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IN THIS ISSUE

Child Forensic Interviews After *Crawford v. Washington*: Testimonial or Not?

Allie Phillips, JD

With the issuance of the *Crawford v. Washington* decision on March 8, 2004, the United States Supreme Court reinforced a defendant's right to confront witnesses in court. Such confrontation and cross-examination of young or vulnerable children can be harmful and unjust. *Crawford v. Washington* sets forth factors to consider when deciding whether out-of-court statements by a nontestifying witness must be considered "testimonial" and be subject to cross-examination. One factor is whether the declarant could reasonably expect his or her statement to be used in court. For child protective service cases, the age and development of children are important variables to consider when trying to determine if they could reasonably expect their statements to investigators to be used in prosecution, thus requiring their court appearance and exposure to cross-examination. In her article, Phillips explains how courts across the country are interpreting the *Crawford v. Washington* decision in relation to forensic interviews of children and provides guidance for CPS workers to determine when their investigative interviews may require court appearance of children and exposure to cross-examination.

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Introduction to CAPTA Guidelines, 2003 Amendments

Howard Davidson, JD

In spite of the passage of the CAPTA amendments in 2003 stressing the need to assure the civil rights of all involved in child protective services investigations, many states and agencies are in early stages of work to implement them. Mr. Davidson, Director of the ABA's Center on Children and the Law is working with several states in the efforts to implement the CAPTA reforms.

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Protecting Parents' Rights When Conducting Investigations of Child Abuse and Neglect

Guidelines for Implementing The Child Abuse Prevention and Treatment Act (CAPTA): 2003 Amendments

Nan Giblin Beeler, MSW

Rich Schneider, JD

Ronald C. Hughes, PhD, MScSA

Randi Lewis, JD

In extending and revising the Child Abuse Prevention and Treatment Act (CAPTA) in 2003, Congress included revisions focusing on parents' rights. The new CAPTA revisions require that child protective service workers advise parents of the nature of the reports made against them and mandate that all CPS workers be trained on the protection of "legal rights" of families. To meet their dual responsibilities of thorough child maltreatment investigation and protecting a family's legal and civil rights requires considerable knowledge and skill. Beeler and colleagues provide some general practice and educational guidelines to help states meet these CAPTA requirements. The general guidelines are derived from the research of a multidisciplinary work group of the Ohio Department of Job and Family Services in the State of Ohio.

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Child Forensic Interviews After *Crawford v. Washington*: Testimonial or Not?

Allie Phillips, JD

With the issuance of *Crawford v. Washington*¹ by the United States Supreme Court on March 8, 2004, widespread confusion and concern swept through the child protection communities in regard to one issue: **Are forensic interviews of children “testimonial statements” according to *Crawford*, thus requiring the child to take the witness stand?**

This article will address:

- whether forensic interviews are testimonial statements under the new rule set forth in *Crawford*;
- how courts across the country are analyzing *Crawford* in relation to child forensic interviews;
- arguments prosecutors can make to have forensic interviews declared non-testimonial, and
- how to avoid having forensic interviews deemed testimonial.

Crawford and the Forensic Interview

In *Crawford*, the primary issue was whether a tape-recorded custodial statement made by the defendant's wife could be admitted as substantive evidence against the defendant when the wife did not testify at trial as a result of invoking the marital privilege. The prosecutor in *Crawford* was permitted to introduce the audio tape at trial since statements made by the defendant's wife were statements against her penal interest. The United States Supreme Court overturned the conviction in *Crawford* and set forth a new rule regarding the admission of hearsay testimony when the witness is unavailable to testify. **The new rule provides: “Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is confrontation.”**² Thus, if an out-of-court statement by a witness is deemed testimonial, the Sixth Amendment Confrontation Clause requires that the witness testify and be subject to confrontation or cross-examination before admitting any out-of-court statements.

Before *Crawford*, courts would revert to the rules of evidence and a line of cases stemming from *Ohio v. Roberts*³ to assess whether out-of-court hearsay statements would be admissible at trial. The *Crawford* Court overturned *Roberts* and set forth a new rule that requires witnesses to testify at trial, and be subject to cross-examination, before admitting any out-of-court testimonial hearsay statements from that witness. Unfortunately, the Supreme Court chose not to provide a solid definition of “testimonial statement” except to say that it includes, at a minimum, “prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and police interrogations.”⁴ Other courts have subsequently held that testimonial statements also include “extrajudicial statements contained in formalized testimonial materials,” such as testimony from a preliminary hearing,⁵ before a grand jury,⁶ at a deposition,⁷ or at a former trial;⁸ confessions to police;⁹ responses to police interrogation; and plea allocutions of co-defendants that implicate other defendants.¹⁰ If an out-of-court statement is taken by a government agent¹¹ (e.g., police officer, prosecutor, or child protective services (CPS) worker employed by the state), the statement will be considered testimonial so long as the witness reasonably could expect that statement to be used at a later trial. So the question becomes: Can a child reasonably understand and expect that his or her statements made during a forensic interview could later be used in court?

How Courts Are Interpreting *Crawford* in Relation to Forensic Interviews

Crawford sets forth two factors to consider when determining whether an out-of-court hearsay statement of a non-testifying witness is testimonial. **First, is a government officer involved in the production of the testimony/statement? And second, would the declarant reasonably expect the statement, when made, to be used prosecutorially?** Courts have primarily focused on the first prong of the analysis and have spent little time addressing pertinent child development research and whether young children can reasonably understand that their statements might be used in trial. Many courts have focused solely on whether the interviewer is a governmental agent and, if so, have declared the interview testimonial solely on that factor.

The cases cited below relate to child abuse prosecutions that proceeded to trial without the child's testimony. These cases are outlined to demonstrate how courts are addressing the governmental agent factor yet are not fully addressing the child's reasonable expectation factor. When children are available and testify at trial, *Crawford* does not bar admitting videotaped forensic interviews or other admissible hearsay statements.¹² If the child freezes on the witness stand or has lack of memory to all the details of the abuse, some courts have ruled that the presence of the child on the witness stand, and the availability for cross-examination, though limited, satisfies confrontation and *Crawford*.¹³ The new rule of *Crawford* only applies if the child is not available to testify at trial.

In *State v. Mack*,¹⁴ the court ruled that a social worker, who took over a forensic interview started by a police officer, was a governmental agent and was serving as a proxy for the police when finishing the interview. A three-year-old witness was the subject of the forensic interview. In a pre-trial ruling several days after the issuance of the *Crawford* decision, the trial court found that the child was incompetent to testify. The court further found that the social worker was eliciting statements from the child so that the police could videotape the interview for the investigation. As a result, the forensic interview was declared testimonial and was not admissible due to the child's incompetency to testify. On appeal, the prosecution asked the court to look at the child's intent in making statements during the forensic interview. Unfortunately, the child's intent in making statements is not the factor outlined in *Crawford*; rather, whether the child could reasonably expect her statements to later be used in court. Thus, the court failed to address whether the three-year-old child understood that the statements might later be utilized prosecutorially.

The employment status of a police officer was addressed in *People v. R.F.*¹⁵ This case involved a three-year-old victim who was interviewed by a police officer subsequent to making disclosures of sexual abuse to her mom and grandmother. At trial, all statements made by the child were admitted without the child testifying. These statements were admitted before the decision in *Crawford* was announced. The defendant was convicted and on appeal he raised a *Crawford* violation. Although the court ruled that statements made to family were non-testimonial, the court found that the forensic interview was testimonial because the officer “was acting in an investigative capacity for the purpose of producing evidence in anticipation of a

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criminal prosecution.” The appeal court noted the language regarding the reasonable expectations of the declarant when making out-of-court statements, yet failed to analyze this issue in relation to the three-year-old victim. The defendant’s conviction was upheld in spite of the violation that was deemed harmless error in light of other evidence of his guilt.

In *State v. Bobadilla*,¹⁶ a three-year-old victim disclosed penetration by the defendant to his mother. At a forensic interview with a CPS worker and police officer, the child also disclosed penetration. At a competency hearing, the three-year-old was declared incompetent to testify. At trial, and prior to the decision in *Crawford*, the prosecutor admitted all the child’s statements, including the videotaped forensic interview. The Minnesota Court of Appeals subsequently applied *Crawford* and declared the forensic interview to be testimonial and not admissible because the “...child-protection worker interviewed [the child] in the presence of [the] Detective. She asked [the child] whether anyone had hurt him, who hurt him, and how he was hurt. These circumstances clearly indicate that the interview was conducted for the purpose of developing a case against Bobadilla, and therefore, the answers elicited were testimonial in nature.” However, the child’s statement to his mother was not testimonial because the mother questioned the child about the redness around his anus out of concern for his health, not because she expected to develop a case against Bobadilla. The Minnesota Court of Appeals failed to address the reasonable expectation factor.¹⁷

*T.P. v. State*¹⁸ addressed Alabama’s Tender Years statute, which provides for hearsay statements of children under age 12 to be admitted at trial if the child testifies or if the child is found to be unavailable. The eight-year-old child victim was deemed unavailable to testify due to a finding of emotional trauma by the court. Statements by the child during an interview conducted by a police investigator and witnessed by a social services worker as part of a criminal investigation were admitted at trial. The defendant was convicted and while his appeal was pending, the *Crawford* decision was issued. The appeals court found that the forensic interview was intended as an investigative tool for a potential criminal prosecution, thus being similar to a police interrogation, and therefore fell within the definition of “testimonial.” Again, the court did not address whether the eight-year-old child reasonably expected that his statement could later be used in court.

In *People ex rel. R.A.S.*,¹⁹ a juvenile defendant was convicted of molesting a four-year-old child. The child disclosed to his mother and then during a videotaped forensic interview with a trained police officer. At trial, the child was to go through a competency hearing, but the hearing was not held. Instead, the child’s statements to his mother were admitted at trial, as well as the videotaped forensic interview. The court did not make a conclusion about the child’s unavailability since the prosecutor and defense attorney agreed that the child did not meet the competency requirements. On appeal, the *Crawford* decision was rendered; the court applied *Crawford* and found that the statements by the child to the police officer were testimonial and investigative in nature. The court did not address whether the child victim could reasonably expect her statements to later be used in court. Although the juvenile defendant stipulated that the child was incompetent to testify, the defendant did not waive his confrontation rights. The court found that the defendant only waived unavailability of the child to testify and did not waive the right to confront the child. The hearsay statements to the mother were not addressed on appeal. The conviction in this case was reversed and the case was remanded for a new trial in light of *Crawford*.

In addressing interviewers who are employed for privately funded child welfare centers, the court in *People v. Geno*²⁰ held that the director of a non-governmental Children’s Assessment Center was not a governmental employee. Although Child Protective Services, a state agency, arranged for the interview, this did not impact on the court’s decision. “At the interview, the victim asked the interviewer to accompany her to the bathroom. The interviewer noticed blood in the child’s pull-up and asked the child if she ‘had an owie?’ The child answered, ‘yes, [the defendant] hurts me here,’ pointing to her vaginal area.” The court held that “the child’s answer to the question of whether she had an ‘owie’ was not a statement in the nature of ‘ex parte in-court testimony or its functional equivalent.’”

One case that addressed whether a young child could reasonably understand that statements made in the forensic interview would be used in trial is *People v. Vigil*.²¹ The defendant was charged and convicted of having sexually assaulted the seven-year-old son of a co-worker in the co-worker’s home. At trial, the child’s father testified that he witnessed the defendant leaning over his child and both were partially undressed. When the defendant fled the home, the child was frightened and confused but disclosed anal penetration. The child also disclosed to his father’s friend that his “butt hurt.” A police officer completed a videotaped interview with the child. Portions of the videotaped interview were played at trial after the child was found incompetent to testify. The Colorado Court of Appeals overturned the conviction and ruled that the videotaped statement by the child was testimonial and violated *Crawford*.

We conclude that the videotaped statement given by the child to the police officer in this case was “testimonial” under the *Crawford* formulations of that concept. In so concluding, we reject the People’s argument that the statement could not be considered testimonial because it was not made during the course of police interrogation and because a seven-year-old child would not reasonably expect his statements to be used prosecutorially. ... The police officer who conducted the interview had had extensive training in the particular interrogation techniques required for interviewing children. At the outset of the interview, she told the child she was a police officer, and, after ascertaining that the child knew the difference between being truthful and lying, she told him he needed to tell the truth. Thus, the absence of an oath, which in any event is not a requirement under *Crawford* for police interrogations, did not preclude the child’s statements from being testimonial. ... Nor can the statements be characterized as non-testimonial on the basis that a seven-year-old child would not reasonably expect them to be used prosecutorially. During the interview, the police officer asked the child what should happen to the defendant, and the child replied that the defendant should go to jail. The officer then told the child that he would need to talk to “a friend” of hers who worked for the district attorney and who was going to try to put defendant “in jail for a long, long time.” This discussion, together with the interviewer’s emphasis at the outset regarding the need to be truthful, would indicate to an objective person in the child’s position that the statements were intended for use at a later proceeding that would lead to punishment of defendant.²²

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In *Snowden v. State*,²³ the Maryland Supreme Court ruled that forensic interviews of children ages eight and 10, conducted by a CPS worker, were testimonial and would require testimony by the children at trial in order to admit the videotaped forensic interview. In its opinion, the court found that the CPS worker was a governmental agent, and that although young, the child victims were aware that their statements were being taken because the police were involved. The Maryland Supreme Court imposed an objective ordinary person standard on these child victims, pointed out that the interviews were conducted at a county-owned facility, and that the purpose of the CPS worker conducting the interview was to gather evidence for prosecution. However, the court did acknowledge that some children may not understand the purpose of a forensic interview and said, "Although we recognize that there may be situations where a child may be so young or immature that he or she would be unable to understand the testimonial nature of his or her statements, we are unwilling to conclude that, as a matter of law, young children's statements cannot possess the same testimonial nature as those of other, more clearly competent declarants."

To date, few courts have addressed whether young children can reasonably expect statements made at a forensic interview could later be used in court. The following information is provided to assist prosecutors and allied professionals in this regard.

Arguments That Forensic Interviews Are Not Testimonial

Employment Status of Interviewers

In *Crawford*, the Court took aim at witness statements made to "government officers in the production of testimony with an eye toward trial." The Court noted that casual remarks made by a witness to a friend or family member are far different than a witness making a formalized statement to a police officer regarding a criminal investigation. Many forensic interviewers are now concerned that the status of their employment with a state or governmental agency may automatically label their forensic interview as "testimonial." For instance, if police officers or state-employed CPS workers are trained forensic interviewers, does the status of their employment by a governmental unit automatically deem their forensic interviews as testimonial? Since the government-agent factor is one prong in determining whether a statement is deemed testimonial, it is fair to say that police officers, prosecutors, and state-employed CPS workers are governmental agents. Likewise, interviewers who are employed by a privately owned facility can argue that they are not governmental agents.²⁴ However, the analysis does not end there. The next factor to consider is: Did the young children during the forensic interview reasonably expect their statements would later be used in court?

Young Children Cannot Reasonably Expect Their Statements Will Be Used in Court

The *Crawford* factor that has been least addressed by courts in determining whether a statement is testimonial is: Would the declarant reasonably expect the statement to be used prosecutorially? In essence, does a child understand that during a forensic interview, the statements he or she makes might later be used in a criminal prosecution? Research has shown that young children do not understand what "court" is and, therefore, are unable to understand that statements made in a forensic interview could be used in that forum. "Testifying is anxiety-producing for most adult witnesses. Adults, however, are sufficiently knowledgeable about the legal system to place their testimony in context. In general terms, adults understand what happens in court and what is expected of them.

This knowledge helps adults manage the stress of testifying. By contrast, many children have little idea of what to expect in court. Some young children believe that they will go to jail if they give the 'wrong answer,' or that the defendant will yell at them."²⁵ Following are six of the foremost studies regarding children's understanding of court.

1989 Saywitz Study: "Children's Conceptions of the Legal System"

Dr. Karen Saywitz published a study in 1989 that focused on developmental differences in children's understanding of the legal system and what contributes to that understanding.²⁶ Children ages four to 14 were divided into age groups.²⁷ Half of the children were actively involved in court cases. The study focused on eight court-related concepts: "court," "jury," "judge," "witness," "lawyer," "bailiff," "court clerk," and "court reporter." All the children were asked questions and shown illustrations of these eight concepts and asked to tell what they knew about the concept. The terms "bailiff," "court clerk" and "court reporter" were removed from the final results as the children in all age groups did not understand those concepts. Surprisingly, children with more actual court experience demonstrated less accurate and less complete knowledge than children with no court experience. The researchers surmised this could be for two reasons. First, children who were involved in court cases may have emotional difficulties that interfere with cognitive abilities because they were from dysfunctional families; and second, actual court experience for children may be confusing and chaotic, thus making accurate knowledge of the system more difficult. The chart below demonstrates the percentage of children in each age group that showed accurate understanding of each of the eight concepts:

Concept	Age Group 4-7 years	Age Group 8-11 years	Age Group 12-14 years
Court	0.06% accurate	74% accurate	100% accurate
Jury	0% accurate	21% accurate	73% accurate
Judge	0.06% accurate	93% accurate	91% accurate
Witness	0.11% accurate	86% accurate	100% accurate
Lawyer	0% accurate	93% accurate	100% accurate
Bailiff	0.06% accurate	0% accurate	0.09% accurate
Court Clerk	0% accurate	0% accurate	0.18% accurate
Court Reporter	0% accurate	50% accurate	64% accurate

Children between the ages of eight and 11 begin to have a more accurate understanding of the court system and the primary people involved (e.g., jury, judge, witness, and lawyer). However, children in the younger age group have little to no understanding of the court system's players much less the actual processes contemplated at the time of a forensic interview. Therefore, under the formulation set forth in *Crawford*, children in this age grouping could not reasonably expect that statements made during a forensic interview could later be used prosecutorially.

Additional concepts were tested in this study that further demonstrate when children understand court-related concepts. First, all children were asked: "What makes a jury/judge believe a witness?"

The children in the older age group were able to identify factors used by judges and juries to determine credibility of witnesses, whereas the four- to seven-year-old group assumed witnesses always tell the truth and are believed. Whether the children were in the experienced or non-experienced court group did not affect this result. Second, all children were asked: "How do they [judge/jury] decide who wins the case in court?" The majority of eight- to 14-year-olds were inaccurate in their overall understanding. They generally believed that judge and jury decision making are dependent on each other. Some children in this age group believed that the judge and jury discuss the case together and that the judge can change the jury's verdict. Only three children (in the 12-14 age group) understood that the judge and jury were independent from each other. Third, all children were asked the following questions: "What happens when people tell the truth in court? What happens when people tell a lie in court? Why is it important that people tell the truth in court?" Here, awareness was significantly different across age groups, but not across levels of court experience. A majority of the four- to seven-year-olds could not demonstrate any awareness of the court processes of gathering and determining the truth of evidence. Many of these children believed that the court's goal was to "punish the criminal or give the child to one of his parents," rather than understanding the actual goals of collecting, presenting, and evaluating evidence. Further, these children held the naïve view that evidence would magically present itself and be automatically believed.

Overall, this study demonstrated the following for each age group:

(1) Four- to Seven-Year-Olds: As a result of their egocentric view of the world, this group of children understood some features of the legal system, but not any definable features. For instance, some children understood that a judge is there to talk and listen, but did not understand that a judge is in charge of the courtroom or determines a sentence. This group was unable to meet the criteria of accuracy for any of the concepts listed above. These children could describe court-related personnel as sitting, talking, and helping but could not say how these people perform their roles nor differentiate between these varied roles. For example, the children interchanged the roles of court, police, and prison and were confused as to whether judges remain judges when they go home at night. This group also understood that witnesses had to tell the truth, but only thought that witnesses did so to avoid being punished. Additionally, these children believed that all evidence was necessarily true. The children had blind faith that witnesses tell the truth and, if witnesses themselves, would be surprised by a confrontational cross-examination or repeated interviews which are not consistent with that blind faith. These children further believed that the court process ultimately led to jail and the children could only describe court from the point of view of someone who was in trouble.

(2) Eight- to 11-Year-Olds: Children of this group were able to view court as a place to work out disagreements, but still struggled with defining features between juries and judges. However, these children were better able to understand that judges determine guilt or innocence and decide punishment. They also viewed court similar to church ("You have to be quiet and serious"), and that lawyers help people, are on your side (which shows some understanding of the adversarial process), and stand up for you in court (which shows representational awareness). This group of children showed increased understanding of the differing roles of court-related people, the court process and its function. These children were less likely to confuse

the roles of the court and the police. Under the age of 10, children do not understand what a jury does and they still confuse the word with similar sounding words. Between ages eight and 11, the children studied did not understand that impartial people sit as jurors and instead believed that victims, witnesses, and the defendant's friends are on the jury. This group did not understand that the jury decides the outcome of the case.

(3) 12- to 14-Year-Olds: This group was able to understand the court process and place it in context with the overall government. At this age, these children became aware of the function of juries, but are still confused about the role of the jury in making decisions. Some children believe that the judge and jury work together to make a decision. This demonstrates that children do not understand the need to communicate to the jury rather than the judge. The children in this group could understand factors that would be considered when determining credibility (e.g., facial expressions, reputation, personality, and comparison with corroborating evidence).

1990 Saywitz Study: "Children's Knowledge of Legal Terminology"

Dr. Saywitz conducted a second study that analyzed whether age- and grade-related patterns would be found when testing children on commonly used court terms.²⁸ Children were grouped according to school grades, given a list of 35 legal terms and asked to tell everything they knew about each word. The study showed that some legal terms had significant grade-related trends. Some terms, which were accurately defined by the sixth graders, were largely inaccurate for the kindergartners, such as: "oath," "deny," "lawyer," "date," "sworn," "case," "jury," "witness," "judge," "attorney," "testify," and "evidence." On the other hand, some legal terms did not have grade-related trends because children in all three groups equally understood or misunderstood the term. Terms that were easy for all groups of children to describe accurately were: "lie," "police," "remember," "truth," "promise," and "seated." Terms that were difficult for all groups of children to describe accurately were: "charges," "defendant," "minor," "motion," "competence," "petition," "allegation," "hearing," and "strike."

The study also considered if the age of the children contributed to whether an unfamiliar word was mistaken for a similar sounding word (e.g., jury was mistaken for jewelry) or whether a word had another meaning outside the court system (e.g., "motion is like waving your arms"). These two types of errors were found to be grade-related insofar as the sixth graders made significantly fewer of these errors than the third graders or kindergartners. For example, 19 of 20 kindergartners and 18 of 20 third graders erred with the word "hearing," whereas only seven of 20 sixth graders made the same error. This demonstrated that the older children were able to understand that familiar words may have a different meaning in the court system.

This study demonstrated that "a majority of legal terms tested were not accurately defined until the age of 10."²⁹ Of interest is that younger children admitted lack of knowledge or unfamiliarity with a legal term more frequently than older children. Thus, older children may answer a question concerning a court term, yet not understand the term or the question. On the other hand, younger children may think that they understand the meaning of the term and may testify accordingly, when in fact they have a different meaning in their mind than the adult does. The younger children's resistance to the prompt, "Could it mean anything else in a court of

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law?” suggests that they had limited metacognitive ability to foresee that a term would mean something else in a different, potentially unfamiliar, context. Moreover, it may be difficult for them to shift from one context to another or to continue to generate alternate solutions.³⁰ However, by third grade, children may be able to fit familiar terms into a different context, such as a court setting.

To summarize, even if a child within the age-frame of this study is informed during a forensic interview that his or her statements may be used in a court proceeding, this does not necessarily mean that the child understands what court is or what the purpose of court is. On the other hand, if such information is not provided to a child during a forensic interview, it is not fair to expect the child intuitively to understand the function of court or that the interview may be used in a criminal prosecution.

1989 Warren-Leubecker Study: “What Do Children Know About the Legal System and When Do They Know It?”

This study from Australia researched the developmental trends in children’s perceptions of the legal system, court-related personnel, reasons for going to court, and how decisions are made.³¹ The study involved children ranging from two years and nine months to 14 years in age. The children were asked 23 questions, six of which are included below:

1. Do you know what a courtroom is? 18% of three-year-olds, 40% of six-year-olds, 85% of seven-year-olds, and up to 100% of 13-year-olds answered “yes.”

2. Who is in charge of the courtroom? 82% of the three-year-olds indicated they did not know and the remaining 18% answered incorrectly (e.g., a doctor). Answering the judge was in charge of a courtroom were 15% of four-year-olds, 25% of five-year-olds, 56% of six-year-olds, 73% of seven-year-olds, and 92% of eight-year-olds.

3. Who else is in the courtroom (besides the judge)? The chart below demonstrates the percentage of correct answers according to age.

	Age in Years/ Percentage Correct											
	3	4	5	6	7	8	9	10	11	12	13	
Jury	0	0	3	4	8	13	19	28	38	38	40	
Lawyer	0	0	3	0	8	15	31	44	36	40	20	
Witness	0	11	3	0	0	28	23	20	16	19	39	
Police	0	11	10	26	15	36	26	17	23	34	30	
Defendant	0	7	0	0	8	15	19	28	27	21	20	
Plaintiff	0	0	0	0	4	8	10	15	19	17	20	
Audience	9	0	0	4	4	3	2	4	7	2	20	
Bailiff	0	0	0	4	4	0	4	6	9	15	0	
Court Clerk/ Reporter	0	0	0	0	0	3	3	14	15	9	0	

4. What does a lawyer do? Children under the age of seven did not know what a lawyer does. When children reached age 10 they began to distinguish between attorneys who prosecute or defend others.

5. What is the jury and what do they do? A large number of children mistook the word “jury” for “jewelry” and were unable to answer this question. In general, it was not until age 10 that a significant number of children could understand that a jury is involved in decision-making. However, at age 12, 30% of these children still did not understand the role of a jury in court.

6. Why do people go to court? A significant number of younger children did not know or were not able to provide a reason as shown by these percentages: 91% of three-year-olds; 75% of four-year-olds; 62% of five-year-olds; 43% of six-year-olds; 27% of seven-year-olds; 15% of eight-year-olds; and not until age 13 were all children able to provide an answer.

The results of this study clearly demonstrate that a majority of children between three and four years old do not understand court-related terms, the players involved in court proceedings, the purpose of court proceedings, or the most basic level of the purpose of court. Again, this study is consistent with the above-mentioned prior studies in showing that children under the age of 10 do not understand the court process objectively and consequently cannot understand that their out-of-court statements may be used in court.

1989 Flin Study: “Children’s Knowledge of Court Proceedings”

A study from the United Kingdom replicated the findings in the studies above.³² Children ages six, eight, and 10 were given 20 legal terms, as well as questions regarding court procedures. Consistent with other studies, the 10-year-old children understood more legal terms than the younger children. Only four terms (i.e., “policeman,” “rule,” “promise,” and “truth”) did not show a significant difference in accuracy among the age groups. However, terms such as “going to court,” “evidence,” “jury,” “lawyer,” “prosecute,” “trial,” and “witness” were clearly not understood by the six- and eight-year-old children and only nominally by the 10-year-olds. When asked what kind of people go to court, children ages six and eight did not know or believed that only bad people went to court. However, by age 10, these children understood that all types of people could be involved in court proceedings.

1997 Aldridge Study: “Children’s Understanding of Legal Terminology”

A study of British children ages five to 10 focused on child witnesses’ understanding of the legal system.³³ This study found that children do not begin to understand what a witness is or what a judge is/ or does until age 10; none of the children in the study had ever heard the word “prosecution,” except for one child who said “prosecution’s when you die. You get hanged or something awful like that.” In defining what court is, the children studied had the following answers: One five-year-old stated that “a court is a sort of jail”; one seven-year-old said that witnesses “whip people when they are naughty”; another seven-year-old said “the police think that witnesses have done something naughty”; and one seven-year-old described a judge as “someone who gets money, like at a pet show.”

1998 Berti Study: “Developing Knowledge of the Judicial System”

Similar results as the Saywitz (1989), Warren-Leubecker (1989), and Flin (1989) studies were found in an Italian study from 1998.³⁴

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Of particular interest were the student responses to the question about what court is: 75% of first graders (mean age 6.7) did not know; 45% of third graders (mean age 8.6) did not know; 15% of fifth graders (mean age 10.7) did not know; and 5% of eighth graders (mean age 13.8) did not know. In response to describing a public prosecutor, all first and third graders either did not know or had never heard of a prosecutor; only one of 20 fifth graders and four of 20 eighth graders accurately described a prosecutor. The younger children similarly had difficulty understanding or describing a judge, witness, lawyer, or jury. None of the first and third graders understood that a judge must study law to be a judge, whereas 18% of fifth graders and 94% of eighth graders understood this concept. Therefore, young child witnesses or victims may not understand the role of a judge when testifying.

Overall, results of these six research studies are similar: Each indicates that children under the age of 10 do not comprehend legal terms, the nature or process of court proceedings, or the individuals involved in court proceedings. As such, how can young children independently appreciate that statements made during a forensic interview would later be introduced in a court proceeding? These studies demonstrate that an objective person standard cannot be applied to young children under the age of 10. Instead, the above research amply supports the creation of a “reasonable child” standard in determining whether out-of-court statements by children are testimonial in light of the *Crawford* decision.

Pitfalls to Avoid in Forensic Interviews Truth/Lie Tasks

Many protocols and jurisdictions incorporate a truth/lie task as part of every forensic interview to determine if the child understands the need to be truthful. Although there are many pros and cons regarding the use of truth/lie tasks in forensic interviews (a discussion far beyond the scope of this article), be aware that performing this task could be a factor in determining whether a forensic interview is testimonial. Because a truth/lie determination is required of young children prior to testifying in court, a judge may rule that the use of a similar task in a forensic interview incorporates a courtroom oath into the interview setting, thus making the forensic interview anticipatory of litigation or trial. This issue has only been addressed in one post-*Crawford* case to date. In *People v. Vigil*,³⁵ the Colorado Court of Appeals noted that “the interviewer’s emphasis at the outset regarding the need to be truthful would indicate to an objective person in the child’s position that the statements were intended for use at a later proceeding that would lead to punishment of defendant.”

Many forensic interviewers wonder about the legitimacy of forensic interviews if a truth/lie test is not conducted with the child. The RATAAC Protocol³⁶ developed by CornerHouse in Minneapolis, Minnesota, and taught as part of APRI’s Finding Words forensic interview training, avoids this concern by teaching interviewers how to assess competency during a forensic interview, as well as training members of the multidisciplinary team (MDT) to take every aspect of the child’s statements and corroborate with independent evidence whenever possible. For instance, if the child discloses that she remembers the first incident of abuse because she missed four days of school immediately afterward, members of the MDT should contact the child’s school and locate school attendance records that would support the child’s statement. By corroborating the child’s forensic interview statements in this manner, a truth/lie test during the in-

terview is not needed because independent evidence validates the child’s statements.

Be sure to educate forensic interviewers regarding possible *Crawford*-related concerns if incorporating a truth/lie protocol during the interview.³⁷ Each jurisdiction should decide how to handle a truth/lie component in a forensic interview and should comply with applicable laws and mandates.

Avoid Seeking the Child’s Input Regarding the Investigation

Most protocols and forensic interview guidelines do not ask a child during a forensic interview what he or she would like to happen with the investigation and/or to the suspect. Imposing a burden on the child to provide a response to these questions is unfair given the possible trauma the child has already experienced. Further, the interviewer is not necessarily in a position to honor the child’s requests should the child wish to be reunited with the abuser. For example, if an abused child informs an interviewer that he or she wants to return to the home where the suspect resides, would the interviewer follow the child’s wishes? If the child informed the interviewer that he or she did not want the abuser to be criminally prosecuted, would the interviewer comply with this request? Asking the child what he or she would like to see happen is not only inappropriate, but it can lead to legal consequences in relation to *Crawford*, as the court may label the forensic interview statements as testimonial. As explained in *People v. Vigil*,³⁸ these questions bring possible court action to the child’s attention, negating any argument that the child could not reasonably comprehend that the forensic interview could later be used in court. Educating forensic interviewers to avoid these questions during the forensic interview will not only protect the interview process, but also protect the child.

Conclusion

As courts continue to struggle to define which out-of-court hearsay statements are “testimonial,” the legal implications for child abuse investigations and prosecutions will continue to change. Although some guidance can be drawn from cases that interpret *Crawford*, it is expected that courts across the country will provide conflicting opinions given that the new rule regarding “testimonial statements” was not fully defined in *Crawford*. As the legal landscape of hearsay statements and forensic interviews changes to accommodate the *Crawford* decision, the American Prosecutors Research Institute will provide additional articles and suggestions. To receive continuing updates on post-*Crawford* cases, please contact APRI at (703) 549-4253 or visit our Web site at www.ndaa-apri.org.

About the Author

Allie Phillips is a senior attorney with APRI’s National Child Protection Training Center and National Center for Prosecution of Child Abuse in Alexandria, Virginia. The author wishes to thank Jodi Furness, former staff attorney, and Naomi Meyer, executive assistant with the National Child Protection Training Center; Taya Moxley-Goldsmith, staff attorney with the National Center for Prosecution of Child Abuse; and Jennifer Anderson with CornerHouse Interagency Child Abuse Evaluation and Training Center in Minneapolis, for their assistance with this article.

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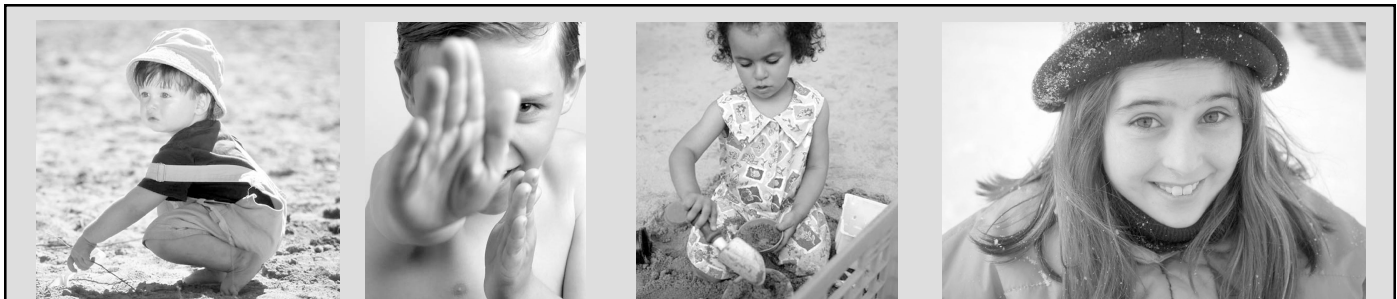
Notes

1. 514 U.S. 36 (2004).
2. *Id.* at 54.
3. 448 U.S. 56 (1980). The *Roberts* Court held that if a witness becomes unavailable at trial, the prosecutor has the burden to prove unavailability of that witness and that the hearsay statement fell into a firmly rooted exception, or has "indicia of reliability" or trustworthiness.
4. *Crawford*, 514 U.S. at 54.
5. *State v. Young*, 87 P.3d 308 (Kan. 2004); *People v. Steward*, 2004 Mich. App. LEXIS 2110 (2004).
6. *People v. Patterson*, 808 N.E.2d 1159 (Kan. 2004) (grand jury testimony generally not subject to cross-examination and therefore not allowed at trial).
7. *Liggins v. Graves*, 2004 U.S. Dist. LEXIS 4889 (S.D. Iowa 2004).
8. *United States v. Avants*, 367 F.3d 433 (5th Cir. 2004).
9. *State v. Pullen*, 594 S.E.2d 248 (N.C. Ct. App. 2004) (co-defendant confession is testimonial and cannot be admitted against a defendant unless the co-defendant testifies and is subject to cross-examination); *State v. Cutlip*, 2004 Ohio 2120 (2004); *Brooks v. State*, 132 S.W.3d 702 (Tex. App. 2004).
10. *United States v. Massino*, 319 F.Supp.2d 295 (E.D.N.Y. 2004).
11. *United States v. Mikos*, 2004 U.S. Dist. LEXIS 13650 (N.D. Ill. 2004) (United States Health and Human Services agents).
12. See, *Idaho v. Wright*, 497 U.S. 805 (1990); *People v. Argomaniz-Ramirez*, 102 P.3d 1015 (2004) ("prior recorded statements made by children to law enforcement officials may be introduced into evidence when the children testify at trial"); *Somervell v. State*, 29 Fla. L. Weekly D 1739 (Fla. Dist. Ct. App. 5th Dist 2004) (a videotaped forensic interview, conducted by a police officer, of the eight-year-old victim was properly admitted at trial after the child victim had already testified).
13. In *People v. Phan*, 2004 Cal. App. Unpub. LEXIS 5047 (Cal. 2004), the child victim testified at trial concerning statements she made to police officers regarding sexual assault. At trial, the child victim had poor recollection regarding police interviews. In a *Crawford* analysis, the court found that confrontation was satisfied because the victim testified and was subject to cross-examination. The fact that the victim had poor memory and was not able to be cross-examined fully did not require reversal. Similarly, in *People v. Warner*, 199 Cal. App. 4th 331 (Cal. App. 3d Dist. 2004), the victim was three years old at the time of the abuse and four years old at the time of trial. In a forensic interview, the victim said the touching by her dad happened lots of times. The victim's mother telephoned defendant (her husband) in a phone sting and he admitted to touching the child. In an interrogation with the detective, the defendant admitted to three touches. At trial, the child did not recall the forensic interview and only admitted to one touching on the witness stand. The prosecutor moved to admit the defendant's statement regarding the additional touches and argued there was sufficient corpus from the victim's testimony to admit the statement of the defendant. The court found that since the victim testified at trial and was subject to cross-examination, in spite of her lack of memory, the defendant's statement could come in as there was sufficient corpus established and no *Crawford* violation.
14. 337 Or.586 (2004). See also, *People v. T.T. (In re T.T.)*, 815 N.E.2d 789 (Ill. App. Ct. 2004) (statements made by the child to a Illinois Department of Children and Family Services (DCFS) investigator and police officer were deemed testimonial due to their status as governmental agents).
15. 2005 Ill. App. LEXIS 98 (Ill. Ct. of App. 2005).
16. 690 N.W.2d 345 (2004).

17. The Minnesota Supreme Court has accepted this case for review and the American Prosecutors Research Institute filed an amicus brief addressing the child development research literature and requested the court to adopt a reasonable child standard.

18. 2004 Ala. Crim. App. LEXIS 236 (Ala. Crim. App. 2004).
19. 2004 Colo. App. LEXIS 1032 (2004).
20. 261 Mich. App. 624 (2004).
21. 104 P.3d 258 (Colo. 2004). The Supreme Court of Colorado has accepted this case on appeal.
22. *Id.* at 262-263.
23. 867 A.2d 314 (Md. Sup. Ct. 2005).
24. See, *People v. Geno*, 261 Mich. App. 624 (2004).
25. John E. B. Myers, Karen J. Saywitz, & Gail S. Goodman, "Symposium: Child Abuse: Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony," 23 *Pacific Law Journal* 3 (1996).
26. Karen Saywitz, "Children's Conceptions of the Legal System: Court Is a Place to Play Basketball," *Perspectives on Children's Testimony*, 131-157 (S.J. Ceci, D. F. Ross, & M. P. Toglia, eds., 1989).
27. Group One (18 children age four to seven), Group Two (19 children age eight to 11) and Group Three (11 children age 12 to 14). The children were also divided into High-Legal-Experience Group (if they were actively involved in a court case by being a victim of abuse or being involved in a custody dispute) or Low-Legal-Experience Group (if they had not been involved in a court case).
28. Karen Saywitz, Carol Jaenicke, & Lorinda Camparo, "Children's Knowledge of Legal Terminology," 14 *L. & Hum. Behav.* 523 (1990).
29. *Id.* at 531.
30. *Id.* at 532.
31. Amye Warren-Leubecker, Carol S. Tate, Ivora D. Hinton, & Nicky Ozbek, "What Do Children Know About the Legal System and When Do They Know It? First Steps Down a Less Traveled Path in Child Witness Research," *Perspectives on Children's Testimony* 158-183 (S.J. Ceci, D.F. Ross & M.P. Toglia, eds., 1989).
32. Rhona H. Flin, Yvonne Stevenson, & Graham M. Davies, "Children's Knowledge of Court Proceedings," 80 *British Journal of Psychology* 285-297 (1989).
33. Michelle Aldridge, Kathryn Timmins, & Joanne Wood, "Children's Understanding of Legal Terminology: Judges Get Money at Pet Shows, Don't They?" 6 *Child Abuse Rev.* 141-146 (1997).
34. Anna Emilia Berti & Elisa Ugolini, "Developing Knowledge of the Judicial System: A Domain-Specific Approach," 159(2) *Journal of Genetic Psychology*, 221-236 (1998).
35. 104 P.3d 258 (Colo. 2004).
36. The RATAAC protocol was developed by CornerHouse Interagency Child Abuse Evaluation and Training Center in Minneapolis, Minnesota. RATAAC stands for: Rapport, Anatomy Identification, Touch Inquiry, Abuse Scenario, and Closure.
37. In *People v. Vigil*, 104 P.3d 258 (Colo. 2004), a forensic interview of a seven-year-old victim was deemed testimonial and in doing so found the truth-lie component of the interview to be one of several factors by the court.
38. 104 P.3d 258 (Colo. 2004).

SOURCE: Phillips, Allie (2005, July/August). "Child Forensic Interviews After *Crawford v. Washington*: Testimonial or Not?" [Electronic Version]. *The Prosecutor*, 39(4). Reprinted by permission from the NDAA.



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)

- 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.

Protecting Parents' Rights When Conducting Investigations of Child Abuse and Neglect

Guidelines for Implementing the Child Abuse Prevention and Treatment Act (CAPTA) 2003 Amendments

Nan Giblin Beeler, MSW, Rich Schneider, JD
Ronald C. Hughes, PhD, MScSA, and Randi Lewis, JD

INTRODUCTION

Intrusion into family life is sometimes necessary to save lives and protect children. Inappropriate intrusion, though, is unethical, often harmful, and may be illegal. Child protective services (CPS) workers who investigate reports of child maltreatment need guidelines for when and how the state's intrusion into family life is appropriate and necessary.

In 2003, Congress amended the Child Abuse Prevention and Treatment Act (CAPTA) to require the following:

- At the time of initial contact with individuals who are subject to a child abuse and neglect investigation, the investigation caseworker from the public child welfare agency must advise these individuals of the complaints or allegations made against them in a manner that protects the confidentiality of the reporter and
- Public child welfare agency caseworkers must be trained regarding their duties to protect the civil rights and safety of children and families from the initial case contact through treatment and termination.

Public child welfare agencies are the states' primary agent for child maltreatment investigation and assessment and for protecting children from harm from abuse or neglect. To meet these responsibilities, CPS workers must respond to community reports of potential maltreatment by conducting assessment and investigation.

During assessment and investigation of possible child maltreatment, CPS workers must balance their responsibilities for completing thorough investigations with their responsibilities to respect the civil rights of all concerned. This includes the rights of families and alleged offenders not to have agents of the state intrude into their home, question them or their children against their will and without explanation, or forcefully remove children from the home without good cause.

Balancing these responsibilities is challenging for CPS workers. CPS social work investigators must protect the civil rights of all concerned while utilizing every opportunity to complete a thorough investigation and risk assessment. Often the best way to collect information regarding possible child maltreatment is to enter the home and interview parents and children; and sometimes the best way to assure short-term safety for a child is to remove the child from the home.

Parents may exercise their rights and decline to cooperate with a CPS investigation. This can compromise a child welfare agency's ability to do a thorough investigation and assessment. Congress recognized the need for the states to address this possibility in enacting the 2003 amendments to CAPTA.

In June 2004, the Ohio Department of Job and Family Services (ODJFS) revised the Ohio Administrative Code to address the two CAPTA requirements mentioned above. Additional guidance was necessary for two important reasons: (1) to address the many interpretive practice issues facing public child welfare agency caseworkers who investigate child abuse and neglect, and (2) to address the training requirements concerning these duties. The original Ohio CAPTA guidance document, from which this publication was derived, was developed to meet that need. The original document has been revised into this publication in the hope that Ohio's experiences may be helpful to other states in their efforts to implement CAPTA requirements. This document provides guidelines to address commonly asked questions and dilemmas regarding the implementation of the two CAPTA provisions cited earlier.

These guidelines are intended to help public child welfare agency staff work with families to protect children from maltreatment, while at the same time protecting parents' constitutional rights. By necessity, discussion of CAPTA implications for specific practice situations are interpretive and must reflect relevant research and best practice standards. Statute, rule, or case law, including those related to CAPTA, may not currently exist regarding many specific issues involved in conducting child maltreatment investigations. Therefore, while our hope is these guidelines will be instructive, public child welfare agencies will still need to work with their agency attorneys and county prosecutors to implement these guidelines within local jurisdictions. Public child welfare agencies will need to consider their own internal operations, how their juvenile courts operate, and how jurists are likely to interpret legal concepts that affect the implementation of CAPTA.

GENERAL PRINCIPLES

Parents have a fundamental liberty interest in raising their children free of unwarranted government interference. This principle of Constitutional law has also been referred to as a right of family integrity or a right of privacy. Parents also have a right to be secure from unreasonable search and seizure and to receive the protections of due process of law established in the Fourth and Fourteenth Amendments to the Constitution.

GUIDELINES FOR IMPLEMENTING CAPTA

Application of Fourth Amendment Rights to Child Abuse and Neglect Investigations

The Fourth Amendment to the Constitution prohibits unreasonable search and seizure of people, their homes, and their possessions, as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Entering homes or accessing children while conducting child abuse and neglect investigations is a form of search for purposes of the Fourth Amendment. Removing children from parental control is considered a seizure. Absent a prior court order or an emergency, parents' consent must be obtained before interviewing a child, interviewing another family member, entering a home, or removing a child from the home.

Application of Fourteenth Amendment Rights to Child Abuse and Neglect Investigations

The Fourteenth Amendment says no state shall "deprive any person of life, liberty, or property without due process of law." Due process consists of both substantive and procedural elements. "Substantive due process" pertains to specific rights. It involves determining whether a right exists and, if so, the standard that must be met to deprive a person of that right. "Procedural due process" pertains to the type of process the state must provide to an individual before a person can be deprived of that right.

As applied to child abuse and neglect cases, courts have ruled that parents have fundamental rights to family integrity and privacy. With respect to child maltreatment, the substantive standard or threshold the state must meet before depriving parents of these fundamental rights is "clear and convincing evidence" of abuse, neglect, or dependency. Emergency situations require a less stringent standard. In an emergency, the state can remove children from their parents' care, based upon "probable cause" to believe their removal is necessary to prevent immediate serious harm.

Case law has held that emergency removals of children require the probable cause standard that a child is in immediate danger of "serious" harm. Therefore, whenever these Guidelines refer to emergency removals of children, or emergency situations during investigations, the standard will be probable cause to believe that a child's removal is necessary to prevent serious harm.

In cases where the agency files a petition in juvenile court to protect a child from serious harm, hearings must be held on these petitions, and the child's parents will have the opportunity to appear and contest the allegations. Procedurally, parents must be given prior notice of the allegations being made by the state and an opportunity to contest the allegations before a judge or magistrate. In emergencies, the court may proceed before a parent receives notice and an opportunity to be heard. However, after judicial action is taken in an emergency, the state must provide notice and an opportunity to be heard as soon as possible.

Issue 1: Notification of Individual Subjects of Investigations

The CAPTA Amendment of 2003 requires that, at the initial time of contact, the public child welfare agency must notify subjects of the child abuse or neglect investigation of the allegations against them.

Questions:

- *To which types of investigations does this requirement apply?*
- *How much detail regarding the allegation should the investigator provide to the subject of the investigation?*
- *What constitutes first contact?*
- *What if the investigator is unsure who the perpetrator is?*
- *What if, during the course of the investigative interviews, there are allegations of another instance or different type of maltreatment?*
- *What if there may be a criminal investigation of the alleged maltreatment?*

To which types of investigations does this requirement apply?

Discussion:

CAPTA is federal legislation with federal terminology and definitions of abuse and neglect. Various state's definitions of abuse and neglect, as well as other related definitions may not be strictly consistent with federal terminology or definition. Therefore, questions may arise regarding types of investigations to which this notification applies.

It appears the intent of the CAPTA amendment is to ensure that subjects are informed of the allegations against them, irrespective of whether the allegation strictly fits within the federal statutory definitions and terminology of abuse and neglect. For example, it would appear that this requirement includes notifying youth of the allegations against them, in cases of sibling abuse or adolescent perpetration of sexual abuse.

Guideline:

The CAPTA notification requirement applies to the initial time of contact with the individuals who are the subject of the complaint or allegation, regardless of how the agency defines the nature of the complaint or allegations for purposes of assignment to the assessment/investigation (e.g., abuse, neglect, dependency, or children in need of protection). The subject of the investigation may be persons other than the parent (e.g., a boyfriend, or caretakers of the child, or siblings).

What constitutes first contact?

Discussion:

The CAPTA requirement reflects our government's interests and responsibility in ensuring the civil rights of subjects of child maltreatment investigations in accordance with the Fourteenth Amendment right to due process. Subjects must be aware of the allegations made against them so they may be fully informed prior to giving consent to investigative activities. Therefore, notification must be made prior to engaging the subject in conversation about the alleged maltreatment.

There is no stipulation that the subject be the first person interviewed during the investigation. In some cases, collateral sources of information or the alleged child victim will be interviewed prior to interviewing the subject of the investigation.

GUIDELINES FOR IMPLEMENTING CAPTA

Guideline:

First contact can either be in person or by telephone, whichever is the actual first contact with the subject of the investigation as the public child welfare agency worker is gathering information during the investigation. The notification must be made prior to discussing the allegation with the individual.

How much detail regarding the allegation should the investigator provide to the subject of the investigation?

Discussion:

The Fourteenth Amendment right to due process includes the right to make fully informed, voluntary decisions whether to consent to searches. Therefore, prior to proceeding with the information gathering phase of the interview, caseworkers must provide enough information so that subjects of the investigation know what they are consenting to.

However, the identities of the reporter and any person providing information during the course of the investigation must remain confidential. In many cases, the individual subject of the investigation can easily determine who knew about the alleged maltreatment and who was likely to report it. Still, the worker must not confirm the identity of the reporter.

Workers must always bear in mind that a criminal investigation of child abuse and neglect cases is a possibility. Close communication with police must be maintained so that caseworkers will be aware of concurrent criminal investigations. Also, a criminal investigation may be triggered at any time, based upon information acquired during the caseworker child maltreatment investigation.

Workers are not required to, and should not, give Miranda warnings. Miranda warnings are given by law enforcement officers to individuals suspected of crimes when the individuals are in law enforcement custody.

Guideline:

Workers should provide enough information so the subject of the investigation understands why the agency is conducting an investigation, but should not give details that will compromise ongoing criminal investigations and must protect the identity of the reporter at all times. Prior to asking an individual subject any questions about the alleged maltreatment, workers should consider using direct, non-inflammatory language and methods that address the following elements:

- That a report was made to the agency
- That the agency is required by law to investigate the report
- That the report states that abuse or neglect (whichever is the case) may have occurred
- A general description or paraphrase of the report
- That the report states that the subject was possibly involved in the situation (if so)

Parents should be informed that their cooperation is both voluntary and that the public child welfare agency must pursue the investigation by all legal means necessary to “final determination.”

For example, depending upon case details, the worker may state that there was a report that the children were possibly neglected in that they were left unsupervised, or that a child may have been abused

and has bruises on his face, or that a child may have been abused by being touched in a sexual manner.

Because of concern about revealing the identity of the reporter, it may be advisable not to provide detailed information from the report regarding how the alleged maltreatment occurred, the frequency of the maltreatment, or other such specific details. The name of the reporting source cannot be disclosed, nor should the identity of witnesses or specific items of evidence be disclosed. If there is a concurrent law enforcement investigation, or if one is likely, the public child welfare agency should check with the police to assure that details that might compromise the criminal investigation are not released. Workers should not provide a copy of the report of the allegations to the subject of the investigation nor read the allegations verbatim.

Example of appropriate level of detail needed during notification:

“My name is Jane Doe. I am a caseworker with Child Protective Services. We are required by law to investigate all reports of possible abuse or neglect. We have received a report about your daughter, Cyndi. May I come in so that we can talk about this?”

Then... (in cases where the subject of the investigation is identified by the reporter):

“We received a report that Cyndi may have been abused, because there are bruises on her face. The report also states that you may have been involved in this situation. I am required by law to pursue this investigation until I can determine if the allegations are true or not, but as I do not now have a court order, your cooperation is voluntary. However, I’m hoping that you will answer my questions so we can determine if there are any problems.”

Another example (in cases where the subject of the investigation is not known):

“My name is Jane Doe. I am a caseworker with Child Protective Services. We are required by law to investigate all reports of possible abuse and neglect. We received a report about your son, Terry. May I come in so that we can talk about this?”

Then...

“Thank you. We received a report that Terry was possibly neglected because he was walking around outside, unsupervised last Tuesday evening. I am required by law to pursue this investigation until I can determine if Terry is in need of protective services, but at this time, your cooperation is voluntary. I’m hoping that we can discuss it, so that we can get it straightened out, and link you with services if needed. Can you tell me about the situation?”

Caseworkers will need to develop their own interviewing approach and be able to adapt it as needed for different situations and individuals.

Informative handouts or booklets that notify parents of their rights and explain agency and juvenile court procedures should be developed. Agencies should develop guidelines and procedures for distributing these booklets as part of the investigative process.

GUIDELINES FOR IMPLEMENTING CAPTA

When parents are unwilling to voluntarily provide needed information, the worker should inform the parents of the agency's legal obligations to continue its assessment to determine if there is serious risk of harm, and, if children are found to be at serious risk of harm, of the agency's obligation to pursue legal options to protect the child. Once it is determined that the agency will initiate court action, the worker should notify the individuals as to where and when the court hearing will be held and their responsibilities to attend, what the agency will ask the court to do, and how the parent can obtain an attorney.

CAPTA also requires that individuals be apprised of their rights to appeal agency actions. Agencies must fully explain the rights and procedures of appeal.

What if the investigator is unsure who the perpetrator is?

Discussion:

In many cases, the identity of the perpetrator is not known at the time of reporting. Many reports allege harm to a child without naming any adult as the person responsible for that harm.

Guideline:

In the course of the investigation, information may be obtained from one individual that another individual could have caused the maltreatment. In these situations caseworkers must notify alleged perpetrators of the allegation against them prior to gathering information from them.

What if, during the course of the investigative interviews, there are allegations of another instance or a different type of maltreatment?

Discussion:

Occasionally, additional maltreatment will be alleged during ongoing CPS investigations. Additional allegations should prompt another consent request. More often, however, additional quantitative evidence will be identified during the investigation. For example, if while investigating reported facial bruises with a consenting parent, burn marks and lacerations are discovered on other parts of the child's body, it is not necessary to request additional consent, if additional quantitative evidence is necessary to determine whether alleged maltreatment has occurred and is serious.

Guidelines:

New allegations of abuse or neglect during an ongoing investigation would warrant a new request for consent by the subject to proceed with a qualitatively different aspect of investigation. This should be considered an "initial" contact for investigation with respect to the CAPTA guidelines.

More common is that the social worker will identify additional quantitative evidence of the alleged maltreatment during the initial investigation. This does not require seeking additional consent if the initial consent was appropriately constructed.

What if there is a criminal investigation of the alleged maltreatment?

Discussion:

Although CAPTA is silent on this issue, guidance has been provided by the U.S. Department of Health and Human Services, Ad-

ministration for Children and Youth (Web site: April 2005, go to Children's Bureau, Initiatives).

... States should be careful not to compromise their own investigations or a concurrent criminal investigation that may lead to criminal charges against a perpetrator of serious child maltreatment. In cases alleging severe physical abuse or sexual abuse, for example, it is critical that CPS and law enforcement investigations be either jointly conducted or at the least carefully coordinated. Investigation of cases involving alleged perpetrators of serious crimes against children should be synchronized between CPS and law enforcement so that relevant evidence of offenses not be concealed or destroyed, child victims not be subjected to undue influence to give or not give information to CPS or law enforcement investigators, or that actions get taken that would place children at greater risk. Such coordination should help ensure that criminal investigations are not undermined.

Guidelines:

Public child welfare agencies should coordinate their investigative activities with law enforcement. In most jurisdictions, this is a stipulated part of law and rule.

In cases involving criminal investigations, law enforcement officers should determine how and when to notify a subject of the investigation, and workers should follow their lead. Public agency caseworkers should plan their activities so as not to compromise a criminal investigation.

However, children's safety cannot be compromised for the sake of building a criminal case. The fact that law enforcement is involved does not relieve public child welfare agencies of their statutory responsibilities to protect children at high risk of imminent serious harm. CPS caseworkers and law enforcement officers should cooperate to assure both a thorough investigation of criminal cases and the safety of all involved children.

Issue 2: Obtaining Consent From the Subject of the Investigation to Enter the Home or to Interview Children or Family Members

The Fourth Amendment of the U.S. Constitution stipulates persons have the right to be free from unwarranted searches. Courts have determined that Fourth Amendment rights apply to certain aspects of CPS investigations, including interviewing children and the subjects of the investigation, and accessing children.

Workers may have access to the home or children only under the following circumstances:

- *The subject of the investigation consents to such access. Consent must be freely given and must not be coerced.*
- *There is an exigent threat to the child's safety.*
- *The child welfare agency or law enforcement has obtained a warrant or a court order.*

Questions:

- *What types of actions could invalidate consent?*
- *Are behavioral, rather than verbal, indicators of consent sufficient?*
- *Are separate consents needed to look in cupboards and*

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bedrooms and to take pictures of the home?

- *What are exigent circumstances?*
- *What if the subject refuses to allow the worker to access the home or the child? How does the worker obtain a warrant or court order?*

What types of actions could invalidate consent?

Discussion:

Consent must be informed and freely given and may be revoked at any time by the consentor.

Consent may not be obtained by threat, intimidation, duress, promises, or subterfuge. For example, workers may not obtain consent by doing the following:

- Threatening to call in law enforcement to obtain the subject's cooperation
- Threatening to remove the child because the individual subject has not cooperated with the investigation
- Promising the subject he or she will not have his or her child removed if cooperation is forthcoming

At the same time, the caseworker should provide the subject with as complete and balanced a depiction of the agency's responsibilities, and probable contingent activities, as circumstances dictate. While it is bad practice to threaten, coerce, or intimidate, it is equally bad practice to withhold information regarding the agency's responsibility to use whatever means is available and necessary to obtain information essential to determining a child's safety. The subject cannot provide informed consent without knowing all pertinent information.

Guidelines:

The worker should explain the purpose for conducting the investigation and ask for the subject's cooperation (see Issue I: Notification).

If the subject refuses to cooperate, caseworkers should seek guidance from their supervisor and attorney or prosecutor. However, workers should not use this as a threat. A recommended response would be, "I will go back to the office and talk with my supervisor about this situation." The worker and supervisor would then jointly determine the best course of action.

It is important to understand that, while consent must be obtained to gain access to the child or the home (except in the case of exigent or emergency circumstances – see Issue #2), consent is not necessary to conduct other investigative activities, such as interviewing collateral contacts. Therefore, investigative activities may proceed even if a subject has refused to cooperate with the investigation.

Are behavioral, rather than verbal, indicators of consent sufficient?

Discussion:

Yes. Examples of behavioral indicators may include the following: The subject responds to a request to enter the house by motioning the worker toward the interior of the home. The subject responds to a request for an interview by beginning to talk, or the subject responds to a request to interview a child by shrugging her shoulders and motioning toward the child.

Guidelines:

When the subject behaviorally gives consent through gesture and action, the worker should verbally acknowledge the consent with language that clearly declares the worker's interpretation that consent has been given, such as "Thank you for letting me talk with you, Joan," or "Thanks for letting me see your home." The worker should document this in the case record.

Is separate consent needed to look in cupboards or bedrooms and to take pictures of the home?

Discussion:

Yes. For example, consent given to participate in an interview does not apply to looking through the house. Separate consent is required for each additional investigative activity, such as looking in cupboards or bedrooms and taking pictures of the home.

Guideline:

The worker should seek separate consent for each investigative activity, such as looking in cupboards and taking pictures of the child's environment. If the subject does not give consent for those activities, then the worker must not conduct those activities unless there is an emergency or the worker has a court order. The worker should document all requests for consent, the subject's responses, and subsequent activities in the case record.

Example:

"Mrs. Jones, part of the information we received was that there was insufficient food in the house. I want to be as fair and objective as possible. So, to find out if there is enough food for your family, I would like to look in your cupboards and refrigerator. Could I get your permission to look in the cupboards and refrigerator? Would you please come with me, so that you can show me around?"

Workers should use discretion in determining when to check for injuries and when to photograph them. Workers should not check for injuries or take photographs for every allegation of abuse or neglect but should do so only when the allegation indicates that there are possible injuries. This raises the question of whether workers should check for injuries in addition to the ones reported in the allegation. Workers should do so when there is good reason to believe that additional new or old injuries or marks suggesting such injury may be present. The presence of suspicious physical injuries, such as pathognomonic bruises, cigarette burns, and belt or wire lacerations, is itself justification to look for additional such injuries to help determine the frequency and scope of alleged abuse and to complete a proper assessment of risk of future harm. Additional search for injury is also appropriate if a previous case record has substantiated abuse with multiple injuries, or if the child has disclosed additional injuries. In these situations, it may be permissible to remove a child's clothing and take photographs of the other injuries. Photographing injuries can be an important part of documentation.

It is good casework practice to ask parents to help physically examine a child for injuries, if the facts warrant such a search, especially if a child's clothing must be removed. Most children are appropriately uncomfortable or feel threatened when a stranger attempts to remove their clothing. If the parent refuses to give consent to check for injuries or take photographs, workers should consult with their supervisor on the best course of action.

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Some states have laws specifically addressing photographing suspected child abuse injuries. For example, Ohio allows mandated reporters to take photographs of injuries and to take photographs of children in out-of-home-settings (e.g., schools, foster homes, and day camps).

What are exigent circumstances?

Discussion:

The Fourth Amendment allows access to the child and the home without consent, if there are exigent circumstances. In this case, exigent circumstances are CPS emergencies where a child is in immediate danger of serious harm, and time does not permit obtaining a court order. An example would be if a worker arrives at the home and finds a very young child who has been left alone.

Guidelines:

In exigent circumstances, caseworkers may proceed to gain access to a child without parental permission. Workers should immediately contact their supervisor to discuss the situation and to develop a plan for securing the child's safety. Workers should follow agency policy and procedure for removing a child from the home, if that becomes necessary.

In other exigent circumstances, the situation may be dangerous for the child and the worker. In these cases, law enforcement officers should be called to the home.

What if the subject refuses to allow the worker to access the home or the child? How does the worker obtain a warrant or court order?

Discussion:

Many juvenile courts have specific procedures that compel parents to comply with agency requests to interview them or a child, to observe a child, or to access their home. These may include orders to access or temporary protective orders. Courts vary in their procedures for obtaining these types of orders. Judicial officers will consider whether there is reasonable belief the child is in danger of maltreatment when determining whether to compel the parents to cooperate. Agencies are unlikely to obtain a juvenile court order when the maltreatment report is vague and/or anonymous, unless additional information is gathered to satisfy the court that there is a reasonable belief that the child is in substantial danger of serious harm.

Guidelines:

In cases where there is no confirmable immediate danger of serious harm and parents refuse to cooperate with the investigation, workers should consult with their supervisor and agency attorney or prosecutor to consider whether legal action should be taken.

If the screening report alleges child maltreatment, but provides no confirmable evidence, workers should attempt to gather additional information from collateral sources prior to approaching juvenile court for an order compelling access to the child. Juvenile court will consider what information has been obtained when making a determination of whether to order the parents to comply with the investigation.

Workers should have access to agency attorneys, prosecutors, or other legal consultants to discuss these and other questions related to legal procedures.

Issue #3: Involving Law Enforcement During Investigations

At times, the presence of law enforcement may be necessary to ensure that the protective service investigation proceeds. Police may be asked to accompany CPS workers when a CPS worker has determined that the safety of a child or family member, or the worker's own safety is threatened during the protective service investigation. Law enforcement support may also be needed to facilitate parental cooperation with court orders. However, law enforcement must not be used for manipulation or preemptive intimidation.

Question:

When does involving law enforcement during investigations become coercive?

Discussion:

The presence of a police officer may be perceived by family members as coercive but may be a warranted use of authority in some situations. The worker's intent in asking law enforcement to assist with an investigative interview is critical. Law enforcement officers should not be involved for the purpose of intimidating subjects into cooperating with the investigation.

Guidelines:

In general, the presence of law enforcement officers should be limited to the following situations:

- The agency has reasonable belief that a child or another family member is in immediate danger of serious harm
- The agency has reasonable belief that a crime has been or is being committed against the child
- The agency has reasonable belief that the worker is, or will be in danger of personal harm during the course of the investigation
- The presence of law enforcement is otherwise required by law

The reason for involving law enforcement officers should be documented in the case record.

Caseworkers should be familiar with state and county policies and procedures for involving law enforcement during investigations. These policies and procedures should specify the situations in which law enforcement should participate in child maltreatment investigations, as well as the tasks they should perform.

Public child welfare agency administrators should review their policies and procedures to determine if these should be revised to assure congruence with CAPTA requirements.

Issue #4: Conducting Interviews With Children at School Without Parental Knowledge or Against Parental Wishes

When parents send their children to school, they have the right to expect the school system to ask their permission before their children are exposed to most contacts by persons outside the school system. Conducting interviews at school, without parental permission or against the parent's wishes, may impact their rights to parent their children without unsolicited and unwarranted governmental interference.

However, failing to interview a child at school may result in an incomplete investigation, and the agency may fail to protect the child from

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further maltreatment. The agency must balance the two dangers inherent in this dilemma: failure to protect the child versus violating parents' rights to due process.

Questions:

- When is it permissible to conduct investigative interviews with an alleged child victim at school without first informing the parent about this activity?
- When is it permissible to conduct investigative interviews with an alleged child victim at school against the parent's wishes?
- When is it permissible to conduct investigative interviews at school with an alleged child victim's siblings?

When is it permissible to conduct investigative interviews with the alleged child victim at school without first informing the parent about this activity?

Discussion:

Investigative interviews should not be conducted at school as a matter of standard operating procedure or just because it is more convenient to do so. Each case should be evaluated to determine the necessity of interviewing the child at school.

Specific facts about the allegation should dictate the need to conduct investigative interviews at school. For example, a child who discloses at school that there is current or ongoing physical or sexual abuse may need to be interviewed at the school to determine if the child is at immediate risk of serious harm upon returning home. Indications that children would be unwilling to discuss the alleged maltreatment in their own home would also warrant interviewing them at school. On the other hand, there would be no reason to interview children at school regarding neglect due to potentially unsanitary conditions at home. In most suspected neglect cases, it is more reasonable to interview children at home.

Guidelines:

Investigative interviews at school without a parent's knowledge should be limited to the following situations:

- There are reasonable grounds to believe a child will be maltreated upon returning home from school
- There are reasonable grounds to believe a child may be intimidated if the alleged maltreatment is discussed in the home
- The child requests to be interviewed at school

The worker should document the necessity of interviewing the child at school in the case record.

Unless there is good reason not to, caseworkers should follow school protocol related to conducting investigative interviews at schools. Some schools do not permit investigative interviews. Caseworkers should follow agency procedures for how to proceed in those situations.

When is it permissible to conduct investigative interviews with alleged child victims at school against the parent's wishes?

Discussion:

When parents have expressed their desire not to have their child interviewed at school, CPS workers should not interview the child at school unless there are exigent circumstances regarding child safety that justify the interview.

Guidelines:

When interviewing a child at school is necessary to assure the child's safety and the child's parents have expressed that such an interview not take place, caseworkers should consult with their supervisor and with the agency attorney or prosecutor to discuss gaining access to the child at school. The agency may also request that the juvenile court order the parents to comply with the agency's request to interview the child at school.

The worker's activities regarding these situations should be documented in the case record.

When is it permissible to conduct investigative interviews at school with the siblings of the alleged child victim?

Discussion:

During an interview of an alleged child victim at school, information may arise which suggests it is necessary or appropriate to interview the child's siblings at school. For example, an alleged child victim could disclose that a sibling has also been abused or that a sibling has witnessed maltreatment.

Guidelines:

Workers should not routinely conduct interviews with siblings at school as a matter of convenience. Workers should interview siblings at school only when an interview with an alleged child victim at school provides information indicating there is immediate danger of serious harm to the alleged child victim or to a sibling. Workers should document the reason for interviewing siblings at school in the case record.

Public child welfare agency administrators, agency attorneys or prosecutors, and school boards and administrators should collaborate to develop formal policies and procedures to guide interviewing siblings at school.

Issue #5: Interviewing Collaterals Without the Subject's Knowledge

A complete investigation requires gathering information from a variety of sources.

Question:

What are the limits of a caseworker's authority in contacting collateral sources of information?

Discussion:

A complete CPS investigation often requires gathering information from collateral sources who may have information about the alleged child maltreatment. In many cases, it is possible to gain a subject's cooperation in contacting those people. In other circumstances, it may be necessary to contact collaterals without parental knowledge or permission. For example, a worker may need to gather information from collateral sources to support a request to juvenile court for an order compelling the subject to allow access to the home or to the alleged child victim.

Guidelines:

Workers should attempt to gain a subject's cooperation in contacting collaterals. Workers should explain the requirement to conduct a complete and objective investigation and assessment of the family's situation and should ask the subject for a list of people who could be of help in providing information pertaining to the investigation.

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Workers should also ask the subject to complete a release of information form to be included in the case record. Following is an example of how to ask for information about collateral sources of information:

Example:

“Ms. Jones, as you know, I need to complete an objective and thorough investigation. To do this, it may be necessary for me to talk with people who are familiar with your family. Would you help me to identify people who know your family well?”

When a worker needs to make collateral contacts without a parent’s knowledge or permission, the worker may contact anyone believed to have information that is pertinent to the investigation. The original referral source may identify collateral sources, some of whom may then identify other sources. Workers may also contact collateral sources, such as relatives or child care providers, who logically would be expected to have pertinent information about the child and family.

Interviewing collaterals against parental wishes is an important issue. A case by case analysis should be made to determine whether it is necessary and appropriate to contact a collateral source over a parent’s opposition. Workers should consult with their supervisor and agency attorney or prosecutor in these situations.

Caseworkers should consider the following factors in determining whether to proceed with contacting collaterals against a parent’s wishes:

- The parent’s reasons for objecting (e.g., confidentiality or safety concerns, as opposed to a desire to obstruct the investigation)
- The importance to the investigation of the information the collateral contact is expected to provide
- Whether the information can be gathered from other sources without conducting interviews

If caseworkers determine, after careful consideration and consultation with their supervisor, that contacting collaterals is necessary, workers should proceed but should contact only collaterals who are likely to have specific information pertinent to the allegation.

During collateral contacts, the caseworker should protect the privacy of the family being investigated as much as possible and should only share information necessary to collect pertinent data. The worker should not provide details about the allegation to collateral sources.

Example:

“Mr. Smith, my name is Alice Jones, and I am from County Child Welfare. We received a report that your nephew, Charles, has two black eyes. We are trying to determine what happened to Charles. Can you share with me any information that would be helpful in understanding the current situation?”

If Mr. Smith asks for details about the report, the worker could state something like the following:

“Mr. Smith I’m sure you can understand the importance of protecting the family’s privacy in this situation. I really can’t tell you about the details of the report. However, I

am very interested in finding out what happened, so we can make sure Charles is safe. Do you have any information that would be helpful in understanding this situation?”

SUMMARY

The CAPTA revisions were promulgated to increase CPS workers’ awareness of, and capacity to assure, the civil rights of subjects of child protective services investigations. These revisions were not intended to decrease child welfare’s commitment to completing thorough and balanced investigations. The CAPTA revisions are best interpreted as an impetus both to assure the civil rights of all concerned and to redouble our efforts to provide complete and thorough CPS investigations that protect children at high risk of serious harm from abuse or neglect.

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Resources:

Ohio Administrative Code 5101:2-34-32 – Public Child Welfare Agency Requirements for Assessments and Investigations – available at <http://onlinedocs.andersonpublishing.com>

“New Child Abuse Prevention and Treatment Act (CAPTA) Requirements Concerning Parental Notification and Legal Rights,” available at U.S. /Administration for Children and Families Web site: <http://www.acf.hhs.gov> and type in key word, CAPTA

About the Authors

Nan Beeler is Training Manager for the Institute for Human Services in Columbus, Ohio.

Rich Schneider is Assistant Prosecutor for Hamilton County in Cincinnati, Ohio.

Ron Hughes is Director of The North American Resource Center for Child Welfare in Columbus, Ohio.

Randi Lewis is Deputy Legal Counsel, Office of Legal Services, Ohio Department of Job and Family Services in Columbus, Ohio.

JOURNAL HIGHLIGHTS Ernestine C. Briggs, PhD

The purpose of *Journal Highlights* is to inform readers of current research on various aspects of child maltreatment. APSAC members are invited to contribute by sending a copy of current articles (preferably published within the past 6 months) along with a two- or three-sentence review to Ernestine C. Briggs, Ph.D., Duke University Medical Center, Trauma Evaluation, Research and Treatment Program, Center for Child and Family Health—North Carolina, 3518 Westgate Drive, Suite 100, Durham, NC 27707 (Fax: 919-419-9353).

SEXUAL ABUSE

Gender Differences in Post-Abuse Reactions

This study examined the understudied issue of gender differences in disclosure, social reactions, post-abuse coping, and PTSD of adult survivors of child sexual abuse (CSA). Data were collected from a sample of 733 college students completing a confidential survey about their demographic characteristics, sexual abuse experiences, disclosure characteristics, post-abuse coping, and social reactions from others. Female students reported greater prevalence and severity of CSA, more distress and self-blame immediately post-assault, and greater reliance on coping strategies of withdrawal and trying to forget than male students. Women were more likely to have disclosed their abuse to others, to have received positive reactions, and to report greater PTSD symptom severity but were no more likely to receive negative reactions upon disclosure than men. Women delaying disclosure had greater PTSD symptom severity, whereas men's symptoms did not vary by timing of disclosure. Additional analyses and implications are discussed.

Ullman, S.E., & Filipas, H. H. (2005). Gender differences in social reactions to abuse disclosures, post-abuse coping, and PTSD of child sexual abuse survivors. *Child Abuse & Neglect*, 29(7), 767-782.

Is There a Link Between Abuse and Fibromyalgia Syndrome?

According to the trauma hypothesis, women with fibromyalgia syndrome (FMS) are more likely to report a history of sexual and/or physical abuse than women without FMS. This study tested the trauma hypothesis and the related prediction that women with FMS are more likely to have posttraumatic stress disorder (PTSD) than women without FMS in a community sample. Sample included women with FMS (N=52) and without FMS (N=53). Sexual and physical abuse were assessed retrospectively using a standardized telephone interview. Except for rape, sexual and physical abuse were reported equally often by women in the FMS and control groups. Women who reported rape were 3.1 times more likely to have FMS than women who did not report rape. There was no evidence of increased childhood abuse in the FMS group. Women with FMS were more likely to have posttraumatic stress symptoms (intrusive thoughts and arousal) and a PTSD diagnosis. With the exception of rape, no self-reported sexual or physical abuse event was associated with FMS in this community sample. However, PTSD was more prevalent in the FMS group. The authors concluded that chronic stress in the form of posttraumatic stress disorder but not major depressive disorder may mediate the relationship between rape and FMS.

Ciccone, D. S., Elliott, D. K., Chandler, H. K., Nayak, S., & Raphael, K. G. (2005). Sexual and physical abuse in women with fibromyalgia syndrome: A test of the trauma hypothesis. *Clinical Journal of Pain*, 21(5), 378-386.

PHYSICAL ABUSE

Multimodal Perceptions of Emotion Among Abused Children

This study examined children's ability to decode and make sense of simultaneously presented emotional signals. Specifically, it looked at the impact of two types of affective learning experiences, familiarity with the emotion poser and salience of a particular emotion on children's perception of multimodal emotion cues. School aged-children (N=63) were presented with conflicting facial and vocal emotions. Researchers tested the effects of familiarity by varying whether emotions were presented by familiar adults or strangers. The salience of particular emotional expressions was tested by contrasting the performance of physically abused and nonabused children. Children exhibited a preference for auditory expressions produced by their mothers. Additionally, abused children were more likely to rely on auditory cues when their own abusive mother was expressing anger.

Shackman, J. E., & Pollak, S. D. (2005). Experiential influences on multimodal perception of emotion. *Child Development*, 76(5), 1116-1127.

Assessment of Suspected Abuse in a General Hospital Emergency Department

The goal of this study was to evaluate the emergency department's assessment and follow-up of possible child abuse in children with fractures. A retrospective audit was conducted of children up to 3 years of age who presented with a fracture to a general hospital emergency department over a 2-year period. In the 98 cases reviewed, there was no documentation of complete physical examination in 57% of cases, whether the injury was witnessed in 54%, or time of injury in 18%. Seventy-five per cent of children with known prior injuries did not have their past history documented. In 80% of all cases, there was no indication that the emergency department doctor had considered the possibility of child abuse. Moreover, emergency doctors did not recognize 25% of the cases with inconsistent histories. The results also suggest poor follow-up of patients in whom abuse was suspected: 46% of children less than 2 years had neither a skeletal survey nor a bone scan. Patients referred to a pediatrician by the emergency department were significantly more likely to have a skeletal survey performed and to have the diagnosis of child abuse confirmed. The authors concluded that emergency department staff do not generally document or assess for all of the indicators of child abuse, and they do not document consideration of the diagnosis in the majority of cases. The need for additional training and resources of emergency department staff, as well as strategies to improve investigation and follow-up of suspected abuse cases, was also discussed.

Ziegler, D. S., Sammut, J., & Piper, A. C. (2005). Assessment and follow-up of suspected child abuse in preschool children with fractures seen in a general hospital emergency department. *Journal of Paediatrics and Child Health*, 41(5-6), 251-255.



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Abused Children Demonstrate Differential Regulatory Responses to Hostility

This study examined the effects of early emotional experiences on regulation of attention in response to interpersonal hostility in a sample of physically abused and nonabused 4-year-olds. Researchers measured abused children's reactions to a realistic interpersonal emotional situation through multiple methods, including autonomic nervous system changes and overt behavioral performance. Physically abused and nonphysically abused children did not differ in terms of their baseline levels of arousal. However, marked differences in physically abused children's regulatory responses to background anger emerged. The authors concluded that the emergence of anger leads to increases in anticipatory monitoring of the environment among children with histories of abuse.

Pollak, S. D., Vardi, S., Bechner, A. M. P., & Curtin, J. J. (2005). Physically abused children's regulation of attention in response to hostility. *Child Development, 76*(5), 968-977.

OTHER ISSUES IN CHILD MALTREATMENT

Pediatric Guidelines for Ameliorating the Effects of Disaster and Terrorism on Children

During and after disasters, pediatricians can assist parents and community leaders by accommodating the unique needs of children and being cognizant of the psychological responses of children to reduce the possibility of long-term psychological morbidity. The effects of disaster on children are mediated by many factors, including personal experience, parental reaction, developmental competency, gender, and the stage of disaster response. Pediatricians can be effective advocates for children and families at multiple levels (e.g., individual, community, national). Pediatricians can also affect national policy in support of families. This report delineates specific children's responses, discusses risk factors for adverse reactions, and gives advice for pediatricians to ameliorate the effects of disaster on children.

Hagan, J. F., Foy, J. M., Coleman, W. L., Goldson, E., et al. (2005). Psychosocial implications of disaster or terrorism on children: A guide for the pediatrician. *Pediatrics, 116*(3), 787-795.

Prospective Study of PTSD Diagnosis and Symptomatology in Preschool Children

This study examined the predictive validity of an alternative to the DSM-IV for diagnosing posttraumatic stress disorder (PTSD) in preschool children and prospectively explored the course of PTSD symptomatology. Sixty-two traumatized children were assessed three times in 2 years with caregiver diagnostic interviews. The results suggested that PTSD diagnosis at visit 1 significantly predicted degree of functional impairment 1 and 2 years later and predicted PTSD diagnosis 2 years later but not 1 year later. The lack of 1-year diagnostic continuity may be explained by children with new traumas. Contrary to expectations, overall PTSD symptoms did not remit over time, regardless of treatment; however, a decrease in re-experiencing symptoms was observed, while avoidance/numbing symptoms increased with time. Thus, significantly more children

were functionally impaired at visits 2 (48.9%) and 3 (74.3%) than were diagnosed with PTSD (23.4% and 22.9%, respectively). The authors concluded that the unremitting course of PTSD symptomatology in preschool children and rates of impairment and diagnosis indicate the need for efficacious treatment.

Scheeringa, M. S., Zeanah, C. H., Myers, L., & Putnam, F. W. (2005). Predictive validity in a prospective follow-up of PTSD in preschool children. *Journal of the American Academy of Child and Adolescent Psychiatry, 44*(9), 899-917.

Is Neighborhood Substance Availability Related to Rates of Child Maltreatment?

This study examined the relationships between availability of alcohol and illicit drugs (as measured by alcohol outlet density and police incidents of drug sales and possessions) and neighborhood rates of child abuse and neglect, controlling for other neighborhood demographic characteristics. Data from substantiated reports of child abuse and neglect in 304 block groups in a northern California city were analyzed using spatial regression techniques. Higher concentration of bars and higher numbers of incidents of drug possession were positively related to rates of child maltreatment in neighborhoods when neighborhood demographic characteristics were controlled. Thus, areas with more bars and drug possession incidents per 1000 population have higher rates of child maltreatment. The authors concluded that factors such as limited resources, neighborhood stress and disorganization, residents prone to dangerous activity, and the use of substances contribute to maltreatment. Thus, neighborhood substance availability may deserve special attention when developing preventive interventions to reduce child abuse and neglect in neighborhood areas.

Freisthler, B., Needell, B., & Gruenewald, P. J. (2005). Is the physical availability of alcohol and illicit drugs related to neighborhood rates of child maltreatment? *Child Abuse & Neglect, 29*(9), 1049-1060.

Pathways to DV Services in Child Maltreatment Cases

Data from the National Survey of Child and Adolescent Well-Being were used to examine the identification of domestic violence (DV) by child welfare workers during investigations of maltreatment and determine how this contributes to the receipt of DV services. The study focused on female caregivers of children remaining in the home following the investigation (n = 3165). While child welfare workers indicated that active DV is present in only 12% of families investigated for maltreatment, 31% of caregivers reported DV victimization in the past year. The concordance rate of reports of DV is low between caregivers and workers, with both reporting active or recent DV in only 8% of families. Substance abuse by the primary caregiver is a strong predictor of underidentification of DV by the child welfare worker (OR=7.6). Overall, about half of the caregivers with active DV identified by the worker received DV services over the 18 months following the investigation. Additional analyses examined whether receipt of child welfare services (CWS) would increase the likelihood that a referral will be made to DV services and whether caregivers would then obtain these services. The authors concluded that both the identification of DV by the worker and having an open CWS case are significant contributors to receipt of DV services.

Kohl, P. L., Barth, R. P., Hazen, A. L., & Landsverk, J. A. (2005). Child welfare as a gateway to domestic violence services. *Children and Youth Services Review, 27*(11), 1203-1221.

Washington Update Thomas L. Birch, JD National Child Abuse Coalition

CONGRESSIONAL AGENDA RESPONDS TO KATRINA RELIEF

When Congress adjourned in August after a recess, members expected the first order of legislative business for the House and Senate to be a major budget reconciliation bill. Legislators were planning to take proposals for spending cuts in programs serving low-income families, such as food stamps and Medicaid, and for extending tax cuts to wealthy Americans. This would make it more difficult to fund these programs and increase the likelihood of reduced federal revenues in future years. Hurricane Katrina has changed the agenda.

Also included in plans for reconciliation were assessments of other programs, such as Temporary Assistance to Needy Families (TANF), the Child Care and Development Block Grant (CCDBG), foster care, and the Earned Income Tax Credit, with the possibility of folding these programs into block grants or enacting legal authority for states to reduce benefits by redefining eligibility for the programs. The focus on offering relief to the victims of Katrina may have temporarily, at least, suspended that effort.

Cutting short the August recess by a few days and returning to Capitol Hill before Labor Day, Congress in short order voted more than \$60 billion in disaster relief aid after Katrina hit the Gulf Coast. With little time taken out for considering the purposes of the emergency spending or the sources of the funds, members of Congress are now taking a harder look at the prospect of running up billions of dollars more in another supplemental appropriations measure. The President has told Congress to find the money for Hurricane Katrina relief through spending cuts. Legislators have floated their own proposals calling for spending cuts in existing programs, putting off elimination of the estate tax, entertaining the possibility of tax increases, and forgoing permanent extension of tax cuts already taken.

At the same time, dozens of bills have been introduced offering a menu of assistance to the hurricane's victims and to the devastated areas of the Gulf states. Proposals range from tax breaks and support for building reconstruction, to relief for displaced workers and emergency Medicaid coverage. Of the \$60+ billion dollars already appropriated—most of it going to the Federal Emergency Management Agency (FEMA)—only about one-third of the funding had been allocated almost a month after the disaster struck, causing some members of Congress to call for caution before moving forward with additional relief spending.

Looking for ways to pay for further relief, the House Republican Study Committee (RSC) on September 21 issued a plan—Operation Offset—calling for spending reductions or outright elimina-

tion for over 120 federal programs. In the name of smart budgeting for costs related to the Katrina relief effort, the 91 members of the conservative RSC resurrected a long-standing wish list of spending cuts and program eliminations. Among the policy and funding changes suggested by the RSC are proposals to delay the Medicaid Prescription Drug Bill for a year and save over \$30 billion, to eliminate subsidized loans to graduate students to save \$8.5 billion over 10 years, to cut funds for the Centers for Disease Control, and to end the redistribution of unused federal funds from CHIP—the child health insurance program. The conservative legislators also put on the table the \$286 billion transportation bill recently enacted and criticized ever since because of the thousands of special earmarks it contains for legislators' pet projects.

The RSC's suggested spending cuts would total just over \$100 billion in savings in 2006 to go toward paying for the hurricane disaster relief. While the list of proposed program cuts in many ways represents nothing new other than an agenda to reduce the size of the federal government, as a response to the devastation suffered after Katrina hit the Gulf Coast, it exemplifies the desire of federal legislators across the political spectrum to move selectively in decid-

ing how to allocate additional relief to the victims of the natural disaster. If Congress in the end decides to label the hurricane relief assistance as "emergency" funding, it will not require offsets, but the new spending will add to the growing federal budget deficit and feed the budget hawks' concerns about the size of the government's annual spending bill.

As for the budget reconciliation measure, key Senators are pushing to postpone changes the bill would make in programs serving the poor. In a letter dated September 6, addressed to the Senate Fi-

nance Committee chair, Sen. Charles Grassley (R-IA), and to Senators Gordon Smith (R-OR) and Olympia Snowe (R-ME)—both Finance Committee members—joined by other Senate colleagues as signatories, urged Grassley not to cut funding for Medicaid, Food Stamps, WIC, or housing and education. The Senators urged Grassley to indefinitely delay consideration of entitlement cuts as the entitlement programs will be a much needed resource for the many displaced by the hurricane.

Both TANF and the child care block grant programs have long been overdue for reauthorization and were recently operating under a temporary extension to September 30. In partial response to the Smith-Snowe letter, Sen. Grassley on September 27 introduced S. 1778, legislation passed by the Senate by unanimous consent on September 29 to extend the TANF authority to March 31, 2006, effectively putting the issue beyond the reach of a reconciliation bill.



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HOUSE BIPARTISAN SPONSORS INTRODUCE HOME VISITING BILL

On July 29, Reps. Danny Davis (D-IL), Todd Platts (R-PA), and Tom Osborne (R-NE) joined in introducing the Education Begins at Home Act, authorizing \$400 million annually over 3 years to support voluntary, early childhood home visitation programs. The bill's three cosponsors are all members of the House Committee on Education and the Workforce to which the measure was referred.

The new bill, H.R. 3628, is similar to S.503, legislation with the same title introduced in March by Sen. Christopher Bond (R-MO). Both measures authorize the U.S. Department of Health and Human Services to make grants to states based on the number of children from birth to 5 years old in the state's population, to "establish or expand" early childhood home visitation services to pregnant women or parents of children not yet of age to enter kindergarten. Recognizing the development in recent years of home visiting programs, the bill requires states to "build on and promote coordination" among existing home visiting services.

The two bills would also strengthen Early Head Start home visitation, including provisions added this year to the House and Senate Head Start reauthorization bills proposed by the National Child Abuse Coalition. These are expected to expand services to parents for parenting skills training and training in basic child development, and to include home-based services and family support services among those offered by Early Head Start.

The Senate bill, which was also introduced by Bond in the last Congress but saw no action, is cosponsored this year by Sens. Hillary Rodham Clinton (D-NY), Mike DeWine (R-OH), Richard Durbin (D-IL), Mary L. Landrieu (D-LA), and Jim Talent (R-MO). Advocates are hopeful that the introduction in the House of a similar bill, also with bipartisan sponsorship, will improve the chances of the legislation moving to enactment.

PARENTS' RIGHTS ISSUE TOPS STATES' 2004 CHILD WELFARE LEGISLATIVE AGENDA

According to a report from the National Conference of State Legislatures (NCSL), measures to ensure that parents' rights are protected when child welfare agencies investigate topped the list of state child welfare legislation in 2004. At least seven states amended their statutes to require that child protective service workers be trained in their legal duties "to protect the constitutional and statutory rights of children and families" and to inform alleged perpetrators of abuse of the allegations made against them.

Changes made in at least seven state laws were passed to comply with the 2003 amendments to the Child Abuse Prevention and Treatment Act (CAPTA), requiring that the subjects of investigations be informed of the allegations against them and that CPS workers be trained in their legal duties to protect the rights of those under investigation. In addition, Utah enacted a measure creating an Office of Child Welfare Parental Defense.

The change in the CAPTA law adopted by Congress in 2003 had been promoted by advocates for protecting parental rights. In testimony in 2001 before the House Committee on Education and the Workforce Subcommittee on Select Education, Christopher J. Klicka, Senior Counsel and Director of State and International Relations for the Home School Legal Defense Association, told the congressional panel that he had, since 1985, "counseled and legally

represented nearly a thousand home school families who were harassed by social workers investigating child abuse tips they received from their child abuse hotlines." He argued in his testimony that "in its current form, CAPTA does not adequately protect parental due process rights" and that by incorporating reforms into CAPTA, "Congress can encourage states to protect families from overzealous child welfare workers." (See the entire text at the Web site: <http://edworkforce.house.gov/hearings/107th/sed/capta101701/klicka.htm>)

In other state law changes responding to the 2003 CAPTA amendments, NCSL reported that three states—Hawaii, Missouri, and Utah—enacted provisions regarding open courts, and one state—Hawaii—was reported to have enacted legislation that requires the reporting of drug-affected newborns to bring the state into compliance with CAPTA. Reflecting the tremendous impact of methamphetamine usage on the safety of children and child welfare services, four states—Georgia, Iowa, Louisiana, and Wyoming—enacted measures to create new criminal penalties for manufacturing or possessing meth or other illegal drugs in the presence of children. South Dakota and Virginia amended their state definitions of child abuse and neglect to include a child who is present during the manufacture of any of these illegal drugs.

High caseloads and high rates of worker turnover were issues rating the attention of legislators in a few states that appropriated funds

for new positions to lower caseloads: Alaska, Connecticut, New Jersey, North Carolina, and West Virginia. Maryland created fiscal penalties if the state child welfare agency fails to fill a specified number of positions, and Mississippi enacted a provision related to the qualifications, supervision, and training of child protection specialists. The full report, State Child Welfare Legislation 2004, which focuses on legislative trends in child welfare addressing 23 issue areas, is available on the NCSL Web site as a PDF file at www.ncsl.org/print/cyf/cwlegislation04.pdf.



CHILD WELL-BEING INDICATORS LACK ABUSE/NEGLECT DATA

The 2005 annual report of America's Children: Key National Indicators of Well-Being, released in July by the Federal Interagency Forum on Child and Family Statistics, details the status of children and families in the United States with the latest available data on 25 indicators related to economic security, health, behavior and social environment, and education.

The report also identifies indicators that are not available because of difficulty in definitions and measurement, particularly using survey research. Among the health-related areas identified as priorities for development as indicators, along with disability and mental health, is child abuse and neglect. The report explains that what is needed are

regular, reliable estimates of the incidence of child abuse and neglect that are based on sample surveys rather than

administrative records.... Since administrative data are based on cases reported to authorities, it is likely that these data underestimate the magnitude of the problem. Estimates based on sample survey data could potentially provide more accurate information; however, a number of issues still persist, including how to effectively elicit this sensitive information, how to identify the appropriate respondent for the questions, and whether there is a legal obligation for the surveyor to report abuse or neglect. (Federal Interagency Forum of Child and Family Statistics. 2003. *America's Children: Key National Indicators of Well-Being*, Washington, DC: Government Printing Office)

The Federal Interagency Forum on Child and Family Statistics is a working group of 20 federal agencies involved in research and activities related to children and families.

About the Author

Since 1981, Thomas Birch, JD, has served as legislative counsel in Washington, D.C., to a variety of nonprofit organizations, including the National Child Abuse Coalition, designing advocacy programs, directing advocacy efforts to influence congressional action, and advising state and local groups in advocacy and lobbying strategies. Birch has authored numerous articles on legislative advocacy and topics of public policy, particularly in his area of specialization in child welfare, human services, and cultural affairs.



NORTH AMERICAN
RESOURCE CENTER
for CHILD WELFARE



CENTER for CHILD
WELFARE POLICY

2005 PRO HUMANITATE LITERARY AWARD WINNERS

Each year, the North American Resource Center for Child Welfare and the Center for Child Welfare Policy celebrate outstanding literary achievement of authors from the United States and Canada in the field of child welfare. Awards are presented to authors who exemplify the intellectual integrity and moral courage required to transcend political and social barriers to champion "best practice" in the field of child welfare.

Daniel Douglas Schneider Child Welfare Book Award Winners

James Barber, PhD
University of Toronto
Toronto, Ontario

Paul Delfabbro, PhD
University of Adelaide
South Australia, Australia

Jennifer Renne, JD
National Child Welfare Resource
Center on Legal and Judicial Issues
American Bar Association
Washington, DC

Martha Shirk, Freelance Writer
Palo Alto, CA

Gary Stangler, Executive Director
Jim Casey Youth Opportunities Initiative
St. Louis, MO

Herbert A. Raskin Child Welfare Article Award Winners

Anne Duggan, ScD
Johns Hopkins University
Baltimore, MD

Aaron McNeece, PhD
Florida State University
Tallahassee, FL

Lori Burrell, MA
Johns Hopkins University
Acme, PA

Kathleen Wells, PhD
Case Western University
Cleveland, OH

Loretta Fuddy, ACSW, MPH
Dept. of Health and Family Services
Honolulu, HI

Bruce A. Thyer, PhD
Florida State University
Tallahassee, FL

Susan Higman, PhD
Johns Hopkins University
Baltimore, MD

Shenyang Guo, PhD
University of North Carolina
Chapel Hill, NC

Elizabeth McFarlane, MPH
Johns Hopkins University
Honolulu, HI

Calvin Sia, MD
University of Hawaii
Honolulu, HI

Tracey Feild
The Annie E. Casey Foundation
Baltimore, MD

All winners received the Pro Humanitate Medal. Book Award winners received a \$5000 cash prize and Article Award winners received a \$1000 cash prize. For more information on the awards, please visit our Web site at www.narccw.com. The North American Resource Center and Center for Child Welfare Policy are located at 1706 E. Broad Street, Columbus, OH. 43203. Phone: (614) 252-0725

IN MEMORIUM

In Remembrance of William Friedrich, PhD

Lucy Berliner Judith A. Cohen

William N. Friedrich died Sunday, September 25, 2005, following a long and valiant struggle with cancer. He made extraordinary contributions to the field of child maltreatment as a researcher, therapist, colleague, and a teacher.

Bill conducted research, published peer reviewed papers, wrote books, and gave lectures all over the world. He is well known for his extensive efforts to establish what is normal sexual behavior in children, what is unusual and of concern, and the relationships of various background variables to sexual behavior problems. His Child Sexual Behavior Inventory is the only standardized measure of sexual behavior problems in children. Bill also illuminated the differences for sexually abused boys as compared with girls in his book *Treatment of Sexually Abused Boys*. His several books on psychotherapy with sexually abused children are remarkable for the combination of theoretical sophistication and practical clinical wisdom they contain. He had just completed a final book on working with children with sexual behavior problems before he died.

Bill was a consummate clinician. He was the exemplar of how to be both an artist and a scientist in doing clinical work. His ability to connect with children and families and to be creative in the delivery of theoretically or empirically demonstrated interventions was amazing.

If that wasn't enough, Bill served as a mentor and teacher to many in the field in this country and in many others. For example, he was a primary consultant for several Eastern European countries as they struggled to develop modern child abuse response programs, including Croatia, Bulgaria, Hungary, the Czech Republic, Poland, and Romania. Anyone who read his work, attended a lecture, or talked with him came away knowing more and inspired.

Bill made many contributions to APSAC. He was Co-chair of the Research Committee for the American Professional Society on the Abuse of Children (APSAC) for many years and was awarded the 2000 APSAC Outstanding Research Career Award.

Bill is remembered for his extraordinary combination of complex thinking, scientific rigor, intellectual curiosity, and artful clinical creativity. To add to these exceptional qualities, Bill was always humble about his accomplishments, generous in giving credit, fun loving, and acerbic in his wit. He was also a fiction writer, a bike enthusiast, an outdoor lover, and a devoted family man. He leaves his wife Wanda and their two children, Hannah and Karl.

SAVE THE DATE

14th APSAC Annual Colloquium in Nashville, Tennessee, June 21–24, 2006

APSAC Advanced Training Institutes in San Diego, California, January 23, 2006 (in conjunction with the 20th Annual San Diego International Conference on Child and Family Maltreatment, January 23–27, 2006)

APSAC Forensic Interview Clinic in Seattle, Washington, April 24–28, 2006

HELP FROM APSAC FOR HURRICANE VICTIMS

Hurricane Katrina had a devastating impact on many of our members in the Gulf Coast region. The national office is slowly hearing from people as they are able to access communication and as they feel the need to contact APSAC. We have determined from our affected members that there is a major role all of us together can play in their recovery. This role is to help them reestablish their professional lives. Some of our members lost everything, and this includes their books and practice materials. APSAC is asking for members, particularly the state chapters, to pull together and send to the national office any of the following: books, practice materials, gift cards for books, audiotapes, videotapes, and whatever else you can spare.

We will catalogue the resources and get them to our members who have lost their own materials. Remember, APSAC is a multi-disciplinary organization. Our members are researching and practicing in the areas of mental health, medicine, law, law enforcement, and prevention, to name a few. Books and materials from multiple professions are welcome.

Send books and materials to:

Dr. Cynthia Cupit Swenson
Family Services Research Center
Medical University of South Carolina
67 President Street - Suite CPP
PO Box 250861
Charleston, SC 29425

STATE CHAPTERS ALSO ASSIST HURRICANE RELIEF

Kathy D. Johnson, president of the North Carolina Professional Society on the Abuse of Children (NCPSAC), has announced that NCPSAC is offering a challenge to all state chapters to match its donation to APSAC of \$200. This will assist in replacing the professional libraries of APSAC members who lost them during hurricanes Katrina and Rita. The APSAC national office will collect the monetary donations and distribute them as needed. Let's see how many donations we can get before the end of the year. Contributing chapters will be recognized in the Advisor. The Challenge is on!!!

Send cash and gift certificates to:

APSAC, c/o Daphne Wright, Operations
PO Box 30669
Charleston, SC 29417

APSAC MEMBERSHIP RENEWAL RATE REACHES 95.3%

Annual membership is in effect from January 1 to December 31. Renewal notices were mailed at the end of October. If you did not receive one, please contact the home office immediately at 843-764-2905 so we can update your information.

The operations management team would like to thank APSAC members for their support and patience through this year of transition. With the integration of the membership, publication, and outreach systems at APSAC's new location in Charleston, our organization continues to improve and strengthen its partnerships and membership base. In fact, for the first time in APSAC's history, the membership renewal rate reached a high of 95.3% in 2005. We appreciate the combined efforts and hard work of the Board of Di-

rectors and management team, which are together producing positive results we can all be proud of.

SAN DIEGO ADVANCED TRAINING INSTITUTES

January 23, 2006

Town & Country Resort and Convention Center
San Diego, California

The APSAC Advanced Training Institutes will be held in conjunction with the 20th Annual San Diego International Conference on Child and Family Maltreatment on January 23-26, 2006.

Continuing Education Credits (CEUs) are offered for all Advanced Training Institutes.

Registration information and forms for the following Advanced Training Institutes can be accessed on the APSAC Web site (www.apsac.org) or by calling 843-764-2905:

- *Advanced Training for Managing the Therapeutic Relationship: Empathy, Counter Transference, Vicarious Trauma, and Ethics*
Jon R. Conte, PhD

- *Advanced Training for Forensic Interviewers: Improving Your Knowledge and Skills in the Interview With Males and Children Who Have Developmental Disabilities*
Deborah Davis, LCSW, Kee MacFarlane, MSW, Martin Henry, PhD, & Katherine Eagleson, LCSW

- *Advanced Training Institute on Basic Training in Trauma-Focused Cognitive Behavioral Therapy*
Anthony P. Mannarino, PhD, & Judith A. Cohen, MD

- *Advanced Training Institute on Pediatric Sexual Abuse With Update on Medical Evaluation*
Joyce Adams, MD, & Lori Frasier, MD, FAAP

CHILD MALTREATMENT IS NOW ONLINE

For instructions on how to access your online account of *Child Maltreatment: Official Journal of the American Professional Society on the Abuse of Children*, please contact the national office at 843-764-2905 or visit www.apsac.org. You must have your APSAC membership ID, which the APSAC office can verify, to receive the online edition of *Child Maltreatment*.

Please note that access to *Child Maltreatment* online is a membership benefit. Your access to the journal will end December 31, 2005, unless you renew your membership through 2006.

OJJDP WEB SITE OFFERS EXPANDED COVERAGE AND TARGETED SERVICES

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has launched a redesigned home page on its Web site. Enhancements include expanded coverage of news, publications, and links to tools designed to assist specific users, such as first-time visitors and students. Aid for those seeking funding information or the latest data is also provided.

Access the OJJDP Web site's redesigned home page at:
<http://www.ojp.usdoj.gov/ojjdp>

NEWS OF THE ORGANIZATION

NOMINATION FOR APSAC BOARD OF DIRECTORS

APSAC is seeking nominations of members to stand election to the Board of Directors for 3-year terms, beginning January 2007 and ending December 2009.

Board members' contributions of time, energy, and talent play an enormous role in APSAC's success. To remain effective and powerful, APSAC needs the active participation of all members of the Board of Directors. Members who are enthusiastic and supportive but unable to perform duties of a Board member are highly valued and can serve APSAC in many other capabilities, but they should not be nominated for Board service unless they can devote the time necessary to fully discharge a Board member's duties. These duties include, but are not limited to, the following:

- attending at least one board meeting a year
- chairing a committee or subcommittee
- waiving speaking fees for a minimum of one (1) APSAC-sponsored training event each year
- actively working to generate members and revenue for the association

Nominations are due at APSAC's national office by February 21, 2006. Complete nominations consist of a completed nomination form, a 100–400 word letter of nomination from one person or a self-nomination letter outlining the candidate's qualifications for service on the Board of Directors, and a copy of the candidate's resume or curriculum vita, or both.

Please send nominations to: APSAC, PO Box 30669, Charleston, SC 29417 or E-mail: apsac@comcast.net

Please use the following nomination form:

American Professional Society on the Abuse of Children 2006 Call for Nominations Board of Directors, January 2007–December 2009

The Nominations Committee of APSAC welcomes nominations of members to stand for election to APSAC's Board of Directors. Please submit the name of a nominee, along with the additional requested information, by February 21, 2006, for terms starting in January of 2007.

Nominee _____

Address/Street _____

City _____ State _____ Zip _____

ATTACHMENTS

- (1) Summary description of nominee's contributions and past involvement with APSAC, as well as contributions in the field of child maltreatment or specific qualifiers to enhance the overall function of a not-for-profit organization. NOT to exceed 100–400 words.
- (2) Brief job history—a synopsis of the nominee's professional job history. A resume is acceptable.

Nominator _____

Phone Number _____ E-mail _____

Deadline Information Received by: February 21, 2006

Mail to: APSAC

P.O. Box 30669

Charleston, SC 29445

NEWS OF THE ORGANIZATION

NEXT APSAC FORENSIC INTERVIEW CLINIC

The Forensic Interview Clinics focus on training professionals responsible for conducting investigative interviews with children in suspected abuse cases. These comprehensive clinics offer a unique opportunity to participate in an intensive 40-hour training experience and have personal interaction with leading experts in the field of child forensic interviewing. APSAC's curriculum emphasizes state-of-the-art principles of forensically sound interviewing with a balanced review of several models.

Plan now to attend the next clinic in Seattle, Washington:

Date: April 24-28, 2006

**Training Location: Washington State Criminal Justice Training Commission (CJTC)
19010 1st Avenue South, Burien, WA 98148 (3 miles from the Sea-Tac Comfort Inn)**

Hotel Information: Sea-Tac Comfort Inn and Suites
19333 International Blvd., SeaTac, WA 98188
or visit: www.comfortinnseatac.com

Room Rate: Special discounted rate of \$50 per night single or double (excluding tax)

Reservations: Call 800-826-7875 or 206-878-1100 and ask for the "CJ rate"

Arrival by Air: Sea-Tac International Airport (the hotel offers a free airport shuttle)

Rental Car Needs: The Comfort Inn will shuttle Clinic registrants from CJTC to the hotel and back upon request. You are responsible for arranging your own transportation from CJTC to your hotel by shuttle, taxi, or a rental car, if you prefer. The hotel also offers a free airport shuttle.

Local Clinic Organizer: Patti Toth at pthoth@cjtc.state.wa.us or call 206-835-7293

For Registration and Membership Information: Contact APSAC's home office at 877-402-7722 or e-mail: apsac@comcast.net.

Please indicate if you wish to attend: Seattle, WA April 24-28, 2006

****Please list information as you want it to appear on your nametag****

First Name _____ MI _____ Last Name _____

Degree _____ Your Agency _____

Address/Street _____

City _____ State _____ Zip _____

Work Phone _____ Fax _____ Home Phone _____

E-mail Address _____ Cell Phone _____
(Mandatory field)

_____ Years of experience _____ Number of investigative interviews conducted

How did you hear about the Clinics? _____ APSAC Web site _____ Other Web site _____ E-Mail Notice from: _____

_____ Mailed brochure _____ APSAC Colloquium _____ Other: _____

Clinic Registration Fee: Nonmembers **\$1199**
 APSAC Members (savings of \$100) **\$1099**

Membership and renewal applications may be
downloaded from the Web site: www.apsac.org

(Group rates available for groups of 5 or more – please contact APSAC at 877-702-7722 for details) **Total \$** _____

Method of Payment:

Enclosed is: Check # _____ or Purchase Order # _____
(APSAC's Tax ID is 93-0940608)

Pay by Credit Card (please circle appropriate choice): MasterCard VISA AMEX Discover

Card #: _____ Exp. Date ____/____/____

Signature: _____ Date _____

- Confirmation of registration will be e-mailed approximately one month prior to each Clinic
- For more information about APSAC membership, publications, or training, visit our Web site at www.apsac.org
- For CEU information, see page 3 under Continuing Education

APSAC CONTRIBUTES TO THE U.N. SECRETARY GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN

APSAC's central office, at the direction of its Executive Board, recently sent its standards, practice guidelines, and study guides to the Secretariat of the U.N. Secretary General's Study on Violence Against Children. This was done to make a contribution to the Study, the most far-reaching international examination of the topic ever undertaken.

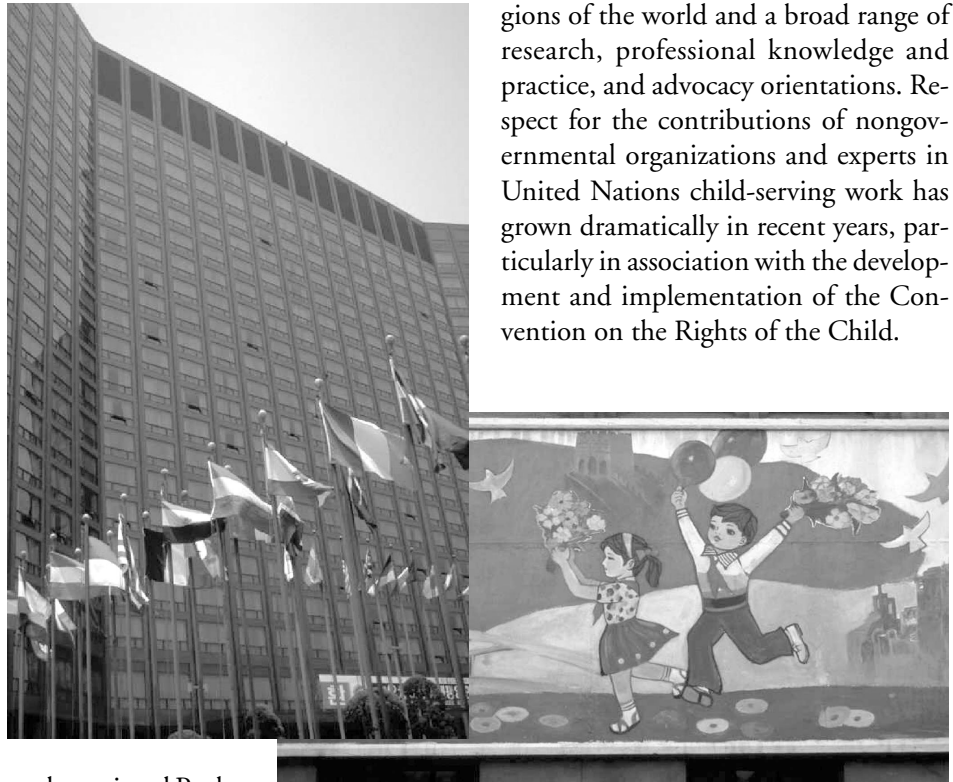
The Study was originally initiated at the request of the U.N. Committee on the Rights of the Child following two discussion days on the theme of violence against children. The Committee on the Rights of the Child is the body that oversees worldwide national application of the U.N. Convention (treaty) on the Rights of the Child, to which 191 of the 193 recognized nations of the world have committed (for information on the Convention, see <http://www.unhcr.ch/html/menu3/b/k2crc.htm>; for information on the Committee and its work see <http://www.ohchr.org/english/bodies/crc/index.htm>);).

The Chairperson of the Committee emphasized that the Study "should lead to the development of strategies aimed at effectively preventing and combating all forms of violence against children, outlining steps to be taken at the international level and by States to provide effective prevention, protection, intervention, treatment, recovery and reintegration" (for an overview on all aspects of the Study, see <http://www.violencestudy.org/r25>). The Study began in earnest on 12 February 2003, when the U.N. Secretary-General appointed Paulo Sergio Pinheiro as the independent expert to direct the study, setting the expectation that the World Health Organization (WHO), the United Nations Children's Fund (UNICEF), and the U.N. Office of the High Commissioner on Human Rights (OHCHR) would collaborate in supportive ways to assure the Study's success.

The Study has included five major components: (1) questionnaires sent to all governments of the world; (2) nine regional consultations with experts and leaders in related areas; (3) solicitation of involvement and perspectives from children; (4) call for public submissions; and (5) activities pur-

sued by the independent expert, Mr. Pinheiro, including field visits and participation in meetings on the topic throughout the world. The Study undertook no new empirical research directly, but has encouraged research by others. Presently, the Secretariat is reviewing information available to it and developing first drafts of the report of its findings, conclusions, and recommendations, which is expected to be presented to the U.N. General Assembly in November of 2006.

An NGO (nongovernmental organization) Advisory Panel for the Study was established to assist the Study Secretariat throughout all aspects of the Study process. It includes 21 members representing virtually all regions of the world and a broad range of research, professional knowledge and practice, and advocacy orientations. Respect for the contributions of nongovernmental organizations and experts in United Nations child-serving work has grown dramatically in recent years, particularly in association with the development and implementation of the Convention on the Rights of the Child.



Stuart Hart (Deputy Director of the International Institute for Child Rights and Development, Centre of Global Studies, University of Victoria, BC), a long-time member of APSAC, who cochaired with Marla Brassard the task force that developed APSAC's guidelines on psychological maltreatment and who has coauthored APSAC publications on the topic, is one of the three North American members of the NGO Advisory Panel. He intervened to facilitate the contribution of APSAC perspectives, standards, and knowledge sources to the Study, for which the Study Secretariat has expressed appreciation.

CONFERENCE CALENDAR

November 2-4, 2005

**29th Annual Governor's Conference for the Prevention
of Child Abuse and Neglect
Topeka, Kansas**

call Vicky Roper 316-942-4261 ext. 251
or e-mail: vroper@kcsf.org
or visit: www.kcsf.org

November 16, 2005

**ATSA 24th Annual Research and Treatment
Conference: Battling Sexual Abuse
With Prevention and Treatment
Salt Lake City, UT**
call 503-643-1023

December 5-9, 2005

**Sexual Assault Forensic Examiner Training
Presented by University of California, Davis
Medical Training Center
Sacramento, CA**

call 916-734-5089
or e-mail: glynis.butler-stone@ucdmc.ucdavis.edu
or visit: www.calmtc.org

January 9-13, 2006

**Sexual Assault Forensic Examiner Training
Presented by California Hospital Medical Center SART
Los Angeles, CA**

call Jeanie Stephenson 213-724-5519
or e-mail: JStephenson@chw.edu

January 23, 2006

**APSAC Advanced Training Institutes
20th Annual International Conference
San Diego, CA**

call 843-764-2905
or visit: www.apsac.org

January 30, 2006

**Nevada Coalition Against Sexual Violence
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January 23-27, 2006

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visit: www.chadwickcenter.org

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or visit: www.ourkidscenter.org

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Seattle, WA**

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call 843-764-2905
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July 9-12, 2006

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APSAC Important Contact Information

Membership, Publications, Continuing Education
Daphne Wright & Andrea Wright
Operations
PO Box 30669
Charleston, SC 29417
843-764-2905 or toll free: 877-40-APSAC
Fax: 803-753-9823
E-mail: apsac@comcast.net



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