

THE STATUS OF CHILD PROTECTION IN ST. KITTS/NEVIS

THE NEED FOR A NATIONAL
REPORTING PROTOCOL



For every child
Health, Education, Equality, Protection
ADVANCE HUMANITY

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POLICY BRIEF: ST. KITTS/NEVIS

BACKGROUND

The Federation of St. Kitts and Nevis was among the first countries in the region to sign and ratify the United Nations Convention on the Rights of the Child. Since ratification on July 24th, 1990, some gains have been made in ensuring that national laws, policies and practices conform with the spirit and intent of the convention.

Despite the positive efforts, authorities in St. Kitts/Nevis readily acknowledge that the child protection mandate required of the State has not been adequately met.

At a recent roundtable discussion hosted by the Department of Probation and Child Protection Services, the chosen theme was "Advancing Child Protection: Keeping the Promise". The forum was created so as to facilitate "sober reflection" on the "policies and practices which are contributing so immeasurably to institutionalized deficiency and neglects"¹. There was unequivocal acknowledgement during the discussion that "too many children were still being missed by a system designed to offer them protection."²

Acknowledgement of the present inadequacies in the national child protection system is an important first step in the right direction. However, identification of the weaknesses and the implementation of corrective measures are critical to the advancement of St. Kitts/Nevis commitment to making good on its national and international child protection obligations.

UNICEF's support to the government of St. Kitts/Nevis in the creation of a child abuse protocol is geared at taking those very necessary next steps in identifying and correcting some of the inadequacies in the current systemic responses to child abuse.

Although, a child abuse protocol will not, on its own, solve all of the present challenges it is certainly an efficient means by which deficiencies in the system can be identified and corrected.

This initiative is intended to produce an end product in the form of a national protocol to guide professionals in the prevention, reporting and management of child abuse.

¹ Advancing Child Protection: Keeping the Promise. Paper presented by Maurice Williams. (24th July 2006, Frigate Bay, St. Kitts.)

² Ibid

METHODOLOGY

The primary goal of the broader research initiative is to provide technical support to the Government of St. Kitts/Nevis to prepare a national protocol to guide professionals in the prevention, reporting and management of child abuse, under the coordination of the mandated child protection agency.

The expected outputs of the assignments are as follows:

- (a) A written assessment of current processes for reporting of child abuse.
- (b) A policy brief to justify the need for a national reporting protocol.
- (c) A National Protocol for the prevention, reporting and management of child abuse.
- (d) A National Action plan for the implementation of the protocol.
- (e) The development of a training and stakeholder outreach programme to guide the effective implementation of, and adherence to the protocol and prevention action plan.

The research methodology was qualitative in nature and drew on a number of techniques to facilitate comprehensive data collection and effective analysis.

The approach included:

- (i) A desk review of all relevant documentation, including policy documents and existing protocols in the region.
- (ii) A legislative review to ensure familiarity with the relevant legal frameworks.
- (iii) Extensive interviews with key sectors which may be entry points for children who are abused or at risk of abuse, e.g. education, health, law enforcement and social services.
- (iv) Focus groups with child protection officers, for the purpose of identifying problems and seeking instructions about the creation of the protocol.

THE NATURE AND EXTENT OF CHILD ABUSE IN ST. KITTS/NEVIS

An accurate determination of the exact nature and full extent of child abuse in St. Kitts/Nevis is not realizable, and this in itself, is one of the primary reasons supporting the creation and implementation of a protocol. The present system, or lack thereof, for reporting child abuse has meant that there is no centralized system for receiving reports of abuse and collecting data. This is a chronic problem that pervades the region and has been previously identified in several reports as one of the key factors compromising the effectiveness of the region's child protection regime. In one report, the following observation was made,

“Poor or non-existent data collection on child abuse has hindered the ability of the respective islands to offer accurate and/or meaningful statistical feedback on the incidence and trends of child abuse. A major contributing factor to the poor data collection is the lack of any centralized, official entity that can facilitate continuous and reliable collection of information on child abuse.”³

Another study discovered the alarming variance in child abuse statistics depending on the source of information within the respective island. That study correctly explained the disparity of the statistics as “underscoring the worrying gaps in interagency protocols for the management of child abuse of which data collection is a vital part.”⁴

³ O.E.C.S. Family Law Reform and Domestic Violence Project: Report on Reform to Child Protection Law in the O.E.C.S. and Turks & Caicos Islands.

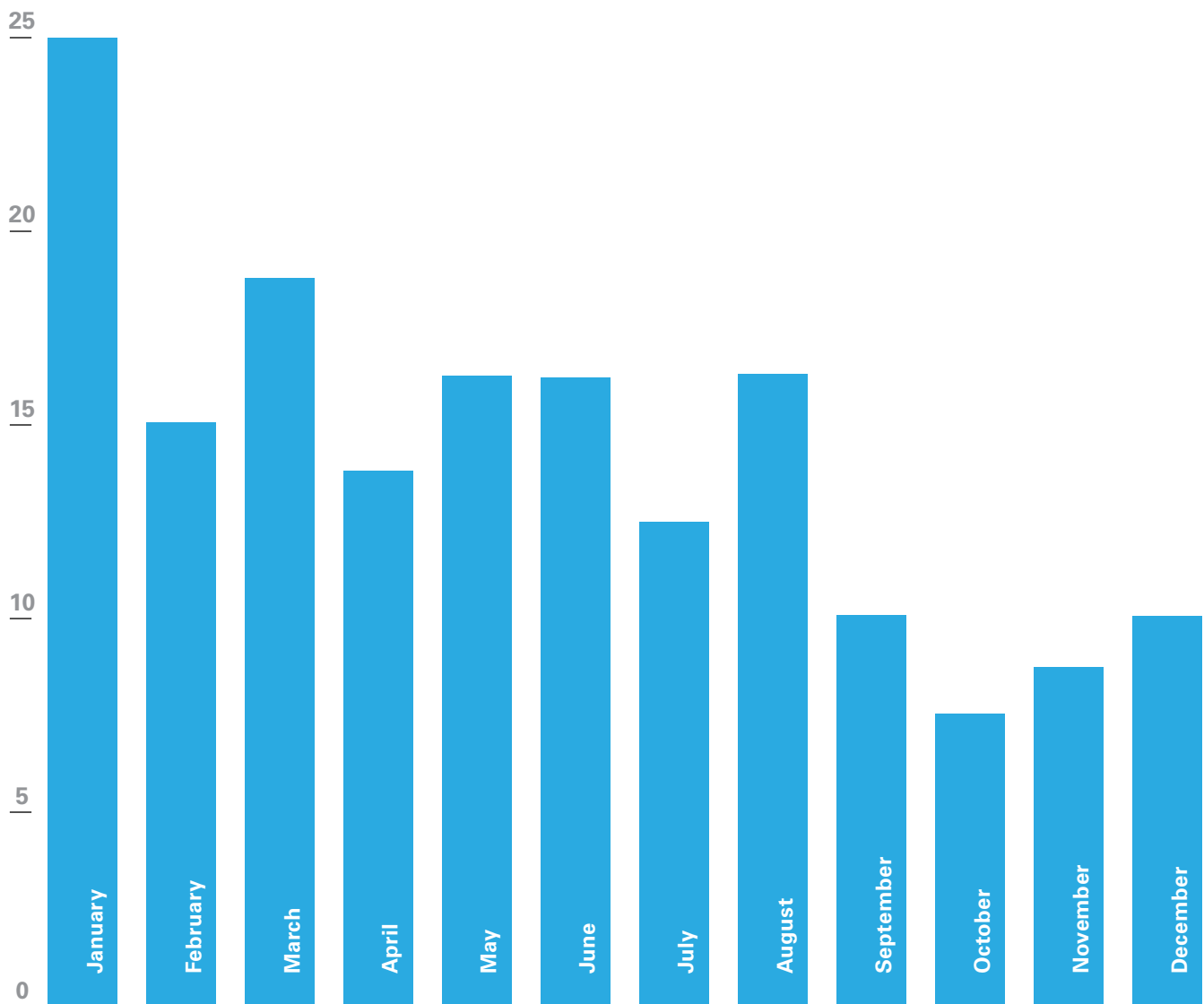
⁴ NCH/UNICEF Study on Social Services Delivery.

The Department of Probation and Child Protection Services, as the de facto child protection agency in St. Kitts/Nevis does collect statistical information. However, the data is reflective of only those reports received and responded to by that agency. Given the poor state of reporting by other agencies to the Department, there is no centralized data collection and this in turn undermines any accurate assessment of the true extent of child abuse in the country. Although the issue of reporting will be subsequently addressed, it is important to note that good reporting systems are inextricably linked to the issue of comprehensive data collection.

Nevertheless, there have been valiant efforts on the part of the Department of Probation and Child Protection Services to collect and disaggregate data based on the cases reported to that agency. These figures, as underestimated as they may be, combined with other indications, are cause for concern and clearly establish the need for urgent redress. The 2006 records of the Department indicate as follows:

Total Number of Cases Reported (Taken from Monthly Reports by Probation and Child protection Services, Basseterre, St. Kitts)

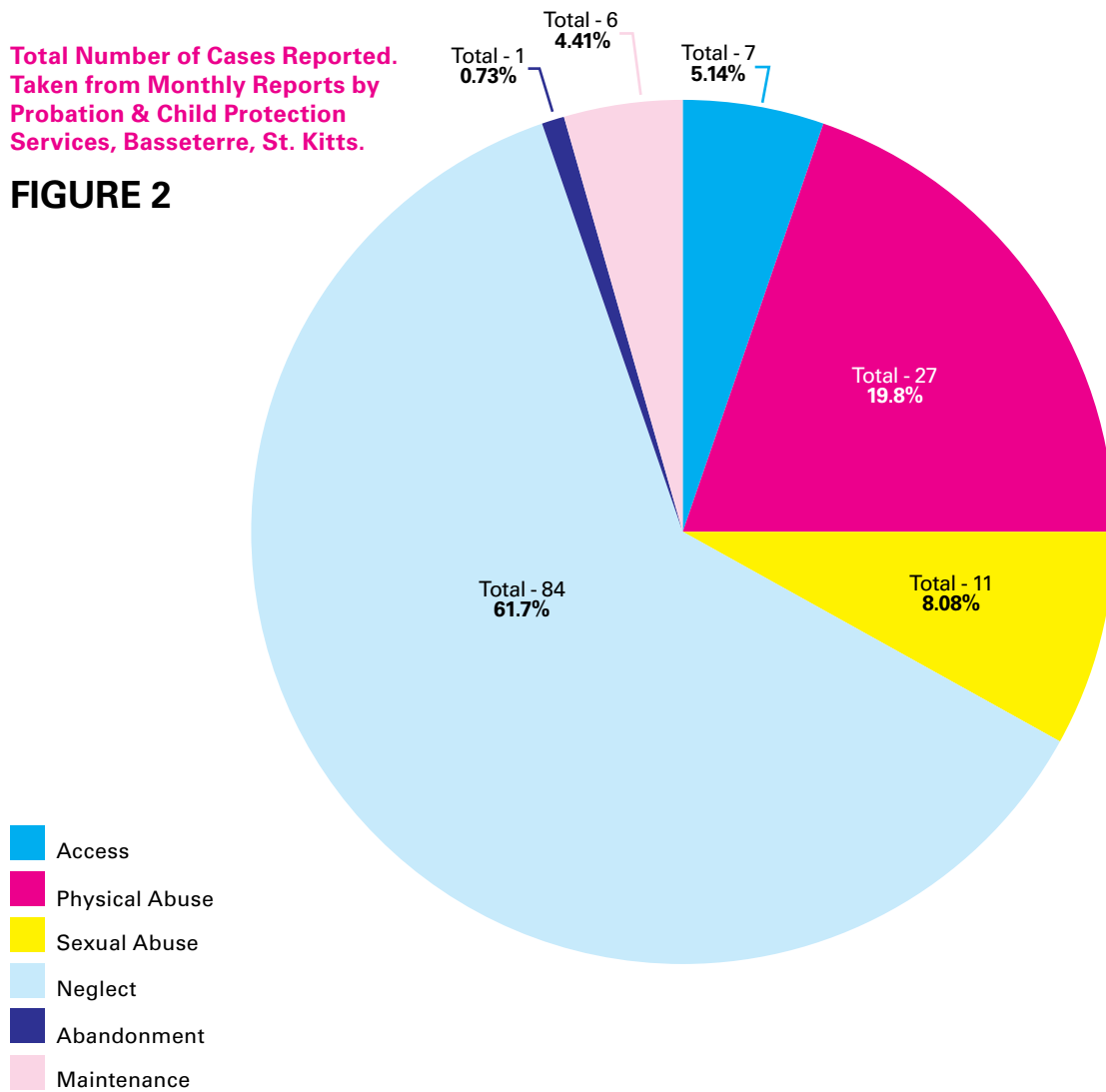
FIGURE 1



Total number of reported cases for 2006:136

**Total Number of Cases Reported.
Taken from Monthly Reports by
Probation & Child Protection
Services, Basseterre, St. Kitts.**

FIGURE 2



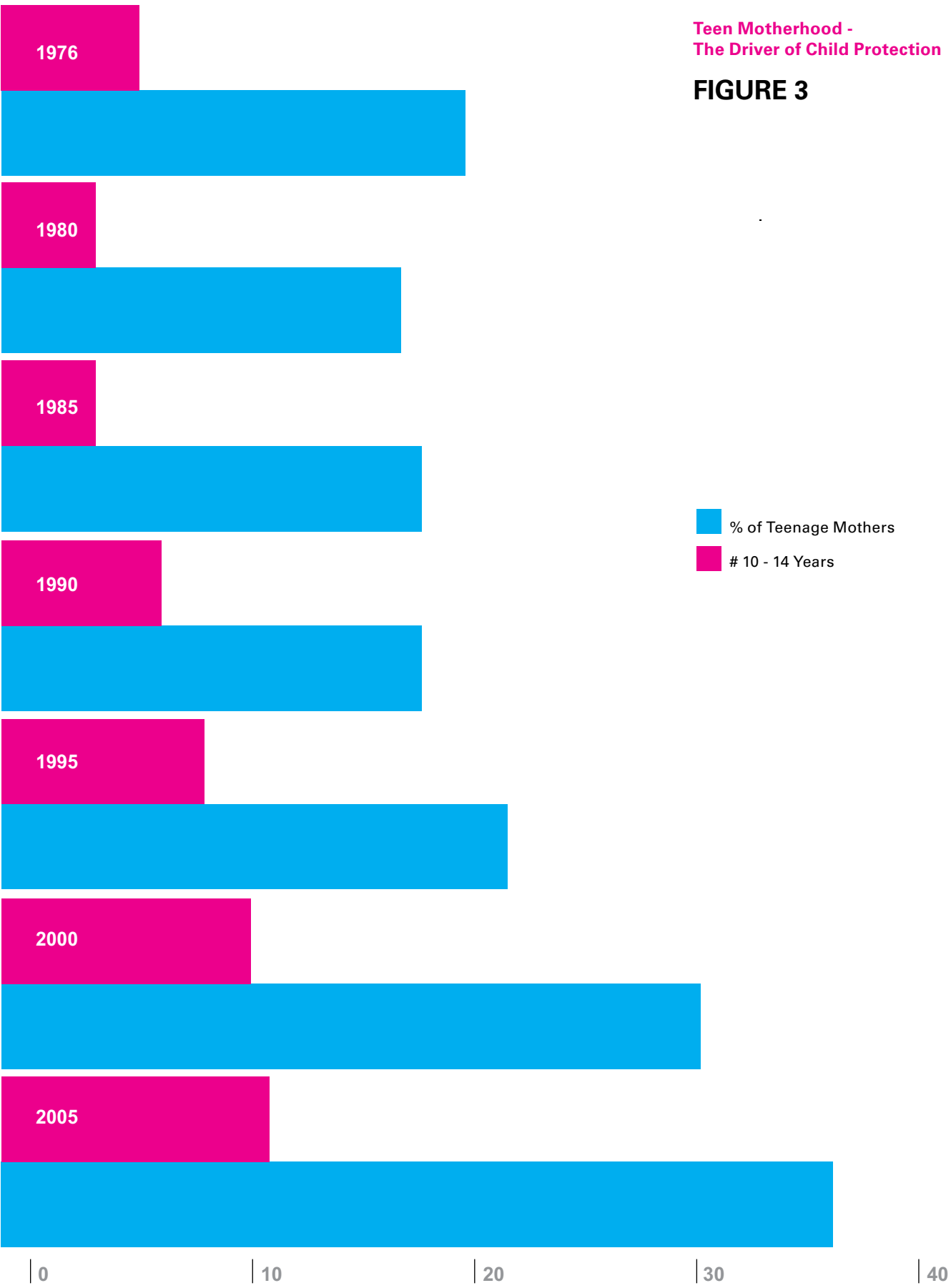
The twin island State of St. Kitts and Nevis is the smallest English-speaking independent State in the Caribbean. The estimated population is approximately forty-five thousand (45,000) of which over 40% is below the age of twenty (20) years. With these demographics, even the underestimated figure of a total of 136 reports of child abuse and neglect is troublesome. It is also clear that physical abuse, sexual abuse and neglect are key areas of concern. Other indicators of the extent of the problem are the high pregnancy rates for girls under the age of sixteen (16) and the number of sexual offence cases that actually reach the High Court criminal assizes list.

In a review of the Assizes list for 2007, eighteen (18) of a total of fifty-four (54) cases (approximately 33%) were offences of a sexual nature, with a high percentage of these offences being committed against child victims.

In a presentation made by the current Chief Medical Officer in St. Kitts, he made the argument that teen motherhood was “the driver of child protection” in that country. In Figure 3 he demonstrated the high incidence of teenage pregnancy and the alarming incidence of pregnancy amongst young girls between the ages of ten (10) to fourteen (14) years.

Teen Motherhood -
The Driver of Child Protection

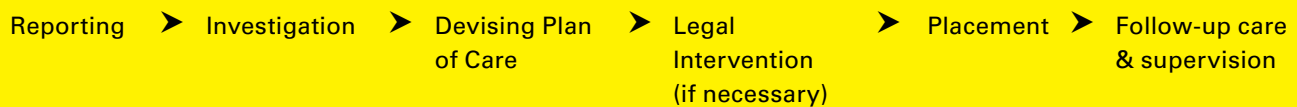
FIGURE 3



IDENTIFYING THE CHALLENGES

The major challenge, directly linked to the need for a clearly defined protocol is the lack of a centralized reporting system and the broader concern of failure to report. This is surprisingly an issue despite the inclusion of a mandatory reporting provision in the Probation and Child Welfare Board Act 1994. However, reporting is only one component of the child protection scheme and it is therefore important to identify any other challenges that may be present at other stages of the process. The stages of a child protection process may be captured as follows:

FIGURE 4



The child abuse protocol will need to address each stage of this process with a keen awareness of the existing challenges, whilst still charting the ideal course for moving towards comprehensive and effective child protection procedures.

REPORTING: MANDATORY REPORTING

The reporting phase of child abuse is perhaps the most critical feature in the overall scheme of protection measures. If matters are not brought to the attention of the appropriate authorities, then no response to the abuse can be reasonably expected. It is the triggering event of the system and can set the standard by which all of the subsequent phases of the process will be guided. In other words, a poor reporting system can negatively impact on the other aspects of the system, in the same way that a well developed reporting system can have a very positive influence on the process.

The Probation and Child Welfare Board Act, 1994 creates a duty to report child abuse cases. Mandatory reporting of child abuse is therefore expressly enshrined in the legislation. The provision reads as follows:

“It shall be the duty of all doctors, nurses, social workers, police officers, teachers, child care providers, child psychologists, guidance counselors and such other persons as the Board may determine, to report to the Board all cases and suspected cases of child abuse coming to their attention.”

Interestingly, the provision does not expressly require parents or guardians to report, nor does it address the sanctions to be imposed if there is a failure to report. It is quite

reasonable to expect a mandatory requirement to have sanctions attached to it because this reinforces the non-voluntary nature of the directive. In Trinidad and Tobago, for example, the Trinidad and Tobago Sexual Offences Amendment Act (2000) has recently added a mandatory reporting provision. It requires a parent and others in authority to report the commission of a sexual offence on a minor, with sanctions of \$5,000.00 fine and/or seven (7) years imprisonment for failure to do so.

The mandatory reporting provision of St. Kitts/Nevis, even without the inclusion of sanctions, clearly creates a legal obligation on the part of professionals to report child abuse and would protect them from any backlash regarding ethical considerations, such as confidentiality.

In this regard, any amendments to the legislation should include an expansion of the categories of persons required to report to include parents or guardians and consideration should be given to the imposition of sanctions.

RECEIVING REPORTS OF ABUSE

A duty to report is best facilitated by one focal point which receives all reports. In fact, a system that creates a central coordinating agency for alleged child abuse cases is the only sure means by which an accurate national profile of child abuse can be ascertained. Some reports have already recommended the establishment of child protection registers and strong inter-agency protocols as strategies for the realization of this goal.⁵

This approach clearly anticipates that there is a clearly identified and well established entity to not only receive the reports, but to undertake every other aspect of the child protection process. Unfortunately, the situation in St. Kitts/Nevis is such that the legislation vests this responsibility on the Probation and Child Welfare Board, without creating any structure for the implementation of these responsibilities. The legislation does not speak to a specially created implementing agency which is to carry out the functions of the Board. In Grenada, for example, the equivalent Board has an implementing agency, in the form of the Child Welfare Authority which carries out the day to day functions of ensuring the care and protection of children in Grenada. The Board, in that context, has primarily an administrative role. Similarly, in Barbados, the legislation creates the Child Care Board, but the Board has both an administrative branch and a technical branch. The technical branch is staffed with the child care coordinators, officers, psychologists and other technical staff who actually implement the child protection provisions under that country's Child Care Board Act.

The failure in St. Kitts/Nevis to establish either a specially created implementing agency or technical branch within the Board structure, has meant that the Department of Probation and Child Protection Services is now the de facto agency carrying the State's child protection mandate.

⁵ NCH/UNICEF Report on Social Services Delivery in the O.E.C.S. and Turks & Caicos.

This department falls under the Ministry of Social Development, Community and Gender Affairs. The staffing is as follows:⁶

FIGURE 5

1 Director
1 Senior Probation Officer
1 Senior Child Care Officer
9 Probation Officers
2 Child Care Officers
1 Junior Clerks
Total: 15

This present configuration means that the staffing devoted exclusively to child protection for the entire state of St. Kitts/Nevis is three (3) persons, and a Director, who oversees all aspects of the programming in that department. Needless to say, this is inadequate, especially when compared to the ten (10) persons assigned to probation duties.

The absence of a well established entity, with the supporting infrastructure to receive reports and carry out the other duties expected of a child protection agency will inevitably compromise the overall efficiency of the system.

Mandatory reporting, if properly enforced, will require the systems to support it. A requirement that professionals and others in authority must report child abuse is a serious one and these persons must be assured of the credibility and legitimacy of the agency to whom they must report. An ill-equipped and under resourced child protection agency will not be able to effectively respond to child abuse cases and can potentially undermine reporting of these cases. Those required to report must have confidence in the system to respond effectively.

THE PRESENT STATE OF AFFAIRS

Interviews with key sectors, including law enforcement, education and health, clearly demonstrated that although there is some recognition of the central role played by the Department of Probation and Child Protection Services, reporting to that agency is discretionary and occurs on an ad hoc basis.

In the schools, reports are often made to the guidance counselors and this may or may not reach the Department. Doctors seldom report, unless they are well acquainted with the system and have a working relationship with the Department. The police interviewees felt that they did report to the Department on a fairly routine basis, but this was disputed by the Department itself.

Generally, it would be safe to say that the reporting systems are quite weak. This is the

⁶ Taken from the Ministry of Social Development Organizational Chart.

case, despite attempts by the Department to forge stronger linkages with other sectors and to create a Memorandum of Understanding geared at encouraging better working relationships, with particularly the police and the Department of Gender Affairs. This memorandum was drafted in the year 2000 and spoke to the “sharing of information with each other concerning all allegations of child abuse.” The agreement conceded that “their primary function, powers and methods of working are markedly different.” It also went on to say that “this situation not only leads to confused roles but in many instances has left the response system disorganized and in disarray, ultimately resulting in duplication, passing of the buck or no action, to the detriment of the victim.”⁷

Feedback from the interviews confirmed that the Memorandum has had little to no impact on the handling of cases, including the element of reporting. Clearly, any attempt at enforcing the mandatory reporting requirements will need to move beyond the Child Welfare Board or the Department, to a full blown State-driven initiative that pulls in all the relevant government ministries and other State entities.

INVESTIGATION

Investigation of child abuse is a necessary follow on from a report being made. A report simply alerts the authorities to the possibility of abuse, but it is only after a thorough investigation that this possibility can be confirmed or dismissed. Investigations can and should be conducted at both the level of the police (a criminal investigation) and the child protection agency (a civil child protection investigation). The decision by the police not to pursue a criminal investigation, does not necessarily mean that there are no protection concerns deserving of a protection investigation. This is important to note because the threshold of proof in the criminal context is higher than the civil context. Investigations of child abuse will usually involve several steps, including interviews of the victim; interviews with the alleged offender; interviews with family members, teachers and other relevant information sources, as well as medical examinations.

Interviewing is a skill and the skillfulness of an interviewer is truly tested in the handling of cases involving child victims, given the youthfulness, immaturity and peculiar vulnerabilities of children. The use of age appropriate interview techniques and tools are often central to child abuse protocols and this may in turn trigger the need for specialized training.

INTERVIEWS

The protocol will address the who, what, where and when of interviewing. It would be geared at providing some guidance on the interviewing phase so as to eliminate duplicity of interviews and gaps in the collection of critical information.

At present, there are no guidelines informing the interviewing of victims, and the police and health sectors, in particular, are in dire need of some guidance in this regard. One of the pediatric doctors most frequently used for abuse cases, made the observation that there was no standard protocol to be followed and that the interviewing of children was “problematic” because of the repetitive nature of the interviews conducted by the doctor, the police and the social workers.

⁷ Memorandum of Understanding. Probation and Child Welfare Board. 2001 at p. 1.

MEDICAL EXAMINATIONS

Doctors in St. Kitts/Nevis do not have a lot to work with in corroborating an allegation of child abuse. Interviews confirmed that rape kits are not available. Instead, doctors do swab tests and this gets sent to the laboratory for testing. One doctor raised the valid concern of “chain of custody” problems because there is often no secure setting for storage of samples. He shared the view that whereas physical abuse cases were easier to confirm, child sexual abuse often went to court with no conclusive medical evidence. He made the following comment:

“The legal system seems to be looking to us for corroboration and we can’t offer it”

Additionally, medical examinations can be done at both the district hospitals and the central hospital. There is no policy of routine admission of child abuse cases onto the pediatric ward, as there is in Barbados and there is reportedly a deficiency in the follow up of cases for pregnancy and STD and HIV testing. There is also no established policy on emergency contraception and this can result in the discretionary prevention of pregnancies in rape cases, depending on the individual views and preferences of the attending doctor.

There is obvious scope for regulation of medical interventions in child abuse cases.

DEVisING A PLAN OF CARE AND LEGAL INTERVENTIONS

After an investigation is carried out, the relevant authorities must then decide on a course of action. This action plan can either involve closing the case for lack of evidence that the child is in need of protection or moving forward because grounds have been established for further intervention. Once the intention to move forward with the matter has been formulated, it becomes necessary to devise a plan of care.

This plan may require the removal of the child to a place of safety, whether as a Ward of the State or with an alternative placement in the community. It may also be possible to have the child remain in the family setting subject to some form of supervision. Whatever the plan, it

is conventional practice that this plan of care is discussed and presented in written form so that there is a clear sense of direction on the matter. It is not uncommon for case conferences to be held with a view to formulating a written plan of care.⁸ Unfortunately, this is not pursued in St. Kitts/Nevis or many of the countries in the region.

Upon formulation of a plan for moving the case forward, there is usually the need for subsequent legal interventions to occur.

A review of the circumstances in St. Kitts/Nevis, strongly indicated that the legal responses to child abuse, particularly child sexual abuse were in urgent need of attention.

⁸ In the Canadian context, for example, the Children’s Aid Society is required to present the written plan of care in its package of documents that is to be submitted to the Court in child protection proceedings.

An assessment of the legal responses is sub-divided into the two categories of criminal justice responses and civil responses.

CRIMINAL JUSTICE RESPONSES

Sexual offences in St. Kitts account for almost one-third of all of the cases that are prosecuted in the High Court. A breakdown of the criminal assizes list for 2006 and 2007 were as follows:

FIGURE 6

SEPTEMBER 2006 ASSIZES

Total # of cases	Total # of Sexual Offences	% of Sexual Offences
29 traversed matters	11 of the traversed matters	38%
13 new matters	2 of the new matters	15%
42	13	31%

SEPTEMBER 2007 ASSIZES

Total # of cases	Total # of Sexual Offences	% of Sexual Offences
28 traversed matters	11 of the traversed matters	39%
26 new matters	7 of the new matters	27%
54	18	33%

There are statistics from the police which also clearly indicate that sexual offences, although not age-specific, is of significant relevance to children under the age of sixteen (16).

A breakdown of the different categories by sexual offences demonstrated that “unlawful carnal knowledge” and indecent assault on females were disproportionately represented. Unlawful carnal knowledge, by the very nature of the offence, implies that the victims are all under sixteen (16) years. Indecent assault charges can include adults, but based on reports, involves mainly child victims. The offence of incest also usually involves young victims

FIGURE 6

Year	Rape	Incest	Unlawful Carnal Knowledge	Indecent Assault on Females	Indecent Assault on Males	Abduction	Total
2002	12	3	19	19	-	-	53
2003	6	1	18	17	-	-	42
2004	9	5	26	31	-	2	73
2005	11	1	19	24	2	2	57
2006*	4	2	4	9	-	-	19

June 2006*

Despite this significant representation of sexual offences, those who were more directly involved with the legal processing of child abuse cases regarded the legal system as a major site of ineffectiveness in the systemic response to redress child abuse.

In the criminal law context, St. Kitts/Nevis shares a lot of commonality with several of the O.C.E.S. states, where the criminal law is outdated and a major overhaul of the law is long overdue. The inadequacies in the law are reflected in both the substantive and procedural law relating in particular to child sexual abuse. The areas of concern are as follows:

(i) Retention of the Honest Belief Defense

Although the age of consent in St. Kitts/Nevis is sixteen (16), the defense of honest belief does exist and can be utilized by an adult who has committed the offence of unlawful carnal knowledge, which is having intercourse with a minor. This defense is applicable if the defendant can establish that he honestly believed that the child was sixteen (16) or older. This is an obvious loophole in the law that can be relied upon by defendants, especially if the complainant child victim is reluctant to pursue the matter. Some jurisdictions in the Caribbean, including Barbados have narrowed the defense to make it available to the defendant only if he is under a prescribed age and he has no similar record of similar offences.⁹ These jurisdictions have, in essence, made sexual intercourse with a minor a strict liability offence, which means that there can be no defense. The importance of tightening the laws in relation to these types of offences is heightened by the rate of prevalence, where it was widely believed amongst the interviewees that the sexual exploitation of girls by older men was a growing phenomenon in St. Kitts/Nevis.

(ii) Statute of Limitations

The criminal provisions which prohibit unlawful carnal knowledge, impose a maximum penalty of five (5) years imprisonment for a child under the age sixteen (16) but above the age of fourteen (14). There is a sanction of life imprisonment for unlawful carnal knowledge of a girl under the age of fourteen (14).

⁹ In St. Lucia, for example, an accused who is twenty-one (21) years or younger can rely on the defense.

However, the law has imposed a limitation period on the prosecution of cases involving unlawful carnal knowledge of girls between fourteen (14) and sixteen (16), such that the unlawful conduct must be prosecuted within twelve (12) months after the commission of the offence. The acting Director of Public Prosecutions (D.P.P.) of St. Kitts viewed this constraint as unnecessary and problematic.

(iii) Sexual Intercourse as a Required Element

Many of the sexual offences, including rape, incest and unlawful carnal knowledge, require actual sexual intercourse as the material element of the offence. Sexual intercourse is limited to vaginal penetration by a penis and would therefore exclude equally traumatic and invasive acts. Some states have broadened their definition of sexual intercourse to incorporate other types of sexual acts.¹⁰

An expanded definition of sexual intercourse would be particularly helpful in incest cases where children can often be violated in ways that fall short of penetrative sex by family members.

As it presently stands, most intercourse that falls short of penetrative vaginal sex would have to be captured under the lesser offence of indecent assault.

(iv) The Inherent Gender Bias

Several of the sexual offences apply only to acts committed by men against girls, excluding intercourse that is initiated by a woman or a man with young boys. Although it became abundantly clear through the interviews that sexual offences are predominantly the concern of young girls, it is by no means exclusively a female phenomenon. Boys are also sexually abused, molested and exploited and this can be instigated by an adult female perpetrator. The offences of rape and unlawful carnal knowledge are currently gender specific, and offer no protection to boys and young men. This deficiency was remedied in St. Lucia where the law has been made gender neutral and can therefore equally apply to boys and girls.

(v) Unlawful Carnal Knowledge vs. Rape

The law in St. Kitts/Nevis provides much harsher penalties for rape than for the related offence of unlawful carnal knowledge. Whereas, the latter offence is punishable by a maximum of five (5) years imprisonment when committed on a girl between the age of fourteen (14) and sixteen (16), the offence of rape can result in life imprisonment. This large disparity in sentencing outcomes is perplexing and begs the question, under what circumstances will unlawful carnal knowledge be the offence charged as opposed to rape?

Unfortunately, there appears to be no consistent answer to this question in St. Kitts/Nevis, which has created a glaring gap for the legal processing of child sexual abuse cases. Any presumption that unlawful carnal knowledge should be routinely applied to almost all cases involving girls or young women, places this group at a distinct disadvantage and should be vigorously discouraged.

(vi) The Corroboration Requirement

The law in St. Kitts/Nevis still requires that a child's evidence must be corroborated. That is to say that the law requires that there be some form of evidence independent

¹⁰ See UNIFEM/ECLAC, "Eliminating Gender Based Violence, Ensuring Equality (2003) for a legal review of rape and other sexual offences.

of the child's testimony itself that lends credence to the evidence given by the child. If this independent evidence is not available, it may not prevent the case from proceeding altogether but it will mean that the Judge will issue a warning to the jury during his summation. This "warning" is geared at cautioning the jury that it is dangerous to convict on the evidence of the child alone. The "warning" makes it very difficult to secure a conviction although it is still open to a jury to return a guilty verdict if they found the evidence of the child witness to have been credible.

Sexual abuse, by the very nature of the offence, usually occurs in private. Accordingly, it is not easy to have independent eye witnesses to the incident, as may be available in a murder case or a robbery. For children, many of these offences occur in the privacy of the home where reliance on third party evidence to support the victim's version of events is very rarely available. In the face of this reality, the legal requirements of corroboration for sexual offence cases is often difficult to meet. It is in recognition of the importance attached to corroboration that one lawyer presenting at a conference hosted by the Department of Protection and Child Protection Services made these remarks:

"Also important in this area of the law is the judges' summation. Judges give a very important summation of sexual offences which may often make or break your case. One part of his direction goes like this, that it is dangerous to convict on the evidence of the person but it is possible however, that if you believe the victim, you can so convict. Very often I hasten to add, it depends on how the judge sums up, or the manner in which the judge gives the direction, how he emphasizes the area of summation, how many times that he makes this direction, and of course it depends on how it impacts the jury. But I can't reiterate how important it is to look for corroboration in sexual offence cases however raw it may be or seem to be."¹¹

A Police awareness of this requirement is reportedly a major factor used by law enforcement officers to screen the cases that they consider worthy of charges being laid. Interviewees, including experienced child care officers at the Department of Probation and Child Protection Services, reported that police officers often refused to charge alleged perpetrators in cases involving child victims in the absence of corroborating evidence. The younger the victim, the less the likelihood that a charge would be made.

With all due respect to law enforcement officers, it is important that they remember that their role is not that of the prosecutor who is entitled to assess the evidence and determine whether there is a reasonable prospect for conviction. Screening of cases by the police at the initial stage of arrest is limited to a determination as to whether there are reasonable grounds to believe that an offence has been committed.

The corroboration requirement is not specific to St. Kitts/Nevis, but has application in most of the O.E.C.S States, including Grenada.

(vii) Courtroom Layout and Procedures

The physical layout of a courtroom and the techniques by which a child victim's evidence can be given are important ingredients in the creation of a child-friendly justice system. The use of screens and closed circuit television (C.C.T.V.) is one approach to achieving a court environment that is less intimidating for child witnesses.

¹¹ Advancing Child Protection:- Sexual Exploitation and Molestation: The Search for Justice for Victims and Society. (Paper presented at the Conference entitled "Advancing Child Protection, Keeping the Promise. July 24 – 28 2006.)

Family Court settings that have a built-in social service infrastructure would go a long way in creating a comfortable physical setting for children. Although criminal proceedings will not be heard in a Family Court structure, the social services attached to this court could be drawn upon to assist victims in criminal trials. Of course, Family Court would also be an invaluable contribution to the enhancement of civil proceedings involving children.

St. Kitts/Nevis is presently contemplating the establishment of a Family Court and research confirmed that a court of dual jurisdiction (where the jurisdiction of the Magistrate Court and High Court is blended) is the model under present consideration. Careful consideration must be given to the structuring of this court and its supporting services.

In the area of legal procedure, one of the remaining impediments to a child-friendly system is the existence of Preliminary Inquiries. At present, a Preliminary Inquiry at the Magistrate's court level is required before the matter is sent to High court for trial. The net result of this system is that victims must give their evidence twice. This factor was already noted in an earlier research exercise, which highlighted the obvious pain and trauma that this must cause to young and vulnerable witnesses.¹²

St. Kitts/Nevis is one of the countries in the region that has legislated in camera proceedings of sexual offences and this is a very positive step in the right direction.

(viii) Reluctant Victims and Family Members

A recurring theme in the St. Kitts/Nevis research was the reluctance of victims and/or their parents to pursue legal proceedings. In one report, the following observation was made,

"It seems a paradox to me, particularly in sexual offences for under sixteen (16) years old that the law is presumably there to protect young girls and boys against not only offenders, but against themselves, as well as their parents, but the law seems weak on preventing cash and cheques book settlements which are unfortunately on the increase."¹³

Police, social workers, doctors and other key players in the system designed to afford protection to children all reported a high incidence of cases being derailed by the reluctance, of especially parents, to legally pursue the matter. Financial settlements and other bribes were reportedly a routine alternative to prosecution of cases. This raises the legitimate consideration of the possible introduction of policies to effect mandatory charging and prosecution of cases involving child victims. It also raises the possibility of introducing into a protocol the procedures that must be followed before cases will be withdrawn or dismissed. Criminal charges go well beyond the individual victim and are meant to reflect broader public interest considerations. A policy that reinforces the serious nature of these offences and conveys the State's reluctance to drop charges may go a long way in improving the legal responses to child abuse.

¹² UNIFEM/ECLAC Study, Ibid at footnote 10.

¹³ J. Harris, "Advancing Child Protection: The Search for Justice for Victims and Society." Ibid.

CIVIL RESPONSES

The O.E.C.S. Family Law Reform project has recommended that the region moves towards the creation of specially created Child Protections Acts that allow for the removal, care and supervision of children who are at risk of harm. This reform initiative recognized that the legal responses to child abuse could not start and end with criminal sanctions being imposed on the perpetrator.¹⁴ It underscored the importance of laws that have a strong protective thrust, and focus on the protection of the victim from harm. This perspective shifts the focus from the offender to the child victim and from accountability and punishment to victim safety, protection and rehabilitation.

St. Kitts/Nevis is one of the very few O.E.C.S. States that has specially created child protection legislation and this takes the form of the Probation and Child Welfare Board Act (1994). Despite this achievement, St. Kitts/Nevis is confronting many challenges in its ability to effectively respond to cases of child abuse.

Although there may be several reasons for this state of affairs, there are some key factors that have compromised redress in this area.

There are as follows:

- (i) Although the Probation and Child Welfare Board Act was passed in 1994, it is not being utilized in any meaningful way. The relevant authorities appear uncomfortable with the legislation and have continued to draw on the outdated Juvenile Act to instigate child protection proceedings.
- (ii) Admittedly, there are some deficiencies in the Probation and Child Welfare Board Act, but these are not insurmountable and could be remedied with the necessary amendments to the legislation. In the meantime, however, the total disregard for this legislation and its current non-application has retarded the growth of civil child protection proceedings in St. Kitts/Nevis.
- (iii) The Juvenile Acts in St. Kitts/Nevis and across the region are primarily used to assume jurisdiction over juveniles who have come into conflict with the law. These acts operated primarily within a criminal law context and most of the features of the legislation are aimed at addressing juvenile delinquency, as opposed to the care and protection of abused children. The legislation also contemplates the prosecution of parents or guardians who do not fulfill their obligations to adequately care for their children. Under these circumstances, the parent will usually be prosecuted for neglect and sanctions are imposed. As noted by one author,

“The child protection component of the Juvenile Acts are a clear “after-thought” and were not designed with a view to promoting meaningful child protection objectives. The legislation does not even offer a helpful definition of child abuse and it offers little to nothing in terms of the process that should be implemented in the prevention, detection, treatment, rehabilitation and follow-up of child abuse cases.”¹⁵

Partially as a result of the strong criminal undercurrent to the child protection proceedings, officers from the Department of

¹⁴ Report on reform to Child Protection Law in the O.E.C.S. and Turks and Caicos Islands: Family Law Reform and Domestic Violence Project

¹⁵ Report on Reform to Child Protection Law in the O.E.C.S. and Turks and Caicos Islands. Ibid.

Probation and Child Welfare services are actually engaged in the prosecution of cases involving neglectful mothers¹⁶, as opposed to focusing on their mandate to ensure the protection of children.

Despite protests from the Department, the police do not prosecute these cases, and child protection officers say that they are left with no choice but to handle these matters themselves.

This is a totally unsatisfactory situation and the protocol, as a policy document will have to address this issue.

Prosecution of cases is a role to be performed by either police prosecutors or regular prosecutors and a clear definition of the respective roles of prosecutor and child protection officer will need to be addressed.

- (iv) Under the Domestic Violence Act, 2000, a protection order can be applied for on behalf of a child. In fact, the legislation mentions a number of persons who can make such an application, including a probation officer, social worker or police officer. A protection order, under the Domestic Violence Act is advantageous because, unlike the Juvenile Act or the Probation and Child Welfare Act it facilitates the removal of the perpetrator from the family home. Ordinarily, the child victim is removed to a place of safety, but the Domestic Violence Act makes provision for the perpetrator to be restrained from entering the family home or having any contact with the victim. This approach prevents any disruption or anxiety that the child may experience as a result of being uprooted from both home and community.

Unfortunately, this legislation has reportedly never been utilized in St. Kitts/Nevis for the benefit of a child. Like many other jurisdictions, domestic violence legislation is perceived as operating for the sole benefit of adult women who are in abusive relationships. Legal intervention for the protection of children who are being abused or who are at substantial risk of abuse, should be broadened to encompass all available legal remedies.

The importance of the law to ensuring the safety and security of children cannot be overstated. It is a powerful tool for safeguarding children's rights and ensuring accountability. The child abuse protocol must ensure that due process is always followed and that child protection matters should not in any way, be capricious or arbitrary. Legal principles and processes should be adhered to at all times.

PLACEMENT AND FOLLOW-UP CARE

The protocol would need to establish guidelines for the placement of children into alternative care environments, whether foster care or institutional care.

As previously indicated, the removal and placement of children must be done pursuant to a legal process. Where Voluntary Care Agreements are utilized, it is important to establish that parents fully understood the nature of the Agreement and have agreed to surrender care and control of their child(ren) to the State.

¹⁶ Interviews with the Department confirmed that most of the cases prosecuted under the Juvenile Act involve neglectful mothers who have primary responsibility for child care and have not fulfilled these responsibilities. The gendered dynamics of this course of action are especially problematic.

In the case of St. Kitts/Nevis, Voluntary Care Agreements are not routinely used, as they are, for example, in Barbados. On most occasions, children are brought into care pursuant to a court process. However, there was feedback to suggest that whereas a court process is usually started and children are initially placed in care, there is sometimes a failure to go back to court to finalize the court order that will allow the child to be legitimately a ward of the State. There are instances where an emergency placement for the statutory maximum of twenty-eight (28) days has been effected, with no further legal steps being taken. In one highlighted case, the child had been taken into care over five (5) years ago and there was no final order in place.

There is only one child care home in St. Kitts and this houses a very mixed population of children. Some interviewees expressed serious reservations about the conditions at the home and the Probation and Child Welfare Board will only place children in that institutional setting as a place of last resort. Foster care is the preferred placement for children and there are presently forty-eight (48) children placed in forty-five (45) foster homes.

THE DEVELOPMENT OF A CHILD ABUSE PROTOCOL

The identification of challenges is a crucial step in the development of a child abuse protocol. Without a keen awareness of the substantive and procedural deficiencies in the system, it would be difficult to create an instrument that is geared towards enhancing the overall responses to child abuse. Having pinpointed the gaps in the delivery of child protection services, it is hopeful that a protocol will help to guide the interdisciplinary responses to child abuse and facilitate the standardization of practices. A protocol will not, on its own, bring an end to child abuse. However, if effectively implemented with other types of interventions, a protocol can go a long way in strengthening the safety net for abused children.

WHAT IS A PROTOCOL?

A protocol is a set of policies, procedures and agreements to be followed in child abuse cases. It is also a collaborative tool to ensure that agencies are working together without duplicating or overlapping tasks. A protocol can be as simple or complex as you want to make it.

Why have a Child Abuse Protocol?

(Taken from the Tribal Law and Policy Institute's Guide for the Development of Child Abuse Protocol.)

- To establish standards for points of contact, methods of contact and purpose of contact between relevant agencies.
- To strengthen and clarify relationships between child abuse response agencies.
- To define professional roles and responsibilities.
- To improve the credibility and accountability of the agencies involved.
- To reduce trauma to children by improving interagency coordination.
- To inform and educate the community about how reports of abuse are handled.
- To ensure consistency in the way that cases are handled.

How will having a Protocol improve Child Abuse Responses?

- By defining the purpose and scope of the interagency co-ordination and collaboration.
- By describing the roles and responsibilities of different professionals.
- By defining the steps that must be completed at each stage.
- By defining the time frames for completion of each step.
- By having concrete and practical procedures for handling special issues that may arise.
- By protecting agencies from allegations of favoritism or politics in their handling of cases.
- By informing the community of what they can expect to happen when alleged abuse is reported.

ELEMENTS OF A CHILD ABUSE PROTOCOL

An interagency protocol provides a step by step process for how cases will be handled when there is an allegation of child abuse. It is a reference tool and should be clear and easily accessible.

As previously stated, a protocol can range from a very short and simple document outlining only the basic requirements, to a very detailed and sophisticated document. The nature of the document should however be balanced against the principle of accessibility, which would require that the end product be relatively brief and user friendly.

The basic elements of a protocol should include:

- Philosophy or Mission Statement
- Definitions
- Child Protection Procedures (Reporting, investigation, plans of care and placement.)
- Roles and Responsibilities
- Time frames
- Special Procedures
- Review Processes and Revisions to the Protocol

CONCLUDING REMARKS

A child abuse protocol is not the magical wand by which the plight of abused children will be suddenly remedied. The creation of an effective child protection system calls for a number of responses, including appropriate legislation, effective social services delivery; trained personnel and the political will to effect positive change.

Nevertheless, a protocol can go a long way, when combined with other essential ingredients, to enhancing child protection procedures. St. Kitts/Nevis already has some of the legislative frameworks in place, albeit with some deficiencies, but there is no supporting protocol to assist with the actual implementation of the law.

The creation and implementation of a child abuse protocol is certainly a step in the right direction, that if combined with all the other necessary components, will make a meaningful contribution to the enhancement of the child protection system in St. Kitts/Nevis.

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