

CHAPTER 3: The Child Protection Process

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PLEASE READ THE MATERIAL PRIOR TO ATTENDING THE SESSION.

Homework for Session:

Read chapter 3; answer and submit chapter 3 review questions.

Class Objectives:

- Learn how a case enters the child protection system and the court system.
- Understand what the CASA Volunteer needs to do to be prepared for court.
- Learn about the different types of Juvenile Court hearings.

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UNIT 1: Laws Governing Child Abuse & Neglect Cases

State laws governing child abuse and neglect are largely based on the requirements of federal legislation. In local jurisdictions governed by tribal laws, the Indian Child Welfare Act takes precedence over conflicting federal and state laws. Each state legislature must make its own decisions about how to meet the requirements of federal laws **and** the needs of the state. State laws translate community standards into state standards. It is important for the CASA to be familiar with the laws in order to make appropriate advocacy decisions for his/her child.

The state, tribal, and/or local laws that govern child abuse and neglect define terminology related to abuse, neglect, and dependency, and they outline the procedures for responding to cases of child maltreatment to ensure that the rights of children and families are protected. Ohio law and administrative code, local rules and court orders determine what is to be done by whom, from the initial report of suspected abuse until the case is closed.

Specifically, they outline:

1. Definitions of abuse, neglect, and dependency;
2. Requirements for reporting suspected child abuse and neglect;
3. Responsibility of Hamilton County Job & Family Services (HCJFS) to offer protective services and to screen and investigate reported incidents of child abuse and neglect;
4. Conditions under which Hamilton County Job & Family Services (HCJFS) is required to invoke the jurisdiction of the court;
5. Circumstances under which children may be removed from their homes;
6. Role of the best interests advocates, including the CASA volunteer and Guardian ad Litem (GAL);
7. Required court hearings and when they should be held;
8. Guidelines magistrates must follow and options they may choose as they make decisions about the child's placement, care, treatment and custody status;

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9. What the legal requirements are of parents;
10. What the magistrates must include in their court entries;
11. How court decisions may be appealed;
12. Open vs. closed courtrooms;
13. Confidentiality of juvenile records;
14. Rights of foster parents.

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UNIT 2: Who Are The Participants in a Case?

The Parties & Participants in the Case

In child abuse and neglect court cases, there are at least three participants:

1. The parents/caretakers named in the petition;
2. The petitioner (most often child protective services agency); and
3. The CASA volunteer and GAL(Guardian ad Litem). (At ProKids, the GAL is known as a CASA Manager.)

In legal terms, a party to a case is a person who has standing in the court action, allowing them to participate fully, request the court to take action, and receive notice of all proceedings connected with the case.

The parties have a legal right to be heard by the magistrate in the court hearing. The parties also have a legal right to be represented by an attorney. If there is more than one parent or caretaker named in the petition, each one may be represented by a different attorney. If the parents/caretakers cannot afford to hire an attorney, the state provides them with one. When a party does not attend court, the court may conduct the hearing without the party. Or a hearing can be postponed if a party or party attorney requests a continuance and that continuance is granted by the magistrate or judge.

The Adoption and Safe Families Act of 1997 (ASFA) provides that foster parents, pre-adoptive parents, or relatives who are caring for the child be given notice of and the opportunity to be heard at all review hearings. This notice requirement does not mean that these individuals are parties in the case.

Each participant in the case has a different role and perspective. The magistrate hears the distinct perspectives of the parties as their attorneys present evidence, arguments, testimony from witnesses, and recommendations for the magistrate to consider as he/she makes decisions about the child's case.

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The Child

Why is the child's case in court?

- . A petition has been filed alleging abuse, neglect, or dependency. A petition is referred to as a complaint in Hamilton County.

What does the child need during court intervention?

- . The child needs the court to order an appropriate intervention and treatment plan so he/she can live in a safe, stable home, both in the short and long term.
- . The child needs the court intervention to be focused and timely; and
- . The child needs services that will meet his/her needs.
- . The child's needs include safety/protection, placement if the child is out of the home, family contact, permanency, financial support, a support system, education, mental, and physical health services.

The CASA Volunteer

What is the role of the CASA volunteer in the case?

- . The CASA volunteer independently investigate the child's case;
- . Determines the child's needs;
- . Explores family and community resources to meet the child's needs;
- . Makes recommendations to the court;
- . Advocates on behalf of the child's best interest;
- . Monitors the case;
- . Informs the court of the child's expressed wishes.

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What does the CASA volunteer bring to the case?

- . An interest in improving the life of the child through the court process;
- . Time, energy and focus;
- . Longevity -- the CASA volunteer often stays on the case from beginning to end;
- . An “outside the system” point of view and an independent perspective; and
- . The community’s standard for the care and protection of its children.

When is the CASA volunteer involved in the case:

- . The CASA volunteer is involved from the time of his/her assignment to a case through the close of the child’s case, when the permanent plan has been approved by the court and achieved for the child.

The CASA Manager/GAL

What is the role of the CASA Manager/GAL in the case?

The CASA Manager/GAL is appointed on the case along with the CASA volunteer and has ultimate responsibility for the case. She/he supervises and supports the CASA, coaching them to advocate for the best interest of the child. The CASA Manager/GAL:

- . Knows the history of the case.
- . Advises and guides the CASA volunteer on how to perform the duties on the case.
- . Together with CASA volunteer creates a plan for moving the case forward.
- . Discusses community and educational resources with the CASA volunteer.
- . Maintains contact with parties involved in the case regarding significant issues and events.
- . In the absence of a CASA volunteer, performs all the responsibilities of a CASA volunteer, including all duties in compliance with Rule 48 of the Rules of Superintendence for the Courts of Ohio and is subject to the approval of Hamilton County Juvenile Court.
- . Confers with CASA Program Attorney to advocate successfully.
- . Maintains confidential and complete case records.

When is the CASA Manager/GAL involved in the case?

She/he is involved in the case from appointment by the court of the case until the court terminates the case.

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CASA/GAL Program Attorney

What is the role of the CASA program attorney?

- . The CASA program attorney represents the child's best interest as determined by the CASA volunteer and CASA Manager;
- . Advocates for the recommendations of the CASA volunteer and CASA Manager;
- . Provides legal consultation to the CASA volunteer and CASA Manager regarding the case; and
- . Files legal documents relevant to the child's case.

When is the CASA program attorney involved in the case?

- . He/she is involved from the CASA volunteer's assignment through the end of the court case and appears at contested hearings.

Parents/Caretakers Named in the Petition

Why are the parents/caretakers involved in the case?

- . They have been brought into this court action because HCJFS asked the court to intervene to protect the child from maltreatment and/or to have his/her basic needs met;
- . If the court determines that the child(ren) has been abused and/or neglected the parents need to comply with the reunification plan approved by the court and correct the conditions that led to the child's removal, thereby effectively protecting their child and/or enabling their child to return home; and
- . They need to follow the orders of the court or risk having their parental rights terminated.

What do the parents/caretakers bring to the case?

- . The parents bring their feelings for the child, family ties, history of parenting, abilities and skills as parents, interactions with the child, interactions with each other, and other challenges they are facing.

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Attorney for the Parent/Caretaker

What is the role of the attorney for the parent/caretaker in the case?

- . The attorney for the parent/caretaker represents the wishes of the parent/caretaker he/she represents;
- . Protects the legal rights of the parent/caretaker in court;
- . Advises the parent/caretaker on legal matters; and
- . Files legal documents relevant to the case.

When is the attorney for the parent/caretaker involved in the case?

- . He/she is involved from the petition filing through the end of the court case or until he/she withdraws.

HCJFS Caseworker

What is the role of the HCJFS caseworker in the case?

- . The HCJFS intake caseworker has completed a risk assessment process and, based on risk and/or substantiated allegations of abuse and/or neglect, has determined the need for court intervention. The HCJFS intake caseworker petitioned the court to intervene on the child's behalf because;
 - He/she has not been able to develop an intervention plan with the family that would eliminate the risk of maltreatment to the child, or
 - Due to believed imminent risk, he/she has removed the child from his/her home to ensure the child's safety.
- . The case will be transferred from the HCJFS intake caseworker to an on-going case worker;

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- . The HCJFS caseworker needs the court to order that the agency's intervention and treatment plan be followed by the parents/caretakers and other service providers so that the need for continuous HCJFS intervention is not required to ensure the child receives proper care and protection; and
- . The HCJFS ongoing caseworker is responsible for managing the social service case, and arranging for court-ordered services to be provided to the child and the child's family.

What does the HCJFS caseworker bring to the case?

- . The caseworker brings training in analyzing risk, assessing service needs, and providing guidance to families;
- . Direct services for families to provide them with the knowledge, skills, and resources necessary for change; and
- . Links to other service providers so that the family can access resources outside the HCJFS system.

When is the HCJFS caseworker involved in the case?

- . An HCJFS caseworker is involved from the initial contact with the family and/or child until HCJFS services are no longer needed.
- . In Hamilton County an intake worker investigates the case initially, then the case is transferred to an on-going caseworker.

Attorney for HCJFS

Hamilton County Prosecutor's Office is responsible for representing HCJFS in child protection cases.

What is the role of the attorney for HCJFS in the case?

- . The prosecutor's role is to represent the position of the agency in court;
- . Advise the agency regarding its responsibilities as outlined in the law; and
- . File legal documents relevant to the case.

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When is the attorney for HCJFS involved in the case?

- . He/she is involved from the petition filing through the end of the case.

Magistrate

What is the role of the magistrate in the case?

- . The magistrate is appointed by an elected Hamilton County Judge to hear certain types of cases. (Judges are elected and magistrates are appointed.) The magistrate's role is to determine if there is a continued safety issue for the child that necessitates continued out-of-home placement if the child has been removed from home;
- . Review case progress and approve placements;
- . Hear testimony, motions, etc., regarding the case;
- . Approve the permanent plan for the child;
- . Order termination of parental rights when appropriate; and
- . Close the court case when there is no longer a need for court intervention or the permanent plan has been achieved.

When is the magistrate involved in the case?

- . The magistrate is involved from the request for emergency custody at the petition filing until the court case is closed.

When is the JUDGE involved in the case?

- . A judge is involved when a party to the case files an objection to the magistrate's decision. The judge reviews the magistrate's decision then decides whether to uphold or reverse the decision.

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UNIT 3: The Juvenile Court Process

Juvenile Court Hearings - Child Protection

For a case to enter the juvenile court system, the first step often is for the child protective services agency to file a complaint with the court alleging that the child has been abused or neglected. The Prosecutor’s office, representing HCJFS, prepares the complaint with information from the HCJFS caseworker. The child may be removed from the home under an emergency custody order, or a complaint may be filed without taking the child into custody. At the first hearing, the magistrate appoints a Guardian ad Litem. Usually the CASA volunteer is appointed later in the case.

Following is a table outlining a sample of the types of hearings that occur once a petition is filed and the possible timelines for the hearings.



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Type of Hearing	Description
<p>Emergency Order Hearing</p>	<p>In this hearing, the magistrate determines the child’s placement until next hearing. Additionally, the magistrate inquires about missing parents, possible relative placements, the status of other children in the home, and the child’s needs pending adjudication.</p>
<p>Day One and Day Seven Shelter Care Hearing.</p>	<p>Until the time of the adjudication, each hearing will review the child’s placement, relative placement and other placement options, and the child’s needs pending adjudication. These hearings ensure all parties have received proper notice of future hearings and service of the complaint and motions.</p>
<p>Adjudication</p> <p><i>It is not unusual for parties to substantially agree about the facts in the complaint.</i></p>	<p>At this hearing, the magistrate determines whether the facts alleged in the complaint are true. The magistrate may find that the facts outlined in the petition if true still do not constitute abuse or neglect. If so, the magistrate dismisses the petition. If the magistrate finds that the facts in the petition do allege abuse or neglect then the magistrate has to determine whether there is sufficient evidence supporting the specific allegations outlined in the petition. If the magistrate is presented with sufficient evidence, he/she will then determine whether the child is abused, neglected and/or dependent. If there is insufficient evidence to prove the allegation, the petition is dismissed and the child is returned to the parents.</p>
<p>Disposition</p> <p><i>Often takes place immediately following the adjudication but can be set at a later date by request of any party.</i></p>	<p>At disposition, the magistrate decides what should happen to the child -- depending on the child’s best interest -- now that abuse or neglect has been determined. Disposition addresses such matters as placement, needed services, and permanency planning. Dispositional alternatives include: protective supervision; temporary custody (TC); legal custody; permanent custody (PC) or planned permanent living arrangement (PPLA).</p>

Juvenile Court Hearings

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Type of Hearing		Description
Juvenile Court Hearings	<p>Review Hearing</p> <p><i>Usually held quarterly.</i></p>	<p>At each review hearing, the magistrate considers the progress of the parents and the needs of the child. Additionally, the magistrate reviews the need for continued custody and what efforts are being made to find a permanent plan for the child. Each review hearing requires a CASA volunteer court report providing the magistrate with current information about what is in the best interest of the child.</p>
	<p>Annual Review Hearing</p> <p><i>Held within twelve months of the initial removal from the home and at least every twelve months thereafter. (Can take the place of a review hearing.)</i></p>	<p>At the annual review hearing, the magistrate considers next steps for the child: continued custody to HCJFS, reunification with a parent, termination of parental rights and adoption, or custody to a relative or other suitable person. The magistrate also looks at the efforts made by HCJFS to implement the current plan for the child.</p>
	<p>Termination of Parental Rights (TPR) or Permanent Commitment Motion (PC)</p> <p><i>If a magistrate ceases reunification efforts, the PC petition must be filed by HCJFS within sixty days. Otherwise, it is to be filed by HCJFS if a child is in care fifteen months of the past twenty-two months (unless the court finds a compelling reason, such as permanency plan for guardianship or custody with a relative or other suitable person, that PC is not in the child's best interest, or that HCJFS has not provided adequate services to the family).</i></p>	<p>If the parent's circumstances or response to rehabilitation services indicate that there is little likelihood he/she will be able to parent the child in the foreseeable future, the case may proceed to a request for permanent custody. At a PC hearing, the magistrate decides whether or not the grounds alleged in the PC motion have been proven and whether PC is in the best interest of the child. The CASA must prepare a PC report for the court about whether PC is or is not in the child's best interest. If the PC motion is granted, the parent's rights are terminated, and then he/she is no longer a party to the abuse/neglect proceeding.</p> <p>A parent may decide to forgo the trial and voluntarily relinquish all parental rights and responsibilities to the child.</p>

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	Type of Hearing	Description
Juvenile Court Hearings	<p>Post-PC Placement Review</p> <p><i>Held within six months of the PC and every six months until permanency is achieved.</i></p>	<p>At post-PC reviews, the magistrate reviews the permanency plan for the child and services that the child needs. In particular, the magistrate looks at efforts made by HCJFS to find a permanent placement if one has not already been located.</p>

Remember, the CASA volunteer and CASA Manager must ensure each attorney and party have a copy of the CASA’s report prepared for the magistrate.



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How CASA Volunteers Are Assigned

ProKids receives new cases in three primary ways:

- **Day 1 Hearings**

Periodically ProKids receives all the new cases entering Juvenile Court on a particular day. This is called the Day 1 Docket. Cases are assigned to the Day 1 Docket in a variety of ways, but they are typically new cases to the Juvenile Dependency Court. A ProKids attorney and ProKids CASA Manager are present at these hearings. The CASA volunteer to whom the case will be assigned may or may not be present depending on his/her availability.

- **Conflict Cases**

ProKids receives these cases because a conflict of interest has arisen with the Public Defender Guardian ad Litem (GAL) Division Office. An example of this conflict is the Public Defender GAL represents the minor mother on a case. ProKids is assigned to advocate on behalf of the minor mother's child's best interests, if a case on her child is opened, because the mother and the child might have different interests.

- **Referral**

ProKids can receive referrals directly from magistrates. This is done for particular needs of the child/family or expertise of the ProKids CASA volunteer (i.e., ProKids Building Blocks Birth-to-Five CASA volunteer).

Once a case is received and a CASA Manager is assigned, the CASA Manager will then call a CASA volunteer to discuss the specifics of the case. Once accepted, the CASA Manager will then submit the Juvenile Court Appointment Entry and the CASA volunteer begins his/her investigation.

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The Juvenile Court Appointment Entry

Is typically generated by the ProKids CASA Manager/GAL. This document allows the CASA volunteer access to all records and reports on the child.

**COURT OF COMMON PLEAS
JUVENILE DIVISION
HAMILTON COUNTY, OHIO**

IN RE:

CASE NO:

**ENTRY APPOINTING PROKIDS
GUARDIAN AD LITEM AND COURT
APPOINTED ADVOCATE**

The Court upon its own motion hereby appoints/retains _____ an officer of this Court to serve as ProKids Guardian ad Litem and _____ an officer of this Court to serve as Court Appointed Special Advocate volunteer for the above named child/ren in this cause.

1. The Guardian ad Litem and the Court Appointed Special Advocate volunteer shall perform an integral part of the Court’s fact finding process; shall, in coordination with other parties, investigate and report to the Court such information as will assist in obtaining a permanent home: and shall make recommendations regarding this child/ren to the Court and may undertake any other such actions, including transportation of said child/ren, which is necessary in the performance of their duties.
2. Upon presentation of a copy of this order to any agency, hospital, organization, school, person, or office including, but not limited to, the Clerk of this Court, human services agencies, physicians, mental health professionals, or law enforcement agencies, the Guardian ad Litem and/or the Court Appointed Special Advocate volunteer shall be permitted to inspect and copy any records relating to the child/ren including those records subject to O.R.C. 3701.243 without the consent of the child/ren or parent/custodian.
3. The Guardian ad Litem and/or the Court Appointed Special Advocate assigned to this cause shall maintain any information received from any such source as confidential, and will not disclose the same except to report to the Court or as the Court directs or law permits.
4. The Guardian ad Litem and/or the Court Appointed Special Advocate shall be notified of any hearings, reviews, or other proceedings concerning the child/ren and shall be notified prior to any change made in the child/ren’s case plan by any party, except those actions taken to prevent immediate or threatened physical or emotional harm to the child/ren, as provided in O.R.C. 2151.412, in which case the Guardian ad Litem must be notified before the end of the next business day after the change is made.
5. All of the above work will be under the general supervision of ProKids and at the direction and discretion of this Court.

Date

Magistrate

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UNIT 4: Appearing in Court

It's Monday morning. You have spent the last few months investigating your case, talking to your child's caseworker, her teachers, her therapist, and her health care providers, visiting with her and her foster family, and interviewing her parents. You have worked very hard preparing your court report. Now it's time to go to court.

If just the thought of going into a courtroom has your palms sweating and your heart racing, then take a few deep breaths and sit back. Here is what you need to know about surviving in the courtroom.

(Note: Some of the words related to court procedures may be unfamiliar to you. The Glossary contains a definition of many of the terms that are used in this section.)

Preparation: Getting Ready for Court

Once you have completed your investigation, prepared your court report, and talked to your CASA Manager, your case is ready for court. Now you need to get yourself ready for court. This means being well informed and forewarned about the court process, which the following material is intended to do.

Appearance: "What do I wear?"

This is probably not your most serious concern, but since the magistrate's first impression of you will be based on your appearance, it deserves discussion. Impressions given to the magistrate are crucial so you should dress professionally and conservatively. Business suits or jackets and ties for men; business suits, dresses, skirts or slacks and blouses for women are appropriate.

Demeanor: How should I act?"

Your demeanor in court is also important. One word sums it up: **respect**. Anytime you are in the courtroom -- even when your case is not being heard -- conduct yourself in a respectful, professional manner. Some particular warnings:

- . Do not bring food or drinks into the courtroom.
- . Do not chew gum or have anything in your mouth that will need to be spit out.
- . Turn off your cell phone and any other electronic devices that could disrupt proceedings.

Show respect for everyone in the courtroom. This rule applies regardless of whether you disagree with them, do not personally care for them, or actually dislike them. Always refer to others as Mr. or Ms.

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THE HEARING

“Where Do I Sit?”

Your supervisor will always be with you at court and will direct you where to sit.

“Where Is the Jury?”

In child protection proceedings, there is no jury. In the vast majority of CASA volunteer cases, the magistrate will make the final decision regarding the case.



THE HEARING BEGINS

Review Hearings

As a CASA volunteer, most of the hearings you attend will be review hearings. The purpose of a review is simply to inform the court about the progress of the case. Specifically, the magistrate is interested in knowing how the children are doing in their placements, services, visits, and school. In terms of possible reunification, the magistrate wants to know how the parents are progressing in reunification services and whether they are generally maintaining a healthy lifestyle, free from criminal activity and chronic instability.

Review hearings are very informal. Legal parties to the case (HCJFS, the parents, prior legal custodians, and the CASA volunteer and GAL) attend, along with services providers such as social workers from private foster care networks, sometimes therapists, and other interested individuals. No testimony is taken and sometimes attorneys are not present. The magistrate generally will begin the hearing by asking the HCJFS caseworker to provide an update, then moving on to the parents, service providers, and then the CASA volunteer.

Sometimes the magistrate will have read your report, other times crowded dockets prevent this. The CASA should always be prepared to briefly and clearly present the information and recommendations gathered in the report. If you get stuck or there is a question you cannot answer, your CASA Manager is always there to assist you.

Your report will include specific recommendations as to the child and possibly in regard to the parents. The magistrate may invite a thorough discussion of your recommendations and include orders in the entry related to your recommendations. Sometimes, the magistrate will not take any action to implement your recommendations and may advise you and your CASA Manager to file a motion to obtain an order.

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Generally, review hearings are scheduled four times a year. Some magistrates are especially interested in scheduling reviews around particular events such as, the beginning or end of the school year, or after an extended visit between the parents and children. Other cases require closer scrutiny because of risk to the child or non-compliance with court orders. These cases may have several hearings in a short period of time. Some cases are reviewed less frequently because they are relatively stable or nearing termination.

Contested Hearings

The same courtroom you experienced as a relaxed, informal setting during a review hearing can be a very different place when there is a trial. Instead of legal parties, service providers and other interested persons coming into the courtroom together to report on case progress, formal roles are assumed. The legal parties have a right to be present and have counsel, all others can be excluded from the courtroom or may be called as witnesses. Contested hearings are scheduled when legal parties do not agree about a particular course of action. Issues at contested hearings range from children's long-term placement to visitation schedules. Often, the attorneys waive opening statements and examination of the witnesses begins after the court disposes of any pre-trial issues.

Direct Examination

A witness may be questioned in several stages. First, the attorney who called the witness to the stand will question the witness on direct examination. This type of questioning is generally open-ended, allowing the witness to fully explain his or her answers. The purpose of direct examination is to present the judge with evidence to support the position of the attorney who called the witness to the stand. For this reason, it is possible that someone other than the attorney for the program will call you as a witness. Do not be alarmed or suspicious if this happens, but heed the warnings outlined in the section below on cross-examination. *A helpful rule is to answer only what is asked.*

CASA volunteers rarely, if ever, testify. If you are ever called, the ProKids attorney will usually be the one to call you to the stand. When this is the case, you will have an idea of the questions that he or she intends to ask. Do not, however, think that you can script your testimony. The unexpected -- such as objections or questions from the judge -- can, does, and, in all probability, will occur. If you have concerns about any particular area of your testimony, review it with the attorney prior to the hearing.

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Cross-Examination

Once a witness has been questioned on direct examination by the attorney who called the witness to testify, then all the other attorneys and unrepresented parties have the opportunity to question the witness. This is called cross-examination. Cross-examination involves closed questions and is usually conducted by using leading questions. A leading question is one that can be answered “yes” or “no”. Where direct examination is used to elicit testimony supporting one’s position, the primary purpose of cross-examination is to expose any weaknesses in the witness’s testimony or to make the witness appear less credible to the judge. Cross-examination is also an opportunity for an attorney to elicit positive information about the attorney’s client that probably did not come out on direct examination.

Because the purpose of cross-examination can be to discredit the witness’s testimony, the attorney may try to cast doubt upon the thoroughness of an investigation, the witness’s interpretation of the facts, and perhaps whether the witness’s judgment and actions were clouded by his or her feelings.

Although the witness may feel that the person who is cross-examining is personally attacking him/her, it is very important that the witness does not take the questions personally. If cross-examination is viewed as a personal attack, the witness will appear defensive and unprofessional -- an impression to be avoided at all costs. Remember that the attorney is merely doing what he or she believes needs to be done to zealously represent his or her client.

Being cross-examined is perhaps the most difficult part of appearing in court. This is due in part to the fact that the witness does not know what will be asked, and with each question, the witness may -- at least subconsciously -- wonder what the cross-examiner’s agenda is. The witness should not try to figure out an attorney’s motive for asking a question.

Watch for these cross-examination styles and tactics:

a. Rapid-Fire Questions:

This is where the attorney asks a string of leading questions in rapid succession, giving the witness little time to answer. This tactic is designed to confuse or upset the witness or to force inconsistent answers. *Best response: Take control.* Always remember that the witness can slow the pace down. Take time to consider the question and be deliberate in answering. Some techniques include asking to have the question repeated or pausing before answering each question (in fact, it is always a good idea to take a second or two to think about the question before responding).

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b. Compound Questions:

Sometimes a witness will be asked a question that really contains more than one question. For example, “Isn’t it true that you never talked to the mother and that she tried to schedule an appointment with you?” This tactic is designed to confuse the witness or to force inconsistent answers. When a compound question is asked, your attorney should object. If not, you should tell the judge that the question requires a two-part answer and proceed to answer each question. “I never talked with the mother because she never returned my phone calls and I am not aware that the mother ever tried to schedule an appointment with me.”

c. Lulling the Witness:

In this scenario, the attorney lulls the witness into a false sense of security by being overly friendly and familiar. *Best response: Stay alert.* The witness should remember he/she is being cross-examined, the purpose may be to discredit or diminish the effect of the witness’s testimony.

d. Condescending Counsel:

This tactic is where the attorney is very benevolent to the witness and over-sympathetic to the point of ridicule. Basically it is a condescending attitude. It is used to give the impression that the witness is inept, lacks confidence, or may not be reliable. *Best response: Stay calm.* The witness should not let any anger or frustration show and can defeat this tactic by being firm and decisive with his/her response.

e. Staring at the Witness:

Sometimes during cross-examination, an attorney will pause after a witness has answered a question and stare at the witness, as if expecting the witness to say more. *Best response: The witness should not speak until the attorney asks another question. Stay calm. Stay focused.*

f. Badgering the Witness:

This is just what it sounds like. In this scenario, the attorney gets in the witness’s face (not literally), shouts, and/or demeans. Quite often, this tactic is used in conjunction with rapid-fire questions. This technique is used to make the witness become angry and defensive and to lose control. *Best response: Stay calm.* The witness should speak in a deliberate voice, as unemotionally as possible. The witness’s attorney will object as soon as this style of questioning is apparent.

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g. Demanding a “Yes” or “No” Response to a Question:

Attorneys are taught to ask questions that call for a “yes/no” response on cross-examination. That is the only response the attorney wants. The attorney does not want you to explain to the court all the details surrounding the issue at question. Best response: When a “yes/no” response will either confuse the court or leave out important details, fully answer the question. If the attorney asks the court to order the witness to answer “yes” or “no”, do not fret. The witness’s attorney will have an opportunity on redirect examination to elicit a full explanation from the witness about the matter.

Redirect or Rebuttal Examination

Once all the attorneys have completed their cross-examination of a witness, the attorney who called the witness to the stand has an opportunity to ask more questions of the witness. This is called redirect or rebuttal. If there were new issues raised on cross-examination, redirect examination gives the witness a chance to clear up any confusion and to more fully explain the issues.

Recross-Examination

Following a redirect examination, any issue raised on redirect may be addressed by more cross-examination of the witness. Again, all of the attorneys who did not call the witness to the stand have an opportunity to again cross-examine the witness. This is called recross-examination.

Questions From the Magistrate

The magistrate is permitted to ask questions of a witness at any phase of the examination. The magistrate may ask a question in the middle of an examination or following any phase of the examination. If the magistrate asks a question, the witness should look him or her in the eye and respond with respect, even if the information is negative to the witness’s position.

Objections: “What Did I Do Wrong?”

During an examination of a witness -- be it direct, cross, redirect, or recross -- the attorneys who are not questioning the witness may voice an objection to any question asked. The witness should not be alarmed. This does not mean the witness has done anything wrong. It simply means that the attorney is informing the magistrate that he does not think the question is legally appropriate or proper. If this happens, the witness should stop talking and not answer the question until the magistrate rules on the objection. If the magistrate sustains the objection, the witness should not answer the question at all. The witness should wait for the attorney to ask another question. If the magistrate overrules the objection, the witness should then proceed to answer the question.

CHAPTER 3: The Child Protection Process

General Rules of Testifying

These rules apply to all phases of your examination, but are especially important during the cross-examination phase.

- ***Listen very carefully to the question.***

- ***Understand the question.***

The witness should always make sure he/she understands the question before attempting to answer it. If the witness did not hear the question, ask the attorney to repeat the question. If the question is not clear, the witness should tell the attorney he/she does not understand the question and ask him or her to clarify the question or rephrase it.

- ***Answer only the question asked.***

The witness should not volunteer additional information or discuss tangential matters unless the question calls for a “yes/no” response and such a response would mislead the court. This is especially important on cross-examination. For example, if the question is “Do you know John Doe?” limit your answer to “yes,” “no,” or “I don’t know.” Let the attorney ask any follow-up questions, such as “How do you know John Doe?” One important exception to this rule: if the witness feels the answer needs to be explained, he/she should not answer “yes” or “no.” Proceed to give a full response or consider beginning his/her response by saying, “That question cannot be answered with a ‘yes’ or a ‘no,’ or “The response to that question requires an explanation.”

- ***Do not guess when answering a question.***

If the witness does not know the answer to a question, the witness should not be afraid to say to the court, “I don’t recall” or “I don’t know.” The witness should not attempt to guess at the answer or say, “I think so.” It is better to say that he/she does not know something than to risk discrediting themselves by guessing.

- ***Do not give an opinion unless it is requested.***

For example, if the witness is asked, “Where does Johnny want to be placed?” the answer would vary depending on whether he/she had the information. If the witness does not know, the witness should not say, “I think he would like to be...” However, if the witness is asked, “Where do you think Johnny should be placed?” then they are being asked for their opinion and can answer, “I believe that Johnny should be placed...”

CHAPTER 3: The Child Protection Process

Child Protection Mediation

Mediation offers an effective alternative to traditional court process by using a non-adversarial conflict resolution process in an environment of collaborative problem solving. It allows all parties a safe, guided exchange of information following simple rules that are clearly explained from the outset. Parties are permitted to explore any avenue of possible resolution unfettered by external restraints. Any party can request mediation. The goal of the Hamilton County Juvenile Court Child Protection Mediation Program is to create an atmosphere that values children and families through a reliable process that empowers families and generates reasonable and creative solutions resulting in permanency for children.

Due Process & Continuances

An important role of the court is to ensure that everyone who should be involved in a case has an opportunity to do so. Parties to a case have a right to notice of hearings and service of motions. Sometimes notice and service can be difficult to successfully complete due to missing or inaccurate information about the parents or their whereabouts. It is not unusual for trials to be rescheduled or “continued” because of notice and service issues. Continuances also may be requested and granted when a party or witness fails to appear for a hearing.

“I’ve Just Received a Subpoena!”

In addition to the juvenile proceeding for which you were appointed, sometimes there are other court proceedings involving the same facts and circumstances that brought your child into care. For example, there may be criminal charges of child abuse against one or both of the parents of the child you represent. There may also be court proceedings unrelated to the facts and circumstances that brought the child into care, but which are related to the child, such as a domestic dispute between the child’s mom and dad. When this happens, an attorney involved in these other court proceedings could subpoena you for trial or deposition because he or she believes that you may have information that would be important to his client’s case.

The most important consideration regarding your testimony in other proceedings is confidentiality. By law, CASA volunteers must keep all information regarding the case confidential, and no disclosure may be made except by court order or unless provided by law. So what do you do if you receive a subpoena?

CHAPTER 3: The Child Protection Process

1. Your supervisor will inform you that you have received a subpoena. All subpoenas are served at the ProKids office. Your supervisor will answer all questions that you have and will begin to prepare you for your appearance.
2. Respond to the subpoena by showing up at the designated time and place.
3. ProKids' attorney will represent you at any subpoenaed appearance. Your obligation of confidentiality extends to information about a specific case. If you are asked a question unrelated to a specific case -- for example, a question about you and your background or a general question relating to work as a CASA volunteer -- you may answer the question. If you are asked a question about a specific case -- even an innocent question like "Are you the CASA volunteer for Johnny Doe?" -- you should not answer the question. In response to these types of questions, you should inform the judge that you are not at liberty to discuss any information about a specific case. You might use the following language:

"I respectfully decline to answer the question since I am not at liberty to discuss any information about a specific case."

Once you have informed the court of your obligation of confidentiality, the judge may order you to testify, in which case you may -- in fact must -- do so because you now have the judge directing you to answer the question. If in doubt about whether to respond to a particular question, assert your duty of confidentiality and let the judge direct you to answer (or not). To the extent that you are permitted to testify in other court proceedings, the general rules for testifying are the same as when testifying in a juvenile proceeding.

Material for this unit created by Debra Sasser, Associate Counsel, NC Guardian ad Litem Program, 1999.

Juvenile Court Observation and Report

As a part of your training to become a Court Appointed Special Advocate, you will need to complete a court observation. You can find a copy of the report that is due and the instructions in the front cover pocket of your manual.

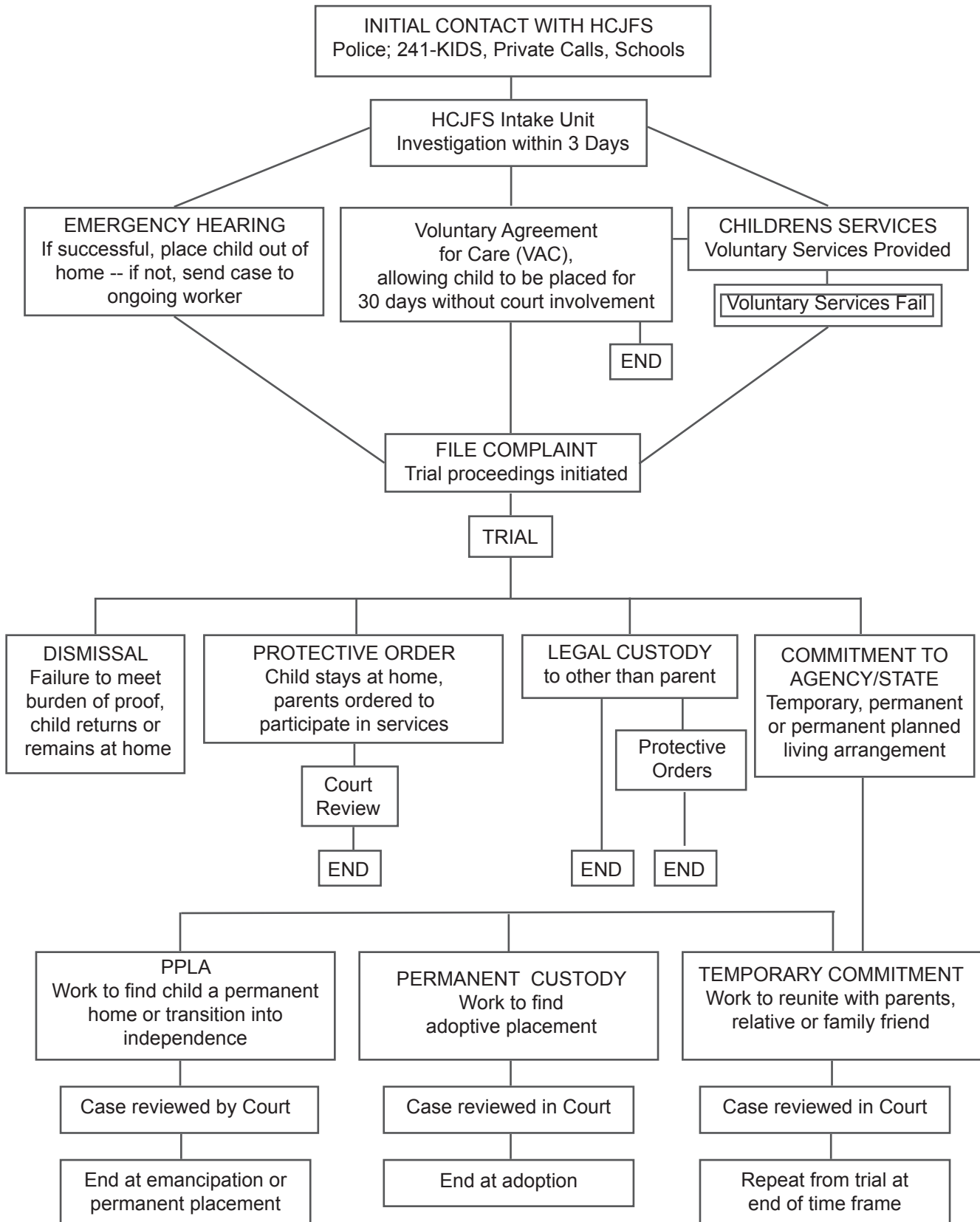
All Juvenile Court Observation Reports must be turned in to the training department prior to being assigned to a case.

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RESOURCE MATERIALS

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Flow Chart for Abuse, Dependency & Neglect Cases



**IN THE COURT OF COMMON PLEAS
OF HAMILTON COUNTY, OHIO
JUVENILE DIVISION**

IN RE: Bobby & Caroline Greene : **Case No. FO3-2345**
: **MOTION FOR INTERIM ORDER**
: **OF TEMPORARY CUSTODY TO**
: **THE HAMILTON COUNTY**
: **JOB & FAMILY SERVICES**

The Hamilton County Job & Family Services (hereinafter HCJFS), by its undersigned representative, moves the Court for an order of custody of the above-captioned children pending full-hearing of the facts alleged in the Complaint. The grounds for this motion are stated with particularity in the attached supporting affidavit.

There are reasonable grounds to believe the children are in immediate danger from their surroundings and, that their removal is necessary. As indicated by the attached affidavit, the parents or legal custodian are currently not able to adequately provide care or protect the health and well-being of the children.

WHEREFORE, the HCJFS moves the Court for an Interim Order of Temporary Custody pending full hearing on the Complaint. Further, the HCJFS prays the Court authorize or endorse removal of the children from their home with a finding of record that continuation in that home would be contrary to the children's best interest; and that the HCJFS made reasonable efforts to prevent the need for removal from the home;

or to find that reasonable efforts to prevent placement were not possible due to the exigent nature of the circumstances; and/or that the agency is making reasonable efforts to reunify the family.

Respectfully submitted,
MICHAEL K. ALLEN
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

Glenda Roddenbecker
Assistant Prosecuting Attorney
Trial Attorney
Ohio Reg. #00634
Telephone: 925-2292
ATTORNEY FOR HCJFS

MOTION FOR INTERIM ORDER OF TEMPORARY CUSTODY

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MEMORANDUM

Juvenile Rules 6, 7 and 13; Ohio Revised Code, Sections 2151.31, 2151.33, 2151.314, 5153.16; Section 5101:2-24-04 Ohio Administrative Code.

REQUEST FOR HEARING

The HCJFS requests the foregoing motion be heard on the (check one)

_____ Emergency Docket

_____ Expedited Docket

**IN THE COURT OF COMMON PLEAS
OF HAMILTON COUNTY, OHIO
JUVENILE DIVISION**

IN RE: Bobby & Caroline Greene : **Case No. FO3-2345**
: **AFFIDAVIT SUPPORTING MOTION**
: **FOR INTERIM ORDER OF**
: **TEMPORARY CUSTODY TO THE**
: **HAMILTON COUNTY**
: **JOB & FAMILY SERVICES**

State of Ohio)
) S.S.
County of Hamilton)

Jennifer Ross, having been duly cautioned and sworn, states as follows:

The circumstances which precipitated the request for an interim order of temporary custody are:

Melissa Greene is the mother of Bobby Greene (DOB 5-5-97) and Caroline Greene (DOB 5-10-99). Roger Tibbs is the legal father of both children. The children were placed in agency foster homes following the signing of a VAC by their mother on 3-19-03.

The children's maternal grandmother, Betty Greene, contacted 241-KIDS on this day and stated mother left the children with her on 3-16-03 and said she would return within hours. Mother subsequently had no contact with the grandmother during the next 3 days. Grandmother called 241-KIDS stating she refused to care for the children for the remainder of the day.

A social worker responded to the grandmother's home that day. While there, mother appeared but stated she no longer wanted the children.

The children were without appropriate and willing caretakers. Mother signed a VAC and the children were placed in separate homes that evening.

AFFIDAVIT SUPPORTING MOTION
Page 1 of 2

Further, affiant sayeth naught.

HAMILTON COUNTY JOB & FAMILY SERVICES
SOCIAL WORKER

Sworn to and subscribed in my presence this 19th day of March, 2003.

Notary Public or Deputy Clerk

**IN THE COURT OF COMMON PLEAS
OF HAMILTON COUNTY, OHIO
JUVENILE DIVISION**

IN RE: Bobby & Caroline Greene

**Case No. FO32345
COMPLAINT**

Jennifer Ross of the Hamilton County Job & Family Services, being first duly sworn and cautioned, states, on information and belief, that the following juvenile(s) under the age of eighteen years;

NAME	DOB	ADDRESS
Bobby Greene	5-5-97	222 East Central Parkway
Caroline Greene	5-1-99	Cincinnati, OH 45202

are neglected and dependent as defined in Ohio Revised Code Sections 2151.03 (A),(B) and 2151.04 (C). The children's mother is Melissa Greene, who resides at 4241 Witlar Avenue, Cinti, OH 45223 and have so resided for a unknown period of time. Roger Tibbs is the legal father and resides at LKA 2812 Price, Cinti, OH 45204.

The children are neglected, abused, and dependent in that:

NEGLECT: Ohio Rev. Code 2151.03

- (a) They are abandoned by their parents, guardian, or custodian;
- (b) They lack proper parental care because of the faults of habits of their parents, guardian, or custodian;
- (c) They exhibit evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it;

DEPENDENT: Ohio Rev. Code 2151.04

- (c) Whose condition or environment is such as to warrant the state, in the interests of the children in assuming their guardianship;

COMPLAINT

Page 1 of 2

The facts that constitute the alleged neglect, abuse, and dependency are as follows:

1. Bobby Greene (dob 5-5-97) and Caroline Greene (dob 5-10-99) are currently placed in agency foster homes following the signing of a VAC by their mother on 3-19-03.
2. The children's maternal grandmother, Betty Greene, phoned 241-KIDS and stated she had been caring for the children for 3 days and refused to keep them until the end of the day. She stated mother's whereabouts were unknown. Shortly after the social worker arrived at the home the mother returned. Mother also refused care of them, saying she was overwhelmed and was afraid she would neglect them if she had responsibility for them.
3. Mother has a long history of cocaine abuse. She attended in-patient drug treatment in 2000 and out-patient following discharge. She has admitted to relapsing. Mother also has a history of neglecting the children due to substance abuse problems.
4. There are no relatives available to care for the children.

IN RE: Bobby & Caroline Greene

COMPLAINT
TEMPORARY CUSTODY
CASE #: FO32345

Complainant therefore prays that this Court inquire into the alleged neglect and dependency of said children and grant temporary custody to the Hamilton County Job & Family Services, or, in the alternative, legal custody to a suitable relative or non-relative, or in the alternative a dispositional order of protective supervision and make such order as the Court deems necessary as provided by law including an order requiring the parents, guardian or legal custodian to pay for the financial support and comprehensive health care expenses of the children.

Further, if necessary, the Complainant prays the Court to inquire into and authorize removal of the children with a finding of record that continuation in this home would be contrary to their best interest and welfare and either: the Department made reasonable effort to prevent or eliminate the need for removal from the home; or reasonable efforts to prevent placement were not possible due to the exigent nature of the circumstances; or the Department has been, since the children's placement outside the home, making reasonable efforts to enable the children to return to their home.

Sworn to and subscribed before me _____, 20_____.

Sylvia S. Hendon/Thomas R. Lipps
(Judge)

(Complainant)

By _____
(Deputy Clerk/Notary Public)

Jennifer Ross
Hamilton County Job & Family Services
222 East Central Parkway
Cincinnati, Ohio 45202
(513) 946-2107

Federal Laws Governing Child Abuse & Neglect Cases

Though most of the law governing child protection, foster care, adoption, and juvenile court proceedings originates with state legislatures, state law is influenced significantly by several federal statutes enacted since 1974. Under these federal laws, states receive billions of dollars each year for the support of their child protective services system, foster care, and adoption services. They are required to comply with the provisions set out in the Child Abuse Prevention and Treatment Act of 1974 (CAPTA), the Adoption Assistance and Child Welfare Act of 1980 (AACWA), and the Adoption and Safe Families Act of 1997 (ASFA) as a condition of receiving these federal funds. Under AACWA, states receive federal funds to offset the costs of providing a wide range of child welfare services to families and children. These funds may be used for, among other things, family support, preservation, and reunification services. States also are reimbursed for a substantial portion of the money they pay to foster parents and other care providers for the “maintenance” (primarily room and board) of a child in foster care. Federal funds pay a portion of the staff training costs, administrative costs, adoption assistance payments to parents of special needs children, and the information systems developed by state agencies for their child welfare systems. **The following federal laws will be examined in greater depth:**

- . The Child Abuse Prevention and Treatment Act of 1974 (amended in 1996);
- . The Indian Child Welfare Act of 1978;
- . The Adoption Assistance and Child Welfare Act of 1980;
- . The Multi-Ethnic Placement Act of 1994;
- . The Adoption and Safe Families Act of 1997;
- . The Foster Care Independence Act of 1999; and
- . The Volunteer Protection Act of 1997.

The Child Abuse Prevention & Treatment Act of 1974 (PL 93-247), Amended In 1996 (PL 104-235)

Background

From a historical perspective, we are still relatively new to the concepts of protecting abused and neglected children and developing appropriate systems, methods, and programs to cope with the problems of these children and their families. Although every state had enacted a child abuse reporting law by 1965, the child welfare system was not adequately protecting children and their families. During the 1970s, the United States Congress became aware of this problem and enacted the Child Abuse Prevention and Treatment Act of 1974 (CAPTA). This legislation earmarked federal funds for states to establish special programs for child victims of abuse or neglect. It also mandated the appointment of guardians ad litem to represent children. Since its enactment in 1974, CAPTA has been amended several times.

Summary

The federal Child Abuse Prevention and Treatment Act, along with its implementing regulations, requires states that receive federal funds for their state child protective services programs to adhere to the following requirements:

1. The state must have a statute mandating the reporting of child abuse and neglect.
2. Upon receipt of a report of suspected abuse/neglect, the state (a) must determine if the report meets the definition of child abuse/neglect under state law, (b) conduct an assessment of the safety of all children under the care of the suspected abuser, (c) begin a prompt investigation of the report, and (d) take steps to ensure the safety of all children under the care of the suspected abuser, including removal of them to a safe environment.
3. The state must have specific procedures or programs for responding to reports of medical neglect, including instances of withholding medically indicated treatment from disabled infants with life-threatening conditions.
4. The state must define “child abuse” and “neglect” in accordance with federal statutes and regulations.
5. The state must submit a state program plan to the federal government every five years to remain eligible for federal funding.
6. The state must provide a guardian ad litem to every abused or neglected child whose case results in a judicial proceeding. The guardian ad litem may be an attorney or CASA (or both) whose responsibilities include completing an independent investigation of the child’s situation and needs, determining what actions are in the best interest of the child, and making recommendations to the court.
7. The state must maintain the confidentiality of child protective services records but make them available to persons who are the subject of the report, government agencies overseeing the state’s child protective services program, child abuse citizen review and fatality review panels, a grand jury or court, and other agencies or persons authorized by state law. The state may refuse to disclose the identity of the person who made the report of suspected abuse unless a court has found that the reporter knowingly made a false report.
8. State law must provide immunity from prosecution for persons who make good faith reports of suspected abuse/neglect.

9. Records of false or unsubstantiated reports of suspected abuse must be deleted from any database accessible to the public or used for employment or background checks. However, a child protective services agency may keep this information in its files for use in risk and safety assessments.
10. State law must not require reunification of a surviving child with a parent who is convicted of murder of one of his/her children or an assault resulting in serious bodily injury to a child. In addition, state law must provide that conviction of one of these crimes against children is sufficient grounds for terminating parental rights.
11. State law must establish at least three citizen review panels whose role is to determine if state and local agencies are carrying out their responsibilities for child protection under state law and professional standards.
12. State law must provide a procedure whereby persons with an official finding of substantiated or founded abuse can appeal that finding.
13. State law must require the disclosure to the general public of information about individual cases of child abuse or neglect that resulted in a child's death or near death.

*Synopsis prepared in October 1995 by Jill Moore, UNC law student.
Updated in May 2000 by William L. Grimm, Staff Attorney, National Center for Youth Law.*

The Indian Child Welfare Act of 1978 (PL 95-608)

Background

The Indian Child Welfare Act (ICWA) was a response to Congressional findings that there was a need for a federal law to prevent state courts and social workers, as well as private agencies, from further destruction of the American Indian family caused by unwarranted removal of Indian children from their tribes and families. ICWA acknowledges the loss of Indian culture resulting from historical government policies, such as separating Indian children completely from their tribe, placing them in boarding schools, and forbidding them to speak their native language. In an effort to “civilize” and assimilate Indians into the main-stream, a decision was reached in the early 1800s to start with the children. Bureau of Indian Affairs (BIA) agents and social workers were given cash incentives based on the head count of children taken away from their tribes and placed in non-Indian institutions and adoptive homes—usually far from home. The Indian Civilization Act was passed in 1810 to facilitate the removal of children in an attempt to assimilate them into Anglo-America. Subsequently, non-Indian caseworkers, courts, and agencies continued to see the Indian family structure as alien, foreign, and undesirable, so the process of adoptions by non-Indians occurred in wholesale numbers. The sense of loss and devastation not only tore away the child's heritage and foundation, it nearly destroyed the Indian family unit and the tribal government structure. The Indian Child Welfare Act was established to strengthen the participation by Indian tribes when placement of Indian children is being considered. It establishes requirements for child-placing agencies to follow when placing Indian children.

Summary

Children who are members of an Indian tribe, or who are the biological children of a member of an Indian tribe and are eligible for membership in the tribe themselves, may only be placed in foster care or for adoption according to the requirements of the Indian Child Welfare Act. The child's tribe is the final determinate of who is a member of the Indian community entitled to ICWA coverage. When ICWA coverage applies in a child's case, it takes precedence over other federal or state legislation. If a state agency initiates an Indian child custody proceeding on the reservation, jurisdiction belongs exclusively with the tribe. When the proceeding is off-reservation, the case must be transferred to the tribe upon the request of the tribe unless there is "good cause to the contrary," as set forth in the Department of the Interior's 1979 BIA "Guidelines for State Courts," Indian Child Custody Proceedings. Some of the reasons not to transfer include the following: parents object; child is over twelve and he/she objects; or the case is at an advanced stage and all witnesses are off-reservation. The state court cannot look at the economics of the family or tribe in making the decision not to transfer. Likewise, the state court cannot look at what it might deem "in the best interest of the child," since the law presumes that it is always in the best interest of an Indian child to have his/her own people determine what is proper for his/her future.

ICWA sets forth the following requirements:

1. State court proceedings for foster care placement or termination of parental rights that involve an Indian child must be transferred to the jurisdiction of the tribe unless they meet one of the exceptions outlined in the 1979 BIA "Guidelines for State Courts."
2. A state court faced with pending proceedings for the foster care placement of an Indian child or the termination of parental rights must notify the child's parent, custodian, or tribe of the proceedings.
3. An Indian child may not be placed in foster care unless there is a determination, supported by clear and convincing evidence, that the child will likely suffer serious emotional or physical damage if left in the custody of his/her parent or Indian custodian.
4. An Indian child's parents may not have their parental rights terminated unless there is a determination, supported by evidence beyond a reasonable doubt, that the child is likely to suffer serious emotional or physical damage if left in the custody of his/her parent or Indian custodian.
5. Voluntary consents to foster care placement or termination of parental rights that involve Indian children are not valid unless executed in writing before a magistrate and accompanied by the magistrate's certificate that the terms and consequences of the consent were fully explained to and fully understood by the parent or Indian custodian.
 - Voluntary consents to foster care placement may be withdrawn at any time.
 - Voluntary consents to termination of parental rights or adoption may be withdrawn at any time before the final decree of termination or adoption is issued -- and up to two years thereafter upon a showing of fraud or duress.
6. In adoptions of Indian children, preferences for placement must be accorded as follows: (1) to a member of the child's extended family; (2) to other members of the child's tribe; and (3) to other Indian families.
7. In foster care or preadoptive placements of Indian children, preferences for placement must be accorded as follows: (1) to a member of the child's extended family; (2) to a foster home licensed or approved or specified by the child's tribe; (3) to an Indian foster home licensed or approved by an authorized non-Indian licensing authority; and (4) to an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suited to the child's needs.

*Synopsis prepared in October 1995 by Jill Moore, UNC law student.
Updated in May 2000 by Evelyn M. Stevenson, Tribal Attorney,
Confederated Salish and Kootenai Tribes of the Flathead Nation.*

The Adoption Assistance & Child Welfare Act of 1980 (PL 96-272)

Background

This law is a blueprint for combined efforts to preserve families and, if necessary, to build new families for children. It was adopted because insufficient services were being provided to keep families together, inappropriate placements of children were being made, disincentives for adoption existed, foster care was prolonged resulting in a lack of permanency for children, and there was a lack of information about children in foster care. The intention of the law was to prevent the breakup of families and provide permanency planning for children.

Summary

The federal Adoption Assistance and Child Welfare Act, along with its implementing regulations, requires states that receive federal funds for assistance with foster care maintenance and adoption assistance to adhere to the following requirements:

1. The state must have a plan for child welfare services that:
 - Provides for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of the children needing such care;
 - Describes the measures taken by the state to comply with the Indian Child Welfare Act; and
 - Provides assurances that: (1) the state has completed an inventory of all foster children who have been in care for six months or more; (2) the state is operating a statewide information system regarding children in foster care; (3) the state is operating a case review system for children in foster care; (4) the state is operating a service program to help children return to their families or be placed permanently; (5) the state is operating a program designed to help children at risk of being placed in foster care remain with their families; and (6) the state has reviewed its policies and procedures for children abandoned at or shortly after birth.
2. The state agency administering the state plan must report known or suspected cases of abuse or neglect among children receiving foster care maintenance payments or adoption assistance aid to the appropriate state agency.
3. The state must establish standards for foster family homes and review the standards periodically.
4. In its state plan, the state must set specific goals as to the maximum number of children who will be in foster care for more than twenty-four months, and describe the steps it will take to meet the goal of decreasing the length of stay for children in care.
5. The state must make “reasonable efforts” (a) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his/her home, and (b) to make it possible for the child to return to his/her home. There is a greater burden to prove “reasonable efforts” when the Indian Child Welfare Act applies. *(Note: Under the Adoption and Safe Families Act of 1997, the safety of the child must be of paramount concern when making decisions regarding reasonable efforts.)*
6. The state must develop a case plan for every child in foster care who receives foster care maintenance payments and must provide a case review system.
7. Under the case review system, the status of each child must be reviewed at least every six months, either by a court or by administrative review.
8. The state must have a procedure or system by which parents may revoke voluntary placement agreements and the child may be returned to them.

9. The state must provide a dispositional hearing for every child in foster care no later than eighteen months after the original placement and every twelve months thereafter while the child's foster care continues. *(Note: Under the Adoption and Safe Families Act of 1997, the hearings are called permanency hearings and must be held within twelve months after the date of the initial order removing custody and at least every six months thereafter.)*

10. The state must have a data collection and reporting system that includes information about children in foster care and children placed for adoption.

*Synopsis prepared in October 1995 by Jill Moore, UNC law student.
Updated in May 2000 by William L. Grimm, Staff Attorney, National Center for Youth Law.*



The Multi-Ethnic Placement Act of 1994 & Inter-Ethnic Adoption Provisions

Background

Increasing awareness of the damage done to children when they are moved from one non-permanent placement to another brought attention to children whose placements were determined solely, or primarily, on the basis of race. Additionally, public attention was focused on the high percentage of children of color who come into care and who remain in care for long periods of time. Federal law set out guidelines meant to respect the importance of a child's culture and heritage while reducing the time that children wait for homes. This legislation also focused on increasing the numbers and diversity of the pool of available foster and adoptive families.

Summary

The Howard Metzenbaum Multi-Ethnic Placement Act of 1994 (MEPA), prohibits denial or delay of placement for foster care or adoption by any agency that receives federal funds because of the child's or foster/adoptive parent's race, color, or national origin. The law was intended to:

- . Decrease the time children wait to be adopted;
- . Prevent discrimination in the placement of children on the basis of race, color, or national origin;
- . Prevent discrimination on the basis of race, color, or national origin when selecting foster and adoptive placements; and
- . Facilitate the development of a diverse pool of foster and adoptive families.

In August 1996, Congress amended MEPA with the Inter-Ethnic Adoption Provisions (IEP) in order to strengthen its nondiscriminatory provisions and to provide stiff penalties for violation of the act. The antidiscrimination provisions of MEPA-IEP now state that any public or private agency or entity that receives federal assistance cannot:

- Deny to any person the opportunity to become an adoptive or foster parent on the exclusive basis of the race, color, or national origin of the adoptive or foster parent or the race, color, or national origin of the child involved in the foster or adoptive placement; and
- Delay or deny the placement of a child for adoption or into foster care on the basis of the race, color, for national origin of the adoptive or foster parent or the race, color, or national origin of the child involved in the foster care or adoptive placement.

MEPA was enacted to encourage transracial placements of children when appropriate same-race placements are not available. The act specifically permits the consideration of a child's cultural, ethnic, or racial background and the ability of a potential foster parent to meet the child's related needs as one of many factors to consider in determining the best interest of a child. The Department of Health and Human Services published a policy guideline in the Federal Register on April 25, 1995, to be used as guidelines for compliance by agencies. An updated policy guideline related to the amendment was made available in June 1997.

Noncompliance with this act is a violation of Title VI of the Civil Rights Act of 1964. Any person who believes that he/she has been a victim of a violation of the act has a right to bring an action for relief in the appropriate U.S. district court. Any entity found in violation of the law will lose considerable federal matching funds. MEPA does not affect the Indian Child Welfare Act of 1978.

*Summary prepared for the Alaska Citizen's Foster Care Review Board. Author unknown.
Updated in May 2000 by William L. Grimm, Staff Attorney, National Center for Youth Law.*

The Adoption & Safe Families Act of 1997 (PL 105-89)

Background

While major provisions of federal child welfare law were enacted in 1980 (AACWA) and 1997 (ASFA), there were important amendments to the federal law in the interim. An Independent Living Initiative was added in 1986, which was then replaced with the John Chafee Foster Care Independence Program in 1999. In 1989, as part of the Omnibus Budget Reconciliation Act, the definition of “case plan” was modified to require that health and education records be included in the case plan and shared with the child’s foster parents. As part of the welfare reform act (the Personal Responsibility and Work Opportunities Reconciliation Act) of 1996, states were directed to consider giving preferences to relatives over a non-related caregiver when placing a child in foster care. That same act contained a provision allowing federal funds to be used to pay for the care of children in private, for-profit institutions.

Summary

The Congressional mandates, which states must follow in order to receive federal funds for child welfare services, are found in several sections of the United States Code. They include Titles IV-B and IV-E of the Social Security Act. Title IV-B allots funds to states for a wide range of services whose purposes include protecting and promoting the welfare of homeless, handicapped, or neglected children; preventing the breakup of families; placing children in adoptive homes; and assuring adequate care of children placed outside the home. It also funds the Promoting Safe and Stable Families Program, which funds family preservation services (including services to adoptive, extended, and foster families), community-based family support services, time-limited (i.e., within fifteen months after the child enters care) reunification services, and adoption promotion and support services. Title IV-B requires a state to submit a plan outlining how it will use those funds and guaranteeing that it meets certain conditions, including a statewide information system, elimination of barriers to timely adoptions across state lines, a case review system, prompt decisions about permanent placement for children abandoned at birth, a plan to comply with the Indian Child Welfare Act, and a plan that ensures that the safety of children is the paramount concern for all service programs supported by these funds. Title IV-E attaches additional conditions with which states must comply in order to receive federal funds for their foster care and adoption assistance programs. Many of these provisions were first enacted as part of AACWA.

Several new conditions were added, time lines changed, and other provisions substantially modified by the Adoption and Safe Families Act of 1997 (ASFA). Foremost among the changes made in 1997 was the declaration that a child’s health and safety must be the paramount concern in all decisions, the creation of exceptions to the requirement of reasonable efforts, and the mandatory filing of a petition to terminate parental rights for a child in care for fifteen months (of the most recent twenty-two months). The conditions imposed upon the states now include:

1. Reasonable Efforts: This mandate was part of the 1980 act. It requires states to make reasonable efforts (a) prior to the placement of a child in foster care to prevent or eliminate the need for removal from his/her home, and (b) to make it possible for him/her to return home from foster care. Its misinterpretation or misapplication by agencies provided much of the impetus for the overhaul of federal law in 1997.

- **Health and Safety the Paramount Concern:** In determining what efforts are “reasonable” and in implementing services that are part of the reasonable efforts, the paramount concern governing the agency’s actions must be the health and safety of the child.
- **Exceptions:** Reasonable efforts are not required if any one of the following three conditions exists: (a) the parent has subjected a child to an aggravated circumstance. The federal law gives four examples -- abandonment, torture, chronic abuse, or sexual abuse. However, states are free to add to the list of aggravated circumstances; (b) the parent has been convicted of murder or manslaughter or having aided, attempted, or conspired to kill his/her child, or been convicted of felony assault resulting in serious bodily injury to one of his/her children; or (c) the parent’s rights to a sibling were involuntarily terminated.
- **Expedited Permanency Hearing:** If the court determines that no reasonable efforts need be made, then a hearing to determine the permanent plan for the child must be held within thirty days and the agency must immediately begin efforts to place the child in a permanent home.

2. Concurrent Planning: At the same time the agency is making reasonable efforts to return a child home, it may plan for and make reasonable efforts to place the child for adoption or legal guardianship.

3. Judicial Determination: Unless the child is in care as a result of a voluntary written agreement with the parents, there must be a judicial determination that the child’s continuation in the home of his/her parent or guardian is “contrary to the welfare of the child” and that reasonable efforts to prevent placement or reunite the child have been made.

4. Case Plan: Each child must have his/her own individualized case plan and for a child 16 or older, the plan must describe the services that will help the youth prepare for independence.

5. Periodic Reviews: No less frequently than every six months after a child enters care, the court or administrative agency (including a citizen review board) must review the child’s case. The purpose of this review is to determine the safety of the child, compliance with the case plan, the progress made in eliminating the causes for placement, appropriateness of the placement, and a projected date for the child’s return home or alternative permanent plan.

6. Permanency Hearing: The focus of this hearing is different from the periodic reviews. Twelve months after a child has entered foster care, a hearing to determine the permanent plan for the child must be held. In cases of children placed out of state, this hearing must also determine if that placement is still appropriate for the child and in the child’s best interest. In cases of a child sixteen years old or older, this hearing must determine what services are needed to help this youth make the transition from foster care to independent living. This hearing must be held every twelve months as long as the child remains in care.

7. Permanency Plan Options: Congress specified four types of permanent plans that are acceptable: return to the parent, placement for adoption, legal guardianship, or planned permanent living arrangement. The latter plan may only be considered when the agency has documented for the court the reasons for eliminating the other three permanent options.

8. Termination of Parental Rights Petitions: The child welfare agency must file a petition to terminate parental rights for a foster child who falls within one of the following categories: (1) a child who has been in foster care for fifteen of the most recent twenty-two months; (2) a child who has been adjudicated an abandoned infant; or (3) a child whose parent was convicted of one of the crimes that create an exception to reasonable efforts.

9. Termination of Parental Rights Petitions -- Exceptions: There are three situations in which the agency may defer filing a petition to terminate parental rights: (1) the child is being cared for by a relative; (2) a compelling reason supports a finding that termination would not be in the child's best interest; or (3) the agency has not provided the parent with the services listed in the case plan as necessary for the child's safe return home.

10. Procedural Safeguards: Basic procedural safeguards (i.e., notice and an opportunity to be heard) must be provided to the parent and child whenever the child is removed from the home, there is a change in the child's foster care placement, or an alteration in the visiting plan for child and parent is made.

11. Relative Placement Preference: The agency "shall consider" giving placement preference to a relative over a non-related foster care provider if the relative meets state child protection standards.

12. Foster Care Standards: Standards drawn from the standards of national organizations, which ensure that children in foster care placements with public or private agencies are provided with quality services that protect their health and safety, must be implemented.

13. Foster Parent Criminal Background Check: Criminal record checks must be completed before a child is placed with a foster or adoptive parent.

14. Exclusion of Foster/Adoptive Parent Applicants: No applicant who has a felony conviction for a crime of violence, including child abuse, spousal abuse, rape, or sexual assault, shall be approved. No applicant with a felony conviction for assault, battery, or a drug offense within the five years prior to his/her application shall be licensed.

15. Preparation of Foster Parents: Due to recognition that foster parents are often inadequately prepared and supported to provide care for the children placed by public agencies in their homes, this provision was added in 1999. It requires that before a child is placed with prospective foster parents, those foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child.

16. Health Insurance for Adopted Children: Any special-needs child who is covered by an adoption assistance agreement shall be provided with health insurance coverage that is "of the same type and kind" as that provided to children under the state's medical assistance program.

Synopsis prepared in May 2000 by William L. Grimm, Staff Attorney, National Center for Youth Law.

The Foster Care Independence Act of 1999

Background

After passage of the Adoption and Safe Families Act in 1997, some of the same Congressional leaders who supported or sponsored ASFA turned their attention to older youth in foster care, particularly those youth aging out of the system. Each year approximately twenty thousand children “graduate” from foster care. Many of these children are not prepared to be self-sufficient. Half have not finished high school, almost half have been homeless or incarcerated or have received public assistance after leaving care, and many have no health insurance and go without needed medical care. Confronted with these grim statistics, Congress enacted the Foster Care Independence Act of 1999.

Summary

The highlights of the Foster Care Independence Act (FCIA) of 1999 include the following provisions. The act:

- Allows states to provide medical insurance coverage to youth between ages eighteen and twenty-one who were in foster care on their eighteenth birthday;
- Allows states to use up to one third of the funds they receive under this new program for room and board for youth between ages eighteen and twenty-one who are leaving foster care;
- Permits states to use federal funds for a wide range of activities and services that will help youth prepare for independence (e.g., substance abuse prevention; preventive health activities; assistance in obtaining a high school diploma or preparing for college or other post-secondary education; mentors; and vocational training);
- Requires that both youth who have left foster care because they aged out at eighteen as well as those youth likely to remain in foster care until age eighteen be provided with services under the program;
- Permits states to use federal funds for a wide range of activities and services that will help youth prepare for independence (e.g., substance abuse prevention; preventive health activities; assistance in obtaining a high school diploma or preparing for college or other post-secondary education; mentors; and vocational training);
- Requires that both youth who have left foster care because they aged out at eighteen as well as those youth likely to remain in foster care until age eighteen be provided with services under the program;
- Requires that youth participate directly in selecting the activities and services they need to establish independence and accept personal responsibility for adhering to their plan;
- Doubles the amount of funding for independent-living services;

- Emphasizes that reasonable efforts to find adoptive homes applies to all children, including older children in care;
- Requires that benefits and services must be made available to Indian children the same as other children in care;
- Requires states to use training funds it receives under Titles IV-B and IV-E to provide training to help foster parents, workers in group homes, adoptive parents, and others address the problems youth face in preparing for independence; and
- Subjects states to greater accountability for the programs operated with these funds. The federal agency responsible for this oversight must consult with youth providers, advocates, and others in establishing outcome measures by which the effectiveness of services will be evaluated.

Synopsis prepared in May 2000 by William L. Grimm, Staff Attorney, National Center for Youth Law.

The Volunteer Protection Act of 1997

Summary

The federal Volunteer Protection Act of 1997 provides protection from liability for volunteers acting within the scope of their volunteer responsibilities. The volunteer must be properly authorized for the activities. Protection is not provided for willful or criminal misconduct, gross negligence, or reckless misconduct; for a conscious and flagrant indifference to the rights or safety of the individual harmed by the volunteer; for violations of federal civil rights laws; for crimes of violence or terrorism or hate crimes; for actions taken under the influence of alcohol or other drugs; or for harm caused by operating a vehicle that must be licensed. Some states have legislation that gives greater protection than this federal law. States may also pass legislation making the federal protection inapplicable. Many CASA/GAL programs purchase liability insurance to offer greater protection for their volunteers, staff, board members, and the organization. One of the best ways CASAs can protect themselves from liability is to act within the prescribed CASA role and in accordance with the program's policies and procedures.

Synopsis prepared in December 2000 by Michael S. Piraino, Chief Executive Officer, NCASAA.

For additional information on current laws, go to
Law Writer Ohio Laws & Rules
codes.ohio.gov/orc/

CHAPTER 3: The Child Protection Process

ProKids' Rule 48 Checklist

(Please review regularly and when preparing court reports)

With my CASA Manager, I have made reasonable efforts to become informed about the facts of the case and to contact all parties. In order to provide the court with relevant information and an informed recommendation as to the child's best interest, my CASA Manager and I have done the following at a minimum, unless impracticable or inadvisable because of the age of the child or the specific circumstances of a particular case:

- Met with and interviewed the child and observed the child with each parent, foster parent, guardian or physical custodian and conducted at least one interview with the child where none of these individuals is present;
- Visited the child at his or her residence in accordance with any standards established by the court in which the guardian ad litem is appointed;
- Ascertained the wishes of the child;
- Met with and interviewed the parties, foster parents and other significant individuals who may have relevant knowledge regarding the issues of the case;
- Reviewed pleadings and other relevant court documents in the case in which the guardian ad litem is appointed;
- Reviewed criminal, civil, educational and administrative records pertaining to the child and, if appropriate, to the child's family or to other parties in the case;
- Interviewed school personnel, medical and mental health providers, child protective services workers and relevant court personnel and obtained copies of relevant records;
- Recommended that the court order psychological evaluations, mental health and/or substance abuse assessments, or other evaluations or tests of the parties as the guardian ad litem deems necessary or helpful to the court; and
- Performed any other investigation necessary to make an informed recommendation regarding the best interest of the child.

CHAPTER 3: The Child Protection Process

im·prac·ti·ca·ble from dictionary.com

-adjective

1. not practicable; incapable of being put into practice with the available means; an impracticable plan.
2. unsuitable for practical use or purposes, as a device or material.
3. (of ground, places, etc.) impassable.
4. (of persons) hard to deal with because of stubbornness, stupidity, etc.

im·prac·ti·ca·ble from Merriam-Webster's Online Dictionary

Function: adjective

1. impassable <an impracticable road>
2. not practicable; incapable of being performed or accomplished by the means employed or at command <an impracticable proposal>

in·ad·vis·able from dictionary.com

-adjective

not advisable; inexpedient; unwise.

in·ad·vis·able from Merriam-Webster's Online Dictionary

Function: adjective

not advisable; not wise or prudent <inadvisable haste>

CHAPTER 3: The Child Protection Process

Ohio Revised Code: 2151.421 Reporting child abuse or neglect.

Up until September 2014, CASAs and GALs were not mandated to report child abuse or neglect. However, this changed with the amendment of s. 2151.421(A)(1)(b). The section now requires CASAs and GALs, among other professionals, to report suspected or known child abuse or neglect. It applies to children under 18 or anyone under 21, if they are developmentally or physically disabled.

All suspected or known incidents of neglect or abuse should be reported by telephone or in person to the public children services agency (HCJFS) or the police. The receiving agency or officer may request a written report of the incident, which should include:

- names and addresses of the child and child's parents;
- child's age and the extent of the injury, abuse, or neglect that has occurred or the threat that is reasonably suspected or believed to occur;
- any other information that might be helpful in establishing the cause of the injury or threat.

Persons making the report are also allowed to take photographs if there is a visible trauma on the child.

The public children services agency should investigate each report of child neglect or abuse within 24 hours, that is, to determine the circumstances surrounding the injuries or the potential threat, the cause of the injuries or threat, and the responsible people. The agency should then make recommendations to the county prosecuting attorney.

Under this section, reports of alleged child abuse and neglect are confidential and may be shared only when dissemination is authorized. The person who makes the report may make reasonable number of requests to the public children services agency for the following information:

- whether the agency has initiated an investigation;
- whether the agency is continuing to investigate the report;
- whether the agency is involved with the child who is subject of the report;
- the general status of the health and safety of the child;
- whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court, only if, at the time the report is made, the person provides his name, address, and telephone number.

This section also grants immunity to the reporter of alleged child abuse or neglect from criminal or civil liability for injury, death, or loss to person or property. However, if CASAs or GALs, among other professionals, fail to report that a child has suffered or faces a threat of suffering any physical or mental injury, or a condition that reasonably indicates abuse or neglect, then they will be liable for damages to the child.