

**REPORT OF THE
VIRGINIA COMMISSION ON YOUTH**

**STUDY OF THE REGIONAL
VIDEOTAPING CENTERS FOR CHILD
SEXUAL ASSAULT VICTIMS**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 22

**COMMONWEALTH OF VIRGINIA
RICHMOND
1999**



COMMONWEALTH of VIRGINIA

Commission on Youth

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January 8, 1999

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TO: The Honorable James S. Gilmore, III, Governor of Virginia

and

Members of the Virginia General Assembly

The 1998 General Assembly, through House Joint Resolution 280, requested that the Virginia Commission on Youth "be directed to study the benefits and feasibility of establishing regional videotaping centers for child sexual assault victims."

Enclosed for your review and consideration is the report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledge their input into this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Thomas M. Jackson, Jr." with a stylized flourish at the end.

Thomas M. Jackson, Jr.
Chairman

Delegate Eric I. Cantor
Delegate L. Karen Darnier
Senator J. Randy Forbes

Delegate Phillip A. Hamilton
Senator R. Edward Houck
Delegate Jerrauld C. Jones
Delegate Robert F. McDonnell

Norma M. Clark
Gary L. Close
Michelle J. Harris

MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH

From the Virginia House of Delegates

Thomas M. Jackson, Jr., Chairman
Eric I. Cantor
L. Karen Darner
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TABLE OF CONTENTS

I.	Authority for Study	1
II.	Members Appointed to Serve	1
III.	Executive Summary	1
IV.	Study Goals and Objectives	3
V.	Methodology	4
VI.	Background	6
	A. National Policy	
	1. Investigative Interviews	
	2. Courtroom Accommodation	
	B. Virginia's Practice	
	1. Investigative Interviews	
	2. Closed Circuit Testimony in the Courtroom	
VII.	Findings and Recommendations	18
VIII.	Acknowledgments	22

Appendix A. Study Resolution HJR 280

Appendix B. Workgroup Members

Appendix C. Bibliography

I. Authority for Study

Section 9-292 of the *Code of Virginia* establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." Section 9-294 provides the Commission the power to "...undertake studies and gather information and data in order to accomplish its purposes...and to formulate and present its recommendations to the Governor and members of the General Assembly."

The 1998 General Assembly enacted House Joint Resolution 280, requesting a study be conducted of the benefits and feasibility of establishing regional videotaping centers for child sexual assault victims. Rather than establish a separate legislative commission, Joint Rules forwarded the study to the Commission on Youth. In fulfilling its legislative mandate, the Commission on Youth undertook this study.

II. Members Appointed to Serve

The authorizing legislation required the Commission on Youth to study videotaping centers for child sexual assault victims. The full membership of the Commission received briefings from the staff in the summer and fall of 1998 and approved the recommendations of the workgroup. The members of Virginia Commission on Youth are:

Del. Thomas M. Jackson, Jr. (Carroll), Commission Chair
Sen. Yvonne B. Miller (Norfolk), Commission Vice Chair
Del. Eric I. Cantor (Henrico)
Del. L. Karen Darner (Arlington)
Del. Phillip Hamilton (Newport News)
Del. Jerrauld C. Jones (Norfolk)
Del. Robert F. McDonnell (Virginia Beach)
Sen. J. Randy Forbes (Chesapeake)
Sen. R. Edward Houck (Spotsylvania)
The Hon. Gary L. Close (Culpeper)
Ms. Michele J. Harris (Norfolk)
Mr. Douglas F. Jones (Alexandria)

III. Executive Summary

Pursuant to HJR 280, the Commission on Youth undertook the study of the feasibility of regional videotaping centers for child sexual assault victims. Through the efforts of the Commission staff and the workgroup convened for this study, the Commission recognized the need to evaluate the overall process of investigation in child sexual assault cases, as well as procedures which may reduce the trauma experienced by a child in a courtroom. The following recommendations are offered to improve the investigation and prosecution of child abuse cases in Virginia.

Closed circuit testimony is one of a number of courtroom accommodations to reduce the trauma experienced by child victims and to enhance their ability to testify. Current Virginia statute allows for the use of closed circuit testimony for child victims the age of 12 and under, when the court finds that the child would suffer severe emotional trauma from testifying in the presence of the defendant. Most judges have applied the age standard to the child's age at the time of the trial. The trauma suffered by the child is a result of the abuse, and is related to the time at which the abuse occurred. The child's age at the time of the trial is arbitrary and may be subject to manipulation. Any protections afforded to the child because of his age should relate to the time of the offense.

Recommendation 1

Amend Section 63.1-248.13:1 (civil proceedings) and Section 18.2-67.9 (criminal proceedings) to allow for the use of closed circuit television in proceedings involving alleged abuse or neglect of a child and/or involving specified offenses against a child, who is the age of 14 or under at the time of the alleged offense and under eighteen (18) at the time of the trial.

Child abuse often occurs within families. Siblings are often witnesses to the abuse and are threatened with serious consequences if they report what they have observed. Child witnesses may also experience severe trauma if required to face the accused in court. This trauma may make them unable to testify.

Recommendation 2

Amend Section 63.1-248.13.1 (civil proceedings) and Section 18.2-67.9 (criminal proceedings) to include an allowance for the use of closed circuit television for child witnesses who were the age of fourteen (14) or under at the time of the alleged offense, and are under eighteen (18) at the time of the trial.

Child abuse has been recognized as one of the most difficult crimes to detect and prosecute. Interviews with children provide unique opportunities to gather and document evidence that is essential to prosecution of the case. Current Virginia law mandates the audio taping of these interviews. A great deal of controversy exists around the merit of videotaping the investigative interviews. A child's disclosure of abuse may take place over several interviews and over an extended period of time. A single initial interview, captured on videotape, may not be a complete account of the alleged abuse. In addition, the knowledge that an interview is being videotaped may make a child uncomfortable, and less able to tell his story. Questions about interviewers' skills have been raised and the tendency to critique the interviewer, rather than listen to the child's report has been identified as a concern. Further concerns were identified around the issues of confidentiality, preservation and ownership of videotapes once they are made, and about access to the tapes. Finally, financial and logistical problems make videotaping of all investigative interviews impossible for some Virginia localities.

Recommendation 3

The Commonwealth of Virginia should not mandate the videotaping of investigative interviews in child abuse cases.

Multidisciplinary team models for the investigation of child abuse have proven effective in coordinating the judicial and social service systems' response to victims of child abuse. The keys to the success of the model are the teams' ability to function collaboratively and the wide range of coordinated services (medical, mental health, legal, etc.) offered to children and their families.

Recommendation 4

The Department of Social Services and the Department of Criminal Justice Services should support local and regional teams in the implementation of successful investigatory models by disseminating information about program models, providing technical assistance, and identifying potential funding sources to localities.

Virginia has the technology and the technical expertise to make closed circuit testimony available throughout the state. Prosecutors report that they do not know enough about the use of closed circuit technology and its applicability in child abuse cases to request it on behalf of their clients. Few judges have had such requests brought before them. Educational opportunities should be provided to judges and prosecutors, with a focus on the current statute, applicability to specific cases, timing of the motion hearing, legal burden, finding of trauma, and technology.

Recommendation 5

The Department of Criminal Justice Services, through the Children's Justice Act, should provide comprehensive education to judges and prosecutors in the use of closed circuit testimony in child abuse cases.

IV. Study Goals and Objectives

On the basis of the requirements of HJR 280, the following study issues were outlined by the staff and approved by the Commission on Youth to guide the study effort:

- Advisability of adoption of a videotape testimony law in child sexual abuse cases;
- Identification of best practice for joint interviews of child sexual abuse victims;
- Assessment of training and equipment needs;
- Advisability of videotape testimony for plea bargains versus court proceedings;
- Identification of effects of adjudication in states with videotape testimony laws;
- Identification of potential funding sources for regional centers.

In order to address these issues, the HJR 280 workgroup developed the following objectives:

- I. Review and analyze the use of closed circuit testimony in child sexual assault cases.
 - A. Identify and analyze relevant state and federal law relating to the use of closed circuit testimony in child sexual assault cases.
 - B. Analyze and compare other state statutes related to closed circuit testimony in child sexual assault cases.

- C. Develop recommendations for revision in current state law relating to the use of closed circuit testimony in child sexual assault cases.
 - D. Identify training and equipment needs related to the use of closed circuit testimony.
- II. Determine the applicability of the use of videotape technology in child sexual assault investigations and the implications for practice in Virginia.
- A. Identify and analyze relevant state and federal law relating to the use of videotape in child sexual assault cases.
 - B. Analyze and compare other state statutes related to videotape in child sexual assault cases.
 - C. Identify and analyze national and local models for the investigation of child sexual assault.
 - D. Develop best practice guidelines for investigation of child sexual assault cases in Virginia.
 - E. Develop recommendations for the use of videotaped interviews as an investigatory tool in child sexual assault cases.
 - F. Identify Virginia's training and equipment needs related to the use of videotape in child sexual assault investigations.
 - G. Identify potential funding sources for implementation of recommended practices.

V. Methodology

The methodology component of the study plan approved by the Commission on Youth incorporated a variety of research methods to meet the study mandate. A workgroup was convened to identify the issues, review relevant data, and develop study recommendations. A literature review was conducted to determine national policy, identify model programs, and analyze state and national expert opinion. State statutes were analyzed for laws relating to the use of both closed circuit television and videotape, and for specific provisions of these laws. Data and reports prepared by the Departments of Criminal Justice Services and Social Services and the State Police were also reviewed. This information included reports on the use of closed circuit television in Virginia and on the training offered to local jurisdictions related to child sexual assault investigations. Finally, national models for child sexual assault investigation were reviewed and analyzed to determine best practices. Each of these study activities will be discussed briefly below.

A. WORKGROUP MEETINGS

In order to respond to the study mandate, a workgroup of professional and constituency groups was established. The disciplines and expertise represented in the workgroup included criminal justice, law enforcement, social services, mental health, pediatric medicine, child abuse prevention, and parents' rights. A full listing of the workgroup membership is found in Appendix B. The workgroup met three times during the course of the study. Members reviewed the data provided by the Department of Criminal Justice Services and the Virginia State Police related to the utilization of closed

circuit technology in child sexual assault cases in Virginia. In addition, discussions were held about the use of videotape as both an investigatory and legal tool, with a focus on the clinical and procedural issues involved in both applications. Finally, the workgroup discussed different models of child sexual assault investigation, identifying the advantages and disadvantages of each model.

B. LITERATURE REVIEW

The literature review included materials on legislative/policy issues and program models related to both the investigation and prosecution of child sexual assault. Some legislative analysis was provided by the American Bar Association Center on Children and the Law and the American Prosecutor's Research Institute. Additional materials provided by the National Center on Child Abuse and Neglect and the American Professional Society on the Abuse of Children, along with professional journals and model program manuals, were included in the review. An Internet search on relevant policies and procedures was also conducted.

C. ANALYSIS OF STATE STATUTES

Many states have enacted legislation designed to improve the process of investigation and prosecution of child sexual assault. The National Child Abuse and Neglect Information Clearinghouse developed the State Statute Series in response to the critical needs of professionals working with children and families. Information found in the Series was analyzed for this study. Individual states' statutes were also reviewed and analyzed. The U.S. Supreme Court addressed the issue of closed circuit testimony in *Maryland v. Craig*, 497 U.S. 836 (1990); this case and the findings of the Court were also reviewed.

D. ANALYSIS OF THE USE OF VIDEOTAPE AND OTHER REFORMS IN CHILD SEXUAL ASSAULT INVESTIGATIONS

Commission staff and workgroup members reviewed and evaluated a number of reforms in the investigation of child sexual assault cases. These reforms included requirements for joint investigations by both social service and law enforcement personnel, the availability of multidisciplinary teams including mental health professionals, improved communication among professionals involved in the investigation, and the practice of videotaping investigative interviews. Finally, Commission staff reviewed and analyzed a number of national models, both videotaped and non-videotaped, for interviewing children in the investigation of child abuse allegations.

E. REVIEW OF THE USE OF CLOSED CIRCUIT TELEVISION IN VIRGINIA

In 1988, the Virginia General Assembly enacted legislation allowing for child testimony by way of closed circuit television for victims in child abuse cases. The Department of Criminal Justice Services (DCJS) has monitored the use of this technology and evaluated its success. In addition, DCJS has provided training to localities on the use of closed circuit television. The Virginia State Police completes a survey form on each request and installation of closed circuit equipment in local courts. Data and reports prepared by DCJS and the State Police were reviewed for this study.

A. NATIONAL POLICY

Allegations of child sexual abuse are often difficult to resolve in the criminal justice system, and testifying in such cases can add to the trauma already experienced by child victims. Investigation of allegations of child abuse depends in large part on obtaining accurate and complete information from children about the event. Children who have been victimized must be able to remember whether the abuse occurred and be willing and able to report it. In addition, successful prosecution of child abuse cases depends on a child's ability to retell his story in court, an often adversarial and intimidating environment. Many observers have purported that the adversarial atmosphere of the courtroom undermines some children's capacity to provide accurate testimony and inflicts unnecessary anxiety.¹ In response, prosecutors and children's advocates called for reforms of both the investigation of child abuse allegations and the adversary trial process. The Children's Justice Act, a part of the Child Abuse Prevention and Treatment Act, as amended in 1989, authorized grants to states for the purpose of assisting states in developing, establishing, and operating programs designed to improve:

1. the handling of child abuse and neglect cases, particularly cases of child sexual abuse and exploitation, in a manner which limits additional trauma to the child victim;
2. the handling of cases of suspected child abuse or neglect related fatalities; and
3. the investigation and prosecution of cases of child abuse and neglect, particularly child sexual abuse and exploitation.

Child welfare professionals began to revise investigatory procedures to respond to the unique needs of children who are faced with the trauma of abuse. Rules of evidence and procedures were amended to facilitate children's testimony and make the court process less formidable for young witnesses.² Overall, reforms have taken place in three arenas: 1) investigative interviews; 2) courtroom accommodations; and 3) preparing children for court. The first two of these reforms are addressed below. The preparation of children is incorporated into investigatory procedures and courtroom accommodations.

1. Investigative Interviews

The way children are interviewed by police officers, social workers, and other professionals often has a direct bearing on children's credibility as witnesses.

¹ Meyers, John E.B., "A Decade of International Legal Reform Regarding Child Abuse Investigation and Litigation: Steps toward a Child Witness Code," *Pacific Law Journal*, Volume 28, 1996, p. 170.

² Goodman, Gail S., "The Effects of Criminal Court Testimony on Child Sexual Victims," *Monographs of the Society for Research in Child Development*, 57, 1992, p. 1-2.

According to Warren and McGough,

*interviewers wishing to elicit accurate reports, especially from young children, should encourage children to spontaneously and freely report information by establishing rapport, allowing sufficient time for response, and refraining from interruptions or premature use of specific questions.*³

Reports about events are most likely to be accurate when they are generated by the child and not the interviewer. Every effort should be made to create an environment which encourages free recall and minimizes interviewer influence.

A number of factors, however, interfere with a child's ability to recall and report traumatic events. Social and emotional forces play an important role in eliciting accurate accounts of victimization experiences. Studies have found that children do not always tell the truth or the complete truth about embarrassing or negative events and wrongdoing by adults. A child's age and developmental level influences the manner of questioning that is necessary and the type of information that can be obtained from him.⁴

Nationally, concentrated efforts are underway to improve the skills of professionals who interview children in abuse cases. With funding from the Office of Juvenile Justice and Delinquency Prevention, the American Prosecutors Research Institute's National Center for the Prosecution of Child Abuse provides training in team settings to police, social workers, therapists, and other child abuse professionals across the country. Under the Victims of Crime Act (VOCA) reauthorization, the 1995 Appropriations Act provided \$2 million to support local children's advocacy centers, which are child-focused, facility-based programs that use multidisciplinary teams to coordinate the judicial and social service systems' response to victims of child abuse.

In many states, local child welfare and law enforcement agencies have increased efforts to train their front line staffs on the specialized techniques for interviewing children. State legislatures have supported improvements in interviewing and investigation in child abuse cases. Thirty-three states, including Virginia, have legislation that requires or encourages joint investigation and cooperation between law enforcement and child protective services.⁵ One of the more controversial issues in the realm of interviewing is whether investigative interviews should be videotaped. Three states, Idaho, Minnesota, and New Hampshire, have legislation requiring videotaping of investigative interviews. Videotaping is common practice in California and Oregon, although neither state's statute mandates it.

³ Warren, A. and L.S. McGough, "Research on Children's Suggestibility: Implications for the Investigative Interview," Criminal Justice and Behavior, Vol. 23, No. 95, 1995, p. 269.

⁴ Lieb, R., L. Berliner, and P. Toth, Protocols and Training Standards: Investigating Allegations of Child Sexual Abuse. Washington State Institute for Public Policy, Olympia, WA, 1997, p. 14.

⁵ U.S. Department of Health of Human Services, Administration for Children and Families, Child Abuse and Neglect State Statute Series, Vol. III, No. 14, 1997, p. 1-2.

during which the child must describe the abuse. Because of the complex nature of child abuse investigations, victims are often required to repeat their "story" three or four times before reaching the courtroom. After the initial disclosure, perhaps to a teacher, parent, or other trusted adult, the child may be interviewed by a social worker, a police officer, a prosecutor, and a guardian ad litem. "By reducing the number of times a child has to tell his story of the abuse, the child's trauma and the systemic confusion may be ameliorated."⁶ A single videotaped interview may be viewed by multiple professionals involved in the case, reducing the need for multiple interviews and/or the number of interviewers in the room. Second, videotaping preserves the child's early description of the abuse while memory of the incident is fresh. Third, the videotaped interview is often powerful evidence that may be admissible in later legal proceedings. Suspects may be more likely to confess when confronted with videotapes. In addition, parental support may be increased when parents have an opportunity to observe their children actually describing what has happened. Fourth, videotaping is a form of quality control. Interviewers may be more aware of how they conduct interviews when they are being videotaped, recognizing that their performance will be preserved for later critique.

Opponents of videotaping raise four principle arguments. Full disclosure of abuse often takes time. As a child becomes more comfortable with those involved in the investigation, or if he receives therapy, additional details may be disclosed. Anyone viewing the initial statement may misunderstand its relationship to subsequent live testimony made by the child. The investigative interview is neither the first nor the only questioning, and videotaping one interaction places excessive emphasis on one of several interviews. Second, videotaping may unduly focus attention on interviewer behavior rather than on children's statements. Providing an opportunity to critique every question asked by an interviewer and pointing out how it might increase suggestibility will create an exaggerated lack of confidence in children's responses.⁷ Another argument against videotaping involves confidentiality and access. Videotapes of children's interviews are especially sensitive and public dissemination would be harmful. It is impossible to guarantee the security of videotapes, especially in high profile cases. Finally, financial and logistical problems preclude the universal adoption of videotaping for all investigative interviews and, in those localities which are able to manage it, the technical problems which are often experienced serve as a barrier to its utilization.

Compelling arguments are found on both sides of the issue. States and localities which have chosen to use videotaped interviews in child sexual assault investigations have identified three primary factors critical to ensuring its success. First, interagency cooperation and coordination are vital to effective and efficient investigations. To this end, a number of localities have developed protocols to clearly identify each agency's role and responsibilities. Protocols identify specific procedures for the use of videotape and for the sharing of information among agencies. Second,

⁶ Hall, S.R., A Multidisciplinary Manual for the Use of Televised Alternative Procedures with Victim and Non-Victim Child Witnesses. University of Arizona, 1995, p. 57.

⁷ Lieb, R., et. al, 1997, p. 59.

training in forensic interviewing of children, with specialized information on the use of videotape, is seen as critical. Finally, in those states and localities regularly using videotaped interviews, special facilities are established to meet children's unique needs and ensure the success of the procedure.

2. Courtroom Accommodations

Considerable legislative and judicial effort has focused on reforming courtroom procedures to better accommodate child victims and witnesses. These accommodations include exceptions to hearsay rules, physical alterations to the courtroom setting, availability of support persons for child witnesses, closing the courtroom to the public and the press, and video testimony. It is the use of video testimony--both through videotape and closed circuit television--that is the focus of this study.

Many states have enacted legislation designed to improve the process of investigation and prosecution of child sexual assault. Thirty-five states have enacted legislation permitting the use of closed circuit television and/or videotaped testimony as a means of protecting children from the additional trauma of facing their abusers in a courtroom during trial. Each state statute varies in specific provisions, but there are a number of similarities which were identified for analysis. Specific variations in the videotaped testimony and closed circuit laws related to a) the age of the victim for whom the technology may be used, b) applicable crimes, e.g., physical abuse, sexual abuse, c) whether or not the technology is available for both child witnesses and victims, and d) who may be present in the room while testimony is being given.

Thirty-five states have enacted legislation authorizing the pretrial videotaping of children's testimony and thirty-four have statutes authorizing testimony via closed circuit television. A breakdown of states' statutory provisions regarding closed circuit and videotaped testimony is provided in Exhibit 1.

The enactment of such legislation has not gone unchallenged. Courts struggle to balance the constitutional rights of the defendant with the desire to minimize a child's trauma. The most common challenge to the constitutionality of these statutes is based upon the criminal defendant's right to confrontation afforded by the Confrontation Clause of the Sixth Amendment to the U.S. Constitution, and made applicable to the states through the Fourteenth Amendment. The Sixth Amendment provides, "In all criminal prosecutions the accused shall enjoy the right...to be confronted with the witnesses against him." The U.S. Supreme Court addressed and held constitutional the use of closed circuit television testimony in *Maryland v. Craig*, 497 U.S. 836 (1990) and determined that the right to face-to-face confrontation is not absolute.

Closed Circuit Television

In the United States, "perhaps the most controversial courtroom reform is the live television link, which allows selected children to testify outside the physical presence of

Exhibit 1
Summary of States' Legislation

State	Closed Circuit	Video-tape	Crimes			Age	Victim	Witness	A	D	Persons Present			O	Person Who May Question Child
			s	p	o						J	V	C		
Alabama	n	✓	✓	✓	< 16	✓	✓	✓	✓	✓	✓	✓	✓	n	
Alaska	✓	✓	✓	✓	< 16	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Arizona	✓	✓	✓	✓	< 15	✓	✓	✓	✓	✓	✓	✓	✓	A	
Arkansas	✓	✓	✓	✓	< 17	✓	✓	✓	✓	✓	✓	✓	✓	n	
California	✓	✓	✓	✓	< 10	✓	✓	n	n	n	n	✓	✓	n	
Colorado	✓	✓	✓	✓	< 15	✓	✓	n	n	n	n	n	n	n	
Connecticut	n	✓	✓	✓	< 12	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Delaware	n	✓	✓	✓	< 12	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Florida	✓	✓	✓	✓	< 16	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Georgia	✓	✓	✓	✓	< 10	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Hawaii	✓	✓	✓	✓	< 16	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Idaho	✓	✓	✓	✓	< 16	✓	n	n	n	n	n	✓	✓	n	
Illinois	n	✓	✓	✓	< 18	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Indiana	✓	✓	✓	✓	< 14	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Iowa	✓	✓	✓	✓	< 14	✓	✓	✓	✓	✓	✓	✓	✓	n	
Kansas	✓	✓	✓	✓	< 13	✓	✓	✓	✓	✓	✓	✓	✓	A	
Kentucky	n	✓	✓	✓	< 12	✓	✓	✓	✓	✓	✓	✓	✓	A	
Louisiana	✓	✓	✓	✓	< 14	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Maine	✓	✓	✓	✓	< 16	✓	✓	n	n	✓	n	n	✓	n	
Maryland	✓	✓	✓	✓	< 18	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Mass.	n	✓	✓	✓	< 15	✓	✓	✓	✓	✓	n	n	✓	A, n	
Michigan	✓	✓	✓	✓	< 15	✓	✓	n	n	n	n	✓	✓	n	
Minnesota	n	✓	✓	✓	< 12	✓	✓	✓	✓	✓	✓	✓	✓	n	
Mississippi	n	✓	✓	✓	< 16	✓	✓	✓	✓	✓	n	n	✓	A	
Missouri	✓	✓	✓	✓	< 17	✓	✓	✓	✓	✓	n	n	✓	n	
Montana	✓	✓	✓	✓	< 16	✓	✓	✓	✓	✓	✓	✓	✓	n	
Nebraska	✓	✓	✓	✓	< 11	✓	✓	✓	✓	✓	n	✓	✓	n	
Nevada	✓	✓	✓	✓	< 14	✓	✓	✓	✓	n	n	✓	✓	n	
N. Hampshire	✓	✓	✓	✓	< 16	✓	✓	✓	✓	✓	n	✓	✓	n	
New Jersey	✓	✓	✓	✓	< 16	✓	✓	✓	✓	n	n	n	✓	n	
New Mexico	✓	✓	✓	✓	< 16	✓	✓	✓	✓	✓	n	✓	✓	n	
New York	✓	✓	✓	✓	< 12	✓	✓	✓	✓	n	✓	✓	✓	A, n	
Ohio	✓	✓	✓	✓	< 11	✓	✓	✓	✓	✓	✓	✓	✓	A	
Oklahoma	✓	✓	✓	✓	< 12	✓	✓	✓	✓	✓	✓	✓	✓	A	
Oregon	n	✓	✓	✓	< 12	✓	✓	✓	✓	✓	✓	✓	✓	n	
Penn.	✓	✓	✓	✓	< 14	✓	✓	✓	✓	✓	✓	✓	✓	n	
Rhode Island	✓	✓	✓	✓	< 17	✓	✓	✓	✓	✓	✓	✓	✓	n	
S. Carolina	✓	✓	✓	✓	n	✓	✓	n	n	n	n	✓	✓	n	
S. Dakota*	✓	✓	✓	✓	< 12	✓	✓	✓	✓	✓	n	✓	✓	n	
Tennessee	✓	✓	✓	✓	< 13	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Texas	✓	✓	✓	✓	< 12	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Utah	✓	✓	✓	✓	< 14	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Vermont	✓	✓	✓	✓	< 12	✓	✓	✓	✓	✓	✓	✓	✓	A, J	
Virginia	✓	✓	✓	✓	< 12	✓	✓	✓	✓	✓	✓	✓	✓	n	
Washington	✓	✓	✓	✓	< 10	✓	✓	✓	✓	✓	✓	n	✓	n	
Wisconsin	✓	✓	✓	✓	< 12	✓	✓	n	n	✓	n	✓	✓	n	
Wyoming	✓	✓	✓	✓	< 12	✓	✓	✓	✓	✓	✓	✓	✓	n	

n=Not Specified | =Unconstitutional as Applied, * =Facially Unconstitutional; s=Sexual Abuse, p=Physical Abuse, o=Other; A=State & Defendant's Attorney, D=Defendant, J=Judge, V=Persons Not Visible to Child, C=Anyone, Taking Child's Welfare into Account

the defendant via closed circuit television.”⁸ Currently, thirty-four states have statutes authorizing the use of closed circuit television testimony in child abuse cases. Fourteen of these specify the use of one-way closed circuit television, seven permit two-way testimony, four mention a preference for two-way but will accommodate victims with one-way if necessary, and nine states do not specify which type of closed circuit television technology is authorized.

Prior to the *Craig* decision, a defendant's right to face-to-face confrontation was considered equivalent to the right to cross-examination. Courts have recognized, however, that this right “must occasionally give way to considerations of public policy and the necessities of the case.”⁹ That the face-to-face confrontation requirement is not absolute does not mean that it may easily be dispensed with. The state's interest in safeguarding the physical and psychological well-being of child victims by avoiding, or at least minimizing, the emotional trauma produced by testifying was determined by the Supreme Court to be sufficient to permit the use of closed circuit television. Additionally, the Court noted that the presence of other elements of confrontation, e.g., taking an oath, cross-examination, and observation of the witness' demeanor, adequately ensures that closed circuit television testimony is both reliable and subject to rigorous adversarial testing in a manner equivalent to that of live, in-person testimony.¹⁰

In order to determine whether the state's interests in protecting a child victim justify an infringement on the defendant's right to confrontation, the Supreme Court established three criteria to be met by the trial court:

1. the trial court must make a case-specific finding that the procedure is necessary;
2. a judge must determine that it is the defendant's presence which will cause emotional distress to the child victim, not a general fear of the courtroom; and
3. the trial court must find that the emotional distress suffered by the child “is more than de minimis, i.e., more than mere nervousness or excitement or some reluctance to testify.”¹¹

Three states (Illinois, Massachusetts, and Pennsylvania) have held their closed circuit television statutes unconstitutional, based on interpretations that their state constitutions require a literal face-to-face confrontation. A fourth state statute, in Arizona, has been held unconstitutional, as the state failed to show a particularized need to use the technology.¹²

Nineteen states permit the use of closed circuit technology in cases in which the defendant has been charged with either sexual or physical abuse, while ten states limit its use to sexual abuse cases. Five states list either “any crime” or “any felony” or do

⁸ Meyers, 1996, p. 206.

⁹ *Mattox v. United States*, 156 U.S. 237, 234 (1985)

¹⁰ *Maryland v. Craig*, 497 U.S. 836 (1990)

¹¹ *Ibid.*

¹² *Arizona v. Vess*, 756 P.2d 333 Ariz. Ct. App. (1988)

not specify the crimes for which the statute can be applied. Statutory language also typically specifies who may use the technology. Nineteen states permit only child abuse victims to make use of closed circuit technology, while 15 states authorize its use for both child victims and witnesses.

The age of the children permitted use of the technology varies widely from state to state, from under 18 years of age to under 10 years of age. Five states mention specifically when the age requirement must be met, i.e., at time of trial, at time of victimization, or both. States also vary on which persons are permitted to be present in the room with the child during testimony; most allow the judge, the defense attorney, the state's attorney, equipment operators, and "any person who would contribute to the welfare and well-being of the child."¹³

Once statutory constitutional and procedural requirements are met, the actual testimony may be taken. Thirteen states authorize only the prosecuting and defense attorneys to question the child. Nine states permit also the presiding judge to question the child. The vast majority of statutes ensure that the child giving testimony via closed circuit shall not also be required to testify in the courtroom. However, to ensure that the defendant's rights are not jeopardized, many states specify that nothing in the statute is to be interpreted to preclude the presence of both the child and the defendant in the courtroom at the same time. In all statutes, the defendant must be permitted to see and hear the child testifying, either in person or on a television monitor, and is permitted unlimited access to the defense attorney who is in the room with the child during the child's testimony.

Videotaped Testimony

Thirty-five states have legislation regarding the admissibility of videotaped testimony in criminal child abuse proceedings. Of these, 68% also authorize the use of closed circuit television testimony. The statutory provisions for videotaped testimony are provided for many of the same states allowing closed circuit television. Many of the same issues and constitutional challenges arise under both statutes.

When the testimony is recorded, the majority of statutes require that: a) the recording be both visual and auditory and recorded on film or videotape or other electronic means; b) the recording equipment is capable of making an accurate recording, the operator be competent, and the recording is accurate and not altered; c) every voice on the recording be identified; and d) every party has an opportunity to view the recording before it is shown in the courtroom.

Courts must still meet the three criteria outlined in the *Maryland v. Craig* decision. Several of the states' videotape statutes have been held unconstitutional as applied, in deference to the court's not establishing a compelling need for the child to testify outside the presence of the defendant or not making specific findings of trauma.

¹³ *Maryland v. Craig*

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State legislators have recognized the need to strike a balance between their duty to protect the constitutional rights of the accused and their interest in safeguarding children. In writing carefully worded statutes, they have attempted to ensure that the constitutional right to face-to-face confrontation will not be violated unless absolutely necessary, based on the facts of the case.

B. VIRGINIA'S PRACTICE

Virginia's legislators and child welfare professionals have joined their colleagues around the nation in recognizing the need for reform in the investigation and prosecution of child sexual assault. The use of multidisciplinary investigatory teams, joint interviewing, extensive training in forensic interviewing of children, and improved collaboration between disciplines are recent innovations in Virginia.

Courtroom reforms, including the use of closed circuit television and improved preparation of children for the court experience, have been implemented to make the legal process less traumatic for children. With funds provided through the Children's Justice Act, Virginia's Department of Criminal Justice Services has provided training and technical assistance to law enforcement personnel, social workers, and prosecutors for improvements in both the investigation and prosecution of child sexual assault cases. A discussion of these improvements follows.

1. Investigative Interviews

Section 63.1-248.6 of the *Code* mandates the establishment of child protective services divisions within local departments of social services for the purpose of receiving and investigating complaints and reports of child abuse. Every valid complaint or report of abuse or neglect must be investigated by the local department. Investigation is defined in the Virginia Administrative Code (22 VAC 40-705-10) as "the formal information gathering process utilized by the local department in determining whether or not child abuse or neglect occurred." Paramount to the investigation are the immediate safety needs of the child. The Child Protective Services (CPS) worker conducting an investigation immediately makes an assessment of the circumstances surrounding the allegation, identifies the immediate safety needs of the child, and, if necessary, develops a safety plan. Once the child's safety has been ensured, the investigation proceeds.

The CPS worker must conduct a face-to-face interview with the alleged victim child. Department of Social Services policy specifies what must occur:

During the interview, the CPS worker should inform the child about the investigation and what will occur during the investigation. The CPS worker should observe the child and document the child's recollection and perception of the allegations. The CPS worker should note the child's emotional and physical condition (including any injury). The CPS worker should learn about the child's needs and capabilities for the purposes of risk assessment and service planning.¹⁴

¹⁴ Virginia Department of Social Services. Service Programs Manual. Volume VII, Section III, Chapter A: Child Protective Services, 1998, p.98.

The Virginia Administrative Code (22 VAC 40-705-80B) requires all interviews with the alleged victim child be audiotape recorded, except when the CPS worker determines that a) the child's safety may be endangered by audiotaping; b) the age and/or developmental capacity of the child makes audiotaping impractical; c) a child refuses to participate in the interview if audiotaping occurs; or d) in the context of a team investigation with law enforcement personnel, the team or team leader determines that audiotaping is not appropriate.

At this time, few Virginia localities are videotaping the investigative interviews. Opinions differ as to the value and appropriateness of videotaping. In addition, concerns are voiced about the technical and environmental limitations (most localities do not have designated interview facilities) and the storage of and access to videotapes.

Interviews are conducted with the alleged abuser, the child's parents or guardians, the child's siblings, and any other collateral witnesses whose knowledge may help confirm or rebut the allegations of abuse or whose involvement may help ensure the safety of the child. In addition, the CPS investigator visits the child's home environment and the site where the alleged abuse occurred.

While the Department of Social Services, through the CPS Division, has statutory responsibility for the initial investigation of child abuse allegations, the Virginia legislature recognized the need for a team approach to the investigatory process. Section 63.1-248.6(F) of the Code provides for the establishment of multidisciplinary teams to promote, advocate, and assist in the development of a coordinated services system directed at the early diagnosis, comprehensive treatment, and prevention of child abuse and neglect. Functions of multidisciplinary teams include:

- a. identifying abused and neglected children;
- b. coordinating medical, social, and legal services for the children and their families;
- c. helping to develop innovative programs for detection and prevention of child abuse and neglect;
- d. promoting community concern and action in the area of abuse and neglect; and
- e. disseminating public information about child abuse and neglect.

The Virginia Administrative Code defines the composition of multidisciplinary teams. Teams should represent, but are not limited to, medical, mental health, social work, education, legal and law enforcement systems. Local departments of social services are required to foster collaborative relationships with the community agencies participating on the teams and to establish plans for exchanging information for the purposes of investigation and disposition of child abuse complaints.

In the investigation of child sexual assault, the collaboration of social services, law enforcement, and prosecutors is especially important. Each discipline has unique needs for information in carrying out its investigatory responsibilities and preparing for possible criminal prosecution. In an attempt to reduce the potential for additional

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trauma to the child victim, many local practitioners and teams make attempts to limit the number of different interviews in which the child must participate. Some local jurisdictions conduct joint interviews as standard practice. Social workers, law enforcement personnel, and prosecutors participate in these interviews. Other teams designate one interviewer to meet with the child, while other members of the team observe the interview and provide input to the interviewer as questions are asked.

The Children's Advocacy Center model, currently used in six states and selected localities, has been identified by law enforcement and child welfare professionals as a potential model for replication in Virginia. Children's Advocacy Centers (CACs) provide a community-based approach whose goal is to improve management of abuse and neglect cases, increase the rate of prosecutions, and ensure that victims and their families receive coordinated treatment services.

Multidisciplinary teams in CACs conduct joint interviews and share in the decision-making concerning the management and investigation of cases, providing a range of services for victims and their families. This model of investigation is reported to provide increased substantiation and prosecution of abuse cases, decrease post-abuse trauma to victims through centralized intake procedures, and enhance support to victims of abuse and their families.¹⁵ The teams also provide locally developed infrastructure that facilitates collaboration among key local government agencies. Communities that have developed such infra-structures report that they have increased efficiency of their systems, improved the quality of care in a cost-effective manner, and addressed a multitude of local juvenile justice and human services issues with increased cooperation.¹⁶

The Office of Juvenile Justice and Delinquency Prevention provides local Children's Advocacy Centers with funding, training, and technical assistance through the National Network of Children's Advocacy Centers. In addition, training, consultation, resource materials, and other technical assistance are provided through regional CACs. Currently four Virginia localities are pursuing the development of CACs.

2. Closed Circuit Television in the Courtroom

In 1988, the Virginia General Assembly passed legislation to allow for testimony by way of closed circuit television in child abuse cases. Pursuant to Section 63.1-248-13:1 of the *Code*,

in any civil proceeding involving alleged abuse or neglect of a child the age of 12 or younger... the child's attorney or guardian ad litem, or, if the child has been committed to the custody of the local Department of Social Services, the attorney for the local Department of Social Services may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed circuit television.

¹⁵ National Network of Children's Advocacy Centers, Organizational Development for Children's Advocacy Centers, Washington, DC, 1996.

¹⁶ *Ibid.*

The person seeking the order must apply at least seven days prior to the court date and must establish that the child is unavailable to testify in open court for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;
2. The child's substantial inability to communicate about the offense; or
3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

In any proceeding in which closed circuit testimony is to be used, the *Code* specifies those individuals to be present. According to Section 63.1-248-13:1, the attorney for the child and the defendant's attorney and, if the child is in the custody of the Department of Social Services, the attorney for the local Department of Social Services "shall be present in the room with the child and the child shall be subject to direct and cross-examination." The only other persons allowed to be present in the room with the child are the guardian ad litem, persons necessary to operate the closed circuit equipment, and any other person "whose presence is determined by the court to be necessary to the welfare and well-being of the child."

Finally, pursuant to the *Code*, the child's testimony shall be transmitted by closed circuit television into the courtroom for the defendant, jury, judge, and public to view. The defendant is to be provided a means of "private, contemporaneous communication with his attorney during the testimony."

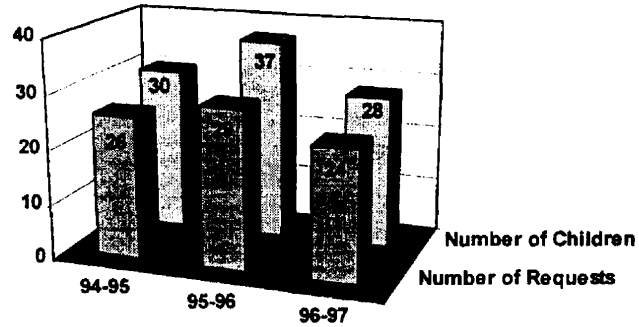
Although the closed circuit testimony legislation was enacted in 1988, the procedure was used very little before 1994. According to a survey conducted by the Department of Criminal Justice Services (DCJS), between 1988 and 1993 there were only six occasions in which closed circuit testimony was used in the state.¹⁷ In October 1993, DCJS and the Virginia State Police received a grant from the Bureau of Justice Assistance (BJA) to expand the use of closed circuit, two-way testimony of children who are victims of abuse. Using the grant funds, Virginia purchased three mobile closed circuit systems. The Virginia State Police houses and maintains the equipment, transports it to local courts for use in child abuse cases, and provides necessary technical expertise. Grant funds have also been used to provide prosecutorial and judicial training, as well as the production and distribution of an informational brochure and a protocol for the use of closed circuit testimony in Virginia courts.

DCJS reports that, during the three years of the BJA program (1994-97), there were 79 requests for closed circuit technology, involving 95 children (Chart 1). The majority of cases involved felony sex offenses against children and only three cases with charges relating to physical abuse. As Chart 2 depicts, the 79 cases involved various court hearings, including preliminary hearings, jury trials, bench trials, and civil protection hearings.

¹⁷ Virginia Department of Criminal Justice Services, Juvenile Justice Section. Closed Circuit Two Way Testimony: Summary of Use in Virginia. 1998.

Chart 1

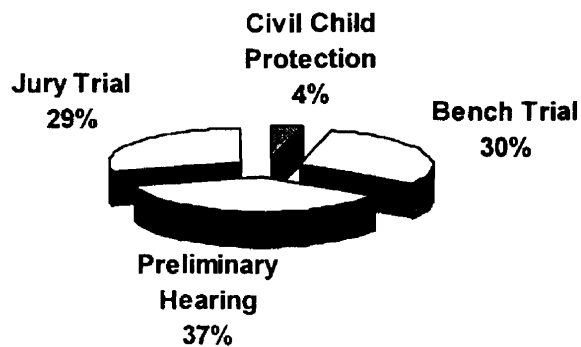
Requests for Closed Circuit



Source: Virginia Department of Criminal Justice Services, Closed Circuit Two Way Testimony: Summary of Use in Virginia, 1998

Chart 2

Requests for Closed Circuit Type of Court Hearing



Source: Virginia Department of Criminal Justice Services, Closed Circuit Two Way Testimony: Summary of Use in Virginia, 1998

As depicted in Chart 3, in 25 of the 79 cases, closed circuit equipment was set up but not used for one of the following reasons: the case was continued; there were guilty pleas; the defense stipulated to the information; the victim testified in the courtroom; or the judge denied the use of the technology.

Chart 3

Requests for Closed Circuit Reasons Equipment Not Used

Cases	Reasons
8	Plea Agreement
7	Judge Denied Use
4	Continuance
3	Victim Testified in Court
2	No Reason Given
1	Defense Stipulates

Source: Virginia Department of Criminal Justice Services, Closed Circuit Two Way Testimony: Summary of Use in Virginia, 1998

Findings from the DCJS program evaluation include:

- The Virginia State Police did an excellent job in setting up and operating equipment and in providing necessary technical assistance.
- Child witnesses felt safe and did "fairly well" with their testimony.
- Prosecutors expressed concern over age limits in the statute (12 and under). Victims over 12 (aged 13 and 14) who would otherwise qualify because of the documented trauma they were expected to experience, were not able to use closed circuit television.
- The statute allows only child victims to use closed circuit testimony, and excludes child witnesses. Concern was expressed for sibling witnesses who were required to testify live. Many of the same issues of fear and trauma were present with the siblings who witnessed the abuse as with the child victim.¹⁸

Across the state, there is widespread agreement that live testimony is most effective and preferred over the use of closed circuit television. However, in those cases in which the victim is clearly unable to testify, the accessibility of closed circuit technology is important and has been a valuable tool in the prosecution of child abuse cases.

VII. Findings and Recommendations

Findings

Closed circuit testimony is one of a number of courtroom accommodations to reduce the trauma experienced by child victims and to enhance a child's ability to participate in prosecution of the case. The U.S. Supreme Court addressed and held constitutional the use of closed circuit testimony in *Maryland v. Craig*, 497 U.S. 836 (1990). The Court

¹⁸ Ibid.

determined that the state's interest in safeguarding the physical and psychological well-being of child victims through minimizing the emotional trauma produced by testifying was sufficient to permit the use of closed circuit testimony. The technology has been used in the prosecution of child abuse cases in Virginia since 1988. In many of these cases, prosecutors report that the use of closed circuit testimony has made the difference between the child victim's ability to testify against his alleged abuser in court and his inability to do so because of severe trauma which would result from having to face the accused.

Current Virginia statute allows for the use of closed circuit testimony for child victims age of 12 and under. Interpretations vary as to whether the age standard is applied at the time of the alleged offense or at the time of the trial. In practice, most judges have applied the standard to the child's age at the time of the trial. Many prosecutors and child welfare professionals report this to be problematic. The child's age at the time of the trial is arbitrary and may be subject to manipulation due to court delays and continuances. Disclosure of the abuse may not be immediate because of the child's fear and trauma. Investigation of the case, once it has been reported, may take several months. Delays in court docketing and continuance of court proceedings add to the time elapsed between the occurrence of the offense and the trial. All of these factors combine to create a situation in which a child for whom closed circuit testimony is necessary will become ineligible because he has celebrated a 13th birthday in the interim. Any protections afforded to the child because of his age should relate to the time of the alleged offense, not the time of the trial.

Children over the age of 12 may also experience severe trauma if required to face their alleged abusers in court. Child abuse, particularly child sexual assault, produces both psychological and physical trauma and alleged victims have often been threatened with harm or death if they report the crime. The prospect of face-to-face confrontation with the defendant is particularly daunting for some children, including those children who may be 13 or 14 years of age. Such trauma may prevent them from being able to testify in court, thereby making prosecution of their cases difficult, if not impossible.

Recommendation 1

Amend Section 63.1-248.13:1 (civil proceedings) and Section 18.2-67.9 (criminal proceedings) to allow for the use of closed circuit testimony in proceedings involving alleged abuse or neglect of a child and/or involving specified offenses against a child, who is the age of 14 or under at the time of the alleged offense and is under 18 at the time of the trial.

Findings

Child abuse often occurs within families. A family or household member is often the alleged perpetrator. Siblings are often witnesses to the abuse and are threatened with serious consequences if they report what they have observed. Frequently, these sibling witnesses experience traumatic feelings of guilt because they were "spared" the abuse and/or because they were unable to protect their sibling. When such cases come to trial, these sibling witnesses may also experience severe trauma at the prospect of facing the alleged abuser in court. Again, such trauma may prevent the witness from being able to testify, since the current closed circuit statute applies only to child victims. The opportunity to use closed

circuit testimony should also be made available to these child witnesses, if the court finds that they are unavailable to testify for any of the following reasons:

- 1) the child's persistent refusal to testify despite judicial requests to do so;
- 2) the child's substantial inability to communicate about the offense; or
- 3) the substantial likelihood, based on expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Recommendation 2

Amend Section 63.1-248.13.1 (civil proceedings) and Section 18.2-67.9 (criminal proceedings) to include an allowance for the use of closed circuit television for child witnesses who are the age of 14 or under at the time of the alleged offense and under 18 at the time of the trial.

Findings

Child abuse has been recognized as one of the most difficult crimes to detect and prosecute. The Commission on Youth recognized the need to evaluate investigative procedures which may improve a child victim's ability to tell the truth in a difficult situation. Because of the frequent lack of corroborating evidence, such as physical, medical, or eyewitness evidence, the child's statements are crucial to a determination of whether or not the abuse occurred. Thus, interviews with children "provide unique opportunities to document the often fleeting evidence that is essential to prove child abuse."¹⁹

Current Virginia law mandates that all interviews of child victims be audiotaped. A great deal of controversy exists around the merit of videotaping investigative interviews. While videotaping does provide an accurate, objective record of a particular interview, a single initial interview is often not a child's only telling of his story and is frequently not complete. It may take several interviews over an extended period of time before a child is comfortable enough to report the entire story. Frequently, children will "test the waters" slowly as they develop trust in their interviewers. This progressive nature of disclosure may not lend itself to capture on videotape. Questions about interviewers' skills have been raised, and the tendency to critique the interviewer instead of listening to the child has been identified as a concern. The knowledge that an interview is being taped may make a child feel uncomfortable and therefore less able to tell his story. There are risks of technical error and questions about confidentiality, access, preservation and ownership of the videotape. Finally, financial and logistical problems make videotaping of all investigative interviews impossible for some localities.

Recommendation 3

The Commonwealth of Virginia should not mandate the videotaping of investigative interviews in child abuse cases.

Findings

Multidisciplinary team models for the investigation of child abuse have proven effective in coordinating the judicial and social service systems' response to victims of child abuse. Typically, teams conduct joint interviews in neutral, child-friendly settings. They make team decisions about management of child abuse cases and provision of comprehensive services to child victims and their families. The keys to the success of the model include the team's

¹⁹ Meyers, p.203.

ability to function collaboratively and the wide range of coordinated services (medical, mental health, legal, etc.) offered to children and their families. The Children's Advocacy Center is one such model currently being developed in several Virginia localities. The Office of Juvenile Justice and Delinquency Prevention offers funding, training, and technical assistance to selected localities to implement this model.

Recommendation 4

The Department of Social Services and the Department of Criminal Justice Services should support local and regional teams in the implementation of successful investigatory models by disseminating information about program models, providing technical assistance, and identifying potential funding sources to localities.

Findings

Virginia has the technology and the technical expertise to make closed circuit testimony available throughout the state. The Virginia State Police house the three mobile closed circuit units and provide set-up and technical support. Prosecutors have reported that they do not know enough about the technology and its applicability in child abuse cases to request it on behalf of their clients. Few judges have had such requests brought before them. In the three-year period 1994-97, requests for use of closed circuit testimony were made in 79 cases. In some cases in which requests for closed circuit testimony have been made, concern has been raised about the timing of the judge's decision to allow it. While the *Code* requires that the motion to use closed circuit testimony be filed at least seven days before the trial, judges frequently do not rule on the motion until the day of the trial. This delay interferes with the adequate preparation of the child for testifying and may lead to equipment being set up but not used. Educational opportunities should be provided to judges and prosecutors, with a focus on current statute, applicability to specific cases, timing of the motion hearing, legal burden, finding of trauma, and technology.

Recommendation 5

The Department of Criminal Justice Services, through the Children's Justice Act, should provide comprehensive education to judges, prosecutors, and guardians ad litem in the use of closed circuit testimony in child abuse cases.

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HOUSE JOINT RESOLUTION NO. 280

Offered January 26, 1998

Establishing a joint subcommittee to study the benefits and feasibility of establishing regional videotaping centers for child sexual assault victims.

Patrons—Watts, Almand, Melvin and Puller; Senators: Gartlan and Howell

Referred to Committee on Rules

WHEREAS, child sexual abuse is a heinous crime which causes great trauma for the victimized child, and a child who has been subjected to sexual abuse should not be further victimized by the criminal justice system; and

WHEREAS, multiple interviews concerning child sexual abuse allegations have been proven to be detrimental to the emotional well-being of a child and to establishing a clear factual history; and

WHEREAS, the 1997 Annual Report of the Virginia Criminal Sentencing Commission indicates that of all felony offenses, rape and sexual assault have the second lowest compliance with sentencing guidelines and that the most common reason for noncompliance due to weak evidence involves sexual offenses against children under age 13; and

WHEREAS, Minnesota and other states have implemented an investigative/assessment procedure that includes one videotaped interview of a child by a specially trained police investigator using a format that is developmentally designed to obtain accurate information and assess the child's competence to provide such information; and

WHEREAS, a multi-disciplinary approach is used and the interview is monitored by other professionals, such as social service workers, prosecuting attorneys, and health care providers, who may need access to the child's statement and who are able to call questions in to the police investigator during the course of the interview; and

WHEREAS, videotaping the interview preserves evidence and documents both verbal and nonverbal behaviors during disclosure; and

WHEREAS, such investigatory interviews have provided valuable corroboration to the court testimony of children required by the confrontation clause of the United States and Virginia Constitutions; and

WHEREAS, the State Board of Social Services recently reflected its concern about how the facts of child abuse cases are established by enacting a regulation requiring that most child protective services interviews with the alleged victim child be audiotaped; and

WHEREAS, the implementation of a such an investigatory videotaping procedure raises numerous issues that need to be thoroughly examined; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the benefits and feasibility of establishing regional videotaping centers for child sexual assault victims. The joint subcommittee shall be composed of 12 members, which shall include 10 legislative members and two nonlegislative citizen members as follows: six members of the House of Delegates, to be appointed by the Speaker of the House; four members of the Senate, to be appointed by the Senate Committee on Privileges and Elections; one attorney for the Commonwealth, to be appointed by the Speaker of the House; and one local law-enforcement representative, to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall examine and provide recommendations regarding the following issues: the operation of videotaping centers in other states; the admissibility of such videotapes in court; the effect such videotapes have had on the adjudication of sexual offense charges involving child victims; the establishment of multi-disciplinary teams and the necessary training; the cost of establishing and operating such a center; and possible funding sources

The direct costs of this study shall not exceed \$ 7,500.

The Division of Legislative Services shall provide staff support for the study. Technical assistance shall be provided by the Departments of Criminal Justice Services and Social Services. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and

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1 recommendations to the Governor and the 1999 Session of the General Assembly as provided in the
2 procedures of the Division of Legislative Automated Systems for the processing of legislative
3 documents.

4 Implementation of this resolution is subject to subsequent approval and certification by the Joint
5 Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of
6 the study.

Official Use By Clerks

Passed By

The House of Delegates

without amendment

with amendment

substitute

substitute w/amdt

Passed By The Senate

without amendment

with amendment

substitute

substitute w/amdt

Date: _____

Date: _____

Clerk of the House of Delegates

Clerk of the Senate

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