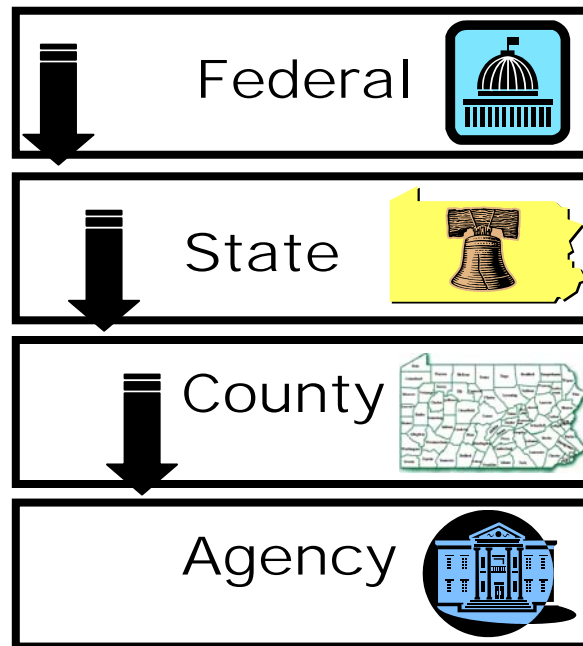


Legal Guidelines and Mandates for Child Welfare Intervention in Pennsylvania

GOAL: To ensure for each child a **permanent, legally assured family which protects the child from abuse and neglect** (55 Pa. Code Chapter 3130 regulations).

This goal is balanced by the **preservation of reasonable parenting** outlined in the Adoption and Safe Families Act of 1997, which identifies that nothing in the act is "intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting."



Federal Mandates

Federal Mandates:

- **Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272, 42 U.S.C. §608, 620-628, 670-676):**

Congress enacted this Act, by amending the Social Security Act, to provide fiscal incentives to states to reduce the unnecessary placement of children in foster care and to ensure periodic review of the cases of children in placement. The amendments require that before a state may receive federal reimbursement for a child in foster care:

Legal Guidelines and Mandates for Child Welfare Intervention in Pennsylvania (continued)

Federal Mandates—(continued)

- **Adoption Assistance and Child Welfare Act of 1980 (continued):**

1. A judge must in each case find that the state has made "reasonable efforts" to prevent placement of the child or to reunite the child with his or her family;
2. The state must develop a written case plan for the child;
3. The state must ensure that the case is reviewed every six months by a court or administrative body with a full judicial review within 18 months of the child's placement (Juvenile Law Center, 2000).

- **Adoption and Safe Families Act of 1997 (ASFA) (P.L. 105-892, 42 U.S.C., 1305):**

On November 19, 1997, President Clinton signed the Adoption and Safe Families Act of 1997, Public Law 105-89, which amends Title IV-B and Title IV-E of the Social Security Act. ASFA establishes unequivocally that the goals for children in the child welfare system are safety, permanency, and well being. The law intends to make the child welfare system more responsive to the multiple, frequently complex, needs of children and their families. While affirming the need to forge linkages between the child welfare system, the courts, and other support systems for families, the law reaffirms the need to assure the safety and well being of children and their families. The law provides renewed impetus to dismantling the barriers to permanence existing for children in placement and the need to achieve permanency for these children.

ASFA embodies several key principles that must be considered in implementing the law:

- The child's safety is the paramount concern. All decisions must be made based on the child's safety and well being.
- Substitute care is a temporary setting. It is not a place for children to grow up. For children who cannot safely return home, the law provides for an expedited process to find these children permanent homes.
- Permanency planning for children begins as soon as the child enters substitute care. From the time a child enters placement, the county agency must be diligent in finding a permanent

Legal Guidelines and Mandates for Child Welfare Intervention in Pennsylvania (continued)

Federal Mandates—(continued)

- **Adoption and Safe Families Act of 1997 (ASFA)—continued:**

family for the child.

- The practice of concurrent planning is encouraged by ASFA to facilitate the timely considerations of all permanency options for the child.
- Achieving permanency for children requires timely decisions from all parts of the child serving system.
- Innovative approaches are needed to produce change. The law envisions real change in the child welfare programs (Commonwealth of Pennsylvania, 2001).

The implementation of the ASFA is measured through the following:

Child and Family Service Reviews (CFSR):

- The 1994 Amendments to the Social Security Act authorized the Department of Health and Human Services to review State child and family service programs in order to assure compliance with the State plan requirements in titles IV-B and IV-E of the Social Security Act. The reviews cover child protective services, foster care, adoption, family preservation, family support, and independent living. They are designed to help States improve child welfare services and the outcomes for families and children who receive services by identifying strengths and needs within State programs, as well as areas where technical assistance can lead to program improvements.
- The reviews examine outcomes and systemic factors in each State's child and family service program. The reviews examine outcomes for children and families in three areas: safety, permanency, and child and family well being. Within these three areas, seven outcomes are assessed through statewide data and reviews of cases, as follows:
 1. Children are, first and foremost, protected from abuse and neglect.
 2. Children are safely maintained in their homes whenever possible.
 3. Children have permanency and stability in their living conditions.
 4. The continuity of family relationships and connections is preserved for children.

Legal Guidelines and Mandates for Child Welfare Intervention in Pennsylvania (continued)

Federal Mandates—(continued)

5. Families have enhanced capacity to provide for their children's needs.
 6. Children receive appropriate services to meet their educational needs.
 7. Children receive adequate services to meet their physical and mental health needs.
- **Indian Child Welfare Act of 1978 (ICWA)—(P.L. 95-608, 92 Stat. 3069, 25 U.S.C. §§1901 et. seq.):**

In Public Law 95-608, Congress "declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs."

An Indian child means any unmarried person who is under the age of eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. In an adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

In any foster or pre-adoptive placement of an Indian child, a preference shall be given, in the absence of good cause to the contrary, to a placement with: (1) a member of the Indian child's extended family; (2) a foster home licensed, approved, or specified by the Indian child's tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

Legal Guidelines and Mandates for Child Welfare Intervention in Pennsylvania (continued)

Federal Mandates—(continued)

- **Multiethnic Placement Act of 1994: (MEPA), P.L. 103-382, §§ 551 et. seq.:**

Congress passed the Multiethnic Placement Act in 1994 in an attempt to decrease the length of time that children wait to be adopted; to prevent discrimination in the placement of children based on race, color, or national origin and to facilitate the identification and recruitment of foster and adoptive parents who can meet children's needs. Congress further strengthened the enforcement of these anti-discrimination provisions when it passed the Interethnic Adoption Provisions in 1996.

The Act states that "...neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care may--(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of race, color, or national origin of the person, or of the child involved; or (B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved." An Administration for Children and Families Information Memorandum states that "Every child, especially one who is languishing in foster care deserves a loving family. Discriminating against these children, or the families that wish to foster or adopt them, on the basis of race, color or national origin, is illegal. Equally important, however, is that such discrimination wrongly denies these vulnerable children the opportunity to enjoy the immeasurable benefits associated with being part of a loving family."

- **Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 (IEP), P.L. 104-188, §§ 1808, et. seq.:**

IEP is seen as an amendment to MEPA and mandates that public and private agencies which receive federal funding are prohibited from delaying or denying placement of a child on the basis of race, color or national origin of the child, foster or adoptive parents. Categorical decisions regarding placement based on the race, color or national origin of the child, foster or adoptive parents are prohibited. Agencies are allowed to consider race or ethnic background in making placements decisions only on an individualized basis connected to the best interests of the child.

Legal Guidelines and Mandates for Child Welfare Intervention in Pennsylvania (continued)

- **Foster Care Independence Act of 1999**

In 1999, The Foster Care Independence Act of 1999 was passed and signed into law renaming it the “John H. Chafee Foster Care Independence Program”. This law outlines Children and Youth’s responsibility to offer children in placement who are over the age of 16 Independent Living services.

State Mandates

- **The Child Protective Services Law (CPSL) -- (23 Pa. C.S. §§ 6301—6385):**

First enacted in 1975, the CPSL notes that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. It notes several purposes:

- Establishes child protective services
- Provides protection for children from further abuse
- Provides rehabilitative services for children and parents
- Encourages complete reporting of suspected child abuse
- Involves law enforcement agencies
- Establishes procedures to assess risk of harm

- **The Juvenile Act -- 42 Pa. C.S. § 6365:**

This act was first enacted in 1972 and was most recently updated in January 2008. It sets out five purposes: These services must:

- Preserve the unity of the family whenever possible or to provide another permanent family. When the unity of the family can be maintained.
- To provide for the care, protections, 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.
- 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.

Legal Guidelines and Mandates for Child Welfare Intervention in Pennsylvania (continued)

State Mandates—(continued)

- 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.
- **Protection from Abuse Act (23 Pa. C.S § 610/611):**

Where the Juvenile Act and CPSL involve state action specifically to protect children, the Protection from Abuse Act 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, to include ordering the abusive family member out of the house for up to one year. A petitioner need only show by preponderance of the evidence that the child was abused.
- **The Pennsylvania Adoption Act (23 Pa. C.S. Part III) :**
 - This act 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 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.
- **Pennsylvania Adoption Opportunities Act of 1974**
 - The purpose of this law is to promote placement of children who are physically and/or mentally handicapped, emotionally disturbed or difficult to place by virtue of their age, sibling relationship, or ethnicity. Under this law, adopting families may apply for financial assistance on behalf of children with special needs.

Legal Guidelines and Mandates for Child Welfare Intervention in Pennsylvania (continued)

State Mandates—(continued)

- **Newborn Protection Act (“Safe Haven”), Act 201 of 2002, (42 Pa C.S. § 6401, et. seq.):**
 - This Act permits a parent to leave a newborn at a hospital without fear of criminal prosecution when the child has not been a victim of suspected child abuse.
- **Crimes Code:**
 - This body of law is enacted to preserve the public order by defining an offense against the public and imposing a penalty for its violation. These offenses may be prosecuted in a criminal proceeding before the court.
- **Regulations:**
 - Regulations are rules for controlling governmental bodies' behavior. The regulations are issued by administrative agencies, such as the Department of Public Welfare. They bind each county in its administration and provision of services and describe implementation of legal requirements. They are the nitty gritty workings of the law that elaborate upon implementing the law on a daily basis. Regulations relating to child welfare practice include:
 - 55 Pa. Code Chapter 3130 - Administration of County Children and Youth Social Service Programs
 - 55 Pa. Code Chapter 3350 - Adoption Services
 - 55 Pa. Code Chapter 3490 - Child Protective Services – Child Abuse
 - 55 Pa. Code Chapter 3700 - Foster Family Care Agency
- **Bulletins:**
 - Issued by administrative and regulatory agencies, such as the Department of Public Welfare, Bulletins implement legal requirements. They present statements of policy and guidelines, which are used, for the most part, until regulations are published as final rulemaking or explain regulatory requirements in more detail.