

Videotaping child sexual abuse investigation interviews

The U.S. Supreme Court has not yet ruled that videotaping investigative interviews with children suspected of having been sexually abused is mandatory.¹ However, “[a]t the best child advocacy centers, interview protocols are followed, the interviews are videotaped, and both social services and the police observe the interviews in order to minimize the need for multiple interviews. Because the interviews are recorded, the exact words used by the interviewer and by the child can be closely scrutinized for evidence of suggestion, confabulation, or misinterpretation.”²

This article investigates the extent to which departments of human services should be mandated by statute to videotape child sexual abuse investigative interviews. While numerous states instruct that videotaping may be done, most do so only by regulation or administrative directive.

Alaska has one of the most detailed legislatively mandated statutes. Alaska Stat. § 47.17.033 provides in pertinent part:

¹ See [Crawford v. Washington, 541 U.S. 36 \(2004\)](#) (an out-of-court statement by a witness that is testimonial is barred under the Confrontation Clause of the Sixth Amendment unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness regardless of whether such statement is deemed reliable by the court). Note that no comprehensive definition of “testimonial” was offered by the court. On October 2, 2014, the U.S. Supreme Court granted cert. in *Ohio v. Clark*, 13-1352. The case raises two major issues: (1) Whether an individual's obligation to report suspected child abuse makes that individual an agent of law enforcement for purposes of the Confrontation Clause; and (2) whether a child's out-of-court statements to a teacher in response to the teacher's concerns about potential child abuse qualify as “testimonial” statements subject to the Confrontation Clause.

² Lyon, T. & Dente, J. (2012). [Child witnesses and the Confrontation Clause. *The Journal of Criminal Law and Criminology*](#).

“...(d) An interview of a child conducted as a result of a report of harm may be audiotaped or videotaped. If an interview of a child concerns a report of sexual abuse of the child by a parent or caretaker of the child, the interview shall be videotaped, unless videotaping the interview is not feasible or will, in the opinion of the investigating agency, result in trauma to the child.

(e) An interview of a child that is audiotaped or videotaped under (d) of this section shall be conducted

(1) by a person trained and competent to conduct the interview;

(2) if available, at a child advocacy center; and

(3) by a person who is a party to a memorandum of understanding with the department to conduct the interview or who is employed by an agency that is authorized to conduct investigations.

(f) An interview of a child may not be videotaped more than one time unless the interviewer or the investigating agency determines that one or more additional interviews are necessary to complete an investigation. If additional interviews are necessary, the additional interviews shall be conducted, to the extent possible, by the same interviewer who conducted the initial interview of the child.

(g) A recorded interview of a child shall be preserved in the manner and for a period provided by law for maintaining evidence and records of a public agency.

(h) A recorded interview of a child is subject to disclosure under the applicable court rules for discovery in a civil or criminal case...”

North Dakota³ provides that the “department shall adopt guidelines for case referrals to a children's advocacy center. When cases are referred to a children's advocacy center, all interviews of the alleged abused or neglected child conducted at the children's advocacy center shall be audio-recorded or video-recorded.”

The National Children’s Advocacy Center published a report in 2011 entitled *Forensic Interviewing Practices in Children’s Advocacy Centers: 2009 Data*.⁴ It notes that 89.5% of child advocacy centers (CAC) responded that they record forensic interviews; 10.5% responded they did not. Of those that responded that they did record forensic interviews, 95% responded that all interviews were recorded; only 5% responded that they did not record all interviews.

When CACs were asked if they were mandated to record forensic interviews by state statute, of the 229 respondents, 42 (18.3%) responded “yes” while 187 (81.7%) responded “no.”

Attorney Bruce A. Young of New York asserts that “when judges, attorneys for children, defense lawyers and prosecutors are forced to rely on the subjective opinions of what happened in the interview, we are reduced to second guessing the reliability of the investigator’s subjective motives instead of examining the more objective recording of the verbatim questions, answers and body language of the subject and questioner. Note

³ Cent. Code § 50-25.1-05.

⁴ Available at <http://www.nationalcac.org/images/pdfs/CALiO/forensic-interview-practices-cacs-2009-2.pdf>

taking is plagued with inaccurate, revised, delayed, edited recording, and failures to preserve contemporaneous notes.”

There are numerous benefits of codifying current practice into statute, the most prominent being that, for legal purposes, the statute becomes a key indication of the standard of care. Such standards play a decisive role in determining whether appropriate service is delivered in a reasonable manner, and by minimizing unwarranted variations. The public, human service professionals and the legal community thereby have a clear expectation regarding how sexual abuse investigation interviews should be handled.

Child welfare practice is constantly evolving, ideally driven by developments in evidence-based practice. While there is no one definition of standard of care, codifying a practice into law is undisputed evidence of a society’s expectations. Perhaps it’s time for state legislators to mandate that, under appropriate circumstances, child sexual abuse investigation interviews should be videotaped.

Daniel Pollack is professor, Yeshiva University, School of Social Work, New York City, and a frequent expert witness in child abuse and foster care abuse cases. He can be reached at dpollack@yu.edu; 212-960-0836. This article originally in *Policy & Practice* 73(1), 36-37.