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MINNESOTA
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ISSUES

SUMMARY REPORT
ON
CRIMINAL JUSTICE ASPECTS
OF
CHILD SEXUAL ABUSE

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Executive Branch Policy Development Program
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SUMMARY REPORT
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OF
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GOVERNOR'S INTERAGENCY TASK FORCE
ON CRIMINAL JUSTICE POLICY

NOVEMBER, 1984

INTRODUCTION

In late 1983 Governor Perpich appointed the Interagency Task Force on Criminal Justice Policy to review, assess and make recommendations about criminal justice policy issues which cross over agency lines. The Task Force consists of state agency commissioners, legislators, a Supreme Court Justice, the State Public Defender, the Ombudsman for Corrections and the State Attorney General. (See Attachment A)

The Task Force selected child sexual abuse as its first priority policy issue for review because of the recent attempts to address this problem primarily through the criminal justice system, and because this issue has generated public controversy and interest. Also many of the agencies represented on the Task Force have some responsibility or legitimate role in child sexual abuse matters.

The Task Force chose to limit the discussion to criminal justice aspects of child sexual abuse although it is understood that the problem cannot be resolved within the criminal justice system alone.

For years child sexual abuse has been either ignored or dealt with only as a social welfare matter. Cases were seldom prosecuted in court. Better understanding of the issue and the broader implications of the problem have encouraged a more aggressive response. Recent legislation has supported pursuing child sexual abuse as a criminal matter.

In addition to the concern about the immediate negative impact on the child, it is now known that many adult criminals were victims of child sexual abuse and many adult sexual abusers were themselves abused as children. Juvenile offenders, too, have often been victims of child sexual abuse. Developing criminal justice policy which affect child sexual abuse has many long-range implications.

PROCEDURE

The Task Force developed a series of policy issues for discussion which covered various phases of the criminal justice system response to child sexual abuse. The phases include detection/reporting, investigation/prosecution, sentencing/treatment and victims.

It should be understood that this report is not put forth as a comprehensive analysis of the problem. In view of general interest and concern about child sexual abuse, the Task Force felt it important to complete a fairly early and broad overview in order to present to the Governor and the legislature some of the areas of concern in dealing with this problem through the criminal justice system.

The Task Force chose to learn about the topic by asking persons knowledgeable of these aspects to respond to the policy issues in general and in light of their experience. They were invited to join in a discussion of the issues.

The Task Force heard from law enforcement officers, educators, prosecutors, judges, social workers, therapists, and corrections specialists. (See Attachment B).

RESULTS

The speakers raised many concerns about the criminal justice system response to child sexual abuse.

BALANCE

Specifically all speakers mentioned the constant challenge to balance the protection of the child with the rights of the accused. Although such a need to balance is important in all phases of criminal justice, the involvement of children, and the emotional nature of this issue, makes balancing especially critical in child sexual abuse. The Task Force discussed at length the appropriate role of the criminal justice system in this spectrum. For some, protection of the child was foremost; the child should always be protected. For others, there was the concern about the accused. Small children make difficult witnesses, thus placing the defendant in a precarious position.

REPORTING

Most speakers mentioned that there is under-reporting. There are many reasons to not report even though M.S.626.556 mandates that professionals engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement report to a law enforcement or welfare agency. Some of the reasons given for non-reporting include confusion about how, what, when, or to whom to report, or fear of being wrong.

One of the biggest reasons for not reporting is peer group pressure. This is mentioned in particular with respect to teachers and workers in institutions such as day care centers and youth centers. Neighbors are also reluctant to report suspicions. Others are reluctant to report because of a lack of knowledge about how cases are to be handled and a lack of confidence in the social welfare or law enforcement systems to adequately deal with the problem.

Teachers are especially concerned about reporting because there is a fear that the action might make a child's life worse. There is also confusion within the school system about whether teachers should report directly to law enforcement or to an in-house committee, which would determine what, if any, action would be taken. Over all there appears to be a lack of uniformity in implementing the child abuse reporting laws.

The Task Force questioned the general conclusion in the media and elsewhere that child sex abuse is a crime of the white middle class. The speakers indicated that, while there is not much evidence, child sex abuse crosses racial and cultural lines and is not limited to any particular group. One special problem appears to be in lack of reporting of the crime in the minority community.

Persons are seldom prosecuted for non-reporting. Legislators on the Task Force were especially concerned about this. Legislative intent expected that abuse be reported with no exceptions. Prosecutors stated that in some cases the person who does not report the case is also the key witness and therefore is not prosecuted for non-reporting. In addition, the recent Hennepin County decision regarding non-reporting of suspected child sexual abuse by school personnel raises issues about the constitutionality of existing reporting laws.

TRAINING

Because detection of and intervention with child sexual abuse involves persons from welfare, law enforcement, public health, and education, there is need for these persons to be well trained regarding unique aspects of this type of problem. Each has a legitimate role; each needs to understand his or her role and that of the other agencies. In particular speakers mentioned that joint training was effective in helping each professional understand the role and responsibility of his/her discipline in the process.

PROSECUTION

In general, the criminal justice system is seen as an appropriate mechanism for response to child sexual abuse. Based on the speakers' responses, however, it became apparent that prosecution of child sexual abuse cases varies across the state. In some counties almost none of these cases are prosecuted while in other counties the cases are vigorously pursued.

Other prosecution issues discussed by the Task Force included the appropriateness of plea bargaining, as well as factors such as the impact of the trial on the victim and the family. The questions underlying these factors are whether these "social considerations" should be taken into account when deciding to try a case and whether a prosecutor is adequately prepared to assess these social considerations or whether only the elements of the crime should be used in the decision to prosecute.

CHILD WITNESS

Over and over again the Task Force heard about the difficulty of dealing with child witnesses. Speakers raised the concern about cross examining children and the extreme difficulty in working with small children. Although the use of video tapes is now admissible, the right of confrontation becomes another problem. Statutes and case law are not clear on the use of expert witnesses and the admissibility of out of court testimony. These factors become even more complex in child sexual abuse cases. Again, the issue is how to balance a defendant's right to confrontation and cross-examination of a child victim or witness against the need to protect the child from emotional stress in the effort to elicit and verify the truth of statements or accusations.

SENTENCING

The Task Force heard almost complete consensus that for child sex offenders both treatment and incarceration options are essential. There was little discussion about how much or how long for each component; however, the speakers emphasized that the assurance of court action and a prospect of incarceration are important aspects of the treatment process. Incarceration can occur in prison, the workhouse or jail.

VICTIMS

The justice system is geared toward treatment of offenders, but has not traditionally dealt with treatment of victims. Speakers emphasized the need for treatment of child victims to prevent long-term problems for the child and others. There is significant evidence that abused children often become abusers themselves or engage in other forms of anti-social behavior in later life.

JUDGES

The Task Force heard that because judges have a key role in the resolution of child sexual abuse cases, it is important for them to have the most recent information about resources and possible sentencing strategies. As in the case of prosecutors, the Task Force heard that judges' understanding of and response to child sexual abuse varies widely.

RESEARCH

There is very little information about the long-term impact of child sexual abuse on the victim, the family and the offender. Nothing is known about the effect of the various intervention models currently in use in Minnesota. In particular there is almost no information about how best to treat victims. There is more and more evidence that mothers of abused children were also abused as children, but little is known about the impact of this factor.

Research is a major gap in the understanding child sexual abuse and how best to deal with the problem. There are no research results on this topic and no current plans in Minnesota for a major research effort. More research is needed into the effect of the methods of intervention.

RECOMMENDATIONS:

1. Evaluate Traditional Notions of Witness Testimony in Relation to Child Victims.

Particular attention should be paid to the following issues.

- a. Right of confrontation
- b. Hearings
- c. Use of expert testimony

2. Support Maintaining a Statutory Structure Which Includes Treatment and Incarceration as Sentencing Components.

If Minnesota Statute §609.346 is cited by the court in sentencing the following criteria should be met: (This statute allows for a stay of imposition if the court finds that such a stay is in the best interest of the victim or the family unit.)

- a. A professional assessment indicates the offender can respond and has been accepted by a community-based or community located program;
- b. A minimum time of local incarceration;
- c. A presumptive state commitment if the offender fails to complete the local program; and
- d. That the victims will receive appropriate counseling and other services.

3. **Affirm the Use of Plea Bargaining as an Appropriate Mechanism for Resolving Some Child Abuse Cases.**
4. **Develop Victim Sensitivity Training for Professional (law enforcement, human services, legal, judicial) Personnel Involved in Processing Child Sexual Abuse Cases.**
5. **Develop Cooperative Training Programs for Professional Personnel Involved in Processing Child Sexual Abuse Cases.**
6. **Clarify and More Vigorously Enforce Child Abuse Reporting Laws.**

Urge the legislature to review and clarify the reporting of child abuse in light of the recent Hennepin County decision as well as the concerns expressed by the people who spoke to the Task Force.

7. **Maintain the Interagency Study Group on Child Abuse for ongoing communication.**

This study group should involve personnel from:

- a. Department of Public Safety
- b. Department of Corrections
- c. Department of Human Services
- d. Department of Education
- e. Office of the State Attorney General
- f. State Public Defender

8. **Request the County Attorneys Association to Review and Report on Charging and Plea Bargaining Practices in Child Sexual Abuse Cases.**

Among the issues to be considered are:

- a. What factors are involved in determining whether the juvenile or criminal system should be utilized?
- b. What factors are involved in determining the appropriate charge?
- c. What factors are involved in determining the appropriate plea disposition?
- d. To what extent do victims' concerns impact upon the charging and case disposition process?
- e. Apparent unevenness in charging practices throughout the state.

9. Request research in the problems of child sexual abuse and the long-term impact of models of intervention on the victims, the offender, and the family.

ACTION STEPS:

The Task Force will present its recommendations to the Governor and the Legislature, and other affected groups.

APPENDIX A.

GOVERNOR'S INTERAGENCY TASK FORCE
ON CRIMINAL JUSTICE POLICY

Paul Tschida, Chairperson
Commissioner of Public Safety

Norman Coleman
Assistant Attorney General
Representing Attorney General H. H. Humphrey

C. Paul Jones
State Public Defender

Wanda Schumacher
Legislative Liaison
Representing Leonard W. Levine
Commissioner of Human Services

John Poupart
Ombudsman for Corrections

Orville Pung
Commissioner of Corrections

Justice George M. Scott
Minnesota Supreme Court

Nan Skelton
Assistant Commissioner of Education

Senator Linda Berglin

Senator Dean E. Johnson

Senator Steven Novak

Representative Sharon Coleman

Representative Connie Levi

Representative Randy Staten

APPENDIX B

RESOURCE PERSONS - CHILD SEXUAL ABUSE

Maribeth Crowell
Deputy Sheriff
Cass County

Nan Skelton
Assistant Commissioner
Department of Education

Michael Milligan
County Attorney
Cass County

Cheryl Indehar
St. Paul Police
Department

William Klumpp
Assistant County Attorney
Washington County

Jack Erskine
Superintendent
Bureau of Criminal Apprehension

Jean Schleh
Assistant County Attorney
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Sandy Hewitt
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Honorable Donald A. Gray
District Court
Second Judicial District

Fern-Sepler King
Child Sexual Abuse Specialist
Department of Human Services

Rina McManus
Deputy Commissioner
Department of Public Safety

Peggy Specktor
Director, Sexual Assault Programs
Department of Corrections