



**CORE 100**  
**CHILD PROTECTIVE SERVICES: LEGAL ISSUES**

A Training Curriculum

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for the  
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The Pennsylvania Child Welfare Competency-Based Training and Certification Program is a collaborative effort of the Pennsylvania Department of Public Welfare, University of Pittsburgh, School of Social Work, and the Pennsylvania Children and Youth Administrators established to train direct service workers, supervisors, administrators, and foster parents in providing social services to abused and neglected children and their families. The Training Program is centrally managed by the University and regionally administered through county-based regional training centers.

## **Agenda for 2-Day Curriculum in Child Protective Services: Legal Issues**

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# CHILD PROTECTIVE SERVICES: LEGAL ISSUES

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## Overview of Curriculum

### Rationale

Child Welfare Professionals require the attitudes, knowledge and skills necessary to provide services related to family preservation and protection of abused and neglected children. To assist new staff in preparing for their work in child welfare, this curriculum explores the legal basis for child protective services in Pennsylvania. The following areas are addressed: the legal basis for intervention, sources of referrals, abused children, dependent children, judicial enforcement of protective services, and the role of the worker.

The competencies taught in this CORE curriculum address fundamental attitudes, knowledge and skills for Child Welfare Professionals delivering services to families and children. The competencies include:

- 100-1 The Child Welfare Professional can use the state's legal definitions of physical abuse, sexual abuse, neglect and mental injury to determine the validity of protective complaints.
- 100-2 The Child Welfare Professional understands the proper role of the juvenile court system in child welfare and knows how to use the juvenile court to protect children.
- 100-3 The Child Welfare Professional understands the caseworker's role and responsibility in the courtroom and knows what constitutes effective testimony.
- 100-4 The Child Welfare Professional is able to gather pertinent evidence and prepare a case for filing and presentation in juvenile court.

### Goals

The participant will understand the legal basis for child protective services in Pennsylvania and understand the serious nature of child welfare work and the potential risk to children if the child welfare system does not intervene properly.

## **Learning Objectives**

Specific learning objectives are provided in each section throughout the curriculum.

Since this is a CORE course, it is imperative that all content material is addressed with participants. It is reasonable to expect that all material can be covered if the trainer paces the course as suggested. Nonetheless, if time becomes an issue, the trainer should compromise activities rather than content. Most activities can be shortened and streamlined if necessary.

## **Length of Workshop**

12 hours

## **Target Audience**

Newly employed child welfare caseworkers and supervisors, and experienced caseworkers and supervisors who have not had formal training in child protective services legal issues.

## **Expectations of Trainer**

The trainer should be knowledgeable and skilled in issues and concepts of child protection including: Federal and Pennsylvania State law and regulations, child welfare values and principles, cultural issues in child protection, and processes and procedures of the juvenile court.

The trainer should have supervisory and casework, and/or legal, experience in child welfare practice, specifically in child protective services.

The trainer should have considerable experience in conducting training workshops, should have excellent group facilitation skills, and should have knowledge regarding the PA Child Welfare Competency-Based Training and Certification Program.

Dear Trainer,

As approved CORE trainers, we have been given an awesome honor, privilege and responsibility!

The responsibility is great - in a few short days, we must create a learning environment in which folks can acquire new attitudes, knowledge and skills in one area of a vast system we have come to know as child welfare. These folks join us, though, with little or no knowledge of, or experience with, child welfare. And so one of our myriad of tasks is to start to lay the foundation upon which a person may continue to build a career as a knowledgeable and skilled child welfare worker.

The honor and privilege of serving as a trainer emanates from our opportunity to truly make a difference. We can make a difference during these two days by ensuring that we are well-prepared in advance, and by going that extra mile while we are with the participants. Later, we can read the results and relish in the increased learning that we helped to facilitate.

The real difference, though, will come in time, and is not as easily measured or readily seen. While participants are learning and building their careers, they must also be prepared to provide quality services to children and their families. Through quality CORE training, we have the honor and privilege of inspiring new workers to provide the utmost in quality services. The difference then comes not only in those workers, but also in the quality of life of untold children, families and communities.

One of my favorite quotes comes from the Syracuse Cultural Workers:

**"No matter what our attempts to inform, it is our ability to inspire that will turn the tides."**

Best wishes to you as you help to turn the tides in child welfare!

Joan Mosier

# Introduction

**Rationale** Group trust and cohesiveness assist in creating a positive environment for learning. When the trainer starts a workshop with an opening activity which engages participants, promotes the development of relationships and makes a point which relates to the training topic, participants will be encouraged to interact, initiating the development of group trust and cohesiveness. Since this will likely be one of the first CORE trainings that the participants will attend, they may be unfamiliar with the training system and its methods. The trainer can reduce the uncertainty of the participants by providing information about the course, the training system and the operational details of the training.

## Learning Objectives

Participants will:

- ❖ Learn about the course and particular details of the training and the training system;
- ❖ Introduce themselves to other participants, become familiar with the workshop competencies, and identify their training needs.

**Time** 15 minutes

**Methods** Presentation by trainer, small group discussion

**Materials** Name tents [index cards or construction paper], markers, flip chart paper,  
Handout #1: Agenda: CORE 100: Child Protective Services and Legal Issues  
Handout #2: CORE 100: Child Protective Services and Legal Issues: Competencies  
Handout #3: "Upon Leaving Training....." [optional]  
Overhead #1: CORE 100 Agenda  
Overhead #2: CORE 100 Competencies

**Activity** After the presentation, choose one of the following openers or create a similar activity which incorporates the OTRM Strengths/Needs Plan.

Activity #1: Four Corners  
Activity #2: Upon Leaving Training [optional]

## Introduction

### **Trainer Note:**

Begin the day by familiarizing the participants with the training and the training system. **Handout #1:Agenda** and **Handout #2: Competencies** may be distributed during the presentation, given to participants as they arrive, or placed on participant tables. References to the Orientation, Training and Resource Manual (OTRM) should be made whenever appropriate throughout the course of the two-day training.

### Outline of Presentation

- ~ Welcome participants to the training.
- ~ Briefly explain that this is a CORE course and note how this course relates to other CORE courses and specialized and related practice courses.
- ~ Review the details of CBT trainings, i.e.
  - 15-minute rule
  - sign-in sheets
  - evaluation
- ~ Introduce the trainer.
- ~ Review the Agenda using **Handout #1 (Agenda for Child....)** and **Overhead #1 (Agenda)**
- ~ Review the training timetable.
- ~ Review the competencies using **Handout #2 (Competencies)** and **Overhead #2 (Competencies)**
- ~ Set the tone for the remainder of the training by noting that the success of the workshop depends upon everyone's participation. Participants should be encouraged to learn by asking questions, challenging each other, by raising problems and issues, and by contributing their own experiences and knowledge. Note that any reluctance or discomfort should be discussed with the trainer. Participants should be encouraged to provide feedback throughout the session so that the trainer can modify the schedule or pace if necessary.

## **Activity #1: Four Corners**

### Step 1

Arrange participants in groups of 4 to 5.

### Step 2

Instruct participants to write their name in the center of their name tent with a marker.

### Step 3

Instruct participants to write the county they work for in the top right corner of the tent, their position in the agency in the top left corner, and the number of months with the agency in the bottom left corner. In the bottom right corner, participants should be instructed to draw a picture depicting their mood coming to the training. For example, a smiley face ? for a willing participant, or a frowning face ? for an unwilling participant.

### Step 4

Refer participants to their OTRM Strengths/Needs Plan completed with their supervisor prior to training. Instruct participants to list their highest priority need on the back of their name tent.

### Step 5

Give the subgroups 5 minutes to discuss their high priority needs. Each group should record the items on a flip chart sheet and post the sheet on the wall. Tell the group that they will review their sheet at the beginning of the next day and put a check mark next to the items they feel have been addressed.

### Step 6

Collect each participant's Strengths/Needs Plan for later review.

## **Activity #2: Upon Leaving Training [Alternative]**

### Step 1

Arrange participants in groups of 4 to 5. Instruct them to write their name in the center of their name tent with one of the markers.

## Step 2

Distribute **Handout #3: "Upon Leaving Training I Want to Know the Following About Child Protective Services"**. Allow participants 5 minutes to complete the Handout by referencing their OTRM Strengths/Needs Plan and the course competencies.

## Step 3

Within their subgroups, give participants 5 minutes to discuss items written on the Handout and choose 5 items to record on their flip chart sheet. Have each group post their sheet on the wall. Tell them that they will review their sheet at the beginning of the next day and put a checkmark next to the items that they feel have been addressed.

## Step 4

Collect each participant's Strengths/Need Plan for later review.

# Section I

## The Legal Basis for Intervention

**Rationale** Understanding the legal basis for the intervention of the child welfare system into the lives of children and families assists Child Welfare Professionals to understand their proper roles and responsibilities in working with families. A review of the legal mandates impacting upon children and families can provide Child Welfare Professionals with an understanding of the legal basis for the provision of child welfare services and how these mandates can be utilized to intervene, when necessary, in the parent/child relationship.

### Learning Objectives

Participants will:

- ❖ Contrast the concepts of unfit care for children with what is in the child's best interests;
- ❖ Identify due process protections;
- ❖ Be aware of the history and purpose of the juvenile court;
- ❖ Compare the various legal mandates pertinent to child welfare practice.

**Time** 2 hours

**Methods** Presentation by trainer, case study and case vignettes with small group discussion.

**Materials** Flip chart strips or sheets, markers  
Handout #4: In the Interest of H.B.  
Handout #5: Legal Mandates  
Handout #6: Name That Law  
Overhead #3, In the Interest of H.B.  
Overhead #4: Principles Controlling State Power Over a Child  
Overhead #5: Purposes of the CPSL  
Overhead #6 Purposes of the Juvenile Act  
Overhead #7 Requirements of P.L. 96-272  
Overhead #8 Requirements of P.L. 105-89

**Activity** Activity #3: In re: H.B.  
Activity #4: Name That Law

## **A. State Intervention in the Parent /Child Relationship**

### **Content of Presentation and Discussion:**

Discussion will begin with the legal basis for intervention. When we consider the authority of the State to intervene in the parent/child relationship, we look to the concept of unfitness. The child welfare agency, in essence, is the State's vehicle for this intervention in family life. What unfitness means is that something in the care of the child falls below acceptable standards. In legal terms, an unfit parent or caretaker is unsuitable, incompetent, or not adapted for the particular service of caring for a child. Acceptable standards are simply standards that our community will accept. Because most child welfare legal mandates emanate from the State, it is, essentially, our community. The standards reflect what the people of Pennsylvania, through their legislators, have defined as acceptable and unacceptable care for children.

What is in the best interest of the child is not the criteria here. Courts are not interested in what is best for the child until the care falls below acceptable standards as defined by law. So, unfitness standards must be met before one can get to any disposition by the court.

### **Activity #3: In re: H.B.**

#### Step 1

Distribute copies of **Handout #4: In the Interest of H.B.** Tell participants that this is an actual case in which the mother of H.B. appealed the case to the Superior Court after H.B. was adjudicated dependent in the Erie County Juvenile Court. Ask participants to read the case within 10 minutes.

#### Step 2

Divide the group into subgroups of 4 to 6 participants, and give each subgroup 15 minutes to discuss the following four questions regarding the case, as shown in **Overhead #3, In the Interest of H.B.:**

1. Do you agree with the Superior Court's decision that H.B. is not dependent?
2. Does this case show parental unfitness or is it based on what is in the child's best interest?
3. List five problems or "red flags" with H.B.'s care. [Trainer can have participants list these individually on strips of flip chart paper or on a flip chart sheet.]
4. How could this case have been better prepared for Court? [Points, again, may be listed individually on strips of flip chart paper or on a flip chart sheet.]

During subgroup discussion, the trainer should sit in on the discussions to assist groups that may be having difficulty and to offer food for thought to stimulate discussion.

### Step 3

Lead a large group discussion of questions 1 and 2.

For question 3, rotate among the subgroups to gather their identified problem areas with H. B.'s care. If strips are used, tape them to the wall under a heading of "risk factors". If not, post responses on a flip chart sheet under the heading of "risk factors".

Possible responses to question 3 include:

- child's young age
- diaper rash
- child's dirty condition
- cigarette burn
- failure to receive immunizations
- disinterest in the child
- improper feeding
- mother's young age
- unmarried
- unemployed
- unstable housing
- need for parenting skills
- hospital "hopping"

For question 4, rotate among the subgroups to gather their ideas for how the case could have been better prepared for court. Use a similar method for posting as in discussion of question 3.

Possible responses to question 4 include:

- professional evaluation of the mother's parenting abilities
- professional evaluation of H. B.'s prospects
- use of pertinent witnesses [The record contained only the subjective impressions of nurses who saw the mother with her daughter briefly during hospital visits as well as the foster mother and caseworker.]
- testimony regarding the medical examination regarding the diaper rash, burn and immunizations
- casework efforts to help mother improve the care of her child.

## Step 4

Conclude discussion on H.B. by summarizing the case:

- The court ruled that the evidence did not clearly and convincingly establish that proper parental care and control was not immediately available.
- Incidents of neglect were isolated and did not warrant the conclusion that the child would continue suffering such treatment.
- Alternative services that would enable the child to stay with her family may be feasible.

## **B. Due Process Protections**

### **Content of Presentation and Discussion:**

Even when unfitness is evident, and we are the state intervening in the life of a child, we cannot just go and take a child, for example. Because of due process protections, we cannot take action until certain procedures are accomplished.

The Fourteenth Amendment to the Constitution states that no State shall deprive any person of life, liberty or property without due process of law. It guarantees procedural fairness where the government would deprive a person of their property or liberty.

This requires that:

- We must put people on notice of the allegations being made, i.e. the petition.
- Then, we must go to court and give everyone an opportunity to a fair hearing.

Other protections are particular to the nature of the governmental function involved, including:

- The right to counsel is extended to parents or caretakers and the child. Those unable to afford legal representation are entitled to court-appointed counsel.
- The right to an impartial trier of fact. The parties are entitled to a hearing by an impartial judge.
- The right of confrontation and cross examination of witnesses. The children and parents are allowed to introduce evidence on their own behalf and cross examine the opposing party's witnesses.

- The right to family integrity. The law requires diligent attempts to strengthen and rehabilitate the family unit before it can be severed.

## C. Types of Intervention

### Content of Presentation and Discussion:

There are four different types of intervention in family life:

- ◆ Social Intervention or consensual services. This is the least restrictive and most favorable manner of intervention. Services are provided solely due to the willingness of the family. Voluntary placements are included in this type of intervention.
- ◆ Criminal Actions. These are court proceedings in which the law enforcement community intervenes against a perpetrator. The perpetrator has injured the child in a manner that meets a criminal statute.
- ◆ Civil Actions include the victim using the legal system to proceed against the perpetrator to compel a civil remedy. Civil remedies seek to redress wrongs or compensate for injuries suffered.
- ◆ Child Protective Actions are captioned "In re: the child victim" since the court is drawing in that child to examine the matter. This is what is commonly used by the child welfare system when social intervention is not sufficient to protect the child. It is used in both abuse and dependency matters with intervention by the juvenile court.

In criminal actions, the outcome may be a fine and/or imprisonment. In civil cases, there may be money awarded to the victim to compensate for the loss. However, in child protective actions, we are not after money, and no incarceration is involved – the focus is on the child.

The role of the juvenile court is to rearrange custodial rights, not to punish. The court will decide how to split those rights, provided that the care of the child falls below acceptable standards.

The court may give custody of the child to the child welfare agency. The parents still retain rights regarding the child, including visitation, medical and educational decisions and participation in the family service plan and the child's permanency plan. The court also retains involvement through ongoing review of the case.

Other alternative actions may occur, such as the parents retaining custody of the child with the child welfare agency allowed protective supervision of the child.

The function of the court is to work closely with the child welfare agency to effect a family service plan designed to protect the child.

**Trainer Note:**

This may be break time.

## **D. History and Overview of the Juvenile Court**

**Trainer Note:**

**Overhead #4: Principles Controlling State Power over a Child** is available for use.

### **Content of Presentation and Discussion:**

In reviewing its history in the United States, the juvenile court was created to protect the child from the harshness of the criminal court. It aimed to accomplish this by substituting a forum that would emphasize the provision of rehabilitative services through the helping professions.

State juvenile court systems emerged in the early 1900's. They were modeled after the Illinois Juvenile Court Act of 1899. The development of these courts represented a direct exercise of the state's *parens patriae* authority, which justifies state intervention, over parental objection, in order to protect children.

The exercise of such state power over a child is generally controlled by three principles:

- It is presumed that children lack the mental competence and maturity possessed by adults.
- Before intervening, the state must show that the child's parents or guardians are unable or unwilling to care for the child.
- The state may exercise the *parens patriae* power solely to further the best interests of the child.

The development of juvenile courts corresponded with the movement toward professionalism in social work and increased social services directed at child protection. Today, the juvenile court exercises jurisdiction over minors brought within the system due to alleged abuse, neglect, abandonment, incorrigibility, and delinquency.

These courts, as opposed to those which are part of the criminal justice system, afford the judge broad discretion in addressing the problems encountered by invoking state coercion to achieve the social welfare system's goal of rehabilitation and treatment of abusive and neglectful parents and other caretakers. The court's determination that a child needs supervision or assistance may result in court-ordered family services or placement of the child.

## **E. Legal Mandates**

### **Trainer Note:**

**Handout #5: Legal Mandates, Overhead #5: Purposes of the CPSL, Overhead #6: Purposes of the Juvenile Act, Overhead #7: Requirements of Public Law 96-272, and Overhead #8: Requirements of Public Law 105-89** are available for use.

### **Content of Presentation and Discussion:**

Legal mandates take various forms including laws, regulations and case law.

**Law** is the legislative pronouncement of the rules which should guide one's actions in society. They continually change with human experience, and as the public conscience changes and views matters from a different viewpoint.

Some laws emanate from the federal level, such as the Adoption Assistance and Child Welfare Act of 1980 or the Adoption and Safe Families Act of 1997. Federal legislation often sets direction for the states to elaborate upon. At times, there is money provided for following their rules.

Most of the laws that child welfare professionals use regularly emanate from the State level, as enacted by State legislators. Examples include the Child Protective Services Law, the Juvenile Act and the Adoption Act.

Child welfare professionals need to know the law, and how it influences social work practice and administration because:

- The law governs the creation of public agencies.
- The legislature enacts statutes that allocate money to create and sustain programs.
- The law establishes: requirements for publicly-funded programs, client eligibility standards, and standards for social work behavior.

**Regulations** are rules or other directives issued by administrative agencies, such as the Department of Public Welfare. They are the nitty gritty workings of the law that elaborate upon implementing the law on a daily basis. For example, the Chapter 3490 Child Protective Service Regulations build upon the Child Protective Services Law. Chapter 3130 regulations dealing with the Administration of County Children and Youth Social Services Programs incorporate requirements of the Adoption Assistance and Child Welfare Act.

**Case law** is of judicial origin as opposed to statutory laws which are legislative pronouncements. Case law arises from court decisions based on the court's interpretation of the law, application of rules from earlier cases, and analysis of the facts and evidence presented in court. It generally consists of broad and comprehensive principles.

Case law can have a major impact on practice. For example, in 1982, the PA Commonwealth Court decided PA State Education vs. Commonwealth Department of Public Welfare. It ruled that public school teachers are not intended to be included in the category of persons responsible for a child's welfare under the Child Protective Services Law and thus cannot commit the "child abuse" that triggers the mechanisms of the Child Protective Services Law. Because of the ruling, child welfare could not intervene when a child was harmed by a teacher from 1982 until 1995, when the law changed to include them in a different manner.

We will now highlight several laws pertinent to child welfare.

The **Child Protective Services Law**, or **CPSL**, was first enacted in response to a national effort to increase reporting of child abuse. It sets out several purposes:

- establish in each county protective services for the purpose of investigating report swiftly and competently;
- provide protection for children from further abuse;
- provide rehabilitative services for children and parents to:
  - ensure the child's well-being, and
  - preserve, stabilize and protect the integrity of family life whenever appropriate or to provide another alternative permanent family when the unity of the family cannot be maintained.
- encourage more complete reporting of suspected child abuse.
- involve law enforcement agencies in responding to child abuse;
- establish procedures to assess risk of harm to a child in order to:

- respond adequately to meet the needs of the family and child who may be at risk, and
- prioritize the response and services to children most at risk.

Beyond the discussion of Legal Mandates, the remainder of the day will be spent discussing some specific pieces of the CPSL.

The **Juvenile Act** is the other major law governing child abuse and also neglect. It was first enacted in 1972, and is the State's chief vehicle for intervening in the lives of children who need state protection. The Act sets forth a statutory scheme that delicately balances the right of children to be protected against the right of families to be free of state intrusion. The Act also deals with delinquency and sets out four purposes:

- Preserve the unity of the family whenever possible or to provide another permanent family when the unity of the family cannot be maintained. To provide for the care, protection, safety and wholesome mental and physical development of children coming within its provisions.
- Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.
- To achieve these purposes in a family environment whenever possible, separating the child from parents only when necessary for his/her welfare, safety or health or in the interests of public safety.
- Provide a means through which the Act's provisions are executed and enforced, and in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced.

Further discussion of the Juvenile Act will occur on the second day of the training when dealing with dependency and court procedures.

The Juvenile Act and CPSL involve state action to protect children. The **Protection from Abuse Act**, on the other hand, permits a family or household member to obtain a court order to protect a child (or family or other household member) who is the victim of abuse. Under this Act, the court has wide-ranging powers of relief, including ordering the abusive member of the family or household out of the house for up to one year.

The **Adoption Act**, another State law, details proceedings for voluntary relinquishment, involuntary termination and adoption. It details mechanisms to provide a new, permanent, legal

family for children whose birth parents are unable or unwilling to fulfill this responsibility. Before a child can be adopted, the relationship between the child and his/her birth parents must be legally severed permanently. This can be accomplished voluntarily or involuntarily. When it is done, the child is "legally free" for adoption. Finalization of an adoption then creates a new parent/child relationship. The adoptive parents and child assume rights and duties equivalent to those of birth parents and a child.

Taking effect largely in 1996, **Megan's Law** provides for registration and community notification regarding sexually violent predators who are about to be released from custody and will live in or near their neighborhood. Law enforcement will track the whereabouts of persons convicted of certain sexual offenses when they are released from incarceration. Written notice that the offender is within their jurisdiction is provided to: victims of the offender, neighbors, directors of children and youth agencies, school superintendents, directors of day care centers and licensed preschool programs, and college presidents.

The **Adoption Assistance and Child Welfare Act of 1980**, or P.L. 96-272, is a federal statute. It was passed in order to reduce unnecessary placement of children and ensure case reviews. P.L. 96-272 establishes the requirement that a case plan be developed for each child as well as stipulates a six-month time interval in which all cases must be reviewed. P.L. 96-272 also establishes a requirement that agencies document that reasonable efforts were made to prevent placement into foster care or to promote reunification if a child is already in placement.

**Trainer Note:** Trainer should indicate that the "reasonable efforts" aspect of P.L. 96-272 has been amended since the passage of the P.L.105 or the Adoption and Safe Families Act of 1997 which will be discussed next.

The **Adoption and Safe Families Act of 1997** re-emphasizes the priorities for children in the child welfare system based on safety, permanence, well-being and timeliness. The following are the major provisions of this statute:

- The incorporation of safety assessments into all aspects of casework, including case planning and review requirements.
- The establishment of certain circumstances under which a court can direct an agency to not make reasonable efforts to reunify a family when a child is in placement. These are known as ***aggravated circumstances*** and will be discussed in more detail shortly.
- The establishment of permanency hearings in replace of review hearings
- The requirement that agencies file a termination of parental rights in the majority of circumstances if a child has been in placement for 15 out of the most recent 22 months.
- The establishment of a new permanency goal called Permanent Legal Custodianship.

The **Indian Child Welfare Act** addresses placement prevention, reunification and adoption issues regarding Native American children. Its purpose is to protect the best interest of the children within their tribal culture. It requires that preference be given to placing the children with relatives, tribal members, in other Native American homes, or Native American institutions rather than in non-Native American homes.

Similarly, the **Indian Child Protection and Family Violence Act** is designed to deal with this particular cultural group and its discrete needs.

Finally, the **Penal Code** is law enacted to preserve the public order by defining an offense against the public and imposing a penalty for its violation. These offenses against the public good are called crimes and may be prosecuted in a criminal proceeding before the court.

A single action may result in the employment of several laws. For example, if a father sexually assaults his young daughter, the case would be investigated under the CPSL, the mother may secure a Protection from Abuse Order to remove the father from the home, and criminal charges may be brought.

#### **Activity #4: Name That Law**

##### Step 1

Distribute **Handout #6: Name That Law**. Working in small groups (or individually), direct participants to name the law, or laws, and its applicability to each of the situations described on the Handout. (If time is short, assign two or three of the situations to each group, rather than all seven.)

##### Step 2

In a large group format, discuss the seven situations, covering the following information:

1. A child has been in foster care for 15 out of the last 22 months. The mother has an addiction problem for which she continues to refuse treatment.
  - P.L. 105-89: permanency hearings and agency requirement to file a termination of parental right petition
  - Adoption Act: termination of parental rights and adoption of child
2. A child was raped as she walked home from school.
  - Penal Code: criminal prosecution of rapist
3. A child was sexually abused by his mother's husband and evidence indicates that the mother would allow her husband back into the home to live.

- CPSL: investigation and rehabilitative services
  - Juvenile Act: finding of dependency, possible removal of child
  - Penal Code: prosecution of offender
4. A child was allegedly abused while at the day care center.
- CPSL: investigation and rehabilitative services
  - Penal Code: prosecution of offender
5. A child was sexually assaulted by her mother's paramour. The mother welcomes the intervention and assistance of child welfare.
- CPSL: investigation and rehabilitative services
  - Protection from Abuse Act: removal of paramour from home
  - Penal Code: prosecution of offender
  - Megan's Law: will alert the mother when the offender reenters the community
6. Three children are found living in a home with open garbage all over, a constant smell of urine, the presence of innumerable animals and their odors, and general disarray and dirtiness constituting a health hazard.
- Juvenile Act: finding of dependency and possible placement
7. Children have been placed in care due to a mother's lack of ability to maintain employment and provide adequate shelter for her children. The agency believes that reunification can realistically be achieved within 6-8 months based on the family service plan developed.
- P.L. 96-272: agency must make reasonable efforts to reunite the family;

## Section II

### Sources of Referrals

**Rationale** In order to understand the functioning of a child welfare agency, Child Welfare Professionals need to have an awareness of the types of referrals that may be received by the agency and their sources. Further, they can better communicate with present and prospective referral sources if they are aware of the rules related to reporting.

#### Learning Objectives

Participants will:

- ❖ Identify the types of reporters of child abuse and neglect;
- ❖ Describe the rules governing mandated reporting of child abuse.
- ❖ Understand the purpose and nature of general protective services

**Time** 30 minutes

**Methods** Presentation by trainer, large group discussion

**Materials** Handout #7: Reporting Suspected Child Abuse  
Handout #8: Annual Child Abuse Report [if available]  
Overhead #9: Reporters of Abuse  
Overhead #9A: General Protective Services

## A. Child Abuse Reporting Statute

### Trainer Note:

Use **Overhead #9: Reporters of Child Abuse**, **Overhead #9A: General Protective Services** and **Handout #7: Reporting Suspected Child Abuse**. While discussing mandated reporters, large group discussion may be used to generate a list of persons required to report abuse.

### Content of Presentation and Discussion:

In Pennsylvania, there are two types of reporters of abuse: those who can and those who must.

- **Permissive reporters** are not required to report, but they may if they have reason to suspect that a child is abused. They do not need to identify themselves.
- **Mandated reporters** are required to report if they have reason to suspect on the basis of their training and experience that a child coming before them is an abused child. Persons are mandated if they come into contact with children in the course of their employment, occupation or practice of their profession.

Mandated reporters include, but are not limited to:

- |                                       |  |
|---------------------------------------|--|
| - licensed physicians                 | - licensed practical nurses                                  |
| - osteopaths                          | - hospital personnel   |
| - medical examiners                   | - Christian Science practitioners                            |
| - coroners                            | - clergy members   |
| - funeral directors                   | - school administrators,<br>teachers, nurses                 |
| - dentists                            | - social services workers<br>(including child welfare staff) |
| - optometrists                        | - day care center workers                                    |
| - chiropractors                       | - other child care or foster care                            |
| - podiatrists                         |  |
| - interns                             |  |
| - mental health professionals workers |  |
| - peace officers                      | -law enforcement officials                                   |
| - registered nurses                   |  |

The CPSL allows for the delegation of the duty to report. In other words, when the mandated reporter is a member of an institution, such as a school, they report to the person in charge or his or her designee.

There is confidentiality protection for those who report. However, their names will be given to law enforcement if the report meets the criteria for referral. Law enforcement is supposed to treat them as confidential informants.

Reporters of abuse have immunity from liability. The law assumes that the reports are being made in good faith. The greater problem arises in failing to report abuse. If a mandated reporter willfully fails to report abuse, they can be charged with a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation. They may also face a potential liability suit.

## **B. Annual Child Abuse Report**

### **Trainer Note:**

The most recent Annual Child Abuse Report can be shown to participants or copies distributed if they are available. After the discussion, participants can be asked to look up information regarding their county. For example, they can find the map of the counties to determine how many reports their county received in the previous year.

### **Content of Presentation and Discussion:**

Each year, the Department of Public Welfare (DPW) issues a full statistical analysis of the reports of suspected child abuse. Information is detailed by county and collectively. Other interesting information, for example regarding perpetrators and referral sources, is included. The report also includes information on the implementation of the CPSL, the cost of child protective services, DPW's evaluation of child abuse services, and any recommendations it has for changes in the law. The report is available at no cost from DPW.

## **C. General Protective Services Referrals**

**Trainer Note: Overhead #9A: General Protective Services** is available for use.

### **Content of Presentation and Discussion**

General protective services are defined as "services to prevent the potential for harm to a child." "Potential for harm" is defined as: "likely, if permitted to continue, to have a detrimental effect on the child's health, development or functioning." General protective services are provided by each county for non-abuse cases. The county agency must provide, arrange or make available the

same services for children in need of general protective services as are available for abused children. These services seek to prevent cases from escalating to reports of child abuse or an adjudication of dependency by providing services to families at an earlier point in time. There are no mandates regarding the reporting of a need for such services; however each county agency is responsible for administering a program of general protective services to children.

General protective service are provided to a child who meets one of the following conditions:

1. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health or morals.
2. Has been placed for care or adoption in violation of law.
3. Has been abandoned by his parents, guardian or other custodian.
4. Is without a parent, guardian or legal custodian.
5. Is habitually and without justification truant from school while subject to compulsory school attendance.
6. Has committed a specific act of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision.
7. Is under 10 years of age and has committed a delinquent act.
8. Has been formally adjudicated dependent under section 6341 of the Juvenile Act (relating to adjudication, and is under the jurisdiction of the court, subject to its conditions or placements and who commits and act which is defined as ungovernable.
9. Has been referred under section 6323 of the Juvenile Act (relating to informal adjustment), and who commits an act that is defined as ungovernable.

The purpose of general protective services is to:

1. Protect the safety, rights and welfare of children so that they have an opportunity for healthy growth and development
2. Assist parent in recognizing and remedying conditions harmful to their children and in fulfilling their parental duties in a manner that does not put their children at risk.

**Trainer Note:**

This will probably be lunch time.

## Section III

### Abused Children

**Rationale** Child Welfare Professionals must be able to recognize the signs of suspected child abuse and be able to use the Child Protective Services Law to determine the criteria for substantiation of child abuse.

#### Learning Objectives

Participants will:

- ❖ List the categories of abuse;
- ❖ Define a child and perpetrators;
- ❖ Describe acts, omissions and specific exclusions in cases of abuse;
- ❖ Identify the criteria for substantiating each type of abuse.

**Time** 3 hours

**Methods** Presentation by trainer, small group activity, large group discussion.

**Materials** Handout #9: Child Abuse Definitions  
Handout #9A: Sexual Abuse Definitions  
Handout #10: The Five Families  
Handout #11: Imminent Risk  
Handout #12: To Be Or Not To Be.....Imminent Risk  
Handout #13: Student Abuse  
Handout #14: Aggravated Circumstances  
Handout #15: Aggravated Circumstances – Parental Conviction of Specified Crimes  
Handout #16: Would You Allege Aggravated Circumstances?  
Overhead #10: Categories of Abuse  
Overhead #11: Perpetrators  
Overhead #12: Exclusions  
Overhead #13: Serious Physical Injury  
Overhead #14: Serious Mental Injury  
Overhead #15: Sexual Abuse/Exploitation  
Overhead #16: Serious Physical Neglect  
Overhead #17: Imminent Risk  
Overhead #18: Student Abuse Is....

**Activity**

Activity #5: The Five Families

Activity #6: To Be Or Not To Be Imminent Risk

Activity #7: Student Abuse

Activity #8: Aggravated Circumstances

## A. Child Abuse Defined

**Trainer Note:**

**Overhead #10A: Child Abuse Defined, Overhead #10: Categories of Abuse, Overhead #11: Perpetrators, and Overhead #12 Exclusions** may be used. Large group discussion can assist in eliciting the information.

### **Content of Presentation and Discussion:**

Discussion will now turn to what constitutes abuse of children as detailed in the Child Protective Services Law. The CPSL sets up the parameters for intervention by the county agency in cases of abuse. Basically, there needs to be some type of abuse as defined by the law, there needs to be a child as defined by the law, and there must be a perpetrator as defined by the law before there is child abuse.

**Child abuse** is said to exist when any one of the following has occurred:

1. Any recent act or failure to act by a perpetrator that causes a non-accidental serious physical injury to a child.
2. An act or failure to act by a perpetrator which causes non-accidental serious mental injury to a child.
3. An act or failure to act by a perpetrator which causes sexual abuse or sexual exploitation to a child.
4. Any recent act, failure to act, or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child.
5. Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or failure to provide the essentials of life, including adequate medical care, which endangers the child's life or development or impairs the child's functioning.

**The five categories of abuse are:**

- ◆ serious physical injury
- ◆ serious mental injury
- ◆ sexual abuse/exploitation
- ◆ serious physical neglect
- ◆ imminent risk of serious physical injury or sexual abuse or exploitation

The law defines a child as a person under 18 years of age.

The law notes that both commissions and omissions must be considered -acts or failures to act.

The law tells us to consider abuse only when it occurs because of the acts or failures to act of one of the following **perpetrators**:

- ◆ parent of the child.
- ◆ person responsible for the child's welfare. This includes persons who provide permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. This does not include school personnel. Examples include baby sitters, day care staff and foster parents.
- ◆ individual residing in the same home as the child. These perpetrators must be 14 years of age or older.
- ◆ paramour of a child's parent. This is someone having an ongoing intimate relationship with the parent.

The law specifies three **exclusions** to child abuse:

1. In serious physical injury serious mental injury, injuries that are explained by the available medical history as accidental are excluded. This appears in the definitions as non-accidental injury.
2. Environmental factors beyond the control of the parent are also excluded from abuse. This includes issues such as inadequate housing, furnishings, income, clothing and medical care.
3. The third exclusion deals with religious beliefs and is one of the rare places that the law addresses cultural issues. This exclusion only pertains to cases of serious physical injury or serious mental injury. It involves situations in which a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents/guardian/person responsible for the child's welfare. The beliefs must be consistent with a bona fide religion. When these situations arise, the agency must closely monitor the child and seek court-ordered medical intervention when the lack of care threatens the child's life or long-term health.

**Trainer Note:**

The following case example may be used to stimulate group discussion. It is based on a recent actual event that was reported in the media.

*Tommy, age 17, was travelling home one night and was injured in a car crash. He is unconscious and his physicians believe that he may need a blood transfusion. The family are members of the Jehovah's Witness faith. Most members of the church believe that prohibitions against blood transfusions are contained in the Bible. The family does not give the hospital permission for the transfusion.*

The agency's obligation is to closely monitor the child. Records would not reference child abuse, but would acknowledge the religious basis for the matter. If it is appropriate, the family would be referred to general protective services. If the physicians note that Tommy's life is threatened, or he will have long-term effects from the lack of the transfusion, the agency should petition the court to seek permission for the transfusion.

[In the actual case, the teen had an advance medical directive releasing the hospital from liability for not performing a transfusion. The hospital petitioned the court to override the directive. The judge denied the petition based on the boy's age and maturity.]

## **B. Categories of Abuse**

**Trainer Note:**

Distribute **Handout #9: Child Abuse Definitions** and **Handout #9A: Sexual Abuse Definitions**. Participants can be asked to pull apart a particular definition and list the elements that are critical considerations for that type of abuse. This can be done individually, collectively, or in small groups. **Overhead #13: Serious Physical Injury, Overhead #14: Serious Mental Injury, Overhead #15: Sexual Abuse/Exploitation, Overhead #16: Serious Physical Neglect** are available for use. Eliciting case examples from participants will assist in illustrating how the law is applied.

### **Content of Presentation and Discussion:**

- In cases of serious physical injury there must be:
  - an injury
  - that is non-accidental
  - caused by an act or failure to act
  - by a perpetrator
  - to a child

- the incident must be recent, i.e. committed within two years of the report.

The injury must do one of the following:

- cause the child severe pain, or
- significantly impair the child's functioning, either temporarily or permanently.

**Trainer Note:**

Participants may raise a discussion for or against corporal punishment. The law does not prohibit its use, hence the county agency cannot insist that it not be used. Alternatives may be recommended by the agency to the extent that the family is willing to accept the recommendations.

- **Serious mental injury** to children is minimally captured in abuse. For example according to the Pennsylvania's 1998 Child Abuse Report, these reports comprised slightly more than 1% of injuries to children in Pennsylvania. To substantiate this type of abuse, there must be:
  - a psychological condition
  - diagnosed by a physician or licensed psychologist
  - that is non-accidental
  - caused by an act or failure to act
  - to a child
  - by a perpetrator
  - It does not have to be recent.

The condition must:

- Render the child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic, or in reasonable fear that his/her safety is threatened; or
- Seriously interfere with the child's ability to accomplish age-appropriate developmental and social tasks.

- **Sexual abuse** is the biggest category of abuse in Pennsylvania. It comprised over 51% of 1998's substantiated reports.

Sexually explicit conduct is the employment, use, persuasion, inducement, enticement or coercion of any child to engage in or assist any other person to engage in any sexually explicit conduct.

Sexually explicit conduct for visual depiction is any simulation of any sexually explicit conduct for the purpose of producing any visual depiction, including photographing, videotaping, computer depicting or filming, of any sexually explicit conduct.

Exploitation is any of the following:

- Looking at the sexual or other intimate parts of a child for the purpose of arousing or gratifying sexual desire in either person.
- Engaging or encouraging a child to look at the sexual or other intimate parts of another person for the purpose of arousing or gratifying sexual desire in any person involved.

Engaging or encouraging a child to participate in any sexually explicit conversation either in person, by telephone, by computer or computer aided device.

The following are general definitions relating to offenses by the Crimes Code which was updated in 1995 through Act 10:

- Deviate Sexual Intercourse is sexual intercourse by mouth or rectum between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the genitals or rectum of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.
- Forcible compulsion is the use of physical, intellectual, moral, emotional or psychological force, either expressed or implied which compels a child to engage in an act as defined in the Crimes Code. The term includes, but is not limited to, compulsion resulting another person's death, whether the death occurred before, during or after sexual intercourse.
- Foreign object is any physical object not a part of the alleged perpetrator's body.
- Indecent contact is any touching of the sexual or intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.
- Sexual Intercourse is intercourse by mouth or rectum, as well as penile/vaginal intercourse, with any penetration, however slight.

Rape is engaging in sexual intercourse with a child:

1. By forcible compulsion;
2. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
3. Who is unconscious or where the perpetrator knows that the child is unaware that the sexual intercourse is occurring;
4. Where the alleged perpetrator has substantially impaired the child's power to appraise or control his or her conduct by administering or employing,

without the knowledge of the child, drugs, intoxicants or other means for the purpose of preventing resistance;

5. Who suffers from a mental disability which renders the child incapable of consent; or
6. Who is less than 13 years of age.

Statutory Sexual Assault is engaging in sexual intercourse with a child under the age of 16 years and the alleged perpetrator is four or more years older than the child and the child and the alleged perpetrator are not married to each other.

Involuntary deviate sexual intercourse is engaging in deviate sexual intercourse with a child:

1. By forcible compulsion; or
2. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
3. The child is unconscious or the alleged perpetrator knows that the child is unaware the indecent contact is occurring;
4. The alleged perpetrator has substantially impaired the child's power to appraise or control his or her conduct by administering or employing, without the knowledge of the child, drugs, intoxicants, or other means for the purpose of preventing resistance;
5. The child suffers from a mental disability which renders him or her incapable of consent;
6. The child is less than 13 years of age;
7. The child is less than 16 years of age and the perpetrator is four or more years older than the child and they are not married to each other.

Sexual Assault is engaging in sexual intercourse or deviate sexual intercourse with a child without the child's consent.

Aggravated indecent assault is engaging in penetration, however slight, of the genitals or rectum of a child with a part of the perpetrator's body for any purpose other than good faith medical, hygienic or law enforcement procedures:

1. Without the child's consent;
2. By forcible compulsion;
3. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
4. The child is unconscious or the alleged perpetrator knows that the child is unaware that the penetration is occurring;
5. The alleged perpetrator has substantially impaired the child's power to appraise or control his or her conduct by administering or employing, without the knowledge

of the child, drugs, intoxicants or other means for the purpose of preventing resistance;

6. The child suffers from a mental disability which renders him or her incapable of consent;
7. The child is less than 13 years of age; or
8. The child is less than 16 years of age and the alleged perpetrator is four or more years older than the child and they are not married to each other.

Indecent assault is indecent contact with a child or causing the child to have indecent contact with the perpetrator:

1. Without the child's consent;
2. By forcible compulsion;
3. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
4. The child is unconscious or the alleged perpetrator knows that the child is unaware the indecent contact is occurring;
5. The alleged perpetrator has substantially impaired the child's power to appraise or control his or her conduct by administering or employing, without the knowledge of the child, drugs, intoxicants, or other means for the purpose of preventing resistance
6. The child suffers from a mental disability which renders him or her incapable of consent
7. The child is less than 13 years of age; or
8. The child is less than 16 years of age and the alleged perpetrator is four or more years older than the child and they are not married to each other.

Indecent exposure is exposing of the genitals in any public place where there are other persons under circumstances that the alleged perpetrator knows or should know that this conduct is likely to offend, affront or alarm.

Incest is an alleged perpetrator who knowingly marries, cohabits or has sexual intercourse with an ancestor, descendent, a brother or sister of the whole or half blood, or an uncle, aunt, nephew or niece of the whole blood. The relationships referred to include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

Prostitution: any person who is an inmate of a house of prostitution or otherwise engaging in sexual activity as a business; or loitering in or within view of any public place for the purpose of being hired to engage in sexual activity.

Definitions:

- A. House of prostitution: Any place where prostitution or promotion of prostitution is regularly carried on by one person under control, management or supervision of another.
- B. Inmate: A person who engages in prostitution in or through the agency of a house of prostitution.
- C. Public Place: Any place to which the public or nay substantial group thereof has access.
- D. Sexual Activity: Includes homosexual and other deviate sexual relations.

Promoting Prostitution: The following acts shall, without limitation of the foregoing, constitute promoting prostitution:

- A. Owning, controlling, managing, supervising, or otherwise keeping alone or in association with others, a house of prostitution or a prostitution business;
- B. Procuring an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;
- C. Encouraging, inducing, or otherwise intentionally causing another to become or remain a prostitute;
- D. Soliciting a person to patronize a prostitute;
- E. Procuring a prostitute for a patron;
- F. Transporting a person into or within this Commonwealth with intent to promote the engaging in prostitution by that person, or procuring or paying for transportation with that intent;
- G. Leasing or otherwise permitting a place controlled by the actor alone or in association with others, to be regularly used for prostitution or the promotion of prostitution, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities or other legally available means; or
- H. Soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this subsection.

Living off Prostitutes: A person, other than a prostitute or a prostitute's minor children or other legal dependent incapable of self-support, who is knowingly supported in whole or substantial part by the proceeds of prostitution is in violation of promoting prostitution.

Patronizing Prostitution: Hiring a prostitute or any other person to engage in sexual activity with him or her or if that person enters or remains in a house of prostitution for the purpose of engaging in sexual activity.

These definitions of sexual abuse, as noted, were changed by Act 10 1995. Hence, they only apply to acts that occurred on or after July 1, 1995. For incidents that occurred before that date, the previous statute must be applied. It contained seven types of sexual abuse. Workers should

consult with their supervisors if they are dealing with sexual abuse incidents that took place before July 1, 1995.

- In cases of **serious physical neglect**, there must be:
  - a physical condition caused by an act or omission by a perpetrator to a child.

The condition must:

- endanger the child's life or development, or
- impair the child's functioning.

It must arise from:

- prolonged or repeated lack of supervision, or
- failure to provide the essentials of life, including adequate medical care.

Serious physical neglect does not have to be a recent act. The exclusions for environmental factors and religious beliefs should also be kept in mind.

### **Activity #5: Five Families**

#### Step 1

Divide the group into subgroups of 4 to 5 participants. Distribute **Handout #10: Five Families** to all participants. Give the group 15 minutes to determine for each family:

- ~ the type of abuse that may have occurred, and
- ~ the factors which must be determined before the abuse can be substantiated.

[If time is short, assign one or two families to each subgroup.]

#### Step 2

Discuss each family with the large group, covering the following points:

The **Adams** family consists of a 33-year-old mother, 35-year-old father, a 12-year-old son, and a 10-year-old daughter. They live in an isolated area with several extended family members. The son misses a lot of school and appears very temperamental. The school referred the family to child welfare with concerns about the son's emotional health. The caseworker's first visit to the home did not go well. It was difficult to keep everyone in the room at the same time, and they denied any need for help. The parents showed an indifference to their son. He appeared very unresponsive and apathetic. The parents did not seem to place a high priority on school, noting

that they were not honor roll students, but they have done well. Yet, the family does not seem to have any steady source of income.

**Type of abuse:** serious mental injury.

Substantiation factors:

- Child under age 18
- Is there a psychological condition?
- Does the condition meet the legal definition?
- Obtain a diagnosis by a physician or licensed psychologist.
- Determine that condition is non-accidental.
- What is the act or failure to act?
- Who is the perpetrator?

The **Butler** household consists of an 18-year-old mother and her 9-month-old child. They live in a housing project with subsidized rent. The child's father had been involved with the family until recently. Child welfare was called to intervene when the child was taken to the emergency room with a suspicious fracture. The mother states that the child fell out of his crib. The mother meets willingly with the caseworker and discussions seem to go well until the child cries. The mother then becomes angry and wonders why the child is doing this to her and why he does not love her.

**Type of abuse:** serious physical injury.

Substantiation factors:

- Child is under age 18.
- Injury is a fracture.
- Is it accidental or nonaccidental?
- Was the injury caused by an act or omission?
- Did it happen within the last two years?
- Who is the perpetrator?
- Did the injury cause severe pain or impair functioning?

The **Clinton** family consists of the father and stepmother, both age 43, and a 16-year-old daughter. The caseworker was quite impressed with the family's big home in the upscale section of the city. According to the stepmother, the father is quite successful in business despite his humble beginnings, and is popular with his colleagues and friends. His success has continued despite the death of his wife five years ago, and the rumors of downsizing at his company. The father and daughter have been very close since the mother's death, and he has given his daughter everything. Yet, the daughter does not go out much and spends a lot of time alone in her room. She won't wear her nice clothes and seems to wear layers of old clothes. Despite good grades, she seems to have a lot of anxiety over attending school and other activities. The father is never

around during the worker's visits. The school counselor referred the family because she suspects a sexual relationship between the father and daughter.

**Type of abuse:** sexual abuse

Substantiation factors:

- Child is age 16.
- Father is the alleged perpetrator.
- Need a specific allegation that meets the criteria for one of the specific types of sexual abuse.

The **Delaware family** consists of a 28-year-old mother, her 19-year-old boyfriend, and five children ranging in age from 2 to 13. The oldest child is sometimes in charge while the mother goes out with the boyfriend. The house is dirty and in disarray. The school complains about the children's clothing and states that they have an odor. The children have not attended for a while due to a persistent lice problem. The police have been called to the home on various occasions for fighting and loud parties. Their last visit was in February when the neighbor called to report that the 2-year-old was walking on the road with no shoes.

**Type of abuse:** serious physical neglect.

Substantiation factors:

- Physical condition is the lice infestation
- It was caused by failure to properly treat the infestation.
- Perpetrator is the mother.
- Children are ages 2 to 13
- The condition may impair functioning by not enabling children to engage in activities, such as school attendance.
- The condition arises from a failure to provide the essentials of life.

The **Elk family** consists of a 23-year-old father, 22-year-old mother and 7-year-old son. The mother is well known by the child welfare staff due to her years spent in foster care. The mother admits that her husband has been drinking a lot, but states that everything will be okay as soon as he finds a good job. She notes that the father loves his son and would not hurt him; the injuries the child has suffered when alone with the father have all been unfortunate accidents. The mother reports that the son is doing well in his special needs classes at school.

**Type of abuse:** serious physical injury and/or serious mental injury.

Substantiation factors:

- Child is age 7.

- Perpetrator is the parent or parents.

**For serious physical injury:**

- What are the injuries?
- Were they accidental or non-accidental?
- Was there an act or failure to act?
- Did the injuries happen recently?
- Did the injuries cause severe pain or impairment of functioning?

**For serious mental injury:**

- Is there a psychological condition?
- Was it diagnosed by a physician or licensed psychologist?
- Is it accidental or non-accidental?
- The condition may be interfering with the child's ability to accomplish age-appropriate developmental and social tasks.

**Trainer Note:**

Distribute **Handout #11: Imminent Risk** and use **Overhead #17: Criteria for Imminent Risk** to aid in discussing imminent risk. Refer participants to the legal definition on page 2 of **Handout #9: Child Abuse Definitions**.

- The final category of abuse was most recently added to the CPSL effective July 1, 1995. As opposed to the other types of abuse, **imminent risk** or threatened harm is much more of a subjective application. Judgements are needed and greater collaboration is in order.

These are situations where a child is demonstrably at risk, but because of happenstance, the intervention of a third party, or actions of the child, abuse did not otherwise occur.

The legal definition of imminent risk is on page 2 of the "Child Abuse Definitions" Handout:

**Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.**

The criteria for imminent risk includes:

- There must be a child under age 18.

- It must be non-accidental.
- The allegation must pertain to serious physical injury or sexual abuse/exploitation. Mental injury and physical neglect do not apply.
- It must be a recent act- occurring within two years of the report, but after July 1, 1995.
- A specific act or failure to act has to have taken place.

What occurred has to be of such force or gravity that one can reasonably assume that abuse would have occurred. Not could have, but would have.

What would have happened must fit the criteria for that type of abuse. For example, if it is imminent risk of serious physical injury, what would have occurred would have to cause the child severe pain or temporarily or permanently impair functioning.

As an example, a father and his teenage son get into an argument. The father becomes very angry and threatens to shoot his son.

- Would this be imminent risk if the father does not own a gun? NO
- What if the father owns a gun which is under lock and key throughout the entire incident? NO
- What if the father removes the gun from the gun cabinet and points it at his son? PROBABLY
- What if the father fires the gun into the wall over his son's head? YES

The standard of proof used is substantial evidence. The definition is noted on the "Child Abuse Definitions" Handout. It outweighs inconsistent evidence, and is something that a reasonable person would accept as adequate. The law does not tell us what a reasonable person is. However, it suggests a need for increased consultation and supervision. Imminent risk cases are a time when two heads are better than one.

### **Activity #6: To Be Or Not To Be Imminent Risk**

#### Step 1

Divide the group into subgroups of 4 to 5 participants. **Distribute Handout #12: To Be or Not to Be..Imminent Risk.** Instruct participants to determine which situations should be considered as imminent risk and the factors leading to the decision.

#### Step 2

Discuss each case, covering the following information:

A psychotic young woman gives birth to a baby boy. The hospital reports the birth to the agency due to concerns around her ability to parent this child. She is extremely paranoid, and stated many times prior to the birth that she prayed for a girl because a boy would be a demon. Her history includes extensive sexual and physical abuse at the hands of her father. She relates only to women and becomes aggressive when approached by any male on the hospital staff. An older sibling was removed from her care three years ago after she beat the child extensively. That child was also a male. The mother is to be discharged soon. She will continue to be serviced by outpatient mental health. The hospital believes the child to be in danger if discharged with the mother.

**Determination and Discussion:**

- This is certainly a high risk case with an imminent risk of placement, but it does not meet the definition of imminent risk as defined in the CPSL. There has been no specific act or failure to act on the mother's part toward this newborn that creates an imminent risk of serious physical injury.

A two-month-old infant is being cared for by her father while her mother works. The infant has cried for nearly two hours and all efforts by the father to calm the child have failed. The father loses control and shakes the infant violently for about 15 seconds at which time the mother comes home and, after a struggle, manages to stop the father from shaking the infant. The child suffered no visible injuries or condition as a result. The father indicates that shaking the infant in the past stopped the crying.

**Determination and Discussion:**

- This should be considered an imminent risk case. The act is the father shaking the infant. It is well established that shaking infants can lead to severe injury or death.
- If the child had suffered serious injuries as a result of the shaking by the father, this would be a physical abuse case and not an imminent risk case.
- If an investigation determined that the father has shaken the baby on several occasions without injury, the latest incident could be considered an act in a series of acts which created an imminent risk of serious physical injury.

A mother of three children loses her apartment and moves in with her father, who sexually abused her for many years. She often allows her father to care for the children while she goes out at night.

**Determination and Discussion:**

- This should be considered as a possible imminent risk case.
- The act or failure to act is the mother leaving her children with a perpetrator of sexual abuse.
- The mother knew that her father sexually abused her and should have known that her children were not safe in his care.
- This type of case will require careful consideration before being indicated as imminent risk. The mother was also a victim of sexual abuse. If she has not had treatment for her own sexual abuse, it may be difficult to establish the should have known criteria. Her failure to exercise reasonable judgement may be enhanced by the fact that she never received treatment for her own abuse.
- If the children are actually sexually abused by their grandfather, it would be a sexual abuse case and not an imminent risk case. The grandfather would be the perpetrator. Consideration could also be given to listing the mother as a perpetrator by omission.

A mother of three children moves in with a female friend after losing her own apartment. The friend has a boyfriend who, unbeknownst to the mother, has a prior conviction of sexually assaulting children. The boyfriend volunteers to watch the children while the mother looks for a job.

**Determination and Discussion:**

- This is not an imminent risk case under the CPSL.
- Although the children are at imminent risk of sexual abuse in this scenario, a parent cannot be expected to "know all".
- If the agency knows that the boyfriend has a history of sexually assaulting children, the agency is not at liberty to tell the mother without written consent from all parties involved in the prior sexual abuse case.
- Dependent upon the female friend's knowledge of the situation and the conviction, she may be considered a perpetrator as a household member.

## C. Student Abuse

**Trainer Note:**

**Overhead #18: Student Abuse Is...** is available for use.

### **Content of Presentation and Discussion:**

When Act 151 took effect, school employees were returned to the CPSL. The reporting process and the expectations are strictly dictated in the law, and are different than the criteria for abuse which has already been discussed. So, student abuse has its own separate part of the law with its own procedures.

As noted on the "Child Abuse Definitions" Handout, student abuse is the serious bodily injury or sexual abuse or sexual exploitation to a student by a school employee.

A student is an individual who is under 18 years of age and is enrolled in a public or private school, intermediate unit or area vocational-technical school.

School employees are persons employed by a school, unless they have no direct contact with students. This includes persons employed by an independent contractor of a school. The CPSL never refers to the school employee as a perpetrator. They are school employees suspected of abusing a child, or school employees responsible for abusing a child.

Only two types of abuse are included in student abuse:

- Sexual abuse/exploitation. The act would need to fit one of the eleven types of sexual abuse that were previously discussed.
- Serious bodily injury. This type of abuse must cause:
  - ✓ substantial risk of death, or
  - ✓ serious permanent disfigurement, or
  - ✓ protracted loss or impairment of an organ or other body part.

These requirements apply whenever a school employee is functioning in the role of a school employee regardless of when or where the abuse occurred. They do not apply when a school employee is paid by the parents or student for what they are doing with the student, or if the employee is otherwise with a student and not functioning as a school employee.

For example, a teacher who helps a student with his or her studies, or is involved in an extracurricular activity, after school hours would be included in student abuse.

However, if the teacher was being paid by a parent to tutor a student, the teacher would be considered a self-employed agent of the parent. In this case, the teacher could be considered a person responsible for a child's welfare and investigated under the other CPSL rules.

The referral process for suspected student abuse is very different than the process for reporting child abuse. The process for student abuse begins in the school.

Referral sources for this type of abuse are generally school employees. They must make a referral when they suspect that a student coming before them is a victim of serious bodily injury or sexual abuse/exploitation by a school employee.

If the school employee learns about the abuse from another person, they must see the child and then make a report if they suspect student abuse.

The school employee suspecting student abuse makes the report to the school administrator, oftentimes the principal. The administrator does not make the referral to the county agency. Rather, he or she must immediately refer the case to law enforcement officials and the district attorney. No independent investigation by the administrator is allowed.

If the administrator is the suspect, then the school employee suspecting student abuse gives the information directly to law enforcement and the district attorney.

Law enforcement does an initial review. If they suspect that there is evidence of serious bodily injury or sexual abuse/exploitation by a school employee, then they make a referral to the county agency. The agency registers the report with ChildLine.

The law requires that the county agency and law enforcement coordinate their investigations. Interviews with the student must be conducted jointly. Law enforcement, though, has the opportunity to interview the school employee before the county agency has any contact with him or her.

### **Activity #7: Student Abuse**

#### Step 1

Distribute **Handout #13: Student Abuse**, a 10-part true and false quiz. Dependent upon time and other group considerations, participants may be asked to consider the statements individually, in subgroups or as a large group discussion.

#### Step 2

Review each statement, covering the following information:

1. All school employees, except the administrator, meet the definition of perpetrator under the CPSL.

**False. No school employees are referred to as perpetrators under the CPSL. All school employees, including administrators, can be considered school employees responsible for student abuse. There is an exception for individuals who have no direct contact with students.**

2. Any child under the age of 18 who is enrolled in a public or private school, intermediate unit or area vocational-technical school can be classified as a student.

**True. This is the definition of student in the CPSL.**

3. When a report of suspected student abuse is received by the county agency from the parent, the agency should direct the parent to contact the school administrator.

**True, as far as the statement goes. The agency is also expected to take the information and report it to the administrator as well. If the parents state that they have notified the administrator and the administrator has refused to make a report, the agency shall take the information and report it to the administrator, law enforcement and the district attorney.**

4. If the agency has a contract with a facility and a school employee of that facility is identified as a school employee suspected of student abuse, the agency should conduct a thorough investigation into the matter, prior to filing a report with ChildLine.

**False. This school employee would be considered an agent of the county agency because the agency has a contract with the facility. Therefore, this would be investigated by a regional representative.**

5. Administrators should report suspected student abuse to CPS and the police.

**False. Administrators are mandated to report to law enforcement and the district attorney. They are not mandated to report to CPS or ChildLine.**

6. A child who has multiple bruises as a result of being hit by a school employee is a victim of student abuse.

**False. The child would not be considered a victim of student abuse because his injuries do not constitute serious bodily injury.**

7. A teacher who is being paid by the parents to tutor their child would be considered a perpetrator of child abuse, rather than a school employee responsible for student abuse, if that teacher sexually abused the child while tutoring the child.

**True. The school employee in this situation is an agent of the parent in the role of a tutor paid by the parent. Therefore, the school employee would be considered a person responsible for the child's welfare, as found in the definition of perpetrator in the CPSL.**

8. The interviews of the child shall be conducted jointly by law enforcement, CPS, and the school administrator.

**False. The administrator is not part of the investigatory process. Only CPS and law enforcement are. The CPSL requires joint interviews of the child by CPS and law enforcement.**

9. If a school employee hits a student in the mouth and knocks out the student's permanent teeth, it could be considered student abuse.

**True. The loss of the permanent teeth should be considered serious bodily injury because they cannot come back on their own and the child has suffered a permanent loss of a bodily function.**

10. A school bus driver is not considered a school employee.

**False. The school bus driver is a school employee under the CPSL.**

**Trainer Note:**

The discussion of aggravated circumstances logically flows to occur on Day 1. However, if time runs short, aggravated circumstances should be able to be covered comfortably on Day 2.

## **D. AGGRAVATED CIRCUMSTANCES**

**Trainer Note:**

**Overhead #19: Aggravated Circumstances, Overhead #20: Five Aggravated Circumstances in PA, Handout #14 Aggravated Circumstances, and Handout #15: Aggravated Circumstances – Parental Conviction of Specified Crimes** are available for use

### Content of Presentation and Discussion

When the Adoption and Safe Families Act (ASFA) was passed in 1997, a modification was made to the requirement that agencies must make "reasonable efforts" to prevent placement and/or

reunify a family before seeking to terminate parental rights. The ASFA legislation states that there are certain circumstances under which "reasonable efforts" to reunite a family should be brought to the court's attention for a decision whether or not reasonable efforts should be made to reunite the family. These circumstances are known as "aggravated circumstances". An aggravated circumstance is said to exist when:

- A situation is so egregious that a child's safety may be in serious jeopardy, and even with services, it is unlikely that safety can be assured.
- OR
- A situation has occurred in which a child has been subjected to such egregious circumstances that reunification of the child with his or her family should not occur.

There are five Circumstances which qualify as "aggravated circumstances" in Pennsylvania:

**1. A child is abandoned**

A child is considered to be abandoned if:

- The identity or whereabouts of the parents is unknown and cannot be ascertained and the parent does not claim the child within three months of the date the child was taken into custody.

Explanation: It is incumbent upon the child welfare agency to ascertain the identity or whereabouts of the parents through such means as the County Assistance Office, the Bureau of Motor Vehicles, the Social Security Administration, and other local contacts that can help in obtaining information on missing persons such as the police, school records etc. Agencies have access to the Federal Parent Locator Service to request the following information: parent's social security number and address/location; employer's name and address; the parent's wages and benefits.

- The identity or whereabouts of the parent *are known*; however the parents have failed to maintain substantial and continuing contact with the child for a period of six months.

Explanation: The focus of assessing "substantial and continuing" contact is parental intent, not hard and fast rules. An agency is to consider "substantial contact" within the circumstances and abilities of the parent. The "extent", "quality" and "affect" of contact upon the child must be considered by the agency. In considering "continuing contact", the type, pattern and frequency of contacts should be considered.

**2. The child or a sibling of the child has been subject to serious bodily injury, sexual violence or aggravated physical neglect**

Serious Bodily Injury is defined in the same way as it is in the Child Protective Services Law (CPSL): "Bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ." A conviction is *not required* for aggravated

circumstances based on serious bodily injury; however agencies must prove the circumstance by providing "clear and convincing evidence" to the court.

Sexual Violence includes rape or indecent contact as defined in the Crimes Code § 3101, incest or using, causing, permitting, persuading or coercing the child to engage in a prohibited sexual act as defined in the Crimes Code § 6312 (a) or a simulation of a prohibited sexual act for the purpose of photographing, videotaping, depicting on computer or filming involving the child. A conviction is ***not required*** for aggravated circumstances based on sexual violence. The definition for Sexual Abuse in the CPSL is broader than the definition for Sexual Violence in that the CPSL definition of sexual abuse includes sexual exploitation. Sexual Exploitation is not included in the definition of aggravated circumstances.

Aggravated Physical Neglect: Any omission in the care of a child which results in a life-threatening condition or seriously impairs the child's functioning. A conviction is ***not required*** for aggravated circumstances based on aggravated physical neglect.

**3. The parent of the child has been convicted of certain crimes where the victim was a child**

The following crimes have been identified to meet aggravated circumstances:

- Criminal homicide
- A felony relating to aggravated assault, relating to rape, relating to statutory sexual assault, relating to involuntary deviate sexual intercourse, relating to sexual assault, relating to aggravated indecent assault
- A misdemeanor relating to indecent assault
- An equivalent crime in another jurisdiction

The crimes as listed above could involve any child. Agencies must access Criminal History information if a crime is alleged.

**4. The parent of the child attempted, solicited or conspired to commit the above crimes**

Aggravated circumstances exist if the parent of the child has been ***convicted*** for having attempted to solicit or conspire to commit any of the offenses referenced above either in Pennsylvania or another jurisdiction.

**5. Parental rights to another child of the parent were involuntarily terminated**

The termination of parental rights to another child must have been involuntary to qualify under aggravated circumstances.

The allegation of aggravated circumstances requires that an agency file a petition for a judicial inquiry to be made in order to:

- Determine whether or not aggravated circumstances exist
- Determine whether reasonable efforts must be made to reunify a family
- Determine whether the termination of parental rights should occur immediately

The child welfare agency is required to file the petition that alleges aggravated circumstances. It is incumbent upon the court to make a finding on the allegation of aggravated circumstances, as well as to decide, whether parental rights should be immediately terminated or whether reunification services should still be provided if aggravated circumstances are founded. The process for filing such petitions is as follows:

***For New Referrals to the Agency:***

1. When an agency receives a referral for services for a child and decides that it needs to file a petition for dependency, as a part of the investigation and decision process, an agency must ascertain whether they believe aggravated circumstances exist. The completion of a Risk Assessment is required.
2. When an agency reasonably believes that aggravated circumstances exist, the petition for dependency must include a statement of facts alleging aggravated circumstances. The petition for dependency must also include a request for a finding from the court of whether or not reasonable efforts are to be made to reunify the family if aggravated circumstances are found to exist.

***For a Child Who is Currently Dependent:***

1. Aggravated circumstances may become known for a dependent child at a period of time following the original investigation and acceptance of the case. For dependent children, at any point in time, if an agency discovers that aggravated circumstances exist, it ***must*** file a petition alleging aggravated circumstances within 21 days. A new risk assessment must be completed prior to filing the petition.
2. The petition must request a finding of whether reasonable efforts should continue to be made to reunify the family if the court finds that aggravated circumstances exist.

Petitions alleging aggravated circumstances can only be filed for children who are dependent. There are children who may have been subject to circumstances that one may believe to be aggravated circumstances but who are safe and who are not in need of agency intervention via dependency. These children, since they are not dependent, will not have a judicial finding on whether or not aggravated circumstances exist. If aggravated circumstances exist and one is unsure if dependency should be petitioned for, the following should be considered:

- The circumstances surrounding the aggravated circumstances
- The risk assessment completed as a result of the discovery

**Activity #8: Aggravated Circumstances**

Step 1:

Distribute ***Handout # 16 : Would You Allege Aggravated Circumstances?*** Give participants 10 minutes to complete the handout.

Step 2:

Read each vignette aloud and ask participants to voluntarily give their response as to whether aggravated circumstances exist.

**Jennifer:**

Jennifer is a 21 year old psychotic who just gave birth to a baby boy. She has a history of beating her first son severely. Two years ago, after placing her first child in foster care, the local children and youth agency filed a petition with the court for an involuntary termination of parental rights. The court terminated Jennifer's parental rights and the child was adopted. Jennifer has not been taking medication because of her pregnancy. She was severely physically and sexually abused as a child by her father. She has stated that she hates males and believes they are all "the devil." Hospital staff are requesting intervention.

**This case involves aggravated circumstances due to the involuntary termination of Jennifer's rights to another child two years ago.**

**Lisa:**

Lisa is the 26-year old mother of Nancy, age 8. Neighbors have reported to the agency that Nancy is left alone for many hours in the apartment when Lisa goes out to search for drugs. The last time this occurred, a neighbor heard crying from inside the apartment. When they knocked at the door, Nancy reported that she had not seen her mother since last evening. Lisa has since returned home to find Nancy gone, unaware that she was taken into custody by the Children and Youth Agency.

**This case does not involve aggravated circumstances.**

**Jack:**

Jack is a 3-year old child who has been in a foster home for the past year with permanency goal of reunification. The child was placed due to parental neglect. Mother is not a resource and her whereabouts remain unknown. A neighbor phones the county agency alleging that the father is known in Colorado because he killed another child. The Colorado child welfare agency was contacted who verified in writing that the father was responsible for the starvation death of a sibling and had served time in prison for it.

**This case involves aggravated circumstances due to the father's conviction of the death of a child.**

**Malcolm:**

Malcolm is the 35 year-old uncle of 11-year old Desiree. Desiree reported to her teacher that her uncle, with whom she lives, shows her his "private parts" when they watch movies together. The school has reported this incident to Children and Youth. Upon investigation, it is discovered that on multiple occasions, Malcolm has exposed himself to Desiree; however Desiree insists that he has never touched her nor asked her to touch him. Upon obtaining Criminal History information on Malcolm, it is discovered that he was convicted of Sexual Exploitation five years ago for exposing himself to children in a neighboring County.

**This case does not involve aggravated circumstances because sexual exploitation does not qualify under the aggravated circumstances defined by Pennsylvania.**

**Tom:**

Tom is the single parent of 9-year old Darryl. Darryl's mother abandoned Darryl and Tom when Darryl was 9 months old. Children & Youth took custody of Darryl after welts and bruises were discovered on Darryl's buttocks and legs. Neighbors allege that Tom physically disciplines Darryl using such implements as a belt and wooden paddle. The neighbors also indicated that 15 years ago, Tom was convicted of killing his girlfriend. Through the investigation, the worker obtains criminal history on Tom and discovers that he was convicted of involuntary manslaughter in the death of his girlfriend, and served 6 years in prison for the crime.

This case does not involve aggravated circumstances because the felony committed was not against a child.

## Closing Activity and Review

**Rationale**                    A review of concepts addressed maximizes the retention of content.

### **Learning Objective**

Participants will:

- ❖ Identify and review key concepts from the day's content.

**Time**                         15 minutes

**Method**                    Group activity

**Materials**                Index cards

**Activity**                    Activity #9: Question Cards

### **Activity #9: Question Cards**

#### Step 1

Distribute an index card to each participant. Ask each participant to write down a question pertaining to a key concept from the day's content on the card. The question may pertain to an issue for which they need clarification or a question that they feel is important to the day's discussion.

#### Step 2

Collect the cards and shuffle them (or have a participant do so). Then, redistribute the cards.

#### Step 3

Ask each participant to read the question aloud and provide an answer. The trainer may add any needed clarifications. [As an alternative, after the redistribution of the cards, the questions can be answered by subgroups rather than individuals.]

#### **Trainer Note:**

At the completion of the exercise, remind participants of the day and time that the session will reconvene.

If the individual Strengths/Needs Plans have not yet been reviewed, take them with you to review before the next day of training.

## Day 2 - Opening Activity

**Rationale** Repetition and review assists participants in the transfer of learning. In addition, participants have more of a stake in their learning when they track their own progress.

**Learning Objective**

Participants will:

- ❖ Recognize key concepts from the previous day's content and activities.

**Time** 30 minutes

**Method** Group activity and discussion

**Materials** **Handout #17: Unscrambling Our Learning**

**Activity** Activity #10: Unscrambling Our Learning

## Activity #10: Unscrambling Our Learning

### Step 1

Convene subgroups in the same constellation as during the Day 1 Introduction when identifying their needs. Distribute **Handout #17: Unscrambling Our Learning** to all participants. Ask participants to work in their subgroups (or individually as an alternative) to unscramble the words on the handout and note what was learned about the subject during the previous day. Give participants 10 to 15 minutes to unscramble the terms and cite their significance.

[This is not intended to be a lengthy exercise. Depending upon the participants and time considerations, the trainer may streamline the process by assigning, for example, five unscrambles to each group, or ending the unscrambling when a group or individual unscrambles about seven to ten words.]

### Step 2

Through group discussion, unscramble the terms and review their importance to child welfare.

1. finestsun **unfitness**

Something in the care of the child falls below acceptable standards. The CPSL and Juvenile Act define the care that falls below these standards.

2. ude cropess **due process**

Protections of the Fourteenth Amendment to the Constitution guaranteeing procedural fairness. These include rights to notice, a fair hearing, counsel, an impartial trier of fact, confrontation and cross examination, and family integrity.

3. nuejlive tourc **juvenile court**

Emerged in the early 1900's to protect children from the harshness of the criminal court. It represents the state's authority to intervene, over parental objection, in order to protect children.

4. truelingosa **regulations**

Rules or other directives issued by administrative agencies such as the Department of Public Welfare.

5. seac wal **case law**

Arises from court decisions based on the court's interpretation of the law.

6. demandta **mandated**

A type of reporter of abuse who must report child abuse because they come into contact with children in the course of their employment, occupation or practice of their profession.

7. rotaterprep **perpetrator**

Defined by the CPSL as a parent of a child, person responsible for a child's welfare, household member, or paramour of a child's parent.

8. suncloxies **exclusions**

The CPSL lists three exclusions to abuse: accidental injuries, environmental factors, and religious beliefs.

9. gageavatr mcustiscrcane **aggravated circumstances**

Egregious situations in which reasonable efforts to reunify a child to his or her family may not be warranted

10. oursise chysipal jinruy **serious physical injury**

A type of abuse that causes a child severe pain or significantly impairs the child's functioning.

11. sourise tanlem yurnij **serious mental injury**

A diagnosed psychological condition caused by acts or omissions of a perpetrator. One of the types of abuse.

12. lexusa seabu **sexual abuse**

The biggest category of child abuse in Pennsylvania.

13. iresous shypalic glentec **serious physical neglect**

A physical condition which endangers the child's life or development or impairs the child's functioning.

14. miniment kris **imminent risk**

A type of abuse constituting threatened harm.

15. encert cat **recent act**

Abuse occurring within two years of the report.

16. pear **rape**



## Section IV

### Dependent Children

<b>Rationale</b>	Child Welfare Professionals must be able to recognize the elements of dependency and be able to use the Juvenile Act to determine the legal criteria for substantiating dependency in court.
<b>Learning Objectives</b>	Participants will: <ul style="list-style-type: none"><li>❖ Identify the legal definition of a dependent child.</li></ul>
<b>Time</b>	45 minutes
<b>Methods</b>	Presentation by trainer, large group discussion
<b>Materials</b>	Overhead #6: Purposes of the Juvenile Act Handout #18: Dependent Child

## A. Criteria for Dependency

### Trainer Note:

Begin by explaining that the CPSL discussion has ended and review of the Juvenile Act will begin. You may wish to review the purposes of the Juvenile Act using **Overhead #6: Purpose of the Juvenile Act**.

The Code of 1650 is excerpted below and is an optional introduction to exhibit the progress in the laws dealing with children.

Distribute **Handout #18 Dependent Child**. Discussion will be aided by soliciting case examples from participants.

### Content of Presentation and Discussion:

#### The Code of 1650

Excerpts from the Code of 1650, being a compilation of the earliest laws and orders of the General Court of Connecticut: Also, the Constitution, or Civil Compact, entered into and adopted by the Towns of Windsor, Hartford, and Wethersfield in 1638-9. To which is added some extracts from the Law and Judicial proceedings of the New Haven Colony commonly called BLUE LAWS.

*13. If any Child or Children above sixteen years old and of sufficient understanding shall Curse or smite their natural father or mother, hee or they shall bee put to death; unless it can bee sufficiently testified that the parents have beene very unchristianly, negligent in the education of such children, or so provoke them by extreme and cruell correction that they have beene forced thereunto to preserve themselves from death, maiming.*

*14. If any man have a stubborne and rebellious sonne of sufficient yeares and understanding viz. Sixteene years of age, which will not obey the voice of his father or the voice of his mother, and that when they have chastened him will not hearken unto them; then may his father and mother, being his natural parents, lay hold on him and bring him to the Magistrates assembled in Courte, and testifie unto them, that their sonne is stubborne and rebellious and will not obey their voice and Chastisement, but lives in sundry notorious Crimes such a sonne shall bee put to death.*

Children are no longer put to death or even incarcerated for being stubborn and rebellious, however the law does address parents who are negligent in the education of their children or who use extreme correction. These issues are dealt with in the Juvenile Act.

In Pennsylvania, we cannot involve the Juvenile Court in cases of child abuse alone. We must combine all the things learned about abuse with the concepts of unfitness defined in dependency. So, discussion will leave the CPSL and turn to the Juvenile Act.

The unfitness standards are defined in the Juvenile Act's definition of dependency.

A dependent child is a child who:

1. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that custodian's use of alcohol or a controlled substance that places the health safety or welfare of the child at risk;
2. Has been placed for care or adoption in violation of law;
3. Has been abandoned by his parents, guardian, or other custodian;
4. Is without a parent, guardian or legal custodian;
5. While subject to compulsory school attendance is habitually and without justification truant from school;
6. Has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian, and who is ungovernable, and is found to be in need of care, treatment or supervision;
7. Is under the age of ten years and has committed a delinquent act;
8. Has been formally adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (6); or
9. Has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is ungovernable in paragraph (6). Informal adjustment references actions by a probation officer who may refer the child and his/her family to an agency for assistance before filing a petition.

10. Is born to a parent whose parental rights with regard to another child have been involuntarily terminated (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child.

When filing a petition with the court, the petitioner must set forth the facts which bring the child within the jurisdiction of the court as they pertain to one or more of these nine bases.

It should be noted that the definition of a child is somewhat different in the Juvenile Act.

As in the CPSL, a child may be someone under age 18. However, that can be extended under certain conditions utilizing the Juvenile Act. A child includes someone who was found to be dependent before age 18 and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event past age 21. This allows a foster child, for example, to remain in placement until they complete high school.

## **Section V**

# **Judicial Enforcement of Protective Services**

<b>Rationale</b>	The juvenile court is an essential complement to the child welfare agency when parents or other caretakers are unable or unwilling to effectively cooperate in services offered by the agency and the child is at risk of further harm. Nonetheless, court intervention should only be employed when it is essential to protect the health and safety of the child. In order to make this critical judgement, Child Welfare Professionals must know when the court is an appropriate intervention, know what steps lead up to court action, and understand the various court proceedings.
<b>Learning Objectives</b>	<p>Participants will:</p> <ul style="list-style-type: none"><li>❖ Identify factors to consider in determining whether to petition the court;</li><li>❖ Describe reasonable efforts;</li><li>❖ Identify how children come into protective custody;</li><li>❖ Demonstrate the ability to complete a petition;</li><li>❖ Describe the various proceedings that are a part of the juvenile court process.</li></ul>
<b>Time</b>	3.25 hours
<b>Methods</b>	Presentation by trainer, small group activity and large group discussion.
<b>Materials</b>	Flip chart sheets, Handout #19: Where Am I? Overhead #21: Reasonable Efforts Overhead #22: Protective Custody Overhead #23: The Petition Includes... Overhead #24: The Participants Overhead #25: Items Discussed at Permanency Hearings Overhead #26: Permanency Options Overhead #27: Exceptions to Filing TPR Petitions
<b>Activity</b>	Activity #11: Revisiting the Five Families Activity #12: Just the Facts

## Activity #13: Where Am I?

### A. Deciding Whether To Go To Court

#### Content of Presentation and Discussion:

Court action should be initiated when parents or other custodians are unable or refuse the services offered and the child is in imminent danger or harm under the present conditions. The following factors should be considered in determining whether to petition the court for court jurisdiction and temporary custody, protective supervision and/or services:

- ◆ The child's need for emergency care and transfer of custody from the home due to conditions dangerous to the child's well-being, safety, prevention of further abuse or neglect and voluntary placement cannot be secured.
- ◆ The willingness or ability of the parents or other custodians to accept the help offered to change the situation. Court action is sometimes used as a leverage to achieve rehabilitative ends. The parent may be willing to accept treatment to avoid separation from his/her child.
- ◆ The possibility of further abuse continuing in the home is greater than the benefits to the child derived from continued placement at home without judicial intervention.
- ◆ Abandonment or desertion of the child.

### B. Reasonable Efforts

**Trainer Note:**

**Overhead #21 Reasonable Efforts** is available for use.

#### Content of Presentation and Discussion:

When the agency must intervene on behalf of abused and neglected children, it is not enough to protect them from immediate harm. When the agency is deciding whether to place children outside the home, it must take into account not only the children's safety, but also the emotional impact of separation. Throughout its involvement, the agency must strive to ensure that children are brought up in stable, safe, permanent families, rather than in temporary and unstable foster placements.

The need to provide permanent homes in a timely manner for abused or neglected children is the fundamental principle behind the Adoption and Safe Families Act of 1997.

Statutory provisions designed to achieve permanency for abused or neglected children are based on several principles of child development:

- Many mental health professionals believe that stable and continuous caregivers for children are very important to normal emotional growth. According to these authorities, children need secure and uninterrupted emotional relationships with adults who are responsible for their care. Repeatedly disrupted placements and relationships can interfere with a child's ability to form close emotional relationships after reaching maturity.
- Children need the security of having parents committed to their care. The lack of parents who provide unconditional love and care can profoundly affect a child's self-image.
- Having a permanent family adds predictability to a child's life. Foster care, with its inherent instability and impermanence, can impose great stress on a child. Weathering the normal situational changes of childhood in a permanent family enables a child to envision a more secure future.
- The child-rearing competence of autonomous families is always superior to that of an agency. Parents are likely to be capable of making the best, most timely decisions for a child, while decision-making concerning a child in foster care can often be fragmented and inconsistent.
- If it is important that children be raised in stable and secure families, it follows that the agency should, when possible, protect the child without removing the child from home. Preventing unnecessary removal also helps to preserve the constitutional right of families to be free from unwarranted state interference.
- To prevent unnecessary removal of children from their homes, the agency must take strong, affirmative steps to assist families. Toward this end, except in cases where aggravated circumstances are founded by the court and reasonable efforts are not deemed necessary by the court, child welfare agencies are required to make reasonable efforts to prevent the necessity of placement.

In determining whether the agency met the reasonable efforts requirement, the court must find that:

- Reasonable efforts were made to prevent or eliminate the need for removal of the child from his home; or

- If preventive services were not offered due to the necessity of an emergency placement, the lack of such services was reasonable under the circumstances; and
- Continuation of the child in the home would be contrary to the welfare safety or health of the child.

The intention of reasonable efforts is that child welfare agencies offer a full range of services as an alternative to placement. These include services such as counseling, parent education, homemaker/caretaker, and part day service.

With reasonable efforts determinations, the burden of proof is on the agency. The requirements are a matter of law, and federal funds are denied if this standard is not met.

**Trainer Note:**

This will probably be break time.

**Activity #11: Revisiting the Five Families**

Step 1

Divide participants into subgroups of 4 to 5 individuals. Refer participants to **Handout #10: Five Families**. Direct the subgroups to review the families and determine which, if any, of the families they would recommend for court intervention. Tell them that they should be prepared to defend their positions.

Step 2

In a large group discussion, debate in which cases a petition should be filed with the court. Responses will likely vary due to the minimum amount of information offered on each family.

Step 3

Refer participants back to their subgroups. Assign one or two of the Five Families to each subgroup. Direct subgroups to identify the reasonable efforts that should be made by the agency prior to petitioning the court. The lists may be posted on flip charts, or recorded by the subgroup for later reporting.

## Step 4

In a large group discussion, identify reasonable efforts that can be made to prevent placement of the child/ren in each of the Five Families.

### **C. Protective Custody**

**Trainer Note:**

**Overhead #22, Protective Custody** is available for use.

#### **Content of Presentation and Discussion:**

Both the CPSL and Juvenile Act address the requirements for taking a child into custody.

#### **Under the CPSL, a child can be taken into protective custody:**

- as provided by the Juvenile Act, or
- by a physician examining or treating the child (limited to 24 hours, after which a court is needed), or
- by the director or designee of a hospital or medical institution (limited to 24 hours, after which a court order is needed).

This action may be taken if it is immediately necessary to protect the child.

#### **A child can be taken into protective custody under the Juvenile Act:**

- by a court order, or
- by a law enforcement officer or duly authorized officer of the court.

The criteria are:

- ✓ there are reasonable grounds to believe that the child is suffering from illness or injury, or
- ✓ the child is in imminent danger from his/her surroundings and that the removal is necessary, or
- ✓ if the child is a runaway.

#### **Emergency detention of children is authorized in:**

- a medical facility,

- a licensed foster home or home approved by the court,
- a facility operated by a child welfare agency or one approved by the court, or
- any other DPW-approved place or facility.

## **D. The Petition**

### **Content of Presentation and Discussion:**

A petition is used to initiate court proceedings. It is a legal document which requests the court to do something.

All petitions must be filed under the Juvenile Act. They may also cite the CPSL, alleging abuse. Hence, a child may be alleged to be dependent, or alleged to be dependent and abused, but cannot be solely alleged to be abused. So all petitions filed in dependency cases must at least meet the minimum requirements of the Juvenile Act.

Any person may file a dependency petition with the court. In most cases, the child welfare agency is the petitioner, however, others, such as law enforcement and school districts, may at times petition the court.

A petition can be filed whether or not a child is in protective custody. If protective custody of a child has been taken under the Juvenile Act, a petition must be filed with the court within 24 hours or the next business day. This would generally occur before the informal hearing.

The timetable for filing a petition under the CPSL differs from that of the Juvenile Act. Because child abuse demands swift intervention, the CPSL anticipates situations that require protective custody even though a petition has not been filed. At the time of the informal hearing, if the court determines that protective custody shall be continued for an alleged abuse victim, the agency must file a petition within 48 hours of the hearing. So, unlike the Juvenile Act's timetable where the petition is filed before the hearing, the CPSL's timetable allows for the filing of the petition after the informal hearing.

If protective custody of the child has not been taken, the agency may file a petition with the court whenever it determines that the action is indicated.

Procedures for filing a petition vary among agencies. In some agencies, it is the responsibility of the worker to complete and file the petition. In others, a special court liaison or the agency solicitor may complete the document. Regardless of the method, the family worker is the key person to identify the important case facts that need to be included in the petition.

Most, if not all, agencies have a standard format that is used for the petition. These forms often include all of the language required in a petition as well as sections to add information discrete to a particular family.

Workers unfamiliar with their agency's procedures for filing or the format of their petition should seek out this information after the training.

**Trainer Note:**

**Overhead #23 The Petition Includes...** is available for use.

All petitions must include the following information:

- The facts which bring the child within the jurisdiction of the court. These case-specific facts support the definition of dependency or dependency and abuse. So, the petitioner looks to the definition of dependency (and abuse if relevant) and puts forth the facts that support it. The petition sets the limits of evidence to be admitted in court by telling the parties what the issues are, and what the petitioner is trying to prove.

The petitioner must include all relevant facts needed to prove allegation. Failure to include all relevant facts in the petition serves to exclude their consideration at the adjudicatory hearing. However, only facts that can be proven should be included.

For example, if the petition alleges abuse based on inadequate supervision, evidence of cigarette burns cannot be admitted. Similarly, events occurring after the filing of the petition may not be admissible to prove the original allegations. An amended petition can be filed to include new information.

- A statement that it is in the best interest of the child and the public that the proceeding be brought.
- The name, age and residence address of the child.
- The names and addresses of the parents, guardian, or custodian of the child and of the spouse, if any, of the child.
- Whether or not the child is in custody. If the child is in custody, you must provide the place of his/her detention and the time he/she was taken into custody.
- The reasonable efforts taken by the agency to prevent the placement OR a statement of the facts the County agency or the child's attorney intends to prove to support an allegation of aggravated circumstances. The county agency or the child's attorney should also be prepared to make recommendations to the court regarding reasonable efforts to reunify should the court find for aggravated circumstances.

## Activity #12: Just the Facts

### Step 1

Refer participants to **Handout #10: Five Families** and specifically to the Delaware family. The trainer may decide to have participants work individually or in subgroups of 4 to 5 individuals. Instruct participants to complete the section of a petition which sets forth the facts which bring the Delaware children within the jurisdiction of the court. Remind participants to cite the specific parts of the Juvenile Act (and CPSL) that the facts support.

### Step 2

In a large group discussion, construct the facts that should be included in the Delaware petition.

Possible responses include:

- As per the Juvenile Act, the children are without proper parental care or control, subsistence, education as required by law, or other care or control necessary for their physical, mental, or emotional health, or morals:
  - The four younger children are frequently left in the care of a 13-year-old babysitter who cannot adequately supervise them.
  - The family home is dirty and in disarray, creating a health and safety hazard to the children.
  - The children's clothing is not clean, creating a health hazard.
  - The children have had persistent lice and the parent has not provided treatment or taken other steps to relieve the condition.
  - The children have missed X days of school due to the lice and the parent has not provided the school with adequate justification of the absences.
  - The emotional health and physical safety of the children has been affected by loud parties and fighting by adults in the home.
  - The two-year-old is without proper care and control and was found to be walking on a public road with no shoes during February.
- As per the CPSL, the children are victims of serious physical neglect in that:
  - They are suffering from a physical condition of a persistent lice infestation.

- The parent has failed to provide the essentials of life by not properly treating the infestation.
- The condition has impaired the functioning of the children by excluding them from participation in activities including school attendance.

**Trainer Note:**

The trainer may want to review appropriate reasonable efforts for the Delaware family as developed in Activity #11.

## **E. Rights of Parents and Children in Judicial Proceedings**

### **Content of Presentation and Discussion:**

The Juvenile Act specifically cites basic rights of the parties in a dependency proceeding:

- The parents and child have a right to counsel. If they do not have the financial resources to employ counsel, the court must provide it.

Various counties have different procedures for how this is accomplished. The agency, generally, will give notice to the parents that they have a right to counsel and how they can secure representation if they cannot afford a private attorney. At times, this notice is a part of the petition. In some areas, free representation is available through legal services, and/or the court may make other provisions for the counsel. Similarly, counties have various methods for providing counsel for the child/ren. This may include appointment of a particular attorney to represent children in all cases, or a pool of attorneys who are appointed on a rotating basis. The worker may or may not be involved in arranging for counsel. Workers who are unfamiliar with their county's procedures should check with their supervisor for further information.

- The parties are entitled to the opportunity to introduce evidence and otherwise be heard in their own behalf and to cross-examine witnesses.

Other rights were discussed on the Day 1 discussion of due process protections. They include:

- Putting people on notice of the allegations. This occurs through the petition, which has already been addressed.
- Opportunity to a fair hearing, which will be addressed soon.
- Right to an impartial trial of fact.

- The right to family integrity, which is addressed through reasonable efforts.

Failure to make provisions for any of these rights may interrupt or delay the judicial process. At the extreme, it may cause a child to be released from protective custody prematurely.

## **F. Prehearing Conferences and Negotiating Case Settlements**

### **Content of Presentation and Discussion**

Rather than proceed with an actual hearing, some courts may first schedule a prehearing conference. At the conference, the parties and their attorneys come together to discuss their positions in the case. Some courts may expect certain written reports for this proceeding, such as a social summary prepared by the family's worker. This is a less formal process and may lead to an agreement of the parties, thus eliminating the necessity for a more formal hearing. These agreements are often desirable since they can reduce the adversarial nature of the proceeding, can eliminate the need for a child to testify in court, and can save the time and expense of a full presentation of evidence.

The attorneys for the parties may engage in negotiations to settle the matter through an agreement rather than a court decree. These discussions may occur at a prehearing conference or at any other point of the process. In order to bind the parties, a stipulation must be in writing or made on the record in court. The judge will generally incorporate the stipulation into a court order which has the same force as an order resulting from a hearing.

## **G. Participants in the Juvenile Court Process**

**Trainer Note:**

**Overhead #24 The Participants** is available for use.

### **Content of Presentation and Discussion:**

There are various key participants in the juvenile court process.

The parties are the persons concerned with or actively taking part in the proceeding. They have the right to present evidence, cross-examine witnesses, and appeal decisions of the court. In dependency matters, the parties are the petitioner, the respondents (usually the parents or guardians), and the child.

❖ The **petitioner** is usually the child welfare agency, although, as addressed earlier, it can be any interested person. Actual court appearances are usually made by the family's worker, although procedures may vary in individual counties.

❖ It is important that all **parents** and other custodians be made a part of the court matter. Non-custodial parents and involved putative fathers should be included. If the child cannot be returned to the custodial parent immediately, it might be possible to place the child with the other parent rather than in agency care.

Putative fathers who have not previously been involved in the child's life should also be included in the court process. Timely resolution of paternity issues is both in the best interests of the child, and important to further case processing.

When parents do not have custody, the child's foster parent, pre-adoptive parent or relative providing care for the child must be provided timely notice of the hearing by the agency, and the court must provide them with the opportunity to be heard at any hearing. This however, does not give the foster parent, pre-adoptive parent or relative providing care legal standing in the matter being heard. These individuals should be available to be present in court since the best decision may be to leave the child in their home, at least temporarily, and since they often have vital information about the child and family.

❖ The **child** is the subject of the juvenile court proceeding. Children should often be present at hearings, but their attendance can depend upon many factors including their age, their physical and emotional condition, and the degree that requiring them to be present might traumatize them. Regardless of the decision made regarding the child's inclusion, the child should be accessible in the event the court determines that the child's presence is necessary.

❖ A **judge** presides over the hearings and is responsible for making the required decisions. There are no juries in dependency matters, so the judge is responsible for determining facts as well as the law. The judge's involvement also requires rulings on motions, insuring that appropriate procedural rules are followed, and determining whether evidence is admissible. Additionally, the judge must read and decide on filings, such as petitions and stipulations.

Hearings may be conducted by a **master** rather than a judge. A master must be a member of the bar and is generally appointed by the court. The master must inform the parties of their right to appear before a judge. If there is no objection, the master hears the case and sends written findings and disposition recommendations to the judge. If the judge does not order a rehearing, the master's findings and recommendations become the order of the court, and are confirmed in writing by the judge.

❖ The **attorney for the petitioner** is often the agency solicitor. This individual is employed by the child welfare agency to represent the agency in court and provide other legal advice. In smaller counties, the solicitor often has other functions and is available to represent the agency on

a part-time basis. Other counties may have a full-time solicitor or a group of attorneys to represent the child welfare agency.

❖ The **attorney(s) for the parents** is required to protect the interests of the parents. If there is a conflict of interest between the parents, each parent may have their own attorney. Because it is often the parent(s) who is suspected of neglecting (and abusing) the child/ren, the parents will typically want to be represented by legal counsel in the juvenile court proceedings. There is a broad range in the quality of counsel in neglect and abuse proceedings. The quality of counsel ranges from the worst inactivity (for example, attorneys who meet with their clients only shortly before hearings), to attorneys with a high degree of dedication and skill. Workers can assist parents who cannot afford an attorney to arrange for meaningful representation by explaining what steps need to be taken to determine their eligibility for court-appointed counsel. By encouraging timely action by the parents, counsel can be appointed and they can confer with counsel before the hearing.

❖ Both the Juvenile Act and CPSL specify the **child's** right to **legal representation**.

The Juvenile Act clearly mandates appointment of counsel to advocate for the child.

The CPSL mandates the appointment of a guardian ad litem for the child in cases in which abuse has been alleged. The guardian ad litem must represent the best interests of the child at every stage of the proceeding. The CPSL mandates that the guardian ad litem make further investigation necessary to ascertain the facts, interview witnesses, examine and cross-examine witnesses, make recommendations to the court, and participate further in the proceedings to the degree appropriate for adequately representing the child. The CPSL further dictates that, when it is appropriate because of the age or mental and emotional condition of the child, the guardian ad litem shall also determine the wishes of the child about the proceedings and communicate the information to the court.

❖ In cases in which a stipulation cannot be reached and a court hearing will take place, **witnesses**, beyond the parties, may be needed to help prove the allegations contained in the petition.

To ensure the appearance of a witness in court, a subpoena may be served to compel the person to appear and present evidence at the hearing. The subpoena may also direct the person to bring documents or exhibits that are in their possession. Subpoenas should be served upon any witness that the worker believes may not appear in court voluntarily and is necessary for the proper presentation of the case to the court.

Generally, there are four types of witnesses: The child witness, the lay witness, the character witness and the expert witness. Each must be considered competent to testify and declare that he or she will testify truthfully.

Regardless of mental or physical incapacity or immaturity, any person is qualified as a witness if he/she has the ability to observe, remember, recount and understand the duty of a witness to tell the truth. Persons who lack the ability to relate their observations or who cannot distinguish truth from falsity are often disqualified. These may include very young children or persons lacking the mental capacity to understand an oath.

The competency of a **child witness** depends upon the capacity of the child, the ability to differentiate truth from falsity and the sense of duty to tell the truth. Age is not the criteria. In order to determine the child's competence, the judge may question the child, at times in the judge's chambers.

A **lay witness** is one who lacks any specialized knowledge or skill to qualify as an expert. Child welfare workers often testify as non-expert witnesses. As such, they can only testify about a matter of which they have first-hand knowledge. This means testimony only about observations, i.e. sight, hearing, feel, touch and smell. Unlike an expert witness, the lay witness cannot testify concerning inferences or conclusions drawn from the observations. The judge draws the conclusions.

A **character witness** offers evidence to show what an individual's recognized traits are, or to show the quality of an individual's conduct. For example, a parent's reputation for angry outbursts might be relevant in a physical abuse case.

An **expert witness** is one who possesses a special skill or knowledge in a particular area that exceeds the knowledge of an ordinary individual. Beyond observations, the expert witness can give an opinion and draw conclusions based upon their expertise.

On its own or at the request of one of the parties, the court may order witnesses to leave the courtroom while the hearing is in progress to ensure truthful testimony and avoid undue influence.

A witness who is sequestered must leave the courtroom and wait until called to testify. When testimony is complete, the witness leaves the courtroom and waits to see if they are called upon again, unless they are excused by the court.

**Trainer Note:**

In a large group discussion, brainstorm possible witnesses to call to a hearing on the Delaware family. The list includes: the older children, the worker, the mother, the mother's boyfriend, school staff and their attendance records, the police, medical person and documentation of the lice infestation, and the neighbor.

This will probably be lunch time.

## H. Informal Hearing

**Trainer Note:**

A flow chart of the various events in the judicial process and their timetables may be constructed on a flip chart to assist participants in understanding the sequence.

**Protective Custody** (can hold a child in protective custody for up to 24 hours)



**Petition** (must be filed within 24 hours after taking protective custody in cases of dependency, or within 48 hours after the informal hearing under the CPSL)



**Informal Hearing** (must be held within 72 hours of taking protective custody)



**Adjudicatory Hearing** (held within 10 days of the informal hearing if protective custody has been taken)



**Disposition Hearing** (scheduled immediately or within 20 days after the adjudicatory hearing)

**Permanency Hearing** (held every six months after the disposition hearing)

**Trainer Note:**

The above chart of events may change slightly in cases where aggravated circumstances have been found by the court in. The federal ASFA legislation (P.L 105-89), when describing the processes to be used when aggravated circumstances are alleged and found, does not specify that Courts must hold a disposition hearing in these cases. If a disposition hearing is not held, the court would move directly to a permanency hearing. This will vary from County to County across the Commonwealth.

## **Content of Presentation and Discussion:**

Both the Juvenile Act and the CPSL call for an informal hearing to be held within 72 hours of taking protective custody of a child. Other terms used for the hearing include shelter care hearing, 72-hour hearing, and detention hearing, however the law refers to it as the informal hearing.

At this hearing, the court reviews the initial decision to place the child/ren in protective custody, and determines whether continued placement outside the home is required. The main issue is whether or not the child can be immediately and safely returned home.

To evaluate the likelihood and severity of harm if the child is returned home, the court takes into account not only the facts and circumstances that gave rise to the original removal of the child, but also what might be done to safeguard the child in the home. In other words, consideration is given to the current danger to the child as well as how the danger can or cannot be eliminated.

The outcome of the hearing is a decision on whether the child should be returned home immediately or remain in placement pending further court action.

In the case of dependency, the petition would have most likely been filed before the informal hearing. If protective custody was taken under the CPSL and the child remains in placement pursuant to the informal hearing, the agency has 48 hours from the hearing to file the petition.

## **I. Adjudicatory Hearing**

### **Content of Presentation and Discussion:**

The adjudicatory hearing is held within ten days of the informal hearing. If protective custody has not been taken, but a petition has been filed, the first hearing is the adjudicatory hearing, held when the court wishes.

Adjudication means the pronouncement of a judgement based on the evidence. So, this hearing is established to determine the truth or falsity of the allegations contained in the petition. There are two questions to be answered (the first always applies, the second applies only in certain situations):

1. Whether the facts at the hearing lead to the conclusion that the child is either dependent or dependent and abused as defined by the Juvenile Act, and also the CPSL in the case of the latter.
2. If dependency is found by the court, **and** aggravated circumstances are being alleged by the agency or the child's attorney, whether the facts presented substantiate aggravated circumstances. **Note:** Alleged aggravated circumstances can only be ruled on by the court if a child has been found to be dependent.

***Question One: Dependent or Dependent and Abused:***

The burden of proof is on the party asserting the neglect, which, in most cases, is the agency. This means that the agency has the duty to substantiate the issues raised in the petition in order to convince the court of the truth of the claims and hence prevail in the case.

The standard of proof refers to the level of certainty by which the judge must be convinced that the allegations in the petition are true. In juvenile court, the standard is clear and convincing evidence.

This standard is more strict than the preponderance of evidence standard used in most civil proceedings. Preponderance means the petitioner must convince the judge that it is more likely than not that certain facts are true, or by a 51% degree of certainty. Clear and convincing evidence, though, is less stringent than the beyond a reasonable doubt standard used in criminal court.

The middle ground is used in order to balance the interests of the child's well-being with the right to family privacy. The clear and convincing standard requires proving that it is highly probable that the existence of the facts is true. The judge, in essence, must have a firm belief in the facts.

Because the adjudicatory hearing determines the intervention of the state in family life, sworn testimony, using rules of evidence, applies. For example, hearsay statements made by persons not in the courtroom are not generally permitted.

The hearing includes only testimony which relates to whether a given child fits within the statutory definition of dependency. Only "unfitness", not best interest, information is permitted.

The result of the hearing is to determine whether the child is dependent or dependent and abused. If the case is not proven and the child is not adjudicated dependent, the involvement of the juvenile court is ended. The case is dismissed and all conditions or restrictions are discharged. If the child is found to be dependent, the adjudication hearing is completed and the court moves to the next phase of the process.

***Question Two: Aggravated Circumstances:***

The *standard of proof* for a court to determine that aggravated circumstances exist is clear and convincing evidence. The petition must include a statement of the facts the county agency or child's attorney has to prove or support the allegation. **Note:** a criminal conviction is not required to prove the existence of aggravated physical neglect or physical abuse resulting in serious bodily injury or sexual violence committed by the parent.

There are two possible results when the court finds that aggravated circumstances exist:

1. If a judge finds that aggravated circumstances exist but that reasonable efforts should still be made to reunify the family, then services as needed are to be provided to the family.
2. If a judge finds that aggravated circumstances exist and that reasonable efforts are not to be made to reunify the family, then a permanency hearing is held within 30 days to determine what permanent living arrangement will be made.

If a judge finds that aggravated circumstances do not exist, then reasonable efforts to reunify the family apply.

## **J. Permanency/Dispositional Hearing**

### **Content of Presentation and Discussion:**

The dispositional hearing is the stage of the juvenile court process in which, after finding that the child is within the jurisdiction of the court, the court determines who shall have custody and control of the child and what the permanency plan for the child is. The court may also set additional conditions concerning the child's placement and may issue certain directives to the parties.

Whether the petition has been sustained, and what is to happen next to the child, are two distinct determinations that need to be examined separately. The two decisions are as distinct from one another as a finding of guilt is distinct from sentencing in criminal court. This separate, or bifurcated, hearing helps assure that there is an appropriate focus on dispositional issues such as removal of the child and visitation. The dispositional hearing is scheduled immediately or within 20 days of the adjudicatory hearing, if the child has been removed from the home.

The burden of proof remains on the agency.

The standard of proof remains clear and convincing evidence.

A clear necessity must be established if it is determined that alternatives to placement are unfeasible. However, during the dispositional hearing, the court can proceed in a more informal manner. Evidence that was not allowable in the hearing on the petition can be considered. The court can review all evidence that is helpful in determining the questions presented, including oral and written reports.

The hearing includes only testimony which relates to what dispositional alternative is to be taken by the court. Best interest information is considered. Opinions of social workers and others may be permitted.

The result is a decision on whether the child remains in his/her own home with court-ordered conditions, or custody is given to someone else.

Under the Juvenile Act, the court has several options of disposition and orders the one best suited to the protection and physical, mental and moral welfare of the child:

- The court may permit the child to remain with his/her parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes. This may include supervision as directed by the court for the protection of the child.
- Alternatively, the court may set conditions and limitations and transfer temporary legal custody to any of the following:
  - ✓ Any individual within or without Pennsylvania, including any relative, who, after study, is found by the court to be qualified to receive and care for the child.
  - ✓ An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.
  - ✓ Or, a public agency authorized by law to receive and provide care for the child.

The OTRM references a video which follows a case through the informal, adjudicatory and dispositional hearings. It is recommended that workers view "Confronting Child Sexual Abuse: A Video Training Series, Tape Two, Juvenile Court." Since the video is not Pennsylvania specific, workers should rely on information from this training when discrepancies are noted for such details as time frames.

## **K. Continuing Jurisdiction**

**Trainer Note:**

**Overhead #25 Items Discussed at Permanency Hearings, Overhead #26 Permanency Options and Overhead #27 Exceptions to Filing TPR Petitions** are available for use.

### **Content of Presentation and Discussion:**

Note that in the discussion of the disposition, the outcomes were all subject to the conditions and limitations of the court. This sets the stage for the court's continuing involvement.

Once a child has been adjudicated a ward of the juvenile court, the court retains jurisdiction or control over the child until the child either reaches age 18 (or in some cases age 21), or until the

jurisdictional status is otherwise terminated by the court. This jurisdiction is maintained through periodic reviews which measure the progress of the case in terms of the orders dictating the conduct of the parties, and determine the need to modify previous orders.

Once a child has been adjudicated dependent and is subsequently placed outside the home, the PL 105-89 (Adoption and Safe Families Act) requires that the court conduct **permanency hearings** in which specific information regarding the child's welfare is presented. To accomplish these reviews, the agency files a petition with the court, and includes a copy of the family service plan and the child's permanency plan.

The first permanency hearing must occur no later than six months from the date of placement. Subsequent reviews are held no later than six months from the previous permanency hearing. To accomplish these permanency hearings, the agency files a petition with the court, and includes a copy of the family service plan and child's permanency plan. These are often standard petitions which request the court to do two things.

- ❖ The first request is for the court to hold a permanency hearing. At this proceeding, the court determines:
  - ◆ Continuing necessity for and appropriateness of the placement;
  - ◆ Extent of compliance with the service plan;
  - ◆ Extent of progress made in alleviating the circumstances which necessitated the original placement;
  - ◆ A likely date for achievement of the child's goal.

Permanency hearings must be conducted at the following intervals:

1. Within six months of:
  - The removal of a child from the home;
  - Each previous permanency hearing until the child is returned home or removed for the jurisdiction of the court.
2. Within 30 days of:
  - A court's determination that aggravated circumstances exist and that reasonable efforts to reunify the family or prevent placement do **not** need to be made;
  - A permanency hearing at which aggravated circumstances were determined to exist, and reasonable efforts do not need to be made; however the permanency plan for the child is incomplete or inconsistent with the court's determination;

- When an agency (at some point beyond the initial intervention of the agency) discovers that aggravated circumstances may exist for a child already in placement;
- A petition alleging that a hearing is necessary to protect the physical, mental or moral welfare of a dependent child.

At permanency hearings, the following matters are discussed:

1. The continuing need for and appropriateness of the placement;
2. The appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child;
3. The extent of progress made toward alleviating the circumstances which required placement;
4. The appropriateness and feasibility of the current placement goal for the child;
5. The likely date by which the goal for the child might be achieved;
6. Whether the child is safe;
7. If the child has been placed outside of Pennsylvania, whether the placement continues to be best suited to the protection and physical, mental and moral welfare of the child;
8. If a child is 16 years of age or older, determine what services are needed to assist the child in making the transition to independent living;
9. If aggravated circumstances exist OR if a child has been in placement for at least 15 out of the last 22 months, determine whether the county agency has:
  - filed a petition to terminate parental rights
  - identified, recruited, processed and approved a qualified family to adopt the child.

NOTE: There are three exceptions for which an agency is *not required* to file a petition to terminate parental rights when the circumstances in paragraph #9 exist:

1. The child is being cared for by a relative best suited to the welfare of the child;
2. The agency has documented a compelling reason why the termination of parental rights would not be in the best interest of the child;
3. The child's family has not been provided with the necessary services set forth in the permanency plan.

On the basis of the above determinations being made, and all relevant evidence presented during a permanency hearing, the court shall determine if and when the child:

1. Should be returned to the parents, guardian or other custodian;
2. Will be placed for adoption (termination of parental rights petition filed by agency);

3. Will be placed with a legal custodian;
4. Will remain in another living arrangement intended to be permanent in nature and approved by the court. **Note:** The agency must document a compelling reason why options 1 through 3 are *not suitable* before this option can be exercised.

At the discretion of the court, permanency hearings do not need to be conducted if:

- a child has been placed in a court-approved living arrangement that is intended to be permanent in nature;
- a child has been placed in an adoptive home;
- a child has been placed with a permanent legal custodian appointed by the court.

### **Activity #13: Where Am I?**

#### Step 1

Divide group into subgroups of 4 to 5 participants. [Alternatively, participants can complete the exercise individually, or it can be completed in a large group discussion if time is short.]

Distribute **Handout #19: Where Am I?**. Explain that the list of statements are excerpts from higher court rulings or otherwise describe a component of certain hearings. Ask participants to determine at what type of hearing the ruling was made.

#### Step 2

Reconvene the group and solicit responses to each statement. Ensure that the following information is covered:

1. The court must ascertain whether the child is currently and prospectively without parental care, with the burden of proof on the party seeking to take the child from its parents.  
**(Adjudicatory hearing)**
2. Any decision to remove the child from the home must be based on the paramount purpose of ensuring the child's safety; such factors as age of child, extent of child's relationship with parent, and the nature of the parent-child relationship should be considered.  
**(Dispositional hearing)**
3. A court must ascertain not only what sort of parental care child received in the past, but also what sort of parental care child will receive in the future if he/she remains with the parents.  
**(Adjudicatory hearing)**

4. Evidence only as to a child's relationship with mother is insufficient. The court must determine whether a child's father is available and capable of rendering requisite care for and control over the child.  
**(Adjudicatory hearing)**
  
5. Except where aggravated circumstances are determined to exist and reasonable efforts determined to be not necessary by the court, even when there are inadequacies in the home, the court must aim to preserve the unity of the family. This may involve ordering child welfare services to instruct parents in skills needed to care for the child and to provide follow-up supervision in the home where feasible.  
**(Dispositional hearing)**
  
6. Evidence showed that child had severe bruises on his cheeks and abdomen and had received substandard care in the past.  
**(Adjudicatory hearing)**
  
7. Court determines whether reasonable efforts were made to prevent placement or whether the absence of said effort was reasonable due to the emergency nature of the removal or the  
**(Informal hearing)**
  
8. The court makes specific factual findings as to what efforts the agency is making to eliminate the need for placement of the child and whether such efforts are reasonable.  
**(Permanency Hearing)**
  
9. The court examines such things as: the extent of progress made toward alleviating the circumstances which required placement; the appropriateness and feasibility of the current placement goal for the child; the likely date by which the goal for the child might be achieved and whether the child is safe.  
**(Permanency Hearing)**

**Trainer Note:**

This will probably be break time.

## **Section VI**

### **The Role of the Worker**

**Rationale** An important part of training is to help workers understand their roles and responsibilities and to prepare them to provide a high quality of services to children and families. Discussion is needed to assure that workers are clear about their relationships to the other participants in the court process. Similarly, they must be prepared to effectively execute their role in court proceedings. Finally, in order to assure transfer of learning to the job, participants should participate in an activity in which they reflect upon their learning and commit to using the new attitudes, knowledge and skills in their work setting.

#### **Learning Objectives**

Participants will:

- ❖ Describe the relationship between the Child Welfare Professional and the agency solicitor and other participants in the juvenile court process,
- ❖ List the elements of providing effective court testimony,
- ❖ Identify new attitudes, knowledge and skills learned in training.

**Time** 1.5 hours

**Methods** Presentation by trainer, group and individual activities.

**Materials** Flip chart sheets or flip chart strips,  
Handout #20: How To Be a Good Witness,  
Handout #21: Something Big Is Up  
Handout #22: Bibliography  
Handout #23: Child Abuse and the Law

**Activity** Activity #14: The Good Witness  
Activity #15: Something Big Is Up

## **A. Relationship to the Agency Solicitor**

### **Trainer Note:**

You may wish to begin this segment by polling participants to determine how many participants know who their agency solicitor is and how many have met him or her. Those who do not have the information should be referred to their supervisor to determine who their solicitor is and discuss agency specific procedures for working with the solicitor.

### **Content of Presentation and Discussion:**

Historically, the intertwining of law and social work has engendered conflicts. Each profession has its own mission, content and ideology. Law is primarily concerned with the maintenance of social order through settlement of disputes, and social control. Social work focuses on the recognition and alleviation of human problems, within the context of human service organizations. So, the pairing of fields with essentially separate identities and missions can be a source of friction.

The two professions, though, can and do overlap, and complement and enhance each other in relation to the resolution of social problems. Law provides part of the direction, structure and legitimation with which social work addresses individual and societal problems. Social work brings substantive knowledge of human relationships that can be used in settling disputes or in shaping approaches to improve social conditions.

Generally, social workers have little, if any, legal training, and lawyers are rarely exposed to social work education. If good cooperation is to be enjoyed, each profession must continually be aware of the different, yet important, pieces each bring to the process, and educate one another in the skills, knowledge and reasoning of the other.

The first step, then, toward effective communication between the solicitor and Child Welfare Professional, is an understanding of one another's basic concepts. Participation in this course and learning agency procedures for working with the solicitor will provide many of the concepts to the worker.

The worker's relationship to the solicitor is much like the relationship with other professionals who are called upon when special needs arise. For example, a mental health professional may be called upon to assist in serving a particular, specialized need of a family that the worker cannot

alone meet. The mental health worker will bring his/her own profession's skills, knowledge and reasoning to the process. Some of the language will differ from that of the Child Welfare Professional. There will be areas where the two professionals overlap and there will be areas of difference that can give rise to conflict. Nonetheless, each must strive to cooperate and understand one another's basic concepts in order to work together in best serving the family's needs. Through regular contact, and the blending of each professional's knowledge and skills toward a common goal, the desired results can be realized. In much the same way, the solicitor is called upon to help meet the particular need of court intervention in the life of a family.

The solicitor is the attorney for the agency, meaning the agency is his/her client. As such, the solicitor attempts to convince the court to follow the recommendations of the agency regarding the child and family. As the agency's representative, the worker meets with the solicitor to provide the information s/he needs to represent the agency's position before the court. The worker must make critical decisions and judgements when determining what information will be important to the court proceedings. The worker must be able to articulate the factual, objective basis for his/her actions and decisions. All of the pertinent information must be related to the solicitor or it will likely not be brought before the court.

The court secures its information about a case largely through testimony. Workers and other witnesses can only testify in response to questions asked by the attorneys. A key piece of information may never be heard by the court if the worker does not provide it to the solicitor and the solicitor does not approach the issue through questioning. Depending upon the weight of the evidence, its absence could lead the court to reject the agency's recommendations.

In addition to the information that the worker can provide in court, there may be information that can and must be provided by other witnesses. The solicitor will likewise learn about these potential witnesses and their possible testimony from the worker. For witnesses chosen, the worker may need to arrange for the solicitor to meet with them so both the solicitor and the witnesses can be prepared for court.

At times, the solicitor and worker may disagree on the course of action and recommendations to be made to the court. These disagreements should always be worked out internally, prior to any interaction with the court or other parties, to assure a quality resolution to the case.

Again, the worker must become familiar with particular agency procedures to determine the flow of communication and any reports that may need to be completed, or additional steps that may need to be taken.

## **B. Relationship To Other Participants**

### **Content of Presentation and Discussion:**

Beyond the agency solicitor, the Child Welfare Professional has different relationships with the various participants in the juvenile court process.

- ❖ Both the juvenile court judge and the social service agency have crucial roles in the child welfare system. Children and youth services is the designated community agency for delivering preventive and supportive services to families in crisis. The juvenile court provides the legal framework for state intervention into family life.

Dependent upon factors such as the size of the county and its procedures, the judge and Child Welfare Professional might never interact outside of the trappings of the court. Yet, theirs is a unique relationship, and they share the same goal: to produce positive outcomes for children and families. Both strive to protect children and preserve families. Nonetheless, a tension exists between the two. The law calls upon the court to oversee the agency, to make orders relating to placement and care of the child/ren, and in many circumstances to direct what the agency should do. This oversight takes place within a legal environment, which the worker often finds foreign and hostile.

The worker must often defend his/her actions in court. Workers are cross-examined by attorneys, their judgements are challenged, and the judge may make orders which the worker finds unreasonable, unfounded and impractical. Perhaps most of all, the worker finds him/herself in an adversarial process, which seems ill-suited to the goals of child protection and family preservation.

Judges, too, sometimes find the relationship difficult and unsatisfactory. Some judges complain that juvenile dependency work is little more than social work with a legal gloss. Reviewing the delivery of social services is an untraditional, complex tasks that some judges have not been interested in learning. When agency staff are unprepared or reveal their displeasure with court oversight and the adversarial process, it does not make the tasks facing the judge any more attractive.

The judge and worker cannot do without one another, however. Laws do not permit the worker to remove children temporarily or permanently without some oversight. Parents and children need to have the opportunity to question agency action which violates family integrity, and the court seems a logical choice for that oversight. Moreover, child welfare needs the power and prestige of the courts when making decisions concerning the removal and return of neglected and abused children. When there are allegations of "child snatching" or unwisely returning children to neglectful or abusive parents, it is important for the agency to be able to point out that each of its decisions to remove or return a child has been approved by a judge.

(The challenge seems to be to develop a better working relationship between social services and the courts when it is absent. The principal attributes of a successful dependency system appear to include an adequately resourced county agency which can deliver services immediately to families in crisis, and a responsive court system prepared to ensure that a child removed from parental care reaches permanency without unnecessary delay.)

- ❖ Similarly as with the judge, the worker may have little contact with attorney(s) for the parents outside of the court. At minimum, the worker will interact with this attorney in court during cross-examination. If a case is highly contested, the relationship may be very adversarial, with the worker's actions and judgements questioned and even criticized. On the other hand, there may be a relationship of mutual respect for the respective roles, and a free exchange of information and positions. It is prudent to consult with the solicitor to determine the level of contact between the worker and the parents' attorney(s). At times, the solicitor may advise that all of these contacts occur through him/her. Some attorneys will be minimally involved with their clients and will only appear at court proceedings. Others may be very involved and attend meetings between the worker and parents, such as to develop the family service plan, interview the worker, review files and other reports, and monitor the case progress. Throughout these contacts, the worker should remember that one of the attorney's roles is to assure that all rights due the parents are preserved, a role that is shared with the worker.
- ❖ In many, but not all, court proceedings, the position and recommendations of the guardian ad litem will be the same or similar to that of the worker. This is not to say that an adversarial relationship will never arise. If there is any doubt, consult with the solicitor as to whether contact should be direct or through the solicitor.

Generally, though, the worker will interact cooperatively with the guardian ad litem. This attorney may cross-examine the worker in court. They may ask the worker to arrange a meeting between the child and the attorney. The guardian ad litem may also wish to interview the worker, review files and other reports and monitor the case progress. The worker should remember that an attorney must be an advocate for his/her client. While the worker shares this advocacy role, the worker has a broader responsibility of balancing the child's rights with those of the parents.

- ❖ Witnesses for the agency are often determined by the worker and solicitor. The worker will sometimes serve the subpoena on a witness, and otherwise keep them informed of the time and place of the hearing. The worker may arrange for the solicitor and witnesses to meet and review testimony. Some witnesses, especially those who are inexperienced in testifying, may exhibit anxiety over the process. The worker can assist by discussing the importance of their court appearance to the child, by reviewing the court process and procedures, and by providing tips on appropriate court conduct.

- ❖ The worker's professional relationship with the parents continues in accord with the family service plan, despite the court proceedings. Services may be modified dependent upon any court rulings. The previous working relationship may change, though, once a petition has been filed or the child is removed. The actions may generate hostility. It is difficult for the worker to be both a helper to the family and an adversary in court, and the effectiveness of services may be diminished. It is critical that the worker be direct and honest with the parents about the involvement of the court. The worker must assure that the parents' rights are upheld, and will likely be the person to provide all necessary notices and help the parents to engage an attorney if they cannot afford one.

Beyond the minimum notices and requirements, the worker can assist the parents by taking steps to assure that they are not unduly disadvantaged in the court process. A parent, for example, may be unable to read or have poor comprehension, so receiving written notice of the proceedings will be of little use. In this case, the worker can meet with the parents to lay out what is happening and relate the details of the notice in an understandable fashion. English may not be the first language for some parents, so translation of notices and court documents may be needed. The worker may need to determine what arrangements can be made for court hearings when the parents do not speak English or are hard of hearing or deaf.

If the parents have little experience in working with an attorney, the worker can discuss expectations that the parents should have for their counsel. It is critical that the worker assist parents who are indigent to secure counsel. On the practical side, if the parents appear in court without an attorney, but want representation, the hearing will be postponed. More importantly, assisting parents in securing counsel will help assure that their rights are rightfully preserved. The process can be aided, and quality representation better assured, if the worker assists the parents in making the requisite contacts in a timely fashion so that their attorney can meet with them in advance and adequately prepare for court. Each party must be completely and diligently represented in order for the juvenile court to function effectively.

- ❖ The worker's professional relationship with the child's foster parent, pre-adoptive parent or relative providing care for the child is also very critical. These temporary care providers must be given notice of all hearings related to the child in their care and are required to have the opportunity to be heard at those hearings. While the opportunity to be heard does not give the temporary caregiver legal standing in court, it does allow the caregiver the opportunity to provide information to the court that he or she believes to be critical for the court to make an informed decision about the child's situation. The court is looking for factual information, rather than opinions. The caregiver can provide this information in person during the hearing, or in writing if desired. The worker may be asked to assist the agency solicitor in preparing the caregiver thinking through what information they feel the court needs to hear in regards to the child's situation. The worker should also be aware that caregivers may have a very different perspective than the agency, and this is acceptable.

- ❖ The final participant with whom the worker will have a relationship is the child. As with the parents, the worker's services to the child will continue throughout the court's proceedings. Age-appropriate children will be aware of court proceedings and will likely have concerns. The worker should explain the proceedings to the child in a manner understandable to the child.

For children who must testify, the worker can take steps to minimize stress for the child:

- Explain why going to court is necessary
- Take the child to the courtroom or other facility to be used before the hearing. Point out the role of the different participants and where they will sit. Allow the child to "try out" the chair in which they will sit during the hearing.
- Arrange for the guardian ad litem or child's attorney to meet with the child. S/he may be able to role play questions to be asked.
- Monitor the family to protect the child from intimidation by hostile parents or other family members.
- Encourage the child to express any fears.

In the case of emergency placements, a myriad of tasks must occur in a very short period of time. Workers should expect that this will be an especially hectic period for them.

However, striving to complete all tasks in a quality fashion will help prevent legal issues and problems as the case proceeds and minimize the disruption of this serious intervention into the life of the family.

## **C. Court Testimony**

### **Activity #14: The Good Witness**

#### **Step 1**

Divide group into subgroups of 4 to 6 participants. Distribute a flip chart or flip chart strips to each group. Instruct each group to develop a list of elements important to serving as a good witness.

#### **Step 2**

Rotate among the groups to solicit ideas and develop a comprehensive list of elements to be considered by good witnesses. Assure that the following tips for testifying are addressed:

- Be on time, but expect a lengthy waiting period.
- Being prepared is the best ally in the courtroom. Have a complete knowledge of the case record. Refresh your memory and recall events. Do not memorize, though, since you will sound artificial.
- Dress is business attire. Courts are conservative. Your appearance may add or detract from your credibility.
- Review the case with your attorney in advance. Discuss what questions will be asked and what challenges to expect. Bring up points and questions that you think are important. Know that opposing counsel may tear you down.
- Expect to feel anxious. It is normal. Actually, as with public speaking, it gets the adrenaline going and can help you to do a better job if you do not let it overwhelm you. 90% of the population is fearful of public speaking. Common symptoms of nervousness include speaking rapidly in a monotone, slumping in the chair, and an inability to recognize anyone in the courtroom. These symptoms can be minimized:
  - >Speak a little louder and a little slower than normal.
  - >Sit straight back in the seat and do not allow your shoulders to slump.
  - >Orient yourself to the courtroom. Look around the room for a familiar face.
- Tell the truth, no matter how much it hurts. Do not compromise your credibility or try to influence the outcome.
- Do not guess. If you do not know the answer, say so. "I do not know" or "I do not remember" are acceptable answers.
- Listen to the question, be certain you understand it, then answer what is asked. If you do not understand the question, you may ask the attorney to repeat it.
- Be sincere, dignified and warm. You want to appear humane and concerned about this serious matter. It will add to your credibility.
- Speak clearly and distinctly. You must answer with words, not gestures. Make sure that everyone hears you. It is easy, for example, to lose your train of thought if the court reporter makes you repeat things.
- Be cautious of what you say. There is no room for humor, sarcasm, slang, or swearing in the courtroom. Avoid acronyms. Use proper English. Do not appear defensive. Avoid all off-hand responses. Keep to the facts.

- Be positive and firm in your responses. Avoid maybe, I guess, I think. Absolute self-control is essential. Do not lose your temper or argue with opposing counsel. Be courteous.

### Step 3

Distribute **Handout #20: How To Be a Good Witness**.

**Trainer Note:**

Ask participants to complete the evaluation at this time.

Review the "Needs" flip charts from day one to determine if there are any remaining issues to address or to refer to other resources.

Describe the remaining CORE courses and reassure participants that considerable training and experience are necessary to perform this very difficult job in a competent manner. Participants should be reminded to be patient and not to allow feelings of inadequacy or worry about their performance to interfere with their willingness to learn new skills and to ultimately master the job.

## D. Transfer of Training

### Activity #15: Something Big Is Up

#### Step 1

Distribute **Handout #21: Something Big Is Up** to participants. Return the "Individual Strengths and Needs Plan" to each participant. Instruct participants to complete the Handout individually while reviewing their initial Plan.

#### Step 2

Ask for a few volunteers to share pieces of their plan in the following areas:

- I now know....
- I will start....
- I will stop....

- I will continue to....
- I deserve a compliment because....

### Step 3

Offer specific compliments to the group for such things as their participation, attention, cooperation, humor, etc. Wish them well in their important position of Child Welfare Professional.

### **Closing and Evaluation:**

Distribute **Handout #22: Bibliography** to all participants. Inform participants that the bibliography for this workshop lists resources that may be valuable to them during the course of their work. Many of the resources are available through their Regional Training Center OR the Central Management Organization of the Training Program based at Shippensburg University.

If not already provided to participants earlier in the training, distribute **Handout #23: “Child Abuse and the Law”** to all participants.

Workshop evaluations should now be distributed to all participants.