



Preserving Video-Recorded Child Sexual Abuse Investigative Interviews



Every video-recorded child sexual abuse investigative interview is unique and cannot be replaced if the recording is lost, damaged, or destroyed. Arguing that the failure to properly preserve video evidence was not done in bad faith may not pass legal muster. Pursuant to the Due Process Clause of the 14th Amendment, “criminal prosecutions must comport with prevailing notions of fundamental fairness” *California v. Trombetta*, 467 U.S. 479, 485 (1984). Simply put, if a video has not been properly preserved it may cause problems with due process later.

In many states, by law, video recording child sexual abuse investigative interviews must be preserved as evidence. For instance, the Iowa Code § 232.71B (2015) [Duties of the department upon receipt of report] provides “...19 Rules. The department shall adopt rules regarding the intake process, assessment process, assessment reports, contact with juvenile

court or the county attorney, involvement with law enforcement, case record retention, and dissemination of records for both child abuse assessments and family assessments.”

Similarly, South Carolina Code Ann. § 17-23-175 (2013) [Admissibility of out-of-court statement of child under twelve; determination of trustworthiness; notice to adverse party], subsection (A)(2) states: “an audio and visual recording of the statement is preserved on film, videotape, or other electronic means, except as provided in subsection (F).” Subsection (F) states: “Out-of-court statements made by a child in response to questioning during an investigative interview that is visually and auditorily recorded will always be given preference. If, however, an electronically unrecorded statement is made to a professional in his professional capacity by a child victim or witness regarding an act of sexual assault or physical abuse, the court may consider the statement in

a hearing outside the presence of the jury to determine:

- (1) the necessary visual and audio recording equipment was unavailable;
- (2) the circumstances surrounding the making of the statement;
- (3) the relationship of the professional and the child; and
- (4) if the statement possesses particularized guarantees of trustworthiness.”

Our surveillance society and digital environment have changed everything. Never before have we been able to record and store such vast amounts of information. The storage, maintenance, and retrieval of video-recorded interviews are crucial to ongoing child maltreatment investigations and for use in future legal forums. If they are not properly preserved, there is a risk that constitutional rights and obligations

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a desk or on your phone right before a home visit. Software that applies new findings in neuroscience and knowledge of how people heal and develop is vital. Think of Us is currently exploring how to create software that can help youth heal, develop, and thrive as healthy adults.

Think of Us currently partners with foster care agencies and their Independent Living Programs (ILPs), cohorts of nonprofits, and departments of social services to improve outcomes of young people transitioning out of foster care by providing a web and mobile platform that influences ILPs, nonprofits, and child welfare systems to help overcome three main barriers—becoming more efficient, improving outcomes, and becoming more data-driven.

The platform is a life-coaching web and mobile platform that empowers youth to build personal support systems. Youth create their own advisory boards as they transition out of foster care and into the workforce and/or post-secondary education, while also providing valuable support that traditional families might otherwise provide. The platform provides young people with interactive content,

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self-coaching activities, and planning tools to help identify and set goals for their treatment plan, also providing a framework to achieve the goals they have set. Young adults will gain information and insight needed to overcome everyday challenges, such as renting an apartment or reconnecting with biological family.

Caseworkers can use the platform to respond to requests and support youth through their goals and task management. Workers and higher-level staff can see advanced analytics of their current youth caseload's goals and challenges. The platform provides

real-time data about youth's current needs so that workers can focus on making data-driven decisions as they coach and support youth.

Many people do not know how the case management system works. I know I did not when I was 13. However, if I was told build a skyscraper with no electricity and no mechanics, it would seem like I was set up for failure because I was not provided with the adequate tools needed to succeed. This happens every single day to youth of all ages through case management, yet we are complacent. The power of conversation, however, is the most powerful thing we have. Starting uncomfortable conversations and making it known that severely outdated case management systems are unacceptable can invoke change. Updated case management systems and advanced technology will save caseworkers time, increase efficiency, increase compliance rates, offer additional reporting tools, and result in better outcomes for youth. If you had tools to help youth build skyscrapers, why wouldn't you help? 📺

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will be impaired. Consequently, human services agencies are facing hard questions with crucial legal implications:

- Video recordings, in whatever format, are prone to degradation. Such factors as corrosion, oxidation, adverse chemical reactions, and physical damage are all possible culprits. Knowing this, are human services agencies committed to properly preserving this crucial evidence?
- Are agency policies considering the effects of hardware and software obsolescence?
- Original video recordings should be retained in an unedited format. Are agencies ensuring that all future copies of the edited video interview are really exact duplicates?

- Are security, confidentiality, and accessibility ensured?
- Is there sufficient redundancy?
- What costs are involved?
- Appropriate retention of video files, be they digital or videotape, must take into account factors such as the frequency of access that is required, the technology infrastructure of the recordings, and the size of the collection. The Library of Congress's File Format Sustainability¹ criteria provides factors for evaluating a given format. Are there written agency policies that address these issues?
- Can video recordings be shown to any employee or just those who have a specific need to see them?

- Are there written procedures regarding the circumstances under which these videos may be released? Exactly whose approval is necessary?

The right answers to these questions may be the keys to justice—for an alleged perpetrator and for a child. 📺

Reference Note

1. See <http://www.digitalpreservation.gov/formats>

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