

DVD RECORDING THE FORENSIC CHILD ABUSE
VICTIM INTERVIEW: Washington State's pilot
project 2003 – 2005

Acknowledgements:

This project was funded by the Children's Administration of the Department of Social and Health Services for the State of Washington.

This project relied upon the support and co-operation of the Prosecuting Attorney Offices for King, Benton, Franklin, Kittitas and Stevens counties.

This project benefited from the participation of the Washington Coalition of Sexual Assault Programs; the Harborview Center for Sexual Assault and Traumatic Stress; and Washington State University

Individual Acknowledgements:

Andy Miller – Benton County Prosecutor; Steve Lowe – Franklin County Prosecutor; Greg Zempel – Kittitas County Prosecutor; Jerry Wetle – Stevens County Prosecutor; Lisa Johnson – Senior Deputy Prosecuting Attorney for King County; David Ryan – Senior Deputy Prosecuting Attorney for King County; Rich Anderson - Senior Deputy Prosecuting Attorney for King County; Christine Liebsack – Child Interviewer for King County; Lisa Larrabee – Child Interviewer for Kittitas County; Mari Murstig – Child Interviewer for Benton and Franklin Counties; Fran Lynn for Stevens County; Ashley Wilske – Child Interviewer for King County; Lucy Berliner – Harborview Special Assault Center; Laura Merchant – Harborview Special Assault Center; Mike Gaffney – Washington State University; Teri Herold-Prayer – Washington State University; Suzanne Brown-McBride – Washington Coalition of Sexual Assault Programs; and many others.

CONTENTS

Executive Summary.....	4
Introduction.....	5
Findings.....	9
Additional DVD Recording Sites Established.....	12
Conclusions.....	13

Appendices:

- A. Data Collection Form for DVD recording project.
- B. Equipment list and room design.
- C. Sample Protective Order
- D. WCSAP Victim Reactions to DVD Recording
- E. Selected Statistical Findings by WSU

EXECUTIVE SUMMARY

The pilot project on recording of the forensic child interview generated the following general findings:

- (1) DVD recording of the child interviews was found to enhance the ability of prosecutors to file appropriate charges. Greater detail as to the child's report and the ability to see the demeanor of the child was helpful for filing decisions. This benefited cases involving both younger and older children.
- (2) DVD recording of the child interviews was found to increase the ability and timeliness of plea negotiations. Professional interviews with clear reports sped up the plea negotiation process.
- (3) DVD recording of the child interviews was not clearly advantageous or disadvantageous in conducting criminal jury trials. The recording did remove certain issues during the course of a trial, for example claims that the interviewer was using leading questions or coercing allegations, which ultimately highlighted the non-leading nature of the interview and the professionalism of the interviewer. At the same time, it provided a ready exhibit for focusing the jury away from the child's actual trial testimony and onto issues surrounding the conduct of the child interview.
- (4) DVD recording was useful in improving the skills of child interviewers, but having a specialized child interviewer is clearly the priority for child abuse investigations.

The following issues were observed concerning the implementation of recording forensic child interviews:

- (1) While initial setup costs are predictable, ongoing maintenance of the system requires resources and some expertise.
- (2) Technical failures, especially sound quality, were ongoing problems requiring equipment, room arrangement, and interview practice adjustments.
- (3) Transcription was necessary for cases going to trial, for witness preparation and for appellate review. Transcription cost for all cases was prohibitive.
- (4) An aggressive commitment to recording confidentiality is necessary. Protective orders must be used in every case. A system of accounting for recordings after resolution of charges is necessary. Statutory changes may be necessary to protect the confidentiality of the recordings.
- (5) Court admission of recordings was contradictory amongst individual judges.
- (6) Victim concerns centered upon who would ultimately see the recording. When assured of the use of protective orders, victim concerns seemed to be addressed.
- (7) Parties in dissolutions and dependencies sought access and use of the recordings.

INTRODUCTION

In 2002, the Children's Justice Task Force for Washington State agreed to fund a pilot project on recording of the forensic child abuse victim interview. Five counties agreed to DVD record the forensic child abuse victim interviews from January 1, 2003 to January 1, 2004. The purpose of the pilot project was to review the method of documenting child abuse victim interviews, not to review how to conduct a child abuse victim interview.

The pilot project purchased equipment for all five interview locations from a single vendor, and arranged for installation by the vendor. Dave Ryan from King County visited the interview rooms and arranged for the purchase of equipment by the pilot project. The equipment was permanently installed and became the property of the five pilot project counties upon termination of the pilot project. Each interview room was equipped with a dual camera set-up, and wiring for fixed or portable microphones. One camera focused upon the child, and the other captured the interviewer and the entire room. The pilot project initially used fixed microphones for recording audio.

The Washington Association of Prosecuting Attorneys coordinated a meeting with Washington State University and the Harborview Center for Sexual Assault and Traumatic Stress, prior to the start of the project, to finalize the information that was collected for review and to draft the form included within this report as Appendix A. A review committee of prosecutors and child interviewers was formed to evaluate and report on the project. The review committee did not possess the actual tapes of interviews. WAPA coordinated additional meetings in order to evaluate the project and to issue interim updates and this final report.

The pilot project counties agreed to record, at a minimum, all forensic interviews involving children under the age of ten years, which took place within the five child interview rooms furnished under this pilot project with DVD equipment, and which were conducted by the regularly assigned child interviewer or detective. Forensic interviews were those conducted for the purpose of investigating whether to file criminal charges. The pilot project age limit mirrored the age limit for the admission of child hearsay under RCW 9A.44.120. The pilot project counties recorded additional interviews at their discretion. All recorded interviews were included within the pilot project analysis. CPS was given access to view the recordings, and transcripts or written summaries of the recorded interviews, but the actual tape did not leave the possession of law enforcement/prosecution, and was available solely for the purposes of criminal investigation and prosecution.

At the outset of the forensic child interview and on the recording, the child was informed that the interview was being recorded. To the extent possible, pre-interviews were not conducted prior to recording. The child interviewer was not required to inform the child of the recording in any specific manner or with any specific phrases, but interviews were not recorded over the objection of the child.

Pilot project counties sought to enter protective orders for the DVD tapes under RCW 10.97.130 and CrR 4.7. A uniform protective order for the DVD tapes was developed, and is attached as Appendix C. Usually, dual recordings were made, with one copy being put into evidence by law enforcement and the other copy remaining with the prosecution for viewing or copying to the defense. The pilot project counties did not release the DVD tape outside of criminal justice system agencies unless ordered to do so by the Superior Court. The tapes were not used in trainings, but were used in a confidential setting, composed solely of child interviewers, in order to conduct post-interview peer review during the pilot project. The pilot project review committee did not view, possess or record any of the tapes. DVD tapes are stored and destroyed in accordance with existing archive rules.

Pilot project interviewers entered information on a form provided by WAPA. A copy of the partially completed form was faxed to WAPA upon completion of the child interview. The form additionally required input by prosecuting attorneys, in the event the case was submitted for a filing decision. The original form did not leave the possession of the prosecuting attorneys office in the event that the interview was forwarded to law enforcement. The pilot project counties initiated procedures to track interviews forwarded to law enforcement, and subsequently referred for prosecution, in order to complete the form. The form included whether the victim wished to exercise his or her rights under RCW 7.69A.030. If a case was referred back to the prosecution by law enforcement, the deputy prosecutor assigned the case was responsible for completing the form and faxing it to WAPA upon completion of the case by conviction, acquittal or declination to file.

Each of the five child interview sites completed recording for calendar year 2003. Under the terms of the pilot project, they recorded until January 1, 2004. It was optional for the counties to continue recording under the same criteria as the pilot project employs after that date. Each county chose to continue recording child abuse victim interviews upon completion of the pilot project term.

WAPA expended additional funds to provide DVD tapes for the five sites through the end of 2003. The cost of the DVDs exceeded estimates primarily because of need to make dual recordings. Since the counties decided to continue to record, each has funded ongoing expenses out of county revenues after January 1, 2004.

The pilot project expended \$6,000 for transcription costs at the Benton/Franklin site. This funding was insufficient to cover the costs for the entire calendar year of 2003. The pilot project counties have decided to limit transcription to cases that are going to proceed to trial.

The pilot project counties initial review of the recording of child interviews included the following observations:

- In one King County case, the trial judge expressed disappointment that the recording was not used in trial, rather the prosecution and defense both relied upon transcription passages for impeachment and rehabilitation of the child witness. This occurred after the court found certain portions of the child interview recording inadmissible. Interviews with prosecutors and defense counsel will need to address the time commitments in finding specific passages on DVDs and any difficulties in marking the location of those passages for trial usage or redaction.
- In a Kittitas County case, when the victim's testimony became uncertain at trial, the court denied admission of the recording, but did allow for recess of the trial so that the recording could be used to refresh the memory of the child witness. The judge would not compel the defense to provide the state with a copy of their transcript of the recording. The state had sought to use the transcript to refresh the memory of the child witness in court and to ask the witness questions about her testimony during the interview. Under this ruling, Kittitas County feels bound to transcribe any videotapes for cases going to trial.
- In Benton County, detectives and prosecutors have been satisfied with the recording, but have not used it in trial yet. They have experienced technical difficulties in taping (power surges, taping stops, etc.). The courts have entered the protective orders without resistance.

The usage of the recordings in trial differs from county to county, depending upon the disposition of the individual trial courts.

In 2004, WAPA accessed and expended additional funds to purchase and install recording equipment for seven additional counties (Island, Kitsap, Chelan, Douglas, Spokane, Thurston, and Walla Walla). Approximately \$56,000 was divided amongst six interview sites (Chelan and Douglas counties are using a joint interview room).

In Benton County, a child abuse case was retried after a hung jury. The first jury had hung 11 to 1 to convict, and the recording of the interview was not admitted at trial because of redaction issues. At the re-trial, the recording was redacted and admitted. The defense retained an expert witness to evaluate the interview and specific questions, but not the live testimony of the child before the jury. The jury acquitted in the re-trial. There were other changes between the first and second trials, such as the impeachment of the initial reporter with a theft conviction that was committed after the first trial. But, everyone involved in both trials believed the focus on the recording in the second trial was an important issue. This case and recording do not raise issues concerning the defendant's actual guilt – there existed a credible, but unfortunately inadmissible, confession by the defendant.

On April 26, 2005, the participating prosecutors, child interviewers, child advocates, experts and pilot project reviewers met in Tacoma, Washington. At the meeting, Washington State University, Harborview Center for Sexual Assault and Traumatic Stress, the Washington Coalition of Sexual Assault Programs, and the participating counties presented their experiences and findings. The entire group evaluated the pilot project and findings.

FINDINGS

1. What settings lead to successful recording of the child abuse victim interview?

Participants unanimously agreed that having a fixed location for forensic child abuse victim interviews was essential. Having a protocol for the timing and taking of the interviews creates an orderly process that is conducive to relaxing the child victim and eliciting information. Using the same interviewer creates an orderly and calm interview process. The room should be child and technology friendly; for example use neutral colors and avoid wooden tables and chairs being moved upon tile floors. The equipment should be previously installed and un-obtrusive. Background noise must be controlled, regardless of the quality or number of microphones used in the equipment set-up. When possible, the involvement and easy access of the child victim to parents or caregivers before and after the interviews was positive.

2. Was recording more effective for certain age groups of child abuse victims?

Participants found that recording the interviews was effective for all age groups. Younger children often communicate non-verbally, and the recording captured those acts for subsequent viewing and decision making. It also helped with competency determination in younger children. For older children, who often give long answers, the recording allowed for taking these statements without interruptions to catch up the note-taking. Deputy Prosecutors appreciated being able to view the demeanor of children in conjunction with review of any recorded statements. This was also helpful in cases that processed over a long period of time, or that included many instances of interviewing. In those situations, often the demeanor of the child loses affect. The recording preserved the original emotions present during the first interview. The recordings also present a better record in evaluating a failure to report versus a denial of abuse.

3. Did victims agree to recording, and if not, what were the reasons for not consenting?

Overwhelmingly, child abuse victims consented to the recording of their statements. Occasionally, concern was expressed as to who would be allowed to see the interview. These concerns, expressed by child victims and parents, were alleviated when the use of the protective order was explained. This finding reinforces the decision to use and enforce protective orders for the recordings. In the rare instances of continued discomfort with the recording, the child victims tended to be older and concerned with failure of the protective order or of the courts in safeguarding access to the recording.

4. Was access to the recording controlled? Were the protective orders effective?

Participants found that access to the recording was protected by the courts. The protective orders were agreed upon by the parties and entered by the courts. There is some concern that the public records law effect upon these protective orders is unknown. Most counties created a law enforcement original for the evidence room, as well as a

prosecutor copy that could be viewed by the defense. In certain cases, a copy was provided the defense in conjunction with entry of a protective order prohibiting duplication, and with a requirement to return. In at least one instance, a threat of taking the matter before the trial court was needed to re-claim a tape. There is some concern that in the future, these tapes will be sought in dissolution and dependency cases.

5. Were the recordings admissible in the state's case?

Generally, if child hearsay was admissible in the case, the recording was also admissible. This was not true for certain individual courts. The recording was admissible to re-fresh the child victim's recollection in all cases that we are aware of. If the child testified, the recordings were not usually offered by the prosecution. The more likely scenario would be to use the tape to respond to defense cross examination that sought to show inconsistency between trial testimony and the prior interview statements.

6. When is transcription necessary; and what are the costs?

Participants agreed that transcription will be necessary in cases that are expected to go to trial. Finding specific statements made during the interview is much easier for interviewers, prosecutors and defense by using transcripts rather than the recordings. Additionally, it is perceived as necessary for appellate review. In Benton and Franklin Counties, a proposed budget of \$6000 to cover transcription costs for all interviews during the calendar year, was exhausted before the project was half completed.

The absence of transcription in Benton and Franklin Counties during the second half of the calendar year did not negatively affect cases that did not go to jury trial. The most significant benefit of recording was achieved by actually viewing the DVD during the charging and negotiation processes.

7. How did the recordings affect Child Protective Services case handling?

In general, it appeared to the project counties that CPS was willing to defer conducting their own child interview in favor of the recorded forensic child abuse victim interview. Over the course of the year, a practice emerged of CPS audiotaping the interview using portable recorders. This method, or using an audio feed from the interview room equipment, produces an accurate copy of the DVD recording. CPS employees sometimes viewed the actual interview.

8. What affect did the recordings have on filings? Pleas? Trials? Appeals?

Participants were unanimous that the recordings improved the criminal charge filing process. More information, such as non-verbal actions and demeanor, was available in accessing the victim's credibility.

Participants were similarly unanimous on the increased incidence of obtaining pleas. This benefit was seen as to both obtaining a plea, and in obtaining a plea early in the process. To the extent pleas were obtained early in the process, the number of child

victim interviews was decreased. If a case went to trial, the reduction in the number of child victim interviews was not realized.

The effect of recording upon trials was contradictory. In Kittitas County, the trial court would not allow the use of the recording by the prosecution. In a case from Benton County, it appeared the recording was used to focus attention away from the child's actual trial testimony and focus it upon the interview protocols – this case ultimately resulted in an acquittal. Participants were split as to whether the recording created a distraction from the facts - by readily lending itself to expert evaluation as to interview protocols. However some prosecutors felt that this would only occur in cases that were going to be contested regardless of the recording. Jurors appeared to value viewing of the recording, and some prosecutors felt that both public and jury confidence in the objectivity and professionalism of the prosecution was increased. The final consensus, based upon a limited number of actual trials, was that DVD recording of the child abuse victim interview was neither an advantage, nor a disadvantage to the trial process. The project did note that if a DVD recording is challenged as to protocol or conduct, expert testimony will be necessary for both sides.

This report does not contain information in relation to appeals from convictions where the forensic child abuse victim interview was DVD recorded. No reported opinions have been issued at the time of this report being written.

9. Factoring in both effects and costs, how should recording of interviews be prioritized versus use of professional interviewers, interviewer training, or specialized enforcement units?

The most strongly held opinion by the participants of this project was that the first priority in successfully investigating and resolving child abuse cases is having a full time specialized child interviewer. The second priority was seen as ongoing training and peer review for child interviewers. The third priority was recording of child abuse interviews, based upon a finding that the recording of child interviews was a spur to improving the practices of the child interviewers. Specialized enforcement units were seen as more closely tied to size of jurisdiction and not necessarily best practices in the statewide sense. Small counties were encouraged to consider jointly conducting child abuse victim interviews in order to accomplish having a full time specialized child interviewer.

ADDITIONAL VIDEOTAPING EQUIPMENT INSTALLATIONS

In 2004, the Washington Association of Prosecuting Attorneys arranged for the purchase and installation of DVD recording equipment in six new locations. These locations did not participate in the forensic child abuse victim interview study.

The locations were the child interview rooms in Island, Spokane, Kitsap, Thurston, Walla Walla, and a jointly used room in Chelan and Douglas counties. After installation, the equipment became the property of the county.

This funding purchased and installed a dual camera recording system, with one camera focused on the child and one camera focused upon the entire interview room. The recording is in DVD format with a simultaneous backup recording machine. DVD players and monitors were purchased for use in the Prosecuting Attorneys Office and the Superior Courtroom. Remaining funds were used to purchase blank DVD tapes.

WAPA arranged for a meeting of the installation counties prior to purchase of equipment. The original pilot project counties were invited to attend. Dave Ryan of King County, who assisted in the purchase and installation of the pilot project county systems attended as a resource. The process mirrored that used in the original child interview recording pilot project funded by a grant under the Children's Justice Act.

Ongoing operating and maintenance costs are the responsibility of the installation counties. The grant purchased and installed the equipment within a limit of \$9000.

CONCLUSION

Each jurisdiction involved in the forensic child abuse interview recording project saw a benefit. This benefit manifested itself by more information being available at the filing and plea negotiation stage of proceedings. The effect of the recordings during trials was harder to evaluate, but this likely is attributable to the nature of contested proceedings rather than the benefit of the recordings. Increased public confidence in our justice system was also seen as a benefit.

While original set-up costs for recording of child abuse interviews are manageable, ongoing costs and technical expertise to maintain the set-ups increase over time. Transcription costs are necessary for cases going to trial. More importantly, the “truth seeking” benefit of recording child abuse victim interviews requires professional child interviewers. These interviewers are the first and largest investment that must be made statewide.

The State of Washington and the Judiciary must make a commitment to protecting the privacy interests of child abuse victims. The recording of victims should remain voluntary. Recording is not the equivalent of access to a child witness, or necessary to allow for the effective examination of child witnesses by either the prosecution or the defense. Additionally, effective use and review of the recorded interviews can be accomplished for both prosecution and defense without broad dissemination of the actual tapes. Protection should be given to the actual tapes from publication and use in other forums than the criminal justice system. This protection will require statutory change.

Bottom line, the most effective action that could be taken in Washington State to improve child abuse investigations is to fund and implement the statewide use of specialized child interviewers. This program should include funding for the positions, ongoing training, peer review meetings, and DVD recording.