

NS
10
C 536
1989a

PUBLIC HEARING

before

SENATE COMMITTEE ON CHILDREN'S SERVICES

To examine proposals for legislation developed to address issues raised during the September 27, 1988 public hearing concerning the Division of Youth and Family Services (DYFS)

February 9, 1989
Room 407
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Catherine A. Costa, Chairwoman
Senator Gabriel M. Ambrosio, Vice Chairman
Senator Wynona M. Lipman
Senator Leanna Brown
Senator Donald D. DiFrancesco

ALSO PRESENT:

Michele Leblanc
Office of Legislative Services
Aide, Senate Committee on Children's Services

* * * * *

Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625



CATHERINE A. COSTA
Chairman
GABRIEL M. AMBROSIO
Vice-Chairman
WYNONA M. LIPMAN
LEANNA BROWN
DONALD D. DIFRANCESCO

New Jersey State Legislature
SENATE COMMITTEE ON CHILDREN'S SERVICES
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 292-1645

January 13, 1989

NOTICE OF A PUBLIC HEARING

**THE SENATE CHILDREN'S SERVICES COMMITTEE
ANNOUNCES A PUBLIC HEARING
TO EXAMINE LEGISLATIVE PROPOSALS
DEVELOPED TO ADDRESS THE DIVISION OF
YOUTH AND FAMILY SERVICES' METHOD OF
INVESTIGATING REPORTS OF CHILD ABUSE**

**Thursday, February 9, 1989
Beginning at 9:30 A.M.
Room 407 of the State House Annex
Trenton, New Jersey**

The Senate Children's Services Committee will hold a public hearing on Thursday, February 9, 1989, beginning at 9:30 A.M., in Room 407 of the State House Annex, Trenton, New Jersey, to examine proposals for legislation developed to address issues raised during the September 27, 1988 public hearing concerning the Division of Youth and Family Services (DYFS). The hearing will afford the public the opportunity to comment and offer suggestions on legislative proposals aimed at improving the methods DYFS employs to investigate reports of institutional and familial child abuse, and bolstering the policies and procedures used to safeguard the rights of adults and their children when faced with an investigation. The committee intends to hear from individuals and representatives from public and private agencies for the purpose of obtaining information which will aid in drafting legislation needed to reform the administrative procedures of DYFS.

Address any questions or requests to testify to Michele Leblanc, Committee Aide (609-292-1646), State House Annex, Trenton, New Jersey 08625. Those wishing to testify are asked to submit nine typed copies of their testimony on the day of the hearing. The chairman may find it necessary to limit the number of witnesses and the time available to each witness at the hearing.



TABLE OF CONTENTS

Page

William Waldman Director Division of Youth and Family Services New Jersey Department of Human Services	3
Donna Pincavage Executive Director Governor's Task Force on Child Abuse and Neglect	10
Peter A. Gold, Esq. Public Member Governor's Task Force on Child Abuse and Neglect	10
James A. Louis Deputy Public Defender Juvenile Administration Office of the Public Defender Department of the Public Advocate	20
Dr. Martin A. Finkel Acting Chairman Department of Pediatrics University of Medicine and Dentistry of New Jersey	27
Cecilia Zalkind Assistant Director Association for Children of New Jersey	33
Gennine Frisby-LaRue Associate Director Government Relations New Jersey Education Association	41
Trudi Thornton Associate Director Instruction and Training Division New Jersey Education Association	42
Dr. Meyer S. Schreiber Professor of Social Welfare Kean College of New Jersey	51
Robert Benjamin Management Consultant East Windsor, New Jersey	57
Arthur A. Fau Parents Without Partners	59



TABLE OF CONTENTS (continued)

Page

Arnold Herman Director Foster Friends, Inc.	62
Cathleen Dillon-McHugh	65
Nancy Jean Havemann	66
Nicholas Andrian President Families First, Inc.	71
Mia Andersen Chairman Legislative Activities New Jersey PTA	76
Vincent Trivelli Legislative Coordinator Communications Workers of America	81
George Krevet Caseworker Division of Youth and Family Services New Jersey Department of Human Services	81
Thomas Duffy Vice President National Burn Victim Foundation	85
Julie Turner Executive Director New Jersey Association of Children's Residential Facilities	87
Dr. Susan Cohen Esquilin	89
Janet F. Spressart The Mental Health Association of New Jersey	89
APPENDIX:	
Testimony submitted by William Waldman	1x
Position paper from Governor's Task Force on Child Abuse and Neglect, plus attachments, submitted by Peter A. Gold, Esq.	29x



TABLE OF CONTENTS (continued)

Page

APPENDIX (continued):

Statement submitted by Alfred A. Slocum Public Advocate of New Jersey	38x
Statement submitted by Cecilia Zalkind	54x
Letter addressed to the New Jersey Education Association from Robert V. Daniels, plus attachments, submitted by Trudi Thornton	61x
Testimony submitted by Dr. Meyer S. Schreiber	112x
Statement submitted by Mia Andersen	115x
Statement submitted by Thomas Duffy	121x
Statement submitted by Dr. Susan Cohen Esquilin	124x
Testimony submitted by Sue Dondiego Legislation Chairman New Jersey Foster Parents Association	126x
"Allegations in Custody and Visitation Cases, Edited by E. Bruce Nicholson with Josephine Bulkley" American Bar Association National Legal Resource Center for Child Advocacy and Protection	130x
Letter dated 6/20/85 addressed to the National Center on Child Abuse and Neglect Washington, D.C., from George J. Albanese Commissioner New Jersey Department of Human Services	157x
"Federal Register" - February 6, 1987 Part III, Department of Health and Human Services Office of Human Development Services," plus attachments	166x

* * * * *



SENATOR CATHERINE A. COSTA (Chairwoman): I would like to call this public hearing to order. I am very pleased to see such a good crowd out today. As you know, we will be discussing proposals for bills following the public hearing we had in September regarding child abuse, both physical and sexual.

Before we go on to that, I would like to speak about the hiring freeze on DYFS employees, because it is of utmost importance that that be lifted. It is important for the young children who are in their care. By attrition, they are just leaving people out and not filling up those spots. We know that DYFS is having a hard enough time right now as it is in keeping their employees, because they are so over-taxed.

I would like to read you a letter that I sent to Mr. Richard Standiford, Director of the Office of Management and Budget:

"Dear Mr. Standiford: As you may know, the Senate Children's Services Committee will hold a public hearing on Thursday, February 9, 1989, at 9:30 a.m., in Room 407, State House Annex, to discuss certain legislative proposals concerning the Division of Youth and Family Services.

"One of the proposals calls for a ratio of one caseworker to 20 cases. Currently, each worker has an average of 37 cases. By reducing the caseload per worker, the caseworker would gain greater knowledge of each individual case, and would avoid making errors due to unfamiliarity with the children, families, and other persons involved in a particular case.

"Reducing the work load of individual caseworkers would also help to reduce the high turnover rate among caseworkers, and would help to build a more experienced staff.

"The essence of the proposal to protect children at risk of abuse or neglect will be undermined if DYFS is not exempt from the current hiring freeze. I believe that a freeze on DYFS caseworkers will accelerate vacancies. To accelerate

vacancies in DYFS offices where the turnover rate approaches 16% annually, will force already overburdened caseworkers to pick up additional cases, increase caseworker burnout, decrease caseworker performance, and drive the vacancy rate even higher.

"I believe that a freeze on DYFS caseworkers will freeze progress and cause the Division to slip backwards, undoing many recent staffing improvements which have enhanced the delivery of services. I believe that a freeze on DYFS caseworkers will pose a greater risk of injury or death to children who, under the best circumstances, confront deprivation and abuse and unstable environments on a daily basis.

"While these frightening consequences may not have been articulated to the panel which rejected the December 1988 request to exempt DYFS caseworkers from the freeze, it is now imperative that this freeze be expeditiously reconsidered by the Employment Review Board. Considering the irreversible harm which will result from the continuation of the freeze, and paradoxically the Committee's proposal to improve services and so prevent harm, the Committee requests that you testify at the public hearing on February 9 regarding the December rejection of the Department of Human Services' exemption request and current deliberations regarding any additional Department requests.

"Any information you provide will assist the Committee in its deliberations regarding DYFS caseloads and the protection of children at risk. Due to the timeliness of this request, please feel free to contact me directly regarding the Committee's hearing and your testimony."

Now, this was sent to Mr. Standiford. He won't be here today, but we did receive a response which the Committee will be reviewing right after this hearing. Then we will take it from there.

At this time, we have quite a list of people to be heard from. I ask that if you plan to say something that has already been said, since we do have such a long list, will you

please not repeat it. That way, we can get everybody in. Now, where is my list?

The first person we will call is Director William Waldman, of the Division of Youth and Family Services. Oh, by the way, Senator Ambrosio is here with us, and we expect our other members to be here shortly.

W I L L I A M W A L D M A N: Good morning, Senator Costa, and members of the Senate Children's Services Committee. I first would like to express my appreciation to all of you for your follow-up from our September hearing. The legislative proposals being considered by you are, indeed, serious and thoughtful ones. I commend you for the opportunity you have given to our Division, to the various child and family advocates here today, to our clients, and to other interested parties to continue the public dialogue in crafting new legislative initiatives to improve the child protection and child welfare system in the State of New Jersey, and to safeguard and strengthen the rights of those affected.

I would like to say at the outset that we support many of the proposals now being considered by the Committee. Our support, as reflected in this testimony -- both the written testimony I have submitted and my verbal testimony -- refers to the intent or concept of the proposals. Since several of the proposals have cost implications, we have concerns as to the availability of funds that would be necessary to implement the enabling legislation, particularly in light of the current state of the budget. Further, as we discussed at the September hearing, the Governor's Task Force on Child Abuse and Neglect is studying similar issues and will publish its findings and recommendations later this year. I would also ask that the report, once it is issued by the Task Force, be given careful consideration.

This is the third opportunity I have had to sit before you at a hearing. I have to tell you, I learned an enormous

amount at the two previous hearings. I believe you will find in my written testimony that what I have learned has been incorporated into my point of view, some of the actions we have taken at the Division, and our specific responses.

For the purposes of time, I don't want to read my entire testimony, but there are two or three issues that I feel strongly about, which I want to take just a few minutes to highlight.

I am very concerned about the third proposal that has been put forth, which would reassign primary responsibility for the conduct of child protective investigations to county prosecutors. You know, less than 20% of the over 50,000 referrals that we receive and act upon each year meet the standard of potential criminal activity set forth in the New Jersey Administrative Code, and an even smaller number of those are ultimately prosecuted. Such a reassignment would defeat a long-term effort to divert inappropriate matters from the criminal justice system, and would use the criminal justice framework to deal with what are essentially social problems.

There are differing and legitimate purposes for State intervention in such cases: One, criminal, to identify and prosecute crimes; and the other, civil and social, to protect children and to preserve families. Elements of the two often overlap, but they are not mutually exclusive.

Experts believe that the best approach is the joint approach, including the identification of the types of situations that are exclusively civil in nature, those that are criminal, and those that have elements of both. We currently utilize that joint approach, and have tailored it through individual working agreements with the 21 prosecutors throughout the State of New Jersey. It seems to be working for all of us in that way. Joint investigations do occur today, many cases in a manner that permits us to fulfill both the civil and social responsibilities that we in DYFS have, and the law enforcement responsibilities that the prosecutors have, as well.

Finally, I would submit to you that asking the prosecutors to take the lead role would involve them in an additional 40,000 cases a year throughout the State of New Jersey, and this would very likely have a significant cost impact at the county or local level.

The second proposal we have some serious concerns with is the one that speaks to reassigning the lead role for institutional abuse. First, I would like to assure you on that point that we currently do not investigate ourselves. We have a long-standing agreement with the Public Advocate to conduct institutional abuse investigations in the facilities operated by our Division. With respect to other areas of perceived conflict, I believe the Public Advocate, Al Slocum, said it best at the last hearing. In essence, he indicated that DYFS had the expertise and the diversity in our structure -- he called us "amorphous," and I'm not sure he meant that as a compliment, incidentally -- to deal with this responsibility in a fair and effective manner.

Another balance for us, is that the cases that involve suspected criminal activity are referred to a special unit of Deputy Attorneys General in the Division of Criminal Justice. I believe in this arrangement as well.

Finally, I would remind you that we have some relatively new legislation on institutional abuse. Two members of this Committee sponsored a bill that strengthened our role in the investigation of child abuse and neglect situations in institutions, and I would say, "Let's give that bill an opportunity to work." I think we made some positive improvements.

The final area I wanted to comment on is, there are two related proposals that provide for the creation of an Office of the Ombudsman for Children in the Department of Human Services, to serve both as an official oversight committee to monitor the activities of DYFS, and to be the lead agency investigating and resolving complaints concerning State services for children.

Senator Brown should be commended for her foresight and her advocacy position in creating an additional and important safeguard for New Jersey's families and children. Similarly, Assemblyman Bryant should be recognized for his bill addressing the same issue.

I would propose to the Committee a somewhat different approach, which I believe goes even further in the same very positive direction. I would ask that you give your most serious consideration to the creation of an Office of Child Welfare Advocacy within the Department of the Public Advocate. It would have the capacity to provide individual and group representation to families and children, and would have authority beyond just the children and families served by our Division.

I would like to make it clear as to the reasons why I support such an office. I have continuing faith and pride in our caseworkers and supervisors who perform the day-to-day tasks associated with investigating over 50,000 referrals each year, as well as providing continuing supervision for over 50,000 children in New Jersey at any given point in time. I believe we have made some progress in the timeliness and quality of our services, but we still have a distance to go. Despite those positives, there are some very special considerations and needs that I would bring to your attention:

There are broad powers granted to the Division of Youth and Family Services by statute. I would submit to you that there is a need for a counterbalance and safeguard for low-income families, and children in particular, who cannot afford or access private counsel or representation. There are many children in our system who are duly diagnosed, who have needs that are most appropriately met in several separate governmental and several service components: Corrections, Education, DYFS, Mental Health, Developmental Disabilities. I think such a system as I am proposing would prevent those children from falling through the cracks of our safety net. You

know, especially with the vulnerabilities of the families, and especially the children at risk whom we serve, there is really a critical need for accountability and balance through the kinds of safeguards and oversights that such a committee could provide, to help us to prevent injustice and tragedy.

The location of such an office is of the utmost importance. The office needs to be located within a department of State government that has the organizational capacity and resources to provide the kind of individual and group representation that is required. The sheer volume of complaints we get, or concerns that are currently received by us, the Public Advocate, some of your legislative staff, and State offices, coupled with the complexity of those cases, and the complexity of the system itself, cry out for an institutional capacity for resolution that far exceeds what an individual ombudsman or committee with a limited staff could achieve. Such individual representation is of paramount importance, so we can all be assured that poor families and children have the same opportunity for representation and advocacy as the more affluent families who can afford it on their own.

For all of the above reasons, and others which I have listed in my testimony, I would urge your consideration of the creation of such an office. I would submit that the most direct and effective manner to respond to the concerns that I heard many of you express last time-- Senator Ambrosio raised an issue about the voluntary service agreements. You, Senator Costa, and I think Senator Rand, were concerned that our clients have a confidant who they could speak from their heart to. We are all concerned about the gaps between policy and practice. I would represent to you that an Office of Child Welfare Advocacy within the Department of the Public Advocate would best respond to those concerns.

In conclusion, when I discussed this matter with our Commissioner, Drew Altman, he asked me to put aside for a moment

-- to step back from my role as Director of the Division of Youth and Family Services, and advise him if I thought this proposal was in the best long-term interest of New Jersey's families and children. I told him that I believed it was then, and I welcome the opportunity today to give you that same answer.

In closing, I again express my appreciation to you, Senator Costa, to the members of the Committee, and to all the advocates and citizens here today. The time and effort that all of you have devoted to improving our child and family service systems are, indeed, commendable. On behalf of our Division, I am grateful for the opportunity you have provided me through the various hearings, to listen, to learn, to observe, and to move forward. My staff and I look forward to working with you in crafting these legislative proposals.

Thank you very much for this opportunity.

SENATOR COSTA: Thank you so much, Director Waldman. One brief question from Senator Ambrosio.

SENATOR AMBROSIO: On your comment regarding Proposal 3, Director, I frankly share your concern that reassigning primary responsibility to the prosecutors' offices may be an overreaction to what we see to be -- to what in my judgment is a need to readjust the role. The real concern is that the prosecutors' offices, and the investigatory arm in particular, get plugged into suspected child abuse cases as soon as practical to preserve evidence and to see to it that the investigation is conducted properly. There is a general perception that DYFS workers are not trained to do that, nor should they be trained to do that.

Would you agree that there is at least some fine-tuning needed, in terms of the relationship between the prosecutors' offices and DYFS?

MR. WALDMAN: There is always fine-tuning needed. In fact, we had to do some in the last year in a couple of the counties. Each individual prosecutor has his style as to how he

wants us to relate to him. Quite frankly, in all of the counties we worked out a situation where they really take the lead in the criminal justice part of the investigation, unquestionably.

We measured ourselves in the quality assurance report we recently published, to reflect how timely and accurate we were in referring cases to the prosecutors. We had made a fairly significant improvement over time. I think we are up to about 95% accuracy now. But you're right, it is a very delicate and important relationship, and we will have to continue to fine-tune as time goes on.

SENATOR AMBROSIO: All right. Thank you.

SENATOR COSTA: Senator Brown has joined us, and she would like to ask you a question.

SENATOR BROWN: Thank you, Madam Chairman. I appreciate your allowing me a few minutes. Obviously we are here this morning to listen, and certainly, Madam Chairman, this is a far cry from the attendance when we had our first meeting of this Committee. I think that showcases the importance that all of us, as individuals in New Jersey, are attaching to the future, i.e., our children.

Needless to say, I appreciate your comments about the concept of an ombudsman. I am very supportive of having it in the Department of the Public Advocate. I think that makes a great deal of sense. The important thing is that we have an effective mechanism really out there championing the cause of our children. All of us have been listening to the Joel Steinberg trial in New York City, and other very dramatic examples on New Jersey Nightly News. Just last night, there was a case of a schoolteacher who was sensitive enough to alert the local people that there was an abuse going on.

So, we are all in this together, Madam Chairman. I just commend you for calling this hearing, and look forward to really toughening the laws here in the State of New Jersey on behalf of our children.

SENATOR COSTA: Director Waldman, you spoke about a few of the points we have raised. Are you in agreement with the others?

MR. WALDMAN: There are some variations we have. There are many of them we do agree with, but there are several that we have listed some qualifications on, or some alternate approaches.

SENATOR COSTA: That is in your testimony?

MR. WALDMAN: That is fully developed in my testimony.

SENATOR COSTA: Thank you very much.

As I stated, we are here to listen today, really. I am not going to stop anyone from asking questions, but I have already asked them not to, unless we really have to find out something.

I would like to call Peter Gold now, and Donna Pincavage. Did I say that correctly?

D O N N A P I N C A V A G E: Pincavage (correcting Senator Costa's pronunciation of her name).

SENATOR COSTA: That's the Governor's Task Force on Child Abuse and Neglect. I want to commend you for your report. I think it is very good.

P E T E R A. G O L D, E S Q.: Thank you.

MS. PINCAVAGE: Madam Chairman, Senator Ambrosio, Senator Brown: My name is Donna Pincavage. I am the Executive Director of the Governor's Task Force on Child Abuse and Neglect. Union County Prosecutor John Stamler was scheduled to be here today to testify on behalf of the Task Force, but unfortunately, he has come down with the flu, and has asked Mr. Gold and myself to provide his testimony.

In addition, when the Attorney General's Office found out that Prosecutor Stamler was not able to be here, they sent a representative, Susan Holley, who is here to address any issues regarding law enforcement.

At this time, I would like to just say that the positions we are about to present today are the positions of the

Protection Subcommittee. The full Task Force has not had an opportunity to sit down and vote on these particular issues, but the Protection Subcommittee has. Peter Gold will present those issues, and we will both be available for questions.

MR. GOLD: Thank you, Donna. Good morning, Madam Chairperson, Senator Ambrosio, and other distinguished members of the Committee and staff. I am a public member of the Governor's Task Force on Child Abuse and Neglect. The Governor's Task Force has been charged by the Governor under executive order to coordinate and initiate State programs related to the prevention of child abuse and neglect.

In the spring of 1988, the Task Force undertook the major responsibility of studying New Jersey's child protection and child welfare system for the purpose of determining what we as a State do well, and what we as a State can do better. To this end, the Task Force created a multi-disciplinary working group of over 60 people. The members of the working group include: doctors, lawyers, professors, social workers, government administrators, DYFS contract recipients, and many others. I believe most interests and views in the field are represented among the membership of the working group.

The working group has been executing its charge by forming four subcommittees. One of those is the Reporting Subcommittee. The Reporting Subcommittee is reviewing the entire law and procedure for handling reports, and will be making recommendations about the appropriate ways to assure that valid reports are made, and to discourage reports which have no basis in fact, but which are motivated by malice or recklessness.

Another subcommittee is addressing decision-making. That subcommittee's work has very broad ranging goals, and they are concerned with all of the factors which go into determining whether child abuse or neglect can be substantiated under the laws of the State of New Jersey.

A third group is information handling and confidentiality. This committee has heard testimony about what happens with information that DYFS has obtained, and the availability of that information to others. This subcommittee is looking at balancing between rights of privacy and really the public's right to know, and parents' and guardians' rights to know.

The fourth subcommittee is the one I am most knowledgeable about, because I chair that subcommittee. My group's specific charge is to examine New Jersey's child protection welfare system and, in particular, to examine the role of DYFS in the child protection system. Several issues developed for our study, and these include the following, many of which you have highlighted, and which have been highlighted for you here, coincidentally:

1) Whether there is an inherent conflict of interest between DYFS' role as child protector and DYFS' role as a child and family healer; that is, whether there is a conflict between DYFS' child protection function and DYFS' child welfare function?

2) Whether DYFS and its clients would benefit from some additional oversight outside of the Division and outside of the Department of Human Services?

3) Whether there is a potential for conflict of interest within DYFS in its role as a contracting agency? In particular, can DYFS adequately monitor, audit, and evaluate the programs and services for which it contracts? We note, parenthetically, that DYFS-- We believe that DYFS awards approximately \$100 million a year in contracts. A sub-issue is whether DYFS has the ability to adequately investigate and respond to reports of abuse in entities and institutions with which it contracts?

4) Whether child abuse and neglect is being consistently and professionally diagnosed and treated throughout the State?

5) Whether the level of continuity of services provided in cases where intervention is warranted is acceptable to us? Sub-issues which we are examining include: client to caseworker ratios; the number of caseworkers assigned to a case over the life of a case; turnover of DYFS personnel; compensation of DYFS personnel; and training of DYFS personnel and related issues.

6) Finally, whether existing policies, procedures, and practices utilized in obtaining voluntary separation or placement agreements assure that the decision by a parent, legal guardian, or caretaker is, to the maximum extent possible, free from coercion and is made voluntarily?

This morning, I offer some of our preliminary conclusions on some of these issues. In doing so, I stress that because of timing concerns, these conclusions have not been presented to the full Task Force, even though they have been discussed with several members and acting Co-Chair John Stamler, with positive comment.

Our preliminary recommendations are reflected on the two charts which I have attached as exhibits to my written testimony, which I hope each of you have a copy of.

In sum, our work on many of these issues suggests that there should be created a global Child Advocacy Authority, "in, but not of" the Department of the Public Advocate. This Authority would coordinate many of the functions which are either currently being performed, or should be performed, by diverse and separate agencies, divisions, and departments in New Jersey State government.

This Authority would have four major functions:

1) Information: The role of the Authority would be to facilitate public awareness about the issue of child abuse and respond to public and media inquiries. In contrast to what currently occurs, the response would be from a source that does not have front-line case handling responsibilities, and should

therefore be perceived as objective. In this role, the Authority would, independently of DYFS, determine "confidentiality" constraints on the scope of information released.

2) Ombudsperson: Another function would be an ombudsperson function, similar, although not the same, as that described in Senator Brown's bill. In essence, the ombudsperson would receive, investigate, and respond to complaints about elements of the child protection child welfare system. If substantiated, the complaints would be referred to the Public Advocate or the Attorney General, if they could not be expeditiously resolved by the ombudsperson.

3) Audit/Review: The Authority would conduct program audits of the effectiveness of the various elements in the child protection child welfare system. These could theoretically include: program audits of DYFS, institutions with which DYFS contracts, and programs in other departments.

Another function of the audit/review element would be to collect and coordinate data and other information from each element of the child protection child welfare system. These elements include: DYFS, Human Services, the Judiciary, Law and Public Safety, the Public Advocate, as well as all the other elements of the system which are reflected on the exhibits to my written testimony. We believe this function is not occurring now.

4) Finally, the fourth function, policy and planning: The Authority would be responsible for statewide global policy development and program planning. In discharging its duties under this function, the Authority having obtained information from each of its components, that is from information, program audit/review, and ombudsperson, as well as information from all other elements of the system, would be able to make policy and planning recommendations in a comprehensive and cost-effective fashion. Thus, the system would benefit most from having each

of these four functions performed by a single coordinating entity.

I am loath to suggest anything that would, without direct benefit, result in the expansion of government. It is my sense, however, that implementation of this proposal would have the opposite effect; that is, I believe it may result in a contraction of our bureaucracy through consolidation of some functions and perhaps personnel from the several divisions, agencies, and departments that are now performing, or attempting in earnest to perform child protection and child welfare-related functions.

This proposal presents the global perspective. It provides New Jersey with a vehicle for having one group of professionals responsible for continually monitoring existing programs and initiating new programs on a statewide basis. It attempts to resolve issues of conflict of interest and oversight, while simultaneously focusing on improving existing programs and initiating new ones.

The existence of an Authority performing these four functions focuses our energies and resources on pro-active measures. Although as I have testified, we believe that an ombudsperson or similar function should be implemented, we also believe that doing so without implementing the other three elements would, by definition, be "reactive" and cause us to focus our resources and energies on individual cases and complaints.

By contrast, implementing this proposal permits policymakers and program initiators to directly convert the information learned in redressing individual complaints to the development of effective statewide programs which may not be related to a particular complaint about any aspect of the child protection child welfare system.

Further, by creating a single professional Authority, we can harness the skills, dedication, and commitment of

knowledgeable persons actively working in this field. I would suggest that this is particularly important for program audit and review. For example, we believe that to effectively evaluate whether a program is reducing child abuse, it is necessary that the evaluators be experienced in the field.

This proposal does not call for a radical restructuring or realignment of the Division of Youth and Family Services. To the contrary, we commend the Division, its Director, and its committed personnel for the work they have done and are doing. However, by implementing this proposal, we believe they can perform their services even better. Simply, they will have another tool at their disposal.

Speaking for myself, and for the many talented people who have contributed to this work, we are confident that this recommendation is practical, grounded in necessity, and can be implemented in relatively short order.

That is the report from the sub-group of the working group on the role of DYFS in our child protection system. Those are our preliminary conclusions. I would like to spend another minute, if you will indulge me, on responding specifically to the legislative proposals you have made.

The first proposal, limit caseworker ratios to one to 20 and supervisor ratios of one to five: This is a position that the Task Force supports. It is admirable and should be pursued.

The second proposal, make false reporting of child abuse a crime of the fourth degree: The members of the Task Force we have discussed this proposal with, as well as the Protection Subcommittee, are divided on the issue. Some feel it should have a penalty such as failure to report child abuse, but others feel the penalty should be stronger, as a deterrent effect. But there is significant division on the Task Force, and in the Protection Subcommittee in particular, on this issue.

The third proposal, reassign primary responsibility for conducting investigations of reports of child abuse to the county prosecutors' offices: This we are constrained to vehemently oppose. Many of the cases brought to the attention of DYFS are social problems, and are not criminal in nature. The county prosecutors' offices do not have sufficient staff or training to handle these cases currently.

New Jersey Administrative Code Title 10, section 129-1.1, obligates DYFS caseworkers to report to the county prosecutor all cases involving suspected criminal conduct on the part of the parent or caretaker. There have been several statutory criteria developed specifically to accomplish this end, which DYFS must follow. When cases are reported to the county prosecutors, obviously the Task Force supports joint investigation.

The fourth proposal, reassign DYFS' lead role in investigation of child abuse committed in institutions or placements either operated, or at least initiated by DYFS to the office of the ombudsman for children: The Task Force opposes this as it is proposed.

The Public Advocate's Office currently investigates reports of child abuse which allegedly occur in a DYFS-operated facility. The Division of Criminal Justice and DYFS investigate cases of institutional abuse in non-DYFS facilities. The office of ombudsman, or what we proposed earlier in terms of another oversight mechanism could review and investigate complaints about DYFS' action regarding institutional abuse in the same manner it would investigate other complaints about DYFS and other members of the child protection system.

The fifth proposal, develop a network of county-based diagnostic centers staffed with full-time professionals who would work closely with DYFS, investigators from county prosecutors' offices, and other law enforcement personnel: This position, I believe, will be more directly addressed by Dr.

Finkel, who is here today, and who is on my subcommittee. We do note two things: The way it was presented in the memorandum indicated that it would be a voluntary program only, and second, it would be county-based. We believe there should be some rethought given to whether it should be voluntary. We fail to see why all the children and families in the State cannot benefit from such centers, once they are established.

Your proposal for discussion was county-based. We believe that due to constraints of professional talent in the State, and resources, it might make somewhat more sense to consider regional centers, at least initially -- south, central, and northern.

The sixth proposal, establish requirements for informing parents of a child who has allegedly been abused or neglected of the status of their case, their rights, and an appropriate time frame for the resolution of the case: We wholeheartedly support this.

The seventh proposal, Senator Brown's outstanding bill on the Office of Ombudsman for Children: I believe I have already addressed this. We believe it is supported. However, the subcommittee which I chair urges you to consider making it one of four functions in a Child Advocacy Authority.

The eighth proposal, amend the statute which limits access to records of child abuse to include the parents of the abused child among the persons who are entitled to receive the report when abuse occurs in an institutional setting: Our position is that we oppose this, as drafted. Allowing parents to have access to the records might violate the confidentiality of other children whose names might be included in the record, and other work pertaining to other individuals who may not be the subject of child abuse, yet are involved in the investigation. The Task Force supports the concept of providing information to the parents of victims of institutional abuse.

The ninth proposal, appropriate funds to the Department of Human Services or the courts for contracting with community-based organizations for the establishment or improvement of facilities for supervised visitation during the pending of child abuse allegations: We support this wholeheartedly.

The tenth proposal, establish an Office of the Ombudsman for Children in the Department of Human Services: I believe we have already addressed this with our proposal for a Child Advocacy Authority and an ombudsman function in that proposal.

Your final and eleventh function, develop a child placement bill of rights which would protect the rights of all children who have been placed outside their homes by DYFS: This is a commendable proposal, and should be pursued. But we are recommending that it includes all children placed outside their homes, including those placed in correctional facilities and psychological institutions.

Thank you very much. We appreciate the opportunity to review your most thoughtful proposals, and we commend you for your leadership in this field. We would be delighted to answer any questions, or to work with you in the future.

SENATOR COSTA: Thank you so much for your recommendations and your input. It is greatly needed.

I would like to say that Senator DiFrancesco has joined us. I am going to ask the panel if they wish to expound on anything. Otherwise, we will go on to the next witness.

SENATOR AMBROSIO: Just one question. Peter, you don't really oppose parents obtaining records of child abuse in institutions. You just want the confidentiality of third parties protected?

MR. GOLD: Yes.

SENATOR AMBROSIO: Okay.

SENATOR DiFRANCESCO: Senator Costa?

SENATOR COSTA: Yes, Senator DiFrancesco.

SENATOR DiFRANCESCO: I don't have a question. I know that perhaps I asked Senator Brown, and Donna may have mentioned this, but I called you about Prosecutor Stamler from Union County wishing to be here.

SENATOR COSTA: Yes.

SENATOR DiFRANCESCO: He was unable to make it. He had a recent heart transplant. I think I mentioned that. Were it not for that, I know John would have canceled anything else to be here to give testimony. He is really upset that he is not able to be, but he has no choice.

SENATOR COSTA: Well, we hope he is getting better.

SENATOR DiFRANCESCO: I wanted you and Senator Ambrosio to be aware of that, because it is very important to him, and I know it is very important to the Committee.

SENATOR COSTA: Thank you, Senator. Thank you very much.

Our next speaker will be Jim Louis, of the Department of the Public Advocate.

J A M E S A. L O U I S: First, I would like to thank the Committee for the opportunity to be here. I would like, as a matter of personal privilege as a New Jersey taxpayer and citizen -- and proud to be one -- to simply point out that my momma would be very happy if the Committee's record showed that my last name is spelled L-O-U-I-S. Now that I have taken care of family matters--

SENATOR COSTA: Thank you.

MR. LOUIS: Allow me to introduce myself. My name is James Louis. I am the Deputy Public Defender in charge of Juvenile Administration in the Office of the Public Defender, which is one of, and the largest of the units within the Department of the Public Advocate. In that role, I am responsible for our programs representing children in juvenile

delinquency and other juvenile court matters, as well as children in child abuse and neglect cases, who go to Family Court.

I am here today representing our Commissioner, Alfred A. Slocum, the Public Advocate, who is unable to be here. He certainly was pleased with the request of the Committee to have an opportunity to make a presentation today. We have, in fact, distributed copies of the Commissioner's testimony.

For the sake of time, which I know is important, I am only going to go over a few highlights of our testimony -- a few points that seem to be extremely important to us -- to our entire Department -- because I must say, while I am here in my role with a part of the Department, in fact so many other units within our Department touch on the lives of children, and represent children in dealings with DYFS and with other agencies as well. So, there is a broad range of interest in the various points that the Committee has presented in the memorandum listing the proposals.

The first one I would like to talk about-- Again, let me just simply apologize in advance for the fact that while I don't want to be repetitive, it certainly is important to get across that there is a wide range of support for certain points. And while I may be agreeing with people who have spoken before me, I would like to think that I will be agreeing with people who speak after me, as well.

The first point that I think is worth noting is in regard to the Committee's proposals concerning the investigation of child abuse cases, both family child abuse cases and institutional cases. In our experience, we have found that there is a very real and very important distinction between the interests -- the concerns of the investigator from the social child welfare agency and the concerns of the investigator from the criminal justice agency. While certainly the law is clear that everybody's interest is the interest of the child, the fact

of the matter is, in the emergent situation, law enforcement's major responsibility is to see if there is anybody there that they need to arrest to protect everybody -- to protect the rest of society and, indeed, to protect the victim.

The social welfare -- child welfare worker, in the case of New Jersey, the DYFS worker's responsibility is to immediately see if there is a need for any protective services for the child, who may very well be in very serious imminent danger. It is very difficult, and it seems that other states have had a very difficult time, merging those two. Our recommendation in reviewing these matters, and again based on years of experience in dealing with these child abuse cases, is that it may be that the Committee ought to concern itself, and that in fact the policymakers who are responsible for DYFS' activities should be concerning themselves, not with the question of who does the investigation -- what agency does the investigation -- but more with the question of the qualifications and the quality of the investigation done.

We know, because our office is filled with some very good professional investigators, that there is a particular technique, there is a particular talent involved, and that not everyone is able to go out, albeit being very well-meaning, and gather evidence; and that those specific techniques and those specific talents need to be developed, either through training or through selection of staff, so that both the law enforcement and the child welfare protective services' investigation can be of high quality, and will not be antagonistic with each other -- another important point. As has been said by others, it is very important that the concept of working cooperatively and working jointly be encouraged, not only for the sake of the two investigative agencies, but I might add, for the sake of the child.

It is very, very important that all investigators and all persons who are intervening on the child's behalf, limit the

amount of intrusion in the child's life, if it is at all possible to do so, and investigating jointly is one of the most effective ways of providing that limitation.

Regarding the institutional abuse investigations, again it has been stated that here is another area where the joint investigation can be most productive. My agency -- my office -- investigates -- as has been stated -- the institutional abuse allegations that arise out of DYFS institutions. We always contact the Division of Criminal Justice's Investigative Unit, and more often than not they are not interested in it. They don't feel that allegations of criminality arise. It would be very, very detrimental to the interests of the children in the institutions if law enforcement, making that legitimate determination that it does not arise as a criminal issue, would be then placing any constraints on the speed of the institutional investigation, or the investigation of a family abuse case as well. So again, the major point is one of the qualifications of the investigators on the one hand, and the willingness -- in fact, I daresay the obligation -- of the two investigative agencies to work together to the fullest extent possible.

The Committee raised an issue regarding false reports, and this is a question that has been of vital importance to us as well, not only because we have our role of representing children, but very often defendants that we represent are the victims of false reports. The one thing we would point out to the Committee is that there already exists -- and our written testimony spells this out and gives the citations -- the specific citations-- There already exists mechanisms in the criminal law of this State that make the kinds of false reports that are made, in some cases -- and, of course, the record is not at all clear as to the scope, the magnitude of that problem -- but to the extent that false reports are made, malicious reports, there are mechanisms both in the child abuse law

itself, which only grants immunity to good-faith reports, but also in the criminal statutes -- in the criminal code -- that we feel would cover sanctions for false child abuse reports. To the extent that they are not useful, it may well be a disinclination, or a disincentive to prosecuting those cases. I might add that, of course, making a false report is a fourth degree crime, would then make it an indictable offense, and would require the prosecutorial forces of the county prosecutor. So I think that certainly additional investigation -- additional review of the existing laws may prove helpful to the Committee in addressing this problem.

On the point regarding the development of diagnostic centers, the only point that we would like to add is in support of the notion that these diagnostic centers not be limited strictly to cases where families volunteer to come forward. I would like to state that point from the viewpoint of an advocate for children, that to the extent that these diagnostic centers are going to have expertise, and are going to have people who are qualified and capable and sensitive to gathering information about child abuse and neglect cases, the Committee should remember that children whose parents refuse to be cooperative may be even more in need of that beneficial help, than children whose parents agree to come forward.

The recommendation regarding information about time frames of investigations and the recommendation about making available information regarding institutional abuse investigations, are two points that have been of great concern to our Department and, in fact, are points that Commissioner Slocum raised at your September hearings. All we need to say on that point is, it is vitally important, if people are to have confidence in the integrity of the system, that they know what is going on. On the one hand, it is imperative that nothing be done that would breach the confidentiality, not only of third parties, but of the children and families themselves. Something

that is often forgotten, is that that confidentiality isn't there simply to protect the people who make the report, or make the referral. It is also there to protect the right of privacy of the children and their families.

But, recognizing that, and recognizing that there may well be ways to design an approach to this problem that will safeguard the confidentiality, it is very important that families know what is going on; what the system is doing regarding their children. Certainly this is true in the institutional abuse cases, and at the very least, in the cases where the allegation is that the abuse took place in the family. It seems to be not at all a breach of any confidentiality to, at the very least, let the family know -- let the parents know what the prognosis is in terms of a time frame regarding the investigation, and furthermore, to give them a progress report. That does not, in itself, require that confidential information be disclosed. We are very impressed with those recommendations.

The final point I guess I would like to make, is simply that, as you will see in our written testimony, we have reviewed all of the proposals of the Committee. Commissioner Slocum has presented points on each and every one of them. I here have specifically addressed those that seem to give rise to the need for additional attention by the Committee, and those which certainly stand out as the most important from the standpoint of advocacy for children.

That concludes my formal presentation.

SENATOR COSTA: Thank you so much. We have lost two of our Senators solely because they were needed for a quorum on the Judiciary Committee.

MR. LOUIS: Oh, yes. Well--

SENATOR BROWN: Madam Chairman?

SENATOR COSTA: Yes, Senator Brown?

SENATOR BROWN: Just two quick questions: Obviously, any department has to set priorities. Where does the Department of the Public Advocate have children in its priority list of objectives?

MR. LOUIS: Well, certainly I am in a difficult position to answer that, since that is all I do. To me, it looks like it is priority number one, in terms of my day-to-day operations. Commissioner Slocum has always stated clearly on the record, and certainly even privately to me, that he has a vital concern for children. As I said, in terms of our review of the recommendations of the Committee, we brought together representatives of every single one of our divisions, because they all have an important role to play regarding the concerns of children. I would say that children are a very high priority of the Department.

SENATOR BROWN: Let me just say that the reason my bill put the ombudsman's office in, but not of the Department of Human Services, was because at that moment in time, to be perfectly honest, some of us felt that your Department was only concerned with housing issues. Whereas housing issues are extremely serious, so are problems affecting children. I am delighted to have you here testifying today. I will say that Marcia Richman from your Division has been most supportive of having your operation be more in the front line defending children in the State, so we are glad to have you here.

Secondly, through the Chairman, I would like some specific examples of how cooperation with the investigation of individual cases with your particular operation and DYFS could be facilitated. It is fine to say, "This is a general principle," but we would all agree there is going to be no choice, frankly, here in the State of New Jersey, as we get tighter challenges as far as the budget is concerned. But I really would, you know, like a couple of specific examples of how you think we could benefit by improved cooperation. Okay?

MR. LOUIS: Surely. Senator, can you elaborate a little bit in terms of the kinds of investigations you are talking about? As you say, certainly as a general principle, cooperation is better than antagonism. Are you speaking about cooperation regarding institutional abuse cases, or regarding abuse cases--

SENATOR BROWN: I know the Chairman wants to move things along, so maybe you and I can talk afterwards. But you were the one who brought up cooperation, so let's see what we can do as far as fleshing out specifics in the area of cooperation. Okay?

MR. LOUIS: Let me offer to you, and to the Chairman and the entire Committee, that we will be very pleased to present any information we can regarding that specific question.

SENATOR COSTA: Will you be staying on?

MR. LOUIS: I will be here the entire day.

SENATOR COSTA: Senator Brown could speak to you afterward.

MR. LOUIS: Certainly.

SENATOR COSTA: Thank you, Mr. Louis -- L-O-U-I-S.

MR. LOUIS: Thank you.

SENATOR COSTA: We will now have Dr. Martin Finkel, please, Acting Chairman, Department of Pediatrics, UMDNJ. Welcome back, Dr. Finkel. We appreciated your testimony the last time.

D R. M A R T I N A. F I N K E L: Thank you very much.

Distinguished members: I am again really appreciative of the opportunity to address your Committee. My comments will be directed to the commendable work you have all completed in preparation for legislative action to address many aspects of the appropriate investigation, validation, and service components of DYFS procedures. I am pleased to respond to the Committee's draft conceptual proposal number five to develop a network of county-based diagnostic centers staffed with

full-time professionals. At your September hearings, I proposed a network of three regional diagnostic centers, each of which would have the responsibility for seven counties in their region. These regional diagnostic centers would develop the model by which coordination, training, and service would be organized within each respective region. Each center would be charged with the responsibility of helping its constituent counties identify their resources. Direction and consultative services would be provided by each of the professional disciplines making up the full-time diagnostic and therapeutic team. Until the individual counties develop the necessary expertise, the centers could provide outreach with child psychologists, psychiatrists, and pediatricians who would travel from one county to another to provide these services.

It is unrealistic to assume that each county would have professionals with the expertise and motivation to develop multi-disciplinary diagnostic teams on its own. Few counties in the State have done so, to date. Those counties which are functioning in a multi-disciplinary sense, continue to lack much of what I deem necessary and essential. Few professionals have a desire to deal with sexually abused or physically maltreated children. Professionals with appropriate skill levels are very much the exception. Without a foundation of regionalized resource facilities, legislation which would mandate county-based centers will be unlikely to succeed. We must pool our resources and coalesce teams of committed individuals to invest their energy in developing state-of-the-art coordinated services which will be the model and catalyst for development within each region. Few counties will be able to afford the cost of a pediatrician, clinical child psychologist, MSW, child psychiatrist, art therapist, and family therapist, which are essential members of a dedicated team. Even if counties could afford a pediatrician, child psychiatrist, and child psychologist, it is doubtful that these professionals with specialized forensic expertise could be found for each county.

Another important consideration is: Where should these teams be located? Experience has unfortunately demonstrated time and time again that the most hurried, least comprehensive, and most traumatic physical examinations for alleged sexual assault occur in our community-based hospital emergency rooms. In order to validate an allegation, both medically and historically, highly specialized skills are needed. Just as a cardiologist is not equipped to do brain surgery, an emergency room physician is rarely equipped to do an adequate forensic medical examination. Children should be evaluated in the least crisis-oriented and most non-threatening environment possible. An ideal environment is a setting which can meet what are primarily ambulatory needs of these children.

There is a presumption that hospitals should be rallying points for regionalized services. In many clinical services that may be true, but for the vast majority of victimized children, the hospital environment is less than optimal. Regionalized centers need to have a close affiliation with a hospital for those cases which require diagnostic testing which cannot be completed on an outpatient basis or hospitalization as a result of their abuse. Hospitals, as a rule, have done little to date to reach out in their communities and offer services to abused children. Most hospitals and community-based physicians have shied away from getting involved, particularly in sexual abuse cases. In light of the fiscal constraints of our hospitals throughout New Jersey, it is highly unlikely that they will make the significant in-kind contributions necessary to support programs for the evaluation of sexually abused or maltreated children.

I believe that university affiliated programs are a natural resource for developing regionalized diagnostic centers. They are most likely to be the institutions which will attract the variety and caliber of professionals necessary. Universities have a natural role as outreach centers.

Universities have the necessary support services to develop the educational outreach to train professionals within the region and develop research to study the effectiveness of our intervention programs.

For example, at the University of Medicine and Dentistry School of Osteopathic Medicine, we have developed a model in our Center of Excellence: The Center for Victimized Children, which has resulted in a well-coordinated ambulatory-based diagnostic facility recognized within our county, and throughout the State and region, for its expertise and leadership in evaluative services for sexually abused children.

Further, our department was the first on the east coast to utilize colposcopy in the medical evaluation of sexually abused children. The Department of Pediatrics has also received a Federal grant, with the area Health Education Centers, to develop curricular training materials for doctors and other professionals within the State. Let's take advantage of these resources.

Without the institutional support of our Dean Humphrey and his recognition of the importance of these services, we would not have had the start-up funds for the personnel necessary to develop a true multi-disciplinary team coordinated by our Departments of Pediatrics and Psychiatry. Our needs, however, and the needs of the children and citizens of this State, go well beyond just start-up. Legislation and funding are essential for abused children to have the diagnostic and therapeutic services necessary to validate their allegations and meet their treatment needs.

In these few minutes, I have addressed some of the many issues which need to be explored further before proceeding legislatively. My concerns about the structure and location of diagnostic centers need further consideration. I would be pleased to continue to explore, with your Committee, details of the development of these resources.

I would strongly advise that all resources that are to be developed are made available to both victim and families of intrafamilia and extrafamilia maltreatment. In my opinion, it would be detrimental to a majority of children if only those families who voluntarily sought help were given access to these resources.

A sexually abused child does not know the sequence of events which cascade following the disclosure of their abuse. Telling their stories once is difficult enough, but telling it to school counselors, police, prosecutors, DYFS workers, psychologists, and doctors is very difficult, and will, in itself, be traumatic, unless we provide a network of trained professionals who understand how children are victimized and can provide coordinated intervention in a safe and therapeutic environment. I know that you want this for our children. I trust, and they hope, that you will meet their needs.

Thank you.

SENATOR COSTA: Thank you, Dr. Finkel. In September, when you presented your testimony, I thought it was the best recommendation I could have heard. I would like to see that in operation.

Tell me, the three centers right now-- Would they be able to handle-- If we put this through and made it law immediately, would they be able to handle it at the present time, or would there be--

DR. FINKEL: I think that obviously there is going to be a development phase. The answer may not be just three; it may be five, because if you look at-- If you were to take the concept of university-affiliated -- and they don't all necessarily have to be that way-- It would seem to me that taking advantage of places which have a nexus of professionals to begin with, would be a good starting point. I think we will need more than three, but I think that if we shoot in the direction of having each county develop something, I think we

are going to have a problem. Hopefully, down the road, we would see that each county would have sufficient resources to handle their own county problems, and utilize regional centers as development centers and consultative centers.

SENATOR COSTA: At the present time, though, it would take a while for start-up, to bring these seven counties together. How long would it take to get from anywhere in those seven counties to the center itself?

DR. FINKEL: Obviously, that depends upon the region. For example, we are currently--

SENATOR COSTA: You are located in--

DR. FINKEL: I am located near Camden -- in Camden County. So the seven counties, except for Cape May, are relatively close. It is not, obviously, appropriate-- It is too far for routine consultation, to come that distance, or to meet therapeutic needs on an ongoing basis. So we have to count on developing resources within each one of the counties. That is why the possibility of using these centers, if they have enough resources, until those counties develop their own to go out, let's say, one day a week, each one of those counties and provide consultative services and help them develop the network they need, and the programs they need, makes sense.

We may need more than three, but we would have to look at the volume of cases per region. There may be a discrepancy. Obviously, I don't think that the amount of use is equally distributed necessarily between each one of the three regions. So, the northern region, because of the increased population, may need two, or even three, centers. But I think we have to start somewhere. Three is a consideration, but it could be more.

SENATOR COSTA: That is the best way to handle the problem, because the overall person is being treated. I think that's great. Senator Brown?

SENATOR BROWN: Let me just underscore, having come out of county government, as did our Chairman, that I think we have

to rely on the counties being very essential building blocks in this whole delivery service for children. Therefore, any way that the counties are used as vital ingredients, you know, whether some of your people attend youth services committees in the various seven counties that you represent from time to time, certainly would be one way of having input.

I think that we can't let counties off the hook as far as the key role they need to play. The resources are always there. It is a question of how society wants to use them.

SENATOR COSTA: And we could use them properly with the proper instruction. Thank you, Dr. Finkel. We appreciate it.

DR. FINKEL: Thank you very much.

SENATOR COSTA: Cecilia Zalkind, Assistant Director, Association for Children of New Jersey.

C E C I L I A Z A L K I N D: Good morning. Thank you for the opportunity. I am back again to talk to you about the legislative proposals following the September hearing.

Before beginning my comments, I really do want to sincerely commend the Committee for its efforts. In my experience in the Legislature, there are many public hearings, but few results. So it is very exciting to see a list of legislative proposals that reflect this Committee's efforts -- its truly unprecedented efforts -- and commitment to looking at a very serious problem. In fact, we are very pleased with the proposals, and generally support each of them except for one, which I will discuss in a moment.

Our comments today are really in the nature of reorganizing and strengthening some of the proposals, because we would really like to see some of these developed into legislation. I will summarize this here in my statement before you, and will enclose testimony which more specifically spells out some of the recommendations we are making.

Basically, ACNJ recommends: First, that proposals numbers 4, 7, and 10, which all have to do with some outside

oversight of the Division of Youth and Family Services, be combined and offered as amendments to Senator Brown's bill -- Senate Bill No. 550 -- to create an Office of Child Advocacy in the Public Advocate's Office. There seems to be a growing consensus that there is a need for an independent, objective oversight of the functioning of DYFS. Questions have been raised both about the handling of individual case complaints, as well as the ability of the agency to identify and resolve broader systemic problems.

At the September hearing, many witnesses expressed concern about the ability of the agency to monitor itself. In fact, we commend Director Waldman for his recent public comments, and his comments this morning, on the need for an oversight office outside of DYFS. This is not a very popular stand for a Division Director to take about his own agency, and we commend his objectivity in looking at this.

Secondly, we feel strongly that the ability of DYFS to objectively handle institutional abuse investigations is a serious issue. This was raised by us at the September hearing, and by several other organizations. At that hearing, it was primarily in response to an assessment of the Institutional Abuse Unit within DYFS and the quality and timeliness of its functioning. I do wish to state, however, that this recommendation is one that our Association has made for a long time and, in fact, was an issue that we raised at child abuse hearings in 1984. We really do question whether it is appropriate for DYFS to investigate allegations of abuse in facilities in which it places, and supports children. The potential for conflict is too great.

These issues, to us, seem very similar -- the issue of handling complaints, looking at systemic issues, and institutional abuse. They all involve the independence, objectivity, credibility, and authority of an agency to resolve disputes, conduct investigations, and carry out actions and

recommendations on both individual and systemic bases. They also depend on the avoidance of even the potential conflict of interest. In many ways, the Office of the Public Advocate was created exactly for this purpose -- to provide both case and class monitoring of State agencies responsible for the State's most vulnerable citizens. In looking at the statutes that created both the Division of Advocacy for the Developmentally Disabled and the Division of Mental Health Advocacy, there is language that spells out the functioning of just such an oversight office.

We feel strongly that a similar office is needed to provide advocacy for children and families receiving services from DYFS. We envision this office encompassing several different functions:

- 1) To investigate and act upon individual case complaints;
- 2) To receive reports and data concerning the functioning of the agency as a whole;
- 3) To monitor conditions in programs and facilities;
- 4) To provide legal representation for children;
- 5) To investigate and take appropriate action on all allegations of institutional abuse;
- 6) To report to the Legislature and the public regarding the status of children served by the agency.

In fact, in looking at your proposals outlined in your memo, we could even envision a broader role for this Office of Child Advocacy to include oversight and monitoring of all the State entities that serve children. We are becoming increasingly aware that children's needs really do cut across divisional and departmental lines. In some departments, such as the Department of Corrections, children's needs compete with adult issues, and often children lose in that battle. In fact, I think the issue you raised about the Public Advocate's Office, Senator Brown, is a valid one, because both the Division of

Developmentally Disabled Advocacy and the Division of Mental Health Advocacy combine advocacy for adults and children. It might be more appropriate to combine all children's advocacy into one office for advocacy.

We realize this is a much broader suggestion that goes well beyond the scope of your legislative proposals. It would involve reorganizing divisions within the Office of the Public Advocate itself and removing certain functions from other agencies, such as the Institutional Abuse Investigation Unit from DYFS. We believe, however, that it is a unique opportunity to provide advocacy on behalf of the children in our State.

In many ways, Senate Bill No. 550 -- which we have long supported -- proposes a framework for this kind of a proposal. It is, however, more of an information and referral function, and does place the office in the Department of Human Services. With the amendments we have outlined, we think this could be a viable bill for creating this type of an office, and we would be very happy to work with the Committee further on this issue.

Secondly, we looked also at the issue of caseload size, and a cap on caseload size, in the context of a broader issue involving developing more community services. We are recommending that proposals numbers 1 and 9 should be combined and proposed as a Community Support Act of 1989. Although we agree that caseload size is a critical element in adequate case handling, there are other issues beyond setting a cap on worker/client ratios that might address this issue. The visitation program outlined in proposal number 9 is an excellent example. Although Judge Page proposed this concept in the context of supervised visitation between the child abuse victim and the alleged perpetrator, we view it as having broader value to children in out-of-home placement. Visitation for children in foster care is often difficult for an overworked DYFS worker to arrange, especially if they are responsible for transporting both the parent and the child to visits. Providing some funding

to develop services in the community to have such visitation programs has a number of benefits:

1) We think it would decrease the work load of the DYFS worker, especially if transportation were involved,

2) It might be more convenient in terms of working hours and setting outside the DYFS office for meaningful parent/child visitation. We also think it is far more appropriate for a family to be treated in its own community. That helps the family to achieve some independence.

What we are suggesting -- not that we oppose a cap on caseload size -- is that we hold off on this issue for a time; that we look to develop more community services, and that we also look to fill what vacancies exist in the Division right now. In our recollection, the Division has never -- even outside of the DYFS hiring freeze -- achieved a full staff complement. There are always ongoing vacancies. We would be very interested in seeing a concerted effort -- which I think was under way until the hiring freeze came into effect -- to fill all vacancies, and then do an assessment of exactly what the work load is for the worker, and whether the ratios that are outlined in this proposal are appropriate.

I would just like to also mention, as you know, we have conducted some advocacy with the Governor's Office around the hiring freeze. We feel very strongly that this is detrimental to the protection of the children in our State. I commend the Committee for following up on this issue. I think there are some interesting questions to be raised about the status of the freeze and the requests both for a blanket exception and exceptions for individual staff positions.

Three, we feel that proposals numbers 2 and 8 should be combined and introduced as the Child Abuse Reporting Reform Act of 1989. We endorse the Committee's proposal to make false reporting of child abuse a crime of the fourth degree. We are in general support of the amendments as outlined in the

proposal, but feel that stronger language is needed. In looking at statutes in other states, we would prefer specific language that requires evidence that an individual intentionally or maliciously makes a false report of child abuse or neglect, rather than the language that is currently outlined in section (a).

We would also recommend eliminating section (c), since false allegations can be an issue in cases other than those involving a custody dispute, although those have been the most traumatic examples. We also very strongly support amending Title 9 to allow reports of institutional abuse investigations to be shared with parents. We believe that a parent has a right to know when an abuse allegation has been made by, or on behalf of his or her child, and that the parent also has the right to obtain the results of that investigation. And of course, we would agree with any efforts to protect the confidentiality of people not directly involved in the investigation.

Four, we strongly support proposal 11, the child placement bill of rights. Based on the findings of our recent report, "Splintered Lives," which was highly critical of the State's out-of-home placement system, we endorse any efforts to express the rights of, and responsibility for these children. We are also aware that questions have already been, and will be raised about the narrow scope of this proposal. In fact, you could articulate a bill of rights for children in a wide variety of out-of-home placements. We would support that, as long as the specificity in this proposal is left intact. We were very pleased with all of the provisions, because we feel that they address all of the important issues involving children in out-of-home placement.

Five, we are recommending that proposal number 5 be introduced in lieu of proposal number 3. Proposal number 3, which would shift the primary responsibility for the investigation of child abuse allegations to the prosecutors'

offices, is the one proposal on this list that we cannot endorse. We believe that the aim of these two proposals is the same; that what you are looking for is some cooperative investigations among child welfare, law enforcement, and medical professionals, in order to minimize trauma to the child abuse victim and to conduct a thorough investigation. We believe that the idea of a network of county-based or regional-based centers, as Dr. Finkel described, is an innovative and effective response to these problems, and we would endorse such a legislative proposal. We would not support moving child abuse investigations to the prosecutors' offices. We feel this would be chaotic and not in the best interests of children; that DYFS, the child protective service agency, is the appropriate agency to investigate familial abuse.

If concern about DYFS and the prosecutors' offices is the motivation for the proposal, we believe this should be addressed in another manner, such as the diagnostic center, or in some effort to further improve relationships between DYFS and the county prosecutors' offices, which we understand have been very successful in recent years.

Lastly, we feel that proposal number 6, which addresses the rights of parents to understand what is going on during the investigation process, might, at this point, be more appropriately addressed in the regulatory process, rather than in legislation. This, in fact, is an issue we raised very strongly at the previous hearing, and we have continued since the hearing in September to hear from many parents who do not fully comprehend their rights and the role of DYFS in their lives, once an abuse allegation has been made.

We believe, first, that this possibility of the creation of an Office of Child Advocacy, as outlined above, will address some of these problems. We are concerned, however, and I would like to mention here-- These concerns are heightened by the fact that DYFS has not promulgated administrative

regulations to define their standards for practice and the rights of parents to an appeal process. We understand that the Division is now moving to develop regulations in all of its practice areas, giving priority to this area of initial investigation and response first.

While we applaud these efforts, we are concerned about the length of time it will take to draft these regulations. We think it is important for the Division to articulate a clear timetable to which it can be held accountable, so that their internal policies can finally be drafted into clear regulations. Until that occurs, we believe that children and families, as well as the agency itself, are highly vulnerable.

We are also very concerned about the openness of DYFS to include individuals outside of the agency in the development of these regulations. We have been working for a year with Legal Services in New Jersey, which proposed some similar regulations in the foster care area. We have been told that those are going to be set aside while the Division develops administrative regulations, and that, in fact, there will be no outside participation in this process, and that the public will have an opportunity to respond to the regulations only after they have been published for public comment in the "New Jersey Register."

We feel strongly that public input is necessary during the development of the regulations, to ensure that parent rights are addressed, and that a process is established to clearly articulate these rights to the parents on a case-by-case basis. We also believe that public involvement at the outset will ultimately shorten the length of time it will take to adopt these regulations.

Although as I have said, we don't see a need for specific legislation in this area right now, we would encourage the Committee to request that DYFS keep them informed of the process, especially as to its timeliness.

In closing, I would again like to commend your efforts. I think the legislative proposals are excellent, and have a tremendous potential to address the broad issues that came out at the September hearing. I would like to publicly offer the support and cooperation of our Association in seeing that these do become legislation and are enacted into law.

Thank you.

SENATOR COSTA: Thank you so much, Cecelia. I see that Senator Lipman has joined us. I would like to ask our Committee -- and I have already gotten approval from the two members who had to leave -- to endorse, by sending a letter to the Governor, support to lift the freeze on DYFS caseworkers. May I have a motion to that effect?

SENATOR LIPMAN: Yes.

SENATOR BROWN: I'll second it.

SENATOR COSTA: It has been moved and seconded. Roll call?

MS. LEBLANC: (Committee Aide) Senator Costa?

SENATOR COSTA: Yes.

MS. LEBLANC: Senator Lipman?

SENATOR LIPMAN: Yes.

MS. LEBLANC: Senator Brown?

SENATOR BROWN: Yes.

SENATOR COSTA: Thank you, and we do have yeses from the other two members. Thank you, Cecelia.

MS. ZALKIND: Thank you very much.

SENATOR COSTA: Our next witness will be Gennine Frisby-LaRue, Associate Director, New Jersey Education Association, Government Relations.

G E N N I N E F R I S B Y - L a R U E: Good morning, Madam Chair. I want to thank you for this opportunity for NJEA to speak again on this issue. I am going to defer my testimony to Trudi Thornton, who appeared before you at the first hearing. Trudi is the Associate Director of our Instruction and Training Division.

T R U D I T H O R N T O N: Good morning. This is not on?
(referring to microphone)

SENATOR COSTA: That is for our recorder.

MS. THORNTON: Oh, okay. I want to thank you again for allowing me the opportunity to come and speak on behalf of the New Jersey Education Association. A number of the items that are addressed in NJEA's testimony have been touched upon, so I will briefly make comments, and then go on to share with you our primary concerns. I think in light of the services that we are seeking for children in the State of New Jersey, it is important not only for you, members of the Committee, but also for those people who are here today out of an interest for children, that I explain NJEA's basic tasks and responsibilities in New Jersey. There is a dual task involved.

I, as a member of the Instruction Division, am the staff contact to the New Jersey Education Association's Youth Services Committee, which functions, probably, in a similar fashion to this Committee. I have been serving on a subcommittee to the Governor's Task Force on Child Abuse and Neglect, and I am currently serving on a working committee. The responsibility of the working committee that I am involved with is that of reporting and screening child abuse reports in New Jersey.

I think it is important for everyone here to understand that while we are concerned about our members' rights, we are extremely active in working for the children in the State, primarily because anything that impacts upon our youth, impacts upon the educational system.

The testimony that is outlined for you (referring to written testimony) deals with a number of aspects. Copies of testimonies that were prepared by NJEA, which were presented to the New Jersey State Board of Education, based on the guidelines that the Department of Education drafted, along with the Department of Human Services, raised numerous concerns for the

New Jersey Education Association. I have outlined those concerns for you, and I am going to just touch upon them briefly, because they do then impact upon what it is that I will be talking about when I refer to your proposals.

Concerns that exist right now are primarily the training of DYFS investigators, their involvement in school investigations, the impact they have had on disciplinary actions taken against school employees, and their overall involvement in what is considered the educational process. The fact that we have investigators coming in who are not adequately trained in what goes on in an institutional setting such as a school, and yet they are part of a process that is extremely difficult for us to understand, makes us question their involvement at all, or at least the need for additional involvement in investigating school allegations.

The second concern that is raised in the testimony is the assistance that DYFS receives from the schools. The schools are our number one source for assisting students -- assisting children in the State -- and yet we have concerns about the confidentiality that has been violated when reports are made from the schools, and the failure on the part of the two to find a way to work together for the benefit of children. It is a source of contention that has been ongoing that has been shared by NJEA on numerous occasions. We believe there is a better way.

I would like to just take a moment to reflect on Senator Rand's resolution, which, in fact, calls for a review of DYFS. While the testimonies that were received back in September primarily dealt with out-of-school settings, it has occurred to us that the law is all-encompassing. I had Senator Ambrosio ask me why we just didn't go in and negotiate changes. The law supersedes anything that we might negotiate in a school district, and concern for children has placed us in a situation of questioning why these things are happening. A letter that has been shared with you today was received yesterday from one

of our members. I think he states some very interesting points as to what is going on in the State, and why there is a tremendous need to correct the existing law, or at least make some amendments.

Senator Rand did, in fact, ask that we review DYFS. NJEA questions the wisdom of proposing legislation prior to more input based on the investigation that is taking place. We are, in fact -- probably for the first time -- talking-- There are individuals from numerous agencies, all concerned with children, who are, for the first time, meeting and sharing concerns, sharing problems, and trying to work out solutions. We would hope that what testimony is shared today based on the work that has been done to date, would impact on the final drafting of any legislation.

NJEA asks the following questions, and would hope that the Committee would, in fact, keep them in mind:

Do we have a comprehensive overall plan as to where, as a State, we are trying to go on behalf of children?

Can new procedures actually be implemented without a complete review of DYFS?

Are legislative proposals premature at this time?

Now, while I am raising those questions on behalf of NJEA, I share with you that NJEA is also looking into areas where the law should be changed. So, we are basically all doing the same things.

We support, and we commend you for your actions. They are actually extremely timely and surprising, I'm sure, to everyone who is here. I, myself, was extremely surprised to see them so quickly. We support a number of them, and I will share with you any concerns we have based on those.

We totally support limiting caseworker to child ratios and caseworker supervisor to caseworker ratios in this State, and applaud you for the motion that was just passed on behalf of the deleting the freeze.

We support the development of a child placement bill of rights. NJEA believes that children need protection, and that these children have special needs that must be addressed.

We support funds to be appropriated for supervised visitations, with the understanding that the goal would be that children belong with their families, if situations allow, and all efforts should be made to, in fact, keep the family intact.

As far as the deletion of the absolute criminal immunity and the making of false reports of child abuse a crime of the fourth degree, while we support this legislation, NJEA urges the Committee to amend the legislation so that it, in fact, covers all bases of false allegations. What we are now seeing in educational institutions -- and I will clarify that -- is that the people who have chosen a profession in which they work on a daily basis with children, are the most at-risk members of our society today. While we are calling on them to identify and assist the youth, we are lacking a quality of trust that is absolutely necessary. What we are hearing from the institutions -- from the schools in New Jersey is, DYFS -- "Just keep them away." If we are going to work together, we have to find a better way to deal with the existing problems. False allegations are an ongoing situation right now, and a real problem.

Joint investigations-- We support the concept. However, NJEA believes that institutional investigations should not be conducted by DYFS. If DYFS can assist, that would be one area of consideration, but for the most part we believe that the national guidelines calling for an arm of the law to investigate in institutional settings would be a more appropriate source of investigation.

NJEA recognizes the need to develop a network of county-based centers to assist DYFS in the county prosecutors' offices throughout the State. After listening to testimony this morning, a lot of thought has gone into how that would work.

The contention that NJEA has listed in the testimony is simply one of, "Can we accurately evaluate a system at this time, and do we need more information before establishing such centers?"

Requirements should be established for informing parents of their rights and the time frame applied to DYFS investigations. We certainly do support that.

There are only two areas from your draft legislation that, in fact, we find some serious concerns with. First is the establishment of the Office of Ombudsman for Children. Primarily here we question the following: Who would be employed in this particular area? What training would be provided? And, funding, for a number of reasons: A lack of funding right now. The pay that is being received by individuals who are actively investigating allegations of child abuse in New Jersey is lacking and, in fact, if we are creating another office, will we now be spreading out a situation and creating so many arms to this process that we will, in fact, be doing less service to the children?

The second is, access to institutional child abuse reports by parents. We also believe this would be a violation of confidentiality, and could hinder due process, and probably hinder the entire investigatory procedure. Parental reaction could, in fact, create a serious problem.

In conclusion, NJEA would ask you to look at the law closely. The fact that it is all-encompassing and that school employees, institutional employees, are responsible for adhering to that law-- We have received drafted guidelines from the Department of Education and the Department of Human Services, and we raise questions based on the fact that, while they comply with the existing law, we don't know that they will comply with what the Governor hopes to see accomplished. We do not believe that, in fact, local options should be part of the guidelines that will exist. We would like to see statewide guidelines for dealing with child abuse, so that everyone working with children

will know exactly how to make a report, how to assist a child, what their protection will be, and, in fact, how to conduct themselves should they be the recipient of an allegation; should they be the target, so to speak.

While we have an all-encompassing law, we lack definitions of child abuse and neglect as they should be applied to different settings. This is an area of the law that needs to be addressed. There are definitions in the law, but how they apply to different settings is misleading and have created difficult situations for those investigating. What constitutes child abuse in a school? I have had different definitions provided, but they don't match. In a home setting, corporal punishment to a degree is acceptable. It is not acceptable in a school setting, yet the law is all-encompassing. What NJEA is seeking is-- While we have an all-encompassing law, there have to be provisions made so that we can apply the law, and apply it justly.

NJEA is making the following recommendations today:

The law should differentiate between parental, caretaker -- and I will emphasize -- school employee conduct. Clear definitions are needed as to what constitutes abuse, and how we are going to apply the law in the different settings. Along with that, there is the question of school monitoring. Where does daily, everyday school discipline end, and child abuse begin? To date, as far as we know, no one has been able to identify that.

The second recommendation is that DYFS not conduct investigations of school-related allegations of child abuse and neglect. And the third, which is directly connected to that, is that the national guidelines calling for law enforcement agencies to investigate all institutional, including school, investigations be, in fact, turned over to an arm of the law, and that we incorporate that in the New Jersey law on child abuse and neglect.

I would restate that while education and the educational system provide a very valuable resource in the protection of children-- I will just take a moment to indicate that Senator Brown mentioned this morning a kindergarten teacher who placed a call. I would say that that was probably the first time that someone in an educational facility was given credit for protecting children, and it pleased me tremendously.

We are a service to the children of New Jersey, not only their education and their growth, but their safety and protection. Anything that will violate the trust and the working together of interested agencies is going to continue to create problems. Our hope is that we can work together; that we can protect the people who have chosen to work with children, so that they, in fact, can protect the children.

Thank you.

SENATOR COSTA: May I ask you a question regarding reporting of child abuse? The schools are the best place to see what is happening to a child. Teachers can see the difference physically, emotionally, etc. Are you saying that the teachers are afraid to report it because they don't like the investigation that may occur to them, putting them in the spotlight?

MS. THORNTON: They are afraid to report, for several reasons: Their primary concern is that even in cases where they say, "Please keep my name confidential," and try to cooperate, they will indicate that they are from a school, and they will give the school's name, address, and phone number, so that DYFS investigators can use them as a resource and as an assistance, to some degree. They can go in and check files and gather information. Where names have been given out, and it is becoming an almost every-time situation, they are finding outraged parents becoming vindictive, and the school system itself is suffering. Parents are now saying, "The school is just reporting us for nothing, and we have DYFS investigating us." So, they are concerned with that.

SENATOR COSTA: I personally feel that the Lisa Steinberg case would not have come to the end it did, if the schools had noted it. I don't see how come they didn't note it. If what you are saying is that teachers choose not to say anything, I think that's terrible.

MS. THORNTON: There is also confusion as to the person who should be reporting it. This is part of what we are looking into -- the working committee I am currently serving on -- "Whose role should it really be, and what should the overall effort of that institution be to protect a child?" There is fear -- tremendous fear -- on the part of--

SENATOR COSTA: There is something wrong here, where we have the information right before us, and we are not using it to protect children. I think that is a crime; I really do. I think if that is the case, we really have to look further into what is making that so.

MS. THORNTON: The other area is, they don't differentiate.

SENATOR COSTA: I am quite upset over that.

MS. THORNTON: When school employees hear "DYFS," it's DYFS. They don't differentiate between the individuals who they report to and the individuals who come in and do investigations on school employees who have been accused of child abuse. That has created another situation. The trust factor is really lacking.

SENATOR COSTA: I think the children should come first in any teacher's mind. Their welfare should come first, before themselves. I think that would be a true indication of their service.

Senator Brown?

SENATOR BROWN: Two quick observations: First of all, I think it is important to showcase when you see something that, in your own opinion, has been done right. We also wonder what roles administration plays in the school. But I thought it was

very appropriate -- on my public television station last night -- to see the principal taking the responsibility for dealing with the press and the public on this issue. The teacher had triggered the system. The system seemed to work and, of course, it was in the Chairman's home county of Burlington that this all took place. As an elected person, I felt very pleased about the way that whole situation was handled. I think you have to showcase the good.

Secondly, let me just say that I always think that the best defense is a good offense. So my idea behind an Ombudsman for Children is not only to strengthen the investigation aspect, but to really help the public to recognize that each individual child is a miracle himself or herself, and is not something to be imposed upon or to be used as an object of frustration, and so on. The schools are there doing a marvelous job, but we in society have to help you more.

MS. THORNTON: I would just like to go back to the principal's role. We don't know what that is. There is conflict within the schools. We have administrators who very much want to be the ones to determine whether a call is made or not made, and yet the law very clearly specifies that every individual is responsible. We have members who have experienced adverse situations, based on their calling and making a report. They say they will not do it again.

SENATOR COSTA: I think you need some work in that field of education entirely, as far as what to do, and obeying the law. If you are neglecting it, it is a sad commentary. And if you have to get to your principals, and say, "What is the procedure; what exactly do we do?" I think it should be done. I think you should do it as soon as possible.

MS. THORNTON: The law has been explained, basically, to all of our members.

SENATOR COSTA: I know, but if you are holding back on the--

MS. THORNTON: There is still a fear aspect. I share with you today that the primary source of that fear is based on the false and malicious allegations that have taken place. It is becoming a very clear situation, where if an employee in a school would create any kind of situation among parents that is uncomfortable, the chances increase that someone in the community will be reporting somebody.

SENATOR COSTA: Well, that is unfortunate. But I believe you see that the legislators disagree about this discomfort. This is the reason for the resolution that made the hearings that we had before, and what we are trying to do now.

We would like to work together with you. If there is anything we can do to see that you do have definition as to what procedures to follow, then it's done, because I think that is the one place where we really can find out right away which child is being abused.

Thank you very much for your testimony.

MS. THORNTON: Thank you.

SENATOR COSTA: I would like to call out of order here, Mr. Robert Benjamin. He has come from New York, and he has a time constraint, so I am going to take him out of order at this point. He is a private consultant. (Senator Costa consults with Aide and Dr. Schreiber at this point)

Mr. Benjamin, I'm sorry. I will have to stop for just a moment, and ask Dr. Schreiber to come up. He is a Professor, and he has classes he has to get back to.

I know everybody wants to be first, but I'm trying. Dr. Schreiber? You will be next, Mr. Benjamin, so don't stray too far away.

D R: M E Y E R S. S C H R E I B E R: Senator Costa, members of the Committee: Thank you very much for the opportunity to appear. My name is Meyer Schreiber. I am Professor of Social Welfare at Kean College of New Jersey in Union. However, I am speaking as a private citizen in the

public interest. Part of my appearance is predicated on my experience as a social worker and a social work educator. I have served as a consultant on children's services for the United States Children's Bureau. I volunteered for almost two years with the Child Placement Review Board in Newark, and particularly, I have spent the past 16 years as a professor at Kean College, where of our 800 graduates since we started our bachelor's social work program, we have encouraged 40% of our graduates to go to work for DYFS, which we think is a rather particularly important achievement. It is this matter of who provides the services that I would like to testify on today, because I think in your Committee deliberations and the proposals, there is one scant proposal that deals with the person who delivers the services, and I would like to take this opportunity to expand on that.

First, I would like to indicate that two key things are clear to me in addressing the work of DYFS. First, this is an agency that is entrusted with the most vulnerable, the most upset, the most chaotic families in our midst. The type of crisis work they do is almost unknown to any other agency of government, except possibly public assistance. And the addictions, the unpredictability, the lack of an early warning system-- Our current state of scientific knowledge is still so primitive, that we come upon families, through a system such as DYFS, when they are the most vulnerable; when they are the most destroyed. And yet, we are expecting people to perform the kinds of things that are almost impossible, given the way the family and the child have been dealt with.

The second point I would like to raise is, the child welfare field today in America, and in New Jersey, is experiencing severe shortages of staff at all levels, particularly social workers. There are other areas, it seems, that people want to work in, rather than child welfare. It is no longer a status kind of job. So this is occurring at a time

when the number of children and families coming into care is increasing; it's soaring. The result is that DYFS is devoting considerable of its resources and energy to recruiting trained staff.

So, I would like to raise some suggestions for the Committee's consideration, that deal particularly with staff, because as I look around and listen to the advocates, this is one area which does not seem to be within their agenda.

My first suggestion is a very unconventional one: That the Director of DYFS be given a position, kind of, an appointment for four or five years. I think Mr. Waldman is a superb Director. I believe that--

SENATOR COSTA: Dr. Schreiber, I am going to interrupt you here, because I would like you-- You know, we think very highly of Director Waldman, but we would like to stick to the agenda, and that is the proposals submitted.

DR. SCHREIBER: Well, I am touching on it through your one to 20, and I would appreciate the opportunity.

SENATOR COSTA: That has nothing to do with our proposals.

DR. SCHREIBER: The one to 20 caseload ratio you raised--

SENATOR COSTA: Oh, all right. Go ahead.

DR. SCHREIBER: --my point being, I think his job, or the job of the Director of DYFS, is one of the most demanding. There are political pressures; there are public pressures; there are all kinds of pressures to deal with. If we are to recruit and retain the best and the most competent, I think we have to give the person a time frame within which one could really develop the kinds of programs that everybody is testifying about today, and that your Committee is asking for. So, that is my point.

Secondly, I think the DYFS worker who is now called the family service specialist -- who used to be called a social

worker -- is a source of much difficulty. Everything everybody has said, and your Committee is looking at, is predicated upon the fact -- or on the assumption that the worker there is the person who can really deliver the goods. No one has looked at the fact that some DYFS district offices have turnovers in one year of 50%, 60%, 70%, 80%, particularly in urban areas. No one has looked at the fact that many DYFS workers are art history majors, are economics majors -- anything but social workers. There is no requirement today in DYFS that a person going to work have a bachelor of social work degree or master social work degree. And yet, we are asking them to do all of this work that society is throwing their way -- repairing families, helping children, and so on.

The State Department of Personnel has declassified it from a social work position. DYFS, never in its history, said, to all who have worked for us, "You have to be a bachelor social worker," or to all who have worked for us, "You have to be a master social worker." I think your Committee ought to be concerned about this, because why do people burn out? Why do they quit? Because they are not trained for the exigencies that are thrust upon them. They have a month of training, and within six months many people leave, because they can't take what is demanded of them, not having the social work training that is so urgent for them to have.

You could establish a caseload of one to five for a worker. That means nothing if the worker doesn't have the basic knowledge, the basic skills, the basic commitment. Unless someone is going to turn attention to the personnel involved in delivering these services, the people out of all these monitors, whether it is an ombudsman or the Public Advocate-- If they are going to monitor, they are always going to come back to, "What is the competence of the person? How well is that person doing the job?" Unless we can strengthen the adequacies and the competencies-- You could get the Governor to fill those

positions tomorrow, but if those positions are filled by people who do not have the background, we are not achieving anything. The Governor may bend, or his management committee may agree, but we need to get people.

To show you further how difficult this is, DYFS pays almost \$24,000. That is more than many social workers with a master's degree get in New Jersey. But yet, very few of them are attracted to DYFS. They all wind up in private agencies, some of which DYFS contracts with, and gives DYFS money. Now, why is this? A, because, unfortunately, over the years, the State, the citizens, the professional groups -- including my own social workers -- have allowed DYFS to get in a terrible state. We pillage, we thrust upon them, we criticize them. Where their credibility is lost -- as you just heard from a woman who I don't think knows all the facts-- DYFS has been made responsible. It is as if we are blaming DYFS for the sins, or for the errors, or for the derelictions of the parents and the children who are involved in the system. Very few people have a good word for DYFS. How are we going to build a system unless we get people in there who want to do the job?

Similarly, DYFS has an assistant supervisor job. Again, that is something where someone comes up in the rank. We have to develop ways of strengthening that job. DYFS has no educational leave. When I worked for the Children's Bureau, we poured millions of dollars into giving agencies like DYFS Social Security funds, so that they could send their best workers, for two years, to get a MSW, so they could come back. That is no longer possible with Federal money. It is no longer possible with State money.

When is the State going to realize that they need to upgrade the level of performance of the workers? When Mr. Albanese was Commissioner, he was red hot on management. That's great, but you can't manage unless you have people in the front trenches, in the front lines. There is nothing being done for

those people today. If they wish to get graduate training, they do it on their own time. After a day in a DYFS office, or in the field, one is hardly in a position to do this kind of thing.

My final point is about some of your recommendations about an ombudsman or whether, as some others have said, a Public Advocate, and so on. I would like to urge very, very careful consideration of whatever monitoring. It seems to me that everybody is ready to monitor DYFS, and some of us have seen the kinds of monitoring regulation that the Office of the Public Advocate does in other kinds of areas, other kinds of monitoring. This agency needs help. If you help them to get the best people, if you help them to get people who can do the job, we won't need all these monitors. Everybody is anxious to monitor. Go to a district office; see the paperwork.

Now, I recall when child placement review boards were formed. Very few people remember why they were formed. They were formed because the Advocate said, "We have lost faith in DYFS. We want the court to appoint citizens to review DYFS' work." No one has never looked intensively. In fact, I think we have a new special interest group called the, "Child Placement Review Boards." They have a whole litany of organizational activities. What impact has that had about DYFS? Now we have the court-appointed special advocate again coming in.

Maybe we need one central monitoring kind of job, but we certainly need to give the people who are in the front lines -- the unsung heros -- the kinds of capacities they need. It is dismaying to me to hear about people who truly have the interests of children and their families at heart, forgetting about the person who quits the job after four months, and you can't get a replacement, and you're not sure the replacement is going to be any better than the person who left.

The administrative problems of trying to run an agency like DYFS are tremendous. There is no other agency of State

government that I know of that would be willing to settle on the qualifications of its workers than those that have been imposed on DYFS. Here we have a medical school faculty member. He wouldn't hire anybody less than an M.D. to run those clinics he talked about. So why are we willing for DYFS to be allowed to hire somebody who majored in art history or romance languages? I have nothing against those particular areas, but certainly I think that the children of the State deserve somebody who, by interest, aptitude, and education, has shown that this is where one's commitment lies; that it is not merely a job. It is a career; it is a professional task.

I'm sorry, Senator Costa, that I took to secure this route, but I think someone has to speak up about what is going on. I don't know how many people in this room have ever been in a DYFS district office. I don't know how many of them ever looked at what the people are doing. But I think this is what has to be done.

So, thank you again.

SENATOR COSTA: I'm sorry you haven't attended our other public hearings. You would have heard of our concern that we cannot hold special workers in DYFS. We're trying.

DR. SCHREIBER: Well, I'm sure you have that concern.

SENATOR COSTA: Thank you. Mr. Benjamin, please.

R O B E R T B E N J A M I N: Madam Chairman, members of the Committee: My name is Robert Benjamin. I am a management consultant based and living in East Windsor. I would like to thank Senator Costa and the Committee for allowing me to comment on the proposals being discussed today.

I have a longstanding interest in the problems of child abuse and neglect. In 1974, while consulting to a management services agency for community health centers, I designed a prototype of a data collection, tracking, and reporting system, whose purpose was to identify children at high risk by collecting data from multiple sources. I am now working with

Dr. Vincent Fontana, Chairman of the New York City Mayor's Task Force on Child Abuse, and with the Lisa Foundation, a children's advocacy organization named for Lisa Steinberg, whose members are primarily attorneys, physicians, and other professionals. We are updating the original design I developed in 1974, as a means for advocating improved case finding in New York.

I would like to comment on proposal number 1 aimed at improving management ratios. I believe that any sound management policy, regardless of the organization, must include realistic ratios, but improved case management must start with improved case finding, and must include improvements in the quality and quantity of information on which decisions are made.

In many ways, New Jersey does a far better job of collecting and using abuse and neglect data than does New York, but we must improve DYFS' ability to obtain data collected by mandated sources, such as schools. This means constant fine-tuning of our data registry systems and increasing educational programs that are themselves aimed at increasing and improving case reporting by mandated sources. In addition, we must recognize that the ratios proposed and the support systems they will require will cost money. As a father, and as a taxpayer, I have been, frankly, insulted over the past eight years to hear that I am not willing to pay more in taxes to see the United States meet its moral obligations to its children.

I am not wealthy, and there are many Federal and State plans to spend my money that I will oppose, but I would appreciate it if you would ask me, before assuming what my moral priorities are. If saving children from abuse and neglect costs me money in the form of increased taxes, then take it.

I also support the proposal for a network of county-based diagnostic centers. Decentralized team approaches to case management have proven effective in improving a number of health and social problems, and I believe they are a sound strategy. Again, these will require the Legislature to put our

money where your mouths are and, in my case, you are welcome to it.

Regarding the other proposals before you, I have serious doubts, as have, I guess, most other people testifying today, about the wisdom of reassigning primary responsibility for investigation to county prosecutors. At the same time, and for similar reasons, I cautiously favor the other proposals.

We have begun to see a backlash against improved protective services, largely as a result of anecdotal horror stories about adults whose lives have been ruined by false allegations of abuse. These horror stories are used by well-intentioned groups with little regard for their negative impact on the protection of children. I believe that in order to maintain public support for improved children's protective services, the agencies responsible for those services must constantly guard abuse of their own authority. In addition, they must constantly work to earn the public's trust in the areas of confidentiality, fairness, and rigorous self-management. The proposals that address these issues can only help to increase public confidence in DYFS' fairness and confidence.

Again, I thank you for your courtesy and attention.

SENATOR COSTA: Thank you, Mr. Benjamin. I would now like to call Arnold Herman, Director of Foster Friends, Inc.

UNIDENTIFIED SPEAKER FROM AUDIENCE: He is outside somewhere.

SENATOR COSTA: Okay. Art Fau, Parents Without Partners? You are? (speaking to gentleman who approaches Committee table)

A R T H U R A. F A U: Art Fau.

SENATOR COSTA: I beg your pardon?

MR. FAU: Art Fau.

SENATOR COSTA: Oh, Mr. Fau. Okay, thank you.

MR. FAU: Good morning, Chairman Costa, Senator Lipman, Committee members, Committee staff, members of the public. I am grateful for your invitation to return before you today, to offer suggestions and comments that will contribute to improving the services from the Division which are needed by the families and children of our State.

Initiative 2, making false reporting of child abuse a crime of the fourth degree, is without a doubt a necessary action that is long, long overdue. For the same reasons that were given for this initiative, particularly that which acknowledges the malicious actions made during the pendency of a divorce proceeding, it is also necessary for the Division to be at least acknowledged as a source of information as to the issues and actions that occur, which the courts may consider before making awards and judgments which affect children.

Initiative 5, which proposes to develop county-based centers to provide a coordinated approach between social, medical, county justice, and law enforcement agencies is a good concept. Yet, not one of the initiatives proposes any type of demonstration projects which have been identified by the Federal government in the Family Support Act of 1988.

One suggestion I would offer, is that we should be concerned and interested in projects which could test the effect of in-home early childhood development programs and preschool, center-based development programs, which would emphasize the use of volunteers and would also include the possible academic credit for student volunteers. The program should be able to demonstrate that programs can enhance the cognitive skills and linguistic ability of children under the age of five. These same programs should encourage involvement by parents in family-centered education programs that will assist the children directly in achieving these goals, and also help the parents contribute to the proper development and education of their young children. The Division could also be involved in the

development and coordination of interdisciplinary approaches to reducing school dropouts and encouraging skill development with existing community-based organizations around the State.

High-risk teen-agers have been identified as any male or female who has reached the age of 10 and whose age does not exceed 20 years, who: Might have a history of academic problems; who might have a history of behavioral problems, both in and out of school; comes from a one-parent household; or may very well either be pregnant or have parented a child. Yet, our State has limited and marginally effective programs addressing these high-risk teen-agers. We can see that by the incidences of teen-age pregnancies, teen-age suicides, and certainly teen-age substance abuse.

Programs are needed in which a range of non-academic services -- sports, recreation, the arts -- and self-image counseling are provided to these high-risk teen-agers. One idea could be the forming of a clearinghouse, similar to the New Jersey Self-Help Clearinghouse, where high-risk teen-agers could be referred to, and encouraged to participate in, these non-academic areas, such as the arts, the recreation, or the sports, which are already in many of our communities.

The ombudsman is certainly needed to investigate complaints made by individuals against abuse and capricious acts alleged against the Division, but to advocate for the children and families in that same capacity as a possible official oversight committee is doubtful, in my opinion. Historically, it has always appeared that the ability of an advocate, when part of the bureaucracy, to receive adequate resources to investigate and make reports is, in my opinion also, a sad commentary. But what I think we have seen work, and what stimulates what President Bush called, in each one of us, the "wisdom, the integrity, and the courage" -- which we all have, and which we need to bring out -- is if each and every one of us is acknowledged and encouraged to be an important element in the

solution. In my opinion, if we establish some sort of a commission, composed of members from the various affected interests, such as the single parents, the foster parents, parents with special parenting concerns, professionals in social work, educators, and individuals in both government and business-- At the very least, the commission could be expected to hold conferences or to get out around the State to gather information that could be used in making a report back to the Legislature on the effects of legislative action and the possible need for further action by the Legislature.

In conclusion, I think the work of this Committee so far is a foundation -- a very strong foundation -- but what we have to do is create something that will be dynamic, something that will be motivation for us to continue to respond to how families will change today, tomorrow, and in the future.

I ask that this Committee keep that in mind, and I thank you.

SENATOR COSTA: Thank you, Mr. Fau. We appreciate it.

Arnold Herman, are you back in the room? (affirmative response from audience) Okay. Mr. Herman is Director of Foster Friends, Inc.

A R N O L D H E R M A N: I apologize for not being here when you called me, Senator. I had to feed the parking meter downstairs.

SENATOR COSTA: That's all right.

MR. HERMAN: First, I would like to add my thanks to everybody else's for the work that has been done by this Committee. I think the fact that you came out with this so quickly was a real surprise to all of us, and of course we are all very gratified by it.

I am just going to limit my comments to a few sections here, because some of the other stuff has already been covered, and other things I am sure will be.

SENATOR COSTA: I would appreciate that. We are limited on time.

MR. HERMAN: Okay. I will try to be as brief as I can, Senator.

In section 2, there are three -- a, b, and c, and there is the word, "and," after b. It says, "The alleged abuser committed the abuse and neglect and has the intent to use--" I wonder whether that would eliminate, for instance, a neighbor; in other words, where that "c" has to be one of the criteria for violation of such a law, if it is passed this way?

SENATOR COSTA: Well, just let us hear what you have to say on this -- how you feel about it.

MR. HERMAN: Okay. If I understand it correctly, it is limited to people who have the intent to use false information to influence a child custody hearing. If that is the case, I think it would eliminate cases of people who do it for malice; in other words, a neighbor who is mad at another neighbor, a distant relative who might want to get back at somebody, you know, an in-law who they don't like. I really think it has to be broad and beyond that to include anybody who maliciously makes such a complaint, regardless of whether it is to influence a child custody hearing or not. That was my question on that point.

Going to sections 3 and 4, we at Foster Friends and as foster parents, are against this as being unworkable and even more of a hardship on people who are unjustly accused of some sort of abuse. The way it works now in many counties is, a DYFS worker will come in with a local detective from the municipal police department. Now, it is traumatic enough for someone to have a DYFS worker come into their house and basically accuse them of molesting or abusing a child. When you add a detective from the local police department, that makes it a little bit worse. If you add still somebody from the prosecutor's office, and this is going to be real, real traumatic for people who

possibly did not do anything. As we know from statistics, about 60% of the people who are investigated did not do anything.

We also feel it is unworkable because of the amount of people who would be needed in the prosecutor's office. To run out every time an allegation is made, we think, would be completely out of line.

What we feel is needed, and we mentioned this before, is a trained -- and I underline that word "trained" -- team of investigative people, including someone from DYFS, including a parent, and this word, "parent," again I think we should underline. There has to be someone who is experienced; someone who knows the difference between horseplay with a child and molesting a child; someone who knows the difference between spanking a child and physically abusing a child; someone who knows the difference between hugging a child and, again, sexually abusing a child.

I think the biggest problem -- and I think you heard it more so at the last hearing, than you have today -- is the fact that DYFS sends inexperienced workers out to investigate, people who are not parents; people who have never dealt with children. I think the only way this is going to be solved is for there to be standing committees in each county, consisting of a DYFS worker, because that is a necessity, consisting of a parent, a very experienced parent, and perhaps consisting of somebody in the medical field, be it a psychiatrist or someone from the actual medical field to make a determination where sexual abuse is charged. I think this is the only way we are going to solve this, not with people from the prosecutor's office, not with putting more people into the DYFS agency. I think once and for all, the rights of people who are not guilty have to be protected. The only way they are going to be protected is when the person who comes in to investigate has a full knowledge of what might take place, not just a book knowledge of what somebody says might have happened.

My last point, Senator, is on the point of bringing the caseload ratio up. Although as a foster parent I probably might support that in practice, again I don't think it is very realistic, in view of the fact of the hiring freeze. Even if the freeze is put aside, you are never going to get that one to 20 ratio, I don't think, under present circumstances.

I am also personally not sure it is a good idea. We have a system right now -- and you heard this at the last hearing -- where many people, including our organization, feel the agency is out of control -- the DYFS agency. The problem seems to be that you have good leadership on top who is trying to make changes, and you have people on the bottom who are paying no attention to what the top is doing. To add more people to this, to make it bigger, is just going to make it more out of control. I think whatever has to be done, adding numbers is not the answer. As I say, I sympathize with the worker who is overworked, and I agree they are. I am a member of the Child Placement Review Board, and I know the paperwork they have. It's way out of line. But adding more people to a system that is already running out of control, I don't think is the answer, unless you have controls to bring it back into the limits.

I will limit my comments to those, because, as I said, there are many other things in here that we agree with.

SENATOR COSTA: Thank you very much.

MR. HERMAN: Thank you.

SENATOR COSTA: We appreciate it. Cathleen Dillon McHugh I am going to try to get everybody in before 12:30, because we have to be back to caucus at that time. So, I appreciate your--

CATHLEEN DILLON - McHUGH: I am going to let my sister, Nancy Havemann, read the statement. It is from both of us, and my parents, Rose and William Dillon. There was an error made on the witness list.

N A N C Y J E A N H A V E M A N N: Senator Costa and Committee members: My family and I would like to thank all of you for the time and effort that has been spent in developing the proposals for legislation concerning the Division of Youth and Family Services and their handling of child abuse cases.

Limiting caseworker to child ratios is a wonderful idea. This will help alleviate stress on the part of the caseworkers and hopefully enable them to be accurate in their judgments and avoid unnecessary false accusations, in addition to protecting children who need outside intervention. However, how feasible is this proposal with a hiring freeze on in the State of New Jersey? As to additional costs, if additional personnel are hired, who will bear this cost? Perhaps some of the politicians can do away with some of their unnecessary perks.

Making false reporting of abuse a criminal offense is a good proposal. This is all well and good for legitimate false accusations. However, what happens to the DYFS worker who claims innocence to falsely making an allegation? Will it still be their word against the accused? How will you be able to identify the person making the accusation if calls are confidential and can be made anonymously?

As to proposal number 3, currently DYFS sends their information to the prosecutor's office for possible grand jury indictment. Does this proposal indicate that a DYFS worker would merely make a report to the prosecutor before an arrest is made? Under all circumstances, criminal charges should not be filed until an investigation of both the victim and alleged abuser is undertaken. This investigation must be done by persons trained, and I repeat, "trained," in handling child abuse cases. Backgrounds of the victim and alleged abuser must be checked. As the law now stands, when someone is arrested for child abuse, he is presumed guilty until proven innocent. Hopefully, proposal number 3 will help alleviate false arrests. Under no circumstances should a "less sophisticated" DYFS worker be involved in any child abuse case.

The Office of Ombudsman for Children must be a totally autonomous department, not connected to the Department of Human Services, which has for so long hidden, protected, and denied the abuses by those in the Division of Youth and Family Services.

Autonomy must also apply to the regional diagnostic centers. These centers should be staffed with full-time professionals, totally independent of DYFS, not chosen by DYFS, and not on the payroll of the Department. These professionals should merely report their findings to the Division. I cannot stress enough the need for a staff trained to examine and question the alleged victim, in a manner appropriate to that alleged victim's age level and mental capabilities. Currently, the accused has no rights. Additionally, in stating the diagnostic centers would be beneficial only to those seeking help, what then becomes of the alleged victims who do not seek help? These centers should be the place of mandatory initial investigations. At present, nothing DYFS requires is voluntary, so why not make this mandatory?

Proposal number 6 is long overdue. As to the handbooks, they are outdated and guidelines not heeded. Additionally, these handbooks are for foster parents. Natural parents are not given a handbook when their child is born. Why should child rearing be different for foster versus natural children? Currently, a natural, adoptive, or foster parent has no rights and is not kept informed or given any information when DYFS has an investigation. A new handbook should be written by some agency other than DYFS; perhaps the Bar Association of New Jersey or other group of lawyers. They would be the proper authorities to revise and rewrite the handbook.

Proposal number 7 indicates that complaints regarding DYFS would be handled at their home base. This is just a reshuffling of current procedures. DYFS complaints should be handled by an autonomous agency.

As to protecting the identity of the alleged abuser, the identity of the accused should be kept anonymous in all instances until an indictment is handed down and criminal charges then filed.

As to appropriation of funds to improve supervised visitation, what could be a more natural setting than the home of the alleged victim or that of a close friend or relative? There is no need to improve facilities that should currently be in good repair. Visitations could also take place at the regional diagnostic centers. There is absolutely no reason to burden taxpayers unnecessarily with the expense of visitation facilities.

As to proposal 10, once again, I must state that the office of the ombudsman must be independent of DYFS. Perhaps the Department of Law and Public Safety would not be so self-serving.

A child placement bill of rights is a good idea in theory. However, in actuality, where are the rights of the parents, whether they be natural, adoptive, or foster?

An issue not addressed in any of these proposals is that of expungement of records when the accusations have been proven false. This must be considered. Innocent people have criminal records, even though the charges are not true. If an alleged abuser is proven innocent, records should, and must be expunged.

Another issue not addressed is compensation for the hell the victims of false accusations have had to live through because of incompetency on the part of caseworkers and a narrow-minded bureaucracy at DYFS, so bent on "proving" as many child abuse cases as possible. There must be a bill of rights for the victims of false accusations. Lives are shattered and can never be the same; family unity is broken, never to be mended.

How do you compensate for that? How can you ignore compensation for those victims? How do you heal the deep wounds created by a case mishandled by inadequately trained caseworkers who, along with their supervisors, never bothered to hear the truth or check the facts? How does a family forget the abuse perpetrated by DYFS itself?

The issues of expungement and compensation were not considered in any of these proposals, and our family and many others like ours, feel we were abused, once again, by the State of New Jersey and those it entrusts to protect our lives.

SENATOR COSTA: Thank you. I recall your family being here.

MS. HAVEMANN: Yes.

SENATOR COSTA: I understand your pain. That is something I just asked our Aide to look into, expungement of records when someone is proven innocent.

MS. HAVEMANN: We would certainly appreciate that.

SENATOR COSTA: Thank you for bringing that to our attention.

SENATOR BROWN: Madam Chairman?

SENATOR COSTA: Yes? I'm sorry, Senator Brown.

SENATOR BROWN: As a point of personal privilege, I really appreciate your making the effort to come here to testify today. However, you are speaking to three elected officials up here. All of us have years in public service. We have seen good things, and we have seen bad things. We are here today because we believe the system does work. I think it is helpful when you are making statements, if you don't take cheap shots at us. It is really helpful.

One thing disturbing, is the reaction it got from the audience. You know, we are not here because of perks. We are here because we think it is important that New Jersey has elected officials out there who work night and day. I'm sure Senator Lipman returns phone calls at 10 o'clock at night, and

Senator Costa returns phone calls at six o'clock in the morning. It is not that we are here because of the perks. I just think that none of us are going to get further in this thing called the health of the State of New Jersey, if we don't -- bottom line -- have respect for the system.

Excuse me for speaking rather passionately about this at this moment in time, but just a couple of Fridays ago, I had a celebration of being in this business for 20 years of my life. I would not be in it if I didn't believe that the system works.

Thank you very much.

MS. DILLON-McHUGH: I just want to comment on that: It was not meant for any of you personally.

MS. HAVEMANN: It was not meant for your Committee.

MS. DILLON-McHUGH: It wasn't meant for the Committee, but in our case the system did not work at all.

MS. HAVEMANN: It did not work.

MS. DILLON-McHUGH: I just have one other comment. It is not in the written testimony, but I will say it publicly: I work in a library. I am with children; I am with high school kids. I approach children and high school kids with my hands behind my back. I have been punched in the arm. I can't do anything in retaliation, because I will be accused of abuse. I will never report an abuse case, because of what my family went through. I wouldn't put another family through that. When I have a child, I will retain a lawyer who will be called whenever I have to take that child to a doctor if the child falls, because I am not going to go through this.

MS. HAVEMANN: I am really very sorry if any of you were offended by the word, "perks." It was not meant for your Committee. Our family--

SENATOR COSTA: Well, I wondered why I was being cheated. I asked what perks were there that I don't know about. (laughter)

MS. HAVEMANN: No, no, no. That's why I said it's not you.

SENATOR COSTA: But I understand that you were hurt, and that's why I overlooked it.

MS. HAVEMANN: I think you get the point.

MS. DILLON-McHUGH: The term "politician" goes across-the-board, not necessarily the legislators.

MS. HAVEMANN: No one more than our family can appreciate what your Committee has done. Believe me, we would not have come out in this freezing weather and parked two miles away and walked, if we didn't want to be here. We feel very grateful for what you have done.

SENATOR COSTA: We appreciate your being here. Thank you.

Nicholas Andrian, President, Families First, Inc.

N I C H O L A S A N D R I A N: Madam Chairman, I shall be mercifully brief. I am aware and I and my organization, Families First, Inc., have been accused by some State officials in the past of DYFS bashing. Of course, we see our role as one of protecting the God-given rights of the basic unit of our civilization; that is, the family. So, whether the family comes under attack from the corner drug dealer or from a government agency, we oppose these forces in whatever small way we can.

Likewise, we have made it clear that we oppose the Joel Steinbergs of this world. We put our sincerity to the test when, in the summer of 1985, in conjunction with vocal, we put together an 11-point proposal which would allow the State to pursue its rightful role of protecting children, without sacrificing the sanctity of the family structure. We never heard from our own State officials on our proposal, although we are pleased to see that some of the proposals that you are putting forth today are similar to the ones we cooked up, in a sense, back in 1985. We did, however, receive some inquiries from other states and from private organizations.

I am happy to say that we are pleasantly surprised by the initiative of this Committee, and we were so quoted in the press recently. Furthermore, we commend Director Waldman, who picked up the cudgel from his predecessor and who has endorsed some of your proposals.

Please allow me briefly to comment on some of your proposals: Number one, one way of limiting caseworker to child ratios without much increase in funding, would be to instill proposal number 3. In other words, by reassigning investigations of abuse reports to the duly constituted body empowered and trained to do so -- the police and the prosecutor. Our experience has been that the police are much more circumspect than individual DYFS caseworkers in ascertaining the existence of abuse, especially when criminal penalties are in order. I can tell you that from my own case, the Verona police had long decided that there was no basis for any further investigation, as no one was willing to sign a complaint against me, and as my accusers, the natural grandparents of our foster child, informed the police that they were using this accusation as a lever to regain custody of their granddaughter. A letter to that effect has existed for almost five years, and I was recently given possession of that letter by a Superior Court judge.

DYFS knew of this exculpatory material and kept it from us. Had the police been charged with deciding the merits of the case, my wife and I, not to mention our adopted child, would not have gone through the hammers of hell all this time. Of course, the light is now at the end of the tunnel for us, fortunately.

Abuse of a child is on the statute books as a crime, and should be treated as such. Remove the criminal cases from DYFS' hands, and the caseworker/child ratio will automatically drop. Not only that, but we would be spared the ugly specter of seeing parents acquitted by a jury of their peers of any abuse or neglect, only to see their parental rights terminated in a

Family Court proceeding, orchestrated behind closed doors by DYFS.

Proposal number 3 is not only right in line with the Constitution of the United States and of the State of New Jersey, but it is also in keeping with the 1948 Universal Declaration of Human Rights, whose 40th anniversary was celebrated in Paris in December.

Just three brief articles: Article 10 of the Declaration of Human Rights: "Everyone is entitled in full equality to a fair and public hearing by an independent, impartial tribunal in the determination of his rights and obligations and of any criminal charge against him."

Article 12: "No one shall be subjected to arbitrary interference with his privacy, family" -- arbitrary, not reasonable interference -- "home, or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to protection of the law against such interference or attacks" and, more to the point, Article 16, section 3: "The family is the natural and fundamental group unit of society, and is entitled to protection by society in this state."

As for proposal 2, certainly false reporting of abuse is a serious matter, especially when it is used as a means for satisfying a grudge or as leverage in a custody dispute, such as happened to us. An attorney friend of mine, who was once a prosecutor, told me of an incident way back in 1960, when a mother came to his office charging sexual abuse of her young daughter by her husband. For some reason, the investigators smelled the proverbial rat, and told the woman that the investigation would continue if she would submit to a polygraph, at which point she confessed to seeking leverage in an impending divorce. In those days, she was lucky to get off without being prosecuted.

There must be common sense in any investigation. Certainly in a close judgment call, the child must be

protected. We have absolutely no quarrel with that. However, our organization has run into case after case of clear evidence of non-abuse being suppressed, and other evidence being manufactured through the use of so-called experts who have prostituted their credentials in service to the State, since they rely on the State for their income. It is human nature to incorporate one's own interests with a noble cause, such as that of protecting children. As a teacher I might be inclined, for example, to want to look the other way at a student's poor performance, in order to keep my foreign language enrollment up, not that I confess to anything of the sort, of course.

Now, this brings us to proposal number 5. The full-time professionals at county-based diagnostic centers must be held accountable by citizen groups who, along with randomly chosen experts, could review conclusions drawn by these full-time professionals, lest their closeness to DYFS lead them into finding abuse where none really exists.

As for values clarification such as what we have seen on the part of DYFS-paid homemakers, and other well-intentioned intruders, it is better for a mother to be with her child through her ineptness than to be without the child because of a perceived inability to properly diaper her baby or otherwise follow State-mandated guidelines for child rearing. It is a short step from that to the State's deciding who may or may not have children, in the interest of breeding the right type of citizen. This was tried in Germany a half a century ago or so, if I rightly recollect. We are already at the point where your 12-year-old daughter can have a State-sanctioned abortion without your permission or even your knowledge.

Experts, professionals, etc. involved in child abuse investigations must, in no way, be tied to the interests of State employees who may benefit from the creation of abuse where clearly none exists. They are not infallible and in fact, in many cases, display less horse sense than the common citizen.

As for an Ombudsman for Children, we prefer to see an ombudsman for families, for the interests of the non-abusive family must never be separated from one another. Yes, children most assuredly have God-given constitutional rights to be free of abuse and exploitation, but let us not use this issue of children's rights as a means of bringing about the collectivization of the American family through its kids. This is the bottom line issue, and why we have reincorporated into an organization of wider scope, Families First, Inc., from our earlier name of Coalition for the Unjustly Accused.

Any ombudsman's office must clearly not be under the control of the Public Advocate's Office, in our opinion, since there is clearly a conflict of interest. The Public Advocate provides law guardians for the alleged victim. These law guardians, almost to a man/woman, always seem to side with DYFS' view of the issue. At the same time, the Public Advocate also provides public defender attorneys in Family Court proceedings for indigent parents, often from the same office. An ombudsman must be independent. When I literally came to Trenton in the fall of '84 broke, having lost a foster child we loved and our own baby to birth defects, the Public Advocate's Office took an interest, at least on the surface, in helping us, until they learned the role of one of their own, the law guardian in our case, after which they dropped out of the scene.

Proposal number 6 is not only necessary, it is unconstitutional to do otherwise. If parents were informed of the status of the case, you wouldn't have a situation where poor parents have to kidnap their kids away from the State in order to protect them from sexual abuse and beatings, such as happened in 1987, evidence of which Cary Edwards' office asked us for, and which we provided, and about which nothing was done. Perhaps somebody should raise this issue on the campaign trail, now that Mr. Edwards is looking for the Governorship.

Proposal number 9 is excellent, that of providing a community-based organization for supervised visits between parents and children in State custody. I can think of no better place perhaps than a church or a synagogue, underutilized areas during the week, in any event.

There is much, much more to say. Let me close by saying that New Jersey Statute 9:6-8 states: "Any legislative committee has the absolute right to access to DYFS records and reports." We are urging you to set up a subcommittee of legislators, experts, and community leaders to look into the hundreds of cases of abuse of parents and of children having come to our organization's attention, and having been committed by DYFS under the misguided leadership of its former director. These must not be allowed to fall by the wayside, as we now move forward in a new spirit of enlightenment and cooperation toward the goal of protecting those God-given treasures that are our children. For Christ told us, in Mark 9, verse 42: "Whosoever would cause one of these little ones who believe in me to sin, it would be better for him if a millstone were tied around his neck and he were cast into the sea."

I thank you very much for your time.

SENATOR COSTA: Thank you very much, Mr. Andrian. Mia Andersen, please, New Jersey PTA, Legislative Liaison.

M I A A N D E R S E N: Thank you for the opportunity to be heard. I am grateful that I can represent the PTA, the State's largest and oldest child advocacy organization, representing a current membership in excess of 226,000 members.

We applaud your efforts, again. I say this every time I sit down, that we applaud your efforts, and are grateful that there is such strong leadership on behalf of children and families in the State. We certainly need it.

New Jersey PTA Board of Directors unanimously voted to support the creation of an independent office of child welfare in the Department of the Public Advocate, to act as oversight

for DYFS operations. We applaud the courage and foresight of Director Waldman. Such an office will have the credibility and the power to conduct oversight investigations. The results of these investigations will provide the Division with the information it needs to successfully evaluate not only the implementation of its policies and procedures, but the performance of particular district offices and staff. As a result, the Division will have the material necessary to appropriately modify its policies and procedures; develop better training materials; reassign staff; and in fact, if necessary, dismiss staff.

The creation of such an independent office of child welfare in the Department of the Public Advocate will provide the State with a mechanism to hold the Division accountable for its policies and practices. Such accountability is essential to reassuring the public that the Division will be held to a high standard of practice. Additionally, the Division will be able to bring to the Legislature independent and credible information necessary to support its requests for resources. We urge the Committee to move quickly to introduce and pass legislation that would create such an office.

Now, with regard to the whole issue of oversight planning and coordination, that ties into your recommendations with regard to the office of ombudsman, we would like to say that we support the creation of an Office of Ombudsman for Children. Monitoring is appropriate, but we do not believe that this office should perform police functions of investigation. That should be left, rather, to the office I just referred to.

We believe the office of the ombudsman should be a part of a larger commission for children, as recommended by the Governor's Committee on Children's Services Planning, and reflected in Senator Costa's bill -- S-319. There is currently no way of assessing the state of the State with regard to children and their families. There is no statewide mechanism to

ensure children's needs, coordinate State-sponsored and/or supported activities, or evaluate the effectiveness of programs and services currently offered New Jersey children and their families. Consequently, we have gaps in services and no way to monitor, evaluate, or police the programs and services that we do offer.

I will not go into these now, because time is short. I have listed what the three should do, so you would have an umbrella of a commission for children which would house the ombudsman and be separate in the Department of the Public Advocate, an office of child welfare.

Now, with regard to the specific recommendations-- Number one, with regard to the ratios: There is no doubt that such ratios would do much to improve the Division's ability to meet its charge. While New Jersey PTA has not taken a position on this particular proposal, I want to share some concerns with you.

Where will the Division get the money to pay for the increased staff? If such a proposal were to be enacted and the Legislature were not to appropriate on a continuing basis sufficient funds to support the mandated staff, the Division would be in violation of law when it was forced, because of the lack of funding, to reduce staff. If such a proposal were enacted and insufficient funds were appropriated -- and I just refer you to the current budget crisis -- the Division would be required to reduce caseload to be in compliance with staff ratio mandates. Were such reduction to occur, the Division would be forced to either so narrow its definition as to what constituted abuse and neglect qualifying for Division investigation, or the Division would be required to refuse across-the-board any additional cases. Either one of these alternatives would place children in great danger. Children would be exposed to continued abuse and/or neglect because of the Division's inability to respond.

On the other hand, the Division could also be liable to civil or criminal prosecution for failure to comply with the mandated staff ratios. If a child, denied services because the Division were forced to comply with the enacted staff ratios, and that child suffered serious harm or abuse, the Division's failure to act could be used as a basis for civil or criminal liability.

With regard to false reporting, New Jersey PTA supports, strongly, the enactment of such legislation, as long as the language makes clear that the basis for criminal liability rests on the defendant's intent to make a false report. Additionally, we suggest that the failure to report should become a crime in the fourth degree. Children die each year because of failure to report. I have, by the way, in my written testimony, cited cases from other states and legislation from other states.

New Jersey PTA recommends that increased penalties for false reporting should be accompanied by increased remedies for those who are victims of false reports. We urge that Chapter 9:6-8.13 be amended to include language that provides for the recovery of trouble damages by those who are victims of false reports. I refer you to Massachusetts law. In addition, we urge you to explore the possibility of enacting legislation that would provide the recovery of attorney's fees for acquitted defendants. California has such legislation.

Let me aside say that I am chairing the Committee on Reporting and Screening Laws, referred to by Mr. Gold earlier. Although our Committee has not been able to get its recommendations to that working group as a whole, or to the Task Force, when that is completed we will certainly share it with you, and want to continue to work with you on those particular issues.

With regard to reassigning the primary responsibility to law enforcement, New Jersey PTA strongly opposes this

proposal. We support very much what Mr. Gold, Mr. Louis, and ACNJ said on this issue, and would add only that were you to do that, you would shift the focus-- In addition to what they said, you would shift the focus from providing services for the victim -- for supporting the victim -- to the law enforcement perspective of apprehending a criminal. Since we strongly believe that the philosophy upon which our services to children must rest must be strengthening the family and providing support for those who are dysfunctional, including the victims of abuse, changing that focus, we think, would be very dangerous and nonproductive.

The ones with regard to giving parents access to -- and I will try to abbreviate this -- trying to give parents access to abuse in institutions -- absolutely. As long as there are confidentiality requirements, there is no question but that this is appropriate, necessary, and due. Parents need to be involved in the treatment of their children. They can't be involved in the treatment of their children if they don't know what is happening to them.

I will not go over the other recommendations. I know there are others who have been sitting here a long time and wish to be heard. I have detailed that in my written testimony.

In closing, I want to say that the children's bill of rights with regard to out-of-home placements is very important. We look forward to working with Senator Ambrosio on this.

Before I close, I must urge you to hold hearings on abuse and neglect reporting in education. The Department of Education has currently promulgated rules and regulations for comment in the "New Jersey Register," which have little or nothing to do with the intent of the legislation passed just recently requiring them to do so. There is enormous confusion and resistance by the education establishment to become a part of the network necessary to support abused and neglected children. I urge you to dedicate Committee time to that, and would be eager to work with you on that effort.

Thank you.

SENATOR COSTA: Thank you, Mia. You have brought up some very good points, and we are looking into a few of them. Thank you.

Let's have Vincent Trivelli, Communications Workers of America, Legislative Coordinator.

V I N C E N T T R I V E L L I: Good afternoon, Senators. We will be submitting some detailed written testimony. We will try to be brief this morning, but we do have workers here, and if there is time, they would love to testify on these issues.

In a moment, I am going to turn it over to one of our workers off the job, George Krevet, but I wanted to say two things. First, it must be said that a vast majority of the cases handled by DYFS are handled in a professional manner, without problems, without concerns, under very difficult circumstances. I think that needs to be said.

Secondly, while DYFS employees believe in being accountable for their actions, most of the proposals which you have before you -- most of which we support -- increase accountability. But only one increases the control that those workers will have over their lives. Unless you bring down the caseloads, you will not be able to reduce the limited number of cases for which there are problems.

Having said that, I want to turn this over to George Krevet, who is a caseworker off the job, to briefly discuss some of the other issues.

G E O R G E K R E V E T: Good afternoon, Madam Chairman and Committee members. I would like to briefly review the proposals as they are listed.

Number 1, obviously, is caseload caps. With the adoption of this proposal, we feel that many of the others become superfluous, almost unnecessary. It seems fundamental that the quality of services is proportionate to the size of caseloads. You don't need a master's in social work to realize

that the more cases a worker has, the less attention he or she can devote or avail to those cases, or to each case, which, of course, constitutes the difference between meaningful intervention and going through the motions to satisfy the dictates of the DYFS manual.

The Senator's summary noted the cost factor of this proposal, but consider that a manageable caseload allows for a much greater degree of prevention, as opposed to the more costly process -- the far more costly process -- of attending to a case after it has blown up with, of course, all that that entails -- the legal costs, the placement costs, the medical reimbursement costs, etc.

High caseloads are the primary reason for burnout and turnover. Turnover is very expensive. It involves training new workers. It involves the acclimation of new workers which, of course, involves periods of lower productivity.

The experienced worker can, and obviously does expedite cases faster which, in turn, keeps caseloads lower. The caseload cap then is a fail-safe mechanism; perhaps imperfect, yet it is the only objective criteria for caseload stabilization that currently exists. Caseload caps are akin to the concept of maximum classroom sizes. Society has come to accept standards regarding classroom sizes. We would be appalled at the prospect of a teacher trying to teach a class of 50. We should be equally, if not more appalled at the prospect of a caseworker trying to attend to a caseload of more than 50.

Regarding the second proposal, we agree that false reporting should, indeed, be a crime. With the adoption of this proposal, it would tend to minimize superfluous and indictive referrals.

Regarding the third proposal, that of the county prosecutor taking the lead on investigations: Once again here you have a matter of focus and a matter of priority. Do you want the intervention to be essentially rehabilitative or

punitive? DYFS has a mandate. That mandate requires the rehabilitation and preservation of families. DYFS intervention and expertise is fashioned to that end. If the emphasis of an initial intervention is adversarial, with an eye toward prosecution, as would be the case with a law enforcement agent, subsequent remediation which, of course, is of little concern to a prosecutor's office, is made nearly impossible.

If criminality is suspected or uncovered by the DYFS investigation, a criminal investigation can, and does follow. Sometimes it is done simultaneously, depending on the nature of the referral. But, as is the case with many referrals, a parent may have simply been too heavy-handed, or may have meted out inappropriate discipline, or was neglectful, but not criminal. The objection of intervention then becomes to win the confidence of the family, in order to provide remedial services. This would be made very difficult if the family feels they are likely to be prosecuted for being forthright or candid with their worker.

Number 4-- We don't have to spend much time on that. We basically agree with Director Waldman.

Number 5 addresses the establishment of county-based diagnostic centers and, of course, we welcome any additional resources, unionized, that would help caseworkers.

Proposal 6, regarding informing parents: We agree with the fact that parents should be apprised of their status. They should, obviously, be fully protected of their rights. The concept of the time frame is a bit problematic, however. DYFS cases tend to be fluid. They tend to take on a life of their own. There are simply too many variables to establish what could ultimately become unrealistic expectations. It would be counterproductive to the cases.

Regarding numbers 7 and 10, the ombudsperson. Quite frankly, DYFS workers are already overly accountable. If you took all of the forms that DYFS workers have to fill out, and

attached them and stretched them around this room, they would go entirely around this room and then some. That has actually been done at prior hearings. Most of these forms are designed to ensure accountability. The DYFS manual, which is hundreds of pages long, is designed to ensure accountability. DYFS are accountable to supervisors; they are accountable to management; they are accountable to the Deputy Attorney General's Office; they are accountable to the county prosecutors' offices; they are accountable to Family Court judges; they are accountable to residential placement facilities; they are accountable to child study teams; they are accountable to child placement review boards; they are accountable to the citizen complaint line; and they are already subject to review by the Public Advocate.

The creation of another bureaucratic layer of accountability only gives countenance to the DYFS bashing, and further exacerbates the morale problem, which tends to lead to burnout, which leads to turnover, which leads to increased caseload sizes, and we are right back to number 1, which, of course, leads to more children at risk.

The psychologist at Glassboro State College, Dr. Janet Cahill, did a stress study on DYFS workers, and one of her foremost findings was that responsibility and accountability, without commensurate authority and autonomy, result in stress, morale problems, and poor performance.

Regarding number 8, the availability of records of abused children in institutions to parents: Once again, we say that they should be apprised of the status. They should be given as much information as possible, but to actually have the records available could be counterproductive. Obviously, it would at least inhibit further reporting by the people within the institutions.

Number 9 talks about adequate facilities for visitation. We agree that that should be the case, but then the next logical conclusion is, what is wrong with upgrading the

offices and making them presentable -- the offices in which the workers work?

Proposal 11, regarding the child placement bill of rights: You can't argue with extending basic civil liberties to children.

I want to thank you for the opportunity to address these proposals, and I would be happy to answer any questions.

SENATOR COSTA: Thank you very much. We appreciate your being here, but we want to go on now. Okay?

We are getting near 12:30. I really would like to hear from someone we have never heard from before, although all of you may submit your written testimony -- those of you we do not hear. We have never had before Tom Duffy, Vice President, National Burn Victim Foundation. Is he here? (affirmative response from audience) Okay. Once again, I am going to ask you not to repeat what other people have said, in the interest of time. If there is some point you want to make specifically--
T H O M A S D U F F Y: I will be very brief, Senator. Thank you.

SENATOR COSTA: I appreciate that.

MR. DUFFY: First of all, I would like to commend the Committee on the scope of its inquiry into DYFS, as well as the quality of the result of the first hearings. I think the 11 proposals under consideration here today address significant issues facing child protective services in New Jersey.

I have asked to speak today on one of those issues, that being the proposal to limit caseworker/child ratios to one to 20.

I am the Vice President of the National Burn Victim Foundation. We are headquartered in Orange. We provide services under a State grant to DYFS in the areas of suspected casualties by burning. Our services are twofold: We conduct evaluations; we also offer training. In our training component, we have trained over 800 State and county child abuse

investigators annually. In our evaluation component, we work directly with front-line caseworkers during their investigations.

Prior to joining the NBVF, I worked for DYFS as a district office manager. Your proposal number 1 states that a lower caseworker/child ratio would reduce the work load of caseworkers, reduce high turnover rates, and help to build a more experienced staff. I am greatly concerned, however, that this Committee's desire to achieve those laudable goals would be negated by the present hiring freeze. As indicated in a letter that I wrote to several newspapers, which was published last month, it is not uncommon for DYFS offices, especially in urban areas, to experience a 50% annual turnover rate. Given this, any action by this Committee concerning caseworker/child ratios would be rendered ineffective, unless it is coupled with a strong advocacy stance aimed at exempting DYFS from any present or future hiring freezes. Hiring freezes have impacts that are directly seen, and impacts that lie unseen, only to surface later in the form of undertrained staff and worker burnout.

As we conduct our trainings throughout the State, we are already hearing concerns raised by district office managers that covering caseloads is again becoming problematic. There are regions in the State where non-mandatory skill enhancing training is being discouraged, because of a need to keep workers in the office to cover vacant caseloads. This cutback in training to front-line staff can, and will have a negative impact on the Division's provision of services for months and years to come.

Just last week, The Newark Star-Ledger, in an editorial entitled, "One is Too Many," called upon Governor Kean to seriously consider the request being made by a number of child advocates, the NBVF among them, to exempt DYFS from hiring freezes.

Senators, I am here today to call upon you to join us and to advocate for New Jersey's most vulnerable children. No

matter what else comes of today's hearing, nothing can be accomplished if DYFS is not given the staff necessary to carry out its responsibilities.

I thank you for your time and for your attention to this matter.

SENATOR COSTA: Thank you so much. We already took a vote on letting the Governor know our feeling regarding DYFS workers.

MR. DUFFY: I just wanted to reemphasize the need.

SENATOR COSTA: Thank you.

MR. DUFFY: Thank you.

SENATOR COSTA: Julie Turner?

J U L I E T U R N E R: I will be brief and summarize. I thank you all very much for giving us the opportunity. I am Julie Turner, Executive Director, New Jersey Association of Children's Residential Facilities, which represents the 40 residential treatment centers and group homes serving children placed by DYFS.

I would like to commend the Committee. I would like to particularly commend you on taking a stand on the hiring freeze. I think that was really fine.

I would like to comment on a few specific proposals: One, proposal number 4, reassigning DYFS' lead role in the investigations of child abuse committed in institutions to the office of ombudsman: In concept, we strongly support this. I would recommend that this unit be responsible for all institutional abuse investigations, not just for ones in institutions in which DYFS has a connection, for two reasons. One, it is essential that that unit have the kind of training and experience to do all kinds of institutional investigations. Two, many agencies serve kids placed both by DYFS, possibly by DDD, possibly by DMH&H, and the idea of having two or three different investigators with different things would be, I think, difficult.

I have listed a number of issues that I think should be addressed. Among them is the development of a manual with the input of those who are potential investigatees, both in our facilities and the schools; a kind of joint planning on how investigations should be conducted, what kinds of standards, may eliminate some of the problems that have been brought up by school personnel.

Secondly, among these -- and something that I think is very critical -- is the right of appeal during the recommendation phase, where an investigator may come in and say, "I would like to have someone suspended until the final report is issued." If the report is a year later, we have a few problems, both on the findings and on the recommendations to deal with the findings. So I think appeal has to be built in. I think this would also address some of the concerns brought up by the education group.

On the statute which would give the records of child abuse in institutional settings to parents: It is not clear here whether this would be when they are allegations or when they are confirmed, and they are very separate issues. About 85% of the allegations of institutional abuse are found to be false. Many of them -- and I would refer you to the written testimony -- particularly in our facilities-- We are dealing with some very, very troubled kids, a lot of them coming out of psychiatric hospitals. Some of the allegations are clearly spurious, and I think at that point they should not be provided to parents. Parents must know-- We must let them know if there is medical injury. The child also has the right, always -- it is clearly in the manuals -- to call the parents, but to open the report until it is a final document, I think, is questionable. That would be the recommendation there.

The office of ombudsman, we strongly support. I think the location is-- I think probably the Public Advocate may be the better place. We would very much like to work with your

Committee and Senator Ambrosio on the bill of rights, because we think it is a fairly complex issue.

The last thing is-- I know that the focus of this hearing is on the improvement of investigation. There is not a looking at, at this time, at prevention. I would encourage you to do so. You are well aware-- I am sure you are well aware of the issue of the quality of staff and retention and training issues in terms of this. I was struck, as I was listening to the DYFS people talking--

SENATOR COSTA: Your voice keeps fading out. Would you please speak up?

MS. TURNER: I'm sorry. In talking about the caseworker turnover, I was at a group home yesterday. In the past year, they have hired over 20 people to fill seven positions. I would like to provide you not only with this, but with the work of a group in California. I think you would find it interesting and valuable.

SENATOR COSTA: Thank you very much.

Of the people left who have to testify, is there anything you feel has to be said, that has not been said? Your name is?

D R. S U S A N C O H E N E S Q U I L I N: Dr. Susan Esquilin.

SENATOR COSTA: All right, Dr. Esquilin. And, you are?

J A N E T F. S P R E S S A R T: Janet Spressart, The Mental Health Association.

SENATOR COSTA: All right. We will hear you two, and then there are just about two more. I would appreciate just getting your comments, because we do have to get back on the floor.

DR. ESQUILIN: I understand, and I will make it very brief. I was asked to speak by the Legislative Affairs Committee of the New Jersey Psychological Association, but I am really offering my own opinion here.

I am a psychologist who has worked for the past seven years heavily with sexually abused children, doing evaluations and treatment. I want to raise concerns about the particular point in which the reporting of a false allegation is a crime.

I feel that right now we have a situation where many professionals are reluctant to get involved at all. We are, and we should be, mandated to report any kind of suspected child abuse to the authorities. However, in the privacy of our own offices, we have situations where patients confide in us things that they may have difficulty saying later on. I would like to see the professional people, in the exercise of their professional capacities, be exempted from this kind of crime, because we have situations where a child may be in treatment, may report something to a therapist, and then refuse to make that same statement when interviewed later on.

Just this week, I was confronted with a situation where a child reported something to a therapist; the therapist reported it to the authorities; and the authorities interviewed the child. It was a child custody visitation situation. The authorities interviewed the child. The child would not speak to any of the authorities. I was asked to make an independent evaluation and, again, the child told me the same thing she had told the therapist. Now, had she chosen not to tell me the same thing, the therapist would have been out on a limb by herself. So, I am very concerned about the professional community here, in terms of this particular situation.

The other thing I would like to make you aware of is, the whole problem of false allegations of child sexual abuse in the context--

SENATOR COSTA: What we are speaking of as a proposed bill is touching upon people who absolutely know it is false when they report it.

DR. ESQUILIN: Okay, I understand that, but when you say people don't have reasons-- Well, it is stated in a twofold

way: They know the allegation is false, or they do not have reason to believe that the alleged abuser committed that abuse or neglect. Now, once that child is outside your office, what is the evidence that anybody has that you had reason or didn't have reason? I am concerned about the professional community in this situation, who are liable if they do, and liable if they don't.

The other thing I want to say about that second half -- does not have reason to believe -- is that that is a very problematic, subjective judgment, even with respect to parents in a divorce situation. I just want to outline a few things very briefly.

In the midst of acrimonious divorce situations, children often present with symptoms that are found in children who are also sexually abused. A well-intentioned parent may suspect abuse where none exists and seek to have a situation investigated. Furthermore, as most child sexual abuse does not leave physical signs, and as young children may tell a person close to them and refuse to tell others, the report may be made by a parent and may be honest, and may still not be able to be validated.

Also, incest victims often remain silent in order to preserve the family unit. The divorce situation is a most likely time for a child victim to disclose abuse to a non-abusing parent, as the integrity of the family is no longer an issue.

A recent national study -- and I am providing you with a copy of that -- of Family Courts, demonstrated that the notion of an epidemic of false reports of child abuse in the context of custody situations is a myth. The increase of these cases simply mirrors the increase of reporting of child abuse in general. Only 2-1/2% of disputed custody cases involve any sexual abuse allegations, and of these over half were validated. While evaluating these allegations is frustrating

and time-consuming, the ambiguity of these situations should not propel us into easy answers which could decrease reporting and leave children unprotected.

I am concerned about a potential decrease in reporting with this law, as well as an increase in the underground network that is currently growing of runaway parents and children, which the media has been reporting. I am concerned about this, and I would like to see this at least-- I understand the pain that false reporting has caused families, teachers, various people, but I am also concerned about anything that would inhibit people from reporting possible cases. I feel that this has to be stated in such a clear way that it does not leave that open.

The other thing I just want to say is one sentence: I full support what Dr. Schreiber said about the importance of upgrading the professionalism of the DYFS personnel, not just decreasing case ratios, but increasing requirements for hiring, in-service training, and also specialized units, which at one point existed within DYFS, for sexual abuse, for medical neglect; people who develop expertise within DYFS in certain areas, so that they can use those strengths.

Thank you.

SENATOR COSTA: Thank you. May we please hear from you, Ms. Spressart, The Mental Health Association of New Jersey?

MS. SPRESSART: Good morning. My name is Janet Spressart, and I am here this morning as a representative of The Mental Health Association of New Jersey. The Mental Health Association has identified improved treatment of children, youth, and their families as one of its top priorities.

The Association's volunteer programs include community interaction with children and families in an effort to alleviate the stresses which so often contribute to incidents of child abuse and neglect and ultimately so often to broken homes. Over the years, our volunteers have observed the significant absence of coordination of services among the systems such as DYFS, the

Division of Mental Health, the Department of Education, all of which impact on the lives of children and families. We are encouraged by the response of this Committee to this reality, and we welcome this opportunity to endorse the general concepts contained in your proposals.

We support the general tone and substance because they appear aimed toward accomplishing the following:

Recognition of the interrelatedness of all of the systems which impact on children and youth, of which mental health services are a significant part, and the movement toward coordination of a network so that a child- and family-centered focus emerges.

Movement toward a more thorough system of care for children, youth, and families.

Increased service opportunities with a view toward affirming the dignity of children and their families and respect for their wishes in treatment.

Definition of roles for workers within the system with attention to enhancing opportunity to conduct daily functions with reduced stress and increased commitment.

And finally, definition of various roles in protecting children which encourage objective investigation and more clearly ascribe to those who would abuse the system appropriate penalty.

We applaud, as have others, the leadership demonstrated by Bill Waldman in his initiative, and believe that his willingness to recommend an independent oversight of the Division's activities bodes well for the future of children in New Jersey.

We ardently hope that the excellent goals offered by this Committee will be energized by equal application of adequate and continuing funding to the task. Whatever growth may be occurring in our public attitudes toward the needs of children and families cannot afford to be sacrificed due to dollars found insufficient to secure promising reform.

Thank you.

SENATOR COSTA: Thank you so much. Gail Houlihan, do we have your testimony? Is Gail Houlihan here? (no response) She's not here, okay. Sue Dondiego, we do have yours.

I want to thank everyone for being here. Your contribution is extremely valuable to us in doing the job we want to do for all the children of this State.

(HEARING CONCLUDED)

APPENDIX



TESTIMONY
OF
WILLIAM WALDMAN
DIRECTOR, NEW JERSEY DIVISION OF
YOUTH AND FAMILY SERVICES
BEFORE
THE
NEW JERSEY STATE SENATE
CHILDREN'S SERVICES COMMITTEE
FEBRUARY 9, 1989

Good Morning Senator Costa, and members of the Senate Children's Services Committee. I first would like to express my appreciation to all of you for your follow-up from our September hearing. The legislative proposals being considered by you are indeed serious and thoughtful. I commend you for the opportunity you have given to our Division, to the various child and family advocates here today, to our clients and to other interested parties to continue the public dialogue in crafting new legislative initiatives to improve the child protection and child welfare system in the State of New Jersey, and to safeguard and strengthen the rights of those affected.

I would like to say at the outset that we support many of the proposals now being considered by the Committee. Our support, as reflected in this testimony, refers to the intent or concept of the proposals. Since several of the proposals have cost implications, we have concerns as to the availability of funds that would be necessary to implement the enabling legislation - particularly in light of the current state of the budget. Further, as we discussed at the September hearing, the Governor's Task Force on Child Abuse and Neglect is studying similar issues and will publish its findings and recommendations later this year. I would also ask that the report, once it is issued by the Task Force, be given careful consideration.

Proposal #1

At our hearing last September I stated that careful consideration

must be given to strengthening the direct service staffing complement of the Division in order for us to perform our statutory and policy mandates that are before us. I continue to stand by that statement.

I submit that proposal number one is flawed. Utilizing individual caseload size as the sole benchmark or barometer for staff allocations can encourage continuing the DYFS involvement with children and families for extended periods of time. This approach also does not encourage connecting families with needed community support services as quickly as possible.

As you know, the Division of Youth and Family Services (DYFS) is currently staffed at a level that represents only 85% of the standards promulgated by the Child Welfare League of America (CWLA). In September I noted this standard is almost twenty years old and does not reflect the changing or more intense problems of the families we serve today or the greater societal expectations we have for enhanced protection as well as life permanency for children. Very recently CWLA drafted revised caseload standards, but within a context of clearly defined workload standards. Similarly, other states and national trends clearly indicate a focus on the development of standards based on workload rather than just caseload.

Clearly, the national trend is toward the development of a workload - rather than caseload - standard for state child welfare agencies. The current thinking among officials in more and more

states is that treating organizational problems, such as poor quality case management, high turnover, and low morale, by increasing the amount of manpower required to service a given number of cases has not solved the problem. Caseload size simply addresses the symptoms, and then only for short intervals of time. Research findings certainly support this national trend.

This newly directed interest in workload-based standards stems from a long documented history of deficient or inadequate child welfare services associated with caseload size. Helaine Hornby, Director of the National Child Welfare Resource Center for Management and Administration, has done considerable research on the subject and concludes that caseload size does not account for differences in the complexity of cases, the range of services required, or the time it takes to provide them. There are even definitional problems as to what constitutes a case (child; child and perpetrator; or whole family).

In 1982, Pennsylvania sought consistency and uniformity in service delivery throughout the state through the use of caseload caps. They found significant inequity in case assignments among workers, among units, and among counties. Massachusetts, Hawaii, Kentucky, Arkansas, Ohio, Nebraska, Tennessee, Texas, and Maryland have all developed, or are in the process of developing, workload standards. As previously noted, the CWLA has also adopted a position in support of workload standards. Workload standard is defined by some as the amount of time it should take on average for a caseworker to perform defined units of work. A

workload standard recognizes that all cases are not equal. Some cases are more difficult to manage and require more time. Workload standards can assist management in assuring that all cases are equally distributed and receive equal attention and, therefore, provide a rational base for making staff projections.

In addition, proposal number one requires significant financial commitments. Given the language and specifications of the formula presented, as applied to our current caseload, this proposal would call for 1,129 new case workers, 220 new supervisors and 359 new clerical employees. Utilizing an existing salary structure, considering fringe benefit requirements, and applying existing formulas for allocating state vehicles, office space and equipment, this proposal would cost in excess of \$50 million dollars. An investment in DYFS staffing of this magnitude would send the wrong message about the responsibility for addressing child abuse and neglect. It ignores the important role of families and communities in child protection activities and would likely severely limit our capacity to utilize the not-for-profit and voluntary sectors, as well as skew our priorities too far from prevention and more towards intervention.

In conclusion, change is needed but we cannot support the adoption of a unilateral and controversial standard for individual caseload size that appears to be prohibitively expensive.

Instead, I would ask that you consider identifying the resources necessary to commission an expert consultant to develop and apply workload standards for New Jersey's child protective and child welfare system as quickly as possible.

Proposal #2

I am delighted the Committee is proposing to impose a penalty for false and malicious reporting of child abuse and neglect. I testified before this Committee in September as to the impact such reporting had on individuals falsely and maliciously accused. The inappropriate drain on DYFS resources, caused by such reporting, should not be tolerated.

This legislative proposal must be carefully crafted so as not to cause a chilling effect on those who would report in good faith and to preserve anonymous and confidential reporting so those citizens who fulfill their obligation to report can do so without fear of retribution. I would also suggest that the penalty set forth in proposal number 2 be reduced to a disorderly persons offense to be equal with the penalty currently imposed in statute for non-reporting. This would bring about an equity between the two measures. Finally, the intent, as described in 2C, should be eliminated. Our experience is there are many motivations or intents for false reporting. All are wrong, and all should be subject to the same penalty.

Proposal #3

Reassigning primary responsibility for conducting civil investigations of reports of child abuse/neglect to County Prosecutors' Offices is not the most desirable solution to the concerns related to these investigations. Making such a reassignment would defeat long-time efforts to divert inappropriate matters from an overburdened criminal justice system and would use a

criminal justice framework to deal with social service issues. There are differing legitimate purposes for state intervention in such cases - one criminal - i.e., to identify and prosecute crimes, and the other civil and social - i.e., to protect children and preserve families. Since elements of the two often overlap, they are not mutually exclusive.

While it is true that under state child abuse law (N.J.S.A. 9:6-8.8 et seq.) DYFS is responsible for investigating all reports of child abuse. Under N.J.A.C. 10:129-1 et seq., pursuant to N.J.S.A. 9:6-8.36a, the Division is required to report only instances of child abuse and neglect that involve suspected criminal conduct:

1. the 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 a 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.

The Division receives many, many more reports of abuse, neglect and child maltreatment than meet the "criminal conduct" criteria. In 1987, DYFS received 50,250 reports of child abuse and neglect and of those, about 20% met the above criteria and were referred to county prosecutors. Because of the basic difference our society makes in establishing criminal and civil standards for investigation, intervention, and adjudication, only a small portion of these cases are actually prosecuted.

Most of the situations that are referred to the Division alleging child maltreatment are not criminal in nature, although they often do present a risk of harm to children and evidence of family disturbance.

The prosecution of a crime can devastate a family, and damage a child irreparably, no matter what the disposition is, even when the case is dismissed. The appropriate investigation and prosecution of crimes do not negate the family's and its members' need for - nor their right to - services to protect the child and rehabilitate the family unit. Conversely, it is appropriate that social work intervention not hinder or interfere with the criminal investigation.

Experts believe that the best approach is the joint approach, including the identification of the types of situations that are exclusively civil in nature, those that are criminal, and those that have elements of both.

In addition, procedures for cross reporting and joint investigation should be set forth. Towards that end, the following has been done:

1. DYFS and the Division of Criminal Justice have recognized the need for joint investigations when situations may be criminal in nature. Also recognized are the importance of skill development on the part of Division workers in the areas of investigation, preservation of evidence, etc., as well as awareness on the part of law enforcement of the value of the responsibilities of the Division and the skills needed to carry out those responsibilities.
2. Because DYFS and Criminal Justice recognize the need for joint investigations and skill development in investigation and case handling, joint training between DYFS and law enforcement has been conducted since October 1983.
3. Through the Prosecutors Working Group, DYFS and Criminal Justice developed standards for reporting and conducting joint investigations. Through local

affiliation agreements, many Division offices and County Prosecutors have implemented guidelines and procedures for handling joint investigations of child abuse and neglect cases. For the most part, these agreements work, and case handling and investigations benefit from the skills of both disciplines. They are carried out effectively and efficiently with the least amount of additional trauma to children and families.

4. The Governor's Task Force on Child Abuse and Neglect developed and issued a "Best Practice" guide to professional practice in the identification, reporting, investigation and treatment of child abuse/neglect. This document contains a section on a model for joint investigation by law enforcement and DYFS personnel.

The volume of cases referred to DYFS because of abuse or neglect is more than five times the number of those that are criminal in nature, which are currently referred by DYFS to County Prosecutors. Although it is not for this Division to speak for the County Prosecutors or for the counties, it would appear that extensive organizational and operational change would be required as well as additional staff and fiscal resources if the counties were to assume the child abuse investigation responsibilities now performed by DYFS. The budgetary impact on the counties would more than likely be prohibitive. Since most of these cases are not criminal in nature and require social services, rather than police or court intervention, we oppose the reassignment of all child abuse investigations to County Prosecutors' offices.

Proposal #4

This proposal would reassign to an Office of Ombudsman for Children (with the help of the County Prosecutors' Offices) the lead role in investigating child abuse incidents that took place in DYFS-operated institutions or that pertain to placements initiated by DYFS. In considering this matter, we believe it would be beneficial to review the history and current practice concerning institutional abuse investigations.

Since 1978, the Division has utilized separate, specialized staff members in distinct organizational units to investigate allegations of child abuse and neglect in a wide variety of out-of-home settings. This approach recognizes that the knowledge and skills necessary to investigate allegations of abuse/neglect in residential facilities, group homes, shelters, hospitals, public and private day schools and child care centers, for example, are different from those necessary to investigate such allegations in the child's own home. It also reflects the Division's and the federal government's recognition of the need to avoid the appearance and the potential for conflict of interest when the allegations involve acts or omissions in institutions or facilities operated by DYFS itself. Therefore, since that time, pursuant to a Departmental Administrative Order and an inter-agency agreement between the Department of Human Services and the Department of the Public Advocate, all allegations of child abuse and neglect in DYFS-operated residential facilities, group homes and child care centers have been investigated by specialized personnel in the Public Advocate's Office, in conjunction with

investigators from the Division of Criminal Justice in the Attorney General's Office, as appropriate. In fact, federal regulations under the Child Abuse Prevention and Treatment Act require that "a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action." [45 CFR 1340.14(e)] The Division's arrangement with the Public Advocate has been reviewed and approved by the Office of the Governor and by the responsible federal agencies.

Regarding placements "at least initiated by DYFS", we assume the Committee staff is addressing the thousands of placements made annually by DYFS direct service units into residential treatment centers, shelters, group homes, etc. which are privately owned and operated and for which the Division provides funding pursuant to contracts negotiated and renegotiated annually. Based on that assumption, we do not believe any change in the present arrangement for investigations of allegations of child abuse and neglect in such institutions is either required, necessary or potentially beneficial. Public Advocate Alfred A. Slocum, in testifying before the Committee in direct response to a question about whether he believed there was any inherent conflict with DYFS being the investigating arm of an institution it has control over, stated:

"No, I said it rather briefly in my testimony. My position is that it [DYFS] is an agency which has developed over time a significant body of expertise, and I think the institution

12X

is amorphous enough to permit it to carry out its investigative function and be responsible for the protection of our children, as well, and apply corrective measures as part of the services rendered.

I don't see that there's an inherent conflict between the two. I think the thing that should override and give paramount judgment to these matters is the fact that within that organization [DYFS] resides most of the expertise that is required to get to the bottom of both of these matters, and the expertise is there as well to provide the services that our children need, and I'd utilize it." (transcript, p. 181).

From an organizational standpoint, the Division's Institutional Abuse Investigation Unit (IAIU) is totally separate from the Division's operational and contract units, and has its own separate chain of command that culminates in the Director of DYFS. Specifically, the IAIU Unit reports to the Assistant Director for Intergovernmental Affairs, who reports directly to the Director of DYFS. Every case involving a suspected criminal act, in accordance with the law, is reported to a special centralized unit of Deputy Attorneys General (DAGs) and to investigators in the Division of Criminal Justice (DCJ) or to the appropriate County Prosecutor's Office. IAIU and DCJ investigators have been jointly trained and do conduct joint investigations, as appropriate. In addition, Division of Law DAGs advise IAIU on civil law, authority and procedures concerning individual

or institutional corrective actions, as needed. Thus, there are sufficient internal protections that avoid even the appearance of a conflict of interest. As further discussed in our response to proposals 7 and 10, we believe that appropriate external safeguards and oversight for this function and others can best be achieved through the creation of an Office of Child Welfare Advocacy within the Department of the Public Advocate, rather than through creation of an Office of Ombudsman for Children, as proposed.

Finally, the Legislature reviewed and acted upon significant amendments to our child abuse laws to address institutional abuse during 1986 and 1987. Senate Bill 2116, sponsored by Senators DiFrancesco, Brown and Bassano, and Assembly Bill 2575, sponsored by Assemblyman Franks, and several others, were addressed no fewer than eight times in committees, on the floor, and after conditional veto by the Governor, the bills were passed unanimously and signed into law as Chapter 341 of the Laws of 1987. Not once, to our knowledge, was the issue of real or perceived conflict of interest raised by any of the parties.

In conclusion, I believe that, with the creation of an Office of Child Welfare Advocacy, as described above, coupled with our continuing efforts to improve our practice, there would be no need for any further organizational or structural changes to protect our children in institutions and other out-of-home placements.

Proposal #5

The Division fully supports the concept and intent of the proposal to develop a network of diagnostic centers that would be staffed with full-time professionals who could work closely with the Division, County Prosecutors' Offices, and other law enforcement personnel in the diagnosis and treatment of child abuse and neglect.

The Division continues to devise mechanisms for coordinating the activities of the many agencies that play a role in child abuse and neglect investigations. There is a recognized need to improve the examination and child abuse identification skills of medical professionals and to support those improved skills with a more comprehensive system of community-based social and law enforcement programs. We have similarly recognized that independent, locally-based organizations of this nature are cost effective and can render determinations that enjoy greater perceived objectivity and fairness than those rendered by individual paid consultants.

The county-based diagnostic center provides the opportunity to take a multi-disciplinary team approach, under which all involved agencies provide services as part of a planned, coordinated process. We see this approach as encouraging a comprehensive child- and family-focused effort, instead of a fragmented, haphazard effort where each agency pursues its own limited goals. This approach permits the caseworker efficient access to qualified professionals who can conduct child abuse exams and can identify

subtle diagnostic signs from history, and easily overlooked physical and emotional evidence. Further, it promotes a safe, non-threatening, and calm environment for the child, family and investigators. The team effort would work to reduce the burden of responsibility that currently seems to rely only on DYFS caseworkers. This system also encourages the justice and law enforcement systems to rethink their roles in re-establishing the health and stability of the family, rather than being exclusively concerned with prosecution issues.

From the standpoint of operational efficiency, effective use of resources and cost effectiveness, regional centers would:

- o attract the most experienced and skilled practitioners in the disciplines represented;
- o remain current with important issues and new techniques;
- o provide consistency in the approach of the various disciplines to the victims, the families of the victims, and the perpetrators, leading to better validation and more effective treatment; and
- o serve as training sites for a future network of county-based centers.

We take exception to the statement that the centers can only benefit the families that voluntarily seek help for their

problem. It is our experience that many families do not voluntarily seek help for this problem. Often victims do not routinely seek help because they fear it will create problems in the family; they may have been sworn to secrecy by an adult authority figure or they have been threatened by the perpetrator, and others in the family may have ignored previous pleas for help. To be effective, we must deal with the situations as we find them and develop strategies to reach and assist those who are resistant to treatment as well as those who seek it.

In summary, the Division lends its support to the concept and intent of developing centers to evaluate and treat victims of abuse. We are firmly convinced that such centers would enhance the skill and expertise brought to bear upon individual case situations and would further the balance we all are seeking to protect children and preserve families.

Proposal #6

Very simply and directly, we fully concur with and support proposal number 6, which would establish requirements for informing parents of a child who has allegedly been abused or neglected of the status of their case, their rights, and an approximate timeframe for resolution of the case. Such a proposal, if implemented, would indeed serve to strengthen and reinforce our current practice.

Proposals #7, #10

These proposals are closely related and provide for the creation of an Office of the Ombudsman for Children in the Department of Human Services to serve both as an official oversight committee to monitor the activities of DYFS and to be the lead agency in investigating and resolving complaints concerning state services for children. Senator Brown should be commended for her foresight and advocacy position to create an additional and important safeguard for New Jersey's families and children. Similarly, Assemblyman Bryant should also be recognized for his bill addressing this issue.

I would propose to the Committee a somewhat different approach, which I believe goes even further in the very same positive direction. I would ask that you give most serious consideration to the creation of an Office of Child Welfare Advocacy within the Department of the Public Advocate that would have the capacity to provide individual and group representation to families and children and to have authority beyond just the children and families served by DYFS.

I would like to be clear as to the reasons why I support such an office. I have continuing faith and pride in our caseworkers and supervisors who perform the day-to-day tasks associated with investigating over 50,000 referrals of child abuse and neglect each year, as well as providing continuing supervision to more than 50,000 of New Jersey's children at any given point in time. I also believe we have made--and continue to make--progress in

the quality and timeliness of our services and in the adherence to established statutes, regulations and policies. Yet, there are some very special considerations and needs that I would bring to your attention:

- o The broad powers granted to DYFS by New Jersey Statute and the need for countervailing balance and safeguards for low-income families and children in particular who cannot afford or access private counsel or representation;
- o The many children who are "dually-diagnosed" or who have needs that are most appropriately met in several separate governmental and service components (i.e., corrections, education, DYFS, mental health, developmental disabilities, etc.) and who may fall through the cracks in our safety net;
- o The legal requirements for confidentiality, which severely constrain, if not prevent, individual public case accountability and at times undermine public confidence, understanding and support;
- o The need to strive constantly to assure consistency between policy and actual practice in our 50,000 cases each year;
and
- o The vulnerabilities of families, particularly children at risk, and the critical need for timely and high quality decision making and service provision in each instance to prevent injustice or tragedy.

The location and structure of such an office is of the utmost importance. The office needs to be located within a department of State Government that has the organizational capacity and resources to provide the kind of individual and group representation that is required. The sheer volume of complaints or concerns that are currently received by the offices of DYFS, the Public Advocate, and other State offices, coupled with the complexity of the individual cases and the system itself, cries out for an institutional capacity for resolution that far exceeds what an individual ombudsman or committee with a limited staff could achieve. Such individual representation is of paramount importance so we all can be assured that poor families and children have the same opportunity for representation and advocacy as do our more affluent families, who can afford their own representation.

The Public Advocate currently maintains offices or divisions of developmental disabilities and mental health advocacy. The addition of an office or division of child welfare advocacy would add an advocacy component to cover more fully the vulnerable populations served by the Department of Human Services and assure that families and children in need of services receive equal priority and attention.

For all of the above reasons, I urge your consideration, in concept, of the creation of an Office of Child Welfare Advocacy within the Department of the Public Advocate. There are other advocates here today who have thoughts and plans for child

welfare oversight. The concept requires careful thought, and attention must be given to all recommendations. I would submit that the most direct and effective manner to respond to concerns such as the voluntary service agreements, perceived gaps between policy and practice, and the need for an independent confidante for troubled families, could all best be served by the Office I am proposing. The Office of Child Welfare Advocacy would not relieve DYFS or other State offices of their responsibilities but would provide independent advocacy and a balance of authority and accountability.

In conclusion, when I discussed this matter with our Commissioner, Drew Altman, he asked me to put aside for the moment my role as Director of DYFS and to advise him if I thought this proposal is in the best long-term interest of New Jersey's families and children. I told him then that I believed it was and welcome the opportunity today to give you that same answer.

Proposal #8

This proposal suggests that the statute which limits access to records of child abuse, N.J.S.A. 9:6-8.10a, be amended to include the parents of the abused child among the persons who are entitled to receive the report when the abuse occurs in an institutional setting. The proposal makes clear that its intent is to provide parents with a right to know what happened to their child so that they can aid in the treatment process. We would support a legislative amendment so crafted as to clearly carry out that intent.

First, it is important for Committee members and the public to know that, as a matter of Division policy, all institutions that we regulate and in which we are responsible for conducting investigations of alleged abuse are required to notify the parent of the child at the time of the incident concerning any injury, diagnosis and treatment. All parents are entitled to notification of both the results of the investigation and any recommendation for treatment as it relates to their child. Such notification is committed in writing upon request.

The proposal states that the statute would also include a provision that would protect the identity of the alleged abuser when the records have been released to the parents of the victim. The intent of this provision would be almost impossible to implement. In fact, in most instances, the parent is well aware of the alleged abuser's identity, be it a teacher, a day care worker, a residential child care worker or any other institutional custodian. However, the Division does support provision for the protection of the identity of the referrant and any other person when the disclosure of such information would be likely to endanger the life or safety of the referrant or other person or would be likely to result in the discharge or discrimination against the referrant with respect to his/her employment. This is already codified in the New Jersey Administrative Code at N.J.A.C. 10:129-2.1(b)9(d), and is a federal requirement, as well.

We believe the policy considerations behind the confidentiality statute (N.J.S.A. 9:6-8.10a) are not primarily those stated by Committee staff in proposal number 8, i.e., to protect from vindictiveness and to encourage reporting incidents of abuse. Rather, they are along the lines of those so recently stated by the federal government in repromulgating the regulations that form the framework for our statute: that the interests of the child and his or her family must be the principal considerations in determining the nature and extent of disclosure of confidential information, and that disclosure to certain agencies is essential to carry out the purposes of diagnosis, investigation, treatment, and prevention of abuse and neglect. In 1980, the Appellate Division of the Superior Court ruled along these lines in denying access when a parent's reasons for wanting copies of such records had nothing to do with the provision of care or supervision of the child by his parent, but rather to obtain the records for purposes of compiling documentation for potential lawsuits, K. v. M. 176 N.J. Super 132, 422 A2d 449. While it would appear that the Committee's proposal is intended to be consistent with the foregoing ruling, we urge that statutory language should be carefully drafted and should comport with 45CFR §1340.14 in order to ensure continued eligibility for federal funding under the Child Abuse Prevention and Treatment Act. Division staff stand ready to provide such information and technical assistance as the Committee may require to achieve this goal.

Proposal #9

We support in concept and intent the need to develop and expand resources for supervised visitations in child welfare matters. We believe the need extends beyond the child abuse cases to include child neglect situations as well. The proposed programs would be set up to service persons not able to be served by the Supervised Visitation Program operated by County Probation Departments. Judge Page's testimony in September on this particular matter was both accurate and eloquent. DYFS offices or court settings are not the neutral or natural settings often needed for such visitations. Community-based voluntary agencies could, with the appropriation of necessary resources, provide excellent alternatives. Resources would need to include the appropriate physical space necessary as well as the qualified staff required for the supervision. An examination of the costs associated with such programs currently in place indicates an average cost for a program to cover one county would be approximately \$60,000 and serve approximately 50-60 families per program.

Proposal #11

This proposal calls for legislation to establish a Bill of Rights for children who have been placed outside of their home under the care and supervision of the Division. It envisions that such legislation would outline specific rights reflecting the best interests of these children, make the Division responsible for protecting and promoting their welfare and form the basis for a State policy "stressing" permanency.

The Division supports the enactment of legislation creating a Bill of Rights for children, and acknowledges that special consideration must be given to children who are both separated from their families and subject to State authority over their lives. We would recommend the scope of this Bill of Rights be extended to all children in out-of-home placement under the supervision of any and all governmental entities.

We note that existing State statutes already provide some rights for special classes of children, since DYFS often has care or custody of children placed outside of their homes in the mental health, developmental disabilities and correctional systems. Other statutes assign responsibility to the Division, other Departments of State Government, the Courts and the State for the welfare of children in out-of-home placements and stress the importance of prevention, preservation of family integrity and permanency.

In addition, the Child Placement Review Act, which is designed to promote permanency, monitor the welfare of children in placement and ensure the fulfillment of the responsibilities of the Division and others, also contains provisions giving certain procedural rights to minors in placement.

The principles that underlie these laws are supported by the Division and are reflected, in detail, in its policies. Therefore, the Division would certainly support codification, to

provide a common legislative basis for both procedural and substantive rights for all children placed outside of their homes under government care or custody. However, such legislation would have to be carefully drafted to ensure that:

1. There would be no diminution of the existing rights of special classes of children;
2. The enumeration of rights would need to be broad enough to encompass conditions in a variety of placement settings, provide flexible and reasonable standards and avoid restricting service provision to existing models;
and
3. State responsibilities would need to be subject to resource limitations.

The principles that the Division would endorse in such legislation include the rights of children to:

1. the necessities of life (such as food, clothing, shelter, medical and mental health care) in a humane physical and psychological environment;
2. protection (from abuse, neglect, exploitation, discrimination, extraordinary "treatment" procedures and cruel and unusual punishment);

3. family integrity (including security and continuity in parental and parental substitute relations; contact with parents, siblings and grandparents; access to the family's religion and cultural heritage; and services designed to prevent family separation and permanency);
4. the opportunity to attain independence and self sufficiency (through appropriate education, treatment habilitation, and training); and
5. the opportunity, appropriate to age and level of functioning, to participate effectively in decisions and actions affecting their lives and placement (such as notice, representation, the opportunity to be present and participate in decision making and recourse to challenge adverse decisions).

In addition, while recognizing the need for special consideration for children involved with the Division -- in this year of the United Nations Convention on the Rights of the Child -- also recommends that serious consideration be given to having New Jersey pioneer the first comprehensive State Bill of Rights for Children. Both the Commissioner and members of the Legislature have indicated an interest in such a measure in the past, and the Division would be willing to play a major role and provide technical assistance in the development of an appropriate bill.

In closing, I again express my appreciation to you Senator Costa, to members of the Committee, and to all of the advocates and citizens here today. The time and effort that all of you have devoted to improving our child and family services system is indeed commendable. On behalf of our Division, I am grateful for the opportunity you have provided me through this hearing. My staff and I look forward to working with you. Thank you and good day.

Governor's Task Force on Child Abuse and Neglect
Protection Subcommittee's Position on
Proposed Legislation
Senate Committee on Children's Services
February 9, 1989

1. Limit the caseworker to child ratios to 1:20, the casework supervisor to caseworker ratio to 1:5, and a support staff to caseworker ratio to 1:5, as suggested by the Communication Workers of America.

Position: Support

2. Make false reporting of child abuse a crime of the fourth degree and amend section 6 of P.L. 1971, C. 437 to delete the provision which affords persons who make reports of child abuse absolute criminal immunity.

Position: Members are divided on this issue. Some members support, others oppose and some feel it should have the same penalty as failure to report child abuse (disorderly person and subject to a fine up to \$500.00 or up to six months imprisonment, or both).

3. Reassign primary responsibility for conducting investigations of reports of child abuse to county prosecutor office's.

Position: Oppose. Many of the cases brought to the attention of DYFS are social problems and not criminal in nature. The county prosecutors' offices do not have sufficient staff or training to handle these cases. NJ Admin. Code title 10 section 129-1.1 (1984) et seq. obligates DYFS caseworkers to report to the county prosecutor all cases involving suspected criminal conduct on the part of the parent or caretaker. Six criterias are identified as reportable cases which are:

1. Death of 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;
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.

When cases are reported to the county prosecutor, the Task Force supports joint investigation whenever possible. (See attachments from Child Abuse and Neglect: A Professional's Guide To The Identification, Reporting, Investigation and Treatment).

4. Reassign the DYFS's lead role in the investigation of child abuse committed in institution or placement either operated or at least initiated by DYFS to the Office of Ombudsman for children.

Position: Oppose. The Public Advocates Office currently investigates reports of child abuse which allegedly occur in a DYFS operated facility. The Division of Criminal Justice and DYFS investigates cases of institutional abuse in non-DYFS facilities. The Office of Ombudsman or another oversight committee could review and investigate complaints about DYFS actions regarding institutional abuse in the same manner it would investigate other complaints of DYFS actions.

5. Develop a network of county-based diagnostic centers staffed with full-time professionals who would work closely with DYFS, investigators from county prosecutors' offices and other law enforcement personnel.

Position: Martin Finkel will address this in his testimony.

*Violence
region
center*

6. Establish requirements for informing parents of a child who has allegedly been abused or neglected of the status of their case, their rights, and an appropriate time frame for the resolution of the case.

Position: Support

7. Amend Senate Bill No. 550, establishing the Office of the Ombudsman for children, to allow the office to serve as an official oversight committee which would act on complaint about DYFS activities.

Position: Peter Gold, Esq. will address this in his testimony.

8. Amend the statute which limits access to records of child abuse to include the parents of the abused child among the persons who are entitled to receive the report when the abuse occurs in an institutional setting.

Position: Oppose. Allowing parents to have access to records might violate the confidentiality of other children whose names may be included in the record and that of the referent. The Task Force supports the concept of providing information to the parents of the victim of institutional abuse.

9. Appropriate funds to the Department of Human Services or the courts for contracting with community-based organizations for the establishment or improvement of facilities for supervised visitation during the pending of child abuse allegations.

Position: Support

10. Establish an Office of the Ombudsman for children in the Department of Human Services.

Position: Peter Gold, Esq. will address this in his testimony.

11. Develop a child placement Bill of Rights which would protect the rights of all children who have been placed outside their homes by DYFS.

Position: Support but we are recommending that it includes all children placed outside of their homes including those in correctional facilities and psychiatric institutions.

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.

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?

**CHILD
ADVOCACY AUTHORITY**
[In But Not Of Dept. Of Public Advocate]

**EXECUTIVE
DIRECTOR**

**Policy/Planning
Recommendations**

Ombudsman

Audit Review

Information

- To make and receive recommendations to and from:
- DYFS
 - Human Services
 - Public Advocate
 - Community Affairs
 - Higher Education
 - Education
 - Health
 - Corrections
 - Law & Public Safety
 - County Freeholders
 - Judiciary
 - Legislature
 - Governor's Office
 - Diagnostic & Therapeutic Regional Centers

- To receive and respond to complaints about
 - Elements of CPS* (DYFS, Institutions, Contractors, etc.)
 - From elements of CPS, other government and the public.
- Subpoena Power
- Confidentiality Issues
- Sworn Complaints with Criminal Penalty
- Referral of substantiated claims to
 - Public Advocate (Civil)
 - Attorney General (Criminal)

- To Audit/Review all elements of CPS* (DYFS, Contractors Institutions, etc.)
- To obtain, collect and coordinate data and information from elements of CPS (Human Services, Judiciary, Law & Pub. Safety, etc.)

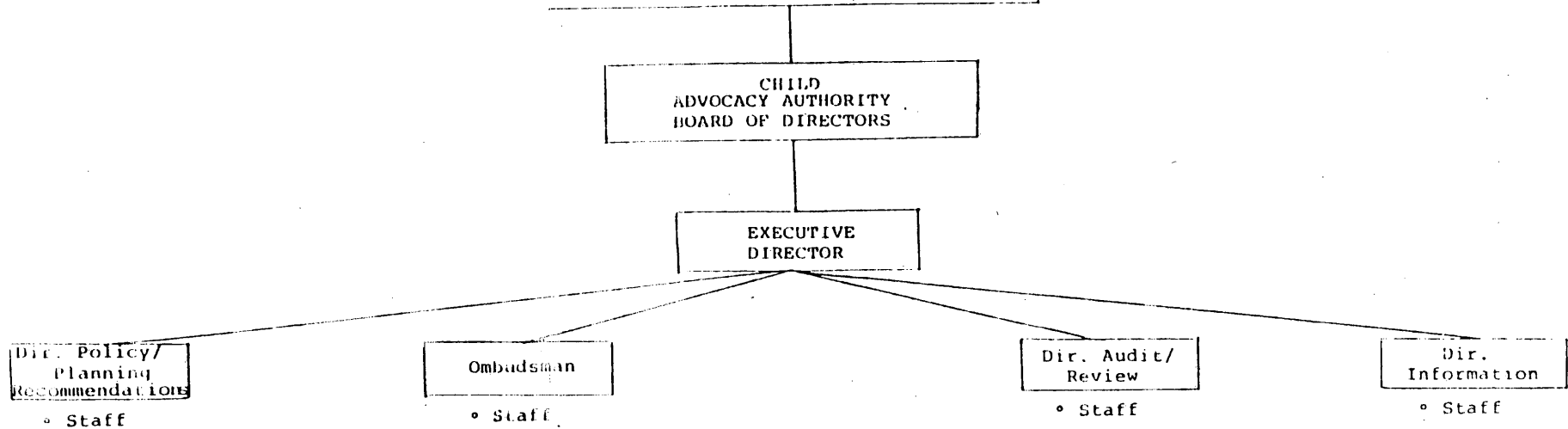
- To Facilitate
 - Public Awareness
 - Responses to the Public
- Media Resource Center

*Child Protective System

[Prepared by Peter A. Gold, Esq., Working Group, Governor's Task Force on Child Abuse & Neglect (1-30-89 Draft No. 3)]

XCF

CHILD
ADVOCACY AUTHORITY
[In But Not of Dept. Public Advocate]



(1) Duties of CAA to coordinate, review and initiate child protection and welfare activities of elements of CPS* including:

- Policy and activity recommendations to legislative, judiciary and executive
- Investigate and respond to complaints about elements of CPS

- Audit CPS elements
- Obtaining data/Information from CPS elements.
- Provide Information to public and provide media resource

(2) Members of CAA

- DYFS Director
- DYFS Trustee
- Comm. Human Services
- Comm. Higher Education
- Comm. Education
- Comm. Health
- Comm. Corrections
- Public Advocate
- Attorney General
- Chief Justice
- Legislature
- Diagnostic & Therapeutic Regional Centers
- Chair, N.J. Freeholders Group
- Fourteen Public Members
 - 8 Child Protection/Welfare Related
 - 6 Other

* Child Protective System

372

STATEMENT
OF ALFRED A. SLOCUM
PUBLIC ADVOCATE OF NEW JERSEY

BEFORE THE SENATE COMMITTEE ON CHILDREN'S SERVICES

FEBRUARY 9, 1989

SENATE COMMITTEE ON CHILDREN'S SERVICES

FEBRUARY 9, 1989

GOOD MORNING MADAME CHAIRWOMAN COSTA AND MEMBERS OF THE COMMITTEE. I AM COMMISSIONER ALFRED A. SLOCUM, PUBLIC ADVOCATE FOR THE STATE OF NEW JERSEY. I AM HERE TO DISCUSS THE COMMITTEE'S RECOMMENDATIONS ADDRESSING PROBLEMS WITH THE METHODS AND NATURE OF THE DIVISION OF YOUTH AND FAMILY SERVICES (DYFS) CHILD ABUSE INVESTIGATIONS.

AS I MENTIONED IN MY TESTIMONY ON THIS MATTER LAST SEPTEMBER 27, THE DEPARTMENT OF PUBLIC ADVOCATE HAS OCCASION FOR REGULAR INTERACTION WITH THIS ASPECT OF DYFS' MANDATE THROUGH OUR VARIOUS OFFICES AND DIVISIONS. THE OFFICE OF THE PUBLIC DEFENDER'S LAW GUARDIAN UNIT CONDUCTS ALL THE INSTITUTIONAL ABUSE INVESTIGATIONS OF DYFS OPERATED FACILITIES AND PROVIDES LEGAL REPRESENTATION TO CHILDREN WHO ARE VICTIMS OF CHILD ABUSE. THE DIVISION OF MENTAL HEALTH ADVOCACY REPRESENTS BOTH ADULTS AND CHILDREN IN PSYCHIATRIC HOSPITALS AND INVESTIGATES CHILD ABUSE ALLEGATIONS WITHIN SUCH HOSPITALS. THE DIVISION OF ADVOCACY FOR THE DEVELOPMENTALLY DISABLED INTERACTS WITH DYFS WITH REGARD TO THE SERVICES OFFERED TO AND PLACEMENT OF AUTISTIC AND DEVELOPMENTALLY DISABLED CHILDREN. FINALLY, OUR OFFICE OF CITIZENS COMPLAINTS, AMONG THE MANY THOUSANDS OF CALLS IT RECEIVES, HANDLES COMPLAINTS ALLEGING DYFS ABUSE OF ITS INTERVENTION RESPONSIBILITIES AND INVESTIGATORY AUTHORITY. WE HAVE ALL CAREFULLY REVIEWED YOUR RECOMMENDATIONS AND OFFER YOU THE BENEFIT OF OUR EXPERIENCE AND EXPERTISE IN THE HOPE OF SIGNIFICANTLY IMPROVING THE PROCEDURES FOR INVESTIGATING CHILD ABUSE. WE HAVE CONSIDERED YOUR PROPOSALS SERIATIM:

1. THE COMMITTEE PROPOSES CASEWORKER TO CHILD RATIOS OF ONE TO TWENTY AND CASEWORKER TO SUPERVISOR RATIOS OF ONE TO FIVE IN ITS RECOMMENDATIONS TO THE LEGISLATURE. WE AGREE THAT A REDUCTION IN CASELOAD NUMBERS WILL PROVIDE SOME RELIEF FROM THE HIGH TURNOVER RATES AFFLICTING DYFS CHILD ABUSE CASEWORKERS AND MAY REDUCE ERRORS. HOWEVER, THE PARTICULAR RATIO TO BE USED MAY VARY WITH THE TYPE OF WORK BEING DONE AND THE QUALITY OF THE STAFF PERFORMING THOSE TASKS. LOW RATIOS MAY PROVE USELESS IF ADEQUATE TRAINING IS NOT PROVIDED. IT MAY ALSO BE NECESSARY TO VARY THESE RATIOS DEPENDING ON WHETHER THE PARTICULAR DYFS FUNCTION IS THE INVESTIGATION OF ALLEGED CHILD ABUSE OR THE PROVISION OF PREVENTIVE FAMILY SERVICES. WE RECOMMEND THAT BEFORE MANDATING SPECIFIC NUMBERS THAT CHILD WELFARE EXPERTS SUCH AS THE CHILD WELFARE LEAGUE OF AMERICA, THE ASSOCIATION FOR CHILDREN OF NEW JERSEY, THE AMERICAN PUBLIC WELFARE ASSOCIATION, AND OTHERS, BE CONSULTED. LACKING THE ABILITY TO FORSEE WHAT SOCIETAL MALADIES MAY BEFALL THE CHILDREN OF THE FUTURE, THE OPERATIVE STANDARD SHOULD BE CHILD/CASEWORKER AND CASEWORKER/SUPERVISOR RATIOS WHICH PROVIDE SUFFICIENT STAFF TO DO THE PARTICULAR JOB CAREFULLY AND WELL.

2. IT IS FURTHER PROPOSED THAT ANYONE MAKING A FALSE REPORT OF CHILD ABUSE BE CHARGEABLE WITH A CRIME OF THE FOURTH DEGREE AND THAT IMMUNITY FROM CRIMINAL LIABILITY FOR THE MAKING OF A REPORT BE DELETED FROM OUR LAWS. THE IMMUNITY PROVISION IN QUESTION STATES THAT, "[A]NYONE ACTING PURSUANT TO THIS ACT IN THE MAKING OF A REPORT UNDER THIS ACT [EMPHASIS ADDED] SHALL HAVE IMMUNITY FROM ANY LIABILITY, CIVIL OR CRIMINAL"1 WE READ THIS PROVISION NOT AS ABSOLUTE IMMUNITY FOR ANY REPORT BY ANY PERSON BUT, CONSISTENT WITH THE OTHER PROVISIONS OF THE ACT, IMMUNITY FOR "[A]NY PERSON HAVING A REASONABLE CAUSE [EMPHASIS ADDED] TO BELIEVE THAT A CHILD HAS BEEN SUBJECTED TO CHILD ABUSE OR ACTS OF CHILD ABUSE"2

1. N.J.S.A. 9:6-8.13. AMENDED BY P.L. 1987, C. 341, SEC. 5. EFFECTIVE DECEMBER 24, 1987.

2. N.J.S.A. 9:6-10. AMENDED BY P.L. 1987, C. 341, SEC. 5. EFFECTIVE DECEMBER 24, 1987.

THE PROVISION OF AN UNSWORN WRITTEN STATEMENT KNOWN TO BE UNTRUE TO AUTHORITIES, WHICH INCLUDES GOVERNMENTAL AGENCIES AND PUBLIC SERVANTS,³ IS A CRIME OF THE FOURTH DEGREE,⁴ AS IS THE FALSE INCRIMINATION OF ANOTHER TO A LAW ENFORCEMENT AUTHORITY.⁵ SIMILARLY, THE PROVISION OF A FICTITIOUS REPORT TO A LAW ENFORCEMENT AUTHORITY⁶ OR THE MISLEADING OF A PUBLIC SERVANT THROUGH A WRITTEN STATEMENT,⁷ ARE DISORDERLY PERSONS OFFENSES. WHILE IT MAY BE DIFFICULT FOR PROSECUTORS TO ESTABLISH THE INTENT FOR THE FALSE FILING OF A CHILD ABUSE REPORT, IT IS, HOWEVER, PREFERABLE TO USE EXISTING AVENUES FOR REGULATING POSSIBLY CRIMINAL REPORTS THAN TO ESTABLISH A NEW CRIME. WE RECOMMEND THAT THE LEGISLATURE MAKE ITS INTENT TO PROVIDE IMMUNITY FOR "GOOD FAITH" CHILD ABUSE REPORTING CLEAR IN THE STATUTE, AND AVOID ACTIONS WHICH MAY CHILL THE REPORTING OF ABUSE BASED ON REASONABLE SUSPICION BUT NOT ABSOLUTE CERTAINTY.

3. STATE V. KUSHNER 192 N.J. SUPER. 583, 471 A. 2D 903 (A.D. 1984).

4. N.J.S.A. 2C:28-3 (a). AMENDED BY P.L. 1981, C. 290 SEC. 26. EFFECTIVE SEPTEMBER 24, 1981.

5. N.J.S.A. 2C:28-4 (a) P.L. 1978, C. 95 SEC. 2C:28-4, EFFECTIVE SEPTEMBER 1, 1979.

6. N.J.S.A. 2C:28-4 (b) IBID.

7. N.J.S.A. 2C:28-3 (b) IBID.

THE MINNESOTA STATUTE CITED IN THE COMMITTEE'S RECOMMENDATIONS ONLY PROVIDES THAT "[A]NY PERSON WHO KNOWINGLY OR RECKLESSLY MAKES A FALSE REPORT SHALL BE LIABLE IN A CIVIL SUIT FOR ANY ACTUAL DAMAGES SUFFERED . . ."⁸ BOTH OF THE STATUTES WERE RECENTLY ENACTED AND NEITHER HAS BEEN TESTED IN THE COURTS. WE MAY, IN TIME, WISH TO ASSESS THE IMPACT ON REPORTING LEVELS IN THOSE STATES.

FURTHERMORE, WE ARE NOT CONVINCED THAT IT HAS BEEN DOCUMENTED THAT "FALSE REPORTS" ARE A SIGNIFICANT PROBLEM REQUIRING A CHANGE IN THE STATUTE. WE BELIEVE THE BALANCE MUST ALWAYS FAVOR PROTECTING THE BEST INTEREST OF THE CHILD.

FINALLY, THE INTENT OF THE PROPOSED RECOMMENDATION COULD EASILY BE NEGATED BY SIMPLY MAKING AN ANONYMOUS CHILD ABUSE ALLEGATION FROM A PUBLIC TELEPHONE.

8. MINN. S.A. 626.555 SUBD 5; 1988 MINN. LAWS C., 662 SEC. 2.

3. THE PRIMARY PURPOSE OF A DYFS INVESTIGATION OF CHILD ABUSE IS, AND SHOULD BE, QUITE DIFFERENT FROM AN INVESTIGATION AIMED AT THE PROSECUTION OF A CRIME. DYFS CASEWORKERS MUST OPERATE "IN THE BEST INTEREST OF THE CHILD" AND MUST ON OCCASION MAKE IMMEDIATE JUDGEMENTS CONCERNING IMMINENT DANGER TO THE VICTIMS OF ABUSE WHICH BY NECESSITY OF CIRCUMSTANCE IMPINGE ON THE LEGAL CUSTODY RIGHTS OF OTHERS, NOTABLY PARENTS. ALTHOUGH CRIMINAL PROSECUTION OF ABUSIVE PARENTS MAY IN SOME WAYS BENEFIT THE CHILD, THE INTENDED BENEFICIARY OF PROSECUTORIAL ACTION IS ALWAYS SOCIETY-AT-LARGE. CRIMINAL LAW ENFORCEMENT, HOWEVER, ATTACKS A RELATIVELY SMALL, BUT POTENTIALLY HIGHLY VISIBLE, NUMBER OF CASES. THE ORIENTATION TOWARDS THE GATHERING OF ADMISSIBLE EVIDENCE AND PROVING CASES IN CRIMINAL COURT BY PROSECUTORS IS AN IMPORTANT AND VITAL FUNCTION. HOWEVER, ITS IMMEDIATE AIM IS DIFFERENT FROM ENFORCEMENT OF CIVIL CHILD PROTECTIVE STATUTES.

WE ASSERT THAT DYFS CHILD ABUSE CASEWORKERS AND SUPERVISORS MUST BECOME MORE FAMILIAR WITH INVESTIGATORY TECHNIQUES WHICH PRESERVE EVIDENCE OF CRIMINALITY AND DO NOT OBSTRUCT THE CRIMINAL PROCESS. FURTHERMORE, A SEPARATE UNIT IN THE PROSECUTOR'S OFFICE MAY BE NECESSARY SO AS TO BECOME EXPERT AT CHILD ABUSE PROSECUTIONS AND TO OVERCOME THE CONSIDERABLE INSTITUTIONAL INERTIA WHICH EXISTS AGAINST BRINGING THESE CASES TO TRIAL. WE DO NOT CONTEND THAT ONE OF NECESSITY EXCLUDES THE OTHER. IN FACT, IN UNION COUNTY JOINT INVESTIGATIONS OF CHILD ABUSE ALLEGATIONS BY DYFS AND THE PROSECUTOR'S OFFICE ARE THE GENERAL PRACTICE. WE RECOMMEND THAT THE STATUTORY SCHEME REQUIRE SUCH JOINT INVESTIGATIONS, WHERE APPROPRIATE, AND THAT DYFS IMPROVE ITS INVESTIGATORY TECHNIQUES THROUGH BETTER TRAINING AND A SEPARATE INVESTIGATIONS UNIT IF NECESSARY.

4. ~~THE~~ LAW GUARDIAN PROGRAM IN THE DEPARTMENT OF THE PUBLIC ADVOCATE ALREADY CONDUCTS ALL INSTITUTIONAL ABUSE INVESTIGATIONS IN FACILITIES OPERATED BY DYFS. THE REASSIGNMENT OF INSTITUTIONAL CHILD ABUSE INVESTIGATIONS WHERE DYFS CONTRACTS WITH SUCH A FACILITY IS NEEDED TO SAFEGUARD THE BEST INTEREST OF THE CHILD. THE ATTORNEY GENERAL HAS A SEPARATE DIVISION WHICH HANDLES INSTITUTIONAL ABUSE CASES. THE FOCUS HERE MUST BE ON THE FUNCTION TO BE PERFORMED BY SUCH AN OFFICE AND NOT ON ITS FORM. HOWEVER, SHOULD THE OFFICE OF THE OMBUDSMAN FOR CHILDREN NOT BE CREATED, THE INVESTIGATORY FUNCTION SHOULD BE PLACED IN AN EXISTING OPERATION. ADDITIONALLY, TO AVOID POTENTIAL CONFLICTS OF INTEREST, ALL CASES ARISING FROM ANY DEPARTMENT OF HUMAN SERVICES OWNED, OPERATED OR CONTRACTED WITH FACILITIES SHOULD BE INVESTIGATED BY THE SEPARATE UNIT, NOT JUST DYFS CASES.

5. THE DEVELOPMENT OF COUNTY-BASED DIAGNOSTIC CENTERS WHICH WOULD DIAGNOSE AND TREAT THE VICTIMS OF CHILD ABUSE AND CAREFULLY PRESERVE ANY EVIDENCE OF CRIMINALITY IS AN EXCELLENT IDEA WITH OTHER BENEFITS AS WELL. TOO OFTEN CHILDREN VICTIMIZED BY ABUSE ARE FURTHER TRAUMATIZED BY BEING SUBJECTED TO MULTIPLE EXAMINATIONS BY VARIOUS PERSONNEL. CAREFUL DIAGNOSIS AND TREATMENT BY ONE SET OF MEDICAL EXPERTS WOULD GREATLY MINIMIZE UNNECESSARY INTRUSIONS ON THE CHILD'S PERSONAL INTEGRITY. AGREEMENTS BETWEEN DYFS AND PROSECUTORS TO USE SUCH CENTERS AND TO ACCEPT THEIR MEDICAL FINDINGS WOULD BOTH IMPROVE CRIMINAL INVESTIGATION OF THESE MATTERS AND PROTECT CHILDREN FROM BEING FURTHER TRAUMATIZED BY THE SYSTEM.

THE COMMITTEE'S LANGUAGE ON THE USE OF THESE FACILITIES ON A VOLUNTARILY BASIS SHOULD BE CLARIFIED TO ADDRESS THOSE CASES WHERE FAMILIES DO NOT CHOOSE TO AVAIL THEMSELVES OF THE FACILITY. IT MAY MORE OFTEN BE THE CASE THAT SUCH EXPERTISE WOULD BE NECESSARY WHEN PARENTS ARE UNCOOPERATIVE AND SUBJECT TO INVESTIGATIONS THEMSELVES. THIS POINT NEEDS FURTHER CLARIFICATION BY THE COMMITTEE. WE WOULD ALSO RECOMMEND THAT THE COMMITTEE SEEK OUT TESTIMONY FROM THE ORGANIZATIONS ALREADY PERFORMING THIS FUNCTION GIVEN THE STATE OF NEW JERSEY'S BUDGET OUTLOOK, IT MAY BE MORE PRODUCTIVE TO AIM FOR THE ESTABLISHMENT OF REGIONAL DIAGNOSTIC CENTERS FIRST WITH EXPANSION TO THE COUNTY LEVEL SHOULD THE WORKLOAD AND AVAILABLE FUNDING JUSTIFY SUCH A MOVE.

6. WE AGREE WITH THE RECOMMENDATION WHICH WOULD PROVIDE PARENTS OF CHILDREN ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED WITH AN APPROXIMATE TIME FRAME FOR THE COMPLETION OF INVESTIGATIONS. PARENTS SHOULD KNOW OF THE ESTIMATED TIME REQUIRED TO COMPLETE THE INVESTIGATION. AT THE VERY LEAST, THIS MAY BE BENEFICIAL TO THEM SINCE THEY WILL KNOW THAT THERE IS AN APPROXIMATE END TO THE CASE. HOWEVER, WE MUST CAUTION THAT IT MAY NOT PROVIDE MUCH MORE THAN THAT. THE FACT THAT THE TIME-TABLE BEING PROVIDED IS ONLY AN APPROXIMATION DOES NOT GIVE THE PARENT ANY RECOURSE TO CHALLENGE A FAILURE TO MEET THE TIME-FRAME. DYFS' GUIDELINES AND REGULATIONS ALREADY REQUIRE COMPLETION OF INSTITUTIONAL CHILD ABUSE AND NEGLECT INVESTIGATIONS WITHIN THIRTY DAYS. THIS RARELY OCCURS.

ADDITIONALLY, PARENTS SHOULD BE INFORMED OF NOT ONLY THE ESTIMATED COMPLETION OF INVESTIGATIONS, BUT ALSO THE PROGRESS OF SUCH INVESTIGATIONS. PEOPLE WHO REPORT AN ABUSE OR NEGLECT ALLEGATION SHOULD BE INFORMED OF THE STATUS OF THE CASE, THAT IS, WHETHER IT IS ACTIVE, ONGOING OR COMPLETED. OFTEN, DOCTORS ASSUME THAT BECAUSE THEY HAVE RECEIVED NO FEEDBACK ON THE REPORTS OF ABUSE THEY FILE, NOTHING IS BEING DONE. THE ACKNOWLEDGEMENT OF THE REPORTER'S CONTRIBUTION, THROUGH THE PROVISION OF CASE STATUS INFORMATION, IS A SMALL PRICE TO PAY FOR MAINTAINING THEIR INTEREST AND ALERTNESS TO POTENTIAL CHILD ABUSE AND NEGLECT SITUATIONS.

7. CONSISTENT WITH OUR RECOMMENDATION IN PROPOSAL NUMBER FOUR, THE OFFICE OF THE OMBUDSMAN FOR CHILDREN SHOULD BE PLACED OUTSIDE OF THE DEPARTMENT OF HUMAN SERVICES. EVEN THE STATUS OF "IN BUT NOT OF THE DEPARTMENT" WOULD NOT BE SUFFICIENT BECAUSE IT WOULD SUBJECT SUCH AN OFFICE TO BUDGET AND LOGISTICAL CONTROLS WHICH WOULD RENDER IT LESS EFFECTIVE. WHEREVER THE OFFICE IS FINALLY PLACED, IT SHOULD BE GIVEN THE AUTHORITY TO RECEIVE COMPLAINTS, NOT ONLY ON DYFS' ACTIVITIES, BUT ON THOSE OF ANY AGENCY SERVING CHILDREN.

8. AMENDING THE STATUTE WHICH PROVIDES ACCESS TO RECORDS OF INSTITUTIONAL CHILD ABUSE AFTER THE INVESTIGATION HAS BEEN COMPLETED WILL BE BENEFICIAL TO THE PARENTS. PARENTS OF INSTITUTIONALIZED CHILDREN MAY NOT BE AWARE THAT THEIR CHILD HAS BEEN ABUSED AND THAT AN INVESTIGATION HAS BEEN CONDUCTED. FOR THAT REASON, THE PARENTS SHOULD NOT ONLY BE ENTITLED TO RECEIVE THE REPORT WHEN IT IS CONCLUDED, BUT THEY SHOULD ALSO BE INFORMED AT THE OUTSET THAT A COMPLAINT HAS BEEN FILED AND KEPT INFORMED AS TO THE PROGRESS OF THE INVESTIGATION. THE PROTECTIONS OFFERED BY A CONFIDENTIAL PROCESS SHOULD NOT BE USED TO HAMPER A PARENT'S LEGITIMATE INTEREST IN BEING INFORMED OF THE PHYSICAL, EMOTIONAL AND MENTAL CONDITION OF THE CHILD OR IN THEIR INTEREST TO PURSUE CIVIL REMEDIES AGAINST THE INSTITUTION PERPETRATING THE ABUSE.

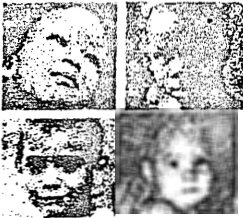
9. ESTABLISHING OR IMPROVING FACILITIES FOR SUPERVISED VISITATION IS AN IMPORTANT SERVICE TO BOTH THE CHILD AND PARENT UNDERGOING THE TRAUMA OF A CHILD ABUSE INVESTIGATION. UNIFORM STATE STANDARDS FOR PROVIDING SUPERVISED VISITATIONS REQUIRE NOT ONLY THE APPROPRIATE FACILITIES BUT THE SERVICES OF A HIGHLY SKILLED, WELL-TRAINED SUPERVISOR FOR EACH VISITATION PROGRAM.

A SUPERVISED VISITATION PROGRAM ALREADY EXISTS IN THE COURTS FOR NON-DYFS INVOLVED CASES. THE SUCCESS AND UTILIZATION OF THIS PROGRAM VARIES FROM COUNTY TO COUNTY. THE REFINEMENT AND EXPANSION OF THIS PROGRAM WOULD BE WORTH PURSUING. SUCH A PROGRAM SHOULD APPROXIMATE AS MUCH AS POSSIBLE A NATURAL HOME ENVIRONMENT AND BE EASILY ACCESSIBLE BY PUBLIC TRANSPORTATION.

10. AGAIN, WE ARE OF THE STRONG BELIEF THAT AN OFFICE OF OMBUDSMAN FOR CHILDREN SHOULD NOT BE PLACED IN THE DEPARTMENT OF HUMAN SERVICES AND THAT ITS SCOPE FOLLOW THE INTEREST OF CHILDREN TO WHATEVER AGENCY IT MAY LEAD AND NOT ANY PARTICULAR STATE AGENCY, SUCH AS DYFS. (SEE ITEM 7)

11. A CHILD PLACEMENT BILL OF RIGHTS SHOULD APPLY TO ALL CHILDREN IN ALL TYPES OF RESIDENTIAL PLACEMENTS. THE RIGHTS OF CHILDREN IN FOSTER CARE SHOULD BE SEPERATELY ADDRESSED. THE COMMITTEE SHOULD CONSIDER SPECIFYING THAT THE CHILD SHALL HAVE, BUT NOT BE LIMITED TO, THE FOLLOWING RIGHTS: TO VISITATION; TO COMMUNICATE BY TELEPHONE OR IN WRITING; TO EVENTUALLY BE RETURNED HOME IF ADVISABLE; TO A PLACE CLOSE TO HOME; TO CONSULT WITH AN ATTORNEY; TO OBTAIN MEDICAL CARE; TO HAVE A SAFE-LIVING ENVIRONMENT; TO WEAR HIS OR HER OWN CLOTHES; TO HAVE HIS OR HER OWN PERSONAL POSSESSIONS; AND TO HAVE TRANSPORTATION PROVIDED.

THESE RIGHTS ARE CONSISTENT WITH OTHER PROPOSALS PROVIDING PSYCHIATRIC AND HOSPITAL PATIENTS WITH A STATEMENT OF THEIR RIGHTS. A COMPREHENSIVE, UNIFIED APPROACH WILL ASSURE THAT EACH CHILD IS TREATED IN A MANNER THAT ACCORDS HIM OR HER THE PROTECTION, RESPECT AND INTEGRITY TO WHICH HE OR SHE IS ENTITLED.



ASSOCIATION FOR
CHILDREN OF NEW JERSEY

ACNJ

17 Academy St., Suite 709, Newark, NJ 07102
201/643-3876

P.O. Box 634, Bellmawr, NJ 08031
609/854-2661

FAX 201/643-9153

TO: Senator Catherine A. Costa, Chairperson
Members, Senate Committee on Children's Services

FROM: Ciro A. Scalera, Executive Director
Cecilia Zalkind, Assistant Director
Association for Children of New Jersey (ACNJ)

DATE: February 9, 1989

RE: Legislative Proposals to Strengthen Child Abuse
Investigations by DYFS

Before beginning our comments on the legislative proposals regarding the Division of Youth and Family Services (DYFS) handling of child abuse investigations, we wish to sincerely commend this committee on its unprecedented efforts in developing these initiatives and holding this second hearing today.

The substance and scope of these proposals demonstrate the commitment of each of you to respond to the serious issues raised at the hearing last fall. We applaud these efforts and publicly commit the co-operation and assistance of the Association for Children of New Jersey (ACNJ) in ensuring that these proposals are introduced into legislation and enacted into law.

In general, we are supportive of each of the initiatives outlined by the committee. They go to the heart of the major recommendations that were made by the individuals and organizations who testified at the September hearing. In fact, they reflect in great part many of the suggestions which ACNJ made. Our comments today are more in the nature of re-organizing and further developing some of these ideas into specific legislative proposals.

ACNJ recommends that:

1. Proposals # 4, 7 and 10 be combined and offered as amendments to Senate Bill 550 to create an Office of Child Advocacy in the Public Advocate's Office.

There is a growing concensus that there is a need for independent, objective oversight of the functioning of DYFS. Questions have been raised about the handling of individual case complaints as well as the identification of broader, systemic problems. At the September hearing, many witnesses expressed concern about the ability of the

agency to monitor itself. In fact, DYFS Director Waldman acknowledged these issues in his recent public support for the creation of an oversight office within the Public Advocate. We commend his efforts.

Additionally, the ability of DYFS to objectively handle institutional abuse investigations was also raised by ACNJ and several other organizations at the hearing. We continue to question whether it is appropriate for DYFS to investigate allegations of abuse in facilities in which it places and maintains children. The potential for conflict seems too great.

These issues are very similar. They all involve the independence, objectivity, credibility and authority of an agency to resolve disputes, conduct investigations and carry out actions and recommendations on both an individual and systemic basis. They also depend on the avoidance of even the perception of a potential conflict of interest.

In many ways, the Office of the Public Advocate was created to provide this sort of "case" and "class" monitoring of state agencies responsible for the state's most vulnerable citizens. The legislation creating the Division of Advocacy for the Developmentally Disabled (N.J.S.A. 52:27E-41.4) empowers the office "to receive and investigate complaints and provide such legal representation and other advocacy services on an individual or class basis that the Public Advocate deems appropriate to protect and advocate the rights of developmentally disabled persons." The Division of Mental Health Advocacy (N.J.S.A. 52:27E-24 and 25) defines a similar role in regard to mental hospital patients.

We feel strongly that a similar office is needed to provide advocacy for children and families receiving services from DYFS. We envision this office encompassing several functions:

- a. To investigate and act upon individual case complaints.
- b. To receive reports and data concerning the functioning of the agency as a whole.
- c. To monitor conditions in programs and facilities.
- d. To provide legal representation for children.
- e. To investigate and take appropriate action on all allegations of institutional abuse.
- f. To report to the Legislature and the public regarding the status of children served by these agencies.

In fact, we would support a broader role for an Office of Child Advocacy to include oversight and monitoring of all the state entities that serve children. We are becoming increasingly aware that children's needs cut across current departmental and divisional organizational lines. In some departments, such as the Department of Corrections, children's needs compete with adult issues. One office responsible to monitor services to all children under the state's care could be an effective entity in ensuring that children's needs are met and that standards for services are uniform.

We realize that this is a somewhat broader suggestion that goes well beyond the scope of the legislative proposal. It would involve re-organizing divisions within the Office of the Public Advocate and removing certain functions from other agencies, such as the Institutional Abuse Investigation Unit from DYFS and the Juvenile Detention Monitoring Unit from the Department of Corrections. We believe, however, that it provides a unique opportunity to assess and monitor children's services in a comprehensive, thorough manner. We also think that it makes sense given the importance of protecting these children.

In many ways, Senate Bill 550, which we have long supported, proposes a very similar organization. Its emphasis, however, is on information and referral rather than advocacy. Additionally, it places the office "in but not of" the Department of Human Services. Locating this office within the Public Advocate's Office and giving it appropriate authority would strengthen its potential. We recommend that S-550 remain the framework for this proposal, incorporating these other ideas as amendments.

We would be very glad to work further with this committee to more clearly define this concept.

2. Proposals # 1 and 9 should be combined and proposed as the Community Support Act of 1989.

Although we agree that caseload size is a critical element in adequate case handling, we also believe that other issues must be addressed in addition to setting a legislative cap on child-worker, worker-supervisor and worker-support staff ratios. The development and funding of support services outside DYFS could also be a significant factor in reducing the workload for the DYFS worker.

The visitation program outlined in proposal #9 is an excellent example. Although Judge Page proposed this concept in the context of supervised visitation between the child abuse victim and the alleged perpetrator, we view it as having broader value to children

in out-of-home placement. Visitation for children in foster care is often difficult for an overworked DYFS worker to arrange, especially if they must provide transportation for all the parties.

Additionally, such visitation often occurs in the DYFS office, which may not be conducive to privacy, and during DYFS working hours, which may not be convenient for working parents. An outside agency might be able to provide a more appropriate setting for visitation and offer it at a more convenient time.

We strongly support funding for such efforts. We are pleased that, in response to the ACNJ report, Splintered Lives, the DYFS Central Region is offering some funding to community agencies to develop visitation programs. These efforts should be expanded and supported.

Although caseload size may not be directly affected by this proposal, the worker's time will be freed if certain services are delivered by other entities. It is often far more appropriate for the family to receive services within their own community from an independent agency. It can serve to enhance family support and to enable the family to achieve independence.

We do not oppose an appropriate cap on caseload size. The recent hiring freeze imposed by the Governor on the filling of vacancies by state agencies demonstrates the potential critical impact on child protective services and other areas of service delivery for vulnerable children. Legislation setting such a cap may be an appropriate measure to ensure adequate services to dependent children apart from political or budgetary considerations.

We do, however, suggest that before a legislative cap is proposed, an assessment be done of the DYFS capacity to function with a full staff complement. In our experience, DYFS has never had its fully allocated staff -- there are always vacant positions. We suggest that an assessment be done of agency needs after full staffing is achieved before a specific cap is proposed.

In light of these issues, the current hiring freeze poses a significant problem. As we have already indicated in correspondence to this committee, we are fearful that child protective services will suffer if DYFS direct services staff is not exempt from the freeze. We encourage the committee to raise this question with DYFS, the Department of Human Services and the Governor's Office to determine the nature and extent of each of their efforts to address this crisis.

3. Proposals # 2 and 8 should be combined and introduced as the Child Abuse Reporting Reform Act of 1989.

We endorse the committee's proposal to amend N.J.S.A.9:6-8.13 to make false reporting of child abuse a crime of the fourth degree. We are in general support of the amendments as outlined in the proposal but feel that it is necessary to be more specific by requiring evidence that an individual "intentionally or maliciously makes a false report of child abuse or neglect" rather than the language currently outlined in section (a). We would also recommend eliminating section (c) since false allegations can be an issue in cases other than those involving a custody dispute.

We also strongly support amending N.J.S.A. 9:6-8.10a to allow reports of institutional abuse investigations to be shared with parents. We believe that a parent has the right to know when an abuse allegation has been made by or on behalf of his child and that the parent also has a right to obtain the results of that investigation.

4. Proposal #11, the Child Placement Bill of Rights, should be introduced and strongly supported.

ACNJ strongly supports Senator Ambrosio's proposal to enact a Bill of Rights for Children in out-of-home placement. Based on the findings of our recent report, Splintered Lives : A Report on Decision-making for Children in Foster Care, which was highly critical of the state's out-of-home placement system, we endorse any effort to express the rights of and responsibility for these children.

We are aware that questions could be raised about the narrow scope of such a proposal. In fact, one could articulate a Bill of Rights for children in a wide variety of out-of-home placements. There has been, however, strong documentation recently and historically on the specific needs of the DYFS foster care population. We believe these needs should be addressed immediately. If it is stated in the bill that this is a limited population of focus, the Legislature can come back to expand the focus at a later time.

5. Proposal #5 be introduced in lieu of proposal # 3.

Proposals # 3 and 5 address the same issue: the need for cooperative investigations among child welfare, law enforcement and medical professionals in order to minimize further trauma to the child abuse victim and to conduct the most thorough, definitive investigation possible. We believe that the idea of a network of

county-based diagnostic centers is an innovative and effective response to these problems. We would endorse such a legislative proposal.

We do not agree, however, that primary responsibility for conducting investigations of reports of child abuse should be re-assigned to the county prosecutor's offices. We do not even believe that the prosecutor's office should have the primary investigative authority for cases involving potential criminal action. As the child protective services agency, DYFS is appropriately responsible for the initial determination of abuse and subsequent referral to the prosecutor's office.

If concern about co-operation between DYFS and the prosecutor's office is the motivation for this proposal, we believe that this should be addressed in another manner. Diagnostic centers, such as the one described in proposal #5 are far more appropriate in protecting the child and in fostering co-operation among the various entities responsible for the investigation.

In fact, this is an area in which DYFS has shown significant improvement. Based on Quality Assurance data recently released by DYFS, referrals of appropriate cases to the prosecutor's office, which were a significant problem for several years, are now being achieved more than 96% of the time. Additionally, we understand that co-operative agreements have been established between the DYFS offices and prosecutors in many counties. We therefore do not see a current need for legislation in this area although we believe that such co-operative efforts must continue.

6. Proposal #6 might be more appropriately addressed in the regulatory process rather than in legislation.

Concern about the parent's understanding of the DYFS investigatory and substantiation process in child abuse cases was an issue raised by ACNJ at the September hearing. We continue to hear from parents who do not fully comprehend their rights and the role of DYFS in their lives once an abuse allegation has been made. We believe that the creation of an Office of Child Advocacy as outlined above will address some of these problems.

These concerns, however, are heightened by the fact that DYFS has not promulgated administrative regulations to define their standards for practice and the rights of parents to an appeal process. We understand that DYFS is now moving to develop regulations in all of its practice areas, giving priority to this area of initial investigation and response.

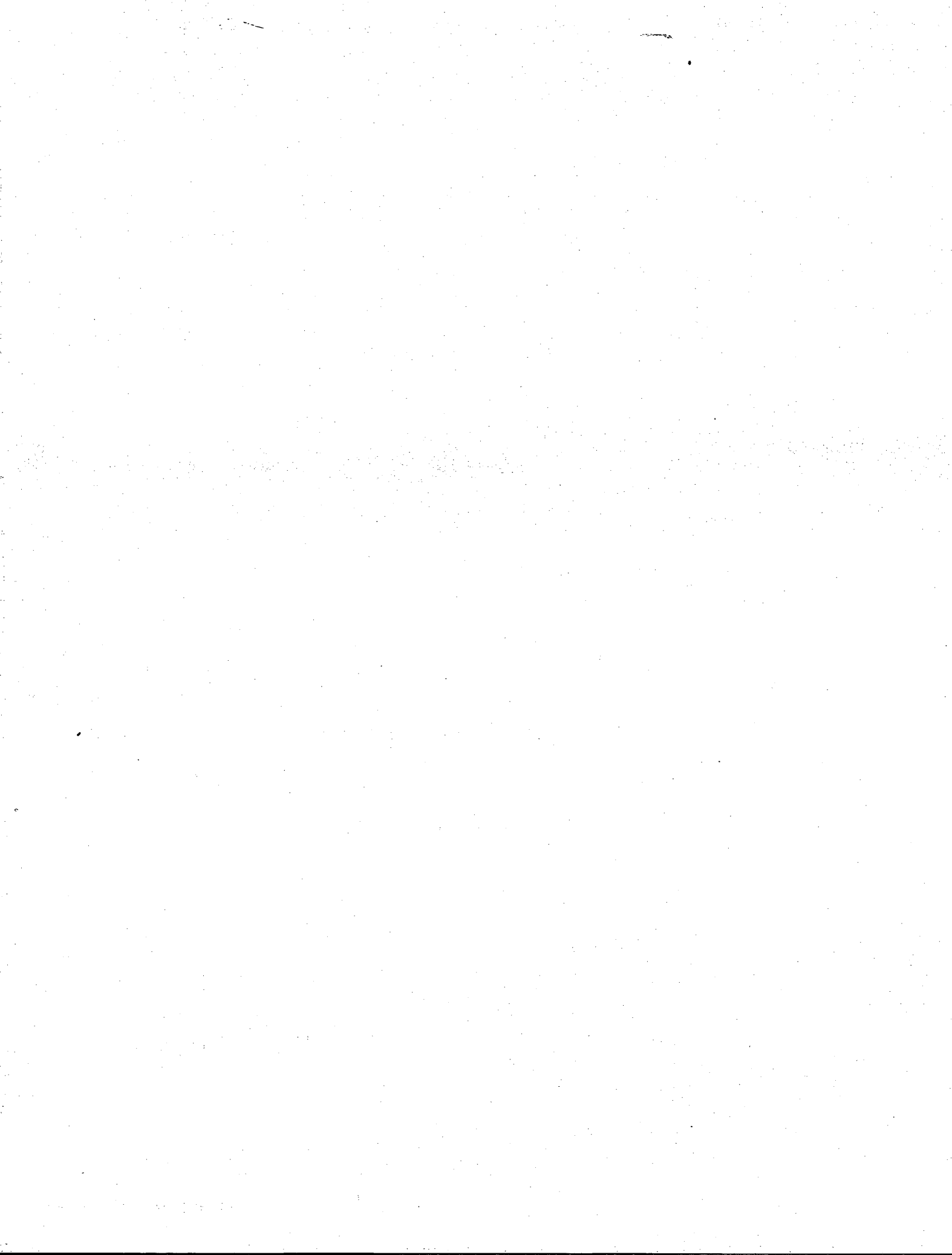
While we applaud these efforts, we are concerned about the length of time it will take to draft these regulations. We believe that

DYFS should articulate a clear timetable to which it can be held accountable so that their policies can finally be drafted into clear regulations. Until that occurs, children and families, as well as the agency itself, are highly vulnerable.

We are also concerned about the openness of DYFS to include individuals outside the agency in the development of the regulations. We have been told by a DYFS representative that there will be no outside participation in this process and that the public will have an opportunity to respond to the regulations only after they have been published for comment in the N.J. Register.

We believe that public input is necessary during the development of the regulations to ensure that parent rights are addressed in the regulations and that a process is established to clearly articulate these rights to the parent on a case-by-case basis. We also believe that public involvement at the outset will ultimately shorten the regulatory process.

Although we do not see a need for specific legislation in this area at the present time, we would encourage the committee to request that DYFS keep them apprised of the process, especially as to its timeliness.



FEB 8 - 1989

Robert V. Daniels
304 Thackeray Lane
Williamstown, N.J. 08094

New Jersey Education Association
180 W. State St.
P.O. Box 1211
Trenton, NJ 08607-1211

Dear Ms. Thornton:

I would like to stress my support for the NJEA stand on child abuse reportings as a serious threat to the professional welfare of teachers.

It is a well known fact how insensitive DYFS operates with the "child never lies" attitude which enrages me.

As a teacher with an unblemished career of 12 years, I was a victim of a false accusation of sexual assault, thus suspended from school for 54 painful days until the nine year old admitted she lied. The parents went to the State police, who called DYFS, I was charged, never asked one question as DYFS believed the girl. Thanks to an excellent investigation by the prosecutors office, the girl broke her unfounded story.

I agree with your stand to postpone regulations until such time as "clear procedures are submitted on how cases will be handled so that we who are involved will be protected from unnecessary harm and injustice".

I am unconvinced by state safeguards, and question the capacity and ability along with qualifications of DYFS caseworkers who screen out false reports made by vindictive students. Obviously, these people are inadequately trained and are grossly insensitive to teachers who are the "professionals".

Please keep our profession informed about this most important issue.

Sincerely yours,
Robert V. Daniels
Robert V. Daniels



Testimony on Senate Committee on Children's Services'
Proposals for Legislation on Child Abuse
Trudi Thornton, Associate Director
New Jersey Education Association
February 9, 1989

Senator Costa, members of the Committee on Children's Services, good morning. I am Trudi Thornton, Associate Director of Instruction and Training for the New Jersey Education Association. Thank you for this opportunity to share additional concerns regarding child abuse as it relates to public school employees and to comment on the Committee's proposals for legislative action.

Attached you will find copies of testimony prepared for the New Jersey State Board of Education outlining NJEA concerns as they relate to proposed Department of Education and Human Services guidelines. If adopted, these guidelines will regulate each school's role in reporting suspected child abuse and in assisting with DYFS investigations concerning in school and out of school allegations.

Testimony on Senate Committee on Children's Services'
Proposals for Legislation on Child Abuse

Page 2

While these proposed guidelines comply with the existing law, amendments to the law are necessary in order to facilitate a more effective system and to eliminate unconstitutional and defective practices.

The testimonies outline NJEA concerns about the policies and practices of DYFS, and question the competency of DYFS staff in investigating allegations of child abuse and neglect.

NJEA CONCERNS INCLUDE:

- + Failure on the part of DYFS investigators to maintain the confidentiality of school employees reporting suspected child abuse
- + Failure of DYFS to keep the school informed of actions taken to protect children
- + Failure on the part of DYFS to continue to work with the school on behalf of abused children.
- + Failure to provide training for DYFS investigators, especially the lack of training and preparation for school investigations

Testimony on Senate Committee on Children's Services'
Proposals for Legislation on Child Abuse

Page 3

- + Failure on the part of DYFS to carefully screen incoming reports alleging child abuse in schools
- + Failure of DYFS to define acts of child abuse in a school setting
- + Failure on the part of DYFS to utilize administrative assistance prior to investigating allegations concerning school employees
- + Failure on the part of DYFS investigators to provide due process during school investigations
- + The interference of DYFS in disciplinary actions taken against school employees in the absence of substantiating evidence
- + The ongoing listing of school employees' names in the REGISTRY when allegations remain unsubstantiated
- + Excessive workload of DYFS case workers and investigators
- + The inconsistent practices of DYFS statewide
- + The involvement of DYFS in education

Review of the committee's proposed legislation raises many similar concerns. Senator Rand's resolution calls for a review of the practices and policies of DYFS. That review is currently underway. NJEA questions the wisdom of proposing changes in the law prior to the completion of the review.

Testimony on Senate Committee on Children's Services'
Proposals for Legislation on Child Abuse

Page 4

NJEA ASKS

- + Is there a comprehensive overall plan?
- + Can new procedures be implemented without first improving the practices of DYFS?
- + Are legislative proposals to change the existing law premature?

NJEA SUPPORTS WITH CONCERN:

- + Efforts to limit caseworker to child ratios and caseworker supervisor to caseworker ratios will create a more realistic workload and more effective system.
- + The development of a Child Placement Bill of Rights for the protection and care of children placed in out-of-home settings is vital. NJEA believes these children have special needs and those needs should be addressed.
- + NJEA agrees that funds should be appropriated for supervised visitation.

Testimony on Senate Committee on Children's Services'
Proposals for Legislation on Child Abuse

Page 5

- + The deletion of the provision which affords persons who make reports of child abuse absolute criminal immunity, and the making of false reporting of child abuse a crime of the fourth degree is supported. **HOWEVER, NJEA CONTENDS THAT SUCH LEGISLATION SHOULD NOT BE LIMITED TO CHILD CUSTODY DISPUTES, BUT SHOULD APPLY TO ALL FALSE OR MALICIOUS ALLEGATIONS.**
- + Joint investigations by DYFS and the County Prosecutor's offices would enhance the investigatory process. **HOWEVER, NJEA BELIEVES INSTITUTIONAL INVESTIGATIONS SHOULD NOT BE CONDUCTED BY DYFS.**
- + NJEA recognizes the need to develop a network of county-based centers to assist DYFS and the County Prosecutor's office. **HOWEVER, NJEA CONTENDS THAT THE MODEL PRESENTED HAS NOT BEEN IN EXISTENCE LONG ENOUGH TO ALLOW FOR ACCURATE EVALUATION.**
- + Requirements should be established for informing parents of their rights and the time frame applied to DYFS investigations.

Testimony on Senate Committee on Children's Services'
Proposals for Legislation on Child Abuse

Page 6

NJEA OPPOSES:

- + The establishment of an Office of the Ombudsman for Children in the Department of Human Services is of concern to NJEA. While NJEA recognizes the need for supervision of DYFS, it questions the need for one more investigatory office. NJEA questions the need for the creation of a special office to conduct investigations of DYFS created or monitored institutions. National guidelines recommend the use of existing law enforcement agencies which currently possess the competencies necessary for such investigations. Who would be employed in this office?
- + The access of institutional child abuse reports to the parents of allegedly abused children would constitute a violation of confidentiality and due process. Parental reaction could seriously hinder the investigatory process.

CONCLUSION:

While the bulk of testimony received by the Committee on September 17, 1988 relates to out-of-school investigation procedures and practices, NJEA reminds you that the law is all

Testimony on Senate Committee on Children's Services'
Proposals for Legislation on Child Abuse

Page 7

encompassing. School employees, salaried or uncompensated, are responsible for adhering to the same statutes as other citizens. While child abuse and neglect applies to both the school setting and the out-of-school setting, definitions of child abuse vary in each of the settings.

- + In home settings corporal punishment is acceptable. It is not in schools.
- + The law directly conflicts with Title 18-A (The corporal punishment statute) which authorizes reasonable force in breaking up fights.

WHILE WE HAVE AN ALL ENCOMPASSING LAW, ITS PROVISIONS ARE NOT BEING APPLIED CONSISTENTLY.

NJEA RECOMMENDS:

- + that the law differentiate between parental, caretaker and school employee conduct;
- + that DYFS not conduct investigation of school related allegations of child abuse and neglect;

Testimony on Senate Committee on Children's Services'
Proposals for Legislation on Child Abuse

Page 8

- + that the national guidelines calling for law enforcement agencies to investigate all institutional (including school) allegations of child abuse and neglect be incorporated in the New Jersey law.



POSITION STATEMENT ON PROPOSED NEW RULES
FOR THE REPORTING OF CHILD ABUSE
Trudi Thornton, Associate Director
New Jersey Education Association
January 18, 1989

Members of the board, good afternoon. I am Trudi Thornton of the Instruction and Training Division of the NJEA. Thank you for this opportunity to share additional concerns regarding child abuse as it relates to public school employees in New Jersey.

Information on the policies, practices and procedures of the Institutional Abuse Unit of DYFS has led to these additional concerns and has answered some previously unanswered questions regarding school reporting and investigating.

WORKLOAD AND STAFF TRAINING OF DYFS EMPLOYEES

While all institutional referrals are received and screened by the Unit's Trenton office, allowing for central administration, the cases are then referred to four offices in the state (Hammonton, Princeton, Newark and Paterson). Besides investigating allegations concerning public school employees, the unit also investigates such out-of-home settings as hospitals, correctional facilities, private schools, camps, day care centers

**Position Statement on Proposed New Rules for the
Reporting of Child Abuse**

Page 2

and group homes. In light of the fact that the unit has maintained that their workload is excessive, they are understaffed. The unit employs only thirty professional staff along with secretarial assistance to handle their ever increasing responsibilities. It has been reported that they receive approximately 2100 cases a year. They screen out approximately 10-15 percent of the reports and the substantiation rate of those reports investigated is around 18 percent.

While the unit maintains that many referrals involve inappropriate behavior and not child abuse, they are not all screened out and the cases are closed, some noted as unsubstantiated, some noted as unsubstantiated with concern. DYFS does admit that they hire employees with little or no training in the screening process. Unfortunately unsubstantiated reports concerning school employees often result in the filing of concerns and suggested actions to be taken against the employees.

NJEA ASKS THE FOLLOWING QUESTIONS:

1. Why are reported cases which indicate inappropriate behavior investigated?
2. Why are they not screened out more carefully?

3. Why aren't administrators dealing with cases that are not child abuse?
4. Where should administrative supervision and intervention end and DYFS investigations begin?

DEFINITIONS OF CHILD ABUSE

When asked what constitutes abuse in a school setting the following information was shared by the Unit:

Emotional Abuse: Must be chronic, ongoing situations which cause children to feel less worth. This would include situations such as a child being singled out or picked on.

While the child abuse statutes in New Jersey apply to all parents and caretakers, measures of child abuse vary based on settings:

- In home settings corporal punishment may be acceptable.
- In psychiatric settings - four point restraint is acceptable.
- In school settings - corporal punishment is acceptable in breaking up fights.

NJEA ASKS THE FOLLOWING QUESTIONS:

1. Has DYFS clearly defined child abuse based on settings?
The few examples cited don't say very much.
2. Is DYFS able to clearly define acts of child abuse in a school setting?
3. How are school employees to receive training if the above has not yet been accomplished?
4. How are school related reports screened in the absence of clear definitions?

In the screening process questions are to be asked in regard to a child being seriously injured. The examples given by the Unit:

Pushing or shoving a child is not child abuse. However the same act taking place near stairs which could result in a dangerous fall would constitute child abuse.

We were informed that situations which are not acts of child abuse are not investigated by the Unit yet public school investigations by DYFS have occurred for the following reasons:

-A teacher accused of wearing tight jeans every Thursday by a 13 year old girl who claimed he was trying to excite her. In addition to the DYFS investigator, a police officer was sent to the school.

**Position Statement on Proposed New Rules for the
Reporting of Child Abuse**

Page 5

- A teacher was accused of mental abuse due to excessive homework.
- Teachers have been accused of child abuse when breaking up fights.
- A teacher with 26 years of service and an outstanding record was suspended for four weeks pending a DYFS investigation. He stood in front of a doorway with his arm across the doorway. Pushing by students in line caused a young lady in the front to be pushed into his arm. She told her parents the teacher touched her breasts. These allegations were supposedly screened prior to the investigations. Yet real people suffered real humiliation because of these patently absurd charges.

NJEA ASKS THE FOLLOWING QUESTIONS:

1. Are standards for screening reports being applied consistently?
2. Should these situation have involved DYFS?
3. Should these situations have been handled by administrators?
4. Should public school employees be listed in the DYFS files and REGISTRY when cases are closed and marked unsubstantiated?

WHEN SHOULD SCHOOL REFERRALS BE MADE TO DYFS

The serious nature of child abuse has created excessive concerns for all who work with children. Records indicate that school referrals are received primarily from administrators (more than 1/2), parents, and children. Due to the high rate of administrative reporting.

NJEA ASKS THE FOLLOWING QUESTIONS

1. Is it easier to force nontenured staff out of the profession by reporting them to DYFS than to professionally evaluate, supervise and assist new educators?
2. Is DYFS reporting being used to circumvent the tenure law? It certainly is an effective means of forcing a resignation or early retirement.
3. What are the responsibilities of administrators in situations of questionable employee conduct?
4. Did the department do its homework prior to drafting the proposal?
5. Should DYFS, while still under investigation concerning its policies and procedures, be listed in regulations governing public school investigations?

**Position Statement on Proposed New Rules for the
Reporting of Child Abuse
Page 7**

NJEA continues to maintain that the proposed regulations are premature.

The attached recommendation (see pages 8 and 9) for investigating reported cases of institutional child abuse were disseminated nationwide by the American Bar Association to assist states in drafting legislation. Interestingly enough the recommendation concerning Institutional Abuse is to have an arm of the law, not DYPS, deal with such investigations. The rationale for the recommendation appears to be very clear. Has this recommendation been considered in New Jersey?

CONCLUSION

The lack of definitions, the shortage of DYPS staff, the lack of training provided for DYPS staff, the substantial number of cases reported in the state, the high instances of reporting and the percentage of cases substantiated support NJEA's growing concerns.

NJEA URGES:

The Board to postpone the adoption of regulations governing the reporting and investigating of child abuse in schools until such time as clear procedures are submitted on how cases will be

**Position Statement on Proposed New Rules for the
Reporting of Child Abuse**

Page 8

**handled so that we who are involved will be protected from
unnecessary harm and injustice.**

**CHILD ABUSE
AND
NEGLECT
REPORTING
AND
INVESTIGATION**

**POLICY GUIDELINES
FOR DECISION MAKING**



APWA

Douglas J. Besharov
Rapporteur

Library of Congress Cataloging-in-Publication Data

Besharov, Douglas J.

Child abuse and neglect reporting and investigation.

Includes bibliographical references.

1. Abused children—Services for—United States. 2. Child abuse—United States—Investigation. 3. Child abuse—United States. I. Title.

HV741.B485 1988

362.7'044

88-974

ISBN 0-89707-345-2

© Copyright American Bar Association, 1988

Douglas J. Besharov, J.D., LL.M., is a Resident Scholar at the American Enterprise Institute, Washington, D.C. He was the first director of the U.S. National Center on Child Abuse and Neglect, 1975-1979.

The contents of this publication should not be construed as the official policy of the American Bar Association, or the American Enterprise Institute.

TABLE OF CONTENTS

PREFACE	iv
CONSENSUS-BUILDING PARTICIPANTS	v
I. INTRODUCTION	1
II. THE "CHILD PROTECTIVE MISSION"	2
The Role of Child Protective Services	2
The Wider Role of Community-based Services	2
Law Enforcement	3
Institutional Abuse	3
Parental Rights	4
Poverty Issues	4
Meeting Unmet Needs	5
III. DEFINITIONAL CLARIFICATION	5
Sufficient Severity	5
Threatened Harm	6
The Forms of Child Maltreatment	7
IV. DECISION MAKING GUIDELINES	8
Public and Professional Education	9
Receiving Reports	10
Case/Dispositional Decision Making	11
Interdisciplinary Consultation	11
V. INVESTIGATORY DETERMINATIONS	12
Some Unsubstantiated Reports Are Necessary	12
CONCLUSION	15

PREFACE

This report seeks to provide guidance to state and local officials, professionals, and advocates seeking to improve the reporting and investigation of suspected child abuse and neglect. It embodies the consensus of a national group of child protective professionals. The consensus-building process was conducted under the auspices of the American Bar Association's National Legal Resource Center for Child Advocacy and Protection in association with the American Public Welfare Association and the American Enterprise Institute. Financial support was provided by the National Center on Child Abuse and Neglect, Administration on Children, Youth and Families, Department of Health and Human Services.

A preliminary draft of this consensus document was prepared by me, and revised by the participants in a three day consensus-building conference at Airlie House, Virginia, May 29-31, 1987. At the meeting, the preliminary draft was reviewed and edited by the entire group. Based on the results of the meeting, a revised draft was sent to all participants for their further review and approval. This report, revised in accordance with the comments of Howard Davidson and Betsey Rosenbaum, is the culmination of this consensus-building process.

**Douglas J. Besharov
Rapporteur**

CONSENSUS-BUILDING PARTICIPANTS

- Jose Allaro
Coordinator
New York City's Mayor's Task Force on
Child Abuse and Neglect
New York City Department
of Social Services
- Ira Bartell
Director
Children and Family Services
South Carolina Department
of Social Services
- Douglas J. Besharov
Resident Scholar
American Enterprise Institute for Public
Policy Research
- Karen Banner
Policy Associate
American Public Welfare Association
- Peter Breen
President
American Public Welfare Association
Welfare Director
Marin County, California,
Department of Health and Human Services
- Larry Brown
Executive Director
American Humane Association
- Jane Nady Burnley
Acting Director
Office for Victims of Crime
U.S. Department of Justice
- James Cameron
Executive Director
New York State Federation on Child Abuse
- Jean Clarren
Assistant Director
Baltimore County, Maryland
Department of Social Services
- Howard Davidson
Director
National Legal Resource Center for Child
Advocacy and Protection
American Bar Association
- Margo Fritz
Executive Director
Parents Anonymous
- Bruce Gardner
Assistant District Attorney
Madison County, Alabama
- Jeanne Giovannoni
Professor of Social Work
University of California, Los Angeles,
School of Social Welfare
- Margaret Gran
Cofounder
Victims of Child Abuse Laws (VOCAL)
- Frederick Green
President
National Committee for Prevention
of Child Abuse
- Christine Hanus
Administrator
Human Services Division
Nebraska Department of Social Services
- Mark Hardin
Assistant Staff Director
National Legal Resource Center for Child
Advocacy and Protection
American Bar Association
- Norma Harris
Administrator
Community Services Division
Montana Department of Social and
Rehabilitative Services
- Mary Kealoh
Project Consultant
American Bar Association
- Bettye Kelly
Services Director
Durham County, North Carolina,
Department of Social Services
- Marie Leaner
Associate Deputy Director
Division of Child Protection
Illinois Department of Children and Family
Services
- Dodie Livingston
Commissioner
Administration for Children, Youth, and
Families
U.S. Department of Health and Human
Services
- James Marquart
President
National Association of Public Child
Welfare Administrators
Assistant Commissioner
Protective Services for Families and
Children Branch
Texas Department of Human Services

Ruth Massinga
Secretary
Maryland Department of Human Resources

William Mizelski
Chief
National Victims Initiative Section
Office for Victims of Crime
U.S. Department of Justice

Janet Motz
Administrator
Child Protection Program
Colorado Department of Social Services

Jean Nielsen
Director
Division of Family Services
Utah Department of Social Services

Henry Plum
Attorney at Law
Wauwatosa, Wisconsin

Norman Polansky
Professor Emeritus
School of Social Work
University of Georgia

Gerald P. Regier
President
Family Research Council of America

Betsy Rosenbaum
Project Manager
American Public Welfare Association

Merle Springer
President
Eckerd Family Youth Alternatives, Inc.

Betty J. Stewart
Acting Associate Commissioner
Children's Bureau
Administration for Children, Youth, and
Families
U.S. Department of Health and Human
Services

Robert ten Bensel
Professor of Public Health and Pediatrics
School of Public Health
Maternal and Child Health Division
University of Minnesota

Peter Walsh
Director
Bureau of Social Services
Maine Department of Human Services

Michael Weber
Director
Hennepin County, Minnesota, Community
Services Department

Susan Weber
Acting Director
National Center on Child Abuse and
Neglect
Children's Bureau
Administration for Children, Youth, and
Families
U.S. Department of Health and Human
Services

Susan Wells
Director
Child Abuse Screening Project
National Legal Resource Center for Child
Advocacy and Protection
American Bar Association

I. INTRODUCTION

Over the past twenty years, much progress has been made in protecting abused and neglected children. Every state has passed a mandatory reporting law. The result has been an enormous increase in reported cases.¹

In 1985, more than 1.9 million children were reported to the authorities as suspected victims of child abuse and neglect. This is more than twelve times the estimated 150,000 children reported in 1963.

Increased reporting and specialized child protective agencies have saved many thousands of children from death and serious injury.

Despite this progress, major gaps in protection remain:

Professionals—physicians, nurses, teachers, social workers, child care workers, and police—still fail to report many of the maltreated children whom they see, including those with observable injuries severe enough to require hospitalization.

Many thousands of other children suffer serious injuries after their plight becomes known to the authorities. Studies in a number of communities indicate that 25 to 45 percent of the children who die under circumstances suggestive of child maltreatment have previously been reported to child protective agencies.

There is some reason to believe that, after many years of decline, child fatalities attributable to child maltreatment rose in 1986.

At the same time, the nation's child protective agencies must investigate a large number of reports that are not substantiated:

Nationwide, only about 40 percent of all reports are "substantiated" (or a similar term) after investigation. This is in sharp contrast to 1975, when about 65 percent of all reports were "substantiated."

Each year, over 500,000 families are investigated for reports that are not substantiated.

These simultaneous problems are unfair to the children and parents involved, and they threaten to undo much of the progress that has been made in building child protective programs. There is widespread confusion about what should be reported and investigated—and what should not be. This report recommends policy changes designed to reduce such confusion.

Almost all the recommendations made in this report can be implemented through changes in child protective agency administrative procedures and training manuals. In most states, no new laws need be passed. Moreover,

¹The following statistics concerning reported cases are derived from various reports of the American Humane Association.

the recommendations are consistent with the Federal Child Abuse Prevention and Treatment Act, so that their adoption will not threaten a state's eligibility for grants under the Act.

II. THE "CHILD PROTECTIVE MISSION"

Child abuse and child neglect are serious national problems. Only firm and effective government intervention protects many children from serious injury and even death.

The Role of Child Protective Services

The responsibility to receive and investigate reports of suspected child abuse and neglect is primarily assigned to a single, statutorily created public agency, usually called the "Child Protective Service Agency" (or CPS). To protect children from abuse or neglect, Child Protective Service Agencies perform the following functions: report taking, screening, investigation, initial risk assessment, crisis intervention, report disposition, case planning and implementation, and case closure.

The objective of Child Protective Service Agencies is to protect children from abuse and neglect. They do so by strengthening families so that children can remain within or be returned to their families; by temporarily removing children from situations of immediate danger; and by pursuing the termination of parental rights and assuring the child permanency in a substitute family if the custodial family cannot be preserved without serious risk to the child.

The Wider Role of Community-based Services

Nevertheless, the protection of children from abuse and neglect is a community-wide concern. Child protective services must be provided as an integral component of a larger array of child welfare services designed to enhance the well-being of children, and of an even broader continuum of human services designed to help meet the needs of children and families. Special responsibility is placed on child welfare, law enforcement, medical and public health, mental health, and educational agencies and professionals.

Across the nation, however, Child Protective Service Agencies are being pushed to respond to the absence of other, more appropriate services. *Child abuse* hotlines, for example, are receiving thousands of "reports" that, at base, are not about child abuse or child neglect, but are really requests for needed family-oriented social services. Many of these reports involve adolescent behavioral problems (such as truancy, delinquency,

school problems, substance abuse, and sexual acting out); children who need specialized education or treatment; and chronic parent-child conflicts with no indication of abuse or neglect. Some of these reports result in the family receiving much needed services, but most do not. In any event, these additional, inappropriate calls to CPS hotlines significantly increase the number of unsubstantiated cases.

In effect, callers are trying to use Child Protective Service Agencies to fill gaps in what should be a comprehensive child welfare system. To prevent this misdirection of scarce resources, and to reduce the number of unsubstantiated cases, Child Protective Service Agencies must develop policies and procedures that specify the kinds of calls that are appropriate and that should be accepted for investigation.

Law Enforcement

Child abuse is a crime and, therefore, a legitimate concern—and responsibility—of police and other law enforcement agencies. A number of calls made to CPS agencies may involve matters that are the sole or joint responsibility of law enforcement to evaluate and investigate. Recognizing this, there is need to eliminate unnecessary multiple interviews of children and other unnecessary duplications of effort, to promote proper and expeditious collection and preservation of physical and other evidence, and to carry out the statutory mandate in the majority of states for law enforcement and CPS agencies to cross-report such cases. Joint efforts with law enforcement—police and prosecutors—should be made to develop a coordinated system for identifying and investigating appropriate calls.

A recent tendency has been to broaden the definition of the those who may be reported for "child abuse and neglect," particularly in cases of sexual abuse, to include all adults, whether or not in the child's home and whether or not responsible for the child's care.² Cases of maltreatment by babysitters, adults not in the child's home, and strangers are more appropriately assigned to law enforcement agencies. They should not be investigated by Child Protective Service Agencies unless the parents appear unwilling or unable to protect the child.

Institutional Abuse

Child Protective Service Agencies are family oriented. Therefore, although the abuse and neglect of children in public and private institutions is intolerable, its investigation is beyond the scope of functions best performed by child protective service workers. Child Protective Service

²This expanding of the definition goes beyond child maltreatment in out-of-home care, which is discussed in the next section.

Agencies should be assigned investigatory responsibility only over intra-familial or quasifamilial child maltreatment, broadly defined to include parents, guardians, foster parents, and other persons (such as boyfriends or girlfriends) continuously or regularly in the child's home.

The investigation of child maltreatment in out-of-home care, on the other hand, requires specialized units of professionals (often law enforcement or licensing) with the necessary expertise and authority. Furthermore, such units must be independent of the agency or facility being investigated, so that there is no conflict of interest.

Parental Rights

If the parent declines help from the Child Protective Service Agency—or refuses to cooperate altogether—the agency and the courts must decide whether the danger to the child is so great that specific treatment services must be imposed or the child removed from the home.

Laws against child abuse and child neglect are an implicit recognition that parental rights are not absolute, and that society, through its courts and social service agencies, should intervene into private family matters to protect endangered children. But in seeking to protect helpless children, it must be remembered that, in large part, only suspicions are being reported. The parents' innocence should be presumed—unless evidence establishing the suspected maltreatment is obtained. CPS Agencies cannot impose treatment services on unwilling parents without a court order.

Poverty Issues

Many of the families reported to Child Protective Service Agencies are poor and on welfare. If the child is actually neglected, that is, if parental failure poses a danger to the child, protective action is required. Even some serious situations, however, reflect not parental failure but, rather, social factors beyond the control of individual families.

Poor children and their families have a right to the assurance of their basic needs, including food, clothing and shelter. These needs must be ensured, however, through reform of income support programs (such as public assistance, child support, and food stamps) or through the use of family-centered or family preservation services. Child Protective Service Agencies have not been established as society's response to poverty, and for them to assume, or be assigned, this role misdirects those services and resources from their proper mission.

¹See 45 Code of Federal Regulations sec. 1340.14 (e) (January 26, 1983).

Meeting Unmet Needs

Children and families have many unmet social service needs for which the label "child abuse and neglect" and a child protective response are inappropriate. Institutionally, Child Protective Service Agencies should advocate and broker for the remedies these families need. Individually, Child Protective Services workers, like all other human service professionals, have a responsibility to help provide necessary crisis services for all children and their families.

III. DEFINITIONAL CLARIFICATION

Statutory and agency definitions of "child abuse and neglect" establish reporting responsibilities; they also determine what reports will be investigated, and their disposition. Most existing definitions, however, are broad and imprecise. Potential reporters and child protective workers need clearer and more specific guidelines to help their decision making.

While statutory reform would be helpful, existing laws can be clarified through a combination of more specific administrative rules and better training materials (consistent with relevant state judicial precedents). Such materials should reflect the following policy and definitional considerations.

Sufficient Severity

The Federal Child Abuse Act requires the reporting of instances of physical and mental "injury . . . under circumstances which indicate that the child's health or welfare is harmed or threatened thereby." No one, therefore, would suggest that minor scratches, which are indeed "injuries," should, by themselves, be a reason to require a report.⁴

Involuntary Child Protective Service Agency intervention (action taken after a report has been investigated) should be limited to situations of serious harm or threatened harm to the child. This limitation is meant to protect the rights of parents to exercise their best judgment about how to raise children and to protect regional, religious, cultural, and ethnic differences in such beliefs.

There has been much confusion about the concept of sufficient "seriousness," however. It is not restricted to life-threatening situations.

⁴For the definition exposition of how severity of injury effects—and should effect—child protective decision-making, see Giovannoni and Becerra, *Defining Child Abuse* (1979).

Reflecting the need to specify the level of severity, the National Center on Child Abuse and Neglect provides the following definitions:

"Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function.

"Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in his ability to function within his normal range of performance and behavior, with due regard to his culture.³

Any narrower definition of "serious" would threaten the state's eligibility under the Federal Child Abuse Act.

Threatened Harm

Deciding to intervene is relatively easy when the child has already suffered *serious* physical or mental injury. If the parents cannot satisfactorily explain what happened—and there is reason to believe that the parents are responsible—protective action must be taken.

Society, however, does not wait until a child is seriously injured before taking protective action. The purpose of child protective intervention is also to protect children from *future* injury. Hence, the laws of all states authorize Child Protective Service Agencies and courts to intervene before children have suffered an injury, even a minor one.

This authority (requirement, in fact) to protect children from "threatened harm"—that is, to predict future danger to the child—adds immeasurably to the subjectivity of reporting and investigatory decisions. Despite years of research, there is no psychological profile that accurately identifies parents who will abuse or neglect their children in the future.

Children who have already been abused or neglected are in clear danger of further maltreatment. So are their siblings. But—and this is the key to understanding when a prediction of future danger is justified—the parents' conduct need not already have seriously injured the child for it to be considered "abusive" or "neglectful," and for it to be the ground for Child Protective Service intervention. If the parent did something that was *capable of harming the child*, the parent has demonstrated that he is a continuing threat to the child. It is reasonable to assume that—unless there is a change in circumstances—a parent who has already engaged in harmful conduct toward the child will do so again. Of course, such behavior must be relatively recent; ordinarily, involuntary intervention should not be based on behavior from the distant past.

³National Center on Child Abuse and Neglect, *Child Protection: A Guide for State Legislation* subsections 4 (h) and (i) (Draft 1983).

Therefore, involuntary Child Protective Service intervention should be authorized only if:

- (1) the parent has seriously harmed the child or engaged in behavior capable of seriously harming the child, whether or not actual harm resulted; or
- (2) the parent is suffering from a severe mental disability⁶ that demonstrably prevents the parent from adequately caring for the child.

The latter condition requires a specific assessment of parental functioning and the risk to the child.

The Forms of Child Maltreatment

Early child protective laws focused only on physically abused and battered children. But sexual abuse can leave lasting psychological scars on its young victims, and child neglect can be just as damaging, and just as deadly, as physical abuse. Therefore, Child Protective Service Agencies should respond to all forms of physical, sexual, and psychological maltreatment, in accordance with the following definitions.

Physical Abuse—physical acts (such as striking, punching, kicking, biting, throwing, burning, or violent shaking) that caused, or could have caused, physical injury to the child.

Reasonable corporal punishment is not child abuse, and it is therefore not reportable. The laws of all states recognize the right of parents to physically discipline their children—as long as the punishment is "reasonable" or not "excessive."

Sexual Abuse—vaginal, anal, or oral intercourse; vaginal or anal penetrations; or other forms of contacts for sexual purposes.

Sexual Exploitation—using a child in prostitution, pornography, or other sexually exploitative activities.

Physical Neglect—failing to provide needed care (such as food, clothing, shelter, protection from hazardous environments, care or supervision appropriate to the child's age or development, hygiene, and medical care) that caused, or over-time would cause, serious harm.

Abandonment—leaving a child alone or in the care of another under circumstances that demonstrate an intentional abdication of parental responsibility.

Psychological Maltreatment⁷—acts or omissions that caused, or could

⁶Including severe mental illness, severe mental retardation, severe drug abuse, and severe alcohol abuse, as defined in American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorder (DSM III)* (1980).

⁷This category is often labelled "emotional maltreatment." The broader phrase was adopted to reflect the fact that it encompasses the full range of serious psychological disorders.

cause, serious conduct, cognitive, affective, or other mental disorders.⁹

Psychological maltreatment is a serious problem requiring Child Protective Service intervention. Its subjectivity and potential overbreadth, however, require that Child Protective Service Agencies exercise special care in this area. There is insufficient professional knowledge about the harmfulness of certain parent/child interactions. In many cases, there is no way of predicting, with any degree of certainty, whether a particular parent's behavior will result in severe harm to the child.

Therefore, a two level approach to the definition of psychological maltreatment is recommended. For such extreme acts as torture and close confinement, no demonstrable harm to the child is required. For less severe acts, such as habitual scapegoating, belittling, and rejecting behavior, demonstrable harm is required. Similarly, some extreme forms of developmental neglect have unambiguous signs, for example, non-organic failure-to-thrive. In less severe cases, assessment by a mental health professional is necessary before proceeding. In these cases, consideration must be given to the severity, chronicity, and context of the parent's acts or omissions. Another important factor can be the parent's failure to seek (or accept) help for such emotional problems in the child.

The meeting participants could not reach agreement on the role of Child Protective Service Agencies in cases of *educational neglect*. All agreed that parental failure to send a child to school is a serious problem. There was broad feeling, however, that this is not an appropriate area for Child Protective Service intervention. A substantial number of participants would have limited Child Protective Service responsibility to cases of *active* parental interference with the child's school attendance. An even larger number would have Child Protective Service Agencies play no role in such cases, leaving intervention entirely to school authorities unless other forms of abuse or neglect are present.

IV. DECISION MAKING GUIDELINES

Child protection is a multi-stage process of intervention, ascending in accordance with the child's need for protection. The level of intervention rises at a number of discrete points. At each stage of decision making, the Child Protective Service Agency must consider two interrelated factors: (1) the degree of harm or threatened harm to the child, and (2) the certainty of evidence.

⁹As defined by DSM III, *supra* n. 4.

Thus, most reports are based on a *suspicion*, usually described as "reasonable cause to suspect," that the child has been abused or neglected. To determine that a report is substantiated, states require either "some credible evidence" or sufficient reason to conclude that the child has been abused or neglected. For the imposition of involuntary court ordered services, state laws require either a "preponderance of the evidence" or "clear and convincing evidence." Similarly, most court opinions on the subject require serious harm or the threat of serious harm for the imposition of involuntary court ordered services.

Decisionmakers do not have specific and widely accepted guidelines that would help ensure uniform and more appropriate reporting and case disposition. More specific operational definitions and decision making criteria must be developed for each stage of the child protective process.

Public and Professional Education

Potential reporters are not required to be sure that a child is being abused or neglected, or to have absolute proof of maltreatment. Instead, reports are required if there is "reasonable cause to suspect" or "reasonable cause to believe" that a child is abused or neglected. This is not, however, an open-ended invitation to report whenever one has a vague, amorphous, or unspecified concern over a child's welfare. Better public and professional materials are needed to obtain more appropriate reporting.

For the general public, educational materials and programs should: (1) clarify the legal definitions of child abuse and neglect; (2) give general descriptions of reportable situations (including specific examples), and (3) explain what to expect when a report is made. Brochures and other materials for laypersons, including public service announcements, should give specific information about what to report—and what not to report.

Professional education should include more specific information about the basis for a report. Keyed to the specific professions most likely to report, it should explain the importance of obtaining—and of providing to the Child Protective Service Agency—information about the nature of the child's injuries or maltreatment; the history of prior injuries or maltreatment of a child; the condition of a child, including his personal hygiene and clothing; the statements and demeanor of a child or parent—especially if the injuries to the child are at variance with the parental explanation of them; the condition of the home; and the statements of others. The need for the professional who made the report to continue to be involved in efforts to protect the child should also be stressed.

*Some states adopt a probable cause standard, that is, "reasonable cause to believe."

"Behavioral indicators" of child abuse, especially of sexual abuse, have a ~~valud~~ place in decision making. Particularly when there is an otherwise unexplained change in behavior, they provide important clues for potential reporters to pursue, and they provide crucial corroborative evidence of maltreatment. However, the lists of "behavioral indicators" now being circulated, standing on their own and without an accompanying full history of past and present behaviors, should not be the basis of a report. Such behaviors have many other possible explanations. Nevertheless, some alarming and unusual child behaviors may, in and of themselves, warrant a report by qualified professionals. More work needs to be done in developing descriptions of such behaviors and educating professionals about them.

Education for both public and professional audiences should describe the range of community resources—beyond Child Protective Services—available for children and families with problems other than child abuse or neglect.

Receiving Reports

Not all calls to Child Protective Service Agencies are reports of suspected child abuse and neglect. Because of the volume of calls they receive, the danger of harassment, and the need to limit unnecessary investigations, Child Protective Service Agencies have an obligation to determine whether a call is appropriate for investigation. Agencies that carefully screen calls have lower rates of unsubstantiated reports and expend fewer resources investigating inappropriate calls.

Child Protective Service Agencies should develop more specific policies and procedures for determining whether to accept a call for investigation. *Such policies should require a determination that the call falls within the state's statutory definition of reportable suspected child maltreatment.* Factors to be considered include: (1) the age of the child, (2) the identity of the responsible caretaker and relationship to the child, (3) the suspected existence of an incident or circumstance falling within the state's definition of child maltreatment, and (4) the existence of demonstrable harm or risk of harm to the child. When appropriate, calls may be referred to other agencies that can provide services needed by the family.

This kind of intake decision making cannot be done by clerks, nor by untrained caseworkers. A sophisticated judgment about the child's need for protection must be made. In addition, the intake staff must be able to provide advice and consultation to the person on the telephone. Experienced and qualified CPS workers should be assigned to intake—where they can do the most to improve agency decision making.

Case/Dispositional Decision Making

Definitions of child abuse and neglect must distinguish between those child rearing situations that society thinks are less than optimal—and for which voluntary services should be offered—from those of such severity that society is prepared to impose, through court action, treatment services and, if necessary, removal of the child. This is meant to protect the rights of parents to exercise their best judgment about how to raise children and to protect regional, religious, cultural, and ethnic differences in such beliefs.

In effect, Child Protective Service Agencies need specific guidelines for deciding what kind of intervention is needed, and for determining whether to pursue involuntary intervention. The National Association of Public Child Welfare Administrators (NAPCWA), has identified the relevant factors to be considered in assessing the severity of danger to the child and the certainty of evidence:

- (1) Action or failure to act of the parent or caretaker
- (2) Impact of parental/caretaker behavior on child/severity of the alleged abuse
- (3) Age of child
- (4) Frequency/recency of the alleged abuse
- (5) Credibility of reporter
- (6) Type and amount of evidence and corroboration
- (7) Relationship of alleged perpetrator to the child
- (8) Location of child
- (9) Parental willingness to protect the child
- (10) Parental ability to protect child.¹⁰

These guidelines need to be reviewed and operationalized.

Interdisciplinary Consultation

Reporting, investigatory, and dispositional decision making often entail a complex weighing of medical, social work, child development, and legal considerations. Decision making becomes easier—and more accurate—when it is made in consultation with other professionals whose skills and experience can help assess the situation. Consultation can be accomplished informally or through the more formal mechanism of a "Multidisciplinary Team" (sometimes called a "Suspected Child Abuse and Neglect" or "SCAN" Team) comprised of professionals from many disciplines.

¹⁰National Association of Public Child Welfare Administrators, *Guidelines for the Development of Protective Services for Abused and Neglected Children and Their Families*, pp. 6-9 (March 18, 1987).

V. INVESTIGATORY DETERMINATIONS

Child Protective Service Agencies must determine the validity of reports so that basic case-handling decisions can be made. This is especially true because the laws under which a Child Protective Service Agencies operate give them the right to intervene against parental wishes. In addition, procedures for the sealing or expunging of records often depend on such determinations.

Some Unsubstantiated Reports Are Necessary

Nationwide, only about 40 percent of all reports are "substantiated." The rest are dismissed after investigation.¹¹ Although rules, procedures, and even terminology vary (some states use the phrase "unsubstantiated," others "unfounded" or "not indicated"), in essence, an "unsubstantiated" report is one that is dismissed after an investigation finds insufficient evidence to warrant further Child Protective Service involvement.

Many unsubstantiated cases involve situations of poor child care that, though of legitimate concern, simply do not amount to child abuse or neglect. In fact, a substantial proportion of unsubstantiated cases are referred to other social agencies that can provide needed services to the family. Others involve situations in which the person reporting, in a well-intentioned effort to protect a child, overreacts to a vague and often misleading possibility that the child may be maltreated.

Moreover, an unsubstantiated report does not necessarily mean that the child was not actually abused or neglected. Evidence of child maltreatment is hard to obtain, and may not be uncovered when agencies lack the time and resources to complete a thorough investigation or when inaccurate information is given to the investigator. Other cases are labelled unsubstantiated when there are no services available to help the family. Some cases must be closed because the child or family cannot be located.

A small percentage of unsubstantiated reports are deliberate misstatements. Studies of sexual abuse reports, for example, suggest that, at most, from 4 to 10 percent of these reports are knowingly false.¹² Malicious reports are illegal. In appropriate cases, a referral for civil or criminal prosecution should be considered.

A certain amount of unsubstantiated reporting is an inherent—and legitimate—aspect of reporting *suspected* child maltreatment and is necessary

¹¹American Association for Protecting Children, *Highlights of Official Child Neglect and Abuse Reporting (1985)*, p. 9; Table 2 (The American Humane Association, 1987).

¹²See, e.g., L. Berliner, "Deciding Whether a Child Has Been Sexually Abused," in *Sexual Abuse Allegations in Custody and Visitation Cases*, (in press, American Bar Association).

to ensure adequate child protection. We ask hundreds of thousands of strangers to report their suspicions; we cannot ask that they be certain.

These realities make it important, for both programmatic effectiveness and agency image, that the meaning of statistics about unsubstantiated cases be clarified. *First*, the categories of reasons for closing a case after an initial investigation should be standardized across the states. *Second*, to document the role of Child Protective Service Agencies in providing services to families, the category of "unsubstantiated" reports should be divided into two parts:

- (1) Unsubstantiated—no further action taken, and
- (2) Unsubstantiated—services provided or arranged.

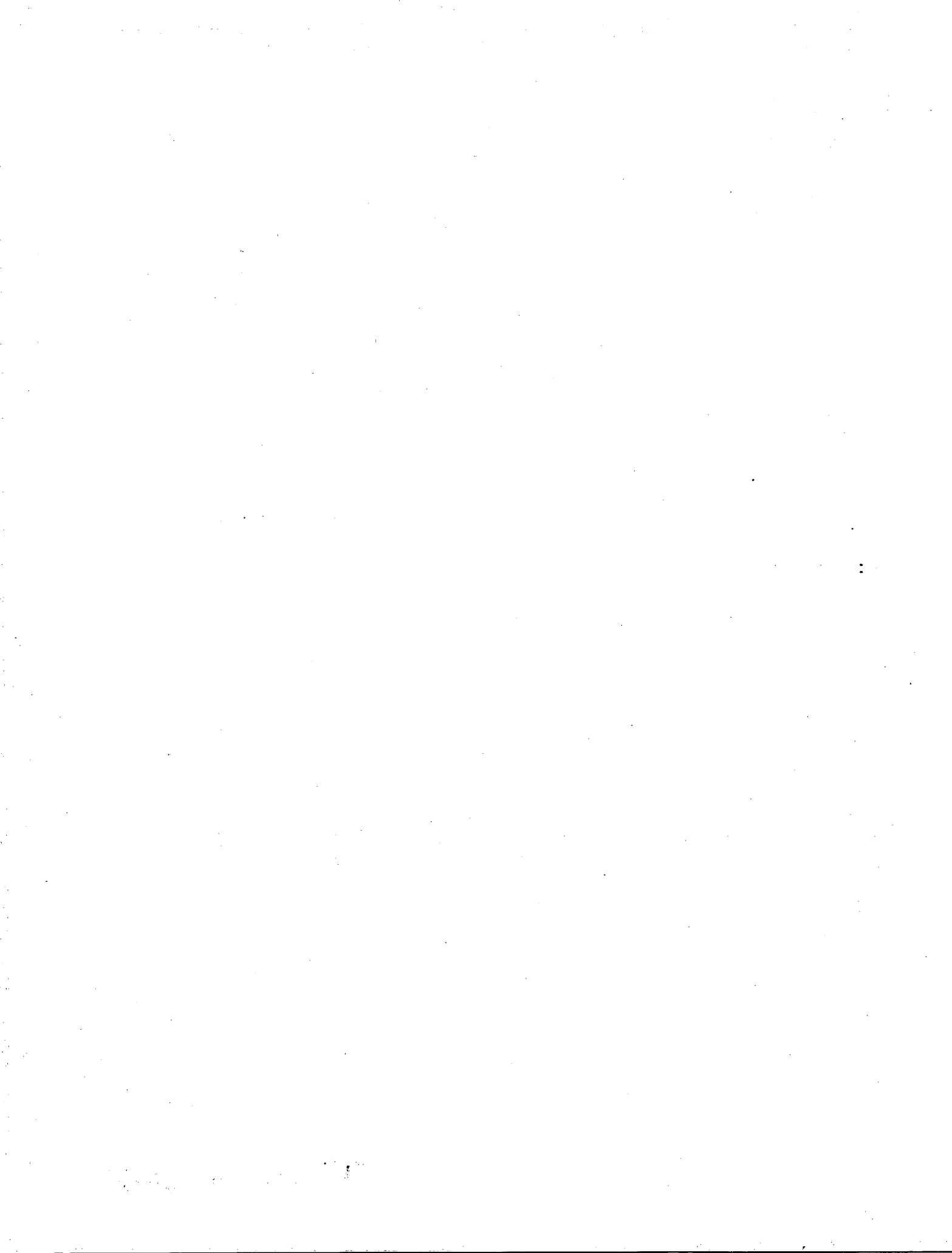
CONCLUSION

This report has sought to provide policy guidelines for improved reporting and investigatory decision making. Its recommendations can be summarized as follows:

1. Child Protective Services should be defined as a program limited to abused or neglected children and their families within a broader child welfare service system, not as *the* child welfare program.
2. The community, not the Child Protective Service Agency alone, has the primary and ultimate responsibility for preventing and treating child abuse and neglect. The community and professionals do not satisfy this obligation merely by reporting cases.
3. Child Protective Service Agencies should be assigned investigatory responsibility only over intrafamilial or quasifamilial child maltreatment, broadly defined to include parents, guardians, foster parents, and other persons (such as boyfriends or girlfriends) continuously or regularly in the child's home.
4. Investigating nonfamilial abuse and neglect should be the responsibility of law enforcement, licensing, or other agencies with the expertise and authority to investigate such cases, not of the Child Protective Service Agency. Furthermore, such units must be independent of the agency or facility being investigated, so that there is no conflict of interest.
5. Consistent with the need to safeguard the welfare of endangered children, every effort must be made to protect parental rights.
6. Definitions of child abuse and neglect and implementing rules should be redrafted to be more specific and to clarify the types of cases that should be reported—and not reported—to the Child Protective Service Agency.
7. Involuntary Child Protective Service intervention should be authorized only if: (1) the parent has engaged in seriously harmful behavior toward the child, whether or not actual harm resulted; or (2) the parent is suffering from a severe mental disability that *demonstrably* prevents the parent from adequately caring for the child.
8. Decisionmakers do not have specific and widely accepted guidelines that would help ensure uniform and more appropriate reporting and case disposition. More specific operational definitions and decision making criteria must be developed for each stage of the child protective process.
9. Public and professional education should provide clear information about what to report (and not to report), give descriptions and examples of reportable conditions, explain what to expect when a

report is made, and give information on appropriate alternative resources for other child and family problems. Professionals should be asked to give more specific information than the general public when making a report.

10. "Behavioral indicators" of child abuse, especially of sexual abuse, have a valid place in decision making. However, the lists of "behavioral indicators" now being circulated, standing on their own and without an accompanying full history of past and present behaviors, should not be the basis of a report.
11. State law should allow for, and guidelines should support, the screening of reports by qualified staff—in order to limit the Child Protective Service Agency's involvement in inappropriate cases.
12. The extent of Child Protective Service Agency intervention should vary with the degree of harm or threatened harm to the child and the certainty of the evidence. Guidelines to assess both should be developed.
13. Reporters should not be expected to decide if abuse or neglect has occurred before making a report. Thus, a certain number of unsubstantiated investigations is necessary to ensure adequate child protection.
14. Uniform categories and definitions of investigative findings should be developed. They should accurately reflect the disposition and the services provided in cases that are not substantiated.





POSITION STATEMENT ON PROPOSED NEW RULES
FOR THE REPORTING OF CHILD ABUSE
Trudi Thornton, Associate Director
New Jersey Education Association
November 16, 1988

Members of the board, good afternoon. I am Trudi Thornton, Associate Director of the Instruction and Training Division for the NJEA. Thank you for this opportunity to share NJEA's views on this most critical topic.

While NJEA has long been and continues to be an advocate for children, providing school employees with training in identification of child abuse and in their responsibilities for reporting suspected abuse under the law to prevent the victimization of children, NJEA is equally concerned with the growing victimization of innocent adults maliciously and falsely accused of acts of child abuse and neglect. Individuals who work with children today are at risk.

Careful review of the proposed rules indicates that some existing problems as we know them are not addressed sufficiently. Concerns which require attention include:

Page 2, Section 1: REPORTING CHILD ABUSE

Failure on the part of DYFS to maintain confidentiality has led to the disclosure of the names of school referrers to parents, thus placing individuals in peril. Safeguards for referrers are necessary to ensure continued reporting.

Therefore, NJEA Recommends:

- quasi-anonymous school referrals calling for school identification without naming individual referrer. This would allow for contact with all school employees who have contact with the child in question without singling out any particular individual.
- A statement of what constitutes reasonable cause should be included.
- The principal or his or her designee should be notified prior to contacting DYFS unless the referrer is calling anonymously.
- Should the administrator choose to make the call to DYFS, it will be done immediately in the presence of the initial referrer.

Page 4, Section 6: PREVENTION OF INSTITUTIONAL CHILD ABUSE ALLEGATIONS

In the absence of clearly defined acts of child abuse in a school setting, today's school employees are open targets for such allegations.

Teachers who enforce rules and insist on structure have been accused of emotional child abuse. No one has delineated where normal school procedures and discipline end and child abuse begins. Along with providing in-service to all staff, NJEA Recommends:

- districts should adopt discipline policies and procedures in conjunction with their child abuse policies.
- Discipline policies should delineate the responsibilities of the staff and the administration in maintaining discipline.
- Parents should be informed of districts discipline practices.
- Districts should be informed as to how the law applies to them (i.e., should school employees break up fights? Who determines excessive restraint?).

Page 4, Section 7 (i,ii) STUDENT INTERVIEWS

DYFS investigators have employed procedures which are questionable; therefore, NJEA Recommends:

- Administrators should be present during all questioning of pupils.
- No other school employees will be required to be present during such questioning sessions against their will.
- During institutional investigations, a legal representative will be provided should employees be questioned concerning allegations brought against another employee.

Page 5 (vii) INSTITUTIONAL ABUSE INVESTIGATIONS

Reports of injustices during such investigations come to us from many different sources — NJEA network attorneys, NJEA members, and administrative reports. We have seen inconsistent investigatory procedures and a lack of standards and criteria for determining the guilt or innocence of accused persons.

Some institutional abuse investigators seem to believe they are on a mission. They judge the accused prior to a hearing. They judge the accused prior to a hearing. They gather facts and twist statements to fit their already determined conclusion.

Lack of due process is abuse — abuse of our system of justice and of individuals. Lack of due process allows for unfounded charges that damage the personal reputations of innocent people and abruptly end professional careers.

NJEA believes the existing child abuse statute on institutional investigations is unconstitutional. Individuals accused of committing an act of child abuse or neglect in a public school are assumed to be guilty until proven innocent.

An accused murderer is offered more legal rights. Under America's system of justice, accused murderers have the right to legal representation, to face their accuser and to full knowledge of the accusation with which they are charged.

Individuals accused of child abuse, however, have none of these rights. That's the law in New Jersey.

NJEA Recommends:

- The use of school experts, individuals who know and work with the children in the initial questioning and investigation of such allegations.
- School administrators should be allowed to obtain sufficient information prior to determining reasonable cause to believe that an allegation is founded. Good faith reports can't be made without question.

- Due process procedures should be delineated and they should be afforded to any school employee who is accused of child abuse — not only those who are reassigned or suspended. Persons being investigated should be provided with Miranda Warnings.
- They should receive notice of the charge. (It is impossible to respond to vague unspecified charges.)
- They should be advised that they have the right to counsel.
- They should be advised of their constitutional and statutory rights to remain silent.

NJEA believes that the following should be included in the proposed rules:

PROVISIONS FOR THE INNOCENT

DYFS investigators have recommended that school districts penalize exonerated staff members — yes, people who have been cleared have been reprimanded, transferred, reassigned, and have lost salary increments.

NJEA Recommends:

- No school employee exonerated of all allegations shall be reprimanded, transferred, reassigned, or suffer a loss in salary.
- Expungement or correction of all records, including the removal of any derogatory statements from an individual's file should occur if allegations are unsubstantiated.
- Students who are found to have maliciously accused a school employee shall be disciplined.

NJEA wants its members to report abuse, and we want investigations to continue. However, we raise a question of timeliness in adopting such rules. With the passage of Senator Rand's resolution calling for a review of DYFS, we believe that the adoption of any rules or regulations calling for school cooperation with the agency is premature. The inconsistent practices of DYFS have led to criticism. Would we not be wise to wait until we know what the statewide practices of DYFS are going to be? The implementation of their policies is currently in question and many raise issue with their autonomy and question their involvement in any manner in school investigations.

Child abuse is a highly sensitive, emotionally charged issue. Investigations must be done by competent, highly trained individuals, people who have expertise in investigating, interviewing, counseling, intervening, reporting, and the ability to work cooperatively with concerned school employees.

It is our sincere hope that the Board will adopt regulations that address the concerns of all.



STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
EN 500
TRENTON, N.J. 08625-C500

November 1, 1988

OFFICE OF THE COMMISSIONER

TO: Members, State Board of Education

FROM: Saul Cooperman, Commissioner

SUBJECT: Proposed New Rules for the Reporting of Allegations of Child Abuse-
N.J.A.C. 6:3-5.1 through 5.2

Summary

On December 24, 1987, P.L. 1987, c. 341 was signed into law. This law amends N.J.S.A. 9:6-1 et seq. of the child abuse laws, including clarifying the application of existing child abuse laws in school settings. The amended law requires the Department of Education in consultation with the Department of Human Services to adopt rules and regulations concerning the relationship, rights, and responsibilities of the Division of Youth and Family Services (in the Department of Human Services) and local school districts in reporting and investigating allegations of child abuse. The proposed new rules fulfill the legislative requirements of P.L. 1987, c. 341.

The proposed new rules are summarized as follows:

N.J.A.C. 6:3-5.1 and N.J.A.C. 6:3-5.2 establish the purpose of the subchapter and require district boards of education to adopt and implement policies and procedures for reporting and cooperating with the DYFS in investigations of alleged child abuse. In addition, this subsection sets forth the procedures to be included in district policies as well as district responsibilities during the investigation of alleged child abuse.

Social Impact

The Department anticipates a positive social impact to be associated with the proposed new rules, since these rules would provide a clear understanding of the procedures and responsibilities for reporting and investigating allegations of child abuse in the school setting.

Economic Impact

The proposed new rules will have no new or additional impact because school districts are already required to adhere to the Departments of

Education and Human Services standards for reporting allegations and cooperating in investigations of child abuse in the schools. No additional costs are necessary to implement or maintain these rules.

Regulatory Flexibility Statement

The proposed new rules will have no reporting, recording, or compliance requirements for small businesses. The proposal impacts only upon New Jersey school districts and possibly the Department of Human Services.

NEW JERSEY ADMINISTRATIVE CODE

TITLE 6

EDUCATION

CHAPTER A. STATE BOARD OF EDUCATION

SUBTITLE 3. SCHOOL DISTRICTS

SUBCHAPTER. THE REPORTING OF ALLEGATIONS OF CHILD ABUSE

AUTHORITY: N.J.S.A. 18A:1.1, 18A:4-15, 18A:6-10 et seq.,
18A:25-1, 18A:25-6, 18A:36-19 and N.J.S.A.
9:6-3.1, 9:6-8.9, 9:6-8.10, 9:6-8.13,
9:6-8.14, 9:6-8.21, 9:6-8.40, 9:6-8.72a,
and N.J.A.C. 10:129-2.1

6:3-5.1 Purpose

(a) The purpose of these rules is to establish uniform Statewide policies and procedures for public school personnel to report allegations of child abuse to the Division of Youth and Family Services (DYFS) and to cooperate with the investigation of such allegations.

6:3-5.2 Adoption of policies and procedures

(a) District boards of education shall adopt and implement policies and procedures for the reporting and the cooperation with the Division of Youth and Family Services (DYFS) in investigations of child abuse. District policies and procedures developed pursuant to the rules shall be reviewed and approved by the county superintendent. These policies and procedures shall not be limited to, but shall:

i. Include provisions requiring school personnel, compensated and uncompensated (volunteer), to immediately report to the DYFS incidents of child abuse and to inform the school principal or his or her designee of the report. However, notice to the principal or his or her designee need not be given when the person believes that such notice would be likely to endanger the referrer or child(ren) involved or when the person believes that such disclosure would be likely to result in retaliation against the child or in discrimination against the referrer with respect to his or her employment.

i. School personnel having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse as defined under N.J.S.A. 9:6-8.9 shall immediately report to the DYFS (N.J.S.A. 9:6-8.10). When referring cases to the DYFS, the school referrer shall provide, when possible, the following information:

- (1) Name of child;
- (2) Age and grade of child;
- (3) Name and address of child's parent or guardian or other person having custody and control (e.g., foster parent);
- (4) Description of child's condition, including any available information concerning current or previous injuries, abuse, or maltreatment and including any evidence of previous injuries;
- (5) Nature and possible extent of the child's injuries, abuse, or maltreatment; and

(6) Any other pertinent information that the referrer believes may be relevant with respect to the child abuse and/or to the identity of the alleged perpetrator.

2. Include a statement indicating the importance of early identification of child abuse.

3. Provide assurances that no school personnel will be discharged from employment or in any manner discriminated against as a result of making in good faith a report or causing to be reported an allegation of child abuse (N.J.S.A. 9:6-8.13).

4. Require procedures for:

i. District cooperation with the DYFS in investigations of child abuse that has occurred at any time outside or within the confines of the school or during a school-related function;

ii. District action as defined in N.J.S.A. 9:6-3b, c and d in response to the findings at each stage of the investigation process as it affects the child(ren) and the school personnel;

iii. Release of the child(ren) from the school; and

iv. Transfer of the child(ren) between schools.

5. Provide for the establishment of a liaison to the DYFS from the district board of education:

i. The function of the liaison is to:

(I) Facilitate communication and cooperation between the district and the DYFS; and

(2) Act as the primary contact person between the schools and the DYFS with regard to general information sharing and the development of mutual training and other cooperative efforts.

6. Include provisions for the delivery of information and in-service training programs to school personnel concerning child abuse, instructional methods and techniques relative to issues of child abuse in the local curriculum, and personnel responsibilities pursuant to N.J.S.A. 9:6-8.10 et seq.;

7. Detail the responsibilities of the district board of education as follows:

i. Permit the DYFS investigator to interview the child(ren) in the presence of the school principal or his or her designee. If the child(ren) is intimidated by the presence of that school representative, the child(ren) shall name a staff member, whom he or she feels will be supportive, who will be allowed to accompany the child during the interview. The purpose of including a school representative is to provide comfort and support to the child, not to participate in the investigation.

ii. Cooperate with the DYFS in scheduling interviews with any school personnel who may have information relevant to the investigation;

iii. Release, in accordance with N.J.S.A. 18A:36-19 and N.J.A.C. 6:3-2.1 et seq., all pupil records of the child(ren) under investigation that are deemed to be relevant to the assessment or treatment of child abuse (N.J.S.A. 9:6-8.40);

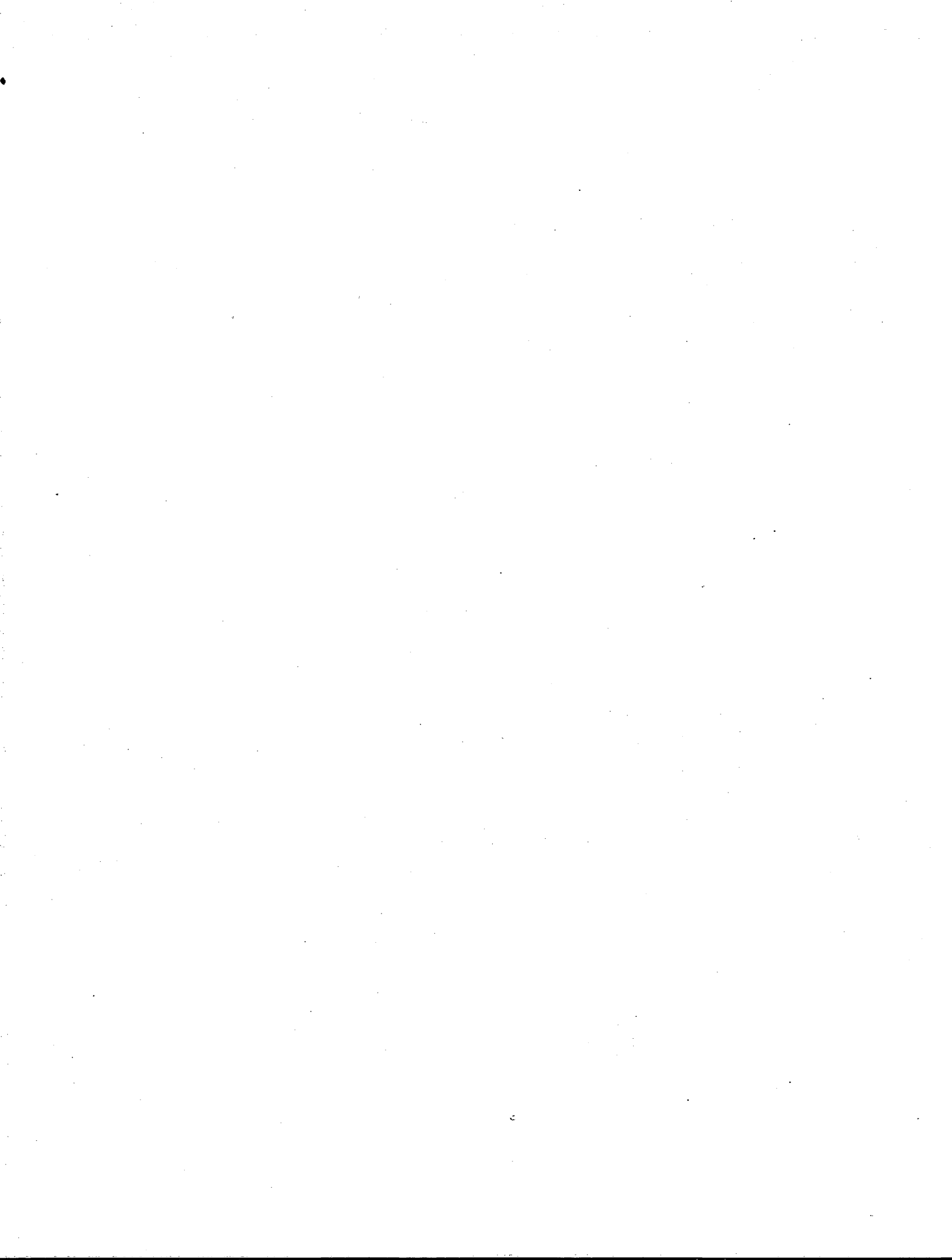
iv. Maintain and secure all confidential information about child abuse cases in accordance with N.J.S.A. 18A:36-19 and N.J.A.C. 6:3-2.1 et seq.;

v. Permit the DYFS to physically remove pupils from school during the course of a school day when it is necessary to protect the child or take the child to a service provider. Such removal shall take place once the principal or his or her designee has been provided, either in advance or at the time removal is sought, with appropriate authorization from the DYFS district office;

vi. Cooperate with the DYFS when it is necessary to remove the child(ren) from his or her home for proper care and protection and when such removal results in the transfer of the child to a school other than the one in which he or she is enrolled;

vii. Provide due process rights to school personnel who have been reassigned or suspended in accordance with N.J.S.A. 18A:6-10 et seq., 18A:25-1, 18A:25-6, and N.J.S.A. 9:6-3.1. Temporary reassignment or suspension of school personnel alleged to have committed an act of child abuse shall occur if there is reasonable cause to believe that the life or health of the alleged victim or other children is in imminent danger due to continued contact between the school personnel and a child (N.J.S.A. 18A:6-10 et seq. and N.J.S.A. 9:6-3.1).

6857j



KEAN COLLEGE OF NEW JERSEY
Union, New Jersey 07083

Testimony of Dr. Meyer S. Schreiber
At The Public Hearing
of the
N.J. State Senate Children's Services Committee
February 9, 1989

My name is Dr. Meyer S. Schreiber. I am a Professor of Social Welfare at Kean College of N.J., Union, N.J. My interest in appearing before this committee grows out of my work and activities in a variety of areas: I have served as a Consultant on Social Services with the U.S. Children's Bureau, I have worked as a child care worker in a children's institution, I have been a volunteer with the Child Placement Review program in Essex County and in my current and previous position I have had the unusual opportunity of preparing many students for work with The Div. of Youth & Family Services. I am testifying as a citizen in the public interest.

Two key things are clear to me in addressing the work of DYFS:

1. The very chaotic nature of the lives of some families in the community creates crises which call for state intervention and protection of the young. These developments in family life occur literally at 5 minutes to 12, or when a family situation is at its worst. This situation focuses our attention on the lack of an early warning system of significance that could help the community identify families in need of help way before a crisis develops.

2. The Child Welfare field is experiencing severe shortages of staff at all levels, especially social workers. This occurs at a time when the number of children and families coming into care is soaring. The result is that DYFS is expending tremendous time and energy to recruit and retain staff.

I would therefore like to raise the following suggestions for the Committee's consideration and study in the firm belief that my references to the worker and supervisor have been omitted to a large extent by the advocates and others interested in making a system work.

1. The Director of The Div. of Youth and Family Services should be appointed to a five year term. The appointment should be by the Commissioner of Human Services with the approval of the State Senate. This position is one of the most demanding, most difficult and stressfull ones in state government. An individual who is eminently qualified for this key position needs the opportunity to use this time frame to be innovative, to be

creative, to be forceful and to work toward goals that are attainable and meaningful. Currently there is really no kind of autonomy which such a person needs and still can be accountable to the Commissioner of Human Services. The political pressures can be dealt with when one has a kind of tenure which bolsters one's courage and daring in a position which call for all of this and more.

2. The DYFS line worker is now called a Family Services Specialist; the previous title was Social Worker. Through this declassification the Dept of Human Services and the Dept of Personnel have deepened a major difficulty DYFS faces. That is the recruitment and retention of trained social workers who can deal with family crisis, with children in urgent need of help. Currently anyone with a college degree and a year's experience (which is loosely defined as regards Human Services experience) can qualify to work at DYFS. It is therefore not unexpected that one learns of tremendous turnover in some district offices, particularly those in urban areas, where it is as high as 50% and often is more. The likely candidate for such turnover is the individual who is not prepared to deal with the rigors and demands of the position. The individual more likely to stay is one who has had training and has a Bachelor's of Social Work degree.

This Committee can contribute immensely to strengthening DYFS as a service system by demanding the return to the Social Work title; that trained BSWs and MSWs be given preference in hiring. This will help considerably as a mechanical reduction in caseload is not enough if a worker is not able to contend the daily pressures, tensions, frustrations and feelings of incompetence.

There are many motivated, fine workers who are the backbone of DYFS and carry on day in and day out in spite of the pressures and often unfair criticism from many quarters. These workers, indeed all DYFS workers, should be given opportunities to enhance their knowledge and skills. Currently the State of New Jersey does not have an Educational Leave program such as it did years ago. It is imperative that this be restored so that people can deepen and broaden their knowledge and skills and become even more important members of the DYFS team.

This move is important for another reason. The next level of worker is Asst. Supervisor. Persons who do well at the line worker level rise to this position. Most of these motivated individuals have had no real education or preparation for the difficult job of supervising five direct service workers. These individuals would greatly benefit from educational leave as there are two graduate schools of social work who prepare social workers for exactly that kind of position. I refer to the Columbia Univ. and Hunter College Schools of Social Work who are two metropolitan schools with faculty with considerable child welfare expertise.

3. There has been considerable talk in some of New Jersey's daily press about all kinds of ways to monitor DYFS's work; to make it more accountable and responsive. I urge this committee to carefully examine all these proposals against a background of why such measures are needed. There is - in my considered judgement - sufficient accountability in place so that more and more monitoring would only contribute to DYFS's difficulties in using time and energy with such persons and agencies.

Several years ago advocates urged the state to develop a Child Placement Review procedure. This was an act evidencing a lack of faith in DYFS. So now court appointed citizens meet weekly to oversee DYFS's work. There really has been no solid and full study to examine the impact of this mechanism upon the performance of DYFS. Rather, it has created another hierarchy of special interest, in my estimation, and has not made significant changes in DYFS as a delivery system.

In summary, the key roles of staffing have been overlooked in the rush to judgement once more about DYFS and the pressing need to build DYFS into a more solid, professional agency that can truly exemplify sensitive, high professional quality services to its clients most of whom constitute those at the bottom of our social structure. DYFS needs help; lots of it.

I want to thank this Committee for the opportunity to appear before you in this public forum. I shall look forward to your deliberations and recommendations as a key legislative group.

Meyer S. Schreiber

Meyer S. Schreiber, D.S.W.

NEW JERSEY PTA

900 Berkeley Avenue
Trenton, New Jersey 08618
(609) 393-6709, 393-5004

TO: Senate Committee on Children's Services

FROM: Mia Andersen, Chairman
Legislative Activities
15 Beekman Road
Summit, New Jersey 07901

RE: Division of Youth and Family Services

DATE: February 9, 1989

New Jersey PTA Board of Directors supports the creation of an independent Office of Child Welfare in the Department of the Public Advocate to act as oversight for DYFS operations. We applaud the courage and foresight of Director Waldman. Such an office will have the credibility and the power to conduct oversight investigation. The results of these investigation will provide the Division with the information it needs to successfully evaluate not only the implementation of its policies and procedures but the performance of particular District Offices and staff. As a result the Division will have the material necessary to:

- * appropriately modify its policies and procedures;
- * develop better training materials;
- * reassign staff;
- * dismiss staff.

The creation of an independent Office of Child Welfare in the Department of the Public Advocate will provide the State with a mechanism to hold the Division accountable for its policies and practices. Such accountability is essential to reassuring the public that the Division will be held to high standard of practice. Additionally, the Division will be able to bring to the Legislature independent and credible information necessary to support its requests for resources. We urge the Committee to move quickly to introduce and pass legislation that would create an office of child welfare in the Department of the Public Advocate.

As Chair of the Sub Committee on Screening and Reporting for the Working Group of the Governor's Task Force on Child Abuse and Neglect, I can assure you that that effort is proceeding very well. We are in the process of drafting our sub committee's recommendations and I look forward their approval by the Task Force and subsequent release to the Legislature. I am eager to work closely with you to implement those recommendations.

With regard to our positions on the proposals before us today:

115X

1. Limit the caseworker to child ratios to 1:20, the caseworker supervisor to caseworker ration to 1:5, and a support staff to caseworker ratio of 1:5, as suggested by the Communications Workers of America.

There is not doubt that such ratios would do much to improve the Divisions ability to meet its charge. While New Jersey PTA has not taken a position on this particular proposal, I want to share some concerns with you. Where will the Division get the money to pay for the increase personnel? If such a proposal were to be enacted and the Legislature were not to appropriate-on a continuing basis-sufficient funds to support the mandated staff, the Division would be in violation of law when it was forced, because of the lack of funding, to reduce staff.

If such a proposal were enacted and insufficient funds were appropriated:

- * the Division would be required to reduce case load to be in compliance with the staff ration mandate;

Were such reduction to occur, the Division would be forced to either so narrow it's definition was constituted abuse and neglect qualifying for Division investigation or the Division would be required to refuse to accept additional cases of any sort. Either one of these alternatives would place children in danger. Children would be exposed to continued abuse and/or neglect because of the Divisions inability to respond.

and

- * the Division could be liable to civil or criminal prosecution for failure to comply with mandated staff ratio's.

If a child denied services because the Division were forced to comply with enacted staff ratios and that child suffered serious harm from abuse and/or neglect, the Divisions failure to act could be used as a basis for civil or criminal liability.

Enactment of such a staff ratio mandate would result in placing New Jersey children at risk of serious harm unless the mandate were accompanied by mandated ongoing funding necessary to support required staff.

2. Make false reporting of child abuse a crime in the fourth degree and amend existing law (section 8 of P.L. 1971, c. 437 (C9:6-8.13) to delete the provision which affords persons who make reports of child abuse absolute criminal immunity.

New Jersey PTA supports the enactment of such legislation as long as the language makes clear that the basis for criminal liability rests on the defendant's intent to make a false report. Additionally, we would suggest that failure to report should become a crime in the fourth degree. Children die each year because of failure to report. Landeros v. Flood, 551 P.2d 389, 131 Cal Rptr 69, 17 C3d 399 (1976)

New Jersey PTA recommends that increase penalties for false reporting should be accompanied by increased remedies for those who are the victims of false reports. We urge that C. 9:6-8.13 be amended to include language that provides for the recovery of treble damages by those who are victims of false reports. Massachusetts recently enacted such legislation. Laws of Massachusetts, 1986, C. 230.

In addition we urge you to explore the possibility of enacting legislation that would provide for the recovery of attorneys fees by acquitted defendants. California has enacted such legislation.

3. Reassign primary responsibility for conducting investigations of reports of child abuse to county prosecutor's offices.

New Jersey PTA strongly opposes this proposal. Law enforcement is necessarily concerned with apprehending those who commit crimes, not with providing help to the victims. We believe that this shift in focus from ensuring the welfare of the child to techniques necessary to apprehend perpetrators is not in the best interests of New Jersey's children and youth. NJPTA believes that our goal must be to strengthen families so that children can remain with their natural parents. We believe that it is far more productive to dedicate resources to improving parent's ability to raise their children than to place children in foster care and/or adoption. Not only do we believe that this is more productive for the children but it is also far more cost effective. There are not enough public dollars to support out of home care for all children who are subject to abuse and/or neglect.

In addition, law enforcement has other demands that may rise above abuse and neglect investigations. They have orders ahead, so to speak. We believe that investigations of abuse and neglect must be the primary focus of an agency in order to ensure the possibility of appropriate and timely response.

If there is concern that DYFS workers are not "less sophisticated in the appropriate techniques of investigation," then additional training should be required and funds appropriated to support such training. It is also important to

define what "appropriate" techniques means in relation to a child abuse investigation.

4. Reassign the DYFS's lead role in the investigation of child abuse committed in institutions or placement either operated or at least initiated by DYFS to the Office of Ombudsman for Children with the help of the County Prosecutor's Office.

We are currently studying this proposal but have not taken a position at this time.

5. Develop a network of county-based diagnostic centers staffed with full-time professionals who would work closely with DYFS investigators from county prosecutors' offices and other law enforcement personnel.

NJPTA has not taken a position on this proposal at this time. When we have finished out study of this recommendation we will share our position with you.

Recognizing our position in support of DYFS as the primary lead agency in the investigation of child abuse and neglect, such a network might offer potential for increased professionalism in diagnosing abuse and neglect and developing an appropriate remedial plan for the family. On the other hand, insufficient funding would prevent its successful implementation. Too few staff would result in limiting number of cases; too few centers would limit clients because of inaccessibility. Coordination between DYFS and these centers would pose substantial problems to unified case management.

6. Establish requirements for informing parents of a child who has allegedly been abused or neglected of the status of their case, their rights, and an approximate time frame for the resolution of the case.

NJPTA is in full support of this recommendation.

7. Amend Senate Bill No. 550, establishing the Office of the Ombudsman for Children, to allow the office to serve as an official oversight committee which would act on complaints about DYFS activities.

NJPTA supports the creation of an Office of Child Welfare in the Department of the Public Advocate, to act as the investigatory and oversight body for DYFS operation. We do not believe that combining this function with that of the Ombudsman would be in the best interests of that office. The Ombudsman should be a trouble shooter, problem solver. Adding the police function would, we believe, negatively impact on the ability to carry out those functions.

8. Amend the statute which limits access to records of child abuse, N.J.S.A. 9:6-8.10a, to include the parents of the abused child among the persons who are entitled to receive the report when the abuse occurs in an institutional setting.

NJPTA supports this proposal. Parents have the right to be informed as to the safety, health and welfare of their children. It is essential that parents be involved in the treatment of their children. Such information is essential to that function.

9. Appropriate funds to the Department of Human Services or the courts for contracting with community based organizations for the establishment or improvement of facilities for supervised visitation during the pendency of child abuse investigations.

NJPTA believes that it is essential that children be protected at all times. However, supervised visitation is important to the welfare of children and their families. While we have no position on this particular recommendation, we support any efforts that would provide for enhanced supervised visitation.

10. Establish an Office of the Ombudsman for Children in the Department of Human Services.

NJPTA supports the creation of the Office of the Ombudsman for Children. Monitoring is appropriate, but we do not believe this Office should perform police functions of investigation.

We believe that the Office of the Ombudsman should be a part of a larger Commission for Children as recommended by the Governor's Committee on Children's Services Planning. Some of the provisions of that recommendation are contained in Senator Costa's bill S 319. There is currently no way of assessing the state of the State with regard to children and their families. There is no statewide mechanism to assess children's needs, coordinate state sponsored and/or supported activities, or evaluate the effectiveness of programs and services currently offered New Jersey children and their families. Consequently, we have gaps in services and no way to monitor, evaluate and police the programs and services we do provide.

We need a Commission on Children in order to:

1. Gather information, including data collection/analysis and research;
2. Prepare needs assessments;
3. Formulate State goals and objectives for children's services;
4. Identify gaps in services;
5. Identify overlap in services;

6. Participate in the State budget planning process;
7. Prepare and review legislation and administration policies affecting children;
8. Facilitate inter-Departmental committees and task forces established to develop policies/programs and address service delivery issues;
9. Provide clearing house/public information activities to maintain and inventory of services and disseminate information to public official and community groups;
10. Provide of technical assistance to community groups and the corporate sector for voluntary projects.

We need an Office of Ombudsman for Children to:

1. Provide oversight of delivery of programs and services to children and their families;
2. Troubleshoot on identified problems and advocate for their solution.

We need an Office of Child Welfare in the Department of the Public Advocate to:

1. Investigate service delivery failures;
2. Provide government the information necessary to improve service delivery.

NJPTA urges you to enact these mechanisms in order to assure appropriate planning, coordination, evaluation and accountability of the programs and services provided by the State to New Jersey's children and their families.

11. Develop a Child Placement Bill of Rights which would protect the rights of all children who have been placed outside their homes by DYFS.

This is an important proposal which NJPTA supports in concept. We would welcome the opportunity to work with Senator Ambrosio and the development of such a Bill of Rights.

STATEMENT TO THE NEW JERSEY SENATE Children's Services Committee at the Public Hearing to examine legislative proposals to address the Division of Youth and Family Services method of investigating reports of child abuse.

Thursday, February 9, 1989

Statement made by: Tom Duffy, Vice President
National Burn Victim Foundation
308 Main Street
Orange, New Jersey 07050

STATEMENT

I have reviewed the transcript of the hearings conducted by this committee last September. I would like to commend the committee on both the scope of its inquiry, as well as the quality of its result. I think that the 11 proposals under consideration here today address the significant issues facing child protective services in New Jersey.

I have asked to appear here today to speak on one of your proposals, that being the proposal to limit caseworker-to-child ratio to 1:20.

I am the Vice President of Operations for the National Burn Victim Foundation, headquartered in Orange. The Foundation provides services under state grant to the Division of Youth and Family Services in the area of suspected child abuse/neglect cases involving burn injuries. Our services are two-fold: one, we conduct case evaluations; and, we provide training to DYFS and law enforcement personnel on forensic investigations of child abuse by burning cases.

In our training component we train over 800 state and county child abuse investigators annually. In the evaluation component we work directly with the frontline caseworkers during the initial stages of child abuse/neglect investigations.

Prior to joining the NBVF, I worked for DYFS as a District Office Manager.

As your proposal states, a lower caseworker-to-child ratio would "reduce the workload of caseworkers, ...reduce high turnover rates, and help build a more experienced staff".

I am greatly concerned, however, that this committee's desire to achieve those laudable goals will be negated by the present hiring freeze imposed by the state. As I indicated in a letter to the editor that was published in several newspapers throughout the state last month, it is not uncommon for DYFS offices, especially in urban areas, to experience a 50% annual turnover rate of front line caseworkers. Given this, any action by this committee concerning caseworker-to-child ratios will be rendered ineffective unless it is coupled with a strong advocacy stance aimed at exempting DYFS from any present or future hiring freezes.

Hiring freezes have impacts that are directly seen and impacts that lie unseen only to surface later in the form of an under-trained staff and worker burnout. As we conduct our trainings throughout the state, we are already hearing concerns raised by District Office Managers that covering caseloads is again beginning to become problematic.

There are regions in the state where non-mandatory, skill-enhancing training is being discouraged because of the need to keep workers in the office to cover uncovered caseloads. This cutback in training to frontline staff can and will have a strong

STATEMENT TO THE N.J. SENATE
Page 3

negative impact on the Division's provision of services for months and years to come.

Just last week the Newark Star-Ledger in an editorial entitled "One Is Too Many" called upon Governor Kean to seriously consider the request being made by a number of child advocates, the NBVF among them, to exempt DYFS from the freeze.

I am here today to call upon you, Senators, to join us and advocate for New Jersey's most vulnerable citizens, our children. No matter what else comes of today's hearings, nothing can be accomplished if DYFS is not provided the staff to carry out its duties.

I wish to thank you for your time and for your attention to these concerns.

Statement presented by Susan Cohen Esquilin, Ph.D., February 9, 1989, before the New Jersey Senate Committee on Children's Services.

As a psychologist who has evaluated or treated over a thousand sexual abuse victims in the past seven years in my work at Children's Hospital in Newark and in my private practice, I am aware that the enormity of the problem of child abuse has just begun to reach public awareness, and yet many individuals remain fearful of becoming involved. Making false reporting a fourth degree crime will turn the clock back in the battle against child abuse and is a serious error. First, while it may be aimed at disgruntled spouses, it will create uncertainty and reticence among professionals when confronted with disclosures of abuse in their offices which may or may not be able to be validated on subsequent interviews. At the very least, psychologists, physicians, and educational personnel should continue to have complete immunity from prosecution when reporting suspected child abuse. These individuals should also be immuned from criminal and civil action when asked by authorities to conduct evaluations of suspected child abuse by DYFS, the prosecutor's office, or the proposed diagnostic centers. Second, the judgment that any individual "does not have reason to believe that the alleged abuser committed that abuse or neglect" is subjective and problematic. In the midst of acrimonious divorce situations, children may present with some symptoms that are also found in children who have been abused. A well-intentioned parent may suspect abuse where none exists and seek to have the situation investigated (Esquilin & Witt, 1989). Furthermore, as most child sexual abuse does not leave physical signs and as young children may tell a person close to them and refuse to tell others, the report made by a parent may be honest and may still not be able to be substantiated. Also, incest victims often remain silent in order to preserve the family unit; the divorce situation is a most likely time for a child victim to disclose abuse to a non-abusing parent, as the integrity of the family is no longer an issue. A recent national study of family courts demonstrated that the notion of an epidemic of false reports of child abuse in the context of custody situations is a myth. Only 2.5% of disputed custody cases involve any sexual abuse allegations and, of these, over half were validated (Thoenes & Pearson, 1988). While evaluating these allegations is frustrating and time-consuming, the ambiguity of these situations should not propel us into easy answers which could leave children unprotected. This proposal will result in a decrease of reporting, raising the specter of more Lisa Steinbergs, and will lead to an increase in the underground network of runaway parents and children. These cases must be allowed to surface, be investigated, and be resolved.

With regard to many of the other proposals, it is likely that the transfer of responsibilities that are now with DYFS to other agencies will overwhelm those agencies, especially in the larger counties. The real solution lies with dramatically

decreased DYFS caseloads, as well as with upgrading the professionalism of DYFS workers and supervisors, through increased requirements for hiring, thorough and on-going in-service training, and specialized units in each DYFS office to handle different kinds of abuse and neglect situations.

Esquilin, S. & Witt, P. (in press). Understanding sexual abuse allegations in the context of child custody disputes. New Jersey Family Lawyer. (special issue, March 1989)

Thoenes & Pearson (1988). Summary of findings from the sexual abuse allegations project. In Nicholson & Bulkley (Eds.), Sexual abuse allegations in custody and visitation cases, 1, American Bar Association.



SENATE COMMITTEE ON CHILDREN'S SERVICES
Honorable Catherine A. Costa, Chairman

Public Hearing
February 9, 1989
State House Annex

Testimony of: NJ Foster Parents Association
Presented by: Sue Dondiego, Legislation Chairman

126X

1
WE THANK YOU FOR THIS OPPORTUNITY TO COMMENT ON THE COMMITTEE'S PROPOSALS IN RESPONSE TO THE PUBLIC HEARING ON DYFS HELD ON SEPTEMBER 27TH, 1988:

1. LIMIT THE CASEWORKER TO CHILD RATIOS TO 1:20, THE CASEWORKER SUPERVISOR TO CASEWORKER RATIO TO 1:5, AND A SUPPORT STAFF TO CASEWORKER RATIO OF 1:5, AS SUGGESTED BY THE COMMUNICATIONS WORKERS OF AMERICA.

WE HAVE ALWAYS SUPPORTED WORKABLE CASELOAD AND SUPERVISORY RATIOS. OUR TESTIMONY, BEFORE THIS COMMITTEE, ON EVERY OCCASION HAS POINTED OUT THE FACT THAT MORE CHILDREN COMING INTO FOSTER CARE HAVE SERIOUS PHYSICAL, EMOTIONAL, AND MEDICAL PROBLEMS.

WE AS FOSTER PARENTS, HAVE SOUGHT AND RECEIVED THE SUPPORT OF THIS COMMITTEE TO PUT IN PLACE THOSE PROGRAMS AND RESOURCES WHICH WOULD HELP US TO PROVIDE BETTER CARE FOR THESE CHILDREN. DYFS STAFF, RESPONSIBLE FOR A FAR GREATER NUMBER OF CHILDREN THAN THOSE IN FOSTER CARE, FACE THE SAME DIFFICULTIES WHEN WORKING WITH DYSFUNCTIONAL FAMILIES. DYFS IS, AND MUST BE, RESPONSIBLE FOR FAR MORE THAN THE PROTECTION OF CHILDREN. IT MUST HAVE THE EXPERTISE AND RESOURCES TO FULFILL THIS RESPONSIBILITY. WE WOULD RECOMMEND THAT, IN ADDITION TO LOWER RATIOS, THE DIFFICULTY OF INDIVIDUAL FOSTER, ADOPTIVE AND BIRTH FAMILY NEEDS, BE TAKEN INTO ACCOUNT WHEN ASSIGNING CASELOADS.

AS FOR RESULTING "IN A SIGNIFICANT COST TO THE STATE", IF WE ADDED UP THE FINANCIAL COSTS AND THE COST IN HUMAN LIVES, WE ARE ALREADY PAYING FAR MORE TO CONTINUE A CRISIS ORIENTED PROGRAM RATHER THAN A PREVENTIVE/SUPPORT SYSTEM.

DYFS'S PRIME RESPONSIBILITY IS TO PROTECT CHILDREN, BUT EQUALLY IMPORTANT, IT ALSO HAS THE RESPONSIBILITY TO KEEP FAMILIES TOGETHER, TO ENSURE THAT FOSTER CARE IS THE BEST POSSIBLE ALTERNATIVE FOR CHILDREN. ITS RESIDENTIAL CENTERS ARE EQUIPPED TO PROVIDE THE SERVICES NEEDED TO TROUBLED YOUTH, AND ALL CHILDREN IN OUT-OF-HOME PLACEMENT FIND A PERMANENT HOME THROUGH REUNIFICATION WITH THEIR BIRTH FAMILIES, ADOPTION, OR OTHER APPROPRIATE PROGRAM.

2. MAKE FALSE REPORTING OF CHILD ABUSE A CRIME OF THE FOURTH DEGREE (18 MONTHS IMPRISONMENT, \$7,500 FINE MAXIMUM PUNISHMENT) AND AMEND SECTION 6 OF P.L. 1971, C. 437 (C. 9:6-8.13) TO DELETE THE PROVISION WHICH AFFORDS PERSON WHO MAKE REPORTS OF CHILD ABUSE ABSOLUTE CRIMINAL IMMUNITY.

WE AGREE THAT FALSE ALLEGATIONS ARE A SERIOUS MATTER. IN ADDITION TO THE DAMAGE IT DOES TO THOSE FALSELY ACCUSED, IT TAKES UP VALUABLE WORKER TIME WHICH COULD BE BETTER SPENT ON CHILDREN AND FAMILIES.

WE WOULD LIKE TO SEE SOME CLEARER DEFINITIONS FOR A FOURTH DEGREE CRIME IN ORDER NOT TO DISCOURAGE ANYONE MAKING AN ABUSE REPORT IN GOOD FAITH.

3. REASSIGN PRIMARY RESPONSIBILITY FOR CONDUCTING INVESTIGATIONS OF REPORTS OF CHILD ABUSE TO COUNTY PROSECUTOR'S OFFICES.

THIS MAY BE ONE SOLUTION TO ENSURING ABUSE INVESTIGATIONS ARE HANDLED SENSITIVELY AND APPROPRIATELY BUT WOULD WANT TO SEE A PROPOSED PROCEDURE, INCLUDING AVAILABILITY OF TRAINED STAFF, WOULD ALLEGATIONS AGAINST FOSTER PARENTS BE INCLUDED, HOW DOES THIS IMPACT ON THE DIFFERENCES IN CIVIL/CRIMINAL LAW, ETC.

4. REASSIGN THE DYFS'S LEAD ROLE IN THE INVESTIGATION OF CHILD ABUSE COMMITTED IN INSTITUTIONS OR PLACEMENTS EITHER OPERATIONED OR AT LEAST INITIATED BY DYFS, TO THE OFFICE OF OMBUDSMAN FOR CHILDREN.

WE MIGHT AGREE THAT INVESTIGATIONS OF CHILD ABUSE NEED TO BE THE RESPONSIBILITY OF AN OUTSIDE ENTITY. WE UNDERSTAND THAT THERE MAY BE OTHER RECOMMENDATIONS TO ADDRESS THIS ISSUE. WE WOULD LIKE TO REVIEW ALL OPTIONS BEFORE WE SUPPORT ANY ONE PROPOSAL. WE DO, HOWEVER, WANT TO SEE APPROPRIATE GUIDELINES AND TRAINING FOR ANYONE INVOLVED WITH ABUSE INVESTIGATIONS.

5. DEVELOP A NETWORK OF COUNTY-BASED DIAGNOSTIC CENTERS STAFFED WITH FULL-TIME PROFESSIONALS WHO WOULD WORK CLOSELY WITH DYFS INVESTIGATORS FROM COUNTY PROSECUTORES' OFFICES, AND OTHER LAW ENFORCEMENT PERSONNEL.

SINCE SOME FAMILIES WILL NOT SEEK HELP VOLUNTARILY, SHOULDN'T THESE SERVICES SHOULD BE AVAILABLE TO ALL CHILDREN? WE BELIEVE THIS CAN BE A VERY VALUABLE APPROACH. WE WOULD LIKE TO KNOW HOW MANY FAMILIES SEEK HELP VOLUNTARILY AND HOW MANY CENTERS WOULD BE NEEDED IF THIS APPROACH WAS USED FOR ALL CASES.

6. ESTABLISH REQUIREMENTS FOR INFORMING PARENTS OF A CHILD WHO HAS ALLEGEDLY BEEN ABUSED OR NEGLECTED OF THE STATUS OF THEIR CASE, THEIR RIGHTS, AND AN APPROXIMATE TIME FRAME FOR THE RESOLUTION OF THE CASE.

TOTALLY AGREE - INCLUDE ADOPTIVE PARENTS, FOSTER PARENTS, AND/OR ANYONE ACCUSED OF ABUSE AND/OR NEGLECT.

7. AMEND SENATE BILL NO. 550, ESTABLISHING THE OFFICE OF THE OMBUDSMAN FOR CHILDREN, TO ALLOW THE OFFICE TO SERVE AS AN OFFICIAL OVERSIGHT COMMITTEE WHICH WOULD ACT ON COMPLAINTS ABOUT DYFS ACTIVITIES.

SAME AS RESPONSE #4

8. AMEND THE STATUTE WHICH LIMITS ACCESS TO RECORDS OF CHILD ABUSE, N.J.S.A. 9:6-8.10A, TO INCLUDE THE PARENTS OF THE ABUSED CHILD AMONG THE PERSONS WHO ARE ENTITLED TO RECEIVE THE REPORT WHEN THE ABUSE OCCURS IN A INSTITUTIONAL SETTING.

AT WHAT POINT IN TIME WOULD THESE RECORDS BE MADE AVAILABLE? WE WOULD NEED SOME ASSURANCE THAT ONLY RECORDS OF SUBSTANTIATED ABUSE BE MADE ACCESSABLE. IT SEEMS TO US THAT PARENTS NEED TO BE INFORMED BUT WOULD RECOMMEND THAT PERHAPS, RATHER THAN THE OFFICIAL RECORDS, PERTAINENT INFORMATION BE SHARED. WE ALSO FEEL THERE SHOULD BE SOME GUIDELINES AS TO WHICH PARENTS SHOULD RECEIVE THIS INFORMATION. IF PARENTS HAVE NO CONTACT WITH THEIR CHILD OVER A LONG PERIOD OF TIME AND ARE NOT INVOLVED IN ANY TREATMENT PROCESS, WHAT PURPOSE WOULD IT SERVE TO NOTIFY THESE PARENTS??

9. APPROPRIATE FUNDS TO THE DEPARTMENT OF HUMAN SERVICES OR THE COURTS FOR CONTRACTING WITH COMMUNITY-BASED ORGANIZATIONS FOR THE ESTABLISHMENT OR IMPROVEMENT OF FACILITIES FOR SUPERVISED VISITATION DURING THE PENDENCY OF CHILD ABUSE ALLEGATIONS.

ABSOLUTELY YES! WOULD LIKE TO SEE THIS EXPANDED TO INCLUDE ALL SUPERVISED VISITS.

10. ESTABLISH AN OFFICE OF THE OMBUDSMAN FOR CHILDREN IN THE DEPARTMENT OF HUMAN SERVICES.

WE SUPPORT AN OVERSIGHT COMMITTEE/OFFICE WHICH WOULD MONITOR DYFS ACTIVITIES BUT WOULD PREFER TO SEE THIS OUTSIDE THE DEPARTMENT OF HUMAN SERVICES. AGAIN, WE WOULD LIKE TO REVIEW ALL OPTIONS BEING RECOMMENDED.

11. DEVELOP A CHILD PLACEMENT BILL OF RIGHTS WHICH WOULD PROTECT THE RIGHTS OF ALL CHILDREN WHO HAVE BEEN PLACED OUTSIDE THEIR HOMES BY DYFS.

GOOD IDEA. WITH IMPETUS FROM THE NATIONAL FOSTER PARENT ASSOCIATION AND NATIONAL ACTION FOR FOSTER CHILDREN, A BILL OF RIGHTS FOR FOSTER CHILDREN WAS ADOPTED IN CONGRESS HALL, PHILADELPHIA, IN 1973. WE WOULD BE HAPPY TO SHARE THIS DOCUMENT WITH SENATOR AMBROSIO.

WE HAVE DONE OUR SHARE OF PRODIGING DYFS TO MAKE CHANGES WHICH WE FELT WERE NEEDED. WE HAVE NO PROBLEM WITH HOLDING THEM ACCOUNTABLE, AT ALL LEVELS, FOR WHAT WE BELIEVE ARE INAPPROPRIATE ACTIONS. HOWEVER, WHILE WE AND OTHERS CONTINUE TO ADVOCATE FOR CHANGE, WE ARE DEEPLY CONCERNED WITH DYFS'S ABILITY TO CARRY OUT, WHAT WE AND THEY SEE AS ESSENTIAL SERVICES, WHEN THEY ARE UNDERSTAFFED. VERY SIMPLY, THE HIRING FREEZE WILL ALSO FREEZE MANY PROGRAMS AND SERVICES IDENTIFIED AS ESSENTIAL THROUGH NJFPA EXECUTIVE BOARD AND DYFS SENIOR STAFF MEETINGS, AND SPLINTERED LIVES.

WE BELIEVE ALL CHILDREN AND FAMILIES, UNDER THE SUPERVISION OF DYFS, NEED AND DESERVE THE SAME LEVEL OF ATTENTION AND SUPPORT. IT IS IMPOSSIBLE TO BREAK OUT ALL THE AREAS OF DYFS'S SERVICES AND SELECT THOSE WHICH WILL BE COVERED AND THOSE WHICH WILL NOT.

IF THIS COMMITTEE OR ANYONE EXPECTS POSITIVE CHANGE, IT CANNOT BE IN ONE AREA OR WHAT WE WILL HAVE NEXT IS PUBLIC HEARINGS ON SERVICES TO FAMILIES, ADOPTION, FOSTER CARE, RESIDENTIAL PLACEMENTS, ETC.

WE URGE ANY MEMBER OF THIS COMMITTEE, AS PERHAPS THE COMMITTEE AS A WHOLE, TO SUPPORT OUR EFFORTS TO HAVE DYFS EXEMPT FROM THE HIRING FREEZE.

IN CONCLUSION, WE BELIEVE THIS COMMITTEE HAS SHOWN A TRUE COMMITMENT TO ADDRESSING THE NEEDS OF CHILDREN AND FAMILIES. OUR ASSOCIATION STANDS READY TO ASSIST IN ANY WAY POSSIBLE.

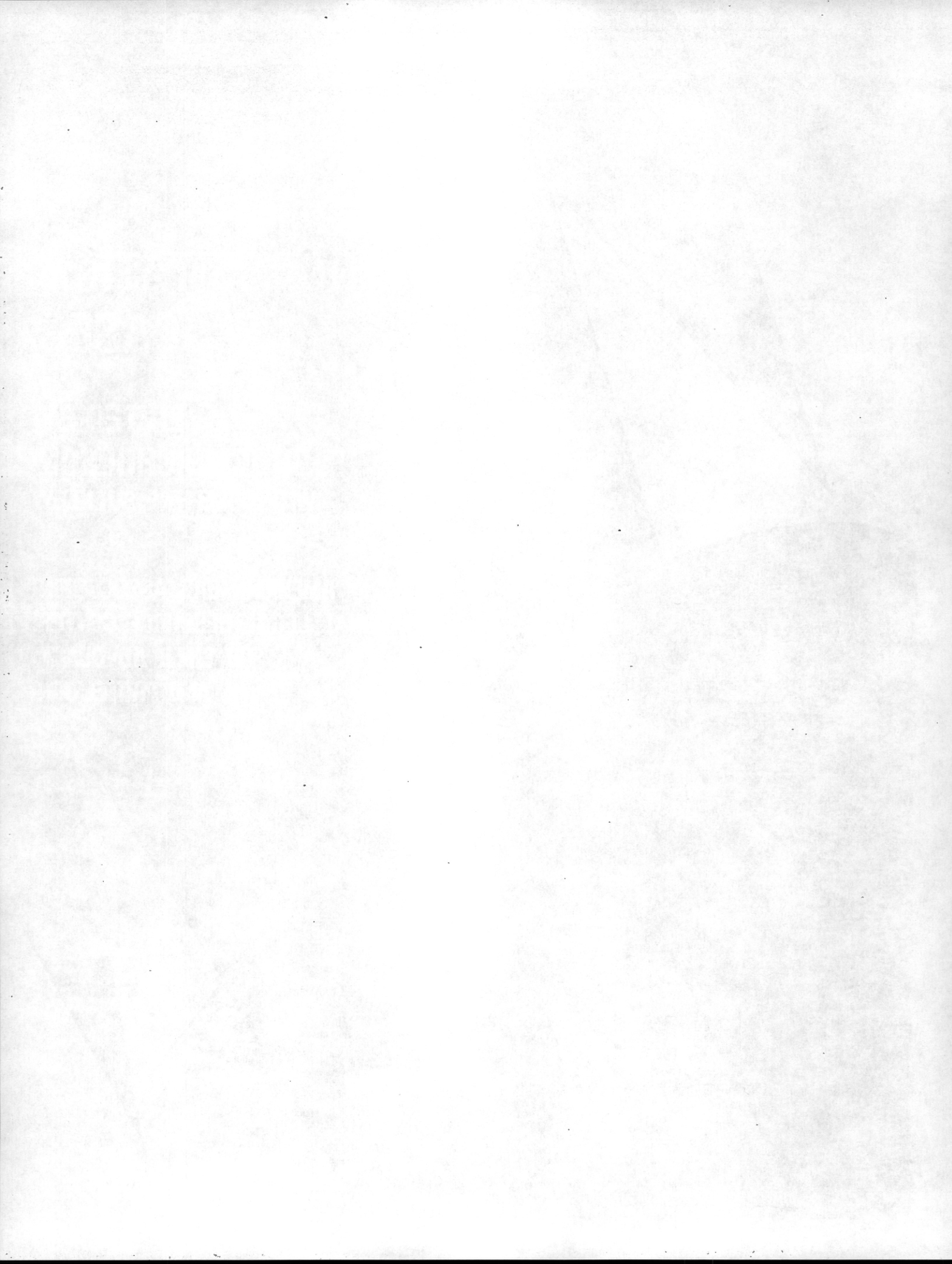


**AND VISITATION
CASES**

**EDITED BY
E. BRUCE NICHOLSON
WITH JOSEPHINE BULKLEY**

**AMERICAN BAR ASSOCIATION
NATIONAL LEGAL RESOURCE CENTER
FOR CHILD ADVOCACY
AND PROTECTION**

130X



*See Addendum
also - pgs. 20+21*

**SEXUAL ABUSE ALLEGATIONS IN
CUSTODY AND VISITATION CASES:
A Resource Book for
Judges and Court Personnel**

Edited
by
E. Bruce Nicholson

With
Josephine Bulkley

The National Legal Resource Center for
Child Advocacy and Protection
A Program of the
American Bar Association
Young Lawyers Division

in cooperation with

The Association of Family
and Conciliation Courts
Research Unit

This publication was made possible by Grant No. 90-CA-1165 from the National Center on Child Abuse and Neglect, Children's Bureau, Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services. The contents should not be construed as official policy of the American Bar Association, the Association of Family and Conciliation Courts, the National Center on Child Abuse and Neglect or any other agency of the Federal Government.

Support readings are reproduced with permission of the various authors and publishers. These readings cannot be further reproduced or used without the express written permission of original publishers. Inquiries concerning these materials should be directed to the National Legal Resource Center for Child Advocacy and Protection, American Bar Association, 1800 M Street, N.W., Washington, D.C. 20036 (202) 331-2250.

February, 1988

↙ © American Bar Association, 1988. Library of Congress No. 88-151355

ISBN 0-89707-358-4. Cover art by Barbieri & Green, Washington, DC

131X

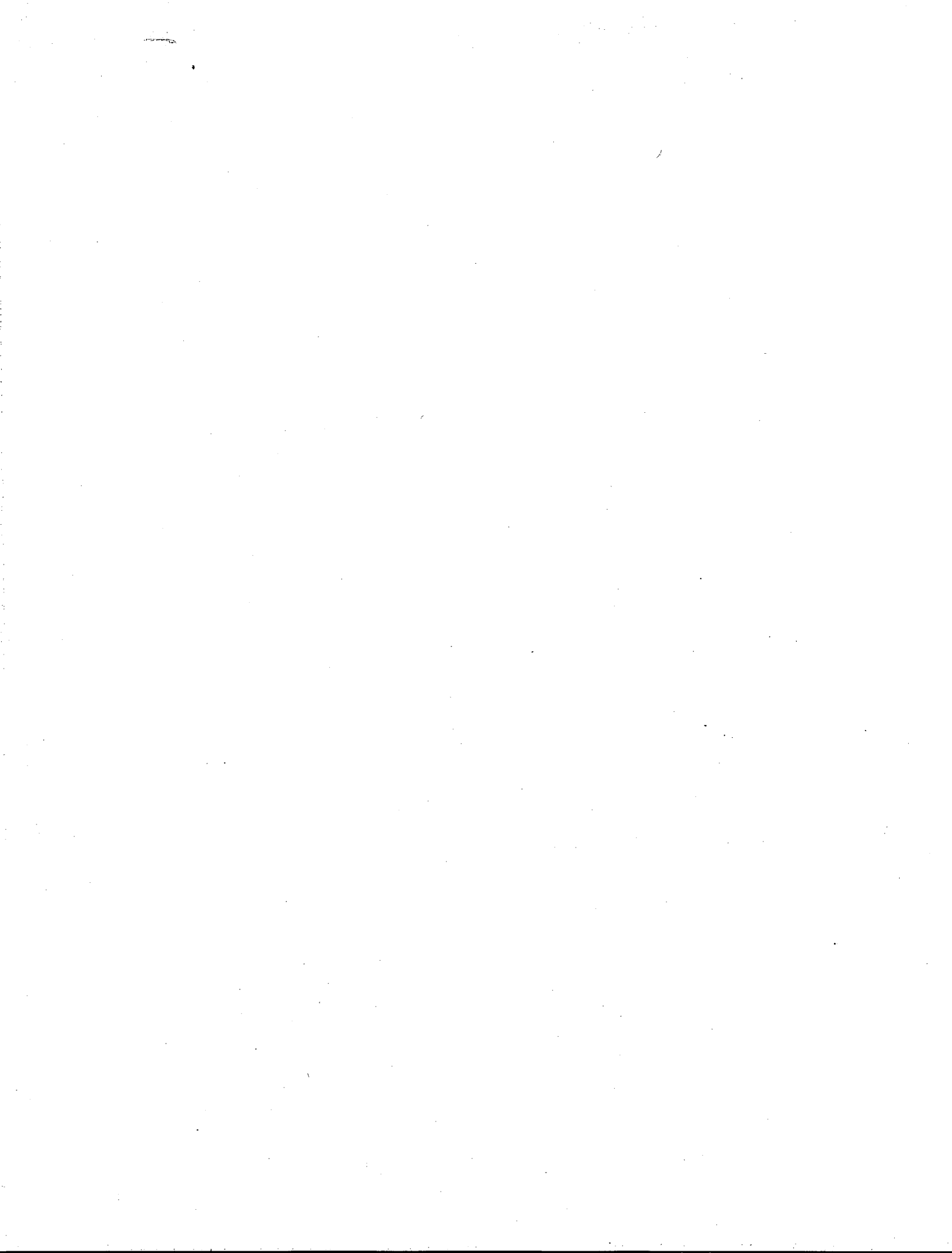


TABLE OF CONTENTS

PART I	Overview	
1.1	Summary of Findings From the Sexual Abuse Allegations Project Nancy Thoennes, Ph. D. and Jessica Pearson, Ph. D.	1
1.2	False Allegations of Child Sexual Abuse	22
	Child Sexual Abuse Allegations in Custody or Visitation Cases: A Report of 20 Cases David P. H. Jones and Ann Seig	
	Studies of True and False Allegations: A Critical Review Frances Sink, Ph. D.	37
	Deciding Whether a Child Has Been Sexually Abused Lucy Berliner	48
PART II	Investigation and Assessment	
2.1	Investigative Interviewing Excerpts from:	
	"Validation" and "Case Management" in Handbook of Clinic Intervention in Child Sexual Abuse 39-41, 69-73, 81, 91-96, DC Heath and Company: Lexington Books, Lexington, MA (1982) Suzanne M. Sgroi	71
	"The Interview Itself" in Interviewing the Sexually Abused Child 19-29, University of Colorado, Denver (2d ed. 1986) David P.H. Jones and Mary McQuiston	83
2.2	Child Evaluators' Roles in Child Sexual Abuse Assessments Sue White, Ph.D., Gail Santilli, MSSA, ACSW, and Kathleen Quinn, M.D.	94
2.3	"Child Sexual Abuse: A Medical View," United Way Inc. and Children's Institute International, Los Angeles, Ca. (1985) Astrid Hager, M.D.	106
PART III	The Court Process	
3.1	"The Relationship of Family and Juvenile Courts in Child Abuse Cases," 27 <i>Santa Clara Law Review</i> 201 (1987) Judge Leonard P. Edwards	122

3.2	Psychological Expert Testimony in Child Sexual Abuse Cases Josephine Bulkley	191
3.3	The Child's Input in Custody and Visitation Disputes Involving Sexual Abuse Allegations Josephine Bulkley	214
3.4	Independent Representation for Children: An Annotated Bibliography	230
3.5	Aggressive Advocacy for Parents Protecting Children in Child Sexual Abuse Cases Richard DuCote and Dennis Harrison	246
3.6	Child Sexual Abuse Allegations in Family Court Proceedings E. Bruce Nicholson	255
 Part IV Recommendations		
4.1	Summary of Recommendations from the Sexual Abuse Allegations Project Nancy Thoennes and Jessica Pearson, Ph.D.	279
4.2	Recent recommendations of other organizations regarding court handling of child sexual abuse cases	
	Child Victim/Witness Guidelines American Bar Association	287
	Recommendations for Improving Legal Intervention in Intrafamily Child Sexual Abuse Cases American Bar Association	291
	"Court Procedures," chapter 6 in Child Sexual Abuse: Improving the System's Response, 37 <i>Juvenile & Family Court Journal</i> 31-36 (1986) National Council of Juvenile and Family Court Judges	297
	"Deprived Children: A Judicial Response 73 Recommendations," <i>Metropolitan Court Judges Committee Report</i> (1986) National Council of Juvenile and Family Court Judges	302
 Part V General Issues Related To Child Sexual Abuse: Excerpted Materials From Leading Sources		
5.1	Dynamics and Prevalence of the Problem	
	"Sexual Abuse of Children," in <i>Victimization of Women</i> 81, 82 (J. Chapman & M. Gates eds.) Sage Publications, Inc.: Newbury Park, CA (1978) Kee MacFarlane	312

<p>"Clinical Issues in Child Sexual Abuse," in Social Work and Child Sexual Abuse, <i>J. of Social Work and Human Sexuality</i> 95, Haworth Press, Inc.: New York, NY (1982) Lucy Berliner & Doris Stevens</p>	<p>314</p>
<p>"Sexual Abuse of Children: Implications for Practice," in <i>Social Casework: The Journal of Contemporary Social Work</i> 601, Family Service Associations of America: Milwaukee, Wisc. (1981) Jon R. Conte & Lucy Berliner</p>	<p>318</p>
<p>"Implications for Theory, Research and Practice," <i>Child Sexual Abuse: New Theory & Research</i> 223-227, Sage Publications, Inc.: Newbury Park, CA (1984) David Finkelhor</p>	<p>319</p>
<p>"Prevalence," in <i>A Sourcebook on Child Sexual Abuse</i> 20, 21 Sage Publications, Inc.: Newbury Park, CA (1986) David Finkelhor</p>	<p>322</p>
<p>"Accessory-to-Sex: Pressure, Sex, and Secrecy," in <i>Sexual Assault of Children and Adolescents</i> 85, D. C. Heath & Co.: Lexington, Mass., and W. B. Saunders & Co.: Philadelphia, Penn. (1978) Ann Wolbert Burgess & Linda Lytle Holmstrom</p>	<p>324</p>
<p>5.2 Offenders</p>	
<p>"Abusers: A Research Review," in <i>A Sourcebook on Child Sexual Abuse</i> 91-94, 117, Sage Publications, Inc.: Newbury Park, CA (1986) David Finkelhor</p>	<p>325</p>
<p>"Abusers: Special Topics," in <i>A Sourcebook on Child Sexual Abuse</i> 119-122, 126-137, 142, Sage Publications, Inc.: Newbury Park, CA (1986) David Finkelhor</p>	<p>328</p>
<p>"Clinical Issues in Child Sexual Abuse," in <i>Social Work and Child Sexual Abuse, J. of Social Work and Human Sexuality</i> 97-98, Haworth Press, Inc.: New York, NY (1982) Lucy Berliner & Doris Stevens</p>	<p>341</p>
<p>"Clinical Dimensions of Adult Sexual Abuse of Children," in <i>3 Behavioral Sciences & the Law</i> 341-354, John Wiley & Sons, Inc.: New York, NY (1985) Jon R. Conte</p>	<p>343</p>
<p>5.3 Victims</p>	
<p>"Clinical Issues in Child Sexual Abuse," in <i>Social Work and Child Sexual Abuse, J. of Social Work and Human Sexuality</i> 100-102, Haworth Press, Inc.: New York, NY (1982) Lucy Berliner & Doris Stevens</p>	<p>355</p>

	"Initial and Long-term Effects: A Review of the Research," in <i>A Sourcebook on Child Sexual Abuse</i> 143, 152, 162,-165, Sage Publications, Inc.: Newbury, Park, CA (1986) Angela Browne & David Finkelhor	360
5.4	Mothers in Incest Cases	
	<i>Father-Daughter Incest</i> 42-49, 129-133, 138-140, Harvard University Press: Cambridge, Mass. (1981) Judith Lewis Herman	367
5.5	Intervention and Treatment	
	"Sexual Abuse of Children: Implications for Practice," <i>Social Casework: The Journal of Contemporary Social Work</i> 601-606, Family Service Associations of America: Milwaukee, Wisc. (1981) Jon R. Conte & Lucy Berliner	373
	<i>Father-Daughter Incest</i> 144-150, 154-171, Harvard University Press: Cambridge, Mass. (1981) Judith Lewis Herman	376
	<i>Recommendations for Improving Legal Intervention In Intrafamily Child Sexual Abuse Cases</i> 1-6, American Bar Association: Washington, D.C (J. Bulkeley ed. 1982)	397
	"Sex Offenders: Who are They? Can They Change?" in <i>Retraining Adult Sex Offenders: Methods and Models</i> 3-8, Safer Society Press: Syracuse, NY (1984) Fay Honey Knopp	404
5.6	Prevention	
	"Prevention: A Review of Programs and Research," in <i>A Sourcebook on Child Sexual Abuse</i> 224, 225, 254, Sage Publications, Inc.: Newbury Park, CA (1986) David Finkelhor	409
	"Implications for Theory, Research and Practice," in <i>Child Sexual Abuse: New Theory & Research</i> 227-234, Sage Publications, Inc.: Newbury Park, CA (1984) David Finkelhor	411

From E. Bruce Nicholson with Josephine Bulkley (Eds.) Sexual Abuse Allegations in Custody and Visitation Cases American Bar Association National Legal Resource Center for Child Advocacy and Protection, 1988.

SUMMARY OF FINDINGS FROM THE SEXUAL ABUSE ALLEGATIONS PROJECT

Nancy Thoennes, Ph.D. and Jessica Pearson, Ph.D.
The Association of Family and Conciliation Courts
Research Unit
1720 Emerson Street
Denver, Colorado 80218

INTRODUCTION

Although reports of incest and child sexual abuse can be found throughout history, it was not until the late 1960's that sexual abuse was specifically and explicitly recognized by statute as a reportable offense. Since then, estimates of its incidence have continued to spiral. In 1978 the reporting incidence was believed to be 1.87 per 10,000 children. By 1980 the estimate had risen to 5.76. The figures climbed to 9.0 in 1982 and 15.88 by 1984.

Despite growing attention to the problem, numerous unanswered questions remain regarding the causes behind sexual abuse, the long-term effects on victims, and the best methods for diagnosing and treating victims and offenders. In addition, new areas of concern are continually emerging. Recently a special group of cases has received considerable attention: sexual abuse allegations arising at the time of divorce or in subsequent legal actions regarding access to the children. Such allegations pose a variety of special problems to courts, family law attorneys, protective service agencies and private and court-based mental health professionals.

For example, in light of the parental dispute custody evaluators, attorneys, judges and protective service workers may experience special concerns about the validity of the charge. Dependency actions, and certainly criminal proceedings, are frequently hampered by the lack of a parent who is deemed to be "credible."

Additional problems result from the demands on courts and child protective service agencies to work together cooperatively. In most jurisdictions, child abuse cases fall within the domain of juvenile court; perhaps requiring the coordinated actions of juvenile and criminal courts. In cases with a custody or visitation matter pending, the situation is often complicated by the involvement of a domestic relations, family court or superior court. Typically the greater the number of courts involved, the greater the potential for communication lapses.

Similarly, the CPS agency is usually aligned with the juvenile court and has little experience cooperating or communicating with the family court. Indeed, the CPS agency may misunderstand the powers of the family court and its ability to protect the child without CPS agency intervention. It is also true that domestic relations court workers may be largely unaware of the policies and constraints under which the CPS agency must operate.

THE ABUSE ALLEGATIONS PROJECT

The Abuse Allegations Project was funded by a grant from the National Center on Child Abuse and Neglect (90-CA-1165). Research was conducted by the Research Unit of the Association of Family and Conciliation Courts (AFCC) and the National Legal Resource Center for Child Advocacy and Protection of the American Bar Association.

The research focuses on allegations of sexual abuse emerging in family court at the time of a divorce or a custody/visitation dispute. During the research, AFCC personnel conducted telephone interviews with representatives of 25 large domestic relations courts throughout the U.S.; analyzed nearly 300 questionnaires returned by members of the National Council of Juvenile and Family Court Judges and the Association of Family and Conciliation Courts; kept track of the number and nature of abuse allegations heard by court mediators and investigators in twelve courts; and conducted in-depth personal interviews at five sites.

The primary court sites (Denver, Los Angeles, Seattle, Madison and Cambridge) were selected to maximize geographic and organizational variety. Included are courts in which abuse and custody matters are heard before the same bench and those with separate juvenile and family judges; courts with and without family clinics staffed by social workers, psychologists and psychiatrists; courts with in-house custody investigators and mediators, and those without such services; jurisdictions making routine use of representatives for children in domestic relations proceedings and those rarely employing such services; and systems making both extensive and limited use of private professionals in the psychological and psychiatric communities to aid in the evaluation of the family.

Approximately 70 in-depth interviews were conducted with court mediators, evaluators, and administrators; court clinic staff, domestic relations and juvenile court judges; and referees, guardians ad litem, court appointed special advocates, child protective services workers, private custody evaluators, private family law practitioners and private clinicians experienced in the field of child sexual abuse and sexual abuse evaluations.

The present article briefly explores the following issues: the nature of the allegations, estimates on the incidence of such charges, issues facing court personnel in reporting the case, evaluations resulting from the report, the perceived veracity of the charges and methods of managing cases as they proceed in the CPS agency and the courts.

NATURE OF THE ALLEGATION

Interviews with court personnel reveal that domestic relations courts are encountering a wide range of sexual abuse allegations. Only occasionally do the cases involve charges of actual intercourse with a child. As frequently there are concerns expressed over fondling, kissing, exhibitionism or behaviors which are inappropriate given the child's level of maturity (e.g., bathing with an older child). Not surprisingly, it is sometimes difficult for the court worker hearing the allegation to determine whether these inappropriate behaviors constitute abuse. As one commissioner notes:

"There is a range of acceptable behaviors, people with different value systems aren't necessarily guilty of abuse."

Mental health professionals suggest that some "questionable" behavior charges result from the lack of clear norms regarding acceptable interactions between a child and the network of adults she is surrounded by following the divorce. Indeed, we even lack well established norms to govern single fathers and their children. As one protective service worker observes:

Mothers can take their young sons into the women's restroom without question. A father who takes his daughter into the men's restroom might find himself accused of 'questionable' behavior.

On the other hand, not all 'questionable behavior' reports can be dismissed as innocent and misinterpreted actions. Nor, of course, do all sexual abuse allegations arising in the family court involve ambiguous actions; in many instances the alleged behavior clearly represents abuse.

Most reported sexual abuse involves male perpetrators and female victims.² Not surprisingly, then, most sexual abuse allegations arising during the course of a divorce or custody action involve accusations against fathers, stepfathers or mother's boyfriend. Court personnel report that the most common case involves a father alleged to be abusive by the mother. However, charges by a father against mother's male partner are also common and cases also arise in which allegations are brought against the child's stepbrother, grandfather, uncle or a family friend. Similarly, the alleging party may be a parent, a grandparent, or even the child's teacher or therapist. In some cases the allegation is very clearly brought by the child. Several court mediators and evaluators recall instances in which an interview with the child triggered the investigation.

Although not frequent, there are even "charge and counter-charge" situations. In these cases, the party bringing the initial charge is in turn accused of abuse. Thus, a father who alleges that his child is being molested by her stepfather may find himself accused of the behavior. Although on the surface these "counter-charges" appear to be motivated by little more than revenge, court workers and consulting psychiatrists warn against dismissing them too readily. Abusive parents often project their own feelings and behaviors onto others. Thus, an allegation may trigger the accused party into closer scrutiny of both the child and the accusing party and the result can be a counter-allegation.

Finally, it is important to note that discussions of "abuse allegations" may improperly suggest that most of these cases involve specific or direct accusations. In reality, many parents simply relay their concerns about the way the other parent interacts with the child, express a combination of concern and disbelief about possible abuse, or question court workers about whether a suspected behavior is "normal" or cause for alarm. Still other parents are merely conveying suspicions relayed to them by third parties, such as teachers or physicians.

THE INCIDENCE OF ABUSE ALLEGATIONS

Some writers have suggested that the allegation of sexual abuse in divorce constitutes a major problem. Based on reports in the San Francisco Examiner, the LA Times, and the Oakland Tribune, Lee Coleman, M.D. describes the situation:

a wave of false allegations, filed by persons in the midst of custody and visitation disputes, is flooding the police and the courts.³

However, respondents to a survey of courts around the country typically describe seeing "a small but growing number" of such charges.

Interviews with court workers in our five research sites confirm these views. In addition, many individuals believe that the major increase in such cases actually took place 3-5 years ago, in the early 1980's. Since that time they feel the reporting incidence has leveled off. The increased numbers earlier in the decade are largely attributed to increased attention to the problem of sexual abuse. The rise of allegations within divorces is seen as paralleling the rise in reports to protective service agencies in general. The increase in direct reports to CPS agencies has been dramatic, with a national increase of nearly 200 percent during the last decade.⁴ As one commissioner notes, "we've taught parents the warning signs of abuse, we've got to expect more reports".

Similarly, professionals have been sensitized to the problem and to the mandatory reporting laws. One protective service supervisor suggests that courts are hearing more about sexual abuse these days because custody mediators and evaluators are more likely to bring the issue up and, "if you ask the child, you'll hear about it. If you don't ask, you won't hear."

The limited information available to date suggests that in most courts approximately two percent to ten percent of all family court cases involving custody and/or visitation disputes also involve a charge of sexual abuse. Since the incidence of contested custody is estimated to be about 10 to 15 percent of divorce filings with minor-aged children, it may be more accurate to estimate that sex abuse allegations occur in the range of approximately 2 to 15 per 1000 divorce filings.⁵

The perception of these cases as far more common may reflect the fact that such cases are particularly vexing cases for court professionals and their impact is disproportionate to their occurrence. Court personnel as well as private mental health professionals consistently rate such cases as among the most troublesome and time-consuming. In addition to involving the child protective services agency, numerous courts, and a wide array of private professionals, these cases often involve young children, high levels of parental anger, extended family members choosing sides, and a host of other problems, including spousal abuse or alcohol abuse, which further complicate an accurate assessment.

REPORTING ISSUES

Abuse allegations arising at divorce or during custody/visitation disputes may come to the attention of many different court actors including intake workers, court mediators or investigators. In systems lacking such personnel, referees and judges may be the first to hear the allegation. Typically when parties are represented they have shared their concerns with their attorney prior to the court appearance. The attorney must advise his/her client about the actions to be taken: whether to report the case, whether to mention it in a custody evaluation or mediation, whether to introduce it in a custody-visitation hearing. One private attorney described the difficult choices to be made:

As a woman attorney in a firm of women attorneys, I'm usually representing the mom bringing the issue up. Usually she says, 'I can't really believe he'd be doing this, but...', or they've seen something that's got them worried but they're also feeling guilty and ashamed. It makes them feel people will consider them bad moms if it's true. People will question how observant and caring they are. Lots of times you have to convince them to discuss it. I'll explain to them that custody and visitation hinge on it, and child support flows from that. Also, if they wait [to bring the charge up] until it looks like dad will have easy access to the kids, they'll be asked 'why did you wait so long to say something?' The hardest part is that, in all honesty, you have to tell her that her concern about losing the children [because she failed to prevent the abuse] is valid.

Once the allegation is raised there appears to be very little disagreement among court professionals about the procedures to follow. Typically the child protective services authorities are notified. If the allegation is made during mediation, the session is generally terminated. Custody evaluations are more flexible: the investigation may be suspended or it may continue following notification to the CPS agency. In virtually all systems the custody hearing will await the CPS decision and, if the case involves juvenile court actions, the custody/visitation hearing will also be suspended pending the juvenile court ruling.

Professional reluctance to report abuse is far from unusual. National research conducted by the National Center for Child Abuse and Neglect (1981) suggested that only about 50 percent of the sexual abuse known to professionals is in fact reported.⁶ The unwillingness to report abuse probably varies by profession: therapists are especially concerned that such reports violate the family's confidential relationship with the treatment provider. Widespread concern and skepticism about what the child protective service agency will do with the report is also a probable explanation for the failure to report.

However, family court personnel, including custody mediators and custody investigators/evaluators, deny selectively reporting cases with sexual abuse allegations. They point to strong reporting laws and the serious risk posed by failure to report in explaining why court personnel would prefer to error on the side of over-reporting. Family court workers do agree that deciding whether a report is necessary can necessitate some discretion on their part. The discretion centers around determining whether or not a given case entails

"abuse" or merely poor judgment in behavior, and in establishing whether there is a "reasonable suspicion" of sexual abuse.

Family court personnel suggest that reporting all possible cases of sexual abuse, regardless of the alleged behavior or the likelihood that abuse took place, would create tremendous problems, including: escalating family conflicts; creating unnecessary delays in the establishment of custody/visitation orders; subjecting children to unwarranted investigations; and generating extra work for an already overburdened CPS agency. The CPS workers we interviewed expressed confidence that family court workers are responding appropriately and expressed doubt that the level of discretion being exercised poses any risk to children.

THE INVESTIGATION OF THE ALLEGATION

Investigations of possible sexual abuse result in a finding by the CPS agency that a case is either "substantiated," or "unsubstantiated." The former outcome indicates sufficient evidence for the court to become involved in the case and for the CPS agency to provide services to the family. An unsubstantiated finding may indicate abuse did not occur, or may reflect the lack of sufficient evidence to warrant further action. It is generally conceded by all court personnel to be the responsibility of the CPS agency to investigate allegations and reach determinations regarding their veracity. In actual practice, however, the division of labor in an investigation is more complex. Many actors play a potential role. For example, many systems require police involvement in the early stages of the investigation. Still other jurisdictions have adopted team approaches that stress the involvement of pediatricians, psychologists and representatives of the prosecutor's office or dependency court.

The domestic relations court may also play a role in such investigations. While some courts indicate they undertake no action in a case once it has been reported to the CPS agency and rely on that agency's determination to guide the court's action on custody or visitation, others play a far more active role. Some courts report a reluctance on the part of CPS agencies to seriously investigate abuse charges in divorce/custody cases. Caseworkers may dismiss such cases as undoubtedly false or assume that the domestic relations court will protect the child. If the child is not living with the allegedly abusive parent, the case may not be perceived to involve imminent danger, thus resulting in a lower case priority. Even in settings where the CPS agency is believed to adequately perform the abuse investigation, the family court worker may be involved in a simultaneous but more general evaluation of the family such as a custody study.

Not surprisingly, concerns arise when CPS workers and custody evaluators reach differing conclusions. In some cases the differences represent opposite conclusions, in other instances they principally reflect the differing goals or missions of the two professionals. For example, the CPS worker may rule that the case is too weak and questionable to warrant juvenile court actions or the imposition of a treatment plan. The court evaluator charged with recommending the parenting arrangement that will best serve the child may feel the real possibility of abuse is grounds for denying custody or restricting visitation.

It is unclear how domestic relations judges respond to these differing conclusions. According to several counselors, judges in small courts have greater confidence in recommendations of their own, familiar custody workers while those in larger, jurisdictions are more influenced by the conclusions of the official investigatory agency.

Another potential actor in the investigatory process is a representative appointed to protect the child's best interests. Although guardian ad litem (GAL) appointments are rare in domestic relations cases, a few courts have mandatory appointments in custody disputes. In other settings, representatives are appointed in all divorce actions that involve serious allegations such as sexual abuse. Jurisdictions also vary as to whether the representative is a non-attorney acting as a Court Appointed Special Advocate (CASA) or an attorney. In some courts, the non-attorney advocate may in turn be represented by legal counsel, and in rare cases the child may be represented by an attorney who will serve as an advocate, not for "the child's best interests" but for the child's position or opinion.

At worst, the GAL or CASA may play a passive and vague role or may become inappropriately aligned with one parent. In systems with strong programs and skilled advocates, the GAL and CASA are usually greatly appreciated by the court, the attorneys, the consulting mental health professionals, and the parents.

In the early stages of a case, GALs and CASAs frequently investigate the family and to some degree the alleged abuse. To avoid duplication of effort, many advocates report coordinating their actions with the court's custody evaluators. Typically, child advocates and court investigators reach the same conclusions regarding desirable case outcomes. If different opinions exist, family court counselors suggest that attorney advocates would hold more power with the judge, but they feel certain that the disagreement would lead to a full hearing. If the child's representative is a non-attorney volunteer, it is less certain whose opinion would carry greater weight--the court counselor or the advocate. However, in courts with strong CASA programs there is no doubt that this individual's opinion will hold great weight with the court.

In cases which do not proceed to juvenile court hearings, the child's advocate may play a special role in ensuring that the domestic relations court is aware of any possible abuse or risk to the child. This function may not be served by the attorney for the alleging parent because of concerns that introducing the unfounded abuse charge will be viewed negatively by the presiding judge.

A final set of actors in the investigation process are private mental health professionals retained to aid in evaluating the family. Depending on the jurisdiction, the services of these clinicians may be requested by one or more of the following: the child protective services agency, the court hearing the abuse allegation, court custody investigators, referees, judges, or guardians ad litem in the juvenile or domestic relations court.

Mental health experts provide psychological testing, clinical interviewing, collect and analyze corroborating data to help shed light on whether the child appears to fit the pattern of a sexual abuse victim, whether the accused parent is a likely offender, the nature of treatment that

might be beneficial to the family, and other family dynamics that should be considered when determining the child's living arrangement.

These professionals stress that they cannot perform a fact-finding role. They cannot tell the CPS worker or the judge whether or not the abuse, as alleged, actually occurred. Nor can they determine the guilt or innocence of any of the possible offenders. No standardized test alone can accurately predict whether someone is abusive or non-abusive. Mental health professionals can provide information that will suggest whether sexual abuse would be a likely or unlikely explanation in the case, and how well or poorly the alleged party fits the profile of a sexual offender. They can point out other family dynamics, such as the child's level of attachment to each parent, that may help in reaching the best resolution in the case.

Judges, family court counselors and CPS workers all acknowledge that clinicians do not have definitive answers, and cannot tell them whether the sexual abuse charge is "true" or "false." However, the joking remark of one family court counselor carries more than a little truth:

Even though we know they don't have the answer, we're always hoping they will give it to us anyway!

Similarly, most clinicians feel that their role carries with it tremendous pressures to "produce the answer." Although most maintain that they feel comfortable producing a report that is inconclusive with respect to the abuse, they recognize that such reports must be the source of tremendous judicial frustration:

When a report winds up concluding that "the abuse is not inconsistent..." the court must be frustrated and the judge is probably saying, "I already knew that, I didn't need an 'expert' opinion to figure that out."

Needless to say, custody and visitation disputes only exacerbate the pressure clinicians feel to produce "answers" for impatient judicial audiences. The rival pressures for certainty and respect for the ambiguities of available data are not easily resolved.

Everybody wants a litmus test,...We need to let judges know that lots of professionals have quick answers based on faulty assumptions. I'm not saying that you need to be so vague that you're useless. I'm more optimistic than that. It's a delicate line between being too pat and too vague. You put the puzzle together and you look for consistencies.

ISSUES IN THE INVESTIGATION OF CHILD SEXUAL ABUSE

In general, sexual abuse investigations are difficult and complex. These cases often lack physical evidence and witnesses. Although expert investigators believe that reports from children should be treated very seriously, they can cite exceptional cases in which disturbed children fabricated or embellished sexual abuse stories to please adults, obtain revenge against a parent or step-parent, or to gain attention.⁶

Clinicians also acknowledge that very young victims may misrepresent the person responsible for the abuse. Frightened at the prospect of retaliation, young children may name a person with whom they feel safe as opposed to a less "safe" person, without understanding the consequences of the misreport. Very young children may also offer very vague comments that must be interpreted by the child clinician.

Family pathology, psychosis and spousal abuse factors also complicate assessments in some cases. For example, it is argued that mothers who were abused as children or as wives are overly sensitized to the issue and find it difficult to believe that their children could have a positive father-child relationship. It is too simple, however, to dismiss such charges altogether. Women abused as children may marry abusive partners and may be justified in their suspicions. Similarly, while some women who were abused during the marriage may be worrying unnecessarily that the abuse will be transferred to their children after the divorce, for others the concern is justified.

When sexual abuse allegations must be assessed within the context of a custody or visitation dispute, the investigation is further complicated. No doubt the single greatest difficulty is the tendency for acrimonious disputes to produce a range of symptoms in children that closely parallel many symptoms of child sexual abuse. Depression, withdrawal, anxiety, and fear of abandonment may well be indicators of sexual abuse for children from intact households in the absence of other obvious stresses.⁹ However, children whose parents are in the process of divorce and/or bitterly contesting custody or visitation may be expected to exhibit these stress-related behaviors without the presence of sexual abuse.¹⁰

Exceptionally provocative or aggressive sexual behavior in children is common to sexually abused children but is not routine in children adjusting to a divorce or embroiled in a custody battle. However, in some cases even overtly sexual behavior may be more attributable to the divorce than to abuse. Mental health experts report that children of divorced parents are often surrounded by a higher level of sexual excitement than are children from intact households. One psychiatrist notes that "no matter how good the marriage is" children living with their mothers and fathers are generally far less aware of, or concerned about, the sexuality between their parents. The child who is living with a mother and her new partner, or who visits father and his new partner, is surrounded by more sexual expression between adults, and is more concerned about this behavior.

Evaluations of the alleged offender are also complicated by the presence of a custody or visitation dispute. Thus, in a sentiment echoed by others, one therapist observes:

The perpetrator's hallmark is defensiveness, but this is also true for a lot of people who are involved in custody and visitation disputes.

Another therapist observes that offenders in incest cases, including cases where the allegation arises during the divorce or custody proceedings, will be among those least likely to admit the offense. Divorce cases often involve young children rather than adolescents. Social stigma is probably greatest in the sexual abuse of pre-pubertal children. In addition, although all offenders risk serious consequences for admissions of guilt, the parental offender, but not the outside adult, risks the possibility of losing contact with a child to whom he feels genuine love.

THE QUALITY OF THE SEXUAL ABUSE ASSESSMENT

Investigating the possibility of sexual abuse may involve a wide range of professionals with specialized skills and expertise. In addition to the social worker at the child protective services agency, the investigation may involve the police and medical personnel. In some instances consulting psychologists or psychiatrists may be asked by the court, the CPS agency or the parents' attorneys, to evaluate the family in order to assess the likelihood of the allegation. Although it is with these consulting experts that we are most concerned in this section, the comments are also generally applicable to the evaluation and investigation performed by the CPS worker.

Identifying poor evaluations is sometimes merely a case of becoming familiar with the work of a given psychologist, psychiatrist or protective service worker. Court workers, attorneys, child advocates and other psychotherapists agree that in most communities there are individuals with well-known biases who inevitably reach the same conclusion in every case. Thus, some evaluators predictably find all accused parties fit the profile of an offender, while others routinely find the opposite.

However, even generally unbiased individuals may produce poor evaluations. Respected, experienced evaluators, prosecutors, and guardians ad litem have a variety of insights to help the courts and attorneys in their efforts to assess evaluations. They can also offer recommendations to their peers about how a report should be presented in order to maximize its utility.

The credentials and experience of the expert should be considered. Prosecutors point out that not every pediatrician is skilled in recognizing the physical signs of possible sexual abuse. Similarly, the professional conducting the psychological evaluation must be skilled in the areas of family dynamics in sexual abuse, sexual abuse victims and offenders, and child adjustment to divorce.

Experienced evaluators suggest that to be of greatest value the worker or team should see every member of the family involved in the dispute. At a minimum this would include the two parents and the child. In most cases new spouses, siblings of the child in question, or extended family such as grandparents would be included. The court appointed evaluator is, of course, in the best position to gain access to all parties. If full access is impossible, as it sometimes is, the court should dismiss any report which draws conclusions about individuals the evaluator never saw.

As a general rule, experienced evaluators suggest that reports based on single interviews with parties should also be viewed with caution. In addition, most evaluators prefer to see parties alone and in various combinations. This allows evaluators to observe mother-child or father-child interactions. However, this procedure may not be warranted if there is good reason to believe that the encounter would be traumatic for the child. Multiple interviews are, of course, frequently time-consuming. Evaluators must balance the need to help resolve the case expeditiously, avoiding prolonged family uncertainty and stress, with the need to conduct thorough interviews and data collection.

Properly conducted evaluations will draw on information from sources outside the family. Evaluators should be in touch with any professionals who

have had contact with the family. Schools, and pediatricians, for example, are excellent sources of information.

To be of greatest utility, the evaluation should not be exclusively focused on the issue of sexual abuse. The evaluator is not attempting to prove whether or not the abuse occurred. In order to best assist the court, one must consider the strengths and weakness of each parent. In addition, evaluators must consider all aspects of the family in order to ensure that they do not mistakenly assign symptoms caused by other problems to the alleged abuse. This point is especially noteworthy in cases where children and parents may be reacting to a separation, divorce or conflict over visitation and custody. During the course of the evaluation the following issues should probably be explored:

- * family history, including: abuse histories in parents' homes, past family violence, education and employment histories and social network ties.
- * sexual history of both parents
- * details of the alleged abuse
- * anger control on the part of the alleged perpetrator, and prior history of violence
- * relationship dynamics, including the nature of the custody or visitation dispute and marital history
- * drug and alcohol history
- * cognitive functioning of all parties including presence of major mental illnesses

Although reports may be structured or organized in a variety of ways, some styles will probably make the report more useful and compelling. The report needs to carefully document how conclusions are reached. Interviews with lawyers and judges reveal enormous dissatisfaction with reports that provide "six pages of family history that you already know and one page of conclusions". Equally useless are reports that contain a series of numbers from the standardized tests with no interpretation to explain their relevancy. Documenting conclusions may include explanations and interpretations of test results, verbatim quotes from the indepth interviews, information from outside sources such as the school or physician, and lots of detail. The goal is to provide the court with a compelling picture of how the alleged abuse could very plausibly have occurred, or how the allegation seems inconsistent with the evaluation results.

Although the report should be complete, evaluators are urged to avoid "jargon" and to keep to the point. Reports are viewed as "padded" if they include long family histories which repeat information already available through other evaluations. Keeping the report short and succinct will also increase the likelihood that it is fully read. Some evaluators prepare lengthy reports which contain great detail, but also include brief summary and recommendations sections.

THE VALIDITY OF THE ALLEGATION

The validity of sexual abuse allegations heard in family court has increasingly become a source of contention between those who perceive the court's response to be excessively skeptical and those who believe the court blindly accepts the charge and views the accused parent as guilty until proven innocent. Published accounts are also polarized in their views of the courts' response. Some authors insist that family courts inevitably are inclined to dismiss the allegation.

From report to determination, the fact that these allegations may be a strategy in a custody dispute is weighed heavily by each person who makes any decision about the abuse reported.¹¹

Others have suggested, explicitly or implicitly, that judicial skepticism is advisable since allegations arising in divorces or custody/visitation matters are in fact likely to be false.

For many parents engaged in seriously contested child custody disputes, false allegations of child abuse have become an effective weapon for achieving an advantage in court.¹²

Much of the writing to date has been based on authors' general clinical experiences, rather than on an empirical assessment of probability samples. In attempting to explain why false allegations arise, and how they can be detected, clinicians often deliberately choose a sample of false allegations for in-depth study. While this technique is valid, the reader and the author must not lose sight of the limits to this approach.

An additional problem in considering the validity of sexual abuse charges arising in custody and visitation cases is the lack of information about the disposition of sexual abuse cases in general. There is some reason to suspect, however, that sexual abuse is difficult to detect and a great percentage of the reports in the general population—not simply in family court—are ultimately labelled "unfounded." Highlights of Official Child Neglect and Abuse Reporting for 1984, reports:

Based on data from 19 states, a national estimate of 727 thousand reported children were considered substantiated for child abuse and neglect by CPS systems. This represents approximately 42 percent of the 1.7 million children who were reported in 1984.¹³

These substantiation rates unfortunately include cases with custody or visitation disputes in progress, as well as those without. Nevertheless, these statistics strongly suggest that the incidence of unsubstantiated reports is generally quite high.

In our interviews with professionals at each of our research sites, we asked for insights into the validity of the charges they heard or were asked to assess. In the absence of a generally accepted set of phrases to describe these cases, we refer to true, false, indeterminate, and spiteful or fictitious allegations.

True allegations are those in which the abuse, more or less as charged, was believed to have occurred. False allegations are those offered in good faith, but where, for a variety of reasons, the abuse was unlikely. In

indeterminate cases the likelihood of the charge remained in serious doubt. Finally, "spite or fictitious allegations" describe the case in which the alleging party is believed to have deliberately manufactured the allegation of sexual abuse, or maliciously capitalized on innocent circumstances.

Family court personnel suggest that there is possibly a certain subset of cases in which abuse clearly took place. One court administrator suggests that perhaps half of all the allegations heard may be such cases. More problematic are those cases in which all the professionals remain uncertain about what, if anything, actually transpired. These cases often involve very young children with very confusing, vague stories or totally unwilling to talk. These cases may also involve an accusing parent who seems seriously mentally disturbed and an accused parent who is conceivably abusive. These cases may also involve clear evidence of abuse but a variety of possible perpetrators.

In some cases all the professionals involved in the case feel fairly certain that the abuse did not occur. A few professionals believe such allegations are "the new fad way to deprive a father without due process." However, the more general consensus is summed up by one clinician who notes, "I have seen a couple of manufactured cases, and you do have to be concerned with the rights of the accused parent. But that's not the usual case."

One factor repeatedly cited as a deterrent to deliberate false reporting is the potential damage an allegation may do to the alleging parent's reputation. One guardian ad litem observed, "If mom does bring it up, people are going to ask 'what did she do about it?'. So, if you are just manufacturing a story, you'd better get ready for criticism." The sentiment that the allegation hurts the parent making the charge is echoed by others who believe that the court is likely to view most parents bringing such allegations as vindictive and angry.

Although parental anger is an important feature in understanding sexual abuse allegations that arise in divorce, none of the clinicians and few court or child protective service workers we spoke to believe that the anger commonly leads to direct fabrications. A guardian ad litem concurs:

Moms get very involved in reporting, certainly. Sometimes they get overly involved. Moms are very angry. Often the child tells mom and mom's the only person the child will talk to. As a result, you have to filter what mom's saying through her general anger at dad and her fury at the idea of abuse. You have to try to hear what part of all this is what the child actually says.

In some cases anger undoubtedly results in a parent who is more willing to believe the worst in interpreting less than conclusive evidence.

At least two factors may on the surface seem cause to question the validity of the allegation. Incidents that are reported to custody evaluators or mediators, which have never been mentioned to other authorities such as pediatricians or CPS workers, strike some as "convenient" but questionable. Others doubt reports of abuse which allegedly began only after the divorce. As one CPS administrator admits, "I wonder about the cases where dad suddenly becomes abusive after the divorce."

However, mental health professionals suggest that neither factor is necessarily cause for dismissing the allegation. In a truly abusive household each parent may have a motive for remaining silent. The non-abusive parent may feel that disclosing the problem will only lead to questions about both parents' desirability as a custodian. In post-divorce cases the prospect of returning to visit with an abusive parent may trigger a disclosure by a child. In new divorce actions, the parental separation may provide the child with the necessary conditions for a disclosure: the perpetrator is out of the home and less of a threat, the child may no longer worry that revealing the abuse will cause a divorce. In addition, as one mental health professional notes, "At the divorce, mom is ready to face clues she's ignored before." Thus, the timing of the disclosure is only a concern if the report seems to be almost an afterthought.

Several psychologists and psychiatrists report that, although the onset of abuse following a divorce may strike many as unlikely, the possibility is worth serious consideration. One psychologist offered the following example: In speaking to groups of attorneys I remind them:

Divorce is a crazy-making time, right? I see everyone nod. It doesn't make someone an abuser, but like drinking, divorce can create a lessening of controls and provide situations conducive to it. The attorneys relate to this because they realize that their clients are doing crazy things that they normally wouldn't dream of doing.

Another psychologist points out that if a society wished to ensure that sexual abuse would occur, it would develop arrangements that closely parallel current visitation practices. As he describes it:

It's not hard to believe that some abuse starts after divorce. If you take parents with inclinations and make them lonely and needy, and give them a child who is also lonely and scared and put them together for entire weekends, alone—you've created a perfect opportunity for abuse to occur.

The general consensus among the family court personnel we interviewed, as well as in the child protective service agencies, guardians ad litem and the private sector mental health community, is that deliberately false allegations do occur but they are exceedingly rare. As a result, courts are urged to treat each allegation seriously in order to protect the child.

CASE MANAGEMENT

A survey of courts around the country, as well as in-depth interviews in our five research sites, confirms that the greatest obstacles to the efficient handling of cases occurs when two or more states, or even two or more counties are involved. Courts have not yet begun to address the reforms in policies and procedures that will be needed to remedy this problem. However, courts have considered the difficulties created by the involvement of several courts within a single county.

In systems where sexual abuse and custody/visitation cases are routinely heard before the same judge, cases involving both issues probably create a minimum of extra problems. The judges we spoke to uniformly agreed that one court, even one individual, hearing both issues would no doubt be the preferred approach. However, in many systems the reorganization needed to create such a court is viewed as an impossibility.

At their worst, systems with separate juvenile and family courts can subject families to confusing and contradictory orders, or may provide them insufficient attention as each court assumes the matter will be handled elsewhere. As an arm of the juvenile court, the child protective service agency has on occasion been confused about the role and powers of the family court.

In addition, given the number of agencies and courts involved, the likelihood of duplicated efforts and resulting case delays is increased. The child protective service agency, the law enforcement agency, the child custody evaluation unit of the family court, the private psychologist retained to help investigate the abuse allegation, and the independent custody evaluator may each cover much the same ground in a given case.

Courts and CPS agencies around the nation have developed a number of strategies to help streamline interventions into sexual abuse cases. Systems with specialized sexual abuse teams in law enforcement or child protective services may find that these workers can help to ensure smooth case processing. These specialized workers often have regular meetings with juvenile court personnel to discuss all active cases. The specialized CPS workers are also in frequent contact with the parents and their attorneys. These workers may help to facilitate communication. However, in most systems family court workers are not members of such interagency child sexual abuse groups.

Another method to ensure that cases are not subjected to unnecessary delays or inappropriate orders, is the routine use of representatives or advocates appointed for the child in the family court. CASAs and GALs are involved in each step of the case and are in communication with each of the agencies and courts involved. Thus, family court counselors, child protective service workers and juvenile court representatives report communicating with the child's advocate at some point during the case. This provides the CASA or GAL with a vantage point from which to spot case delays and conflicting actions. It also provides an opportunity to speed the process by facilitating information sharing and decision making. However, to be effective the representative must be well trained, thoroughly familiar with the system and actively involved in the case. This argues for careful appointments and adequate supervision and consultation for non-attorney advocates.

In a similar fashion, court administrators may be able to maximize the amount of communication and cooperation between family and juvenile courts. These individuals are in a position to flag cases that involve both courts and take the appropriate steps to guarantee that everyone involved in the case, including, among others, the judges and attorneys, are aware of the actions being taken in the case.

Finally, some jurisdictions have adopted a policy urging that cases be consolidated. In courts with jurisdiction over custody and abuse matters,

this would simply involve arranging for the same judge to hear both issues. In locations where separate courts are involved in the abuse and custody matters, a decision must be made to have both issues heard before one of the two courts. In many cases this will mean that the abuse allegation and custody/visitation matter will be resolved by the juvenile court. In cases with a long history in family court, including time-consuming custody studies and psychological evaluations, the matters might be handled in family court.

Although arranging for the case to be heard solely in family or juvenile court has obvious advantages, there are also problems. All attorneys handling divorce and custody matters should be familiar with the procedures and practices in the juvenile court. In many cases, however, attorneys actually practice primarily in domestic relations or juvenile court, rather than both. As a result, some attorneys are likely to resist attempts to consolidate the case in an unfamiliar setting.

Some juvenile court judges and family law attorneys insist that family court judges are perceived to be reluctant to hear abuse cases. It is also argued that family court judges will be too concerned with parental rights. Their experience has fostered a strong belief that both parents have a right to see their children. Critics feel that the focus on parental rights, combined with a lack of knowledge about sexual abuse, makes family court judges slow to deny visitation and instigate investigations.

Finally, in some states, juvenile and family court judges question whether the family court has the necessary authority to order families into treatment. Many observers believe that such powers do exist, but are unnecessarily questioned by family court judges. All agree that without this power family judges are at a serious disadvantage in resolving the abuse aspects of the case.

Short of the ultimate goal of a single judge hearing all the issues in the case, improved communication between the juvenile and domestic relations benches would be welcomed. Formal policies outlining the way in which cases will be consolidated or communication will take place are also needed if these policies are to last beyond the tenure of those who developed them.

SUMMARY OF FINDINGS

The Abuse Allegations Project has involved a review of relevant literature and case law, telephone and mail surveys of courts throughout the nation, in-depth interviews in five diverse courts and case tracking efforts in twelve domestic relations courts. Based on the results of all these approaches, the following general findings are offered about sexual abuse allegations arising in domestic relations courts:

- The number of sexual abuse charges arising during divorces and/or custody/visitation disputes is small in absolute numbers, and as a percentage of all contested cases.
- The number of cases involving such allegations has increased in recent years, as have sexual abuse reports in the general population. Increased media attention and public awareness campaigns are probably largely responsible for the rise in reports.

- * Probably half of all reported sexual abuse cases are ruled 'unfounded'. At present there is no evidence to suggest that allegations arising at the time of divorces or custody disputes are more likely to be false.
- * Deliberately false allegations made to influence the custody decision or to hurt an ex-spouse do happen, but they are viewed by knowledgeable professionals as rarities.
- * Courts hear a wide range of "allegations". Some are clear accusations, some are expressions of mingled concern and disbelief. The actions in question range from sexual intercourse to behaviors (such as parental nudity) which may be acceptable to some families or cultures.
- * The most typical cases involve charges by mothers against fathers. However, stepfathers and mother's boyfriends are often accused by fathers. Charges are also raised by and against grandparents, uncles, family friends and full and step siblings.
- * The level of discretion in abuse reporting currently exercised by domestic relations court personnel is both acceptable to and appreciated by child protective services workers.
- * Labels employed by CPS agencies may be a source of confusion to some outsiders. Not all "unsubstantiated" or "false" cases are deliberate lies. While these cases lack sufficient evidence, there may have been abuse in some of these cases.
- * Typically a great many actors are involved in these cases: CPS workers, police, physicians, guardians ad litem, custody evaluators, private mental health workers, family, juvenile and perhaps criminal court representatives. Coordinated efforts by these actors can help reduce delays, duplicated efforts, contradictory orders and general trauma.
- * In the past, problems have arisen between CPS workers and family court personnel due to a lack of communication and resulting misunderstandings about the role of each.
- * All but the most flagrant cases of sexual abuse are difficult to validate. In cases with divorces or custody/visitation disputes in progress, the following may be complicating factors: child behaviors may be the result of stress related to either abuse or the divorce; sexual behaviors by children may be the result of abuse or the result of living in a more sexually charged environment following the parental separation; new people in the child's life may be either abusive or simply reacting, perhaps poorly, to the lack of clear guidelines regarding appropriate and inappropriate intimacy; the accused parent's defensiveness may be due to the risk of having the abuse revealed or merely due to the risk of losing custody and visitation.
- * Allegations may arise only after a custody study or other court action has begun. There is no reason to believe that these cases are necessarily false. Many parents hope to divorce, gain custody

and restrict visitation without mentioning sexual abuse and inviting CPS agency involvement.

- * Abuse may begin only after the divorce. Cases alleging such behaviors should not be dismissed as implausible.
- * Mental health professionals can provide valuable assistance to the court, but they cannot be expected to definitively prove or disprove the abuse charge.
- * In general, the court is usually best served when the evaluation report is: prepared by an evaluator with experience in sexual abuse evaluation and treatment, child development and divorce; based on multiple interviews; based on interviews with all relevant parties; based on information from interviews, standardized and projective tests; documented, with support offered for conclusions; focused on the allegation but not to the exclusion of other family dynamics and parental strengths and weaknesses.

*See Addendum
DS-20 + 21*

Footnotes

¹American Association for Protecting Children, Inc. **Highlights of Official Child Neglect and Abuse Reporting 1984.** American Humane Association, Denver, Colorado, 1986.

²MacFarlane, K., Waterman, J. **Sexual Abuse of Young Children,** Guilford Press, N.Y., 1986.

³Coleman, L. "False Accusations of Sexual Abuse: Have the Experts Been Caught with their Pants Down?" Unpublished manuscript, 1985.

⁴Ibid at 1.

⁵Based on preliminary case tracking reports from participating courts. Final results from this portion of the Sexual Abuse Allegations Project are due in November, 1987.

⁶National Center for Child Abuse and Neglect. **National Incidence Study of Child Abuse and Neglect.** Department of Health and Human Services: Washington, D.C., 1981.

⁷Scott, R., Stone, D. "MMPI Profile Constellations in Incest Families." **Journal of Consulting and Clinical Psychology**, 54, 3, 364-368, 1986.

⁸Rosenfeld, A., Nadelson, C., Kreiger, M. "Fantasy and Reality in Patients' Reports of Incest." **Journal of Clinical Psychiatry**. 40, 159-164, 1979.

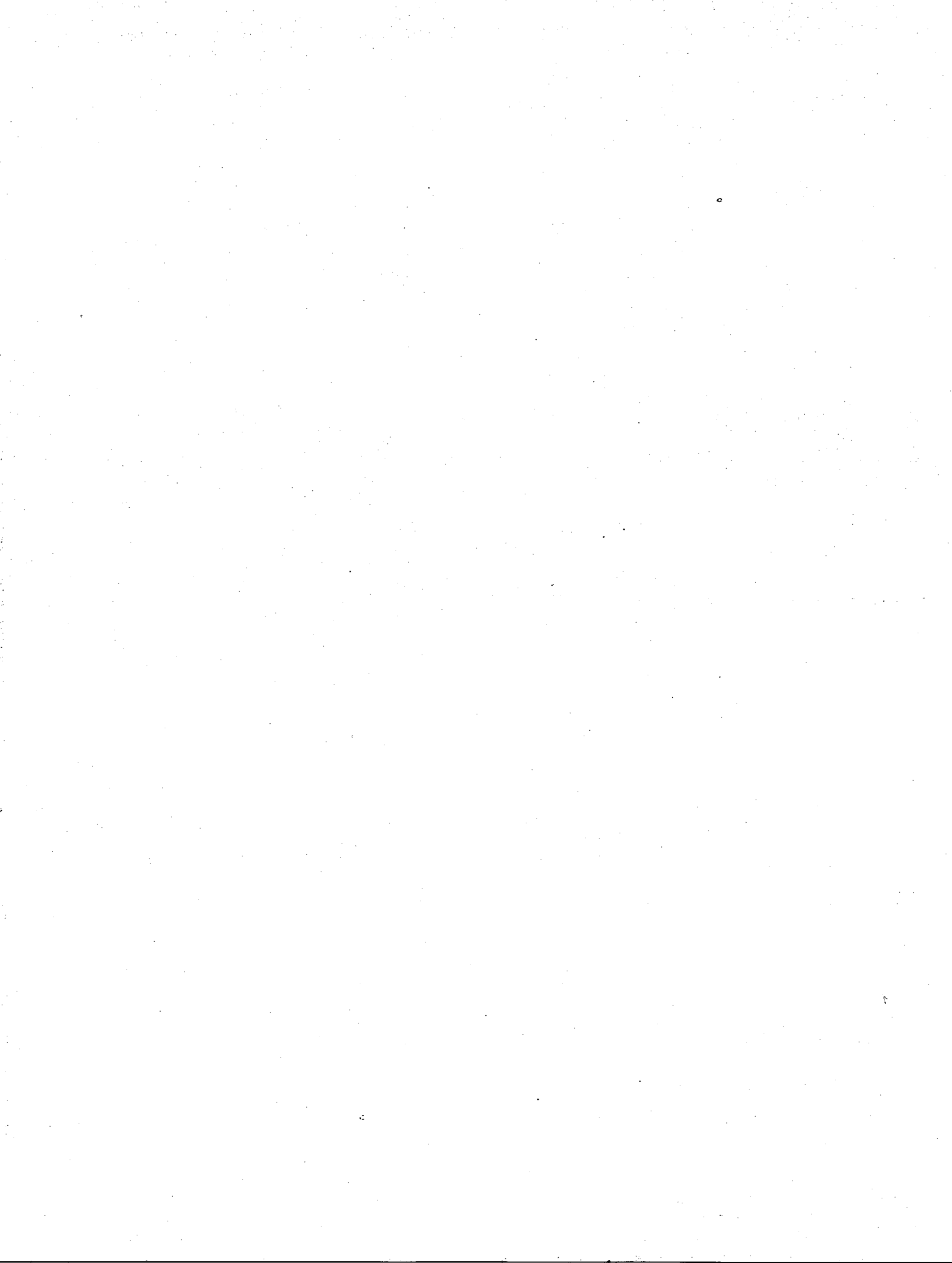
⁹Green, A. "True and False Allegations of Sexual Abuse in Child Custody Disputes." *Journal of the American Academy of Child Psychiatry*, 25.4:449-456, 1986.

¹⁰Wallerstein, J., Kelly, J. *Surviving the Breakup*. Basic Books, Inc.: New York, 1980.

¹¹Gray, L. Unpublished paper presented at the Fourth National Conference in the Sexual Victimization of Children. New Orleans, Louisiana. May 1986.

¹²Gordon, C. "False Allegations of Abuse in Child Custody Disputes." *The Massachusetts Family Law Journal*. November, 1985.

¹³Ibid at 1.



**An Addendum to A Summary of Findings
of the Sexual Abuse Allegations Project:
A Profile of Sexual Abuse Cases Seen by Family Courts**

One data collection effort coordinated by the AFCC Research Unit as a part of the Sexual Abuse Allegations Project involved identifying and gathering information on contested custody and visitation cases which included allegations of sexual abuse. Eleven courts throughout the nation participated by having mediators and/or evaluators complete a data collection form each time they encountered such cases. The full results of this data collection effort, including the role of the child protective services agency and later family court involvement, is available by contacting the Research Unit of the Association of Family and Conciliation Courts. The following presents selected highlights from the data.

Seven of the participating courts report that mediation and/or evaluation services are used very routinely. Court administrators in these sites expressed confidence that virtually all custody/visitation disputes involving sexual abuse allegations would come to the attention of the court counselors completing our forms.

During the period of time in which data collection took place, six months in most locations, the counselors in these seven jurisdictions served approximately 6,100 families with custody or visitation disputes. Of these, 105 cases also involved an allegation of possible sexual abuse. In none of the seven courts did more than nine percent of the contested custody-visitiation cases involve such allegations and in five of the courts fewer than five percent involved sexual abuse allegations.

The information gathered on approximately 160 families from all eleven court systems offers a number of insights into the types of sexual abuse allegations encountered by family court staff.

Most allegations are limited solely to sexual abuse. However, about 12 percent of the cases also involve claims of other physical abuse. Approximately 70 percent of the allegations charge that the abuse was repeated and took place over a period months. The remaining 30 percent involve allegations of a single isolated incident. Of those cases charging more than a single incident, about half indicate the abuse occurred for 12 months or less and half charge the abuse occurred for more than 12 months.

In half of all cases the accused party is the child's biological father. New partners of the child's mother are accused in 20 percent of all cases. Another 17 percent involve accusations against other family members such as the child's grandfather, uncle, stepbrother, brother or cousin. The remaining cases typically involve allegations against the mother (7%), stepmother (1%) or a parent's friend (3%).

In a number of the cases (23%) there is no clear information about the nature of the abuse is offered to the court worker. The alleging party often

can only indicate that there seems to be behavior on the part of the child which is suggestive of possible abuse. Only a very few cases (7%) are limited to allegations which might arguably be dismissed as involving only poor judgment on the part of the accused. Such cases are typified by parents who share beds or baths with children whose maturity level no longer readily allows such actions.

Most of the cases brought to the attention of the family court worker involve allegations of behaviors which, if they transpired, clearly victimized the child. These behaviors are often limited to fondling (38%), but also involve relatively frequent charges (30%) that the parent masturbated before, digitally penetrated, or engaged in oral-genital contact with the child. Finally, ten percent of all cases allegedly involved sexual intercourse with full or partial penetration.

About two-thirds of the cases had been reported to the local child protective services agency, or the police, prior to the point at which the family court worker encountered the case. The CPS agency was notified in most (76%) of the previously unreported cases. Only seven percent of the families were never reported to child protective services. A variety of factors were cited as guiding the decision not to report the case: for example, several cases involved a child who was now nearly grown; a few were described as not serious enough to warrant an intervention.

Finally, the data collection form required the court worker to indicate whether in his or her best estimation the party bringing the allegation actually believed the charge. In 20 percent of the cases the court counselor could offer no opinion as to the "good faith" nature of the report. In those cases where an opinion was offered, we find that 85 percent of the counselors feel the parent probably or definitely believed the allegation and in 15 percent of the cases the worker expressed doubt that the report was offered in good faith. Thus, family court staff reject the notion that sexual abuse allegations accompanying custody or visitation disputes are primarily the result of vindictive or manipulative parents.

June 20, 1985

National Center on Child
Abuse and Neglect
U.S. Children's Bureau
Health and Human Services
P.O. Box 1182
Washington, D. C. 20014

Attention: Jay Olson

Dear Mr. Olson:

The New Jersey Division of Youth and Family Services (DYFS) within the Department of Human Services is submitting these comments in response to rules proposed in the Federal Register, Wednesday April 24, 1985, Volume 50, No. 79, pages 16105 through 16109. Although our specific comments are included below in a line-by-line analysis, the following is a summary of those comments.

DYFS believes that Section 102(3) of P.L. 98-457, which amended the definitional section of the Child Abuse Prevention and Treatment Act to clarify that the term "sexual abuse" includes "sexual exploitation," should relieve the states of the requirement to amend their statutes to include separate definitions of sexual abuse and sexual exploitation. DYFS also believes that the language in the regulation concerning the applicability of the sexual abuse definition to those 18 and under is confusing and should be clarified. Further, since the regulations define "out-of-home care" narrowly, DYFS suggests that the term "residential facility" be defined either descriptively or by enumerating examples in order to know how broadly that term can be interpreted.

Regarding the definition of "a person responsible for a child's welfare" and the concomitant "out-of-home care"

definition, in our view there is no justifiable rationale to limit the definition of out-of-home care to mean "center-based day care provided during a portion of a 24-hour day." Such a restrictive definition ignores that there are many other types of out-of-home care facilities that are equally likely to generate child abuse; children in such facilities should be protected by a definition that extends to them. DYFS also contends that the State Child Protective Services (CPS) agency should assume more of the responsibility for the investigation, treatment and follow-up action involved in handling child abuse in such institutional settings. This position is based on the New Jersey experience which indicates that the state CPS agency is both more willing and able than the criminal justice system to devote the necessary time and resources to adequately deal with these situations. In the same vein, DYFS urges that public and private day schools should be included in the definition of "out-of-home care" and contends again that the CPS agency is better equipped than the parent to deal with abuse in such settings. Parents often have difficulty dealing with such entrenched bureaucracies as local and state departments of education and school boards.

Regarding the time frame for the states' completion of these regulatory (or statutory) changes, DYFS suggests that the state be the final arbiter of when its legislative sessions end.

Finally, regarding the due process options that are put forth in the regulations, although New Jersey supports option #2 which states that a State should confirm a substantiated report on an alleged perpetrator only if he has received a copy of the substantiated report and been allowed a fair hearing to amend, correct, or expunge the record, DYFS also feels that this provision does not give sufficient direction to the state concerning due process requirements. The regulations should more fully outline what this process should be. In the line-by-line analysis, suggestions are made concerning possible due process options for consideration.

Comments

1340.2(d)

Since child abuse and neglect is now defined, both by recent amendment to the federal law and in these proposed regulations, to include sexual abuse and sexual abuse is so defined to include sexual exploitation, it is particularly onerous to require States to amend their statutes to include a separate definition of sexual exploitation when the state law or regulation already defines child abuse to include sexual abuse.

Further, the decision whether a State law is the "same in substance," should be made by the Attorney General of the state as the primary executive officer responsible for interpretation of a state's law, not by the office of the Regional Attorney. If a separate or clarifying definition is needed, a state should be able to do this through its regulations, which have the force and effect of law, in the same way that these federal regulations clarify and amplify the federal statutes. To require those states, such as ours, that already have the legal authority to add specificity and clarity to comply with federal requirements by promulgating rules to go to the legislature when the federal law does not require a state statutory amendment undercuts the very essence of the Administration's policy to eliminate unnecessary federal regulatory burdens. This provision has been arbitrarily applied in the past and should be eliminated, in light of the lack of legal necessity. A "state's law" properly embodies more than statutes; it includes rules, regulations and judicial decisions as well. Reason and past practice support our position, and we urge that these be required to be considered in any compliance review process.

In 1340.2(d) child abuse and neglect is defined to include sexual abuse or exploitation, and the definition applies to children "under the age of 18, or the age specified by the child protection law of the state" (emphasis added). However, in 1340.2(d)(1), the separate definition of sexual abuse, it states that a child is "any individual who has not attained the age of eighteen." There is an internal inconsistency in these definitions: in one, sexual abuse (which is defined as one aspect of child abuse) may or may not apply to an individual under eighteen, depending on the state's law; under the other, all those under eighteen are children vis-a-vis sexual abuse. Although the background information notes this conflict, it would cause less confusion if this inconsistency were resolved by specifying that, for the purposes of the sexual abuse definition, the age eighteen, and not the state's age, will govern.

Since these regulations provide a somewhat controversial definition of "out-of-home care," it would be helpful to also define "residential facility" so that the states could know whether the term encompasses group homes, temporary and longer term correctional facilities for juveniles, hospitals and convalescent homes, etc.; or whether, as in the case of out-of-home care," a narrower definition was intended.

1340.2(d)(2)(1) -- Although this section has not been changed, we suggest that it be amended to add: "though financially able to do so or though offered financial or other reasonable means to do so." This will make it clear that parents cannot be found to be neglectful merely because they are poor.

Regarding 1340.2(d)(4), the definition of "a person responsible for a child's welfare," and the proposed definition of "out-of-home care" to mean "center-based day care provided during a portion of a 24-hour day," these definitions are restrictive by nature and, in many ways, contradictory to the institutional abuse investigative process practiced in New Jersey.

It is not clear why center-based day care was singled out as the only appropriate population to investigate in less than 24-hour facilities. While we are aware of the notorious sexual abuse allegations made in California and New York, we believe that this population is no more or less suited to investigations by the child protection agency than children attending day camps, day schools, or developmentally disabled day training centers. It appears to be an arbitrary decision based on available resources of CPS agencies rather than any philosophy of how child abuse investigations should be handled. The regulations suggest that out-of-home investigations should generally be handled by law enforcement personnel. Experience in New Jersey has shown that we cannot rely exclusively upon law enforcement personnel to properly investigate, review, prosecute or otherwise handle all child abuse cases. Prosecutorial discretion allows prosecutors to administratively dismiss some allegations, and to choose those cases to bring to the grand jury or to trial based on their priorities and work load relative to all other crimes in the community. Also, in many instances, the higher standard of proof and the confrontational aspects of trial on the criminal side may dissuade the criminal justice authorities from taking action, even where protective and corrective steps are appropriate. Child abuse is just one piece of their business. The CPS agency, on the other hand, is mandated to investigate only reported allegations of abuse or neglect.

For the above-cited reasons, the civil process in New Jersey is generally more responsive to abuse situations than the criminal process. The regulations describe how the CPS should function in these cases (Section 3, CFR 1340.2(d)): "...rather, the agency will investigate the report and work with law enforcement personnel to protect the child, prevent further abuse, and possibly alleviate or correct the factors leading to the report" This is the process which is followed in New Jersey, except that the CPS agency is responsible for protecting the child, preventing further abuse, and alleviating or correcting the factors leading to the report. The criminal justice system is primarily concerned with making and proving its case against a perpetrator of abuse, and cannot remove the alleged perpetrator from a facility to protect the child unless the person is arrested and incarcerated. In New Jersey, the CPS agency must initiate this kind of action.

The civil process in New Jersey is now being strengthened through regulations and proposed legislation that will allow the CPS agency to ask for the removal of a child abuse perpetrator from a facility if the child or other children are deemed to be at risk. The CPS agency also requires each facility involved in a child abuse case to submit a corrective action plan to alleviate the conditions contributing to or causing the abuse. The New Jersey system is mentioned only to illustrate how it should not be assumed that the criminal justice system is the most appropriate or most responsive entity for investigating abuse or neglect in less than 24-hour facilities. The states should not design systems in reaction to a perceived lack of adequate staff, rather they should design them to best meet the needs of abused children and to prevent future abuse, regardless of the setting.

DYFS proposes that the definition of "person responsible" be extended to include staff persons in day schools, day training centers, day camps, head start centers and before and after school programs, and that "out-of-home care" be defined to include the same such facilities, for the safety and protection of those populations.

Further support for this position can be found in the National Council of State Human Services Administrators' comments on these regulations:

Research as well as experience has shown that there is more likely to be abuse in settings that have less oversight and where there is more of an opportunity to go unobserved. Day care centers have more staff, more supervision and generally more opportunity for oversight than do group or family day care homes. If NCCAN is concerned about protecting children in day care then the regulations should cover all day care programs and should not be limited to center-based day care. If NCCAN is interested in protecting children in out-of-home care then the definition needs to be much broader.

The point can be made that a large proportion of the abuse in out-of-home care takes place in school settings. NCCAN in their January 26, 1983 regulations appears in fact to define settings which provide less than 24-hour care as day care centers and schools. The preamble to those regulations states:

"For children in settings which provide less than 24-hour care such as day care centers and schools, we believe that primary reliance should be placed on parents to protect their own children by

voicing concerns to school officials or seeking criminal action. Therefore we do not believe a change in the language of the regulation to include personnel of day care centers and schools is necessary or desirable."

The only qualification DYFS offers to these statements is that New Jersey includes public and private day schools among the out-of-home settings subject to investigation. In New Jersey, we have found that it is often either extremely difficult or beyond a parent's abilities to navigate the bureaucracy of a school system in order to advocate for their child relative to his abuse by school personnel. Parents are often intimidated or overwhelmed by the school system; they often passively accept the actions of school personnel in positions of authority. A state CPS agency is not burdened with these types of problems and has more success in having the school system accept its recommendations for corrective action.

To reiterate, the regulations should give careful consideration to the definition of "out-of-home care." It should not be one which is primarily a response to a "popularized" problem such as abuse in day care centers. If there is to be a regulatory definition of "out-of-home care" it should be one that is conceptually sound and workable and not one that artificially delimits the type of facilities and institutions to be covered.

1340.13

1340.13(a)(1) -- This section should make it clear that the state's definition of when the close of the second general legislative session following February 25, 1983 falls, (either through advice of the state's Attorney General or Chief Legislative Counsel), will govern.

1340.13(a)(2) -- This section should be qualified relative to the comments made above which would liberalize the definition of persons providing out-of-home care to all those categories delineated above.

1340.14

1340.14(b) provides that, "...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." Our research has shown that while many states have been permitted to meet definitional requirements by promulgating regulations or submitting clarifying opinions from their Attorneys General,

others have been directed by their Regional Offices to make statutory changes. This disparity seems to be more a function of the views and attitudes of Regional Offices than of actual differences in state statutes. This section should be amended to allow all states to promulgate rules or submit opinions or certifications to meet the various definitional changes.

1340.14(2) -- These regulations should provide more guidance to the states concerning the due process standards that should govern release of information on child abuse reports and, in concert with the expansion of the "out-of-home care" definition, such access should extend to all enumerated categories listed above. Since central registry information will likely be used by more states for more purposes in the future, the accuracy of that information should be subject to challenge at the time of the CPS determination.

In regard to the due process procedures, New Jersey suggests the following standards for federal promulgation:

A. Persons "substantiated" as perpetrators of child abuse, pursuant to a child abuse investigation by a CPS agency, shall be given the opportunity to request a Fair Hearing before an impartial administrative forum in order to contest that finding.

B. Notice of such hearing's availability will be made within 10 days of the conclusion of the CPS investigation.

C. Failure to request a hearing within 10 days of receiving written notice of its availability will be deemed a waiver of the right to such hearing.

1340.14(i) -- Above it is stated that the definitions of "out-of-home care" and "person responsible for a child's welfare" should be expanded to include other less than 24-hour settings and, concomitantly, the staff responsible for the care of children in such settings. Related to this suggestion is the necessity of allowing greater access to confidential child abuse records than is proposed in this section. In addition to access for directors of agencies authorized to license/register day care facilities, approve foster and adoptive placements, and directors of day care centers, those administering the other types of out-of-home care facilities listed above should also have access to child abuse records, for the same rationale invoked in Secretary Heckler's Model Child Care Standards Act -- Guidance to States to Prevent Child Abuse in Day Care Facilities (January, 1985), to protect vulnerable children placed in out-of-home settings. Of course, the due process standards mentioned above would also apply to individuals found to be

perpetrators of child abuse who are subsequently denied employment in an out-of-home care facility because the facility receives notice of such background. CPS institutional abuse investigation reports should also clearly be permitted to be shared with appropriate administrative bodies in order to effectuate disciplinary and corrective actions. Confidentiality should not be permitted to be a shield to perpetrators to prevent remediation.

Finally, expanding the group of those eligible to receive confidential child abuse information also raises the question of whether it is time to reexamine confidentiality restrictions to determine if they actually serve to protect the interests of children. We in New Jersey feel very strongly about protecting our vulnerable citizens from the risk of harm or exploitation, and we have strict laws and rules to safeguard identifying information concerning recipients of public assistance, social services and child protective services for these reasons. We believe that the National Center should set forth the philosophical or policy basis for confidentiality of abuse and neglect records in regulation form, and then reconsider each of the fourteen separate subsections (and other possibilities) in light of this basis. A particular issue we would like to see addressed is the inability to respond to media inquiries or investigations of child abuse or neglect. We are totally precluded from responding with facts, even when specific case information has been made public by concurrent law enforcement actions or by clients themselves or by their representatives. When the State CPS agency must always answer "No comment," the confidentiality restrictions handicap an agency's ability to demonstrate its effective handling of child abuse or neglect matters. Such answers are commonly regarded by the public as bureaucratic stonewalling, and often viewed as an attempt to cover-up inadequacies in the system. This is ultimately damaging to children because of the perception of ineptitude it leaves. We suggest that, in such limited cases, the confidential nature of the records has been effectively waived and we should be permitted to respond to the extent of correcting this already public information.

Thank you for the opportunity to make these comments. As a recipient of NCCAN grants and, specifically, as a grantee to design an Institutional Abuse investigative system, New Jersey is in the forefront in the development of out-of-home care

investigation processes. Hopefully, our experience and perspective on the problems in investigating child abuse in less than 24-hour facilities will be given due consideration in your formulation of these regulations.

Sincerely,

George J. Albanese
Commissioner

GJA:20



Resistant to Federal Treatment

Friday
February 6, 1987

Part III

Department of Health and Human Services

Office of Human Development Services

45 CFR Part 1340
Child Abuse and Neglect Prevention and
Treatment Program; Final Rule

166X

Summary of the Final Rule

In response to comments, we have made changes in the language of the NPRM. In this final rule we have (1) broadened the definition of the term "out-of-home-care" to mean child day care, i.e., family day care, group day care, and center-based day care; and, at State option, any other settings in which children are provided care; (2) deleted the three new categories of individuals and organizations to whom States may release confidential information for employment purposes and, instead, added a section allowing States to release such information with proper safeguards to any agency or individual as the State may determine by statute; (3) clarified that States may implement statutory changes made in the definition of child abuse and neglect either by enacting new State laws or by regulations that have the full force and effect of law; and (4) made a number of technical amendments to correct or clarify certain sections of the rule.

In addition, in response to a large number of comments, we are taking this opportunity to clarify the Department's position relating to the failure to provide adequate medical care as an element of negligent treatment or maltreatment.

Discussion of Major Comments and Changes

Following is a summary of the major comments, our response to those comments, and a discussion of the changes that we have made in the regulations.

1. Section 1340.2 Definitions

(a) *Definitions of the terms "child abuse and neglect"—§ 1340.2(d) and "sexual abuse"—§ 1340.2(d)(1).* In the NPRM, we added the language from section 3(1) of the Act to specify that, for purposes of the definition of child abuse and neglect, the term "child" means a "child under the age of eighteen, or the age specified by the child protection law of the State." We also replaced the definition of "sexual abuse" and "sexual exploitation" in §§ 1340.2(d)(1) and (2) with the new statutory definition of "sexual abuse" from section 3(2) of the Act. The new definition of "sexual abuse" describes a wide range of sexual abuses of children under the age of eighteen, including acts of sexual exploitation, in terms that are the same in substance as those in the current regulations. However, in contrast to the definition of "child abuse and neglect", the Act specifically defines "child" or "children" with respect to sexual abuse as "any individual who has not attained the age of eighteen."

Comment: Four commenters commented on the proposed definition of the term "sexual abuse." All expressed approval of the proposed definition. However, one respondent suggested that clarification was needed regarding the age definition with respect to child abuse and neglect and sexual abuse to make it clear that, for the purpose of the sexual abuse definition, the age of 18, and not the State's statutory definition of age, will govern.

Response: We believe it is clear both in the statute and the regulations that two different age limits apply. Therefore, we have decided that no further clarification is needed.

(b) *Definition of "a person responsible for a child's welfare"—§ 1340.2(d)(4).*

Prior to the 1984 Child Abuse Amendments, section 3(1) of the Act defined the term "child abuse and neglect" to mean abuse or neglect "by a person who is responsible for a child's welfare" In implementing regulations at § 1340.2(d)(5), the Department defined "a person responsible" to include, among others, "an employee of a public or private residential home or facility."

The 1984 Amendments amended section 3(1) of the Act to add the words "including any employee of a residential facility or any staff person providing out-of-home-care."

In the NPRM, we amended § 1340.2(d)(4), the definition of "a person responsible", to incorporate the new statutory language and to define the term "out-of-home-care" to mean "center-based day care provided during a portion of a 24-hour day."

Comments: We received 23 letters from State and local child welfare agencies, Members of Congress, child welfare advocacy groups, and other national and professional organizations commenting on our definition of out-of-home-care.

Most of the commenters supported the statutory definition that requires reporting of abuse and neglect in out-of-home care, but objected to our proposal to limit such reports by defining out-of-home care as center-based day care. Commenters believed that the majority of children who are cared for in out-of-home settings would be denied the protection afforded to the smaller percentage of children who are cared for in center-based day care settings. Most commenters recommended that the definition be expanded. Two Members of Congress active in passage of the 1984 Amendments indicated that it was not their intent to limit the definition of out-of-home care to exclude family or group

day care homes or other types of out-of-home child care.

Response: We concur. § 1340.2(d)(4) now includes the statutory language and the new sentence "For the purpose of this definition, out-of-home care means child day care, i.e., family day care, group day care, and center-based day care; and, at State option, any other settings in which children are provided care." This means that State reporting laws must define out-of-home care to mean child day care, i.e., family day care, group day care, and center-based day care, and may, at State option, include in the definition any other settings in which children are provided care.

Role of the CPS Agency

In the NPRM, we specifically invited public comment on the role of the State CPS agency in responding to reports of child abuse in non-family situations. Given the fact that all reports of abuse and neglect must be investigated, we asked for comments on which State agency(s) currently are or should be responsible for responding to reports of abuse in residential settings; for responding to reports of abuse by staff persons in various categories of out-of-home care; and, more generally, what should be the scope, focus, and role of the State child protective service agency in investigating other than intra-family reports of abuse.

Approximately 20 responses were received. Some objected to CPS agency involvement in any investigation of institutional or out-of-home care situations given the increasing number of reports of abuse and neglect and lack of trained staff and resources. Some took the position that all such situations should be investigated by law enforcement or licensing authorities. Others stated that responsibility for a child's welfare outside the home is the responsibility of the parents. The majority of commenters, however, expressed a recognition of the need to involve the CPS agency but also urged coordination with and use of other agencies.

In developing the NPRM, the Department did not wish to indicate that the State CPS agency must be the only State agency responsible for investigating all reports of child abuse or neglect, whether such abuse or neglect occurs within or outside the family setting. Nor did the Department intend to limit the involvement of law enforcement, licensing, or other appropriate agencies in the investigation and resolution of such reports. We recognize that law enforcement, mental

health, and protective services agencies have critical roles to play in addressing the problems associated with abuse and neglect.

Since the enactment of the Child Abuse Prevention and Treatment Act, implementation by the designated State CPS agency has focused primarily on the prevention and treatment of child abuse and neglect in intra-familial settings. Within this framework, State agency staff have directed their efforts not only towards protecting the child but also towards attempting to preserve the home and family. The expansion of the statutory definition of the term "person responsible for a child's welfare" does not automatically expand the role of the CPS agency. These final rules require that, in order to qualify for a State grant under this Act, a State must establish procedures whereby the State, through a designated agency or agencies, will receive and investigate reports of child abuse or neglect. States, not the Department, will determine which agency(s) within each State will be designated as the agency(s) to receive and/or investigate reports. There is no requirement that the CPS agency must investigate all reports although this is permissible. States must establish procedures tailored to the unique characteristics of each State's child protective services statute and organizational and administrative structure.

Given the new requirements in the Act, the Department encourages States to examine their current practices and procedures for responding to reports of child abuse or neglect in both in-home and out-of-home settings. We believe that such an overall assessment will provide States with an opportunity to identify problem areas, to explore the options available for receiving and responding to a variety of reports of abuse or neglect, and to develop procedures that will ensure that the appropriate agency(s) will investigate these reports in a timely and effective manner.

Finally, several commenters recommended changes in other definitions. These recommendations were not acted upon as the definitions they addressed were not proposed for change in the NPRM. A change was recommended in § 1340.2(d)(2) to define "negligent treatment" more broadly to include failure to provide "health care" rather than failure to provide medical care. A change was also recommended in § 1340.2(d)(3) to add new language to the definition of "threatened harm" to permit intervention on behalf of a child whose parents are practicing their

religious beliefs with respect to medical care only if the child "is in imminent danger of death or permanent bodily injury."

2. Approval of Applications— § 1340.13(a) (1) and (2)

In the preamble to the NPRM, the Department indicated that States would need to review their statutes and, where necessary, make appropriate State statutory changes in order to comply with the new definitions of "sexual abuse" and "person responsible."

Comments: Four commenters objected to the requirement that States must make statutory changes in order to comply with the new definitional requirements. Commenters recommended that those States which have the authority to effect these changes through their rulemaking process be allowed to do so.

Response: We agree. Therefore, we have amended § 1340.13(a) (1) and (2) to provide that, in order to comply with the new definitional requirements, States may effect the necessary changes through their rulemaking process, provided such rules have the full force and effect of law.

Comment: One commenter recommended that the regulations should make it clear that the State's definition of the beginning and end of its legislative session will govern.

Response: We were not aware that this was a problem area and would, of course, defer to a State's definition of the beginning and end of its legislative session. In addition, we have added the words "which convenes" in § 1340.13(a)(2) to make clear that States have until the close of the first general legislative session of the State legislature which convenes following the effective date of these regulations to make necessary changes in their State law.

3. Confidentiality—§ 1340.14

In the NPRM, the Department proposed to allow the States additional flexibility in the release of confidential information from the State's child abuse registry. We proposed to allow disclosure of certain information to three additional categories of individuals and agencies for the purpose of preventing the employment or utilization of known or suspected abusers. The three proposed categories were: the director (or his or her designee) of an agency designated by the State to license and/or register child day care facilities, a director (or his or her designee) of a child day care center, and the director (or his or her designee) of an agency licensed by the State to

provide foster care placement and services and/or adoptive services.

Comments: Twenty-four letters contained comments or recommendations on this proposal.

Seven commenters opposed the proposed expansion of categories of individuals and agencies who would have access to confidential information in child abuse registries. They argued that the purpose of the registry was to serve (or to operate) as a repository of primarily unverified reports of known or suspected abuse. Its function was to serve as a resource to persons investigating, preventing, or treating child abuse and neglect; it was not set up to provide the type of accurate, verified information being sought for employment screening purposes.

Other commenters argued that the proposed list of employment-related exceptions to the confidentiality requirements was too limited; that the proposed expansion would result in efforts to restrict the type of information stored in the registry and thus hamper CPS agency investigations; and that use of the registries to identify abusers is not feasible since many registries are indexed by the child subject and not the perpetrator of the abuse.

Seventeen commenters expressed support for the proposed expansion, and some recommended further expansion to include other categories such as directors of family and group homes, residential facilities, and Head Start programs.

Almost all commenters expressed concern with respect to the threat to individual privacy and adequate due process safeguards in expanding access to this information. Commenters pointed out that the level of substantiation of these reports varies among States, as do the procedures and methods used to identify substantiated or unsubstantiated reports. They stated that, if adopted, such a proposal may do great disservice to individuals as well as raise legal questions of due process if the quality of information disclosed is not verified or screened in some manner.

Response: The Department's purpose in proposing to expand the categories of individuals who may have access to information from State child abuse registries was to allow States additional flexibility in the release of confidential information. This information can be used to screen known child abusers from being employed or used as volunteers in child care settings and from being approved as foster or adoptive parents.

We believe that pre-employment screening is one way to prevent and reduce child abuse in day care settings. This is reflected in the Department's "Model Child Care Standards Act-Guidance to States to Prevent Child Abuse in Day Care Facilities" issued in January 1985. In addition, in making available to States in FY 1985 an additional \$25 million under the Social Services Block Grant program, Congress required States using those funds to establish, by law or regulation, procedures to provide for employment history and background checks for all operators and employees of child care facilities and others who deal directly with children.

Therefore, we continue to believe that increased access to information may be necessary, at State option, to prevent instances of child abuse or neglect. We agree with commenters, however, that, at the Federal level, it is not possible to identify, as we attempted to do in the NPRM, all agencies or individuals with whom the State may want to share information. Therefore, we have added a new paragraph (3) in § 1340.14(i) to permit States to authorize, by statute, disclosure to persons or agencies other than those already listed in § 1340.14 for employment and related purposes. Any information disclosed for these purposes is subject to the confidentiality requirements of State statutes and paragraph (i)(1).

Although many commenters recommended we specify due process procedures in regulations, we believe that States are sensitive to the issue of due process and individual privacy and will develop their own procedures consistent with due process protections for all individuals.

Comment: One State agency raised the question of whether the confidentiality rules should be re-examined. The commenter asked for a discussion of the philosophical and policy basis of these rules and expressed concern that the CPS agency's inability to respond to media inquiries or investigations of child abuse or neglect could prevent it from demonstrating its effective handling of child abuse or neglect matters.

Response: All of the provisions on confidentiality, including disclosure provisions, were re-examined in the course of developing this rule. Both philosophically and from a policy basis, we believe that the interests of the child and his or her family must be the principal considerations in determining the nature and extent of disclosure of confidential information. We also believe that disclosure serves the purposes of diagnosis, investigation,

treatment, and prevention of abuse and neglect and that disclosure to certain agencies or individuals is essential to carry out these functions. On this basis, disclosure is permitted under current rules to such entities as agencies investigating reports of abuse and neglect, courts, grand juries, and physicians treating a child suspected of being maltreated. Disclosure to the media does not appear to serve these purposes.

Technical Amendment

In addition, in reviewing these rules for publication, we noted that § 1340.14(i)(2)(viii) provides that a State may authorize disclosure to "A person who is responsible for the child's welfare . . .". The purpose of this provision is to allow a person about whom a report of known or suspected abuse or neglect has been made to have access to information about him or herself, and thus an opportunity to correct such information.

Because most State central registries include information and reports on all persons, not just "persons responsible" (as defined in § 1340.2(d)(5)), and because we believe that States may want to allow all individuals access to information concerning themselves in the central registry as well as an opportunity to correct this information, we have revised paragraph (i)(2)(viii) to allow disclosure to "A person about whom a report has been made . . .".

Providing Adequate Medical Care

Comment: Although not raised for public comment in the NPRM, almost one half of the comment letters related to what constitutes negligent treatment or maltreatment of a child with respect to adequate medical care and under what circumstances, if any, parents providing spiritual or other alternative or remedial health care to their children should be reported to the CPS agency (see § 1340.2(d)(2) and (3)). Because of the importance of this issue and the diversity of the comments, the Department is taking this opportunity to clarify its position on this matter.

Some commenters expressed concern that State legislators, State agency officials, and some members of the public had interpreted the 1983 final child abuse rule to mean that a physician must be called even when only mild symptoms of illness are apparent, regardless of whether harm or a substantial risk of harm to the child's health is present; that failure to provide any type of medical care to children must be reported, and that the practice of spiritual healing, for example, automatically is considered negligent

treatment, and thus must be reported. Many of these commenters feared that State officials were being urged to prosecute all families solely because they were practicing their religious beliefs in the matter of providing alternative or other remedial health care for their children. Other commenters thought that some children from families practicing spiritual or faith healing are being denied equal protection of their rights under the Fourteenth Amendment to the Constitution. As a result, they felt that the Departmental regulations should require reports to the CPS agency of all instances of failure to provide medical care to children in all families utilizing alternative or other types of health care. They also recommended that Departmental regulations require States to repeal "religious exception" statutes. (These are statutes which provide that parents practicing their religious beliefs with respect to providing health care for their children shall not, for that reason alone, be considered negligent parents or be considered to have neglected the child.)

Response: It was not, and is not, the Department's position that the rules for this program should be taken as a signal to States to prosecute or require reports on families practicing alternative or other remedial health care except where there is harm or substantial risk of harm to the child's health or welfare. Previous regulations for this program required that State statutes contain a provision that, when parents or guardians provide spiritual or other forms of remedial health care, they should not, *for that reason alone*, be considered negligent parents. Language to this effect was required in State law as a condition of eligibility for a State grant. This requirement was deleted in the final rules published January 28, 1983. The Department's action in this matter was based solely on the fact that such an eligibility requirement was not required by the Act and thus should not be imposed by Federal regulation. The regulatory philosophy of this Administration has been to provide maximum State and local flexibility. The deletion of this provision in 1983 reflected our approach to regulating—not a policy shift regarding State protections for parents who practice their religious beliefs.

It is the Department's position that reports of known or suspected abuse or neglect should be made as required by the statute and regulations. Current child abuse and neglect rules contain the following definition of child abuse and neglect:

"Child abuse and neglect means the physical or mental injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare."

The regulations further define phrases in that definition, e.g., "negligent treatment or maltreatment" is defined to include failure to provide adequate food, clothing, shelter, or medical care; "threatened harm to a child's health or welfare" is defined to mean "a substantial risk of harm to the child's health or welfare."

It is not now nor ever has been the Department's policy nor the intent of the regulations that reports be made to the State CPS agency or other State authorities except when there is harm or a substantial risk of harm.

It is the continuing intent of these rules to allow States to exercise their rights to provide medical services where there is harm or a substantial risk of harm to the child's health or welfare. Further, we want to emphasize that such decisions regarding needed medical care are best made at the State and local levels by the CPS agency and the juvenile courts. The CPS agency has the responsibility to investigate and decide what constitutes "adequate medical care"; what types of care are acceptable; and what constitutes harm or substantial risk of harm to the child's health or welfare. It is also the responsibility of the CPS agency to work with the juvenile court to assure that medical services are provided where necessary to protect the life and safety of the child.

Technical Amendments

a. In § 1340.1, Purpose and scope, we are revising paragraph (c) to delete the reference to title IV-A of the Social Security Act which no longer authorizes a social services program and to correct the Code of Federal Regulations (CFR) citation to the regulations for the title IV-B program.

b. In § 1340.3, Applicability of Department-wide regulations, we are revising paragraph (b) to correct the CFR citation to the Federal procurement regulations.

c. § 1340.13(a), Approval of applications, is amended by deleting the phrase "adequate health care" in the first sentence and replacing it with the phrase "adequate medical care" to be consistent with the words in the referenced section, § 1340.2(d)(2).

d. In § 1340.15, Services and treatment for disabled infants, we are adding at the end thereof the citation of the Office of Management and Budget (OMB)

Control Number reflecting OMB approval of the information collection provisions contained in the final rules published on April 15, 1985 (50 FR 14878).

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects. Nothing in either the statute or the rule is likely to create substantial costs. Therefore, the Secretary concludes that this regulation is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of \$100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" we prepare an analysis describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. These final rules do not contain information collection requirements or increase Federal paperwork burden on the public or private sector. Thus, no submission to OMB is required.

List of Subjects in 45 CFR Part 1340

Child welfare. Disabled. Family violence. Grant programs—health. Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 13.669, Child Abuse and Neglect Prevention and Treatment.)

Dated: August 29, 1986.

Jean K. Elder,

Acting Assistant Secretary for Human Development Services.

Approved: December 24, 1986.

Otis R. Bowea,

Secretary.

For the reasons set forth in the preamble, 45 CFR Part 1340 is amended as follows:

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

1. The authority citation for Part 1340 is revised to read as follows:

Authority: The Child Abuse Prevention and Treatment Act, Pub. L. 93-247, 96 Stat. 4; Pub. L. 95-266, 92 Stat. 205, sections 609-610; Pub. L. 97-35, 95 Stat. 488; Pub. L. 98-457, 96 Stat. 1749 (42 U.S.C. 5101 et seq.).

2. 45 CFR 1340.1(c) is revised to read as follows:

§ 1340.1 Purpose and scope.

(c) Requirements related to child abuse and neglect applicable to programs assisted under title IV-B of the Social Security Act are implemented by regulation at 45 CFR Parts 1355 and 1357.

2. 45 CFR 1340.2(d) is revised to read as follows:

§ 1340.2 Definitions.

(d) "Child abuse and neglect" means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State, by a person including any employee of a residential facility or any staff person providing out of home care who is responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term encompasses both acts and omissions on the part of a responsible person.

(1) The term "sexual abuse" includes the following activities under circumstances which indicate that the child's health or welfare is harmed or threatened with harm: 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 sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with

children. With respect to the definition of sexual abuse, the term "child" or "children" means any individual who has not attained the age of eighteen.

(2) (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 ensure that medical services are provided to the child when his health requires it.

(3) "Threatened harm to a child's health or welfare" means a substantial risk of harm to the child's health or welfare.

(4) "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, or any staff person providing out of home care. For purposes of this definition, out-of-home care means child day care, i.e., family day care, group day care, and center-based day care; and, at State option, any other settings in which children are provided care.

(4) Section 1340.3(b) is revised to provide the correct CFR citations as follows:

§ 1340.3 Applicability of Department-wide regulations.

(b) The following regulations are applicable to all contracts awarded under this part:

48 CFR Chapter 1—Federal Acquisition Regulations.

48 CFR Chapter 3—Federal Acquisition Regulations—Department of Health and Human Services.

5. Section 1340.13(a) is revised, and paragraph (c) is added to read as follows:

§ 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 abuse" (see § 1340.2(d)(1)) and the definitional requirement of negligent treatment as it relates to the failure to provide adequate medical care (see § 1340.2(d)(2)). The State must include these two definitional requirements in its definition of child abuse and neglect either by statute or regulation having the force and effect of law no later than the close of the second general legislative session of the State legislature following February 25, 1983:

(2) Either by statute or regulation having the force and effect of law, the State modifies its definition of "child abuse and neglect" to provide that the phrase "person responsible for a child's welfare" includes an employee of a residential facility or a staff person providing out of home care no later than the close of the first general legislative session of the State legislature which convenes following the effective date of these regulations:

(3) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(4) The State is otherwise in compliance with these regulations.

(c) Except for any requirement under section 4(b)(2)(K) of the Act and § 1340.15 of this part pertaining to medical neglect, a State which, on October 9, 1984, did not meet the eligibility requirements of section 4(b)(2) of the Act and this part and thus did not receive a State grant in FY 1984 may apply for a waiver of any requirement. In order to apply for a waiver, the Governor of the State must submit documentation of the specific measures the State has taken and will be taking to meet the as yet unmet eligibility requirement(s).

(1) State's whose legislatures meet annually may be granted a one-year waiver if OHDS finds that the State is making a good faith effort to comply with such requirement(s). This waiver is renewable for a second year if, based on additional documentation, the Secretary finds the State is making substantial progress to achieve compliance.

(2) States whose legislatures meet biennially may be granted a waiver for a non-renewable period of not more than two years if OHDS finds, based on documentation, the State is making a good faith effort to comply with any such requirement(s).

6. Section 1340.14(i) is revised as follows:

A. Paragraph (i)(1) and the introductory text of (i)(2) are republished:

B. Paragraph (i)(2)(viii) is amended by deleting the words "A person who is responsible for the child's welfare" and substituting the words "A person about whom a report has been made,";

C. Paragraphs (i)(3) and (i)(4) are redesignated as paragraphs (i)(4) and (i)(5), respectively; and

D. A new paragraph (i)(3) is added as follows:

§ 1340.14 Eligibility requirements.

(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:

(viii) A person about whom a report has been made, 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.

(3) If a State chooses, it may authorize by statute disclosure to additional persons and agencies, as determined by the State, for the purpose of carrying out background and/or employment-related screening of individuals who are or may be engaged in specified categories of child related activities or employment. Any information disclosed for this purpose is subject to the confidentiality requirements in paragraph (i)(1) and may be subject to additional safeguards as determined by the State.

7. The Office of Management and Budget Control Number is added to the end of § 1340.15 as follows:

§ 1340.15 Services and treatment for disabled infants.

(Approved by the Office of Management and Budget under OMB Control Number 0980-0165.)

[FR Doc. 87-2410 Filed 2-5-87; 8:45 am]

BILLING CODE 4130-01-M

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 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 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 bonafide 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.

173X

SUBCHAPTER 2. CHILD ABUSE PREVENTION AND
TREATMENT ACT OF 1974 REQUIREMENTS

Authority

N.J.S.A. 30:4C-4, 30:1-12, 9:6-8.10a, 9:6-8.15 and 45 CFR 1340.14(i)(2)(xi).

Source and Effective Date

R.1985 d.373, effective July 15, 1985.
Sec: 17 N.J.R. 885(a), 17 N.J.R. 1766(b).

Executive Order 66(1978) Expiration Date

Pursuant to the requirements and criteria of Executive Order 66(1978), this subchapter expires on July 15, 1990.

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.

PARAGRAPHS ON CONFIDENTIALITY
MAY BE USED FOR PUBLICATION
IN PART OR WHOLE

DYFS officials stated that under state law information about its reports on specific cases of child abuse and neglect is confidential and can not be shared except in limited circumstances to appropriate individuals or authorities. These laws were enacted to protect children and their families from further exploitation. Federal regulations also restrict the disclosure of such information.

"We believe that sharing information about suspected and confirmed cases of child abuse and neglect may be damaging to children and their families," said DYFS Director William Waldman.

"While each report of child abuse or neglect is different, they all deal with extremely sensitive and private traumas affecting individual children and families. The overwhelming majority of individuals we serve who do not want their personal lives discussed in public. These laws and guidelines were established to protect their right to privacy," said Waldman.

"However, the division does not want to be perceived as using these safeguards for purposes other than those for which they were designed. We welcome the opportunity to discuss our operations with legislators, child welfare advocates and the media, within the restrictions required by law.

"For those cases which require independent review to ensure that parents and children are being well served by this agency, we will continue to cooperate fully with the courts, legislative committees and others authorized to receive specific case information," Waldman said.

(SHORT VERSION OF THE SPECIFIC LIMITS ON DISCLOSING INFORMATION FROM CHILD ABUSE REPORTS UNDER NEW JERSEY LAW-PARAPHRASED)

Under New Jersey law (N.J.S.A. 9:6-8. 10a.) information from records of child abuse reports may only be disclosed to the following individuals, agencies or governmental bodies for the purpose of investigating, diagnosing, treating or preventing child abuse and neglect:

- o authorized child protective agencies;
- o police or other law enforcement officials;
- o physicians treating children who may have been abused or neglected;
- o individuals authorized to place children under protective custody;
- o agencies caring for children, or their parents or guardians, when the information is necessary to ensure their welfare;
- o courts, and law guardians and attorneys as determined by the courts;
- o grand juries;
- o legislative committees; and,

- o researchers, with the approval of the director of the Division of Youth and Family Services.

These individuals and agencies must also keep information from child abuse and neglect reports obtained from DYFS confidential. Anyone who willfully discloses information from the division's child abuse and neglect records is guilty of a misdemeanor and subject to up to \$1,000 in fines and three years in prison. (N.J.S.A. 9:6-8. 10b.)

(LONG VERSION, WHICH CLOSELY QUOTES STATE LAW)

New Jersey law (N.J.S.A. 9:6-8.10a.) specifically states that all records of child abuse reports, all information obtained by the Division of Youth and Family Services in investigating such reports and all reports of findings forwarded to the division's central registry shall be kept confidential and may be disclosed only under the circumstances expressly authorized below.

The division may release the records and reports referred to above, or parts thereof, to the following:

- o A public or private child protective agency authorized to investigate a report of child abuse or neglect;
- o A police or other law enforcement agency investigating a report of child abuse or neglect;
- o A physician who has before him a child who he reasonably suspects may be abused or neglected;
- o A physician, hospital director or 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 to determine whether to place the child in protective custody;

- o 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 of such child or such parent, guardian or other person;
- o 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;
- o A grand jury upon its determination that access to such records is necessary to conduct its official business;
- o 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 necessary to the legislative purpose;

- o Any person engaged in a bonafide 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 shall keep such records and reports, or parts thereof, 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 three years, or both. (N.J.S.A. 9:6-8. 10b.)

(FEDERAL GUIDELINES)

Federal regulations under the Child Abuse Prevention and Treatment Act limit the disclosure of information concerning child abuse reports and investigations only to situations where the purposes are clearly for diagnosis, investigation, treatment and prevention. States choosing not to comply with these regulations risk losing federal funding for child abuse and neglect programs.

