

INTRODUCTION TO CAPTA GUIDELINES, 2003 AMENDMENTS

Howard Davidson, JD, Director
American Bar Association Center on Children and the Law

The committee has also included a requirement for training of CPS workers on their legal responsibilities in order to protect the constitutional and statutory rights of children and families. While the committee is strongly committed to the main mission of the child protective services system — to ensure that child safety and the best interests of the child are protected, the committee believes it is important for child protective services personnel to understand and respect fourth amendment limitations on their right to enter a home when investigating an allegation without a court order. The committee firmly believes that individuals being investigated for alleged child maltreatment should be informed of the specific allegations made against them. [This law] addresses this issue by requiring States to have policies and procedures in place to require child protection workers, at the initial time of contact, to advise individuals who are subject to a child abuse and neglect investigation of the complaints or allegations made against them. The committee recognizes that it is a basic right for all citizens to be informed of what crime they are being accused of at the time they are being asked for an interview or entry into their home.

— From U.S. Senate Report 108-112, March 4, 2003
(accompanying the bill that became the 2003 CAPTA reauthorization)

In extending the federal Child Abuse Prevention and Treatment Act (CAPTA) by passing the Keeping Children and Families Safe Act of 2003 (Public Law 108-36), Congress took steps to address an issue covered in other, earlier CAPTA reauthorizations. That issue concerns the rights of parents accused of child maltreatment. In past CAPTA reauthorizations, Congress (1) protected parents' rights to sue for malicious reporting of abuse/neglect by allowing states to restrict reporter immunity to "good faith" reports; (2) required prompt CPS expungement of reports labeled unsubstantiated or false, for public access or job screening purposes; (3) mandated a CPS appellate process for parents wishing to challenge a CPS "substantiation" finding; and (4) gave judges authority to release names of confidential "reporters" of child maltreatment upon finding that a knowingly false report was made.

The Ohio Department of Job and Family Services has responded to the latest "parental rights" focused CAPTA revisions requiring advisement of parents by CPS of the nature of the "report" made against them and mandated training for all CPS workers on protection of the "legal rights" of families. The Ohio Child Welfare Training Program has developed materials for the State of Ohio's children's services agencies on how to implement these 2003 CAPTA parent provisions.

As I write this, state and county CPS agencies have had over 2 years to implement policies and training curricula to address these federal requirements. However, I know that many are still in the process of developing caseworker education programs and practice guidelines related to this. The following materials will be valuable in those efforts. I would also encourage CPS administrators and trainers, as well as advocates, to look at the following page on the HHS Children's Bureau's Web site: www.acf.dhhs.gov/programs/cb/initiatives/capta/legalissues.htm.

In that guidance, the following training topics are suggested:

In-Home Investigative Practices

- Priority of, and process for, notifying parents of their rights in state law and agency policy, during an abuse/neglect investigation (e.g., timing of notice, whether written materials on rights are given, providing language-appropriate information)
- Balancing safety of children with a parent's "right to know" various information
- How to avoid compromising a potential criminal abuse/neglect investigation
- Procedures for requesting consent to access a home and/or see children
- Limited situations where, without parental consent, caseworkers can lawfully enter a home and forcibly see a child without first seeking court order (e.g., what constitutes emergency situations)

INTRODUCTION TO CAPTA GUIDELINES, 2003 AMENDMENTS

- Process used to obtain judicial approval for home entry and access to children
- Securing access to and interviewing children outside parents' presence
- Securing access to and interviewing others in home besides children and parents
- Limits on what caseworkers can do in conducting in-home physical exams of children, photographing injuries of a child or home environment, and arranging for medical examinations when necessary
- Legal issues related to touring an entire home, opening drawers, closet doors, refrigerators, etc., and removing physical evidence
- When a caseworker should bring police into the investigative process (e.g., worker safety), and a process for CPS to request police, prosecutor, or agency attorney assistance when refused access to a child victim or any necessary records

Investigation Activities in Schools and Elsewhere

- Understanding whether school has obligation to cooperate and not deny CPS access
- When and how to notify school of reasons for child's interview and examination
- How to handle interviewing/examining of children at public schools, private schools, day care centers, or other public or private settings
- Whether and when to have school personnel present at and involved in child's interview and examination
- Getting information from third parties in investigative process, including laws and policies on confidentiality and information sharing, as well as obtaining court assistance to obtain information

Taking Child Into Temporary Custody

- Legal process, documentation, etc., that must be followed in child removals
- Whether and when law permits caseworkers to take custody of child without a court order or parental consent, to obtain a medical exam or mental health evaluation
- Whether and when law permits caseworkers to take child, without court order or parental consent, to a Children's Advocacy Center or other assessment program
- Situations that legally permit caseworkers to take child into custody for investigative purposes, or for CPS to take child into custody because he or she suffered serious harm or is at imminent risk of serious harm

Legal Rights of Children and Parents During CPS and Court Process

- Communicating to child and family, in age and language-appropriate ways, legal basis/responsibility for CPS investigations and interventions
- Advising parents of right to refuse CPS assistance, or treatment referrals, and CPS legal obligations if child is believed at risk of serious harm
- What happens in juvenile court (dependency) process

SOURCE: <http://www.acf.dhhs.gov/programs/cb/initiatives/capta/legalissues.htm>

How can these questions be turned into "good practice" guidance? Read on.