

Legal Aspects of CPS



Overview

One of the most challenging aspects of child protective services is navigating the court system on behalf of the well-being and safety of the children and families with whom you work. During Caseworker Core Module III: *Legal Aspects of Family-Centered Child Protective Services*, you will have an opportunity to learn about the legal definitions of abuse and neglect and how to participate in juvenile court proceedings.

Before attending that training we invite you to read the following interview with eight experienced colleagues from across the state. These colleagues will discuss how laws (sometimes referred to as statutes) and rules impact their daily practice. They also share their thoughts on how to best prepare for court and your upcoming training.

Developed by:

The Institute for Human Services with the Skill Building and Transfer Work Team

For:

The Ohio Department of Human Services and the Ohio Child Welfare Training Program – Revised October 2007

Pre-Training Assignment Caseworker Core: Module III

Panel of Experts

William Kirby, ESQ, Chief Juvenile Magistrate, Franklin County

Magistrate Kirby has been a juvenile defense attorney, a guardian ad litem, and an assistant county prosecutor.

William Cardina, MA, LSW, Training Coordinator

William Cardina has been going to court as a caseworker for over 20 years. He just recently joined a staff development unit.

Elizabeth Reese Mangon, ESQ, LSW, Staff Attorney/Court Liaison, Summit County Children's Services

Liz Mangon worked for nine years as a protective and on-going caseworker in Summit

County before joining the legal department.

Xan Boone, HCJFS Children's Services Training Supervisor

Xan Boone is an MSW with over fifteen years of child welfare experience. Currently, she is a training supervisor for a metro county.

Juliana Harrison, MSW, LISW, Professional Development Trainer, FCCS

Juliana Harrison has been in child welfare for over 20 years as a caseworker and as a supervisor. Currently she trains new staff.

Mary Jo Kramer, MSW, LISW, Professional Development Trainer,

Franklin County Children Services

Mary Jo Kramer has over 20 years of CPS experience both as a caseworker, supervisor, and trainer. Currently, she coordinates a new worker training program.

Stefanie Polacheck, HCJFS Children's Services Intake Caseworker

Stefanie Polacheck's first two years at CPS was as an intake investigator. She is now in a specialized sex abuse unit.

Ben Hannah, Training Coordinator, Southwest Ohio Regional Training Center

Ben Hannah has over 10 years as both an intake and an on-going supervisor. Currently he is with staff development.



Why Do I Need to Know This?

Interviewer: *Thanks for agreeing to join me today. When I asked for names of practitioners I should talk to about laws and rules and how they impact child protective services, your names were consistently mentioned. So let's just start there. In what ways do laws and rules impact a caseworker's daily life?*

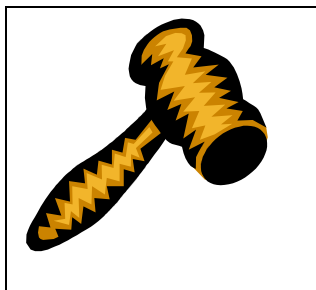
Boone: When you start in this field you don't realize that everyday you deal with some aspect of the law. Daily, there are questions, such as whether you can enter a home when a young child has answered the door, or when is it OK to transport a

child. Some of these issues carry liability if you make the wrong choice or forget a key step in the process.

Hannah: One of the worst situations I remember involved a caseworker who failed to notify a non-custodial father that his children were going to be placed in foster care. It turned out that the father was a registered foster parent. The worker had contact information but did not think it was important to contact him because the mother said he had not been involved



Why Do I Need to Know This? continued



“I tell new workers to talk to their supervisors ahead of time, and, if they will not be available when the worker is in court, find out who is next in line.”

Juliana Harrison, LISW



in the children’s lives. When we found out he was a foster parent, we went immediately to apologize and set things right. The worker learned an important lesson. The father’s story was very different from the mother’s. The mother had claimed that the father was no good and not supportive. The father stated the mother refused to allow him any contact. He loved the children and was upset to think they might be placed in foster care.

Magnon: I see that happen all the time. I’ve worked with cases where the caseworkers didn’t know who all the parties in a case were and didn’t know that fathers needed to be notified even when they are not involved.

Interviewer: *How do new caseworkers learn all of the laws and rules? There seem to be so many. I’d think it would be overwhelming.*

Magnon: I think it requires good supervision. For instance, caseworkers have to rely on their supervisor to know that notification isn’t just important because it is the law. It’s important because it’s in the best interest of the child.

Boone: I call it supervision by cell phone. I learned early on the importance of always knowing who I could contact when I had any doubt about what action to take.

Harrison: I tell new caseworkers to talk to their supervisors ahead of time and if they will not be available when the worker is in court, find out who is next in line.

Hannah: I think it would be helpful for workers to have copies of the Ohio Revised Code (ORC). We have the books at the agency, but they are few and far between. Caseworkers need to have a legal framework so that when they are in

the field and see something, they know whether or not it is against the law.

Kirby: Many caseworkers operate under the assumption that any mark or bruise left on a child by a parent is abuse. Corporal punishment is not illegal. For a mark to rise to the level of abuse, the parent’s action has to be excessive under the circumstances, and the action has to have posed a substantial risk of serious physical harm. If workers can’t show that the parent’s action rose to the level of serious physical harm, then I can’t rule that the child was abused.

Interviewer: *How would a caseworker show that level of harm in court?*

Kirby: They need to bring me facts that show the parent’s behavior posed serious physical harm. Marks alone don’t mean abuse! Criteria for serious physical harm include:

- A condition requiring hospitalization or prolonged psychiatric care;
- Physical harm that carries a substantial risk of death;
- Physical harm involving permanent incapacity or temporary, substantial incapacity;
- Physical harm involving permanent physical disfigurement or temporary, serious disfigurement; or
- Physical harm resulting in substantial suffering or prolonged or intractable pain.

Polacheck: I once had a parent who actually appealed a case I had substantiated. It was one of my first cases and I still think I was right, but he brought in a copy of the ORC and the abuse finding was reversed.



Why Do I Need To Know This? continued

Polacheck: I don't think the codes were in the legal training manual I received as a new worker. It would have been really helpful.

Interviewer: *In Caseworker Core Module Three: "Legal Aspects of Family-Centered Child Protective Services", caseworkers will get a thick file of handouts that include definitions of abuse and neglect and other information It sounds like all of you are recommending that workers hang on to those and keep them handy for quick reference.*

Hannah: Right. I remember being a new worker and not making the right connections because it was two years before I ever saw the ORC definitions of abuse. Now they can be accessed on-line.

Kirby: You know, along the same lines as needing to know what is or isn't abuse, caseworkers are sometimes in a quandary as to what to do about cultural healing practices that leave marks on the child's body. We sometimes hear, for example, that a family should be helped to see that coining is not looked upon favorably in our country. However, what if the family refuses to stop coining, and considers it neglectful to not use every possible healing practice for their child? Coining doesn't rise to the level of serious physical harm, therefore it is not abuse and the agency does not need to get involved with this family.

Boone: That's true, but I always caution caseworkers to be very careful about examples. Different dynamics can mean different outcomes. There may be a time when what a parent alleges to be a cultural practice rises to the level of serious harm.

Kirby: I just thought of something else that is important for new caseworkers to be aware of. Caseworkers need to plan to use alternate sections of the child abuse and neglect statutes, if needed. For example, there was a shelter care hearing in my courtroom last week where a stepfather had allegedly molested his stepdaughter. The

only evidence was this girl's testimony, but, by the time the case was heard in a shelter care hearing, the girl had recanted. Therefore, the agency could not prove that sexual contact nor sexual conduct had occurred by the alleged perpetrator. However, there was considerable conflict between this girl and her mother, and the girl feared that the situation at home would be unbearable if she returned that day. The agency had wisely filed a dependency action, which allowed me to grant temporary custody of the girl to the agency. I was able to base this decision on the dependency section of the statute that states a child can be found to be dependent if there are "conditions or environment which warrant the state to assume guardianship" of the child. Because of this, the agency was able to place the child in foster care to assure her protection.

Hannah: You know, I can't think of a time when we had any action other than dependency.

Polacheck: Even in the sexual abuse unit, we rarely go to court with the sex abuse statute; dependency is more frequently used.

Magnon: In our jurisdiction, when caseworkers file complaints, they file any and all appropriate complaints. But when it gets close to the time for the case to go to trial, our prosecutors want to drop all but the dependency actions in order to avoid a trial.

Kramer: Whenever possible, workers should try to assure the decision to amend to dependency is based on the case, not just because someone wants to avoid a trial. Amending a case down can get the child and the family the services and involvement that is needed, but it may make it harder to get the parent to cooperate with the case plan. And of course, there are some cases so serious, they demand you proceed with an abuse action.



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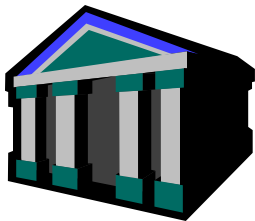
William Kirby, Chief Magistrate



Preparing for Court

“Part of preparing for court has to do with good casework practice.”

Elizabeth Magnon, ESQ



“Another part of good court preparation involves how the worker presents the case in court.

Caseworkers’ credibility is crucial to getting the outcome that’s right for the family.”

Elizabeth Magnon, ESQ

Interviewer: *Do you have any recommendations for new workers going to court for the first time?*

Harrison: Be prepared!

Hannah: And be prepared for the unexpected!

Magnon: Part of preparing for court has to do with good casework practice. Caseworkers should review all of their paperwork to make sure they have dates recorded for each client contact and home visit, notations on all efforts taken to link the family to services, updated reports from each of the service referrals, and information on all of the parties involved in the case.

Cardina: I think it’s important for caseworkers to know the case backwards and forwards. Although you are in court for one reason, the magistrate may have a different agenda and will call on you to provide answers to an unrelated matter. A worker needs to be credible in court and that only comes with preparation.

Magnon: The biggest thing lately for me has been case plans. Plans need to be clearly written, filed on time, and amended when there’s been a placement change. This is hard because there is so much to remember.

Boone: Caseworkers also need good documentation in their case notes. For example, they need to know how to write up disclosures of abuse by the children they’ve interviewed.

Cardina: Being prepared is hard even when you are experienced! When I first started, I was in a small county and had

the advantage of meeting with the juvenile judge, the hospital social worker, and all the other key players. It was also helpful to be able to shadow someone who was a good role model.

Harrison: I really recommend shadowing someone in court. I tell new workers to take it slow. Don’t expect to grasp everything overnight. It will take shadowing and working on several cases before you begin to feel confident.

Magnon: Another part of good court preparation involves how the worker presents the case in court. Caseworkers’ credibility is crucial to getting the outcome that’s right for the family.

Interviewer: *It sounds like there are two parts to court preparation. The first has to do with being prepared with good case management and practice skills and the second has to do with being prepared to present yourself in a credible manner.*

Harrison: That’s correct. Knowing the laws and rules is only one part of a worker’s job. Workers need to also be very aware of how they communicate and present themselves to families, guardian ad litem, and magistrates. It can make the difference between getting or not getting the court decision that will help protect a child.

Boone: I agree. When preparing for court, having good people skills is just as important as knowing the law. An attitude of “My way or the highway!” doesn’t work for families and it doesn’t work in the courtroom.



Preparing for Court continued

Interviewer: *It sounds like good court preparation and caseworker credibility are both linked to the safety and well-being of the families and children we work with.*

Hannah: Absolutely. You may be the best worker in the world, but if you are not prepared, you cannot count on getting done in court what needs to be done.

Boone: Caseworkers need to be prepared with case plans and notes, but they also need to be self-confident. That comes with being prepared. Caseworkers should have the facts they need to be able to stand their ground.

Harrison: Along with all of this, I think caseworkers need critical thinking skills. When you're first starting as a new caseworker, you want black and white answers. You quickly learn, however, that with all the factors to consider, the black and white answers rarely apply. You need to first know what the law says, then you need to know how to go back and access the law or rule to make sure you're right, and then you need to use your critical thinking skills. You have to know if you can progress with the family without involving the court, what you need to do next to protect the child, and what parental rights need to be considered.

“Caseworkers need to be prepared with case plans and notes, but they also need to be self-confident. That comes with being prepared.”

Xan Boone, MSW

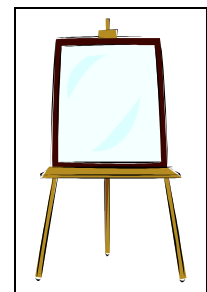
Getting Ready for Training

Interviewer: *What recommendations do you have for new caseworkers getting ready to attend Caseworker Core Module Three: “Legal Aspects of Family-Centered Child Protective Services”?*

Magnon: Bring some real cases to the training, or at least have some cases in mind. Maybe it's one that you are getting ready to file on or a case in which you recently completed a court process. Real cases make application much easier.

Cardina: I recommend identifying someone you can shadow. This person should be able to model how to do things in your own jurisdiction.

Boone: And don't forget to identify contact people in the agency. This should be the first, second, and third person you can call when you need to know what to do with a particular case.



KEY POINTS

“Be prepared! When going to court it is important that best practice be reflected in well-documented case notes and case plans. Court preparation also includes being self-confident and credible and this only comes with being prepared.”

- Laws, statutes, and rules influence almost everything caseworkers do throughout the life of a case.
- You can’t learn everything all at once. Shadowing experienced co-workers who model best practice in the courtroom, and having a supervisor or another experienced worker on call for questions that arise are important components of courtroom preparation for new caseworkers.
- Be prepared! When going to court it is important that best practice be reflected in well-documented case notes and case plans. Court preparation also includes being self-confident and credible, and this only comes with being prepared.
- You need to know the definitions of child abuse and neglect and what, under Ohio’s law, poses substantial risk of serious harm.
- You need to be prepared to use alternative sections of the child abuse and neglect statutes, if needed. Often, a child’s testimony or case evidence is not strong enough to support an abuse ruling, despite a caseworker’s certainty that a child has been abused or is at risk of abuse. In such a case, temporary custody can often be made based on the dependency section of the statute. This may allow the agency to temporarily place the child to assure protection.

Assignment

Your assignment before Core Module Three is to prepare III questions you hope to have answered during the training and complete the attached quiz. Bring your three questions along with your quiz to your first day of class.

QUESTIONS

- 1.
- 2.
- 3.

Remember: Please bring your assignment with you Core Module III.



Legal Aspects of CPS

Caseworker Core Training: Module III Pre-Training Quiz



Instructions: Read each statement and mark “T” if the statement is true and “F” if the statement is false. Bring this assignment with you to class. The quiz will be used throughout the training.

- ___ 1. The sole purpose of Juvenile Court is to act in the best interest of children.
- ___ 2. Corporal punishment of children always constitutes abuse.
- ___ 3. If parents cannot care for their children, but have made adequate arrangements with relatives for care, the children are neglected or dependent.
- ___ 4. Since the purpose of a trial is to win, the parties need not disclose witnesses and evidence to each other.
- ___ 5. At adjudication to determine whether a child is neglected, the child’s best interest is the paramount issue.
- ___ 6. The burden of proof in an abuse case is beyond a reasonable doubt.
- ___ 7. The formal rules of evidence apply at dispositional hearings.
- ___ 8. If disposition is not made within 90 days of removal, the case is dismissed and cannot be re-filed.
- ___ 9. Permanent custody for adoption may be sought only after two years of temporary agency custody have expired.
- ___ 10. There are no limits on the number of six-month extensions of protective supervision.

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