how a child behaves; who, if anyone, he chooses for his friend(s); how his behaviors/attitudes/achievements/personal growth and development compare to other children his age.

When the referrer is an educator (teacher, guidance counselor, child study team member) information sought might include:

- the child's progress/achievement in the school setting
- observable behaviors of the child and changes over time, include day by day behaviors, attitudes, social interactions with adults and peers
- child's friends in school (e.g., child's friends are aggressive, act out, "always in trouble," only same sex peers, all younger than child, no friends)
- any history of observable injuries and any explanations provided by child
- any unusual behaviors noted (e.g., on hot days the child would wear long sleeve shirts and keep sleeves rolled down; child would often refuse to change into gym clothes for unknown reasons; child overreacted when health class discussed the dynamics of incest; etc.)
- knowledge of the child by the Child Study Team, availability of psychological evaluations, diagnostic materials
- circumstances precipitating the referral.

#### **G. The Mental Health Professional as Referral Source**

Often psychologists, psychiatrists, counselors and therapists are reluctant to report allegations of family violence or sexual abuse learned in the course of therapy, feeling such reportage is a betrayal of the client's confidentiality. New Jersey law, however, clearly states that any person having reasonable cause to believe that a child has been abused or neglected is mandated to report the matter immediately to DYFS.

When a therapist reports abuse, the investigators should strive to meet with that therapist in person in an attempt to elicit his help in contacting/interviewing/confronting/servicing the family. When possible, efforts are made to preserve and reinforce the working therapeutic relationship between the mental health practitioner and the child or client family.

If information is available (or if a release can be secured from the nonoffending parent) the investigators should seek to determine:

- the child's/parent's diagnosis
- the child's/parent's commitment to and progress in therapy
- the purpose of therapy (initial identified problem)
- the therapist's insights into individual and/or family's functioning
- the history of therapy, prior treatment, length of current treatment, and frequency of sessions
- any symptoms/behaviors of the child or parent which may indicate that the child has been mistreated or that there is a propensity for abuse in the family.

## H. Collateral Contacts

After the initial screening contact, the presenting situation may not be clear. Contacting collateral sources may benefit the investigation by providing vital background information. Prospective collateral contacts may be identified by the referral source.

The investigators must then assess the possible value of information which could be obtained from these or other individuals and make a decision whether to proceed with these contacts to gather background information or to interview the subject family members directly.

When seeking collateral information, the confidentiality of the client-family must be respected. Information about the allegation should **not** be given to other individuals. Only that information necessary to the client's situation or necessary to elicit required relevant information should be shared.

Collateral sources can be advised that "a referral" was received and that clarifying information is being sought. Terms such as "physical abuse" or "incest" should be actively avoided.

When seeking information from an institution, such as a public school, the investigators should strive to contact an individual who, by his title, authority or speciality **should** be sensitized to matters of professionalism and confidentiality (Aim to speak to the principal, head guidance counselor or a child study team member first. In turn, elicit the principal's help to contact the teacher or school nurse who is actually acquainted first hand with the child. The principal's intervention could serve to further sensitize the staff to the need for confidentiality).

Collateral contacts may include, but are not limited to, consultation with:

- the treating physician/family doctor (obtain medical reports when available)
- the mental health counselor/therapist, if the family is in treatment (obtain progress reports, psychological evaluations, when available)
- school personnel (e.g., school nurse, teachers, counselors, administrators)
- public welfare agencies.

By making collateral contacts, the investigators seek to gain an intimate understanding of:

- relationships within the family (e.g., the teacher states the child feels his older sister is father's "favorite" because he buys her pretty gifts and gives his son nothing)
- patterns of behavior (e.g., an adolescent girl who refuses to participate in gym class at school every Monday morning after return home from weekend visits with her father)
- time schedules of family members (e.g., the neighbor states that the mother goes to the race track every Tuesday night, leaving the six year old daughter in the care of the stepfather)
- personal history of family members (e.g., the family doctor states the mother has a liver ailment due to a history of chronic alcohol abuse)
- key insights into family functioning which could be quite relevant to an abusive family dynamic.

## **I. THE INTERVIEW WITH THE CHILD VICTIM**

### **1. The Setting**

The child victim should be interviewed in a neutral, non-threatening location. It is advisable to avoid interviewing the child in the family home, as often this is where the abuse, physical or sexual, took place. Children are often interviewed in the hospital emergency room or at school. The setting varies according to the given situation.

For the interview with the child in sexual abuse investigations, a successful model for joint intervention suggests that the child under age 10 be seen in a specially designed room (at the prosecutor's office or at the DYFS office). The room features:

- a one way mirror for out-of-sight observation
- toys, games, dolls, blocks, etc. for play before and during the interview
- child-sized furniture and furnishings, to make the child feel at ease.

If such a setting is not available, all efforts should be made to provide for the physical comfort of the child.

### **2. The Child Interview Process (10 years old or younger)**

If the special interview room is utilized, the law enforcement investigator trained in DYFS matters conducts the interview with the child alone. The DYFS worker, law enforcement superiors, and a support person, if necessary, sit in an adjoining room to observe. The entire proceeding is **video taped** (Controversy exists concerning whether the DYFS worker should be present during the interview. The decision may depend on which county prosecutor is conducting the interview, the presenting allegations, or whether the DYFS worker knew the child prior to the interview. A second controversy concerns differing opinions as to whether to interview this young child first or the non-offending parent first).

Following the interview process, the investigator leaves the room and confers with the DYFS worker and/or his superiors for guidance, advice, or suggestions regarding additional questions to pose or matters to pursue. DYFS thus has the opportunity for input in the interview process.

The child is observed continuously while the investigator is in the room as well as while alone. The video tape has a time indicator which serves to document that the video was run continuously, as opposed to being stopped and restarted (to avoid a defense attorney later suggesting that the tape was edited, re-ordered, tampered with, etc.).

The investigator uses the anatomically detailed dolls (see appendices—Section I pp. 1-2) and/or pictures, if warranted (see appendices—Section II).

The DYFS social worker can be identified as the service provider and support to the family whether or not he is part of the interview process.

### **3. The Child Interview Process (11 years old plus)**

The child, aged 11 years or older is interviewed in a neutral setting, such as at school, the hospital, the DYFS or law enforcement office, etc., being too old, worldly, or mature to be seen in the specially designed room (see section "The Setting"). The DYFS worker may be present during the interview, but the law enforcement investigator will lead the questioning. The process may be video taped, or sworn statements may be taken with the aid of a transcriber.

Support persons may be utilized if the child refuses to speak (see following section).

Anatomically detailed dolls and/or pictures can be introduced (see appendices—Section I).

### **4. Presence of Support Person**

The investigators attempt to interview the child victim **alone** to allow them to gain an unbiased account of the situation under investigation.

The child may have great difficulty, however, discussing a highly sensitive subject like sexual abuse with complete strangers. Despite planning, the child may be totally uncommunicative, anxious, hyperactive, withdrawn, etc. A very young child may totally shy away, or even cry.

If the child's reaction to the propsective interview or during the actual interview makes it impossible to elicit any information, then consideration should be given to asking a support person, an individual the child knows, trusts, and may feel comfortable speaking in front of, to sit in on the interview. Support persons may include relatives, teachers or school staff, nurses or social workers, the child's therapist, etc. The support person should **not** be an individual directly involved in the allegations on hand, or an individual who could personally gain from a particular finding. The non-offending parent, in most cases, should **not** serve as the support person. Although the child may feel closest to his parent above all other persons, an alternative support person should be actively sought. Reasons to **avoid** use of the non-offending parent may include:

- The non-offending parent may have played some role in the abuse and may wish to cover up or rationalize.
- The non-offending parent may not believe the incident took place and this disbelief may influence the interview with the child.
- The non-offending parent's reactions to the content of the interview may make the child uncomfortable (crying, anger, etc.).

- The non-offending parent may have additional, personal interests at stake, as in custody matters.
- The non-offending parent may be too personally involved with the child and/or the offender to allow for an unbiased interview.

When the child refuses to speak unless the non-offending parent is present, however, the parent may, out of necessity, be present during the interview. These circumstances must be clearly documented in the investigation report/case record.

Support persons need to be advised that any and all information shared with them or observations they may make must be kept in strict confidence.

The investigators must strive to maintain control of the interview at all times. Support persons should be asked in advance to assume a neutral role and posture during the interview process. The investigators should be sensitive to audible sounds/cues which may emanate from the support person (moans, sighs, uh-huhs, etc.) which could influence the course of the interview or upset the child. Investigators should be aware of the person's facial expressions/reactions, eye contact, body language, etc. If any type of non-verbal communication is in evidence the investigators need to take steps to regain control of the interview. The support person could be asked to sit **behind** the child to avoid further body language/communication, or could be asked to leave the room.\*

Sometimes the support person was the individual who the child first told of the abuse, and/or may be the referral source. That individual may be asked during the actual interview to give the child permission for the story to be told again. The key, however, is that the information, the full account, must come from the **child** not from the support person, a third party to the situation.

The support person could be briefed in advance to be available if he is needed at the time of the interview.

## 5. "Mandatory" Support Person

If the child is to be interviewed at school, the administrator or principal has the right to insist and even mandate that a school official or representative be present (See Appendix, Resolution: State Board of Education).

The decision needs to be made as to who should be present from the school. Options include:

- the child's teacher or another teacher
- the school nurse
- a child study team member
- the principal, vice principal or other administrator.

The presence, in and of itself, of the principal or other school authority figure could cause some children to be anxious, afraid, and non-communicative, while other children might respond positively to such an official. Some children may find the presence of a familiar

---

\*Note: Some experts prescribe that the support person should sit behind the child from the onset of the interview to limit potential interference. Others feel the person cannot provide "support" unless the child can see him or even interact with him during the interview.

teacher to be a support and a comfort, while others might feel embarrassed, ashamed, compromised or betrayed. Whenever possible, the **child** should be **asked** to name an individual whose presence he prefers at the interview.

## 6. Content of the Interview with the Child

The interview with the abused child victim aims to determine:

- Was there one incident or multiple incidents over time?
- Were there elements of secrecy: Pressure? Coercion? Threats?
- Need for medical examination/treatment
- Details of disclosure (e.g., accidental vs. purposeful disclosure; why is child telling now?)
- Were siblings/other children and/or other adults involved in and/or victimized by the abusive activity?

In cases of sexual abuse, the following should be covered:

- Was there a progression of sexual activity?
- Time frames: When is caretaker out of the home to allow sexual abuse incidents to take place?
- Explicit details of sexual activity

Key points to remember during the interview include:

- Children tend to minimize the information they give rather than fabricate it.
- Tell the child who you are, why you are there, your name and what you do in your job. Tell him you talk to children all the time. Let him know that he is not in trouble; that he has done nothing wrong. Ask him if he understands why you want to speak to him.
- Allow the child to get comfortable enough with you to feel safe. Seek to win his friendship.
- Take your time. Set a casual and relaxed atmosphere and pace. Play with the child, using crayons coloring books, stuffed animals, toy telephones, puppets, trucks, etc. Play decreases the anxiety of children, gains their attention, interest and trust.
- As the interview progresses, help the child to volunteer the information. Encourage him. Tell him it's all right to feel the way he does. Normalize the experience, e.g., tell him "Other children have been abused, too". Tell him not to be afraid. Focus the interview when the child disgresses, but do not push.
- After the child has given an indication that abuse has occurred, begin to gather specific information about what occurred, with whom, how often, where it occurred, and when it began. Try to avoid use of the word "why" as it can sound accusatory and is associated with getting into trouble. Try to avoid yes/no questions.
- Aim to establish a time frame for the abuse. Try to find out about the first episode and the most recent ones. Relate to activities children are familiar with (i.e., holidays, seasons, school, etc.), as children usually do not remember specific dates and become confused by periods of time.
- Find out the child's feelings about the offender. Do not speak negatively about him as the child may love the offender, and stop talking to you about him.

- Ask the child what he would like to see happen and be honest with him about what will happen next. Dishonesty on your part can cause recantation later on (Remember, most children just want the abuse to stop and are not prepared for the system's intervention.)
- Allow and encourage the child to ask questions if he has any for you. This helps him to regain control and helps bring the interview to a close. If possible, close on a positive note.

In cases of sexual abuse, the following should be remembered:

- If the child has difficulty verbalizing the activity but has indicated that some type of sexual activity has occurred the anatomical drawings or dolls can be introduced at this time. (See appendix I & II).
- Ask if the child ever told anyone else about the sexual activities, and who they told. You will need to speak to that individual.
- Throughout the interview, remember to tell the child that the abuse was not his fault. Children carry a tremendous amount of guilt and responsibility for the sexual activity.
- Avoid multiple interviews with different interviewers. If you must interview the child again to obtain additional information, tell the child that you will need to speak with him again. The same person(s) who conducted the first interview should conduct any additional interviews. This helps to avoid a feeling of not being believed and possible recantation. It may take more than one interview for the child to feel comfortable enough with you to discuss the sexual abuse.

#### **J. Interview with Siblings**

After the identified child victim is interviewed, any sibling(s) should be seen, to determine:

- whether this child may also be a victim, and whether he is currently at risk of sexual abuse/harm;
- his awareness of the sexual abuse
- whether he can make statements which can validate or negate child victim's story.

The sibling(s) should be interviewed in depth if sexual abuse was indicated by the identified child/victim, or if the child provides details pointing to victimization (see preceding section).

#### **K. Interviewing the Non-Offending Parent/Caretaker**

The non-offending parent should be the next family member interviewed after the child victim and any siblings. Law enforcement seeks to gather additional facts to determine whether this individual collaborated with the offender; whether this individual participated in the criminal activity, either overtly or covertly; and/or whether this individual was even aware of the reported activities. Ideally, law enforcement seeks to obtain a statement from this parent/caretaker which can establish whether a crime occurred and whether the offender was responsible. DYFS seeks to learn the above and to assess this parent/caretaker's ability to protect the child(ren) and provide a stable home environment. This parent should be advised that an official statement may be taken, depending on the content of the interview provided (Some law enforcement officers interview this parent first before interviewing a child aged 10 or younger and may later interview the parent again, as needed). The investigators should:

- Interview the non-offending parent\* to learn her knowledge of the incident(s), her own personal history as it relates to the matter under inquiry (e.g., What was her childhood like? Was she mistreated?), her perspective on the family as a whole unit (roles played by family members), and, most importantly, her ability to protect the children.
- Interview the non-offending parent alone, aside from the family. Aim to win her confidence and trust. Tell her what the child has said happened. Gauge her reaction. Adopt a non-threatening stance and maintain an attitude of concern.
- Determine whether this individual or law enforcement will or should sign a criminal complaint against the offender on behalf of the child.

The investigators seek to learn:

- How long has the non-offending parent known? Can she corroborate any of the child's story? When and how did she find out? Did she tell anyone else who may now be contacted to assist in the investigation?
- Does the non-offending parent believe the child? Will she support the child throughout the investigation/disclosure process or will she side with the offender against the child?
- What action has the non-offending parent taken since she has found out about the abuse? Assess what action could have been taken, and seek to determine why that action was not pursued.
- Is the offender a step-parent to the child(ren)? If so, how has the child reacted to the presence of this step-parent in the home? What are the roles played in the family (non-offending parent's opinion, observations)?
- Does the offender have a tendency toward violence in the community, in the home, domestic violence?
- What is the marital history? Any previous marriages for either partner? Does either parent have other children? Where are they now?
- What is the offender's relationship with the child(ren)? What activities are shared? Are the shared activities appropriate? Is any child favored, given special attention over the other siblings?
- Is there a history of arrests of any family members? Obtain full details.
- Did any family member receive psychiatric treatment or hospitalization? Seek to obtain full details including dates, names of treating physicians, diagnosis, length of stay, discharge planning (obtain signed releases if possible).
- Is there alcohol or drug abuse in the home? What drugs are being abused? Describe behavior changes while the offender is under the influence. Is he known to any treating organizations (AA) or individuals?
- Was the offending parent sexually or physically abused as a child? Was he raised by his parents in a normal family setting or was he raised outside the home, in foster care, by a relative, in a residential school setting, etc?
- Was the non-offending parent physically or sexually abused as a child?
- What is the non-offending parent's relationship with the children, particularly the target child? Is role reversal present? Is there a favorite child, and why?

---

\*Note: Although the pronouns in this section related to the non-offending parent/caretaker are feminine, they are meant to include the masculine as well. The pronouns related to the offender are masculine—they are meant to include the feminine.

- Is the non-offending parent employed? Where, what hours, for how long? What is this parent's schedule (thus giving times when the child and the offender could be alone and abusive/sexual abusive activities could occur)?
- Who is responsible for what task in the family? Who bathes the children? Who is the chief disciplinarian? What types of discipline are exercised?
- Who does the household planning at home? (Financial planning, overall management). Who is the "head" of the household? Can the non-offending parent keep the household in operation financially, daily life operations, etc., if the spouse/offender must leave the home?
- What would the non-offending parent like to see happen now that the sexual or physical abuse is known (to her, as well as to the authorities)?

In sexual abuse cases the investigators should also determine:

- What the non-offending parent knew about the sexual abuse. Assess her statements. Did she perhaps know of a sexual relationship between her spouse and her child, but took no action to protect the child due to her own needs? Did she, in fact, not know? Did she choose not to know?
- What is the non-offending parent's relationship with the offender? Did the relationship change once she learned of the abuse?
- What is the sexual relationship shared? Does the couple share a bedroom? What is the frequency of sexual relations? History of extra-marital affairs? Parents values concerning sex? Any unusual sexual practices or preferences?

After the interview, DYFS may find it necessary to develop a service agreement with the non-offending parent to protect the child(ren) and, if applicable, secured rehabilitative treatment.

#### **L. Interview with the offender**

Once the investigators have gathered available evidence and obtained statements from the referral source, collateral source(s), the child victim(s), siblings, and the non-offending parent, the offender must be interviewed.

Some law enforcement agencies arrest the offender prior to questioning, if there is cause to do so.

The law enforcement investigator should take the lead in questioning (interrogating, if necessary) the offender. Many departments request that DYFS **not** be present during the questioning. As aforementioned, by being excluded from the interview/confrontation process, the DYFS worker can be presented later as a supportive resource to the family instead of being identified with the investigation and/or prosecution effort. In New Jersey, if DYFS is to be present during an interview with an individual who has been taken into police custody, approval from the prosecutor must be obtained first.

Two law enforcement investigators may conduct the interview as a team. One officer can attempt to develop a closer relationship with the offender, helping him to relax and begin to open up.

The offender may act initially hostile, angry, or belligerent and will most likely be frightened or feel threatened. Investigators need to be patient and try to help the offender relax before starting the interview.

The investigator should provide a sense of privacy to the interview process. The offender is **not** to be questioned in a hallway or dispatch area of police headquarters, or in an open area in a hospital emergency room, but is to be interviewed in a quiet room. The investigator should avoid assuming a judgmental attitude and instead should appear sympathetic and concerned. He could use phrases such as, "I know this must be difficult for you" (With a team approach, one investigator could assume this supportive role while the second could be hard hitting in his line of questioning). Efforts should be made to provide to the offender an "out," a reason for his actions, something to blame (i.e., an unhappy marriage, an ungrateful child, the loss of a job, being intoxicated, etc.).

At the commencement of the interview, the offender must be advised of his rights to an attorney, and given the Miranda Warning, a statement which is read to him, by law, advising him that anything he may say may be held against him in a court of law (see appendices). This warning is given if he is being interviewed in a custodial situation (in "police custody"). In addition, the individual should be advised of the concerns, and responsibilities of both law enforcement and DYFS. Any questions or confusion concerning the roles of each or both agencies should be promptly addressed.

The offender is to be advised of the reasons for the interview, and all allegations are to be presented to him. He then is given a full opportunity to present his version of the incident(s). A summary of the evidence is to be provided to him. Any videotaped recording of the child victim's statement is to be played back to him, if necessary, for added impact. A sworn statement is to be taken from the offender, when he has confessed to, or denied the allegations. The statement is typewritten and the offender swears to its truthfulness by signing it. Court transcribers traditionally take statements.

At this point, the treating medical professional (if the child was examined and injuries/trauma were found) could be re-contacted by the investigators to ascertain whether the offender's explanation for the injuries/condition is feasible. If the explanation is feasible, law enforcement may consider dismissing the matter. If the physician continues to state that the injuries/condition could not have been caused as described by the offender and appear to be caused by physically or sexually abusive activities, the offender is again confronted with these statements/professional opinions, and given the opportunity to amend his story and confess.

Law enforcement may choose to utilize a polygraph test during the interview, as an additional mechanism for seeking to establish the facts. As polygraph testing continues to be highly controversial, however, some departments may choose to avoid using this interrogation tool.

Based on statements given by the offender, as compared to evidence gathered and statements obtained from the child victim and others, law enforcement then makes the determination whether enough evidence exists to warrant an arrest. If so, the offender may be arrested, brought before a judge for the setting of bail, and kept in custody until bail requirements are met. Stipulations for release are then determined, such as no contact with the victim pending trial.

If the offender has not confessed and law enforcement feels evidence is lacking to convince a grand jury that he has committed a crime, the offender may be released from custody pending a continued law enforcement investigation. Under these circumstances, he is advised to have **no** contact with the child victim(s). The level of his cooperation and willingness must be carefully assessed.

DYFS and/or law enforcement may, at this point, assist and encourage the non-offending parent to seek a restraining order to bar the offender from the family home. If DYFS feels that the non-offending parent will be ineffective in protecting the child, leaving the child

vulnerable and at risk of renewed contact with the offender, then protective action is to be considered, such as removal of the child from the home and placement with relatives (when available and willing) or in foster or shelter care.

If law enforcement and DYFS find that the entire matter was fabricated and that no sexual or physical abuse took place (adolescent female had sexual relations with a peer, and when caught, blamed her father; child, angry at parents fabricated allegations based on television shown seen; etc.) an assessment must be made by DYFS as to whether the family can and should be immediately reunited, or if the crisis created by the investigation requires interim services/alternative solutions.

## **IV. FOLLOW UP TO THE INVESTIGATION**

### **A. Law Enforcement**

Often matters of the sexual or physical abuse/assault of children are difficult to prove in a court of criminal law. First, law enforcement must establish the fact that criminal activity or an incident of criminal activity took place. Law enforcement must then identify and prove who was responsible for that activity. Upon the completion of initial interviewing and evidence and report gathering, law enforcement assesses the strength of its case based on:

- the nature and severity of allegations (i.e., a crime of the first, second, third or fourth degree, disorderly persons offense, etc.)
- the quality and availability of witnesses and other evidence (e.g., the age, maturity, credibility of the child victim as key witness in a sexual abuse/assault matter, the willingness of a medical professional to testify that sustained injuries were, in his opinion, "suspicious," the result of abusive activity, etc.)
- the quality and availability of admissible evidence
- any prior criminal record of the alleged offender, and its relevance to these present allegations
- the alleged offender's willingness to cooperate and/or plead to the charges.

In light of the above factors law enforcement may exercise different courses of action which may include, but are not limited to the following options:

- Dismiss the allegations and turn the matter over to DYFS in entirety. If the criminal case is weak, or if the allegations are unfounded law enforcement may choose to take no further action.
- Continue to investigate the matter in an effort to establish a criminal case, e.g., gather more evidence, seek additional collateral resources, re-interview parties, etc.
- Accept a plan for treatment in lieu of filing criminal charges. If the case is weak, if the offense was not severe, if this was a first offense, or if the offender is cooperative, law enforcement may agree to a plan for treatment instead of prosecution (e.g., An offender fondled his daughter while intoxicated. He now agrees to be hospitalized for alcoholism and to follow treatment recommendations upon discharge).
- File criminal charges based on investigation findings and pursue the matter to full criminal trial/prosecution.

Law enforcement may also seek treatment to be ordered, ultimately, as part of criminal sentencing.

## B. DYFS

Whether the criminal matter is pursued or dismissed, DYFS has a continued responsibility to the child, family, and the alleged offender.

If the entire investigation was based on false accusations, DYFS must assess the family situation, determine why the accusations were made (custody matter, out of anger, due to child's over-exposure to sexual materials, etc.) and attempt to link the family, as a unit or as individuals, to ameliorative services, such as counseling. Important decisions must be made by the **family**, with the aid and guidance of DYFS (e.g., Would the child be at risk of alleged offender's retaliatory actions if the alleged offender returned home? Should the child be placed outside the home until the crisis passes and a service plan is instituted?). DYFS is responsible to see the family through the crisis created by the intrusion of the investigation toward a healthy rehabilitation. A referral to family counseling may help the parents and child establish a healthy communication, improve their injured relationship, and re-direct anger.

If the interviewing process/initial investigation is inconclusive, and it remains unclear whether the allegations are true, DYFS will need to assess the family situation to determine:

- whether the non-offending parent can effectively protect the child from potential harm
- whether the child would be safe if the offender returns home
- what in-home services are appropriate and available to safeguard the child and best serve the family (homemaker services, child care, etc.)
- other services which could benefit the family and address other related or unrelated problems found (e.g., alcohol/drug treatment).

DYFS may want to recommend that the non-offending parent obtain a restraining order to keep the offending parent away from the home and the child(ren) until the commencement of services.

DYFS may need to remove the child from the home, with or without parental consent, to insure the child's safety.

If the offending parent is arrested and held on bail, DYFS should institute a service plan with the non-offending parent which reflects actions to be taken should bail be met, and the offending parent be set free. Referrals may be made for therapeutic intervention which is often needed immediately to diffuse the guilt, anger and confusion felt by the child, any siblings, and the parent remaining at home.

No matter what the circumstances following the initial investigation, DYFS is responsible to first secure the immediate safety of the child and then to assess the strengths and needs of the family. Agency intervention can be short term or long term, depending on the dynamics within the family, degree of cooperation demonstrated and the depth of the problems found.

Law enforcement and/or civil court can be called on to aid DYFS and reinforce its plan for services and rehabilitation of the subject family.

DYFS performs a dual role of:

- investigating allegations of abuse/neglect.
- coordinating treatment services in the community.

One continuing challenge to DYFS is how to switch roles in the eyes of the client, first as investigator and then as helper/support.

### **C. Information Sharing**

During, and especially after the joint investigation, documentation of efforts and findings by both disciplines should be fully shared. The full content of law enforcement's sworn statements from interviews with all family members and the offender should be provided to DYFS. The investigation write-up and findings of DYFS are duly provided to law enforcement. DYFS should be permitted to view any videotaped interviews of family members and/or be given a copy of the transcript of the tape.

Matters of evidence and reports obtained from third parties (hospitals, schools, therapists, etc.) are shared in accordance with the rules and limitations of confidentiality.

With the full sharing of statements/findings, neither DYFS nor law enforcement will need to repeat the interviews with any family members. Law enforcement often holds additional interviews to further validate information gathered. DYFS follows up with the family to provide assessment, services and support. Each discipline should keep the other updated as to the status of any continued investigation/intervention/service provision/court proceeding.

## **V. THE NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES**

### **A. An Introduction to DYFS**

The New Jersey Department of Human Services' Division of Youth and Family Services (DYFS) is the State's comprehensive social service agency for children, families and adults. DYFS is required by State law to investigate every report of child abuse, neglect, abandonment, or exploitation.

The DYFS Mission Statement and Service Principles give overall direction for social service activities.

This mission is to:

1. protect vulnerable children and adults from abuse, neglect or exploitation
2. support family preservation and community living
3. prevent family violence and disruption.

The Service Principles are:

- Each case requires an individual, family and community assessment which recognizes the important role of individuals, families and communities in defining problems and developing solutions, and the importance of client participation in service planning for their families, with time limited agency intervention.
- A unified service system which is community based and organized around local needs with clearly defined roles and responsibilities among all service providers and the use of natural (family and friends) and community supports wherever possible.
- An advocacy approach to services which recognizes the uniqueness of individual, family and community problems and promotes a climate of respect for clients and responsiveness that places client concerns above all others.

DYFS provides general, social and protective services to children and families, and partial care and substitute care to children.

The division worker's responsibility is not only to investigate matters of child abuse/neglect (see Appendix, pp. 36-41) but to offer services to help reduce the identified problems of the family and child. These services can include the referral to individual or family counseling, self-help groups, or assistance to obtain medical care, emergency shelter, transportation, or a temporary homemaker to guide the parents and children. The social worker's activities are designed to protect children and, when possible, to strengthen families and enable families to stay together. In 1988, the division structure includes: a central office located in Trenton; three regional offices which oversee 38 district offices (which perform Child Protective Services functions) and four adoption resource centers. The Office of Child Abuse Control (OCAC) (1-800-792-8610) is the State's Child Abuse Hotline, which is in operation 24 hours daily. Special Response Units (SPRU) are on call after regular business hours in each of the 21 counties in the state. SPRU is contacted by OCAC, as needed, to intervene and ensure continuous around the clock outreach to the children and families of the State of New Jersey.

Often parents or others who mistreat children are beset by problems which overwhelm them. Abusive parents are frequently lonely and isolated. Many of these parents report that they, too, were poorly treated by their own parents.

Others are pressured by the extreme stress produced by poverty, illness, or lack of employment, decent housing and/or medical care. Some parents may not be able to handle the normal stresses of raising children, or surviving in today's competitive society without help.

The social circumstances under which a family lives contributes to child abuse, neglect and personal problems for its members, such as substance abuse. Child abuse and neglect are community problems which require community solutions.

Cooperative efforts between law enforcement, DYFS, and other community agencies have proven effective in combating child maltreatment. It is particularly important to develop cooperation between law enforcement officers and DYFS social workers to protect children, lessen the trauma of agency investigation/intervention, and to successfully link families to helping, rehabilitative services.

# **Appendices**

**Model for Joint  
Child Abuse Investigations  
By  
Law Enforcement and  
Child Protective Services**

## TABLE OF CONTENTS

I.	Use of Anatomically Detailed Dolls .....	1
II.	Demonstration Pictures (Sexual Abuse Investigations) .....	3
III.	1987 Abuse/Neglect Statistics For New Jersey .....	36
IV.	Citations From The DYFS Field Operations, Casework, Policy And Procedures Manual .....	37
	A. Legal Authority And Responsibilities Of DYFS .....	37
	B. Legal Provisions For Court Intervention .....	40
	C. Time Frames For Initial Field Investigation .....	43
	D. Protective Custody Or "Hospital Hold" .....	45
	E. Removal From The Home .....	47
	F. DYFS/Prosecutor Office Disagreement .....	52
V.	State Board of Education Resolution on Child Abuse and Neglect .....	55
VI.	Miranda Warnings .....	57

## **I. USE OF THE ANATOMICALLY DETAILED DOLLS IN CHILD SEXUAL ABUSE INVESTIGATIONS**

Anatomically detailed dolls have become a useful tool in the investigation of child sexual abuse cases. These dolls are designed to be used when a child demonstrates some difficulty or embarrassment in describing the sexual abuse that has occurred. Not all children will require the use of the dolls.

The dolls should be introduced only after the child has given some indication that sexual activity has occurred. They should not be utilized for rapport building. It has been argued by defense attorneys that the dolls are suggestive of sexual activity because of their anatomical parts and their use is therefore leading. Utilization of the dolls must be done according to the format described below, therefore, to prevent difficulties when the child testifies in court.

The interviewer should always have a complete set of dolls available including an adult male and female dolls and a child male and female doll. The doll family should be the same race as the victim.

The dolls are introduced during the interview **only** after the child has indicated that some type of sexual activity has occurred and is having difficulty verbalizing details. Introduction of the dolls prior to this point can be interpreted as leading by a defense attorney. The dolls should be kept out of sight prior to usage.

When the dolls are utilized the following format should be followed:

- 1) Remove the dolls from the bag which has kept them out of sight and say, "I have dolls that look like real people and they help children talk about what happened to them."
- 2) Next, the child is to establish the identity of the dolls. The investigator holds the doll which matches the child's gender and asks whether or not the doll is male or female. After the child answers, ask how he knows. Then ask the child to assign a name to the doll. Most of the time the child will assign his name.

The investigator should avoid assigning an identity to the doll himself because of issues around leading. The dolls are not to be used further if the child assigns any name other than his own.

Follow the same procedure with the adult doll. Have the child identify it as the alleged offender. After identification of victim and offender, put aside all of the other dolls.

- 3) It is now important to identify body parts in order to learn the child's terminology. Begin with the child doll fully clothed and allow the child to undress it. Starting at the top, point to various parts such as hair, eyes, nose, legs, genitalia, etc. Repeat for the adult offender doll.
- 4) Tell the child that you want them to show you what happened using the dolls. Do not say "let's pretend" or "let's make believe." If you are not sure about what the dolls are supposed to be doing when the child places them in a certain position, ask for clarification. Do not assume anything (i.e., child places offender doll on top of child. Do not assume intercourse. There may not have been penetration). It is important that the child tell you as well as show you what is happening. Repeat what the child says to be sure you have heard it correctly.

When the child has finished the demonstration, ask if anything else happened other

than what he showed you. Frequently children will only relate one incident unless you explore further. If the child says that nothing else occurred, then dress the dolls allowing the child to help. **Do not** leave them unclothed and **do not** leave them in any type of sexual position.

Finish your interview by thanking the child and telling him again that the abuse was not his fault. Tell him it was good that he told someone and give him a general idea as to what will happen next.

It is important that the dolls are introduced the same way each time. In the event that the case goes to court there will be consistency in the testimony of the child and the interviewer.

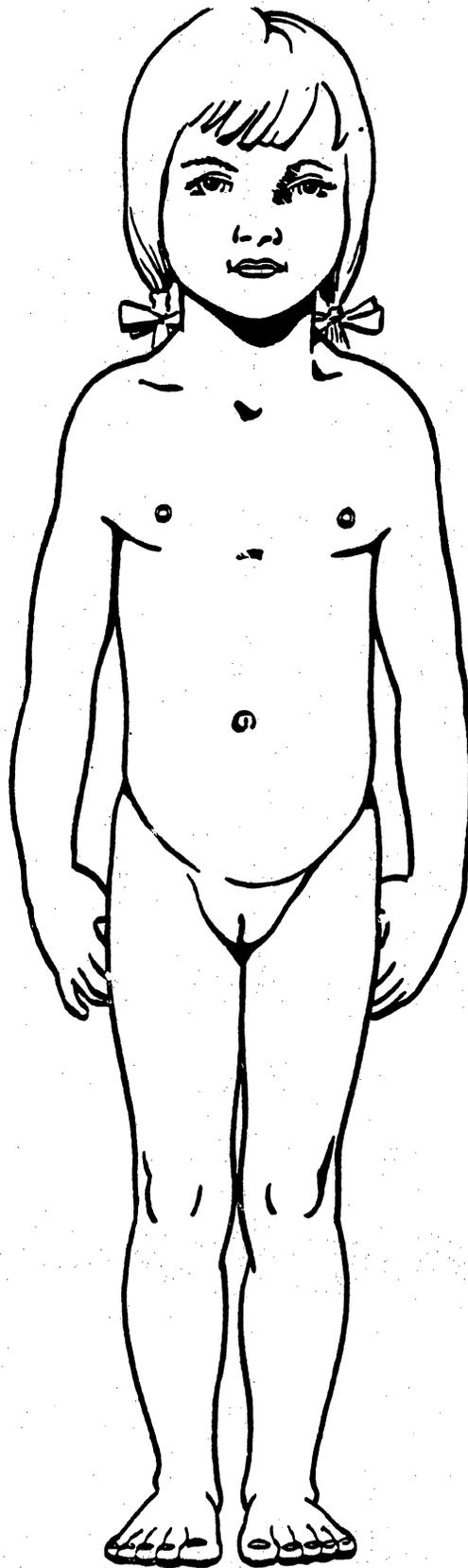
The interviewer should practice before the interview so that he is comfortable with the dolls and their usage. Remember, you relate better to a child by the way you are, rather than by what you say. Embarrassment at touching the dolls will be picked up by the child and could be destructive to the interviewing process, hindering your ability to ultimately protect and help the child.

## **II. DEMONSTRATION PICTURES (SEXUAL/PHYSICAL ABUSE INVESTIGATIONS)**

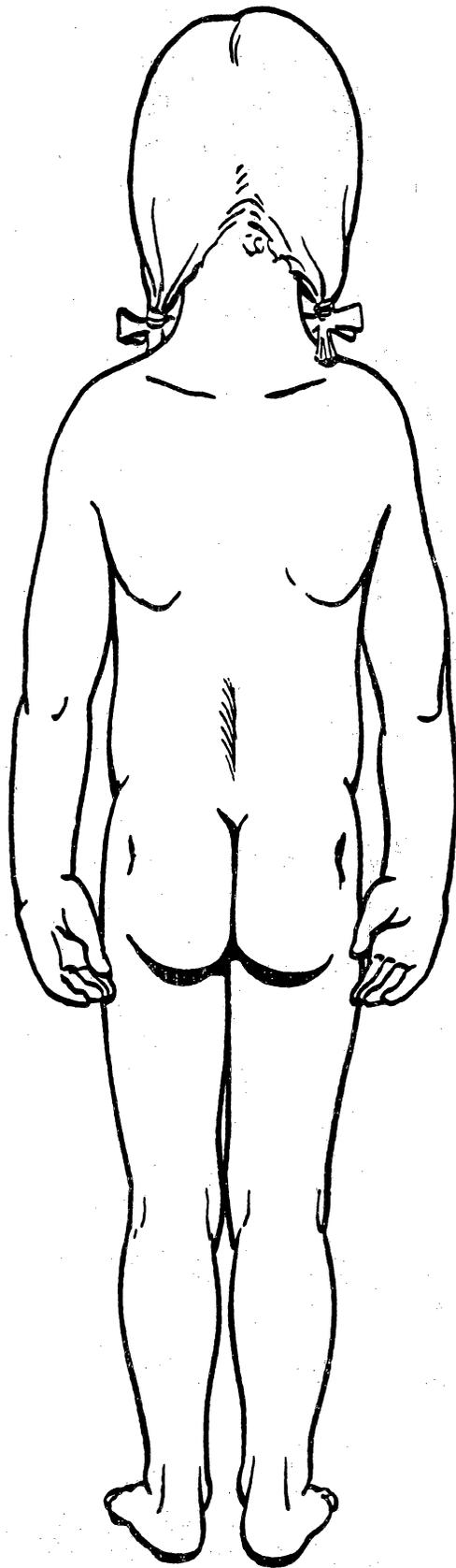
The following full body diagrams, depicting the male/female, black/white, front/back preschool child to fully developed adult can be effectively utilized:

- to interview the child/victim of sexual abuse, and
- as charts to illustrate injuries—relative size, location, shape—during physical abuse investigations.

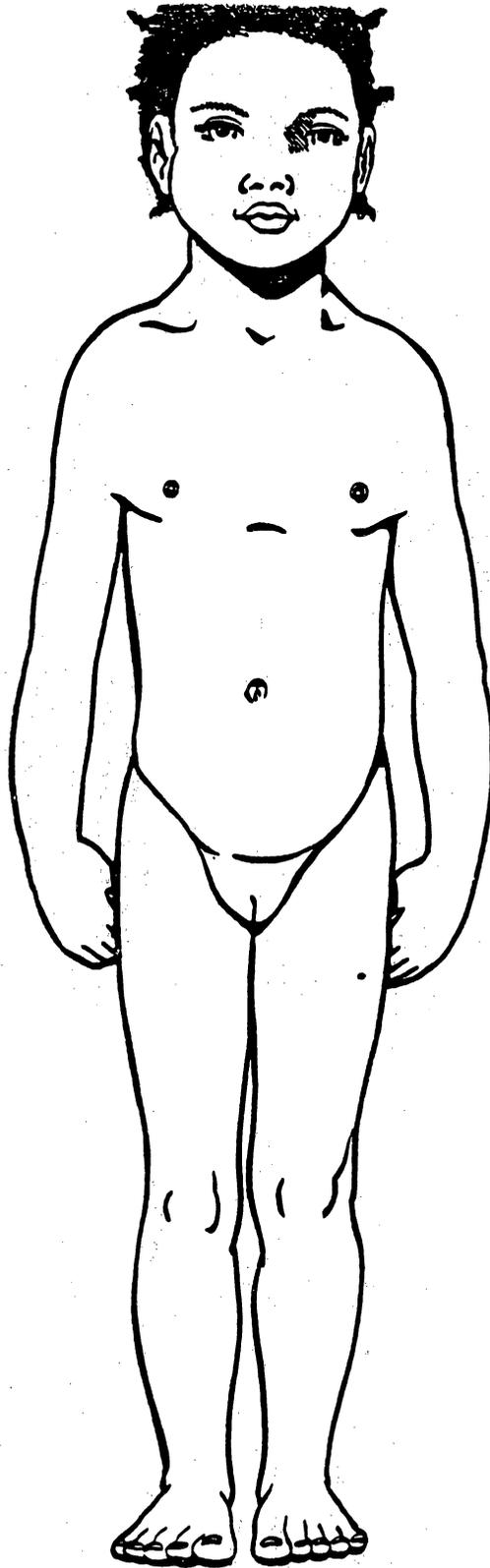
DYFS and law enforcement investigators are encouraged to photocopy these charts from this manual for use in the field.



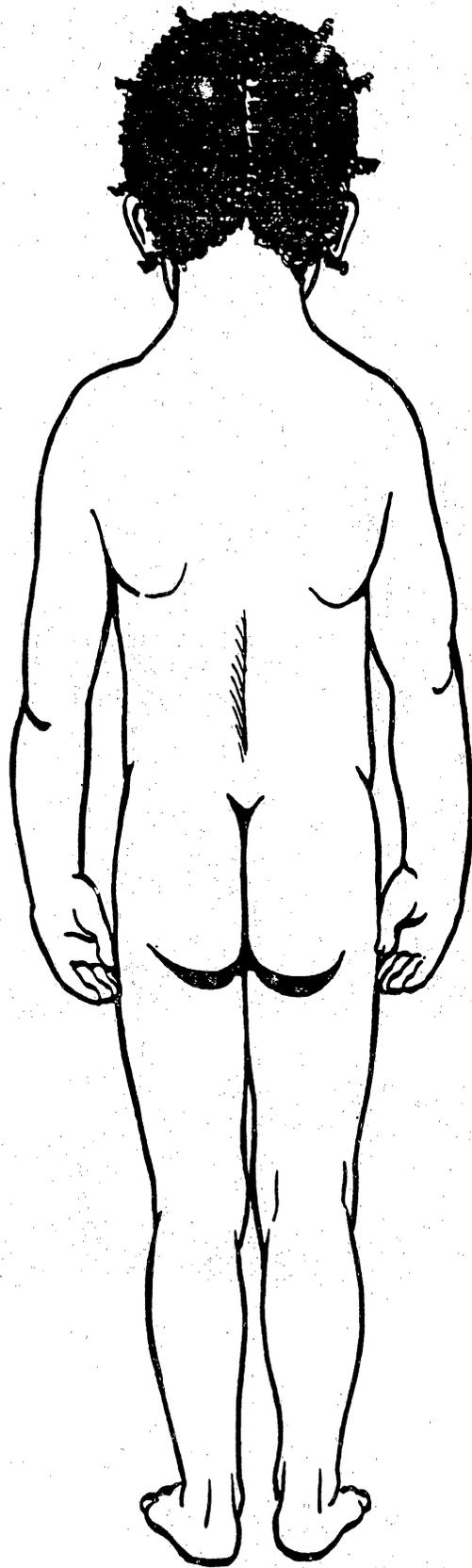
**Figure 1: White, pre-school, female child (front view)**



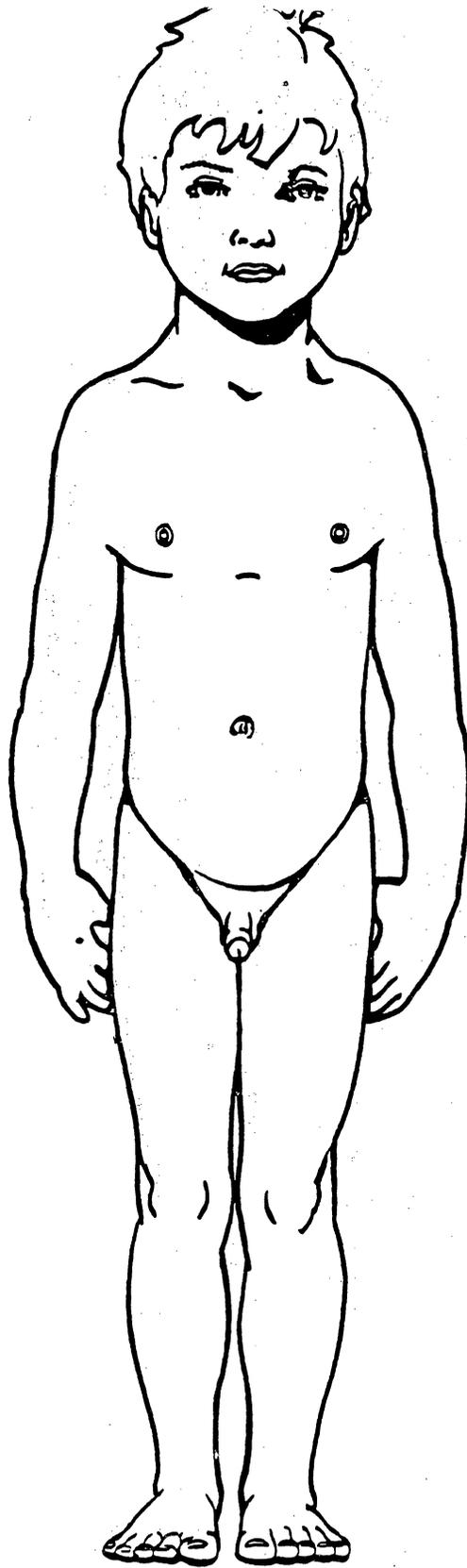
**Figure 2: White, pre-school, female child (back view)**



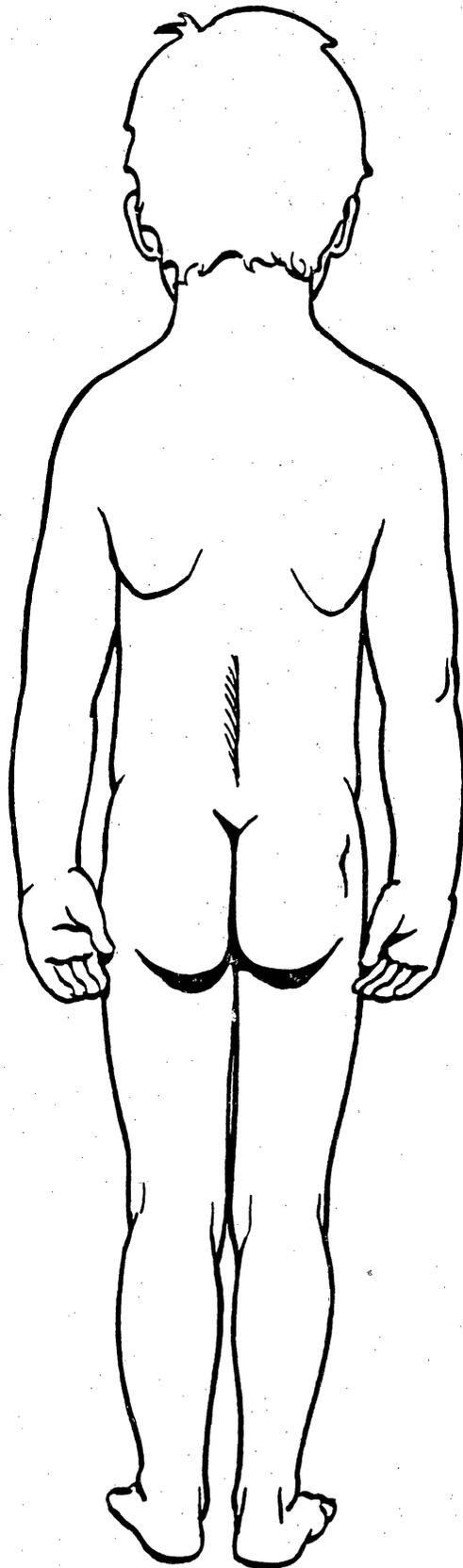
**Figure 3: Black, pre-school, female child (front view)**



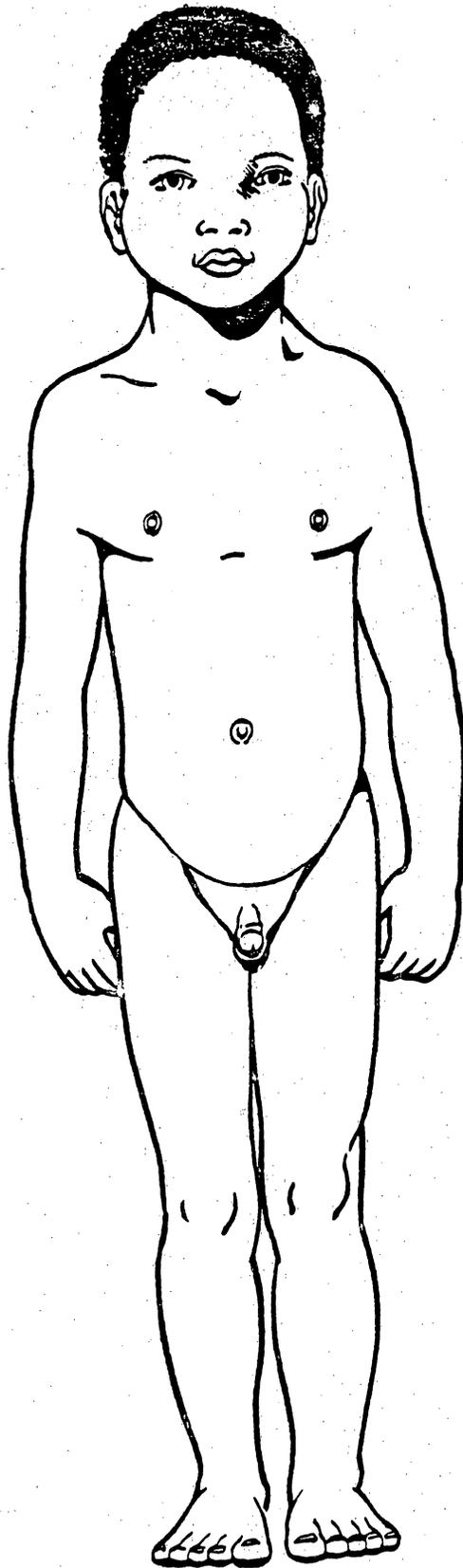
**Figure 4: Black, pre-school, female child (back view)**



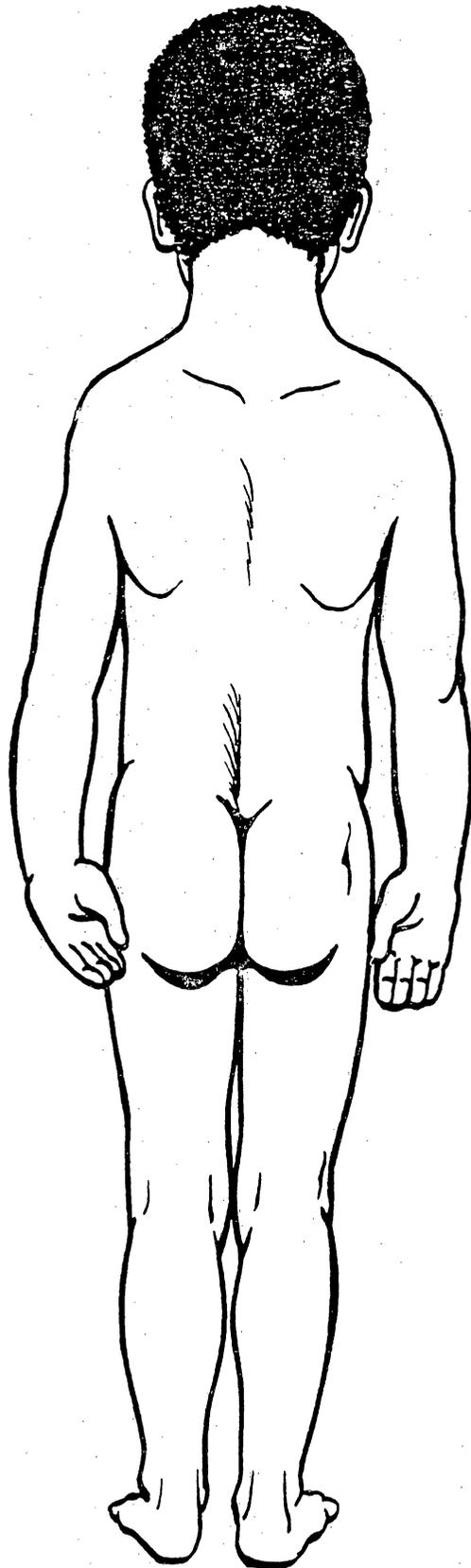
**Figure 5: White, pre-school, male child (front view)**



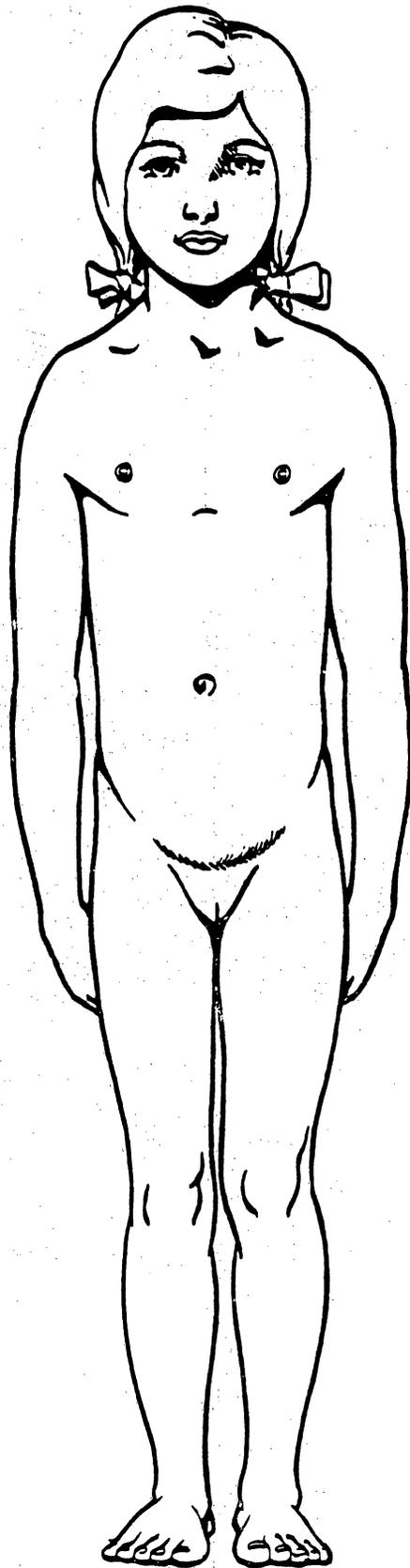
**Figure 6: White, pre-school, male child (back view)**



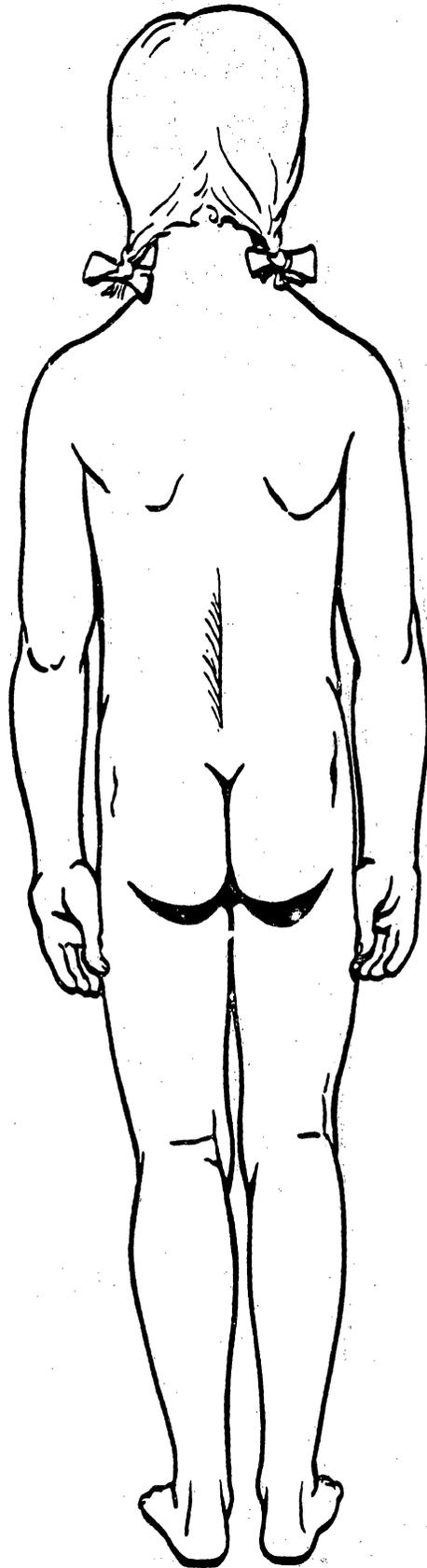
**Figure 7: Black, pre-school, male child (front view)**



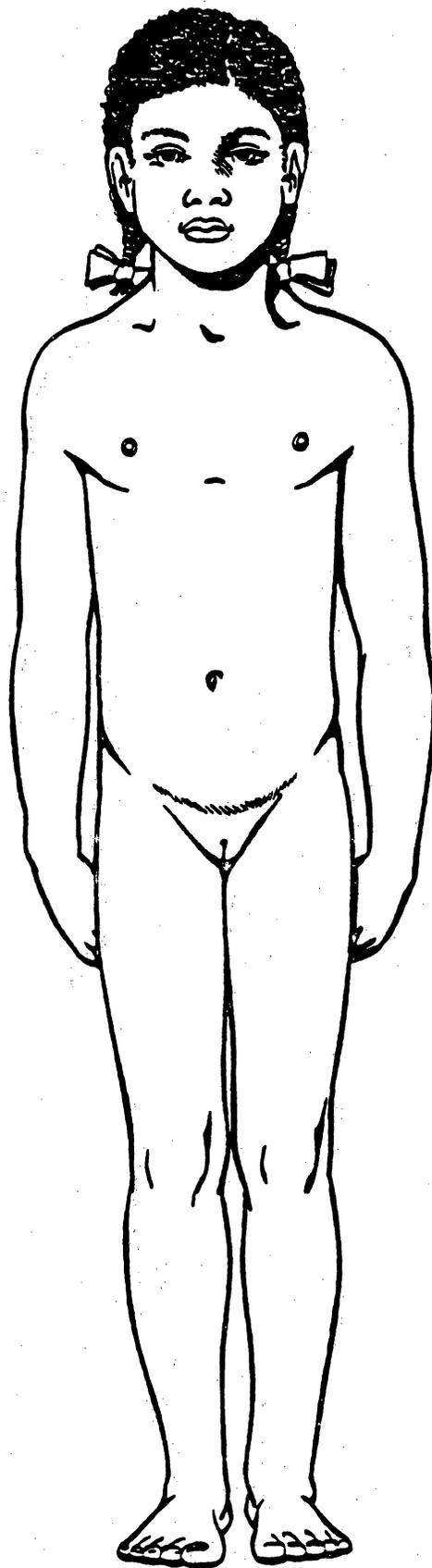
**Figure 8: Black, pre-school, male child (back view)**



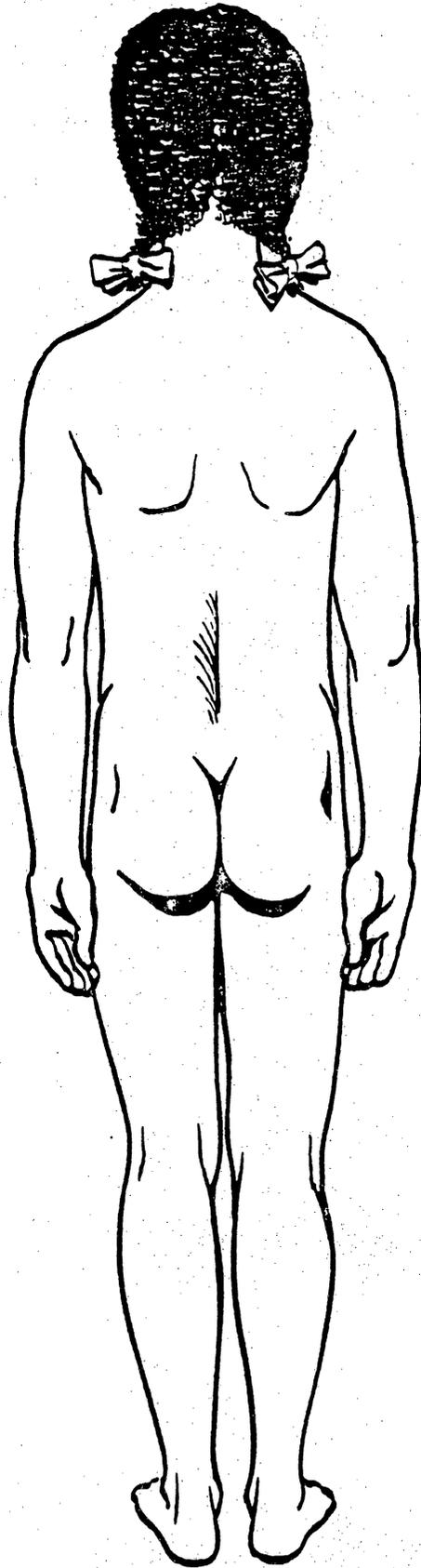
**Figure 9: White, grammar-school, female child (front view)**



**Figure 10: White, grammar-school, female child (back view)**



**Figure 11: Black, grammar-school, female child (front view)**



**Figure 12: Black, grammar-school, female child (back view)**

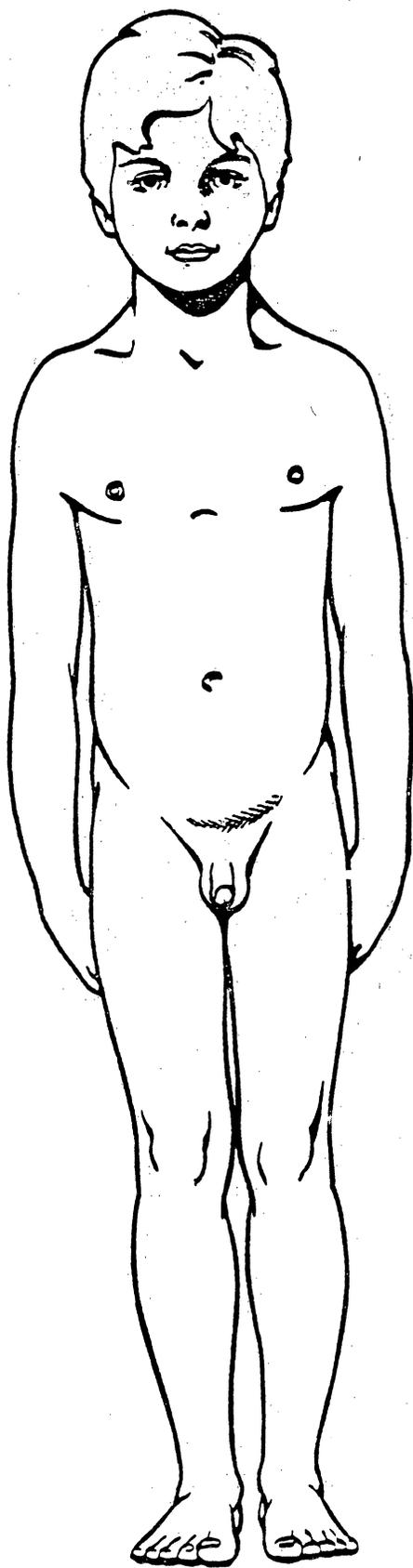
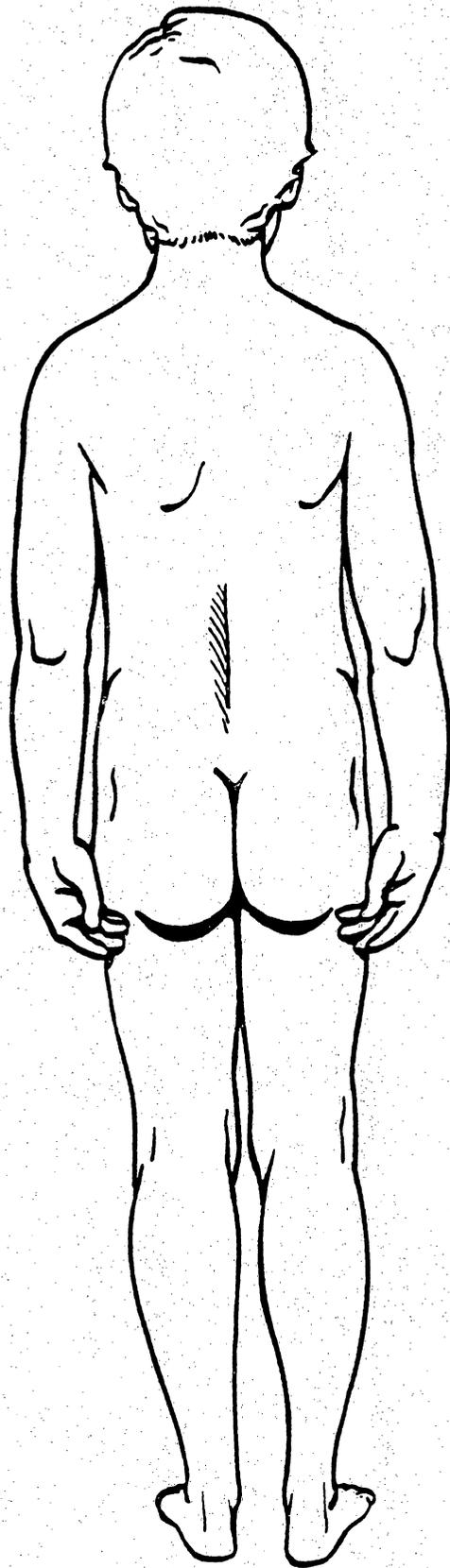
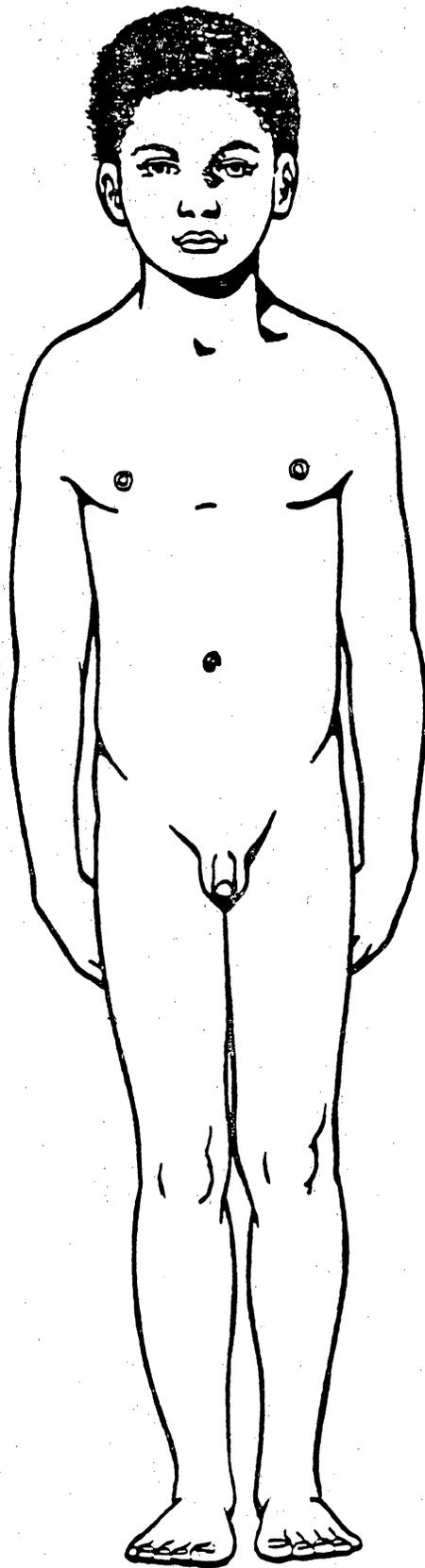


Figure 13: White, grammar-school, male child (front view)



**Figure 14: White, grammar-school, male child (back view)**



**Figure 15: Black, grammar-school, male child (front view)**

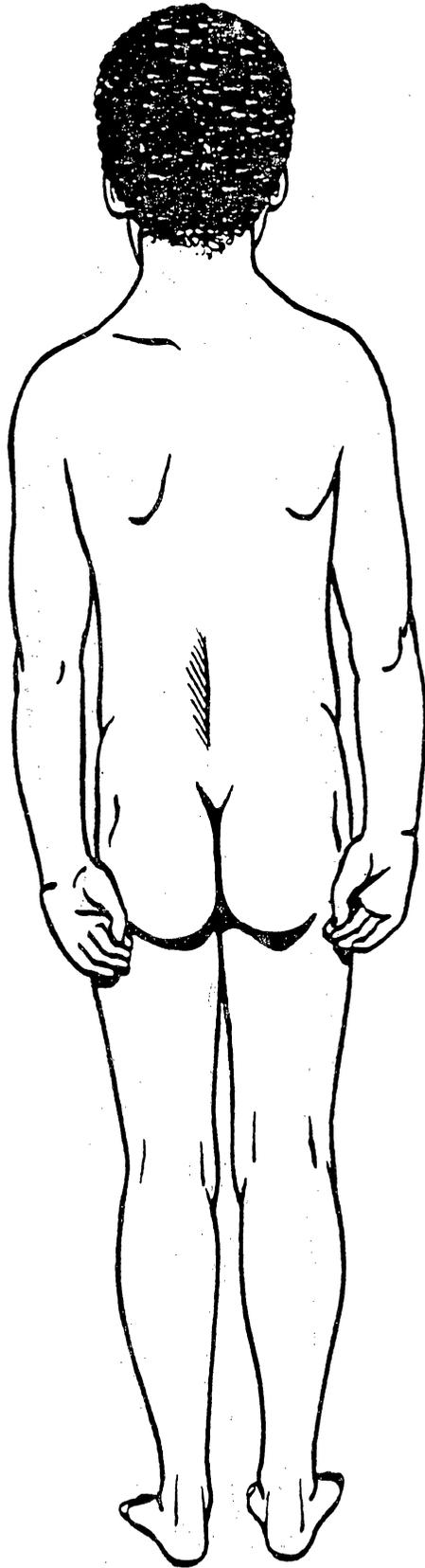
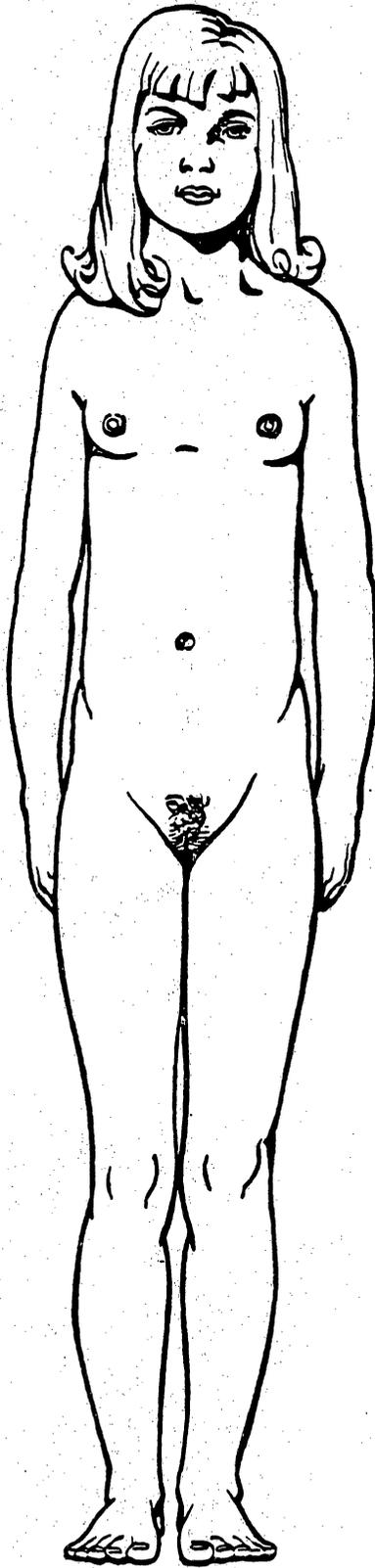
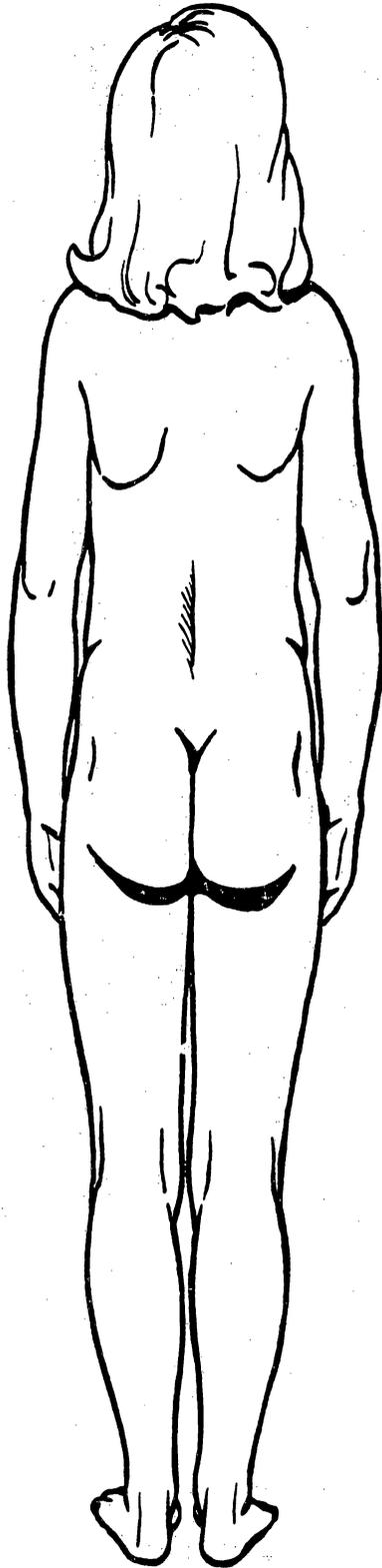


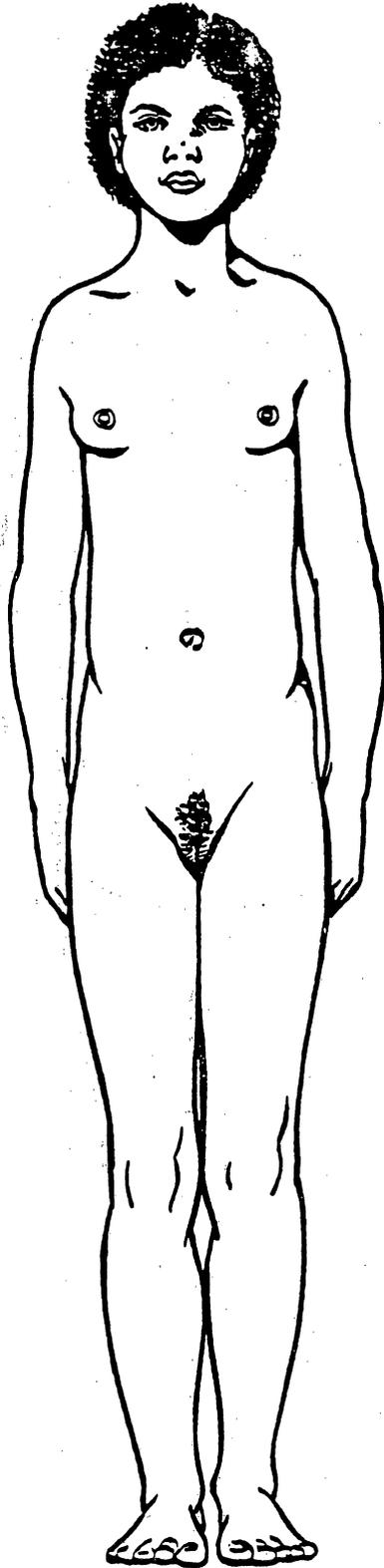
Figure 16: Black, grammar-school, male child (back view)



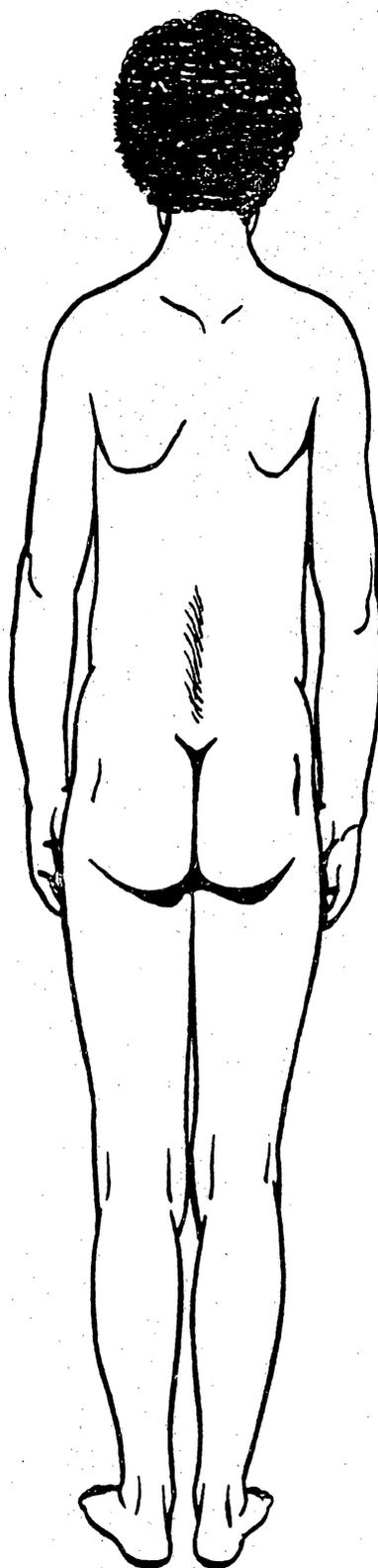
**Figure 17: White, teenage, female (front view)**



**Figure 18: White, teenage, female (back view)**



**Figure 19: Black, teenage, female (front view)**



**Figure 20: Black, teenage, female (back view)**

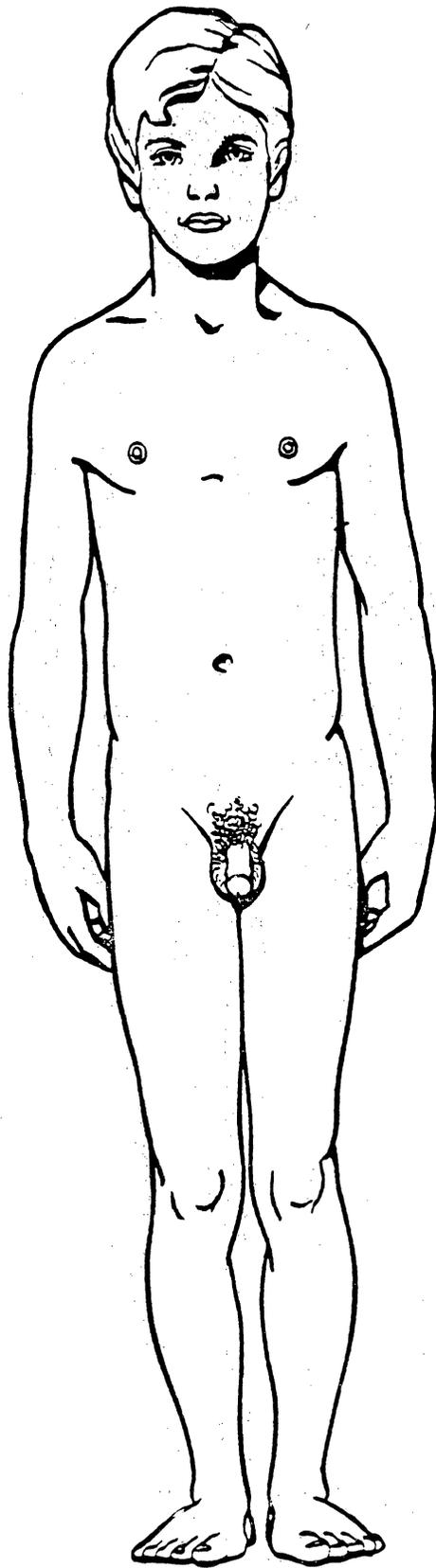
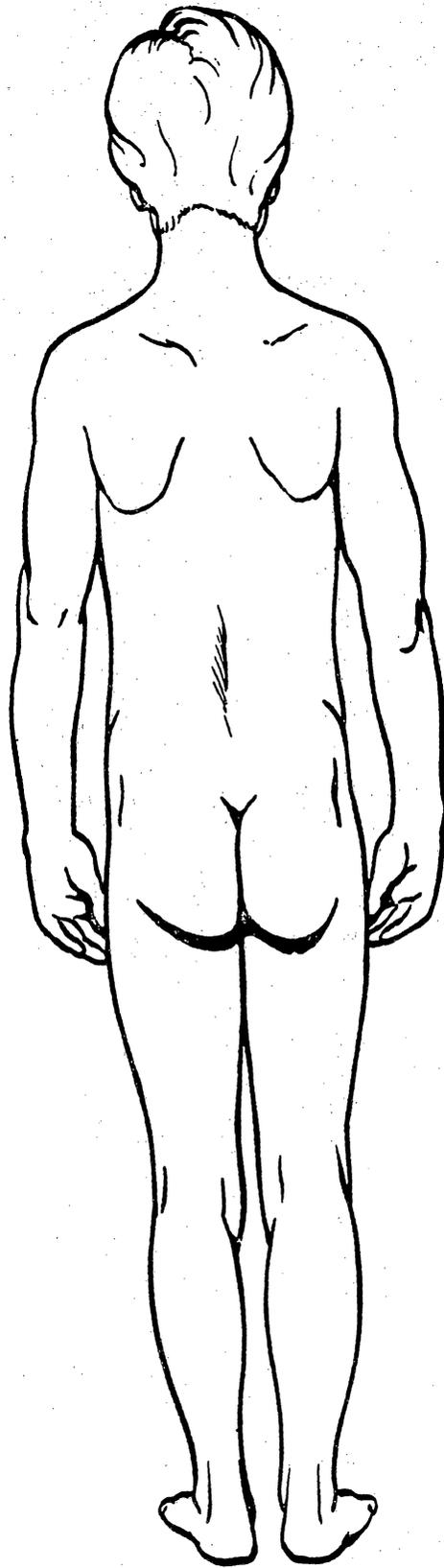
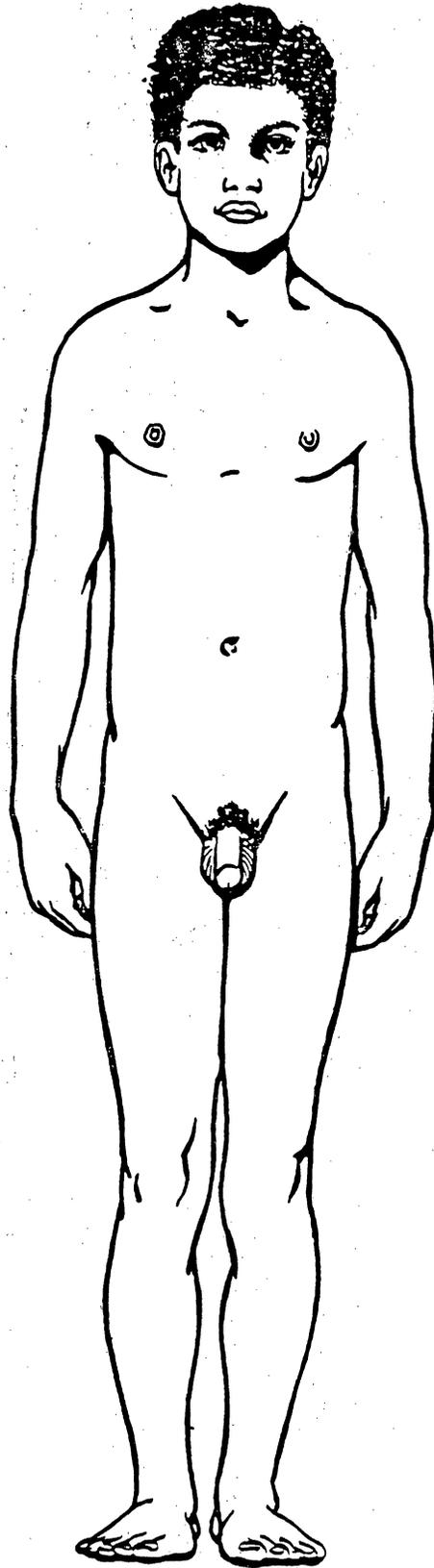


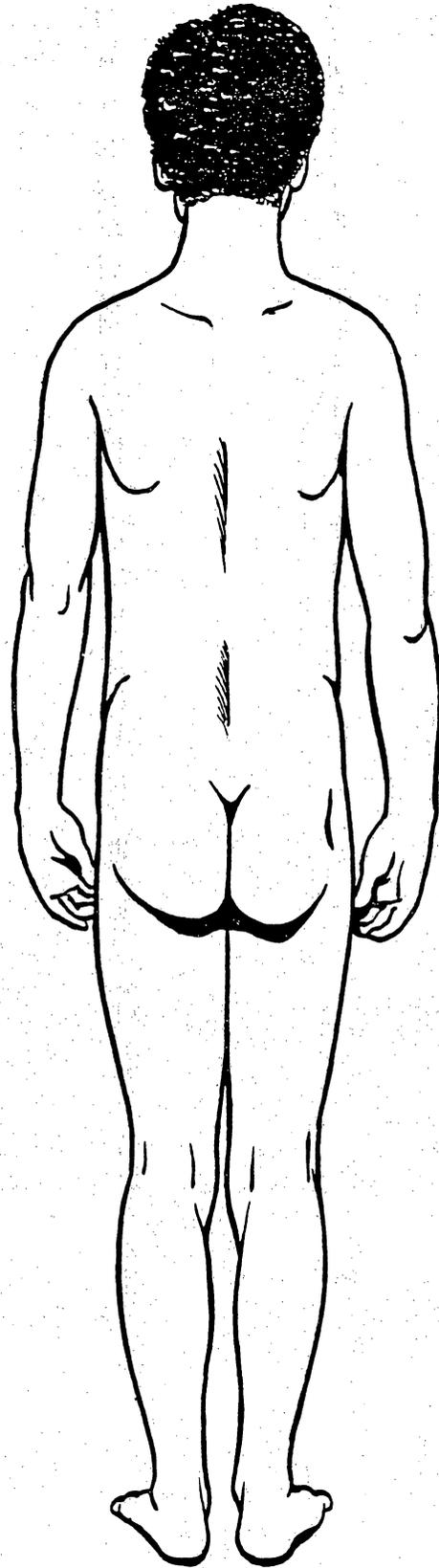
Figure 21: White, teenage, male (front view)



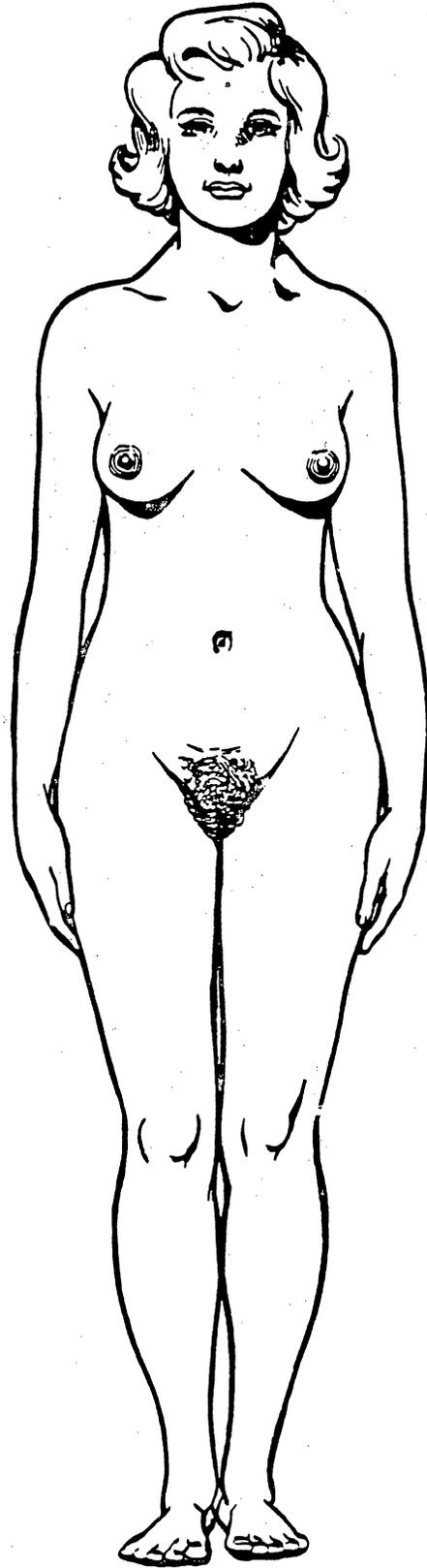
**Figure 22: White, teenage, male (back view)**



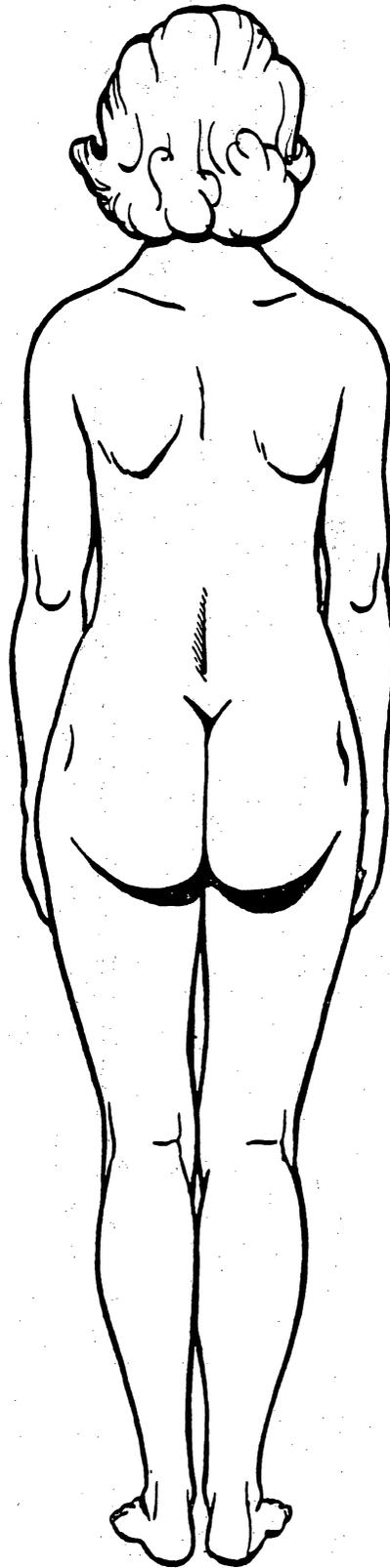
**Figure 23: Black, teenage, male (front view)**



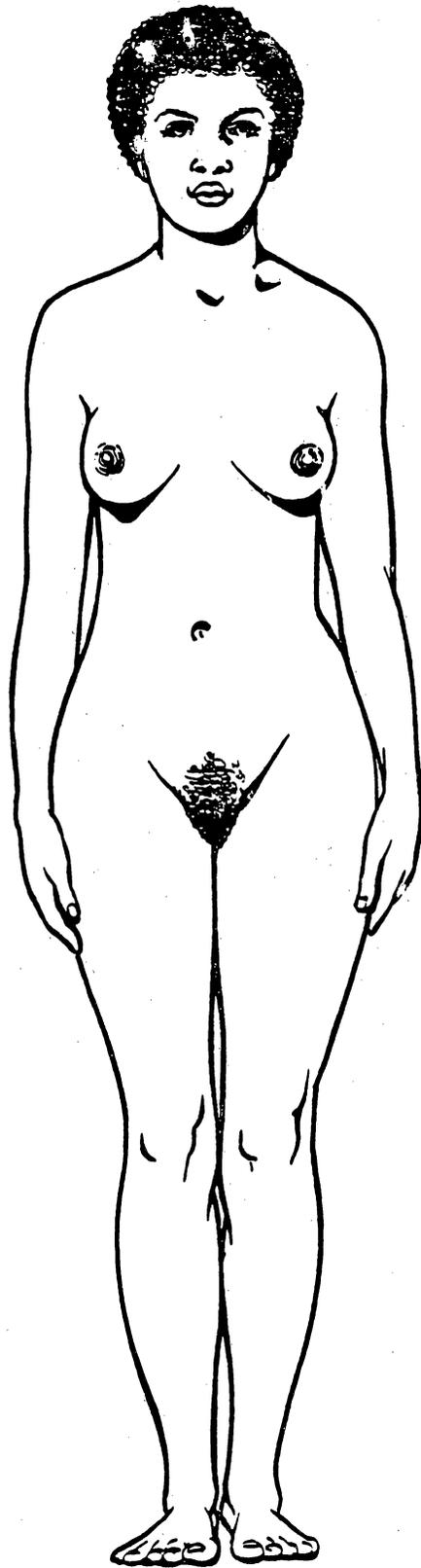
**Figure 24: Black, teenage, male (back view)**



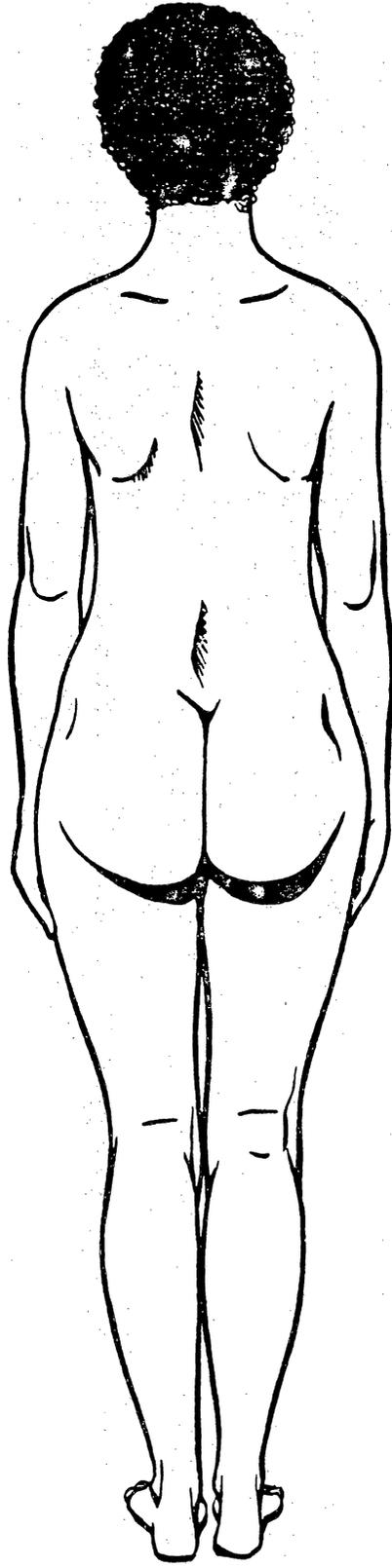
**Figure 25: White, adult, female (front view)**



**Figure 26: White, adult, female (back view)**



**Figure 27: Black, adult, female (front view)**



**Figure 28: Black, adult, female (back view)**

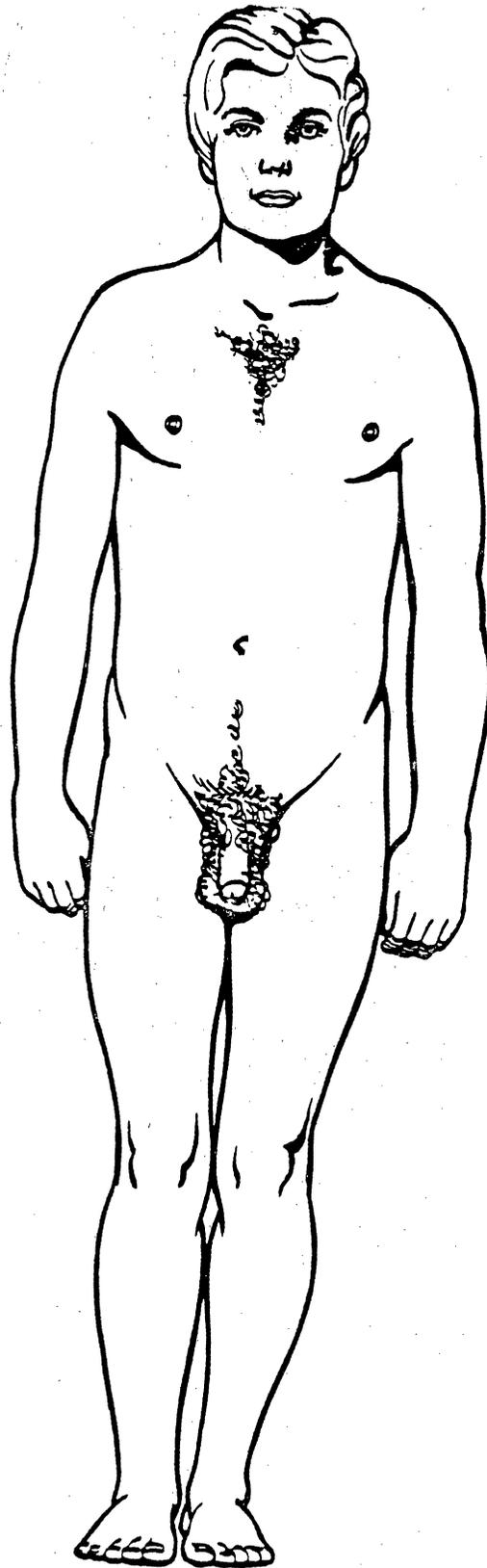
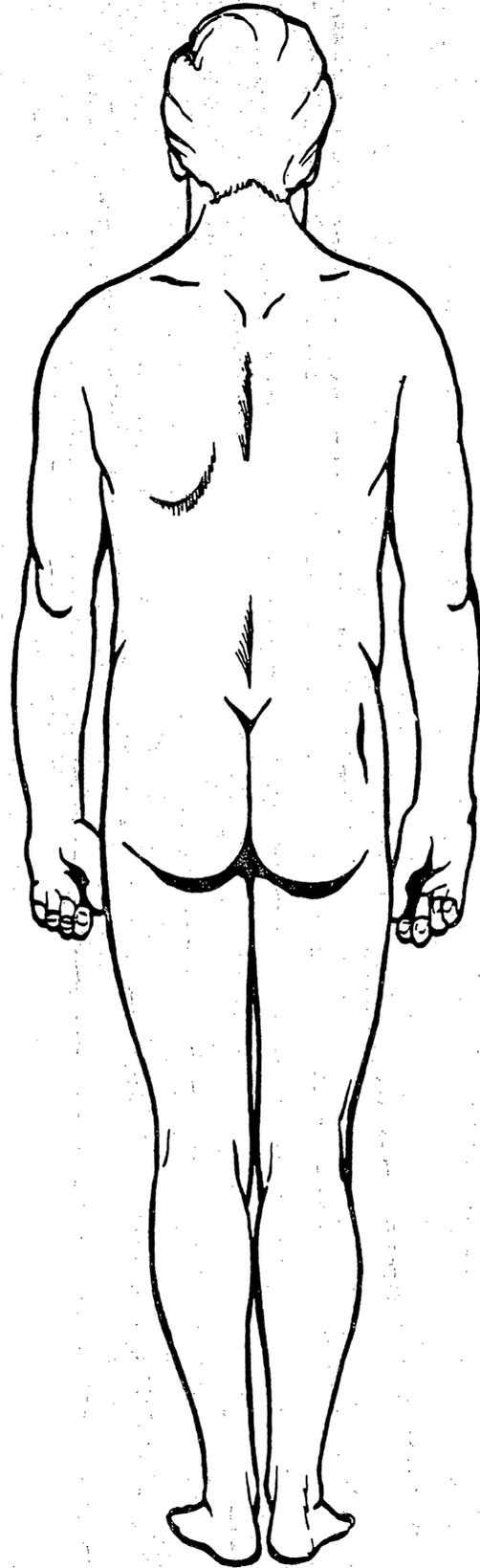


Figure 29: White, adult, male (front view)



**Figure 30: White, adult, male (back view)**

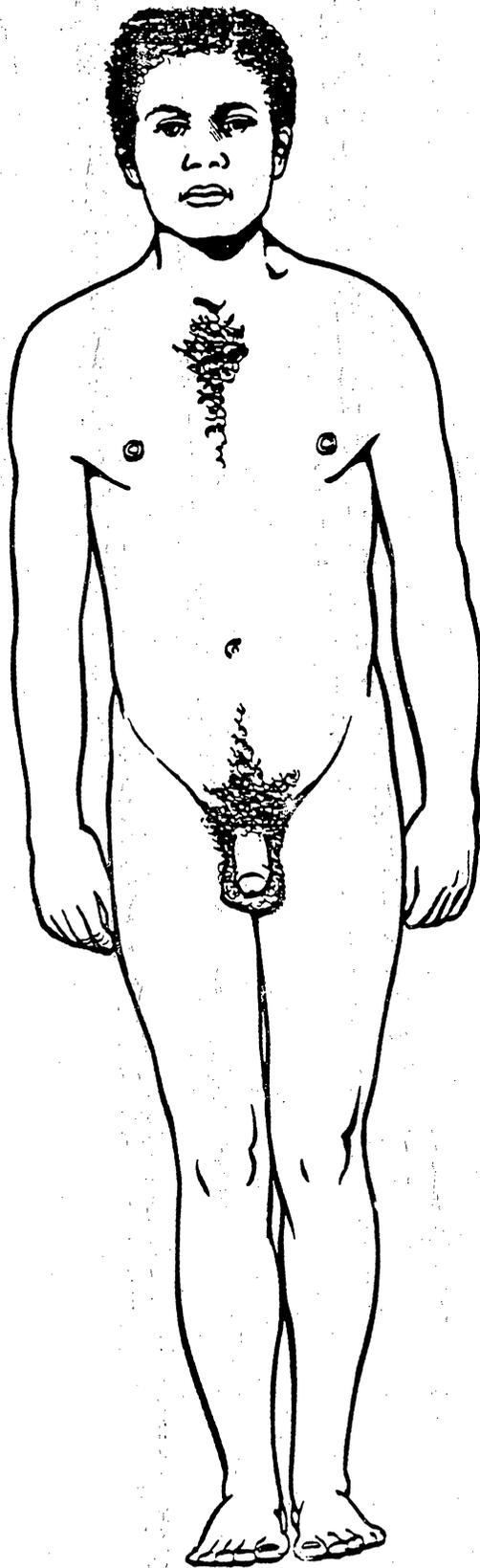
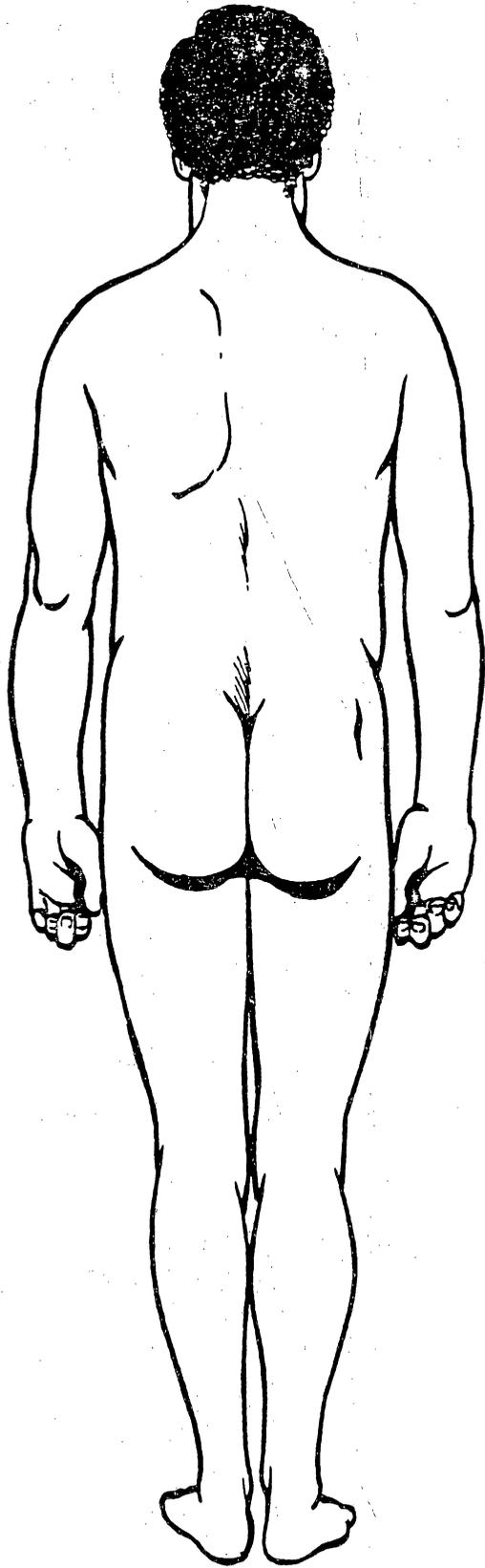


Figure 31: Black, adult, male (front view)



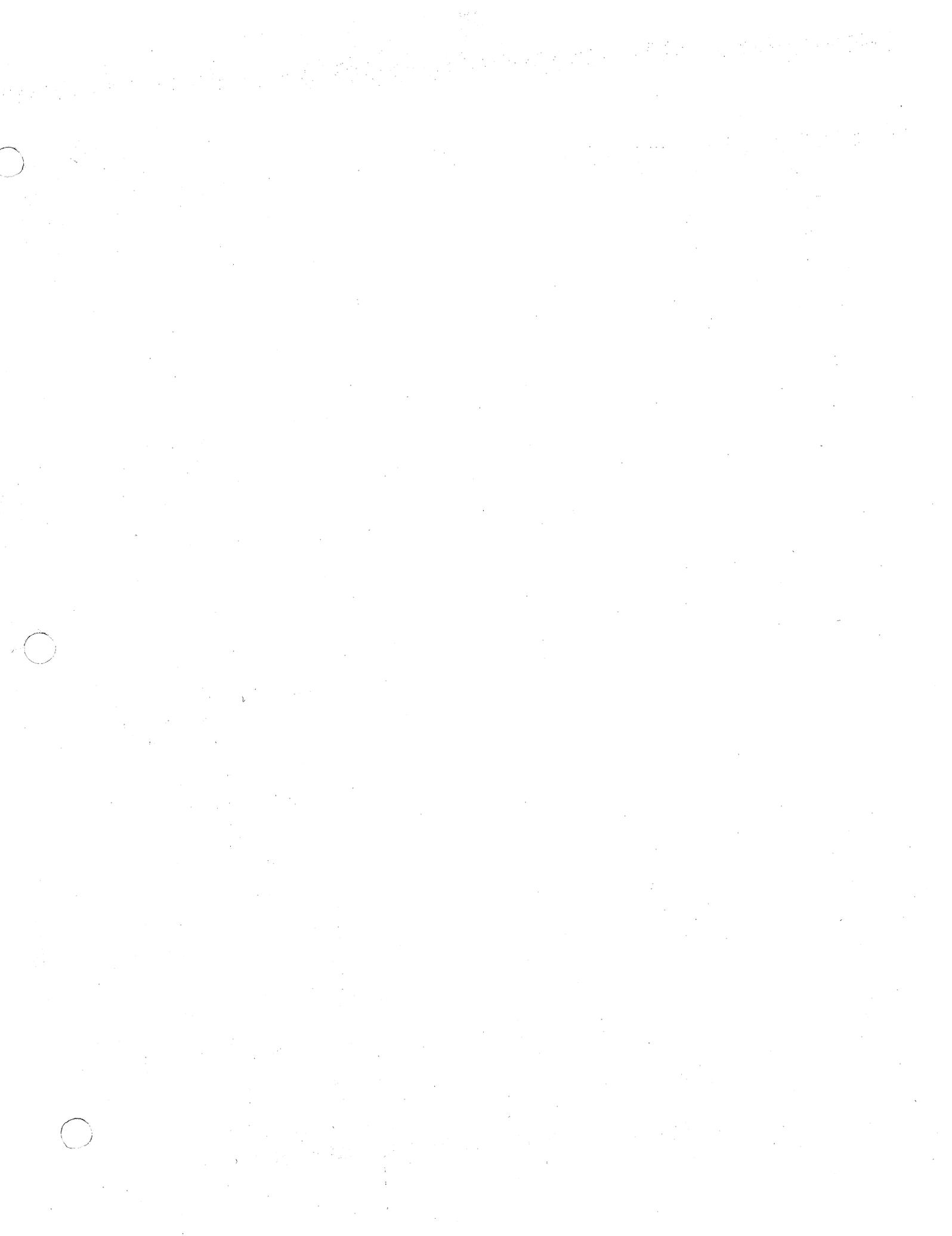
**Figure 32: Black, adult, male (back view)**

### III. 1987 ABUSE/NEGLECT STATISTICS FOR NEW JERSEY

Description	Physical Abuse	Neglect	Sexual Abuse	Physical Abuse & Neglect	Sexual & Physical Abuse	Sexual Abuse & Neglect	Physical & Sexual Abuse & Neglect	Total Children
Number of children involved in investigations by type(s) of alleged abuse/neglect:	16,450	27,057	4,573	1,651	276	199	44	50,250
Percentage of children by type(s) of abuse/neglect:	32.7%	53.8%	9.1%	3.3%	0.5%	0.4%	0.1%	100.0%
Number of children substantiated by type(s) of abuse/neglect:	7,130	10,026	1,963	169	0	0	0	19,288
Percentage of children by type(s) of abuse/neglect:	37.0%	52.0%	10.2%	0.9%	0.0%	0.0%	0.0%	100.0%
Percentage of children investigated that were substantiated by type(s) of abuse/neglect (see *):	43.3%	37.1%	42.9%	10.2%	0.0%	0.0%	0.0%	38.4%
<b>Summary of Children Involved in Investigations (see **)</b>	<b>Number</b>	<b>% of Total</b>						
Investigations:			(*) When a particular type of allegation is investigated, it is very possible that another type will be substantiated. For example, it is possible that an allegation of physical abuse could result in a substantiation of sexual abuse; an allegation of sexual abuse and neglect could be substantiated as neglect only; and so on. This explains why it is possible for the percentage of substantiations over investigations to exceed 100%.					
Involving all types of abuse:	23,193	49.2%						
Involving physical abuse:	18,421	39.1%						
Involving sexual abuse:	5,092	10.8%						
Involving neglect:	28,951	61.4%						
Substantiations:			(**) This summary cross-totals the three major allegation types by counting multiple allegations. For example, the chart above shows that out of 19,288 children substantiated, 7,130 (37%) were involved in physical abuse only. The summary adds in children from all categories where physical abuse is one of the abuse types. Therefore, 7,299 (40.5%) of substantiations involve physical abuse.					
Involving all types of abuse:	9,262	51.3%						
Involving physical abuse:	7,299	40.5%						
Involving sexual abuse:	1,963	10.9%						
Involving neglect:	10,195	56.5%						

#### ABUSE/NEGLECT STATISTICAL SUMMARY: 1983 TO 1987

Description	1983	1984	1985	1986	1987	Change 1983 to 1987	Change 1984 to 1987	Change 1985 to 1987	Change 1986 to 1987
Number of children involved in investigations:	26,398	44,368	47,126	50,413	50,250	23,852	5,882	3,124	(163)
% of year-to-year increase:						90.4%	13.3%	6.6%	-0.3%
Number of substantiations:	8,918	14,970	18,038	17,982	19,288	10,370	4,318	1,250	1,306
% of year-to-year increase:						116.3%	28.8%	6.9%	7.3%
% of substantiations	33.8%	33.7%	38.3%	35.7%	38.4%	13.6%	13.8%	0.3%	7.6%



## **IV. CITATIONS FROM THE DYFS FIELD OPERATIONS, CASEWORK, POLICY & PROCEDURES MANUAL**

### **A. Legal Authority And Responsibilities Of DYFS**

#### **201 Legal Authority and Responsibilities of DYFS to Provide Protective Services**

Both Title 9 and Title 30 of the New Jersey statutes require DYFS to investigate allegations of abuse or neglect or requests for services made either by clients themselves or on behalf of others. P.L. 98-457, a federal statute, requires each recipient state child protective services agency, when responding to reports of medical neglect, to utilize its authority under state law as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. See 202, 203, and 205 below for authority under State law.

Once the investigation has been completed, DYFS must be able to identify the conditions in the family which authorize service delivery. The authority of DYFS to provide services is found in Title 9 and Title 30. These statutes set forth conditions under which DYFS may provide services and identify those conditions for which DYFS is authorized to seek court relief.

#### **202 Authority to Provide Services**

**202.1 N.J.S.A. 30:4C-11** authorizes DYFS to provide needed services at the request of a parent, relative, interested agency, or public official, person standing in loco parentis (i.e., anyone having physical custody of the child), a person or association ... having special interest in such child, or the child himself. However, before services may be provided, DYFS must verify that:

- the welfare of the child will be endangered unless proper care or custody is provided;
- the needs of the child cannot properly be provided for by financial assistance available under State law (e.g. welfare);
- there is no legally responsible person available who is willing and **able** to provide for the child; and
- if the child suffers from a mental or physical disability requiring institutional care, he is not immediately admissible to any public institution providing such care.

**202.2 N.J.S.A. 30:4C-12** authorizes DYFS to provide services if it finds that the parent or parents, guardian, or person having custody and control of any child within this state is grossly immoral or unfit to be entrusted with the care and education of such child with proper protection, maintenance and education, or is of such vicious, careless, or dissolute habits as to endanger the welfare of such child. In order to make such a finding, DYFS must be able to show that the child has suffered demonstrable harm.

**202.3 Title 9** authorizes DYFS to provide services whenever a child is found to be abused or neglected as defined by N.J.S.A. 9:6-8.9 and 9:6-8.21. The definition below is from N.J.S.A. 9:6-8.9.

“Abused child” means a child under the age of 18 years whose parent, guardian, or other person having his custody and control:

**Actual Abuse**                      Inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;

**Risk of Injury**                      Creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; or

**Sexual Abuse**                      Commits or allows to be committed an act of sexual abuse against the child;

**Neglect**                                      Or a child whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, or other such person having his custody and control, to exercise a minimum degree of care (1) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (2) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other act of similarly serious nature requiring the aid of the court; or

**Abandonment**                      Who has been willfully abandoned by his parent or guardian, or such other person having his custody and control.

**203 Authority to Seek Court Relief**

DYFS may seek a court order for investigation under 30:4C-12 whenever any of the above conditions are **alleged** and the parent, guardian or person having custody and control of the child refuses to allow an investigation to be conducted.

Whenever conditions described in N.J.S.A. 30:4C-12 are **verified**, DYFS may seek a court order for supervision or temporary custody of the child.

Whenever the conditions described in N.J.S.A. 9:6-8.21 are **verified**, DYFS may seek a court order for temporary custody, preliminary order for medical treatment, supervision, or an order of protection.

## 204 Resistance to Investigation

Both active and passive resistance to the investigation and the offer of protective services is common and natural. The presence of resistance should not be, in and of itself, an indication of a need for court action. The worker should expect to utilize casework techniques to help the client understand the need for the investigation and any services required for the protection of the child. The worker should not force, coerce, or threaten the client in order to gain the client's cooperation.

## 205 Other Provisions

The law also provides that:

1. it is a misdemeanor for any parent, guardian or other person to abuse, neglect or abandon a child, N.J.S.A. 9:6-3;
2. DYFS shall maintain a 24 hour emergency telephone service for the receipt of child abuse reports, N.J.S.A. 9:6-8.12;
3. upon receipt of a report of child abuse or neglect, DYFS shall take immediate action to insure the safety of the child, N.J.S.A. 9:6-8.11;
4. DYFS shall forward a report of child abuse and neglect referral to the Central Registry within 72 hours of the receipt of the referral, N.J.S.A. 9:6-8.11;
5. a non-criminal process exists for the resolution of abuse and neglect cases, N.J.S.A. 9:6-8.21 et seq.;
6. in any action before the court under N.J.S.A. 9:6-8.21 et seq., both the child and the parent(s) or guardian shall be represented by legal counsel;
7. any physician, director of a hospital or his designee involved in the examination or treatment of a child may take the child into protective custody for a period not to exceed three (3) court days when the child has suffered serious injury, the probable inference from the available information is that the injury was caused by other than accidental means, and the child would normally be returned to the custody of the person suspected of inflicting or allowing the infliction of the injury, N.J.S.A. (9:6-8.16-8.20). See subsection 1100, for a description of DYFS' role in protective custody "hospital hold", situations;
8. DYFS report to the County Prosecutor any criminal conduct arising from child abuse as outlined in subsection 1200.

In order for DYFS to meet its responsibilities, the law authorizes DYFS:

1. to file a complaint with the Juvenile and Domestic Relations Court when conditions specified in the law exist, N.J.S.A. 30:4C-12 and N.J.S.A. 9:6-8.21 et seq.;
2. to remove **any other child** residing in the home in addition to the removal of one child if such removal is necessary to avoid imminent danger to his life or health, N.J.S.A. 9:6-8.33;
3. to apply to the court for a preliminary order to remove the child prior to a preliminary

hearing held when (a) removal is necessary to avoid imminent danger to the child's life or health; (b) the parent is absent or refuses to consent to the removal and (c) there is no time to hold a preliminary hearing, N.J.S.A. 9:6-8.28;

4. to remove a child from his home without the permission of the parent and without a court order prior to filing a complaint when the child is in such condition that his remaining in the home or in the custody of the parent or guardian presents an imminent danger to the child's life or health, N.J.S.A. 9:6-8.29;
5. to request and receive assistance from local and state law enforcement officials, N.J.S.A. 9:6-8.29;
6. to request from any public or private institutions, agencies or practitioners, their records past and present pertaining to a child(ren) who is a subject of a DYFS investigation of abuse or neglect, N.J.S.A. 9:6-8.40.

A complete discussion of the grounds and procedures for DYFS intervention through the court may be found in the Protective Services Litigation Manual, subsection 2402.

## **B. Legal Provisions For Court Intervention**

### **1401 Court Order**

DYFS may petition the court for:

- An Order to Investigate under N.J.S.A. 30:4C-12 when the parent refuses to cooperate or impedes an investigation and the referral of abuse or neglect alleges that the child needs protection.
- An Order for Protective Services (supervision) under N.J.S.A. 30:4C-12 when the child requires protective services, which do not necessitate his removal from his home, and the parent refuses to cooperate with DYFS in the provision of such services. This would occur in situations requiring medical or psychiatric treatment of the child, educational services, or services to ameliorate family problems that endanger the child's physical and/or emotional well-being.
- An Order for Protective Services Custody when:
  - a. DYFS determines that a child's safety requires removal and the parent refuses to consent, including a situation where one parent agrees and the other refuses to consent, N.J.S.A. 9:6-8.28 or 30:4C-12;
  - b. the child is in placement under voluntary agreement, the parent revokes the agreement and DYFS determines that returning the child to the parent would likely result in some form of demonstrable detriment to the child, N.J.S.A. 30:4C-12;
  - c. the child is in need of protection and no parent or legally responsible caretaker can be found, N.J.S.A. 30:4C-12; or
  - d. a parent is willing to sign a voluntary placement agreement but wishes to place conditions on the placement that prevent DYFS from fully carrying out its re-

sponsibility to protect the child, N.J.S.A. 9:6-8.27. In such an instance any special conditions of a placement must be written into the signed agreement.

- Special Orders when the conditions of the case require special relief in the form of probation supervision of the parent or guardian, N.J.S.A. 9:6-8.56, therapeutic services for the parent, N.J.S.A. 9:6-8.58, or setting forth condition of behavior on the part of the parent, such as: (a) staying away from the home; (b) allowing visitation of the child; (c) abstaining from offensive conduct against the child or person having custody of the child; (d) giving proper attention to the home; and (e) refraining from acts which tend to make the home not a proper place for the child, N.J.S.A. 9:6-8.55.
- Guardianship under N.J.S.A. 30:4C-15 a-d when:
  - a. after reasonable efforts to locate the parents of a child who appears to have been abandoned, DYFS should act to terminate parental rights as soon as possible;
  - b. after repeated and consistent efforts by DYFS to rehabilitate the family situation have resulted in an insufficient improvement to insure the child's safety within the family and after one year no further efforts or resources available can reasonably be expected to be successful, DYFS may act to terminate parental rights if an alternate permanent plan can be made.
- The Family Part Judge may enter an order through the CPR process or following PRS litigation recommending that DYFS initiate a proceeding for the termination of parental rights. If DYFS disagrees, DYFS has 30 days from the order to report in writing to the court its disagreement with the recommendation.

DYFS may agree with the recommendation for termination or on its own initiative determine that parental rights should be terminated so that the child may be placed for adoption. In either instance DYFS has 45 days from the order or DYFS decision to pursue guardianship to report to the court about any necessary searches. It must also hold a case conference preparatory to transferring the case from the District Office to the Adoption Resource Center. The case conference should be scheduled in order to allow the District Office to transfer the case to the ARC prior to or at the same time the report is being filed with the court. From the submission of the progress report, DYFS has 90 days to file the guardianship complaint.

#### 1402 Jurisdiction of Court Order

New Jersey orders giving DYFS custody may in fact be enforceable outside of New Jersey under the Full Faith and Credit Clause, the Uniform Child Custody Jurisdiction Act (enacted in many states) or other state law. Whether or not it is practical to attempt enforcement in another state as opposed to a simple referral to an out-of-state agency is determined on an individual case basis. When it is determined that a referral to an out-of-state agency is appropriate, DYFS immediately contacts the child welfare agency and requests its assistance. If it is agreed that court action is needed to protect the child, the child welfare agency where the child now resides may institute such action as permitted under the laws of that state. DYFS may appear in court in that state, but may not institute legal action there.

#### 1403 Duration of Court Orders

PRS orders may be granted for a period of up to 18 months under Title 9 and up to 6 months under Title 30. Each District Office is required to maintain a tickler system as a reminder of expiration dates of PRS orders. Cases are reviewed at least 6 weeks prior to expiration and a determination made as to whether an extension of the order or another type of court action is needed. If the determination is made to return the child to his home the Deputy Attorney General is notified in writing as outlined in the PRS Litigation Manual. If an extension of the order is sought, an affidavit outlining facts and occurrences since the issuance of the previous order which form the basis for the request for extension is submitted to the DAG. There is no statutory limit on the number of extensions that may be granted; however, if a child has been under DYFS custody in PRS for one year and cannot be safely placed with his family, termination of parental rights should be considered, unless there is concrete reason to believe a safe return is possible within the next six months. PRS services are goal oriented and if with the agency and court involvement, the situation has not improved within one year sufficiently to permit a child's return, then the case goal is re-evaluated and other permanent plans made if possible.

If the determination is made to return a child prior to the expiration of the order, with prior notice and agreement of the DAG, the court is advised by letter 10 days before the scheduled return. The court is notified that DYFS plans to return the child by the date scheduled unless the court objects. In no case does DYFS return a child if the court objects. See subsection 2402, Litigation Manual, regarding requirements to comply with court orders.

#### 1404 Including Other Children in Complaints

When removing a child, or taking other court action in regard to PRS families, the Case Manager should consider the other children in the home. The law allows DYFS to include siblings in a complaint when less than all are the subject of the complaint.

#### 1405 Assignment of a Law Guardian

Each child coming to the attention of the court under N.J.S.A. 9:6-8.21, et seq. and 30:4C-12 or 15 has a Law Guardian assigned to represent him in the legal proceedings. In cases brought **only** under N.J.S.A. 30:4C-12 or 15, the court appoints an attorney to represent the child.

##### 1405.1 Access to Records

DYFS must allow the Law Guardian access to the information in the child's record or family records which DYFS intends to use in the court proceedings and also that information collected during the investigation of the complaint leading to the court proceedings, Attorney General Opinion M75-1994. DYFS may request a limit of discovery as outlined in II A 1207.4 relative to records requested by the Law Guardian.

##### 1405.2 Visiting the Child

The Law Guardian must be told where his client is placed, if that information is requested. The Law Guardian may visit the child upon request. The time,

location, and whether the Case Manager accompanies the Law Guardian will be at the discretion of DYFS.

### **1405.3 Foster Home Complaints**

A Law Guardian may not visit a foster home for the purpose of evaluating that home. If a Law Guardian has a complaint about a foster home, he should notify the District Office Supervisor of that complaint. The Case Manager will promptly investigate and report his findings to the Law Guardian and the Regional Administrator via supervisory channels.

## **C. Time Frames For Initial Field Investigations**

### **504 Time Frames for Initial Field Investigation**

#### **504.1 Physical Abuse and Neglect**

The investigation of physical abuse and neglect referrals (see 504.2-.3 for sexual abuse investigations) must begin immediately upon receipt of the referral when:

- a child is currently being physically abused;
- a child has been physically injured by abuse or neglect;
- a child may need medical treatment due to abuse or neglect;
- a child is without adult supervision and not competent to provide for his own care;
- a child is in the hospital and in protective custody (hospital hold);
- a child or family known or unknown to DYFS, is in severe crisis that cannot be handled over the phone;
- there is doubt about the severity of a referral situation, an immediate investigation should be made.

If the referral indicates that a foundling has been discovered, DYFS must respond immediately unless the child is already receiving appropriate medical care and the police are already actively investigating the matter. See II C 305. When an infant or very young child appears to have been willfully abandoned and whose birth parents and family cannot be identified or located, adoption is the presumed goal and the case may be immediately opened at the ARC office for investigation and pre-adoptive placement. See II M 500.

The investigation of abuse and neglect referrals must begin within 24 hours when the referral indicates physical abuse but does not fall into the above categories for immediate investigation, e.g., a report indicates that a child had been abused in the past, evidence of the abuse is no longer present, and there is no evidence that abuse is likely to occur within the 24 hour period following the referral.

The decision to investigate in 24 hours instead of immediately must have supervisory approval.

The investigation of abuse and neglect referrals must begin within 72 hours when:

- the referral indicates physical neglect which does not require immediate investigation as in the above categories; or
- the referral indicates emotional abuse or emotional neglect not precipitating a current crisis requiring immediate field investigation as in the above categories.

With D.O. Manager approval the 72 hour time frame may be extended to 3 working days.

#### **504.2 Sexual Abuse Investigations**

Sexual abuse investigations, like those of other abuse and neglect, require that an overall assessment of referral information be made prior to and in preparation for field investigation.

The following factors are taken into account at the time of referral:

- safety of the child,
- physical trauma/evidence,
- access of alleged perpetrator to the child,
- primary or hearsay referral information,
- level of violence,
- predictability of sexual abuse, i.e., ongoing abuse, one-time occurrence, old incident(s),
- psychological trauma/crisis,
- specific or vague allegations,
- age of the child,
- law enforcement cooperation, protocol or knowledge of incident prior to DYFS referral.

However, unlike other investigations, investigations of sexual abuse frequently require some time to plan and coordinate, particularly with medical and law enforcement personnel. So that the investigation is not compromised, the Case Manager should:

- interview the child in a setting which is neutral and allows him to feel safe;
- interview the perpetrator after the victim;

- plan for the protection of the victim;
- get medical documentation of evidence of assault.

### 504.3 Time Frames for Sexual Abuse Investigation

Referrals of sexual abuse must be investigated immediately when:

- a child is currently being sexually abused;
- there is evidence of physical trauma and/or the presence of other evidence of sexual assault, or
- the family or child are in psychological crisis which cannot be handled over the telephone; or
- there is doubt about the severity of the referral.

Investigation of all other sexual abuse referrals are to begin as soon as possible taking into consideration factors outlined in 504.2 absent the above exceptions **and** within 72 hours of receipt of the referral. Law enforcement is notified as outlined in subsection 1200 and arrangements are made to coordinate the investigation.

When law enforcement is proceeding with its investigation regardless of the above considerations, DYFS must begin its field investigation.

## D. Protective Custody on "Hospital Hold"

### 1101 Protective Custody Law

N.J.S.A. 9:6-8.16 to 8.20 authorizes a physician or hospital director to take a child into protective custody for up to a period of three court days when the child has suffered serious physical injury and the most probable inference from the medical and factual information supplied is that the injury was not accidental and the suspected perpetrator is the person into whose custody the child would normally be returned. This protective custody "hospital hold" gives temporary legal custody of the child to the hospital or doctor. It does **not** give DYFS legal custody of the child. Upon initiating the "hospital hold" the hospital is required by law to immediately refer the situation to DYFS.

### 1102 Purpose

The purposes of this "hold" are to prevent the return of the child to the person suspected of having caused the abuse or neglect and to provide time for DYFS to investigate the allegation.

### 1103 Who Initiates the "Hold"

Any physician, director of a hospital, or his designee may initiate the "hold." DYFS staff may **not** initiate a "hold."

If it is the opinion of DYFS staff that it would be helpful in a particular case for a physician or hospital to invoke a "hold" on a child, it may be suggested. However, if the physician or hospital is unwilling to do so, it is the obligation of DYFS to obtain custody of the child through the court or provide other necessary protective action.

#### **1104 When a "Hold" May Be Initiated**

The "hold" may be initiated at the discretion of a physician, hospital director, or his designee when he suspects that a child's condition is the result of abuse or neglect.

A "hold" may not be initiated when:

1. DYFS has legal custody of the child and a DYFS staff member has accompanied the child to the hospital, or
2. DYFS has acted under N.J.S.A. 9:6-8.29 to remove the child without consent or a court order.

#### **1105 Notifications**

The physician, director of the hospital, or his designee invoking the "hold" must notify DYFS immediately either through the OCAC hotline or the appropriate District Office. In all cases, even when a hospital has informed the parent(s), DYFS must inform the parent(s) of the action taken by the hospital. DYFS must give the parents written notice of the "hospital hold" and a verbal explanation of its meaning and consequences. Form letters, DYFS 14-47 and DYFS 14-47A are available for this purpose.

#### **1106 Investigation**

DYFS investigation must begin immediately upon receipt of notification from the doctor or hospital that a "hold" has been invoked. It is not acceptable for DYFS to delay action until the child is ready for discharge and then request a "hospital hold" to permit DYFS more time to make a determination and plan.

The worker should immediately arrange to see the parent(s), child, attending physician, and any other person(s) with knowledge of the circumstances of the case. The investigation should proceed in accordance with policy and procedures outlined in subsection 500.

#### **1107 Services**

If the investigation indicates that services are necessary for the protection of the child, DYFS must offer services to the family. Court action may be sought if the circumstances so warrant.

#### **1108 Rights of Parent(s) to Visit**

While the child is in the hospital and under the hospital's protective custody, the parent(s) may request to visit the child. Visitation may be granted at the discretion of

the physician, hospital director, or his designee provided that the life or health of the child will not be endangered by the visit. The DYFS Case Manager with the approval of an Assistant Supervisor may recommend whether visitation should be granted.

When there is a difference of opinion regarding the parent's visiting the child, DYFS and hospital personnel should confer to resolve the difference. Since the hospital or physician has temporary legal custody, the final decision rests with the hospital or physician unless DYFS gains custody through court action.

#### **1109 Termination of the Protective Custody**

The "hold" will be terminated automatically when the three court days are over, anytime during the three days if the hospital or physician decides to release the child to the custody of the parent(s), if the court orders custody returned to the parent, or orders the child into DYFS custody. The hospital's protective custody may be terminated before the end of the three day limit at the discretion of the physician, hospital director or his designee. A recommendation by DYFS to terminate may be made by the District Office Manager or his designee.

When there is a difference of opinion regarding termination of the "hold," DYFS and hospital personnel should confer to resolve the difference. Since the hospital or physician has temporary legal custody, the final decision rests with the hospital or physician unless DYFS gains custody through court action.

If the protective custody is terminated by the physician or hospital against the judgment of DYFS and DYFS determines that the child requires protection, court action may be initiated.

### **E. Removal From The Home**

#### **1301 Conditions**

The decision to remove a child from his home must be weighed carefully. The protection of children and the preservation and improvement of family life are sometimes in conflict with each other. When this conflict exists, protection of the child must take precedence, at least temporarily, until such time as it is determined that the family situation has improved sufficiently to insure the child's safety within the home.

#### **1302 Legal Authority**

When the statutory definitions of abuse, neglect, or abandonment are met as outlined in subsection 300, the law authorizes removal by DYFS under the following conditions:

##### **1302.1 With Consent of the Parents**

When DYFS determines that a child should be removed from the natural home, and the parents or other person legally responsible for the child's care and custody are in agreement with the plan, the child may be removed. The agreement to allow DYFS to carry out the plan for removal must be an informed agreement. The parents must be told what has led the worker to believe the removal is necessary and what will happen to the child. No threats may be

made to elicit the consent. Both parents must sign the Foster Care Agreement, DYFS Form 10-3. If either of the parents refuses to sign the agreement, and verbally agrees to place the child or otherwise acquiesces in the removal of the child, the child may be placed. DYFS then must file a complaint for custody, or return the child within three days. If one parent signs a voluntary placement agreement and the other parent acquiesces in the placement but does not sign the agreement, the child may be placed. The DAG must be consulted in these situations to determine advisability of court action. When the parents cannot be located to sign a placement agreement, the agreement may be signed by an adult relative or any other person entitled to sign an application. However diligent efforts must be made to locate and notify the parents and must be documented and kept in the case record. When the parent contacts or is contacted by DYFS regarding the child's placement, DYFS must obtain authority for placement.

Whenever a voluntary agreement for placement is signed, the parent or guardian must be advised of the requirements of the Child Placement Review Act necessitating a court hearing within 15 days of placement.

The parent must sign a placement agreement or DYFS must either return the child to his home within five days or obtain a court order to retain temporary custody. In no case may DYFS retain custody of the child against parental wishes unless a court order is obtained.

#### **Parent Revokes Agreement**

If, subsequent to signing the placement agreement, the parent revokes that agreement, DYFS shall have reasonable time (up to 5 days) to return the child or obtain an order from the court continuing the child in DYFS custody.

### **1302.2 Without Parental Consent But With a Court Order**

Under both Title 9 and Title 30, DYFS may file a complaint with the Juvenile and Domestic Relations Court for an order allowing DYFS to remove a child from his home without the approval of, or in the absence of, the parents. The order to remove a child may be either written or verbal. To obtain the court order the Assistant Supervisor or Litigation Specialist must consult with the DAG to determine if there is sufficient basis to petition the court for an order to remove the child and to determine under which law the petition should be filed. Emergency orders, written or oral, should be requested when the danger to the child appears to be such that there is insufficient time to hold a preliminary hearing.

#### **Disagreement with DAG**

If the DAG does not find sufficient cause for court action, but DYFS determines the safety of the child demands his removal or other court action, the situations should be referred by memo (or by telephone in an emergency) to the Regional Administrator or his designee for resolution with the supervising DAG. If there is no resolution between the Regional Administrator or his designee and the supervising DAG and DYFS still determines that court action is necessary, the Regional Administrator or his designee shall request assistance from the Office of Regulatory and Legislative Affairs (ORLA) to determine whether the argu-

ment should be pursued at a higher administrative level. In no case is DYFS to agree to abandon the pursuit of court action if this is against their professional judgment of what is necessary to protect the child. If, in the District Office's judgment, the case is of an emergency nature, the above policy is to be implemented by telephone.

### **1302.3 Without Parental Consent and Without a Court Order Under Title 9**

Only the police, designated probation officers or DYFS may remove a child from his home without the consent of the parents and without a court order. Removal may occur in this manner only when there is imminent danger to the life or health of the child.

When a worker has been refused permission to remove a child by the parent and it appears that leaving the home to complete the necessary procedures for a court action would endanger the child, or that the parents might leave the home to avoid being located, the worker must attempt to telephone a Supervisor to have the Supervisor complete the necessary procedures to initiate court action. When the worker is unable to leave and unable to communicate with the Supervisor, and the child is in imminent danger, the worker must act under Title 9 and remove the child without a court order. If this cannot be accomplished without endangering the worker, the police must be summoned immediately.

When a child is removed without a court order, a complaint must be filed and a hearing must be held by the Juvenile and Domestic Relations Court on the next court day following the removal unless the child is returned or the parent signs a placement agreement prior to that time.

### **1303 Notification to Parent(s)**

The worker must provide the parent with a DYFS 21-6, informing the parent in writing of the action being taken, when and where the hearing will be held and the authority under which the worker is taking the action.

#### **1303.1 Parents Not in the Home**

In the case where the parent is unavailable to accept the DYFS 21-6 (child left alone—parent cannot be located), the worker should leave the DYFS 21-6 in the home for the parent to find upon his return.

### **1304 Child Not in Home**

If a child is away from home and away from his parents at the time of the investigation, an emergency removal may be made only if:

- the parents cannot be contacted to agree to the removal or they refuse to agree to the removal;
- there is imminent danger to the child where he is or in continuing in his parents' custody; and

- there is insufficient time to file a complaint and obtain at least a preliminary order under N.J.S.A. 9:6-8.28.

#### 1304.1 School Removal

Removing a child from school is permissible in the following circumstances.

- In physical abuse situations when the parents are assessed to be a threat to the child and confrontation among child, parent and case manager is likely to bring about physical injury to that child, **and** police are either unable or unwilling to escort the DYFS case manager into the home.
- In emotional and sexual abuse situations when confrontation between parent and child is likely to cause severe, unusual and potentially irreversible emotional or psychological damage to the child.
- When the strategy of removing the child from his/her home is likely to make the child vulnerable to an attempt by the parents to take custody and flee with that child, **and** the local law enforcement agency is unable, unavailable, or unwilling to escort the case manager and child into that home.

#### 1304.2 School Authorization

When it is necessary to remove a child from the school, the case manager is to provide the building principal or any other appropriate school authority with a copy of the court order granting DYFS custody of the child **prior** to the removal. The court order is the legal documentation required by the school authority to indicate that he has acted in accordance with the law. The complaint is a confidential document and **is not** to be provided to school authorities.

### 1305 Social Conditions for Removal

When the statutory requirements are met, it is DYFS policy that the decision to remove a child be made when **there is substantial risk of injury or death if the child remains and that risk cannot be alleviated by any resources currently available to DYFS or the client**. The following are situations in which removal should be carefully considered. The mere presence of any condition is not in itself grounds for removal, but forms the basis for evaluating the total situation.

- Child has been injured in the past, especially if the injuries were chronic and/or serious.
- The parent has little control over his own behavior, which impacts on the condition of the child. This may include parents who are mentally ill, alcoholic, addicted to drugs, or so mentally retarded that they lack the ability to recognize and/or control or alter their behavior.
- The relationship between the parent and the child is one of extreme ambivalence and negativism resulting in parental hostility, rejection and aggression toward the child which is or is likely to be characterized by violence. This situation may or may not be one in which the child is an active participant in providing and continuing the destructive relationship.

- The family is experiencing serious disruptions which consume all parental energies and the parent has no personal resources to devote to the child until the crisis is resolved.
- Repeated attempts by DYFS utilizing all available resources have consistently failed to correct the family situation and the child has been and will continue to be placed in jeopardy by abuse or neglect.
- Child has suffered serious injuries and DYFS has been unable through a thorough investigation to gather enough consistent information to determine potential risk to the child. Placement should occur while more diagnostic work is done, such as psychological and psychiatric evaluation of child and parents, additional collateral contacts, and detailed review of all available information by DYFS and medical and psychiatric consultants.
- There is sound reason to believe abuse or neglect is occurring and the parent is unwilling or unable to take sufficient corrective action. This may occur when a parent refuses to acknowledge a problem or take any measures to resolve it, or it may occur when the measures a parent is willing to take are not sufficient to alleviate the problem, e.g., a parent may agree to day care, but refuses help with the family or home conditions that precipitate and contribute to an abusive situation, or child is in need of medical treatment to save his life and protect his health and parent for religious or other reasons refuses to provide treatment that meets the child's needs.
- A child has been abandoned or is inadequately supervised as defined in subsection 305. In cases where a child has been abandoned as in the first definition in subsection 305, a petition for custody should be filed immediately. Diligent efforts to locate the parent should continue for six months. If the parent is not located in six months, a petition for guardianship should be filed.
- The Division has reason to believe that a child recently added to a family by birth or by some other means may be at risk of maltreatment because: the parent(s) has been known to the Division in the past **and** the court has substantiated that children under the care and supervision of that parent(s) have been abused or neglected **and** the Division has reason to believe that the conditions leading to the abuse or neglect in the past have not changed **or** the Division is unable to determine whether or not those conditions have changed.

### 1306 **Other Persons or Agencies Seeking to Remove or Removing a Child**

If any person or agency acting under Title 9 notifies DYFS that they intend to seek a court order to remove a child from his home, it is the responsibility of DYFS to immediately initiate an investigation. If that investigation substantiates abuse and indicates removal is necessary, the worker must advise the complainant that DYFS will act to obtain a voluntary placement, court order to remove or emergency removal as the situation warrants. If the investigation indicates that abuse has occurred but removal is not necessary, it is the responsibility of DYFS to formulate a treatment plan and advise the complainant of its actions. If the investigation does not substantiate abuse, DYFS is to advise the complainant of its decision and the results of the investigation. In the latter two situations, if the complainant does not accept the DYFS decision not to remove the child, he is to be advised of his right to file a complaint. DYFS must not prevent access to the court. The worker is not to give legal advice or prepare legal papers.

If the complaint is filed DYFS makes the results of its investigation available to the attorneys and assists the court as needed in making a disposition. DYFS has authority under the law to adjust cases outside of court, before or after a complaint is signed. If DYFS can make a satisfactory plan for the child without court action, it is the worker's responsibility to obtain agreement between all parties involved.

**1307 Notification to Central Registry**

DYFS must report to Central Registry within 24 hours any notification by a person or other agency that they intend to seek a court order to remove a child from his home because of abuse or neglect. This notification is recorded as any other referral on a DYFS Form 9-7.

**F. DYFS/Prosecutor Disagreement**

**1201 The Law**

New Jersey Law, N.J.S.A. 9:6-8.36a, requires DYFS to report to the County Prosecutor those cases of alleged abuse and/or neglect that involve suspected criminal activity on the part of a child's parent, caretaker, or any other person. Rules for compliance with this law have been issued in the New Jersey Administrative Codes 10:129-1 et seq. (See appendices 2419).

**1202 Reportable Conditions**

Case Managers are obligated to report to the Prosecutor cases involving suspected criminal conduct on the part of a parent, caretaker, or any person. Reports must be made regardless of the child's residence, with whom the child lives, or the child's relationship to the alleged perpetrator. This obligation will be satisfied if Prosecutors receive referrals on all cases involving any of the following:

1. death of a child;
2. the subjecting or exposing of a child to unusual or inappropriate sexual activity;
3. any type of injury or condition resulting in hospitalization or more than superficial emergency room treatment;
4. any type of injury or condition that requires more than superficial medical attention (e.g., treatment for a broken bone at physician's office);
5. repeated instances of physical violence committed against a child, or substantially depriving a child of necessary care over a period of time; or
6. abandonment of a child.

Previous nonreported incidents relative to conditions one through six and situations involving religious based refusal to consent to medical treatment relative to conditions one through six must be reported to the Prosecutor.

Routine medical care sought/received through a hospital emergency room should be

treated in the same way as routine medical care sought/received through a physician, clinic or HMO.

Sexual activity occurring between children, whether voluntary or forced, is reportable to the Prosecutor when there is reason to believe that such activity may have occurred (or cannot be ruled out) **and** when there is reason to believe that the caretaker, e.g., foster parents, institutional staff, etc., may have contributed to the situation by their failure to take reasonable steps to prevent its occurrence or recurrence.

Sexual advances or activity between a caretaker and a child is reportable to the Prosecutor whenever such activity is confirmed or even suspected.

### 1203 **Accidental vs. Nonaccidental**

While several of the criteria set forth above are based solely upon the objective condition of the child, there should also be some reason to believe that the injury or condition was not accidentally caused. If, upon investigation, it appears to the Case Manager that a child was most likely injured in an accident (not involving gross negligence on the part of the parent or caretaker), and from DYFS point of view the case would be considered closed, there is no suspected criminal activity to be reported to the Prosecutor. However, for purposes of these guidelines an injury is not accidental if a parent committed an intentional act that produced an unintended result. For example, a parent who physically disciplines a child, may have committed child abuse if the child is injured even though the parent did not intend to cause the injury.

### 1204 **Refusal to Provide Medical Care on Religious Grounds**

If a child's condition is reportable under the guidelines (one through six) but appears to be the result of parental refusal to provide medical care on religious grounds, the case must be referred. However, the Case Manager should be careful to note the parent's religious based explanation on the reports to the Prosecutor. Normally the Case Manager would recommend no investigation in this situation. Cases involving religious based refusal to consent to medical treatment but which do not fall within the reporting guidelines need not be referred to the Prosecutor. In either case, usual hospital and legal procedures should be followed to provide the necessary treatment.

### 1205 **Other Cases**

Although the Case Manager's legal obligation will be satisfied by referring to the Prosecutor all cases outlined in 1202, **Reportable Conditions** any other case may also be referred if in the judgment of the Case Manager and Supervisor the circumstances warrant review by the Prosecutor.

### 1206 **When to Report**

DYFS's duty to refer a case to the Prosecutor arises as soon as the Case Manager has any information about the case which leads him to suspect that the alleged abuse or neglect may have occurred. This does not mean that the worker must have completed an investigation and secured solid evidence of abuse or neglect. Rather, cases falling within 1202, **Reportable Conditions** must be referred at the point at which the worker

has some suspicion that the child's injury or condition probably was not accidentally caused. Reporting is required when:

- a determination that the child's condition is one of those outlined in 1202, **Reportable Conditions**, and
- there is reason to believe that the condition or injury was not accidentally caused.

In some cases, such as where the child is in a hospital and a doctor states that in his opinion the injury was probably not accidental, the Case Manager will have sufficient knowledge to warrant a report at a very early stage of the investigation. In other cases, such as where evidence initially supports the parent's story that an injury was accidental, the duty to report may not arise until a later point when the Case Manager has conducted a more extensive investigation.

#### **1216 DYFS/Prosecutor's Office Disagreement About Whether DYFS Should Intervene**

The child's needs must take precedence over the conduct of a criminal investigation whenever there is a question about the child's welfare and/or physical safety. For this reason, procedures were developed for resolution within 24 hours when DYFS and a prosecutor's office disagree about whether DYFS should intervene while both agencies are investigating an abuse/neglect situation.

DYFS and other agencies named below are to proceed as follows:

##### **A. Level A Resolution**

Where the DYFS Family Service Specialist and a member of the Prosecutor's staff disagree on whether a child's safety is "at risk" and DYFS should intervene, the matter will be immediately referred to the DYFS District Office Manager and the assigned Assistant Prosecutor to resolve the issue.

##### **B. Level B Resolution**

If agreement is not reached at level A, the matter will be immediately referred to the Director of the DYFS Management Team and to the County Prosecutor for resolution.

##### **C. Level C Resolution**

If the matter cannot be resolved at level B, it will be immediately referred to the Commissioner of the Department of Human Services and to the Director of the Division of Criminal Justice, or his designee, for resolution.

##### **D. Time Limit for Resolution**

If the matter is taken to level C, a decision nevertheless shall be reached within 24 hours from the time of the original disagreement.

## V. STATE BOARD OF EDUCATION RESOLUTION ON CHILD ABUSE & NEGLECT

### RESOLUTION

WHEREAS, the Governor's Task Force on Child Abuse and Neglect has recommended that the State Board of Education and the Commissioner of Education call attention to the responsibilities of the educational community regarding cases of child abuse and neglect, and

WHEREAS, the State Board of Education is deeply concerned with the physical, emotional and psychological health and well-being of the children within the educational system in the State of New Jersey, and

WHEREAS, the State Board recognizes the tragic reality that too frequently children are abused, molested and/or neglected by their parents, guardians, and other persons, and

WHEREAS, the State Board realizes the significant contribution which the Department of Education and the local educational community can make toward preventing and intervening in instances of child abuse or neglect, and

WHEREAS, the State Board and the Commissioner acknowledge that, pursuant to **N.J.S.A. 9:6-8.40**, school officials and employees are required to fully cooperate with the Division of Youth and Family Services in the Department of Human Services in the investigation of child abuse cases, and are therefore required to:

1. report cases directly to DYFS;
2. release to DYFS all records past and present pertaining to the child or children under investigation;
3. permit DYFS to physically view the child or children in question;
4. permit DYFS to interview the child or children in the presence of a school official; and
5. permit DYFS to interview any personnel who may have information relevant to the investigation, and

WHEREAS, the State Board and the Commissioner recognize that in addition to reporting cases of child abuse, the schools, through information on interpersonal relationships and parenting offered within the local family life education curriculum, have the potential to educate for prevention of these tragic occurrences in the future, now therefore be it

RESOLVED, that the Commissioner of Education will develop informational materials and training programs about prevention and early recognition of child abuse which local school officials may use within the framework of the local family life education program, and be it

**FURTHER RESOLVED**, that the State Board and the Commissioner urge local boards of education to distribute information and to conduct training programs for school officials and employees about child abuse and neglect, its place in the local curriculum, and their responsibilities pursuant to **N.J.S.A. 9:6-8.10** which requires any person having reasonable cause to believe that a child has been the victim of abuse or neglect to promptly report same to the Division of Youth and Family Services.

**President, State Board of Education**

**Secretary, State Board of Education**

**November 7, 1984**

## MIRANDA WARNING

1. You have the right to remain silent and refuse to answer any questions.
2. Anything you say may be held against you in a court of law.
3. You have the right to consult with an attorney at any time and have him present before and during questioning.
4. If you cannot afford an attorney, one will be provided if you so desire prior to any questioning.
5. A decision to waive these rights is not final and you may withdraw your waiver whenever you wish either before or during questioning.

I acknowledge that I have been advised of my constitutional rights.

---

Accused or Suspect

---

Advising Officer

Witness

Date \_\_\_\_\_ Time \_\_\_\_\_

# **Recognizing and Reporting Institutional Abuse**

**Prepared for  
Governor's Task Force  
On Child Abuse and Neglect**

# TABLE OF CONTENTS

I. OVERVIEW .....	1
II. INSTITUTIONAL ABUSE - Reviewed at a Glance .....	4
A. What is an INSTITUTION? .....	4
B. What constitutes INSTITUTIONAL ABUSE or NEGLECT of a child? .....	4
C. Who is a CARETAKER? .....	5
D. WHEN should a report of institutional child abuse be made? .....	5
E. WHO should report institutional child abuse? .....	5
F. HOW is an institutional child abuse report made? .....	6
G. What INVESTIGATING AGENCY will respond to the report of institutional child abuse? .....	7
H. What TO DO within the institution after reporting the report to DYFS or upon becoming aware of a report of institutional child abuse? .....	7
I. What NOT TO DO within the institution after reporting or becoming aware of a report of institutional child abuse. ....	8
J. What TO DO within the family upon reporting to DYFS suspected institutional abuse or upon becoming aware of an institutional abuse report involving a child within the family. ....	8
K. What NOT TO DO within the family after reporting or becoming aware of a report of institutional child abuse. ....	8

# **RECOGNIZING AND REPORTING INSTITUTIONAL ABUSE**

## **I. OVERVIEW**

The State of New Jersey is a national leader in efforts to identify and deter child abuse and neglect and to provide treatment for the abused child and adult offender. Child abuse is not confined to the home environment but occurs in both public and private facilities which are intended to provide care, education, supervision or maintenance for children in day or residential programs. Although the resultant trauma to the child is similar whether victimized within or outside the home, the circumstances and causes of the abusive conduct and, indeed, the methods of prevention, investigation, and protection differ. Accordingly, New Jersey has established a specialized approach, unique throughout the country, to address the discrete form of child abuse perpetrated within institutions.

Not all out of home child abuse constitutes institutional abuse. The physical or sexual victimization of a child on a city street or in a park occurs out of the home but is not institutional abuse because the child and the offender are likely to be strangers to one another. The key to recognizing institutional child abuse is the caretaker status of the relationship between the child and the offender. The caretaker relationship is one in which the offender directly provides or assists in providing the care, supervision or maintenance of a child under the age of 18 for any period of time in an out of home setting. For example, the day care worker, juvenile detention officer, school teacher, or hospital orderly who abuses a child within the facility commits an act of institutional child abuse and in so doing breaches and exploits a caretaker relationship of trust between the adult and child.

In every incident of institutional child abuse, the offender, whether employed or working on a volunteer basis at a facility or for an organization, has legitimate access to or responsibility for the child who is victimized. Often, the child has developed an affection for the offender who may spend more time during the day with the child than does the parent. The offender may occupy a position of power and authority over the child such as a juvenile corrections or detention officer. In either event, the offender capitalizes on the vulnerability of the child often not by physical force but rather through the more subtle, coercive channels of trust and authority.

Institutional abuse occurs when any adult within an institution physically, emotionally or sexually abuses a child. Physical abuse can take the form of excessive corporal punishment or excessively forceful methods to restrain the child. Emotional abuse occurs when an adult singles out a child and subjects the child to verbal assaults which harass, berate, humiliate and demean the child's self-esteem. Sexual abuse includes forcing or threatening a child to engage in conduct intended to sexually stimulate or gratify the adult, the seduction of a child, the purchase of sexual favors from the child, acceptance of sexual gratification when the child is the initiator and sexual exploitation of the child through prostitution or pornography. Sexual abuse may be either heterosexual or homosexual in nature.

Institutional neglect occurs when a child is exposed to the risk of harm due to the failure of any adult within the institution to exercise a reasonable amount of care to prevent the harm. Examples of neglect are leaving any child or group of children unsupervised or failing to provide needed medical attention. In addition, institutional abuse and neglect can also occur when institutional practices, policies, procedures or the physical plant itself places the safety or security of the child in jeopardy.

The initial identification of institutional abuse and neglect is essentially a public responsibility. In the State of New Jersey, the Division of Youth and Family Services (DYFS) investigates reports of child abuse/neglect. However, DYFS cannot respond until the report is made. Parents, physicians and staff members of institutions are common sources of reports of institutional abuse. However, any person who has reason to believe that a child may be the victim of abuse has not only the moral obligation but, in New Jersey, has the obligation under the law to report the suspected abuse to DYFS. Suspected institutional abuse must be reported immediately to DYFS at (609) 292-0617 during normal business hours and at 1-800-792-8610 at all other times.

Reason to believe that a child is the victim of institutional abuse may be no more than the child's statement that an act of abuse occurred or an unexplained injury which likely occurred while the child was at the institution. It is not appropriate and in fact counter-productive for either the child's parent or any person within the institution to question the child or other persons in order to delve into the background circumstances of the suspected abuse. That job rests with the professionals who will respond to the report. Questioning the child, other persons or the offender in order to verify the suspicion may irreparably taint the integrity of the State's investigation and damage the State's ability to take appropriate action against the offender or the institution if the report is substantiated.

Every report of abuse or neglect is investigated by the State of New Jersey through DYFS. DYFS District Office personnel respond to reports of in-home abuse. However, recognizing that institutional abuse investigations entail a variety of issues which differ from intra-familial abuse investigations, a specialized response unit was established within DYFS. The DYFS Institutional Abuse Investigation Unit (IAIU) handles the investigation of all reports of institutional abuse. With its central intake screening office in Trenton, IAIU dispatches DYFS investigators from its four regional IAIU offices in response to reports of institutional abuse. The DYFS-IAIU investigators interact both with the child's home and the institution itself in an effort to ensure the child's safety, ascertain whether the report is valid or unsubstantiated and also develop any administrative recommendations to be implemented by the institution. In cases where the institution involved in the investigation is operated by DYFS, the report is referred at the outset by DYFS to the Department of the Public Advocate-Law Guardian Program to avoid a conflict or the appearance of a conflict of interest on the part of DYFS. The Public Advocate investigates the report in lieu of DYFS but in the same manner and with the same authority and responsibilities as DYFS.

Some reports of institutional abuse have potential criminal implications. In general, these types of reports include all reports of child sexual abuse as well as physical assault in which the child has sustained a serious injury. DYFS-IAIU notifies the Division of Criminal Justice, Institutional Abuse Unit (DCJ-IAU) about these reports before commencing any investigation. DCJ-IAU works directly with DYFS-IAIU in a joint investigative approach to resolve the report for both administrative and criminal investigation purposes and to do so by dispensing with repetitive interviews and duplications in effort whenever possible. DCJ-IAU, which has statewide investigative and prosecutorial authority, conducts the criminal inquiry in all institutional abuse cases with the exception of private and public educational facilities. There is particular attention given to the local community when abuse is alleged to have occurred in its community school. Therefore, allegations of institutional abuse within public and private schools are reported directly by DYFS-IAIU to the appropriate county prosecutor's office.

An essential preliminary determination which must be made in an institutional abuse investigation is an assessment of the "at-risk" factor — the immediate and continuing safety not only of the child who may have been abused but the safety of other children who attend the institution and are in contact with the offender. Usually, all that is required to neutralize the at-risk factor is to separate the offender from the child and to prevent the offender from having direct, unsupervised

contact with other children. This does not mean that there is a presumption of guilt applied to the offender. Rather, it is a precautionary measure to allow the investigation to proceed without risk to any child during the pendency of the inquiry. The offender may have certain rights arising by law or from contractual obligations with the employer. These rights must be respected and can ordinarily be adhered to by simple, rudimentary accommodations which do not prejudice or stigmatize the employee. Whenever possible, a reassignment of the staff member to alternate duties during the pendency of the investigation will suffice.

An investigation into an institutional abuse report is a broad one. Not only must the child and family be interviewed but staff including the offender if he/she agrees, and other children within the facility may be interviewed to adequately assess the validity of the report. When a child is believed to have significant information regarding the substance of an investigation, the parents of the child will be notified of the investigation and the need to interview the child. If the report is substantiated, then the possibility that other children within the institution may be victimized must be considered. Therefore, an institutional abuse investigation is likely to entail much more time than an in-home investigation. Every effort is made to ensure that the course of the investigation does not substantially interfere with the otherwise normal routine and activities of the institution.

An institutional abuse investigation may disclose that the welfare of the children in the care of the institution is endangered as a result of policies or practices of the institution, its program operation or from defects in the physical plant. In such circumstances, even though the source of the risk to the children cannot be attributed to any individual, the investigation may result in findings against the management of the institution and could reach the level of substantiated abuse or neglect due to failure of management to eliminate risks which management knew or should have known existed.

Despite the many considerations which arise in the context of an institutional abuse investigation, the present and future well being of the child is nonetheless the core concern. Sometimes when a very young child is believed to have been the victim of sexual abuse, the offender cannot be identified with certainty or the abuse itself cannot be substantiated in a legal sense to support a criminal prosecution. Yet, the child may be suffering from the trauma, seen or unseen, of the abuse. Hence, counseling services for the child may be needed. Regardless of whether the report of abuse is substantiated, the treatment costs for a child traumatized by suspected institutional abuse may be reimbursable through a claim filed with the Violent Crimes Compensation Board, 60 Park Place, Newark, New Jersey 07102.

## **II. INSTITUTIONAL ABUSE — Reviewed at a Glance**

### **A. What is an INSTITUTION?**

The term INSTITUTION means a public or private facility in the State of New Jersey which provides children with out of home care, supervision or maintenance. INSTITUTION includes, but is not limited to, the following types of facilities:

1. Correctional facility
2. Detention facility
3. Treatment facility
4. Day care center
5. Family day care home
6. Group home
7. Public and private school, including school bus services
8. Shelter
9. Day or residential camp
10. Hospital.

### **B. What constitutes INSTITUTIONAL ABUSE or NEGLECT of a child?**

A child, under the age of 18 years, is a victim of INSTITUTIONAL ABUSE or NEGLECT if the child's caretaker harms the child in any one of the following ways:

1. Inflicts or allows the infliction of physical injury to the child by other than accidental means.
2. Creates or allows to be created a substantial or ongoing risk of physical injury to the child by other than accidental means.
3. Commits or allows an act of sexual abuse to be committed against the child.
4. Subjects the child to emotional abuse.
5. Impairs or places at risk the child's physical, mental or emotional condition as a result of the failure of the caretaker to exercise a minimum degree of care in providing the child with adequate physical and medical necessities, proper supervision or by inflicting excessive corporal punishment.
6. Use of physical restraint of the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property.
7. Use of excessive physical restraint of the child under circumstances warranting restraint to avert harm to the child, to another or to property which might arise from the child's behavior.
8. Willful isolation of the child from ordinary social contact which thereby results or is likely to result in emotional or social deprivation to the child.

### **C. Who is a CARETAKER?**

A child's CARETAKER in an institution includes:

1. Any person, employee or volunteer, whether compensated or uncompensated, who is responsible for the child's welfare for any period of time and in any manner;
2. Any person who has a legal duty for or voluntarily assumes the care, custody or supervision of the child in the institution for any period of time and in any manner;
3. Any staff member or volunteer in an institution regardless of whether or not the staff member or volunteer is responsible for the care, custody or supervision of the child for any period of time and in any manner.

### **D. WHEN should a report of institutional child abuse\* be made?**

Immediately upon ascertaining information that a child has or may have been subjected to abuse or acts of abuse, a report must be made to the Division of Youth and Family Services (DYFS).

No one within the institution or within the child's home should undertake an inquiry of the child or any other person in an effort to determine the likely truth or falsity of an abuse report. This function is for the professional, trained investigator who will respond to the report.

### **E. WHO should report institutional child abuse?**

Any person who has reasonable cause to believe that a child has or may have been subjected to abuse or acts of abuse must report it immediately the complaint to DYFS. N.J.S.A. 9:6-8.10. To avoid delay, a report to DYFS takes precedence and can then be followed by any internal procedures established within the institution to advise supervisors of the report made to DYFS.

Any person who makes a report of child abuse in good faith is protected by law through immunity from any civil or criminal liability that might otherwise be incurred or imposed. N.J.S.A. 9:6-8.13.

Any staff person of an institution who is discharged or discriminated against as a result of the staff person reporting an allegation of child abuse or neglect can seek reinstatement of employment with back pay or other appropriate relief by filing a cause of action in the family part of the Chancery Division of Superior Court. N.J.S.A. 9:6-8.13.

Any person who has reasonable cause to believe that a child has or may have been the victim of abuse is required by law to report it immediately to DYFS. Failure to report the known complaint constitutes a disorderly persons offense punishable by a maximum term of six months incarceration and/or a fine of \$1,000. N.J.S.A. 9:6-8.14, N.J.S.A. 2C:43-8; N.J.S.A. 2C:43-3.

\*The term "abuse" is used in its broadest sense and is intended to encompass acts of neglect when the term abuse is used in these guidelines.

**F. HOW is an institutional child abuse report made?**

During business hours, 9:00 a.m. to 5:00 p.m., Monday to Friday, a report of child abuse is made to the DYFS Institutional Abuse Investigation Unit in Trenton, New Jersey by telephoning:

(609) 292-0617.

Collect calls will be accepted.

At all other times, the report is made to the 24 hour toll free child abuse hotline, Office of Child Abuse Control (OCAC):

1-800-792-8610.

The caller should be prepared to furnish the following information or as much of the following information as is readily available without causing a delay in reporting:

- 1.. Data regarding the child
  - a. Name
  - b. Age
  - c. Home address and telephone number
  - d. Parent or guardian's name
  - e. Present location of child, address and telephone number
  - f. Child's present physical condition;
2. Data regarding the institution
  - a. Name
  - b. Address (including county) and telephone number
  - c. Administrator's name;
3. Data regarding caretaker (offender) who allegedly abused the child
  - a. Name
  - b. Home address and telephone number
  - c. Age
  - d. Position at the institution, i.e., teacher, day care worker, youth worker
  - e. Present whereabouts
  - f. Regular hours at the institution;
4. Description of the alleged incident of abuse
  - a. Date, time and place of incident
  - b. Circumstances which transpired to prompt the report
  - c. Name of persons who have or may have had contact with the child or caretaker regarding the incident
  - d. Extent of any medical attention received or needed by child or offender with respect to the incident.

Remember, if any portion of the above listed information is not readily available, **DO NOT DELAY** the report. Instead, make the report and provide all the information available at that time.

**G. What INVESTIGATING AGENCY will respond to the report of institutional child abuse?**

Every report of institutional child abuse is investigated by the DYFS INSTITUTIONAL ABUSE INVESTIGATION UNIT (DYFS-IAIU) or its designee which will provide direction and guidance to the institution and the family during the pendency of the investigation. At the conclusion of the investigation, DYFS-IAIU will issue a report of findings and recommendations to the institution. Interim recommendations and status reports may also be issued.

Reports of child abuse, which involve suspected criminal activity on the part of the offender, are referred by DYFS-IAIU to the DIVISION OF CRIMINAL JUSTICE — INSTITUTIONAL ABUSE UNIT (DCJ-IAU), a prosecutorial unit under the aegis of the Attorney General. DCJ-IAU investigates and, where warranted, prosecutes incidents of institutional child abuse in all institutions listed in Section I with the exception of public and private schools. The latter category is referred directly by DYFS-IAIU to the local county prosecutor's office.

The types of child abuse reports referred to DCJ-IAU include:

1. Subjecting or exposing a child to unusual or inappropriate sexual activity
2. Inflicting or permitting the infliction of a non-accidental injury resulting in hospitalization, emergency room treatment, or more than superficial medical attention
3. Repeated instances of physical violence committed against children.

When a report of child abuse relates to a DYFS operated institution, a field representative from the DEPARTMENT OF THE PUBLIC ADVOCATE — LAW GUARDIAN PROGRAM will respond in lieu of DYFS-IAIU and will likewise refer to DCJ-IAU any child abuse report involving suspected criminal activity.

**H. What TO DO within the institution after reporting the complaint to DYFS or upon becoming aware of a report of institutional child abuse.**

DO take appropriate internal steps to protect the child. This may include:

1. Securing needed emergency medical attention
2. Separating the child and offender to prevent further contact
3. Comforting and reassuring the child, if appropriate, that the child was correct to disclose the abuse and that the child is not at fault
4. Providing the child with immediate counseling services, if needed, given the child's present emotional condition.

DO consider the safety of other children at the facility. Assign the offender to alternate duties which remove the offender from direct and/or unsupervised contact with other children pending resolution of the abuse report.

DO complete any routine reports which are required by the standard operating procedure of the facility to record the circumstances which prompted the abuse report. Do ensure that this function is not expanded in an effort to conduct an internal "investigation" of the report.

DO feel free to ask the responding investigator about the process which will follow.

DO comply with the caveats in Section I which follows.

**I. What NOT TO DO within the institution after reporting or becoming aware of a report of institutional child abuse.**

Do NOT conduct an inquiry into the report to determine its validity. This is a task for the appropriate investigating agency(s) which will respond to the report of abuse.

Do NOT require or ask the child to write a summary of the abuse report or otherwise interrogate the child. The child will be interviewed by the appropriate investigation agency(s).

Do NOT inform the offender of any details pertaining to the report of abuse or the identity of the complaining or implicated child. If circumstances require, advise the offender:

1. A report of abuse was made to DYFS
2. Pending investigation of the report by DYFS, the offender will be reassigned to alternate duties
3. The institution has not made any judgment in favor of or against the offender pending the outcome of an investigation by DYFS.

**J. What TO DO within the family upon reporting to DYFS suspected institutional abuse or upon becoming aware of an institutional abuse report.**

DO take appropriate steps to insure the safety and well being of the child. This may include:

1. Securing needed emergency medical attention
2. Keeping the child at home pending a response by an investigator to the report
3. Comforting and reassuring the child, if appropriate, that the child was correct to disclose the abuse and that the child is not at fault
4. Informing the child that visitors (investigators) will talk to the child to help the child and that the child can trust the visitor.

DO feel free to ask the responding investigator about the process which will follow and about counseling services.

DO comply with the caveats in Section K which follows.

**K. What NOT TO DO within the family after reporting or becoming aware of a report of institutional child abuse.**

Do NOT overreact by becoming emotional or angry in the presence of the child. The child may internalize the reactions of adult family members and the child may feel at fault and guilty for causing distress within the family. Additionally, the child may conclude that the best way to have a "happy family" again is to no longer talk about the abuse incident or to deny any disclosure previously made.

**Do NOT question the child regarding details of the incident once aware of the nature of the report. However, if the child volunteers information, do listen in a caring manner and be prepared to provide the child's information to the responding investigator with accuracy and without embellishment.**

**Do NOT contact other parents of children who attend the facility. If you have reason to believe that a particular child may have been abused or has pertinent information, provide the child's name to the responding investigator who will then make the necessary inquiries.**

**Guidelines on the Management  
of  
Child Abuse and Neglect Cases  
in Hospitals**

**Prepared For  
Governor's Task Force  
On Child Abuse and Neglect**

**By**

**Connie Ryan, M.S.W.**

**Division of Youth and Family Services  
Trenton, New Jersey**

**and**

**Irene Webber, M.S.W.**

**Jersey Shore Medical Center  
Neptune, New Jersey**

## TABLE OF CONTENTS

<b>I. Acknowledgement</b> .....	<b>1</b>
<b>II. Introduction</b> .....	<b>2</b>
<b>III. A Coordinated Team Approach to Child Abuse &amp; Neglect</b> .....	<b>3</b>
<b>IV. Child Abuse Team Composition</b> .....	<b>4</b>
A. Child Abuse Liaison .....	4
B. Hospital Social Worker .....	4
C. Primary Physician .....	4
D. Nurse .....	4
E. Child Protective Services Worker .....	4
F. Law Enforcement Staff .....	5
<b>V. Guidelines for the Identification of Child Abuse &amp; Neglect</b> .....	<b>5</b>
A. Characteristics of the Child .....	5
B. History .....	5
C. Physical Examination .....	6
D. Physical & Behavioral Indicators of Child Abuse & Neglect .....	7
1. Physical Abuse .....	7
2. Sexual Abuse .....	8
3. Types of Child Neglect .....	8
4. Physical Neglect .....	9
5. Emotional Maltreatment .....	9
6. Identification of High-Risk Families .....	9
<b>VI. Treatment Protocol for the Management of Child Abuse &amp; Neglect</b> .....	<b>10</b>
A. Reporting Suspected Child Abuse & Neglect .....	10
B. Expediting the Evaluations of Suspected Child Abuse & Neglect Patients .....	10
C. Treatment of the Children .....	11
D. Treatment of Parents/Caretakers .....	11
E. Confidentiality .....	11
F. Interviewing & Examining the Child/Family .....	11
G. Child Abuse Team Conference .....	12
H. Treatment/Hospitalization of Selected Cases .....	12
I. Consent for Treatment .....	13
<b>VII. Roles and Responsibilities of Team Members</b> .....	<b>13</b>
A. Role of the Hospital Social Worker/Child Abuse Liaison .....	16
B. Role of the Physician .....	18
C. Role of the Nurse .....	21
D. Role of the Division of Youth & Family Services (DYFS) Worker .....	23
E. Role of Law Enforcement .....	25
1. Notification to Prosecutor's Office .....	25
2. Notification to Local Police Jurisdiction .....	25

3. Investigation .....	25
4. Resources for Statements .....	25
5. Physical Evidence .....	26
6. Documentary Evidence .....	27
7. Identification & Arrest of the Offender .....	28
8. Prosecution of the Offender .....	28
F. Rights of Parents to Visit .....	28
G. Protective Custody/Hospital Hold Procedures .....	28
<b>VIII. Documentation of Suspected Child Abuse &amp; Neglect on the Medical Chart ....</b>	<b>29</b>
<b>IX. Providing Medical Testimony for Court Cases .....</b>	<b>32</b>
<b>X. Staff Education .....</b>	<b>32</b>
<b>XI. Evaluation .....</b>	<b>32</b>
<b>XII. Conclusion .....</b>	<b>33</b>
<b>XIII. APPENDICES</b>	
A. Appendix A: Child Abuse Consultation Form .....	1
B. Appendix B: Body Diagram Form .....	3
C. Appendix C: Hospital Hold Warning Form .....	4
<b>XIV. Bibliography .....</b>	<b>5</b>

## I. ACKNOWLEDGEMENT

Most of the information provided in this manual has been adopted from several references including:

Jersey Shore Medical Center, *Child Abuse Diagnostic Center Policies & Procedures*, 1988

American Hospital Association, *Guidelines on the Management of Child Abuse & Neglect Cases*, 1986.

U.S. Department of Health, Education & Welfare, *Guidelines for the Hospital & Clinic Management Abuse & Neglect*, January 1979.

Martin A. Finkel, D.O., University of Medicine & Dentistry of New Jersey-School of Osteopathic Medicine (U.M.D.N.J.-S.O.M.), *Medical Examination In Alleged Sexual Abuse of Children*, 1988.

New Jersey Hospital Association, *Model Policies & Procedures: Amendment to Licensure Standards N.J.A.C.-8:31-26.4*, September 1981.

New Jersey Division of Youth & Family Services, *The Health Professions and Child Abuse & Neglect*, December 1979.

Special thanks to the staff of Jersey Shore Medical Center, N.J. Division of Youth & Family Services and Monmouth County Prosecutor's Office and Christian M. Hansen, M.D. who contributed greatly to the development and implementation of a multi-disciplinary coordinated approach to child abuse and neglect cases in hospitals.

## **II. INTRODUCTION**

Hospitals serve as the front-line of protection for many children who are endangered by abuse and neglect. As a result, all hospitals that serve children are in a primary position to identify, treat and protect those who may be victims of abuse and neglect. All states have enacted laws that define what constitutes child abuse and neglect. Most specifically address the responsibility of health care professionals to report suspected child abuse and neglect to the mandated child protection agency.

Hospital administration has a critical role in creating a climate of commitment to the welfare of children who may have been abused and neglected, as well as their families. The purpose of this document is to provide guidelines to assist medical and hospital staff in meeting their responsibilities to identify, treat and protect victims of child abuse and neglect. It is also designed to assist hospitals with the development and evaluation of programs that serve abused and neglected children and their families.

The U.S. Department of Health, Education and Welfare guidelines indicate that personnel in a health care facility have the following five main objectives in cases of suspected or confirmed child abuse and neglect:

1. Identify those children seen in the hospital setting who may have been abused and neglected.
2. Provide adequate medical care for the injuries sustained. Such care should include follow-up counseling services.
3. Carry out the legal obligations of reporting child abuse and neglect cases according to state law.
4. Collect data in a comprehensive manner so that if this data is needed later in court as evidence, it will be adequate to document the diagnosis of child abuse and neglect.
5. Remain therapeutic and helpful to the children and parents or caretakers of the child and they will more likely be receptive to continued treatment, whether provided by the hospital or an outside agency. As used here, therapeutic means establishing an empathetic, trusting relationship and ensuring privacy and confidentiality.

To achieve the above objectives, hospital-wide policies and procedures are needed. These policies and procedures should include, but are not limited to:

- Definitions of child abuse and neglect
- Reporting requirements as mandated by state law
- A mechanism for the internal referral of cases
- Designation of a professional employee to serve as the contact or liaison person with the mandated child protective agency (DYFS) and law enforcement staff, and to coordinate efforts and services
- Written protocols for the identification and treatment of suspected child abuse and neglect victims for the emergency room, clinic, and pediatrics, where such services exist
- Roles and responsibilities of each discipline involved

- Guidelines for documentation, including photographs and x-rays
- Appropriate procedural steps for assuming protective custody
- Requirements for release of information

Specialized policies and procedures establish consistent standards of practice and foster the development of cooperative working relationships.

### **III. A COORDINATED TEAM APPROACH TO CHILD ABUSE AND NEGLECT**

Child abuse and neglect is a multidimensional problem that requires a multidisciplinary approach to its identification, diagnosis and treatment. In a hospital setting, it requires cooperative intervention of the three major disciplines involved, social work (DYFS), medical (physician, nurse and hospital social worker) and law enforcement (police and/or county prosecutor's office) in a way that will minimize the trauma to the child and expedite the appropriate disposition of the case.

The objectives of a coordinated team approach to suspected child abuse and neglect situations are as follows:

1. To foster a multidisciplinary team approach to the identification, diagnosis and treatment of suspected child abuse and neglect cases with the team consisting of the physician, nurse, hospital social worker, DYFS caseworker, and law enforcement staff involved in the case.
2. To educate appropriate hospital and medical staff about the State laws and hospital policies and procedures related to child abuse and neglect.
3. To establish procedures for case conferences among team members to share information and assessments and collaborate on determining the best plan for the child regarding treatment and/or placement.
4. To designate a professional department/employee to serve as the liaison to DYFS and law enforcement staff, and to provide continuity and case management services.
5. To minimize the number of interviews and examinations of the child through a joint interview/examination process wherever possible.
6. To evaluate, diagnose and treat the child as quickly as possible and help expedite appropriate disposition of the case.
7. To provide ongoing staff education to develop skill and expertise in successfully recognizing and sensitively treating victims of child abuse, as well as remaining therapeutic and helpful to the parents or caretakers.
8. To evaluate suspected child abuse and neglect cases through regular ongoing interdisciplinary meetings regarding identification and treatment. The meetings will also ensure future case quality assurance and problem solving among the participants.

## **IV. CHILD ABUSE TEAM COMPOSITION**

### **A. Child Abuse Liaison**

Consistency is imperative in the management of child abuse and neglect cases. To make a hospital child abuse and neglect system work, it is critical for each hospital to designate a professional department/employee as the hospital-based liaison for the Division of Youth & Family Services and law enforcement staff, and to provide continuity and case management. The liaison would be responsible for coordinating the reporting of all suspected child abuse and neglect cases, monitoring and evaluating compliance with the hospital's policy and procedures, and developing the necessary linkages with community support systems designed to provide follow-up services.

A liaison is essential in order to consistently carry out the hospital objectives for child abuse and neglect cases. In most hospitals, the designated professional department/employee will be the hospital Social Work Department/social worker. It is important to note that the designation of a hospital contact person does not change the legal reporting requirements under state law.

According to the state reporting law, any individual who suspects child abuse/neglect must report this to the appropriate authorities. An internal mechanism for reporting is appropriate but does not alleviate the individual's responsibility to report if this mechanism is not implemented. (Refer to "Role of Hospital Social Worker/Child Abuse Liaison" section for details).

### **B. Hospital Social Worker**

As indicated above, in most hospitals the Social Work Department or hospital social worker is designated as the child abuse liaison (see above description for details). In addition to the child abuse liaison responsibilities, the hospital social worker also collaborates with the DYFS worker to evaluate the child in relation to his/her family.

In order to assess whether or not child abuse or neglect is occurring, the child must be evaluated in the context of the family dynamics. An evaluation of the family is essential to a comprehensive diagnostic, treatment and case management services plan. The evaluation is most often completed by the hospital social worker and DYFS worker collaboratively. (Refer to Role of the Hospital Social Worker/Child Abuse Liaison for details).

### **C. Primary Physician**

In all forms of abuse and neglect, a primary physician should be involved, be it a pediatrician or family practitioner. The examination of the child should be performed by a pediatrician or family practitioner whenever possible. If the child is brought into the Emergency Room and there is trauma or bleeding, the examination should be performed jointly by the Emergency Room physician and a pediatrician or family practitioner. (Refer to the Role of the Physician for details).

### **D. Nurse**

In many instances, the nurse is the first person to see the child and may be the first to consider the diagnosis of suspected child abuse and neglect. The nurse can provide data from observations of the child and parent and their interactions to help identify suspected child abuse and neglect. The nurse communicates her observations to the physician and initiates a referral to the Child Abuse Liaison, if abuse or neglect is suspected. (Refer to Role of the Nurse for details).

### **E. Child Protective Services Worker**

Refer to Role of the DYFS Worker section for details.

## **F. Law Enforcement Staff**

Refer to Role of Law Enforcement Staff section for details.

## **V. GUIDELINES FOR THE IDENTIFICATION OF CHILD ABUSE AND NEGLECT**

Professionals have difficulty believing that maltreatment of children occurs. The development of sensitivity to warning signals, regardless of the situation, is a most important task. Often professionals are reluctant to report possible abuse or maltreatment for fear of the stigma associated with such a report. It is imperative to remember that an abused or maltreated child has the right to be protected. The identification of child abuse and neglect is not the sole responsibility of one individual, agency or institution. It requires a multidisciplinary approach and the collaboration of several disciplines working as a team to identify, diagnose and treat the child and family.

### **Index For Suspicion of Child Abuse and Neglect**

#### **A. Characteristics of the Child:**

- Seems unduly afraid, especially of his parents
- Is kept confined (as in a crib, playpen or cage) for long periods of time
- Shows evidence of repeated skin wounds or other injuries
- Injuries are inappropriately treated in terms of medication
- Appears undernourished
- Is given inappropriate food, drink or medicine
- Is dressed inappropriately for weather conditions
- Is passive and avoids parental confrontation
- Is overly aggressive, demanding and hyperactive
- Shows evidence of overall poor care
- Is constantly irritable and cries often
- Takes over the role of parent and tries to be protective or otherwise take care of parent's needs—"role reversal" behavior

#### **B. History:**

1. Characteristic age—usually under 6 years
2. General health of child—indicative of neglect
3. Characteristic distribution of fractures

4. Disproportionate amounts of soft tissue injury: evidence that injuries occurred at different times with lesions in various stages of resolution
5. Cause of recent trauma not known
6. Previous history of similar episodes and multiple visits to various hospitals
7. Date of injury prior to admission to hospital—delay in seeking medical help
8. Child brought to hospital for complaint other than one associated with abuse or neglect, such as cold, headache, stomachache
9. Reluctance of parent or caretakers to give information
10. History related by parents or caretakers is usually at complete variance with the clinical picture and the physical findings noted on examination of the child
11. Parents' inappropriate reaction to severity of injury
12. Family discord, financial stress, alcoholism, psychosis, mental retardation, drug addiction, and/or inconsistent social history that varies according to intake worker

**C. Physical Examination:**

1. Signs of general neglect: failure to thrive, poor skin hygiene, malnutrition, withdrawal, irritability, repressed personality
2. Bruises, abrasions, soft tissue swelling, human bite marks, strap marks, human hand marks, hematomas, ocular damage, old healed lesions
3. Evidence of dislocation of fractures of the extremities
4. Burns—cigarette, match tip, incense, radiator, hot plate, hot water, immersion burns of the buttocks and perineum, "stocking" and/or "glove" injuries
5. Unexplained symptoms of an acute abdomen—ruptured viscera
6. Neurological findings associated with brain damage, subdural hematoma, subarachnoid hemorrhages
7. Coma, convulsions, death
8. Symptoms of drug withdrawal or drug intoxication—neonatal drug withdrawal, accidental or intentional drug poisoning

## PHYSICAL AND BEHAVIORAL INDICATORS OF CHILD ABUSE AND NEGLECT

### Type of Child Abuse and Neglect

#### 1. PHYSICAL ABUSE

#### Physical Indicators

##### Unexplained bruises and welts:

- on head, face, lips, mouth
- on torso, back buttocks, thighs
- in various stages of healing
- clustered, forming regular patterns
- reflecting shape of article used to inflict (electric cord, belt buckle)
- on several different surface areas
- regularly appear after absence, weekend or vacation

##### Unexplained Burns:

- cigar, cigarette burns, especially on soles, palms, back of buttocks
- immersion burns (sock-like, glove-like doughnut shaped on buttocks or genitalia)
- patterned like electric burner, iron, etc.
- rope burns on arms, legs, neck or torso

##### Unexplained fractures:

- to skull, nose, facial and/or dental structures
- in various stages of healing
- multiple or spiral fractures

##### Unexplained lacerations or abrasions:

- to mouth, lips, gums
- to external genitalia
- to eye (detached retina, laceration, hyphema, dislocated lens)
- to skull (subdural hematoma)

Delay in seeking treatment and unusual parental or child behavior pattern of any sort

#### Behavioral Indicators

Wary of adult contacts

Apprehensive when other children cry

##### Behavior Extremes:

- aggressiveness, or
- withdrawal

Frightened of parents

Afraid to go home

Reports injury by parents

## 2. SEXUAL ABUSE

### Physical Indicators

Difficulty in walking or sitting  
Torn, stained or bloody underclothing  
Pain or itching in genital area  
Bruises or bleeding in external genitalia, vaginal or anal areas  
Foreign objects in vagina or rectum  
Venereal disease, especially in pre-teens  
Pregnancy

### Behavioral Indicators

Unwilling to change for gym or participate in Physical Education  
Withdrawal, fantasy or infantile behavior  
Bizarre, sophisticated, or unusual sexual behavior or knowledge  
Poor peer relationships  
Delinquent or run away  
Reports sexual assault by caretaker

### Emotional Indicators

#### Infant & Toddler

Irritability  
Feeding difficulty  
Sleep disturbances  
Altered levels of activity

#### School Age Child

Behavioral problems  
Anxieties  
Sleep disturbances  
Flightful dreams  
Withdrawn attitude

#### Adolescent

Fright & confusion  
Guilt feelings  
Anger & acting out  
Depressive affect

### Reasons for Acceptance of Sexual Acts

- Infant or toddler is confused, has no choice.
- School age child lacks real concept of sexuality—unable to make decisions of compliance or refusal.
- Trust that familiar adult would do no wrong.
- Adolescent victim has guilt feelings about inviting and/or accepting, so continues lest being accused.
- Adolescent girl may feel pity for sexually deprived father.
- Physically abused or neglected girl or boy may accept sexual acts as a form of love and attention.

## 3. TYPES OF CHILD NEGLECT

- Abandonment—total or for long periods of time
- Lack of supervision—young children left unattended at home or in the care of other children too young to protect them
- Lack of adequate clothing and poor personal hygiene—severe diaper rash, dirty, unbathed, pediculosis
- Lack of medical or dental care—unmet health needs, lack of immunizations and dental care
- Lack of adequate nutrition—insufficient quantity and quality of food resulting in severe development lags of “failure to thrive”
- Lack of adequate shelter—dangerous and unsanitary housing conditions
- Lack of emotional stimulation—physical and mental retardation syndromes and/or “failure to thrive”
- Lack of education—chronic absenteeism

**4. PHYSICAL  
NEGLECT**

**Physical Indicators**

Consistent hunger, poor hygiene  
inappropriate dress  
Consistent lack of supervision,  
especially in dangerous  
activities or long periods  
Constant fatigue or listlessness  
  
Unattended physical problems  
or medical needs  
Abandonment  
Malnutrition  
  
Decayed or painful teeth

**Behavioral Indicators**

Begging, stealing food  
  
Extended stays at school  
(early arrival or late  
departure)  
Constantly falling  
asleep in class  
Alcohol or drug abuse  
  
Delinquency (thefts)  
States there is  
no caretaker

**5. EMOTIONAL  
MALTREATMENT**

Habit Disorders (sucking,  
biting, rocking, etc.)  
  
Conduct Disorders (anti-  
social, destructive, etc.)  
  
Neurotic traits (sleep disorders,  
speech disorders,  
inhibition of play)  
Psychoneurotic reactions  
(hysteria, obsession,  
compulsion, phobias,  
hypochondria)

Behavior extremes:  
—overly compliant,  
passive or aggres-  
sive, demanding  
Overly adaptive  
behavior  
—inappropriately adult  
—inappropriately infant  
Development lags  
(Physical, mental  
emotional)  
Attempted suicide

**6. IDENTIFICATION OF HIGH-RISK FAMILIES**

Many families seen in the hospital are noted to be at high-risk for child abuse and neglect or other symptoms of family dysfunctioning. Although the child may not manifest evidence of abuse or neglect, the nursing and medical staff may become concerned because of the presence of severe marital discord, serious mental illness, drug addiction or alcoholism or violent behavior in either parent, the absence of signs of attachment to the child (no eye contact or holding of the child), rough handling of the child, hygiene neglect, or excessive spanking of young children. These families should be referred to the Hospital Social Work Department for evaluation and referral to appropriate community agencies.

## **VI. TREATMENT PROTOCOL FOR THE MANAGEMENT OF CHILD ABUSE & NEGLECT**

### **A. Reporting Suspected Child Abuse and Neglect**

The state law of New Jersey mandates that any person having reasonable cause to believe that a child has been subjected to child abuse, or acts of child abuse, shall report the same immediately to the New Jersey Division of Youth & Family Services (DYFS) by telephone or otherwise. (N.J.S.A. 9:6-8.10). Any person knowingly violating the provisions of this act, including the failure to report an act of child abuse, having reasonable cause to believe that an act of child abuse has been committed, is subject to criminal liability as a disorderly person. (N.J.S.A. 9:6-8.14).

As indicated previously, with a coordinated team approach the reporting of suspected child abuse and neglect cases in hospitals should be designated to one professional department/employee to serve as the Child Abuse Liaison. In most hospitals the child abuse liaison function is delegated to the hospital Social Work Department or hospital social worker. According to the state reporting law, any individual who suspects child abuse/neglect must report this immediately to the appropriate authorities. An internal mechanism for reporting is appropriate but does not alleviate the individual's responsibility to report if this mechanism is not implemented.

N.J. Statutes, Title 9, defines child abuse and neglect as the following:

1. inflicts, or allows to be inflicted, upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any bodily organ;
2. creates, or allows to be created, a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious protracted disfigurement or protracted loss or impairment of the function of any bodily organ;
3. commits, or allows to be committed, an act of sexual abuse against the child; or
4. a child whose physical, mental, or emotional condition has been impaired, or is in imminent danger of becoming impaired, as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care in (a) supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so, or though offered financial or other reasonable means to do so; or (b) providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment, or by any other acts of a similarly serious nature requiring the aid of the court; or
5. who has been willfully abandoned by his parent or guardian, as herein defined.

### **B. Expediting the Evaluations of Suspected Child Abuse & Neglect Patients**

Cases involving suspected child abuse and neglect should be given high priority. Even when they are not medical emergencies, such cases are social emergencies and should be handled before any routine problems or children with minor illnesses. The only cases receiving higher priority should be acutely ill or injured patients. Emergency Room staff can help to expedite

these cases by detecting them in the waiting room and notifying the physician as soon as possible.

It is important not to lose sight of the primary goal of providing care to the child and the family. It is necessary to remember cultural differences and environmental factors that could influence observations of the situation and may lead to inaccurate conclusions.

### **C. Treatment of the Child(ren)**

The child(ren) should be separated from the offender whenever possible. This may include separation from the parent(s), caretaker(s), allies of the offender, etc. The child should be provided with an environment that ensures privacy. Only staff directly involved with the care of the child should talk with the child. Staff should provide maximum support to the child, not be judgmental, nor allow emotional responses (i.e. anger, pity, taking sides, outrage, etc.) to interfere with providing optimal care.

### **D. Treatment of Parents/Caretakers**

Suspected child abuse and neglect is a highly sensitive matter. We must treat the parents or caretakers of the abused or neglected child in a non-judgmental manner; otherwise they may become defensive and feel alienated. If this happens, it may impede the investigation and intervention efforts of DYFS and law enforcement personnel, and may not protect the child.

It is essential to remain helpful to the parents or caretakers of the abused or neglected child. This is very difficult. Feeling angry with such parents is natural, but expressing this anger is very damaging to parent cooperation. Keep in mind that most of these parents are lonely, frustrated, unloved, or otherwise needy people, who actually love their children but who have lashed out at them in anger.

If hospital staff maintain a therapeutic and helpful approach, the parents or caretakers will more likely be receptive to continued treatment, whether it is provided by the hospital or an outside agency. As used here, therapeutic means establishing an empathetic, trusting relationship and ensuring privacy and confidentiality.

### **E. Confidentiality**

Hospital employees frequently have access to confidential and privileged information regarding these cases. All information concerning suspected child abuse and neglect patients, their families and the allegations involved must not be discussed with anyone except when required. Patients, their families, medical staff, DYFS and law enforcement staff rely on hospital staff to conform to this rule. The hospital's responsibility of trust must not be violated.

### **F. Interviewing and Examining the Child/Family**

Whenever possible, it is critical to minimize the number of medical personnel examining the child and the number of people interviewing the child and family members. This usually can be accomplished through a joint interview process and joint medical examination (i.e. ER physician and pediatrician, pediatrician and gynecologist, etc).

The reasons for a joint approach in the interview and examination process are:

- To minimize further trauma to the child

- To avoid losing sight of the victim's needs and the confusion of too many people questioning and probing
- To prevent perceptions of the facts from becoming altered either by the child or the professionals involved.

The joint interview team should be comprised of either the DYFS worker or the hospital social worker in conjunction with law enforcement personnel. The DYFS worker and hospital social worker will decide jointly who will interview the child with law enforcement personnel depending on such factors as knowledge of the family or previous involvement. In cases where law enforcement personnel are not involved, the DYFS worker and hospital social worker will jointly decide who will lead the interview process. A decision to interview an offender who is a family member/caretaker should not be made until there is a consultation with the appropriate law enforcement agency.

In all forms of abuse and neglect, the examination should be performed by a pediatrician or family practitioner. If there is trauma or bleeding present and the child will be examined in the ER, the examination should be performed jointly by the Emergency Room physician and a pediatrician or family practitioner.

#### **G. Child Abuse Team Conference**

After all assessments are completed, the physician, nurse, social worker, DYFS worker and law enforcement staff member participate in a case conference to determine the best plan for the child.

#### **H. Treatment/Hospitalization of Selected Cases**

In order to develop the diagnosis of suspected child abuse and neglect and initiate a treatment program, it is often necessary to use a brief hospitalization. Although the severity of the injury may not warrant hospitalization, the practitioner's concern about the family situation and risk of repeated abuse may govern the decision to admit the child. The physician should be candid with parents about the true nature of his concerns and the reason for hospitalization. If the parents do not consent to hospitalization, a Hospital Hold may be considered and invoked if warranted (See Protective Custody—Hospital Hold for details).

The hospital administrator can consent to treatment of the child if a Hospital Hold has been initiated, as this gives the hospital temporary legal custody of the child for a period of up to three court days (See section on Hospital Hold for details).

Treatment plans for follow-up care after hospitalization must be carefully and clearly defined so that the child and family can receive appropriate professional support and assistance. This is especially true in unsubstantiated cases where the child and family have a greater need for preventive services than proven victims of assault.

Once the diagnosis of suspected child abuse and neglect has been made, comprehensive treatment plans for the child and family should be implemented. No single combination of treatment modalities can be applied to all families. The specific medical, psychological, developmental and socio-economic needs of each family determine the particular combination of services offered.

## I. Consent for Treatment

Consent for treatment of a child must be provided by the child's parent(s) except in the following situations:

1. If DYFS brings the child to the hospital for medical evaluation, and/or treatment in the Emergency Department or Clinic, and the child's parent(s) do not accompany the child, DYFS obtains verbal consent from the parent prior to bringing the child to the hospital in order to have the child evaluated/treated. Documentation of the verbal consent must be documented in the child's medical record.
2. If the Emergency Department or Clinic evaluation decides to admit the child, DYFS assists in obtaining the parent's written consent for admission. DYFS either brings the parent to the hospital to sign the general admission consent or asks the parent(s) to sign the consent form at home and witnesses the consent signatures. If the parent(s) refuse to sign consent for admission, a Hospital Hold may be utilized (Refer to Protective Custody Hospital Hold for details).
3. DYFS can consent to medical evaluation and treatment if they have a court order giving them custody or guardianship of the child, or if they have invoked the Dodd law (N.J.S.A. 9:6-8.29) and removed the child without parental permission in an emergency situation. (Refer to Title 9 in the Appendix).
4. If a child under DYFS supervision is in foster care or residential placement, the foster parent or residential facility representative can consent for routine checkups and routine treatment *only*. If the injury or treatment required is unusual or suspicious, and for all care other than routine checkups and routine treatments, the appropriate DYFS office is to be called for consent. If there is an urgent reason to treat the child in the Emergency Department, the child should be treated first, then the appropriate DYFS office is to be called for consent. (Please note: If you are ever in doubt about consent for children in foster care or residential placement, call the appropriate DYFS office or the twenty-four hour hotline at the DYFS Office of Child Abuse Control (1-800-792-8610).
5. If the child's parent(s) refuses to consent for a specific diagnostic procedure, a hospital administrator can request a court order to treat. If the physician determines that treatment is necessary for the preservation of the child's life or limb, and the parent refuses to consent to treatment, the physician may opt to render such treatment. If practical, administrative consent should also be requested in these circumstances.

*NOTE:* The Social Work Department should be notified in all such cases to consider whether circumstances warrant involvement of DYFS or legal authorities.

6. In certain cases, if child abuse or neglect is suspected and there is no caretaker capable of safely caring for the child and no emergency housing available for placement in the community, the child may be admitted to the hospital with administrative consent.

## VII. ROLES AND RESPONSIBILITIES OF TEAM MEMBERS

To insure that the proper protocol is followed in the treatment of child abuse and neglect cases, the following procedures are recommended:

### Monday through Friday, 8:30 A.M. to 5:00 P.M.

- A. If DYFS brings the child to the Emergency Department and/or Clinic:

1. Prior to their arrival at the hospital, the DYFS worker should call the hospital social worker and advise that he/she is bringing in a child for evaluation of child abuse/neglect.
  2. The child abuse liaison will notify the Emergency Room/Clinic of the arrival of a suspected child abuse case.
  3. The child abuse liaison should notify the county prosecutor's office if the DYFS worker has not already done this.
  4. The nurse will perform the assessment as indicated in the Role of the Nurse.
  5. The appropriate physician (ie. pediatrician, family practitioner, ER physician, etc.) will obtain a history and examine the child for the determination of medical care as outlined in the Role of the Physician.
  6. After the physician has advised that the patient's medical needs have been met, the DYFS worker and/or hospital social worker and law enforcement staff will jointly conduct an in-depth interview with the child. The primary interviewer will be determined by the team prior to seeing the patient. Subsequent to interviewing the child, a joint interview will also be conducted with the parents or caretakers. A decision to interview a family member/caretaker who is the offender of child abuse/neglect should not be made until there is a consultation with the appropriate law enforcement agency.
  7. The physician, nurse, hospital social worker, DYFS, and law enforcement staff will have a conference to determine the best plan for the child considering all assessments and alternatives.
- B. If the child is brought to the Emergency Room and/or Clinic by someone other than DYFS:
1. The nursing staff will call the hospital social worker who will coordinate all non-medical care.
  2. The hospital social worker will interview the child, and if child abuse and neglect is suspected, will:
    - a) Notify DYFS immediately
    - b) Notify the county prosecutor's office.
  3. The appropriate physician will obtain a history and examine the child for the determination of medical care.
  4. The nurse will perform the assessment as indicated in the Role of the Nurse.
  5. After the attending physician has advised that the patient's medical needs have been met, DYFS, hospital social worker, and law enforcement staff, will jointly conduct an in-depth interview with the child. The primary interviewer will be determined by the team prior to seeing the patient. Subsequent to interviewing the child, a joint interview will also be conducted with the person who brought the child to the hospital. Attempts will also be made to talk with the parents at this time.

6. The physician, nurse, hospital social worker, DYFS, and the law enforcement staff will have a conference to determine the best plan for the child considering all assessments & alternatives.

**After 5:00 P.M. Weekdays, Weekends, and Holidays**

A. If DYFS brings the child:

1. DYFS should call ahead to alert the Emergency Room of their arrival wherever possible.
2. Nursing staff will advise the appropriate physician of the child's arrival.
3. When the child has arrived, Nursing will contact the on-call child abuse liaison.
4. The appropriate physician will examine the child for the determination of medical care.
5. The nurse will perform the assessment as indicated in the Role of the Nurse.
6. The on-call child abuse liaison will respond to the child abuse consult by telephone and will confer with hospital staff about the case situation.
7. The on-call child abuse liaison will ensure that the suspected child abuse/neglect case has been reported to the county prosecutor's office, and that proper documentation of this report is indicated.
8. The DYFS worker and law enforcement staff will jointly conduct in-depth interviews with the child and the parents/caretakers separately at the hospital or wherever the parents/caretakers may be available. Again, it is important to note that interviewing of family members/caretakers should not be done until there is a consultation with law enforcement staff.
9. The on-call child abuse liaison will act as the coordinator between DYFS, law enforcement, hospital and medical staff to facilitate communication and coordination of efforts, if needed.
10. The physician, nurse, DYFS worker, and law enforcement staff will confer on the case to determine the best plan for the child. If needed, the on-call child abuse liaison will be called for further consultation.
11. If needed, the on-call child abuse liaison will respond in person and will follow the same guidelines as indicated above for Monday-Friday, 8:30 A.M.-5:00 P.M.

B. If the child is brought to the Emergency Department by someone other than DYFS:

1. The nurse will perform the assessment as indicated in the Role of the Nurse.
2. The appropriate physician will examine the child for determination of care.
3. *If there is suspicion of child abuse or neglect after the medical evaluation:*
  - a. Nursing will contact the on-call child abuse liaison.

- b. The on-call child abuse liaison will respond to the consult by telephone, confer with hospital staff regarding the case situation and determine whether an in-person response to the hospital is needed. If an in-person response is necessary, he/she will follow the same guidelines as indicated above for Monday-Friday, 8:30 A.M.-5:00 P.M.
- c. The on-call child abuse liaison will provide consultation to hospital staff regarding the case, via the telephone, if an in-person response is not needed.
- d. The on-call child abuse liaison will ensure that the suspected child abuse/neglect has been reported to DYFS and the county prosecutor's office, and that proper documentation of this report is indicated.
- e. The DYFS worker and law enforcement staff will jointly conduct an in-depth interview with the child and parents/caretakers separately at the hospital or wherever the parents/caretakers may be available. Again, it is important to note that interviewing of family members/caretakers should not be done until there is a consultation with law enforcement staff.
- f. The on-call child abuse liaison will act as a liaison between DYFS, law enforcement, hospital and medical staff to facilitate communication and coordination of efforts if needed.
- g. The physician, nurse, DYFS worker and law enforcement staff will conference the case to determine the best plan for the child. If needed, the on-call child abuse liaison will be called for further consultation regarding the case.

#### **A. ROLE OF HOSPITAL SOCIAL WORKER/CHILD ABUSE LIAISON**

**Monday-Friday 8:30 A.M.-5:00 P.M.:**

- 1. Serves as the hospital-based child abuse contact or liaison person.
- 2. Receives requests for evaluations of suspected abuse or neglect cases from hospital personnel (i.e. Emergency Room, Clinic, pediatric staff and/or community agencies, DYFS, police, schools).
- 3. If the child is brought in by *anyone other than DYFS*, interviews the child and the parent/caretaker separately to assess whether child abuse and/or neglect *is suspected*.
- 4. Initiates case referrals to appropriate personnel for consultation and/or evaluation (i.e. pediatrician, pediatrics or emergency room nurse).
- 5. If child abuse or neglect is suspected, immediately reports the case by telephone to DYFS. If warranted, also reports the case to appropriate law enforcement staff (i.e. county prosecutor's office or police department staff).
- 6. Serves as the liaison between DYFS, law enforcement staff, hospital and medical staff to facilitate communication and coordination of efforts.
- 7. If the parents/caretakers are present, explains what has been done and why, helps to elicit their cooperation, and provide crisis intervention services. Assists with keeping the medical and hospital staff supportive and therapeutic in their approach to these parents and ensures that the parents are kept informed of what is happening to the child at all times.

8. Explains to the child what is happening and why, in an age-appropriate manner.
9. Confers with physician, nurse, DYFS and law enforcement staff:
  - a. To share information/assessments
  - b. To help determine the best plan for the child
  - c. To discuss/help resolve consent issues, if child is determined to be in need of acute hospitalization for medical or social reasons
  - d. If appropriate, initiates a Hospital Hold with administrative approval, and notifies DYFS, nursing management and security that a Hospital Hold is in effect.
10. If the child is admitted, provides social work services in accordance with regular job description.
11. Confers with nursing and medical staff regarding child's medical status, as well as hospital social worker's, DYFS, and law enforcement staff's assessments, findings and activities.
12. Provides crisis intervention or supportive counseling services to parent and child.
13. Maintains contact with DYFS and law enforcement staff to discuss the child's status and disposition plans, and provides DYFS with hospital/medical staff recommendations as needed.
14. Provides DYFS and law enforcement staff with the medical records needed to assist with the investigation of suspected abuse and neglect.
15. Assists DYFS with the discharge plan by helping to arrange for health related follow-up services.
16. Documents the social work assessment, notification to DYFS and law enforcement staff, objective observations and facts, all pertinent/significant interventions provided, initiation of a Hospital Hold, the child's discharge and follow-up care plan on the child's medical chart.

**After 5 P.M. Monday-Friday, and on Weekends:**

1. Responds to the suspected child abuse and neglect consult by telephone.
2. Confers with hospital staff regarding the case situation.
3. Ensures that the suspected child abuse/neglect case has been reported to DYFS and that proper documentation of this report is indicated.
4. Ensures that the case has been reported to law enforcement staff, and that proper documentation of this report is indicated.
5. Serves as liaison between DYFS, law enforcement staff, hospital and medical staff to facilitate communication and coordination of efforts, if needed.
6. Documents all pertinent information and interventions provided on the appropriate social work consultation form for the medical chart.

7. If needed, responds in person to the case at the hospital and follows the same guidelines as indicated above for Monday-Friday, 8:30 A.M.-5:00 P.M. (#1-16).

## **B. ROLE OF THE PHYSICIAN**

Child abuse and neglect continue to be problems of considerable importance to the health and well-being of many children in New Jersey. The number of cases reported to DYFS has more than doubled over the past three years. This probably is due to better reporting and improved professional and lay awareness of the problem. It may be that this increase also is due to a worsening of the problem including: increasing numbers of homeless families with children, increasing numbers of families in which violence is present, increasing numbers of parents affected by substance abuse, and increasing numbers of teenage pregnancies.

The maltreatment of children has existed since the beginning of time, but it was only in 1962 that the medical profession became seriously involved in the problem of child abuse. Since then, pediatricians and other health professionals have made a significant contribution in protecting children from further harm and in obtaining help for the parents for their problems that led to the abuse in the first place.

Managing a case of suspected child abuse is a very emotionally charged experience. It is as difficult for the physician as it is for others involved in the case. Some physicians hesitate to report when they are faced with a child whom they suspected may have been abused. Professionals and lay individuals alike have difficulty believing maltreatment of children occurs. As a prerequisite to accurate identification there must be a willingness to believe that maltreatment of children does occur.

A higher percentage of cases reported by physicians are substantiated. This indicates the greater accuracy with which cases of abuse are reported when seen by physicians. It also emphasizes the important role physicians play in the early recognition and referral of cases of abuse and neglect.

The physician's role involves several steps. First, he/she must acknowledge that the problem exists and have a healthy index of suspicion when he sees a child with an injury that cannot be explained by the history given by the parent. Then he must, with great sensitivity, discuss with the parents the fact that the child abuse is part of his differential diagnosis. This is often the most difficult part of the initial management of the case.

It is important at this point that feelings of anger or hostility towards the parents not be shown. The way in which the physician approaches the parents initially may set the stage for later success or failure in the outcome of the case.

The physician must be honest in what he tells the parents about the suspected diagnosis and about reporting the case to child protective services (DYFS). He may also tell them that he is required by law to report a suspicion of child abuse to the state child protective service agency and that he could be accused of professional negligence if he did not report the case as he saw it. The report should be viewed as a protection for the child and a means of obtaining services for the family that is experiencing problems.

The state law of New Jersey mandates that any person having reasonable cause to believe that a child has been subjected to child abuse or neglect, shall report the same immediately to the New Jersey Division of Youth and Family Services (DYFS) by telephone or otherwise. (N.J.S.A. 9:6-8.10). Any person knowingly violating the provisions of this act, including the failure to report

an act of child abuse, having reasonable cause to believe that an act of child abuse has been committed, is subject to criminal liability as a disorderly person. (N.J.S.A. 9:6-8.14).

The physician's role does not stop with reporting. He/she must try to protect the child from further injury. This may involve admitting the child to the hospital for medical or social reasons. He should do a comprehensive evaluation of the child's physical, developmental and mental status and use appropriate medical consultants as necessary in order to manage the child's medical problems. The injuries may be complex and require pediatric orthopedists, neurosurgeons, radiologists and other specialists.

The physician must maintain complete and legible records and be aware that his testimony in family court may be needed in order to establish the diagnosis of abuse or neglect. Rarely will this be necessary. Occasionally he may even have to testify in criminal court if the prosecutor's office charges the parents with criminal assault. It is irresponsible for the physician to refuse to testify in court as this may be necessary to protect the child from further injury.

The physician must try to overcome his fear of libel. He should realize that the law requiring him to report also protects him from libel if his suspicion is based on sound clinical grounds and turns out to be unfounded.

He also can make a contribution to protecting children by participating in a hospital or community based multidisciplinary team that periodically meets to review cases of abuse or neglect.

Further roles for the physician involve possible prevention, child advocacy, education, and consultation.

### **The Diagnosis of Child Abuse**

The diagnosis of child abuse is made by a careful history. The physician tries to determine if the injuries seen in the child can be explained by the history. Sometimes this is difficult to determine in a busy emergency room, hospital clinic or private office. It may be only after several interviews by different professionals involved in a case that an accurate history about the injury is obtained.

Consistency in the history is important. A story that changes over time and varies from one interviewer to another is suspect. The parent who is vague and disinterested about what has happened to the child, may also raise the suspicion of abuse.

For example, a frequent explanation for a serious head injury in abusive situations is that the small child fell out of a high chair and struck his head on a carpeted floor. Such a simple fall is not likely to cause a serious head injury. Helfer et al (1977) reviewed 246 children 5 years or younger who fell out of bed accidentally. There were no serious head injuries; only 3 children had a skull fracture on x-ray; none had any brain damage. The authors conclude that severe head injury and brain damage are very rare when small children suffer simple falls.

A careful, complete physical examination of the infant or child is always indicated. If there is one suspicious mark or bruise or burn on a child's body, a complete visual inspection of the child must be done in order to detect other possible injuries. This must be done with sensitivity and respect for the modesty of the child. In cases of head injury and where the Shaken Infant Syndrome is suspected, a careful ophthalmological examination is indicated to detect retinal hemorrhages.

Certain basic laboratory tests may be indicated, depending upon the type of injuries seen in

the child. For example, blood coagulation studies are indicated if the child has extensive bruises. Normal values will help to rule out a medical cause for the bruising.

If a young child presents with a fracture of one bone, serious consideration should be given to performing a skeletal survey or long bone survey. This may detect old healing fractures that are not obvious on physical examination. A bone scan is not usually helpful in this regard, since it detects recent fractures, bone infections and/or tumors. It may be difficult to tell one from the other on bone scan, therefore x-rays are more helpful.

In the case of a suspected head injury in a young infant or child, the physician may decide to order a CT Scan of the head to detect subdural, subarachnoid, or intracerebral bleeding.

The family and social information obtained by the social worker at the hospital or by the DYFS worker will be valuable in assessing risk to the child. The worker will also be able to determine if the family has been previously known to DYFS. In this instance it will be important to determine whether any other previous allegations of abuse or neglect were substantiated and to obtain information about other siblings and their general health and well being.

The behavior of the parents at the hospital may give clues about the possibility of inflicted injury in the child. It is important to observe their affect, general demeanor, response to questions, concern about the child, and to note the questions they ask about the seriousness of the injuries and the outcome. Nurses provide valuable observations on the pediatric floor when a child is admitted to the hospital with injuries. The way in which the parents interact with the child and with the staff often gives clues towards a diagnosis of accident or abuse.

Finally, the child's behavior may give indications about what is happening at home. A nurtured child usually looks to the parent for comfort at the time of a crisis and a nurturing parent usually provides such comfort. The developmental level of the infant and the young child who has been injured may give indications about whether the child is being neglected as well.

All of the above steps in the diagnosis of possible abuse require skill and time. It is for this reason that some children are admitted to the hospital while a thorough investigation is proceeding. This investigation involves the DYFS worker, physicians & possibly police and the prosecutor's office. If all of these professionals are able to work together, the outcome is likely to protect the child from further injury, and to obtain some help for the parents' problems which led to the abuse in the first place.

### **Differential Diagnosis**

There are certain medical diseases that the physician has to consider when faced with a child with bruises or bone changes that could possibly be caused by one of these diseases. A young child with a bleeding disorder might present with ecchymosis which could be confused with inflicted bruises. Diseases such as idiopathic thrombocytopenic purpura, henoch schlein aid leukemias and must be considered depending upon the presentation of low platelets and history. The young boy with hemophilia may present with a swollen, painful joint. The child with leukemia can present with bleeding phenomena which could be confused with inflicted marks.

Certain skin disorders such as annular impetigo, toxic epidermolnecrosis in their acute stages may resemble burns because of the redness of the skin associated with them.

There is a rare bone disorder called *osteogenesis imperfecta*, also sometimes called Brittle Bone Disease. In this condition, the infant is usually born with fractures which occur spontaneously. They are not the result of inflicted trauma by the parent. The physician in the emergency room when presented with such an infant may not be aware of this rare disease. He/she may consider

child abuse as the most likely diagnosis. A referral may be made, an investigation begun and the well-meaning, nurturing parents may be put through an inappropriate investigation for abuse.

Routine x-rays will rule out this rare condition. Usually the problem is the reverse. The young infant has suffered an inflicted fracture and the inexperienced physician diagnoses osteogenesis imperfecta. This is such a rare disease that it does not even deserve a place in the differential diagnosis of an infant with a fracture.

### **Severe Neglect**

Child neglect is much more common than child physical or sexual abuse. It is also more complex and more difficult to define. There are different types of child neglect. The term includes inadequate food and shelter, inadequate housing, lack of supervision, inadequate medical care and other instances in which parents fail to provide the child with the basic necessities of life. These of course also include love and nurturing.

It is sometimes difficult to determine whether the child is suffering from neglect because his parents are unable to provide for him or because they are unwilling to provide for him. In the first instance, the parents may be doing the best that they can, but are still unable to provide optimal care. In the second instance, the parents do not provide for the child's basic needs for any one of a number of complex reasons.

Child neglect is usually not a willful process in which the parent is determined to neglect the child. It usually occurs because of a number of problems in the family including drug or alcohol abuse, mental or physical illness or family breakdown and/or poverty.

Nevertheless, the effects upon the vulnerable child are real and they can be devastating. Neglect may even be more devastating to a child's healthy development than is physical abuse. This is because neglect is often of longer duration and may be so subtle that physicians and child welfare professionals fail to recognize it.

Emergency room physicians will occasionally see a young infant or child brought in because of any one of a number of signs of neglect. The infant may have untreated infections which have become chronic. These may include chronic otitis media with purulent drainage or chronic impetigo of the skin which has gone untreated. Severely malnourished infants and children occasionally show up in the emergency rooms of hospitals. They may represent cases of failure-to-thrive in which the infant's physical growth and development is below normal because of some impairment in the parent-infant relationship.

Specific references are provided in the appendix. The articles provided were chosen to reflect a systems approach to understanding inflicted trauma.

### **C. ROLE OF THE NURSE**

1. Assesses the chief complaint of the child and obtains a brief history of previous illness and/or injury. Question the child and parent(s)/caretakers separately, whenever possible regarding the brief history and chief complaint. A decision to interview a family member/caretaker who is the suspected offender should not be made until there is consultation with the appropriate law enforcement agency.
2. If the child is brought in by D.Y.F.S. the nurse:
  - a. Insures the hospital social worker/child abuse liaison is contacted.
  - b. Advises the appropriate physician of suspected abuse and neglect.

3. If the child is brought in by anyone other than D.Y.F.S., the nurse:
  - a. Contacts the hospital social worker/child abuse liaison.
  - b. Separates the child from the offender whenever possible.
  - c. Remains with the child until the physician or hospital social worker arrives.
  - d. Advises the physician of his/her concern and observations.
4. The nurse completes a physical and behavioral assessment of the child, i.e.:
  - a. Observes and notes the condition of the skin (i.e., bruises, abrasions, areas of swelling, unusual marks—bites, burns, etc.) using a body diagram, as well as narrative notes.
  - b. Assesses any limitations of motion (i.e., inability or hesitancy to move a limb, stiffness, pain on movement, etc.)
  - c. Notes level of consciousness (i.e., awake, alert, drowsy, lethargic, comatose, etc.)
  - d. Observes any signs of neglect (i.e., failure to thrive, poor hygiene, malnutrition, poor skin turgor, etc.)
  - e. Observes and notes signs of emotional distress (i.e., irritability, depression, withdrawal, fear, acting out, etc.)
  - f. Observes parent/child interaction (i.e., child frightened of or overprotective of parent, angry at parent, absence of any interaction, etc.) and uses formal parent-child assessment tools when appropriate.
5. Records all spontaneous statements and answers to questions made by child, parents, caretakers, etc., verbatim on the medical chart.
6. Documents all assessment facts and observations on the medical chart.
7. Following all chain of possession procedures, sets aside clothing articles with evidence of assault or abuse for examination by law enforcement officials, when appropriate.
8. Insures that any specimens drawn for examination or study that are to be retained in the hospital, such as blood, etc., are documented to maintain the chain of possession. Transfers of possession should be kept at a minimum. When a transfer occurs, it should be logged.
9. Confers with the physician, hospital social workers, DYFS and law enforcement staff:
  - a. To share information/assessments.
  - b. To help determine the best plan for the child.

*If the child is hospitalized,* the role of the nurse is to:

10. Provide consistent care and a therapeutic environment during hospitalization:
  - a. Demonstrate acceptance of the child and show attention while not encouraging inappropriate behavior.

- b. Plan appropriate activities, using play to work through emotional stresses.
  - c. Promote the child's self-esteem by praising abilities.
  - d. Provide T.L.C. (Tender, Loving Care).
11. Help relieve anxiety in the child:
- a. Treat the child for a physical problem and not as an "abused" child.
  - b. Avoid asking too many questions about the abuse. The child should relate any aspects of the alleged abuse to *one* consistent person of the team.
12. Provide emotional support to parents:
- a. Orient the parents to the unit and help them feel welcomed and recognized as an important part of a child's care and recovery.
  - b. Allow natural parent-child activities in the relationship to occur, as long as they are not destructive or harmful to the child.
  - c. Empathize with coping problems the parents may verbalize but do not condone the abuse.

**IMPORTANT: REFER TO RIGHTS OF PARENTS TO VISIT SECTION FOR QUESTIONS/CONCERNS REGARDING PARENTAL VISITATION.**

13. Provides education for parents as indicated (e.g., feeding techniques, methods of handling developmental problems such as toilet training, etc). Try not to lecture—use demonstration and role-modeling.
14. Continue to observe and document physical and behavioral assessment findings throughout the child's stay in the hospital.
15. Plan for discharge:
- a. Work closely with the hospital social worker in planning follow-up care.
  - b. Provide complete discharge instructions to parent or significant other, making sure they have verbalized an understanding of what those instructions are.

#### **D. ROLE OF THE DIVISION OF YOUTH AND FAMILY SERVICES (DYFS) WORKER**

1. Investigates reports of all suspected child abuse and neglect.
2. Conducts an in-depth interview with each child, parent/caretaker and/or the offender along with law enforcement staff. As previously stated, no DYFS worker is to interview the family member/caretaker suspected of child abuse/neglect until first consulting with law enforcement staff.
3. Confers with the physician, nurse, hospital social worker and law enforcement staff:
  - a. to share information/assessments.

- b. to determine the best plan for the child. *DYFS' exclusive role and responsibility is to determine if the home environment is safe for the child/children to return.*
  - c. to discuss/finalize consent issues, if child is determined to be in need of treatment or acute hospitalization for medical or social reasons.
  - d. if appropriate, to *recommend* that a Hospital Hold be initiated giving the hospital protective custody of the child. If a Hospital Hold is initiated, DYFS' role is to notify the parents in writing that a Hold is in effect and to ensure that written notification of this Hospital Hold is on the child's medical chart. DYFS *cannot* initiate a Hospital Hold. (See Protective Custody—Hospital Hold section for details).
4. Provides transportation for child and/or parent, if necessary.
  5. Requests records and medical information of hospital staff to assist with investigation of suspected abuse/neglect.
  6. If needed, locates alternate placement if the child is unable to return home.
  7. Provides/arranges for necessary follow-up services if the child is discharged from the Emergency Room.
  8. Provides consultation to hospital staff, if they are uncertain whether a case is appropriate for referral.

**If the child is admitted to the hospital, DYFS' role continues as follows:**

9. Communicates daily with hospital social worker to discuss the child's status and the anticipated disposition.
- \*10. Arranges for and purchases child care services to supervise or "babysit" for children admitted to the hospital for non-medical reasons, if necessary.
11. Investigates the report and the home situation thoroughly and as quickly as possible speaking with caretakers, siblings, relatives, school personnel, etc.
12. Actively seeks, develops and maintains alternate placement—resources for children, if they cannot return home.
13. Implements the discharge plan for the child with assistance from the hospital social worker for health related follow-up services.
14. Supervises the case post-discharge ensuring that appropriate follow-up care and supportive services are provided/arranged. Communicates with hospital social worker, as well as law enforcement staff when appropriate, etc.

(Note: Follow-up care and supportive services can include parent-aide services, homemaker services, parents anonymous groups, day care, marital counseling, individual counseling, parenting education, etc.)

15. If appropriate, files civil litigation charges.

---

\*Since these children would have been admitted for social reasons *only*, they may require constant supervision due to their state of wellness and high energy levels.

## **E. ROLE OF LAW ENFORCEMENT**

To respond to reported cases of suspected child abuse and neglect and determine if there is probable cause to believe that a crime has been committed.

### **1. Notification to the Prosecutor's Office**

The county prosecutor's office shall be notified of appropriate suspected cases of child abuse or neglect.

### **2. Notification to the Local Police Jurisdiction**

The county prosecutor's office will determine whether to contact the local police department within whose jurisdiction the incident occurred in order to conduct a child abuse investigation. If the local police department requests assistance in conducting the investigation, the county prosecutor's office will respond. If the local police department is unable to respond, or if the jurisdiction is unknown, the county prosecutor investigator will respond.

### **3. Investigation**

It is the responsibility of the investigator/police officer to determine if there is probable cause to believe that a crime has been committed. The investigator shall confer with the physician, nurse, hospital social worker and the DYFS representative to share information/assessments. The following procedures shall be observed when gathering information.

#### **Victim/Witness Interviews**

No in depth interviewing with a victim/witness shall be conducted by law enforcement or other non-medical staff until the attending physician or other authorized medical staff has advised that the patient's medical needs have been met and the patient can be interviewed.

The law enforcement official shall coordinate the interview process and may be accompanied by the DYFS representative and/or the hospital social worker when the victim is being interviewed. The primary interviewer will be determined by the Team prior to seeing the child. All parties shall coordinate the questions through the appointed interviewer when interviewing the victim or a witness with first hand knowledge of the facts or circumstances. The interview process with the offender and witnesses will be coordinated by law enforcement staff.

### **4. Resources for Statements**

In the event that either typewritten or videotaped statements are deemed necessary by the law enforcement officials, they shall supply all necessary materials including secretarial help. Physical accommodations needed to obtain such statements will be arranged through the hospital social worker and every effort will be made to avoid interference with the daily routine of the hospital.

The law enforcement official may make available all oral and written statements to the physician, nurse, hospital social worker and DYFS representative in order to aid in the treatment and the best plan for the child. The law enforcement official shall provide any pertinent information about the filing of criminal charges at the earliest possible time to aid in the decision as to how the child shall best be cared for and protected.

## 5. Physical Evidence

Gathering and evaluating physical evidence is the primary source of information in an investigation and a major aid in determining if a crime has occurred. Due to the necessity of treatment and the nature of evidence, many individuals may come in contact with the physical evidence or may in fact gather such evidence. Ultimately, it is the responsibility of the law enforcement officials to collect that evidence and preserve it so that it may be presented in a prosecution. Therefore, it is necessary that the following procedures be observed and that each step in the evidence collection procedures be documented.

### A. Clothing

All clothing must be carefully preserved as it may contain evidence of an assault such as blood, semen, saliva, hair, and physical alterations such as tearing, ripping, soiling or spotting.

As soon as any medical/hospital staff come in contact with the victim's clothing, it is imperative that the articles be placed in separate bags, set aside and turned over to the law enforcement official as soon as possible.

Upon transfer of the clothing from the medical/hospital staff to the law enforcement official, a receipt to establish a chain of custody must be prepared by the law enforcement official to document the transfer of possession and establish a chain of custody.

### B. In-Hospital Laboratory Testing

Often testing done by the hospital for purposes of medical treatment (i.e., drawing blood) may provide critical evidence for the state. It is thereby very important that the chain of custody be maintained and accurately documented.

Copies of all laboratory testing should be included in the medical records of the victim. Further, the names of medical/hospital staff involved with the handling and/or testing of the specimen should be indicated in the medical records as well. This should include all testing for venereal disease, pregnancy and H.I.V.

### C. Rape Kits

The rape kit contains a variety of forensic specimen collection supplies. The rape kit was initially designed for evaluation of rape in adults, not children. As a result, in most cases not all of the specimen materials need to be collected for children.

A rape kit is designed to detect physical evidence. *If there is no reason to suspect the presence of such evidence, either through the history obtained, or the amount of time between incident and treatment, then the use of the kit is both counter productive as an evidence gathering tool and an unnecessary imposition upon a patient.*

The decision to utilize a rape kit as part of the medical examination is both a legal and medical one. Therefore, the decision to use or forego the kit shall be a joint one, between the physician and the law enforcement officer. In any case where there is a dispute, the county prosecutor's office shall make the final decision on the use of the kit. As a guideline, the following criteria shall be considered:

1. *The presenting history:*

If penetration is not indicated or is indicated only for certain body areas, the entire kit procedure need not be utilized.

2. *The amount of time between incident and examination:*

As a rule of thumb, a 72-hour period between penetration and examination will negate the need for dried secretions and swabbings.

3. *The age of the victim:*

The age of the child is to be considered paramount and discretion should dictate that the younger child need not be subjected to the rape kit examination.

4. *The ability to document trauma or other indications of assault by external visual examination:*

If external examination with extensive, accurate recording of same will satisfy the medical personnel that evidence of abuse exists, particularly in young children, then that alone may be sufficient.

5. *If the overall history, examination and other supporting documentation supports a medical/legal determination that abuse either exists or does not exist then a kit may be deemed unnecessary.*

**6. Documentary Evidence**

A. The use of documentary evidence is most persuasive in diagnosing and prosecuting suspected child abuse and neglect. The principal forms of documentary evidence include hospital records, charts, reports, history, X-Rays, treatment reports, and photographs. This documentation, when presented to an expert, can provide the basis for a qualified opinion as to whether a patient/victim has suffered a form of child abuse.

1. *Hospital Records*

The prosecutor's office will maintain ongoing contact with the child abuse liaison to ensure that all appropriate records have been received.

2. *Photographs*

The county prosecutor's office or local law enforcement officer will photograph physical injuries. Care will be taken to respect the child's sense of modesty and feelings of being "damaged goods." Therefore, it is important to photograph the child dressed prior to photographing undressed portions of the body. Only law enforcement staff of the same sex should be allowed to photograph the child's genitalia.

When obtaining photographs of any part of the body, an identifying tag with a measuring scale should be placed adjacent to the area to be photographed. Photographs will be taken in a tasteful manner with the victim properly draped.

a. Because photographs are taken by law enforcement officials for evidence in a possible criminal investigation, permission from the victim or the parent/guardian is not required. However, every effort should be made by the law enforcement officials to

assure the victim and the parent(s) or guardian of the necessity for the photographs and their limited use. In the event that the victim and/or the parent(s) refuse to allow photography, this will be noted in the hospital and police records.

- b. Copies of photographs taken by law enforcement officials may be made available to the hospital for teaching purposes upon closure of any criminal proceedings which may be instituted. Standard procedures will be followed to ensure the anonymity of the person photographed.

#### **7. Identification and Arrest of the Offender**

The law enforcement official will continue to provide information to DYFS and the child abuse liaison about the suspected offender. An arrest will be promptly communicated to DYFS and the child abuse liaison.

#### **8. Prosecution of the Offender**

- A. The county prosecutor's office will maintain communication with the DYFS and the child abuse liaison regarding the status of all pending cases as it affects their organization.
- B. In the event that a DYFS worker or medical staff is subpoenaed, all efforts shall be made to minimize their inconvenience. The county prosecutor's office will make every attempt to schedule their testimony at a specific time in order to avoid extended waiting in court.

#### **F. Rights of Parent(s) to Visit**

1. While the child is in the hospital and under a Hospital Hold, the parent(s) may request to visit the child. Visitation may be granted at the discretion of the child abuse team providing that the life or health of the child will not be endangered by the visit. When there is a difference of opinion regarding the parent(s) visit, the final decision rests with the hospital since it has temporary legal custody of the child, unless DYFS gains custody through court action.
2. If DYFS has legal custody of the child *or* has acted under the Dodd Law (N.J.S.A. 9:6-8.29) and removed the child without consent or a court order, only DYFS can decide whether visits will be allowed. However, it is suggested that the team be consulted about such visits.
3. The prosecutor's office is responsible for notifying the hospital if the conditions of bail indicate that the parent(s) not have any contact with the victim or the victim's family.

#### **G. Protective Custody/Hospital Hold Procedures**

##### ***PURPOSE***

To protect suspected child abuse victims from removal from hospital custody, by parents or anyone, until proper arrangements can be made for the protection of the child.

##### ***PROCEDURE***

During regular working hours, the administrator responsible for the social work dept., or, in his/her absence, the Chief Executive Officer is empowered to take into protective custody any child suspected of being abused or neglected under the provisions of the Protective

Custody Law (P.L. 1973, c.147). After hours, the administrator on call is so empowered. Under the Protective Custody Law, the hospital administrator may take an abused or neglected child into protective custody without consent of the parents for up to three (3) court days, during which time DYFS, after being notified of the custody action, will investigate the circumstances in the home environment leading to the suspected abuse or neglect. DYFS will take steps to extend the period of custody through court action if necessary to protect the child.

Whenever a determination is made to take a child into protective custody, the child abuse liaison or administrator must *immediately* notify the appropriate DYFS District Office by telephone. After hours, (weekends, holidays, or weekdays between 5 p.m. and 9 a.m.) the matter should be reported to the DYFS Office of Child Abuse Control—1-800-792-8610.

When making a report, the child abuse liaison or hospital administrator provides the DYFS District Office or the Office of Child Abuse Control with the following information:

- A. The name of the reporting administrator or child abuse liaison and the phone number where s/he can be reached
- B. Child's name and birthdate
- C. Names of parent(s) or caretaker(s)
- D. Present or last known address of parent(s) or caretaker(s)
- E. Description of the child's condition as detailed as possible
- F. Any information known concerning the circumstances of the suspected abuse

The initiation of a Hospital Hold means that the child is in the protective custody of the hospital administrator or examining physician as the *protem* legal guardian of the child. In cases where the life or health of the child is in danger, treatment may be provided by the hospital without consent of parent(s).

A Hospital Hold *cannot* be initiated by DYFS. Only a physician or a hospital administrator can initiate a Hospital Hold. DYFS can only request that a Hospital Hold be placed on a child.

Hospital Hold should be considered only as a last resort, due to the restriction of time in which DYFS has to work (3 court days). A copy of a sample form to be used when advising hospital staff of the possibility of applying the Hospital Hold is included in this appendix. This form will serve the purpose of preventing the parents/guardians from removing the child from the hospital.

## **VIII. DOCUMENTATION OF SUSPECTED CHILD ABUSE & NEGLECT ON THE MEDICAL CHART**

The documentation of suspected abuse or neglect should include the following information:

- A. Detailed written history of the injury/trauma to the child, which includes any verbatim statements given by the child or parent as to how the injury occurred.
- B. Description of the injury or injuries

C. Description of parent-child interaction

D. Medical conclusions

**A. History**

A complete history of how the injury/trauma allegedly happened should be obtained by *one* person, preferably the physician, as soon as possible after admission. It is important for the person obtaining the history to talk with the parents directly so that this history is not looked upon as hearsay evidence (second-hand information) if the matter eventually ends up in court. A thorough history includes:

1. Date and time the patient is brought in.
2. Name(s) of professional(s) who accompany the patient.
3. Informant's name (parent, child, relative or can be more than one person).
4. Date, exact time and place of the incident causing the injury to the child.
5. How the injury occurred; record spontaneous statements and answers to questions verbatim.
6. The sequence of events *preceding* the injury to the child.
7. Person(s) present at the time the injury occurred.
8. Time lag, if any, before seeking medical attention.
9. Reason for the delay in seeking medical attention.
10. Any past history of injuries/abuse to this child or other children in the family.
11. Person(s) who is accused of abusing the child, if identified by informant or child; this is not information however that the physician needs to seek out.
12. Indicate any specific statements made by the child in relation to the injury/trauma verbatim.

**B. Description of the Injury or Injuries**

Upon physical examination of the child the following information should be documented in writing:

1. List the injuries by site (e.g., head, arms, legs, buttocks, back, chest, abdomen, genitalia).
2. Plot the location of the injuries on a body diagram chart
3. Describe each injury by size, shape, color and estimate of age.
4. If the injury identifies the object that was used to cause it, state this in writing (e.g., belt buckle, strap mark, hand print, cigarette burn, bite marks, rope marks).

5. Use non-technical terms whenever possible such as "bruise" instead of "ecchymosis," "cheek" instead of "zygoma."
6. Use inches instead of centimeters where possible.
7. Describe any bizarre behavior the child may be exhibiting.
8. Indicate if other lab tests (e.g., x-rays/skeletal survey) or evaluations (e.g., psychological, psychiatric, neurological) have been ordered and the reasons why.
9. Indicate if photographs have been taken of the injury/injuries.
10. Do *not* use the phrase "rule out child abuse/neglect;" instead, provide a factual statement on reasons why this injury represents "suspected child abuse/neglect" or "SCAN by history."
11. Document facts only, both positive and negative.
12. Indicate type of follow-up and time frames that are being recommended.

### C. *Description of Parent-Child Interaction*

1. Describe in *behavioral* terms, any observations made regarding parent-child interactions; do not state conclusions drawn from the behavior, instead describe the behaviors observed.
2. Document any statements by the parent or child regarding the parent's perception of the child, or the child's perception of parent, verbatim.
3. Include in the medical record copies of any formal parent-child interaction assessments used in the evaluation process.

### D. *Medical Conclusions*

Before formulating a conclusion ask the following questions:

1. Can any or all of the physical findings be corroborated with the history?
2. Have alternative explanations for the trauma been considered and are they plausible?
3. Have all of the diagnostic and forensic tests been completed and the results reviewed prior to coming to a conclusion?

The following conclusion alternatives provide the examining physician with a variety of options beyond the normal/abnormal examination conclusions. These alternatives are:

1. The physical examination is consistent with the history that has been provided with specific delineation of the findings and the alleged activity.
2. The physical examination neither confirms nor denies the history of ... This conclusion is most appropriate in children with a history that provides sufficient historical details to validate the complaint but whose physical examination neither demonstrates acute or chronic trauma

3. The physical examination is consistent but not necessarily indicative of ....
4. The physical examination is inconsistent with the history of ...

Utilizing one of these conclusions leaves the greatest number of options open for the child victim. If needed, the physician's conclusions can be further elaborated in the court room. All medical reports should be either typewritten or written legibly.

## **IX. PROVIDING MEDICAL TESTIMONY FOR CASES WHICH GO TO COURT**

Cases of suspected child abuse may require medical testimony when it is determined that the case should be heard in the Family Court and/or the Superior Court—Criminal Division. Child abuse/neglect cases are heard in Family Court to determine whether or not a child should remain in the care and custody of the abusive parent and/or guardian. Those cases are litigated by DYFS through the Attorney General's Office. The cases heard in Superior Court—Criminal Division are cases where offenders are prosecuted criminally by the county prosecutor's office for abusing a child.

Petitions in Family Court for the protection of a child are sustained on the basis of a "preponderance of the evidence," which means just enough evidence to tip the scale in favor of the petition. Criminal charges in Superior Court—Criminal Division must be sustained by the highest standard of proof, "beyond a reasonable doubt."

Testimony by medical/hospital staff may be required to prove a child's physical injuries or evidence of sexual abuse as well as to provide the critical evidence against the offender that the injuries did not occur in a manner consistent with the offender's story.

Medical testimony is often aided by well documented medical records which are complete, accurate & legible. (Refer to Documentation of Suspected Child Abuse and Neglect on the Medical Chart section for details).

## **X. STAFF EDUCATION**

Staff education is the essential foundation for high quality management of suspected child abuse and neglect cases. All involved staff, employees and volunteers, should be aware of the state laws and hospital policy related to child abuse and neglect. This awareness may be achieved by incorporating a special section about abuse and neglect into the hospital orientation and/or employee handbook.

Direct services staff should acquire the skills necessary to successfully recognize and treat these children and their families. The literature is replete with professional resources, often discipline specific, that can assist in the development of these skills (see attached Bibliography).

On-going staff education can encompass the following: high-risk indicators of abuse and neglect; the establishment of a helping relationship between the health care professionals, the child and the family; clear and concise verbal communication and written documentation; awareness and understanding of each professional's responsibility in dealing with cases of suspected abuse and neglect; and preparation for courtroom testimony.

## **XI. EVALUATION**

Regular evaluation of suspected child abuse and neglect cases will help to ensure the quality of intervention and compliance with hospital policy and procedures. Discipline-specific

activities can be initiated as accountability measures. If there is an established team, interdisciplinary case review using preset criteria can be an effective evaluation method for general problem-solving and quality assurance purposes. Annual policy reviews can be established to determine if changes need to be made.

## **XII. CONCLUSION**

The identification, treatment, and protection of children who may be victims of abuse and neglect will be enhanced in hospitals where the administration has created a climate of commitment. This commitment can be fostered through the development of objectives that address direct services, policies and procedures, ongoing staff education, and continuing evaluation of the system.

Since child abuse and neglect is a multidimensional problem, it requires a multidisciplinary approach to its identification, diagnosis and treatment. In hospitals, a coordinated team approach to suspected child abuse and neglect situations will bring together the three (3) major components involved: the social (D.Y.F.S.), the medical (physician, nurse and hospital social worker), and law enforcement (police and/or county prosecutor's office). If the social, medical and law enforcement components collaborate and coordinate their activities, they can cooperatively intervene in a way that will minimize the trauma to the child and determine what is the best plan for the welfare of the child.

# **Appendices**

## **Guidelines on the Management of Child Abuse & Neglect Cases in Hospitals**

## TABLE OF CONTENTS

A. Appendix A: Child Abuse Consultation Form .....	1
B. Appendix B: Body Diagram Form .....	3
C. Appendix C: Hospital Hold Warning Form .....	4
Bibliography .....	5

**APPENDIX A: CHILD ABUSE CONSULTATION FORM (PG. 1)**

Date Medical Record #

Time

On-Call Social Worker Patient Account #

- \* Person giving referral  
 Responding by phone  Responding in Person  
Suspected Condition:  
 Neglect  Physical Abuse  Sexual Abuse

Child's Name: Date of Birth: Age:

Address: Phone:

Child Accompanied By:

- |                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> <i>Mother</i> Name: <span style="margin-left: 150px;"><input type="checkbox"/> <i>Father</i> Name:</span> |
| Address: <span style="margin-left: 150px;">Address:</span>                                                                         |
| Phone: <span style="margin-left: 150px;">Phone:</span>                                                                             |
| <input type="checkbox"/> <i>Other</i> Name: <span style="margin-left: 150px;"><input type="checkbox"/> <i>DYFS Worker</i></span>   |
| Address: <span style="margin-left: 150px;">Name:</span>                                                                            |
| Phone: <span style="margin-left: 150px;">Office Address:</span>                                                                    |
| Relationship: <span style="margin-left: 150px;">Phone:</span>                                                                      |

If DYFS has not been contacted, call 1-800-792-8610  
DYFS contacted by: Time:  
SPRU Worker responding:

Prosecutor's Office notified by: Time:  
184 County Investigator's Name:  
Responding in Person: Yes  No

Police notified by Time:  
Police Department responding  
Police Department Phone:  
Detective's Name:

Pediatrician on call for Diagnostic Center:  
Resident seeing child:

\*Advise RN to document telephone consult and place a copy of the E.R. chart in a sealed envelope in the Social Work mailbox.

**JERSEY SHORE MEDICAL CENTER  
CHILD ABUSE DIAGNOSTIC CENTER  
SOCIAL WORK CONSULTATION**

Patient's Stamp

**APPENDIX A: CHILD ABUSE CONSULTATION FORM (PG. 2)**

If suspected physical abuse, describe:

Pictures taken      Yes       No

If yes by whom:  
Reason if *not* taken

If suspected sexual abuse, describe:

Were cultures taken      Yes       No   
If yes, by whom and which ones

Was rape kit utilized:      Yes       No   
If yes, why and what was utilized

Was VDRL test performed:      Yes       No       Date:

Other tests performed:

HIV      Yes       No       Date:

Drug Screening      Yes       No       Date:

Blood      Yes       No       Date:

Urine      Yes       No       Date:

Description of Incident (who, what, where, when and how):

Psychosocial History:

Child Admitted      Yes       No

If no, disposition and referrals for follow-up:

Medical Social Worker

**JERSEY SHORE MEDICAL CENTER  
CHILD ABUSE DIAGNOSTIC CENTER  
SOCIAL WORK CONSULTATION**

**APPENDIX B: BODY DIAGRAM FORM**

ON DIAGRAM BELOW MARK AREA WHERE THE FOLLOWING  
ARE NOTED INDICATING SIZE & CONFIGURATION:

- B —Bruise
- L —Laceration
- E —Edema
- S —Scar
- D —Decubitus
- R —Rash

**APPENDIX C: HOSPITAL HOLD WARNING FORM**

Date

This child's case is being investigated by \_\_\_\_\_ County  
DYFS for possible neglect/abuse. A hospital hold has been requested by DYFS in  
the event the child's family tries to physically remove the child from this facility AMA  
and/or without consent of DYFS. The DYFS worker for the child is  
and can be reached at this number, \_\_\_\_\_, Monday-Friday, 8:30 A.M. to 5:00 P.M.

The following individuals have all been notified about the possibility of a hospital hold being initiated. If a hold is needed, the administrator on-call should be contacted for approval of the hold. All other staff should be re-contacted when the hold is initiated and advised of the case status.

1. Administrator on call \_\_\_\_\_, Beeper # \_\_\_\_\_
2. Nursing Supervisor, Extension 4256.
3. Nurse Manager and Assistant Nurse Manager on floor.
4. On-Call hospital Social Worker, long-range Beeper #776-1910.
5. Security Desk, Extension 4183
6. DYFS worker, as above. If after 5 P.M. or on weekends, call the DYFS hotline, 1-800-792-8610 and advise them that a hospital hold is in effect.

Upon occasion, the child's parents may become hostile and disruptive when a hospital hold is initiated. If this occurs, the child's parent may be escorted from the hospital by our security staff. DYFS should be notified of this occurrence. The incident should be documented in the nursing notes on the medical chart, as well as the social worker notes, if Monday-Friday, 8:30 A.M. to 5:00 P.M.

**Medical Social Worker**

**JERSEY SHORE MEDICAL CENTER  
SOCIAL WORK DEPARTMENT  
HOSPITAL HOLD PROCEDURES**

CADC—8-87

Patient's Stamp

## BIBLIOGRAPHY

Burgess, A.W., and others. *Sexual Assault of Children and Adolescents*. Lexington, VA: D.C. Heath and Co., 1978.

Finkel, Martin A., D.O. *Medical Examination in Alleged Sexual Abuse of Children*. Stratford: University of Medicine & Dentistry of N.J., 1988.

Helfer, R.E., Slovis, T.L. *Injuries Resulting When Small Children Fall Out of Bed*. *Pediatrics*, 1977, Vol. 60.

Keith-Lucas, Alan. *Giving and Taking Help*. North Carolina: University of North Carolina Press, 1974.

Kempe, C.H., and Helfer, R.E. *The Battered Child*. 3rd ed. Chicago: University of Chicago Press, 1980.

Sgroi, S.M. *Handbook of Clinical Intervention in Child Sexual Abuse*. Lexington, VA: D.C. Heath and Co., 1982.

Star, B. *Helping the Abuser, Interviewing in Family Violence*. New York City: Family Service of America, 1983.

The Society for Hospital Social Work Directors. *Guidelines on the Management of Child Abuse & Neglect Cases*. Chicago: American Hospital Association, 1986.

Jersey Shore Medical Center. *Child Abuse Diagnostic Center Policies & Procedures*. Neptune, N.J., 1987.

U.S. Department of Health, Education & Welfare. *Guidelines for the Hospital & Clinic Management of Child Abuse & Neglect*. Washington, D.C.: U.S. Government Printing Office, January 1979.

New Jersey Hospital Association. *Model Policies & Procedures: Amendment to Licensure Standards* N.J.A.C.—8:31-26.4. Princeton: N.J. Hospital Association, September 1981.

New Jersey Division of Youth & Family Services. *The Health Professions and Child Abuse & Neglect*. Trenton: N.J. Division of Youth & Family Services, December 1979.

National Association of Social Workers. *NASW Standards for Social Work Practice in Child Protection*. Washington, D.C.: National Association of Social Workers, February 1981.

Council on Scientific Affairs Report. *Diagnostic & Treatment Guidelines Concerning Child Abuse & Neglect*. Chicago: American Medical Association, December 1984.

# **Medical Examination Of the Sexually Abused Child**

**Prepared For  
Governor's Task Force  
On Child Abuse and Neglect**

**By**

**Martin A. Finkel, D.O.**

**University of Medicine and Dentistry of New Jersey  
School of Osteopathic Medicine  
Acting Chairman, Department of Pediatrics**

# TABLE OF CONTENTS

I. Introduction .....	1
II. Determining the Urgency of Examination .....	1
III. Preparing the Child for Examination .....	2
IV. Examining the Child .....	2
V. Differential of Trauma in Sexual Abuse .....	4
A. Extragenital Trauma .....	4
B. Oral-Genital Trauma .....	4
C. Manual Stimulation of Offender's Genitalia .....	4
D. Fondling, Introduction of Foreign Body Non-penile .....	5
E. Penile Stimulation Without Penetration .....	5
F. Penile Penetration — Vagina or Anus .....	6
G. Accidental Trauma .....	6
VI. Evaluation for Sexually Transmitted Diseases .....	7
VII. Evidence Collection in the Forensic Evaluation of the Sexually Abused Child .....	7
A. Clothing Collection .....	8
B. Dried and Moist Secretions .....	8
C. Examination for Motile Sperm .....	8
D. Obtaining Photographs .....	9
VIII. The Medical Record .....	9
Documentation and Formulation of Conclusion	

## **I. INTRODUCTION**

This document will provide an introduction to the "How To's" of the medical evaluation of the sexually abused child. This is not the definitive work but is rather a guide which is a distillate of the author's experience examining sexually abused children and knowledge of the literature. This will set the stage for physicians who, by the nature of their clinical practice, participate in the validation of suspected sexual abuse.

This document does not address physical abuse although the reference section includes some excellent review articles on physical maltreatment, its diagnosis and management, along with key articles to further the reader's knowledge of sexual abuse.

## **II. DETERMINING THE URGENCY OF EXAMINATION**

The accidental or purposeful disclosure of the possibility of sexual abuse unfortunately results in a crisis response by parents, caseworkers, and medical professionals. Although all disclosures are psychosocial emergencies in intrafamilial sexual abuse, few are medical emergencies. The initial intervention will generally be best approached if stabilization of the family and historical validation is seen as a priority, except for those children who meet the criteria for immediate medical examination. Many children disclose abuse long after the last episode of inappropriate contact. Findings of acute trauma are therefore unlikely to be present and the immediate medical examination may not be the most important component of the initial validation and intervention. A knowledgeable, sensitive and thorough examination of the sexual abuse victim with appropriate documentation so as to avoid repeated examinations should be every physician's goal.

The emergency room may be the least desirable environment for de-emphasizing the crisis-like nature which can surround the initial investigation of these cases. The criteria for considering immediate medical examination are as follows:

1. History of age inappropriate sexual contact within the last 72 hours
2. History of acute vaginal bleeding and/or genital trauma
3. Vaginal discharge and the possibility of sexually transmitted disease
4. Possibility of pregnancy when presented with a history of penile vaginal penetration in an adolescent child who has reached menarche.

If a child has had a history of a vaginal discharge for some time and the child is medically stable, disclosure of possible sexual abuse does not warrant referring a child to the emergency room in the middle of the night for a medical evaluation. It is most appropriate for the examination to be deferred until the daytime when an unhurried examination can be completed by a physician who feels comfortable examining these children and has the resources to collect appropriate cultures and diagnostic tests for sexually transmitted diseases.

In post menarcheal adolescents when the possibility of pregnancy needs to be entertained based on the history, consideration for pregnancy prophylaxis or termination may be indicated. The child must be included in the decision for termination if that is an appropriate therapeutic option.

If the immediate examination criteria are not met and it appears that the child will refuse the examination, the initial encounter should be utilized to develop rapport with the child. Arrangements should be made for an examination as soon thereafter as possible. The genital examination should only be completed within the context of a complete head to toe physical.

In the unusual circumstance in which there is a history of significant genital trauma, it may be necessary to examine the child under anesthesia to adequately assess the extent of the injuries.

### **III. PREPARING THE CHILD FOR THE EXAMINATION**

It is essential that a trusting relationship be developed between the physician and the child prior to examining the child sexual abuse victim. Children who have been abused often feel betrayed by those people in whom trust should have been implicit. The physician has an opportunity to be one of the first professionals in whom the child can build a foundation of trust. The purpose of the examination should be explained to the child. It should be emphasized that this will be a complete head to toe examination, that all parts of the body are important. An adult ally of the child's choice should be present during the examination. The physician should determine the names that the child uses for body parts and communicate with the child in that terminology. An empathetic and patient approach by the doctor usually overcomes problems associated with the doctor's gender.

The purpose of the examination is not only to document abnormality, but also normality. Children who have been abused frequently feel that they are "damaged goods" and may have an altered body image. The physician is the only professional who, after a thorough examination, can tell these children that they are physically "normal." Older children will frequently be concerned about their status as a virgin (even in cases where genital fondling is the only alleged activity), and their ability to have normal adult sexual relationships when they grow up and their ability to bear children when age appropriate. In the older child, addressing all of these issues is important.

Victims of sexual abuse have had no control over what has happened to them. Therefore, it is important that the physical examination is approached in a manner which provides the child with a sense of participation and control. This is in part accomplished by allowing the child to participate in the examination by holding instruments, culturettes, Q-tips, observing components of the examination and asking questions throughout the examination.

Depending upon the age of the child, the results of the examination are discussed with the child. Although the chronic subtle signs of genital trauma may have considerable evidentiary value i.e., (small healed transections, alterations of the hymenal architecture, etc.), they need to be presented in such a way that they do not support the child's feelings of being "damaged goods."

If the child requires a future examination for follow-up treatment of a vaginal discharge or observing the healing chronology of acute genital trauma, it is best that the initial examining physician who has developed rapport with the child do that examination.

### **IV. EXAMINING THE CHILD**

The child should be allowed to have a trusted adult ally present during the examination for support. Depending upon the age of the child and the ability of the child to detach from the adult ally, one

of several positions may be utilized in the examination of the child's genitalia. In small children, having the child sit in the caretaker's lap throughout the examination may be most appropriate. As a general rule, one should attempt to avoid examining the child in the position in which they have been victimized. This is particularly important in males who have been sodomized. In males, the knee chest position, although offering excellent visualization, is frequently the position in which they have been sodomized. Therefore, the left lateral decubitus position is the most appropriate position for examination.

In examining the female child, the supine frog leg position and/or the knee chest position offers excellent visualization of the genitalia. An examiner may have a preference for one position or another, although the use of both positions will optimize the potential for examining all aspects of a child's genitalia. Children should have their sense of modesty respected, therefore, they should be appropriately gowned and draped.

In the supine frog leg position, gentle downward and lateral traction with the index and third finger on the buttocks will open up the vaginal introitus for visualization of the hymenal membrane and perihymenal tissues. Taking time to allow the child to relax during this process will provide greater relaxation to the pubococcygeal muscles and supporting structures of the hymenal membrane and thus greater visualization. In the knee chest position, gentle separation of the labia will provide visualization of the vaginal introitus and the structures therein.

Before examination of the genitalia a review of genital anatomy and descriptive terminology as presented in the appendix is most appropriate.

During the examination, the child may be asked questions to help clarify his/her perception of what happened. Statements made by the child to the physician or nurse should be noted verbatim in the medical record. The physician then attempts to corroborate the historical details with specific patterns of ano-genital trauma.

Before examining the genitalia or anus for signs of trauma, clarify whether or not the alleged activity was penetrating or non-penetrating. Young children have considerable difficulty differentiating whether an object was placed in them or on them. A child may state that a penis was placed in them when in fact what they meant was that the labia were spread and the shaft of a penis or digit was placed between the labia along the vestibular surface of the hymenal membrane or over the anal verge tissues. In addition, the child should be asked whether or not they have been physically hurt by the activity. Those children who complain of having discomfort associated with specific acts are more likely to have findings of injury.

In intrafamilial abuse, the offender usually has little desire to physically hurt the child. If the child experienced discomfort during the activity, he or she is less likely to be engaged in the activity again.

When either an adolescent family member or extrafamilial offender is involved, there is a greater likelihood that force will be utilized and signs of trauma will be found. When historical details suggest that a series of progressive activities have occurred over time without a history of discomfort, the more subtle changes associated with gentle stretching of tissues may be seen.

Variables which may mitigate for or against the likelihood of findings of trauma being present include;

1. the presence or absence of the use of force;
2. age differential of the child and the offender;
3. size of the object introduced;
4. cooperativeness of the child;
5. the use of lubricants;
6. position of the child.

All findings of acute or chronic trauma to the hymenal membrane, perihymenal tissues, hymenal orifice and/or anus should be described in detail. When referring to the location of the findings, it is helpful to utilize a clock face as a reference. The examining physician should utilize a millimeter rule or caliper to measure specific findings.

A hand held illuminated magnifying glass or an ophthalmoscope with its green filter may be utilized to help visualize changes in the vascular pattern of the hymenal membrane, perihymenal and anal verge tissues. The green filter makes the appearance of the vascular pattern more distinct and may help clarify changes which represent scar tissue. The colposcope, which has built-in magnification, light source, green filter, and photographic capabilities, can serve as an excellent non-invasive tool to visualize and document changes in the ano-genital anatomy.

Scar tissue formation may be the sequelae from either single or multiple episodes of ano-genital trauma. Scar tissue may be seen as proliferative and mounding or subtly distorting the tissues through the formation of synechae. The degree of scar tissue formed will depend on many variables.

Very obvious acute ano-genital trauma may heal with no obvious sequelae. When only regeneration of traumatized tissue is involved, the signs of injury may resolve in less than 72 hours. With more significant injury in which repair (granulation tissue) is necessary, the healing process is prolonged and varies based on the extent of injury, presence or absence of infection and further injury. When obvious acute trauma is apparent, the examining physician should arrange for repeat examinations at appropriate intervals to document residual of the trauma. An understanding of how acute genital trauma heals and what its residual might be, will help the physician interpret changes in ano-genital anatomy when visualized long after the acute injury.

## **V. DIFFERENTIAL OF TRAUMA IN SEXUAL ABUSE**

### **A. Extragenital Trauma**

Extragenital signs of trauma are more likely to be found in extrafamilial cases of sexual abuse where physical force is more commonly utilized. Close observation of the skin for the presence of bruises, abrasions, contusions and bite marks should be noted. Target organs of extragenital trauma frequently include the breasts, thighs, neck and buttocks. In addition, observation of the scalp for traction alopecia should be noted.

### **B. Oral-Genital Trauma**

The female or male victim who has been engaged in performing fellatio, if forceful, may have petechiae of the palate or tears to the labial frenulum. Depending upon when the last episode of oral genital contact occurred, there may be value in obtaining oral swabs and/or nasal secretions for the presence of sperm and/or seminal products. In the male child that has been a victim of fellatio, there may be bite marks, petechiae or abrasions to the shaft of the penis, glans, or scrotum. The female genitalia following cunnilingus may demonstrate acute signs of injury including petechiae, edema, abrasions or bite marks.

### **C. Manual Stimulation of Offender's Genitalia**

If the child has been forced to manually stimulate the offender's genitals, it is unlikely that there will be any findings on the child's hands, although saliva or seminal products may be present depending upon when the child is examined in relation to the abuse.

#### **D. Fondling, Introduction of Foreign Body, Non-penile**

In the female victim, the acute findings of genital manipulation depend upon the degree of force utilized and may run the spectrum of no findings at all to that of erythema, edema, superficial abrasions and/or contusions. In forceful fondling with digital penetration or introduction of foreign body into the vagina through the hymenal orifice, there may be significant lacerations and/or transection. Information concerning the child's position, use of lubricants and the cooperativeness of the child should be obtained. In the female victim, chronic signs of abuse may be reflected by the presence of scar tissue and/or alterations in the integrity of the hymenal membrane orifices' characteristics. Trauma may be observed as healed transections or fine synechiae distorting the membrane integrity.

In the male victim, the same variables which contribute to the presence or absence of signs of trauma in the female victim apply. Physical findings of manual stimulation of the genitalia may include edema and/or abrasions to the penile shaft, glans, or scrotum. Examination of the anus may reveal edema, abrasions, contusions and in forceful cases, lacerations of the anal verge tissues and anal sphincter. The repeated introduction of a digit, several digits or a foreign body into the anus may result in signs of chronic trauma which may present as hypertrophy of the rugae with a concomitant loss of the fine rugal pattern of the anal verge tissues. Cupping or coving between rugae is consistent with the loss of subcutaneous fat from repeated blunt trauma and may be noted in combination with laxity to the anal sphincter. In addition, pigmentary changes to the perianal area, particularly hyperpigmentation may be noted. Two signs which may suggest the repeated introduction of a foreign body into the anus are the anal wink and buttocks separation test. According to Paul (1975, 1977), a triad of signs is frequently associated with repeated introduction of a foreign body into the anus. These include thickening of the anal verge tissue, obliteration of the anal verge skin folds, and increased elasticity of the anal sphincter. Increased elasticity was defined as the ability to introduce three or more examining fingers and a reduction in the anal sphincter muscles power to grip. All three of these findings should be present to provide sufficient documentation of longstanding anal penetration. In addition, loss of subcutaneous tissues between the rugae and scar tissue offer further corroborative evidence.

#### **E. Penile Stimulation without Penetration**

Vulvar or intracural coitus are two forms of penile stimulation without penetration through the hymenal orifice. Legal definitions of penetration may vary considerably. Penetration may be defined as an object placed between the labia or thru the hymenal orifice. In young children, significant trauma will be present if an object the size of a penis has been placed through the hymenal membrane orifice. The effects of vulvar coitus can be readily differentiated from the effects of penetrating through the orifice. Vulvar coitus can result in trauma to the anterior commissure, the posterior fourchette, and the vestibular surface of the hymenal membrane. Acute findings of the penile shaft pressing against the labia and the posterior fourchette frequently result in lacerations, abrasions, erythema, and edema. More chronic subtle signs may be observed as the presence of scar tissue in the posterior fourchette and on the vestibular surface of the hymenal membrane. The presence of scar tissue on the vestibular surface of the membrane can potentially result in constriction of the hymenal orifice.

In the male victim, a penis may be placed between the gluteal folds and rubbed over the surface of the anus and buttocks resulting in edema, contusions and/or abrasions to the natal cleft and anal verge tissues.

## **F. Penile Penetration - Vagina or Anus**

In the female victim, the signs of penile vaginal penetration may be quite apparent or subtle depending upon the size of the child. In a young child, the introduction of an adult penis with the average diameter of 3.5 cm. will cause significant and obvious acute trauma. In the child who has experienced longstanding intrafamilial sexual abuse, the activities may have started out by digital penetration with stretching of the hymenal membrane orifice and gradual enlargement. This facilitates the introduction of a penis at a later stage. With the use of lubricants and/or cooperativeness of the child, introduction of a penis may result in minimal acute trauma. In older children who are approaching puberty or are postpubertal, the estrogenized changes of the hymenal membrane may make it difficult to observe healed signs of trauma. Estrogen results in thickening of the tissue and changes in the vascular pattern. Chronic signs of penile trauma may include healed lacerations of the hymenal membrane which must be differentiated from congenital clefts. In general, clefts are less likely to be symmetrical and do not extend to the vaginal wall. With repeated introduction of a penis into the vagina, there may be rounding of the edge of the hymenal membrane orifice, and remnants of the hymenal membrane may remain as caruncula hymenales or the edge may appear attenuated. With repeated vaginal penetration, there may be elongation of the posterior wall of the vagina and flattening of the vaginal wall rugae. Trauma in the fossa navicularis and the posterior fourchette between 5 and 7 o'clock are most commonly seen with penile penetration.

In the male victim, acute findings of anal penetration will include anal spasm edema, petechiae, contusions, and fissures. Although unusually serious complications of sodomy include transection through the anal sphincter and possible perforation of the rectosigmoid colon, proctoscopic examination may reveal petechiae to the mucosa of the rectosigmoid. Chronic signs of abuse are the previously noted triad and may be coupled with acute findings. Children who have experienced acute anal penetration should provide a history of pain on initiation of penetration, less discomfort during the sodomy and considerable discomfort after the act has been completed. These children will frequently indicate that they had significant discomfort associated with passage of bowel movements and may have noted passage of blood.

## **G. Accidental Trauma**

The trauma patterns of accidental injury to the genitalia is quite different from that seen in inflicted trauma. In addition, the historical context in which the injury is explained will also be different. Acute accidental injury generally presents itself shortly after the injury occurred with the victim usually accompanied by a concerned caretaker. All children who have acute genital trauma should be interviewed alone to ascertain their story as to how the injury occurred.

The most common accidental injuries are of the straddle type. Straddle injuries occur when the child falls on a bicycle crossbar, balance beam, or jungle gym. There is no scientific basis for the common belief that girls "break their hymen" by horseback riding or doing gymnastic splits.

Accidental injuries to the anus are extremely unlikely. Self inflicted etiology to explain findings of ano-genital trauma are a favorite of defense attorneys. To date, there is little knowledge of masturbatory habits of children. Whether or not masturbation will result in changes in ano-genital anatomy is unknown. It is extremely unusual in clinical practice to see children who self-inflict injury.

## **VI. EVALUATION FOR SEXUALLY TRANSMITTED DISEASES**

Children who are suspected of having a sexually transmitted disease must be presumed to have obtained the infection in a sexually transmitted manner. When a child has a sexually transmitted disease, in some way, they must have come in contact with infected genital secretions. When investigating, the physician must presume that this occurred in an abusive fashion until proven otherwise.

Extraordinary explanations are at times provided by caretakers to explain how the child could have contracted the disease. In some cases, following a thorough and competent investigation in a prepubertal child, an explanation for how the child contracted the disease may not be obtained. This is most likely a limitation of our investigative skills coupled by handicaps due to the age of the child. This should not be attributed to extraordinary characteristics of the microbe such as an ability to live on toilet seats. Keep in mind how fastidious gonococcus is and how difficult it may be to culture it utilizing appropriate medium in a CO<sup>2</sup> environment.

When an explanation is not apparent, assessment of risk to the child after evaluation of all family members for sexually transmitted disease will help predict continued risk.

When collecting specimens be careful not to cause any discomfort to the child. Small diameter, nonbacteria static, saline moistened urethral swabs can be introduced through a small diameter hymenal orifice to collect culture material and gram stain material without discomfort.

Specific guidelines for evaluation of treatment of sexually transmitted diseases are provided in the attached appendices. Refer to references for additional reading.

## **VII. EVIDENCE COLLECTION IN THE FORENSIC EVALUATION OF THE SEXUALLY ABUSED CHILD**

This section provides basic introductory comments on the collection of forensic specimens. These procedures are applicable for any child in which there is a history of sexual assault within 72 hours. The physician has only one opportunity to obtain forensic specimens following an alleged event. Therefore, care must be given in selecting the appropriate test and collecting the specimens in a manner which will optimize their yield. Not all tests are appropriate for every case. The "rape kit" was not designed for use in children although it provides all of the essentials for the collection of evidence and provides instructions with each step. Familiarity with the rape kit prior to its clinical use will help the examiner feel more comfortable when called upon to use it during an actual case.

All the preliminaries to examination in preparing the child should be followed prior to proceeding with the collection of specimens. Special care must be exercised when handling body fluids. Gloves should be worn to protect the examiner from infected body secretions. In addition, when collecting specimens for secretion analysis, the wearing of gloves protects against contaminating the specimen with the examiner's blood type secretions present in sweat. When evidence is collected, be sure to maintain the chain of custody. Transfers of custody should be kept at a minimum. When a transfer occurs, it should be logged. All specimens for forensic analysis are submitted to the New Jersey State Police Crime Laboratory. If questions arise concerning specifics of collections, contact the technical services during the daytime at (609) 882-2000.

At the time of collecting forensic specimens, it is also appropriate to complete the collection of specimens necessary for the evaluation of a sexually transmitted disease.

Although the rape kit outlines the procedures for the collection and preservation of evidence, the following points emphasize areas of special concern.

**a. Clothing Collection**

If the child has not changed clothing since the sexual assault, it may be appropriate to have the child's clothing or portions taken as evidence depending upon what the activities were. In reports of fondling, collection of clothing will have little value. Clothing collection is of greatest value when the offender is an extrafamilial individual. Collected articles of clothing thought to have forensic value should be placed in a paper bag (not plastic) prior to submission to the N.J. crime lab.

The child may have changed clothing prior to the examination. Clothing which is suspected of having seminal stains, but not currently being worn by the child, should be retrieved even if washed. Discarded diapers may have valuable forensic evidence and should be obtained if available.

**b. Dried and Moist Secretions**

A long wave ultraviolet (Woods) light will be helpful in scanning the body and clothing for signs of semen which fluoresces blue green. When secretion stains are identified, describe the specific location and size of the stain.

The procedure for lifting seminal and blood stains is as follows:

- Dried semen or blood can be gently scraped with the back of a clean scalpel blade into a paper envelope supplied in the rape kit.
- Dried secretions which cannot be scraped should be lifted by utilizing a sterile cotton swab moistened with sterile distilled water. Note that the swab should not be soaked but just moistened.
- Moist secretions should be collected with a sterile dry cotton swab to avoid dilution. When collecting moist secretions for observing sperm motility, sterile saline should be utilized. As a general rule, two to three swab specimens from each area should be collected. This will provide adequate material for sperm identification, acid phosphatase, P30 and blood group antigen determination.

All specimens must be appropriately labeled. The air drying of collected specimens is important prior to placing the swab into the cardboard container. Sixty minutes of air drying is necessary to optimize preservation of the specimen and is best achieved by the use of a cool air fan.

**c. Examination for Motile Sperm**

A wet mount is utilized to identify the presence or absence of motile sperm, regardless of its source (vagina, mouth, and anus). Sperm motility can be determined by a wet mount examination. Motile sperm, when present, help in timing the event. Special media such as "Hepes" may be available in the hospital or acquired for the outpatient facility. Hepes media helps preserve the sperm motility. Examination of sperm is completed at 400 magnification. After examination, a permanent smear is collected with the use of Cidex-fixative and placed into a bottle.

**Procedure as follows:**

- Select swab or swabs (vaginal, rectal or oral) with secretions and roll swab back and forth in either one drop of saline or HEPES media to transfer material to slide. Air dry swab and place in cardboard container.
- Place cover slip on slide and immediately examine under 400 magnification for number of motile and nonmotile sperm per high powered field.
- After completing the microscopic examination, place labeled slide in cardboard mailer.

The following chart reflects various survival times depending upon the location and type of evidence to look for:

**SURVIVAL TIME OF EVIDENCE**

<b>SITE</b>	<b>MOTILE SPERM</b>	<b>NONMOTILE SPERM</b>	<b>ACID PHOSPHATASE</b>
Pharynx	½-6 Hrs.	6 Hrs. (?)	6 Hrs. (?)
Rectum	½-8 Hrs.	24 Hrs.	24 Hrs. (?)
Vagina	½-8 Hrs.	7-48 Hrs.	12-48 Hrs.
Clothing	½ Hr.	Up to 12 Months	Up to 3 Years

**d. Obtaining Photographs**

When evidence of genital and nongenital trauma exists, photographs provide important supportive documentation. Care must be taken to respect the child's sense of modesty and feelings of "damaged goods." Therefore, photograph the child dressed prior to photographing undressed portions of the body. Police photographers only of the same sex should be utilized to photograph the genitalia of a child. When obtaining photographs of any part of the body, an identifying tag with a measuring scale should be placed adjacent to the area to be photographed.

**VIII. THE MEDICAL RECORD**

**Documentation and Formulation of Conclusion**

The medical record of the ano-genital examination should be descriptive. The use of the phrase "normal genitalia" is insufficient. There are many characteristics of the genitalia which have considerable variability from child to child. A detailed description serves as a baseline reference which may be helpful in children without signs of trauma, but who may be considered to be at continued risk of abuse.

Descriptive characteristics of the hymenal membrane may include its thickness, orifice configuration, orifice transverse and vertical diameters, presence of bumps, clefts, attenuation of the membrane,

edge, rounding of the membrane edge, redundancy of tissues, hymenal tags and estrogen effect.

In the pathologic state, noting friability of the tissues particularly in the area of the posterior fourchette, presence of labial agglutinations, erythema, edema, abrasions, contusions, petechiae and vaginal discharges are essential.

The more chronic signs of trauma may include healed tears and subsequent distortion of the hymenal membrane. Scar tissue may take a variety of forms. Neovascularization within developing scar tissue may be observed depending upon when the examination occurs in reference to trauma. Alterations in the vascular pattern of the vestibular surface of the membrane and the perihymenal tissues may be reflective of superficial mucosal or deeper injury.

The hymenal membrane's orifice is dynamic and may vary depending upon the degree of relaxation of the child. Considerable patience and the use of the supine and/or knee chest positions may be necessary to appreciate the variability of the transverse diameter of the hymenal orifice. Placing a digit through the hymenal orifice may be traumatic, and referencing findings to such provides no useful information. In selected cases, a rectal vaginal examination is indicated in the prepubertal child. Utilize a millimeter ruler to measure specific findings. Be sure to note the position in which the child was examined and refer to the location of the specific findings utilizing a clock face as a reference.

Before formulating a conclusion ask the following questions:

1. Can any or all of the physical findings be corroborated with the history?
2. Have alternative explanations for the trauma been considered and are they plausible?
3. Have all of the diagnostic and forensic tests been completed and the results reviewed prior to coming to a conclusion?

The following conclusion alternatives provide the examining physician with a variety of options beyond the normal/abnormal examination conclusions. These alternatives are as follows:

1. The physical examination is consistent with the history that has been provided with specific delineation of the findings and the alleged activity.
2. The physical examination neither confirms or denies the history of ... This conclusion is most appropriate in children with a history that provides sufficient historical details to validate the complaint but whose physical examination neither demonstrates acute or chronic trauma.
3. The physical examination is consistent but not necessary indicative of ...
4. The physical examination is inconsistent with the history of ...

Utilizing one of these conclusions leaves the greatest number of options open for the child victim. If needed, the physician's conclusions can be further elaborated in the court room. All medical reports should be either typewritten or written legibly.

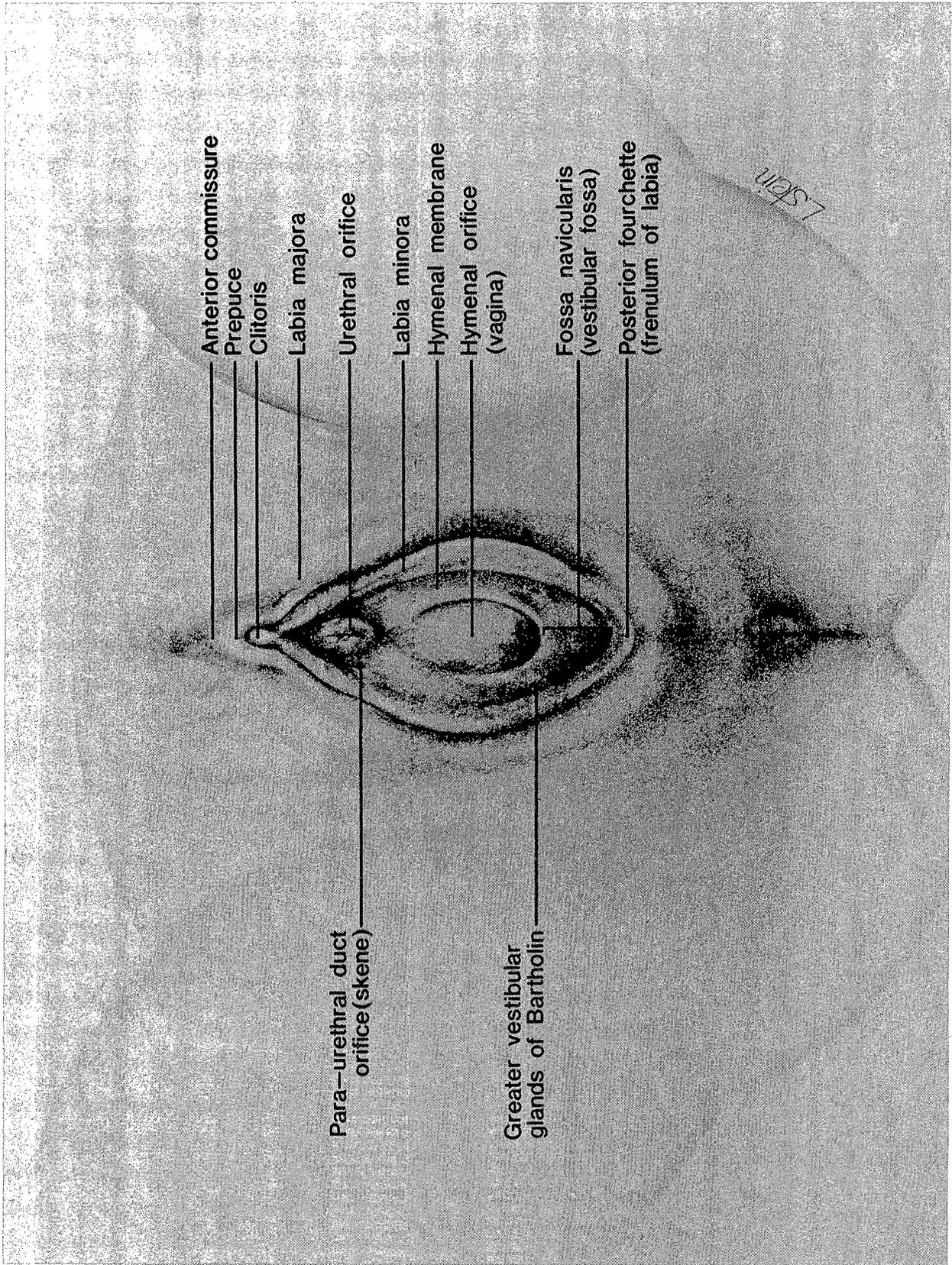
# **Appendices**

## **Medical Examination of the Sexually Abused Child**

## TABLE OF CONTENTS

Appendix 1	Female Genital Anatomy .....	1
Appendix 2	Sexually Transmitted Diseases .....	2
	A. Guidelines for Management—Laboratory .....	2
	B. Treatment Guidelines—Vulvovaginitis .....	5
	C. Office Laboratory Diagnosis of Sexually Transmitted Diseases .....	7
Appendix 3	Evidence Collection and Secretion Analysis .....	19
Appendix 4	Guidelines for Interviewing—Developmental .....	23
Appendix 5	Traumatic Impact of Child Sexual Abuse .....	28
Appendix 6	Physician as Expert Witness—Introductory Article .....	39
Appendix 7	Bibliography—Suggested Reading on Sexual Abuse .....	42
Appendix 8	Bibliography—Suggested Reading on Physical Abuse .....	44

APPENDIX 1



## APPENDIX 2A

---

**Table 1.** Management of child victims with history of sexual assault: guidelines for detection of sexually transmitted diseases (STDs).

---

### Laboratory tests

- A. Mandatory immediate tests
  - 1. Gram stain of any discharge from genitals, urethra, or anus for intracellular gram-negative diplococci
  - 2. *Neisseria gonorrhoeae* cultures from cervix/vagina, urethra, anus, and throat, as indicated by history; confirm positive cultures with sugar utilization tests
  - 3. Syphilis serology
  - 4. Pregnancy test in postmenarcheal girls
  - 5. Wet preparation for trichomonads
  - 6. Test for presence of semen
- B. Recommended immediate tests (if available)
  - 1. *Chlamydia trachomatis* cultures
  - 2. *Ureaplasma urealyticum* cultures
- C. Recommended follow-up tests
  - 1. *N. gonorrhoeae* cultures
  - 2. Syphilis serology
  - 3. *C. trachomatis* cultures (if available)
  - 4. *U. urealyticum* cultures (if available)
  - 5. Herpes simplex virus cultures, if suspicious lesion appears
  - 6. Repeat pregnancy test, if appropriate
- D. Mandatory follow-up tests
  - 1. Test of cure 3-7 days after treatment of proved *N. gonorrhoeae* infection
  - 2. Repeat syphilis serology
  - 3. Follow-up culture of any previously cultured pathogen

### Treatment of STDs

- A. Treat gonorrhea on the basis of positive gram stain
- B. No prophylaxis when assailant unknown
- C. Epidemiologic treatment indicated if assailant known to have disease

### General management

- A. Report to appropriate legal and child protective services
- B. Follow-up by social worker, psychologist, etc.
- C. Interview for abuser and contact tracing

---

**Table 2.** Management of children with genital symptoms: guidelines for detection of sexually transmitted diseases (STDs) and possible child abuse.

---

### Laboratory tests for children with discharge

- A. Mandatory immediate tests
  - 1. Gram stain of discharge for intracellular gram-negative diplococci
  - 2. *Neisseria gonorrhoeae* cultures from cervix/vagina, urethra, anus, and throat, as indicated by history; confirm positive cultures with sugar utilization tests

3. Syphilis serology
4. Pregnancy test in postmenarcheal girls
5. Wet preparation for trichomonads
- B. Recommended immediate tests (if available)
  1. *Chlamydia trachomatis* cultures
  2. *Ureaplasma urealyticum* cultures
- C. Follow-up tests
  1. *N. gonorrhoeae* cultures
  2. Syphilis serology
  3. *C. trachomatis* cultures (if available)
  4. *U. urealyticum* cultures (if available)
  5. Herpes simplex virus cultures, if suspicious lesion appears
  6. Repeat pregnancy test, if appropriate
- D. Mandatory follow-up tests
  1. Test of cure 3-7 days after treatment of proved *N. gonorrhoeae* infection.
  2. Repeat syphilis serology if another STD confirmed
  3. Follow-up culture of any previously cultured pathogen

#### **Laboratory tests for children with no discharge**

- A. Mandatory immediate tests
  1. *N. gonorrhoeae* cultures from cervix/vagina, urethra, anus, and throat, as indicated by history; confirm positive cultures with sugar utilization tests
  2. Syphilis serology
  3. Pregnancy test in postmenarcheal girls
  4. Wet preparation for trichomonads
- B. Recommended immediate tests (if available)
  1. *C. trachomatis* cultures
  2. *U. urealyticum* cultures
- C. Follow-up tests
  1. *N. gonorrhoeae* cultures
  2. Syphilis serology
  3. *C. trachomatis* cultures (if available)
  4. *U. urealyticum* cultures (if available)
  5. Herpes simplex virus cultures, if suspicious lesion appears
  6. Repeat pregnancy test, if appropriate
- D. Mandatory follow-up tests
  1. Test of cure 3-7 days after treatment of proved *N. gonorrhoeae* infection.
  2. Repeat syphilis serology if another STD confirmed
  3. Follow-up culture of any previously cultured pathogen

#### **Treatment of STDs**

- A. Treat gonorrhea on the basis of positive gram stain
- B. If gram stain negative, await culture results before treating

#### **General management**

- A. Report to appropriate legal and child protection services
- B. Follow-up by social worker, psychologist, etc.
- C. Interview for abuser and contact tracing

---

**Table 3. Management of children with suspected abuse because of behavioral symptoms: guidelines for medical and social care.**

---

**Initial visit**

- A. Complete history and physical should include vaginal/cervical and anal cultures in girls or penile and anal cultures in boys for *Neisseria gonorrhoeae*
- B. Consider other nontraumatic tests for STD
  - 1. Syphilis serology (?)
  - 2. Wet preparation for trichomonads
  - 3. Others as appropriate and available
- C. Consider pregnancy test

**General management**

- A. Careful interviewing for history of sexual abuse
- B. Consider social or psychological evaluation
- C. Consider reporting to legal authorities if abuse suspected

---

Source: Kramer, D., Jason, J., 1982, Sexually Abused Children and Sexually Transmitted Diseases, Review of Infectious Diseases 4:883-890 (Supplement, Nov-Dec)

## APPENDIX 2B

**Table**  
**Vulvovaginitis—Treatment Guidelines**

Etiologic Agent	Treatment	Alternative Therapy Comments
B-streptococcus—Group A	Penicillin V  Potassium 125 mg. to 250 mg. q.i.d. for 10 days	erythromycin in penicillin allergic patient at 40 mg/kg/day in 4 divided doses for 10 days
Candida albicans	Nystatin, miconazole or clotrimazole topically for 7 days	in small children oral nystatin may be necessary in resistant cases
Chlamydia trachomatis	Erythromycin ethylsuccinate (ESS) 50 mg/kg/day in 4 divided doses for 7 days	if >45 kg and/or >8 y.o. tetracycline hydrochloride 500 mg. p.o. q.i.d. for 7 days or doxycycline 100 mg. b.i.d. for 7 days
Condylomata acuminata	10-25% podophyllin topically followed by thorough bathing 1-4 hours later. Apply podophyllin weekly for 4 weeks	if extensive lesions or in difficult location consider the use of laser surgery in preference to topical therapy.
Herpes genitalis (Type II)	5% Acyclovir ointment q. 4 hrs. for 7 days	in initial infection oral acyclovir may be indicated
Haemophilus Influenza	Amoxicillin 20 mg. to 50 mg./kg/day p.o. t.i.d. for 7 days	
Neisseria gonorrhoea	<45 kg. child Amoxicillin 50 mg./kg and probenecid 25 mg/kg as a single dose p.o.  Procaine penicillin G IM 100,000 U/kg and probenecid 25 mg/kg	>45 kg. child Amoxicillin 3 gm p.o. and probenecid 1 gm p.o. as a single dose  Procaine penicillin G 4.8 million U IM and probenecid 1 gm. p.o.

	Erythromycin 40 mg/kg/day in 4 divided doses p.o. for 7 days	Use if less than 8 y.o., and/or allergic to penicillin
	Spectinomycin 40 mg/kg IM as a single dose	Spectinomycin 2 gm use only if penicillin resistant organism or allergy to penicillin
	Tetracycline 40 mg/kg in 4 divided doses for 7 days if less than 45 kg but older than 8 years	Tetracycline 50 mg. q.i.d. p.o. for 7 days also effective for chlamydia
Nonspecific Vaginitis NSV ( <i>Gardnerella Vaginalis</i> )	Metronidazole 15 mg/kg/day in three divided doses for 7-10 days	In adolescent use Metronidazole 500 mg. b.i.d. p.o. for 7 days
<i>Treponema pallidum</i>	Benzathine penicillin G 2.4 million UIM once per week for 3 weeks if greater than 1 year old	In penicillin allergic patient erythromycin or tetracycline dose depending upon age and weight
<i>Trichomonas vaginalis</i>	Metronidazole 15 mg/kg/day in three divided p.o. doses for 7-10 days	In adolescent Metronidazole 2 gm p.o. as single dose

---

Source: CDC MMWR Treatment Guidelines supplement October 18, 1985, Vol. 34, p. 45

Emans, S.J., Vulvovaginitis in the Child and Adolescent, Pediatrics in Review, Vol. 8 (1), July 1986, p. 12-19.

## APPENDIX 2C

### SERIES: INFECTIOUS DISEASES AND THE OFFICE LABORATORY. EDITED BY JAMES K. TODD, M.D.

#### Office laboratory diagnosis of sexually transmitted diseases

M. DIANNE MURPHY, MD

A companion article<sup>1</sup> in this issue reviews the clinical presentation of sexually transmitted diseases (STD) in children. This article will concentrate on the approach to the office laboratory evaluation of the common clinical syndromes. Most of the patients seen by a pediatrician are infants, preschoolers or of latency age and will not require an evaluation of STD as often as will the adolescent age group. The clinical presentations usually associated with the prepubescent child are perineal pruritis, vaginitis and dysuria,<sup>2,6</sup> while the diagnosis of urethritis, epididymitis, pelvic inflammatory disease or cervicitis is more likely to be suspected in the adolescent. The wide variety of organisms associated with these "typical" syndromes (*Neisseria gonorrhoeae*, Chlamydia, Candida, Trichomonas, Gardnerella, Treponema pallidum and herpes-virus) as well as the more unusual etiologies seen in younger children (Shigella, Group A streptococcus, *Enterobius vermicularis*) requires careful attention to laboratory detail to assure the correct diagnosis.

#### OFFICE VS. REFERRAL EVALUATION

Because the pediatrician is not confronted with the need to make a laboratory evaluation for STD as often as for other infectious diseases such as pharyngitis or urinary tract infections, the pediatrician may not feel adequately prepared or experienced to collect or assess all specimens. This may be particularly true in evaluating Gram stains of cervical or urethral specimens and wet preparations for Trichomonas. The limitations of the capabilities of each office should be recognized, and consideration should be given to having unusual specimens evaluated in a reference laboratory or to referring the problem patients to a person or facility experienced in diagnoses and management of STD. If the patient is referred, however, consideration must also be given to the assurance of privacy for the adolescent and the expertise of the individual(s) in evaluating a young child.

#### GENERAL CONSIDERATIONS

Table 1 lists some of the organisms etiologically involved in STD of children. Capabilities to provide a provisional diagnosis in many and confirmatory diagnoses in some (with others requiring the assistance of a referral laboratory) are well within the realm of many office laboratories, depending on the volume of demand. Some special problems involved with evaluation for each organism are listed below.

---

From the Department of Pediatrics, The University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, TX 78284.

Address for reprints: M. Dianne Murphy, M.D., Department of Pediatrics, The University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, TX 78284.

TABLE 1

*Organisms etiologically involved in the STD of children*

Organism	Specimen	Provisional Diagnosis	Confirmatory Procedure	Final Verification/Reference Laboratory
<i>N gonorrhoeae</i>	Urethral or vaginal swab	Intracellular Gram-negative diplococci	Oxidase-positive Gram-negative diplococci	Sugar fermentation or Phadebact®
Shigella	Vaginal swab	Nonlactose fermenters on MacConkey; diarrhea and bloody discharge		Positive growth on selective medium
Group A streptococcus	Vaginal swab	beta-hemolytic colonies on 5% blood agar plate	Growth inhibition around "A" disc	
<i>Gardnerella vaginalis</i>	Aliquot of discharge	pH > 4.5 "clue cells"	Fishy odor with 10% KOH "sniff test"	Unnecessary
<i>Trichomonas vaginalis</i>	Aliquot of discharge		Wet preparation-observation of motile protozoan	Cultures available, not necessary
<i>Candida albicans</i>	Aliquot of discharge		10% KOH and warm to observe for hyphal elements	Cultures available, not necessary
<i>Chlamydia trachomatis</i>	Urethral or cervical swab	On Giemsa: intracytoplasmic inclusions		Growth on McCoy cells
Herpes simplex	Scraping or swab from vesicle, ulcer or cervix	Wright's or Giemsa: multinucleated giant cells		Growth in tissue culture
<i>E vermicularis</i>	Sticky paddle or Scotch® Tape preparation		Ova or pinworm seen	

***Neisseria gonorrhoeae***

To collect specimens for *N. gonorrhoeae*, instruments must be lubricated with warm water only, since most lubricants are toxic for the gonococci. After inoculation onto a medium, the organism must be placed in a CO<sub>2</sub> environment as soon as possible and definitely within less than 2 hours.<sup>7</sup> Although vaginal flora are affected by hormonal balances and pH, in general they are composed of many Gram negatives (including enterics), anaerobes, staphylococci, streptococci, diphtheroids and lactobacilli<sup>4,7,8</sup>. This makes interpretation of Gram stains very difficult. Gram negative enteric bacilli may appear to be intracellular when they overlie cells, or they may stain bipolarly and be misdiagnosed as diplococci<sup>7,9</sup> even in experienced hands. Some clinics do not perform Gram stains on vaginal or cervical material because the smear may be only 50 to 80% sensitive.<sup>8,9</sup> Gram-stained urethral specimens from males are more reliable and can be used for preliminary diagnosis if intracellular Gram-negative diplococci are seen. Cultures should always be obtained when *N. gonorrhoeae* is suspected.

The organism requires an enhanced CO<sub>2</sub> atmosphere (3 to 7%) and is susceptible to killing from delayed inoculation into this atmosphere<sup>10</sup> or from failure to provide a warm environment.<sup>11</sup> All agar media should be prewarmed to room temperature before direct inoculation. There is a wide variety of Thayer-Martin (TM) agar medium modifications,<sup>7,8</sup> and the best suggestion is to use whatever medium is used by the local referral laboratory.

The Transgrow® bottle with a modified TM medium contains CO<sub>2</sub> and serves as a suitable transport mechanism.<sup>12</sup> It also negates the need for a CO<sub>2</sub> incubator or candle jar. Certain precautions are necessary. Because CO<sub>2</sub> is heavier than air, the bottle must be held in an upright position while inoculating the specimen to avoid escape of the CO<sub>2</sub>, and it must be incubated at 35°C overnight before shipping. It should not be used as a primary plating medium unless a CO<sub>2</sub> incubator is available, since the original CO<sub>2</sub> will escape over time and the organism will not grow optimally. To inoculate the medium a swab specimen is moistened by the fluid in the bottom and is then streaked across the medium from bottom to top.

Despite inhibitory antibiotics both enteric Gram-negative bacilli and yeast often grow on either TM medium or its modifications, so the presence of growth does not itself confirm *N. gonorrhoeae*.

*Neisseria* produce catalase and oxidase enzymes. Because most enteric Gram-negative bacilli, streptococci and staphylococci are oxidase-negative, the presence of this enzyme is an important determinant for evaluation of any growth on the TM plates. Because *Moraxella*, *Eikenella* and some Gram-negative bacilli are oxidase-positive, a Gram stain is still required.<sup>9</sup> Further confirmation (by sugar fermentation or Phadebact®) in a referral laboratory is recommended, unless these procedures are performed frequently enough in the office laboratory to assure familiarity with the requirements of these tests.

### ***Trichomonas vaginalis***

Diagnosis of *Trichomonas* infection is very uncommon in the prepubescent female.<sup>4,13,14</sup> Although more likely to occur in adolescents, it is still much less common than is *Candida* as a cause of vaginitis.<sup>1,14</sup> Males can have urethritis<sup>15</sup> due to *Trichomonas*, but it is uncommon. The usefulness of a saline preparation in making this diagnosis has been demonstrated.<sup>14, 16</sup> *T. vaginalis* is a protozoan belonging to a family of flagellates which has an undulating membrane connecting the flagellum to the body and three to five anterior flagella. The organism is ray-shaped with one large nucleus. Because it requires an acid environment, pH <4.5, it habitates only in the vagina and is not usually found elsewhere in humans except in the prostate gland. These protozoans "swim with a characteristic wobbling or rolling motion; sometimes they use their flagella to whirl their bodies about while anchored to a bit of debris."<sup>17</sup> To note this movement, the saline suspension must be evaluated before it dries. The specimen is placed on a drop of normal saline on a slide, and a coverslip is added. If the slide cannot be evaluated immediately, then a covered Petri dish with moist gauze and two broken swab sticks upon which to rest the slide will provide a moist chamber for the few minutes needed until examination. Alternatively a swab with an ample specimen may be swirled in a tube of warm saline prior to preparing the slide. Culturing is possible but expensive and is not usually required.<sup>14,16</sup>

### **Candida**

*Candida* vaginitis is not necessarily a STD, but it is a common cause of vaginitis. Once the saline smear has been examined on low power for motile protozoan, an evaluation for budding yeast or pseudohyphae can be conducted on high power. If there are many cellular elements, then a drop of 10% KOH should be mixed with a drop of specimen, and the slide can be warmed slightly over a lightbulb or the incinerator and then reevaluated.

### ***Chlamydia trachomatis***

Chlamydial specimens require adequate epithelial cells. Collection from the transitional zone of the cervix or 4 to 6 cm from the urethral meatus is recommended. Calcium alginate swabs are

preferable to cotton or Dacron for inoculation onto cell lines.<sup>18</sup> Cultures of discharge or urine are unacceptable. The chlamydiae are obligate intracellular parasites. Because they cannot synthesize adenosine triphosphate they are tied to an intracellular lifestyle which provides one of the modes of diagnosis—intracytoplasmic inclusions. On Giemsa stain, the inclusions appear as basophilic and coccoid. The type of inflammatory cells found in the specimen can be helpful. Viral infections should have a majority response of lymphocytes, while chlamydiae elicit a mixed population of polymorphonuclear neutrophils and lymphocytes.<sup>18</sup> Schachter and Dawson,<sup>8</sup> however, do not recommend the routine use of Giemsa staining of genital tract specimens, because the test is insensitive, time-consuming and easy to misinterpret due to debris. In areas where Chlamydia cultures are available, the referral laboratory will provide the transport medium. This medium contains antibiotics to inhibit growth of the other flora. Transport should avoid extremes of temperature, but the specimen may be placed on ice (not frozen) for transport. If the specimen cannot be inoculated within 24 hours, it should be frozen at -60°C. The office freezer usually does not suffice.

### **Herpes simplex**

Both smears for cells and cultures for herpes simplex are affected by the timing of collection. As time from onset of the disease increases, the number of positive results decreases, because virus shedding decreases with time. Vesicles have a higher yield of live virus than ulcers, which occur later in the disease, have dried and are more likely to have a serous fluid which decreases virus viability. Time from collection to inoculation also affects results. The collected specimen should be kept at 4°C (or on ice) and transported. Almost all infectivity is lost after 4 hours at 4°C. If inoculation does not occur within less than 1 or 2 hours, then the specimen should be frozen at -70°C.<sup>19</sup>

When slides are made for evaluation of giant multinucleated cells, the slide should be air dried and fixed with 95% methanol.

In the genital area, vesicles and ulcers which are painful suggest the presence of herpes simplex. Once a foreign body, Shigella and other causes of vaginitis have been ruled out, mucopurulent vaginitis might suggest the need for a viral culture. Diagnosis of herpes simplex, by scraping the base of the vesicle or ulcer for cells and staining with Wright or Giemsa, is possible in the office laboratory by evaluating the cells for "ballooning" of the cytoplasm and fusion of cells into multinucleated giant cells. This is not a sensitive test, and many cytologically negative specimens will eventually be positive by cell culture.<sup>19</sup> Viral holding or transport media with nutrients and antibiotics are available from most virology laboratories. The factor having the greatest impact on the success of the viral culture is the collection and handling of the specimen. If that is done properly, the specimen can be placed in distilled water and transported if holding media are not available.<sup>19</sup>

### ***Gardnerella vaginalis***

This organism was formerly known as *Haemophilus vaginalis*. As a facultative anaerobe, this organism, like Bacteroides and Peptococcus, is usually not present in large numbers in the vagina. In women with nonspecific vaginitis these organisms increase in number while the normal streptococci and lactobacilli decrease.<sup>20</sup> As a result the normally acidic pH of vaginal fluids increases (pH >4.5), "clue cells" (epithelial cells full of Gram-variable pleomorphic coccobacilli) appear and the vaginal fluid is copious and thin. Ten percent KOH added to secretions releases amines which have a "fishy" odor.<sup>21</sup> In one study 87% of women who had at least three of these findings were proven to have nonspecific vaginitis secondary to *G. vaginalis*.<sup>20</sup> Although

clue cells are felt to be useful by some,<sup>22</sup> others do not recommend this evaluation because of the multiple organisms often covering epithelial cells<sup>23</sup> resulting in a 37% error in diagnosis.<sup>24</sup>

Culture of *G. vaginitis* is technically difficult, so diagnosis is usually based on symptoms, vaginal fluid consistency and the amine "sniff" test.<sup>25</sup>

### ***Enterobius vermicularis***

To maximize identification of *Enterobius*, the specimen should be obtained before the child awakens or washes. Simply applying the sticky side of clear Scotch® Tape to the perianal region usually provides sufficient eggs to make the diagnosis. A method developed in our laboratory involves rolling a paraffincoated cotton swab in the same area. When the mother returns the swab the paraffin is dissolved in a small volume of xylene in a centrifuge tube, and this solution is spun for 3 minutes at 2000 to 3000 rpm. The sediment is aspirated and placed on a slide, and multitudes of eggs are usually immediately visible. Although it requires extra steps it saves significant scanning time.

Pinworm infestation is extremely common, and the eggs have been found in astounding numbers in schools and enclosed spaces.<sup>17</sup> The adult worm is small (less than 13 mm) and tapered on both ends, and parents often find it in stools or perianally. *E. vermicularis* causes intense pruritis and can cause vulvo-vaginitis or dysuria by meandering into a variety of orifices.

### **Syphilis**

The laboratory diagnosis of syphilis should be left to the referral laboratory. Darkfield preparations from ulcers or mucous membrane lesions require immediate evaluation, and the usual office laboratory is not equipped for this procedure. Serologic evaluation is almost always provided *gratis* by the local health department. Serology obtained from an individual with an ulcer should be repeated in a few weeks and months, because the presentation may be too early for the antibody response to be detected. The Venereal Disease Research Laboratory test and the rapid plasma reagin test are based on antibodies to a phospholipid and not to *T. pallidum*-specified antigens. Because these tests can have nonspecific reactivity a positive nontreponemal antigen test should be confirmed by the treponemal antigen-specific tests (fluorescent treponemal antibody-absorption or microhemagglutination test.)

## **MATERIALS**

The capital equipment needed for the diagnosis of STD (Table 2) is used for many other laboratory procedures. The benefits of an expensive incinerator include assurance of a constant temperature sufficiently intense to kill organisms, prevention of aerosolization of organisms and the lack of an open flame or gas in the office. An incinerator can be left on all day and is very convenient to use. Specimens can be inoculated and spread with any available loop except Nichrome,® which may give a false positive oxidase reaction.

A Gram stain kit is slightly more expensive than ordering all the reagents separately, but the shelf life of the stains are such that small volumes are more useful for the office laboratory, and the composition and performance of the stain is assured.

Oxidase reagent is marketed in a variety of forms: swab, ampul, disc, strips and liquid. The chemical dimethyl-*p*-phenylenediamine oxalate is more stable than is indole phenoxylate and therefore is used in most of the commercial products. The chemical can be purchased in bulk

and prepared each day that it is needed by mixing a spatula of chemical with 300 ml of water and stirring until a pink color appears. Alternatively a large batch can be made up and aliquots of it can be poured into tubes and frozen. Once it is thawed or prepared, it is light-sensitive; it must not be left out at room temperature or in the light during the day and should be prepared fresh each day. The Oxy-swabs<sup>®</sup> are buffered, sterilized and packaged in easy to store, light-resistant cylinders. The manufacturers comment that when swabs are properly refrigerated their shelf life is 1 year. One swab can be used for more than one test or colony simply by rotating the swab. The oxidase discs are moistened and the colony is applied. These also are stable for 1 year when handled as directed by the manufacturer. The oxidase ampuls are reusable and, via a plastic dropper sleeve, deliver enough liquid for 10 different tests. The manufacturers state that the ampuls do not need to be refrigerated and have a shelf life of 2 years. Ampuls are the most expensive form because once the ampul is crushed it must be used that day. All the oxidase tests are positive when a transition from pink to black or dark purple occurs. The tetramethyl form of the chemical becomes positive within 10 seconds, and false positives occur after 15 to 20 seconds, while the dimethyl reagent is slower and may take longer than 20 seconds to become positive; therefore, the form of oxidase being used in the test must be known.<sup>9</sup>

**TABLE 2**

*Equipment needed for the diagnosis of STD*

Materials	Approximate Cost (\$)
Capital equipment (cost)	
Alcohol burner	5.30
Loop incinerator	135.00
Incubator	200-300+
Inoculation loops	2.00
Expendable materials (cost/unit)	
Tipped applicators	
Cotton swabs	0.18
Calcium alginate	0.17
pH tape	0.01/test
10% KOH	0.01/test (if bought in bulk)
Gram stain material	0.28
Oxidase reagents	0.06-0.35
Media	
TM	0.75-0.80/plate
Sheep blood agar	0.40-0.70/plate
Chocolate agar	0.60/plate
Transport media	1.00/tube or bottle
Phadebact <sup>®</sup>	1.45/test
Alternatives	
JEMBEC <sup>®</sup>	0.75/plate (includes CO <sub>2</sub> )
Isocult <sup>®</sup> GC/Trich <sup>®</sup>	2.95/test (includes CO <sub>2</sub> and oxidase)
Bacti Lab <sup>®</sup>	
GC Duet <sup>®</sup>	1.08/test (liquid oxidase, 0.05/test)
CO <sub>2</sub> Incupak <sup>®</sup>	0.13/test (oxidase, 0.05/test)
Corpora <sup>®</sup> Goni Quick <sup>®</sup>	1.50/test (CO <sub>2</sub> , oxidase included)
Ames <sup>®</sup> Microcult GC <sup>®</sup>	2.41/test (CO <sub>2</sub> , oxidase included)

Because pH tape is much less expensive per test, it is recommended over the use of dipsticks with pH as one of the components.

Media should always be purchased from a company that is reliable and not based on price alone. The best suggestion for identifying a reliable supplier is to check with a large hospital or other referral laboratory and inquire about who supplies its media and why. Because some *N. gonorrhoeae* (<10%) are sensitive to vancomycin at levels present in TM medium, any discrepancy, where the Gram stain is positive and the culture is negative, requires reculturing onto chocolate agar in an attempt to isolate the organism. Some of the more commonly used media are modified TM, Martin-Lewis and NYC (New York City Department of Health).

The Phadebact Gonococcus Test<sup>®</sup> is a coagglutination test in which the Protein A component of *Staphylococcus aureus* has been coated with antibody to *N. gonorrhoeae*.<sup>26</sup> When mixed with colonies of gonococci, the test provides visible clumping. This test requires young colonies (less than 24 hours) or the organism autoagglutinates. The test should be performed on organisms which have been subcultured to chocolate agar. The Phadebact<sup>®</sup> gives 3% false negatives and 1% false positives.<sup>26</sup> The test requires the provision of a positive control which could be a known *N. gonorrhoeae* culture frozen in saline and stored for this use. Because of the cost and the low demand for *N. gonorrhoeae* confirmation in pediatric office settings, it is usually more practical to send oxidase-positive specimens to referral laboratories.

## APPROACH TO COMMON SYNDROMES

**Urethritis (male).** Specimens of urethral discharge or material obtained from the outer one-third of the urethra using a calcium alginate swab should be obtained; one swab should be rolled on a slide for Gram staining of the specimen and another should be used for culture (Fig. 1). At least five white cells must be seen for the specimen to be adequate for evaluation and to be compatible with the diagnosis of urethritis. If no organisms are seen, if white cells are adequate and if the clinical symptoms are compatible, a diagnosis of nonspecific urethritis can be made and treated as outlined in the companion article.<sup>1</sup> Cultures should still be obtained for *N. gonorrhoeae*.

All cultures for *N. gonorrhoeae* should be swabbed onto selective medium by rolling the swabs over one-third to one-half of the plate and then streaking for isolation with a loop or another swab, or they should be sent to a referral laboratory on transport medium. The plate should be incubated at 35°C in 3 to 7% CO<sub>2</sub> and evaluated at 24 hours. If no growth is apparent the plate should be reincubated for an additional 24 to 48 hours. Bacterial colonies on the plate should be evaluated for oxidase production. If they are oxidase-negative, the organism is not *N. gonorrhoeae*; if oxidase-positive, the organism could be *N. gonorrhoeae*, *Neisseria meningitides* or other Gram-negative cocci. Gram stain of the colony is necessary to eliminate organisms with inconsistent morphologies. Organisms which are morphologically consistent on Gram staining and are oxidase-positive require further evaluation to rule out *N. meningitides*. This may be done by sugar fermentation tests or Phadebact<sup>®</sup>. Both methods require that a colony similar in appearance to the oxidase-positive colony (oxidase is toxic to the bacteria) be subcultured onto chocolate agar and incubated in CO<sub>2</sub> at 35°C for less than 24 hours for use with either the Phadebact<sup>®</sup> or fermentation tests. The Phadebact<sup>®</sup> will provide an answer in minutes and the newer fermentation tests (Rin<sup>®</sup> and Minitek<sup>®</sup>) give results in less than 4 hours. All of these tests require an adequate inoculum of a pure culture and are best performed in a referral laboratory with a high volume of specimens.

After inoculating media for isolation of *N. gonorrhoeae*, a decision concerning other cultures should be made. For the male with nonspecific urethritis and a negative Gram stain of a urethral specimen, a culture for Chlamydia is possible but rarely necessary clinically.

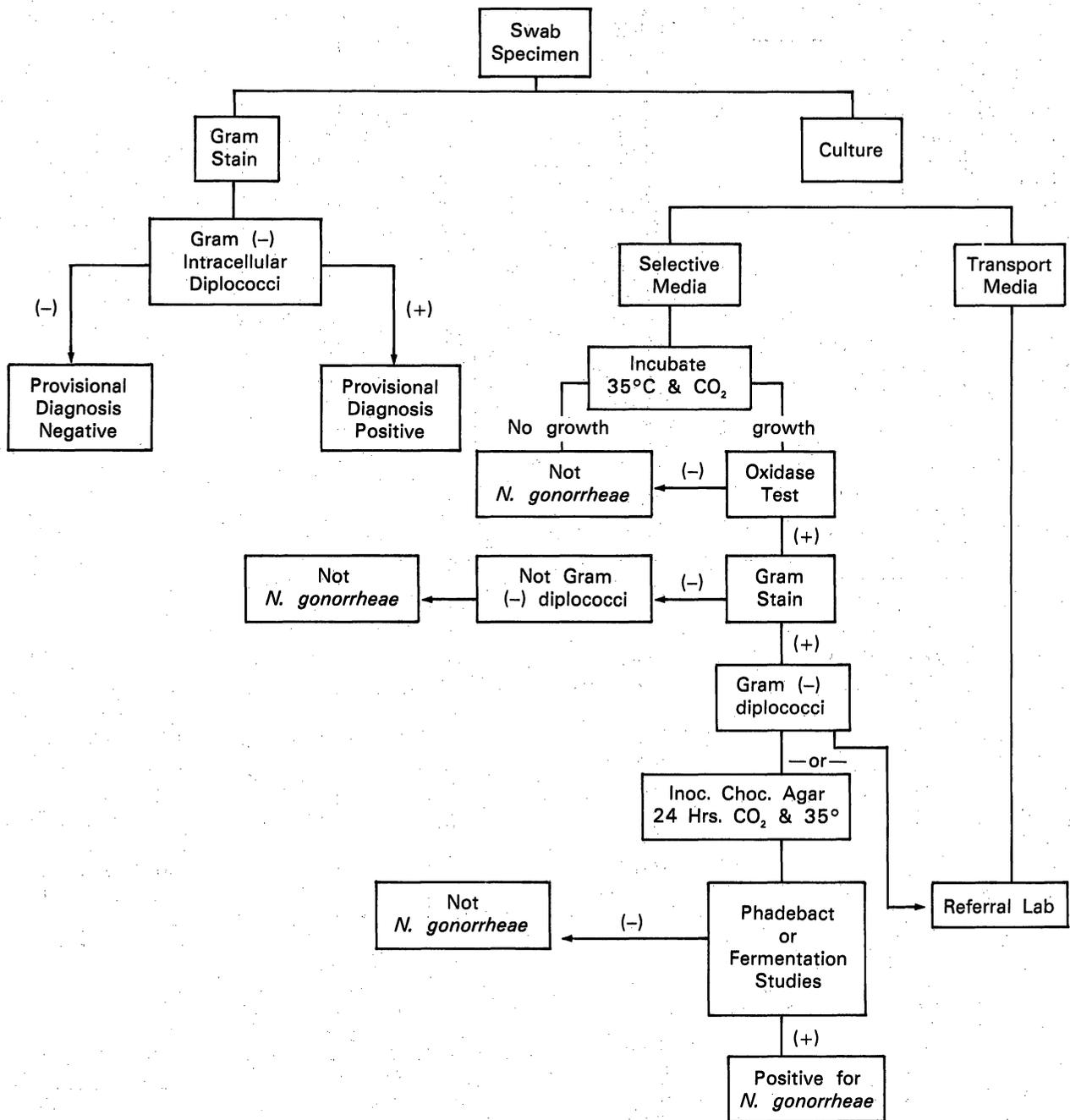
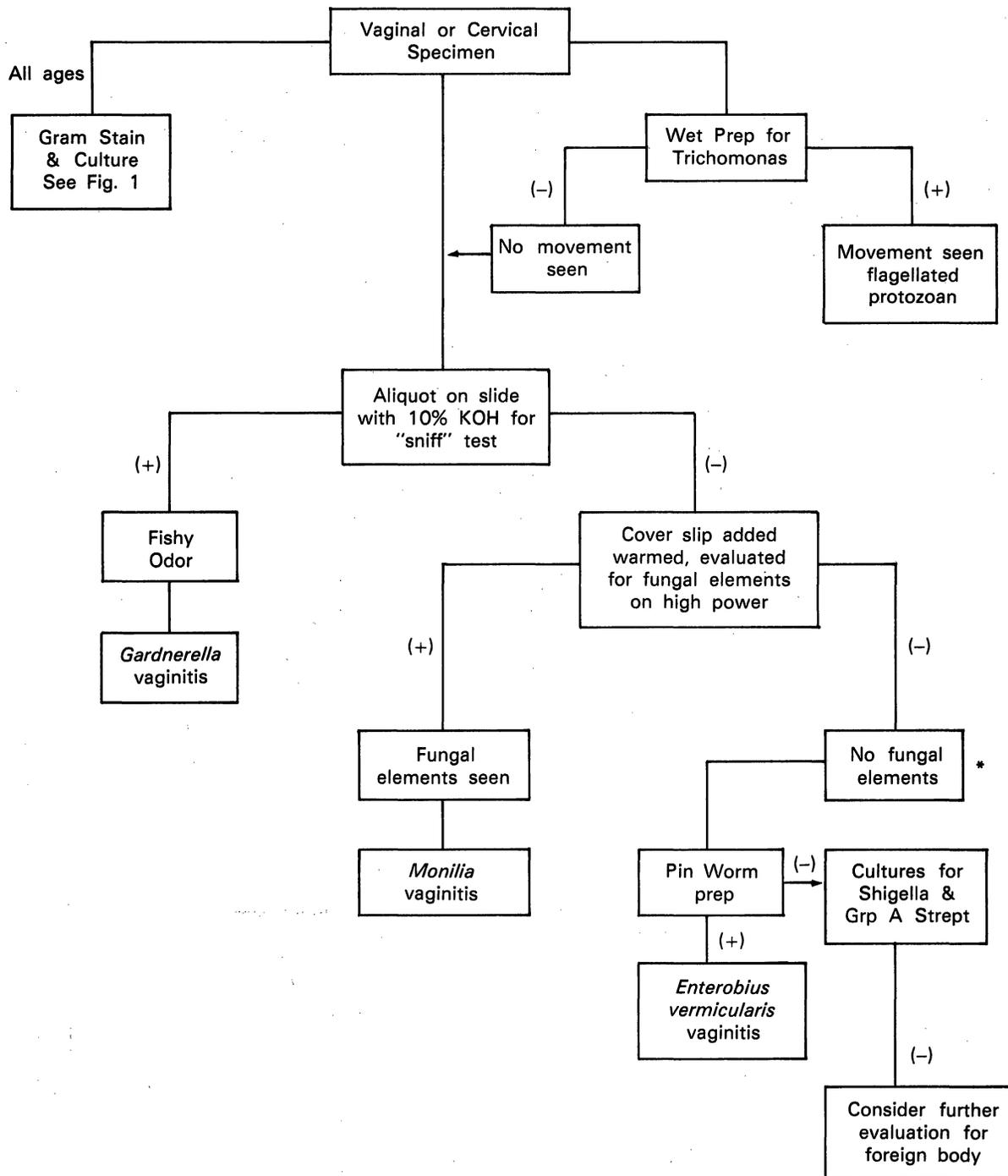


Fig. 1. Evaluation of urethritis, *Inoc*, inoculate.

**Vaginitis.** The general approach to the evaluation of vaginitis in the female is shown in Figure 2. The evaluation of *T. vaginalis*, *Candida* and *G. vaginalis* is discussed under "General Considerations." If no etiologic agent has been arrived at by completion of the KOH preparation, then other bacterial cultures should be considered under special circumstances.

A bloody vaginal discharge in the young child with or without a history of diarrhea should be evaluated for *Shigella*. Because the isolation and interpretation of microbiologic results required



\*Begin here for prepubescent female

Fig. 2. Evaluation of vaginitis, *Grp A Strept*, Group A streptococci.

for *Shigella* are complex, it is best to transport a swab in an appropriate transport medium to a referral laboratory. It is important to rule out this agent, since its presence could obviate assessment under anesthesia for a foreign body. A 5% sheep blood agar plate should also be inoculated exactly as described for throat cultures,<sup>27</sup> the agar should be stabbed and an "A" disc should be placed and incubated at 35-37°C for 24 to 48 hours. Hemolytic colonies may represent Gram-negative enteric bacilli, streptococci or staphylococci; therefore a confirmatory negative catalase test and/or zone of inhibition around the A disc is required for the diagnosis of Group A streptococcal vaginitis.

While waiting for the results of cultures it is a simple matter to evaluate for the presence of *E. vermicularis*. Because the female pinworm deposits as many as 12,000 eggs, it is usually easy to obtain eggs for inspection. The egg is oval with a doubly refractile rim. Because nocturnal visitation may vary, one negative examination does not eliminate this entity, and a repeat examination in a few days is suggested.<sup>18</sup>

## ALTERNATIVES

Numerous companies are marketing kits for the diagnosis of *N. gonorrhoeae*. Because of some problems with variability in CO<sub>2</sub> content in the Transgrow® medium bottle and the practical problems working with the bottle, other approaches have been developed. These kits usually incorporate MTM, ML or NYC medium in either a plastic-covered plate, with a tablet placed in a well to release CO<sub>2</sub>, or a paddle of medium inoculated and restored to a container into which a tablet releases CO<sub>2</sub>. Problems with these systems relate to the fact that the table may be forgotten, the system may not be properly sealed, it may be turned upside-down before the water releases all the CO<sub>2</sub> or the prong marks which streak one of the system media may make it difficult to see and isolate the colony. These systems can be used for primary isolation in addition to transport systems.

None of these systems should be used until a preliminary parallel inoculation system allows assessment of the success of the new procedure in the office.

Alternative fermentation tests, other than the standard cystine Trypticase® agar medium with sugars, involve enzymes which do not require growth of the organism.

## QUALITY ASSURANCE

All office laboratories should develop quality control procedures which assure a reliable result. Records should be kept of daily recordings of incubator, refrigerator and room temperatures. New orders of media should be checked for sterility (place an uninoculated plate in the incubator for 72 hours) and support of appropriate growth (inoculate a plate from each new order with a known positive culture).

A discs and oxidase reagents are both infamous for their instability and should be stored exactly as the instructions state (A discs, 4°C and desiccator; oxidase, 4°C and no light), and each new order should also be evaluated with known positives.

Because the diagnosis of a STD is complicated, it is my opinion that any office laboratory participating at this level of microbiologic evaluation should also be participating in some form of survey program. The American College of Pathologists has a program directed at the office laboratory called Excel. This allows review of the performance of the laboratory in comparison with those of other laboratories at the same level in identifying unknown samples. It is fun, challenging and flexible. There is an annual fee of \$60 for administration plus a charge for the

number of categories in which the laboratory participates. It is worth the cost to know that one's office laboratory tests are being performed correctly.

## COST BENEFIT ANALYSIS

To evaluate one culture which is positive for *N. gonorrhoeae* using a standard TM plate, an oxidase disc, a Gram stain, a subculture onto chocolate and a Phadebact® test costs at least \$3.25. If fermentation tests or other oxidase systems are used, costs could increase to \$4.00. Alternative media systems cost almost \$3/culture before isolation onto chocolate agar for verification with Phadebact® or sugar fermentation. Evaluation of wet preparations, the use of pH strips and KOH add approximately \$0.50 to the cost. Additional culturing using a 5% sheep blood agar plate and transport medium adds \$1.45.

The cost of consumable supplies for a complete evaluation of purulent vaginitis increases to \$6.00 if the culture for *N. gonorrhoeae* uses alternative culturing techniques in place of a plate of TM medium. This does not include the charges the referral laboratory makes for viral (approximately \$40.00), Chlamydia (approximately \$25.00) or enteric cultures (approximately \$20.00). The evaluations performed in the office laboratory would easily have cost \$40 to \$50, assuming that cultures for Candida and Trichomonas were not sent out and that the wet preparation and KOH evaluation were performed in the office. If all the specimens were sent to a referral laboratory, it could cost a patient over \$100.00 for a complete evaluation of a case of vaginal discharge.

## SUMMARY

The office laboratory can be a tremendous resource for the physician. This is particularly true in the evaluation of STD, where many simple procedures may provide at least a preliminary diagnosis. Instead of waiting for more expensive culture results, the physician can make the diagnosis of Candida, Trichomonas or Gardnerella in the female and *N. gonorrhoeae* in the male, while the patient is in the office. Cultures for *N. gonorrhoeae* can be, with the use of the Phadebact® or newer enzymatic sugar tests, completed in the office. This, however, is not recommended for an office which performs this test infrequently, because quality control procedures and known positives and negatives which should be incorporated into these procedures are often neither practical nor readily available. The wrong diagnosis in the area of STD leads not only to medical mismanagement but also to tremendous emotional and personal trauma. A good working relationship with a referral laboratory will augment the care and services you and your office laboratory can offer to the patient.

## REFERENCES

1. Bell TA: Major sexually transmitted diseases in children and adolescents. *Pediatr Infect Dis* 2:153-161, 1983
2. Paradise JE, Campos JM, Freidman HM, et al: Vulvovaginitis in premenarcheal girls. *Pediatrics* 70:193-198, 1982
3. Altchek A: Pediatric vulvovaginitis. *Pediatr Clin North Am* 19:559-581, 1972
4. Heller RH, Joseph JM, Davis HJ: Vulvovaginitis in the premenarcheal child. *J Pediatr* 74:370-377, 1969
5. Schwartz RH, Wientzen RL, Barganti RG: Vulvovaginitis in prepubertal girls: The importance of Group A streptococcus. *South Med J* 75:446-447, 1982
6. Murphy TV, Nelson JD: Shigella vaginitis. *Pediatrics* 63:511-516, 1979
7. *Bailey and Scott's Diagnostic Microbiology*. Edited by S Fingold, W Martin, E Scott. St. Louis, The CV Mosby Co., 1978, pp 80-90
8. Gallanis TC, Dawson F, Harding HB: Laboratory diagnosis of gonorrhea in premenarcheal females and in adults. *Obstet Gynecol* 29:401-404, 1967
9. Morello JA, Bohnhoff M: Neisseria and Branhamella. *Manual of Clinical Microbiology*. Edited by E Lennette. Washington DC, American Society for Microbiology, 1980, pp 111-130

10. Chapel TA, Smeltzer M, Dassel R: The effect of delaying incubation in a CO<sub>2</sub>-enriched environment on gonococci. *Health Lab Sci* 13:45-48, 1976
11. Chapel TA, Jeffries C, Gatewood C, et al: Effect of medium temperature on recovery of gonococci. *Am J Clin Pathol* 72:84-87, 1979
12. Martin JE, Lester A: Transgrow, a medium for transport and growth of *Neisseria gonorrhoeae* and *Neisseria meningitidis*. *HSMHA Health Rep* 86:30-33, 1971
13. Blattner RJ: *Trichomonas vaginalis* infection in a newborn infant. *J Pediatr* 71:608-610, 1967
14. Aherne T, Ritchie E: Vaginitis: The method of diagnosis. *J Irish Med Assoc* 70:510-511, 1977
15. Kuberski T: *Trichomonas vaginalis* associated with nongonococcal urethritis and prostatitis. *Sex Transm Dis* 7:135-136, 1980
16. McCue JD, Komaroff AL, Pass TM, et al: Strategies for diagnosing vaginitis. *J Fam Pract* 9:395-402, 1979
17. *Introduction to parasitology*. Edited by C Chandler, A Read. New York, John Wiley & Sons, Inc., 1955, pp 460-464
18. Schachter J, Dawson CR: Psittacosis-lymphogranuloma venereum agents/TRIC agents. *Diagnostic procedure for viral, rickettsial and chlamydial infections*. Edited by E Lennette, N Schmidt, Washington DC, American Public Health Assoc. Publication, 1979, pp 1021-1059
19. Rawls WE: Herpes simplex viruses I and II. *Diagnostic procedure for viral, rickettsial, and chlamydial infections*. Edited by E. Lennette, N. Schmidt. Washington DC, American Public Health Assoc. Publication, 1979, p 309-360
20. Spiegel CA, Amsel R, Eschenbach D, et al: Anaerobic bacteria in non-specific vaginitis. *N Engl J Med* 303:601-606, 1980
21. Pfeifer TA, Forsyth PS, Durfee MA, et al: Non-specific vaginitis. *N Engl J Med* 298:1429-1433, 1978
22. Teare EL, Bakhtiar M, Rogers TR: Non-specific vaginitis. *J Antimicrob Chemother (Suppl)* 8(1):496-497, 1981
23. Clay J: Non-specific vaginitis. *J Antimicrob Chemother* 7:501-504, 1981
24. Smith RF, Rogers HA, Hines PA, et al: Comparisons between direct microscopic and cultural methods for recognition of *Corynebacterium vaginale* in women with vaginitis. *J Clin Microbiol* 5:268-272, 1977
25. McTighe AH: *Gardnerella vaginalis*. *Lab Med* 13:624-626, 1982
26. Lewis JS, Martin JE: Evaluation of the Phadebact® gonococcus test, a coagglutination procedure for confirmation of *N. gonorrhoeae*. *J Clin Microbiol* 11:153-156, 1980
27. Todd JK: Throat cultures in the office laboratory. *Pediatr Infect Dis* 1:265-270, 1982

## **APPENDIX 3**

### **EVIDENCE COLLECTION AND SECRETION ANALYSIS**

#### **TYPES OF MEDICAL-LEGAL OR FORENSIC EVIDENCE**

##### **HISTORY OF SEXUAL ASSAULT**

1. Statements made by child regarding the identity of the abuser and type of sexual contact which occurred may be admissible under exceptions to the hearsay rule (depends on the state laws)
2. May be the only evidence in the case.
3. Documentation of the details of the history may help direct physical evidence collection and aid in interpretation of the results of the collection.

##### **DOCUMENTATION OF USE OF FORCE**

1. Documentation of general injury representing force
2. Documentation of injury to perineal structures

##### **DOCUMENTATION OF SEXUAL CONTACT**

1. Presence of sperm, seminal fluid products
2. Presence of sexually transmitted diseases, pregnancy
3. Collection of foreign materials, clothing as evidence

##### **EVIDENCE OF IDENTITY OF OFFENDER**

1. Analysis of saliva, semen, and blood

##### **VICTIM IDENTIFICATION**

1. Analysis of saliva and blood

#### **GENERAL GUIDELINES FOR EVIDENCE COLLECTION**

1. Obtain victim's (or child's guardian or parent's) consent
2. Limit number of personnel involved in handling specimens
3. Use standardized collection kits
4. Use a specific collection checklist
5. Be able to account for and document handling of specimens
6. Devise a procedure for determination of whether all or part of kit will be obtained
7. Make certain names and locations of handlers are clearly documented

#### **SEXUAL ASSAULT KITS—COMMON CONTENTS**

1. Victim consent forms
2. Specimen collection checklist
3. Brown paper bags (not plastic) for clothing
4. Tubes with swabs to collect secretions (some also contain pipettes)

5. Glass slides
6. Non-heparinized tubes for blood typing and syphilis serology
7. Combs for collection of pubic hair and scalp hair
8. Orange sticks for fingernail scrapings
9. Envelopes for hair, nail scrapings
10. Gauze square or several swabs with tube for victim's saliva sample
11. Tamper proof seal
12. Routing form and information label for signatures of specimen handlers

## **SPECIMEN COLLECTION**

### **SPECIFIC MEDICAL TESTS**

1. Urine pregnancy test in postmenarcheal victim
2. Stool guaiac in cases of anal sodomy
3. Rectal, oropharyngeal, and vaginal cultures for *Neisseria gonorrhoeae*
4. Samples to detect other sexual transmitted diseases as indicated
5. VDRL or RPR blood sample

### **FORENSIC SPECIMENS—COLLECTED, LABELED, BAGGED, AND SEALED**

1. Obtain 2-3 swabbed specimens from each area of body assaulted (for sperm, acid phosphatase, P 30, blood group antigen determinations)
  - a. MOUTH: swab under tongue, and buccal pouch next to upper and lower molars swab nasopharynx if victim gagged during ejaculation
  - b. VAGINA: use dry or moistened swab, pass through vaginal opening and if possible leave in place for one minute or more. Alternate method is to use saline wash with 2cc saline, and collect with pipette or swabs
  - c. RECTUM: insert swab at least 1/2 to 1 inch beyond anus
  - d. From any other suspicious site on body or clothing
2. Make saline wet mount of specimens from all assaulted orifices and examine immediately for presence of sperm and whether it is motile or not
3. Some crime labs request a dry smear be made of each secretion sample in addition to the swabs, others do not
4. Collect saliva specimen to determine the victim's antigen secretion status using 3-4 sterile swabs or a 2 x 2 gauze pad touched only by victim and placed in tube
5. Save torn or bloody clothes or when semen is suspected during Woods light examination (semen fluoresces with UV light). If victim was wearing a tampon, pad or diaper during assault or if a fresh tampon, pad, or diaper was used following the abuse, save this for analysis.
6. Save and bag any foreign material found upon removal of clothing
7. Other specimens, often considered optional:
  - a. Combed pubic hair; and 3-6 plucked pubic hairs from victim
  - b. Fingernail scrapings using orange sticks
  - c. Combed scalp hair; and 3-6 plucked scalp hairs from victim

## **ANALYSIS FOR PROOF OF SEXUAL CONTACT**

### **SPERM**

#### **MOTILE SPERM**

1. Detected using saline wet mount, the presence of motile sperm is the most tangible proof of recent ejaculation into the orifice

2. May be present for only 1/2 hour and rarely seen after 6-8 hours from time of ejaculation, although motile sperm may be found in the cervix up to 5 days later. Shorter life span in oral cavity should be noted.

#### NON MOTILE SPERM

1. May be processed using a PAP smear technique or saline mount
2. May be present for up to 12-20 hours, rarely up to 48-72 hours. Shorter time of detection in mouth.
3. May be detected on clothing for up to 12 months.

#### ACID PHOSPHATASE

1. Studies vary as to the amount of acid phosphatase naturally found in vaginal secretions and the length of time of persistence of elevated levels following intercourse
2. Acid phosphatase of prostatic origin is found in high concentration in semen 130-1800 IU/L
3. Acid phosphatase may be found in low levels in vaginal secretions <50 IU/L or <50-80 King Armstrong units/L or <20 sigma units/L
4. Acid phosphatase is a more sensitive indicator of recent intercourse due to more rapid decay of sperm
5. A marked elevation in vaginal secretions correlates with intercourse within the last 24-48 hours; levels usually return to normal within 72 hours but may be normal within 3 hours
6. Elevations are of shorter duration in the mouth (<6 hours?) and in the rectum (<24 hours?) but only estimates of duration are available
7. May persist on clothing in dried state for months or even years

#### SEMEN GLYCOPROTEIN OF PROSTATIC ORIGIN—P 30

1. Present in high levels in semen—mean 1.55 mg/ml of seminal plasma
2. Present in low levels in male urine—mean 260 mg/ml urine
3. Not found in vaginal fluid, urine, saliva of females
4. Present in normal and vasectomized males
5. Positive P 30 test means sexual contact has occurred within the last 48 hours, since it has a linear decline to undetectable within 48 hours
6. Collect specimen in same manner as for acid phosphatase—dried swab
7. In dried state, may be detectable for up to 12 years
8. In one study, 7 of 27 rape victims with negative acid phosphatase tests had positive P 30 tests

#### LIMITATIONS OF LABORATORY TESTS FOR SEXUAL CONTACT

1. If ejaculation has not occurred or if a condom is used, tests for sperm, acid phosphatase and P 30 will be negative
2. If perpetrator has aspermia or a vasectomy, tests for sperm will be negative but acid phosphatase and P 30 will be positive
3. If tests are obtained >48 to 72 hours after intercourse, all tests are likely to be negative
4. In adult women examined within 24 hours of unprotected vaginal intercourse, only 50-60% had sperm and only 40-84% had acid phosphatase detected
5. Only three studies in children give a rate of positive laboratory findings: in one study including both boys and girls, 30% of a selected group (only 16% of all victims were tested) had positive tests for semen. A second study of boys only, 5% of

all victims had positive tests, and 27% of those examined within 72 hours of the assault had positive tests for semen. The third study in which 84% of the boys and girls were victims of non incest abuse, 18% had positive tests for sperm and/or acid phosphatase.

## **IDENTIFICATION OF THE OFFENDER**

The analysis of these tests require the expertise of a forensic pathologist or a specialized crime laboratory, however the collection of some of the samples can be done as part of the routine examination.

### **SEMINAL FLUID ANALYSIS FOR GENETIC MARKERS**

1. Approximately 80% of the population are "secretors"—all body fluids will contain blood group antigens including semen and saliva. "Secretors" fluids will contain blood group antigens ABO, RhD, MN, P, Lewis, and other factors. At least 16 genetic markers have been identified in seminal fluid or sperm.
2. Approximately 20% of the population are "non secretors" and their fluids can be identified by the presence of Lewis (LE) substance.
3. Control samples are always taken from victim (saliva and blood) to accurately identify the secretor status and genetic markers of the victim for comparison to those fluids which may be from the perpetrator

### **BLOOD**

1. Blood found on clothing or on the body of the victim may represent blood from victim or assailant
2. Blood samples may be analyzed using the same procedures as other blood fluids.

### **HAIR ANALYSIS**

1. Commonly hair analysis uses direct microscopic comparison of hairs which is much less specific than fluid analysis
2. Variability of hair types from different sites in one individual lead to the ability to say only that the sample is consistent with, inconsistent with, or inconclusive when compared with hair from perpetrator
3. Neutron activation analysis—expensive but precise technique, which can identify 18 variable components common to human hair

### **FINGERPRINTS**

1. Not often used. Difficult to obtain.

### **BITE MARKS**

1. Rarely present. Accurate sampling and analysis difficult.

---

**SOURCE:** Alan R. DeJong, M.D. Co-Director, Childrens' Health Center, Jefferson Medical College, Thomas Jefferson University, Philadelphia, Pa.

## APPENDIX 4

### INITIAL APPROACH TO THE SEXUALLY ABUSED CHILD

"The professional style of the interviewer is an important factor in the initial meeting with the child. 'Professional style' means regard for clients and how this is transmitted, such as through the way you meet the child, the way you introduce yourself, and the subsequent dialogue. The child, as well as family members, will be watching to see if you are concerned, interested, and respect them as individuals. The child and family members need to know who you are and the agency or discipline you represent. The next task is related to professional competence and involves establishing credibility. You need to prove your expertise and somehow convey your experience to the child. You can establish that this is part of your work ('I talk with children who have had something like this happen' or 'I talk with children regarding upsetting situations that have happened to them.')

"Interviewing Young Victims," A. Burgess and L. Holmstrom, in *Sexual Abuse of Children and Adolescents*, A. Burgess, et al., ed., page 173.

In general, the interview is the heart of a sexual assault case. The better the statement the better the case. In child sexual assault situations, the child's description of what happened is the most important—and often the only—evidence. How complete and how convincing it is depends to a great extent on the skill of the interviewer. Eliciting information about sexual matters from children requires sensitivity and personal comfort with the subject, as well as an ability to interact and communicate with children. If the interviewer is uncomfortable, the child will likely be also.

Children **cannot** go to an adult level, so adults must accommodate the limitations and capabilities of children by going to the child's level, in both physical set-up and verbal interactions. This means both the way and what is asked must be something the child can understand and respond to.

Children, especially younger ones, re-experience the abuse when talking about it and none like to talk about it (if they do, it is cause for worry from a psychological perspective). No matter how sensitive or concerned the interviewer is it is still difficult for the child. All interviewing by anyone about the sexual abuse (including CPS, police, medical personnel, etc.) should have a specific and necessary purpose.

Children who have been abused by a trusted adult or relative will understandably not have reason to trust the interviewer. They must be convinced that telling is safe and good, and will not cause further harm. Many children have been taught to fear police in general, or have been directly threatened with jail if they tell. Specific reassurance or clarification about who is in trouble and what can happen is necessary. Children also fear the power of police which could be used against the offender, particularly if the offender is related to the child or there have been positive aspects to the relationship. Children usually don't tell everything the first time. It is common for additional information to come out later. Do not be upset or angry about it, as it is actually confirmatory. The police investigation won't be interfered with, and the additional facts/information can be added at a later time.

As professionals working with children well know, children think, feel, and act differently than adults. Cognitive, emotional, and social growth begins at birth and gradually develops through

---

Berliner, L., et al., *Child Sexual Abuse Investigation: A Curriculum for Training Law Enforcement Officers in Washington State*, Criminal Justice Training Commission, Victims of Sexual Assault Programs, Department of Social and Health Services, State of Washington, 1983, pp. 19-24.

childhood. At each stage of development, children have certain capabilities which define the limits of their abilities to recall and relate events. Their perception and feelings about what has happened is also determined by developmental level. It is essential to have some understanding of these stages to be an effective interviewer of young children. The impact of the abuse on the child, as well as the ability to tell what happened, depends on the stage of development of the child.

Other factors are clearly also important; such as the child's individual personality, the characteristics of the family, other life experiences, and any pre-existing physical or psychological disabilities.

The characteristics of the abuse itself, and especially the duration, the relationship to the offender, and presence or absence of violence, and the possible consequences of disclosure all influence what and how the child will tell about the abuse.

The following are general descriptions of the developmental stages of children and sexual abuses.

### **Infancy/Toddler/Pre-Verbal Stage:**

The child is unable to give verbal accounts of abuse, only possessing the most rudimentary verbal skills, which, in combination with gestures, could suggest an abusive episode (e.g., the child may point to the genital area and say, "Owee, Dadda, owee"). There must be additional evidence to form a basis for concluding sexual abuse: medical evidence (evidence of injury and/or infection), witness evidence, and/or evidence of the child's behavior toward the offender (e.g., fear, crying).

### **Preschool Stage (3-5 years of age):**

Children at this age are completely dependent on adult family members to meet all their physical and emotional needs. They think in an egocentric way, with themselves at the center of their world, and they do not understand interrelationships or differences between individuals/families. Security is the basic issue and they depend entirely on adults to take care of them. They have no real awareness of outside events or options, the family being the source of all their information.

Preconceptual, concrete, intuitive thinking is characteristic. They do not understand causality, abstractions, metaphors, analogies, or irony. Early verbalizations are likely to be loose, disorganized, circumstantial, brief, contain relevant and irrelevant details. Although they can recall events, they can not give accurate information regarding antecedents, sequence, or context. Time and space are personalized, not logical. There may be some understanding of the concepts of before and after. Information about specific times or dates is not at all reliable, no matter what the child actually says. Verbal abilities may be beyond the actual cognitive capabilities of the child. Children play and learn by rehearsal of behaviors and situations they observe. At this age, children have a **very** short attention span, become restless, are active and spontaneous, will change the subject, quickly lose interest in subject and may revert to "I don't know," or "I can't remember" during an interview, to avoid boredom.

For sexually abused children, this means that the offender is almost always a relative or caretaker (since this age group does not have other independent relationships). They do not know the behavior is both sexual and wrong; they may be aware that it hurts or feels good or is unusual (because it is concealed). If committed by an authority figure, the children will be fearful of telling, since they see adults as omnipotent. Children's feelings toward the offender will reflect the degree of dependence. Children at this age are unable to make up sexually explicit information or to have learned about it except through direct experience. Children may have behavioral reactions to the experience because they do not yet verbalize adequately.

When abuse is suspected in this age group, identification may come about because the child's behavior reflects this experience. The child may simulate sexual activities with dolls, pets or other children. The child's behavior may be sexualized, such as open mouth kissing, initiating, touching genitals of adults, or talking in a sexual way. They may comment or react if touched on the genitals (while being bathed or changed), show fear or discomfort at being touched ("Don't hurt me like Daddy does."). The child may have knowledge of sexual acts and activities (e.g., erections, or oral/anal sex), or ask questions like "Why does milk come out of a wiener?" The child may react differently to the accused offender or have symptoms after being with him/her, like crying if being left with a certain babysitter, showing regressed behavior (return to earlier behavior like thumb-sucking, bedwetting), have nightmares, or be fearful. Finally, the child may have medical symptoms or psychosomatic symptoms: vaginal infections, bladder infections, stomach aches, headaches.

Often a child discloses because of a change in circumstances that makes the child feel it may be safe to tell (e.g., parents' divorce). Documentation of behavioral changes or indicators, the context of disclosure, and the exact words of the child may be used as supportive evidence.

### **Interviewing Suggestions:**

It is not necessary to spend a great deal of time establishing a relationship, as this is not something normally done by this age group. Be very brief and directed. The child must feel safe and secure, and very well may need a support person of her/his choice present. **Never** force or pressure the child into talking about the sexual abuse; if the child is unwilling to talk, back off. Always use some non-verbal means of communicating along with verbal communication; dolls, drawing pictures, or demonstrating by pointing to body areas or showing positions are all helpful interviewing aids. The child is often fearful about what will happen to the offender and may need a specific assurance.

### **School Age (About Six To Nine or Ten Years Old/First through Fourth or Fifth Grade):**

At school, children begin to have a life of their own with activities and relationships outside of the family. Their world expands to include friends and other adults like teachers or neighbors. Their sources of information are greatly increased by exposure to other ideas and people. Although they continue to rely on the family for most physical and emotional needs, there is a gradual shift. Peers become important as playmates, but not as a basic source of emotional support. Same sex relationships are most common, often accompanied by an expressed negative attitude toward the opposite sex.

Children's thinking is still fairly concrete, but they begin to understand concepts and symbolic thinking. They learn to read and write and communicate better. Increasing knowledge and skill building are what they spend time doing. They can locate themselves generally in time and space using events and activities as identifying markers. Children learn how to deceive during this age and to have/keep secrets. They do not have a clear sense of a separate identity from family and adults and may assume feelings of responsibility for external events, such as the divorce of their parents.

The sexually abused child in this developmental stage generally knows that the sexual behavior is not acceptable, since it usually occurs in forced, pressured or deceptive circumstances. But children's general lack of control over life events prevents them from challenging or resisting it. They are usually confused and scared by the experience.

However, some children actually don't seem to really mind the sexual abuse, or tolerate it because

they are getting something in exchange like money, presents, or special attention which may be lacking in their life. Once children have become a part of an ongoing situation, they may feel that they are as much of the problem as the offender and could be equally punished or blamed if it becomes known.

Children who have been sexually assaulted in this age group may have had a change in behavior, such as becoming withdrawn, having nightmares, coming home with unaccounted for money, getting depressed, aggressive, or regressing to earlier behaviors. Their relationship to peers at school, in the community or certain individuals may change. They may demonstrate sexually stylized behavior, reflecting a kid's version of adult behaviors.

Documentation of these behavioral indicators can be used as supportive evidence of sexual abuse.

### **Interviewing Suggestions:**

Take more care in establishing a trust relationship by getting to know them a little before asking about sexual assault. This age group needs much reassurance. It is very difficult for them to talk about sexual activity and they will be embarrassed. Some children giggle, some get overstimulated, and others constrict and give very little information. The interviewer should be prepared to deal with this kind of behavior. Often it helps children to have an activity to occupy them while they are talking, such as drawing, building, or playing. Nonverbal communication tools (such as dolls, drawings) are important aids to interviewing. Most children can usually talk without a parent present. The interviewer needs to allay any fears the child may have of police, or ideas that they may have to go to jail.

### **Puberty (Nine or Ten Years Old Through Twelve or Thirteen Years Old/ Fifth through Seventh Grade):**

The physical changes of puberty begin and affect girls about one to two years earlier than boys. Their bodies are developing and they are very self-conscious, feel awkward, and almost everything is embarrassing. Sexual thoughts and feelings begin at this time. Hormones and the consequent major changes cause moodiness, extremes in feelings, and outbursts of emotion.

There is a strong desire to belong, to be liked, and to be accepted by the peer group. Anyone who is different is ostracized. Friendships start to be significant sources of emotional intimacy. Family relationships get difficult and conflict-ridden, although they are still the primary source of support. Family and societal rules begin to be challenged, but usually only tentatively. Shoplifting, drug experimentation and early sexual contact may begin now.

The pre-teen sexually abused child knows that sexual behavior is wrong, Self-consciousness, fear of being blamed, not wanting anyone to know, thinking they caused it or associating their own physical changes with the adult's sexual interest inhibit them from telling. They may tell a friend or indicate something is going on; once they do tell, they may feel guilty about having gone along with it at all. They will try to block it out and/or pretend it is not happening, and act as if everything is okay on the outside.

When children in this age group are being molested, their behavior may be interpreted simply as being part of normal life changes. A different relationship with the offender, like being treated specially, treated worse, or treated like a junior mom/junior adult may become apparent. The child may exhibit age inappropriate behavior, such as acting either older or younger than she/he is, or associating with older or younger kids. The child may have few friendships, and may not do things with other children, like have friends over to the home, or talk on the telephone. In serious cases the child may exhibit depressed or aggressive behavior.

### **Interviewing Suggestions:**

This is a particularly embarrassing age and the gender of the interviewer may make an important difference. A business-like approach is helpful; being respectful and somewhat formal may minimize some of the awkward feelings. Be quick and clinical in discussing the sexual aspects. Involve the child in the process by asking her/him for opinions on matters, telling her/him that those opinions and feelings will help in the investigations. Finally, clarify and emphasize the adult's responsibility for the behavior; this aged child is often worried about her/his role and responsibility for the sexual abuse.

### **Adolescents (Twelve or Thirteen Years Of Age To Adulthood)**

Usually this age group is almost fully physically developed. Most adolescents are sexually active with peers to some degree, and are certainly well aware of and interested in sexual matters. Peer relationships are of primary importance and often of greater immediate significance than family relationships.

The shift toward greater independence is going on at this time. It is often accompanied by a high level of testing authority and authority figures. Conflict between parental/society expectations and adolescent desires is normal. They may be very intense, have extreme reactions to situations, and take themselves very seriously. They want to appear competent and find it hard to admit when they need help or are in over their heads.

In many cases, sexually abused adolescents are teens who have been abused over a period of time by a parental figure and are now no longer willing or able to tolerate the difference between what is normal for others and what their experiences as victims has been. They become more aware of alternatives to living in an abusive situation.

Adolescent victims may have overt emotional or behavioral problems which are a response to victimization. They may be rebellious, defiant, non-compliant; they may fail, be suspended or truant from school; may be in trouble with the law; may abuse drugs or alcohol; may be depressed, exhibit suicidal ideation or make attempts, or self-mutilate, may sexually act out by being sexually indiscriminate or even become involved in prostitution; may run away; may have family problems; may have psychosomatic disorders, such as headaches, abdominal pain, or hysterical reactions.

### **Interviewing Suggestions:**

The interviewer must establish some rapport with the adolescent. Being honest, direct, and not condescending is the approach that works best. It is also very helpful for the interviewer to adjust her/his reactions to the reactions of the victim toward the offender and the offense. Enlist the teen's support and cooperation, do not become an adversary; allow them some control by taking them seriously. Do not judge or criticize their conduct. Finally, be direct; they know why they are being interviewed and will appreciate the interviewer's candor.

## APPENDIX 5

VS 34

Amer. J. Orthopsychiat. 55(4), October 1985

### THE TRAUMATIC IMPACT OF CHILD SEXUAL ABUSE: A Conceptualization

David Finkelhor, Ph.D., and Angela Browne, Ph.D.

Family Violence Research Program, University of New Hampshire, Durham

---

*A framework is proposed for a more systematic understanding of the effects of child sexual abuse. Four traumagenic dynamics—traumatic sexualization, betrayal, stigmatization, and powerlessness—are identified as the core of the psychological injury inflicted by abuse. These dynamics can be used to make assessments of victimized children and to anticipate problems to which these children may be vulnerable subsequently. Implications for research are also considered.*

---

The literature on child sexual abuse is full of clinical observations about problems that are thought to be associated with a history of abuse, such as sexual dysfunction, depression, and low self-esteem. However, such observations have not yet been organized into a clear model that specifies how and why sexual abuse results in this kind of trauma. This paper is an attempt to provide such a model. Based on a review of the literature on the effects of sexual abuse,<sup>6</sup> the paper suggests a conceptualization of the impact of sexual abuse that can be used in both research and treatment.

The model proposed here postulates that the experience of sexual abuse can be analyzed in terms of four trauma-causing factors, or what we will call *traumagenic dynamics*—traumatic sexualization, betrayal, powerlessness, and stigmatization. These traumagenic dynamics are generalized dynamics, not necessarily unique to sexual abuse: they occur in other kinds of trauma. But the conjunction of these four dynamics in one set of circumstances is what makes the trauma of sexual abuse unique, different from such childhood traumas as the divorce of a child's parents or even being the victim of physical child abuse.

These dynamics alter children's cognitive and emotional orientation to the world, and create trauma by distorting children's self-concept, world view, and affective capacities. For example, the dynamic of stigmatization distorts children's sense of their own value and worth. The dynamic of powerlessness distorts children's sense of their ability to control their lives. Children's attempts to cope with the world through these distortions may result in some of the behavioral problems that are commonly noted in victims of child sexual abuse. This paper will describe the model and suggest some of its ramifications and uses. We will first describe each of the four dynamics and then show how each dynamic is associated with some of the commonly observed effects of sexual abuse. We will conclude by illustrating how the model can be used in clinical work and in research.

---

Submitted to the Journal in February 1985. Preparation of this work was supported by grants from the National Center on Child Abuse and Neglect (90CA 0936101) and the National Institute of Mental Health (MH15161).

## FOUR TRAUMAGENIC DYNAMICS

*Traumatic sexualization* refers to a process in which a child's sexuality (including both sexual feelings and sexual attitudes) is shaped in a developmentally inappropriate and interpersonally dysfunctional fashion as a result of sexual abuse. This can happen in a variety of ways in the course of the abuse. Traumatic sexualization can occur when a child is repeatedly rewarded by an offender for sexual behavior that is inappropriate to his or her level of development. It occurs through the exchange of affection, attention, privileges, and gifts for sexual behavior, so that a child learns to use sexual behavior as a strategy for manipulating others to satisfy a variety of developmentally appropriate needs. It occurs when certain parts of a child's anatomy are fetishized and given distorted importance and meaning. It occurs through the misconceptions and confusions about sexual behavior and sexual morality that are transmitted to the child from the offender. And it occurs when very frightening memories and events become associated in the child's mind with sexual activity.

Sexual abuse experiences can vary dramatically in terms of the amount and kind of traumatic sexualization they provoke. Experiences in which the offender makes an effort to evoke the child's sexual response, for example, are probably more sexualizing than those in which an offender simply uses a passive child to masturbate with. Experiences in which the child is enticed to participate are also likely to be more sexualizing than those in which brute force is used. However, even with the use of force, a form of traumatic sexualization may occur as a result of the fear that becomes associated with sex in the wake of such an experience. The degree of a child's understanding may also affect the degree of sexualization. Experiences in which the child, because of early age or developmental level, understands few of the sexual implications of the activities may be less sexualizing than those involving a child with great awareness. Children who have been traumatically sexualized emerge from their experiences with inappropriate repertoires of sexual behavior, with confusions and misconceptions about their sexual self-concepts, and with unusual emotional associations to sexual activities.

*Betrayal* refers to the dynamic by which children discover that someone on whom they were vitally dependent has caused them harm. This may occur in a variety of ways in a molestation experience. For example, in the course of abuse or its aftermath, children may come to the realization that a trusted person has manipulated them through lies or misrepresentations about moral standards. They may also come to realize that someone whom they loved or whose affection was important to them treated them with callous disregard. Children can experience betrayal not only at the hands of offenders, but also on the part of family members who were not abusing them. A family member whom they trusted but who was unable or unwilling to protect or believe them—or who has a changed attitude toward them after disclosure of the abuse—may also contribute to the dynamics of betrayal.

Sexual abuse experiences that are perpetrated by family members or other trusted persons obviously involve more potential for betrayal than those involving strangers. However, the degree of betrayal may also be affected by how taken in the child feels by the offender, whomever the offender. A child who was suspicious of a father's activities from the beginning may feel less betrayed than one who initially experienced the contact as nurturing and loving and then is suddenly shocked to realize what is really happening. Obviously, the degree of betrayal is also related to a family's response to disclosure. Children who are disbelieved, blamed, or ostracized undoubtedly experience a greater sense of betrayal than those who are supported.

*Powerlessness*—or what might also be called disempowerment, the dynamic of rendering the victim powerless—refers to the process in which the child's will, desires, and sense of efficacy are continually contravened. Many aspects of the sexual abuse experience contribute to this dynamic. We theorize that a basic kind of powerlessness occurs in sexual abuse when a child's territory and body space are repeatedly invaded against the child's will. This is exacerbated by

whatever coercion and manipulation the offender may impose as part of the abuse process. Powerlessness is then reinforced when children see their attempts to halt the abuse frustrated. It is increased when children feel fear, are unable to make adults understand or believe what is happening, or realize how conditions of dependency have trapped them in the situation.

An authoritarian abuser who continually commands the child's participation by threatening serious harm will probably instill more of a sense of powerlessness. But force and threat are not necessary: any kind of situation in which a child feels trapped, if only by the realization of the consequences of disclosure, can create a sense of powerlessness. Obviously, a situation in which a child tells and is not believed will also create a greater degree of powerlessness. However, when children are able to bring the abuse to an end effectively, or at least exert some control over its occurrence, they may feel less disempowered.

*Stigmatization*, the final dynamic, refers to the negative connotations—*e.g.*, badness, shame, and guilt—that are communicated to the child around the experiences and that then become incorporated into the child's self-image. These negative meanings are communicated in many ways. They can come directly from the abuser, who may blame the victim for the activity, demean the victim, or furtively convey a sense of shame about the behavior. Pressure for secrecy from the offender can also convey powerful messages of shame and guilt. But stigmatization is also reinforced by attitudes that the victim infers or hears from other persons in the family or community. Stigmatization may thus grow out of the child's prior knowledge or sense that the activity is considered deviant and taboo, and it is certainly reinforced if, after disclosure, people react with shock or hysteria, or blame the child for what has transpired. Children may be additionally stigmatized by people in their environment who now impute other negative characteristics to the victim (loose morals, "spoiled goods") as a result of the molestation.

Stigmatization occurs in various degrees in different abusive situations. Some children are treated as bad and blameworthy by offenders and some are not. Some children, in the wake of a sexual abuse experience, are told clearly that they are not at fault, whereas others are heavily shamed. Some children may be too young to have much awareness of social attitudes and thus experience little stigmatization, whereas others have to deal with powerful religious and cultural taboos in addition to the usual stigma. Keeping the secret of having been a victim of sexual abuse may increase the sense of stigma, since it reinforces the sense of being different. By contrast, those who find out that such experiences occur to many other children may have some of their stigma assuaged.

These four traumagenic dynamics, then, account in our view for the main sources of trauma in child sexual abuse. They are not in any way pure or narrowly defined. Each dynamic can be seen, rather, as a clustering of injurious influences with a common theme. They are best thought of as broad categories useful for organizing and categorizing our understanding of the effect of sexual abuse.

## **TRAUMAGENIC DYNAMICS IN THE IMPACT OF SEXUAL ABUSE**

With the four traumagenic dynamics as an organizing framework, it is useful to reconsider the literature on the effects of sexual abuse. Although a great many behavioral and emotional problems have been related to a history of sexual abuse,<sup>6</sup> unfortunately the sum total of literature adds up to little more than a list of possible outcomes. This is conceptually frustrating and does not encourage deeper understanding of the phenomenon.

The notion of traumagenic dynamics, however, offers a way both to organize and theorize about many of the observed outcomes. Most of the outcomes, it will be noted, can be conveniently categorized according to one or two of these dynamics. It would seem as though certain

traumagenic dynamics are more readily associated with certain effects. Obviously, there is no simple one-to-one correspondence. Some effects seem logically associated with several dynamics. But there are clear general affinities. In this section, we will briefly describe the effects that seem to be associated with the four dynamics.\*

### ***Traumatic Sexualization***

There are many observed effects of sexual abuse that seem readily connected to the dynamic of traumatic sexualization. Among young child victims, clinicians have often noted sexual preoccupations and repetitive sexual behavior such as masturbation or compulsive sex play. Some children display knowledge and interests that are inappropriate to their age, such as wanting to engage school age playmates in sexual intercourse or oral-genital contact.<sup>1,3,12,21,22</sup> Some children who have been victimized, especially adolescent boys, but sometimes even younger children, become sexually aggressive and victimize their peers or younger children. Clinicians have remarked about promiscuous and compulsive sexual behavior that sometimes characterizes victims when they become adolescents or young adults, although this has not been confirmed empirically.<sup>7,22,40</sup> There are also several studies suggesting that victims of sexual abuse have a high risk for entering into prostitution.<sup>5,19,32</sup>

The sexual problems of adult victims of sexual abuse have been among the most researched and best established effects. Clinicians have reported that victimized clients often have an aversion to sex, flashbacks to the molestation experience, difficulty with arousal and orgasm, and vaginismus, as well as negative attitudes toward their sexuality and their bodies.<sup>8,12,29,34,38</sup> The frequently demonstrated higher risk of sexual abuse victims to later sexual assault may also be related to traumatic sexualization,<sup>11,13,17,30</sup> and some victims apparently find themselves inappropriately sexualizing their children in ways that lead to sexual or physical abuse.<sup>14,18,21,34,36</sup> All these observations seem connected to the traumagenic dynamic of sexualization.

Such problems and behavior, as well as victims' self-reports, suggest the various psychological effects produced by traumatic sexualization. At its most basic level, sexual abuse heightens awareness of sexual issues, which may be particularly true among young children who might not otherwise be concerned with sexual matters at their stage of development. Part of the preoccupation is associated simply with the sexual stimulation of the abuse and the conditioning of behavior that may go along with it, but it is also very much a function of the questions and conflicts provoked by the abuse about the self and interpersonal relations. Confusion often arises especially about sexual identity. Victimized boys, for example, may wonder whether they are homosexuals. Victimized girls wonder whether their sexual desirability has been impaired, and whether later sexual partners will be able to "tell."

Traumatic sexualization is also associated with confusion about sexual norms and standards. Sexually victimized children typically have misconceptions about sex and sexual relations as a result of things offenders may have said and done. One common confusion concerns the role of sex in affectionate relationships. If child victims have traded sex for affection from the abuser over a period of time, this may become their view of the normal way to give and obtain affection.<sup>17,20,24</sup> Some of the apparent sexualization in the behavior of victimized children may stem from this confusion.

Another impact that traumatic sexualization may have is in the negative connotations that come to be associated with sex. Sexual contact associated in a child's memory with revulsion, fear, anger, a sense of powerlessness, or other negative emotions can contaminate later sexual

---

\*A tabular presentation of these traumagenic dynamics, roughly broken down into psychological impact and behavioral manifestations, is available from the authors.

experiences. These feelings may become generalized as an aversion to all sex and intimacy, and very probably also account for the sexual dysfunction reported by victims.

### ***Stigmatization***

Other effects of sexual abuse seem naturally grouped in relation to the dynamic of stigmatization. Child victims often feel isolated, and may gravitate to various stigmatized levels of society. Thus they may get involved in drug or alcohol abuse, in criminal activity, or in prostitution.<sup>3,4,17</sup> The effects of stigmatization may also reach extremes in forms of self-destructive behavior and suicide attempts.<sup>4,11,17,21,34,35</sup>

The psychological impact of these problems has a number of related components. Many sexual abuse victims experience considerable guilt and shame as a result of their abuse.<sup>2,10,11</sup> The guilt and shame seem logically associated with the dynamic of stigmatization, since they are a response to being blamed and encountering negative reactions from others regarding the abuse. Low self-esteem is another part of the pattern, as the victim concludes from the negative attitudes toward abuse victims that they are "spoiled merchandise"<sup>3,9,18,21,34,38</sup> Stigmatization also results in a sense of being different based on the (incorrect) belief that no one else has had such an experience and that others would reject a person who had.

### ***Betrayal***

A number of the effects noted in victims seem reasonably to be connected with the experience of betrayal that they have suffered, in the form of grief reactions and depression over the loss of a trusted figure.<sup>1,3,7,20,21</sup> Sexual abuse victims suffer from grave disenchantment and disillusionment. In combination with this there may be an intense need to regain trust and security, manifested in the extreme dependency and clinging seen in especially young victims.<sup>20,23</sup> This same need in adults may show up in impaired judgment about the trustworthiness of other people<sup>4,9,21,34,36,38</sup> or in a desperate search for a redeeming relationship.<sup>34,35</sup> As mentioned before, several studies of female incest victims have remarked on the vulnerability of these women to relationships in which they are physically, psychologically, and sexually abused.<sup>4,11,13,17,25,30</sup> Some victims even fail to recognize when their partners become sexually abusive toward their children. This seems plausibly related to both an overdependency and impaired judgment.

An opposite reaction to betrayal—characterized by hostility and anger—has also been observed among sexually abused girls.<sup>4,9,26</sup> Distrust may manifest itself in isolation and an aversion to intimate relationships. Sometimes this distrust is directed especially at men and is a barrier to successful heterosexual relationships or marriages. Studies have noted marital problems among sexual abuse victims that also may represent the surfacing of mistrust and suspicion.

The anger stemming from betrayal is part of what may lie behind the aggressive and hostile posture of some sexual abuse victims, particularly adolescents,<sup>1,8,10,21,27,39,41</sup> Such anger may be a primitive way of trying to protect the self against future betrayals. Antisocial behavior and delinquency sometimes associated with a history of victimization are also an expression of this anger and may represent a desire for retaliation. Thus, betrayal seems a common dynamic behind a number of the observed reactions to sexual abuse.

### ***Powerlessness***

There is also a configuration of effects of sexual abuse that seem plausibly related to the dynamic of powerlessness. One reaction of powerlessness is obviously fear and anxiety, which reflect the

inability to control noxious events. Many of the initial responses to sexual abuse among children are connected to fear and anxiety. Nightmares, phobias, hypervigilance, clinging behavior, and somatic complaints related to anxiety have been repeatedly documented among sexually abused children.<sup>1,2,7,8,10,14,15,21,22,26,33,35,39</sup> These fears and anxieties may extend into adulthood as well.

A second major effect of powerlessness is to impair a person's sense of efficacy and coping skills. Having been a victim on repeated occasions may make it difficult to act without the expectation of being revictimized. This sense of impotence may be associated with the despair, depression, and even suicidal behavior often noted among adolescent and adult victims. It may also be reflected in learning problems, running away, and employment difficulties, which researchers have noted in victims who feel unable to cope with their environments.<sup>1,2,7,17,22,24,26</sup> Finally, it seems readily related to the high risk of subsequent victimization (noted in previous sections) from which sexual abuse victims appear to suffer: these victims may feel powerless to thwart others who are trying to manipulate them or do them harm.

Attempts to compensate for the experience of powerlessness may account for a third cluster of effects. In reaction to powerlessness, some sexual abuse victims may have unusual and dysfunctional needs to control or dominate. This would seem particularly to be the case for male victims, for whom issues of power and control are made very salient by male sex role socialization.<sup>16,28</sup> Some aggressive and delinquent behavior would seem to stem from this desire to be tough, powerful, and fearsome, if even in disparate ways, to compensate for the pain of powerlessness. When victims become bullies and offenders, reenacting their own abuse, it may be in large measure to regain the sense of power and domination that these victims attribute to their own abuser. All these effects seem related to the traumatic dynamic of powerlessness that is integral to the sexual abuse experience.

The preceding should give a sense of how the four traumagenic dynamics are connected to the common patterns of reactions seen among victims. It should be clear, however, that the reactions are overdetermined. Some effects seem plausibly connected to two or even three traumagenic dynamics; for example, depression can be seen as growing out of stigmatization, betrayal, or powerlessness. There is no one-to-one correspondence between dynamics and effects. It may be that stigma-related depression has different manifestations and therefore calls for a different therapeutic approach than depression related to powerlessness. Such hypotheses suggested by the model are worthy of further clinical and empirical investigation.

## **CLINICAL ASSESSMENT USING THE MODEL OF TRAUMAGENIC DYNAMICS**

Of the many possible uses for the conceptual model described here, an obvious one is in making clinical assessments of the possible effects of abuse. Up to the present, clinicians have evaluated abuse experiences on the basis of unsystematic and untested assumptions about what causes trauma. There have been some attempts to classify abuse experiences to aid in assessment, but these classifications have various shortcomings.

One common classification scheme looks at the characteristics of the offender: for example, whether the abuse was at the hands of the "regressed" or "fixated" abuser.<sup>16</sup> However, this conceptualization provides little insight into the nature of the trauma experienced by the child. More often, experiences have been classified according to simple dichotomies which reflect collective clinical judgment about what kinds of abuse are "more traumatic." Thus, abuse is commonly distinguished by whether it occurred inside or outside the family, on the belief that abuse inside the family has more serious effects on the child. Abuse is also commonly categorized according to whether or not penetration occurred and whether force was used.

This approach to assessing the potential for trauma has real limitations. Beyond the fact that

its assumptions are largely untested, the approach results in an overly simplistic classification of experiences as either more or less serious. Nothing about the *character* of the effect is inferred, and nothing about how the trauma is likely to manifest itself is suggested.

The model of traumagenic dynamics proposed here allows for a more complex assessment of the potential for trauma. With the assistance of these concepts, the clinician can evaluate an abuse experience on four separate dimensions. The question is not whether it was more or less serious, but rather what specific injurious dynamics were present. The characteristics of the experience itself can be examined for their contribution to each of the traumagenic processes. On the basis of the configuration of traumagenic dynamics most present in an experience, the clinician can anticipate what would be the most likely types of effects.

Thus, a clinician might proceed through the model dynamic by dynamic, asking first: How traumatically sexualizing was this experience? Facts about the experience, such as whether intercourse occurred, how long it went on, and the degree to which the child participated, all might contribute to an assessment of the degree of sexualization. Next a clinician would ask: How stigmatizing was the experience? Factors such as how long it went on, the age of the child, the number of people who knew about it, and the degree to which others blamed the child subsequent to the disclosure would all add to the assessment of this dynamic. Similarly, with regard to betrayal, facts about the relationship between the victim and the offender, the way in which the offender involved the victim, and the attempts—successful and unsuccessful—of the victim to get assistance and support from other family members would all be taken into account. Finally, the facts about the presence of force, the degree to which coercion was brought to bear, the duration of the abuse, and the circumstances under which the abuse was terminated would be particularly relevant to a determination of the degree to which powerlessness was a major dynamic.

Once an assessment is made about the experience according to the four traumagenic dynamics, a clinician should be able to draw inferences about some of the predominant concerns of the victim and about some of the subsequent difficulties to be expected. An assessment based on the traumagenic dynamics would also be useful for formulating intervention strategies. If, for example, assessment suggested greatest trauma in the area of stigmatization, interventions might be aimed specifically at reducing this sense of stigma. Such interventions might include involvement with a survivors group, where the victim could get support from other victims, or other activities to repair the sense of a stigmatized and devalued self.

## **TRAUMAGENESIS BEFORE AND AFTER ABUSE**

Although the sexual abuse itself is assumed to be the main traumatic agent in victims, it is important to emphasize that any assessment approach to understanding trauma must take into account the child's experiences both prior to *and* subsequent to the abuse. Abuse will have different effects on children depending on their prior adjustment and on how others respond to it. The conceptual framework being proposed here is easily adapted to this need.

The four traumagenic dynamics do not apply solely to the abuse event. They are ongoing processes that have a history prior to and a future subsequent to the abuse. They can be assessed in each phase. In the pre-abuse phase, the traumagenic dynamics need to be understood particularly in relation to a child's family life and personality characteristics prior to the abuse. For example, a child already who was a previous victim of physical or emotional abuse may have already been suffering from a disempowering dynamic before the abuse occurred. However, an eldest child with important responsibilities, living in a fairly healthy family environment, may have acquired a well developed sense of personal efficacy and powerfulness. In such a context, the disempowering aspects of a sexual abuse experience may have only a minor or transient

effect. If the child had experienced an unstable family configuration, in which the loyalty of significant others was in doubt, then the dynamic of betrayal may have already been strongly potentiated. However, the betrayal dynamic from the sexual abuse experience might be substantially less for a child who had a sense of trust firmly established.

The operation of the traumagenic dynamics can also be assessed in the events subsequent to the sexual abuse. Two main categories of subsequent events have particular importance: 1) the family reaction to disclosure, if and when it occurs, and 2) the social and institutional response to the disclosure. For example, much of the stigmatization accompanying abuse may occur *after* the experience itself, as a child encounters family and societal reactions. A child who was relatively unstigmatized by the molestation itself may undergo serious stigmatization if later rejected by friends or blamed by family and if having been abused remains a focus for a long time. The dynamic of powerlessness is also greatly affected by a child's experiences subsequent to sexual abuse. If, for instance, a great many authorities become involved in the experience and the child is forced to testify, forced to leave home, forced to tell the story on repeated occasions, and subjected to a great deal of unwanted attention, this can also greatly increase the child's sense of powerlessness. But, if the child has a sense of having been able to end the abuse and obtain support and protection, this may greatly mitigate any sense of powerlessness that resulted from the experience itself. Thus, in assessing the experience, the contributions of the pre- and post-abuse situation must be included in the relation to the four traumagenic dynamics.

## IMPLICATIONS FOR RESEARCH

The four traumagenic dynamics described in this paper have implications for both research and intervention. Perhaps most importantly, they can be used as a conceptual guide in the development of assessment instruments. Up until now, research on child sexual abuse has been conducted using either broad psychological inventories like the MMPI<sup>37</sup> or the California Psychological Inventory<sup>31</sup> or else ad hoc, investigator-invented measures. The broad inventories have subscales like neuroticism or self-acceptance that can assess a variety of pathological conditions, but these are not necessarily the pathologies related most closely to sexual abuse. The ad hoc measures, by contrast, are more sensitive to the specific pathology that may result from sexual abuse, but they are not based on any theory, and often suffer from lack of methodological rigor.

This model of traumagenic dynamics can be the basis for developing instruments specifically designed to assess the impact of sexual abuse. Sections of the instruments would be geared to tap each of the four dynamics. Two separate instruments might be developed, one for direct administration to the children and another for completion by parents or professionals. Forms of the instruments might be tailored for different age groups. Such instruments are badly needed to further research on sexual abuse.

## CONCLUSION

This paper has tried to suggest a framework for a more systematic understanding of the effects of sexual abuse. It has introduced four traumagenic dynamics, which are seen as the four links between the experience of sexual abuse and the sequelae that have been widely noted. Developing a conceptualization of these links may serve as a step in the direction of advancing our understanding of sexual abuse and mitigating the effects of these experiences on its victims.

## REFERENCES

1. ADAMS-TUCKER, C. 1981. A sociological overview of 28 abused children. *Child Abuse Neg.* 5:361-367.
2. ANDERSON, S., BACH, C. AND GRIFFITH, S. 1981. Psychological sequelae in intrafamilial victims of sexual assault and abuse. Presented at the Third International Conference on Child Abuse and Neglect, Amsterdam.

3. BENWARD, J. AND DENSEN-GERBER, J. 1975. Incest as a causative factor in anti-social behavior: an exploratory study. Presented to the American Academy of Forensic Science, Chicago.
4. BRIERE, J. 1984. The effects of childhood sexual abuse on later psychological functioning: defining a "post-sexual-abuse syndrome." Presented to the Third National Conference on Sexual Victimization of Children, Washington, DC.
5. BROWN, M. 1979. Teenage prostitution, *Adolescence* 14:665-675.
6. BROWNE, A. AND FINKELHOR, D. 1984. The impact of child sexual abuse: a review of the research. Presented at the Second National Conference of Family Violence Researchers, Durham, NH.
7. BROWNING, D. AND BOATMAN, B. 1977. Incest: children at risk. *Amer. J. Psychiat.* 134:69-72.
8. BURGESS, A. AND HOLMSTROM, L. 1978. Accessory to sex: pressure, sex, and secrecy. *In Sexual assault of children and adolescents.* A. Burgess et al. Lexington Books. Lexington, Mass.
9. COURTOIS, C. 1979. The incest experience and its aftermath, *Victimology* 4:337-347.
10. DE FRANCIS, V. 1969. Protecting the Child Victim of Sex Crimes Committed by Adults. American Humane Association, Denver.
11. DE YOUNG, M. 1982. The Sexual Victimization of Children. McFarland & Company, Jefferson, N.C.
12. FINCH, S. 1967. Sexual activity of children with other children and adults. *Clin. Pediat.* 3:1-2.
13. FROMUTH, M. 1983. The long term psychological impact of childhood sexual abuse. Unpublished doctoral dissertation, Auburn University, Auburn, Ala.
14. GELINAS, D. 1983. The persisting negative effects of incest. *Psychiatry* 46:312-332.
15. GOODWIN, J. 1982. Sexual Abuse: Incest Victims and Their Families. John Wright—PSG, Inc., Boston.
16. GROTH, N. 1979. Men Who Rape. Plenum, New York.
17. HERMAN, J. 1981. Father-Daughter Incest. Harvard University Press. Cambridge, Mass.
18. HERMAN, J. AND HIRSCHMAN, L. 1977. Father-daughter incest. *Signs* 2:735-756.
19. JAMES, J. AND MEYERDING J. 1977. Early sexual experiences and prostitution. *Amer. J. Psychiat.* 134:1381-1385.
20. JONES, C. AND BENTOVIM, A. Sexual Abuse of Children: Fleeting Trauma or Lasting Disaster. Unpublished manuscript. The Hospital for Sick Children, London.
21. JUSTICE, B. AND JUSTICE, R. 1979. The Broken Taboo. Human Sciences Press, New York.
22. KAUFMAN, I., PECK, A. AND TAGIURI, C. 1954. The family constellation and overt incestuous relations between father and daughter. *Amer. J. Orthopsychiat.* 24:266-279.
23. LUSTIG, N. ET AL. 1966. Incest: a family group survival pattern. *Arch. Gen. Psychiat.* 14:31-40.
24. MEISELMAN, K. 1978. Incest. Jossey-Bass, San Francisco.
25. MILLER, J. ET AL. 1978. Recidivism among sexual assault victims. *Amer. J. Psychiat.* 135:1103-1104.
26. PETERS, J. 1976. Children who are victims of sexual assault and the psychology of offenders. *Amer. J. Psychother.* 30:398-421.
27. REICH, J. AND GUTIERRES, S. 1979. Escape: aggression incidence in sexually abused juvenile delinquents. *Crim. Just. Behav.* 6:239-243.
28. ROGERS, C. AND TERRY, T. 1984. Clinical intervention with boy victims of sexual abuse. *In Victims of Sexual Aggression.* I. Stewart and J. Greer, eds. VanNostrand Reinhold, New York.
29. ROSENFELD, A. ET AL. 1979. Incest and sexual abuse of children. *J. Amer. Acad. Child. Psychiat.* 16:327-339.
30. RUSSELL, D. 1983. Intrafamily child sexual abuse: a San Francisco survey. Final Report to the National Center on Child Abuse and Neglect.
31. SEIDER, A. AND CALHOUN, K. 1984. Childhood sexual abuse: factors related to differential adult adjustment. Presented at the Second National Conference for Family Violence Researchers, Durham, N.H.
32. SILBERT, M. AND PINES, A. 1981. Sexual child abuse as an antecedent to prostitution. *Child Abuse Neg.* 5:407-411.
33. SLOANE, P. AND KARPINSKI, E. 1942. Effects of incest on the participants. *Amer. J. Orthopsychiat.* 12:666-673.
34. STEELE, B. AND ALEXANDER H. 1981. Long-term effects of sexual abuse in childhood. *Sexually Abused Children and their Families.* P. Mrazek and C. Kempe, eds. Pergamon Press, Oxford.
35. SUMMIT, R. 1983. The child sexual abuse commodation syndrome. *Child Abuse & Neg.* 7:177-193.
36. SUMMIT, R. AND KRYSO, J. 1978. Sexual abuse of children: a clinical spectrum. *Amer. J. Orthopsychiat.* 48:237-251.
37. TSAI, M., FELDMAN-SUMMERS, S. AND EDGAR, M. 1979. Childhood molestation: variables related to differential impact of psychosexual functioning in adult women. *J. Abnorm. Psychol.* 88:407-417.
38. TSAI, M. AND WAGNER, N. 1978. Therapy groups for women sexually molested as children. *Arch. Sex. Behav.* 7:417-429.
39. TUFT'S NEW ENGLAND MEDICAL CENTER (Division of Child Psychiatry). 1984. Sexually Exploited Children: Service and Research Project. Final report for the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, DC.
40. WEISS, M. ET AL. 1955. A study of girl sex victims. *Psychol. Quart.* 29:1-27.
41. WISCONSIN FEMALE JUVENILE OFFENDER STUDY. 1982. Sex Abuse among Juvenile Offenders and Runaways. Summary report, Madison, Wisc.

## **Table 1: Traumagenic Dynamics in the Impact of Child Sexual Abuse**

### **I. TRAUMATIC SEXUALIZATION**

#### **Dynamics**

- Child rewarded for sexual behavior inappropriate to developmental level
- Offender exchanges attention and affection for sex
- Sexual parts of child fetishized
- Offender transmits misconceptions about sexual behavior and sexual morality
- Conditioning of sexual activity with negative emotions and memories

#### **Psychological Impact**

- Increased salience of sexual issues
- Confusion about sexual identity
- Confusion about sexual norms
- Confusion of sex with love and care-getting/care-giving
- Negative associations to sexual activities and arousal sensations
- Aversion to sex-intimacy

#### **Behavioral Manifestations**

- Sexual preoccupations and compulsive sexual behaviors
- Precocious sexual activity
- Aggressive sexual behaviors
- Promiscuity
- Prostitution
- Sexual dysfunctions; flashbacks, difficult in arousal, orgasm
- Avoidance of or phobic reactions to sexual intimacy
- Inappropriate sexualization of parenting

### **II. STIGMATIZATION**

#### **Dynamics**

- Offender blames, denigrates victim
- Offender and others pressure child for secrecy
- Child infers attitudes of shame about activities
- Others have shocked reaction to disclosure
- Others blame child for events
- Victim is stereotyped as damaged goods

#### **Psychological Impact**

- Guilt, shame
- Lowered self-esteem
- Sense of differentness from others

#### **Behavioral Manifestations**

- Isolation
- Drug or alcohol abuse
- Criminal involvement
- Self-mutilation
- Suicide

### **III. BETRAYAL**

#### **Dynamics**

- Trust and vulnerability manipulated
- Violation of expectation that others will provide care and protection
- Child's well-being disregarded
- Lack of support and protection from parent(s)

#### **Psychological Impact**

- Grief, depression
- Extreme dependency
- Impaired ability to judge trustworthiness of others
- Mistrust; particularly of men
- Anger, hostility

#### **Behavioral Manifestations**

- Clinging
- Vulnerability to subsequent abuse and exploitation
- Allowing own children to be victimized
- Isolation
- Discomfort in intimate relationships
- Marital problems
- Aggressive behavior
- Delinquency

### **IV. POWERLESSNESS**

#### **Dynamics**

- Body territory invaded against the child's wishes
- Vulnerability to invasion continues over time
- Offender uses force or trickery to involve child
- Child feels unable to protect self and halt abuse
- Repeated experience of fear
- Child is unable to make others believe

#### **Psychological Impact**

- Anxiety, fear
- Lowered sense of efficacy
- Perception of self as victim
- Need to control
- Identification with the aggressor

#### **Behavioral Manifestations**

- Nightmares
- Phobias
- Somatic complaints; eating and sleeping disorders
- Depression
- Disassociation
- Running away
- School problems, truancy
- Employment problems
- Vulnerability to subsequent victimization
- Aggressive behavior, bullying
- Delinquency
- Becoming an abuser

## APPENDIX 6

### THE EMERGENCY PHYSICIAN IN THE COURTROOM: SERVING AS AN EXPERT WITNESS IN CASES OF CHILD ABUSE

SUSAN B. TORREY, MD, STEPHEN LUDWIG, MD

In a climate of increasing awareness of medical/legal liability, when a subpoena arrives, the physician usually assumes that the specter of a malpractice suit has reared its head. This is not always the case and, in fact, the emergency physician is often required to testify as an expert witness or to present medical evidence in a case unrelated to malpractice. Such a situation occurs with regularity in pediatric emergency medical practice. Child abuse and child sexual abuse, in particular, are medical emergencies that often result in legal proceedings. The physician is mandated both by the law and by his/her conscience to serve as an advocate for the abused child. This may require reporting the case to a child welfare agency as well as going to court. In the courtroom, the physician supplies the link between observed facts and cause or effect. This function is particularly important for ascribing cause to physical injury in a nonverbal child. The description of the legal process that follows is a basic one, but it will provide the emergency physician with a framework from which he/she can prepare for the experience of being an expert witness.

#### SETTING

In situations of child abuse and child sexual abuse, the case is either being heard in family court or criminal charges have been filed against the alleged perpetrator. In the first setting, the purpose of the hearing is usually to consider issues of custody or solution to the domestic problems which have contributed to a dangerous home situation. Possible outcomes include removing the child from the parents' custody or establishing and implementing a treatment program to help the parent retain custody. In a criminal proceeding, the alleged perpetrator is accused of a criminal act, and the purpose of the hearing is to establish guilt or innocence. The setting is more formal, and the experience of the expert witness is more rigorous.

In addition to the courtroom setting, it is important to establish why medical testimony is required. Often, the emergency physician will be asked to establish an official record of the diagnosis, treatment, and implication of an injury. In this situation the physician is a fact witness. In other circumstances, the court will seek an expert witness who can give an opinion regarding the likely cause of, and long-term morbidity from the injury. In the latter role, the physician will frequently be asked to interpret technical material for the court.

#### PREPARATION

In preparing for the hearing, it is helpful to determine from the lawyers involved how the medical testimony will contribute to the case. Although the medical findings may be crucial, there might be other information on which the case depends. Establishing the context of the medical testimony will provide an understanding of the scope of the case. The well-prepared lawyer will discuss in advance the specific questions which might be addressed to the physician. Discussing this

---

From the Emergency Department, St. Christopher's Hospital for Children, and Temple University School of Medicine (Dr. Torrey), and the Emergency Department, The Children's Hospital of Philadelphia, and The University of Pennsylvania School of Medicine (Dr. Ludwig).

information beforehand identifies the attorney-physician-child advocacy team and each individual's role.

A thorough familiarity with the medical records, radiographs, laboratory data, and pertinent medical literature will significantly ease the anxiety of any expert witness. This information is also available to the defense counsel and, if their preparation exceeds that of the expert, the latter's testimony may be of little value. In addition, the emergency physician sees many patients every day, and his/her ability to remember the details of a particular case will distinguish it and make an impression on a judge and jury. The testimony does not have to be delivered from memory, and the witness may refer to any notes made in the medical record.

Finally, it is important to know the parties involved in the court proceedings. In addition to the child and parents, there may be legal counsel for the parents, a representative of a public welfare agency, and a guardian for the child. Familiarity with the participants will avoid confusion in the courtroom.

### THE COURTROOM EXPERIENCE

The typical court appearance of an expert witness involves three parts: qualification, direct examination, and cross-examination. Understanding the purpose of each procedure and the way in which it will be conducted are essential parts of the expert witness's preparation. During qualification, the lawyer who calls the doctor will "qualify" him/her as an expert witness. This procedure establishes the physician's credentials and allows him/her to state opinions and draw conclusions, as well as to present the facts. The information presented usually involves degrees, level of training, and licensure. Specific experience relevant to the case should be mentioned, as well as previous court experience. Providing the lawyer with this information beforehand will assure that all of the appropriate credentials will be presented. The emergency physician should be reassured that his/her medical school training and subsequent experience with many normal children are generally sufficient to qualify him/her as an expert in cases of child abuse. The witness will testify about firsthand observations or facts, and his/her level of experience is usually adequate. If the physician is confident in his/her observation and conclusions, he/she should not be intimidated by attempts to imply that he/she is inexperienced or unqualified. This is even true for pediatric trainees. Anyone with a medical school education has far more medical experience than anyone in the legal or law enforcement fields.

During *direct examination*, the prosecution will present all the material that is relevant to the case. The expert witness must be familiar with the details and be prepared to discuss areas that he/she feels are important but that may have been overlooked by the lawyer's questions. It is, however, important for the physician to avoid areas in which he/she is unsure of the facts or has limited knowledge. By confining the remarks to relevant areas about which he/she is confident, the physician will maintain credibility, and the testimony will be much more valuable. This will be particularly evident during cross-examination.

Throughout the direct examination, the witness's demeanor will affect the court appearance. He/she is a physician and has special knowledge and ability. Therefore, although the medical sophistication of the court is limited, the expert should include some technical terms in the presentation. These can later be translated into lay terminology by the physician, if necessary. It is also important to present objective data to the court. The testimony of an impartial and fair witness will be the most valuable. In addition, photographs and radiographs are an excellent accompaniment to verbal testimony and should be used whenever possible. The direct examination will usually conclude with questions about the proximate cause. Here, the physician is asked to conclude what is the most likely cause of, for example, a child's injuries. This does not require an absolute answer. It is often sufficient to conclude that an injury is consistent with the suggested

cause. It is seldom necessary to conclude that there is no other possible explanation for the injury, but the expert witness may state an opinion regarding the cause of an injury.

The *cross-examination* is an opportunity for the opposing counsel to challenge the statements of the expert witness, and it is certainly the most anxiety-provoking aspect of a court appearance. The physician should begin to lower this anxiety level first by adequately preparing the testimony, keeping in mind that the expert is not the one on trial. It is important that the expert not take the defense counsel's questions personally. The expert witness needs to listen to and consider the implications of each question carefully and take time to prepare the answers. If a question is asked that the witness cannot answer, he/she should not hesitate to respond that he/she does not know the answer, that it is outside of the area of expertise, or that he/she does not recall. Finally, the witness's conclusions should be strong but not absolute. If a witness does not acknowledge other possible or probably causes of an injury, he/she may appear biased or insecure.

There are a number of techniques used in cross-examination of which the witness should be aware. First, a question may be asked in a "yes or no" format even though it cannot be answered by a simple "yes" or "no." The physician should first state that the question cannot be answered in one word, or turn to the judge with certain qualifications while answering. Sometimes a question is so complex that its meaning is unclear. The physician can then ask the lawyer to repeat the question or to simplify it. Secondly, the defense counsel may attempt to paraphrase the words of the witness. Listen very carefully, since a slight modification can alter the essence of the testimony. In this situation, the witness should not hesitate to correct the defense attorney, if necessary. Furthermore, the defense may criticize the witness's notes and record-keeping to point out inadequacies or exclusions. Although such an experience may convince the physician to keep better records in the future, he/she is not obliged to precisely record every conversation and observation.

## CONCLUSION

The emergency physician who treats children will, at some point, be required to testify in a legal proceeding on behalf of a child. A basic understanding of the legal framework and courtroom proceedings will demystify the process and help the physician become an effective expert witness. Preparation should include discussions with the lawyer who has called the witness regarding the context of the medical testimony, anticipated questions, and cross-examination techniques. During the testimony, the physician must listen carefully to the questions, trying to understand their meaning, and not answer hurriedly. The experience of being an effective expert witness can be rewarding, when the outcome of the legal proceeding is beneficial to the child.

## REFERENCES

1. Ludwig S, Heiser A, Cullen TR, et al. You are subpoenaed. *Clin Proc Child Hosp Nat Med Cent* 1974;30:133-147.
2. Ludwig S. The pediatrician's role in family court. Schwartz W, ed. *Textbook of primary care pediatrics*. Chicago: Year Book Medical Publishers. 1986.
3. Leake HC III, Smith DJ. Preparing for and testifying in a child abuse hearing. *Clin Pediatr* 1977;16:1057-1063.
4. Bell C, Mlymec WJ. Preparing for a neglect proceeding: A guide for the social worker. *Juvenile Justice* 1975; Nov: 29-40.
5. Brent RL. The irresponsible expert witness: A failure of biomedical graduate education and professional accountability. *Pediatrics* 1982;70:754-762.

## APPENDIX 7

### BIBLIOGRAPHY—SEXUAL ABUSE

#### 1. Victimization-Dynamics-General Understanding

Anglin, T.M. 1984, Physician Management of Sexually Abused Children and Adolescents, *Current Problems in Pediatrics*, 14(7)

Finkelhor, D., Browne, A., 1985, The Traumatic Impact of Child Sexual Abuse: A Conceptualization, *Amer. J. Orthopsych.* 55(4):530-541

Groth, NA, 1984, *Men Who Rape*, New York Plenum Press, pp. 141-150

Rosenfeld, A.A., 1982, Sexual Abuse of Children: Personal and Professional Responses in: Newberger, E.H., ed., *Child Abuse*, Boston, Little Brown, pp. 57-58

Sgroi, S.M., Porter, K.S., 1982, "Validation of Child Sexual Abuse", In: Sgroi, S.M. (Ed.), *Handbook of Clinical Intervention in Child Sexual Abuse*, Lexington, Mass., Lexington Books

Summit, R., 1983, The Child Sexual Abuse Accommodations Syndrome, *Child Abuse and Neglect*, 7:177-193

#### 2. Forensic Aspects of Medical Evaluation in Sexual Abuse

Blake, E., et al, 1976, Genetic Markers in Human Semen: A Review *Journal of Forensic Sciences* 2(4):784-796

Enos, W.F., Conrath, T.B., 1986, Forensic Evaluation of the Sexually Abused Child, *Pediatrics*, 78:216-236

Finkel M.A., 1988, *The Medical Evaluation of Child Sexual Abuse*, Green, A.H. (Ed.); *Child Sexual Abuse*, New York, NY, Brunner-Mazel.

McCloskey, K., et al, 1975, Prostatic Acid Phosphatase Activity in the Post Coital Vagina, *Journal of Forensic Sciences*, 21:603-636

Paul, D.M., 1975, Medical Examination in Sexual Offenses, *Med., Sci, Law*, 15(3):154-162

Paul, D.M., 1977, The Medical Examination in Sexual Offenses Against Children, *Med., Sci., Law*, 17(4):251-258

Pole, K., 1976, The Medical Examination in Sexual Offenses, *Med. Science, Law*, 16:73

Sensabaugh, G.F.: 1978, Isolation and Characterization of a Semen-Specific Protein from Human Seminal Plasma: A Potential New Marker for Semen Identification, *Journal of Forensic Sciences*, 23:106

Snyder, L., 1967, *Suspected Sexual Assault, Homicide Investigation*, 2nd ed., Springfield, Ill., Thomas, pp. 354-358

Sprales, et al, National Center for Prevention and Control of Rape. *The Evaluation and Management of Rape and Sexual Abuse: A Physician's Guide*, Dept. of HHS, Public Health Services, NIMH, Rockville, MD., 1985, pp. 1-70

### **3. Sexually Transmitted Diseases**

American Academy of Dermatology: 1984, Task Force on Pediatric Dermatology, Genital Warts and Sexual Abuse in Children, *JAM Acad. Dermatology*, 11:529-530

American Academy of Pediatrics: 1983, Committee on Early Childhood, Adoption and Dependent Care: Gonorrhea in Prepubertal Children, *Pediatrics*, 71:553

Bell, T.A., 1983, Major Sexually Transmitted Diseases of Children and Adolescents, *Ped., Inf. Disease*, 2(2):153-161

Chlamydia Trachomatis Infections: Policy Guidelines for Prevention and Control, *MMWR*, 1985, 34:35, p. 53

Clark, D.P., 1986, Condylomata Acuminata in Children, *Current Concepts in Skin Disorders*, 17(2):10-17.

Ingram, D.C., Runyan, D.K., 1984, Vaginal Chlamydia Trachomatis Infection in Children with Sexual Contact, *Ped., Inf. Dis.*, 3(2):97-99.

Kramer, D.G., Jason, J., 1982, Sexually Abused Children and Sexually Transmitted Diseases, *Review of Infectious Diseases*, 4:883-890 (Supplement, Nov-Dec)

Murphy, D.M., 1983, Office Laboratory Diagnosis of Sexually Transmitted Disease, *Ped., Inf. Dis.*, 2(2):146-152

Sexually Transmitted Diseases Treatment Guidelines, *MMWR*, 1982:31(2)335-605

### **4. Medical Examination**

Anglin, T.M., 1984, Physician Management of Sexually Abused Children and Adolescents, *Current Problems in Pediatrics*, 14(7):13-15

Cowell, CA: 1981, The Gynecologic Examination of Infants, Children and Young Adolescents, *Pediatric Clin. of North America*, 28:247-266

DeJong, A.R., 1985, The Medical Evaluation of Sexual Abuse in Children, *Hospital and Community Psychiatry*, 36(5):509-512

Emans, S.J., Goldstein, D.P., 1980, The Gynecologic Examination of the Prepubertal Child with Vulva Vaginitis; Use of the Knee-Chest Position, *Pediatrics*, Vol. 65 (4):758-60.

Heger, A., 1985, *Response: Child Sexual Abuse, A Medical View*: Los Angeles: United Way and Children's Institute International, pp. 23-24

Woodling, B.A., Heger, A., 1986, The Use of the Colposcope in the Diagnosis of Sexual Abuse in the Pediatric Age Group, *Child Abuse and Neglect*, 10:111-114

## APPENDIX 8

### BIBLIOGRAPHY—PHYSICAL ABUSE

#### 1. Child Homicide

Christotell, K.K., Zieserl, E.J., Should Child Abuse Be Suspected When A Child Dies Unexpectedly? *AJDC* 1985, 139:876-80

Krugman, R.D., Fatal Child Abuse: Analysis of 24 Cases, *Pediatrician*, (1983-85); 12(1)68-72

#### 2. Skeletal Trauma—Radiologicimaging

Caffey J., The Whiplash-Shaken Infant Syndrome, *Pediatrics*, 1974, 54:396-402

Leonidas, J.C.: Skeletal Trauma in the Child Abuse Syndrome, *Pediatric Annals*, 12:875-881, 1983

Diament, M.J.: Should the Radionuclide Skeletal survey be used as a screening procedure in suspected child abuse victims? *Radiology*, 1983, 148:573-576

Merten, D.F., Radkowski, M.A.: The Abused Child: A Radiological Reappraisal, *Radiology* 1983, 146:377-386

Radkowski, M.A.: The Battered Child Syndrome: Pitfalls in Radiologic Diagnosis, *Pediatric Annals* 1983, 12:894-903

#### 3. Skull and Intracerebral Trauma

Merten, D.F., Osborne, D.R., Craniocerebral Trauma in the Child Abuse Syndrome, *Pediatric Radiology* 1984, 14:272-277

Zimmerman, R.A., Bilaniuk, L.T., Computed Tomography of Craniocerebral Injury in the Abused Child, *Radiology* 1979, 130:687-690

Alexander, R.C., Scher, D.P., Magnetic Resonance Imaging of Intracranial Injuries from Child Abuse, *Journal of Pediatrics* 1986, 109(6)975-979

Hobbs, C.J., Skull Fracture and the Diagnosis of Abuse, *Archives of Disease in Childhood* 1984, 59:246-252

#### 4. Burns

Lenoski, E.F., Hunter, K.A., Specific Patterns of Inflicted Burn Injuries, *Journal of Trauma* 1977, 17(11)842-846

Hobbs, C.J., When are Burns Not Accidental? *Archives of Disease in Childhood*, 1986, 61:357-361

#### 5. Visceral Injuries

Kirks, D.R., Radiological Evaluation of Visceral Injuries in the Battered Child Syndrome, *Pediatric Annals* 1983, 12:12:858-893

Kuhn, J.P., Bergen, P.E.: Computed Tomography in the Evaluation of Blunt Abdominal Trauma in Children, *Radial Clin. N. America* 1981, 19:503-513

Touloukian, R.J., Abdominal Visceral Injuries in Battered Children, *Pediatrics* 1968, 421:642-646

## **6. Cutaneous Manifestations—Bite Marks**

Wagner, G.N., Bite Mark Identification in Child Abuse Cases, *Pediatric Dentistry* 1986, 8:96-100

Furness, J., A General Review of Bite-Mark Evidence, *American Journal of Forensic Med. and Path.*, 1981, 2(1)49-52

Ellerstein, N.S., The Cutaneous Manifestations of Child Abuse and Neglect and Dis. Child, 1979, 133:906-909

## **7. Failure to Thrive**

Hufton, I.W., Oates, R.K., Nonorganic Failure to Thrive: A Long Term Follow-up, *Pediatrics*, 1977, 57:73

Silver, H.K., Finkelstein, M., Deprivation Dwarfism, *Journal of Pediatrics*, 1976, 70:317

Skuse, D.H., Non-organic Failure to Thrive: A Reappraisal Arch of Diseases in Childhood 1985, 60:173-178

Goldbloom, R.B., Failure to Thrive, *Ped. Clin. N. Amer.*, 1982, 29(1)151-166

## **8. Miscellaneous**

Kempe, C.H., Silverman, F.N., The Battered Child Syndrome, *JAMA* 1962, 181:17-24

Garbarino J., The Elusive "Crime" of Emotional Abuse, *Child Abuse Neglect*, 1978, 2:89-99

Sherdan, B., New Malpractice Perils for Every Doctor: The Battered Child, *Medical Economics*, 1976, 53:33-46

Solomons, G.S., Trauma and Child Abuse: The Importance of the Medical Record, *Amer. Jour. Dis. Child*, 1980, 134:503-505

McDonald, A.E., Child Abuse: Problems of Reporting: *Ped. Clin. North Am.*, 1979, 26(4):785-791

# **The Educator's Role in Child Abuse and Neglect Cases**

**Prepared For  
Governor's Task Force  
On Child Abuse and Neglect**

**By  
Vito Gagliardi, Ed.D.  
Margaret Nigro**

## TABLE OF CONTENTS

I	Introduction .....	1
II	Board of Education Policy on Child Abuse and Neglect—Sample .....	2
III	Board of Education Procedures on Child Abuse and Neglect—Sample .....	3
IV	An Affiliation Agreement on the Investigation of Child Abuse for Use by the School Districts and the Division of Youth and Family Services—Sample .....	7

## I. INTRODUCTION

This section is designed to help school personnel, parents, guardians and board members understand the child abuse laws, as well as their rights and responsibilities in reference to child abuse and neglect. School personnel are able to observe the physical, emotional, and behavioral changes of children on a day-to-day basis. They are in a unique position to make an early identification of children at risk and to assist the Division of Youth and Family Services (DYFS) in protecting the child and helping the family.

On November 7, 1984, the State Board of Education adopted a resolution to address the issue of child abuse and neglect. As a result of this resolution, the New Jersey Department of Education developed policies and procedures for reporting child abuse and neglect. Subsequently, local school districts developed policies relative to child abuse and neglect. They also provide in-service training for all school personnel to raise their awareness level and to provide information about identifying and reporting suspected child abuse to DYFS. The training also covered the investigation process conducted by DYFS.

On December 24, 1987 Governor Kean signed Chapter 341, Laws of 1987 which affects the current State Board of Education Resolution, New Jersey Department of Education policies and procedures, and local school district policies. As a result of this recently enacted legislation: "The Commissioner of the Department of Education shall, in cooperation and consultation with the Commissioner of the Department of Human Services, adopt rules and regulations, pursuant to the 'Administrative Procedure Act,' P.L. 1968, c.410 (C.52:14B-1 et seq.), concerning the relationship, rights and responsibilities of the Division of Youth and Family Services in the Department of Human Services and local school districts regarding the reporting and investigation of allegations of child abuse." Upon completion, the New Jersey Administrative Code will be included in this educational section.

**SAMPLE**

**II. BOARD OF EDUCATION POLICY  
CHILD ABUSE AND NEGLECT**

The \_\_\_\_\_ Board of Education believes that the physical and mental well-being of all children in its charge must be maintained as a prerequisite to achievement through the formal educational process. The school district personnel will cooperate with the New Jersey Division of Youth and Family Services (DYFS) in identifying, immediate reporting and investigation of all suspected cases of child abuse and neglect.

The board of education directs the superintendent to develop and implement procedures for compliance with statutory requirements pertaining to suspected child abuse and neglect.

The superintendent shall require all the employees to receive child abuse and neglect in-service training annually. This training shall be relative to identifying and reporting allegations of child abuse to the DYFS as well as the investigative process conducted by the DYFS. Additionally, the employees shall be made aware of their rights and responsibilities according to law and code. This policy and the procedures are to be posted on the bulletin board of every building and discussed with staff.

Parents shall be informed in writing of this policy and the procedures when their child enters elementary school, junior high school, and senior high school as well as when any changes in policies or regulations occur.

**SAMPLE**

**III. BOARD OF EDUCATION PROCEDURES  
CHILD ABUSE AND NEGLECT**

**I. CHILD ABUSE REPORTING AND REFERRALS**

**A. Reporting**

New Jersey law requires that any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report it immediately to the DYFS. (N.J.S.A. 9:6-8.10).

Person making report immune—"Anyone acting pursuant to this act in the making of a report under this act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such person shall have the same immunity with respect to testimony given in any judicial proceeding resulting from such report" (N.J.S.A. 9:6-8.13).

Violations, failure to make report—"Any person knowingly violating the provisions of this act including the failure to report an act of child abuse having reasonable cause to believe that an act of child abuse has been committed, is a disorderly person" (N.J.S.A. 9:6-8.14). A person convicted of a disorderly persons offense under N.J.S.A. 9:6-8.14 is subject to a \$1,000 fine and up to six months in jail.

All school employees shall immediately report child abuse directly to the DYFS. After reporting the incident to the DYFS, the person reporting the alleged abuse should notify the school principal or designee of the report, in accordance with local procedure. However, consistent with the DYFS regulations, notice to the principal need not be given where the referrer believes that such notice would be likely to endanger the safety of the referrer or children, or where such disclosure would be likely to result in retaliation against the child or in discrimination against the referrer with respect to his/her employment.

The DYFS accepts all reports of suspected abuse or neglect by telephone, in writing, and in person from all sources, including identified sources, news media, anonymous sources, sources which have incomplete information, the child involved and/or his/her parent. An immediate call to the DYFS sets in motion the investigative process, which includes steps to be taken to protect the child or children involved or at risk.

1. Noninstitutional Child Abuse—abuse and neglect suspected of taking place in the home or community by a parent, guardian or any other person having custody or control of the child.

A report may be made in person or by telephone to the local DYFS:  
weekdays between 9:00 a.m. and 5:00 p.m. at \_\_\_\_\_  
weekends, holidays, or after hours at 1-800-792-8610

2. Institutional Child Abuse—abuse and neglect suspected of taking place in a school or other institutional setting.

A report may be made in person or by telephone to the Institutional Abuse Investigation Unit (IAIU):

weekdays between 9:00 a.m. and 5:00 p.m. at 1-609-292-0617  
weekends, holidays, or after hours at 1-800-792-8610

## B. Referrals

In an effort to prevent and intervene in instances of child abuse and neglect, the schools shall cooperate with the DYFS, in the early identification, reporting and investigation of suspected child abuse cases, whether or not corroborative evidence is available.

When referring cases to the DYFS, the school referrer should provide as much pertinent information as possible including:

- name of child;
- age and grade of child;
- name and address of child's parent, guardian or other person having custody and control;
- description of child's condition, including any reports available from the school social worker, nurse, principal or designee concerning current or previous injuries, abuse, or maltreatment;
- nature and possible extent of the child's injuries, abuse, or maltreatment;
- an indication of the seriousness of the situation and whether the child appears to be in imminent danger; and
- any other information that the referrer believes may be helpful with respect to the child abuse and identity of the alleged perpetrator.

## II. DYFS CHILD ABUSE INVESTIGATIONS

### A. Responsibilities of the School

#### 1. Noninstitutional/Institutional Abuse Investigations

The responsibilities of the school are as follows:

- permit DYFS to interview the child in the presence of the school principal or designee. However, if this is contraindicated by the case situation, such as when the child is intimidated by a school representative's presence, the child can name a staff member whom he/she feels will be a supportive presence who will be allowed to accompany the child during the interview. The school representative will be informed by the DYFS worker conducting the interview that the discussion and investigation are confidential. There may be circumstances, however, where the school official may have to be excused from the interview by the DYFS;
- permit the DYFS to photograph the child for the child's protection if he or she has visible injuries;

- cooperate with the DYFS in scheduling interviews with any school personnel who may have information relevant to the investigation;
- release to the DYFS under direction of the principal or designee all records past and present pertaining to the child or children under investigation that are deemed by the DYFS to be relevant to the assessment or treatment; and
- provide a secure cabinet for filing and maintaining confidential information about child abuse cases.

### **III. REMOVAL OF THE CHILDREN FROM THE SCHOOL BY THE DYFS**

#### **A. Removal Procedures**

From time to time, it may be necessary for the DYFS to remove children from school during the course of a school day in order to protect the child or take the child to a service provider. At such times, the DYFS district office shall provide to the appropriate school authority, either in advance or at the time removal is sought, one of the following authorizations:

- a letter from the DYFS indicating agency authority;
- parental consent either from the parent's direct communication to the school or through the presentation of written authorization to the DYFS from the parent;
- a document invoking statutory authorization under N.J.S.A. 9:6-8.29, which is a precourt document (DYFS 21-6) authorizing the DYFS to act to protect the child;
- a court order establishing that the DYFS has been granted care and custody of the child; or
- a guardianship order from the court establishing that the DYFS is the legal guardian of the child.

#### **B. Release of Student from School**

The school shall, at no time, release a child to any person claiming to be a representative of the DYFS unless one of the above conditions is met and the official DYFS staff photo identification has been shown. If there is any question regarding the worker's identity or credentials, the principal or designee should call the DYFS district office that the worker represents.

### **IV. TRANSFERS OF CHILDREN BETWEEN SCHOOLS**

The DYFS may remove some children from their homes for their proper care and protection. This may require the transfer of the child to a school other than the one in which he/she is enrolled.

#### **A. Responsibility of the School**

The sending school will transfer the records of the child to the receiving school.

## B. Responsibilities of the DYFS

1. The DYFS staff will arrange for student transfer with both the sending and receiving school prior to enrollment.
2. When a foster child is placed in another school district, the DYFS social worker will share appropriate information relating to the child's educational records with school officials in order that the most appropriate educational plan be developed for the child. Additionally, when a foster child is moved from one home to another, within the same district, the school will be notified promptly.
3. The DYFS staff will pick up the transfer card from the sending school and deliver it to the receiving school. This may be carried out by the DYFS social worker, the foster parent, or another DYFS approved worker. However, if this task is to be executed by someone other than the DYFS social worker, the DYFS will notify the sending school of the arrangement.
4. When there are legal restrictions on a parent's contact or visitation privileges, which are known to the DYFS, that agency will provide the principal or designee of the receiving school with documentation regarding the court order.
5. The DYFS will notify the school principal or designee of changes in status of court orders in which the DYFS is a party.

## V. CONFIDENTIALITY

### A. Records

In accordance with N.J.S.A. 9:6-8.10a, the DYFS may release information to "An agency authorized to care for, treat or supervise a child who is the subject of a child abuse report, or a parent, guardian or other person who is responsible for the child's welfare, or both, when the information is needed in connection with the provision of care, treatment or supervision to such child or such parent, guardian or other person." As a recipient of the DYFS records and reports, school personnel shall keep them confidential. "Any person who willfully permits or encourages the release of the contents of any record or report in contravention of this act shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000 or to imprisonment for not more than 3 years, or both" (N.J.S.A. 9:6-8.10b).

**SAMPLE**

**IV. AN AFFILIATION AGREEMENT ON THE  
INVESTIGATION OF CHILD ABUSE FOR USE BY THE  
SCHOOL DISTRICTS AND THE DIVISION OF  
YOUTH AND FAMILY SERVICES**

Developed by

**NEW JERSEY STATE DEPARTMENT OF EDUCATION  
UNION COUNTY OFFICE**

in cooperation with

**THE DIVISION OF GENERAL ACADEMIC EDUCATION**

and

**NEW JERSEY STATE DEPARTMENT OF HUMAN SERVICES  
DIVISION OF YOUTH AND FAMILY SERVICES**

**AN AFFILIATION AGREEMENT  
ON INVESTIGATION OF CHILD ABUSE**

**TABLE OF CONTENTS**

<b>I. PURPOSE OF THE AGREEMENT .....</b>	<b>9</b>
<b>II. LIAISONS .....</b>	<b>9</b>
<b>III. CHILD ABUSE .....</b>	<b>10</b>
A. Definition .....	10
<b>IV. CHILD ABUSE REPORTING AND REFERRALS .....</b>	<b>11</b>
A. Reporting .....	11
B. Referrals .....	11
<b>V. DYFS CHILD ABUSE INVESTIGATIONS .....</b>	<b>11</b>
A. Responsibilities of the School .....	12
B. Responsibilities of the DYFS .....	13
<b>VI. REMOVAL OF THE CHILDREN FROM THE SCHOOL BY THE DYFS .....</b>	<b>16</b>
A. Removal Procedures .....	16
B. Release of Student from School .....	17
<b>VII. TRANSFERS OF CHILDREN BETWEEN SCHOOLS .....</b>	<b>17</b>
A. Responsibilities of the School .....	17
B. Responsibilities of the DYFS .....	17
<b>VIII. CONFIDENTIALITY .....</b>	<b>18</b>
A. Records .....	18
<b>IX. JOINT INITIATIVES BETWEEN THE SCHOOL DISTRICT AND THE DYFS .....</b>	<b>18</b>
A. Joint Interviewing .....	18
B. Service Plan Development and Service Initiatives .....	18
C. Consultation and Information Sharing .....	18
D. In-service Training .....	18

**AN AFFILIATION AGREEMENT ON INVESTIGATION  
OF CHILD ABUSE ALLEGATIONS BETWEEN \_\_\_\_\_  
DISTRICT OFFICE OF THE DIVISION OF YOUTH AND FAMILY SERVICES  
AND \_\_\_\_\_ SCHOOL DISTRICT, \_\_\_\_\_ COUNTY**

**I. PURPOSE OF THE AGREEMENT**

The purpose of this affiliation agreement is to develop and formalize a working agreement on the processes by which \_\_\_\_\_ School District and \_\_\_\_\_ District Office of the Division of Youth and Family Services (DYFS) will interact in addressing the needs of families and children when child abuse and neglect is suspected or known. Specifically, this agreement establishes the relationship and responsibilities for both parties concerning, but not limited to:

- developing a liaison relationship;
- reporting suspected abuse and neglect;
- facilitating investigation of alleged child abuse, both in school (institutional) and out of school (noninstitutional); and
- facilitating corrective action recommended as a result of the child abuse investigation.

**II. LIAISONS**

The DYFS and the school district central office administration will each designate one staff person to serve as the liaison between the two agencies. The roles and functions of the liaisons are to:

- facilitate communication and cooperation;
- identify issues or problems that arise in implementation of this agreement and to facilitate a resolution;
- act as the primary contact person between the schools and the DYFS with regard to the agreement, its renegotiation, and general information sharing; and
- act together in developing mutual training and other cooperative efforts, such as information exchanges, joint speaking engagements, etc.

The liaison role does not include continuing communications between the school staff and DYFS personnel on individual case situations unless conflicts arise in an investigation which is governed by the affiliation agreement. Abuse and neglect referrals are not to be screened or referred through the liaisons.

Person making report immune—"Anyone acting pursuant to this act in the making of a report under this act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such person shall have the same immunity with respect to testimony given in any judicial proceeding resulting from such report" (N.J.S.A. 9:6-8.13).

Violations, failure to make report—"Any person knowingly violating the provisions of this act including the failure to report an act of child abuse having reasonable cause to believe that an act of child abuse has been committed, is a disorderly person" (N.J.S.A. 9:6-8.14). A person convicted of a disorderly persons offense under N.J.S.A. 9:6-8.14 is subject to a \$1,000 fine and up to six months in jail.

All school employees shall immediately report child abuse directly to the DYFS. After reporting the incident to the DYFS, the person reporting the alleged abuse should notify the school principal or designee of the report, in accordance with local procedure. However, consistent with the DYFS regulations, notice to the principal need not be given where the referrer believes that such notice would be likely to endanger the safety of the referrer, or where such disclosure would be likely to result in discrimination against the referrer with respect to his/her employment.

The DYFS accepts all reports of suspected abuse and neglect by telephone, in writing, and in person for all sources, including identified sources, news media, anonymous sources, sources which have incomplete information, the child involved and/or his/her parent. An immediate call to the DYFS sets in motion the investigative process, which includes steps to be taken to protect the child or children involved or at risk.

1. Noninstitutional Child Abuse—abuse and neglect suspected of taking place in the home or community by a parent, guardian or any other person having custody or control of the child.

A report may be made in person or by telephone to the local DYFS:  
weekdays between 9:00 a.m. and 5:00 p.m. at \_\_\_\_\_  
weekends, holidays, or after hours at 1-800-792-8610

2. Institutional Child Abuse—abuse and neglect suspected of taking place in a school or other institutional settings.

A report may be made in person or by telephone to the Institutional Abuse Investigation Unit (IAIU):  
weekdays between 9:00 a.m. and 5:00 p.m. at 1-609-292-0617  
weekends, holidays, or after hours at 1-800-792-8610

### III. CHILD ABUSE—DEFINITION

"'Abused child' means a child under the age of 18 years whose parents, guardian, or other person having his/her custody and control:

- Inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;
- Creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; or
- Commits or allows to be committed an act of sexual abuse against the child;
- Or a child whose physical, mental, or emotional condition has been impaired or is in

imminent danger of becoming impaired as the result of the failure of his/her parent or guardian, or such other person having his/her custody and control, to exercise a minimum degree of care in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment or using excessive physical restraint under circumstances which do not indicate that the child's behavior is harmful to himself/herself others or property; or by any other act of a similarly serious nature requiring the aid of the court;

- Or a child who has been willfully abandoned by his/her parent, guardian, or such other person having his/her custody and control" (N.J.S.A. 9:6-8.9).

#### **IV. CHILD ABUSE REPORTING**

New Jersey law requires that any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report it immediately to the DYFS (N.J.S.A. 9:6-8.10).

In an effort to prevent and intervene in instances of child abuse and neglect, the schools shall cooperate with the DYFS, in the early identification, reporting and investigation of suspected child abuse cases, whether or not corroborative evidence is available.

When referring cases to the DYFS, the school referrer should provide as much pertinent information as possible including:

- name of child;
- age and grade of child;
- name and address of child's parent, guardian or other person having custody and control;
- description of child's condition, including any reports available from the school social worker, nurse, principal or designee concerning current or previous injuries, abuse, or maltreatment;
- nature and possible extent of the child's injuries, abuse, or maltreatment;
- an indication of the seriousness of the situation and whether the child appears to be in imminent danger; and
- any other information that the referrer believes may be helpful with respect to the child abuse and identity of the alleged perpetrator.

#### **V. DYFS CHILD ABUSE INVESTIGATIONS**

The New Jersey Department of Human Services, Division of Youth and Family Services (DYFS) is the state's comprehensive social service agency for children, families, and adults. The DYFS is required by State law to investigate every report of a child who is suspected of being abused, neglected, or abandoned.

The DYFS Mission Statement and Services Principles give overall direction for social service activities. It is based on local needs and resources available and cooperative community planning and services.

The mission is to:

- protect vulnerable children and adults from abuse, neglect, or exploitation;
- support family preservation and community living; and
- prevent family violence and disruption.

According to agency policy, the DYFS has specific time-frames to respond to a referral, which are as follows:

- immediately—in cases of physical or sexual abuse where the child has been injured or is in imminent risk of harm;
- within 24 hours—if there is no immediate danger to the child due to the abuse and neglect, i.e., a report indicates that a child has been abused in the past, evidence of the abuse is no longer present and there is no evidence that abuse is likely to occur within the 24 hour period following the referral; and
- within 72 hours—in cases of physical neglect which do not require immediate investigation or emotional abuse and neglect not precipitating a current crisis requiring immediate field investigation.

For the purposes of this agreement, suspected incidents of child abuse and neglect will be categorized as follows:

- noninstitutional abuse—abuse and neglect suspected of taking place in the home or community by a parent, guardian or any other person having custody or control of the child; or
- institutional abuse—abuse and neglect suspected of taking place in a school or other institutional settings.

#### A. Responsibilities of the School

##### 1. Noninstitution/Institutional Abuse Investigations

The responsibilities of the school are as follows:

- permit DYFS to interview the child in the presence of the school principal or designee. However, if this is contraindicated by the case situation, such as when the child is intimidated by a school representative's presence, the child can name a staff member whom he/she feels will be a supportive presence who will be allowed to accompany the child during the interview. The school representative will be informed by the DYFS worker conducting the interview that the discussion and investigation are confidential. There may be circumstances, however, where the school official may have to be excused from the interview by the DYFS;
- permit the DYFS to photograph the child for the child's protection if he or she has visible injuries;

- cooperate with the DYFS in scheduling interviews with any school personnel who may have information relevant to the investigation;
- release to the DYFS under direction of the principal or designee all records past and present pertaining to the child or children under investigation that are deemed by the DYFS to be relevant to the assessment or treatment; and
- provide a secure cabinet for filing and maintaining confidential information about child abuse cases.

## B. Responsibilities of the DYFS

### 1. Noninstitutional Abuse Investigation

- conduct the investigation as soon as possible;
- notify the parent or guardian of their investigation as soon as possible and prior to the child's return home from school;
- present the official DYFS staff photo identification to appropriate school personnel on all visits to the school;
- contact the school principal or designee, in person or by phone, for further information about the reported suspected child abuse and neglect, if necessary;
- report to the county prosecutor those cases of alleged abuse and neglect that involve suspected criminal activity on the part of the child's parent, guardian, or any other person.
- interview the child in the presence of the school principal or designee. However, if this is contraindicated by the case situation, such as when the child is intimidated by a school representative's presence, the child can name a staff member whom he/she feels will be a supportive presence who will be allowed to accompany the child during the interview. The school representative will be informed by the DYFS worker conducting the interview that the discussion and investigation are confidential. There may be circumstances, however, where the school official may have to be excused from the interview by the DYFS;
- interview any school employee who may have information relevant to the investigation;
- receive any records or materials from the principal or designee that would assist in the assessment or treatment of the abused child;
- report by letter to the local district superintendent using the DYFS Form 26-64 as to whether or not the referred family will be receiving ongoing services. This response will be sent within 30 working days. If appropriate, additional information essential to the health and safety as well as the education of the referred student will be forwarded or discussed with the appropriate school personnel; and
- provide the school principal or designee with any information related to a child's change in residence or specific medical concerns.

## 2. Institutional Abuse Investigation

### a. Definitions

“ ‘Institution’ means a public or private facility in the State which provides children with out of home care, supervision or maintenance. Institution includes, but is not limited to, a correction facility, detention facility, treatment facility, day care center, residential school, shelter and hospital” (N.J.S.A. 9:6-8.21g.).

“ ‘Day school’ means a public or private school which provides general or special educational services to day students in grades kindergarten through twelve. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis” (N.J.S.A. 9:6-8.21h.).

“ ‘Reasonable cause to believe’ as it relates to an institutional setting is defined as follows:

- if a child directly makes an allegation involving himself/herself and a staff person;
- if a child or staff person makes an allegation regarding an event he/she has witnessed involving another child and a staff person; and
- if a child or staff person has witnessed physical or sexual activity occurring between students.

### b. Investigation Unit

The Institutional Abuse Investigation Unit (IAIU) in the DYFS was created to investigate all allegations of child abuse and neglect in institutional settings including day schools. The Intake/Administrative Unit is located in Trenton. The investigators are located in four regional offices throughout the state:

- Hammontown—Southern Region (Atlantic, Burlington, Cape May, Cumberland, Gloucester, Camden, Salem)
- Princeton—Central Region (Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset)
- Newark—Central Region (Essex and Union)
- Paterson—Northern Region (Bergen, Hudson, Morris, Passaic, Sussex, Warren)

### c. The Process of the DYFS Investigation

#### (1) Referral

A referral for suspected abuse and neglect is made to the IAIU Intake/Screening Unit in Trenton. Appropriate cases are immediately referred to the proper regional office for investigation. IAIU notifies the school principal by telephone and the local superintendent through a written memorandum that it is initiating an investigation of alleged abuse. The regional supervisor assigns the case to an investigator who contacts the principal or designee at the facility. Should the nature of the referral satisfy the existing criteria, the case will be referred to the appropriate law enforcement entity. When

law enforcement officials are contacted, every effort will be made to conduct a joint, confidential investigation for the convenience of the facility staff and the families involved.

(2) Interviews

When visiting the school, the IAIU investigator will present the official staff photo identification to appropriate school personnel. The investigator will speak to the child in question, any witnesses to the alleged incident, other staff members, and any collateral persons necessary to complete the investigation.

(a) The child(ren)

The DYFS worker will interview the child in the presence of the school principal or designee. If this is contraindicated by the case situation, such as when the child is intimidated by a school representative's presence, the child can name a staff member whom he/she feels will be a supportive presence who will be allowed to accompany the child during the interview. The school representative will be informed by the DYFS worker conducting the interview that the discussion and investigation are confidential. There may be circumstances, however, where the school official may have to be excused from the interview by the DYFS.

(b) The alleged perpetrator

The DYFS worker will interview the alleged perpetrator. Should the staff person wish to have legal representation during the interview, this request must be honored. Should the staff person wish to have a representative of their professional association present during the interview, the association representative may be present as a witness to the testimony but may not participate in the interview or advise the staff person as how to answer the questions. This type of advice can only be given by an attorney.

(c) An exit interview will be held with the principal or designee after all the interviews have been completed for the day. During the exit interview, the principal or designee will be advised of any remedial action which is being recommended. He/she will also be given information regarding the course of the investigation and the possibility of their participation. Obviously, information which may compromise the investigation, particularly criminal investigations, cannot be shared at this time.

(d) Other persons

The DYFS worker may want to interview witnesses to the alleged incident, as well as other staff members.

(3) Notification to Parents

The DYFS is responsible for notifying the parent or guardian that they are initiating an investigation of a report of suspected institutional abuse. In the event that attempts to reach the parent are unsuccessful, the investigation will proceed.

#### (4) Immediate Intervention

In order to insure the safety of the child(ren) during the investigation process, the IAIU may request the removal of the alleged perpetrator(s) from direct contact with all children. Any request for removals or other immediate action will be confirmed in writing by the IAIU regional office.

#### (5) Access to School Documents

The investigator is permitted to see and/or have copies of incident reports, medical reports, or other school documents pertinent to the investigation through the authorization of the chief school administrator or designee.

#### (6) Final Report and Recommendations

The IAIU will have the investigation completed within 45 days of the receipt of the initial referral. If the investigation continues beyond the 45 day limit or the report is unable to be prepared on time, an interim status letter will be sent to the local district superintendent advising him/her of any immediate concerns regarding the investigation and/or clearly stating when a final report can be expected. If a finding is known at this time, it will be relayed. Once the investigation is completed, a final report will be issued to the local district superintendent and the county superintendent. If recommendations are included in the final report, they will be of two types:

- a recommendation which directly relates to specific incidents of harm to the child(ren) in the facility, and/or
- a recommendation which is not related to an incident of harm but is relevant to the future safety of the child(ren), such as a stressful environment, or methods of discipline.

The IAIU will inform the county superintendent, as necessary, when a local district has not responded to the recommendations on institutional child abuse. The county superintendent will then follow-up with the local district superintendent. It is the responsibility of the IAIU to monitor the corrective action plans submitted by the local district superintendent.

## **VI. REMOVAL OF THE CHILDREN FROM THE SCHOOL BY THE DYFS**

### **A. Removal Procedures**

In some cases, it may be necessary for the DYFS to remove children from school during the course of a school day in order to protect the child or take the child to a service provider. At such time, the DYFS district office shall provide to the appropriate school authority, either in advance or at the time removal is sought, one of the following authorizations:

- a letter from the DYFS indicating agency authority;
- parental consent either from the parent's direct communication to the school or through the presentation of written authorization to the DYFS from the parent;

- a document invoking statutory authorization under N.J.S.A. 9:6-8.29, which is a precourt document (DYFS 21-6) authorizing the DYFS to act to protect the child;
- a court order establishing that the DYFS has been granted care and custody of the child; or
- a guardianship order from the court establishing that the DYFS is the legal guardian of the child.

#### B. Release of Student from School

The school shall, at no time, release a child to any person claiming to be a representative of the DYFS unless one of the above conditions is met and the official DYFS staff photo identification has been shown. If there is any question regarding the worker's identity or credentials, the principal or designee should call the DYFS district office that the worker represents.

### VII. TRANSFERS OF CHILDREN BETWEEN SCHOOLS

The DYFS may remove some children from their homes for their proper care and protection. This may require the transfer of the child to a school other than the one in which he/she is enrolled.

#### A. Responsibility of the School

The sending school will transfer the records of the child to the receiving school within 10 days after the transfer has been verified by the requesting school district.

#### B. Responsibilities of the DYFS

1. The DYFS staff will arrange for student transfer with both the sending and receiving school prior to enrollment.
2. When a foster child is placed in another school district, the DYFS social worker will share appropriate information relating to the child's educational records with school officials in order that the most appropriate educational plan be developed for the child. Additionally, when a foster child is moved from one home to another within the same district, the school will be notified promptly.
3. The DYFS staff will pick up the transfer card from the sending school and deliver it to the receiving school. This may be carried out by the DYFS social worker, the foster parent, or another DYFS approved worker. However, if this task is to be executed by someone other than the DYFS social worker, the DYFS will notify the sending school of the arrangement.
4. When there are legal restrictions on a parent's contact or visitation privileges, which are known to the DYFS, that agency will provide the principal or designee of the receiving school with documentation regarding the court order.
5. The DYFS will notify the school principal or designee of changes in status of court orders in which the DYFS is a party.

## **VIII. CONFIDENTIALITY**

### **A. Records**

In accordance with N.J.S.A. 9:6-8.10a., the DYFS may release information to "An agency authorized to care for, treat or supervise a child who is the subject of a child abuse report, or a parent, guardian or other person who is responsible for the child's welfare, or both, when the information is needed in connection with the provision of care, treatment or supervision to such child or such parent, guardian or other person." As a recipient of the DYFS records and reports, school personnel shall keep them confidential. "Any person who willfully permits or encourages that release of the contents of any record or report in contravention of this act shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000 or to imprisonment for not more than 3 years, or both" (N.J.S.A. 9:6-8.10b.).

## **IX. JOINT INITIATIVES BETWEEN THE SCHOOL DISTRICT AND THE DYFS**

### **A. Joint Interviewing**

In some instances, it may be appropriate for both the DYFS and school personnel to interview the parent, guardian or family members jointly at the school.

### **B. Service Plan Development and Service Initiatives**

Upon the request of either party, and the mutual agreement of both, the parties will participate in the development and initiation of a service plan for children. Such a plan shall clarify the role and responsibilities of each of the parties.

### **C. Consultation and Information Sharing**

The DYFS and the school share information concerning specific children in planning joint services. The DYFS staff will enlist the assistance of school personnel in monitoring children's well being and progress.

### **D. In-service Training**

The DYFS and the schools provide in-service training for each other. Subjects covered may include, but are not limited to:

- identification of child abuse and neglect;
- review of this affiliation agreement on a regular basis to ensure that new school and the DYFS employees are aware of the contents;
- referral process and follow-up;
- support services for children and their families; and
- agreements on planning and scheduling developed by the liaison persons representing the DYFS and the schools in a partnership effort.

**X. THE AGREEMENT**

THE AGREEMENT—Representatives from \_\_\_\_\_ School District and \_\_\_\_\_ District Office of the DYFS will meet and review the initial agreement. The term of the agreement is one year. In addition, within two weeks prior to the beginning of the twelfth month from the effective date, the agreement will be reviewed. The parties will then agree to continue this agreement for another year or to terminate the agreement. Modifications required by a change in state or federal law governing the substance and procedures agreed upon herein shall be made on the effective date of such revisions of law.

The parties to this agreement recognize the value of cooperation in identifying, reporting and investigating suspected child abuse or neglect, and believe cooperation will more effectively protect children and strengthen families.

As an expression of commitment to children and families, the parties do hereby affirm to abide by the standards set forth in this document.

On this \_\_\_\_\_ day of \_\_\_\_\_, Nineteen Hundred and \_\_\_\_\_

\_\_\_\_\_  
School District Superintendent

\_\_\_\_\_  
District Office Manager  
Division of Youth and Family Services

\_\_\_\_\_  
President  
District Board of Education

\_\_\_\_\_  
Regional Supervisor  
Institutional Abuse Investigation Unit

**The Prosecution Of  
Child Abuse  
and  
Neglect Cases**

**Prepared For  
Governor's Task Force  
On Child Abuse and Neglect**

**By  
Thomas K. Isenhour  
Assistant Prosecutor, Union County**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	GENERAL APPROACH .....	1
	A. Introduction .....	1
	B. Experienced And Specialized Assistant Prosecutors .....	2
	C. Experienced And Specialized Investigators .....	2
	D. Vertical Prosecution .....	3
	E. Cooperation Between Law Enforcement And The Division Of Youth And Family Services—Joint Investigations .....	4
	F. Utilization Of All Techniques Available .....	6
III.	TOOLS .....	7
	A. Closed Circuit Television Testimony .....	7
	B. Anatomically Detailed Dolls .....	9
	C. Videotaped Interviews .....	10
	D. Use Of Expert Witnesses .....	11
	E. The Rape Shield Statute .....	12
	F. Prompt Disposition Statute .....	14
IV.	LEGAL ISSUES .....	14
	A. Introduction .....	14
	B. <i>K.A.W.</i> .....	15
	C. Fresh Complaint Testimony .....	19
	D. Extended Statute Of Limitations .....	22
	E. <i>State v. Fraction</i> And <i>State v. Miller</i> .....	23
	F. <i>State v. Bowens</i> .....	24
	G. <i>Miranda</i> Warnings By DYFS Case Workers .....	25
	H. Rule 55 .....	25
	I. Defense Discovery Of Reports Prepared By The Division Of Youth And Family Services .....	30
	J. Competency .....	31
	K. Hearsay Exceptions .....	33
	L. Sentencing .....	35
V.	PRACTICAL CONSIDERATIONS .....	37
	A. The Child Witness At Trial .....	37
	B. Supervising Investigations .....	39
	C. Convincing The Jury .....	41
	<b>APPENDICES</b>	
	Appendix I. Child Abuse Syndrome Brief .....	1
	Appendix II. Legal Analysis Of The Retrospective Application of <i>N.J.S.A. 2C:1-6(b)(4)</i> .....	6

## **I. INTRODUCTION**

When prosecuting cases of child abuse and neglect, a prosecutor cannot lose sight of the fact that in addition to investigating and determining that a child has been abused, he must also convince 12 members of the jury that the defendant charged with the crime is responsible for the abuse. The 12 members of the jury who will decide the case will come from greatly divergent religious, racial, ethnic, economic, and educational backgrounds. They generally will have no knowledge of child abuse except for what they have seen reported in the media and depicted in fictional accounts on television. They will hear the trial judge instruct them that they have to unanimously agree that the defendant is guilty and that he is guilty beyond a reasonable doubt.

It is against this backdrop that all prosecutors operate. However, if one were to compare how the 21 counties in New Jersey respond to this challenge, one would observe that there are almost as many methods to investigate and prosecute child abuse cases as there are counties in New Jersey. While no one method has been validated as the most effective to date, several counties share an approach which greatly enhances the likelihood of successful prosecutions while lessening the impact of the prosecution on the victim. On the other hand, there are many methods which impede the likelihood of a successful prosecution.

The purpose of this section of the guide is to suggest a general approach to the investigation and prosecution of child abuse cases. It will also present an overview of the various tools available to the prosecutor, the legal issues which are inherent in any child abuse prosecution, and certain practical considerations when investigating a child abuse case and taking it to trial. It is not, however, intended as a definitive guide on how to investigate a child abuse case or how to prove a case once it reaches trial. Such a discussion would be well beyond the scope of this manual. Nor is it intended to educate professionals in other fields about the intricacies of a criminal prosecution. A working knowledge of the criminal justice system is presumed. It is hoped, however, that professionals from other fields will be able to gain a better understanding of the prosecutor's role.

## **II. GENERAL APPROACH**

### **A. INTRODUCTION**

The most effective approach to the investigation and prosecution of child abuse cases should minimally include the following components:

1. Experienced and specialized assistant prosecutors
2. Experienced and specialized investigators
3. Vertical prosecutions—specialized child abuse units within county prosecutors' offices
4. Cooperation between law enforcement and the Division of Youth and Family Services—joint investigations
5. Utilization of all techniques and methods at one's disposal, including reliance upon professionals from other disciplines.

That these five factors are listed may seem simplistic. Unfortunately, only a handful of counties in the State utilize such an approach. While it is recognized that many counties lack the resources to implement such an approach, this approach is recommended as one towards which all prosecutors should strive to achieve.

## **B. EXPERIENCED AND SPECIALIZED ASSISTANT PROSECUTORS**

To ensure that child abuse cases are effectively prosecuted, the assistant prosecutor responsible for them must receive specialized training, have hands-on experience, be well versed about child abuse legal issues and case law, and be temperamentally suited for the task. In contrast, many prosecutors seem to feel that a good assistant prosecutor is a good assistant prosecutor regardless of what type of case he is assigned. In other words, if one can effectively try a burglary, rape, or drug case, then he can do the same with child abuse cases. This ignores several facts.

One fact is that child abuse cases are among the hardest of all cases to try. Child abuse cases are almost unique in that the assistant prosecutor must first prove that a crime even occurred. Unlike the average homicide, burglary, robbery, or drug case, the average child abuse case presents no physical evidence of the crime. Therefore, before the jury can conclude that the defendant is guilty, they first have to determine if the child was in fact abused. To compound the problem, the usual case will involve inconsistencies by the victim, delays in reporting the abuse, motives for fabrication, possibly recantation, and a host of other problems unique to child abuse cases. Without experience in the field and in trying such cases, it is very difficult to simply rely upon the skills one has learned in prosecuting other types of cases.

Secondly, most assistant prosecutors will try a child abuse case only rarely, if ever. In comparison to the more common crimes, such as burglary, theft, robbery, or drug cases, only a few child abuse cases go to trial. Trying one child abuse case a year hardly yields the experience necessary to effectively represent the State.

Thirdly, there is now such a substantial volume of case law surrounding child abuse cases that it is unreasonable to expect every assistant prosecutor in the office to be adequately prepared to handle all the issues that may arise during trial.

Lastly, not every assistant prosecutor has the temperament and demeanor to work effectively with the victims. Some are just not adept at relating to children when it comes to a courtroom setting.

And even if they are adept at relating to children generally, they may not be able to do so when it involves sexual acts of a very intimate nature. Some assistant prosecutors have great difficulty with these cases and feel uncomfortable and ill at ease. If this feeling is sensed by the child or jury, the results can be disastrous.

## **C. EXPERIENCED AND SPECIALIZED INVESTIGATORS**

Of equal importance, if not greater importance, is utilizing the skills of a detective or investigator experienced in investigating cases of child abuse and neglect. The investigation of child abuse cases may, in fact, be the most important aspect of the criminal prosecution. Not only does it determine who should be charged with the commission

of a crime, it is the foundation upon which the outcome of the criminal prosecution depends. Like the assistant prosecutor, the investigator responsible for child abuse cases must receive specialized training, have hands-on experience, be familiar with child abuse legal issues and trial tactics, and be temperamentally suited for the task. Many of the factors discussed above apply here.

If a child abuse case is assigned to an investigator inexperienced in handling such cases, the question is not whether he will make a mistake but how many. Child abuse cases are difficult to investigate. To communicate with a five year old about her father performing intercourse and cunnilingus on her is not an easy thing to do. Whereas a skilled investigator may get a very detailed account, an unskilled investigator may get nothing. An investigator may be uncomfortable and the victim will pick up on that and react accordingly. Furthermore, unless the investigator is experienced in the field, he will most likely close cases that should have been prosecuted. For instance, when confronted with a young female who states that an adult male put his penis in her vagina, yet the medical exam shows no evidence of penetration, the investigator may conclude that the victim is fabricating the abuse. When in fact, her conception of the man putting his penis in her consisted of the man rubbing his penis against her labia.

A similar situation might arise where a young boy states that he was sodomized by an adult male. The boy further states that he, the child, had his pants and underwear on when this happened. An unskilled investigator would think he had no case. An experienced investigator would understand how literal a child can be and ask "where were your clothes?" The probable answer would be "around my ankles."

In addition, the investigator must have some knowledge of the legal issues inherent in child abuse cases. An investigation which fails to comply with the time specificity requirements of State in Interest of K.A.W., 104 N.J. 112 (1986), to recognize the age and relationship components of N.J.S.A. 2C:14-1 et seq., or to properly assess the child's competency is an inadequate investigation. It is also one that must be redone.

An experienced investigator's skills go beyond dealing with the child. They also go towards dealing with the family, the offender, and obtaining other specific types of information needed before the case can go to trial. Even with expertise in dealing with child abuse cases, these tasks are difficult. To expect an inexperienced investigator to handle these cases on rare occasions is a disservice to him, the victim, and the State's case.

#### **D. VERTICAL PROSECUTION**

Vertical prosecution is a concept which generally includes the creation of a specialized unit to handle a specific type of case, whether it be homicide, narcotics, arson, etc. These specialized units exist because the nature of the crime requires specific knowledge and expertise. In New Jersey, these units are found in the county prosecutors' offices and have countywide jurisdiction. Child abuse is a crime which needs to be handled in such a fashion. The Governor's Task Force on Child Abuse and Neglect, the Attorney General's Office, and the County Prosecutors Association have all strongly recommended the formation of specialized child abuse units in county prosecutors' offices throughout the State.

The unit should be composed of both investigative and legal personnel. Obviously, the size of the jurisdiction dictates the size of the unit. The role of the assistant prosecutor

in such a unit is multifaceted. He should be aware of all reports of abuse that come into the office. He should also review the investigation as it develops and provide insight and guidance into what is needed. Once the investigation is complete and reviewed by the investigator's supervisor, the assistant prosecutor must then make a determination as to whether a complaint should be signed.

If a complaint is signed, it is the assistant prosecutor's responsibility to present the matter to the grand jury and to take the case to trial. Obviously, if one's caseload is too large, the supervising assistant prosecutor should have other attorneys assigned to the unit to assist in the supervision and trial work.

This approach resolves the issue of experienced assistant prosecutors and investigators handling child abuse cases. Anyone assigned to such a unit and survives becomes skilled quickly. This in and of itself is a major advantage. It is also cost effective for them to receive the specialized education and training the assignment will require.

One advantage is that when it comes to trying a case or pleading a case, the assistant prosecutor is intimately familiar with the file. He has an understanding an assistant prosecutor just picking up the file would not have. The assistant prosecutor also benefits because he has the day to day assistance of the investigator who investigated the case from the outset. This assistance from the investigator begins when the case is opened until a plea is entered or a verdict returned.

The assistant prosecutor further benefits from such an approach because he better understands the dynamics of a child abuse investigation. By working with the investigator, he knows what can be done and what cannot be done. With the specialized knowledge of prosecuting such cases, with the knowledge of investigating such cases, and with the knowledge of a particular file, he is in a much better position to make critical decisions as to how to proceed.

The investigator also stands to gain. Not only does he have the opportunity to work closely with the assistant prosecutor to ensure that his case is properly handled, he also gains valuable insight into what issues become important at trial. It is one thing for an investigator to hear what happened to his case at trial; it is more beneficial to work with the assistant prosecutor and actually see what transpires at trial. With such experience and knowledge, he becomes better equipped to investigate other cases in the future.

Another major advantage of having specialized child abuse units within county prosecutors' offices is that it ensures that the cases will be handled consistently and capably. When the task is left to municipal detectives who often lack specialized training and experience, the results are divergent and often disastrous. A child abuse unit within the county prosecutor's office also ensures that the joint investigation to be discussed below will be coordinated in a manner that cannot be achieved at the municipal level.

#### **E. COOPERATION BETWEEN LAW ENFORCEMENT AND THE DIVISION OF YOUTH AND FAMILY SERVICES (DYFS)—JOINT INVESTIGATIONS**

Another component of an effective approach to investigating and prosecuting child abuse cases involves a good working relationship between law enforcement and the Division of Youth and Family Services. In New Jersey both the Division of Youth and

Family Services and the county prosecutors are intricately involved in the investigation of child abuse cases. For a detailed understanding of the Division's role, please refer to the section of this manual entitled *A Model for Joint Child Abuse Investigation by Law Enforcement and Child Protective Services*. For a detailed understanding of how DYFS and the county prosecutor's offices interact, refer to part II, "Child Protective Services (CPS) and Law Enforcement Functions and Procedures." For a detailed understanding of how DYFS and law enforcement can conduct a coordinated and effective investigation, refer to section III "The Joint Investigation." It should be noted that DYFS is not involved in all child abuse cases and consequently the following points are limited to only those situations in which DYFS participates.

As the latter mentioned section of this manual is so comprehensive and detailed in reference to how joint investigations should be conducted, that information will not be repeated here. It does bear repeating, however, that joint investigations are essential to the success of a criminal prosecution. The need for such cooperation is readily evident when one considers what occurs when such cooperation is non-existent. In the absence of cooperation, two separate investigations are conducted. Generally, the DYFS investigation will precede the law enforcement investigation. The interview with the child may take place in a hospital or the child's home. The offender may be close at hand. A new worker may lack the training or experience to conduct an effective interview. Also the worker's caseload may interfere with his spending the time necessary to conduct an effective investigation from a prosecution perspective. Even with the proper training, the focus of the DYFS investigation is different than the focus of a criminal investigation. The interview will reflect that fact. While many DYFS workers are incredibly skilled and dedicated, they are not law enforcement personnel who must be prepared to prove the case beyond a reasonable doubt.

In addition, the worker will interview the offender. When doing so, the worker will lack the training and experience of police personnel in confronting suspects. The worker will also lack the aura of authority possessed by law enforcement personnel. Under such conditions, the likelihood of obtaining admissions is lessened.

The prosecutor's investigator will then conduct his investigation. The victim will be subjected to a second interview. It is likely that discrepancies, sometimes major discrepancies, will exist between the reports of the two investigative entities. The differing reports can then be used to impeach the child should he be required to testify.

When the prosecutor's investigation is almost complete and the time comes to interview the offender, several possibilities exist. One is that the offender may have contacted an attorney and will simply refuse to speak. The other is that the offender, having been made aware of the allegations and having had time to prepare, will give a well planned denial. He may also have had time to work with the victim so that the victim has already recanted. In any event, it is clear that the likelihood of obtaining a confession is greatly reduced.

Given that child abuse cases are so difficult to try, it is axiomatic that anything that interferes with the gathering of evidence is to be avoided. If law enforcement and the Division of Youth and Family Services cooperate, however, both parties stand much to gain. During the interview of the child, both may be present and privy to the same information. Both will then benefit from the information obtained by the more experienced investigator. It should be noted that although two separate reports will be prepared, they will be based upon the same information. A similar rationale applies to interviews with the offender. While the worker may not be present, the offender will be more likely to speak with the investigator than if he had already been alerted

to the report of the abuse. He will also be more likely to make admissions or poorly prepared denials which can be refuted at trial.

The investigator also gains from the DYFS investigation. It is not unusual for a DYFS worker to come across a piece of information of great value in the investigation and prosecution. This information may come from one of the victim's relatives or a variety of individuals who the investigator may never have interviewed or reinterviewed as the case progressed. The DYFS worker can also be of value in providing certain insights into how the family interacts and in providing support to the victim. Lastly, the worker can provide assistance in transporting and locating a child who has been removed from his home.

#### **F. UTILIZATION OF ALL TECHNIQUES AVAILABLE**

Many tools and techniques are available to an assistant prosecutor trying a child abuse case. Some examples of these include:

1. Anatomically correct dolls
2. Closed circuit testimony
3. Videotaped interviews
4. Expert testimony
5. Multidisciplinary approaches
6. Rape Shield statutes
7. Various hearsay exceptions
8. A rapidly expanding body of case law.

With the exception of the multidisciplinary approach, all of these developments can be readily utilized in court and will be discussed in detail in the following subsections under individual headings. While not every prosecutor will want to use these tools, it is important that he understand that they exist and how they can be used. It is incumbent upon the prosecutor to familiarize himself with them so that he can make an informed decision as to whether he wants to make them a part of his arsenal.

As for the multidisciplinary approach, it will not be treated individually. Yet, it is so significant a development that it requires some amplification here. The multidisciplinary approach is simply a team approach to handling child abuse and neglect cases. In its purest form it consists of a DYFS worker, medical professional, mental health professional, law enforcement investigator, and assistant prosecutor. It is essentially a vertical prosecution format which includes additional personnel. Its function, however, is broader than that of a vertical prosecution format.

It operates from the initial complaint until after the criminal prosecution is complete. Some components of the team will continue to operate well after the termination of the criminal prosecution. As a group, the members are responsible for the investigation of abuse, the determination that abuse has occurred, the therapeutic treatment of the victim if necessary, the protection of the victim, and the criminal prosecution. When one member takes the lead in fulfilling the function of his profession, it is expected that the others will assist in any way possible. For the prosecutor, what this means is that he has ready access to expert opinions as well as expert witnesses who may be called to testify at trial. It also means that he does not have to make critical decisions in a vacuum.

The multidisciplinary approach is one which all prosecutors should strive to achieve. As you may have noticed, however, it is not included as an integral part of the approach previously discussed here. The reason for this is two-fold. First, it is very difficult to implement a true multidisciplinary approach in most jurisdictions. In its purest form, the members of the group would be in close contact and meet periodically to review the progress of the cases for which they are responsible. For large jurisdictions with excessively large caseloads, such an approach is not currently feasible. In smaller jurisdictions, such specialization may not be practical. In the remaining jurisdictions, financial reasons often prove to be prohibitive. At least some counties of New Jersey have been able to find hospitals which are willing to shoulder much of this responsibility.

Secondly, where specialized units are formed and the assistant prosecutors draw upon experts in other professions on a case by case basis, such an approach is very similar to the multidisciplinary approach. The primary difference is that the burden is on the prosecutor to obtain the necessary medical and mental health experts.

### **III. TOOLS**

#### **A. CLOSED CIRCUIT TELEVISION TESTIMONY**

The use of closed circuit television is a mechanism by which a child is allowed to testify out of the presence of the defendant, the jury, and spectators. It can be ordered after motion by the witness, the witness' parents, the witness' attorney, the prosecutor, the defendant, or even on the trial judge's own motion. The court will then conduct an in-camera hearing. If it finds that the witness is sixteen years of age or younger and that there is a substantial likelihood that the witness would suffer severe emotional or mental distress if required to testify in open court, it may order the use of closed circuit television.

As discussed above, the rules governing the use of closed circuit testimony in New Jersey are set forth in N.J.S.A. 2A:84A-32.4. Many other states have similar statutes although some have minor variations. It is not unusual to hear some child abuse advocates refer to the use of closed circuit television as a revolutionary breakthrough in the prosecution of child abuse cases.

Prosecutors have somewhat mixed opinions on how frequently closed circuit television testimony should be utilized. Most prosecutors believe its use should be the exception rather than the rule. Others believe that prosecutors should attempt to utilize it as a matter of course.

As for prosecutors who feel closed circuit television testimony should be used rarely, they offer several different reasons to support their position:

1. Unless the child will simply be unable to testify otherwise, prosecutors would prefer to have the jury view the child closely in open court. There is an incredible difference in the impact on the jury when the victim is a miniature image on the television screen as opposed to when the child is within arm's reach of the jury. Emotion is one of the few advantages the State has in prosecuting a child abuse case. Anything that depersonalizes the victim, such as a television image, or reduces the emotional impact may cause the State to lose advantage it can ill afford to lose.
2. Contrary to popular opinion, child witnesses often fare very well in court. (See

following subheading "*The Child Witness at Trial.*") With proper preparation, it would be the rare case in which closed circuit television is necessary.

3. Any case in which the child is so traumatized as to require closed circuit television is probably a case that should be pled. If a child is going to suffer severe emotional or mental distress by testifying in front of the jury, one must ask to what degree is the child going to suffer by only testifying on camera. One must also question whether a child so traumatized will be able to effectively communicate with the jury so that the State may sustain its burden.
4. In counties where the prosecutor's and court's caseloads are heavy, the use of closed circuit television testimony is impractical. Delays can be expected just to hold the hearings, and much advance planning in arranging to have the equipment set up at the proper time and in the proper court room is required. In counties where numerous cases are docketed for trial in any given week, this often presents something of a scheduling nightmare.

There will be some cases, however, where apart from the victim, the State will have incredibly strong evidence. It may consist of a confession, expert testimony, or other evidence which is highly corroborative of the abuse. It may be that for whatever reasons the defendant will not plead regardless of how attractive the State makes its plea offer. In these cases, where the victim need not provide a highly detailed version of the abuse, there is little dispute among prosecutors that closed circuit television may be the State's only alternative. If such is the case, it should clearly be used.

As for the prosecutors who advocate a more frequent use of closed circuit television testimony, they provide another perspective.

1. Regardless of whether a child can take the stand without obvious adverse effect, testifying in front of the defendant and/or the jury is an experience no child should have to endure. Prosecutors should utilize whatever tools are at their disposal to lessen the impact of the criminal prosecution on the child.
2. With proper equipment, the emotional impact of the child's testimony will not be lost on the jury by using closed circuit television testimony. In fact, it is suggested that the use of closed circuit television testimony will emotionally enable the child to present a clearer, more detailed, and more credible account of the abuse to the jury.
3. With proper preparation, established procedures, and the cooperation of the judiciary, the utilization of closed circuit television testimony need not cause substantial delays or scheduling problems.

At the current time there are few published Appellate Division decisions which shed light on what constitutes severe emotional or mental distress or how the standards should be established. See State v. Bass, 221 N.J. Super 466 (App. Div. 1987). Much discrepancy as to what the statute requires can be expected from trial judges. While testimony from a mental health practitioner will more readily meet the State's burden, it is hoped that such testimony will not be required. Alternate sources of evidence could be family members, school personnel, or law enforcement personnel who interviewed the child. Prosecutors should be wary, however, not to allow the State's motion to undergo a transformation to a defense fishing expedition for prior inconsistent statements by the victim. If the State does utilize expert testimony based upon interviews with the victim, the State should be prepared to defeat a defense motion for

a psychiatric examination of the victim for the limited purpose of determining whether the witness would suffer severe emotional and mental distress.

## **B. ANATOMICALLY DETAILED DOLLS**

Any prosecutor involved in prosecuting child abuse cases must have a set of anatomically detailed dolls. While he may not choose to use them in all cases, they are too valuable a form of evidence to be overlooked and not used regularly. Anatomically detailed dolls achieve several different goals:

1. At the outset, they facilitate communication or understanding between the jury and the witness. Young children use a variety of words and phrases to describe their intimate parts. Some confuse phrases. Some refer to their intimate parts generically. When a six year old female says a defendant put his penis in her "private" but cannot provide any further description, yet points to the rectum, the jury has no doubt that she is referring to an act of sodomy. Furthermore, the jury will not be confused when they hear testimony of her age appropriate hymen and introitus with no evidence of abuse.
2. Along a similar vein, the use of anatomically detailed dolls enables the witness to paint a vivid picture for the jury. Consider the following scenario. In one instance the child is asked "What did he do after he took off your clothes?" The child responds, "He got on top of me and put his thing in me." The child is then asked, "What did he do while he was on top of you?" The child responds, "Nothing." The child is then asked "Well, what happened then?" The child responds, "He got off of me." At this point, a prosecutor could use leading questions to elicit testimony from the child as to how the defendant moved and exactly what he did. Leading questions, however, which call for yes or no answers, are not very convincing. Rather than resort to leading questions, the use of anatomically detailed dolls allows the prosecutor to elicit the testimony in a convincing manner. With the above-mentioned scenario in mind, the prosecutor need only give the dolls to the child and ask the child to show the jury exactly what the defendant did to her. When the child picks up the male doll, places it on top of the girl doll, struggles to insert the male doll's penis into the girl doll's vagina, and then starts moving the male doll in a coital or humping fashion, the previous testimony which did not seem credible to the jury now becomes crystal clear. Similar descriptions of how a defendant moved his hand or finger can be equally evocative. While leading questions are sometimes required to prompt certain demonstrations, the child's independent demonstration lessens the impact of the leading nature of the questions.
3. Anatomically detailed dolls allow a prosecutor to have his witness tell his or her story twice. First, the prosecutor elicits as much oral testimony as possible. Utilizing the dolls, the prosecutor then has the child repeat everything while demonstrating the behaviors with the dolls at the same time. As any prosecutor knows, the more times a primary witness repeats his testimony to the jury, the better position the State is in to get a proper verdict.
4. Lastly, most child abuse cases have little evidence. While anatomically detailed dolls are not real evidence, they are demonstrative evidence. More importantly, the jurors remember the dolls when they retire to deliberate.

Anatomically detailed dolls should not, however, be used in all cases. Older victims

of abuse may feel silly using the dolls. They also may appear that way. They are usually sufficiently articulate so that the use of the anatomically detailed dolls is not necessary. Even with younger children, prosecutors should be cautioned to ascertain whether an in court demonstration with the dolls will add to the child's credibility.

In New Jersey the use of anatomically detailed dolls in court is authorized by N.J.S.A. 2A:84A-16.1.

### **C. VIDEOTAPED INTERVIEWS**

Even among jurisdictions with specialized child abuse units, there is a divergence of opinion on how the child's allegations should be recorded. Some use the tried and true sworn statement format. Others utilize written summaries. Still others videotape the interviews with the child.

Videotaping interviews is a relatively recent development. Some jurisdictions believe they could not exist without it. Many others prefer not to utilize videotape. Its proponents claim that the videotape serves at least three primary functions:

1. The use of the videotape lessens the impact of the criminal prosecution on the victim. When videotaping is used, the child need only have one contact with law enforcement prior to pretrial preparation. As the videotape is so descriptive, it enables the prosecutor to assess credibility and the likely impact of the child's testimony on a jury. Furthermore, the child need not testify before the grand jury which could be just as difficult as testifying at trial. As the vast majority of these cases plead rather than go to trial, the use of the videotape, it is suggested, minimizes the effect of the criminal prosecution on the victim as the victim has only one contact with law enforcement throughout the entire prosecution.
2. It is also suggested that the videotaping of the child's allegations is a valuable investigative tool in persuading defendants to confess and in persuading defense attorneys to have their clients plead. During interrogation, the defendant can be shown the videotape. When confronted with what victim will say in open court, the proponents of videotaping maintain that some defendants will confess. The same is argued about showing the videotape to defense attorneys. Once they see what they will be up against at trial, they will be much more likely to try and convince the defendant to enter a plea.
3. In the event a prosecutor can get a prior statement of a witness into evidence, a videotaped statement shown to the jury has much greater impact than the mere reading of a witness' statement. Examples of when such a statement could be introduced are: a) past recollection recorded, b) recanting witness situations or, c) prior consistent statements to bolster credibility once the witness has been impeached with prior inconsistent statements. It must, however, be pointed out that not all trial judges will allow the videotape to be played. While some have, others have asked for written transcripts. Although at least a couple of cases in which the videotapes were actually played to the jury are on appeal, this author is unaware of any reported decisions on such a procedure.

Opponents of the videotape offer several arguments against it:

1. The child testifying before the grand jury is an integral part of the criminal pros-

education. It is important for the prosecutor to assess how the child will respond while giving live testimony. As grand jury testimony is not adversarial, it is not detrimental to the child.

2. Children rarely disclose all of the acts of abuse during a first interview. As most videotapers will only interview the child once, they lock themselves into an account which is certain to expand by the time of trial.
3. Although a videotape may be more descriptive than a statement or summary, the videotape is a double edged sword. Only few investigators are skilled at eliciting so much information in such a small time frame. With unskilled investigators, the videotape is of little value. Furthermore, even if the investigator performs his role perfectly, a bad witness is a bad witness. Certain inadequacies in a witness' account which may not show up in a statement are vividly depicted in color for the defendant and defense attorney to observe. In such situations, it is highly unlikely that videotapes of this nature will prompt a confession or a plea.

It should be apparent that both the proponents and opponents of videotaping make cogent points. The videotape, like any other investigative tool, has its advantages and disadvantages. Any prosecutor who routinely handles child abuse cases should consider videotaping as an option, and if appropriate, utilize it.

#### **D. USE OF EXPERT WITNESSES**

The use of expert witnesses is another tool which prosecutors cannot afford to ignore. At the current time, there are primarily two types of experts in child abuse cases. One, the medical professional, who can testify as to physical evidence of abuse, has long been relied upon by prosecutors when physical evidence exists. All too often no such physical evidence exists. The newly emerging experts in child abuse cases are the mental health professionals who can fill the gap when there is no physical evidence. They may testify in reference to the symptomology and behavioral patterns of abused children.

In reference to experts who testify as to physical evidence of abuse, no analysis of this type of expert testimony will be provided here due to its complexity and the limited scope of this section of the manual. Other sections of this manual, however, especially the sections entitled "Medical Examinations in Alleged Sexual Abuse of Children" and "Guidelines on the Management of Child Abuse and Neglect Cases in Hospitals," provide a detailed understanding of such testimony. It is expected that all prosecutors are familiar with qualifying experts and eliciting their testimony.

It should be stressed, though, that expert medical testimony should be presented whenever it provides evidence of the abuse, however minimal. It should also be used when no evidence exists, but due to the nature of the abuse, a layman might expect there to be evidence of abuse. It is important not to leave juries wondering whether there should have been evidence of abuse, when in fact, an expert would not have expected to find evidence.

As stated previously, the newly emerging expert in child abuse cases is the mental health professional. His testimony centers around behavioral patterns of abused children and the dynamics of abuse, including its indicators. All of these areas are subsumed under or related to what are known as Child Sexual Abuse Syndrome and Post-Traumatic Stress Disorder, among others.

In some states, such testimony has been used for several years and is well supported by case law, statute, or court rules. Other states have prohibited its use in its entirety. In New Jersey, no statute addresses the issue. And while no Appellate Division or Supreme Court cases have confronted the issue directly, several recent opinions seem to indicate that the New Jersey Supreme Court would find it acceptable. See State v. R.W., 104 N.J. 14 (1986). As one highly publicized trial in New Jersey is inundated with such testimony, it is anticipated that more prosecutors will utilize this evidence with the acquiescence of the trial courts and that the appellate courts will hand down a definitive ruling on just how broad this testimony can be.

To understand how this testimony could be used and how a prosecutor can have it introduced, a modified version of a brief prepared by Essex County Assistant Prosecutor Sarah M. Sencer-McArdle is provided in the Appendix to this section. Further information can be found in the *"Investigation and Prosecution of Child Abuse"* by Patricia A. Toth and Michael P. Wahlen, which is published by the National Center for the Prosecution of Child Abuse.

## **E. THE RAPE SHIELD STATUTE**

Although N.J.S.A. 2A:84A-32.1 (New Jersey's original rape shield statute) was not repealed when the New Jersey Code of Criminal Justice became effective in 1979, it was essentially reenacted with several changes as N.J.S.A. 2C:14-7:

1. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, or criminal sexual contact, evidence of the victim's previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit such evidence, for any purpose, he must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier due to the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and that the probative value of the evidence offered is not outweighed by its collateral nature or the probability that its admission will create undue prejudice, confusion of the issues or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.
2. In the absence of clear and convincing proof to the contrary, evidence of the victim's sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.
3. Evidence of previous sexual conduct shall not be considered relevant unless it is material to negating the element of force or coercion or to proving that the source of semen, pregnancy or disease is a person other than the defendant. For the purposes of this section, sexual conduct shall mean any conduct or behavior relating to sexual activities of the victim including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, living arrangements and lifestyles.

This is a very significant statute for prosecutors trying child abuse cases. It is quite common for victims of sexual abuse, especially long-term abuse, to act out sexually in a variety of ways. Unfortunately, it is also not unusual to discover that victims of sexual abuse have been abused by more than one individual. Whenever such information is provided in discovery, prosecutors should expect that defense attorneys will strenuously attempt to elicit that information during trial.

Such testimony is particularly damaging to the State's case, even in the context of what otherwise would be considered a strong case. Defense attorneys like to elicit such testimony to suggest that the victim is prone to fantasy, is sexually precocious, or simply not worthy of belief. They also like to introduce such testimony because if for no other reason, this testimony confuses the jury or distracts their attention. While it is often stated that a confused jury is one likely to return a not guilty verdict, this is especially true in child abuse cases where the primary evidence against the defendant is the testimony of a young child.

Whenever such testimony is provided in discovery, prosecutors should expect the defense to focus on it in their opening and to elicit testimony about it from the victim. Prosecutors should be prepared to utilize N.J.S.A. 2C:14-7 to prevent such a tactic by the defense. This is so even when the defense has failed to provide notice as required by the statute. It is not unusual to discover that many defense attorneys are not aware of the statute, or if they are, they believe it does not apply to child abuse cases.

If the defense has not provided notice, prosecutors should wait until after the jury is sworn, but before opening, and inform the court that the State has reason to believe that the defense may attempt to elicit testimony barred by the statute. If this is acknowledged by the defense, the following argument should be made:

1. The evidence defendant seeks to admit is evidence of the victim's previous sexual conduct, and the statute applies as the defendant is charged with a violation of either N.J.S.A. 2C:14-2 or N.J.S.A. 2C:14-3.
2. Defendant failed to comply with the notice requirement under the statute, and as the evidence is not newly discovered, the defendant is statutorily barred from introducing such evidence. In the absence of newly discovered evidence, the statute requires that defendant "must apply for an order of the court before the trial or preliminary hearing." The statute vests no discretion in the court to relax the notice requirement in the interest of justice or otherwise.

If the defendant has complied with the notice requirement or the court relaxes the notice requirement in spite of the clear wording of the statute, the following argument should be made:

1. The statute clearly specifies what evidence of the victim's previous sexual conduct can be considered relevant. As the evidence the defense seeks to elicit does not negate the element of force or coercion, which is never relevant in a child abuse case, or prove that the source of semen, pregnancy or disease is a person other than the defendant, the evidence he seeks to admit is irrelevant by statutory definition and therefore inadmissible. The defense's true purpose in seeking to elicit the testimony should also be highlighted for the court, namely to degrade the victim and make her unjustifiably appear unworthy of belief.
2. If the evidence is relevant, its probative value is outweighed by its collateral nature or the probability that its admission would create undue prejudice, confusion of

the issues or unwarranted invasion of the privacy of the victim. This argument will be strengthened if the previous sexual conduct occurred more than one year prior to the date of the offense charged as it would be presumed to be inadmissible under paragraph (b) of the statute.

The previous arguments are spelled out to the degree that they are because a very small minority of judges have ruled that the statute does not apply to child abuse cases. This may have occurred because of the judges' unfamiliarity with the statute or because of particularly compelling arguments by the defense. Unfortunately, there are no reported decisions interpreting the statute in this context since its enactment. The only ammunition on the State's side, therefore, is the plain reading of the statute. Consequently, prosecutors should be prepared to expound on the statute as if they had written it personally. Experience has shown that, at least with a small minority of judges, a mere assertion that the statute bars such evidence may be inadequate. It is anticipated that in the proper case the issue will be appealed with a favorable reported decision for the State.

It should be noted that the statute may also prevent the state from introducing evidence of the victim's lack of prior sexual activity to negate consent. Although negating consent is not an element of the offense which must be proved in child sexual abuse cases based upon age, prosecutors generally prefer to elicit such testimony simply to create greater sympathy for the child. While no New Jersey cases have yet addressed the use of such testimony, case law in other jurisdictions indicates strongly that this type of evidence may be prohibited by the statute.

#### **F. PROMPT DISPOSITION STATUTE**

N.J.S.A. 2A:163-4 and 5 specify that:

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

This act became effective on June 24, 1987. As it does not appear in Title 2C, it is not widely known. As a plain reading of the statute reveals, it is simply a directive that courts consider the impact of the criminal prosecution on a child when ruling on motions and request for adjournments. Although the courts will be considering other factors as well, prosecutors should cite the statute when confronted with clogged court calendars, unnecessary delays, and frivolous requests for adjournments.

### **IV LEGAL ISSUES**

#### **A. INTRODUCTION**

From a purely legal perspective, trying child abuse cases today can be an incredibly difficult task. In addition to the specialized body of case law that has developed over the years, prosecutors trying a case confront perhaps one of the most rapidly expanding

bodies of case law in the field of criminal prosecution. Historically, very few child abuse cases were the subject of criminal prosecution. With the increasing public awareness of the problems of child abuse in the recent past, however, the number of criminal prosecutions have increased dramatically. Consequently, the appellate courts are having to deal with child abuse issues at an unprecedented rate, and as one would expect, they are handing down decisions which dramatically impact on the manner in which prosecutors discharge their responsibilities.

It is imperative that prosecutors trying child abuse cases be cognizant of the developments that are taking place at the current time as well as the case law that has developed over the years. Prosecutors who are well versed in other areas of criminal prosecution cannot assume that their expertise in other areas will enable them to handle child abuse cases adequately. Prosecutions of child abuse cases are too specialized and the case law is in too great a period of flux for such a cavalier approach.

The purpose of this part of this section of the manual is to provide an overview of the legal issues that prosecutors can expect to encounter in any given child abuse case. It is, however, not intended as a substitute for legal research on the part of the reader. The fact sensitivity of child abuse cases and the lack of precedents in certain areas preclude a comprehensive analysis here. This part is merely intended to alert the reader to certain issues that may arise and to provide a foundation upon which legal research can begin.

It should be noted that prosecutors responsible for trying child abuse cases should not hesitate to draw upon the assistance of prosecutors in other counties and in the Attorney General's Office who are responsible for trying child abuse cases. Another valuable source of assistance is the Appellate Section of the Attorney General's Office. Deputy Attorney Generals in that section have prepared comprehensive and exhaustive briefs on many of the issues prosecutors will confront.

**B. K.A.W.**

In State in Interest of K.A.W., 207 N.J. Super. 19 (App. Div. 1986), the Appellate Division handed down a decision which, if it had not been subsequently reversed, would have prevented the State from prosecuting a large percentage of child abuse cases. The Appellate Division essentially ruled that due process requires the State to allege the specific dates of the offenses charged. The State's failure to do so would result in a dismissal of the complaint.

Prior to the Appellate Division's decision, it had been common practice for prosecutors to simply charge that the abuse occurred within time periods of up to several years. If more than one incident was alleged to have occurred, the complaint or indictment would routinely specify that the criminal acts occurred "on divers dates between" certain time periods. The scope of the period of time charged depended upon how well the victim could articulate a period of days, a month, a school year, or his/her age at the time of the abuse. Prosecutors took it for granted that victims of abuse could not specify the exact dates of the assaults. Nor did case law require it. See State v. Kuske, 109 N.J. Super. 575 (App. Div. 1970); State v. Johnson, 20 N.J. Super. 93 (App. Div. 1952); State v. Davis, 6 N.J. Super. 162 (App. Div. 1950). In State in Interest of K.A.W., 207 N.J. Super. 19 (App. Div. 1986), the amended juvenile complaint charged K.A.W. with committing acts on divers dates over a 20 month period.

It was with great anticipation that prosecutors awaited the New Jersey Supreme Court's review of the Appellate Division's ruling. In State in Interest of K.A.W., 104 N.J. 112 (1986), the Court reversed the Appellate Division's decision while at the same time setting guidelines which would drastically alter the manner in which child abuse investigations and prosecutions would be conducted. In deciding the case, the Court stated:

The issue as posed in the State's petition for certification is whether a complaint in a juvenile delinquency action, charging the sexual assault on a victim younger than 13 years of age, must specify an exact date of occurrence. The answer to that question is "no." For constitutional due process purposes, the adequacy of a charge set forth in a juvenile delinquency complaint, as in a criminal indictment, turns on whether the notice contained in the complaint sufficiently apprises the accused of the offense with which he is charged to enable him to prepare a defense. Id. at 113-114.

The Court framed the issue as being a balancing of the State's interest in prosecuting child abuse cases and the defendant's interest in receiving sufficiently adequate notice of the offense to permit him to prepare a defense but pointed out that "the harsh reality of the matter is that the product of the State's most diligent and imaginative investigative techniques may nevertheless fail to meet the requirement of fair notice to the juvenile." Id. at 21. The Court further stated:

In balancing the competing interests, the State's in prosecuting child molesters and protecting this extremely vulnerable class of victims from sexual exploitation, the accused's in receiving fair notice, a trial court confronted with a motion to dismiss must engage in a most delicate exercise. It demands judging at its best. To state the problem of balancing is to reveal its fact sensitivity. Although fixed, precise standards are not available as guides to resolution of the issue, there are some general criteria to aid a court in its review of the adequacy of "time" information set forth in a complaint. Id. at 121-122.

As specified by the Court, the factors to be considered are:

1. The length of the alleged period of time in relation to the number of individual criminal acts alleged.
2. The passage of time between the alleged period for the crime and defendant's arrest.
3. The duration between the date of the indictment and alleged offense.
4. The ability of the victim or complaining witness to particularize the date and time of the alleged transaction or offense.
5. The age and intelligence of the victim.
6. The extent and thoroughness of the prosecutor's investigative efforts to narrow the time frame of the alleged offense.
7. Whether there was a continuous course of conduct.

Rather than provide a detailed analysis of how these factors are to be considered and how they relate to one another, the Court noted:

We do not insist on adherence to any particular formula. Rather, what is required is an especially diligent scrutiny of the facts of the incident as they may be disclosed. The aim is to narrow the time frame of the occurrences as complained of—if not to the extent of the exact date or dates, then possibly in respect of seasons of the year, or incidents in the victim's life such as a death in the family, or a change in a family member's job routine, or the beginning of the school year or of vacation time or of extracurricular activities. When the trial court is satisfied that these sources of information have been exhausted, it would then be in the position to strike the necessary balance to determine whether "fair notice" has been given. Id. at 122-123.

Quite significantly, the Court also added that while defendant's alibi may be considered to the extent that he makes it known, the fact that it "might suffer in the face of an extended time frame does not constitute a sufficient basis for dismissal of a complaint in this context, where a 'number of occasions' of misconduct are alleged." Id. at 123.

At the current time it is too early to predict what impact K.A.W. will have on child abuse cases in the long run. To date, only two cases applying the K.A.W. standards have been reported. State v. Bowens, 219 N.J. Super. 290 (App. Div. 1987); State v. Hass, 218 N.J. Super. 133 (App. Div. 1987). Both provide little guidance.

While it is clear that some child abuse cases that were previously viable will no longer be able to be prosecuted, it is anticipated that the number of cases falling within this category will be especially low. Both the trial courts and the Appellate Division, in unreported decisions, have shown a willingness to recognize the State's interest in prosecuting child abuse cases and have upheld diverse date indictments over periods of times up to at least several months. While some trial judges have resolved the issue on behalf of the defendant, it is anticipated that published Appellate Division decisions will resolve this situation.

When confronted with a K.A.W. challenge, prosecutors appear to be on the firmest ground when the victim is younger, when the abuse was ongoing, when the State has done everything within its power to narrow the dates in the indictments, when the relationship and degree of contact between the victim and defendant are great, and where the defendant provides no specifics as to his alibi defense. The State's position weakens when the factors just recited are reversed. As should be apparent, there is only one factor over which the State has any control. That factor is the extent to which the prosecutor's investigative efforts have been utilized to narrow the time frame of the alleged offense. Regardless of any of the other factors, with some exceptions, prosecutors should not expect to withstand a K.A.W. challenge if the investigation upon which the indictment is based lacks substance.

Consequently, it is anticipated that the major effect of K.A.W. will be upon the manner in which the State investigates its cases rather than in the wholesale dismissal of indictments by the judiciary. In the past, it was quite common for competent investigators to only elicit information from the victim about what acts were done to him, when was the most recent incident, when was the first incident, how many incidents were there in all, and whether there were any incidents that the victim specifically remembered. Usually the inquiry into these areas ended when the child

provided some answer or even a non-responsive one. In light of K.A.W., however, cursory interviews with victims in this manner are wholly inadequate. To simply request a general idea as to the nature of the abuse, an estimate of the number of times it occurred, and its duration would not establish that the State has done everything within its power to limit the time frame of the indictment. While K.A.W. does not require that investigators obtain detailed answers, it does appear to require that investigators ask detailed questions and conduct thorough investigations.

In conducting interviews, then, it is necessary for investigators to systematically elicit as much information as possible about each incident that the child remembers. To do this, investigators cannot be satisfied with non-responsive answers and then move into other areas. The investigator must attempt to provide some focus to each incident by asking questions relating to the weather, the time of year, holidays, birthdays, family trips, living arrangements, school, where other family members were at the time of the offenses, whether it was night time or day time, and about other significant events or occurrences in the child's life. To accomplish this task, investigators should interview the victim's parents or caretakers, or the non-offending parent or caretaker in intrafamilial abuse cases, prior to interviewing the child so that the investigator will have some grasp of the significant occurrences and relationships in the victim's life.

After interviewing the child, the investigator should then attempt to corroborate as much of the child's account as possible. Interviews and investigations of this kind are not easy to complete. Many investigators feel that this kind of inquiry is needless, too time consuming, impossible to achieve, and is more difficult for the victim. Some prosecutors have similar feelings. They would prefer to have less detailed statements which cannot be used as effectively to impeach the child at trial. As K.A.W. at least for the time being requires the State to narrow the time frame of the indictment, such investigations appear to be necessary. There are, however, advantages to investigations of this kind.

Several warnings need to be attached to investigations designed to comply with K.A.W.:

1. Prior to formally recording the victim's responses, the investigator must develop a sufficient rapport with the victim to ensure that the victim will be willing to be fully responsive during the interview. Otherwise, the victim may well intentionally withhold numerous details and present only a minimal account of the abuse. In such circumstances, while the victim's responses may nonetheless satisfy the requirements of K.A.W., formally recording only the minimal account of the abuse can have disastrous consequences later in the criminal prosecution.
2. Investigators must consider the age and emotional characteristics of the victim in fashioning their interview. K.A.W. is designed to provide notice to the defendant. It is not intended to endorse interrogations of victims.
3. Children, especially young children, tire easily. Investigators must exercise their discretion to ensure that the victim does not simply start giving answers to end the interview.
4. Along a similar vein, investigators should not let their zeal in obtaining definite answers become so apparent that the victim seeks to please the investigator.
5. Investigators should realize that dates which may be significant to the investigator may not be as significant to certain children. It is only the major holidays that must be covered, not less significant holidays like Lincoln's Birthday, Veteran's Day, etc.

6. Unless the victim will testify before the grand jury, all questions of this nature by the investigator should be adequately recorded so that the assignment judge who hears the motion to dismiss the indictment can properly determine that the State has done everything in its power to narrow the time frame of the offense.
7. For jurisdictions that do not utilize sworn or videotaped statements before the grand jury, it is the assistant prosecutor who shoulders the responsibility for narrowing the time frame of the indictment when the matter is presented.

### C. FRESH COMPLAINT TESTIMONY

While it can be stated that fresh complaint testimony permits proof by the State that the victim complained of the abuse within a reasonable time to someone she would ordinarily turn for sympathy, protection, or advice, it is a concept that has often suffered from a lack of precise definition and application. One need only review the comments to Evid. R.20, 63, and 63(4) as an indicator that its exact nature is somewhat amorphous. A review of the case law is equally revealing of some of the problems that surround the practical application of fresh complaint testimony at trial. This is especially true in light of the Appellate Division's recent decision in State v. J.S., 222 N.J. Super. 247 (App. Div. 1988).

Due to the fact sensitivity of the cases and the appellate courts' penchant for determining plain error based upon a review of all the evidence presented at trial, it is difficult to provide a concise legal analysis of fresh complaint testimony upon which prosecutors could confidently rely. In seeking to admit fresh complaint testimony, prosecutors must sift through the facts of the different decisions, rely upon some, distinguish others, and make well reasoned arguments. The following case summaries are provided only to illustrate some of the conflicts prosecutors may encounter.

#### 1. WHAT CONSTITUTES A "COMPLAINT"?

State v. J.S., 222 N.J. Super. 247 (App. Div. 1988).

A seven year old victim reported the abuse to a friend who in turn informed two adults of what the victim said. The two adults, one being the victim's mother, subsequently and separately asked questions of the victim. Both adults testified at trial as fresh complaint witnesses. The Court ruled that it was improper to allow testimony of the adult witnesses under the fresh complaint doctrine. The Court reasoned that the fresh complaint doctrine permits testimony that the victim made a "complaint." To qualify as a complaint, the Court reasoned that the victim's statement must at least be self-motivated and not extracted by interrogation.

State v. Kozarski, 143 N.J. Super. 12 (App. Div. 1976).

The facts in this case are difficult to recite as a reconstruction hearing was necessary due to the destruction of the original stenographic notes in a fire. For the first time on appeal, the defendant alleged that the complaint may have been elicited under questioning by the mother.

For the sake of argument, the Court assumed this to be true and ruled that it would not constitute plain error in light of the fact that fresh complaint testimony of one of the victim's friends, to whom the victim first reported the abuse, had been properly admitted.

## 2. WHAT CONSTITUTES "WITHIN A REASONABLE TIME"?

State v. Balles, 47 N.J. 331 (1966)

The nine year old victim reported the abuse within hours after it occurred. The Supreme Court rejected defendant's argument that it was for the court rather than the jury to determine whether a reasonable time had elapsed and held "that if it found that the complaint was not made 'within reasonable time after the commission of the alleged offense' it could consider that fact in determining the value and weight to be given to the testimony." Id. at 341.

State v. Hummel, 132 N.J. Super. 412 (App. Div. 1975).

The fifteen year old victim's complaint occurred three years after the abuse began and four to six weeks after she was separated from the defendant. The Court stated:

In determining what constitutes a reasonable time in this case it is important to recognize that both R and D were foster children under the control of the defendant and his wife. Additionally, the jury obviously believed their testimony that defendant had threatened them with being put away in a children's shelter if they spoke. Under these circumstances, their continued silence, except with respect to statements to each other, while resident in the Hummel home, is not unreasonable. Nor is the delay of four to six weeks before R informed her sister L of what had happened unreasonable. We cannot conclude, under evidence which the jury could find credible, that a fifteen year old girl, abused and threatened for some three years, would not reasonably require several weeks to overcome her residual fears. "(The nearness of the complaint to the occurrence or the remoteness therefrom cannot affect its competency but only its probative value." (Citations omitted)

We are satisfied that under the circumstances of this case, all of the statements of the complaining witnesses, including those to each other, were made within a reasonable time after the events and thus were competent. Id. at 423.

State v. Kozarski, 143 N.J. Super. 12 (App. Div. 1976).

The eleven year old victim reported the abuse two weeks after the abuse occurred. The Court ruled that "in light of the natural reluctance of an eleven year old boy to divulge information of this type to his parents, and because he was 'somewhat afraid,' the time period involved was not such as to bring the statement beyond the comprehension of the rule." Id. at 16.

4 Wigmore, Evidence, Section 1135 (Chad. rev. 1972).

Wigmore reasons that "But, if it be considered that the purpose of the evidence is merely to negative the supposed silence of the woman, it is perceived that the fact of the complaint at any time should be received" Id. at 302-303.

## 3. HOW MANY DETAILS OF THE COMPLAINT CAN BE ELICITED?

State v. Gambutti, 36 N.J. Super. 219 (App. Div. 1955).

The following testimony was elicited at trial:

"She said, 'Mother, what did he do that for?'"

"And I said, 'What did who do?'"

"And I didn't know what she meant, and so she came across to me and said that Mr. Gambutti had put his hand on her 'Tally Wacker'."

"Do you know what she means when she refers to her 'Tally Wacker'?"  
"That is her privates." Id. at 225.

In examining the admission of this testimony under the fresh complaint doctrine, the Court stated:

"(E)nough may be given in evidence to show the nature of the complaint, even though it involves to some extent the particulars thereof, and that the rule is not violated by evidence as to the time and place where the complaint is made, the circumstances under which it is made, and the person to whom made, the condition of the victim when making the complaint, the conduct of the prosecutrix at the time she made the complaint, and that she exhibited, if such was the fact, marks of violence and other like indications . . ." (citation omitted) Id. at 228-229.

The Court then ruled that "Although we have some doubt that the statement of the mother about her conversation with the child, as outlined above, constituted the giving of details," the details of her complaint were admissible otherwise following her impeachment during cross examination. Id. at 229.

State v. Hintenberger, 41 N.J. Super. 597 (App. Div. 1956).

The following testimony was elicited at trial:

- Q. "I would like to emphasize . . . I don't want details, but I would like you to tell the court what the nature of this report was."  
A. "Well, she came to me and she said that something had happened. And she told me the exact things she said here in court today." Id. at 603.

In ruling that this testimony went beyond the bounds of fresh complaint testimony, the Court reasoned that the witness' statement that "she told me the exact thing she said here in court today" was tantamount to a narration of all the details previously testified to by the victim and went beyond what was necessary to show the nature of the complaint.

State v. Balles, 47 N.J. 331 (1966).

The Supreme Court, in determining to what extent details of a complaint could be admitted, reasoned:

In State v. Gambutti, supra, our Appellate Division approved a similar common-sensible approach; it noted that where details of the complaint are inadmissible "enough may be given in evidence to show the nature of the complaint even though it involves to some extent the particulars thereof." 36 N.J. Super., at p. 228.

We consider that Mrs. Berg's testimony as to Rhonda's complaint did not constitute the improper recounting of details. In response to an inquiry as to what Rhonda had told her, she said "Mr. Balles had put his hand down her panties and had touched here." She did not elaborate and could hardly have said less and still identified the nature of Rhonda's complaint. Id. at 339.

State v. J.S., 222 N.J. Super. 247 (App. Div. 1988).

The Court summarized the content of the fresh complaint testimony as follows:

As to the testimony of Mrs. S., this witness testified that after a conversation with her ten year old daughter, she approached C. and asked "what had happened to

her." The child did not volunteer the information. Likewise, C's disclosure to her mother, Mrs. M., 12 days after the alleged assault, was the product of questioning by the mother. Indeed, Mrs. M. testified that when she opened the subject with C. "She wouldn't talk. She cried, and she didn't want to talk about it." The methodology of the questioning was explained by Mrs. M. in the following way: "She wouldn't say hardly anything at all I had to ask her, you know, about the events, and she would just say yes or no." in response to the prosecutor's inquiry it was developed that C. furnished "yes" answers to her mothers questions which established that "he had felt her body, and that he had stuck his fingers inside her vagina." Id. at p. 253.

In deciding the admissibility of this evidence as fresh complaint testimony, the Court stated:

In permitting the adult witnesses to testify to the child's statement that defendant had felt her breasts and had penetrated her vagina, the court's ruling exceeded the necessities of the case to the prejudice of defendant. All that was needed was enough to show that the child did not suffer the outrage in silence. Id. at p. 254.

The Court then cited Wigmore and Balles, but stated "In contrast, the witness herein could hardly have said more respecting details which were superfluous to identify the nature of C.'s complaint." Id. at p. 254.

As noted earlier the preceding case summaries are presented only to illustrate some of the conflicts prosecutors can expect to encounter when seeking to admit fresh complaint testimony. There are others which will not be recounted here. Like the issues highlighted, though, their resolution would depend upon the facts of the given case and the thoroughness of the prosecutor's research.

It should be noted that prosecutors should pay special attention to the ruling in J.S. about the sufficiency of the jury charge in that case. As the jury charge is very similar to the model charges in many respects, prosecutors should ensure that trial judges before whom they try cases are equally as familiar with the decision.

#### **D. EXTENDED STATUTE OF LIMITATIONS**

Prior to December 3, 1986, the standard five year statute of limitations for indictable matters was applicable to child abuse prosecutions. N.J.S.A. 2C:1-6(b)(1). On that date, an amendment to N.J.S.A. 2C:1-6 became effective pursuant to L. 1986, chap. 166. As amended, N.J.S.A. 2C:1-6(b)(4) now provides:

A prosecution for any offense set forth in N.J.S. 2C:14-2 or N.J.S. 2C:14-3, when the victim at the time of the offense is below the age of 18 years must be commenced within two years of the victim's attaining the age of 18 years or within five years after the crime is committed whichever date is later.

The statutory language is succinct, easily understood, and consequently will not be discussed here. At the time the amendment was enacted, however, there was some confusion among prosecutors as to whether it could be applied retroactively to crimes occurring prior to its effective date. Based upon a legal analysis by D.A.G. Debra L. Stone, the Deputy Chief of the Appellate Section, that confusion has now dissipated:

1. If the prior five year statute of limitations had expired prior to the effective date N.J.S.A. 2C:1-6(b)(4), N.J.S.A. 2C:1-6(b)(4) does not apply and the case cannot be prosecuted.
2. If the prior five year statute of limitations had not expired prior to the effective date of N.J.S.A. 2C:1-6(b)(4), N.J.S.A. 2C:1-6(b)(4) does apply and the case can be prosecuted.

In the event that prosecutors need rely upon D.A.G. Stone's legal analysis, it is included in the appendix to this section.

#### **E. STATE V. FRACTION AND STATE V. MILLER**

State v. Fraction, 206 N.J. Super. 532 (App. Div. 1985) is a decision with which all prosecutors who try Chapter 14 cases should be familiar. While it is not a landmark case nor can it be considered controversial, it can be very useful when confronting a creative defense attorney or a trial judge unfamiliar with trying cases under N.J.S.A. 2C:14-2. It also is the only reported decision addressing one of the issues under consideration.

In the case, defendant was convicted of two counts of aggravated sexual assault. Both counts stemmed from one criminal episode in which defendant forcibly committed acts of vaginal intercourse and cunnilingus upon an adult female. The victim's testimony revealed that defendant confronted her with a knife when she was leaving her place of employment and dragged her into nearby woods where the sexual assaults took place. In addition to the vaginal intercourse, the victim testified that the defendant licked her outer labia but did not insert his tongue into her vagina.

In ruling on the defendant's challenge to the trial court's charge to the jury, the Court stated:

Initially, we reject defendant's argument that the trial court erred in his instruction to the jury. N.J.S.A. 2C:14-2a(4) provides that one "is guilty of aggravated sexual assault if he commits an act of sexual penetration" and threatens the victim with a weapon. N.J.S.A. 2C:14-1c defines "sexual penetration" in the following terms:

Sexual penetration means vaginal intercourse, cunnilingus, fellatio, or anal intercourse between persons or insertion of the hand, finger, or object into the anus or vagina, either by the actor or upon the actor's instruction. The depth of insertion shall not be relevant as to the question of the commission of the crime.

By its very terms, therefore, the phrase "sexual penetration" includes the act of cunnilingus. Although the word "cunnilingus" is not defined in the Code of Criminal Justice, we are in accord with the trial judge's determination that it must be its ordinary and well understood meaning. (Citation omitted) It is generally defined as "oral stimulation of the vulva or clitoris." (Citations omitted) Thus, by definition, cunnilingus constitutes a form of "sexual penetration" under the statute not withstanding the fact that the actor's tongue is not inserted in the vagina.

Contrary to defendant's assertion, the last sentence of the statutory definition does not compel a different result. What was meant to be conveyed was that the depth of insertion is irrelevant with respect to those sexual acts which require actual

penetration. This sentence was merely intended to serve as a legislative expression of the pre-Code rule that penetration, however slight, is sufficient in cases involving vaginal and anal intercourse. Id. at 535-536.

Although the Court's reasoning will not be recounted here, the Court then ruled that the convictions for the two types of aggravated sexual assault did not merge.

In reference to a more complex merger issue in child sexual abuse cases, however, prosecutors should familiarize themselves with State v. Miller, 108 N.J. 112 (1987). In Miller, the Court ruled that the defendant's convictions for aggravated sexual assault under N.J.S.A. 2C:14-2(a) and third degree endangering the welfare of a child under N.J.S.A. 2C:24-4(a) which were based upon the same conduct should not have been merged. In light of the rationale employed by the Court, however, prosecutors should not assume that endangering the welfare of the child never merges with aggravated sexual assault, for this is simply not correct. In some instances, based upon the Court's rationale, endangering the welfare of a child may merge with chapter 14 offenses.

#### F. STATE V. BOWENS

State v. Bowens, 219 N.J. Super. 290 (App. Div. 1987) addresses the propriety of several comments made by the prosecutor during summation. As one of the prosecutor's comments was a comment that is very similar in some respects to one widely recommended in prosecutors' training courses and publications, prosecutors should pay special heed to the Court's ruling.

In the prosecutor's summation, he stated "We're dealing with hidden acts. We're dealing with private acts done in a bedroom done in an alleyway. So we're left with really only two people that have intimate knowledge of what happened, the victim and the assailant." Id. at 302. On appeal, the defendant contended that this was an improper comment on his failure to testify. In overturning the defendant's conviction, the Court stated:

Equally improper was the prosecutor's previously-quoted comment which impinged on defendant's right to refuse to testify. Although the defendant never requested a jury instruction after his objection to this remark was sustained, we conclude that it was plain error on the part of the judge not to say anything to the jury to reinforce its duty to respect defendant's right to refuse to testify without any negative inferences. Id. at 302.

With the exception of the prosecutor's addition of the phrase "so we're left with only two people . . .," it is generally well accepted that prosecutors should stress to the jury that acts of abuse are secret crimes which take place behind closed doors and which are not subject to public viewing. This type of comment is recommended so that the jury will understand the type of evidence which will be presented. Prosecutors generally believe that juries prefer physical evidence which can be picked up and carried into the jury room during deliberations. To overcome the lack of physical evidence in most child sexual abuse cases, it is important to make the jury realize that the only evidence the State can be expected to have in a case such as this is the testimony of the victim. Prosecutors often point out that a child abuse case is unlike a burglary case where the State can introduce photographs of a forcible entry and recovered property, a homicide case where the State can introduce a wide variety of physical evidence and possible eyewitness testimony, or a CDS case where the State can

introduce numerous packets of cocaine, in addition to other physical evidence.

In Bowens, the prosecutor's comment went one step further. By directly specifying that only the victim and the defendant have intimate knowledge of what happened, the prosecutor drew direct attention to the fact that the defendant knew what happened and that he was unwilling to take the stand to testify about it or be subject to cross-examination.

Obviously, if the defendant had taken the stand, the prosecutor's entire comment would have been proper.

#### **G. MIRANDA WARNINGS BY DYFS CASE WORKERS**

State v. Helewa, 223 N.J. Super. 40 (App. Div. 1988).

Only a bare recitation of the facts and the holding will be recounted here. Defendant was arrested by a municipal detective with the assistance of several officers from his department. After being taken to police headquarters, defendant was advised of his Miranda rights. He also read and signed a Miranda card. Although he waived his rights under Miranda, he was not questioned nor even asked if he wanted to give a statement by the law enforcement personnel. The following day, he was interviewed in the county jail by a DYFS case worker at which time he gave a statement.

Although the Court affirmed the trial court's denial of the defendant's motion to suppress the statement, the Court did so in a surprising manner. Equating the role of a DYFS worker with a police officer, given the close working relationship between DYFS and law enforcement, the Court held that DYFS workers like police officers must give Miranda warnings to defendants in custody prior to interrogation. The Court upheld the trial court's ruling, however, by finding that the DYFS case worker in this particular case did not need to readvise the defendant of his Miranda rights as he had previously been advised and he had never invoked his right to remain silent or requested an attorney.

Although it is highly unlikely that circumstances such as these would ever recur, prosecutors should familiarize themselves with the Court's holding. In certain situations, the Court's holding could have serious repercussions if the DYFS worker elicits statements prior to the administration of Miranda warnings while a defendant is in custody. Any subsequent admissions to law enforcement personnel would be suppressed as fruit of the poisonous tree. It should be noted, however, that regardless of the holding in this case, any procedures or practices which enable DYFS workers to interview a defendant in custody prior to the law enforcement interrogation are to be discouraged. A better procedure will require law enforcement personnel to be present whenever a DYFS worker interviews a suspect in custody, whether it be in police headquarters or the county jail, to insure that the Miranda warnings are properly administered.

#### **H. RULE 55**

In cases where the defendant has committed acts of abuse on the victim or other children and for whatever reason these acts cannot be made the subject of the criminal prosecution for which defendant is on trial, prosecutors should consider utilizing Evid. R. 55 to admit the evidence at trial with the proper limiting instruction for the jury's consideration. Evidence of other crimes for which a defendant cannot be charged is

actually quite common in child abuse cases. Its prevalence can be attributed to several factors: K.A.W. considerations, the statute of limitations, previous prosecutions, current prosecutions which cannot be joined, and the discovery during pretrial preparation that the abuse began at an earlier time than previously indicated by the victim.

Great care, however, should be exercised by prosecutors seeking to introduce other crime evidence at trial. In some instances, the evidence can be easily introduced. In other instances, it cannot properly be introduced. Generally, there are three factual situations in which prosecutors will have to make a decision as to whether they should use Evid. R. 55 in a child abuse case:

1. Where the defendant has committed prior acts of abuse on the victim
2. Where the defendant has committed acts of abuse on someone other than the victim and the acts are closely related in time, place, and circumstance to the abuse of the victim
3. Where the defendant has committed acts of abuse on someone other than the victim and acts are not closely related in time, place, and circumstance to the abuse of the victim.

With the first two factual situations, prosecutors should be successful in admitting the evidence. As for the last factual situation, a more focused legal analysis is required before a determination as to its admissibility can be made. Before proceeding, it should be noted that the compartmentalizing of Evid. R. 55 cases into the three factual situations above is not a mechanism employed by reviewing courts in analyzing Evid. R. 55 cases. The factual situations as delineated herein are provided to facilitate an understanding of the application of Evid. R. 55 cases to child abuse cases.

Where the defendant has committed previous acts of abuse upon the victim, it has long been established that such evidence is admissible. This was recognized even when Evid. R. 55 was a common law concept. State v. Hintenberger, 41 N.J. Super. 597 (App. Div. 1956); State v. Andoloro, 108 N.J.L. 47 (Sup. Ct. 1931). Although the Comments to Evid. R. 55 question whether the rationale employed in these cases is still viable in light of the adoption of the rule, three Appellate Division cases have addressed the issue of prior acts upon the victim since the adoption of the rule. State v. Cusick, 219 N.J. Super. 452, 464-7 (App. Div. 1987); State v. Kozarski, 143 N.J. Super. 12, 17 (App. Div. 1976); State v. Kuske, 109 N.J. Super. 575, 590 (App. Div. 1970).

In Kozarski, the victim testified that the defendant performed an act of fellatio on him in Pennsylvania several hours prior to the act of fellatio performed on him in New Jersey which was the subject of the indictment. There was also testimony that defendant proposed an act of anal intercourse. In reviewing this testimony, the Court stated:

While it is true that evidence of other crimes may not be adduced for the purpose of showing predisposition in that defendant would be likely to commit the crime charged, such testimony is admissible to show defendant's state of mind and intent particularly where the acts testified to are so related to the crimes charged as to time, place, and circumstance as to evidence a continuous state of mind with respect to the acts for which defendant is being tried. (Citations omitted) Id. at p. 17.

In Kuske, the Court was compelled to review the admissibility of letters written by the defendant to the victim which the Court characterized as being "strongly cor-

roborative of past improper sexual relations between the two and indicate plans for cohabitation in the future." Id. at 587. The Court stated:

We cannot find any injustice to the defendant in the allusion "to certain other acts" since it is well established in consent sex cases that acts of sexual relations between the parties prior to the act charged, may be given in evidence as tending to sustain the principal charge by showing the relation and intimacy of the parties and corroborating the testimony of the complaining witness as to the particular act involved, and to show the guilty intent. (Citations omitted) Id. at 590.

A third case, State v. Cusick, 219 N.J. Super. 452 (App. Div. 1987), also supports the position that evidence of prior abuse of a victim is always admissible under Evid. R. 55. Cusick will be addressed in more detail later. Although it does not directly hold that evidence of prior abuse of the victim is always admissible, the language and holding in the case can be relied upon to support that position.

When seeking to admit evidence of prior abuse of a victim, prosecutors should attempt to fashion their arguments to conform to the rule in a manner more specific than Kozarski and Kuske. While prosecutors should obviously cite those cases as well as Hintenberger and Andoloro, some trial courts prefer to see the State's argument fall within one of the categories of facts in issue as specified in the rule rather than one of the non-enumerated facts in issue. Although the continuous state of mind category is recognized in the above cases, "plan" or "intent" arguments may be of assistance in convincing some trial judges. Cusick represents a good example of an intent argument for sexual assault cases under N.J.S.A. 2C:14-2(b). As for a plan argument, prosecutors should stress to the court that evidence of the prior abuse must be admitted so that the jury can understand that the offense for which the defendant is charged is part of the defendant's larger plan to utilize the victim as a source of sexual gratification over a period of time. Although not entirely sound, prosecutors can cite conspiracy cases such as State v. Louf, 64 N.J. 172 (1973) and State v. Coruzzi, 189 N.J. Super. 273 (App. Div. 1983), in which the reviewing courts reasoned that in the absence of such other crime evidence the jury would be at a loss to understand the defendant's role in the crime unless the full picture was presented. Furthermore, not only is such evidence probative of defendant's intent, it also enables the jury to understand the testimony of the victim which otherwise might appear nonsensical.

This is especially true in light of K.A.W., which in the absence of Evid. R. 55 evidence, would unjustifiably limit what the entire account of the abuse is. As K.A.W. was only designed to preclude defendants from undergoing the risk of having criminal penalties imposed in the absence of specific notice, it should be argued that K.A.W. was not intended to make the victim testify in a vacuum. Without the victim's account of how the abuse started, what the defendant initially did to her, how it progressed, and what defendant may have said to her during the earlier stages, the jury would be in a very poor position to assess the victim's credibility and the defendant's actions and guilt.

Where the defendant has committed acts of abuse on someone other than the victim and the other acts are closely related in time, place, and circumstance to the abuse of the victim, prosecutors should also succeed in admitting this evidence. State v. Sinnott, 24 N.J. 408 (1957); State v. Hummel, 132 N.J. Super. 412 (App. Div. 1975). In Sinnott, defendant was indicted for one act of sodomy upon a boy identified as Robert. Robert testified that a body identified as Edward was also sodomized at the same time. Edward testified similarly although he was not named in the indictment for which the defendant was then on trial. In upholding the admission of this evidence, the Court stated:

When the evidence of another crime tends to prove logically against the defendant some element of the crime for which he is tried, (citation omitted), or where the evidence of another crime tends to show malice, ill will, or intent on the part of the actor, (citation omitted), or where a common scheme or plan embodies the commission of two or more crimes so related that proof of one tends to establish the other, (citations omitted), it becomes admissible.

It is equally well settled that where the commission of a former crime evinces a state of mind that is carried forward and is shown to exist at the time of the commission of the crime charged, and the former crime is so related to the crime charges as to time, place, and circumstances that the state of mind may be said to be continuous, evidence of the former crime is admissible. Id. at 413-414.

In Hummel, defendant was indicted for sexually abusing two foster children, R and D, who had been placed in his home for a period of approximately three years. At trial, a third foster child, C, testified as to how the defendant had fondled her. In approving of this testimony, the Court stated:

The testimony of C, a foster home ward in defendant's home during the same period that D and R were there, was admissible to show defendant's state of mind and attitude as to sexual behavior with his wards. The criminal acts testified to by C were so related to the crimes charged against defendant as to time, place, and circumstance, as to evidence a continuous state of mind with respect to the acts for which he was being tried. (Citation omitted). The fact that C was not mentioned as a victim in any indictment against the defendant for the acts testified to is of no comment.

C's testimony did not bear on defendant's general predisposition towards sexual misconduct with young girls or the kind of wrongdoing with which he was charged. Rather the circumstances here were so circumscribed, involving the treatment of foster children in defendant's home while they resided there, that the other crime evidence given by C and real legal relevance to the issue of his sexual attitude and conduct toward such foster children. It is intertwined in time, place, and circumstance with the charges here involved as to be admissible under Evid. R. 55. Id. at 425-426.

When seeking to admit other crime evidence of this nature, prosecutors should also proffer plan and intent arguments as described previously, if appropriate. While Sinnott and Hummel clearly recognize the unenumerated continuous state of mind exception to Evid. R. 55, defense attorneys may be able to successfully argue that this exception is too amorphous to be considered as valid in the absence of a real fact in issue.

A plan argument based upon the facts of Hummel could consist of arguing that defendant parlayed his abuse of one girl into the abuse of several in that each individual would be willing to participate in the abuse and not reveal it if all were being abused. A similar argument could be made that defendant took in foster children for the sole purpose of allowing him the opportunity to abuse them.

The most difficult situation to determine whether Evid. R. 55 applies to a child abuse case is where the defendant has committed acts of abuse on someone other than the victim and the acts are not closely related in time, place, and circumstance. In these situations, it is expected that prosecutors must adhere closely to the rule and be able to specify which fact in issue the evidence tends to prove. An example of such a case is State v. Cusick, 219 N.J. Super. 452 (App. Div. 1987). In that case, one aspect

of Evid. R. 55 evidence involved the testimony of M.J., who was not named in the indictment, regarding how defendant had fondled her. The Court reasoned:

Defendant was charged with aggravated sexual assault, sexual assault, and endangering the welfare of a child with respect to R.S. and K.S. As to the victim K.S., defendant admitted that at times he swung and cradled her, but denied ever having touched her genitalia or breasts in the process. As the State points out, because defendant's alleged fondling of K.S. was by itself as consistent with accidental or grandfatherly touching as with lascivious intent, evidence of the prior incident was admissible. Admission of the prior crimes evidence was necessary to try to rebut any potential defense of mistake. Lacking the knowledge of defendant's past, a jury might have found that although defendant had touched K.S.'s breasts or vagina that such touching occurred unintentionally when defendant was swinging or cradling the child. As R.S.'s testimony was the only inculpatory evidence with respect to the charges concerning K.S., there would have been considerable room for defendant to have argued mistake or accident. In this context, the trial court properly admitted evidence of defendant's past crimes.

Another reason for which the prior crimes evidence was admissible was to prove defendant's intent when he performed the acts of molestation. In defining for the jury the crime of sexual assault, the trial court noted that one of the material elements of that offense is that defendant engaged in sexual contact with the victim. The trial court went on to define sexual contact as:

The intentional touching by the defendant, either directly or through clothing, of the victim's intimate parts for the purpose of degrading or humiliating the victim, or for the purpose of sexually arousing or sexually gratifying the defendant (emphasis supplied).

Extremely probative of whether defendant's acts were done for purposes of sexual arousal or gratification was the evidence that defendant had previously pleaded guilty to having sexually assaulted young girls. This fact supported the inference that defendant enjoyed or was stimulated by sexual acts with young girls and was therefore relevant to whether or not defendant was guilty of sexual contact. As sexual contact is a constituent element of the offense of sexual assault, the prior crimes evidence helped prove "some other fact in issue." Evid. R. 55. Furthermore, unlike crimes such as homicide, where the perpetrator's intent may be inferred from the manner in which the offense was committed, the nature of the crimes of sexual assault and endangering the welfare of a child do not give rise to any such inference. Thus, the testimony concerning defendant's prior sex crimes was properly admitted under Evid. R. 55 as evidence of defendant's intent. Id. at 464-467.

A reading of Cusick reveals that the evidence was relevant to show absence of mistake and intent. However, if defendant had denied touching the victim in any manner, it is unlikely whether absence of mistake would have been in issue. Similarly as to intent, although the Court's reasoning seem to imply that whenever defendant is charged with a sexual assault predicated upon a sexual contact, evidence of prior sexual contacts will be admissible to determine whether the touching was for the purpose of sexual gratification, this may not always be the case. If the acts alleged in the indictment, if believed, were of a nature that clearly and unequivocally reflected the purpose of sexual gratification, the defense can be expected to argue that the only real fact in issue is whether defendant touched the victim in the manner described, not whether it was done for sexual gratification. See State v. Atkins, 78 N.J. 454 (1979); State v. Peltack, 172 N.J. Super. 287 (App. Div. 1980). The defense would further argue

that the relevance of the testimony is minimal or non-existent and therefore should be excluded as its potential for prejudice is so great.

For an understanding of the procedures to be followed in admitting such evidence and the burden of proof if the crimes are not evidenced by criminal convictions, prosecutors should familiarize themselves with State v. Elmore, 205 N.J. Super. 373 (App. Div. 1985); State v. Lassiter, 197 N.J. Super. 2 (App. Div. 1984); State v. Wilson, 158 N.J. Super. 1 (App. Div. 1978). Prosecutors should be wary of defense attorneys' attempts to turn the Rule 8 hearing into a fishing expedition and a practice session on cross-examining the witness.

For an understanding of how Evid. R. 55 evidence can be used in physical abuse and neglect cases, prosecutors should familiarize themselves with State v. Wright, 66 N.J. 466 (1975); State v. Elmore, 205 N.J. Super. 373 (App. Div. 1985); State v. Wilson, 158 N.J. Super. 1 (App. Div. 1978).

#### **I. DEFENSE DISCOVERY OF REPORTS PREPARED BY THE DIVISION OF YOUTH AND FAMILY SERVICES**

Until State v. Cusick, 219 N.J. Super. 452 (App. Div. 1987) was recently decided, prosecutors had no firm guidelines by which to determine how they should respond to requests by defense attorneys for the State to provide reports prepared by the Division of Youth and Family Services. In Cusick defense counsel attempted to subpoena reports prepared by the Division. The Division refused to comply with the subpoena. A deputy attorney general appeared before the court to explain that DYFS was statutorily barred from providing the reports to anyone not specified in N.J.S.A. 9:6-8.10a. The statute does, however, provide for a release of the DYFS records to:

A court, upon its finding that access to such records may be necessary for a determination of an issue before the court, and such records may be disclosed by the court in whole or in part to the law guardian, attorney or other appropriate person upon the finding that such further disclosure is necessary for determination of an issue before the court. N.J.S.A. 9:6-8.10a(b)(6).

Consequently the trial court reviewed the records in camera and refused to provide the materials to the defendant. Certain reports had already been provided to defense counsel in discovery. Upon review, the Appellate Division approved of the procedure employed by the trial court. Prosecutors should read the decision for a more complete understanding of what materials the defense will be entitled to in situations of this kind.

Cusick, however, does not address the issue of DYFS material in the prosecutor's file. As a matter of course, these materials should be a part of the prosecutor's file whenever the Division is involved in the case. Past practice reflects that some prosecutors routinely provided DYFS materials in discovery. Others provided the material only if they contained relevant information such as statements of potential witnesses. Still others refused to provide any of the materials. Instead, they notified their adversaries in writing that the State was in possession of DYFS reports and that the defendant would have to move before the court for a determination of whether they should be provided.

In light of the fact that N.J.S.A. 9:6-10b provides criminal sanctions for the release

of the records in contravention of N.J.S.A. 9:6-10a, the latter procedure is considerably more advantageous. The following points should be made:

1. Prosecutors should notify defense counsel that the State is in possession of the Division's reports or some of the reports.
2. Prosecutors should also notify defense counsel that they must make an application to the court for the records.
3. These notices to defense counsel should be in writing and should specify which materials the State possesses. Discovery letters are a convenient mechanism to provide this notice.
4. In the event that the reports contain summaries of statements by potential witnesses or other evidence which would be discoverable under Rule 3:13-3, prosecutors should ensure that these materials are provided to defense counsel. If necessary, this may involve referring to the reports on the record at arraignments or pretrial conferences and indicating that the reports contain relevant information. It may mean that prosecutors will be forced to ask the court to review the records. This procedure is recommended as prosecutors should not put themselves in a position where defense attorneys can later allege that the State knowingly withheld relevant or exculpatory material.

## J. COMPETENCY

New Jersey witness competency requirements are very favorable to the prosecution in that all persons are qualified to testify regardless of age. Evid. R. 7; State in Interest of R.R., 79 N.J. 97 (1979). When prosecuting child abuse cases involving very young children, prosecutors must only concern themselves with overcoming the requirements of Evid. R. 17 if the witness' competency is challenged. Evid. R. 17 provides:

A person is disqualified to be a witness if the judge finds that (a) the proposed witness is incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him, or (b) the proposed witness is incapable of understanding the duty of a witness to tell the truth. An interpreter is subject to all the provisions of these rules relating to witnesses.

Consequently, if a child is capable of expressing herself and understands that she has a duty to tell the truth, she will be allowed to testify. For a thorough understanding of the manner in which the courts will determine competency under Evid. R. 17, prosecutors need only review State in Interest of R.R., 79 N.J. 97 (1979); State v. R.W., 104 N.J. 14 (1986); State in Interest of C.A., 201 N.J. Super. 28 (App. Div. 1985); State v. Zamorsky, 159 N.J. Super. 273, (App. Div. 1978); State v. Grossmick, 153 N.J. Super. 190 (App. Div. 1976).

In reference to attempts by defense counsel to obtain psychiatric examinations of victims to attack their competency, a witness' age alone is an insufficient basis upon which to compel a psychiatric examination. State v. R.W., 104 N.J. Super. 14 (App. Div. 1986). Consequently, the defendant must establish a substantial need to justify the ordering of the examination, which the courts have characterized as an extraordinary measure. A review of the relevant cases demonstrates that the defendant's burden is

indeed heavy. State v. Hass, 218 N.J. Super. 133 (App. Div. 1987) (child abuse victim suffering from functional encopresis); State v. Franklin, 49 N.J. 286 (1967) (witness previously institutionalized); State v. Butler, 27 N.J. 560 (1958) (witness) diagnosed as having chronic brain syndrome associated with convulsive disorder with behavior reaction). Needless to say, prosecutors should strenuously oppose motions by the defense to compel psychiatric examinations of child abuse victims as such examinations constitute an unjustifiable intrusion on the privacy interests of the victim. In addition, they can cause unreasonable delays and provide defense attorneys with an additional source of information with which to impeach the child at trial.

In the absence of expert testimony at competency hearings pursuant to Evid. R. 8 and 17, the manner in which the hearing is conducted varies greatly depending upon the judge. Some courts will allow the prosecutor to elicit the testimony necessary to establish competency. These courts also allow the defense the opportunity to put questions to the victim. Prosecutors should be cognizant of the need to restrict the defense's cross-examination to competency only. Some defense attorneys will attempt to stray from competency into the substantive charges in order to establish a record which can be used to impeach the victim at trial.

Other courts allow neither the prosecutor nor the defense to elicit testimony directly from the victim. The court instead assumes this responsibility and usually will allow the attorneys the opportunity to submit specific questions for the court to ask, if the attorneys so request. Prosecutors should affirmatively request this opportunity and present a written list of questions to the court similar to the ones that the prosecutor would use if allowed to elicit the testimony directly. If not allowed this opportunity, prosecutors should nonetheless be ready to respectfully object to the court's questions if put to the victim in a manner a child would not be expected to understand. Examples of inappropriate questions for very young children are:

- Do you know that you have an obligation to tell the truth?
- Why is it important that you tell the truth?
- What is truth?
- Do you know what it means to swear to tell the truth?

Even with poorly phrased questions, some very young children give reasonably good answers. Other children, however, can give very confused answers or totally nonresponsive answers. The prosecutor should respectfully request that the questions be paraphrased in a manner that a child would be expected to understand and be prepared to provide them to the court.

If a prosecutor is allowed to elicit testimony directly, he should begin by asking questions designed to establish that the witness is capable of expressing himself. These questions should center around aspects of the child's life that are important to him. The following is a brief list of examples of general areas that should be delved into:

1. Age and other vital statistics such as address, telephone number, etc.
2. Who the witness lives with
3. Descriptions of the witness' home and living arrangements
4. The important people in the witness' life
5. Who the witness' friends are
6. What the witness likes about them
7. What the witness likes to do for fun
8. School or pre-school
9. Favorite subjects and abilities to count or spell

Within these areas, numerous questions can be promulgated. Depending upon the child's responses, they can be never ending. The purpose of these questions is merely to demonstrate that the child can respond meaningfully to the questions posed.

As for the second area of significance under the rule, the witness' understanding of his duty to tell the truth, the questions should be directed to the child to demonstrate that he understands the difference between the truth and a lie, that it is right to tell the truth, and that she will be punished in some fashion if she tells a lie. In some instances, this can be easily established.

- Have you ever heard someone tell a lie?
- Who? (Prompting may be necessary to get a child to identify someone such as a friend or sibling.)
- What did they say?
- Why was that a lie?
- Was it good or bad (or right or wrong) for them to say that?
- Is it good or bad for you to tell a lie?
- Are you supposed to lie?
- Why?
- What happens if you tell a lie?
- What would your mother do if you told a lie?
- Do you go to church (religious service of any kind)?
- Do you believe in God?
- What would God think if you told a lie?
- Do you know what it means to promise something?
- Have you ever promised your mother that you would do something?
- If you promise somebody something, are you supposed to do that?
- If the judge asks you to promise to tell the truth, will you?

While some of these questions may not always be productive with very young children, in many instances they will be very productive if the child is properly prepared. It should be noted, however, that there are a variety of questions which can be utilized to elicit the necessary information. Prosecutors should spend sufficient time with the victims so that they can accurately assess what type of questions will be the most effective. The investment in time in preparing the victim will be equally useful in making the victim feel more relaxed in the courtroom.

## **K. HEARSAY EXCEPTIONS**

This section was initially designed to provide an analysis of the tender years hearsay exception as recognized in State v. D.R., 214 N.J. Super. 278 (App. Div. 1986). However, as the New Jersey Supreme Court overturned the decision, it will not be discussed herein. State v. D.R. 109 N.J. 348 (1988).

There are other exceptions to the hearsay rule, Evid. R. 63 which are especially relevant to child abuse cases.

These rules are:

- Evid. R.63 (1) (a)—prior inconsistent statements.
- Evid. R.63 (1) (b)—past recollection recorded.
- Evid. R.63 (4) (b)—excited utterances.

Evid. R. 63 (12) (c)—statements to physician regarding the cause of physical condition.

**Evid. R. 63 (1) (a)** can be especially valuable for prosecutors trying child abuse cases. It allows for the substantive use of prior statements of recanting witnesses by the party calling the witness if the statement is inconsistent with the witness' trial testimony and is in the form of a sound recording or writing signed by the witness under circumstances establishing its reliability, or was given under oath at various types of proceedings.

As to how to determine whether a statement of the victim was given under circumstances establishing its reliability, prosecutors should be familiar with State v. Gross, 216 N.J. Super. 98 (App. Div. 1987). It provides for a Rule 8 hearing for the court to consider the circumstances surrounding the taking of the statement. The hearing is conducted after the witness has testified before the jury in a manner inconsistent with the statement. If the court finds that the circumstances establish its reliability, the statement may then be introduced substantively.

In intrafamilial abuse cases, it is quite common for the victim's family to indicate that they do not want one of their relatives prosecuted. This usually occurs at some point after the investigation is completed and they have come to realize what the consequences of the criminal prosecution will be. It is also quite common for family members to subtly or not so subtly persuade the victim to recant. In situations where the State is in possession of a defendant's confession but lacks other substantive evidence to corroborate the confession in the absence of the victim's testimony, this can be an incredibly frustrating experience.

Prior to the adoption of Evid. R. 63 (1) (a), the State had no option other than dismissing the charges. With Evid. R. 63 (1) (a) prosecutors need only inform defense counsel that the State will not dismiss the charges, but instead will introduce the defendant's confession, and, if the victim recants on the stand, introduce her prior statement substantively. After familiarizing themselves with the rule, defense counsel will be willing to resume plea negotiations if they attach credence to the prosecutor's representation.

Even in the absence of a confession, some investigations so clearly indicate the defendant's guilt that a case can be tried exclusively by the use of prior inconsistent statements. In one case which this author tried, all the State's witnesses, the victim and her parents, recanted on the stand. The defendant was the victim's step-grandfather. Utilizing Evid. R. 63 (1) (a), their prior signed written statements were introduced. As the statements were so convincing and their attempts at recantation were so poor, the jury quickly returned verdicts of guilty to all counts of the indictment. While there are serious questions as to whether the State should proceed under such circumstances, there may be instances where the State's failure to act places the victim and other children with whom the defendant has contact in jeopardy. In such situations, Evid. R. 63 (1) (a) is indispensable.

**Evid. R. 63 (1) (b)** provides for what is commonly referred to as a past recollection recorded. If a witness has genuinely forgotten many of the details of the assaults due to the passage of time, the desire to block out the abuse, or for other reasons, the rule can and should be used if the requirements of the rule can be met. Unfortunately, in most child abuse cases, it cannot be used because of the requirement that the statement be made at a time when the fact recorded was fresh in the witness' memory. As most victims of abuse do not report the abuse promptly, it is difficult to characterize

the past recollection recorded as having been made when it was fresh in the witness' memory.

Furthermore, the rule also provides that the witness must testify that she made a true statement at the time it was recorded. Conceptually, children find it very difficult to testify that the statement was true while at the same time testifying that they have no present recollection. Some victims, especially younger ones, hardly even remember giving a statement. In situations where these requirements can be met, though, this rule should be utilized.

Evid. R. 63 (4) (b) embodies the hearsay exception commonly referred to as an excited utterance. Under the rule, the statement is admissible if it was made "while the declarant was under the stress of a nervous excitement caused by such perception, in reasonable proximity to the event, and without opportunity to deliberate or fabricate." For a detailed understanding of how this rule may or may not be applied in child abuse cases, prosecutors should read State v. Bass, 221 N.J. Super. 466 (App. Div. 1987), State in Interest of C.A., 201 N.J. Super. 28 (App. Div. 1985), and State v. Ramos, 203 N.J. Super. 197 (Law. Div. 1985). It should be noted, however, that Evid. R. 63 (4) (b) can be used even when the victim is not competent to testify. State in Interest of C.A., 201 N.J. Super. 28, 31-32 (App. Div. 1985).

Evid. R. 63-12 (c) provides for an exception to the hearsay rule for statements as to the cause of symptoms or pain made to a physician consulted for the purpose of treatment. While prosecutors would prefer to be able to utilize this rule in child abuse cases, it is highly unlikely that such evidence will be admitted whenever the examination is conducted after a referral to the Division. As DYFS and law enforcement work so closely and the purpose of the DYFS exam is for both treatment and evidence gathering, the DYFS examination would be viewed as being unreliable for the purpose of the rule as are police prompted medical examinations. State in Interest of C.A., 201 N.J. Super. 28, 33-34 (App. Div. 1985). If C.A. can be distinguished, or if law enforcement and DYFS are not involved in the examinations, there may be situations in which the courts would find that the statements were made for the purposes of treatment rather than evidence gathering. If such is the case, prosecutors should attempt to utilize Evid. R. 63-12 (c).

## L. SENTENCING

The sentencing of defendants who have been convicted of Chapter 14 offenses is identical to sentencing of other criminal defendants with the major exception of N.J.S.A. 2C:14-6 and N.J.S.A. 2C:47-1 et seq. For defendants convicted of a second or subsequent offense under N.J.S.A. 2C:14-2 or N.J.S.A. 2C:14-3(a), N.J.S.A. 2C:14-6 mandates a fixed minimum sentence of not less than five years during which the defendant shall be ineligible for parole.

N.J.S.A. 2C:47-1 et seq. provides that whenever a defendant is convicted of a Chapter 14 offense or an attempt to commit a Chapter 14 offense, he must be referred to the Adult Diagnostic and Treatment Center for a physical and psychological evaluation. It should be noted that endangering the welfare of a child, in the absence of a Chapter 14 offense, is not an offense which will require or entitle a defendant to an evaluation. If the Center's report indicates that defendant's conduct is found to be characterized by a pattern of repetitive and compulsive behavior, the defendant may be sentenced to the Center for specialized treatment.

As the statutory language indicates that a sentence to the Center is discretionary upon the court if the defendant's behavior is found to be repetitive and compulsive, several options are open to the court:

1. The court can sentence the defendant to the Center with or without periods of parole ineligibility.
2. The court instead can sentence defendant to state prison. It would be the truly exceptional case, however, for a court to exercise this option.
3. The court can impose concurrent sentences to the Center and state prison. This is not unusual especially if there are convictions for offenses other than sex crimes.
4. In the absence of a presumption of incarceration or if the presumption can be overcome, the trial court can impose a non-custodial sentence.

In any event, these sentences must conform with the general sentencing provisions of Chapter 43 and 44 of the New Jersey Code of Criminal Justice. For a clearer understanding of these options, prosecutors should be familiar with N.J.S.A. 2C:47-1 et seq., State v. Chapman, 95 N.J. 582 (1984) and State v. Hamm, 207 N.J. Super. 40 (App. Div. 1986) and State v. Howard 110 N.J. 113 (1988). In the absence of a finding that a defendant's conduct was characterized by repetitive and compulsive behavior, the court lacks the authority to sentence the defendant to the Center.

Prosecutors should be especially familiar with State v. Howard 110 N.J. 113 (1988), which was decided only recently. In that case, the Supreme Court decided that a defendant entering a plea of guilty to an offense which carried the possibility of an Avenel sentence must be advised that an Avenel sentence carries vastly different parole eligibility requirements than does a state prison sentence. The failure to do so will allow a defendant to later withdraw his plea. Prosecutors should refer to the court's decision for a thorough understanding of the effect of an Avenel sentence on parole eligibility.

It should be noted that while N.J.S.A. 2C:47-3 (c) provides that in lieu of incarceration, the court may, upon the written report and recommendation of the Adult Diagnostic and Treatment Center, place such person on probation with the requirement, as a condition of such probation, that he receive outpatient psychological treatment in a manner to be prescribed in each individual case, the Center no longer makes recommendations of this nature due to the Appellate Division's decision in State v. Hamm, 207 N.J. Super. 40 (App. Div. 1986). The report either concludes that defendant does or does not fall within the purview of the Act.

Prosecutors should be familiar with the operations of the Center. It houses approximately 460 inmates at the current time. An approximate 300 bed expansion is underway. Due to the number of defendants who must be evaluated at the Center, it takes approximately six weeks from the entry of a plea of guilty or the return of a verdict to perform the evaluation. The evaluation takes place at the Center and requires approximately a half day. If the defendant is sentenced to the Center, it can take up to one year before space will be available for the defendant's admission.

As a practical matter, defendants sentenced to the Center will spend considerably more time in custody than will a defendant sentenced to state prison. Consequently, parole disqualifiers can be bargained away during plea negotiations if they are a major impediment in convincing defendants to enter a plea of guilty. More importantly, due

to the significantly greater loss of liberty that a sentence to the Center entails, prosecutors should anticipate that some defendants will seek to challenge the sufficiency of the Center's findings. That such a challenge is proper is supported by case law. State v. Horne, 56 N.J. 372 (1970); State v. Wingler, 25 N.J. 611 (1957); State v. Howard, 110 N.J. 113 (1988).

When challenged, the State has the burden of proving by a preponderance of the evidence that defendant's conduct was characterized by repetitive and compulsive behavior. State v. Howard, 110 N.J. 113 (1988). To do this, it is necessary to hold a hearing and present the testimony of the psychologist who evaluated the defendant at the Center. The burden is very easy to meet. Subpoenas for the appearance of the examining psychologist should be directed to the Superintendent of the Adult Diagnostic and Treatment Center and specify the name of the examining psychologist and the Center's case number, both of which appear on the prepared report.

Prosecutors should oppose defense requests for such challenges whenever possible. Although some defense attorneys will make the request as a matter of course, prosecutors should argue that the court should not hold such a hearing in the absence of a proffer of evidence to the contrary by defense counsel or some type of facial invalidity in the report itself. Equating defendant's request for a hearing to frivolous requests for Wade hearings which need not be granted merely upon demand, State v. Ortiz, 203 N.J. Super. 518 (App. Div. 1985), prosecutors should further argue that judicial economy requires a denial of defendant's request, especially in counties with heavy caseloads. It should be pointed out that there are only a small number of psychologists at the Center and that their time could be more effectively utilized by conducting evaluations. If required to testify upon the mere request of defense counsel, greater backlogs in having the evaluations prepared can be anticipated.

While recognizing that a mechanism to challenge the Center's findings does exist, prosecutors should inform the court that the reports in Horne and Wingler were facially invalid. In Howard, the defendant had retained an expert who had found the defendant's conduct was not characterized by repetitive or compulsive behavior. Factually speaking, it can be argued that these cases do not stand for the proposition that hearings will be granted upon the mere request of defense counsel. With some exceptions, most trial courts will require that defendants provide some basis as to why the hearing is necessary rather than simply state that they are dissatisfied with the Center's findings.

## V. PRACTICAL CONSIDERATIONS

### A. THE CHILD WITNESS AT TRIAL

There is a widely held belief that victims of child abuse suffer great trauma when they take the witness stand to testify against their abuser. The basis for this belief is difficult to determine. The media regularly depicts this belief as do fictional accounts on television. To a certain extent, this may account for the popularity of the notion.

It may also be that the notion developed as a result of the fact that primarily only the worst of abuse cases in terms of the abuse and the worst of the abuse cases in terms of the prosecutor's proofs would go to trial. Consequently, the perception that

children will be traumatized may be based upon what happens in only a small minority of the cases, not in all cases.

It has only been within the past ten years that the criminal justice system has started to effectively respond to child abuse cases. Much of what was done or believed in the past is now outdated. As prosecutors put more child witnesses on the stand, they gain a better understanding of the dynamics involved and learn new techniques to do it more effectively and with less hardship.

As a general statement, it is simply not true to state that abused children suffer great trauma when called to testify. While it is true that some children will be unjustifiably traumatized, the vast majority of child abuse victims can testify without adverse effect. Children can be wonderful witnesses, and if handled properly, the experience need not be detrimental.

Testifying is a frightening experience for anyone, regardless of age. Many well adjusted, educated, and informed adults are visibly anxious at the prospect of having to testify. Children pick up on the perceptions of those around them. If the child's parent is also a witness and is anxious, the child will react similarly.

Along a similar vein, it is the child's expectations that often determine how he or she will react. The child knows nothing about testifying except what he is told. If he is led to believe that it will be a horrifying experience, the child may well make it horrifying.

Children show their emotions much more noticeably than adults. It is not unusual for a young child to be visibly anxious or emotionally upset at the prospect of doing many things that they periodically are required to do. For example, when a child is informed that he is going to the dentist or going to get a shot, a few tears, protestations, and stomping of the feet can be expected. When parents confront this situation, however, they do not decide to forego medical and dental treatment.

It must also be recognized that child abuse trials are nothing like they are depicted on television. Defense attorneys hardly ever blatantly attack the child witness on the stand in the same manner as they do adult witnesses. They refrain from doing so because if the jury perceives their tactics as being unfair or as taking advantage of the child, the jury will be sympathetic to the child, the attorney will lose credibility, and the jury will take it out on the defendant. They also refrain from doing so as there are numerous kind and considerate methods of eliciting testimony that will be beneficial to the defendant's case. Remember, a child who is attacked will most likely cry and not be able to give answers. Cross-examination becomes meaningless in such a situation. A child who is calm will give answers, answers which will often confuse the jurors and assist the defense's case. As in other scenarios, kids oftentimes say the darnedest things.

Generally speaking, unless the abuse is marked by violence or was extensive over a long period of time, a prosecutor will likely have a potentially good witness at least from the perspective of being able to take the stand. Even with less serious abuse, however, it is not unusual for the prosecutor to observe that a witness is just not emotionally prepared to take the stand. The prosecutor should be able to recognize this in advance and act accordingly. For the majority of cases, though, the emotional impact of testifying can be largely determined by the prosecutor. The following tips may be helpful in preparing a young witness for trial. Departures from these suggestions will be appropriate depending upon the age of the victim and other factors:

1. Meet with the child at least several times before trial.
2. Develop a rapport with the child before getting down to business.
3. Portray going to court as a positive experience.
4. Fully explain who you are and what your role is.
5. Explain why the child need not be embarrassed to discuss the abuse with you, that you talk to children who have had things done to them all the time.
6. Explain that you already know about what happened, but you just need to know more.
7. Ensure that they know that they were a victim, that they did nothing wrong and that it was the adult who did something wrong.
8. Do not talk down to the child.
9. Do not let the victim or the victim's parent think that they have the option of determining whether the child will testify. Although they may have that option, it is helpful if they are unaware of it.
10. Strive to understand the victim's emotions, fears, motivations, and expectations.
11. Know your case well. Know what the child will say. Do not be reticent to ask hard questions.
12. Visit an empty court room with the child.

In many jurisdictions, it is not unusual for prosecutors to observe child abuse victims pass through their systems without anyone making an attempt to help the child deal with their victimization on a therapeutic basis. In New Jersey this should never occur. The Violent Crimes Compensation Board (VCCB) exists for the purpose of providing assistance to the victims of violent crime. Child abuse is a violent crime. It is also a violent crime which the VCCB takes very seriously. The Board is actually quite liberal when it comes to picking up the tab for the long-term therapy of child abuse victims. Every time a new victim of child abuse enters one's office, they should be referred to the victim/witness unit in that office, if one exists, or they should be given the informational pamphlets prepared by the VCCB.

## **B. SUPERVISING INVESTIGATIONS**

When supervising child abuse investigations, prosecutors must ensure that investigators do not forget that it is the investigation that determines whether a prosecutor will be able to prove the case to a jury beyond a reasonable doubt. Many investigators are very cognizant of this fact and conduct superb investigations. Others are not, though, and it becomes the prosecutor's responsibility to ensure that what he needs for trial is obtained. While some investigators will perceive a prosecutor's involvement as interference, it must be noted that it is the prosecutor who is skilled at trial practice, not the investigator. The following general suggestions are provided to assist prosecutors in supervising child abuse investigations.

1. The more complete the investigation, the better it will be. During the early stages of the investigation, and even sometimes up to the date of trial, it is impossible to predict what the defense strategy will be, as are what will become relevant and what will not become relevant at trial. While this is true about other types of criminal cases, it is especially applicable to child abuse cases which depend upon evidence of a different kind. From the very inception of the criminal prosecution, then, it is necessary for the investigator to be prepared to prove every detail his investigation reveals. Nothing should be taken for granted.
2. When interviewing the victim, the investigator should let the child tell his story. They should not assume that they know what happened simply because they have been told of the abuse by the DYFS worker or the child's parent.
3. When interviewing the victim, the investigator should not ask questions in general terms. Investigators should ask detailed open-ended questions that allow the child to respond meaningfully. When discussing abuse of a long standing nature, a question like "what would he normally do to you" makes the child respond in a general manner—a manner which lays a foundation for extensive cross-examination on how his testimony became so embellished at trial.
4. When utilizing anatomically correct dolls, it is important that investigators are familiar with how they should be used. Anatomically correct dolls are not to be used as a substitute for a thorough investigation. They are instead intended to be used as an aid to help the victim more accurately demonstrate the acts of abuse. When interviewing the child, investigators should seek to elicit as much information verbally as is possible. Only after this is done should the dolls be utilized.
5. Investigators should be wary of letting their sympathy for the victim interfere with their investigation. While investigators should show great sensitivity when dealing with abused children, the criminal investigation requires that hard questions are not left unanswered.
6. Investigators should always obtain all information about how the abuse came to be reported, why it was reported, who was involved in the reporting chain, and who else the child may have discussed the abuse with, especially those to whom the defense has access.
7. Investigators should follow-up all the details provided by the victim. Child abuse cases have little hard evidence. Consequently, the corroboration of what many might believe are inconsequential details takes on greater significance than in ordinary cases.
8. Investigators should interview every conceivable source of information, if not to find out what they do know, to find out what they do not know.
9. When interviewing potential defense witnesses, including the suspect, investigators should take detailed statements to lock them into their account. There is no exception to this statement, regardless of how damaging the witness' statement is to the State's case. It is more advantageous to be prepared for the problems at trial than it is to await the unknown. Furthermore, statements of this kind provide the prosecutor with at least some ammunition to cross-examine the witness. Any facts which corroborate the victim's account should also be covered in detail as well as the lack of any motive for the victim to fabricate the abuse.

10. Investigators should strive to obtain a good grasp of the dynamics of the relationship between the victim and the suspect, and between the suspect and the victim's family members. If hostilities or hidden agendas exist, it is important to know about them in advance.
11. DYFS reports as well as medical records should never be overlooked and should always be included in the State's file.
12. Investigators should maintain direct and regular contacts with the victim and victim's family throughout the course of the prosecution. Due to the relationships involved in many child abuse cases, it is not unusual for significant developments to occur.

### **C. CONVINCING THE JURY**

While openings and summations in child abuse cases are generally the same as those in other types of cases, the type of evidence presented in child abuse cases requires that prosecutors make arguments of a somewhat different nature. In addition to the standard prosecutorial openings and summations, prosecutors who have not tried child abuse cases may find the addition of the following points to be of value in persuading a jury.

#### **OPENINGS**

1. When reviewing, or after reviewing, the charges in the indictment, reduce the statutory terms to plain English. A simple reading of the indictment will not suffice, especially in multi-count indictments. For instance, point out that an aggravated sexual assault count, or one of them, involves an act of sexual intercourse, or that the sexual assault count involves a rubbing of the victim's genital area. Let them know that in order for them to reach a verdict, it is crucial for them not to let the number of legal terms of art in child abuse cases confuse them. Tell them that as they listen to the testimony to pay special attention to the age of the victim, the nature of the sexual acts, and in some instances, the relationship between the parties.
2. With young victims, do not predict exactly what the victim will testify to on the stand. Instead, state that the victim will describe how the defendant abused him or what the defendant did to him sexually. Regardless of the amount of pretrial preparation involved, it is not unusual to be surprised on occasion as to what is elicited at trial.
3. Let the jury know that the victim is young, that the victim may be scared, and that they will have to pay special attention to what the victim says. Point out that some adults do not like to discuss intimate sexual acts with anyone and that the members of the jury themselves may find it difficult to have to hear testimony of such an intimate nature in a public courtroom. Let them know that under these circumstances, it might not be surprising if the child failed to say anything at all. Build sympathy for the child while at the same time creating the inference that they are only going to get the minimal version of the abuse.
4. Choose your words carefully. Personalize the victim.

5. Without going into detail, paint a picture of the abuse that will enable the jury to better comprehend the testimony. Alert them to possible problems, but do it in the context of describing the tragedy of the abuse or the dynamics of the abuse.
6. Elaborate as to the fact that they are hearing a child abuse case and that it does not contain the type of evidence that they might expect from watching television. Discuss the case in terms of a secret crime, one that happens behind closed doors. Mention types of evidence in the more routine cases and point out that as in many child abuse cases the only evidence the State has will come from the mouth of the victim. Reinforce the fact that oral testimony is as good as any other form of evidence, if not better. Have them prepared so that when they hear the testimony, they will not have unrealistic expectations.
7. Alert them to the fact that their role will be difficult and that much of their verdict will be based solely upon their assessment of the victim's credibility. Make the jury understand how special their role is in a case of this kind and that discharging their oath will not be as easy as it appears on television.

### **SUMMATIONS**

1. In a child abuse case, due to the lack of hard evidence, it is crucial that the prosecutor's demeanor and behavior before the jury clearly reflect the fact that he has no doubts whatsoever about the defendant's guilt. The jury's decision will be difficult enough without them having to wonder if the prosecutor was a little too unenthusiastic about the case. It should be noted, however, that prosecutors should act in a fair, professional, and responsible manner to ensure that the jury will not have questions about the State being overzealous.
2. In reference to reasonable doubt, explain that the State is not required to prove every fact adduced at trial beyond a reasonable doubt; the State need only prove the elements of the crime beyond a reasonable doubt. Encourage the jury not to get sidetracked on minute issues. Tell them that it is okay to wonder about certain details, but ask them to focus on the major issues, the specific acts of abuse.
3. Discuss in detail the child's inappropriate sexual knowledge. Ask how the victim could describe sexual acts of an intimate nature so effectively if he had not been abused.
4. If there are inconsistencies in the child's account, explain that the victim is a child who has gone through something that no one should have to endure. Explain that credible adults often have trouble remembering every little detail about something that happened in the past. Ask them to consider the victim's age and emotional development, and then ask whether they would have expected him to be entirely consistent.
5. If there are no inconsistencies in the victim's account, point out that the abuse is something the victim will never forget and that the memory of it will remain with him for the rest of his life.
6. Highlight the fact that children are terrible liars and that if the child was fabricating the abuse, it would be impossible for him to have held up through all the interviews, pretrial preparations, and trial without it becoming painfully obvious. Give colorful examples of stupid lies that children tell. Point out that kids lie to get out of trouble,

not into it, and that going to a police station and testifying at trial is trouble to a child.

7. If no motive is presented by the defendant for the victim to fabricate the abuse, ask the jury why the child would go through all this had it not occurred.
8. If a motive for fabrication is proffered, ask the jury to consider whether it has any merit; would the child go through all this for this reason?
9. Peculiar aspects of the evidence, such as the child's failure to report, a parent's failure to report, or possible recantation of a witness, should be explained away as the dynamics of abuse.
10. In reference to the defendant's actions, instruct the jury that the State need only prove that he acted purposely. Tell them that the State cannot and does not have the responsibility to explain why the defendant engaged in acts of abuse as they heard described.
11. Inform the jury that the State, like the defendant, is entitled to a fair trial. Stress that the case is important to the State as well as the defendant. Emphasize that justice requires that they weigh all the evidence. When weighing the evidence, ask the jury not to discriminate against the young victim by unreasonably questioning his veracity simply because he is young. Point out that to do so would be unjust as child abuse cases by their very nature must be based on the testimony of young children.
12. When supported by the evidence, firmly represent that the State has proven its case. Request verdicts of guilty.

# **Appendices**

## **The Prosecution of Child Abuse and Neglect Cases**

STATE OF NEW JERSEY,

Plaintiff,

—vs—

MARGARET KELLY MICHAELS,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
ESSEX COUNTY — LAW DIVISION  
INDICTMENT NOS. 246—06—85  
4243—11—85  
3022—07—85

CRIMINAL ACTION

---

**BRIEF TO ADMIT EXPERT TESTIMONY REGARDING  
CHILD SEXUAL ABUSE SYNDROME**

---

HERBERT H. TATE, JR.  
ESSEX COUNTY PROSECUTOR  
ESSEX COUNTY COURT BUILDING  
NEWARK, NEW JERSEY 07102

SARA M. SENCER-McARDLE  
ASSISTANT PROSECUTOR

Of counsel and  
On the Brief

## **STATEMENT OF FACTS**

Defendant is charged by Indictment Nos. 2464-6-85, 3077-7-85 and 4243-11-85 with 235 counts of crimes against children. The State wishes to present evidence that

- (1) there is a diagnosable cluster of symptoms known as the child abuse syndrome;
- (2) that the syndrome is recognized in the scientific community;
- (3) what the syndrome consists of and what the symptoms are and
- (4) whether a particular child's behavior as described by the child's parents, psychologists and observed by the expert is consistent with this syndrome.

Furthermore, the State will also seek to have said expert testify about the developmental capabilities of a 3-5 year old child.

## POINT I

### EXPERT TESTIMONY ON THE CHILD SEX ABUSE SYNDROME IS APPLICABLE TO THIS CASE AND SHOULD BE ALLOWED

Expert testimony is admissible to establish the Child Sex Abuse Syndrome. Rule 56 (2) provides the rationale and the standard for admitting the testimony of an expert witness:

A witness qualified . . . may testify . . . as to matters requiring scientific, technical or other specialized knowledge if such testimony will assist the trier of fact to understand the evidence or determine a fact in issue. R. 56 (2).

Sufficient criteria are available under R. 56 and applicable case law for limiting the admissibility of expert testimony. R. 56 provides, in effect, three requirements for the admission of expert testimony: (1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at stage of development such that an expert's testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony. State v. Kelly, 97 N.J. 178, 208 (1984).

In Kelly, a case that established the professional acceptance and reliability of the clinical psychological condition referred to as the "battered women's syndrome," the court explicated the requirement of R. 56. The first requirement for admitting expert testimony is that the subject matter be beyond the ken of the average juror. This is so because the primary justification for permitting expert testimony is to assist the trier of fact, the average juror, who is relatively helpless in dealing with a subject that is not a matter of common knowledge. Kelly, supra at 209.

The second requirement that must be met before expert testimony is permitted is a showing that the proposed expert's testimony would be reliable. Kelly, supra at 209. Here, the court relied on State v. Hurd, where it found that scientific evidence meets the threshold of reliability and is admissible if it possesses a "sufficient scientific basis to produce uniform and reasonably reliable results and will contribute materially to the ascertainment of the truth." State v. Hurd, 86 N.J. 525, 536 (1981). This standard of reliability, namely a showing that the scientific basis of the expert's methodology will produce reasonably reliable results, can be met by demonstrating that the expert's evidence has gained "general acceptance" in the scientific community. State v. Cavallo, 88 N.J. 508, 521 (1982).

There are three ways a proponent can establish the general acceptance and thereby the reliability of his scientific evidence: (1) by expert testimony as to the general acceptance, among those in the profession, of the premises on which the proffered expert witness based his or her analysis; (2) by authoritative scientific and legal writings indicating that the scientific community accepts the premises underlying the proffered testimony; and (3) by judicial opinions that indicate the expert's premises have gained general acceptance. Kelly, supra at 210.

Lastly, the third requirement that must be met before expert testimony may be presented is a showing that the proffered expert witness has sufficient expertise to offer the intended testimony. Kelly, supra at 211.

By applying the standards of R.56 and relevant case law, expert testimony relating to the Child Sex Abuse Syndrome satisfies the requirements of assisting the juror and reliability that are set forth in those standards.

A. The Characteristics of the Child Abuse Syndrome are Beyond Common Experience and Require the Opinion of An Expert.

Evidence relating to the Child Sex Abuse Syndrome concerns subject matter that is beyond the ken of the average juror. Many courts have recognized that some sexual abuse cases require expert testimony and have, particularly in child sexual abuse cases, ruled in favor of admitting expert testimony. Such testimony assists jurors inter alia in dispelling the myth that "real" sexual abuse takes place only when the parties are strangers. It also helps to correct the assumption that child victims can be consistent and coherent about details of the assault. Thus, courts are willing to admit experts to testify in order to assist jurors in understanding the complexities of child abuse.

In People v. Benjamin R., the court recognized that child sexual abuse had complex issues, that the average juror does not have a general awareness of a young victim's reaction to sodomy or sexual abuse, that expert testimony tends to clarify the complexity, and that victim behavior in child sexual abuse cases is similar to other "psychological phenomena" about which experts are allowed to testify, e.g., battered child syndrome, battered spouse syndrome and rape trauma syndrome. People v. Benjamin, R., 481 N.Y.S. 2d 827, 832 (A.D. 4 Dept. 1984).

In State of New Jersey v. R.W., the court held that age, per se, cannot serve as a basis for ordering psychiatric testimony for purposes of determining a child's competency as a witness. State of New Jersey v. R.W., \_\_\_\_\_ N.J. \_\_\_\_\_ (1986).

In that case, the court quoted at length from State v. Myers, wherein that court affirmed the use of expert testimony to aid the jurors in understanding the characteristics of sexually abused children, including testimony that such children often will not report the abusive incident.

With respect to most crimes the credibility of a witness is peculiarly within the competence of the jury, whose common experience affords sufficient basis for the assessment of credibility. In most cases, even though an expert's testimony may arguably provide the jury with potentially useful information, the possibility that the jury may be unduly influenced by an expert's opinion mitigates against admission. Nor should the credibility of witnesses in criminal trials turn on the outcome of a battle among experts. The nature, however, of the sexual abuse of children places lay jurors at a disadvantage. Incest is prohibited in all or almost all cultures, and the common experience of the jury may represent a less than adequate foundation for assessing the credibility of a young child who complains of sexual abuse. If the victim of a burglary failed to report the crime promptly, a jury would have good reason to doubt that person's credibility. A young child subjected to sexual abuse, however, may for some time be either unaware or uncertain of the criminality of the abuser's conduct.

\* \* \* By explaining the emotional antecedents of the victim's conduct and the peculiar impact of the crime on other members of the family, an expert can assist the jury in evaluating the credibility of the complainant.

State v. Myers, 359 N.W. 2d 604, 609-610 (Minn. 1984).

See also, State v. Carlson, 360 N.W. 2d 442, 443 (Minn. App. 1985).

The issues of child abuse present difficulties for the average juror respecting the question of credibility

of a child witness. This is an important factor in favor of admitting expert testimony on the issue. "Children do not react to sexual situations as adults would, and their responses, may even appear inappropriate, and even untrue." People v. Payan, 220 Cal.Rptr. 126, 131 (Cal. App. 2 Dist. 1985).

The court reasoned in admitting the testimony:

As the expert's testimony demonstrates the routine indicia of witness reliability-consistency, willingness to aid the prosecution, straightforward rendition of the facts — may for good reason be lacking. As a result jurors may impose standards of normalcy on child victim/witnesses who consistently respond in distinctly abnormal fashion. Payon, supra at 131.

Similarly, in Allison v. the State, the court ruled that expert testimony was admissible to show the pattern of behavior exhibited by children who have been the victims of sexual abuse. The testimony identified five typical behavioral characteristics: (1) secrecy (children are usually not forthcoming with disclosure); (2) helplessness (the child feels he or she can do nothing to prevent the abuse); (3) accommodation (the child attempts to rationalize or accommodate the abuse); (4) delayed, conflicting and unconvincing disclosure (the child may at first give information that makes no sense or may be unconvincing); (5) recantation (if disclosure causes disruption in the child's life, he or she may recant an earlier story). Allison v. the State \_\_\_\_\_ Ga. \_\_\_\_\_ (Court of Appeals, May 1986).

In Allison, the court reasoned that child victims of sexual abuse respond to the assault with the same patterns of behavior which are seemingly at odds with behavioral norms. Since such information is not known to the average juror and the expert's conclusion is not one they would ordinarily draw for themselves, expert testimony regarding child sexual abuse syndrome is properly admissible.

Courts have likewise found that experts' opinion as to the credibility of a child victim's testimony does not invade the exclusive province of the jury. The purpose underlying the testimony of an expert is not to substitute his or her estimate of credibility for that of the jury but rather to provide a scientific perspective by which the jury itself can evaluate the complainant's testimony. State v. Kim, 645 P.2d 1330, 1334, 1335 (Hawaii, 1982).

In Kim, the court concluded that the expert provided the jury with two types of information, first, he supplied the jury with behavioral characteristics shared among sexually abused children, and second, he observed the complainant to exhibit many of those shared characteristics so that he perceived her story to be credible. The court found that the behavioral characteristics proved by the expert were clearly comprehensible and would otherwise not have been available to the jury but for his testimony. Kim, supra at 1338.

Thus, it is clear that testimony of an expert witness satisfies the requirement of R.56 inasmuch as it helps the jury to understand the evidence or to determine a fact in issue.

**B. The Identification of Child Sex Abuse Syndrome has General Acceptance in the Scientific Community.**

The proposed expert testimony satisfies the second requirement of R.56, i.e., that such testimony be reliable. This requirement as explicated in Kelly and Cavallo means that the field testified to must be at such a stage of development that the reliability of the expert's evidence can be attested to by general acceptance in the scientific community.

The identification of the Child Sex Abuse Syndrome as a pattern of behavior has been widely accepted in the scientific community. Psychiatrists have identified a pattern of behavior common to children who have been sexually abused. The victimized child often suffers from behavioral problems of fatigue,

worrying, fear, depression, difficulty in relating to peers, feelings of guilt or embarrassment.

The American Psychiatric Association in its widely accepted Diagnostic and Statistical Manual of Mental Disorder (DSM-III) (Third Ed., 1980) has recognized these behavioral symptoms. It is undisputed that the DSM-III has identified the Child Sex Abuse Syndrome as a behavioral pattern (post-traumatic stress disorder) that clinically and scientifically explains the behavioral patterns of children who have been sexually abused. Knowledge, insight and understanding of the emotional and psychological characteristics of a sexually abused child has become an accepted and integral part of child sexual abuse cases. The recognition and acceptance by the scientific community of post-traumatic stress disorders has led to the acceptance and use of expert testimony in the legal community as a means of identifying, recognizing and explaining the symptomatic effects of sexual assault and the susceptibility to traumatization.

Expert evidence that has been proffered and admitted in the courts persuasively attests to the elements of the child victim's behavior.

In People v. Payan, an expert testified that the syndrome was a widely recognized and acceptable medical diagnosis. She called attention to the authoritative writings of Roland C. Summit, Child Abuse and Neglect, vol. 7 (1983) and Kempe and Helfer, The Battered Child, 3rd ed. 1980. The expert told the jury that the syndrome contained some or all of five elements: secrecy, helplessness, entrapment and accommodation, delayed disclosure and retraction. People v. Payan, 220 Cal.Rptr. 126, 128 (Cal.App. 2 Dist. 1985).

Similarly, in Smith v. State, the court recognized expert evidence in the testimony as to the victim's feelings of guilt, ambivalence, denial and delay in reporting the incident, particularly when it involves someone the child loves. Smith v. State, 688 P.2d 326, 327 (Nev. 1984).

In Carlson, the court declared that qualified expert testimony should be admitted to explain the bizarre emotional and physical behavior of child victims. State v. Carlson, 360 N.W. 2d 442, 443 (Minn.App. 1985).

In Oregon, where an expert witness may not give an opinion on whether he believes a witness is telling the truth, the court held that it is not error to allow an expert's testimony describing the reaction of the typical child victim of familial sexual abuse and whether a testifying victim impeached by her prior inconsistent statement reacted in the typical manner when she made that inconsistent statement. State v. Middleton, 657 P.2d 1215, 1221 (Or. 1983).

From the foregoing, it is clear that the reliability of expert testimony in child abuse cases has been widely established through general acceptance in the profession of its premises and by judicial opinions that indicate that the premises have gained general acceptance.

In sum, there is sufficient reason for admitting expert testimony in child abuse cases. The typical reaction of the child victim of sexual abuse is not readily anticipated nor recognized by the ordinary juror. The testimony of the expert witness will assist the juror in understanding the evidence or in determining a fact in issue. The reliability of expert testimony in child abuse cases is persuasively attested to by its general acceptance in the scientific community and by judicial opinions indicating that the premises have gained acceptance. See also State v. DR, A-3348-84-T4.

In light of the foregoing it is respectfully requested that testimony regarding the Child Abuse Syndrome be admissible in State v. Margaret Kelly Michaels.

Respectfully Submitted  
Sara M. Sencer-McArdle  
Assistant Prosecutor

**State of New Jersey**  
**DEPARTMENT OF LAW AND PUBLIC SAFETY**  
**DIVISION OF CRIMINAL JUSTICE**  
25 MARKET STREET  
CN 085  
TRENTON, NEW JERSEY 08625-0085  
TELEPHONE: 609-984-6500

**W. CARY EDWARDS**  
ATTORNEY GENERAL

**DONALD R. BELSOLE**  
FIRST ASSISTANT ATTORNEY GENERAL  
Director

February 4, 1988

TO ALL COUNTY PROSECUTORS

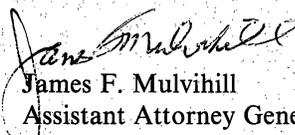
Re: Retrospective Application of the Special Statute of Limitations for Sexual Offenses Involving Victims Less than 18 Years Old L. 1986 c. 166

Dear Prosecutor:

As you may know, the above captioned matter was discussed at the November 24, 1987 Child Abuse and Prosecution Seminar which was attended by Assistant Prosecutors and Deputy Attorneys General assigned to the investigation and prosecution of child abuse and neglect cases.

As a result of that discussion, the Appellate Section of the Division of Criminal Justice was requested to prepare an informal opinion which has been prepared by Deputy Attorney General Debra L. Stone, Deputy Chief, Appellate Section. Deputy Chief Stone concludes that, so long as the original statute of limitations has not expired, the new statute may be applied. However, if the original statute of limitations expires prior to the date of the amended law, it will be impermissible to revive those cases. This informal opinion is enclosed herewith for your review and reference, and for that of appropriate members of your staff.

Very truly yours,

  
James F. Mulvihill  
Assistant Attorney General  
Operations Bureau

JFM/mh  
enclosure

c. John G. Holl, Deputy Director  
Chief of Staff  
DAG Anne C. Paskow  
Chief, Appellate Section  
DAG Debra L. Stone  
Deputy Chief, Appellate Section

*New Jersey Is An Equal Opportunity Employer*

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

**TO:** John G. Holl  
Deputy Director, Chief of Staff

**FROM:** Debra L. Stone  
Deputy Chief, Appellate Section

**SUBJECT:** Retrospective Application of the Special Statute of Limitations for Sexual Offenses  
Involving Victims Less than 18 Years Old—L. 1986 C. 166

You have asked for an opinion on whether the extended statute of limitations for sexual offenses involving victims less than age 18 may be applied to offenses committed before its effective date. Essentially offenses prior to the effective date fall into two categories: Those in which the original statute of limitations had expired prior to the effective date, and those in which the original statute of limitations was still running on the effective date. As to the former, the law clearly provides that once the statute of limitations has expired, that it cannot be revived and therefore those cases cannot be prosecuted. As to those cases where the original statute has not expired, those cases may be prosecuted under the new statute of limitations without offending the ex post facto prohibitions, due process or N.J.S.A. 2C:1-1b (1).

The prohibition against ex post facto laws under both our State constitution, N.J. Const. (1947), Art. IV, Section VII, Par.3, and the Federal constitution, U.S. Const., Art. 1, Section 10, cl.1, have been interpreted identically. State v. Kaplan, 178 N.J.Super 487, 495 (App. Div. 1978). The prohibition "is designed to secure substantial personal rights against arbitrary and oppressive legislation . . ." State v. Davis, 175 N.J.Super 130, 147 (App. Div. 1980), certif. den. 85 N.J. 136 (1980). In numerous decisions, the United States Supreme Court has held that no ex post facto violation occurs if the charge is procedural and does "not increase the punishment nor change the ingredients of the offense or ultimate facts necessary to establish guilt." Hopt v. Utah, 110 U.S. 574, 590 (1984), quoted in Weaver v. Graham, 450 U.S. 24, 29 (1981). That being said, it is never easy to divide legal issues such as the statute of limitations into "procedure" or "substance." State v. Molnar, 81 N.J. 475, 488 (1980); Busik v. Levine, 63 N.J. 351, 364 (1973), app. dism. 414 U.S. 1106 (1963). In New Jersey, at least where the statute of limitations has not expired, it has been denominated as procedural. Busik v. Levine, supra, at 366-367; Pennsylvania Greyhound Line Inc. v. Rosenthal, 14 N.J. 372, 380, 382 (1954). However, as a matter of due process, when a statute of limitations has expired, it is deemed to be a substantive defense and it cannot be revived by a subsequent extension of the statutory period. Busik v. Levine, supra.

John G. Holl  
Deputy Director, Chief of Staff  
January 12, 1988

Page Two

As to those instances where the statute of limitations had not expired at the time the new statute takes effect, the statute of limitations is properly viewed as procedural and therefore would be applied without running afoul of the ex post facto rule, due process or N.J.S.A. 2C:1-1 (b) and N.J.S.A. 2C:1-1c (1) (providing that provisions of the criminal code are not retroactive, unless the provision is procedural and application would not cause undue confusion). Busik v. Levine, supra; Moore v. State, 43 N.J.L. 203 (E. & A. 1881). See also United States v. Richardson, 512 F. 2d. 105 (3 Cir. 1975); Falter v. United States, 23 F. 2d 420 (2 Cir.), cert. den. 277 U.S. 540 (1928). This result is consistent with the result reached in other state courts which have considered this issue. See, e.g., State v. Hodgson, 108 Wash. 2d 662, 740 P. 2d 848, 851-852 (Wash. 1987), and cases cited therein. The distinction between a statute which has run and one which has not was best described by Judge Learned Hand in Falter v. United States:

"[u]ntil the statute has run it is a mere regulation of the remedy . . . subject to legislative control. Afterwards it is a defense, not of grace, but of right, not contingent, but absolute and vested, . . . not to be taken away by legislative enactment." 27 F. 2d at 425.

Interestingly, Falter, considered the seminal case on this issue, relies on the New Jersey Court of Errors and Appeals' opinion in Moore v. State, supra. Accordingly, a prosecution where the offense occurred prior to the effective date of the new statute of limitation but where the prior statute of limitation has not expired is clearly viable. Indeed, at least one law division judge in Ocean County has accepted this reasoning and rejected a challenge to just such a prosecution. State v. George L. Nagle, Ocean County Indict. No. 196-3-87. A Notice of Motion for leave to appeal has been filed in this matter.

In sum, based upon case law in New Jersey, the federal courts and other state courts, there is no bar to a prosecution of an offense which predates the amendment, so long as the original statute of limitations has not expired. If the statute of limitations expired prior to the effective date of the amendment, those cases are legally dead, and may not be revived by virtue of the amendment to the statute of limitations.

D.L.S.

jak

# **Victim-Witness Advocacy**

**Prepared For  
Governor's Task Force  
On Child Abuse and Neglect**

**By  
Pamela J. Fisher, M.S.W.  
Chief, Office of Victim-Witness Advocacy**

# TABLE OF CONTENTS

I. Introduction .....	1
II. Information Services .....	2
A. Orientation to the Criminal Justice System .....	2
B. Notification of Case Status .....	2
C. Victims Bill of Rights .....	3
D. Crime Prevention .....	4
E. Property Return .....	4
F. Court Offices .....	4
III. Advocacy and Support Services .....	4
A. Restitution .....	4
B. Intimidation .....	5
C. Plea Negotiation .....	5
D. Court Appearance .....	5
E. Sentencing .....	5
F. Post-Sentence .....	6
G. Parole .....	6
H. Crisis Intervention, Counseling and Referrals for Other Needed Services .....	6
I. Crisis Intervention .....	7
J. Needs Assessment .....	8
K. Counseling and Referral .....	9
IV. Conclusion .....	10
<b>APPENDICES</b>	
Promises, Promises . . . A Child's View of Incest .....	Appendix I
County Offices of Victim-Witness Advocacy .....	Appendix II
Glossary of Terms .....	Appendix III
Footnotes .....	Appendix IV

## **I. INTRODUCTION**

This section describes the statewide program of the Office of Victim-Witness Advocacy and presents its philosophy and approach to serving child victims and their families who become involved in the criminal justice system. A function of the Office of Victim-Witness Advocacy is to encourage the cooperation of child victims and their families with law enforcement and the courts. Child victims must be treated sensitively during the investigation and prosecution; their willingness to participate in the process will help the prosecutor hold the offender accountable. James K. Stewart, Director, National Institute of Justice has said:

“More than 90 percent of all child abuse cases do not go forward to prosecution. In many of these cases, the decision not to proceed is based on concerns about the child’s possible performance on the witness stand or the impact of the court process on the child victim’s recovery. The unfortunate result is that many suspects are released without the imposition of justice. They not only escape any penalty but have the opportunity for further abuse of their initial victim or other children.”<sup>1</sup>

Pursuant to N.J.S.A. 52:4B-44, New Jersey has mandated the provision of services to victims and witnesses involved in the prosecution of a case. These services are provided by the county Offices of Victim-Witness Advocacy located in each county prosecutor’s office, under the direction of the Chief of the State Office of Victim-Witness Advocacy in the Division of Criminal Justice, Department of Law and Public Safety. The following services provided by the program are intended to help reduce the stress on all victims, including child victims and their families, who become entangled in the complexities of the criminal justice process:

- Crisis intervention and counseling
- Referrals for other needed services
- Orientation to the criminal justice system
- Case status information
- Transportation
- Child care
- Assistance with claims to the Violent Crimes Compensation Board
- Restitution and other forms of financial entitlements
- Assistance with property return
- Court accompaniment
- Employer, school, landlord, creditor intercession services
- Victim-witness waiting/reception areas separated from defendant(s)
- Victim impact statements
- Document replacement assistance

## **II. INFORMATION SERVICES**

The information services offered by the Office of Victim-Witness Advocacy include information about the court process and what is expected of the victim on each occasion, preparation for testimony and orientation to the courtroom environment; case status notification; information pertaining to victims' rights; crime prevention; property return; release status of defendant; as well as directions, parking and courthouse/courtroom locations.

### **A. Orientation to the Criminal Justice System**

Three types of orientation are provided by the Office of Victim-Witness Advocacy. The first is printed information on the criminal justice process. The second involves a discussion with victims about the process as it applies to their case. And the third involves a "walk-through" of the courtroom prior to a court appearance.

The Office of Victim-Witness Advocacy will provide a brochure describing what happens in the criminal justice system, what certain legal terms mean, and the role of victims and witnesses in the process.

While brochures and written information are an important facet of orientation, personal contact with victims is even more critical to relieving anxiety and helping them understand what they are going through. Depending on the caseload, most Victim-Witness Coordinators try to spend time talking with victims either by telephone or in person prior to any court appearance. With child victims/witnesses, coordinators provide age-appropriate instruction in legal procedure and terminology and often take the child for a tour of the courtroom.

A walk-through of the courtroom may take place at the same time as the verbal orientation if the victim comes to the courthouse. The walk-through usually includes:

- showing the witness a courtroom and explaining where each participant will be seated during the proceeding
- letting the witness sit in the witness chair to get a feel for the environment
- showing the victim where to find telephones, waiting room, etc.

Emphasis should be placed on preparing witnesses for grand jury. Particularly when children are going before grand juries, care is taken to describe the kinds of questions that will be asked and, in advance to let the victims sit in the witness chair and become accustomed to the environment. This is of special concern when children are witnesses because grand jury proceedings are secret and the child witness will see no familiar or friendly faces there except the assistant prosecutor's.

These techniques help to alleviate a child's fear of the unknown, enhancing the accuracy and efficiency of the child's recollection.<sup>2</sup>

### **B. Notification of Case Status**

Victims, whether they have testified or not, will receive timely notification of the following significant events in the course of prosecution:

- Arrest
- Pre-grand jury remand

- Administrative Dismissal
- Grand jury remand
- Grand jury dismissal — no bill
- Indictment returned — true bill
- Defendant's acceptance into pre-trial intervention program
- Defendant's termination from or completion of pre-trial intervention program
- Negotiated plea on all charges
- Release on bail/conditions of bail
- Bench warrant/fugitive status
- Disposition on all charges
- Sentencing date
- Sentence imposed on the defendant
- Defendant's filing of an appeal and subsequent status changes
- Court dismissal
- Mistrial/retrial
- Mistrial/dismissal

Victims will be notified as soon as possible of the defendant's release from custody and any associated conditions of that release.

In the case of children, case status notification will be provided to the parent or caregiver who can then assist in providing verbal notice to the child and decide what notice should be given.

In addition, County Victim-Witness Coordinators advise victims of their right to seek restitution, to submit victim impact statements at sentencing, and to appear at sentencing.

### **C. Victims' Bill of Rights**

All victims shall be advised of their rights pursuant to N.J.S.A. 52:4B-36. The Crime Victim's Bill of Rights includes the following entitlements:

1. To be treated with dignity and compassion by the criminal justice system
2. To be informed about the criminal justice process
3. To be free from intimidation
4. To have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible
5. To make at least one telephone call provided the call is reasonable in both length and location called
6. To medical assistance if, in the judgment of the law enforcement agency, medical assistance appears necessary
7. To be notified if presence in court is not needed
8. To be informed about available remedies, financial assistance and social services

9. To be compensated for their loss whenever possible
10. To be provided a secure, but not necessarily separate waiting area during court proceedings
11. To be advised of case progress and final dispositions
12. To the prompt return of property when no longer needed as evidence.

#### **D. Crime Prevention**

Crime prevention information is provided which includes pamphlets concerning home security and personal safety and is displayed in an information rack in victim-witness reception areas operated by the County Offices of Victim-Witness Advocacy. Referrals are made for crime prevention services.

#### **E. Property Return**

The victim/family is advised of the status of any property stolen or removed, as well as procedures and regulations governing property return. Assistance and advocacy to obtain property return is provided unless court rules of evidence require that it be retained.

#### **F. Court Offices**

Individual county offices provide brochures describing their program, what services are available, as well as directions, parking and courthouse/courtroom locations.

### **III. ADVOCACY AND SUPPORT SERVICES**

The child victim is seen as one of the most important and needy victims in the criminal justice system. As such, the program attempts to focus attention on meeting the needs of the child victim and witness by ensuring that consideration is given to the child's schedule; that interviews take place in private surroundings; and that the child is accompanied by a parent, familiar person, or victim advocate.

#### **A. Restitution**

The Office of Victim-Witness Advocacy is concerned about helping the victim obtain restitution. Restitution can be ordered as part of a plea negotiation, diversionary program or as part of the final sentencing. The Victim-Witness Coordinator will spend some time with the victim trying to assess the losses which may be included in a restitution order and inform the assistant prosecutor so that restitution is requested. Needless to say, restitution orders are by no means self-enforcing. It is common for victims to receive only a small portion of the money ordered to be paid to them. For this reason, the post-sentence period of the case becomes very important to victims and their advocates. Monitoring and enforcing restitution becomes an important function in this stage.

## **B. Intimidation**

Many victims are afraid to identify their assailant. Victim-Witness Coordinators can help to soften the impact of identification procedures. The coordinator may attend the line-up proceedings and make sure the victim feels reasonably comfortable and secure. The coordinator can explain the laws and procedures providing for witness protection and encourage victims to contact the police or county investigator if they think that the defendant is intimidating or harassing them. Special attention needs to be given to discussing with a child victim how to respond to intimidation or threats.

## **C. Plea Negotiation**

The post-arraignment stage is when most plea negotiations are struck. Victims who have been properly counseled in early stages should understand what a plea negotiation entails; those receiving information for the first time at this point may need special help in understanding the idea of dropping or reducing some of the charges brought against the defendant.

The child victim's parent or guardian should be involved in the plea negotiation process and should be consulted concerning the final result. While a victim cannot change a decision on a plea negotiation, their input should be considered.

## **D. Court Appearance**

Most of the services provided to a victim or witness at the time of a court appearance are supportive in nature. The primary services provided at the court appearance stage are: transportation, escort, day care and secure waiting areas.

## **E. Sentencing**

The sentencing stage of the criminal justice process can have important effects on the victim and the victim's family.

The Office of Victim-Witness Advocacy provides assistance to the victim and the family in a number of ways before and during the sentence hearing. This includes pre-sentence counseling, aid in preparing a victim impact statement, and companionship during the hearing.

Pre-sentence counseling should prepare the victim with a realistic evaluation of possible sentences and their consequences for the defendant. Consideration must be given to the victim's emotional reaction to the conviction as well as victim's expectations at the sentence hearing.

Victim impact statements report facts about the after-effects of a victimization: the financial costs (medical expenses, loss of earnings, loss/damage to property), physical injury (severity and impact on persons functioning); psychological injury (emotional problems caused by the crime) and social repercussions (problems with relationships, assuming normal activities, etc.). This information is included with the pre-sentence investigation report that is provided to the sentencing judge.

If the victim and/or the family want to attend the sentence hearing, the Victim-Witness Coordinator can accompany the victim to the hearing. In numerous cases the judge does not make a decision which is compatible with what the victim feels is just. While the victim may have been counseled on this possibility, it is a shock and an injury to the victim. The victim needs help to adjust to the final disposition, to survive the hearing and to make practical decisions about the future as a result of the disposition.

The possibility of a strong reaction to the decision calls for an escort to the hearing as well as the possibility of long-term counseling in the post-sentence stage.

#### **F. Post-Sentence**

There are three phases of service in the post-sentence stage. The first involves counseling about the sentence itself; the second involves service to victims relating to parole procedures; and the third concerns the victim's fear of the offender's release in the community.

The court process is over but if victims are left feeling that justice wasn't served, they are at risk of suffering long-term bitter distress. The symptoms of chronic post-traumatic stress disorder, from listless depression to frustrated anger, appear to arise in quite a number of cases.

#### **G. Parole**

Victims of violent crime often believe the prison sentence imposed on the offender will be the time set by the sentencing judge. Realistically the offender is released after serving a percentage of the sentence, based on a formula which takes into account any pre-trial detention time, commutation time, work credits, and parole eligibility date.

Victims have the right to express their opinion to the Parole Board. The county prosecutor's office must notify the victim of this right. This notification is in writing and includes a registration form which the victim uses to register with the Parole Board. When the registration form is received by the Parole Board, contact with the victim will automatically be triggered well in advance of the inmate's eligibility. At this point, the victim will be invited to either submit a written statement or to appear personally to testify before a senior hearing officer of the Board.

Victims may be concerned about retaliation by the offender after release. The Victim-Witness Coordinator will take time to explain to victims the laws concerning intimidation and harassment and may also help them develop a support network which will help them feel more secure in everyday life.

Victims have a right to be notified about the release or escape of an offender. The Victim-Witness Coordinator or the Parole Board will provide this information upon the request of the victim.

#### **H. Crisis Intervention, Counseling and Referrals for Other Needed Services**

The County Victim-Witness Coordinator typically provides crisis intervention, counsels victims and accompanies them to all court proceedings. The coordinator serves as a broker to obtain needed services for the child and family. Referrals can be made to long-term psychological counseling as well as to self-help groups, which can be an important social support mechanism for victims.

## **I. Crisis Intervention**

All victims of crime experience a common series of emotional reactions to varying degrees including, but not limited to:

- fear
- guilt
- shame
- anger
- decreased sense of personal control
- sense of violation of one's self
- concern about reaction of family and friends
- concern about prosecution and involvement with criminal justice system.<sup>3</sup>

The effects of child sexual abuse fall into a wide spectrum of emotional and behavioral reactions. The child may experience:

- isolation and mistrust
- loss of control over one's life
- confused sense of personal identity and responsibility
- fear of losing one's family
- guilt and shame
- depression, suicide ideation
- self-blame for loss of economic or emotional support
- negative self image
- disturbing nightmares and flashbacks
- eating disorders
- learned seduction and eroticism as a substitute for other social skills that were lacking
- susceptibility to abuse by more than one offender (multiple abuse)
- confusion about the uses of power and authority
- poor peer relationships and unsatisfying social relationships
- sexual dysfunction as a result of interference with normal sexual development
- sexual abuse of other children<sup>4</sup>

Most importantly, a child victim's reactions to sexual abuse do not take place in an isolated environment, but are influenced by a number of circumstances. Both the initial and the long-term effects are closely related to various factors:

- the child's age
- the child's emotional stability and maturity
- the child's relation to the offender
- the degree of force or violence used
- the duration of the abuse and the process of disclosure
- the family's and society's reaction to the assault.<sup>5</sup>

The magnitude of the impact that sexual abuse may have on child victims depends on their relationship to the offender and the support they receive from family. Experts agree that repeated sexual abuse by a family member carries a high potential of lasting damage to children especially if they become enmeshed in a volatile family situation. While the mother may suspect or even know about the incest, she may wittingly or unwittingly act in collusion with the offender by not taking steps to protect her child. She may fear a family break-up, which would threaten her own emotional stability and, possibly, her only source of income. She may fear the intervention and humiliation that would follow disclosure to authorities. The mother may simply refuse to face the facts--at great cost to her child.<sup>6</sup>

In some situations where the offender is someone known to the child, even a family member, the mother does reject the offender and support the child. Here, the trauma of being abused by a trusted individual may be tempered somewhat by the unquestioning support of another trusted person. Even so, the child may suffer guilt if the disclosure leads to the separation or divorce of the parents or to the public disgrace of the offender. Counselors have observed that anger and love co-exist uneasily when the abuser is a parent, close relative, or friend. These ambivalent feelings only sharpen the pain of revelation.<sup>7</sup>

A different constellation of emotions typifies the situation where a child is sexually assaulted by a stranger. Because such incidents frequently involve violence, there is greater danger of physical harm than in incestuous abuse. However, the psychological impact may be less severe in cases of stranger assault because parents almost invariably rally to the child's side and seek professional assistance to resolve the crisis. Effective crisis intervention and short-term therapy may suffice to help the child and family overcome their shock and resume their lives as before.<sup>8</sup>

Regardless of the circumstances, almost all victims need reassurance. The role of the coordinator is to help to stabilize the victim and appropriate family members:

- Victims need to know the crisis is over.  
"You are O.K. now. Things may still be chaotic and difficult, but the worst is past."
- They need to know that life will go back to normal.  
"It will get better in time. Other people have done it and you can too."
- They need an ally.  
"You don't have to do it alone. We'll help you."
- Victims need to regain control. They have experienced a situation out of their control. Remind them that their life belongs to them. Give them straight information on choices they face.
- Victims need to feel worth and dignity.  
"You're important and we care."

## **J. Needs Assessment**

Victim-Witness Coordinators actively listen for emotional responses the victim or victim's family may identify or is helped to identify. The following is a sample listing of the types of problems the child victim may be facing that the coordinator seeks to discern:

- Parent's reaction  
Parents may get hysterical. Their reactions may have more of an impact on the child than the victimization. Parents may become overprotective and the child may feel punished.
- Signs of emotional distress  
Changes in eating, sleeping and behavior patterns may occur.
- Guilt  
Children often blame themselves for the uproar.

- Parent's unconcern

Some parents may be unreasonable about their child's needs. They may not want the child to talk to a victim advocate or counselor — they may feel threatened.

- Difficulty in describing the incident

Children may find it hard to describe the incident — particularly if very young.

- Fears about testifying

- Future of the family structure

There may be a tug-of-war between the family service agency wanting to keep the family intact and the criminal justice system wanting to prosecute.

- Reaction of other children

Other children may be cruel. The victim may get a lot of unwanted attention.

## **K. Counseling and Referral**

The following is a list of responses the Offices of Victim-Witness Advocacy are prepared to make when servicing child victim cases:

- Provide reassurance
- Actively listen
- Establish trust
- Discuss concerns about prosecuting
- Explain court process
- Explain grand jury process
- Consult with sexual assault/child abuse unit in prosecutor's office
- Consult with prosecutor
- Discuss family reaction with victim (if applicable)
- Discuss family reaction with family member
- Find support services for parents of sexually abused children
- Develop action plan
- Discuss counseling alternatives
- Make counseling referral for family member

- Coordinate services with professional counselor
- Coordinate and facilitate application to the Violent Crimes Compensation Board for coverage of counseling and any associated medical costs. Eligibility for compensation may vary.
- Arrange counseling for child victim with specially trained therapist.

#### **IV. CONCLUSION**

The problems all crime victims face in the criminal justice system are exacerbated when the victim is a child. A child victim of sexual abuse or violence needs special care in the adult world of jurisprudence where even the size of the witness chair is threatening. By supporting the child through all the pre-trial activities, by minimizing the number of interviews or continuances and thoroughly preparing the child for the courtroom experience, the extent of trauma children face when participating in criminal proceedings is more likely to be reduced.

# Appendices

## Victim-Witness Advocacy

## PROMISES, PROMISES . . . A Child's View of Incest

I asked you for help and you told me you would,  
 If I told you the things my dad did to me.  
 It was really hard for me to say all those things, but you told me to trust you  
 Then you made me repeat them to fourteen different strangers.  
 I asked you for privacy and you sent two policemen to my school in front of everyone,  
 To "go downtown" for a talk in their black and white car,  
 Like I was the one being busted.

I asked you to believe me, and you said that you did  
 then you connected me to a lie detector, and took me to court  
 where lawyers put me on trial like I was a liar.  
 I can't help it if I can't remember times or dates or explain why I couldn't tell my Mom.  
 Your questions got me confused — my confusion got you suspicious.

I asked you for help and you gave me a doctor with cold metal gadgets  
 and cold hands who spread my legs and stared, just like my father  
 Who said it wouldn't hurt, just like my father, who said not to cry  
 Just like my father.  
 He said I looked fine — good news for you, you said,  
 Bad news for my "case."

I asked you for confidentiality and you let the newspaper get my story  
 What does it matter that they left out my name  
 when they put in my father's and our home address?  
 Even my best friend's mother won't let me talk to her anymore.

I asked you for protection and you gave me a social worker who patted  
 my head and called me "honey" (mostly because she could never remember my name)  
 She sent me to live with a stranger, in another place, with a different school.  
 Do you know what it's like to live where there's a lock on the refrigerator,  
 where you have to ask permission to use the shampoo,  
 and where you can't use the phone to call your friends?

You get used to hearing, "Hi, I'm your new social worker, this  
 is your new foster sister, dorm mother, group home."  
 You tiptoe around like a perpetual guest and don't even get  
 to see your new puppy grow up,  
 Do you know what it's like to have more social workers than friends?

Do you know what it feels like to be the one that everyone blames for all the trouble?  
 Even when they were talking to me, all they talked about was lawyers,  
 shrinks and whether or not they'll lose the mortgage.  
 Do you know what it's like when your sisters hate you and  
 your brother calls you a liar?  
 It's my word against my own father's.  
 I'm twelve years old and he's the manager of a bank.  
 You say you believe me — who cares if no one else does?

I asked you for help and you forced my Mom to choose between us —  
 She chose him, of course. She was scared and had a lot to lose.  
 I had a lot to lose too, the difference was you never told me how much.

I asked you to put an end to the abuse — you put an end to my whole family  
 You took away my nights of hell and gave me days of hell instead.  
 You've exchanged my private nightmare for a very public one.

**COUNTY OFFICES OF VICTIM-WITNESS ADVOCACY****ATLANTIC COUNTY**

Jacqueline Buoy, Coordinator  
Office of Victim-Witness Advocacy  
Atlantic County Prosecutor's Office  
19th Avenue at Rt. #40  
Vocational School Complex  
Mays Landing, New Jersey 08330  
(609) 645-5808

**BERGEN COUNTY**

Mary Pillarella, Coordinator  
Office of Victim-Witness Advocacy  
Bergen County Prosecutor's Office  
215 Court House  
Hackensack, New Jersey 07601  
(201) 646-2057  
(201) 646-2964

**BURLINGTON COUNTY**

Marjorie Walraven, Coordinator  
Bobbie Franzysen, Coordinator  
Office of Victim-Witness Advocacy  
Burlington County Prosecutor's Office  
49 Rancocas Road  
Mt. Holly, New Jersey 08060  
(609) 265-5048

**CAMDEN COUNTY**

Linda Burkett, Coordinator  
Office of Victim-Witness Advocacy  
Camden County Prosecutor's Office  
518 Market Street, Parkade Building  
Camden, New Jersey 08101  
(609) 757-8400

**CAPE MAY COUNTY**

Walter Craig, Coordinator  
Office of Victim-Witness Advocacy  
Cape May County Prosecutor's Office  
Main Street  
Cape May Court House, New Jersey 08210  
(609) 465-1163

**CUMBERLAND COUNTY**

Beth Perella-Evans, Coordinator  
Office of Victim-Witness Advocacy  
Cumberland County Prosecutor's Office  
43 Fayette Street, CN 01  
Bridgeton, New Jersey 08302  
(609) 451-8000, ext. 276

**ESSEX COUNTY**

Sydney Roberts, Coordinator  
Office of Victim-Witness Advocacy  
Essex County Prosecutor's Office  
New Courts Building  
Newark, New Jersey 07102  
(201) 621-4707

**GLOUCESTER COUNTY**

Barbara Carter, Coordinator  
Office of Victim-Witness Advocacy  
Gloucester County Prosecutor's Office  
Court House Annex  
Woodbury, New Jersey 08096  
(609) 853-3701  
(609) 853-3694

**HUDSON COUNTY**

Sharon Mai, Coordinator  
Office of Victim-Witness Advocacy  
Administration Building  
595 Newark Avenue  
Jersey City, New Jersey 07306  
(201) 795-6508

**HUNTERDON COUNTY**

Virginia Cavella, Coordinator  
Office of Victim-Witness Advocacy  
Hunterdon County Prosecutor's Office  
8 Court Street  
Flemington, New Jersey 08822  
(201) 788-1403

**MERCER COUNTY**

Mary Effie Gunther-Raney Coordinator  
Office of Victim-Witness Advocacy  
Mercer County Prosecutor's Office  
P.O. Box 8068  
Trenton, New Jersey 08650  
(609) 989-6428  
(609) 989-6274

**MIDDLESEX COUNTY**

Jayne Arrisi-Guarino, Coordinator  
Office of Victim-Witness Advocacy  
Middlesex County Prosecutor's Office  
P.O. Box 71, JFK Square  
New Brunswick, New Jersey 08903  
(201) 745-3394

**MONMOUTH COUNTY**

Beverly Richardson, Coordinator  
Office of Victim-Witness Advocacy  
Monmouth County Prosecutor's Office  
P.O. Box 1261  
Court House  
Freehold, New Jersey 07728-1261  
(201) 431-6459

**MORRIS COUNTY**

Sandra McGowan, Coordinator  
Office of Victim-Witness Advocacy  
Morris County Prosecutor's Office  
Court House  
Morristown, New Jersey 07960  
(201) 285-6200

**OCEAN COUNTY**

Susan Herbert, Coordinator  
Office of Victim-Witness Advocacy  
Ocean County Prosecutor's Office  
CN 2191, Court House  
Toms River, New Jersey 08754  
(201) 929-2027

**PASSAIC COUNTY**

Margarita Rodriguez, Coordinator  
Office of Victim-Witness Advocacy  
Passaic County Prosecutor's Office  
77 Hamilton Street  
Paterson, New Jersey 07505  
(201) 881-4887

**SALEM COUNTY**

Paris Baeriswyl, Coordinator  
Office of Victim-Witness Advocacy  
Salem County Prosecutor's Office  
Court House  
Salem, New Jersey 08079  
(609) 935-7510

**SOMERSET COUNTY**

Alyce Vornlocker, Coordinator  
Office of Victim-Witness Advocacy  
Somerset County Prosecutor's Office  
Administration Building  
P.O. Box 3000  
Somerville, New Jersey 08876  
(201) 231-7100

**STATE OFFICE OF VICTIM-WITNESS ADVOCACY**

Pamela J. Fisher, Chief  
Pamela J. Hamilton, Training Coordinator  
State Office of Victim-Witness Advocacy  
Division of Criminal Justice  
25 Market Street, CN-085  
Trenton, New Jersey 08625  
(609) 984-3849

**SUSSEX COUNTY**

Linda J. Quince, Coordinator  
Office of Victim-Witness Advocacy  
Sussex County Prosecutor's Office  
4 High Street  
Newton, New Jersey 07860  
(201) 383-1570

**UNION COUNTY**

Patricia Witt, Coordinator  
Office of Victim-Witness Advocacy  
Union County Prosecutor's Office  
Administration Building  
Elizabeth, New Jersey 07207  
(201) 527-4595

**WARREN COUNTY**

Carol Buxton, Coordinator  
Office of Victim-Witness Advocacy  
Warren County Prosecutor's Office  
Court House  
Belvidere, New Jersey 07823  
(201) 475-2663

## GLOSSARY OF TERMS

**appeal** — the request that a court with appellate jurisdiction reviews the judgement, decision, or order of a lower court and set it aside (reverse it) or modify it; also the judicial proceedings or steps in judicial proceedings resulting from such a request.

**arraignment** — a court proceeding in which an offender is formally accused of a crime.

**bail** — a monetary or other security given to insure the appearance of the defendant at every stage of the proceedings.

**commutation** — substitution or change; the substitution of a lesser penalty or punishment for a greater one, such as from death to life imprisonment, or from a longer term to a shorter one.

**criminal justice system** — a term describing the various components of criminal justice, i.e., police, prosecutor, courts and corrections.

**disposition** — the sentence the defendant receives.

**grand jury** — a body of people (generally 23 in number) drawn, selected, and summoned according to law to serve as a constituent part of a court of criminal jurisdiction with the duty to receive complaints and accusations in criminal cases, hear the evidence given on the part of the State and make bills of indictment in cases where the grand jurors believe a trial is necessary.

**indictment** — a formal written charge returned by a grand jury charging a person with certain crimes and requiring the person to answer the charges in court.

**plea negotiation** — a process in which the State and the defendant agree that the defendant will plead guilty to some charges in an indictment and will waive the right of trial by jury in exchange for the dismissal of other charges.

**pre-trial intervention** — a program whereby certain defendants are admitted to a supervisory program for a specified period of time and upon satisfactory completion the charges are dismissed.

**remand** — to send back, as for further deliberation.

**restitution** — act of making good, or of giving the equivalent for, any loss, damage or injury.

**victim compensation** — a program which distributes monetary remuneration to victims usually for counseling and uninsured medical bills.

**victim-witness reception center** — a room where witnesses wait to testify.

**FOOTNOTES**

1. U.S. Department of Justice, National Institute of Justice, When the Victim is a Child, by Debra Whitcomb, Elizabeth R. Shapiro and Lindsey D. Stellwagen (Washington, D.C. Government Printing Office, 1985).
2. Helen E. Dent and Geoffrey M. Stephenson, "An Experimental Study of the Effectiveness of Different Techniques of Questioning Child Witnesses," in British Journal of Social and Clinical Psychology, (1979):41; citing W. Stern, "The Psychology of Testimony," in Journal of Abnormal and Social Psychology, Vol. 34 (1939): 3-20.
3. Morton Bard and Dawn Sangrey, The Crime Victim's Book. New York, N.Y., Brunner/Mazel, Inc., 1986.
4. Sgroi, Suzanne M. Handbook of Clinical Intervention in Child Sexual Abuse. Lexington, Mass. Lexington Books, 1982.
5. Ibid..
6. U.S. Department of Justice, National Institute of Justice, Assisting Child Victims of Sexual Abuse, by Debra Whitcomb. (Washington, D.C. Government Printing Office, 1982). pp.2-3.
7. Ibid.
8. Ibid.

# **Child Abuse and Neglect Cases in the Family Court**

**Prepared for  
Governor's Task Force  
On Child Abuse and Neglect**

# TABLE OF CONTENTS

I.	Introduction .....	1
II.	Child Abuse and/or Neglect Proceedings .....	2
	A. Representation of Parties .....	2
	B. Definition .....	2
	C. Jurisdiction .....	3
	D. Temporary Removal of the Child .....	3
	E. Hearings .....	4
	1. Preliminary Hearing .....	4
	2. Fact Finding Hearing to Determine Abuse or Neglect .....	5
	3. Dispositional Hearing .....	5
	F. Notice .....	6
	G. Evidence .....	6
III.	Child Placement Review Proceedings .....	8
	A. Representation of Parties .....	8
	B. Jurisdiction .....	8
	C. Reviews .....	8
	D. Notice of Reviews .....	8
	E. Summary Hearings .....	8
	F. Notice of Hearing .....	9
	G. Special Reviews .....	9
IV.	Termination of Parental Rights and Guardianship Proceedings .....	10
	A. Representation of Parties .....	10
	B. Grounds for Termination of Parental Rights and Guardianship .....	10
	1. Voluntary Surrender of Custody .....	10
	2. Statutory Involuntary Termination of Parental Rights .....	10
	3. Case Law Defining Best Interest for Termination of Parental Rights .....	11
	C. Persons Who May Originate Proceedings .....	12
	D. Notice of Proceedings .....	12
	E. Discovery .....	12
	F. Interlocutory Orders .....	13
	G. Standard of Proof .....	13
	H. Evidence .....	13
	I. Disposition .....	14

## **I. INTRODUCTION**

Most of the cases which result from substantiated findings of abuse or neglect and which require social, health, or other treatment and rehabilitative services, never go to court since the children's parents or guardians agree to the plan of the agency, usually the Division of Youth and Family Services. However, when the agency and the parent or guardian are not able to agree, often in the most serious cases, or when the offender denies the allegation, the matter may be presented to a court for resolution. The Family Part of the Chancery Division, Superior Court of New Jersey, is the arena for such case decisions.

Cases involving children who appear to be in need of protection come into this civil court in three contexts:

1. to determine whether children fit the definition of an "abused or neglected child,"
2. to review placements out of the child's home, and
3. to terminate parental rights.

The latter is the ultimate step when it is being argued that it is not in the child's best interests ever to reunite with the parent or guardian. Frequently a combination of the above issues will pertain to an individual child and family. In addition, a proceeding under the Child Placement Review Act applies to all of the many cases in which out of home placements result from parent-agency agreements rather than court orders.

The following text describes the nature of the civil, family court proceedings dealing with abused and neglected children. It summarizes the New Jersey statutory law as to how the cases are to be filed, the appropriate way they should proceed in court, and the rights of the various parties involved. You will also find references to the most important decisions of New Jersey courts on these points. This material is reprinted from The Pro Bono Attorney's Manual: A guide to attorneys representing New Jersey children and parents in child welfare cases, by Ceil Zalkind, Esq. It appears in this manual by permission of the publisher, the Association for Children of New Jersey, a major, statewide, non-profit, child advocacy organization, and Ms. Zalkind, the Association's Assistant Director.

## **II. CHILD ABUSE AND/OR NEGLECT PROCEEDINGS**

### **A. REPRESENTATION OF PARTIES**

In a child abuse or neglect proceeding, the state agency, the Division of Youth and Family Services, is represented by a Deputy Attorney General. The parents of the child are entitled to representation of counsel under **NJSA 9:6-8.43**. An indigent parent may apply for an attorney through the Department of the Public Advocate which, by regulation, provides that such cases are handled by the Office of the Public Defender. However, as the child must also be represented by a law guardian employed by the Department of the Public Advocate, a conflict arises in as much as the Public Advocate through the Office of the Public Defender cannot represent more than one party within a family. To address this conflict **NJSA 9:6-8.21** also provides that if an indigent parent or guardian is involved, a private, independent attorney from the pool list of the Office of the Public Defender may be appointed to represent the parent or guardian and thus eliminate conflicts of interest.

Unlike a guardianship procedure where a child may have appointed counsel, a minor who is the subject of a child abuse and neglect proceeding must be represented by a law guardian to protect his interests and express his wishes to the court. A law guardian is defined by statute in **NJSA 9:6-8.21 (e)** as an attorney admitted to practice in New Jersey regularly employed by the Department of the Public Advocate. All the minor children in a family are usually represented by one law guardian if their interests do not conflict. In the event of allegations of involvement in the abuse by a sibling who is also a subject of the same court complaint, or other conflict of interest, a pool attorney is assigned to serve as law guardian for one or more of the children.

### **B. DEFINITION**

The definition of child abuse and neglect is included in **NJSA 9:6-8.21 (c)**:

Abused or neglected child means a child less than 18 years of age whose parent or guardian, as herein defined,

1. Inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;
2. Creates or allows to be created a substantial or ongoing risk or physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ, or;
3. Commits or allows to be committed an act of sexual abuse against the child;
4. Or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof,

including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court; or

5. Who has been willfully abandoned by his parent or guardian, as herein defined.

Additional definitions of child abuse and neglect may also be found in **NJSA 9:6-1** and **9:6-8.9** and in the New Jersey Administrative Code 10:129 - 1 et seq.

### **C. JURISDICTION**

Under New Jersey law, a parent may face both civil and criminal proceedings in regard to an allegation of child abuse and neglect. Pursuant to **NJSA 9:6-8.22** and **8.24**, the Family Part of Superior Court in each county has jurisdiction of all non-criminal proceedings involving alleged cases of child abuse and neglect. The court is charged with the immediate protection of the child and commencement of cases of child abuse and neglect must be its first priority.

Pursuant to **NJSA 9:6-8.25**, upon receipt of a complaint the family part shall forward a copy of the complaint to the county prosecutor who shall take whatever action is deemed necessary. The county prosecutor is not precluded from bringing an action against a parent or guardian under **NJSA 2C:24-4** even though the child is the subject of proceedings in the family part. Application of Phillips, 141 NJ Super. 72 (App. Div. 1976). The family part may continue the proceeding in regard to the child after referral of the case to criminal court under **NJSA 9:6-24 (d)** and has the authority to enter any preliminary order necessary to protect the interests of the child pending a final order from the criminal court.

### **D. TEMPORARY REMOVAL OF THE CHILD**

New Jersey law allows the temporary removal of a child from his home by the police, the Division of Youth and Family Services or other individual or institution if there is reasonable cause to suspect that the child's life or health is in imminent danger. Under certain circumstances, such temporary removal may be made without parental consent or court order. The individuals or agencies who may remove a child and the circumstances for such removal are defined in statute as follows:

1. A police officer or agency or institution or individual may temporarily remove a child from the place where he is residing with the consent of his parent or other person legally responsible for his care, if there is reasonable cause to suspect that the child's life or health is in imminent danger (**NJSA 9:6-8.27**).
2. By order of the Family Part of Superior Court prior to a preliminary hearing if the parent has refused to consent to temporary removal, the child appears to suffer from the abuse or neglect of his parent or guardian so that his immediate removal is necessary to avoid imminent danger to his life or health, and there is not enough time to hold a preliminary hearing (**NJSA 9:6-8.28**).
3. By the police, designated employee of the Division of Youth and Family Services or County Department of Probation without an order pursuant to **N.J.S.A. 9:6-8.28** and without the consent of the parent or guardian regardless of whether the parent or guardian is absent, if the child is in such condition that his continuance in such place or residence or in the care and custody of the parent or guardian presents

an imminent danger to the child's life or health and there is insufficient time to apply for a court order (NJSA 9:6-8.29).

4. By a physician or hospital who may keep a child they are treating in their custody temporarily without parental consent if there is imminent danger to the child's life or health and there is insufficient time to apply for a court order (NJSA 9:6-8.16 and 8.29).

If a child has been removed from the place where he is residing without a court order pursuant to NJSA 9:6-8.27 and 8.29, the Division is to make every reasonable effort to inform the parent or guardian that such emergency removal has occurred (NJSA 9:6-8.30a) and must file a complaint on the first court day after such removal has occurred (NJSA 9:6-8.30b). The court will hold a hearing on the next court day to determine whether the child's interests require protection pending a final order of disposition (NJSA 9:6-8.31). In addition, the Division is authorized to consent to any necessary medical care or treatment of the child (NJSA 9:6-8.30c).

If the child has been taken into protective custody pursuant to NJSA 9:6-8.16, the physician or director of the hospital is required to immediately report this action to the Division of Youth and Family Services (NJSA 9:6-8.17). The Division must investigate such reports immediately (NJSA 9:6-8.18) and may apply for a court order placing the child under its care and supervision pursuant to NJSA 30:4C-12 or NJSA 9:6-8.54.

Any person or institution acting in good faith in the removal or keeping of a child pursuant to these statutory provisions shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or keeping (NJSA 9:6-8.29 (d)).

## **E. HEARINGS**

Under New Jersey law, a preliminary hearing, a fact-finding hearing and a dispositional hearing are held by the court to determine the existence of child abuse and neglect and to make a final order of disposition regarding the child's protection. A preliminary hearing follows the temporary removal of a child from his home whether or not the removal was made pursuant to parental consent or court order. The purpose of the preliminary hearing is to determine whether the child's interests require protection, either through out-of-home placement or through in-home supervision of the child in his parent's or guardian's home pending final disposition. A fact-finding hearing is then held to determine the existence of child abuse and/or neglect. The purpose of the dispositional hearing is to determine the final order in the case.

### **1. PRELIMINARY HEARING**

Pursuant to NJSA 9:6-8.31, when a child has been removed without court order, the court shall hold a hearing on the next court day to determine whether the child's interests require protection. In cases other than those in which removal was made without a court order or in which the child was retained in custody by a doctor or hospital, the court may order a hearing at any time after the complaint is filed to determine whether the child's interests require protection pending a final disposition.

Upon such hearing, the court may issue a preliminary order to continue the placement

of the child from his home, may issue a preliminary order of protection pursuant to **NJSA 9:6-8.55** to set forth reasonable conditions of behavior by the parent or guardian responsible for the child's care, or may return the child to the care of his parent or guardian under supervision of the Division pursuant to **NJSA 9:6-8.53**. The court may also authorize a physician or hospital to provide medical or surgical treatment if, such procedures are necessary to safeguard the child's life or health (**NJSA 9:6-8.31 (e)**).

In all cases involving child abuse or neglect, the court shall order an examination of the child by a physician appointed or designated for the purpose by the Division pursuant to **NJSA 9:6-8.3 (g)**.

## **2. FACT-FINDING HEARING TO DETERMINE ABUSE OR NEGLECT**

A proceeding to determine the existence of child abuse and neglect is initiated by the filing of a complaint in which facts sufficient to establish that a child is abused or neglected are alleged (**NJSA 9:6-8.33**).

Pursuant to **NJSA 9:6-8.34**, a proceeding to determine abuse or neglect may be originated by the filing of a complaint by:

1. A parent or other person interested in the child;
2. An authorized agency, association, society, institution or the Division of Youth and Family Services;
3. A police officer;
4. A person having knowledge to believe a child is abused or neglected;
5. A person on the court's direction;
6. The county prosecutor.

In cases where a private individual is unwilling or reluctant to file a complaint, he or she may request the Division to initiate a complaint in his stead.

## **3. DISPOSITIONAL HEARING**

The dispositional hearing provided within **NJSA 9:6-8.46 (c)** is a hearing to determine the placement of the child and disposition of the case. For this hearing, any material and relevant evidence may be admitted.

At the conclusion of a dispositional hearing the court shall enter one of six possible dispositions pursuant to **NJSA 9:6-8.51**:

- a. Suspension of judgment (**NJSA 9:6-8.52**);
- b. Release of the child to the custody of his parent(s). Such release may be made under the continued in-home supervision of the Division (**NJSA 9:6-8.53**);
- c. Placement of the child for an initial period of 18 months. Such placement may

be extended by the court for additional periods of one year each. The Division must submit a report to the court at the end of each term of placement providing data and making recommendations, as necessary. The court may hold a hearing concerning the need for continuing the placement (**NJSA 9:6-8.54**).

- d. Order of protection to set forth reasonable conditions of behavior to be observed by a parent or guardian of the child. For this disposition, the child remains in the custody of the parent or guardian (**NJSA 9:6-8.55**);
- e. Placement of the respondent on probation (**NJSA 9:6-8.56**).
- f. Order mandating therapeutic services (**NJSA 9:6-8.58**).

The above orders may be modified, set aside or vacated upon the court's applications or application of the county prosecutor, law guardian or respondent's attorney for good cause shown and with proper notice (**NJSA 9:6-8.59**). In addition, **NJSA 9:6-8.60** authorizes that a petition to terminate placement may be brought by the child's parents, guardian or any interested persons acting on behalf of the child.

Pursuant to **NJSA 9:6-8.50 (e)**, the court may also suspend any dispositional hearing indefinitely. It may, however, order that the Division provide such services as are appropriate to protect the child and to rehabilitate and improve family life.

## **F. NOTICE**

Pursuant to **NJSA 9:6-8.41**, a hearing may not commence unless a parent or guardian is present at the hearing or has been served with a copy of the complaint. If the parent or guardian is not present, the court must determine that all reasonable efforts have been made to effect service pursuant to **NJSA 9:6-8.38** and **9:6-8.39**.

If the parent or guardian is not present, the court may hear the complaint only if the child is represented by a law guardian. If the parent later requests a rehearing, the court shall grant the motion on an affidavit showing parental relationship unless the court finds that the parent willfully refused to appear at the hearing (**NJSA 9:6-8.42**).

Pursuant to **NJSA 9:6-8.43**, the parent or guardian has the right to request an adjournment to retain and consult with counsel. An indigent parent or guardian may be appointed counsel as described in section II A of this manual.

## **G. EVIDENCE**

The evidentiary standard for the preliminary, fact-finding and dispositional hearings are defined pursuant to **NJSA 9:6-8.46** as follows:

1. Proof of abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of, or the responsibility of, the parent or guardian, and
2. Proof of injuries sustained by a child or of the condition of a child of such a nature as would ordinarily not be sustained or exist by reason of the acts or omissions of the parent or guardian shall be prima facie evidence that a child of, or who is

the responsibility of, such person is an abused or neglected child, and

3. Any writing, record or photograph, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a child in an abuse or neglect proceeding of any hospital or any other public or private institution or agency, if the judge finds that it was made in the regular course of the business, and
4. Previous statements made by the child relating to any allegations of abuse or neglect shall be admissible in evidence; provided, however, that no such statement, if uncorroborated, shall be sufficient to make a fact-finding of abuse or neglect.

In a fact-finding hearing to determine child abuse and/or neglect, the court's decision must be based on a preponderance of the evidence and any competent, material and relevant evidence may be admitted. In a dispositional hearing and during all other stages of a proceeding under this act, only material and relevant evidence may be admitted.

### **III. CHILD PLACEMENT REVIEW PROCEEDINGS**

#### **A. REPRESENTATION OF PARTIES**

Although pro bono counsel is not appointed for indigent parents at child placement review board meetings or hearings, the review process is an integral part of the child welfare system and should be included as part of this manual. Both involuntary placements based upon court order and voluntary placements based upon the consent of the parent are reviewed periodically by a citizen review board which functions as an arm of the Family Part of the Chancery Division of Superior Court in each county pursuant to **NJSA 30:4C-57**. The board's recommendations are reviewed by the court which issues an order regarding the child's placement.

Parents are afforded an opportunity to attend the meetings of the child placement review board and any hearings the court may schedule. Counsel may also attend the reviews and hearings to represent the parent(s) but attorneys are not appointed for indigent parents.

#### **B. JURISDICTION**

Pursuant to **NJSA 30:4C-53**, the Division must file a notice with the Family Part of the Chancery Division of the Supreme Court within 72 hours after the placement of a child outside his home pursuant to a voluntary agreement. The notice must be in the form of a complaint and must include the date and type of placement and the reasons for such placement. This serves to establish a continuing jurisdiction of the court over the placement of the child which ceases upon receipt of notification of the return home or alternative permanent placement of the child.

#### **C. REVIEWS**

Reports of voluntary placements must be submitted to the court by the Division within 45 days of the initial placement and reviewed by the board within 15 days of the receipt of the report. Reviews of involuntary placements are conducted by the board after receipt of the placement plan which must be submitted by the Division within 45 days of the initial court order. The board must complete its review within 15 days. Periodic reviews of both voluntary and involuntary placements shall occur at least annually thereafter (**NJSA 30:4C-58**).

#### **D. NOTICE OF REVIEWS**

Pursuant to **NJSA 30:4C-59**, the board shall provide written notice of the date, time and place of each review at least 15 days in advance to the parents or legal guardian, the child, the temporary caretaker, the Division or any person or agency the board feels has an interest in the child. These parties are entitled to attend the review and/or to submit written information to the board.

#### **E. SUMMARY HEARINGS**

Once it reviews the board's report and recommendations, the court must issue an order concerning the child's placement according to the best interests of the child. The court

may decide to order to return the child to his home, to order continued placement for the child either in accordance with the current placement plan or with a new plan to be developed by the Division or to order that the Division begin proceedings to terminate parental rights.

Pursuant to **NJSA 30:4C-61**, the court may schedule a summary hearing in the following circumstances:

1. The court has before it conflicting statements of material fact which it cannot resolve without a hearing; or
2. A party entitled to participate in the proceedings requests a hearing; or
3. The court concludes that the interests of justice require that a hearing be held.

#### **F. NOTICE OF HEARING**

Pursuant to **NJSA 30:4C-61 (c)**, notice of summary hearing, shall be provided at least 30 days in advance to the following persons:

1. The Division;
2. The child;
3. The child's parents or legal guardian;
4. The review board; and
5. The temporary caretaker.

The Division, the child, the child's parent or legal guardian and the review board shall be entitled to participate in the proceedings. The motion must include a statement regarding the dispositional alternatives of the court.

#### **G. SPECIAL REVIEWS**

A special review by the board and the court is necessary if the Division proposes to return a child home when the approved placement plan specifies continued placement or termination of parental rights. Under **NJSA 30:4C-61.1**, the board must receive notice of the change in plan and conduct a special review within 15 days. The board shall provide written notice of a special review to all interested parties pursuant to **NJSA 30:4C-59** except that the 15 day advance notice requirement is waived.

The board must submit its report to the court within 5 days of the special review and the court shall promptly review the board's recommendations and issue an order concerning the child's placement. The Division cannot return the child home unless the court approves the proposed action (**NJSA 30:4C-61.1 (e)**). In those situations, the court retains jurisdiction over the placement of the child after the child has been returned home in order to ascertain the continued health and welfare of the child.

## **IV. TERMINATION OF PARENTAL RIGHTS AND GUARDIANSHIP PROCEEDINGS**

### **A. REPRESENTATION OF PARTIES**

As in child abuse and neglect proceedings, the state agency, the Division of Youth and Family Services, is represented by a Deputy Attorney General for guardianship proceedings.

A pro bono attorney may be appointed to represent the defendant parent(s). If the parents have separate interests in the child or if there are both a legal and a putative father, individual attorneys may be appointed for each party.

Although the appointment of pro bono attorneys is not mandated by statute, there is specific case law for such appointments. Crist v. DYFS, 135 NJ Super. 573 (App. Div. 1975) provides for the appointment of counsel to indigent parents. There may also be appointed counsel in adoption cases brought by adoption agencies other than the Division or by the parties in a private adoption.

Similarly, a pro bono attorney may be appointed to represent the child as a guardian ad litem. DYFS v. Wandell, 155 NJ Super. 302 (Juvenile and Domestic Relations Court 1977) provides for the appointment of a guardian ad litem for the minor child. There is no mandate that a law guardian be appointed for the child in a guardianship case and a guardian ad litem is often appointed to represent the child's interest.

The assignment of pro bono attorneys is handled differently in the various counties. Some appointments are made by reference to a list maintained by the local bar association; however, in Essex County the attorneys are assigned in alphabetical order directly out of the Lawyer's Diary. The pro bono attorney who is court-appointed serves without compensation.

### **B. GROUNDS FOR TERMINATION OF PARENTAL RIGHTS AND GUARDIANSHIP**

Standards and procedures for termination of parental rights, guardianship and adoption proceedings are found both in Title 9 and Title 30 of the New Jersey Code. As in authority for placement, a parent's or parents rights may be severed either voluntarily or involuntarily.

#### **1. VOLUNTARY SURRENDER OF CUSTODY**

A parent may voluntarily surrender custody of his child and consent to adoption pursuant to NJSA 9:3-41 and NJSA 30:4C-23. Such surrenders, if signed willingly and knowingly by the parent and witnessed by a notary public, are valid and binding regardless of the age of the parent. Surrenders of custody are irrevocable. No further court action is required to terminate parental rights and to place the child for adoption.

#### **2. STATUTORY INVOLUNTARY TERMINATION OF PARENTAL RIGHTS**

The Division, or other agency or individual, may also seek to terminate parental rights without the consent of the parent if it is believed to be in the best interest of the child. The basis for termination of parental rights and subsequent guardianship are found in NJSA 30:4C-15 which states that a petition for guardianship may be instituted upon four separate independent grounds:

- a. It appears that a court wherein a complaint has been proffered as provided in chapter 6 of title 9 of the Revised Statutes, has entered a conviction against the parent or parents, guardian, or person having custody and control of any child because of abuse, abandonment, neglect of or cruelty to such child; or
- b. It appears that any child has been adjudged delinquent by a court of proper jurisdiction in this State; or
- c. It appears that the best interests of any child under the care of custody of the Division of Youth and Family Services require that he be placed under guardianship; or
- d. It appears that a parent or guardian of a child, following the acceptance of such child by the Division of Youth and Family Services pursuant to sections 11 or 12 of this act, or following the placement of commitment of such child in the care of an authorized agency, whether in an institution or in a foster home, and notwithstanding the diligent efforts of such agency to encourage and strengthen the parental relationship, has failed substantially and continuously or repeatedly for a period of more than 1 year to maintain contact with and plan for the future of the child, although physically and financially able to do so.

Pursuant to the statute, the petition may be filed with the Family Part of the Chancery Division of Superior Court in the county where the child is residing at the time of the filing of such petition. These grounds individually, however, may not be sufficient for a guardianship order to be issued and the court retains broad discretion to accept or reject the petition. (See standard of proof in Section IV G of this manual.)

### **3. CASE LAW DEFINING BEST INTEREST FOR TERMINATION OF PARENTAL RIGHTS**

In general, the majority of termination of parental rights cases initiated by the Division of Youth and Family Services are brought under the best interest provision of **NJSA 30:4C-15 (c)**. The interpretation of "best interests" in a termination of parental rights case was recently set forth by the New Jersey Supreme Court. In **D.Y.F.S. v. A.W. and R.W.**, 103 N.J. 313 (1986), the Court defined a four-part test for termination of parental rights:

- a. The child's health and development have been or will continue to be seriously impaired by the parental relationship;
- b. The parents are unable or unwilling to eliminate the harm and delaying permanent placement will add to the harm;
- c. The court has considered alternatives to termination;
- d. The termination of parental rights will not do more harm than good.

Psychological damage to the child must be considered as well as physical abuse or neglect. The absence of abuse or neglect is not determinative of the custody issues but rather the child's psychological well-being must be given serious consideration. **In re Guardianship of R.G. and F.**, 155 NJ Super. 186 (App. Div. 1977).

Although not specified in the statute, the best interest provision of NJSA 30:4C-15 (c), has also been used to seek termination of parental rights based upon the psychological bonding of the child to his foster parent or temporary caretaker. Some courts in the state

have terminated parental rights if it can be shown through psychological evaluation or other expert testimony that the child has become psychologically bonded to his temporary caretaker, that he or she will suffer harm if removed from his temporary caretaker and that his/her caretaker would adopt the child should he/she be freed for adoption. See Sorentino v. Family and Children's Soc., Etc., 74 N.J. 313 (1977).

### **C. PERSONS WHO MAY ORIGINATE PROCEEDINGS**

A guardianship petition may be filed by any person, association or agency or by the Division of Youth and Family Services in the circumstances set forth in **NJSA 30:4C (c) or (d)**.

### **D. NOTICE OF PROCEEDINGS**

Upon the filing of the petition, proper notice requirements pursuant to the court rules must be followed. R.4:4-4(1) and (2) allows for service of complaints either through personal service or optional mailed service if the served party answers or otherwise responds to such service. Service is required upon the mother and legal or putative father.

In addition to service upon the parent(s) or individual having custody and control over the child, **NJSA 30:4C-17** requires that if a guardianship petition is filed by a party other than the Division of Youth and Family Services, the Division must be served with the petition and notice of hearing 20 days prior to the hearing. Service is made according to **R. 4:4-4**.

### **E. DISCOVERY**

Pertinent information, such as reports of the Division and medical or psychological evaluations of the child or parent(s), will be included with the complaint and other court papers sent to the defendant's counsel. If further information is needed, the pro bono attorney may have access to the Division's case record. Arrangements to review the record in the Division district office may be made with the Deputy Attorney General representing the case.

If additional or independent psychological, medical or other evaluations of the parent(s) are needed, the pro bono attorney may ask the court to order such evaluations to be completed. In most instances, the Division is asked to pay the cost of these evaluations.

The pro bono attorney may also have access to the parties in the case. Any questions regarding represented parties, such as the child who is the subject of the case, must be referred to the Deputy Attorney General handling the case.

If a pro bono attorney is appointed as a guardian ad litem for the child, he or she is expected to meet with and to interview the child. Since children rarely appear in court for termination hearings, the guardian ad litem's role is to represent the best interests of the child. Arrangements to meet the child should be made first through the Deputy Attorney General handling the case.

## **F. INTERLOCUTORY ORDERS**

Prior to an order of guardianship, the court may provide for an interlocutory order of temporary custody pending the final hearing. As provided in **NJSA 30:4C-17**, the court may commit the child to the Division pending final disposition of the case.

## **G. STANDARD OF PROOF**

As a matter of federal constitutional imperative, the standard of proof required to be met by the plaintiff in an action to terminate parental rights is clear and convincing evidence. **Santosky v. Kramer**, 102 U.S. 1388 (1982). See also **Youth and Family Services Division v. Torres**, 185 NJ Super. 234 (Juvenile and Domestic Relations 1980) aff. 185 NJ Super. 182 (App. Div. 1982); **J.E.V.M.F.**, 157 NJ Super. 478 (App. Div. 1978); **In Re J.R. Guardianship**, 174 NJ Super. 211 (App. Div. 1980); **In Re C.W., N.W., and N.F. Guardianship**, 183 NJ Super. 47 (App. Div. 1982).

## **H. EVIDENCE**

The court in **In Re Cope**, 106 NJ Super. 336 (App. Div. 1969) also addressed the issue of competent evidence in termination of parental rights and guardianship proceedings and concluded that under particular circumstances certain hearsay evidence is permissible. The court set forth the following guidelines:

[5] In cases of this type the Division should be permitted to submit into evidence, pursuant to Evidence Rules 63 (13) and 62 (5), reports by Division staff personnel (or affiliated medical, psychiatric, or psychological consultants), prepared from their own firsthand knowledge of the case, at a time reasonably contemporaneous with the facts they related, and in the usual course of their duties with the Division.

Reports of this type, prepared by the qualified personnel of a state agency charged with the responsibility for overseeing the welfare of children in the State, supply a reasonably high degree of reliability as to the accuracy of the facts contained therein. The parent remains free to offer evidence contradicting any statement present in such reports and, of course, the trier of the facts may in his discretion call for live testimony on any point.

[6] In the event that such reports contain conclusions drawn from the facts stated in them, the reports may still be admitted, but they should be treated as no more than prima facie evidence of the validity of the conclusions contained in them. If the parent produces evidence refuting such conclusions, petitioner would then have the burden of producing live testimony in order to establish their validity.

Rule **R 5:12-4 (d)** also specifically provides for the admission of such evidence:

(d) The Division shall be permitted to submit into evidence reports by staff personnel or professional consultants. Conclusions drawn from the facts stated therein shall be treated as prima facie evidence subject to rebuttal.

If the defendant presents no rebuttal, the Division report is accepted as the only available evidence on that person or issue. **In Re Guardianship of R.G. and F.**, 155 NJ Super.

186 (App. Div. 1977). If additional information or clarification is desired by the court, examinations and investigations may be ordered at any time during the pending of the matter pursuant to **R. 5:12-4 (d)**.

## **I. DISPOSITION**

The New Jersey Supreme Court has promulgated special rules applicable to proceedings brought by the Division under **NJSA 30:4c-1 et seq.** which require expeditious disposition of such cases. **R. 5:12-1 et seq.** govern termination and guardianship proceedings. In particular, **R. 5:12-4 (a)** requires prompt disposition and directs that upon the return date the court shall proceed to hear the matter forthwith. **R. 5:12-2 (b)** also requires the court to have due regard for the expeditious disposition of such matters when adjournments are requested.

Pursuant to **NJSA 30:4C-20**, if the court is satisfied that the best interest of the child require that he be placed under guardianship, the court shall order termination of parental rights and commit the child to the guardianship of the Division which shall become the legal guardian of the child for all purposes, including the placement of the child for adoption. **NJSA 30:4C-22** further defines such guardianship as full and complete for all purposes and the Division assumes complete guardianship of the person and property of the child.

If a petition for guardianship is denied at the final hearing, subsequent to the issuance of an interlocutory order granting custody to the Division, the child shall be returned by the Division to the parent or individual who retained custody or control over the child. The child may be placed with an interested party pursuant to an application by the Division if the parents of the child cannot be located or for other reasons satisfactory to the court are unable to accept the child pursuant to **NJSA 30:4C-20**. However, if the child is the subject of an outstanding order of placement under **NJSA 9:6 et seq.**, the child may not be returned to the parent(s) without further proceedings under that section.

# **Guidelines in Conducting Mental Health Evaluations of Child Sexual Abuse**

**Prepared For  
Governor's Task Force  
On Child Abuse and Neglect**

**By  
Anthony D'Urso, Psy.D.  
Marsha Heiman, Ph.D.  
Michael Fiore, Ph.D.  
Martha Haldapoulus, M.A.**

## TABLE OF CONTENTS

I	Introduction .....	1
II	Multidisciplinary Approaches to the Validation, Prosecution and Treatment of Child Sexual Abuse .....	1
III	Forensic Psychological Assessment .....	2
	A. Role of the Mental Health Professional .....	2
IV	The Child/Family Assessment .....	2
	A. Evaluation Issues .....	2
	B. Evaluation Procedures .....	5
	C. Children's Interview .....	6
	D. Validation Criteria for the Child .....	10
	E. Family Assessment .....	12
V	Formal Psychological Testing .....	13
	A. Assessment Process .....	13
VI	Clinical Validation of Child Sexual Abuse .....	15
VII	Report Writing .....	18
VIII	Preparing the Child Victim and Family for Treatment .....	20
IX	Expert Testimony .....	20
X	Credentialing .....	24
XI	Bibliography: Assessing Allegations of Child Sexual Abuse .....	24

## **I. INTRODUCTION**

The purpose of the mental health evaluation chapter of this guide is to provide the mental health clinicians with a framework for conducting evaluations in cases of child sexual abuse. This guide provides a comprehensive outline of tests devoted to conducting evaluations, forensic evaluations, the dynamics of child sexual abuse and sexual offenders. The Bibliography provides a complete review of practices and procedures.

The child interview section focuses predominantly on young children. This focus was employed since it best exemplified the many areas of concern in a child abuse evaluation. Certainly, the issues raised can be applied to evaluations of older children who are victims of physical abuse and neglect. Specific criteria for evaluation of physical abuse and neglect can be found in the bibliography provided. In later versions, the authors hope for input from other practitioners to either expand the current chapter to other forms of abuse or to refine the data currently presented.

## **II. MULTIDISCIPLINARY APPROACHES TO THE VALIDATION, PROSECUTION AND TREATMENT OF CHILD SEXUAL ABUSE**

Sexual abuse, as an offense against children, is violent in nature and effect. The trauma of the immediate episode(s) is often compounded by the accompanying erosion of family support systems. The victim of the sexual abuse may be perceived by parents or family members as having contributed in some way to facilitating the abuse. The familial sexual abuse victim is typically extracted from the family constellation, thereby removing the child's primary support systems.

Traumatized child victims do not fare as well in a court system as adult witnesses. The victim may be unwilling or unable to access details of the offense. The erosion of the support system adds a sense of desperation to their circumstances. Multiple investigative interviews with criminal justice, child protective services, education and mental health professionals diminish the victim's stamina to confront their interpersonal issues as well as their ability to meet expectations of the criminal justice system. Very often, victims receive inadequate support and mixed messages from the judicial system, which detract from their confidence in the system's ability to protect them. A traumatized victim may experience involvement with the criminal justice system as a revictimization. The judicial system was not designed with the needs of the child victim in mind. From the prosecutorial perspective, the focus is invariably trained upon the nature of the offense and the offender. The administration of justice via the courts unquestionably supports the rights of the defendant as a primary tenet. Although a gradual support of the victim/witness has occurred via legislative activity, the criminal justice system has not appropriately addressed the multitude of sophisticated issues which often impact upon the victim/witness.

Given the complex nature of child sexual abuse, an acceleration in the evaluation and referral process becomes critical. Traumatized individuals may require crisis intervention and considerable advocacy after reporting the crime. Clearly, the victims are more likely to cooperate with mental health services at the time of extreme emotional pain. The development of the relationship between the victim and the mental health professional shortly after the traumatic event will enhance the likelihood of follow through and ongoing treatment/service. However, there are difficult issues in coordinating the provision of victim services with prosecutorial activity. A major problem is the absence of a formal mechanism to communicate to the victim the various roles and responsibilities of the criminal justice and human services professionals.

Multidisciplinary approaches to cases of child sexual abuse formalize mechanisms to bring the principal actors together. Collaborative case management enhances the coordination of resources and reduces the likelihood of friction and conflict that may arise from the contrast in philosophy and function. To that end, victim services would be better coordinated to insure continuity of support to the victim. An anticipated result of initiating a multidisciplinary approach is a faster case disposition. It is believed that inter-system coordination will reduce the length of time that it takes for a case to move to trial.

The victim's psychological resolution is the goal in any system involved with child victims. From the mental health perspective, resolution of the emotional and physical trauma becomes prominent. From the medical perspective, the healing of any physical trauma and the prevention of disease is critical. From a child protective perspective, risks of further sexual abuse, and/or psychological maltreatment, need to be limited. From an educational perspective, the resolution of the trauma allows the child to function at the appropriate academic levels. From the prosecutorial perspective, victim resolution occurs through the investigation, prosecution and sentencing for a crime. Though the goal of resolution is clear from all system perspectives, the facilitation of resolution from the varying needs of the victim and the system itself sometimes compete. Multidisciplinary approaches to child victims do not mean the mere sharing of information among different disciplines. Rather, multidisciplinary approaches result in the accumulation of more accurate data, quicker protection and intervention in the life of the victim, faster disposition and psychological resolution of a traumatic event.

### **III. FORENSIC PSYCHOLOGICAL ASSESSMENT**

The term "Forensic Psychological Assessment" is defined as the application of the principles and processes of psychological assessment to legal issues (Maloney, 1985). Cases of incestuous child sexual abuse typically involve criminal charges against the offenders. Cases of incestuous child sexual abuse may also involve civil litigation against the offending parent. Mental health professionals are called upon to provide the court with opinions regarding the validity of the child victim's allegations, the level of risk to the child, the ability of a non-offending parent to protect the child, the prognosis for rehabilitation of the offender, and the viability of reuniting the family. To address these questions, it is necessary that the mental health professionals have training and knowledge in both psychological and legal aspects of child sexual abuse.

#### **A. ROLE OF THE MENTAL HEALTH PROFESSIONAL**

It is recommended that the mental health professional be neutral and independent of all sides of the legal dispute including family members, defense attorneys, prosecutors and child protective services. The mental health professional is advised to assume the professional role of investigator (White, et al, 1987) and "fact finder" (Sgroi, 1982), with a focus on the best interests and protection of the child. The role of the mental health professional should not be confused with the role of judge or "trier" of fact. An evaluation team is recommended to facilitate unbiased decision making, and to prevent professional burnout. Mental health professionals who provide treatment in cases of child sexual abuse should not conduct evaluations to prevent potential conflict of interests.

### **IV. THE CHILD/FAMILY ASSESSMENT**

#### **A. EVALUATION ISSUES**

In evaluating reports of child sexual abuse, a clinician must balance both therapeutic

and legal needs. The goal is to create an environment which will support the child and maximize the information disclosed in a neutral and unbiased manner. MacFarlene and Krebs (1986) note:

Interviewers in the field have a grave obligation to be responsible in their use of leading questions and verbal reinforcements, and to provide only as much direction as children may need to overcome their fear and resistance to disclosure if they have been abused. It is a difficult process to articulate and often requires a fine balance between intrusion and restraint. In addition, an interview that may serve the best therapeutic interests of the child may be contraindicated because of legal ramifications. There are no easy answers when dealing with an issue that is both a crime and a mental health problem for children.

Interviewers need to be aware of their own influence over the child and sensitive to the special issues that arise in evaluating reports of sexual abuse. Listed below are several factors to consider and in some way address:

1) **Credibility**—Due to the increased numbers of reports of sexual abuse, particularly during divorce and custody settlements, concerns arise as to the credibility of the child's report. Gardner (1984, 1987) discussed how some children may be led or coached into fabricating reports of sexual abuse. Green (1986) suggests several characteristics to help differentiate true and false reports of child sexual abuse. True cases are distinguished by:

delayed, conflicted disclosures, often with retractions; disclosures usually accompanied by painful and depressive affect; child uses age appropriate sexual terminology; child initially reticent to discuss abuse with mother or others; child will rarely confront father with allegation, even with mother present; child usually fearful in father's presence, congruent with ideation unless molestation was gentle and nonthreatening; mothers are often depressed; child usually demonstrates signs and symptoms of child sexual abuse syndrome.

Interviewers need to be aware of the possibility of fabrications and make judgments about the validity of reports based on a holistic perspective, which takes into account the child's symptoms, the child's statements, the child's presentation style, the characteristics of the family and child which place them at risk for abuse, and other corroborating information. (These factors will be discussed in more detail in the section on validating criteria.)

2) **Fantasy**—Freud's initial clinical observations which were put forth in his "seduction theory" stated that at the root of all neuroses, particularly hysteria, was a traumatic, premature childhood sexual experience. Freud withdrew actual seduction as the etiological cause of neurosis and replaced it with an emphasis on forbidden, imagined desires and fantasies, known as the "Oedipal Complex." As such, accounts of sexual abuse which were originally believed by Freud to be repressed memories of real, externally imposed events were reinterpreted as unconscious fantasies elaborated in the service of the child's internal sexual/aggressive impulses and conflicts. This analytic tradition combined with societal need to deny abuse has led to much confusion over whether children's reports of abuse are fantasy material or based on reality.

Freud's notion of children, however, was often based on applying principles of adult psychology to children. For young children, nurturance and sexuality have not been sufficiently differentiated. Children's romantic interest in their parents does not automatically translate into their desiring and fantasizing about a sexual relationship with

a parent, particularly since children lack a developed concept and knowledge of sex. Conerly (1986) states: "It is certainly true that children fantasize, but they do not fantasize about sexual relationships with adults." (p.48). Mary de Young (1986) also notes that "while a child's fantasy is unquestionably rich and varied and includes both sexual and aggressive themes, several other developmental features restrain and shape these motifs." (p.552). She explains that the preoperational child does not have the mental structures needed for logical thought and hence, "this leaves the child dependent on actual experiences for producing images of fantasy." Furthermore, children's fantasies are characterized as reflective of wishful thinking, closely bound to the pleasure principle, and stress themes of mastery and competence, with the child as hero and as problem-solver, not as the victim. Taking into account these relevant developmental issues, Mary de Young (1986) suggests that:

"the more details a young child can give, the more negative in feeling the experience is that is being related, and the more the child describes sexual acts that exceed in maturity, sophistication, and ability that would be considered normal for the child's psychosexual level of development ... the more likely is the child to be describing real as opposed to imagined events." (p.553)

**3) Clarity**—Several questions have been raised about the degree to which children, particularly young children, can be clear about details of abuse and actually remember the events. Research on children's memory and ability to give eyewitness accounts, however, suggests that children are as capable as adults in recalling central, salient details of an event (Goodwin & Helgeson, 1986, Marvin, 1979, Terr, 1983). Since children do not have as developed cognitive skills, they are poorer at remembering certain peripheral details, such as time (when the abuse occurred) and frequency (how often the abuse occurred). For example, when one child was asked how often the abuse occurred, she responded, "I don't know, I didn't count." Some might even argue that adults are also poor at recalling peripheral information about events, but their inductive and deductive reasoning skills allow them to create the needed information. Therefore one should expect, when interviewing children, that salient and central information about the abuse (e.g., the identity of the abuser and type of abusive activities) will be the most reliable pieces of data and less subject to distortions, as opposed to more peripheral details.

**4) Consistency**—Another concern when interviewing children relates to the degree to which children can maintain a consistent story. It is not unusual for the disclosure of abuse to unfold over time, becoming more elaborated as the child feels safe to recall details of the experience. Also, if the child is interviewed multiple times, certain details may disappear while others may be stimulated. Multiple interviews have the potential to confuse the child, as well as, reduce and diminish the fresh and raw affect which is initially attached to the experience. Another common phenomenon which has been noted by Summit (1983) is the tendency for children to retract their statements, once they have disclosed abuse. Summit explains: "Whatever a child says about the sexual abuse she is likely to reverse it. Beneath the anger of impulsive disclosure remains the ambivalence of guilt and martyred obligation to preserve the family." (p.188) The ability to maintain a consistent story over time will depend on: the degree to which the child feels safe to disclose the abuse; the psychological defenses needed to resolve the trauma; and the degree to which children have been exposed to multiple evaluations. As such, interviewers need to be sensitive to variables which might influence the child's reporting of events.

**5) Time Delays**—It is more often the case than not that children delay their disclosures of abuse. In one study (Conte & Berliner, 1981), it was found that only 16% of sexually

abused children revealed the abuse within 48 hours of their experience. Due to confusion, an internal sense of blame, and fear of repercussions, children maintain the secrecy about the abuse. Once the abuse is disclosed, the time periods between the abuse and the disclosure may interfere with the retrieval of information. A child who may eventually be a witness at a trial can experience several time delays (a delay between the disclosure and the actual abuse and disclosure; a delay between some response to the disclosure, the initial disclosure and the actual abuse; a delay between the trial, the reporting of disclosure, and the actual abuse). Interviewers need to understand the ramifications of such time delays and take into account where in the process their interview is placed.

**6) Developmental Sensitivities**—In interviewing children, clinicians need to be sensitive to the child's developmental stage. Often interviewers are unaware of the language used to question a child, and can confuse the child or make erroneous assumptions based on the child's concrete understandings. For example, one child who reported being fondled described elaborate games played with the offender. When asked if the abuser tickled his pee pee, the child responded no. Later however, the child acknowledged being touched on his pee pee during the tickle game. When questioned about the inconsistency, the child explained, "You asked me if he tickled my pee pee and I'm not ticklish." Waterman (1986) advises: "The evaluator must take into account the unique thinking patterns of preschool children and develop an interviewing style compatible with the child's needs and developmental level." (p.29)

**7) Gender Issues**—Although it is unclear what impact the sex of the interviewer has on the child being questioned, it is important to at least raise the possibility that gender issues may influence the quality of the interview. For example, one female adolescent who was evaluated by a male later admitted to her female therapist that she was too embarrassed to relate specific details of the abuse when first interviewed by a man. Since reactions to the offender are so varied, it is hard to predict what effect the sex of the interviewer may have on the child. However, attempts should be made to ascertain whether the child has a preference about the sex of the interviewer and when possible, this preference should be honored.

## **B. EVALUATION PROCEDURES**

Preparation prior to the actual interview constitutes a vital part of the evaluation process and can help to ensure a more positive experience for the child (Friedemann & Morgan, 1985). With preparation, an interviewer can anticipate trouble spots, formulate specific questions based on the individual history of the child, and select tools needed for conducting the interview. Before evaluating the child, as much background history as possible should be obtained. Some of this information can be made available through records, while other pieces of information may need to be gathered in interviews with significant others prior to evaluating the child. The following categories of information need to be collected:

- 1) **Origins of the allegations**—who suspected the abuse and why; specific statements alleging the abuse; who has been informed; how have suspicions been handled to date.
- 2) **Past history of abuse**—record of prior reports; previous interventions made by the Division of Youth and Family Services (DYFS), police, or other therapists; previous attempts to validate abuse and difficulties in assessing allegations.

- 3) **Family background**—history of other family members being abused; history of prior mental illness or alcoholism; family relationships; family routines—particularly around bedtime, hygiene, babysitters; accessibility of the child to offender(s); norms and education regarding sexuality.
- 4) **Child's cognitive and emotional development**—history of symptoms; ability to verbally communicate thoughts and feelings; personality characteristics, particularly comfort level with strangers and ability to separate from caretakers; and language used for body parts.

Once background information has been collected, then decisions can be made as to how to conduct the interview and who needs to be seen. For example, young children who have limited verbal skills and have difficulty separating from their primary caretaker would best be interviewed over a series of days. By allowing the child to play and explore the unfamiliar surroundings with the parent available, before introducing questions on sexual abuse, the youngster grows more comfortable with the interviewer. Also by allowing the child to play, the interviewer is able to learn how to interpret the child's verbal and non-verbal codes. Although the clinician should always try to interview the child alone, when this is not possible it is recommended that the child be interviewed on the parent's lap, with the child's back to the parent (Esquilin, 1987). Such a procedure however needs to be carefully weighed, particularly if parents are in custody litigation.

### **C. CHILDREN'S INTERVIEW:**

The beginning tone of the interview helps to create an environment in which the child will feel safe to disclose the abuse. Rapport building becomes a critical step in facilitating a successful interview. Beginning the interview in a playful, non-threatening manner helps to reduce the child's anxieties and fears. Allowing the child to explore the room while the interviewer asks casual questions about routine events gives the child the opportunity to become comfortable and feel more in control. It is also helpful for interviewers to introduce themselves and give the child a brief explanation of their role. An introduction helps to orient the child and to allay any fears that the child is being brought to see someone because he or she is bad or in trouble. For example, the interviewer can explain: "I talk with a lot of children, and want to know what they think and feel so I can help them if they have any worries or problems."

As the child explores the room, the clinician can begin to introduce routine questions that will help to put the child at ease, while also providing the interviewer with critical information about the child's emotional and cognitive development. The interviewer wants to assess: 1) the child's ability to express him or herself, 2) the child's level of comprehension and memory capacity, 3) the presence of symptoms, and 4) the child's mental status.

A good place for the interview to begin is with the child describing his or her environment.

- How old is the child?
- What is the child's birthdate?
- Who does the child live with?
- Where does the child live?
- What kind of home does the child live in?

Where is the child's bedroom and is it shared with anyone?  
Do friends or relatives live nearby?  
Who does the child play with?  
What school and grade does the child attend?  
What does the child like and dislike about school?  
What kind of time does the child spend with each parent and other family members?  
What are some favorite activities? Are there any special games?  
What does the child like and dislike about each parent?  
Who babysits with the child?  
How do people in the family get along?  
Do people in the family keep secrets from one another?  
What does the child do when confronted with a problem?  
How has the child been feeling? Any somatic problems? (e.g. not wanting to be left alone, difficulty sleeping, stomach aches, headaches, bedwetting, problems urinating)  
What kinds of dreams does the child have?  
What are three wishes?

Routine questions about the child's life provide significant information about the child's ability to remember details, to verbally express him or herself, to organize his or her thought processes, and to express a range of affect. Here one can begin to establish the child's ability to distinguish reality and fantasy. Asking a child if he or she knows the difference between the truth and a lie lends weight to the child's credibility. If children are too young to define the difference between the truth and a lie, then a simple concrete procedure of asking the child if certain statements are the truth or a lie will suffice (e.g., "If I said you are a boy, would this be a truth or a lie?"). Once the clinician feels that the child is at ease, has a good understanding of the child's environment, family, and routines, specific questions about the possibility of sexual abuse can begin.

Before introducing specific questions about sexual abuse, a common language for describing body parts must be established. A number of techniques is available for this purpose. The clinician can ask the child to name the body parts and ask for specific names given to private parts. Anatomical drawings or anatomically detailed dolls can be used, with the child naming the body parts. A child can also be asked to draw a picture of a person, followed by a picture of a person of the opposite sex. Once the drawing is completed, then the child is asked to tell how he or she knows the difference between a boy and a girl, and is asked the names for the different private parts. If the child is too embarrassed to provide the name for each of the private parts, then the interviewer can try to obtain the name by asking the child to whisper it or can use other mediums that might allow the child some distance, such as puppets. Another technique to break through the embarrassment or fear is to ask about the child's familiarity with the names for private parts which were provided by the parent (e.g., "Some people I know use the word pee pee. What about you?") Once a common language is established, specific, but non-leading questions need to be raised about sexual abuse.

Within the literature, there is no agreed upon method for raising the issue of sexual abuse. Interviewers often hope that questions about the family, daily activities, and how problems are solved will spontaneously evoke a child's disclosure. Unfortunately, children have been threatened to keep the abuse a secret. Others have received an anxious, angry, punitive, or indifferent response to their attempts to disclose, thereby learning that they can trust no one with their secret.

Since children often do not spontaneously disclose the abuse, it is imperative that the interviewer ask specific questions about the possibility of abuse. Again, several techniques are available to help the clinician frame questions. An interviewer can ask if anyone has ever touched the child's private parts. More specifically, Esquilin (1987) has suggested that some anatomically detailed stimulus be used. After the child names the body parts, the interviewer points to the genitalia and asks in a routine manner, "Who touches you here?" If the child does not respond, then the interviewer can ask "Don't you touch yourself?" followed by, "Most people touch themselves when they wipe themselves in the bathroom." After normalizing the experience, then the interviewer repeats the original question, "Well, who else touches you?"

Another entry point into the topic of abuse is through discussing types of touches, good, bad, and uncomfortable or confusing touches. Here, children are asked to identify types of touches, and then are asked if anyone ever touched their private parts in a way that made them uncomfortable. Interviewers need to be careful when asking about uncomfortable touches because for some victims, the touches may have been pleasurable. The Forensic Unit of the Family Enrichment Program at Morristown Memorial Hospital also uses coloring books which discuss touching to introduce the topic and help children disclose the abuse.

Anatomically detailed dolls are widely used to help young children explain what has occurred. Many recommend that the dolls be used only after the child has given some indication that abuse has occurred (Friedemann & Morgan, 1985). The dolls should be used as an aid in helping the child verbalize the abuse and should not substitute for a child's verbal description. The child is asked to pick a doll to represent herself or himself and a doll to represent the offender. Interviewers are cautioned not to use the words, "pretend" or "let's play like this is you," because terminology calls into question issues of fantasy versus reality and can discredit a child's disclosure. As the child demonstrates the sexual activity, he or she is asked to explain what is happening. Due to the controversial nature of the dolls and questions about whether children become suggestible with the dolls, many interviewers are choosing to use the dolls sparingly. MacFarlane and Krebs (1986) note that anatomically detailed dolls are primarily a clinical tool to help children become comfortable in talking about their bodies, not an investigatory technique.

The particular way a clinician enters into a discussion of possible sexual abuse depends on the age and personality of the child, what is reported to have occurred, and particular threats and devices that may have been used to silence the child. Again, the more information the interviewer has prior to the evaluation, the more can be anticipated about how and when to introduce the topic of abuse.

For children who deny abuse, there are several therapeutic methods that may help the interviewer to assess the child's stance. For some children, it is informative to go through a list of significant others and ask them if they have ever been touched by any of these people. In cases where the child has been abused but needs to deny the abuse, they often show differences in how they respond to each of the individuals' names. For example, a child might assertively respond that grandpa has never touched her and then hesitate and say, "I'm not sure," when mother's boyfriend is mentioned. Another technique is to ask children hypothetical questions about possible abuse. For example, children can be asked what they would do if someone tried to touch them and told them to keep the touch a secret. Hypothetical questions about why someone might be worried about the child, or how a little girl or little boy might feel if she or he had been touched, may allow the child enough distance to answer the question in a way that communicates first hand knowledge of abuse. Thus, the use of

hypothetical questions can give the interviewer another barometer for gauging the child's knowledge of events. The decision to use any of these techniques with children who are strongly suspected of abuse but deny the abuse must be weighed according to both therapeutic and legal ramifications. At some point, the clinician may need to sacrifice legal standards for therapeutic results.

Once the child indicates that some abuse has occurred, the interviewer needs to define the extent of activities and circumstances surrounding the abuse. The following categories of information are usually obtained once the disclosure of abuse begins:

1. **Who?** Who abused the child? Were others present? Where were significant others when the abuse occurred? Is the child aware of any sexual activities between the offender and other children? Has the child been abused by anyone else?
2. **What?** What happened? (Ask for specific details of the abuse. The interviewer needs to cover all areas of possible abusive activities: fondling, oral sex, penetration, penile or digital, vaginal or anal, ejaculation, use of objects, pornography or the taking of pictures).
3. **Where?** Where did this occur? (For each activity, the interviewer should ask where the abuse occurred).
4. **When?** When did this occur? How often did this occur? (Here children need to be oriented in time by using significant events, e.g. What grade were you in? Was it hot or cold out? Often, it is helpful to begin with the first abusive event which may be less traumatizing and move to the most recent event).
5. **How?** How did the offender engage the child? Was the child threatened or asked to keep the abuse a secret? Did the child ever try to tell someone and what happened? What made the child decide to tell now? How does the child feel about what happened? What was the child's experience of the events? What are the child's present or future worries about disclosing the abuse?

By gaining peripheral information about the abuse and developing a context for the events, more weight is given to the credibility of the child's statements. As the child unfolds the story of the abuse, the clinician needs to be aware of the child's presentation style. The child's manner of responding affectively and behaviorally while details are shared, provides additional validity to the report of abuse.

In conducting the evaluation, interviewers need to ask open-ended questions which refrain from leading or suggesting a particular answer that has not been offered spontaneously by the child. For example, the question, "Your daddy touched you, didn't he?" leads the child in a particular direction and indicates the desired response. Interviewers also need to refrain from providing differential reinforcements to the child's responses. For example, it is not uncommon to find interviewers who provide positive reinforcement when the child gives affirmative information about the abuse, while responding neutrally when the child is unable to share any information. Typically, interviewers move from broad open-ended questions to more defined questions which elicit specific information about the abuse. As the child provides general information, then he or she is asked to elaborate on the details of the abuse. The child's discussion of events should be structured so that the interviewer can obtain specific information about the nature of the abuse. In general, the clinician needs to follow the child's leads and use the language provided by the child. The interview process entails a balance

between allowing the child to spontaneously relate events about the abuse, while also structuring the child's responses so critical information is elicited.

As the evaluation comes to a close, the interviewer can feel free to make therapeutic interventions. At the conclusion of the interview, clinicians should: 1) normalize that the child is not alone, that other children have had these experiences; 2) reassure the child that he or she is believed; 3) provide the child with a sense of his or her resources, by pointing out to the child the strength required for him or her to come forth and disclose the secret; 4) reassure the child that he or she is not to blame for the abuse; 5) give the child an opportunity to ask questions and ask for help; 6) share with the child what will happen next in the process; and 7) discuss with the child what he or she can do if the need or desire to talk more about these events arise.

#### **D. VALIDATION CRITERIA FOR THE CHILD**

Validating child sexual abuse is based on a number of factors. Children who have been abused often show symptoms. In several recent studies, 66% of those children abused showed some symptomatology (Mannarino & Cohen, 1986; Mian, Wehrspan, Diamond, LeBaron, and Winder, 1986). The most consistent symptoms displayed were: nightmares, bedwetting, clinging behavior, anxiety, depression, and inappropriate sexual behavior. In addition to the presence of symptoms, children who have been abused can usually provide significant details about the sexual activities which occurred. These children can often describe the progression of activities, how they were initially introduced or engaged into the abuse, and how the offender maintained the abuse and kept them secretive (Sgroi, 1982). Furthermore, these children can vividly describe a phenomenological experience which is consistent with those shared by other victims. Finkelhor and Browne (1985) discuss four traumagenic dynamics present in the child's experience of the sexual abuse. These factors—"traumatic sexualization, betrayal, powerlessness, and stigmatization"—represent core phenomenological experiences, which "alter children's cognitive and emotional orientation to the world, and create trauma by distorting children's self-concept, world view and affective capacities." (p.531)

In combination with the direct information provided, there are pieces of nonverbal information which help to assess the validity of the child's allegations. As children share details of the abuse, there are often changes in affect which are different from when they related other non-abusive experiences. The interviewer may notice behavioral changes, as the child relates the events of the abuse. For example, the tone and volume level of the child's voice may change, he or she may avoid eye contact, cry, express anger, and body movements may become still or agitated.

The child's personality and the family history may also show characteristics consistent with abuse. For example, it has been documented in incestuous families that there are often power imbalances in the marriage, along with a reversal of parent/child roles, where the child takes on a more spouse-like role (Herman, 1981; Sgroi, 1982). The child may show characteristics which place them at risk for being abused (e.g., the child is less assertive than other children, the child is frightened about the disintegration of the family; the child lacks a support system that would be responsive to the disclosure). Likewise, the offender may display qualities which are typically observed in individuals who sexually abuse children (Groth, 1982; Finkelhor, 1984). Lastly, there may be evidence provided by significant others which corroborates the child's statements.

The following are suggested criteria for validating abuse:

1. **History of Symptoms** Does the child have a number of symptoms which often correlate with abuse?
2. **Verbal Information Obtained from Interviewer** Did the child specifically say he or she was abused? Was the child able to develop a context and provide peripheral information about the abuse? (Here the interviewer is looking for the degree to which the child can explicitly elaborate the details of the abuse and offer sexual information which is developmentally advanced.) Is the child able to describe a progression of activities and describe the engagement process used to gain access to the child? Does the child report elements of secrecy?
3. **Presentation Style and Changes in Affect** Does the child's presentation style change when the topic of abuse is introduced? How does the child's affect correspond to the content of his or her verbalization.
4. **Degree of Risk for Abuse and Personality Characteristic** Are the dynamics of the family similar to those seen in other incestuous families? Does the child have certain personality characteristics that might make him or her vulnerable to abuse? Does the offender have characteristics which are often observed in sexual offenders? Does the child describe a phenomenological experience which is consistent with that reported by other victims?
5. **Corroborating Evidence** Are there consistencies in the child's story and others' statements? Are there any witnesses to the abuse? Did the child disclose the abuse with anyone else? Is there any medical evidence to support the allegations?

As the clinician examines each of these criteria, decisions can be made about the validity of the stated allegations. In some cases, all of the validating criteria may be present, while in other cases only certain ones will be confirmed. For example, the secret may be so heavily guarded and concealed that there will be no corroborating information. In any event, it is important to assess each of these criteria, for a stronger case can be made for substantiating abuse when all criteria are present. The absence of any one of the above mentioned criteria does not necessarily invalidate the abuse, particularly when the child is able to elaborate specific details of the abuse. In the end, significant weight must be given to the child's description of the abuse, when other factors point to the child's credibility.

Interviewing children about suspected abuse is a creative challenge, which requires general knowledge of child development, experience with sexual abuse in particular, and skill in interviewing children of all ages. MacFarlane and Krebs (1986) remind us:

Competent, sensitive assessment takes time, and systems which demand immediate results must be countered by interviewers who insist upon being given adequate time and friendly environments which are geared to the needs of children, not agencies. On the other hand, we must be cognizant, whatever our professional affiliations, of the various needs for the information that comes out of an interview, and must try to coordinate our efforts in ways that are protective of children's privacy and of their limited tolerance for repeated questioning. (p.98)

The interview process can often feel like a giant puzzle, in which some pieces connect immediately, while other pieces are missing, overlooked in the mass, or are too difficult

to identify and correctly place. With time, patience, and persistence, the puzzle can be completed, and the child can be assisted in resolving the trauma of abuse.

## **E. FAMILY ASSESSMENT**

When evaluating families where sexual abuse has been reported, the mental health practitioner must keep in mind that sexual abuse is not validated on the psychological profiles of the family members but rather on the evaluation criteria of the child assessment. Please refer to that criteria for specific information.

This section of the guide will deal with interviewing and assessing family members. The minimal assessment includes the offending parent and the non-offending parent. Additional assessment should include all family members living in the household even though it is recognized that this type of cooperation is sometimes difficult to obtain. In this initial session, our presumption is that we are dealing with family dynamics where, though a child has reported sexual abuse, the other family members have denied that the abuse has occurred. As opposed to children, adults frequently are aware of the negative, personal and legal consequences associated with child sexual abuse. Their responses, therefore, must be evaluated as guarded responses. In addition, adults are not clear that the systems, i.e. law, medicine, child protective services and mental health, are working in the best interests of the family as a whole. Furthermore, the dynamics of incestuous families have led us to observe that family boundaries become closed and rigid around the secrecy of the sexual abuse. Outside intervention from professionals are typically resisted since the child has "betrayed" the secrecy within the incestuous family. (For example, it is not uncommon for families to be concerned about a loss of home or income if an offending parent is incarcerated.) It is also important for the evaluator to remember that although the offending parent is part of a family unit, and therefore subject to child protective laws, an adult does not have to incriminate himself. Child sexual abuse charges are frequently conducted in both civil and criminal arenas.

In conducting a forensic evaluation, it is important to alert all evaluated family members of their rights. Frequently, this is referred to as a "miranda" type warning. All family members, including the offending parent, should be aware of the fact that a report of the evaluation will be generated, and that report will not only be furnished to the Division of Youth & Family Services, but may also be given to the county prosecutor's office as a result of their statutory relationship with the Division of Youth & Family Services. Patients are frequently confused about doctor/patient confidentiality process in these evaluations. It is important for the forensic evaluator to clearly outline the limitations of confidentiality within the purview of this evaluation.

In forensic psychological assessments of child sexual abuse, a personality profile is generally produced on all family members, including the offending parent and the non-offending parent. This personality profile should include: defenses, affect, interpersonal functioning, family roles, mental status, family background, previous history of physical or sexual abuse, use of addictive substances, marital history, vocational history, previous involvement with law enforcement, sexual development and sexual history, explanation of allegations. Child sexual abuse is not validated from these profiles and histories.

Psychological profiles and histories of family members are compared against the assessment of the child in an attempt to corroborate the child's statements or to identify

inconsistencies with the adult explanation of the child's allegations. Rather the evaluator is assessing the probability and plausibility of the occurrence of sexual abuse within that family unit given the psychological profiles of the individuals and the family history in concert with the validation criteria in other sections of this guide. It is important to note that attempts to objectify or quantify validation criteria for family members have been equivocal. There is clearly no complete profile of the sexual offender or a profile of an offending or a non-offending parent. There is no empirically validated profile of a programming parent. As a matter of practice, it is strongly suggested that family members be evaluated individually, and that family data be weighed on a case by case basis. The credibility of the child is the predominant validating criteria. Family evaluations present an environment of probability or plausibility of occurrence. They also offer a clear statement of the child's safety within that family context. How the family deals with the reported sexual abuse, the degree of protection of the child versus the offender, and the various roles of each family member are important aspects to consider about whether family reunification is possible or probable.

It is important to recognize that these evaluations are often conducted in the context of a family crisis. Assessment of individual family members' functioning must take into account this crisis period as well as the family members ability to cope with and resolve the crisis.

Working with resistant families is the most difficult part of the evaluation process. Sometimes it is helpful to convey to family members that the evaluation is part of a process of resolution of family conflict. The evaluator must also make it clear that the system is not as fragmented as the family in crisis may believe. Child protective services, law enforcement and mental health practitioners frequently work together in the assessment of these cases since, though the nature of the litigation is criminal in nature, family resolutions tend to be more applicable to the type of law governed by family court. Therefore, a family open to the therapeutic resolution may fare better in that multidisciplinary system.

In evaluation those offenders who acknowledge the abuse either previous to the evaluation or during the course of the evaluation, the following areas should be explored: the range of the sexually abusive activities of the adult, the history of abusing children, the method by which the adult has gained access and continued the abuse, the adult's history of violence and substance misuse, the degree of responsibility the offender is willing to take, the degree of remorse and willingness to assist the victim and the level of acceptance or denial presented during the course of the evaluation. For a more complete description and profile of various types of sexual offenders, please refer to Men Who Rape by Nicholas Groth noted in the bibliography.

## **V. FORMAL PSYCHOLOGICAL TESTING**

### **A. ASSESSMENT PROCESS**

In addition to information provided from interviews, formal psychological testing can be used to gain a more comprehensive picture of the victim and offender. Maloney and Ward (1976) break down the process of forensic psychological assessment into three phases: (1) The Problem, (2) Data Collection, (3) Data Interpretation.

**The Problem:** Mental health professionals are advised to clarify with referral sources, the referral questions or problems to be addressed. Mental health professionals who

agree to conduct evaluations based on vaguely defined referral questions, or who fail to define the limits of their evaluations with referral sources are opening themselves and the courts to confusion. For example, mental health professionals cannot provide the courts with an assessment of the guilt or innocence of the offender. They can, however, provide the court with an assessment of the clinical validity of the child victim's allegations. Other examples of appropriate referral problems include the validity of child's recantation of the sexual abuse, the traumatic impact of sexual abuse on the child, the risk to the child of further abuse, the capacity of the non-offending parent to protect the child, the psychological dynamics of individual family members and the relationship of those dynamics to incestuous child sexual abuse, and the prognosis for rehabilitation of the offender.

**Data Collection:** Data, in cases of child sexual abuse should be obtained from all relevant and available sources. Psychological testing is one tool of the evaluation, and cannot be relied upon as a sole source of data in answering referral questions. The mental health professional should be provided with background information from child protective services, law enforcement, medical examinations, school reports, previous psychological evaluations, therapy progress reports, etc. The value of historical background information lies in the heuristic of behavioral prediction (i.e. present and future behaviors are best predicted by past behaviors).

Interviews of all family members and significant others are considered by most evaluators to be the most effective tool in gathering data. It is preferable that all members of the incest triangle (victim, offending parent, non-offending parent) be interviewed and assessed. It is recommended that siblings be evaluated to determine whether or not they have also been sexually abused. Siblings can also provide valuable information regarding family functioning. The psychologist should be explicit in reporting when their evaluative conclusions are weakened by the unavailability of offending parents for evaluation. The standards for conducting interviews in cases of child sexual abuse is addressed elsewhere in this guide.

A standard battery of psychological tests is available if information beyond what can be gathered in an interview format is needed. The mental health professional should have a complete understanding of the reliability and validity of the tests administered.

### **Recommended Tests**

#### **1. Objective Personality Tests**

Minnesota Multiphasic Personality Inventory  
Millan Clinical Multi-Axial Inventory

(Objective personality tests can provide the psychologist with standardized personality profiles which are not open to subjective clinical interpretation. Psychologists should familiarize themselves with the limitations and advantages of objective testing. (See Matarazzo, 1986, and Murphy, 1987).

#### **2. Projective Tests**

Rorschach Inkblot Test  
Children's Apperception Test  
Thematic Apperception Test  
Projective Drawings

3. Intelligence Tests
  - Wechsler Intelligence Scales
  - Stanford Binet Intelligence Scale
  - Kaufman Assessment Battery for Children(Formal intelligence testing may be waived if it is not necessary to address the issue of the child victim's cognitive level and credibility (i.e. the child's understanding of the concepts of time, location and frequency)).
4. Anatomically Detailed Dolls and Forensic Anatomical Drawings  
(While these tools are not considered standardized tests, the mental health professional should familiarize him or herself with the growing body of research and protocols for the use of dolls and drawings in the validation of cases of child sexual abuse. The mental health professional should be informed if these tools have been used with a child by other investigators such as police officers, child protective service workers, other mental health professionals. The repeated use of these tools diminishes the reliability of the findings.)

#### **Data Interpretation**

Interpretation of data from interviews, background information, and test results involves a process of hypothesis testing. To answer referral questions, mental health professionals should look for consistencies and contradictions in the data pool, and develop hypotheses for confirmation and/or rejection. Mental health professionals should have "expert" knowledge of the criteria for validation of child sexual abuse and should weigh data against this criteria.

## **VI. CLINICAL VALIDATION OF CHILD SEXUAL ABUSE**

Validation of child sexual abuse requires the merging of test data and interview material to develop a profile of individual and family dynamics. The various data is used to substantiate recurrent themes or patterns, and identify contradictions. A credibility assessment (Finkelhor, '79 & '84, Sgroi, '82 and Summit, '83) as well as other validating criteria need to be examined.

#### **Criteria for Validating the Child's Responses**

1. Consistency of reporting both within the evaluation sessions and to other sources, embellishment and additions are to be expected
2. Reports of multiple incidents over time
3. Explicit details of sexual behavior
4. Reports of progressive sexual activity
5. Indications of secrecy
6. Reports of threats, coercion, or pressure
7. Physical evidence of trauma
8. Reports of bribes or rewards

9. Feelings of entrapment or accommodation
10. A sense of helplessness and fear of reporting the abuse due to a feeling that the child would not be believed
11. Multiple modes of description of the abuse (i.e. doll re-enactment, the marking of anatomical drawings, play assessment, interview)
12. Assessment of programming, i.e. lack of spontaneity in discussion, few validating criteria beyond basic story, inappropriate offering of the story. (i.e. blurting out and repeated when other issues are being discussed)
13. Assessment of expectations for reviewing the abuse
14. The factor of accidental or purposeful disclosure in ascertaining the readiness of the child to present the dynamics
15. The child's comprehension of truth and lie, and identification of the abuse as the truth
16. Recantation attempts and their justification

In addition to these criteria, the behavioral manifestations of the child are important in validating the abuse. Reports of sexualized and age-inappropriate behavior are significant. Further, while sexual abuse can occur without significant trauma, the report of problematic behavior may well indicate post-traumatic stress disorder.

#### **Post-Traumatic Stress Disorder Criteria**

1. Sleep disturbances
2. Intrusive recollections of the abuse
3. Recurrent dreams of the abusive episodes
4. Reported detachment during the sexual abuse episodes
5. Significant guilt for participation in the abuse
6. Memory impairment, particularly concerning the abuse incidents
7. Avoidance of people or activities when exposed to certain people or events, such as during visitation with the offender

#### **Criteria for Assessment of Offending Parent:**

1. Refer to Groth (1983) for fixated vs. regressed pedophile
2. Attempt to discredit child
3. If abuse is acknowledged, refusal to accept responsibility
4. Poor impulse control

5. Sexually dysfunctional, (i.e. merging of sex and aggression, confusion of sex and closeness)
6. Poor coping abilities
7. Absence or confused empathy for child victim
8. Blaming victim or spouse for allegations or abuse
9. Narcissism and sociopathy

**Criteria for Assessment of the Non-offending Parent:**

A frequently used defense in cases of incestuous child sexual abuse involves the accusation of "programming" by the child's non-offending parent. Dynamics that are often inappropriately used to indicate "programming" include:

1. Intervention with the child concerning child sexual abuse by the non-offending parent (i.e. discussions and questioning)
2. The presence of divorce proceedings
3. The presence of a custody dispute
4. Anger at the offending spouse
5. Overinvolvement between non-offending parent and child

Insufficient data exist concerning the frequency of programming in child sexual abuse. However, it is generally assumed by professionals in child sexual abuse that such cases are rare. Nevertheless, in cases where the child presents allegations in a rote and rehearsed fashion, the child's non-offending parent should be carefully assessed for the following dynamics:

1. An agenda of revenge or retribution towards spouse beyond what would be expected following a revelation of incestuous child sexual abuse
2. Absence of emotional distress at the discovery of child sexual abuse
3. The presence of fabrication of child sexual abuse allegations

Assessing the entire family is of significant importance in validating the sexual abuse. The dynamics presented by each member, as well as their reports of each others' behavior, are critical in ascertaining the dysfunction of the family system. Groth, ('82) has outlined dynamics of the offender. In addition, the following family dynamics should be considered.

**Criteria for Assessment of Family Dynamics:**

1. Initial reaction of non-offending parent, including availability as an ally
2. Denial or minimization by the family
3. Pressure from family to change or deny

4. Message from family of child responsibility to resolve the crisis
5. History of sexual abuse in the parents
6. Attempts at discrediting the child
7. Pattern of secrecy
8. Isolation of the family unit
9. Blurred generational boundaries, and role reversals
10. The presence of sexualized family atmosphere
11. Power imbalances in the marital dyad
12. Sexual dysfunction in the marital dyad
13. The child's perception of the non-offending parent as emotionally unavailable
14. Divided loyalty on the part of the non-offending parent
15. Feeling of responsibility for abuse on the part of the non-offending parent

## **VII. REPORT WRITING**

Report writing in forensic evaluation requires a decidedly different approach than traditional evaluation. The traditional mental health evaluation generally is for the purpose of uncovering personality dynamics that would lead to greater insight of the person and ultimately yield a treatment plan. In forensic psychological assessment, the goal of any individual mental health evaluation is to generally uncover the psychological dynamics present within the person and identify those interventions which would be helpful for more positive mental health. In addition, forensic mental health evaluations are often presented to the courts and would require somewhat of an additional shift in perspective. A forensic mental health assessment's value to the court is in its conclusionary data. The object of a report for court is to determine a relative probability of occurrence, for the trier of fact, either the judge or the jury, to ascertain whether an event occurred or not and the guilt associated with such actions.

In criminal cases of child sexual abuse, the attempt of a forensic mental health evaluation is to uncover the family dynamics, to assess the credibility of the child's allegations against a violation criteria and to determine the probability of such actions occurring within this family constellation. It is not meant to usurp the power of the jury or the judge and the determination of guilt or innocence, and therefore should not, as a conclusion, include statements such as "Mr. and Mrs. Jones are guilty of such a crime." Rather, the purpose of any forensic evaluation is to evaluate individuals within the traditional mental health framework and then to provide the court with some measure of information about the typical behaviors that would be expected in such a crime and to make a conclusion as to whether it was probable. The dynamics of any individual or family should fit such a prediction. Previous case law has supported the need for such evaluations. Please refer to the case law cited in section VIII.

Generally, courts are looking for information about the typical dynamics of children who have been sexually abused, the family dynamics that may or may not make those reports credible within that system, a profile of an offender that would allow for the occurrence of such actions, and the family dynamics that would support the dynamics of secrecy and collusion often involved in cases of child sexual abuse. It is important to recognize that despite empirical attempts at validating child sexual abuse, information reported in this format can be seen as rather equivocal. Courts have admitted information that would talk about the relative credibility of the court (as opposed to determining a child as being truthful or not), whether dynamics of incestuous families and whether offenders fall broadly into a criterion of regressive acts or acts of compulsivity and repetition. It is important to recognize that, to date, there has been no empirically validated profile of an offender nor any empirically validated profile of the child's sexual abuse victim. However, through the continuing work of the National Association for the Prevention of Child Abuse, and other national organizations as well as the research typified by David Finkelhor, Roland Summit and Suzanne Sgroi, typical dynamics of victims as well as incestuous families have been commonly accepted.

Report formats should include the following information:

1. Referral data should include the scope and nature of the charges as well as how the individual or family was referred to the forensic clinician.
2. Information about all parties under evaluation should obviously be included. Background information such as family history, vocational history, the sequence of events, the discovery information, police reports etc., would all be relevant information to include in such a section.
3. Sources of data should also be included such as the types of testing used, the clinical procedures used, as well as the previous reports and evaluations reviewed by the forensic mental health practitioner.
4. Emotional functioning of all members under evaluation should be included. Such an evaluation would include the general thoughts, patterns, intelligence, personality structures, as well as the individual's perception of the reported events and their response to the allegations. The mental health practitioner should be associated with a research group, support group or professional association that deals specifically with child victims and the court process.
5. A summary and formulation section should draw together all of this information into a coherent individual and family pattern of interpersonal behavior. In addition, the forensic mental health assessment should provide some level of certitude to the courts as to the credibility of such allegations within the individual or the family constellation. For example, in the case of a child's evaluation, it would be important for the court to know whether the nature of the allegations and the specificity of the child would be appropriate to the child of a particular age or informational level. In addition, family dynamics that aid or contribute to precocious information or the acquisition of information relative to a child could be weighed against the perceptions of the adult, child rearing practices and general family values.

Clearly written, conclusionary, and well-documented reports with clear examples of psychological behavior aid the Court in their process of decision-making. Reports filled with jargon-centered phrases do not provide the courts the kinds of essential information they need. In addition, through written report and testimony, the credibility of such information will also be weighed by the trier of fact. It is a goal of any forensic evaluation to attain

admissibility, and provide the court with information in such a way as to not usurp the responsibilities of the determination of guilt or innocence.

In this section, there is a general reluctance to provide sample reports since individual practitioners may vary in their approach to assessment. Rather, the purpose was to outline the general issues of admissibility, weight and clarity as the prominent differences between forensic mental health evaluation and the general mental health evaluation provided for the purposes of therapy or hospitalization.

## **VIII. PREPARING THE CHILD VICTIM AND FAMILY FOR TREATMENT**

Mental health evaluations in child sexual abuse must minimize trauma to the child and family to allow them to accept treatment and support after the examinations have concluded. In validated cases, the message of believability and support are essential in indicating to children that it is safe to continue talking about the abuse and that there are ways to help them and their families. An interpretation of the results of the evaluations to the family is essential in verifying that the abuse occurred and presenting the recommendations for treatment. The interpretive session allows for assessment of resistance and continued denial as well as the availability of allies. The family's response to the content of the interpretation can be a useful predictor for treatment outcome. Families tend to have three broadly defined responses:

1. The family accepts the reality of the abuse without blaming the child victim. The family accepts the need to make changes to protect the child. Families in this category tend to have the best chance for family reunification.
2. The family is ambivalent regarding the reality of the abuse, simultaneously mobilizing defenses against the system and availing themselves of help. In such cases, it is recommended that the mental health team extend the interpretive phase to best prepare the family for treatment. Terms of treatment should be clearly defined (i.e. acceptance of responsibility by the offending parent, increased protection by the non-offending parent, and return of the child to age-appropriate non-sexualized role).
3. The family openly denies the reality of the abuse, mobilizes their resources against the victim and the system leading to removal of the child. Most frequently, the systematic resources are placed at the disposal of the child. Support needs to occur in many forms since the traditional supports of the child (i.e. the family structure) are withdrawn. The prosecutor, child protective services and mental health professionals must recognize their increased responsibility to support the child by conveying belief and by keeping the child informed on the status of the case. Children who are not adequately supported by their family and/or the system are at risk for recantation and retraumatization.

It is essential that treatment begin immediately to give support to the child in dealing with the trauma and guilt of the abuse. The message of believability and the support of therapy are significant in minimizing recantation. Thorough support of the family in therapy minimizes negative messages to the child and validates the family's own agendas.

## **IX. EXPERT TESTIMONY**

The traditional role of the expert witness in syndrome testimony has been formed on the Battered Child Syndrome, Rape Trauma Syndrome and the general information regarding

characteristics of offenders of violent crimes (Frazier & Borgida 1985; Walker, 1984). Accordingly, mental health professionals have been called upon to serve as expert witnesses in child sexual abuse cases. Syndrome testimony provides the court with information regarding the typical behaviors that a victim of sexual abuse might display. Although this type of syndrome testimony has evolved through case law and has only been allowed in certain jurisdictions, common characteristics evolve with regard to the admissibility of such testimony. Primarily, syndrome testimony is admissible only when the typical behaviors of a victim are described. A jury may hear such testimony when, without such information, they would be at a deficit and could not appropriately and justly decide a case (New Jersey Rules of Evidence 1984).

A second role in the interface of law and the expert witness is one of advocacy and education. The expert witness is assumed to have a body of knowledge that the courts will call upon when a situation is deemed appropriate (Goldstein, Freud and Solnit 1983). The nature of the allegations made by children in sexual assault cases against adult offenders often results in both criminal and civil litigation. Although the role of the expert can be utilized in providing syndrome testimony, it is also a frequent practice that the mental health professional be involved as a child advocate in a system that functions under an adult set of rules (Kaplan, 1981). The courts speak adult language, proceed with adult rights and make relatively few accommodations for children. It is therefore incumbent upon the mental health professional to initiate the interface with psychology and law. It naturally falls to the mental health professional to serve as the child advocate since the clinicians' relationship with the victim is longer, occurs in many ways (e.g. evaluation, therapy) and results in more frequent contact with the victim than does the legal system (Lawlor, Siskind and Brooks, 1981; Levine, Wilson and Sales, 1980).

However, unclear roles can confuse the interaction between psychology and law (Burke, 1980). Many times the mental health professional who is treating a child victim is called upon by the court to provide information. This therapeutic relationship is typically seen as a biased relationship. The distinction between the role of a therapist and the role of an evaluator is not frequently made within the court system. There exists a confusion between what a forensic evaluation is and the kinds of interventions that therapists make on behalf of children.

A forensic evaluation goal is to provide specific information in a context for decision making. The jaundiced eye of the forensic evaluator is expected to be skeptical and objective. The mental health professional should be clear about role function within the court system. Evaluation calls for the assessment and subsequent conclusion about the relationship between a child victim and the alleged trauma. Conclusions which relate to the credibility of the child victim, the extent of the trauma and the veracity of the child's allegations are very different from the role that a therapist should have within the court room. The evaluator is the expert witness who can testify to syndrome behavior, the general effects of the judicial system on the child victim and the consonance of the child's behavior with other typical victims of sexual assault.

The role of the treating therapist is one of empathy and trust. The goal of the treating therapist is to understand subjective experience of the client and to remain allied with that client for a greater goal of growth, development and traumatic resolution. The therapist is expected to build a confidential and helpful relationship with the child victim which may readily be destroyed in a public forum such as a court hearing. The scope of the therapist testimony is governed by the nature of the relationship with the child and must be weighed against the potential detrimental effects that testimony would have on that patient/client relationship. The therapist should not provide testimony when the therapeutic relationship and confidentiality is threatened, even if that testimony is necessary for prosecution.

Advocacy occurs when the mental health professional educates the court system and the social service system about the dangers of re-victimization by multiple evaluations, the dangers of protracted separation from supportive family members and the dangers of a lack of accommodation for child victims within court proceedings. In this role of advocate, the mental health professional not only provides valuable information to the court but also sensitizes the court and the social service system to the dangers of potential re-victimization through litigation.

Pursuant to New Jersey Evidence Rule (1956) an expert witness "may testify in the form of opinion or otherwise as to matters requiring scientific, technical or other specific knowledge, if such testimony will assist the trier of fact to understand the evidence or determine a fact and issue."

Before an expert can testify to scientific evidence, it must be established that there is a "sufficient scientific base to produce uniform or reasonably reliable results and will contribute materially to the ascertainment of truth." (State vs. Carey 1967-70; State vs. Hurd, 1982). There are three methods recognized by the courts to establish the general acceptance of scientific evidence. These three methods are expert testimony, scientific and legal writings and judicial opinions.

Establishing a common base of information is important for the courts. Most court dismissals relate to recantation or delayed, conflicted and unconvincing disclosure by the child victims. Juries are continuously dissuaded by defense bar arguments of possible reasons why recantation has occurred and why the disclosure of a child could not be seen as credible. The following works describe behavioral characteristics of child victims that have been accepted by experienced professionals as a systematic attempt to explain the phases that occur in child sexual abuse (Finkelhor, 1985, Summit, 1982).

Admissibility is a separate issue from the general nature of expert testimony. Inexperienced witnesses attempting to make themselves helpful to the court, usurp the function of the jury when their testimony centers on the veracity of allegations. Syndrome testimony is meant to provide background information which allows juries to understand victim behavior that would, within the lay knowledge, seem compatible with the crime. Without this information the jury would be at a disadvantage.

Expert testimony with regard to child sexual abuse has been admitted when:

1. It provides information on the typical behavior of a child victim and does not ask the therapist or evaluator to comment on the issues of truthfulness or veracity even when a significant therapeutic history exists with the experts.
2. Truthfulness and believability of the child by the expert only becomes a rebuttal comment when the defendant seeks to discredit witnesses by introducing behavior such as promiscuity and lying.
3. The testimony provides clarity or corroboration.
4. The question of testimony is seen as a matter of importance rather than a matter of admissibility. The following case law is pertinent to this point:

## **EXPERT TESTIMONY IN CRIMINAL CASES**

### **CHILD ABUSE (PHYSICAL & SEXUAL)**

**State v. Carlson**, 360 N.W. 2d 442 (Minn. 1985)  
**State v. Cary**, 49 N.J. 343, 352 (1967)  
**State v. Cavallo**, 88 N.J. 508 (1982)  
**Childers v. State**, 680 P. 2d 598 (Nev. 1984)  
**State v. Durfee**, 332 N.W. 2d 778 (Minn. 1982)  
**State v. Hasseltine**, 352 N.W. 2d 673, 6 (Wis. App. 1984)  
**People v. Henson**, 33 N.Y. 2d 63 (Ct. App. 1973)  
**State v. Hurd**, 86 N.J. 525, 536 (1981)  
**People v. Jackson**, 18 Cal. App. 3d 504 (1971)  
**State v. Kim**, Hawaii, 645 P. 2d 1330 (1982)  
**Lawrence v. State**, 464 N.E. 2d 923 (Ind. 1984)  
**State of Ohio v. Lee**, 459 N.E. 2d 910 (Ohio App. 1983)  
**State v. Love**, 350 N.W. 2d 359 (Minn. 1984)  
**In Interest of M.B.C.** 466 N.E. 2d 273 (Ill. App. 5 Dist. 1984)  
**State v. Middleton**, 294 Or. 427, 657 P. 2d 1215, 6 (Oregon, 1984)  
**State v. Mueller**, 344 N.W. 2d 262 (Iowa App. 1983)  
**State v. Munro**, 680 P.2d 708, 710 (Oregon, 1984)  
**State v. Myers**, 359 N.W. 2d (Minn. 1984)  
**State v. Petrich**, 683 P. 2d 173 (Wash. 1984)  
**State v. Pettit**, 675, P. 2d 183 (Or. App. 1984)  
**State v. R.H.**, 683 P. 2d 269 (Alaska App. 1984)  
**State v. Smith**, 688 P. 2d 326 (Nev. 1984)  
**State v. Tanner**, 675 P. 2d 539 (Utah, 1983)  
**State v. Walden**, 293 S.E. 2d 780 (N.C. 1982)  
**People in the Interest of W.C.L.**, Colo. App. 650 P. 2d 1302  
**People v. Wilkins**, 349 N.W. 2d 815 (Mich. App. 1984)

### **BATTERED CHILD SYNDROME**

**People v. Barnard**, 286 N.W. 2d 870 (Mich. App. 1980)  
**People v. Kinder**, 75 A.D. 2d 34; 428 N.Y.S. 2d 375 (1980)  
**Sanders v. State**, 251 Ga. 70; 303 S.E. 2nd 13 (GA. 1983)  
**State v. Taylor**, 515 P. 2d 695 (Mont. 1973)  
**State v. Wilkerson**, 295 N.C. 559; 247 S.E. 2d 905 (1978)

#### **Basic Concepts of Expert Testimony:**

1. Preparedness is the greatest ally for an expert witness. Frequently the expert's preparation for court testimony is minimal. A pre-trial conference enables the expert witness and the attorney to develop a method of questioning which allows the expert opinion to be offered in a manner that would be most elucidating to the court. Although this might typically be seen as trial strategy, it is important for the expert to direct how opinion and information can be best communicated in the court hearing.
2. Awareness of the adversarial process is critical. A mental health professional must remember that the role of the adversarial process is to gather information and fact by debate and critique. Therefore, the expert should anticipate challenge and attack not from a defensive posture but rather with the understanding that an expert's opinion should be subject to cross examination. The method by which an expert opinion is formulated should be exposed to scrutiny.

3. It is important for the expert to be knowledgeable about the rules of the court. Frequently, experts assume that their understanding of their own field will be adequately communicated in court proceedings. Hypothetical or hostile questions as well as those requiring yes or no answers are often directed at experts. Experts need training to deliver opinions in their testimony. For example, Federal Rules of Evidence indicate that experts do not have to answer questions in a yes or no manner. Experts are expected to give reasons for and expand upon the sound clinical judgement to make a forensic conclusion (Federal Guidelines and Instructions for Expert Testimony).

## **X. CREDENTIALING**

The State of New Jersey does not require any particular credentialing, such as certification of diplomate, for evaluation and testimony in cases of child sexual abuse. Expert witnesses are currently defined as those witnesses that the court has decided to allow as experts through voir dire. However, best practices would suggest that experience in general forensic mental health or child psychology is not sufficient training to provide evaluation in the complex area of child sexual abuse. Most professional groups are more reluctant to establish credentialing procedures since this is often seen as "guild" issue, rather than an issue of the competency of the professional. However, certain minimum standards should be maintained by any expert required to evaluate and testify for child victims:

1. The minimum professional training required by the discipline for the practice of psychology, psychiatry or social work should be evident.
2. Additional training in the area of forensic work diplomate becomes prominent. Though in psychology or psychiatry diplomate status in forensic work is available, this status does not merely assure the court that forensic training encompasses expertise in child matters.
3. A significant history of work with children and adults who have been sexually victimized.
4. The mental health professional should be associated with either a professional association, a research group or support group that deals specifically with child victims.

## **XI. BIBLIOGRAPHY: ASSESSING ALLEGATIONS OF CHILD SEXUAL ABUSE**

Berliner, L & Barbieri, M. The testimony of the child victim of sexual assault. *Journal of Social Issues*, 1984 40, p.125-137.

Breese, P., Stearns, G., Bess, B., & Packer, L. Allegations of child sexual abuse in custody disputes: A therapeutic assessment model. *American Journal of Orthopsychiatry*, 1986, 56, p.560-569.

Conerly, S. Assessment of suspected child sexual abuse. In K. MacFarene, J. Waterman with Conerly, Damon, Durfee, & Long. *Sexual Abuse of Young Children*. New York: Guilford Press, 1986.

Conte, J. & Berliner, L. Sexual abuse of children: Implications for practice, *Social Casework*, 1981, 62, 601-607.

- de Young, M. A conceptual model for judging the truthfulness of a young child's allegations of sexual abuse, *American Journal of Orthopsychiatry*, 1986, 56, p.550-559.
- Esquilin, S. Initial investigation of sexual abuse in young children, *New Jersey Psychologist*, Spring, 1987.
- Faller, K. Is the child victim of sexual abuse telling the truth? *Child Abuse and Neglect*, 1984, 8, p.473-481.
- Finkelhor, D. *Child Sexual Abuse: New Theory & Research*. New York: The Free Press, 1984.
- Finkelhor, D., & Browne, A. The traumatic impact of child sexual abuse: A conceptualization, *American Journal of Orthopsychiatry*, 1985, 55, p.530-541.
- Friedemann, V., & Morgan, M. *Interviewing Sexual Abuse Victims Using Anatomical Dolls: The Professional's Guidebook*. Eugene, Ore.: Migima Designs, 1985.
- Gardner, Richard. Family evaluation in child custody litigation. Cresskill, N.J.: Creative Therapeutics 1984. The Parental Alienation Syndrome and the differentiation between fabricated and genuine Child Sexual Abuse.
- Goodwin, G. & Helgeson. Child Sexual Abuse: Children's memory and the Law, Lenore Wachter, Ed. *Handbook on Sexual Abuse of Children*, 1986, New York: Springer Publishing Co.
- Green, A. True and false allegations of sexual abuse in child custody disputes, *Journal of the American Academy of Child Psychiatry*, 1986, 25, p.449-456.
- Groth, N. The incest offender, In S. Sgroi (Ed.), *Handbook of Clinical Intervention in Child Sexual Abuse*. Lexington Books: D.C. Heath and Company, 1982.
- Groth, N. (1985) Eighth Edition. *Men Who Rape*. New York: Plenum Press.
- Herman, J. with Hirschman. L. *Father-Daughter Incest*. Cambridge, Mass.: Harvard University Press, 1981.
- Jampole, L. & Weber, M.K. An assessment of the behavior of sexually abused and nonsexually abused children with anatomical dolls, *Child Abuse & Neglect*, 1987, 11, p.187-192.
- MacFarlene, K. & Krebs, S. Techniques for interviewing and evidence gathering, in MacFarlene & Waterman with Conerly, Damon, Durfee, & Long, *Sexual Abuse of Young Children*, New York: Guilford Press, 1986.
- Maloney, M.P. (1985). *A Clinician's Guide to Forensic Psychological Assessment*. New York, NY.: The Free Press.
- Maloney, M.P. & Ward, M.P. (1976). *Psychological Assessment: A Conceptual Approach*. New York, N.Y.: Oxford University Press.
- Mannarino, A., & Cohen, J. A clinical-demographic study of sexually abused children, *Child Abuse & Neglect*, 1986, 10, p.17-23.
- Matarazzo, J.D. (1986). Computerized clinical psychological test interpretations: Unvalidated plus all mean and no sigma. *American Psychologist*, 41, 14-24.

- Mian, M., Klajner-Diamond, H., Lebaron, D., & Winter, C. Review of 125 children 6 years of age and under who were sexually abused. *Child Abuse & Neglect*, 1986, 10, p.223-229.
- Murphy, K.R. (1987). The accuracy of clinical versus computerized test interpretations. *American Psychologist*, 42, 192-193.
- Sgroi, S., Blick, L., & Porter, F. A conceptual framework for child sexual abuse, In S. Sgroi (Ed.) *Handbook of Clinical Intervention in Child Sexual Abuse*, Lexington, Mass.: D.C. Heath & Company, 1982.
- Sgroi, S., Porter, F., & Blick, L. Validation of child sexual abuse, in S. Sgroi (Ed.) *Handbook of Clinical Intervention in Child Sexual Abuse*, Lexington, Mass.: D.C. Heath & Company, 1982.
- Summit, R. The child sexual abuse accommodation syndrome, *Child Abuse & Neglect*, 1983, 7, p.177-193.
- Terr, L. Time sense following psychic trauma, *American Journal of Psychiatry*, 1983, 53, p.244-261.
- Waterman, J. Development considerations. In MacFarlene & Waterman, with Conerly, Damon, Durfee, & Long, *Sexual Abuse of Young Children*, New York: Guilford Press, 1986.
- White, S., Strom, G., Santilli, M. & Halpin, B. Interviewing young sexual abuse victims with anatomically correct dolls. *Child Abuse & Neglect*, 1986, 10, p.519-529.
- White, S., Santilli, G., & Quinn, K., (1987). Child evaluator's roles in child sexual abuse assessments. In press.

**Civil and Criminal Statutes,  
Rules and Regulations  
Regarding Child Abuse and Neglect**

## TABLE OF CONTENTS

### STATUTES

<b>N.J.S.A. 9:2-9 et seq.</b> Care, Custody and Support of Children. ....	1
<b>N.J.S.A. 9:3-37 et seq.</b> Adoption. ....	4
<b>N.J.S.A. 9:6-1 et seq.</b> Abuse, Abandonment, Cruelty and Neglect. ....	14
<b>N.J.S.A. 9:6A-1 et seq.</b> Child Life Protection. ....	38
<b>N.J.S.A. 2A:84A-16.1.</b> Use of Anatomically Correct Dolls. ....	41
<b>N.J.S.A. 2A:84A-32.4.</b> Closed Circuit Testimony of Child Victim at Trial. ....	42
<b>N.J.S.A. 2A:163-4; N.J.S.A. 2A:163-5.</b> Prompt Disposition of Criminal Cases Involving Child Victims. ....	43
<b>N.J.S.A. 18A:6-7.1.</b> Requirement for Criminal History Record Checks for Candidates Seeking Employment in Public Schools. ....	44
<b>N.J.S.A. 30:4C-1 et seq.</b> Dependent and Neglected Children. ....	45
<b>N.J.S.A. 30:5B-1 et seq.</b> Child Care Licensing Act. ....	78
<b>N.J.S.A. 2C:1-6.</b> Extends Statute of Limitations for Child Victims of Sexual Assault. ..	83
<b>N.J.S.A. 2C:12-1.</b> Criminal Offenses. ....	84
<b>N.J.S.A. 2C:13-4.</b> Interference With Custody. ....	86
<b>N.J.S.A. 2C:14-1.</b> Definitions ....	87
<b>N.J.S.A. 2C:14-2.</b> Sexual Assault. ....	88
<b>N.J.S.A. 2C:14-3.</b> Criminal Sexual Contact. ....	90
<b>N.J.S.A. 2C:14-4.</b> Lewdness. ....	91
<b>N.J.S.A. 2C:24-4.</b> Endangering the Welfare of Children. ....	92

### REGULATIONS

<b>45 C.F.R. sec. 1340 (1985).</b> Child Abuse Prevention and Treatment. ....	93
<b>N.J. Admin. Code tit. 10 sec. 129-1.1 (1974) et seq.</b> Policy Concerning the Referral and Investigation of Child Abuse and Neglect Cases. ....	101

These statutes, rules and regulations represent prevailing law as of October 1988 and are subject to amendments.

**N.J.S.A. 9:2-9 et seq. Care, Custody and Support of Children.**

**9:2-9. Parents or custodian of child unfit; action in Superior Court or Juvenile and Domestic Relations Court**

When the parents of any minor child or the parent or other person having the actual care and custody of any minor child are grossly immoral or unfit to be entrusted with the care and education of such child, or shall neglect to provide the child with proper protection, maintenance and education, or are of such vicious, careless or dissolute habits as to endanger the welfare of the child or make the child a public charge, or likely to become a public charge; or when the parents of any minor child are dead or cannot be found, and there is no other person, legal guardian or agency exercising custody over such child; it shall be lawful for any person interested in the welfare of such child to institute an action in the Superior Court or the Juvenile and Domestic Relations Court in the county where such minor child is residing, for the purpose of having the child brought before the court, and for the further relief provided by this chapter. The court may proceed in the action in a summary manner or otherwise.

**9:2-10. Order or judgment as to custody; bond**

In an action brought pursuant to section 9:2-9 of this Title, the Superior Court, or the Juvenile and Domestic Relations Court, as the case may be, after an investigation shall have been made by the chief probation officer of the county in which the child may reside, concerning the reputation, character and ability of the plaintiff, or such other person as the court may direct, to properly care for such child, shall make an order or judgment committing the child to the care and custody of such person, who will accept the same, as the court shall for that purpose designate and appoint, until such child shall attain the age of eighteen years, or the further direction of the court; *provided, however*, that in proper cases such care and custody may be exercised by supervision of the child in his own home, unless the court shall otherwise order. Such order or judgment may require the giving of a bond by the person to whose care or custody the said child may be committed, with such security and on such conditions as the court shall deem proper.

**9:2-11. Commitment of child to child caring society; cost of proceedings; consent to adoption of child; support by relative**

The court before which such proceedings shall be conducted, may, in the same manner but in lieu of committing such child, as in section 9:2-10 of this Title specified, commit such child to the care and custody of any society duly incorporated under the laws of this State for the care of children. In such case the court may, in its discretion, cause the person in whose custody such child was, or the county in which such child may reside, to pay all costs and expenses of such proceedings, and such person or society or institution to whom or to which such child is committed may, upon special authority granted in the order or judgment of commitment, give his or its consent, and such consent will be sufficient, to the legal adoption of such child; *provided, however*, that the granting of the right to consent to adoption shall in no wise be construed as authority to place a child for adoption except in accordance with the provisions of chapter three of this Title (§9:3-1 et seq.).

Whenever the court shall have made an order or judgment with respect to the care and custody of a child as contemplated by this Title, and it shall appear that the person in whose custody such child was is a relative financially able and legally liable to provide support for such child, the court may make a supplementary order requiring such relative to make such payment or payments for the support of such child as the court may deem reasonable under the circumstances.

### **9:2-13. Definitions**

For the purposes of this act, the following words and phrases, unless otherwise indicated, shall be deemed to have the following meanings:

(a) The phrase "approved agency" means a legally constituted agency having its principal office within or without this State, which has been approved, pursuant to law, to place children in New Jersey for purposes of adoption.

(b) The word "child" means any person under 21 years of age.

(c) The word "custody" means continuing control and authority over the person of a child, established by natural parenthood, by order or judgment of a court of competent jurisdiction, or by written surrender to an approved agency pursuant to law.

(d) The phrase "forsaken parental obligations" means willful and continuous neglect or failure to perform the natural and regular obligations of care and support of a child.

(e) The phrase "mentally incompetent" means inability to understand and discharge the natural and regular obligations of care and support of a child by reason of mental disease, feebleness of mind, or habitual intemperance.

(f) The word "parent," when not otherwise described by the context, means a natural parent or parent by previous adoption, but the word parent shall not include the father of an illegitimate child.

(g) The word "may" shall be construed to be permissive and the word "shall" shall be construed to be mandatory.

### **9:2-14. Surrender of child custody; validity**

Except as otherwise provided by law or by order or judgment of a court of competent jurisdiction or by testamentary disposition, no surrender of the custody of a child shall be valid in this State unless made to an approved agency pursuant to the provisions of this act or pursuant to the provisions of a substantially similar law of another State or territory of the United States or of the Dominion of Canada or of one of its provinces.

### **9:2-15. Surrender or termination of rights of one parent; rights of other parent**

No surrender of custody by, nor termination of the parental rights of, one parent shall affect the rights of the other parent; nor may one parent act as the agent or representative of the other parent in the surrender of custody or termination of parental rights.

### **9:2-16. Voluntary surrender to approved agency**

An approved agency may take a voluntary surrender of custody of a child from the parent of such child, or from such other person or persons who, by order of a court of competent jurisdiction, have been substituted for the parent as to custody of such child. Each such surrender, when properly acknowledged in the manner and form provided by sections 46:14-6 and 46:14-7 of the Revised Statutes, shall be valid whether or not the person giving the same is a minor, and shall be irrevocable except at the discretion of the approved agency taking such surrender or

upon order or judgment of a court of competent jurisdiction, setting aside such surrender upon proof of fraud, duress or misrepresentation.

**9:2-17. Form of surrender**

The form of any such surrender shall be such as to declare that the person executing the same desires to relinquish the custody of the child, acknowledge the termination of parental rights as to such custody in favor of the approved agency, and acknowledge full understanding of the effect of such surrender as provided by this act. Any such surrender may include a statement that its purpose is to permit the approved agency to place the child for adoption by such person or persons as the approved agency may select.

**9:2-18. Action to terminate parental rights; notice; report**

An approved agency which is providing supervision of a child may institute an action in the County Court of the county in which such approved agency has its principal office in New Jersey or in the Superior Court, seeking the termination of the rights of the parents of such child and the transfer of custody of such child to the agency. A prior surrender of custody as provided by Article II of this act shall not be deemed a waiver of notice or service of process in proceedings under Article III hereof. At least five days prior to the hearing, the plaintiff shall file with the court a written report as to all circumstances of the case.

**9:2-19. Determinations and declarations of court**

If the court shall determine that custody of the child has been surrendered as provided in Article II of this act, the court may declare that the person making such surrender shall have no further right to custody of the child. If the court shall determine that a parent of the child is dead, or mentally incompetent, or has forsaken parental obligation, or has been divorced by the other parent on grounds of adultery, desertion or extreme cruelty, the court may declare that such parent shall have no further right to custody of the child. If the court shall determine that the child is illegitimate, the court shall declare that the father, and the husband of the mother if she be married, shall have no right to custody of the child. If the court shall determine that a custodian or guardian has been appointed for the child, but that such custodian or guardian has willfully and continuously neglected or failed to discharge the responsibilities of such appointment, the court may declare that such custodian or guardian shall have no further control and authority over the person of the child.

**9:2-20. Judgment terminating rights; effect of judgment**

If the court shall find that the parents of the child should have no further right to custody of the child, or that the custodian or guardian, if any, should have no further control and authority over the person of the child, a judgment shall be entered terminating such right or control and authority and transferring the custody of the child to the plaintiff. The judgment so entered, unless otherwise specified therein, shall not affect the duties of the parents, custodian or guardian with respect to support and maintenance of the child.

**9:2-21. Effective date**

This act shall take effect July 1, 1955.

**N.J.S.A. 9:3-37 et seq. Adoption.**

**9:3-37. Liberal construction of act; due regard to rights of all persons affected**

This act shall be liberally construed to the end that the best interests of children be promoted. Due regard shall be given to the rights of all persons affected by an adoption.

**9:3-38. Definitions**

For the purposes of this act:

a. "Approved agency" shall mean a nonprofit corporation, association or agency, including any public agency, approved by the Department of Human Services for the purpose of placing children for adoption in New Jersey;

b. "Child" shall mean a person under 18 years of age;

c. "Custody" shall mean the general right to exercise continuing control over the person of a child derived from court order or otherwise;

d. "Guardianship" shall mean the right to exercise continuing control over the person or property or both of a child which includes any specific right of control over an aspect of the child's upbringing derived from court order.

e. "Guardian ad litem" shall mean a qualified person, not necessarily an attorney, appointed by the court under the provisions of this act or at the discretion of the court to represent the interests of the child whether or not the child is a named party in the action;

f. "Parent" shall mean a natural parent or natural parents, including the natural father of the child born out of wedlock who has acknowledged the child or to whom the court has ordered notice to be given, or a parent or parents by adoption;

g. "Placement for adoption" shall mean the transfer of custody of a child to a person for the purpose of adoption by such person; and

h. "Plaintiff" shall mean a prospective parent or parents who have filed a complaint for adoption.

**9:3-39. Persons and approved agencies; authorization to place children for adoption**

a. No person, firm, partnership, corporation, association or agency shall place, offer to place or materially assist in the placement of any child for adoption in New Jersey unless such person shall be the parent or guardian of the child, or such firm, partnership, corporation, association or agency shall be an approved agency; provided, however, that this prohibition shall not apply to the placement for adoption of a child with a brother, sister, aunt, uncle, grandparent, natural father or stepparent of such child. For the purposes of this section, material assistance in the placement for adoption of any child shall include but shall not be limited to acting as an agent, finder or intermediary for or between any parent and any prospective parent or a person acting on behalf of either in connection with a placement for adoption of such parent's child. The Superior Court, in an action by the Commissioner of the Department of Human Services, may enjoin any party found by the court to have violated this section from any further violation of this section.

b. Any person, firm, partnership, corporation, association or agency violating this section shall be guilty of a misdemeanor.

**9:3-40. Qualification of agencies for approval; rules and regulations; discrimination; prohibition; consideration of factors in placement**

The Commissioner of the Department of Human Services shall promulgate rules and regulations relating to the qualifications of agencies for approval to make placements for adoption in New Jersey. Such rules and regulations shall include, but shall not be limited to standards of professional training and experience of staff and requirements relating to responsibilities of trustees, officers or other persons supervising or conducting the placement for adoption program, adequacy of facilities, maintenance and confidentiality of casework records and furnishing of reports. No approved agency shall discriminate with regard to the selection of adoptive parents for any child on the basis of age, sex, race, national origin, religion or marital status provided, however, that these factors may be considered in determining whether the best interests of a child would be served by a particular placement for adoption or adoption.

**9:3-41. Surrender of child; acknowledged signed instrument; relinquishment of rights and consent to adoption; validity; acceptance of custody by approved agency**

a. Surrender of a child to an approved agency for the purpose of adoption shall be by a signed instrument acknowledged by the person executing the same before an officer authorized to take acknowledgments or proofs in the State in which the instrument is executed, such officer first having made known the contents of the instrument to the person making the acknowledgment and having been satisfied as to the identity of the person executing the surrender, which the officer shall certify on the instrument of surrender or on a paper attached thereto. Such surrender shall constitute relinquishment of such person's parental rights in or guardianship or custody of the child named therein and consent by such person to adoption of the child. Such surrender shall be valid and binding without regard to the age of the person executing the surrender.

b. Any approved agency may accept custody of a child by a duly executed instrument of surrender from a parent or guardian of the child or from another approved agency or any agency for the care and protection of children approved by any other state, by the United States or by any foreign country, which has duly obtained the authority to place such child for adoption.

**9:3-41.1. Surrender of child to agency; provision of available information on child's development to prospective parent**

Any approved agency making an investigation of the facts and circumstances surrounding the surrender of a child shall provide a prospective parent with all available information relevant to the child's development, including his developmental and medical history, personality and temperament, the parents' complete medical histories, including conditions or diseases which are believed to be hereditary, any drugs or medications taken during pregnancy and any other conditions of the parents' health which may be a factor influencing the child's present or future health. Such information shall be made available to the prospective parent prior to the actual adoptive placement in the case of a placement made by an approved agency, or upon the completion of an investigation conducted by an approved agency pursuant to section 12 of P.L.1977, c. 367 (C.9:3-48).

b. The available information required of an approved agency by subsection a. of this section shall be presented to the adoptive parents on standardized forms prepared by the Commissioner of Human Services.

**9:3-42. Venue**

An action for adoption shall be instituted in either the Superior Court or the County Court of the county in which the prospective parent resides; provided, however, that:

a. Whenever the child to be adopted has been received into the home of the prospective parent from an approved agency, the action may be instituted in the County Court of any county in which such approved agency has an office; and provided further that

b. Whenever a parent of the child to be adopted has been granted a divorce from the other parent by the Superior Court, the action shall be instituted in the Superior Court unless such court previously has awarded custody of the child to an approved agency or has consented to the institution of the action in a County Court.

**9:3-43. Who may institute action; consent of spouse; qualifications; waiver**

a. Any person may institute an action for adoption, provided, however, that a married person may do so only with the written consent of his spouse or jointly with his spouse in the same action or after having lived separate and apart from his spouse for a continuous period of at least 18 months.

b. Each plaintiff, at the time of the institution of the action, shall have attained the age of 18 years and shall be at least 10 years older than the child to be adopted, provided, however, that the court for good cause may waive either requirement, such waiver to be recited in any judgment of adoption thereafter entered.

**9:3-44. Promptness in institution of action after child is received in home**

Whenever any person shall receive a child into his home for the purpose of adoption other than from an approved agency, an action for adoption shall be instituted with reasonable promptness. Whenever any person shall receive a child into his home for purposes other than adoption and it is later determined that an adoption shall be sought, an action for adoption shall be instituted with reasonable promptness following such determination. Failure to so act shall not be a sole basis for refusal of the adoption.

**9:3-45. Notice of complaint to parent or putative father; service; contents**

a. In any adoption proceeding pursuant to this act, notice of the complaint may not be waived and a notice of hearing shall be served in accordance with the Rules of Court on each parent of the child to be adopted. The notice shall inform each parent of the purpose of the action and of the parent's right to file written objections to the adoption within 20 days after notice is given in the case of a resident and 35 days in the case of a non-resident. For purposes of this section, "parent" shall include (1) the husband of the mother of a child born or conceived during the marriage and (2) a putative or alleged natural mother or father of a child.

b. Notice pursuant to subsection a. shall not be served on any parent:

(1) Who has executed a valid surrender to an approved agency pursuant to section 5;

(2) Whose parental rights have been terminated in a separate judicial proceeding by court order;

(3) Who has, prior to the placement of the child for adoption, received notice of the intention to place the child, which notice shall inform the parent of the purpose of the placement and of the parent's right to file with the court, in accordance with the Rules of Court, written objections to the proposed placement within 20 days after notice is given, in the case of a resident, and 35 days in the case of a nonresident; and who has either failed to file written objections or denied paternity;

(4) Who has surrendered the child for adoption to the adopting parent in accordance with the provisions of section 3 and the court determines that the surrender is valid; or

(5) Whose child has been made available for adoption in a foreign state or country. If the United States Immigration and Naturalization Service has determined that the child has been approved for adoptive placement, that finding shall be presumptive and no notice as to the availability of the child for adoption shall be served.

c. If personal service of the notice cannot be effected because the whereabouts of any parent of the child to be adopted are unknown, the court shall determine that an adequate effort has been made to serve notice upon the parent if the plaintiff immediately prior to or during the placement and not more than 9 months prior to the filing of a complaint has:

(1) Sent the notice by regular mail and by certified mail return receipt requested, to the parent's last known address;

(2) Made a discreet inquiry among any known relations, friends and current or former employers of the parent;

(3) Unless otherwise restricted by law, made direct inquiries, using the party's name and last known or suspected address, to the local post office, the Division of Motor Vehicles, county welfare office, the municipal police department, the Division of State Police, the county probation office, the Department of Corrections, and any social service and law enforcement agencies known to have had contact with the party, or the equivalents in other states, territories or countries. Failure to receive a response to the inquiries within 45 days shall be a negative response.

d. In any case where the identity of a parent cannot be determined or where the known parent of a child is unable or refuses to identify the other parent, and the court is unable from other information before the court to identify the other parent, service on that parent shall be waived by the court.

**9:3-46. Objection by parent; prohibition of judgment of adoption; exception; guardian or person standing in loco parentis; notice and standing to object**

a. Any parent who has not executed a surrender pursuant to section 5 and whose parental rights have not been terminated by court order shall have the right to object to the adoption of his child. No judgment of adoption shall be entered over an objection of such parent communicated to the court by personal appearance or by letter unless the court finds that such parent has substantially failed to perform the regular and expected parental functions of care and support of the child, which shall include maintenance of an emotional relationship with the child.

b. Any guardian of a child to be adopted who has not executed a surrender pursuant to section 5 and any other person standing in loco parentis of such child shall be given notice of the action and in accordance with the Rules of Court shall have standing to object to the adoption, which objection shall be given due consideration by the court in determining whether the best interests of the child would be promoted by the adoption.

**9:3-47. Action on complaint for adoption; child received from approved agency**

a. When the child to be adopted has been received from an approved agency, the prospective parent shall file with the court a complaint for adoption after the child has been in the home of such prospective parent for at least 6 months. The complaint shall be accompanied by a consent to the plaintiff's adoption of the child signed and acknowledged by an authorized officer or representative of the approved agency; provided, however, that failure or refusal on the part of such approved agency to give such consent, or withdrawal of consent on the part of such approved agency, shall not preclude an action for adoption.

b. Upon the filing of the complaint, the court shall set a date for the adoption hearing not less than 10 nor more than 30 days from the date of institution of the action unless a longer period shall be required in order to obtain service of notice upon one or more of the parents and shall order the approved agency concerned to file at least 5 days prior to the hearing a two-part written report, part one of which shall describe the circumstances surrounding the surrender of the child to the agency and part two of which shall set forth the results of the agency's evaluation of the child and of the plaintiff and his spouse, if any, and the agency's assessment of the care being received by the child and the adjustment of the child and the plaintiff as members of a family. If the agency's report contains any material findings or recommendations adverse to the plaintiff the agency shall serve a copy of part two of its report upon the plaintiff at least 5 days prior to the hearing and the court shall appoint a guardian ad litem for the child in the adoption proceeding if the court determines that such guardian is necessary to represent the best interest of the child. If the approved agency that placed the child with the plaintiff has not consented to the adoption, the court may appoint another approved agency to conduct an investigation and make recommendations in the matter. Such appointment shall not deprive the placing agency of standing to appear at the hearing and contest the adoption. Personal appearance at the hearing by a representative of the approved agency conducting the investigation may be dispensed with by the court if the agency's report favors the adoption. If such appearance is required, the approved agency shall be entitled to present testimony and to cross-examine witnesses and shall be subject to cross-examination with respect to its report and recommendations in the matter. The appearance of the child to be adopted shall not be required unless ordered by the court or unless the inquiry pursuant to section 13 indicates that the child is opposed to the adoption.

c. The adoption hearing shall be held in camera. If a parent of the child has made an objection to the adoption, the court shall take evidence relating to such objection. If the court finds against the objecting parent in accordance with subsection (a) of section 10, it shall make an order terminating the parental rights of such parent and proceed with the hearing.

d. If, based upon the approved agency's report and the evidence presented at the hearing, the court is satisfied that the best interests of the child would be promoted by the adoption, the court shall enter a judgment of adoption. If, based upon the approved agency's report and the evidence presented at the hearing, the court is not satisfied that the best interests of the child would be promoted by the adoption, the court shall deny the adoption and make such further order concerning the custody and guardianship of the child as may be deemed proper in the circumstances.

**9:3-48. Action on complaint for adoption; child not received from approved agency**

a. When the child to be adopted has not been received from an approved agency, the prospective parent shall file with the court a complaint for adoption. Upon receipt of the complaint, the court shall by its order

(1) Declare the child to be a ward of the court and declare that the plaintiff shall have custody of such child subject to further order of the court;

(2) Appoint an approved agency to make an investigation and submit a written report to the court concerning the facts and circumstances surrounding the surrender of custody by the child's parents and the placement of the child in the home of the plaintiff and an evaluation of the child and of the plaintiff and the spouse of plaintiff if not the child's parent and if not a party to the action, provided, however, that whenever the plaintiff is a stepparent of the child, the court may dispense with the agency investigation and report and take direct evidence at the preliminary hearing of the facts and circumstances surrounding the adoption;

(3) Direct the plaintiff to cooperate with the approved agency making such investigation and report; and

(4) Fix a day for preliminary hearing not less than 2 or more than 3 months from the date of the institution of the action; provided, however, that such hearing may be accelerated upon the application of the approved agency and upon notice to the plaintiff where the agency determines that removal of the child from the plaintiff's home is required, in which case the court shall appoint a guardian ad litem to represent the child at all future proceedings regarding the adoption.

Whenever a plaintiff is a brother, sister, grandparent, aunt, uncle, natural father or stepparent of the child, the order may limit the investigation to an inquiry concerning the status of the parents of the child and an evaluation of the plaintiff. At least 10 days prior to the day fixed for the preliminary hearing the approved agency shall file its report with the court and serve a copy thereof on the plaintiff.

b. The preliminary hearing shall be in camera and shall have for its purpose the determination of the circumstances under which the child was relinquished by his parents and received into the home of the plaintiff, the status of the parental rights of the parents, the fitness of the child for adoption and the fitness of the plaintiff to adopt the child and to provide a suitable home. If the report of the approved agency pursuant to subsection a. contains any material findings or recommendations adverse to the plaintiff, the presence of a representative of the approved agency who has personal knowledge of the investigation shall be required at the preliminary hearing. If in the course of the preliminary hearing the court shall determine that there is lack of jurisdiction or that there is lack of qualification on the part of the plaintiff, the action shall be dismissed forthwith. If in the course of the preliminary hearing the court shall determine that the best interests of the child would not be promoted by the adoption, the court shall deny the adoption and make such further order concerning the custody and guardianship of the child as may be deemed proper in the circumstances.

c. If upon completion of the preliminary hearing the court finds that:

(1) The parents of the child do not have rights as to custody of the child by reason of their rights previously having been terminated by court order, their failure to make timely objection to the adoption pursuant to section 10 or intentional abandonment or very substantial neglect of parental duties without a reasonable expectation of a reversal of that conduct in the future;

(2) The guardian, if any, should have no further control or authority over the child;

(3) The child is fit for adoption; and

(4) The plaintiff is fit to adopt the child, it shall issue an order stating its findings, declaring that no parent or guardian of the child has any right to custody or guardianship of the child, terminating the parental rights of such person, fixing a date for final hearing not less than 6 nor more than 9 months from the date of the preliminary hearing and appointing an approved agency to evaluate the placement in accordance with subsection d. If the plaintiff is a brother, sister, grandparent, aunt, uncle, natural father, stepparent or foster parent of the child, or if the child has been in the home of the plaintiff for at least 2 years immediately preceding the commencement of the adoption action, and if the court is satisfied that the best interests of the child would be promoted by the adoption the court may dispense with such evaluation and final hearing and enter a judgment of adoption immediately upon completion of the preliminary hearing.

d. The approved agency appointed pursuant to subsection c. shall from time to time visit the home of the plaintiff and make such further inquiry as may be necessary to observe and evaluate the care being received by the child and the adjustment of the child and the plaintiff as members of a family. At least 15 days prior to the final hearing such approved agency shall file with the court a written report of its findings, including a recommendation concerning the adoption, and shall mail a copy of the report to the plaintiff.

If at any time following the preliminary hearing such approved agency shall conclude that the best interests of the child would not be promoted by the adoption, the court shall appoint a guardian ad litem for the child and a hearing held upon the application of such approved agency and upon notice to the plaintiff, may modify or revoke any order entered in the action and make such further order concerning the custody and guardianship of the child as may be deemed proper in the circumstances.

e. At the final hearing the court shall proceed in camera; provided, however, that if the approved agency in its report pursuant to subsection d. has recommended that the adoption be granted, the final hearing may be dispensed with and, if the court is satisfied that the best interests of the child would be promoted by the adoption, a judgment of adoption may be entered forthwith.

The appearance of the approved agency at the final hearing shall not be required unless its recommendations are adverse to the plaintiff or unless ordered by the court. If such appearance is required, the approved agency shall be entitled to present testimony and to cross-examine witnesses and shall be subject to cross-examination with respect to its report and recommendations in the matter.

f. If, based upon the report and the evidence presented, the court is satisfied that the best interests of the child would be promoted by the adoption, the court shall enter a judgment of adoption. If, based upon such evidence, the court is not satisfied that the best interests of the child would be promoted by the adoption, the court shall deny the adoption and make such further order concerning the custody and guardianship of the child as may be deemed proper in the circumstances.

**9:3-49. Child to be adopted over 10; appearance at hearing; consideration of child's wishes**

If the child sought to be adopted is of the age of 10 years of over, the appearance of such child shall be required at the adoption hearing, and the child's wishes concerning the adoption

shall be solicited by the court and given consideration if the child is of sufficient capacity to form an intelligent preference regarding the adoption.

**9:3-50. Effect of adoption; relationships of parent and child; rights of inheritance**

a. The entry of a judgment of adoption shall terminate all relationships between the adopted child and his parents and all rights, duties and obligations of any person that are founded upon such relationships, including rights of inheritance under the intestate laws of this State, except such rights as may have vested prior to entry of the judgment of adoption; provided, however, that when the plaintiff is a stepfather or stepmother of the adopted child and the adoption is consummated with the consent and approval of the mother or father, respectively, such adoption shall not affect or terminate any relationship between the child and such mother or father or any rights, duties or obligations based thereupon. For good cause, the court may in the judgment provide that the rights of inheritance from or through a deceased parent will not be affected or terminated by the adoption.

b. The entry of a judgment of adoption shall establish the same relationships, rights, duties and obligations between the child and the adopting parent as if such child were born to such adopting parent in lawful wedlock. For good cause, the court may direct the entry of judgment nunc pro tunc as of the date the action was instituted. In applying the intestate laws of this State, an adopted child shall have the same rights of inheritance as if born to the adopting parent in lawful wedlock. In the construction of any testamentary or other document executed subsequent to the effective date of this act, an adopted child shall be deemed lawful issue of the adopting parents unless such document shall otherwise provide.

**9:3-51. Judgment of adoption; filing; docketing; alphabetical index; records; sealing; accessibility**

The clerk of each County Court shall file promptly with the Superior Court a copy of each judgment of adoption entered pursuant to this act. The clerk of the Superior Court shall docket the copies of such judgments and shall maintain an alphabetical index of all judgments of adoption entered each year pursuant to this act in the County Courts and the Superior Court of the State, all of which records shall be sealed and thereafter shall be made accessible only by court order.

**9:3-52. Records of proceedings; filing under seal; inspection; change of birth record**

a. All records of proceedings relating to adoption, including the complaint, judgment and all petitions, affidavits, testimony, reports, briefs, orders and other relevant documents, shall be filed under seal by the clerk of the court and shall at no time be open to inspection or copying unless the court, upon good cause shown, shall otherwise order. An index to all adoption proceedings shall be maintained by the clerk of the court, but no index of adoption proceedings shall be open to inspection or copying or be made public except upon order of the court.

b. Upon entry of a judgment of adoption, the clerk of the court shall certify to the State Bureau of Vital Statistics, any successor agency or any similar agency in the State or country of the child's birth, the date of entry of the judgment, the names of the adopting parent or parents, the name of the child, the date and place of birth of the child and the new name of the child if changed by the judgment of adoption.

**9:3-53. Costs of proceedings; payment by plaintiff**

The costs of all proceedings pursuant to this act shall be borne by the plaintiff, including the costs incurred by an approved agency acting pursuant to an order of the court; provided, however, that such approved agency may waive part of or all such costs. Payment of costs hereunder shall not be a condition precedent to entry of judgment. Such costs shall not include the provision of counsel for any person, other than the plaintiff, entitled to the appointment of counsel hereunder.

**9:3-54. Placement of child for adoption for consideration; prohibition; high misdemeanor:**

a. No person, firm, partnership, corporation, association or agency shall make, offer to make or assist or participate in any placement for adoption and in connection therewith

(1) Pay, give or agree to give any money or any valuable consideration, or assume or discharge any financial obligation; or

(2) Take, receive, accept or agree to accept any money or any valuable consideration.

b. The prohibition of subsection a. shall not apply to the fees or services of any approved agency in connection with a placement for adoption, nor shall such prohibition apply to the payment or reimbursement of medical, hospital or other similar expenses incurred in connection with the birth or any illness of the child, or to the acceptance of such reimbursement by a parent of the child.

c. Any person, firm, partnership, corporation, association or agency violating this section shall be guilty of a high misdemeanor.

**9:3-55. Report by prospective parent; disclosure of valuable consideration paid, given or agreed to be given in connection with adoption; referral of suspected violations of act for prosecution**

a. Any prospective parent who is not a brother, sister, aunt, uncle, grandparent, foster parent, natural father or stepparent of the child to be adopted shall file before the complaint is heard, in accordance with court rules, a detailed report which shall be signed and verified by each such prospective parent and shall disclose all sums of money or other valuable consideration paid, given or agreed to be given to any person, firm, partnership, corporation, association or agency by or on behalf of the prospective parent in connection with the adoption, and the names and addresses of each such person, firm, partnership, corporation, association or agency to whom such consideration was given or promised. The report, a copy of which shall be provided to the approved agency appointed pursuant to section 12 and the Division of Youth and Family Services, shall include but shall not be limited to any expenses incurred or to be incurred by or on behalf of such prospective parent in connection with:

(1) The birth of the child;

(2) The placement for adoption of the child with the prospective parent;

(3) Medical or hospital care received by the mother or the child during the mother's pre- and postnatal period; and

(4) Services relating to the adoption or to the placement for adoption, including legal services, which were rendered or are to be rendered to or for the benefit of the prospective parent, either parent of the child or any other person or agency.

b. Whenever based upon a report filed pursuant to this section it shall appear to the court or to the Division of Youth and Family Services that any person may have violated sections 3 or 18 hereof, the court or the division may refer the matter to the appropriate county prosecutor.

**9:3-56. Severability**

If any provision of this act, or any application of any provision, is held invalid, the invalidity shall not affect other applications of the provision, or other provisions of the act, which reasonably can be given effect despite the invalidity. To this end, the provisions of this act are declared severable.

**N.J.S.A. 9:6-1 et seq. Abuse, Abandonment, Cruelty and Neglect.**

**9:6-1. Abuse, abandonment, cruelty and neglect of child; what constitutes**

Abuse of a child shall consist in any of the following acts: (a) disposing of the custody of a child contrary to law; (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the habitual use by the parent or by a person having the custody and control of a child, in the hearing of child, of profane, indecent or obscene language; (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; (g) using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or (h) in an institution as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21), willfully isolating the child from ordinary social contact under circumstances which indicate emotional or social deprivation.

Abandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child: (a) willfully forsaking a child; (b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection; (c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

Cruelty to a child shall consist in any of the following acts: (a) inflicting unnecessarily severe corporal punishment upon a child; (b) inflicting upon a child unnecessary suffering or pain, either mental or physical; (c) habitually tormenting, vexing or afflicting a child; (d) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child; (e) or exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the health or physical or moral well-being of such child.

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.

**9:6-1.1. Treatment of ill children according to religious tenets of church**

The article to which this act is a supplement shall not be construed to deny the right of a parent, guardian or person having the care, custody and control of any child to treat or provide treatment for an ill child in accordance with the religious tenets of any church as authorized by other statutes of this State; *provided*, that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated.

**9:6-2. "Parent" and "custodian" defined**

"Parent", as used in this chapter, shall include the stepfather and stepmother and the adoptive or foster parent. "The person having the care, custody and control of any child", as used in this chapter, shall mean any person who has assumed the care of a child, or any person with whom a child is living at the time the offense is committed, and shall include a teacher, employee or volunteer, whether compensated or uncompensated, of an institution as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21) who is responsible for the child's welfare, and a person who legally or voluntarily assumes the care, custody, maintenance or support of the child. Custodian also includes any other staff person of an institution regardless of whether or not the person is responsible for the care or supervision of the child. Custodian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school as defined in section 1 of P.L.1974, c.119 (C. 9:6-8.21).

**9:6-3. Cruelty and neglect of children; fine or imprisonment; postponement and probation; commitment of child to society for prevention of cruelty to children; order for payment for support; failure to pay**

Any parent, guardian or person having the care, custody or control of any child, who shall abuse, abandon, be cruel to or neglectful of such child, or any person who shall abuse, be cruel to or neglectful of any child shall be deemed to be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding five hundred dollars (\$500.00) or by imprisonment with or without hard labor, as the court may direct, for a term not exceeding three years, or both. If a fine be imposed, the court may direct the same to be paid in whole or in part to the wife, or to the guardian, custodian or trustee of such minor child or children; *provided, however*, that whenever in the judgment of the court it shall appear to the best interest of the child to place it in the temporary care or custody of a society or corporation, organized or incorporated under the laws of this State, having as one of its objects the prevention of cruelty to children, and the society or corporation is willing to assume such custody and control, the court may postpone sentence and place the child in the custody of such society or corporation, and may place defendant on probation, either with the county probation officers or an officer of the society or corporation to which the child is ordered, and may order the parent, guardian or person having the custody and control of such child to pay to such society or corporation a certain stated sum for the maintenance of such child. When, however, a child is so placed in the custody of such society or corporation, and defendant fails to make the payments as ordered by the court, the court shall cause the arrest and arraignment before it of such defendant, and shall impose upon him the penalty provided in this section.

**9:6-3.1. Temporary suspension of alleged offender; due process rights; single act; several incidents; remedial plan, changes, and sanctions**

a. A teacher, employee, volunteer or staff person of an institution as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21) who is alleged to have committed an act of child abuse or neglect as defined in R.S. 9:6-1, section 2 of P.L.1971, c. 437 (C.9:6-8.9) and section 1 of P.L.1974, c. 119 (C.9:6-8.21) shall be temporarily suspended by the appointing authority from his position at the institution with pay, or reassigned to other duties which would remove the risk of harm to the child under the person's custody or control, if there is reasonable cause for the appointing authority to believe that the life or health of the alleged victim or other children at the institution is in imminent danger due to continued contact between the alleged perpetrator and a child at the institution.

A public employee suspended pursuant to this subsection shall be accorded and may exercise

due process rights, including notice of the proposed suspension and a presuspension opportunity to respond and any other due process rights provided under the laws of this State governing public employment and under any applicable individual or group contractual agreement. A private employee suspended pursuant to this subsection shall be accorded and may exercise due process rights provided for under the laws of this State governing private employment and under any applicable individual or group employee contractual agreement.

b. If the child abuse or neglect is the result of a single act occurring in an institution, within 30 days of receipt of the report of child abuse or neglect, the division may request that the chief administrator of the institution formulate a plan of remedial action. The plan may include, but shall not be limited to, action to be taken with respect to a teacher, employee, volunteer or staff person of the institution to assure the health and safety of the alleged victim and other children at the institution and to prevent future acts of abuse or neglect. Within 30 days of the date the division requested the remedial plan, the chief administrator shall notify the division in writing of the progress in preparing the plan. The chief administrator shall complete the plan within 90 days of the date the division requested the plan.

**9:6-4. Jurisdiction of complaints; immediate trial; procedure**

Complaints for violation of the provisions of this chapter may be made to any municipal court, County Court or criminal judicial district court in any county, or juvenile and domestic relations court in every county of this State. Whenever any person, who shall be charged with any such offense upon oath before any court or by indictment, shall, in writing signed by him and addressed to the county prosecutor of the county wherein the offense was committed, waive indictment and trial by jury, or trial by jury, as the case may be, and request to be tried immediately before the County Court or the juvenile and domestic relations court of such county, without a jury, the county prosecutor shall report such fact to either such court of such county, which, unless it shall deem the public interest will be benefited by denying such request, shall with all due and reasonable speed, proceed to try the person so charged and determine and adjudge his guilt or innocence.

**9:6-5. Complaints, who may prefer**

Any board of education or police department of any municipality, township, towns and boroughs, its designated officers, members or agents, or any society, association or board incorporated or organized under the laws of this State, having as one of its objects the prevention of cruelty to children, its officers or agents, may prefer a complaint against and cause to be arrested and prosecuted any person who shall offend against the provisions of this chapter, and aid in prosecuting the complaint before the court.

**9:6-6. Disposition of fines, penalties and forfeitures**

All fines, penalties and forfeitures imposed and collected in any case when any society, association or board incorporated or organized under the laws of this state having as one of its objects the prevention of cruelty to children, shall be complainant, shall inure to such society, to be used by it for the benefit of the children in its care. All other fines imposed by a court in accordance with the provisions of this chapter shall be paid to the overseer of the poor of the municipality where the defendant resided, to be used for the benefit of the poor of that municipality.

**9:6-7. Agents of societies for prevention of cruelty to children as police officers**

Any duly organized or incorporated humane society, having for one of its objects the protection of children from cruelty, may offer any agents or officers employed by such society to the mayor or other executive officer having authority to commission police officers of any municipality having a regularly organized police department, for the purpose of being commissioned to act as police officers through the limits of such municipality for the purpose of arresting all the offenders against this chapter or any of the provisions thereof, whereupon the mayor in such city shall, if such persons are proper and discreet persons, commission them to act as such police officers, with all the rights and powers appertaining thereto; but no such municipality shall be liable in any way for the salary or wages of such officers, or for any expense whatever in relation thereto, except for the detention of prisoners.

In any municipality not having a regularly organized police department, such humane society may offer similarly qualified persons to the County Court of the county, whereupon such court shall, if they be fit persons, commission such persons to act as constables, with power to arrest all offenders against this chapter or any provisions thereof; but no municipality or county shall be in anywise liable for the salary or wages of any such officer, or for any expense in relation thereto, except for the detention of prisoners.

All persons thus qualified under this section shall be deemed to be constables and police officers, and the keepers of jails or lockups or station houses in any of such counties are required to receive all persons arrested by such policemen or constables.

**9:6-8. Warrant to enter place or house for supposed violations of chapter; arrest of violators**

Whenever any person shall, before a county district court or municipal court, make oath that the affiant believes that this chapter has been or is being violated in any place or house, such court shall forthwith issue a warrant to a constable or other authorized officer to enter such place or house and investigate the same, and such person may arrest or cause to be arrested all offenders and bring them before any court for a hearing of the case; and all constables and policemen shall aid in bringing all such offenders before such authorities for a hearing.

**9:6-8.1 to 9:6-8.7 Repealed by L. 1974 c. 119, §54, eff. Oct. 10, 1974.**

**9:6-8.8. Purpose**

The purpose of this act is to provide for the protection of children under 18 years of age who have had serious injury inflicted upon them by other than accidental means. It is the intent of this legislation to assure that the lives of innocent children are immediately safeguarded from further injury and possible death and that the legal rights of such children are fully protected.

**9:6-8.9. Abused child; child abuse defined**

For purposes of this act:

“Abused child” means a child under the age of 18 years whose parent, guardian, or other person having his custody and control:

a. Inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;

b. Creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; or

c. Commits or allows to be committed an act of sexual abuse against the child;

d. Or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, or such other person having his custody and control, to exercise a minimum degree of care (1) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (2) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment or using excessive physical restraint under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or by any other act of a similarly serious nature requiring the aid of the court;

e. Or a child who has been willfully abandoned by his parent or guardian, or such other person having his custody and control;

f. Or a child who is in an institution as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21) and (1) has been so placed inappropriately for a continued period of time with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being or (2) has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

A child shall not be considered abused pursuant to subsection f. of this section if the acts or omissions described therein occur in a day school as defined in section 1 of P.L.1974, c. 119 (C.9:6-8.21).

#### **9:6-8.10 Reports of child abuse**

Any person having a reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately to the Division of Youth and Family Services by telephone or otherwise. Such reports, where possible, shall contain the names and addresses of the child and his parent, guardian, or other person having custody and control of the child and, if known, the child's age, the nature and possible extent of the child's injuries, abuse or maltreatment, including any evidence of previous injuries, abuse or maltreatment, and any other information that the person believes may be helpful with respect to the child abuse and the identity of the perpetrator.

#### **9:6-8.10a. Reports and information of child abuse reports; confidentiality; release**

a. All records of child abuse reports made pursuant to section 3 of P.L.1971, c. 437 (C.9:6-8.10), all information obtained by the Division of Youth and Family Services in investigating such reports including reports received pursuant to section 20 of P.L.1974, c.119 (C.9:6-8.40), and all reports of findings forwarded to the central registry pursuant to section 4 of P.L.1971,

c. 437 (C. 9:6-8.11) shall be kept confidential and may be disclosed only under the circumstances expressly authorized under subsection b. herein.

b. The division may release the records and reports referred to in subsection a., or parts thereof, to:

(1) A public or private child protective agency authorized to investigate a report of child abuse or neglect;

(2) A police or other law enforcement agency investigating a report of child abuse or neglect;

(3) A physician who has before him a child whom he reasonably suspects may be abused or neglected;

(4) A physician, a hospital director or his designate, a police officer or other person authorized to place a child in protective custody when such person has before him a child whom he reasonably suspects may be abused or neglected and requires the information in order to determine whether to place the child in protective custody;

(5) An agency authorized to care for, treat, or supervise a child who is the subject of a child abuse report, or a parent, guardian or other person who is responsible for the child's welfare, or both, when the information is needed in connection with the provision of care, treatment, or supervision to such child or such parent, guardian or other person;

(6) A court, upon its finding that access to such records may be necessary for determination of an issue before the court, and such records may be disclosed by the court in whole or in part to the law guardian, attorney or other appropriate person upon a finding that such further disclosure is necessary for determination of an issue before the court;

(7) A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

(8) Any appropriate State legislative committee acting in the course of its official functions, provided, however, that no names or other information identifying persons named in the report shall be made available to the legislative committee unless it is absolutely essential to the legislative purpose;

(9) Any person engaged in a bona fide research purpose, provided, however, that no names or other information identifying persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and provided further that the approval of the director of the Division of Youth and Family Services shall first have been obtained.

Any individual, agency, court, grand jury or legislative committee which receives from the division the records and reports referred to in subsection a., shall keep such records and reports, or parts thereof, confidential.

**9:6-8.10b. Permitting or encouraging release of record or report; penalty**

Any person who willfully permits or encourages the release of the contents of any record or report in contravention of this act shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000.00, or to imprisonment for not more than 3 years, or both.

**9:6-8.11. Insuring safety of child upon receipt of report; report to central registry of bureau of children's services in Trenton; privacy of information**

Upon receipt of any such report the Bureau of Children's Services shall immediately take such action as shall be necessary to insure the safety of the child and to that end may request and shall receive appropriate assistance from local and state law enforcement officials. The bureau shall also, within 72 hours, forward a report of such matter to the Central Registry of the Bureau of Children's Services in Trenton. No information received in the central registry shall be considered as a public record within the meaning of P.L.1963, c.73.

**9:6-8.12. Maintenance of 24 hour emergency telephone service for receipt of child abuse calls**

The Bureau of Children's Services shall maintain in each of its districts on a 24 hour daily basis throughout each year an emergency telephone service for the receipt of child abuse calls.

**9:6-8.13. Person making report; immunity from liability; action for relief from discharge or discrimination**

Anyone acting pursuant to this act in the making of a report under this act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such person shall have the same immunity with respect to testimony given in any judicial proceeding resulting from such report.

A person who reports or causes to report in good faith an allegation of child abuse or neglect pursuant to section 3 of P.L.1971, c. 437 (C. 9:6-8.10) and as a result thereof is discharged from employment or in any manner discriminated against with respect to compensation, hire, tenure or terms, conditions or privileges of employment, may file a cause of action for appropriate relief in the family part of the Chancery Division of the Superior Court in the county in which the discharge or alleged discrimination occurred or in the county of the person's primary residence.

If the court finds that the person was discharged or discriminated against as a result of the person's reporting an allegation of child abuse or neglect, the court may grant reinstatement of employment with back pay or other legal or equitable relief.

**9:6-8.14. Violations including failure to make report; disorderly person**

Any person knowingly violating the provisions of this act including the failure to report an act of child abuse having reasonable cause to believe that an act of child abuse has been committed, is a disorderly person.

**9:6-8.15. Rules and regulations**

The Bureau of Children's Services shall from time to time promulgate such rules and regulations as may be necessary to effectuate the provisions of this act.

**9:6-8.16. Child taken to physician or hospital for treatment of serious physical injury; protective custody**

Any physician examining or treating any child, or the director or his designate of any hospital or similar institution to which any child has been brought for care or treatment, is empowered to take the said child into protective custody when the child has suffered serious physical injury or injuries, and the most probable inference from the medical and factual information supplied, is that the said injury or injuries were inflicted upon the child by another person by other than accidental means, and the person suspected of inflicting, or permitting to be inflicted, the said injury upon the child, is a person into whose custody the child would normally be returned.

**9:6-8.17. Report of action of taking protective custody**

The physician or the director or his designate of a hospital or similar institution taking a child into such protective custody shall immediately report his action to the Bureau of Children's Services or its successor, the Division of Youth and Family Services, by calling its local emergency telephone service maintained pursuant to section 5 of P.L. 1971, c. 437 (C. 9:6-8.12).

**9:6-8.18. Bureau of children's services or division of youth and family services; insuring safety of child; investigation; application for order placing child under protective custody**

The Bureau of Children's Services or its successor, the Division of Youth and Family Services, shall upon receipt of such report, take action to insure the safety of the child under section 4 of P.L.1971, c. 437 (C. 9:6-8.11). The said report shall be deemed an oral complaint under section 12 of P.L.1951, c. 138 (C. 30:4C-12), and the Bureau of Children's Services or its successor, the Division of Youth and Family Services, shall investigate the circumstances under which the child was injured and may, after such investigation has been completed, apply for a court order placing the child under its care and supervision, pursuant to section 12 of P.L. 1951, c.138 (C. 30:4C-12).

**9:6-8.19. Notice to parents or guardian; visitation rights; limitation on period**

a. The Bureau of Children's Services or its successor, the Division of Youth and Family Services, shall immediately after the receipt of such report, and after making a determination to take the child into protective custody, shall serve or attempt to serve, written notice upon the parents or guardian that the said child has been taken into protective custody. The notice shall contain a statement of the maximum duration of the protective custody and the location of the child during protective custody.

b. The parents or guardian of a child in protective custody may, upon request and in the reasonable discretion of the physician, director, or his designate, or appropriate official of the Bureau of Children's Services, or its successor, the Division of Youth and Family Services, visit the said child, provided that the life or health of the child will not be endangered by such visit.

c. The entire period of protective custody shall not exceed 3 court days. The protective custody may be terminated earlier at the discretion of the reporting physician, director or appropriate official of the Bureau of Children's Services or its successor, the Division of Youth and Family Services, or upon order of the court.

**9:6-8.20. Physicians or directors of hospitals acting under this law; immunity from liability**

Any physician or director of a hospital or similar institution who takes a child into protective custody pursuant to this act shall have immunity from any civil and criminal liability that might otherwise be incurred or imposed. Any such person shall have the same immunity with respect to testimony given in any judicial proceeding resulting therefrom.

**9:6-8.21. Definitions**

As used in this act, unless the specific context indicates otherwise:

a. "Parent or guardian" means any natural parent, adoptive parent, foster parent, stepparent, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. Parent or guardian includes a teacher, employee or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school as defined in section 1 of P.L. 1974, c. 119 (C. 9:6-8.21).

b. "Child" means any child alleged to have been abused or neglected.

c. "Abused or neglected child" means a child less than 18 years of age whose parent or guardian, as herein defined, (1) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (2) creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; (3) commits or allows to be committed an act of sexual abuse against the child; (4) or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court; (5) or a child who has been willfully abandoned by his parent or guardian, as herein defined; (6) or a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; (7) or a child who is in an institution and (a) has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being or (b) who has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

A child shall not be considered abused or neglected pursuant to paragraph (7) of subsection c. of this section if the acts or omissions described therein occur in a day school as defined in this section.

No child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by

a duly accredited practitioner thereof shall for this reason alone be considered to be abused or neglected.

d. "Law guardian" means an attorney admitted to the practice of law in this State, regularly employed by the Department of the Public Advocate, and designated under this act to represent minors in alleged cases of child abuse or neglect. The Public Advocate may, by regulations, provide that certain classes of cases may be handled by the Office of the Public Defender.

e. "Attorney" means an attorney admitted to the practice of law in this State who shall be privately retained; or, in the instance of an indigent parent or guardian, an attorney from the Department of Public Advocate who shall be appointed in order to avoid conflict between the interests of the child and the parent or guardian in regard to representation. The Public Advocate may, by regulation, provide that certain classes of cases may be handled by the Office of the Public Defender.

f. "Division" means the Division of Youth and Family Services in the Department of Human Services unless otherwise specified.

g. "Institution" means a public or private facility in the State which provides children with out of home care, supervision or maintenance. Institution includes, but is not limited to, a correctional facility, detention facility, treatment facility, day care center, residential school, shelter and hospital.

h. "Day school" means a public or private school which provides general or special educational services to day students in grades kindergarten through 12. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis.

**9:6-8.22. Juvenile and domestic relations court; jurisdiction; duties; priority of cases**

The juvenile and domestic relations court in each county shall have jurisdiction over all noncriminal proceedings involving alleged cases of child abuse or neglect, and shall be charged with the immediate protection of said children. All noncriminal cases involving child abuse shall be commenced in or transferred to this court from other courts as they are made known to the other courts. Commencement of cases of child abuse or neglect must be the first order of priority in the juvenile and domestic relations court.

**9:6-8.23. Law guardian; representation of minor; appointment**

a. Any minor who is the subject of a child abuse or neglect proceeding under this act must be represented by a law guardian to help protect his interests and to help him express his wishes to the court. However, nothing in this act shall be construed to preclude any other interested person or agency from appearing by counsel.

b. The juvenile and domestic relations court, on its own motion, will make appointments of law guardians.

**9:6-8.24. Jurisdiction**

a. Notwithstanding any other law to the contrary, the juvenile and domestic relations court has exclusive original jurisdiction over noncriminal proceedings under this act alleging the abuse or neglect of a child.

b. In determining the jurisdiction of the court under this act, the age of the child at the time the proceedings are initiated is controlling.

c. In determining the jurisdiction of the court under this act, the child need not be currently in the care or custody of his parent or guardian, as defined herein.

d. If the matter in regard to the parent or guardian is referred to the county prosecutor by the juvenile and domestic relations court or otherwise the juvenile and domestic relations court may continue the proceeding under this act in regard to the child after such referral. If the proceeding in regard to the child is continued, the juvenile and domestic relations court shall enter any preliminary order necessary to protect the interests of the child pending a final order from the criminal courts.

**9:6-8.25. Transfer to and from the domestic relations court**

a. Notice to the prosecutor. Immediately upon receipt of a complaint, the juvenile and domestic relations court shall forward a copy of such complaint to the county prosecutor, after which the prosecutor shall take whatever action he deems necessary under all of the circumstances.

b. Any criminal complaint charging facts amounting to abuse or neglect under this act may be transferred by the county prosecutor or the criminal court in which the complaint was made, to the juvenile and domestic relations court, in the county in which the former court is located. If any police officer, county prosecutor or criminal court receives a complaint which amounts to child abuse or neglect, the police officer, county prosecutor or criminal court shall report to the division pursuant to P.L.1971, c. 437, section 3 (C. 9:6-8.10). If any police officer, county prosecutor or the criminal court refers a matter with regard to the parent or guardian, or child, and there appears to be no basis for action in the juvenile and domestic relations court, the proceeding may be terminated. If the juvenile and domestic relations court determines a complaint should be filed, proceedings under this act shall be commenced immediately.

c. Nothing in this act shall be interpreted to preclude the county prosecutor from bringing criminal action against the parent or guardian or any other person even though the child involved is initially or ultimately the subject of proceedings in the juvenile and domestic relations court.

**9:6-8.26. Venue**

Proceedings under this act shall be brought in accordance with the Rules of Court.

**9:6-8.27. Temporary removal with consent**

a. A police officer or an agency, or institution or individual may temporarily remove a child from the place where he is residing with the consent of his parent or other person legally responsible for his care, if there is reasonable cause to suspect that the child's life or health is in imminent danger. If the child is not returned within 3 working days from the date of removal, the procedure required pursuant to this act shall be applied immediately.

b. However, if the Division of Youth and Family Services removes a child with the written consent of the parent or guardian, the proceedings under this act shall not apply, unless the division files a complaint to commence proceedings under this act.

**9:6-8.28. Preliminary orders of court before preliminary hearing held**

a. The juvenile and domestic relations court may enter an order directing the temporary removal of a child from the place where he is residing before a preliminary hearing under this act, if (1) the parent or other person legally responsible for the child's care is absent or, though present, was asked and refused to consent to the temporary removal of the child and was informed of an intent to apply for any order under this section; and (2) the child appears so to suffer from the abuse or neglect of his parent or guardian that his immediate removal is necessary to avoid imminent danger to the child's life or health; and (3) there is not enough time to hold a preliminary hearing.

b. The order shall specify the facility to which the child is to be brought.

c. The juvenile and domestic relations court may enter an order authorizing a physician or hospital to provide emergency medical or surgical procedures before a preliminary hearing is held under this act if (1) such procedures are necessary to safeguard the life or health of the child; and (2) there is not enough time to hold a preliminary hearing under section 11 hereof.

d. Any person who originates a proceeding pursuant to section 14 of this act may apply for through the Division of Youth and Family Services or the court on its own motion may issue, an order of temporary removal. The division shall make every reasonable effort to inform the parent or guardian of any such application, confer with a person wishing to make such an application and make such inquiries as will aid the court in disposing of such application. Within 24 hours the Division of Youth and Family Services shall report such application to the central registry of the division.

e. Any person acting under the authority of this act may request and shall receive appropriate assistance from local and State law enforcement officials.

**9:6-8.29. Emergency removal without court order**

a. A police officer or a designated employee of a county department of probation or a designated employee of the division may remove a child from the place where he is residing, or any such person or any physician treating such child may keep a child in his custody without an order pursuant to section 8 thereof and without the consent of the parent or guardian regardless of whether the parent or guardian is absent if the child is in such condition that his continuance in said place or residence or in the care and custody of the parent or guardian presents an imminent danger to the child's life or health, and there is insufficient time to apply for a court order pursuant to section 8, or any physician or hospital treating such child may keep a child in custody pursuant to P.L. 1973, c. 147 (C. 9:6-8.16 et seq.), and

b. If a person authorized by this section removes or keeps custody of a child, he shall (1) inform the division immediately; (2) bring the child immediately to a place designated by the division for this purpose, and (3) make every reasonable effort to inform the parent or guardian of the facility to which he has brought the child.

c. Any person or institution acting in good faith in the removal or keeping of a child pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or keeping.

d. Any person acting under the authority of this act may request and shall receive appropriate assistance from local and State law enforcement officials.

**9:6-8.30. Action by the division upon emergency removal**

a. The division when informed that there has been an emergency removal of a child from his home without court order shall make every reasonable effort to communicate immediately with the child's parent or guardian that such emergency removal has been made and the location of the facility to which the child has been taken, and advise the parent or guardian to appear in the appropriate juvenile and domestic relations court on the next court day. The division shall also advise the party making the removal to appear. For the purposes of this section, "facility" means a hospital, shelter or child care institution in which a child may be placed for temporary care, but does not include a foster home.

b. The division shall cause a complaint to be filed under this act immediately or on the first court day after such removal takes place.

c. Whenever a child has been removed pursuant to section 7 or 9 of this act, the division shall arrange for immediate medical examination of the child and shall have legal authority to consent to such examination. If necessary to safeguard the child's health or life, the division also is authorized to arrange for and consent to medical care or treatment of the child. Consent by the division pursuant to this subsection shall be deemed legal and valid for all purposes with respect to any person, hospital, or other health care facility examining or providing care or treatment to a child in accordance with and in reliance upon such consent. Medical reports resulting from such examination or care or treatment shall be released to the division for the purpose of aiding in the determination of whether the child has been abused or neglected. Any person or health care facility acting in good faith in the examination of or provision of care and treatment to a child or in the release of medical records shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such act.

**9:6-8.31. Preliminary orders after filing of complaint**

a. In any case where the child has been removed without court order, except where action has been taken pursuant to P.L. 1973, c. 174 (C. 9:6-8.16 et seq.) the juvenile and domestic relations court shall hold a hearing on the next court day to determine whether the child's interests require protection pending a final order of disposition. In any other case under this act, any person who may originate a proceeding may apply for, or the court, on its own motion, may order a hearing at any time after the complaint is filed to determine whether the child's interests require protection pending a final order of disposition.

b. Upon such hearing, if the court finds that continued removal is necessary to avoid an ongoing risk to the child's life or health, it shall affirm the removal of the child to an appropriate place or place him in the custody of a suitable person.

c. Upon such hearing the court may, for good cause shown, issue preliminary order of protection which may contain any of the provisions authorized on the making of an order of protection under section 35 hereof.

d. Upon such hearing, the court may, for good cause shown, release the child to the custody of his parent or guardian from whose custody or care the child was removed, pending a final order of disposition, in accord with section 33 hereof.

e. Upon such hearing, the court may authorize a physician or hospital to provide medical or surgical procedures if such procedures are necessary to safeguard the child's life or health.

f. If the court grants or denies a preliminary order requested pursuant to this section, it shall state the grounds for such decision.

g. In all cases involving abuse or neglect the court shall order an examination of the child by a physician appointed or designated for the purpose by the division. As part of such examination, the physician shall arrange to have color photographs taken as soon as practical of any areas of trauma visible on such child and may if indicated, arrange to have a radiological examination performed on the child. The physician, on the completion of such examination, shall forward the results thereof together with the color photographs to the court ordering such examination.

**9:6-8.32. Application to return child temporarily removed**

Upon the application of the parent or guardian of a child temporarily removed under this act, the court shall hold a hearing to determine whether the child should be returned; a. if there has not been a hearing on the removal of the child at which the parent or guardian was present or had an adequate opportunity to be present; or b. upon good cause shown. Except for good cause shown, such hearing shall be held within 3 court days of the application. Upon such hearing, the court shall grant the application, unless it finds that such return presents an imminent risk to the child's life or health.

**9:6-8.33. Originating proceeding to determine abuse or neglect**

a. A proceeding under this act is originated by the filing of a complaint in which facts sufficient to establish that a child is an abused or neglected child under this act are alleged.

b. Where more than one child is the responsibility of the parent or guardian it may be alleged in the same complaint that one or more children are abused or neglected children.

c. In cases of emergency, in addition to the removal of one child, any other child residing in the home may also be removed if his immediate removal is necessary to avoid imminent danger to his life or health.

**9:6-8.34. Persons who may originate proceedings**

The following persons may originate a proceeding under this act:

a. A parent or other person interested in the child.

b. A duly authorized agency, association, society, institution or the division.

c. A police officer.

d. Any person having knowledge or information of a nature which convinces him that a child is abused or neglected.

e. A person on the court's direction.

f. The county prosecutor.

g. In cases where a private individual is unwilling or reluctant to file a complaint, he may request the division to initiate a complaint in his stead.

**9:6-8.35. Preliminary procedure**

The division may:

a. Confer with any person seeking to file a complaint, the potential respondent, and other interested persons concerning the advisability of filing a complaint under this act; and

b. Attempt to adjust suitable cases before a complaint is filed over which the court apparently would have jurisdiction.

c. The division shall not prevent any person or agency who wishes to file a complaint under this act from having access to the court for that purpose.

d. Efforts at adjustment under this section may not extend for a period of more than 30 days without an order of a judge of the court, who may extend the period for an additional 30 days.

e. Such adjustment may include a preliminary conference held by the division at its discretion upon written notice to the parent or guardian and the potential complainant for the purpose of attempting such adjustment, provided however that the division shall not be authorized under this section to compel any person to appear at any conference, produce any papers, or visit any place.

f. The juvenile and domestic relations court and the division shall deal with cases involving imminent physical harm or actual physical harm on a priority basis.

**9:6-8.36. Admissibility of statements made during a preliminary conference**

No statement made by the potential respondent during a preliminary conference held pursuant to section 15 hereof may be admitted into evidence at a fact-finding hearing under this act or in a court of criminal jurisdiction at any time prior to conviction.

**9:6-8.36a. Report of suspected child abuse and neglect to division by county prosecutor**

The Division of Youth and Family Services shall immediately report all instances of suspected child abuse and neglect, as defined by regulations, to the county prosecutor of the county in which the child resides. Said regulations shall be developed jointly by the division and the county prosecutors, approved by the Attorney General, and promulgated by the Commissioner of the Department of Human Services.

**9:6-8.37. Issuance of summons**

On the filing of a complaint involving abuse or neglect under this act, unless a warrant is issued pursuant to section 19 hereof, the court shall cause a copy of the complaint and a summons to be issued forthwith, requiring the parent or guardian with whom the child is residing to appear at the court within three court days regarding the complaint. The court shall also, unless dispensed with for good cause shown, require the person thus summoned to produce the child at the time and place named.

**9:6-8.38. Service of summons**

a. In cases involving abuse, or neglect the complaint and summons shall be served within two court days after their issuance. If they cannot be served within that time, such fact shall be reported to the court with the reasons therefor within three court days after their issuance and the court shall thereafter issue a warrant in accordance with the provisions of section 19 of this act. The court shall also, unless dispensed with for good cause shown, direct that the child be brought before the court.

b. Service of a summons and complaint shall be made by delivery of a true copy thereof to the person summoned at least 24 hours before the time stated therein for appearance.

c. If after reasonable effort, personal service is not made, the court may at any stage in the proceedings make an order providing for substituted service in the manner provided for substituted service in accordance with the Rules of Court.

**9:6-8.39. Issuance of warrant and reports**

a. The court may issue a warrant directing the parent or guardian with whom the child is residing to be brought before the court, when a complaint is filed with the court under this act and it appears that (1) the summons cannot be served; or (2) the summoned person has refused to obey the summons; or (3) the parent or guardian is likely to leave the jurisdiction; or (4) a summons, in the court's opinion, would be ineffectual; or (5) the safety of the child is endangered.

b. When issuing a warrant under this section, the court may also direct that the child be brought before the court.

c. If a warrant is not executed within two court days of its issuance such fact shall be reported to the court within three court days of its issuance.

**9:6-8.40. Records involving abuse or neglect**

When the division receives a report or complaint that a child may be abused or neglected; or when the division receives a request from the juvenile and domestic relations court to investigate such allegations, the division may request of any and all public or private institutions, or agencies including law enforcement agencies, or any private practitioners, their records past and present pertaining to that child and other children under the same care, custody and control. Records kept pursuant to P.L. 1973, c. 306 (C. 2A:4-42 et seq.) may be obtained by the division, upon issuance by a court of an order on good cause shown directing these records to be released to the division for the purpose of aiding in evaluation to determine if the child is abused or neglected. In the release of the aforementioned records, the source shall have immunity from any liability, civil or criminal.

**9:6-8.41. Required findings concerning notice**

No hearing may commence under this act unless the court enters a finding:

a. That the parent or guardian is present at the hearing or has been served with a copy of the complaint; or

b. If the parent or guardian is not present, that every reasonable effort has been made to effect service under sections 18 and 19 hereof.

**9:6-8.42. Effect of absence of parent or guardian**

If the parent or guardian is not present, the court may proceed to hear a complaint under this act only if the child is represented by a law guardian. If the parent or guardian thereafter makes a motion to the court that a resulting disposition be vacated and asks for a rehearing, the court shall grant the motion on an affidavit showing such relationship or responsibility unless the court finds that the parent or guardian willfully refused to appear at the hearing in which case the court may deny the motion.

**9:6-8.43. Notice of rights**

a. The court shall advise the parent or guardian of his right to have an adjournment to retain counsel and consult with him. The court shall advise the respondent that if he is indigent, he may apply for an attorney through the Department of the Public Advocate. The court shall appoint a law guardian for the child as provided by this act.

b. The general public may be excluded from any hearing under this act, and only such persons and the representatives of authorized agencies may be admitted thereto as have an interest in the case.

**9:6-8.44. Definition of "fact-finding hearing"**

When used in this act the term "fact-finding hearing" means a hearing to determine whether the child is an abused or neglected child as defined herein.

**9:6-8.45. Definition of "dispositional hearing"**

When used in this act the term "dispositional hearing" means a hearing to determine what order should be made.

**9:6-8.46. Evidence**

a. In any hearing under this act (1) proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of, or the responsibility of, the parent or guardian, and (2) proof of injuries sustained by a child or of the condition of a child of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or guardian shall be prima facie evidence that a child of, or who is the responsibility of such person is an abused or neglected child, and (3) any writing, record or photograph, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a child in an abuse or neglect proceeding of any hospital or any other public or private institution or agency shall be admissible in evidence in proof of that condition, act, transaction, occurrence or event, if the judge finds that it was made in the regular course of the business of any hospital or any other public or private institution or agency, and that it was in the regular course of such business to make it, at the time of the condition, act, transaction, occurrence or event, or within a reasonable time thereafter, shall be prima facie evidence of the facts contained in

such certification. A certification by someone other than the head of the hospital or agency shall be accompanied by a photocopy of a delegation of authority signed by both the head of the hospital or agency and by such other employees. All other circumstances of the making of the memorandum, record or photograph, including lack of personal knowledge of the making, may be proved to affect its weight, but they shall not affect its admissibility and (4) previous statements made by the child relating to any allegations of abuse or neglect shall be admissible in evidence; provided, however, that no such statement, if uncorroborated, shall be sufficient to make a fact finding of abuse or neglect.

b. In a fact-finding hearing (1) any determination that the child is an abused or neglected child must be based on a preponderance of the evidence and (2) only competent, material and relevant evidence may be admitted.

c. In a dispositional hearing and during all other stages of a proceeding under this act, only material and relevant evidence may be admitted.

#### **9:6-8.47. Sequence of hearings**

a. Upon completion of the fact-finding hearing, the dispositional hearing may commence immediately after the required findings are made.

b. Reports prepared by the probation department or the division for use by the court at any time for the making of an order of disposition shall be deemed confidential information furnished to the court which the court in a proper case may, in its discretion, disclose in whole or in part to the law guardian, attorney as defined herein, or other appropriate person. Such reports may not be furnished to the court prior to the completion of a fact-finding hearing, but may be used in a dispositional hearing.

#### **9:6-8.48. Adjournments**

a. The court may adjourn a fact-finding hearing or a dispositional hearing for good cause shown on its own motion or on the motion of the county prosecutor, the law guardian, or the respondent's attorney. If so requested, the court shall not proceed with a fact-finding hearing earlier than 3 days after service of summons and complaint, unless emergency medical or surgical procedures are necessary to safeguard the life and health of the child. Adjournment may not exceed 30 court days, without additional court appearance.

b. At the conclusion of a fact-finding hearing and after it has made findings required before a dispositional hearing may commence, the court may adjourn the proceedings to enable it to make inquiry into the surroundings, conditions, and capacities of the persons involved in the proceedings.

#### **9:6-8.49. Special consideration in certain cases**

In scheduling hearings and investigations, the court shall give priority to proceedings under this act involving imminent or actual physical harm, or in which a child has been removed from home before a final order of disposition. Any adjournment granted in the course of such a proceeding should be for as short a time as possible.

**9:6-8.50. Sustaining or dismissing complaint**

a. If facts sufficient to sustain the complaint are established the court shall enter an order finding that the child is an abused or neglected child and shall state the grounds for said findings.

b. If the proof does not conform to the specific allegations of the complaint, the court may amend the allegations to conform to the proof; provided, however, that in such case the respondent shall be given reasonable time to prepare to answer the amended allegations.

c. If facts sufficient to sustain the complaint under this act are not established, or the court concludes that its assistance is not required on the record before it, the court shall dismiss the complaint and shall state the grounds for the dismissal.

d. If the court makes a finding of abuse or neglect, it shall determine, based upon the facts adduced during the fact-finding hearing, and upon any other facts presented to it, whether a preliminary order pursuant to section 11 hereof is required to protect the child's interests pending a final order of disposition. The court shall state the grounds for its determination. In addition, a child found to be abused or neglected may be removed and remanded to a place designated by the court or be placed in the custody of a suitable person, pending a final order of disposition, if the court finds that there is a substantial probability that the final order of disposition will be an order of placement under section 34 hereof.

e. If the court finds that the child is an abused or neglected child as defined in this act, it may refer any aspect of the matter, including anything related to the child and the parent or guardian, to the division, ordering that the division provide such services as are deemed appropriate to the ends of protecting the child and rehabilitating and improving family life, wherever possible. In the event of such referral, the court may suspend any dispositional hearing indefinitely. The division shall report the status of the case so referred to the court annually in writing, a copy to be served upon the parent or guardian and the law guardian. The division shall also report its intent to terminate services in a case so referred to the court in writing.

**9:6-8.51. Disposition of adjudication**

a. At the conclusion of a dispositional hearing under this act, the court shall enter an order of disposition: (1) suspending judgment in accord with section 32 hereof; (2) releasing the child to the custody of his parents or guardian in accord with section 33 hereof; (3) placing the child in accord with section 34 hereof; (4) making an order of protection in accord with section 35 hereof; (5) placing the respondent on probation in accord with section 36 hereof; (6) requiring that an individual found to have abused or neglected a child accept therapeutic services, and this order may be carried out in conjunction with any other order of disposition.

b. The court shall state the grounds for any disposition made under this section.

**9:6-8.52. Suspended judgment**

a. The court shall define permissible terms and conditions of a suspended judgment. These terms and conditions shall relate to the acts of commission or omission of the parent or guardian.

b. The maximum duration of any term or condition of a suspended judgment shall be 1 year, unless the court finds at the conclusion of that period, upon a hearing, that exceptional circumstances required an extension thereof for an additional year.

**9:6-8.53. Release to custody of parent or guardian**

a. If the order of disposition releases the child to the custody of his parent or guardian responsible for his care at the time of the filing of the complaint, the court may place the child under supervision of the division or may enter an order of protection under section 35 hereof.

b. The court shall define permissible terms and conditions of supervision under this section. The maximum duration of any such term or condition shall not exceed a period of 1 year, unless the court finds at the conclusion of that period of 1 year, upon a hearing, that exceptional circumstances require an extension thereof for an additional year.

**9:6-8.54. Placement**

a. For the purpose of section 31 hereof, the court may place the child in the custody of a relative or other suitable person or the division for the placement of a child.

b. Placements under this section may be for an initial period of 18 months and the court, in its discretion, may at the expiration of that period, upon a hearing make successive extensions for additional periods of 1 year each. The place in which or the person with which the child has been placed under this section shall submit a report at the end of the term of placement, making recommendations and giving such supporting data as is appropriate. The court on its own motion may, at the conclusion of any period of placement, hold a hearing concerning the need for continuing the placement.

c. No placement may be made or continued under this section beyond the child's eighteenth birthday without his consent.

d. If the parent or person legally responsible for the care of any such child or with whom such child resides receives public assistance and care, any portion of which is attributable to such child, a copy of the order of the court providing for the placement of such child from his home shall be furnished to the appropriate county welfare board, which shall reduce the public assistance and care furnished to such parent or other person by the amount attributable to such child.

**9:6-8.55. Order of protection**

The court may make an order of protection in assistance or as a condition of any other order made under this act. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by a person who is before the court and is a parent or guardian responsible for the child's care or the spouse of the parent or guardian, or both. Such an order may require any such person: a. To stay away from the home, the other spouse or the child; b. To permit a parent to visit the child at stated periods; c. To abstain from offensive conduct against the child or against the other parent or against any person to whom custody of the child is awarded; d. To give proper attention to the care of the home; and e. To refrain from acts of commission or omission that tend to make the home not a proper place for the child.

The court may also award custody of the child, during the term of the order of protection to either parent or to an appropriate relative; however, nothing in this section shall be construed to give the court power to place or board out any child or to commit a child to the custody of an institution or agency. In making orders of protection, the court shall so act as to insure that in the care, protection, discipline and guardianship of the child, his religious faith shall be preserved and protected.

**9:6-8.56. Probation supervision**

The court may place the respondent under the supervision of the probation department and the court shall define permissible terms and conditions of said supervision. The maximum duration of any such term or condition shall not exceed a period of 2 years, unless the court finds at the conclusion of that period that exceptional circumstances require an extension thereof for an additional year.

**9:6-8.57. Abandoned child**

If the court finds that a child was abandoned by his parents or guardian, it may make an order so finding and may discharge the child to the custody of the Division which shall provide for such child as authorized by law.

**9:6-8.58. Provision for therapeutic services**

In cases where, in the opinion of the court, an individual found to have abused or neglected a child appears to be in need of therapeutic services, the court may order the individual to accept such services or evaluation for such services, including, but not limited to, homemaker services, functional education, group self-help programs, and professional therapy; provided, however, that the court may not commit any person to any residential mental health facility without the consent of such person or after a hearing held pursuant to the requirements of R.S. 30:4-23 et seq. The court shall determine the ability to pay and the method of payment for the care, as it orders.

**9:6-8.59. Staying, modifying, setting aside or vacating orders**

For good cause shown and after due notice, the court on its own motion, or that of the county prosecutor, the law guardian, the respondent's attorney, or the division may stay execution of arrest, set aside, modify or vacate any order issued in the course of a proceeding under this act. The court must state the grounds for this action.

**9:6-8.60. Petition to terminate placement**

Any interested person acting on behalf of a child placed under section 34 hereof or the child's parents or guardian may petition the court for any order terminating the placement. The petition must be verified and must show:

- a. That an application for the child's return to his home was made to an appropriate person after expiration of the Order of Placement provided for in section 34 hereof;
- b. That an application was denied or was not granted within 30 days from the day application was made; and
- c. The grounds for the petition.

**9:6-8.61. Service of petition; answer**

A copy of a petition under section 40 hereof shall promptly be served pursuant to the Rules

of Court upon the division or the individual having custody of the child under section 34 whose duty it shall be to file an answer to the petition within 5 days.

**9:6-8.62. Examination of petition and answer; hearing**

The court shall promptly examine the petition and answer. If the court concludes that a hearing should be held, it may proceed upon due notice to all concerned parties to hear the facts and determine whether continued placement serves the purposes of this act. If the court concludes that a hearing is not necessary, it shall enter an order granting or denying the petition.

**9:6-8.63. Orders on hearing**

a. If the court determines after hearing that continued placement serves the purposes of this act, it shall deny the petition. The court may, on its own motion, reduce the duration of the placement, change the agency or institution in which the child is placed, or direct the division to make such other arrangements for the child's care and welfare as the facts of the case may require.

b. If the court determines, after hearing, that continued placement does not serve the purposes of this act, the court shall discharge the child from the custody of the division or person given custody under section 34 hereof.

**9:6-8.64. Successive petitions**

If a petition under section 40 hereof is denied, it may not again be filed with the court for a period of 90 days after the denial, unless the order of denial permits refiling at an earlier time.

**9:6-8.65. Substitution for original placement**

If under section 34, custody of the child is given to a party other than the division, and that party is no longer able to continue custody of the child, the court may authorize the division to arrange for the child's care by another person or assume custody of the child.

**9:6-8.66. Failure to comply with terms and conditions of suspended judgment**

If a parent or guardian responsible for a child's care is brought before the court for failing to comply with the terms and conditions of a suspended judgment issued under section 32 hereof, and if, after the hearing, the court is satisfied by competent proof that the parent or guardian did so, the court may revoke the suspension of judgment and enter any order that might have been made at the time judgment was suspended.

**9:6-8.67. Failure to comply with terms and conditions of probation**

If a parent or guardian is brought before the court for failing to comply with the terms and conditions of an order of probation issued under section 36 hereof, or of an order of protection issued under section 35 or section 11 hereof, and if, after the hearing, the court is satisfied by competent proof that the parent or guardian did so willfully and without just cause, the court

may revoke the order of probation or of protection and enter any order that might have been made at the time the order of probation was made.

**9:6-8.68. Effect of running away from place of placement**

If a child placed under section 34 hereof runs away from the place of placement, the court may, after hearing, revoke the order of placement and may make any order, including an order of placement, that might have been made at the time the order of placement was made. The court may require that the child be present at such hearing and shall appoint a law guardian to represent him.

**9:6-8.69. Release from responsibility under order of placement**

Those responsible for the operation of a place where a child has been placed under section 34 hereof may petition the court for leave to return the child to the court and, for good cause shown, to be released from responsibility under the order of placement. After hearing the court may grant the petition and make any order, including an order of placement, that might have been made at the time the order of placement was made.

**9:6-8.70. Appealable orders**

An appeal may be taken as of right from any final order of disposition and from any other final order made pursuant to this act. An appeal from a final order or decision in a case involving child abuse may be taken as of right to the Appellate Division of the Superior Court. Pending the determination of such appeal, such order or decision shall be stayed where the effect of such order or decision would be to discharge the child, if the juvenile and domestic relations court or the court before which such appeal is pending finds that such a stay is necessary to avoid imminent risk to the child's life or health.

**9:6-8.71. Appropriations**

There shall be appropriated from the general fund such funds as are necessary to implement the provisions and to effectuate the purposes of this act as shall be included in any general or supplemental appropriation act.

**9:6-8.72. Rules and regulations**

The division shall promulgate such rules and regulations that will facilitate compliance with this act.

**9:6-8.72a. Rules and regulations**

The Commissioner of the Department of Education shall, in cooperation and consultation with the Commissioner of the Department of Human Services, adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), concerning the relationship, rights and responsibilities of the Division of Youth and Family Services in the Department of Human Services and local school districts regarding the reporting and investigation of allegations of child abuse.

**9:6-8.73. Severability**

If any provision of this act or the application thereof to any person or circumstances is held to be invalid, the remainder of the act and application of such provision to other persons or circumstances shall not be affected thereby.

**N.J.S.A. 9:6A-1 et seq. Child Life Protection.**

**9:6A-1. Short title**

This act shall be known and may be cited as the "Children's Trust Fund Act."

**9:6A-2. Child life protection commission; membership; vacancies; personnel**

a. There is established in, but not of, the Department of Human Services a Child Life Protection Commission. The commission shall consist of nine members, to be appointed as follows: one member shall be the Commissioner of the Department of Human Services, or his designated representative; two members shall be county prosecutors, appointed by the Attorney General; and six public members who shall be persons who are experienced in child welfare and represent private organizations which provide services, or funding for services, to children in this State designated to identify, treat and prevent child abuse and neglect, and who shall be appointed by the Governor. The public members of the commission shall be appointed with due consideration for geographic and ethnic diversity.

b. Members of the commission shall serve for terms of four years, except that the Commissioner of the Department of Human Services shall serve ex officio, and except that the county prosecutors shall serve at the pleasure of the Attorney General. Of the public members first appointed, three shall serve for a term of two years, and three shall serve for a term of four years.

Vacancies in the membership of the commission shall be filled in the same manner as the original appointments for the balances of the unexpired terms. Members of the commission shall serve without compensation.

c. The commission shall select from among its public members a chairman and a vice-chairman.

d. The Department of Human Services shall provide the commission with such legal, stenographic, clerical and technical assistance as the commission may require in order to perform its duties under this act.

**9:6A-3. Grant applications; selection criteria**

The Child Life Protection Commission shall receive, evaluate and approve applications of public and private agencies and organizations for grants from moneys annually appropriated from the "Children's Trust Fund." Any portion of the moneys actually appropriated which are remaining at the end of a fiscal year shall lapse to the "Children's Trust Fund."

Grants shall be awarded to public and private agencies for the purpose of planning and establishing or improving programs and services for the prevention of child abuse and neglect, including activities which:

a. Provide Statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the problems of child abuse and neglect;

b. Encourage professional persons and groups to recognize and deal with problems of child abuse and neglect;

c. Make information about the problems of child abuse and neglect available to the public and organizations and agencies which deal with problems of child abuse and neglect; and

d. Encourage the development of community prevention programs, including:

(1) Community-based educational programs on parenting, prenatal care, prenatal bonding, child development, basic child care, care of children with special needs, coping with family stress, personal safety and sexual abuse prevention training for children, and self-care training for latchkey children; and

(2) Community-based programs relating to crisis care, aid to parents, child abuse counseling, peer support groups for abusive or potentially abusive parents and their children, lay health visitors, respite of crisis child care, and early identification of families where the potential for child abuse and neglect exists.

The commission shall in awarding grants establish such priorities respecting the programs or services to be funded and the amounts of funding to be provided as it deems appropriate, except that the commission shall place particular emphasis on community-based programs and services which are designed to develop and demonstrate strategies for the early identification, intervention and assistance of families and children at risk in order to prevent child abuse and neglect.

The commission shall adopt such rules and regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) to govern the awarding of grants under this act as may be necessary to establish adequate reporting requirements on the use of grant funds by recipients agencies and organizations and to permit the commission to evaluate the programs and services for which grants are awarded.

#### **9:6A-4. Annual report**

The Child Life Protection Commission shall file annually, on or before April 1 of each year, with the Governor and the Legislature a report setting forth a description of the programs and services awarded grants in the previous calendar year under this act, which report shall set forth a statement of the priorities established by the commission in awarding those grants.

#### **9:6A-5. Sources of funding**

In addition to moneys deposited into the "Children's Trust Fund" pursuant to section 3 of this act, the Commissioner of the Department of Human Services may designate moneys to be deposited into the fund which have been appropriated from the General Fund to the Department of Human Services as he deems necessary to effect the establishment of the "Children's Trust Fund."

#### **9:6A-6. Costs of diversion of taxation**

Any costs incurred for collection or administration attributable to this act by the Division of Taxation may be deducted from receipts collected pursuant to section 1 of this act, as determined by the Director of the Division of Budget and Accounting.

**9:6A-10. Definitions**

For the purposes of this act:

a. "Child" means a person under 18 years of age.

b. "Child abuse" means abuse, abandonment, cruelty or neglect of a child as defined in R.S. 9:6-1, endangering the welfare of a child as defined in N.J.S. 2C:24-4 or any sexual offense as defined in chapter 14 of Title 2C of the New Jersey Statutes which is committed against a child.

**9:6A-11. Special county commission on child abuse and missing children; program to encourage establishment; activities**

The Department of Human Services shall establish a program, using county human services advisory councils, to encourage each county in this State to establish a special county commission on child abuse and missing children. The special county commission shall address the problems of child abuse and missing children in the county and its activities may include, but shall not be limited to, arranging for educational programs for parents and children, providing information concerning the available services in the county and in the State for abused children and their parents and the parents of missing children, and coordinating the provision of services and programs concerning child abuse and missing children that are offered in the county and neighboring counties.

**9:6A-12. State aid for costs of establishment or operation**

The department shall pay \$2,500.00 to any county that establishes or has established a special county commission on child abuse and missing children for the costs of establishing or operating the commission.

**9:6A-13. Rules and regulations**

In accordance with the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), the department shall promulgate rules and regulations necessary to carry out the purposes of this act.

**N.J.S.A. 2A:84A-16.1. Use of Anatomically Correct Dolls.**

**2A:84A-16.1. Anatomically correct dolls or models; use in testimony of children**

In prosecutions for those crimes described in sections 2C:14-2, 2C:14-3 and 2C:24-4 of the New Jersey Statutes, where the complaining witness is a child under the age of 16, the court shall permit the use of anatomically correct dolls, models or similar items of either or both sexes to assist the child's testimony.

**N.J.S.A. 2A:84A-32.4. Closed Circuit Testimony of Child Victim at Trial.**

**2A:84A-32.4. Prosecutions or actions for sexual assault, criminal sexual conduct, or child abuse or neglect; closed circuit testimony by minor**

a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, or child abuse, or in any action alleging an abused or neglected child under P.L.1974, c.119 (C. 9:6-8.21 et seq.), the court may, on motion and after conducting a hearing in camera, order the taking of the testimony of a witness on closed circuit television at the trial, out of the view of the jury, defendant, or spectators upon making findings as provided in subsection b. of this section.

b. An order under this section may be made only if the court finds that the witness is 16 years of age or younger and that there is a substantial likelihood that the witness would suffer severe emotional or mental distress if required to testify in open court. The order shall be specific as to whether the witness will testify outside the presence of spectators, the defendant, the jury, or all of them and shall be based on specific findings relating to the impact of the presence of each.

c. A motion seeking closed circuit testimony under subsection a. of this section may be filed by:

- (1) The victim or witness or the victim's or witness's attorney, parent or legal guardian;
- (2) The prosecutor;
- (3) The defendant or the defendant's counsel; or
- (4) The trial judge on the judge's own motion.

d. The defendant's counsel shall be present at the taking of testimony in camera. If the defendant is not present, he and his attorney shall be able to confer privately with each other during the testimony by a separate audio system.

e. If testimony is taken on closed circuit television pursuant to the provisions of this act, a stenographic recording of that testimony shall also be required. A typewritten transcript of that testimony shall be included in the record on appeal. The closed circuit testimony itself shall not constitute part of the record on appeal except on motion for good cause shown.

**N.J.S.A. 2A:163-4; N.J.S.A. 2A-163-5. Prompt Disposition of Criminal Cases Involving Child Victims.**

**2A:163-4. Child and victim defined**

As used in this act:

a. "Child means a person 13 years of age or younger at the time a crime was committed against the child.

b. "Victim" means a child who suffers personal, physical, or psychological injury as a result of a crime committed against that child.

**2A:163-5. Criminal cases involving child victim; speedy trial**

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

**N.J.S.A. 18A:6-7.1. Requirement for Criminal History Record Checks for Candidates Seeking Employment in Public Schools.**

**18A:6-7.1. Criminal history record; employee in regular contact with pupils; grounds for disqualification from employment**

No facility, center, school, school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18, other than on a voluntary basis, shall employ or contract for the services of any teaching staff member or substitute teacher, teacher aide, child study team member, school physician, school nurse, custodian, school maintenance worker, cafeteria worker, bus driver, school law enforcement officer, school secretary or clerical worker or any other person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification which would disqualify that individual from being employed or utilized in such capacity or position. An individual shall be disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction of any of the following crimes and offenses:

a. In New Jersey, any crime or disorderly persons offense:

(1) bearing upon or involving sexual offense or child molestation as set forth in N.J.S. 2C:14-1 et seq.; or

(2) endangering the welfare of children or incompetents, as set forth in N.J.S. 2C:24-4 and N.J.S. 2C:24-7; or

b. In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in this section of this act.

c. Notwithstanding the provisions of this subsection, no individual shall be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act if the individual has affirmatively demonstrated to the Commissioner of Education clear and convincing evidence of his or her rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) The nature and responsibility of the position which the convicted individual would hold;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the individual when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have had the individual under their supervision.

## **N.J.S.A. 30:4C-1 et seq. Dependent and Neglected Children.**

### **30:4C-1. Public policy**

This act is to be administered strictly in accordance with the general principles laid down in this section, which are declared to be the public policy of this State:

(a) That the preservation and strengthening of family life is a matter of public concern as being in the interests of the general welfare;

(b) That the prevention and correction of dependency and delinquency among children should be accomplished so far as practicable through welfare services which will seek to continue the living of such children in their own homes;

(c) That necessary welfare services to children should be strengthened and extended through the development of private and voluntary agencies qualified to provide such services;

(d) That wherever in this State necessary welfare services are not available to children who are dependent or adjudged delinquent by proper judicial tribunal, or in danger of so becoming, then such services should be provided by this State until such times as they are made available by private and voluntary agencies; and

(e) That the State may assist private, public and voluntary agencies to construct, purchase, upgrade or renovate youth facilities for the residential care or day treatment of children in need of these services.

### **30:4C-2. Definitions**

For the purposes of this act the following words and terms shall, unless otherwise indicated, be deemed and taken to have the meanings herein given to them:

(a) The title "Division of Youth and Family Services" successor to the "Bureau of Children's Services" means the State agency for the care, custody, guardianship, maintenance and protection of children, as more specifically described by the provisions of this act, and succeeding the agency heretofore variously designated by the laws of this State as the State Board of Child Welfare or the State Board of Children's Guardians.

(b) The word "child" includes stepchild and illegitimate child, and further means any person under the age of 18 years.

(c) The term "care" means cognizance of a child for the purpose of providing necessary welfare services, or maintenance, or both.

(d) The term "custody" means continuing responsibility for the person of a child, as established by a surrender and release of custody or consent to adoption, for the purpose of providing necessary welfare services, or maintenance, or both.

(e) The term "guardianship" means control over the person and property of a child as established by the order of a court of competent jurisdiction, and as more specifically defined by the provisions of this act. Guardianship by the Division of Youth and Family Services shall be treated as guardianship by the Commissioner of Human Services exercised on his behalf wholly by and in the name of the Division of Youth and Family Services, acting through the chief executive

officer of the division or his authorized representative. Such exercise of guardianship by the division shall be at all times and in all respects subject to the supervision of the commissioner.

(f) The term "maintenance" means moneys expended by the Division of Youth and Family Services to procure board, lodging, clothing, medical, dental, and hospital care, or any other similar or specialized commodity or service furnished to, on behalf of, or for a child pursuant to the provisions of this act; maintenance also includes but is not limited to moneys expended for shelter, utilities, food, repairs, essential household equipment, and other expenditures to remedy situations of an emergent nature to permit, as far as practicable, children to continue to live with their families.

(g) The term "welfare services" means consultation, counseling, and referral to or utilization of available resources, for the purpose of determining and correcting or adjusting matters and circumstances which are endangering the welfare of a child, and for the purpose of promoting his proper development and adjustment in the family and the community.

(h) The term "foster parent" means any person other than a natural or adoptive parent with whom a child in the care, custody or guardianship of the Division of Youth and Family Services is placed by said division, or with its approval, for temporary or long-term care, but shall not include any person with whom a child is placed for the purpose of adoption.

(i) The term "foster home" means and includes private residences, group homes, residential facilities and institutions wherein any child in the care, custody or guardianship of the Division of Youth and Family Services may be placed by the said division or with its approval for temporary or long-term care, and shall include any private residence maintained by persons with whom any such child is placed for adoption.

(j) The singular includes the plural form.

(k) The masculine noun and pronoun include the feminine.

(l) The word "may" shall be construed to be permissive.

(m) The term "group home" means and includes any single family dwelling used in the placement of 12 children or less pursuant to law, recognized as a group home by the Department of Human Services in accordance with rules and regulations adopted by the Commissioner of Human Services; provided, however, that no group home shall contain more than 12 children.

(n) The term "youth facility" means a facility within this State used to house or provide services to children under this act, including but not limited to group homes, residential facilities, day care centers, and day treatment centers.

(o) The term "youth facility aid" means aid provided by the Division of Youth and Family Services to public, private or voluntary agencies to purchase, construct, renovate, repair, upgrade or otherwise improve a youth facility in consideration for an agreement for the agency to provide residential care, day treatment or other youth services for children in need of such services.

(p) The term "day treatment center" means a facility used to provide counseling, supplemental educational services, therapy, and other related services to children for whom it has been determined that such services are necessary, but is not used to house these children in a residential setting.

(q) The term "residential facility" means a facility used to house and provide treatment and other related services on a 24-hour basis to children determined to be in need of such housing and services.

(r) The term "legally responsible person" means the natural or adoptive parent, or the spouse of a child receiving maintenance from or through the Division of Youth and Family Services.

**30:4C-2.1. Bureau of Children's Services as continuation of Board of Children's Guardians, etc.**

Except as otherwise provided by this act, the Bureau of Children's Services shall in all respects and for all purposes be deemed a continuation of the agency heretofore known as the State Board of Children's Guardians or the State Board of Child Welfare.

**30:4C-3. Duties of Bureau of Children's Services under act**

The Bureau of Children's Services, in administering the provisions of this act, shall:

(a) provide care and custody for children eligible therefor in such manner that the children may, so far as practicable, continue to live in their own homes and family life be thereby preserved and strengthened;

(b) provide necessary welfare services as may be required by such children, so far as practicable, without assumption of custody;

(c) encourage the development of private and voluntary agencies qualified to provide welfare services for children to the end that through cooperative effort the need for such services may be limited or reduced.

**30:4C-4. Powers of Division of Youth and Family Services**

The Division of Youth and Family Services shall have the requisite powers to:

(a) Exercise general supervision over children for whom care, custody or guardianship is provided in accordance with article 2 of this act;

(b) Administer for the Department of Human Services the powers and duties provided in chapter 3 of Title 9 of the Revised Statutes (Adoption), as amended and supplemented, as the same may be delegated and assigned by the said department;

(c) Administer for the Commissioner of Human Services the powers and duties as provided in chapter 7 of Title 9 of the Revised Statutes (dependent children; bringing into State), as amended and supplemented, as the same may be delegated and assigned by the said commissioner;

(d) Administer for the State Board of Institutional Trustees the powers and duties provided in sections 30:1-14 through 30:1-17 of chapter 1 of Title 30 of the Revised Statutes (visitation and inspection), as amended and supplemented, so far as the same may be delegated and assigned by the said State Board of Institutional Trustees with respect to institutions, organizations and noninstitutional agencies for the care, custody and welfare of children;

(e) Provide care and exercise supervision over children paroled or released from State correctional institutions for juveniles in accordance with rules and regulations established by the State Board of Control;

(f) Make investigations or provide supervision of any child in this State at the request and on behalf of a public or private agency or institution of any other State;

(g) Meet and confer, as the unmet needs of New Jersey's children may require, with representatives of the public welfare boards and the private agencies and institutions for the care of children in this State in order that the programs of such boards, agencies and institutions may be developed and fully utilized and that there may be a coordination of all public and private facilities for the protection and care of children;

(h) Issue such reasonable rules and regulations as may be necessary for the purpose of carrying into effect the meaning of this act, which rules and regulations shall be binding so far as they are consistent with such purpose;

(i) Promulgate and file with the Secretary of State, subject to the approval of the Board of Public Welfare, rules and regulations as may be necessary as a basis for the provision for payment for services rendered by privately sponsored agencies or institutions to children under the care, custody or guardianship of the Division of Youth and Family Services. Such rules and regulations shall include, but shall not be limited to, standards of professional training, experience and practices, and requirements relating to the moral responsibility of the trustees, officers or other persons supervising or conducting the program, the adequacy of the facilities, the maintenance of adequate casework records, and the furnishing of comprehensive reports.

(j) Enter into written agreements with public, private or voluntary agencies to provide youth facility aid to such agencies, subject to a preaward qualification review of the agency's fiscal and programmatic abilities and periodic reviews.

#### **30:4C-4.1. Consent and approval of actions or proceedings**

Notwithstanding the provisions of any other law, no action or proceeding, including an application for a writ of habeas corpus, in any court which the Bureau of Children's Services is authorized by law to commence or maintain shall be commenced or maintained by the said bureau, without the consent and approval of the State Board of Control of Institutions and Agencies or the Commissioner of the Department of Institutions and Agencies, as hereinafter provided.

#### **30:4C-4.2. Nature of consent and approval; rules and regulations**

The said State Board of Control, by departmental rule or regulation, may, as to the commencement or maintenance of certain specified actions or proceedings in any court, grant its consent and approval generally, and as to others, require the consent and approval of the Commissioner of the Department of Institutions and Agencies as the duly authorized agent of the State Board of Control, but in no case shall the Bureau of Children's Services, defend against any action or proceeding or make or oppose any application for a writ of habeas corpus without the express consent and approval of the State Board of Control of Institutions and Agencies thereto or the consent and approval of the Commissioner of the Department of Institutions and Agencies as the duly authorized agent of the State Board of Control.

**30:4C-4.3. Copies of rules and regulations; certification of consent and approval**

The Commissioner of the Department of Institutions and Agencies shall cause a copy of every rule or regulation and a certification of every consent and approval issued or granted by the State Board of Control of Institutions and Agencies or the Commissioner of the Department of Institutions and Agencies pursuant to the provisions of this act to be given to the Attorney General and to the Deputy Attorney General assigned to the Department of Institutions and Agencies.

**30:4C-5. Consent of parent or guardian**

Except as provided in section 12 and sections 15 through 22 of this act, nothing in this act shall authorize the Bureau of Children's Services to accept the care or custody of any child, nor to provide welfare services for any child, except with the voluntary approval and consent of the parent, parents, legal custodian, guardian or other person with whom the child may be living.

**30:4C-6. Persons receiving benefits not deemed paupers; treatment by spiritual means or prayer**

No person to whom or for whom payments for maintenance are made under this act shall be deemed to be or classified as a pauper by reason thereof.

The provisions of this act shall not be construed to deny treatment by spiritual means or prayer, of any child, in accordance with the religious faith of the parent or parents of such child. The provisions of this act shall not be construed to authorize or empower the Bureau of Children's Services to compel a child to undergo medical or surgical treatment, if the child, or parent or guardian of said child, objects thereto in a signed statement upon the ground that the proposed action interferes with the free exercise of his religious principles.

**30:4C-7. Birth, death, and marriage certificates issued without charge**

All birth, death and marriage certificates which may be required under the provisions of this act, or under any rule or regulation issued by the Bureau of Children's Services, shall be issued free of charge upon the order of such bureau.

**30:4C-8. Payments for maintenance exempt from tax**

All amounts paid for maintenance under the provisions of this act, except such amounts as are paid for medical, dental and hospital care, shall be exempt from any tax levied by the State or by any subdivision thereof.

**30:4C-9. Orders of commitment or grants of assistance previously made and other previous actions not affected**

The provisions of this act shall not be construed to terminate, alter or affect any order of commitment or grant of assistance heretofore made under any law relating to the State Board of Child Welfare or the State Board of Children's Guardians, such order or grant being in effect as of the effective date of this act.

Any action heretofore taken by the State Board of Child Welfare or the State Board of Children's Guardians pursuant to any law of this State, or any rule or regulation of the said State Board of Child Welfare or the State Board of Children's Guardians, shall remain in full force and effect until altered, amended or revoked by the State Board of Child Welfare pursuant to its powers and duties as now or hereafter established. Any legal agreement, contract or obligation previously entered into by the State Board of Child Welfare or the State Board of Children's Guardians shall continue in full force and effect and shall be binding upon the State Board of Child Welfare for the intents and purposes of such agreement, contract or obligation.

**30:4C-10. Liberal construction; consistent laws not repealed**

This act shall be liberally construed. Any particular grant of power contained in this act shall be held to be in specification but not in limitation of general powers.

Nothing in this act shall be construed as repealing any other law or part of any law providing for the settlement, relief, assistance and support of the poor, except insofar as inconsistent therewith; nor shall the provisions contained in this act be construed to repeal other provisions of the law not inconsistent herewith.

Nothing in this act shall operate to repeal or nullify the provisions of Title 11 of the Revised Statutes (11:1-1 et seq.).

**30:4C-11. Application for care or custody; verification and investigation; acceptance of care or custody**

Whenever it shall appear that any child within this State is of such circumstances that his welfare will be endangered unless proper care or custody is provided, an application setting forth the facts in the case may be filed with the Bureau of Children's Services by a parent or other relative of such child, by a person standing in loco parentis to such child, by a person or association or agency or public official having a special interest in such child or by the child himself, seeking that the Bureau of Children's Services accept and provide such care or custody of such child as the circumstances may require. Such application shall be in writing, and shall contain a statement of the relationship to or special interest in such child which justifies the filing of such application. The provisions of this section shall be deemed to include an application on behalf of an unborn child when the prospective mother is within this State at the time of application for such services.

Upon receipt of an application as provided in this section, the Bureau of Children's Services shall verify the statements set forth in such application and shall investigate all the matters pertaining to the circumstances of the child. If upon such verification and investigation it shall appear (a) that the welfare of such child will be endangered unless proper care or custody is provided; (b) that the needs of such child cannot properly be provided for by financial assistance as made available by the laws of this State; (c) that there is no person legally responsible for the support of such child whose identity and whereabouts are known and who is willing and able to provide for the care and support required by such child; and (d) that such child, if suffering from a mental or physical disability requiring institutional care, is not immediately admissible to any public institution providing such care; then the Bureau of Children's Services may accept and provide such care or custody as the circumstances of such child may require.

**30:4C-12. Complaint; investigation; hearing; order making child ward of court; duration of order; extension**

Whenever it shall appear that the parent or parents, guardian, or person having custody and control of any child within this State is grossly immoral or unfit to be entrusted with the care and education of such child, or shall fail to provide such child with proper protection, maintenance and education, or is of such vicious, careless or dissolute habits as to endanger the welfare of such child, a written or oral complaint may be filed with the Bureau of Children's Services by any person or by any public or private agency or institution interested in such child. When such a complaint is filed by a public or private agency or institution, it shall be accompanied by a summary setting forth the reason for such complaint and other social history of the child and his situation which justifies such complaint; or, if this is not feasible, such summary shall be made available to the Bureau of Children's Services as soon thereafter as possible.

Upon receipt of a complaint as provided in this section, the Bureau of Children's Services shall investigate, or shall cause to be investigated, the statements set forth in such complaint. If the circumstances so warrant, the parent, parents, guardian, or person having custody and control of the child shall be afforded an opportunity to file an application for care, as provided in section 11 of this act. If the parent, parents, guardian, or person having custody and control of the child shall refuse to permit or shall in any way impede investigation, and the bureau determines that further investigation is necessary in the best interests of the child, the bureau may thereupon apply to the Juvenile and Domestic Relations Court of the county where the child resides, for an order directing the parent, parents, guardian, or person having custody and control of the child to permit immediate investigation. The court, upon such application, may proceed to hear the matter in a summary manner and if satisfied that the best interests of the child so require may issue an order as requested.

If, after such investigation has been completed, it appears that the child requires care and supervision by the Bureau of Children's Services but the parent, parents, guardian, or person having custody and control of the child continue to refuse to apply for care in the manner provided in section 11, the bureau may apply to the Juvenile and Domestic Relations Court of the county where the child resides for an order making the child a ward of the court and placing such child under the care and supervision of the Bureau of Children's Services.

The court, at a summary hearing held upon notice to the Bureau of Children's Services, and to the parent, parents, guardian, or person having custody and control of the child, if satisfied that the best interests of the child so require, may issue an order as requested, which order shall have the same force and effect as the acceptance of a child for care by the bureau as provided in section 11 of this act; provided, however, that such order shall not be effective beyond a period of 6 months from the date of entry unless the court, upon application by the Bureau of Children's Services, at a summary hearing held upon notice to the parent, parents, guardian, or person having custody of the child, extends the time of the order.

**30:4C-13. Referral of matter to legally responsible person or agency charged with administration of financial assistance; other services**

If in the course of verifying and investigating any applications or complaints, as provided for in sections 11 and 12 hereof, it shall appear that there is a person legally responsible for the support of the child who is willing and able to provide the care and support required by such child; or it shall appear that the needs of the child can properly be provided for by financial assistance as made available by the laws of this State; then, the Bureau of Children's Services, before accepting and providing care or custody, shall first make proper referral of the matter to such legally responsible person, or to the agency charged with the administration of such

financial assistance. If it shall appear that the welfare of the child is endangered, and that such condition can be eliminated or ameliorated by making available to or for such child any one or more of whatever specific services the Bureau of Children's Services may be authorized, within the limits of legislative appropriations, to provide for all children in similar circumstances, the child shall be found eligible for care or custody, and the bureau shall proceed to furnish such services either by direct provision or, if the bureau so determines in the specific case, by purchasing such services from any appropriate privately sponsored agency or institution which complies with whatever rules and regulations, established pursuant to this act, may govern such arrangements for purchase of service.

**30:4C-14. Notice of action taken on application**

The Bureau of Children's Services shall give notice in writing to the applicant or complainant of the action taken on any application as provided in sections 11 and 12 hereof.

**30:4C-15. Guardianship; petition**

Whenever (a) it appears that a court wherein a complaint has been proffered as provided in chapter 6 of Title 9 of the Revised Statutes, has entered a conviction against the parent or parents, guardian, or person having custody and control of any child because of abuse, abandonment, neglect of or cruelty to such child; or (b) it appears that any child has been adjudged delinquent by a court of proper jurisdiction in this State; or (c) it appears that the best interests of any child under the care or custody of the Bureau of Children's Services require that he be placed under guardianship; or (d) it appears that a parent or guardian of a child, following the acceptance of such child by the Bureau of Children's Services pursuant to sections 11 or 12 of this act, or following the placement or commitment of such child in the care of an authorized agency, whether in an institution or in a foster home, and notwithstanding the diligent efforts of such agency to encourage and strengthen the parental relationship, has failed substantially and continuously or repeatedly for a period of more than 1 year to maintain contact with and plan for the future of the child, although physically and financially able to do so; a petition, setting forth the facts in the case, may be filed with the juvenile and domestic relations court of the county where such child may be at the time of the filing of such petition. A petition as provided in this section may be filed by any person or any association or agency, interested in such child, or by the Bureau of Children's Services in the circumstances set forth in items (c) and (d) hereof.

**30:4C-16. Association or agency to file summary of records with petition**

Where the petitioner under section fifteen hereof is an association or agency, such petitioner shall file with the petition a summary of its records of the case.

**30:4C-17. Notice of hearing to Bureau of Children's Services; interlocutory order**

When a petition is filed under section 15 hereof by a person, association or agency other than the Bureau of Children's Services, the court, in addition to causing service to be made upon the parent, parents, guardian or person having custody and control of the child in accordance with rules of court, shall also cause a copy of the petition and notice of the time and place of hearing to be served on or mailed to the Bureau of Children's Services at least 20 days before the time of such hearing.

Whenever a petition is filed under section 15 hereof, and there shall be filed with such petition

a statement or statements made under oath and attesting that the best interests of the child require that he be placed under the guardianship of the Bureau of Children's Services immediately and pending final hearing, the court, at a special summary hearing held upon notice to the Bureau of Children's Services, may make an interlocutory order committing such child to the Bureau of Children's Services until a final hearing on the petition. Such interlocutory order shall have the same force and effect as an order of commitment provided for in section 20 hereof.

**30:4C-18. Verification of petition; investigation; report of findings**

Immediately upon receipt of the copy of a petition served on or mailed to the Bureau of Children's Services as provided by section 17 hereof, such bureau shall verify such petition and investigate all the facts pertaining to the eligibility of the child for commitment, and prior to the day set for hearing shall file with the court a report of its findings. Such report shall show such facts as will assist the court in making a decision in the matter.

**30:4C-19. Adjournment**

Adjournment of any hearing on a petition filed under section fifteen hereof shall not exceed a total period of ninety days.

**30:4C-20. Interlocutory order terminating parental rights and committing child to guardianship of Bureau**

If upon the completion of such hearing the court is satisfied that best interests of such child require that he be placed under proper guardianship, such court shall make an order terminating parental rights and committing such child to the guardianship and control of the Bureau of Children's Services, and such child shall thereupon become the legal ward of such bureau, and such bureau shall be the legal guardian of such child for all purposes, including the placement of such child for adoption.

If the court shall have made an interlocutory order as provided in section 17 hereof, but at the final hearing a further order of commitment shall not be made as provided in this section, the Bureau of Children's Services shall return the child forthwith to the parent or parents, guardian or person having had custody of the child immediately prior to the filing of the petition; provided, however, that if such parent or parents, guardian or person having had custody cannot be found or, for other reason satisfactory to the court, is unable to accept the child, the Bureau of Children's Services, upon order of the court, may place the child with such other person or persons who, at the time of final hearing, expressed willingness to accept the child, but such order shall in no wise be construed as a grant of custody or guardianship. In all such cases the interlocutory order shall continue in full force and effect until the Bureau of Children's Services shall have made disposition of the child as provided herein, but in no case for a period longer than 30 days after the final hearing.

**30:4C-21. Guardianship order not to be restrictive**

The order of the court committing a child to the guardianship of the Bureau of Children's Services, shall in no wise be restrictive of the duties, powers and authority of such bureau in the care, custody, placement, welfare and exclusive guardianship of the child as provided in this act, and such bureau shall be removed as such guardian only by a court of competent jurisdiction upon charges preferred and upon good cause shown after an opportunity to be heard.

**30:4C-22. Care, custody or guardianship of division of youth and family services; petitions by division for transfer of assets regarding children in foster homes**

The care, custody or guardianship of the Division of Youth and Family Services shall be full and complete for all purposes and shall vest in the division the custody and control of both the person and property of children in its custody or care, and of its wards, whether committed prior or subsequent to the effective date of this act, when the children are in foster homes, without the necessity of giving bond, and notwithstanding any previous appointment of a guardian for the children under its custody or care or such wards.

Such care, custody or guardianship of the division shall enable the division, acting through the chief executive officer of the division or his authorized representative, to prosecute suits, claims and any and all manners of proceedings or actions in law or equity for and on behalf of the children under its custody or care or its wards when the children are in foster homes; to demand and receive from all persons, including guardians previously appointed, any and all property of the children under its custody or care or its wards when the children are in foster homes; and to hold and administer the real and personal property of the children under its custody or care or its wards when the children are in foster homes, or any interest they may have therein; provided, however, that it shall be proper for the division, in its discretion, to hold funds of the children under its custody or care or its wards when the children are in foster homes on deposit in one or more banks, building and loan associations, or trust companies in this State, and to apply funds, other than earned income or the corpus of any trust, devise or intestate share, or the proceeds of an insurance contract or a personal injury award which a court specifically awards to a child to make the child whole as a result of an injury, of any child under its custody or care or any ward when the child is in a foster home against expenditures for the maintenance of such child under its custody or care or ward when the child is in a foster home.

A court of competent jurisdiction shall hear and determine petitions by the division, on behalf of the children under its custody or care or its wards when the children are in foster homes, for the transfer of any or all assets being held by guardians previously appointed. The court shall have jurisdiction, in its discretion, to waive costs in any proceedings by the division on behalf of the children under its custody or care or its wards when the children are in foster homes.

**30:4C-23. Voluntary surrenders and releases of custody and consents to adoption**

In addition to the methods otherwise provided in this article for establishing guardianship by the Bureau of Children's Services, and when necessary to carry out the provisions of this act, the Bureau of Children's Services, after due investigation and consideration, may, in cases where it would be to the permanent advantage of the child, take voluntary surrenders and releases of custody and consents to adoption from the parent, parents, guardians or other persons or agencies having the right or authority to give such surrenders, releases or consents. Such surrenders, releases or consents, when properly acknowledged before a person authorized to take acknowledgments of proofs in the State of New Jersey, shall be valid and binding irrespective of the age of the person giving the same, and shall be irrevocable except at the discretion of the Bureau of Children's Services or upon order of a court of competent jurisdiction.

**30:4C-24. Application for care or custody of child, complaint, or petition for guardianship by Director of Welfare**

Whenever the director of welfare of any county or municipality in this State shall be called upon to serve any child whose needs cannot properly be provided for by financial assistance as made available by the laws of this State, such director shall, within 24 hours thereafter, give written

notice thereof to the Bureau of Children's Services, and shall file an application for care or custody, as provided in section 11 of this act, or shall file a complaint as provided in section 12 of this act, or shall file a petition as provided in section 15 of this act, as the situation of the child may require. Such notice shall contain all available information concerning the child and his circumstances, which will enable the Bureau of Children's Services to take proper action. If the immediate needs of the child so require, the director shall provide for his care in a suitable place, approved with reasonable promptness for that purpose by the bureau, paying therefor as a charge against county or municipal funds until such time as the child has been found eligible for care, custody or guardianship in accordance with the provisions of this act.

**30:4C-25. Agents of Bureau of Children's Services to visit children**

The Bureau of Children's Services, by its agent or agents, shall regularly visit all children under its care, custody or guardianship under the provisions of this act in order to assure the maximum benefit from such services.

**30:4C-26. Placing child in foster home, group home or institution**

a. Whenever the circumstances of a child are such that his needs cannot be adequately met in his own home, the Division of Youth and Family Services may effect his placement in a foster home, with or without payment of board, in a group home, or in an appropriate institution if such care is deemed essential for him. The Division of Youth and Family Services shall make every reasonable effort to select a foster home, a group home or an institution of the same religious faith as the parent or parents of such child.

b. Whenever the Division of Youth and Family Services shall place any child, as provided by this section, in any municipality and county of this State, the child shall be deemed a resident of such municipality and county for all purposes except school funding, and he shall be entitled to the use and benefit of all health, recreational, vocational and other facilities of such municipality and county in the same manner and extent as any other child living in such municipality and county.

c. Whenever the Division of Youth and Family Services shall place any child, as provided by this section, in any school district, the child shall be entitled to the educational benefits of such district; provided, however, that the district of residence, as determined by the Commissioner of Education pursuant to law, shall be responsible for paying tuition for such child to the district in which he is placed.

d. No municipality shall enact a planning or zoning ordinance governing the use of land by, or for, single family dwellings which shall, by any of its terms or provisions or by any rule or regulation adopted in accordance therewith, discriminate between children who are members of such single families by reason of their relationship by blood, marriage or adoption, foster children placed with such families in such dwellings by the Division of Youth and Family Services, and children placed pursuant to law with families in single family dwellings known as group homes.

Any planning or zoning ordinance, heretofore or hereafter enacted by a municipality, which violates the provisions of this section, shall be invalid and inoperative.

### **30:4C-26a. Rules and regulations**

Subject to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), the Commissioner of Institutions and Agencies is authorized to formulate and adopt all rules and regulations necessary to effectuate the purposes of this act.

#### **30:4C-26.1. Foster home defined**

As used in this act "foster home" means and includes private residences, group homes and institutions wherein any child in the care, custody or guardianship of the Division of Youth and Family Services, may be placed for temporary or long-term care, and shall include any private residence maintained by persons with whom any such child is placed for adoption.

#### **30:4C-26.2. Child care centers; establishment and maintenance**

The Bureau of Children's Services, shall establish and maintain, within the limits of available appropriations, child care shelters in such numbers and at such locations throughout the State as the Commissioner of the Department of Institutions and Agencies with the approval of the State Board of Control shall deem to be necessary.

#### **30:4C-26.3. Use of child care centers; equipment; staff**

Such shelters shall be equipped and used for the temporary care and supervision of children who are placed in the care, custody or guardianship of the Bureau of Children's Services, during the interim between such placement and placement in a suitable foster home. Such shelters shall be properly staffed to provide for child care and supervision and shall contain the necessary facilities for both physical and psychological examinations of such children.

#### **30:4C-26.4. Foster parent defined**

As used in this act "foster parent" shall mean any person with whom a child in the care, custody or guardianship of the Bureau of Children's Services, is placed for temporary or long-term care, but shall not include any persons with whom a child is placed for the purpose of adoption.

#### **30:4C-26.5. Contracts with foster parents; prohibition of provisions prohibiting adoption**

Notwithstanding the provisions of any other law or any rule or regulation of the Bureau of Children's Services, no agreement entered into between said bureau and any foster parent for the care of any child in the care, custody or guardianship of said bureau shall contain any provision prohibiting the adoption of any said child by the foster parent.

#### **30:4C-26.6. Foster parent defined**

As used in this act "foster parent" shall mean any person with whom a child in the care, custody or guardianship of the Bureau of Children's Services, is placed for temporary or long-term care, but shall not include any persons with whom a child is placed for the purpose of adoption.

### **30:4C-26.7. Application by foster parents for placement of children for adoption**

Any husband and wife, who, as foster parents, have cared for a child continuously for a period of 2 years or more, may apply to the Bureau of Children's Services, for the placement of said child with them for the purpose of adoption and if said child is eligible for adoption, the bureau shall give preference and first consideration to their application over all other applications for adoption placements.

### **30:4C-26.8. Criminal history investigation of prospective foster or adoptive parents**

A person, in addition to meeting other requirements as may be established by the Department of Human Services, shall become a foster parent or eligible to adopt a child only upon the completion of an investigation to ascertain there is a State or federal record of criminal history for the prospective foster or adoptive parent or any other adult residing in the prospective parent's home. The investigation shall be conducted by the Division of State Police in the Department of Law and Public Safety and shall include an examination of its own files and the obtaining of a similar examination by federal authorities.

If the prospective foster or adoptive parent or any adult residing in the prospective parent's home has a record of criminal history, the Department of Human Services shall review the record with respect to the type and date of the criminal offense and make a determination as to the suitability of the person to become a foster parent or adoptive parent or the suitability of placing a child in that person's home, as the case may be.

### **30:4C-27. Maintenance of child; medical or psychological examinations; consent for treatment**

Pursuant to the providing of care, custody or guardianship for any child, in accordance with the provisions of this act, the Bureau of Children's Services may expend such sums as may be necessary for the reasonable and proper cost of maintenance, including board, lodging, clothing, medical, dental, and hospital care, or any other similar or specialized commodity or service as the needs of any such child may require, except that the bureau shall not maintain a clothing warehouse for the distribution of clothing to children under its jurisdiction. In lieu thereof, the bureau may pay foster parents caring for children under their supervision a sufficient amount to enable them to purchase necessary clothing items required by the children from the local merchants of the locality in which they reside. Such maintenance costs shall be chargeable against State and county funds as made available in accordance with article 4 of this act, except that the total cost of hospital care for children as provided for herein shall be borne by the State and contributions required to be paid by the counties toward the cost of maintenance of the children involved shall include no part of the cost of such hospital care. However, no costs shall be chargeable if incurred earlier than the date of the child's acceptance in care as provided in section 12 hereof, or earlier than the date of an order of commitment to guardianship as provided in section 20 hereof.

Whenever a medical or psychological examination shall be required for any child as a condition to providing care or custody, or whenever the Bureau of Children's Services avails itself of the facilities and services of any privately sponsored agency or institution, the cost of the examination or service shall be a proper charge against State and county funds, within the limits of available appropriations, in the same manner and extent as expenditures for maintenance.

In providing care, custody or guardianship for any child or in the course of determining the eligibility of any child for care, custody or guardianship in accordance with the provisions of

this act, the Bureau of Children's Services may avail itself of the facilities and services of any privately sponsored agency or institution, with due regard to the religious background of the child, which complies with those rules and regulations as established pursuant to this act, paying such fees for service as may be mutually agreed upon by the bureau and the privately sponsored agency or institution providing service.

Whenever a child under care, custody or guardianship is in need of operation, anaesthesia, diagnostic tests or treatment, the Bureau of Children's Services may give its consent thereto. A consent to operation, anaesthesia, diagnostic tests or treatment when given by the Bureau of Children's Services on behalf of any child receiving care, custody or guardianship shall be deemed legal and valid for all purposes with respect to any person or hospital affording service to such child pursuant to and in reliance upon such consent.

Nothing contained herein shall modify the provisions of section 6 of the act of which this act is amendatory.

#### **30:4C-27.1. Foster parent defined**

As used in this act "foster parent" shall mean any person with whom a child in the care, custody or guardianship of the Bureau of Children's Services, is placed for temporary or long-term care, but shall not include any persons with whom a child is placed for the purpose of adoption.

#### **30:4C-27.2. Discontinuance of clothing distribution centers; clothing allowance**

Notwithstanding the provision of any other law, the maintenance of a clothing warehouse and distribution center for the distribution of clothing to children in the care, custody or guardianship of the Bureau of Children's Services, shall be discontinued and in lieu thereof the bureau shall increase the monthly allowance payable to any foster parent caring for any of said children in a sufficient amount to enable said foster parent to purchase the necessary clothing items required by said children from the local merchants of the locality wherein the foster parent resides.

#### **30:4C-28. Discharge from care, custody or guardianship**

The Bureau of Children's Services may at any time discharge from its care, custody or guardianship any child, if in the opinion of such bureau the best interests of the child will be promoted thereby.

#### **30:4C-29. Payments for maintenance**

Subject to the provisions of section 30 hereof, payments for maintenance shall be made by the Bureau of Children's Services.

The Bureau of Children's Services is hereby empowered to receive from the State Treasurer and from the county treasurer of each county such sums as shall be appropriated for the purposes of this act, and shall cause such sums to be set up in a special account or accounts subject to disbursement by the Bureau of Children's Services.

## ARTICLE IV. FINANCIAL PROVISIONS

### **30:4C-29.1. Costs of care or custody of child in foster home; liability of legally responsible person; agreements for and schedule of payments; failure to make; lien; priority of lien**

a. In any case in which the Department of Human Services, through the Division of Youth and Family Services, is providing care or custody for any child when the child is in a foster home, any legally responsible person of the child, if of sufficient financial ability, is liable for the full costs of maintenance of the child incurred by the division. If the legally responsible person is of insufficient financial ability, the person is liable in an amount which a court of competent jurisdiction directs according to a scheduled rate approved by the division. Nothing contained herein shall prevent the legally responsible person from voluntarily executing an agreement for payment to the division for the costs of maintenance of the child receiving care or custody when the child is in a foster home.

b. The division shall have a lien against the property of the legally responsible person in an amount equal to the amount to be paid, which lien shall have priority over all unrecorded encumbrances.

c. If the legally responsible person fails to reimburse the department, through the Division of Youth and Family Services, for the costs of maintenance of a child incurred by the division when the child is in a foster home, a court of competent jurisdiction, upon the complaint of the Commissioner of Human Services, may summon the legally responsible person and other witnesses, and may order the legally responsible person to pay an amount to the department, according to a scheduled rate approved by the division.

d. In any case in which the department, through the Division of Youth and Family Services, has agreed to provide youth facilities aid to a public, private or voluntary agency pursuant to this act, the division shall have a lien against the property of any person, persons or agency so contracting, in an amount equal to the amount or amounts so contracted to be paid, which lien shall have priority over all unrecorded encumbrances. Such lien shall be reduced for each year of service provided by the agency at a rate to be negotiated by the division and the agency, but in no case more than 20% a year; provided, however, that annual reductions shall not exceed \$10,000.00.

### **30:4C-29.2. Certificate of lien; filing; effect**

At any time during the period which said child is within the care and custody of the division and within two years after the date upon which said care and custody is terminated, the division, through any officer or employee authorized by it so to do, may execute and file a certificate with the county clerk, or if there be such an officer in the county, with the register of deeds and mortgages of the county, or with the clerk of the Superior Court, as the case may be, which certificate shall state the name of the child, the date when the child came under the care and custody of the division and the date of the agreement, if any, the name of the person or persons by whom the agreement was made, if any, and the sum or sums which said person or persons agreed or is liable to pay to the division for the support and maintenance of said child, and the amount due the division for such service at the time of the filing of the certificate, and the rate of accumulation, if any shall occur thereafter, and the person or persons from whom such sum or sums are or will become due, and upon the filing of said certificate the lien shall immediately attach to and become binding upon all real property in the ownership of the person or persons against whom it is filed in the county, if it is filed in the county, or wherever situate in the State, if it is filed in the Superior Court, and it shall have the force and effect of a judgment at law.

At any time after the signing of an agreement to provide youth facilities aid under this act for the duration of both that agreement and any service agreement, the division, through any officer or employee authorized so to do, may execute and file a lien certificate with the county clerk or with the clerk of the Superior Court, which shall state the names and addresses of both parties, the date of the signing of the contract, the sum or sums which were disbursed to the agency in the expectation that the agency would provide contract services to the division in the future, and the amount due the division at the time of filing of said certificate.

**30:4C-29.3. Books for recording certificates of lien; index**

The clerk or register of deeds and mortgages of the county, or the clerk of the Superior Court, as the case may be, shall provide suitable books in which all certificates of lien and other papers incidental thereto shall be received and recorded without the payment of any fee, which books shall be properly indexed in the name of the person or persons against whom the lien is claimed.

**30:4C-29.4. Property subject to lien; notice; liability for disposal of property after notice**

The lien shall become binding upon any goods, rights, credits, chattels, moneys or effects which are held, for the present or subsequent use, of the person against whom the lien is claimed, by any person, firm or corporation, after notice of the existence of the lien forwarded by certified mail to said person, firm or corporation, who or which shall thereafter be precluded from disposing of said property rights until said lien is satisfied or the bureau consents thereto and any person, firm or corporation disposing of such properties or moneys after receipt of such notice of lien shall be liable to the bureau for the value of such properties or moneys so disposed of, except that when the notice of the lien is served upon a banking institution the lien shall be effective against such banking institution only in the amount of the accumulated delinquent maintenance stated therein.

**30:4C-29.5. Compromise and settlement of claims**

The bureau is authorized to compromise and make settlement of any claim for which any lien is filed under the provisions of this act and the making and consummation of any such compromise shall be sufficient authorization for the discharge thereof.

**30:4C-29.6. Discharge of lien; certificate**

Any such lien may be discharged by filing in the office in which the certificate of lien is filed, a certificate setting forth that said lien is discharged of record, signed and acknowledged by the duly authorized officer or employee of the bureau.

**30:4C-30. Sharing of cost of maintenance by State and county**

Except as provided in section 27 hereof relating to hospital care, the cost of maintenance provided under this act for or on behalf of any child shall be shared 75% by the State and 25% by that county where such child may be or may have been at the time of the filing of an application seeking care or custody or at the time of the filing of a petition seeking guardianship.

The Governor shall fix and determine and state in his annual budget message a sum sufficient to pay the estimated amount required to carry into effect the provisions of this act, together

with the deficiencies, if any, incurred in the previous year. The Legislature shall include the amount so determined and stated, in the annual appropriations bill.

Payments from State funds appropriated for the provision of maintenance as authorized by this act shall be made monthly in advance by the State Treasurer, on the warrant of the Director of the Division of Budget and Accounting to the Division of Youth and Family Services, upon statements furnished by the division, approved by the Department of Human Services.

The division may fix the rate of per capita payment for the maintenance of children in each State program and subprogram, including the allowance for clothing.

The division shall annually fix and determine and report to the board of chosen freeholders of each county a sum sufficient to pay the estimated amount of the county's proportionate share of maintenance. Each board of chosen freeholders shall appropriate and make available such amount to the order of the division. Should the amount so appropriated, however, be expended or exhausted during the year and for the purpose for which it was appropriated, additional sums shall be appropriated by such board of chosen freeholders as occasion demands to carry out the provisions of this act, from funds in the county treasury available therefor. Where such county funds are not available or adequate, or should there be no such county funds, such additional sums shall be raised by temporary loans or notes, certificates of indebtedness or temporary loan bonds, to be issued as otherwise provided and limited by law for counties of this State, and the amounts necessary to pay such obligations shall be placed in the budget for the next ensuing fiscal year.

Payments from county funds appropriated for the provision of maintenance as authorized by this act shall be made monthly in advance by the treasurer of the county to the division on the basis of commitments for such county upon bills furnished by the division.

**30:4C-30.1. Hospital care; total cost to be borne by state**

Notwithstanding the provisions of the act of which this act is a supplement, the total cost of hospital care for children as provided for therein shall be borne by the State and the contributions required to be paid by the counties toward the cost of maintenance of said children shall include no part of the cost of such hospital care.

**30:4C-31. Federal assistance; compliance with requirements of Department of Health, Education and Welfare**

The State Board of Control or its duly authorized representative is hereby empowered to negotiate with the Federal Government to secure such financial assistance for the carrying out of this act as may be provided in the Federal Social Security Act, and the State Treasurer is hereby empowered to receive such moneys and shall cause them to be placed in the account or accounts of the Bureau of Children's Services, acting as the agent of the State Board of Control for the purpose of carrying into effect the provisions of this act.

The State Board of Control is further empowered to organize the work of the Department of Institutions and Agencies in behalf of children to comply, in any manner consistent with law, with the reasonable requirements of the Federal Department of Health, Education and Welfare pursuant to Federal law, and to cooperate in extending and strengthening public welfare services for the protection and care of homeless, dependent and neglected children and children in danger of becoming delinquent.

**30:4C-32. Burial of child receiving care, custody or guardianship**

Whenever a child receiving care, custody, or guardianship as provided by this act has died, and an investigation by the Division of Youth and Family Services discloses that there are insufficient funds from any other source to provide proper burial, such division shall authorize the expenditure of an amount reasonably necessary to provide proper burial for such child, and such amount shall be a proper charge against State and county funds, within the limits of available appropriations, in the same manner and extent as expenditures for maintenance.

The amount reasonably necessary to provide proper burial shall be determined by the average cost for a proper burial and funeral charged by funeral directors in the locality in which the child is buried.

**30:4C-33. Compromise and settlement of claims**

The Bureau of Children's Services may compromise and settle any claim due or which may become due such bureau for reimbursement of moneys paid to any individual or organization for maintenance of a child. A memorandum of the compromise and settlement shall be entered in the official records of the bureau.

**30:4C-34. Recovery and disposition of moneys wrongfully received and from persons responsible for support**

Whenever the Bureau of Children's Services shall recover or receive reimbursement of any moneys paid to any individual or organization for the maintenance of a child; the moneys so recovered or received shall be credited to the State treasury or to the Federal Government in the same proportion as they were charged in the original instance. The Bureau of Children's Services is hereby authorized to take all necessary and proper action under the laws of this State for the recovery of any such moneys wrongfully received or retained by any individual or organization, or for the recovery from the person or persons responsible under the laws of this State for the support of such child the value of maintenance furnished to such child.

**30:4C-35. Contributions**

The Bureau of Children's Services is authorized to retain any voluntary contributions of money heretofore received by it, and to receive future contributions. All such contributions, whether already received or hereafter received, shall be kept in a separate fund, and shall be used only upon order of the bureau for the purposes for which the contributions were made, and such funds shall be in the custody and control of the Bureau of Children's Services; provided, however, that any such contribution made to the bureau, the original purpose of which is no longer practicable or possible of achievement, may be used by the bureau, at its discretion, for the general benefit and welfare of children under its supervision.

**30:4C-36. Petty cash fund**

On application in writing by the Bureau of Children's Services the State Treasurer on warrant of the Director of the Division of Budget and Accounting may pay to the bureau from its annual appropriation such amount not exceeding \$5,000.00 as may be necessary to establish a petty cash fund for the payment of traveling expenses and such other current expenses as require a prompt cash outlay.

The Bureau of Children's Services shall file an account with vouchers attached showing all expenditures from its petty cash fund, and on receipt of the amount thereof from the State Treasurer, shall reimburse the fund. Any questions with reference to the allowance, expenditure, accounting and reimbursement of petty cash moneys shall be finally determined by ruling of the Director of the Division of Budget and Accounting.

**30:4C-37. Checks, drafts or warrants held for more than a year; special moneys fund**

Whenever the Bureau of Children's Services shall have issued, or shall hereafter issue, any checks, drafts or warrants to be paid from moneys received from the Federal Government, the State, or any county of this State for the cost of maintenance, and such checks, drafts or warrants shall not be cashed for a period of 1 year from the date of issue, the following procedure shall be taken:

(a) The Bureau of Children's Services shall give due notice to the bank on which such checks, drafts or warrants were issued that no payment shall be made thereon.

(b) The Bureau of Children's Services shall then from time to time deposit in a special fund moneys in an amount equal to that represented by such checks, drafts or warrants, which moneys shall be held for the payments of such checks, drafts or warrants. Such special fund shall be in the custody and control of the Bureau of Children's Services.

(c) The moneys so deposited shall be maintained in such special fund for a period of 6 years from the date of deposit, and, if still unclaimed after that time by anyone having a legal right thereto, shall be credited to the Federal Government, the State, or any county of this State in the same proportion as such moneys were received by the Bureau of Children's Services in the original instance.

Whenever the Bureau of Children's Services shall have credited any moneys to the Federal Government, the State or any county of this State pursuant to the provisions of this section, it shall thereupon be free of all obligations as to those checks, drafts or warrants for which such moneys have been held for payment.

**30:4C-38. Repeal**

The following acts and statutes together with all amendments thereof and supplements thereto are repealed:

Articles one, two and three of chapter five of Title 30 of the Revised Statutes;

"An act defining the guardianship of the State Board of Children's Guardians and providing for the administration thereof," approved May eleventh, one thousand nine hundred and thirty-eight (P.L.1938, c.160);

"An act to amend an act entitled 'An act concerning the care, maintenance, supervision and guardianship of dependent and neglected children, promoting home life therefor, providing penalties for violation thereof, and amending sections 30:5-1, 30:5-33, 30:5-36, 30:5-43 and 30:5-44 of the Revised Statutes.' approved May eleventh, one thousand nine hundred and thirty-eight," approved June twenty-second, one thousand nine hundred and thirty-eight (P.L.1938, c.400);

"An act concerning checks, drafts or warrants issued by the State Board of Children's Guardians

which remain uncashed for a period of one year, and providing for the disposition of moneys held for payment thereof," approved July twelfth, one thousand nine hundred and thirty-nine (P.L.1939, c.213);

"An act concerning the care, maintenance, supervision and guardianship of dependent and neglected children, promoting home life therefor, providing penalties for violation thereof, and amending section 30:5-4 of the Revised Statutes," approved July eighteenth, one thousand nine hundred and thirty-nine (P.L.1939, c.245);

"An act concerning the care, maintenance, supervision and guardianship of dependent and neglected children, promoting home life therefor, providing penalties for violation thereof, and amending sections 30:5-7 and 30:5-8 of the Revised Statutes," approved May sixth, one thousand nine hundred and forty-two (P.L.1942, c.140);

"An act concerning the care, maintenance, supervision and guardianship of dependent and neglected children, promoting home life therefor, providing penalties for violation thereof, and amending sections 30:5-19, 30:5-21 and 30:5-26 of the Revised Statutes," approved May fourteenth, one thousand nine hundred and forty-two (P.L.1942, c.223);

"An act concerning grants of home life assistance by the State Board of Children's Guardians, and amending section 30:5-33 of the Revised Statutes," approved April thirtieth, one thousand nine hundred and forty-five (P.L.1945, c.264);

"An act to change the name of the State Board of Children's Guardians to the State Board of Child Welfare, and supplementing chapter five of Title 30 of the Revised Statutes," approved June eleventh, one thousand nine hundred and forty-seven (P.L.1947, c.257);

Chapter five A of Title of the Revised Statutes.

**30:4C-39. Continuation of consistent provisions of prior laws; effect of repeal**

To the extent that this act contains provisions not inconsistent with those of prior laws it shall be construed as a continuation of such laws. The repeal of the acts and statutes as provided by section thirty-eight hereof shall not revive or re-establish any office, positions, functions, powers, or duties heretofore abolished by such acts and statutes.

**30:4C-40. Effective date**

This act shall take effect January first, one thousand nine hundred and fifty-two.

**30:4C-41. "Approved agency" defined**

"Approved agency" as used herein means a legally constituted agency having its principal office within this State, which holds a valid certificate of approval from the Department of Institutions and Agencies, as provided by law, to place children in New Jersey for purposes of adoption.

**30:4C-42. Adoption resource exchange; establishment**

The Bureau of Children's Services, is hereby authorized and empowered, subject to the availability of appropriations therefor, to establish an Adoption Resource Exchange, the services of which

shall be available only to approved agencies as a further resource to facilitate placement of children for adoption by and through such agencies.

**30:4C-43. Purpose of adoption resource exchange**

The Adoption Resource Exchange authorized by this act shall not itself engage in the placement of children for adoption nor shall it be construed as a substitute for other local community resources, whether public or voluntary. It shall be a facility whereby the Bureau of Children's Services and other approved agencies may mutually share and exchange information concerning children available for adoption and homes available for the placement of adoptive children.

**30:4C-44. Rules, regulations and procedures**

The Bureau of Children's Services is hereby authorized and empowered to establish rules, regulations and procedures necessary to accomplish the purposes of this act.

**30:4C-45. Legislative intent**

It is the intent of the Legislature in enacting this act to benefit hard-to-place children in foster care at State expense by providing the stability and security of permanent homes.

**30:4C-46. Payments in subsidization of adoption; qualifications**

The Division of Youth and Family Services shall make payments to adoptive parents on behalf of a child placed for adoption by the division whenever:

- a. The child because of physical or mental condition, race, age, or membership in a sibling group, or for any other reason falls into the category of a child hard to place for adoption;
- b. The adoptive family is capable of providing the permanent family relationships needed by the child; and
- c. Except in situations involving adoption by a child's foster parent, there has been a reasonable effort to place the child in an adoptive setting without providing a subsidy.

Payments shall be made on behalf of a child placed for adoption by the Division of Youth and Family Services, except that whenever a child who would otherwise be eligible for subsidy payment is in the care of an approved New Jersey adoption agency pursuant to P.L.1977, c.367 (C.9:3-37 et seq.) a child shall, upon application by the agency and satisfaction of the regular requirements of the adoption subsidy program, be approved for participation in the adoption subsidy program. In any case the division may approve payment in subsidization of adoption for a child without legal transfer of care or custody of the child to the division. The division shall adopt regulations for administration of this program with respect to these children, except that all children are evaluated for eligibility in the same manner as children already under the care, custody or guardianship of the division.

**30:4C-47. Costs and expenses covered**

Payments in subsidization of adoption shall include but are not limited to the maintenance costs,

medical and surgical expenses, and other costs incidental to the care, training and education of the child. Such payments may not exceed the cost of providing comparable assistance in foster care and shall not be made after the adoptive child becomes 18 years of age, except that payments not to exceed 80% of the costs shall be made until the child becomes 21 years of age when it is determined by the Division of Youth and Family Services that the needs of the child cannot be adequately met without the payments.

**30:4C-48. Qualifications; original and annual determination**

Qualification for payments in subsidization of adoption shall be determined and approved by the Division of Youth and Family Services, prior to the completion of the adoption proceeding and may be redetermined annually thereafter. No payments shall be made for any child who the division has determined was brought into this State for the sole purpose of qualifying for an adoption subsidy pursuant to P.L.1973, c. 81 (C. 30:4C-45 et seq.).

**30:4C-49. Rules and regulations**

The Division of Youth and Family Services shall make all necessary rules and regulations for administering the program for payments in subsidization of adoptions.

**30:4C-50. Short title**

This act shall be known and may be cited as the "Child Placement Review Act."

**30:4C-51. Legislative declarations**

The Legislature declares that it is in the public interest to afford every child placed outside his home by the Division of Youth and Family Services with the opportunity for eventual return to his home or placement in an alternative permanent home; that it is the obligation of the State to promote this end through effective planning and regular review of each child's placement; and that it is the purpose of this act to establish procedures for both administrative and judicial review of each child's placement in order to ensure that such placement serves the best interest of the child.

**30:4C-52. Definitions**

As used in this act, unless the context indicates otherwise:

a. "Child" means any person less than 18 years of age;

b. "Child placed outside his home" means a child under the care, custody or guardianship of the division, who resides in a foster home, group home, residential treatment facility, shelter for the care of abused or neglected children or juveniles considered as juvenile-family crisis cases, or independent living arrangement operated by or approved for payment by the division, or a child who has been placed by the division in the home of a person who is not related to the child and does not receive any payment for the care of the child from the division, or a child placed by the court in juvenile-family crisis cases pursuant to P.L.1982, c. 77 (C. 2A:4A-20 et seq.), but does not include a child placed by the court in the home of a person related to the child who does not receive any payment from the division for the care of the child;

c. "County of supervision" means the county in which the division has established responsibility for supervision of the child;

d. "Division" means the Division of Youth and Family Services in the Department of Human Services;

e. "Temporary caretaker" means a foster parent as defined in section 1 of P.L.1962, c. 136 (C. 30:4C-26.4) or a director of a group home or residential treatment facility.

f. "Designated agency" means an agency designated by the court pursuant to P.L.1982, c. 80 (C. 2A:4A-76 et seq.) to develop a family services plan.

**30:4C-53. Placement of child outside home; notice; filing; form; contents; jurisdiction of court; notice of permanent placement**

Within five calendar days after the placement of a child outside his home pursuant to a voluntary agreement, the division or the designated agency, as the case may be, shall file notice of such placement with the family part of the Chancery Division of the Superior Court in the child's county of supervision. Such notice shall be in the form of a petition encaptioned "In the matter of . . . , a minor" and shall include the date and type of placement and the reasons for such placement, which shall include the specific efforts to prevent the placement. Such filing shall establish a continuing jurisdiction of the court over the placement of the child.

The division shall also file immediate notice with the court of any change in placement and of the permanent placement or return home of the child. The court's jurisdiction shall cease upon receipt of such notification of the return home or alternative permanent placement of the child.

**30:4C-54. Approval of placement by voluntary agreement by court; hearing; notice**

The court shall, within 15 days following receipt of the notice of the initial placement pursuant to a voluntary agreement, determine, based solely upon the petition and other affidavits and written materials submitted to the court, whether or not reasonable efforts have been made to prevent the placement and whether or not the continuation of the child in his home would be contrary to the welfare of the child, and either approve the placement or order the return of the child to his home, except that, lack of reasonable efforts to prevent placement shall not be the sole basis for the court's order of a return of the child to his home.

The court also may require the submission of supplementary material or schedule a summary hearing if:

- a. The court has before it conflicting statements of material fact;
- b. The court determines that it is in the best interest of the child; or
- c. The child's parents or legal guardian requests the hearing.

The court shall provide written notice to the parties involved in the hearing at least five days prior to the hearing. The court shall provide written notice of the date, time and place of such hearing to the parents or legal guardian of the child, the child or the child's counsel, the child's temporary caretaker, the division, and any other party the court deems appropriate.

**30:4C-55. Placement plan; preparation and revision; contents**

The division shall prepare and revise, when necessary, in consultation with the child's parents or legal guardian and, when appropriate, the child, a placement plan for each child placed outside his home. The plan shall include:

- a. A statement of the goal for the permanent placement or return home of the child;
- b. The intermediate objectives relating to the attainment of the goal; and
- c. A statement of the duties and responsibilities of the division, the parents or legal guardian and the temporary caretaker, including the services to be provided by the division to the child, the parents or legal guardian, and the temporary caretaker.

**30:4C-56. Administrative procedures to provide for needs of children and to obtain federal aid**

The division shall be responsible for establishing such administrative procedures as will enable it to effectively provide for the needs of children placed outside their homes and to secure such Federal funding as is available to meet these needs. Such procedures shall provide for:

- a. Appropriate planning and regular review of each child's case by the division;
- b. Collection and analysis of data regarding the division's caseload to facilitate the continuing evaluation of the division's services, policies and procedures with regard to children placed outside their homes; and,
- c. Provision of such information as may be required by the courts or the placement review boards.

**30:4C-57. Child placement review boards; members; qualifications; appointment; terms; vacancies; reimbursement of expenses; training sessions; meetings; support services; county plan; annual report; rules; coordinator**

a. The assignment judge in each county shall establish as an arm of the family part of the Chancery Division of the Superior Court one or more child placement review boards. The number of review boards in each county shall be based on the number of reviews conducted in the previous calendar year, so that, where practicable, there shall be at least one review board for each 200 reviews. Each board shall consist of five members to be appointed by the judge from among the residents of such county. The judge also shall appoint to each board two alternate members, who shall serve as regular members when regular members are not present. Each member shall be a person who has either training, experience or interest in issues concerning child placement or child development. Each board shall, to the maximum extent feasible, represent the various socioeconomic, racial, and ethnic groups of the county in which it serves. The judge shall annually appoint one of the regular members of the board as chairperson.

Members shall be initially appointed for a provisional term of one year and may be reappointed for subsequent terms of three years. Alternate members shall fill any vacancy until a regular board member has been appointed. Alternate members may be appointed as regular members. The appointed member shall serve for the duration of the unexpired term or for a provisional term of one year, whichever is less. If a board member does not serve satisfactorily, the assignment judge may remove that member pursuant to standards developed by the Child

Placement Advisory Council and the Administrative Office of the Courts. When a vacancy occurs, the judge shall appoint a new member within 30 days. Members shall serve without compensation but shall be reimbursed for such reasonable and necessary expenses, including but not limited to child care expenses incurred in the performance of their official duties. The governing body of the county in which the board serves may provide for reimbursement to review board members for such additional and reasonable expenses as the governing body may determine.

In accordance with guidelines and procedures established by the Supreme Court, members shall attend initial training sessions before being sworn in as a regular member or as an alternate. A regular member or alternate member shall not serve until that person has completed the required training.

The assignment judge, in consultation with the family part judges and review board members, shall ensure that reviews are held at those times necessary to meet the requirements of P.L.1977, c. 424 (C. 30:4C-50 et seq.) and court directives related thereto. The assignment judge shall ensure that each family part of the Chancery Division of the Superior Court shall provide its board with reasonable and necessary administrative and clerical support services to facilitate the operation of the board and to meet the requirements of P.L.1977, c. 424 (C. 30:4C-50 et seq.) and any court directives related thereto. These services shall include, but are not limited to, obtaining and reviewing information requested by the board, preparing and dispatching all notices and reports required under P.L.1977, c. 424 (C. 30:4C-50 et seq.), arranging for board meetings and maintaining a permanent record of all board proceedings, collecting statistical data and serving as a liaison to the division.

b. The assignment judge and family part judges, in consultation with the board in each county shall develop annually a county child placement review plan for the delivery of review services. The county plan shall be prepared in a format prescribed by the Administrative Office of the Courts and the Child Placement Advisory Council established pursuant to section 13 of P.L.1977, c. 424 (C. 30:4C-62) and shall contain a budget and narrative for review services and identify resource needs for the county review system. The assignment judge is responsible for final county review and approval of the county plan and for forwarding the plan to the Child Placement Advisory Council and the Administrative Office of the Courts for their review. The budget contained in each county plan shall be part of the Judiciary budget submitted by the assignment judge to the freeholders or county executive.

The assignment judge shall report to the Administrative Office of the Courts and the Child Placement Advisory Council any significant variation in implementation of the county plan.

c. The board in each county, with the assistance of that county's child placement review coordinator, shall annually prepare a report which specifies issues, needs and service gaps affecting the children under review by the board and, where appropriate, make recommendations as to needed changes or services. The board shall submit the report to the Child Placement Advisory Council established pursuant to section 13 of P.L.1977, c. 424 (C. 30:4C-62) for review. The council may include the stated needs in its annual report to the Supreme Court, the Governor and the Legislature.

d. The Supreme Court may issue rules concerning the duties, responsibilities, training and practices of the boards consistent with the provisions of P.L.1977, c. 424 (C. 30:4C-50 et seq.), but the minimum qualifications for a person employed as a county child placement review coordinator and hired after the effective date of P.L.1987, c. 252 shall not be less than a bachelor's degree from an accredited institution of higher education and two years' experience working with children and their families and relevant training, knowledge or experience in working with volunteers.

**30:4C-58. Review to determine if best interests of child served by placement under voluntary agreement or court order; time of completion; periodic review**

Each board shall act on behalf of the family part of the Chancery Division of the Superior Court in reviewing the case of every child placed outside his home pursuant to a voluntary agreement, to determine whether the best interests of the child are being served by such placement.

Each board shall also act on behalf of the family part of the Chancery Division of the Superior Court in reviewing the case of each child placed outside his home by the division in accordance with a court order pursuant to P.L.1974, c. 119 (C. 9:6-8.21 et seq.), section 12 of P.L.1951, c. 138 (C.30:4C-12), section 24 of P.L.1982, c. 77 (C.2A:4A-43) or section 25 of P.L.1982, c. 77 (C.2A:4A-44). The division or designated agency shall submit to the board within 30 days of a child's placement, a placement plan prepared in accordance with the provisions of P.L.1977, c. 424 (C. 30:4C-50 et seq.).

A board shall initiate a review of a placement pursuant to a voluntary agreement or in accordance with a court order within 45 days following the initial placement and shall complete the review within 15 days thereafter. A periodic review shall take place at least every 12 months thereafter.

The board may schedule additional reviews on its own motion, upon the request of any person listed in section 5 of P.L.1977, c. 424 (C. 30:4C-54) or upon an order of the court.

Notwithstanding the provisions of section 3 of P.L.1977, c. 424 (C.30:4C-52) to the contrary, if a child placed outside his home attains 18 years of age or older and his out of home placement costs are being paid by the division, the board shall continue to conduct periodic reviews until the division terminates supervision.

All such reviews shall include, but not necessarily be limited to, the consideration and evaluation of such matters as:

- a. The appropriateness of the goal and objectives of the placement plan;
- b. The appropriateness of the services provided to the child, the parents or legal guardian and the temporary caretaker;
- c. Whether the child has siblings who are also placed outside of their home;
- d. Whether the wishes of the child were considered regarding placement and development of the placement plan, when appropriate;
- e. Whether the division, the parents or legal guardian and the temporary caretaker are fulfilling their respective responsibilities in accordance with the placement plan;
- f. Whether the parents or legal guardian have been afforded the opportunity and been encouraged to participate in a program of regular visitation with the child;
- g. Whether there are obstacles which hinder or prevent the attainment of the placement plan objectives and goals; and
- h. The circumstances surrounding the placement.

In the case of a child in placement outside of his home on the effective date of this act, the first review shall be completed as soon as possible, but not later than 12 months following such effective date.

### **30:4C-58.1. Adoption; review**

When a child is placed in a home for the purpose of adoption, the division shall notify the family part of the Chancery Division of the Superior Court in the child's county of supervision in writing of the placement. Upon receipt of the notice, the board shall not schedule further reviews of the case unless:

- a. The child is removed from the adoptive home;
- b. The complaint for adoption was not filed within eight months of the placement and the filing of the complaint is not imminent; or
- c. The plan for the child was modified so that immediate adoption by the stated adoptive parents no longer is the goal.

The division shall send the court and the board a status report on the case every four months. When a complaint for adoption has been filed, the division shall inform the court and no further board reviews shall be held while that action is pending.

When a judgment of adoption has been entered the court shall dismiss the complaint pursuant to section 4 of P.L.1977, c. 424 (C.30:4C-53).

If a child is placed in an adoptive home prior to the completion of the initial court review, the court shall retain jurisdiction to complete the review.

### **30:4C-59. Written notice of review; waiver; conduct of review; subpoenas**

Each board shall provide written notice of the date, time and place of each review at least 15 days in advance to the following, each of whom shall be entitled to attend the review and to submit information in writing to the board:

- a. The division or agency;
- b. The child;
- c. The parents including a non-custodial or legal guardian;
- d. The temporary caretaker;
- e. Any other person or agency whom the board determines has an interest in or information relating to the welfare of the child; and
- f. The counsel for a parent, child or other interested party who has provided or is providing representation in the case before the board.

The board may determine who may be in attendance at any particular portion of its meeting. Nothing herein shall be interpreted to exclude judges and court support staff from attending review board meetings.

The written notice shall inform the person of his right to attend the review and to submit written information and shall be prepared in a manner which will encourage the person's attendance at the review.

Notice to the child may be waived by the court on a case by case basis either on its own motion or on the petition of any of the above persons in cases where the court determines that notice would be harmful to the child. A waiver of notice to the child shall not waive the notice requirement to counsel for the child or other representatives of the child.

The review board may seek information from any agency which has been involved with the child, parents or legal guardian or temporary caretaker. If the agency fails to provide the requested information, the court may, upon the request of the board, issue a subpoena to the agency for the information.

The board shall conduct a review and make recommendations based upon the written materials; provided, however, that the board shall afford any party or person entitled to notice pursuant to this section a reasonable opportunity to appear and to present his views and recommendations. Upon the request of the board, the family part of the Chancery Division of the Superior Court may subpoena a person to attend the review board meeting.

A designated agency shall provide relevant and necessary information to the board regarding a child who is reviewed by the board.

**30:4C-60. Written report; findings; statement criteria satisfaction; goal of return to parents; statement of reasons; recommendations; notice of specific finding**

Within 10 days after the completion of such review, the board shall submit a written report to the family part of the Chancery Division of the Superior Court and the division. Such report shall offer one of the following findings, stating the specific reasons therefor:

a. That continued placement of the child outside of the home is not in the child's best interest and the child should be returned home within two weeks and that the division or designated agency, as appropriate, shall provide reasonable and available services which are necessary to implement the return home;

b. That continued placement outside of the home is in the child's best interest on a temporary basis until the long-term goal is achieved, which long-term goal is:

- (1) Return to the child's parents or legal guardian,
- (2) Adoption,
- (3) Permanent placement with a relative,
- (4) Long-term foster care,
- (5) Independent living, or
- (6) Institutionalization;

c. That continued placement outside of the home on a temporary basis is in the child's best interest, but that there is not sufficient information for the board to make a recommendation, therefore, the board requests the court to order the division or designated agency, as appropriate, to provide the needed information within two weeks of the court order.

d. (Deleted by amendment, P.L.1987, c. 252.)

In addition to the finding, the board shall state in its report if the placement plan satisfies the criteria provided in section 9 of P.L.1977, c. 424 (C. 30:4C-58) and if it does not, that the placement plan should be modified or a new plan should be developed.

When making its finding pursuant to this section, the board shall give priority to the goal of return to the child's parents or legal guardian unless that goal is not in the best interest of the child. If the return has not been achieved within one year, and after considering the family's efforts, the division's or designated agency's provision of reasonable and available services, or other relevant factors, the board shall recommend another permanent plan for the child which shall include permanent placement with a relative through adoption or legal custody or adoption by a non-relative. But, if return to a child's parents or legal guardian, permanent placement with a relative or adoption is not possible or is not in the best interest of the child, the board shall recommend an alternative long-term plan for the child.

In addition to the finding, the board shall state the reasons and additional factors it deems appropriate to explain its conclusions. When any change in the plan or situation of the child is recommended, the board shall state its specific recommendations and the factual basis therefor.

In accordance with section 8 of P.L.1985, c. 85 (C. 30:4C-61.1), the board may recommend that the division shall not return a child to his home prior to a review by the board and an order of the court.

Within 10 days of the completion of its review, the board shall provide to those persons entitled to notice under section 10 of P.L.1977, c. 424 (C. 30:4C-59) the specific finding made pursuant to this section, unless the board recommends that the finding shall not be provided to specific individuals as provided in this paragraph. The court may waive notice of findings to the child on a case-by-case basis on its own motion or on the petition of a person listed in section 10 of P.L.1977, c. 424 (C. 30:4C-59) in cases where the court determines that the nature of the findings would be harmful to the child, or if notice to the child of review was waived. The court may waive notice of findings to persons included in subsection e. of section 10 of P.L.1977, c. 424 (C. 30:4C-59) on the recommendation of the board or on the petition of other persons entitled to notice.

**30:4C-61. Court order concerning child's placement; review of report; determination; hearing; notice; copy of order; confidentiality**

a. Upon review of the board's report, the family part of the Chancery Division of the Superior Court shall issue an order concerning the child's placement which it deems will best serve the interests of the child. The court shall issue the order within 21 calendar days of the court's receipt of the board's report unless the court schedules a summary hearing. The court shall either:

(1) Order the return of the child to his parents or legal guardian within two weeks and order the division or designated agency, as appropriate, to provide any reasonable and available services which are necessary to implement the return home;

(2) Order continued placement on a temporary basis until the long-term goal is achieved;  
or

(3) Order continued placement on a temporary basis but that the division shall provide further information within two weeks to the court, which information shall be reviewed by the board within 30 days of its receipt.

(4) (Deleted by amendment, P.L.1987, c. 252.)

In accordance with section 8 of P.L.1984, c. 85 (C. 30:4C-61.1), the court may order that the division shall not return a child to his home prior to review by the board and an order of the court.

In addition, if the placement plan does not satisfy the criteria of section 9 of P.L.1977, c. 424 (C. 30:4C-58), the court shall order that the placement plan be modified or that a new plan be developed within 30 days.

b. In reviewing the report, the court may request that, where available, any written oral information submitted to the board be provided to the court. The court shall make a determination based upon the report and any other information before it; provided, however, that if:

(1) The court has before it conflicting statements of material fact which it cannot resolve without a hearing; or

(2) A party entitled to participate in the proceedings requests a hearing; or

(3) The court concludes that the interests of justice require that a hearing be held, the court may schedule a summary hearing.

c. Notice of such hearing, including a statement of the dispositional alternatives of the court, shall be provided at least 30 days in advance, unless the court finds that it is in the best interest of the child to provide less notice in order to conduct the hearing sooner. Notice shall be provided to the following persons unless the court determines it is not in the best interests of the child:

(1) The division;

(2) The child;

(3) The child's parents including a non-custodial parent or legal guardian;

(4) The review board;

(5) The temporary caretaker; and

(6) The counsel for any parent, child or other interested party who has provided or is providing representation in the case before the board.

The court may also request or order additional information from any other persons or agencies which the court determines has an interest in or information relating to the welfare of the child.

The court shall hold the hearing within 60 days of receipt of the board's report and shall issue its order within 15 days of the hearing.

d. The court shall send a copy of its order concerning the child's placement to all persons listed in subsection c. of this section, except that, if notice to the child of the board review was waived pursuant to section 10 of P.L.1977, c. 424 (C. 30:4C-59), the court may waive the requirement of sending a copy of its order to the child.

e. Any person who receives a copy of the court order shall comply with the confidentiality requirements established by the Supreme Court for the purposes of this act.

**30:4C-61.1. Return of child to home although prohibited by placement plan or conditions unmet in plan; special review by board; court order; waiver in emergency situation; retention of jurisdiction by court; order to show cause for non-implementation of plan; review of plan modification**

a. If the division proposes to return a child home, although the return home is either prohibited by the placement plan approved by the court or expressly contingent upon certain conditions in the placement plan that have not been met, the division shall promptly notify the board and the court in writing.

b. The board shall conduct a special review within 15 days of receipt of the notice provided pursuant to subsection a. or f. of this section to consider and evaluate the reasons for the proposed action and determine whether the action serves the best interests of the child. The board shall provide written notice of the special review pursuant to section 10 of P.L.1977, c. 424 (C.30:4C-59), except that the 15 day advance notice requirement is waived. The board shall submit its report to the court pursuant to section 11 of P.L.1977, c. 424 (C.30:4C-60), except that the board shall submit the report within five days of completion of the special review.

c. The court shall review the board's recommendations within 10 days and issue an order within 5 days unless a summary hearing is scheduled concerning the child's placement pursuant to section 12 of P.L.1977, c. 424 (C.30:4C-61), except that if a party entitled to participate in the proceeding requests a hearing, the court shall hold a summary hearing within 15 days of receipt of the board's report unless the court determines that the request for the hearing is frivolous. The court shall issue its order within five days of the hearing.

d. The division shall not return the child home unless the court approves the division's proposed action and orders the return home of the child.

e. Notwithstanding the provisions of this section to the contrary, in an emergency situation, the court may waive the special review provisions of this section and approve the return home, upon the request of the division to do so. The request of the division for a court waiver of the special review provisions shall be accompanied by a written statement from the division declaring and finding that the out-of-home placement has been disrupted, that no appropriate alternative placement for the child can be found in the home of a relative, a foster home, group home, shelter, residential care facility or other setting following the change in placement, and that the return home will not endanger the health and welfare of the child. The written statement submitted with a request shall also outline the specific reasons for the findings made. The division shall conduct an on-site visit of the home of a child when in an emergency situation the division plans to request of the court a waiver of the special review provisions. A report of the on-site visit shall be included with the request.

If the court approves the division's request, the division shall promptly notify the board of the court's approval of the request. The board shall conduct a review of the change in the placement plan within 15 days of the date the child is returned home. The division shall conduct a minimum of two on-site visits to the home of a child returned there in an emergency situation within the first 10 days of the return to ascertain the continued health and welfare of the child. The court, upon granting a request for a waiver, may require additional on-site visits. A detailed written report of each on-site visit to the home of a child returned in an emergency situation shall promptly be submitted to the court and to the child placement review board.

Notwithstanding any other provisions of law to the contrary, the court shall retain jurisdiction over the placement of the child after a child has been returned home in an emergency situation for up to six months unless there is a subsequent court hearing or court order.

In any case where, following a court order for the implementation of a placement plan, the board determines upon re-review of the case that there has been insufficient effort on the part of the division or any other parties toward implementation of the court ordered plan, the board may petition the court for an order to show cause as to why the plan is not being implemented as ordered.

(f) If, subsequent to the review and approval of a plan by the court, the division proposes to change the long-term goal in the plan or otherwise substantially modify the plan, it shall notify the court and the board in writing, within five days. The board shall schedule review of the modification. The division shall continue to implement the current court ordered plan until the court orders a modified or new plan.

(g) Nothing in this section is intended to limit the court's authority to exercise its regular remedies for enforcement of an order.

**30:4C-62. Child placement advisory council; members; budget; clerical support; reimbursement of expenses; responsibilities**

There is hereby established a Child Placement Advisory Council to consist of one member from each of the child placement review boards to be selected annually by the chairman of each review board. The Director of the Administrative Office of the Courts and the council shall jointly develop a budget which shall provide the council with reasonable and necessary administrative and clerical support services adequate to enable the council to carry out its responsibilities and shall reimburse the members of the council for reasonable and necessary expenses incurred in the performance of their official duties.

The council shall have the authority, consistent with the funds appropriated to the Administrative Office of the Courts for the purposes of this act, to determine annually its program and budget. The council shall, in consultation with the Administrative Office of the Courts, develop guidelines for its annual programs and other aspects of this act.

It shall be the responsibility of the council to:

- a. Advise the Supreme Court with respect to the issuance of rules governing the duties, responsibilities and practices of the review boards;
- b. Review the policies, practices and procedures of the division with respect to the placement of children;
- c. Monitor and evaluate the effectiveness of this act in promoting the welfare of children placed outside their home. These activities may be carried out through the regular collection of data from each county, as well as through other appropriate means;
- d. Advise the Supreme Court with respect to the establishment of guidelines and procedures for the training of placement review board members;
- e. Advise the Supreme Court with respect to the establishment of reporting procedures to be followed by the review boards for the provision of data for the evaluation of this act;
- f. Make an annual report on the effectiveness of the implementation of this act to the Supreme Court, the Governor and the Legislature and such other reports as it may deem proper or as may be requested from time to time by the Supreme Court, the Governor or the Legislature; and

g. Review county plans and reports pursuant to section 8 of P.L.1977, c. 424 (C. 30:4C-57).

**30:4C-62.1. Grants or contributions; acceptance**

The Child Placement Advisory Council may accept from any governmental department or agency, public or private body or any other source, grants or contributions to be used for carrying out its responsibilities under P.L.1977, c. 424 (C.30:4C-50 et seq.).

**30:4C-63. Rules for conduct of review boards; promulgation by Supreme Court**

The Supreme Court, in consultation with the Child Placement Advisory Council, shall issue such rules governing the duties, responsibilities and practices of the board as it deems necessary to effectuate the purposes of this act; establish guidelines and procedures for the training of placement review board members; and establish reporting procedures to be followed by the review boards for the provision of data for the evaluation of this act.

**30:4C-64. Joint legislative committee to monitor and evaluate act; report**

The Institutions, Health and Welfare committees of the Senate and General Assembly, or their respective successors, are constituted a joint committee for the purposes of monitoring and evaluating the effectiveness of the implementation of this act.

At least 3 months prior to the date of expiration of this act, the Joint Committee shall report to the Legislature as to whether this act shall be extended, in either its present or modified form, or whether it shall be permitted to expire.

**30:4C-65. Severability**

If any provision of this act or the application thereof to any person or circumstance is held to be invalid, the remainder of the act and application of such provision to other persons or circumstances shall not be affected thereby.

## **N.J.S.A. 30:5B-1 et seq. Child Care Center Licensing Act.**

### **30:5B-1. Short title**

This act shall be known and may be cited as the "Child Care Center Licensing Act."

### **30:5B-2. Legislative findings and declarations**

The Legislature finds that it is in the public interest to license and regulate child care programs and facilities in order to insure the continuous growth and development of children. The Legislature further finds that comprehensive child care programs are of value to the health, safety, education, physical and intellectual growth and general well-being of the children served and that the programs strengthen and supplement the family unit. The Legislature further finds that child care programs provide places for preventive health measures, early detection of illnesses and handicaps and development of special talents and interests. The Legislature further finds the State and parents have a responsibility in the education of children and that the role of the teacher is essential to the continuous development of children. The Legislature further finds that experience indicates that the development of child care centers should be encouraged, whether publicly or privately supported, to provide a full range of services benefiting the child, parent and community and that there is a great need for expansion of existing centers and for the establishment of additional centers.

### **30:5B-3. Definitions**

As used in this act:

- a. "Child" means any person under the age of six.
- b. "Child care center" or "center" means any facility which is maintained for the care, development or supervision of six or more children who attend the facility for less than 24 hours a day. This term shall include, but shall not be limited to such programs as private nonsectarian child care centers, day care centers, drop-in centers, day nursery schools, nighttime centers, infant-toddler programs, school-age programs, play schools, boarding schools, employment related centers, cooperative child care centers, child care centers which have already received approval by the Department of Human Services prior to the enactment of this act into law, and kindergartens that are not an integral part of an elementary educational institution or system. This term shall not include:
  - (1) Foster homes, group homes and other types of in-home residential facilities, and children's institutions, whether public or private, providing care on a 24-hour basis;
  - (2) All programs operated by a public school district and private schools which are run solely for educational purposes. This exclusion shall apply to kindergartens, prekindergarten programs which are an integral part of an elementary educational institution or system, or a child care center which is an integral part of a private educational institution or system offering elementary education in grades kindergarten through sixth;
  - (3) Centers or special classes operated primarily for religious instruction or for the temporary care of children while persons responsible for such children are attending religious services;
  - (4) Special activities programs for children, including athletics, hobbies, art, music, dance, and craft instruction, which are supervised by an adult, agency or institution;

(5) Youth camps required to be licensed under the "New Jersey Youth Camp Safety Act," P.L.1973, c.375 (C.26:12-1 et seq.); and

(6) Day training centers operated by the Division of Mental Retardation within the Department of Human Services.

c. "Commissioner" means the Commissioner of the Department of Human Services.

d. "Department" means the Department of Human Services.

e. "Parent" means a natural or adoptive parent, guardian, or any other person having responsibility for, or custody of, a child.

f. "Person" means any individual, corporation, company, association, organization, society, firm, partnership, joint stock company, the State or any political subdivision thereof.

g. "Sponsor" means any person owning or operating a child care center.

**30:5B-4. License requirement; separate locations; posting; nontransferability; changes in sponsors**

No person shall conduct, maintain or operate a child care center unless a license has been obtained from the department pursuant to the terms of this act. A separate license shall be obtained for each location. The license shall be posted and displayed by the sponsor at all times in a prominent location within the center. No license issued pursuant to this act shall be transferable. A change in the sponsor of a licensed child care center shall require notification to the department within 14 calendar days and reapplication for licensure.

**30:5B-5. Authority to license and inspect; rules and regulations; standards; inspections; objections to medical examinations or treatment**

a. The department shall have responsibility and authority to license and inspect child care centers. The commissioner shall promulgate rules and regulations for the operation and maintenance of child care centers which shall prescribe standards governing the safety and adequacy of the physical plant or facilities; the education, health, safety, general well-being and physical and intellectual development of the children; the quality and quantity of food served; the number of staff and the qualifications of each staff member; the implementation of a developmental or age-appropriate program; the maintenance and confidentiality of records and furnishing of required information; the transportation of children; and the administration of the center. The commissioner shall also promulgate rules and regulations for license application, issuance, renewal, expiration, denial, suspension and revocation. In developing, revising or amending such rules and regulations, the commissioner shall consult with the advisory council created pursuant to section 14 of this act, and with other appropriate administrative officers and agencies, including the Departments of Health, Education and Labor, the Division of Motor Vehicles and the State Fire Marshal giving due weight to their recommendations. The rules and regulations promulgated pursuant to this act shall be adopted and amended in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. The department shall conduct an on-site facility inspection and shall evaluate the program of the child care center to determine whether the center complies with the provisions of this act.

c. Any rule or regulation involving physical examination, immunization or medical treatment shall include an appropriate exemption for any child whose parent or parents object thereto on the ground that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member.

d. The department shall have the authority to inspect and examine the physical plant or facilities of a child care center and to inspect all documents, records, files or other data maintained pursuant to this act during normal operating hours and without prior notice.

e. The department shall request the appropriate State and local fire, health and building officials to conduct examinations and inspections to determine compliance with State and local ordinances, codes and regulations by a child care center. The inspections shall be conducted and the results reported to the department within 60 days after the request.

f. Nothing in this act shall be interpreted to permit the adoption of any code or standard which exceeds the standards established pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C. 52:27D-119 et seq.).

#### **30:5B-6. License application; contents; issuance; expiration; renewal**

a. Any person operating a child care center on the effective date of this act or desiring to operate a child care center shall make application in the manner and on the forms prescribed by the commissioner. The license application form shall include, but shall not be limited to, the following information: the name and address of the child care center, its sponsor, the staff, the qualifications of the staff members, each member of the board of directors of the corporation, the child care center operator if different from the sponsor, a description of the center's premises, facilities and programs, the number and age of children to be enrolled in the center and the hours of its operation.

b. If a child care center meets the requirements of this act and of the rules and regulations promulgated hereunder, the department shall issue a license to the center. A license shall be valid for a period of three years and may be renewed at the end of that period, subject to continued compliance with the provisions of this act.

#### **30:5B-7. Temporary license; renewal; expiration**

If the department determines that, although in substantial compliance, a child care center does not meet all the applicable provisions of this act and the rules and regulations promulgated hereunder, but that the extent of the center's deviation from legal requirements is not deemed hazardous to the education, health, safety, general well-being, and physical and intellectual development of the children, the department may issue a temporary license which may be issued for a period up to six months. The department may renew the temporary license as often as it deems necessary, but no child care center may operate with a temporary license for more than a total of 18 months.

#### **30:5B-8. Fees**

The commissioner shall establish a minimum fee to be paid by each child care center at the time of application for a license and at every renewal of a license.

**30:5B-9. Denial, suspension, revocation or refusal to renew licenses**

The department may deny, suspend, revoke or refuse to renew a license for good cause, including, but not limited to:

- a. Failure of a child care center or its sponsor to comply with the provisions of this act;
- b. Violation of the terms and conditions of a license by a child care center or its sponsor;
- c. Use of fraud or misrepresentation by a child care center or its sponsor in obtaining a license or in the subsequent operation of the center;
- d. Refusal by a center or its sponsor to furnish the department with required files, reports or records;
- e. Refusal by a center or its sponsor to permit an inspection by an authorized representative of the department during normal operating hours;
- f. Any conduct, engaged in or permitted, which adversely affects or presents a serious hazard to the education, health, safety and general well-being and physical and intellectual development of a child attending the child care center, or which otherwise demonstrates unfitness to operate a child care center; or
- g. Failure to provide a developmental or age-appropriate program that meets the physical, social, emotional and cognitive needs of the children in the center as set forth by regulation.

**30:5B-10. Notice; hearing**

a. The department, before denying, suspending, revoking or refusing to renew a license, shall give notice to the sponsor personally, or by certified or registered mail to the last known address of the sponsor with return receipt requested. The notice shall afford the sponsor with a opportunity to be heard. The hearing shall take place within 60 days from the issuance or mailing of the notice and shall be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1 et seq.).

b. If the center's license is suspended or revoked, the parent of a child in the center shall receive notice thereof personally and in writing, by the center's sponsor or operator.

**30:5B-11. Injunctions**

The commissioner is authorized to institute a civil action in a court of competent jurisdiction for injunctive relief to enjoin the operation of a child care center whenever the commissioner determines that:

- a. There is an imminent danger or hazard that threatens the health and safety of children in the center;
- b. The center or its sponsor has repeatedly violated the provisions of this act; or
- c. A child care center has opened or is operating without a license or without complying with the provisions of this act.

The commissioner may, in addition, request such other relief as is deemed necessary. In any such action the court may proceed in a summary manner.

**30:5B-12. Review**

Any person aggrieved by a final decision of the commissioner is entitled to seek judicial review in the Appellate Division of the Superior Court. All petitions for review shall be filed in accordance with the rules of the court.

**30:5B-13. Violations; crimes of fourth degree**

Any person who operates or assists in the operation of a child care center which does not have a license or temporary license, or who has used fraud or misrepresentation in obtaining a license or in the subsequent operation of a center, or who offers, advertises or provides any service not authorized by a valid license or who violates any other provisions of this act shall be guilty of a crime of the fourth degree.

**30:5B-14. Advisory council; membership; duties; grants or contributions**

a. The Director of the Division of Youth and Family Services in the Department of Human Services and the Director of the Division on Women in the Department of Community Affairs shall establish and designate an advisory council which shall consist of at least 15 individuals who have experience, training or other interest in child care issues. To the extent possible, the directors shall designate members of existing councils or task forces heretofore established on child care in New Jersey as the advisory council.

b. The advisory council shall:

(1) Review rules and regulations or proposed revisions to existing rules and regulations governing the licensing of child care centers;

(2) Review proposed statutory amendments governing the licensing of child care centers and make recommendations to the commissioner;

(3) Advise the commissioner on the administration of the licensing responsibilities under this act;

(4) Advise the commissioner on the needs, priorities, programs, and policies relating to child care throughout the State;

(5) Study and recommend alternative resources for child care; and

(6) Facilitate employment related child care through information and technical assistance.

c. The advisory council may accept from any governmental department or agency, public or private body or any other source grants or contributions to be used in carrying out its responsibilities under this act.

**30:5B-15. Reports**

The advisory council shall prepare and submit to the Senate Institutions, Health and Welfare Committee and General Assembly Corrections, Health and Human Services Committee an annual report of its findings and recommendations.

**N.J.S.A. 2C:1-6. Extends Statute of Limitations for Child Victims of Sexual Assault.**

**2C:1-6. Time limitations**

- a. A prosecution for murder may be commenced at any time.
- b. Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitations:
  - (1) A prosecution for a crime must be commenced within five years after it is committed;
  - (2) A prosecution for a disorderly persons offense or petty disorderly persons offense must be commenced within one year after it is committed;
  - (3) A prosecution for any offense set forth in 2C:27-2, 2C:27-4, 2C:27-6, 2C:27-7, 2C:29-4, 2C:30-1, 2C:30-2, 2C:30-3, or any attempt or conspiracy to commit such an offense, must be commenced within seven years after the commission of the offense;
  - (4) A prosecution for any offense set forth in N.J.S. 2C:14-2 or N.J.S. 2C:14-3, when the victim at the time of the offense is below the age of 18 years, must be commenced within two years of the victim's attaining the age of 18 years or within five years after the crime is committed, whichever date is later.
- c. An offense is committed either when every element occurs or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.
- d. A prosecution is commenced for a crime when an indictment is found and for a nonindictable offense when a warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay. Nothing contained in this section, however, shall be deemed to prohibit the downgrading of an indictable offense to a nonindictable offense at any time if the indictable offense was filed within the statute of limitations applicable to indictable offenses.
- e. The period of limitation does not run during any time when a prosecution against the accused for the same conduct is pending in this State.
- f. The limitations in this section shall not apply to any person fleeing from justice.
- g. Except as otherwise provided in this code, no civil action shall be brought pursuant to this code more than five years after such action accrues.

## N.J.S.A. 2C:12-1. Criminal Offenses.

### **2C:12-1. Assault**

a. **Simple assault.** A person is guilty of assault if he:

- (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another;  
or
- (2) Negligently causes bodily injury to another with a deadly weapon; or
- (3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

b. **Aggravated assault.** A person is guilty of aggravated assault if he:

- (1) Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury; or
- (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
- (3) Recklessly causes bodily injury to another with a deadly weapon; or
- (4) Knowingly under circumstances manifesting extreme indifference to the value of human life points a firearm, as defined in section 2C:39-1f., at or in the direction of another, whether or not the actor believes it to be loaded; or
- (5) Commits a simple assault as defined in subsection a.(1) and (2) of this section upon
  - (a) Any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority; or
  - (b) Any paid or volunteer fireman acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman; or
  - (c) Any person engaged in emergency first-aid or medical services acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of emergency first-aid or medical services; or
  - (d) Any school board member or school administrator, teacher or other employee of a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a member or employee of a school board.

Aggravated assault under subsection b.(1) is a crime of the second degree; under subsection b.(2) is a crime of the third degree; under subsection b.(3) and b.(4) is a crime of the fourth degree; and under subsection b.(5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree.

c. A person is guilty of assault by auto when the person drives a vehicle recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

d. A person who is employed by a facility as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as defined in paragraph (1) or (2) of subsection a. of this section upon an institutionalized elderly person as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

**N.J.S.A. 2C:13-4. Interference with custody.**

a. **Custody of children.** A person commits an offense if he knowingly takes or entices any child under the age of 18 from the custody of the parent, guardian or other lawful custodian of the child, when he has no privilege to do so, or he does so in violation of a court order. It is an affirmative defense that:

(1) The actor believed that his action was necessary to preserve the child from danger to his welfare; or

(2) The child, being at the time not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

Proof that the child was below the critical age gives rise to a presumption that the actor knew the child's age.

Interference with custody is a crime of the fourth degree.

b. **Custody of committed persons.** A person is guilty of a crime of the fourth degree if he knowingly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

## **N.J.S.A. 2C:14-1. Definitions.**

The following definitions apply to this chapter:

- a. "Actor" means a person accused of an offense proscribed under this act;
- b. "Victim" means a person alleging to have been subjected to offenses proscribed by this act;
- c. "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between person or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction. The depth of insertion shall not be relevant as to the question of commission of the crime;
- d. "Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present;
- e. "Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person;
- f. "Severe personal injury" means severe bodily injury, disfigurement, disease, incapacitating mental anguish or chronic pain;
- g. "Physically helpless" means that condition in which a person is unconscious or is physically unable to flee or is physically unable to communicate unwillingness to act;
- h. "Mentally defective" means that condition in which a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of understanding the nature of his conduct;
- i. "Mentally incapacitated" means that condition in which a person is rendered temporarily incapable of understanding or controlling his conduct due to the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his prior knowledge or consent, or due to any other act committed upon that person which rendered that person incapable of appraising or controlling his conduct;
- j. "Coercion" as used in this chapter shall refer to those acts which are defined as criminal coercion in section 2C:13-5(1), (2), (3), (4), (6) and (7).

**N.J.S.A. 2C:14-2. Sexual assault.**

a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

- (1) The victim is less than 13 years old;
- (2) The victim is at least 13 but less than 16 years old; and
  - (a) The actor is related to the victim by blood or affinity to the third degree, or
  - (b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or
  - (c) The actor is a foster parent, a guardian, or stands in loco parentis within the household;
- (3) The act is committed during the commission, or attempted commission, whether alone or with one or more other persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape;
- (4) The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object;
- (5) The actor is aided or abetted by one or more other persons and either of the following circumstances exists:
  - (a) The actor uses physical force or coercion, or
  - (b) The victim is one whom the actor knew or should have known was physically helpless, mentally defective or mentally incapacitated;
- (6) The actor uses physical force or coercion and severe personal injury is sustained by the victim.

Aggravated sexual assault is a crime of the first degree.

b. An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.

c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

- (1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury;
- (2) The victim is one whom the actor knew or should have known was physically helpless, mentally defective or mentally incapacitated;
- (3) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status;

(4) The victim is at least 16 but less than 18 years old and the actor is a member of the victim's household with supervisory or disciplinary power over the victim;

(5) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.

Sexual assault is a crime of the second degree.

**N.J.S.A. 2C:14-3. Criminal sexual assault.**

a. An actor is guilty of aggravated criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in 2C:14-2a. (2) through (6).

Aggravated criminal sexual contact is a crime of the third degree.

b. An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2c. (1) through (5).

Criminal sexual contact is a crime of the fourth degree.

**N.J.S.A. 2C:14-4. Lewdness**

A person commits a disorderly persons offense if he does any flagrantly lewd and offensive act which he knows or reasonably expects is likely to be observed by other nonconsenting persons who would be affronted or alarmed. "Lewd acts" shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

**N.J.S.A. 2C:24-4. Endangering welfare of children.**

a. Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child, who engages in sexual contact which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S. 9:6-1, R.S. 9:6-3 and P.L.1974, c. 119, s.1 (C. 9:6-8.21) is guilty of a crime of the third degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 16 is guilty of a crime of the fourth degree.

b. As used in this subsection:

(1) "Child" shall mean any person under 16 years of age.

(2) "Prohibited sexual act" means

(a) Sexual intercourse; or

(b) Anal intercourse; or

(c) Masturbation; or

(d) Bestiality; or

(e) Sadism; or

(f) Masochism; or

(g) Fellatio; or

(h) Cunnilingus; or

(i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction.

(3) Any person, including any parent, guardian, or other person legally charged with the care or custody of a child, who causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner or may be part of an exhibition or performance is guilty of a crime of the second degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

(5) Any person who knowingly receives for the purpose of selling or who knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer any photograph, film, video tape or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.

(6) For purposes of this subsection, a person who is depicted as or presents the appearance of being under the age of 16 in any photograph or film shall be rebuttably presumed to be under the age of 16.

(2) "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, as defined by State law, by a person responsible for the child's welfare; and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child as those acts are defined by State law, by a person responsible for the child's welfare.

(3)(i) "Negligent treatment or maltreatment" includes failure to provide adequate food, clothing, shelter, or medical care.

(ii) Nothing in this part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child; provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to insure that medical services are provided to the child when his health requires it.

(4) "Threatened harm to a child's health or welfare" means a substantial risk of harm to the child's health or welfare.

(5) "A person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an employee of a public or private residential home or facility or other person legally responsible under State law for the child's welfare in a residential setting.

(e) "Commissioner" means the Commissioner of the Administration for Children, Youth and Families of the Department of Health and Human Services.

(f) "Grants" includes grants and cooperative agreements.

(g) "Secretary" means the Secretary of Health and Human Services, or other HHS official or employee to whom the Secretary has delegated the authority specified in this part.

(h) "State" means each of the several states, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific.

#### **§1340.4 Coordination requirements**

All Federal agencies responsible for programs related to child abuse and neglect shall provide information as required by the Commissioner to insure effective coordination of efforts.

#### **§1340.10 Purpose of this subpart**

This subpart sets forth the requirements and procedures States must meet in order to receive discretionary grants to improve or expand State child abuse and neglect prevention and treatment programs under sections 4(b) (1) and (2) of the Act (42 U.S.C. 5103(b) (1) and (2)).

#### **§1340.11 Allocation of funds available**

(a) The Commissioner shall allocate the funds available for grants to States for each fiscal year among the States on the basis of the following formula:

(1) An amount of \$25,000 or such other amount as the Commissioner may determine; plus

(2) An additional amount bearing the same ratio to the total amount made available for this purpose (reduced by the minimum amounts allocated to the States under paragraph (a)(1) of this section) as the number of children under the age of eighteen in each State bears to the total number of children under eighteen in all the States. Annual estimates of the number of children under the age of eighteen, provided by the Bureau of the Census of the Department of Commerce, are used in making this determination.

(b) If a State has not qualified for assistance under the Act and this subpart prior to a date designated by the Commissioner in each fiscal year, the amount previously allocated to the State shall be allocated among the eligible States.

#### **§1340.12 Application process**

(a) The Governor of the State may submit an application or designate the State office, agency, or organization which may apply for assistance under this subpart. The State office, agency, or organization need not be limited in its mandate or activities to child abuse and neglect.

(b) Grant applications must include a description of the activities presently conducted by the State and its political subdivisions in preventing and treating child abuse and neglect, the activities to be assisted under the grant, a statement of how the proposed activities are expected to improve or expand child abuse prevention and treatment programs in the State, and other information required by the Commissioner in compliance with the paperwork reduction requirements of 44 U.S.C. Chapter 35 and any applicable directives issued by the Office of Management and Budget.

(c) States shall provide with the grant application a statement signed by the Governor that the State meets the requirements of the Act and of this subpart. This statement shall be in the form and include the documentation required by the Commissioner.

#### **§1340.13 Approval of applications**

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

(1) The State is qualified and has met all requirements of the Act and §1340.14 of this part, except for the definitional requirement of §1340.14(a) with regard to the definition of "sexual exploitation" (see §1340.2(2)) and the definitional requirement of negligent treatment as it relates to the failure to provide adequate health care (see §1340.2(d)(3)). The State must include these two definitional requirements in its definition of child abuse and neglect no later than the close of the second general legislative session of the State legislature following February 25, 1983;

(2) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(3) The State is otherwise in compliance with these regulations.

(b) At the time of an award under this subpart, the amount of funds not obligated from an award made eighteen or more months previously shall be subtracted from the amount of funds under the award, unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

#### **§1340.14 Eligibility requirements**

In order for a State to qualify for an award under this subpart, the State must meet the requirements of §1340.15 and satisfy each of the following requirements:

- (a) The State must satisfy each of the requirements provided in Section 4(b)(2) of the Act.
- (b) Definition of Child Abuse and Neglect. Wherever the requirements below use the term "Child Abuse and Neglect" the State must define that term in accordance with §1340.2. However, it is not necessary to adopt language identical to that used in §1340.2, as long as the definition used in the State is the same in substance.
- (c) Reporting. The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.
- (d) Investigations. The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse and neglect. This investigation may include the use of reporting hotlines, contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, psychological and social evaluations, and reviews by multidisciplinary teams.
- (e) Institutional child abuse and neglect. This State must have a statute or administrative procedure requiring that when a report of known or suspected child abuse and neglect involves the acts or omissions of the agency, institution, or facility to which the report would ordinarily be made, a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action.
- (f) Emergency services. If an investigation of a report reveals that the reported child or any other child under the same care is in need of immediate protection, the State must provide emergency services to protect the child's health and welfare. These services may include emergency caretaker or homemaker services; emergency shelter care or medical services; review by a multidisciplinary team; and, if appropriate, criminal or civil court action to protect the child, to help the parents or guardians in their responsibilities and, if necessary, to remove the child from a dangerous situation.
- (g) Guardian ad litem. In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's Uniform Court Rule mandating appointments in every case. However, the guardian ad litem shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.
- (h) Prevention and treatment services. The State must demonstrate that it has throughout the State procedures and services dealt with child abuse and neglect cases. These procedures and services include the determination of social service and medical needs and the provision of needed social and medical services.

(i) Confidentiality. (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

(i) The agency (agencies) or organizations (including its designated multidisciplinary case consultation team) legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect;

(ii) A court, under terms identified in State statute;

(iii) A grand jury;

(iv) A properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report of known or suspected child abuse and neglect or providing services to a child or family which is the subject of a report;

(v) A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

(vi) A person legally authorized to place a child in protective custody when the person has before him or her a child whom he or she reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

(vii) An agency authorized by a properly constituted authority to diagnose, care for, treat, or supervise a child who is the subject of a report or record of child abuse or neglect;

(viii) A person who is responsible for the child's welfare, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person;

(ix) A child named in the report or record alleged to have been abused or neglected or (as his/her representative) his/her guardian or guardian ad litem;

(x) An appropriate State or Local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions; and

(xi) A person, agency, or organization engaged in a bonafide research or evaluation project, but without information identifying individuals named in a report or record, unless having that information open for review is essential to the research or evaluation, the appropriate State official gives prior written approval, and the child, through his/her representative as cited in paragraph (i) of this section, gives permission to release the information.

(3) Nothing in this section shall be interpreted to prevent the properly constituted authority from summarizing the outcome of an investigation to the person or official who reported the known or suspected instances of child abuse or neglect or to affect a State's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

(4) HHS and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

#### **§1340.15 Services and treatment for disabled infants**

(a) Purpose. The regulations in this section implement certain provisions of the Child Abuse Amendments of 1984, including section 4(b)(2)(K) of the Child Abuse Prevention and Treatment Act governing the protection and care of disabled infants with life-threatening conditions.

(b) Definitions. The term "medical neglect" means the failure to provide adequate medical care in the context of the definitions of "child abuse and neglect" in section 3 of the Act and §1340.2(d) of this part. The term "medical neglect" includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

(2) The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:

(i) The infant is chronically and irreversibly comatose:

(ii) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(3) Following are definitions of terms used in paragraph (b)(2) of this section:

(i) The term "infant" means an infant less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age. In addition to their applicability to infants less than one year of age, the standards set forth in paragraph (b)(2) of this section should be consulted thoroughly in the evaluation of any issue of medical neglect involving an infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability.

(ii) The term "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(c) Eligibility Requirements. (1) In addition to the other eligibility requirements set forth in this Part, to qualify for a grant under this section, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(2) These programs and/or procedures must provide for:

(i) Coordination and consultation with individuals designated by and within appropriate health care facilities;

(ii) Prompt notification by individuals designated by and within appropriate health care facilities of cases of suspected medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

(iii) The authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(3) The programs and/or procedures must specify that the child protective services system will promptly contact each health care facility to obtain the name, title, and telephone number of the individual(s) designated by such facility for the purpose of the coordination, consultation, and notification activities identified in paragraph (c)(2) of this section, and will at least annually recontact each health care facility to obtain any changes in the designations.

(4) These programs and/or procedures must be in writing and must conform with the requirements of section 4(b)(2) of the Act and §1340.14 of this part. In connection with the requirement of conformity with the requirements of section 4(b)(2) of the Act and §1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:

(i) Access to medical records and/or other pertinent information when such access is necessary to assure an appropriate investigation of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions); and

(ii) A court order for an independent medical examination of the infant, or otherwise effect such an examination in accordance with processes established under State law, when necessary to assure an appropriate resolution of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions).

(5) The eligibility requirements contained in this section shall be effective October 9, 1985.

(d) Documenting eligibility. (1) In addition to the information and documentation required by and pursuant to §1340.12(b) and (c), each State must submit with its application for a grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

(2) This information and documentation shall include:

(i) A copy of the written programs and/or procedures established by, and followed within, the State for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions:

(ii) Documentation that the State has authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(A) A copy of the applicable provisions of State statute(s); or

(B) A copy of the applicable provisions of State rules or regulations, along with a copy of the State statutory provisions that provide the authority for such rules or regulations; or

(C) A copy of an official, numbered opinion of the Attorney General of the State that so provides, along with a copy of the applicable provisions of the State statute that provides a basis for the opinion, and a certification that the official opinion has been distributed to interested parties within the State, at least including all hospitals; and

(iii) Such other information and documentation as the Commissioner may require.

(e) Regulatory construction. (1) No provision of this section or part shall be construed to affect any right, protection, procedures, or requirement under 45 CFR Part 84, Nondiscrimination in the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

(2) No provision of this section or part may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws or regulations.

#### **§1340.20 Confidentiality**

All projects and programs supported under the Act must hold all information related to personal facts or circumstances about individuals involved in those projects or programs confidential and shall not disclose any of the information in other than summary, statistical, or other form which does not identify specific individuals, except in accordance with §1340.14(i).

**N.J. Admin. Code tit. 10 sec. 129-1.1 (1974) et seq. Policy Concerning the Referral and Investigation of Child Abuse and Neglect Cases.**

**10:129-1.1 Purpose**

(a) State law requires all persons to report suspected cases of child abuse or neglect to the Division of Youth and Family Services ("the Division"), and the Division has a legal obligation to refer to county prosecutors all cases that involve suspected criminal activity on the part of a child's parent, caretaker or any other person. While this duty may result in the referral of a substantial number of cases to prosecutors, it is anticipated that in most of the cases referred extensive police involvement will not be warranted, and indeed that in many cases no police involvement will be required. The objectives of this policy statement are:

1. To set forth guidelines by which Division caseworkers may easily identify cases that must be referred to prosecutors;
2. To establish procedures for such referrals;
3. To establish a system through which Division caseworkers may assist prosecutors in determining which cases should be investigated and in identifying cases in which criminal investigation or prosecution would be detrimental to the child's best interests; and
4. To establish a framework for liaison and improved communication and cooperation between the Division's district offices and the several prosecutors' offices in order to further the mutual goals of protecting the child and proper law enforcement.

**10:129-1.2 General Policy**

The primary concern of all public agencies involved with child abuse and neglect is to ensure the safety, well-being, and best interests of the child. Other considerations, such as the objective of maintaining family integrity, promoting family therapy or the concern for traditional "parental rights," are secondary.

**10:129-1.3 Referral of cases to prosecutor**

(a) Caseworkers are obligated to report to the prosecutor all cases involving suspected criminal conduct on the part of a parent, caretaker or any other person. This obligation will be satisfied if caseworkers refer to the prosecutor all cases involving any of the following: (This list shall not be construed to preclude the referral of any other case which, in the judgment of the caseworker and supervisor, warrants review by the prosecutor.)

1. Death of a child;
2. The subjecting or exposing of a child to unusual or inappropriate sexual activity;
3. Any type of injury or condition resulting in hospitalization or emergency room treatment;
4. Any type of injury or condition that requires more than superficial medical attention (e.g., treatment for broken bone at physician's office);
5. Repeated instances of physical violence committed against a child, or substantially depriving a child of necessary care over a period of time; or

#### 6. Abandonment of a child.

(b) While several of the criteria set forth above are based solely upon the objective condition of the child, there should also be some reason to believe that the injury or condition was not accidentally caused. For purposes of these guidelines, an injury is not accidental if an intentional act produces an unintended result. Thus, a parent, caretaker or any other person who physically disciplines a child may have committed child abuse even though the resulting injury was not intended.

(c) This policy regarding referral applies whether the child is residing at home or in an institution, school or other residential facility, and whether the person believed to be responsible for the injuries is the child's parent, caretaker or any other person.

(d) The Division's duty to refer a case to the prosecutor arises as soon as the caseworker has any information about the case which leads him to suspect that the alleged abuse or neglect may have occurred. This means that the child's condition or injury is one of those specified in this policy and the caseworker has reason to believe that the condition or injury was not accidentally caused.

1. In some cases, such as where the child is in a hospital and a doctor states his opinion that the condition or injury was probably not accidental, the caseworker will have sufficient information to require a report at a very early stage of the investigation. In other cases, such as where evidence initially supports the claim that the condition or injury was accidentally caused, the duty to report may not arise until a later point when the caseworker has conducted a more extensive investigation.

2. Thus, referral need not be made at the time a report is first received by the Division even if the report provides information to place the case in one of the categories set forth in this policy. This information should be supported by the belief of the caseworker. This does not mean that the caseworker must have completed an investigation and secured solid evidence of abuse or neglect. Rather, cases falling within these categories must be referred at the point at which the caseworker has some suspicion that the child's condition or injury probably was not accidentally caused.

(e) Prompt referrals of child abuse and neglect cases are important, and in some cases essential. Hence, written referrals on form DYFS 9-7, or other Division of Youth and Family Services form which contains a narrative description of the essential facts, shall be sent to the prosecutor as soon as the caseworker determines that referral is required by this policy. In cases where there is serious and repeated harm, the referral shall be made as soon as possible by telephone, with written confirmation being sent within 48 hours thereafter. The Division will establish consistent with this policy, specific procedures for making referrals which will include participation of supervisory personnel in identifying cases that this policy requires to be referred and designation of a person in each district office to act as a liaison to the prosecutor. Copies of such procedures will be furnished to all county prosecutors.

#### **10:129-1.4 Division recommendations to prosecutors**

(a) When referring a case to the prosecutor, the caseworker may already have information sufficient to arrive at a preliminary conclusion concerning the need for investigation by a law enforcement agency. This conclusion will be based on the standards in this policy. A recommendation and underlying reasons therefor will be communicated to the prosecutor at the time the case is referred.

(b) Recognizing that the caseworker may have already conducted a preliminary investigation of the case, that the caseworker has some experience and expertise enabling him to assess the need for action by the prosecutor, that in some cases efforts already made to ameliorate the underlying problems may be undetermined by the initiation of a police investigation and that the caseworker is also in a position to identify cases in which immediate action by a law enforcement agency is required, the prosecutor shall give due consideration to the recommendations of the Division. If the prosecutor determines to investigate a case notwithstanding a contrary recommendation by the Division, he should discuss the matter with the caseworker, his supervisor or the district office liaison before initiating the investigation.

#### **10:129-1.5 Response by prosecutors**

(a) In order to facilitate communication with the Division and coordinated handling of child abuse and neglect cases, each county prosecutor will designate an assistant prosecutor to serve as liaison to the Division's district office for such cases. The person so designated will be responsible for keeping the Division informed as to the course of action taken by the prosecutor. In addition, and to the extent practicable, each prosecutor will delegate to one or several investigators responsibility for conducting all investigations in child abuse and neglect cases.

(b) The prosecutor may take various courses of action upon receipt of a referral, among them, the following:

1. Advise the Division staff member making the referral that the prosecutor will not undertake an investigation and request that the prosecutor be advised immediately of any indication of further or continuing abuse or neglect.

2. With advance notice to the Division, undertake an initial investigation using, to the extent practicable, specially designated investigators or refer the matter to a designated officer in a local police department for initial investigation.

(c) After investigating a case, the prosecutor will determine whether criminal prosecution must be undertaken. He should confer with the caseworker in making this determination and will advise the caseworker of his decision.

#### **10:129-2.1 Confidential reporting and releasing requirements**

(a) All records of child abuse reports made pursuant to section 3 of P.L.1971, c.437 (C.9:6-8.10), all information obtained by the Division of Youth and Family Services in investigating such reports including reports received pursuant to section 20 of P.L.1974, c.119 (C.9:6-8.40), and all reports of findings forwarded to the central registry pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11) shall be kept confidential and may be disclosed only under the circumstances expressly authorized in subsection (b) below.

(b) The division may release the records and reports referred to in subsection (a), or part thereof, to:

1. A public or private child protective agency authorized to investigate a report of child abuse or neglect;

2. A police or other law enforcement agency investigating a report of child abuse or neglect;

3. A physician who has before him a child who he reasonably suspects may be abused or neglected;

4. A physician, a hospital director or his designate, a police officer or other person authorized to place a child in protective custody when such person has before him a child who he reasonably suspects may be abused or neglected and requires the information in order to determine whether to place the child in protective custody.

5. An agency authorized to care for, treat, or supervise a child who is the subject of a child abuse report; or an agency authorized to care for, treat, or supervise a parent, guardian or other person who is responsible for the child's welfare, when the information is needed in connection with the provision of care, treatment, or supervision to such child or such parent, guardian or other person by the agency;

6. A court, upon its finding that access to such records may be necessary for determination of an issue before the court, and such records may be disclosed by the court in whole or in part to the law guardian, attorney or other appropriate person upon a finding that such further disclosure is necessary for determination of an issue before the court;

7. A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

8. Any appropriate State legislative committee acting in the course of its official functions, provided, however, that no names or other information identifying persons named in the report shall be made available to the legislative committee unless it is absolutely essential to the legislative purpose;

9. Any person engaged in a bona fide research purpose, provided, however, that no names or other information identifying persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and provided further that the prior written approval of the director of the Division of Youth and Family Services shall first have been obtained, and the child through his/her representative gives permission to release the information.

(c) Any individual agency, court, grand jury or legislative committee which receives from the division of records, and reports referred to in subsection (a), shall keep such records and reports, or parts thereof, confidential.

(d) Whenever information is disclosed pursuant to any of the exceptions enumerated in (b)(1) through (9) above, the identity of the referrant and any other person shall be protected and not disclosed by the division where the disclosure of such information would be likely to endanger the life or safety of the referrant or other person, or where such disclosure would be likely to result in the discharge or discrimination against the referrant with respect to his/her employment.

1. The determination as to whether the disclosure of such information would be likely to endanger the life or safety of the referrant or other person, or jeopardize the referrant's employment, shall be based upon the caseworker's and supervisor's evaluation of the nature and seriousness of the case and an assessment of the propensity for violence and harm or discharge or discrimination.

2. This procedure shall apply to all instances in which information (records and reports) is requested, but particularly when information is requested by an agency authorized to care for, treat or supervise the child's parent, guardian or other person responsible for the child's

welfare when the information is needed in connection with the provision of care, treatment or supervision of the parent, guardian or other person responsible for the child's welfare.

**10:129-2.2 Definition of sexual abuse**

(a) The term "sexual abuse" includes:

1. The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexual explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct; or

2. The rape, molestation, prostitution, or other such form of sexual exploitation of children, or incest with children, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby.

(b) The term "child" or "children" means any individual who has not or individuals who have not attained the age of 18.

## Evaluation Form

NAME:

PROFESSION:

ADDRESS:

EDUCATION:

WORK PHONE:

This is the first edition of *Child Abuse and Neglect: A Professional's Guide to Identification, Reporting, Investigation, and Treatment*. The Governor's Task Force is interested in your comments and suggestions.

Please comment below:

A. Please identify three pieces of information which were helpful to you in the section of the guide devoted to your discipline.

B. Please list three areas of clarification or omission in the section of the guide devoted to your discipline.

Please send comments to:

Governor's Task Force on Child Abuse and Neglect  
1 South Montgomery Street  
CN 717  
Trenton, NJ 08625