

2

CHAPTER 2

Introducing the Law, the Child Protection System & the Courts

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CHAPTER 2

Introducing the Law, the Child Protection System & the Courts



HOMEWORK RECAP

RESOURCE MATERIALS EXPLORATION

Look at the Chapter 2 Web Resources or the Chapter 2 Resource Materials. Pick at least one website or article to explore, and bring back what you learn to share with the group, the facilitator, and your local CASA/GAL program. When you come to this training session, write up a brief description of the resource on an index card provided by the facilitator.

MEDIA REPORTS ON CHILD ABUSE

Look and listen for media reports (newspaper stories, magazine articles, TV reports, and/or radio broadcasts) regarding child abuse today. Make notes about information that you find. We will use the information that you gather to compare child abuse today with child abuse historically.



GOAL

In this chapter, I will increase my understanding of child abuse and neglect issues and the development of child advocacy laws. I will be introduced to the laws, the child protection system, and the court procedures that apply to my work as a CASA/GAL volunteer.



OBJECTIVES

By the end of this chapter, I will be able to . . .

- ✓ Describe how the history and development of child abuse and neglect laws affect policy and law today
- ✓ Identify applicable state, tribal, and local laws and understand how these laws guide the work of the CASA/GAL volunteer
- ✓ Explain how a child abuse or neglect case enters the child protection system
- ✓ Recognize the different hearings and what occurs at each point in the juvenile court process
- ✓ Identify the roles and perspectives of the various people in a child abuse or neglect court case

The Development of Child Abuse & Neglect Laws

Activity 2A: Mary Ellen’s Story

Part 1: Listen as the facilitator describes one of the first documented cases of child abuse in the United States.

Mary Ellen’s Story

Mary Ellen’s case took place in 1874. Her spirit remains with us because her case is generally regarded as the beginning of public concern for the plight of abused and neglected children.

Mary Ellen was a child whose father was dead and whose mother could not care for her because she was destitute and had to work full-time. The New York Commission of Charities and Correction placed Mary Ellen with Mary McCormack Connolly and her husband, who were to care for her and report each year on her progress.

Instead, Mrs. Connolly abused her. She beat Mary Ellen, locked her in a room, rarely allowed her outside, and did not provide adequate food or clothing.

Upset by the child’s screaming, a neighbor told a mission worker about Mary Ellen. The mission worker could find no one to intervene; at the time, laws protecting children were not systematically enforced.

The mission worker finally appealed to Henry Bergh, the founder and president of the ASPCA, the American Society for the Prevention of Cruelty to Animals. He took up Mary Ellen’s cause and was able to persuade a judge to hear her case.

Mary Ellen was carried into the courtroom wrapped in a blanket. This is what the newspaper reported that she told the judge:

My father and mother are both dead. I don’t know how old I am. . . . I call Mrs. Connolly mamma. I have never had but one pair of shoes, but I cannot recollect when that was. . . . My bed at night has only been a piece of carpet stretched on the floor underneath a window. . . . Mamma has been in the habit of whipping and beating me almost every day. She used to whip me with a twisted whip—a raw hide. . . . She struck me with the scissors and cut me; I have no recollection of ever having been kissed by any one—have never been kissed by mamma. . . . Whenever mamma went out I was locked up in the bedroom. . . . I do not want to go back to live with mamma because she beats me so.

Mary Ellen was removed from the people who had mistreated her. Her case stirred public attention, and complaints began to pour in to Henry Bergh. So many cases of child beating and cruelty to children came to light that citizens called a community meeting and formed an association “for the defense of outraged childhood.” That association gave rise to the Society for the Prevention of Cruelty to Children, which was formally incorporated the year after Mary Ellen’s situation came to light.



LEARN MORE!

A more detailed account of Mary Ellen's story appears in the Chapter 2 Resource Materials.

Part 2: In pairs, discuss how you felt as you listened to Mary Ellen's story. On the cards or scrap paper the facilitator provides, each of you should write one word that describes your feelings.

Still in pairs, answer the following questions:

- Why do you think Mary Ellen's situation happened?
- How is Mary Ellen's story different from the ones you learned about through the media accounts that you gathered for homework?
- How is it similar?

In the large group, hold up the card with the feeling you wrote. What do you observe?

Activity 2B: The Development of Child Abuse & Neglect Laws

Part 1: Listen as the facilitator presents a brief history of attitudes toward and treatment of children.

Historical Treatment of Children

Historically, many cultures did not value children. There are exceptions to this, of course, and some cultures have respected and protected children throughout history.

Many practices that were once accepted or condoned would be considered abusive today, such as:

- Treating children as “property” with no rights
“The justice of a master or father is different from that of a citizen; for a son or a slave is property and there can be no injustice to one's property.” — Aristotle
- Harsh physical discipline
“If one beats a child until it bleeds then it will remember; but if one beats it to death, the law applies.” — 13th-century saying
- Infanticide—the willful killing of a child—particularly of weak or “deformed” infants and of female children
- Dubious child-rearing practices, such as swaddling for prolonged periods or early marriage of children
“We went the next day into the town and to the house of the merchant and he said, ‘My daughter is 13 years old and no longer a child and she is fit for marriage.’” — Pearl S. Buck, The Good Earth

Some cultures honored and supported children by:

- Punishing the mistreatment or murder of children

The Code of Hammurabi (1780 B.C.E.)

- Opposing physical discipline

“A loving parent’s hands should be as soft as feathers and not cast iron, and should not break bones.” — Ghana

“A whipped child loses courage and his soul withers and dwindles away until he dies. For the soul of a child is a tender thing and easily hurt.” — Havasupai

Deeply embedded in the history of many industrialized societies, including the United States, were “antichild” practices such as:

- Indentured servitude and child slavery
- Orphan trains
- Boarding schools for Native American children
- Child labor in mines and factories

Part 2: Follow along on the poster as the facilitator gives an overview of the development of child abuse and neglect laws. During the presentation, the facilitator will fill in information about the development of state, tribal, and local laws. In the large group, share what stands out to you.

Child-focused policies are relatively new.

- 1899: First juvenile court (Chicago) placed dependent and delinquent children in homes for wayward youth or reform schools
- 1910: Development of X-ray technology, which eventually allowed doctors to detect subdural (under the skin) injuries and untreated fractures
- 1938: First legal rights of children—Fair Labor Standards Act imposed restrictions on working hours and conditions
- 1962: Dr. C. Henry Kempe created the diagnosis for battered child syndrome
- 1965: Mandatory reporting laws in place in all states

Beginning in the 1970s, the United States Congress became aware (along with the rest of the nation) that the child welfare system was not adequately protecting children and their families. From a historical perspective, it can be said that we are still relatively new to the concepts of protecting abused and neglected children and developing appropriate systems, methods, and programs to cope with the problems these children face.

The chart on the next page outlines information about federal child abuse and neglect laws.

LEARN MORE!

Detailed summaries of the federal laws that impact your work as a CASA/GAL volunteer appear in the Chapter 2 Resource Materials.

Federal Child Abuse & Neglect Laws

1974: Child Abuse Prevention and Treatment Act (CAPTA), Public Law 93-247, amended in 1996

UNIT
1

Created the National Center on Child Abuse and Neglect and earmarked federal funds for states to establish special programs for child victims of abuse or neglect.

For CASA/GAL volunteers:

- Learn whether you, as a CASA/GAL volunteer, are a mandated reporter.
- Learn whether the guardian ad litem has to be an attorney in your state.

UNIT
2

This law requires that states:

- Have child abuse and neglect reporting laws
- Investigate reports of abuse and neglect
- Educate the public about abuse and neglect
- Provide a guardian ad litem to every abused or neglected child whose case results in a judicial proceeding
- Maintain the confidentiality of child protective services records

UNIT
3

1978: Indian Child Welfare Act (ICWA), Public Law 95-608

- Recognizes that Indian children have special rights as members of sovereign nations within the United States
- Responded to congressional hearings in the 1970s that revealed a pattern of public and private removal of Indian children from their homes, undermining their families and threatening tribal survival and Native American cultures
- Was designed to implement the federal government's trust responsibility to the nations by protecting and preserving the bond between Indian children and their tribe and culture
- Sets up placement preference schemes for foster care placements and adoptions of children who have been determined to be Indian children
- Establishes the right of certain entities, including the tribe and the Indian custodian, if one exists, to appear as parties to child welfare cases
- Determines when and if a case should be transferred to tribal court
- Describes rights of the Indian child and the child's tribe

For CASA/GAL volunteers:

- Ask whether every child has Native heritage.
- Investigate tribal resources and services that can be of great benefit to the child.
- Be aware that jurisdiction can be transferred to the tribal court.
- Pay attention to the heritage and identity needs of the child.
- Remember that ASFA timelines (see next page) do not apply to Indian children.
- Keep in mind that ICWA takes precedence over other federal and state law.

Federal Child Abuse & Neglect Laws

2

CHAPTER

1980: Adoption Assistance and Child Welfare Act, Public Law 96-272

This law requires that states:

- Recruit culturally diverse foster and adoptive families
- Comply with the Indian Child Welfare Act
- Establish standards for foster family homes and review the standards periodically
- Set goals and a plan for the number of children who will be in foster care for more than 24 months
- Provide “reasonable efforts” to prevent or eliminate the need for removal of the child from his/her home or to make it possible for the child to return to his/her home
- Have a data collection and reporting system about the children in care

For CASA/GAL volunteers:

- Consider possible placements that respect the child’s cultural heritage but do not limit his/her options.
- Learn the name of the data collection system used in your state:

- Learn how to access this information:

UNIT
1

UNIT
2

UNIT
3

1990: Indian Child Protection and Family Violence Prevention Act

- Establishes federal requirements for the reporting and investigation of child abuse and neglect on tribal lands
- Requires background checks on individuals who have contact with Indian children (including foster and adoptive families)
- Authorizes funding for tribal child abuse prevention and treatment programs

1993: Court Improvement Legislation

Encourages reform in the court system

1994: Multi-Ethnic Placement Act (MEPA)

The goals of this law are to:

- Decrease the time children wait to be adopted
- Prevent discrimination on the basis of race, color, or national origin in the placement of children and in the selection of foster and adoptive placements
- Facilitate the development of a diverse pool of foster and adoptive families

1996: Child Abuse Prevention and Treatment Act (CAPTA) Amended

Amended to include Court Appointed Special Advocates as guardians ad litem

1997: Adoption and Safe Families Act (ASFA), Public Law 105-89

This act embodies three key principles:

- The safety of children is the paramount concern.
- Foster care is a temporary setting and not a place for children to grow up.
- Permanency planning should begin as soon as the child enters foster care.

The act directs timelines within which the child welfare system operates:

- Requires permanency plan within 12 months
- Requires dispositional hearing within 12 months of placement
- Requires court reviews every six months

1997: Volunteer Protection Act

Limits liability of volunteers

1999: Foster Care Independence Act

Addresses needs of older youth in foster care, particularly those aging out of the system



LEARN MORE!

To find out more about how tribes and states interact on child welfare cases, see “Tribal-State Relations: Promising Practices in Child Welfare” in the Chapter 2 Resource Materials.

THE INDIAN CHILD WELFARE ACT

It is critical to understand that ICWA applies different standards to cases involving Indian children. It is always in the best interest of an Indian child to have ICWA followed. Therefore, you should always ask if the child you are working with has Native heritage, even if the child does not “look Indian.” By identifying Indian children and monitoring ICWA compliance, you can help ensure that the Indian child’s cultural and familial needs will be fully considered by the court.

ICWA resources:

- ✓ The CASAnet website, www.casenet.org. An ICWA section provides articles and more in-depth information.
- ✓ National Indian Child Welfare Association, www.nicwa.org. Several excellent packets of ICWA information are available for a small charge.
- ✓ National CASA staff, staff@nationalcasa.org. National CASA program specialists can answer questions and provide information regarding ICWA.

OTHER LAWS THAT AFFECT CASA/GAL VOLUNTEER WORK

In your work as a CASA/GAL volunteer, you will encounter other federal laws that have an impact on child abuse and neglect cases. Following are a few of them:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires, among other things, permission or a court order to access “protected health information” for any individual. Your program will have information on how to access health records.

Special Immigrant Juvenile Status (SIJS) assists some children, including those in foster care, in obtaining legal permanent residency.

Title VI of the 1964 Civil Rights Act says that any entity that receives federal funds must provide a professional interpreter in court.

Titles IV-B and IV-E of the Social Security Act: IV-E is the primary federal funding stream that partially reimburses states for foster care for qualified children. IV-B allots funding for targeted case management services. The state must pay all expenses for a child who is not IV-E eligible out of state general revenues. These expenses include foster care, therapy, etc.

The Victims of Child Abuse Act of 1990 (VOCAA) protects the privacy rights of child victims or witnesses during the investigation or prosecution of a federal crime.



LEARN MORE!

To find out more about laws related to a child’s education needs, see National CASA’s E-Learning series, “Education and Youth in Out-of-Home Care.”

Activity 2C: Your State Child Abuse & Neglect Laws

Part 1: Read the information that follows about the legal requirements for state definitions of child abuse and neglect.

Each state provides its own definitions of child abuse and neglect. There are three places in state statutes where child abuse and neglect are defined:

- Child abuse reporting laws for the identification of cases that warrant reporting
- Criminal codes for defining unlawful behavior
- Statutes for governing the juvenile court for determination of abuse and neglect

In order for states to receive a federal grant for funding under the Child Abuse Prevention and Treatment Act (CAPTA), they must utilize definitions of child abuse and neglect that include, at a minimum, certain specifications. State laws are largely based on the requirements of federal legislation, such as CAPTA. Each state legislature must make its own decisions about how to meet the requirements of federal laws and the needs of the state.

According to definitions of child abuse and neglect on the Child Welfare Information Gateway website:

Under CAPTA, child abuse and neglect means, at a minimum: “Any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”

The term sexual abuse includes: “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 or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or the rape, and in cases of caretaker or interfamilial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.”

Part 2: In small groups, go through the handout containing your state’s child abuse and neglect definitions (first introduced in Chapter 1) and mandatory reporting statutes. How do your state definitions comply with the CAPTA requirements? How do they go beyond CAPTA requirements? In the large group, ask any questions you have about state laws.

LEARN MORE!



To find out more about your state’s laws, go to the Child Welfare Information Gateway State Statutes Search website, www.childwelfare.gov/systemwide/laws_policies/search/index.cfm, where you can search by state for statutes related to abuse and neglect, permanency planning, foster care, and adoption.

Activity 2D: Principles & Values That Guide the Law

Part 1: Read the following information about the principles that guide child abuse and neglect laws and regulations.

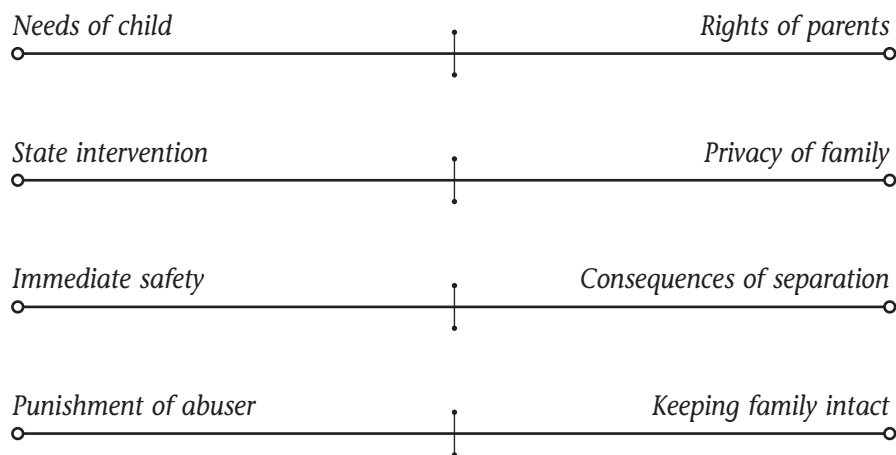
Principles That Guide Child Abuse & Neglect Laws and Regulations

- Federal laws and regulations shape delivery through policies and dollars.
- States are responsible for the child protection function.
- Current federal regulations establish the policies for states when responding to child abuse and neglect:
 - Children are first, and foremost, protected from abuse and neglect.
 - Children are safely maintained in their homes whenever possible and appropriate.
 - Children have permanency and stability in their living situations.
 - The continuity of family relationships and connections is preserved for children.
 - Families have enhanced capacity to provide for their children's needs.
 - Children receive appropriate services to meet their education needs.
 - Children receive appropriate services to meet their physical and mental health needs.

From the United States Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau.

Part 2: Our values as individuals and as a society affect our response to children at risk. In crafting laws, legislators try to strike a balance between competing values. You will consider these same values as you advocate for children.

On the following page is a series of continuums representing some of these competing values. Put an X on the spot along each continuum that indicates which value is more important to you and how strongly you feel about it. After you've ranked yourself, go to the front of the room and put an X where you fall on the corresponding flipchart.



Part 3: In the large group, discuss the following questions:

- What do you notice about where you as a group rank your values?
- How do you think your values will shape your advocacy? How might your advocacy influence the values you currently hold?

Introducing CPS & the Court Process

Activity 2E: How a Case Enters the System

Part 1: Read the following four child abuse report scenarios.

SCENARIO 1

Mrs. Delma Barnes lives next door to Sharon Frazier and her daughter Taysia, who is seven. Mrs. Barnes called the child protection agency hotline to report that she observed Taysia being spanked with a hand by her mom. When asked, Mrs. Barnes told the caseworker that it wasn't an "extra-hard spanking," but that she just did not believe in spanking children at all. Mrs. Barnes said she saw Taysia afterward, and there were no bruises or marks from the spanking. Mrs. Barnes talked with Taysia, who told her she didn't like being spanked. The case was screened out by the intake worker, so there was no investigation.

SCENARIO 2

Joey, age 3, attends daycare, where a staff member noticed a mark on his leg that looked suspicious. The daycare worker, being concerned, called the child protection agency hotline to report the bruise. After talking with the child and his parents, as well as several neighbors, the investigating caseworker found that the bruise occurred while Joey was playing. All accounts of the situation were the same and were found believable. There was no evidence to support that Joey was abused or neglected; therefore, the case was not substantiated and was closed.

SCENARIO 3

First-grade teacher Susan Williams called the child protection agency hotline to report a concern about two of her students, Dot and Stan Grant, 6-year-old twins. They live with their mother, Arlene, and her boyfriend, Tom. Ms. Williams is concerned that the twins are in the middle of fights between Arlene and Tom. There were bruises on Dot's face, which she said happened when Tom accidentally hit her when he was trying to hit her mom.

A caseworker talked with the children separately at school and both children said that their mom and her boyfriend drank beer and smoked "little white cigarettes that they put green stuff in." They also reported that the cigarettes "smelled funny." Both children told the caseworker that their mom and Tom fight and that he hits their mom. Both children have observed these fights, and from their descriptions it seems the fights occur quite often, especially when Arlene and Tom are partying. Both Dot and Stan said they were afraid of Tom.

When interviewed by the caseworker, Arlene admitted that Tom drank beer but said he didn't do drugs anymore. She denied that she drank or did drugs herself. She told the caseworker that sometimes they fought, "but who doesn't?" She said that Tom didn't hurt her and had never hit her. She was surprised that the caseworker could have gotten information that was so wrong. She didn't want the caseworker to talk with Tom. When the caseworker explained that interviewing Tom was necessary, Arlene had a nervous expression on her face.

Tom was visibly displeased when the caseworker arrived to talk with him. He told her that it was none of her business what he did in his home. He said he was good to Arlene's children and bought them what they needed. Even though he and Arlene did fight sometimes, he said, he would never hit her. Tom denied using drugs but told the caseworker that he would drink a beer whenever he wanted.

Further interviews were conducted with the teacher, the maternal grandmother, a neighbor, and a friend of the mother. All but the friend were concerned about these children and told the caseworker that the twins were often in the middle of fights and there was "partying" going on at the home all the time.

Due to the children's disclosures, observations from interviews with their mom and her boyfriend, and information from the collateral contacts, neglect was substantiated. The case will go to Family Support for treatment. Court intervention will not be sought at this time.

First three situations drafted by Angie Pittman, Family Permanency Supervisor, DSS, Buncombe County, North Carolina.

SCENARIO 4

Dr. Valerie Alajuwon called the child protection agency hotline and stated she had examined and admitted 15-month-old Alexa James, who was brought in by her mother, Sheila Washington, and Sheila's live-in boyfriend, Lewis Murphy. Alexa could not bear weight on her right leg. X-ray results showed a fracture of her right tibia (lower leg) and a one-to two-week-old fracture of her right femur (upper leg).

When interviewed by the caseworker, neither Ms. Washington nor Mr. Murphy could explain Alexa's injuries. They claimed to be the child's only caretakers. The caseworker requested that Dr. Alajuwon do a complete physical examination of Alexa, including a series of X-rays. The X-rays revealed a healing rib fracture in addition to the two leg fractures. Since the three fractures were in various stages of healing, Dr. Alajuwon diagnosed Alexa as a victim of battered child syndrome.

At the time of Alexa's discharge from the hospital, there was no new information as to the cause of her injuries. The various ages, type, severity, and location of the injuries without explanations about their occurrence indicated the injuries were nonaccidental. Therefore, to ensure the child's care, supervision, and protection, a petition was filed and Alexa was placed in foster care. When the petition was filed, Penny Ferguson, a CASA/GAL volunteer, and Webster Lance, attorney for the child, were assigned to Alexa's case.

From the North Carolina Guardian ad Litem volunteer training curriculum.

Part 2: Listen as the facilitator presents information about the four stages cases go through to enter the system. In the large group, discuss the questions for each stage and record the answers in the space provided.

STAGE 1: REPORTING SUSPECTED ABUSE OR NEGLECT

- Someone in the community reports to the child protection agency or, in some areas, to law enforcement that they suspect a child is being abused or neglected.

Question: Who reported suspected abuse in the four scenarios you read?

Scenario 1 reporter: _____

Scenario 2 reporter: _____

Scenario 3 reporter: _____

Scenario 4 reporter: _____

STAGE 2: SCREENING REPORTS OF SUSPECTED ABUSE OR NEGLECT

- The child protection agency or, in some areas, law enforcement investigates and intervenes in all circumstances where the allegations, if proven, would fit the legal definition of abuse or neglect. An investigator will respond within a specific time frame determined by the nature of the allegations.
- In circumstances where the allegations would not fit the legal definition of abuse or neglect, the reporter is notified that there will be no investigation. The reporter may be referred to outreach services or other agencies as appropriate.

Question: In which scenario was the report screened out before the investigation stage? Why?

Report screened out: _____

Reason: _____

STAGE 3: INVESTIGATING REPORTS OF SUSPECTED ABUSE OR NEGLECT

- The child protection agency or, in some areas, law enforcement investigates the report to determine the facts, the extent of the abuse or neglect, and the risk of harm to the child.
- If the investigation does not confirm abuse or neglect, the case is closed.

Question: In which scenario was the case closed after investigation? Why?

Case closed: _____

Reason: _____

STAGE 4: INTERVENING IN CONFIRMED CASES OF ABUSE OR NEGLECT

- If the investigation confirms abuse or neglect, the child protection agency then determines whether protective services should be provided or if a petition needs to be filed. Petitions are filed when the agency needs the court to intervene on the child's behalf to

minimize the risk that child maltreatment will recur, or when the child is removed from the home to ensure his/her safety.

Question: *In which scenario was a petition filed? Why?*

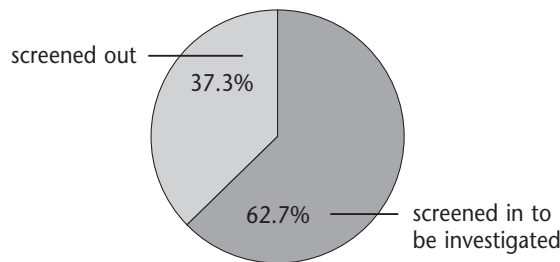
Petition filed: _____

Reason: _____

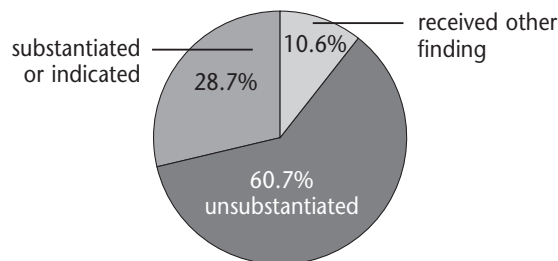
Part 3: Listen as the facilitator shares national, state, and local statistics about the number of cases in the system and the numbers of cases screened out at various stages of this process. What do you notice?

Cases in the System

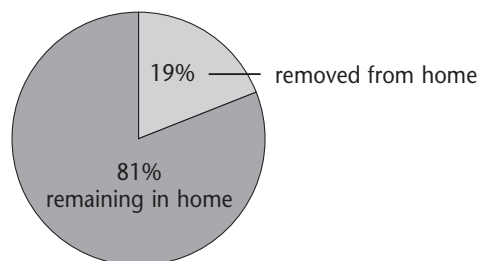
In 2004, an estimated total of 3 million referrals, involving approximately 5.5 million children, were made to CPS agencies across the country.



Of the cases that were investigated, more than one-quarter were substantiated.



An estimated 268,000 children were removed from their homes as a result of child maltreatment investigations.



From *Child Maltreatment 2004*, Administration for Children and Families, Children’s Bureau, www.acf.hhs.gov/programs/cb/pubs/cm04/index.htm.

Activity 2F: The Juvenile Court Process

Listen as the facilitator gives an overview of the juvenile court process in your jurisdiction. The flowchart entitled “A Child’s Journey Through the Child Welfare System” gives a general overview of how cases progress through the court system. Chapters 8 and 9 will cover the court process in more detail. In the large group, ask any questions you have about the process.

The Juvenile Court Process

Court is a series of steps, a series of hearings—each building on what has occurred before.

For a typical child abuse case, the steps are as follows:

- ✓ When a case meets the definitions of child abuse or neglect set out in the law, the allegations of abuse or neglect will be listed in a formal document and filed in court.
- ✓ At the first hearing the judge will make a series of decisions:
 - Whether the allegations are serious and appear to meet the definitions in the law
 - Whether it is safe for the child to live with the parent while the matter is being resolved
 - If the child won’t be living with the parent, whether visits will be allowed
 - When the next hearings will take place
 - In some states, whether the case will be referred for mediation
- ✓ Parents will be given a chance to answer the allegations.
 - If they admit the allegations, the judge will make official findings about what has happened to the child. The judge will order the parents to do things that will correct the problems that brought the family to court, such as counseling, parenting classes, or chemical dependency evaluation and treatment.
- ✓ The parents can deny the allegations and then the case will go to trial.
 - Attorneys will enter documents into evidence.
 - Witnesses will testify about what they have seen or heard.
 - The judge will consider all the evidence and make a decision about whether the allegations have been proven. If not proven, the case will be dismissed. If proven, the judge will order the parents to do things that will correct the problems that brought the family to court.

- ✓ Once the judge orders the case plan (treatment plan), CPS and the CASA/GAL volunteer will monitor the situation and there will be review court hearings to see how things are going.
- ✓ If the problems are corrected and it is safe for the child, the child will be returned to live with the parent and the case will be dismissed from court jurisdiction.
- ✓ If the problems continue—usually because the parents cannot or will not follow through with the requirements of the case plan—the court will have to look to other options to keep the child safe, such as placing the child permanently with a relative or placing the child for adoption by a new family.

CIVIL CASES VS. CRIMINAL CASES

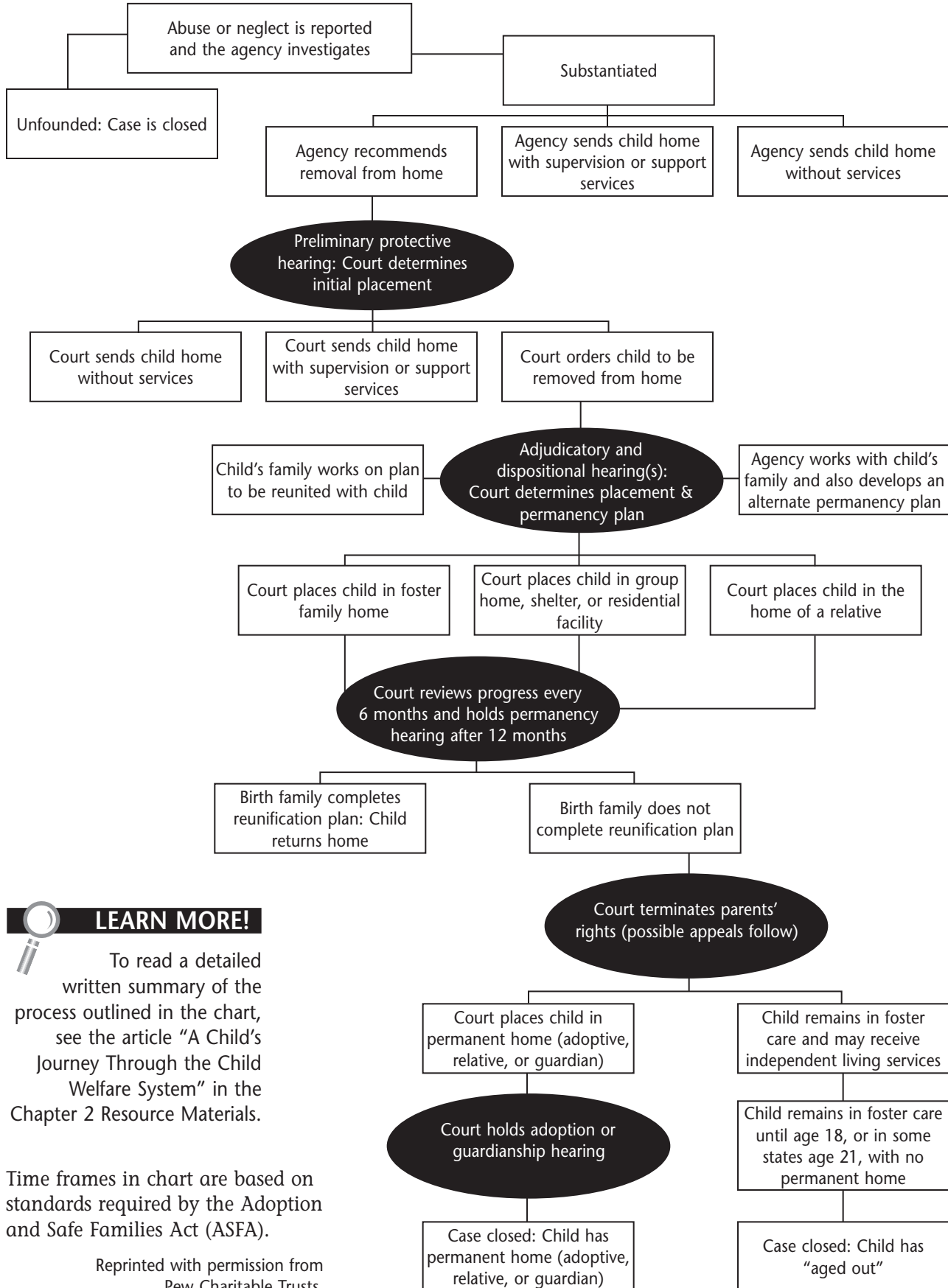
Civil actions are brought to court by individuals or the government to seek various remedies—for instance, damages for injuries or enforcement of contracts. If the defendant is found liable, the court can order him/her to pay compensation, take certain steps, or stop certain conduct. The court cannot send a defendant in a civil case to prison, except for contempt of court. The legal standard of proof is “preponderance of the evidence”—meaning that the allegations are more likely than not to have occurred.

Child protection cases are civil matters.

In criminal cases, the government brings an action against an individual alleging that a crime has been committed. If the defendant is found guilty, the court can order fines, restitution, probation, participation in treatment programs, incarceration (prison), or in some states, the death penalty. Given the severity of potential consequences, the legal standard of proof is higher than in civil cases. Allegations in criminal cases must be proven “beyond a reasonable doubt.”

A parent might also be charged criminally for hurting a child—for example, for sexually assaulting the child. This court process would be separate from the child welfare case.

A Child's Journey Through the Child Welfare System

UNIT
1UNIT
2UNIT
3

LEARN MORE!

To read a detailed written summary of the process outlined in the chart, see the article "A Child's Journey Through the Child Welfare System" in the Chapter 2 Resource Materials.

Time frames in chart are based on standards required by the Adoption and Safe Families Act (ASFA).

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The Roles in a Juvenile Court Case

Activity 2G: Who Participates in a Case?

Listen as the facilitator describes the roles of those involved in a court case, which are outlined below. As you listen, note in the margin any differences in your jurisdiction and use the space provided to write in information relevant to your jurisdiction. If you have questions, share them in the large group.

THE CHILD

- ✓ Why is the child's case in court?
 - A petition has been filed alleging abuse or neglect.
- ✓ What does the child need during court intervention?
 - The child needs the court to order an appropriate intervention and treatment plan so he/she can live in a safe, stable home without ongoing need for intervention from the child protection agency.
 - The areas the child needs addressed include safety/protection, placement if the child is out of the home, family contact, belonging to a family, financial support, a support system, education, mental health, and physical health.
 - The child needs the court intervention to be focused and timely.
 - The child needs services provided that will meet his/her needs.
 - **Other** _____

CASA/GAL VOLUNTEER

In my area this person is called _____

- ✓ What does the CASA/GAL volunteer do in the case?
 - Independently investigate the child's case
 - Determine the child's needs
 - Explore family and community resources to meet the child's needs
 - Make recommendations to the court
 - Advocate for the child
 - Monitor the case
 - Be the voice of what is in the child's best interest
 - Be the voice of the child's expressed wishes
 - **Other** _____
- ✓ What does the CASA/GAL volunteer bring to the case?
 - An interest in improving the life of the child through the court process
 - Time, energy, and focus

The attorney role varies significantly between court jurisdictions. If an attorney is appointed, he/she is sometimes appointed to represent the CASA/GAL program and sometimes appointed to represent the child. In some jurisdictions, two attorneys are appointed, one to represent the child's best interest and one to represent the child's expressed wishes. The facilitator will clarify the role in your local court system.

- Longevity (he/she often stays on the case from beginning to end)
 - An “outside the system” point of view and an independent perspective
 - The community’s standard for the care and protection of its children
 - **Other** _____
- ✓ When is the CASA/GAL volunteer involved in the case?
- **In my jurisdiction:** _____

ATTORNEY FOR THE CASA/GAL PROGRAM OR CHILD

In my jurisdiction this attorney represents [circle one]:

The child’s wishes

The child’s best interest

The CASA/GAL program

- ✓ What does the attorney for the program/child do in the case?
- Represent the child’s best interest and/or wishes, and protect the child’s legal rights in court
 - Translate the CASA/GAL volunteer’s research and recommendations into a form that the court can effectively use to address the child’s needs (within the law, within the scope of the volunteer role, fact-based, etc.)
 - Provide legal consultation to the CASA/GAL volunteer and program staff regarding the case (if the attorney represents the program rather than the child directly)
 - File legal documents relevant to the child’s case
 - **Other** _____
- ✓ What does the attorney for the program/child bring to the case?
- Legal expertise, facilitation and negotiation skills, and courtroom experience
- ✓ When is the attorney for the program/child involved in the case?
- From the petition filing through the end of the court case

PARENTS/CARETAKERS NAMED IN THE PETITION

In my area this person is called _____

- ✓ Why are the parents/caretakers involved in the case?
- They have been forced into this court action because the child protection agency asked the court to intervene to protect the child from maltreatment and/or to have his/her basic needs met.

- They need to comply with the child protection agency's intervention plan and correct the conditions that led to the child's removal, thereby effectively protecting their child and/or enabling their child to return home.
- They need to follow the orders of the court or risk having their parental rights terminated.
- ✓ What do the parents/caretakers bring to the case?
 - Love for the child; family ties; history of parenting; abilities, resources, and skills as parents; interactions with the child and each other; mental, emotional, and physical health or illness; support system; housing and income; and their own issues/problems

ATTORNEY FOR THE PARENT/CARETAKER

- ✓ What does the attorney for the parent/caretaker do in the case?
 - Represent the wishes of the parent/caretaker he/she represents
 - Protect the legal rights of the parent/caretaker in court
 - Advise the parent/caretaker on legal matters
 - File legal documents relevant to the case
 - **Other** _____
- ✓ What does the attorney for the parent/caretaker bring to the case?
 - Legal expertise, facilitation and negotiation skills, and courtroom experience
- ✓ When is the attorney for the parent/caretaker involved in the case?
 - From the petition filing through the end of the court case

CHILD PROTECTION AGENCY CASEWORKER

In my area this person is called _____

- ✓ What is the role of the child protection agency caseworker in the case?
 - The caseworker has completed a risk assessment process and, based on risk and/or substantiated allegations of abuse and/or neglect, has determined the need for court intervention. The caseworker petitioned the court to intervene on the child's behalf because:
 - He/she has developed an intervention plan with the family, which has not resulted in eliminating the risk that child maltreatment will recur, or
 - Due to risk of imminent danger, he/she has removed the child from his/her home to ensure the child's safety.
 - The caseworker needs the court to order that the agency's intervention and treatment plan be followed by the parents/caretakers and other service providers so that the need for

continuous agency intervention is not required to ensure the child receives proper care and protection.

- The caseworker is responsible for managing the case and arranging for court-ordered services to be provided to the child and the child's family.
 - **Other** _____
- ✓ What does the child protection agency caseworker bring to the case?
- Training in analyzing risk, assessing service needs, and providing guidance to families
 - Direct services for families to provide them with the knowledge, skills, and resources necessary for change
 - Links to other service providers so that the family can access resources outside the child protective services system
- ✓ When is the child protection agency caseworker involved in the case?
- From the initial contact with the family and/or child until the agency's services are no longer needed

**ATTORNEY FOR THE CHILD PROTECTION AGENCY
OR THE COUNTY OR THE STATE**

In my area this person is called _____

In my jurisdiction this attorney represents [circle one]:

The child protection agency

The county

The state

- ✓ What does this attorney do in the case?
- Represent the position of the agency/county/state in court
 - Protect the agency/county/state from liability
 - Advise the agency/county/state regarding its responsibilities as outlined in the law
 - File legal documents relevant to the case
 - **Other** _____
- ✓ What does this attorney bring to the case?
- Legal expertise, facilitation and negotiation skills, and courtroom experience
- ✓ When is this attorney involved in the case?
- From the petition filing through the end of the case

INDIAN CHILD'S TRIBE

- ✓ What does the Indian child's tribe do in the case?
 - Represent to the court the "best interest of the child" as defined by the Indian Child Welfare Act (ICWA)
 - Ensure that the parents, the child, and the tribe have all the rights they are afforded pursuant to ICWA
 - Bring to the attention of the court culturally relevant service options and dispositional recommendations
 - Protect the tribe's interest in the child and ensure the preservation of the child's ties to the tribe and its resources
 - Where appropriate, offer or require that the tribe take jurisdiction of the matter
 - File legal documents when it is necessary
 - **Other** _____
- ✓ What does the tribe bring to the case?
 - A very special perspective on preservation of the child's ties to the tribe
 - Knowledge of relevant cultural practices and culturally relevant services that can be considered as potential resources for the child

UNIT
1UNIT
2UNIT
3

JUDGE

- ✓ What does the judge do in the case?
 - Determine if there is a continued safety issue for the child that necessitates continued out-of-home placement if the child has been removed from home
 - Decide if the child is abused or neglected, and if so, order services that will address the needs of the child
 - Order appropriate reviews
 - Hear testimony, motions, etc., regarding the case
 - Approve the permanent plan for the child
 - Order termination of parental rights when appropriate
 - Settle disputed adoption cases
 - Close the court case when there is no longer a need for court intervention or the permanent plan has been achieved
 - **Other** _____
- ✓ When is the judge involved in the case?
 - From the request for emergency custody at the petition filing until the court case is closed (or, if the child is not removed from home, from the arraignment or adjudication hearing, depending on jurisdiction, until the court case is closed)

Activity 2H: Roles in the Harris-Price Case

The names of the people involved in the Harris-Price case are posted around the room. The facilitator will hand out cards with anonymous quotes on them. Go stand by the name of the person you think is most likely to have said the quote given to you.

When everyone has chosen a place to stand, take turns reading your quotes aloud and explaining why you chose the person you did. The facilitator will add relevant information about the roles played by the different characters in the Harris-Price case.



Homework

RESOURCE MATERIALS EXPLORATION

Look at the Chapter 3 Web Resources or the Chapter 3 Resource Materials. Pick at least one website or article to explore, and bring back what you learn to share with the group, the facilitator, and your local CASA/GAL program. When you come to the next training session, write up a brief description of the resource on an index card provided by the facilitator.

CULTURAL EXPLORATION

Prior to the next session, read the articles about cultural competence issues assigned and provided by the facilitator. The facilitator will let you know which cultural groups in your community you should be familiar with as a GASA/GAL volunteer. As you read the articles, note any questions or ideas you have for working with people from different cultures. These articles do not necessarily represent the viewpoint of the National CASA Association or your local CASA/GAL program. Please recognize that no single article about a cultural group can adequately describe one person or one family. These articles are designed to provide an introduction to the many cultures and perspectives represented in your communities. In order to gain a broader understanding of a particular cultural group, consider doing research on your own.

