



LEGAL ADVOCACY WITH CHILD VICTIMS OF SEXUAL ABUSE

NUMBER 8

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Many of the clients we see across the state are child victims of sexual abuse. Sometimes they are presented as the primary client and other times they are presented in connection with a larger pattern of abuse occurring within a family. Sometimes it can be difficult to determine who your client is. If you determine your agency is providing services to more than one family member, make sure that each victim has their own advocate and confidentiality is respected.

This advocate newsletter is intended to provide advocates in Washington State with a general overview of the different legal systems child victims of sexual abuse may be involved with and to also answer common questions about Child Protective Services.

We hope you find it helpful. Please don't hesitate to contact us if you have any questions about this topic or need further assistance and/or support with legal advocacy for child victims of sexual abuse. Thank you for all your hard work!

Sincerely,
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DISCLAIMER:

The legal information provided in this newsletter should not be considered legal advice. Whether a particular factual situation is contrary to federal or state law will depend on a number of circumstances specific to the victim. If you or your client needs legal advice, you should consult an attorney. Laws change both as the result of legislative and court decisions. The information here is current as of September 2008.

LEGAL SYSTEMS' OVERVIEW, *By Catherine A. Carroll*

For advocates working with child victims of sexual abuse, you know that there are many people and agencies who may become involved in the system response to a child victim. Depending on where the initial report went – to either Child Protective Services (CPS) or law enforcement, the response is different. If law enforcement is called and/or reported to, they will respond like they do to most serious violent crimes; by discerning if the allegation is credible, conducting an investigation and referring for possible prosecution. If CPS is reported to, CPS may or may not accept the case for investigation.

As mandated reporters, advocates in Washington play two roles – We are mandated to report sexual abuse of minors and we provide services to minors who are sexually victimized.

Mandated Reporting:

An Advocates Role & Responsibilities Under 26.44.030

Advocates must report if you have reasonable cause to believe that a child or teenager has suffered sexual abuse – this does not mean you need to determine age differences between the parties to establish whether a sex crime has occurred. It means you must have a **reasonable belief** that the minor **has suffered sexual abuse**.

Within 48 hours, an oral report must be made by telephone to local law enforcement or CPS. This includes the identity of the accused if known. Upon request, your report must be followed by a written report which must contain the following information, if known:

- The name, address, and age of the child;
- The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child;
- The nature and extent of the alleged sexual abuse.

Criminal Justice & CPS

Once a report is received by CPS or law enforcement, either may interview the victim. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations *outside of the presence of parents*. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation.

Nationally, CPS accepts approximately 62% of reports for investigation or assessment.
(2006 Data from USDHHS)

In Washington, CPS accepts approximately 47% of reports for investigation or assessment.
(2006 Data from USDHHS)

**Nationally, of all reports made to CPS, the substantiation or indication rate is approximately 30%.
(2006 Data from USDHHS)**

**In Washington, of all reports made to CPS, the substantiation or indication rate is approximately 23%.
(2006 Data from USDHHS)**

Before the interview, CPS or law enforcement *shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes.* CPS or law enforcement *shall make reasonable efforts to include a third party in any interview* so long as the presence of the third party will not jeopardize the course of the investigation. This is where advocates are often present for child sexual abuse interviews. (See RCW 70.125.060)

Child Sexual Abuse Investigation Protocols

If more than one entity responds to an allegation of child sexual abuse, e.g. both law enforcement and CPS, Washington law requires that they must work together to coordinate the investigation. (See RCW 26.44.035). Hence the need for updated county child sexual abuse investigative protocols.

In Washington, a criminal case may move forward against the perpetrator of sexual abuse while CPS is also proceeding with formal court actions to take custody of the child. This is called a dependency action which gives CPS the legal authority to remove the child from the home and put her/him in an out of home placement, e.g. foster care, group home or with relatives.

Whether a case proceeds through the criminal justice system where the child will likely be a witness and/or if the case proceeds through CPS with a full investigation and a substantiation of sexual abuse, an advocate's role may feel different because of the different legal systems – but your essential functions are the same, to provide support services and information either directly to the minor or the non-offending parent, in order to facilitate informed decision making. The key to serving child victims is understanding how the different systems operate and intersect with one another in responding to child sexual abuse.

Pursuant to an investigation, law enforcement may refer the case to prosecution and then the prosecutor begins conducting their investigation – much of it based upon what law enforcement has already ascertained and make the final determination to charge the alleged perpetrator with a sex crime. Pursuant to a CPS investigation, within 90 days CPS may close the file, file a dependency action with the court, or enter into a voluntary contract with the parents.

CHILD SEXUAL ABUSE LEGAL ADVOCACY TIPS & STRATEGIES

by Kelly O'Connell

1) Get to know your judges.

Find out who the judges are in your court that hear dependency actions and preside over family law matters involving child sex abuse. Observe the judges in court and learn how each judge runs his or her courtroom. What types of advocacy are allowed – for example, are advocates allowed to speak in court? How are children treated when requested to testify? Any information you can share about what to expect in court will be very helpful to your client.

In a voluntary contract, the parents of the child sexual abuse victim are working directly with a CPS caseworker to meet certain directives the CPS worker has laid out for them in order to ensure the child is safe at home and free from sexual abuse. The contract may also involve obtaining a protection order against the perpetrator, seeking counseling and/or drug or alcohol treatment and a voluntary out of home placement for the child.

Dependency Actions:

CPS Seeking Custody of Sexually Abused Child(ren)

In dependency proceedings, CPS is representing the State of Washington (attorneys are from the attorney general's office) against the parent/legal guardian of the child. Thus even if the perpetrator parent is being criminally prosecuted, he/she or even the non-offending parent can still have a dependency action proceeding against them. Likewise, if the offending party/parent is not being criminally prosecuted, CPS can still instigate a dependency action against the non-offending parent if they believe the child is not safe in the home. This is where advocates often observe CPS requiring Mom, who is also a victim of domestic violence, to obtain an order of protection against the perpetrator, particularly if the perpetrator is not the biological father of the child. In such cases, if Mom does not comply with CPS directives over a set period of time, it will reflect poorly on her ability to parent her children and reunify with her children. Parents who are unsuccessful with formal Reunification Plans risk losing custody of their children permanently, also known as termination of parental rights.

Family Law: Custody Battles

Allegations of child sexual abuse also present in family law matters. Because it is difficult to prove allegations of child sexual abuse, it is not uncommon for judges to be reluctant to make such determinations if there is no other corroborating evidence. However if such allegations are made, and the court finds the allegation credible (by a preponderance of evidence standard) the court will address the issue in the context of the parenting plan. Specifically, RCW 26.09.191 governs when and how the court may restrict parenting plan provisions when child sexual abuse by a parent or by a person living with a parent has occurred. For more information on family law matters dealing with allegations of child sexual abuse, please see RCW 26.09.191 in its entirety.

In both family law proceedings and dependency actions, the court

2) Get involved in your county protocols for child sex abuse investigation.

Every county has child sexual abuse investigation protocols. If your county's protocols have not been revised recently and need improvement, advocate that they be updated and serve on the committee who reviews them. These protocols can be a great vehicle for expanding on the rights of child victims, especially in the area of privacy rights.

may also appoint a guardian ad litem (GAL) or court appointed special advocate (CASA) to help represent the child's needs and point of view, independent from CPS or the parents.

For advocates, establishing where a case of child sexual abuse is within various systems and processes is critical to the provision of effective advocacy and support services. Also, understanding the roles and responsibilities of other professionals serving child victims of sexual abuse is also very helpful and will allow you to see what your role is and how it is unique – as you often are the only party 'outside' the systems.

Note: Don't be discouraged in providing services to child sexual abuse victims because they are minors. For any client 13 or older, the law permits counseling services without parental notification – meaning you do not need parental consent. For clients that are 12 or younger, you do need parental consent to provide services. If you need assistance in revisiting your agency policies on this issue please do not hesitate to contact the Sexual Violence Law Center.

COMMON QUESTIONS ABOUT CHILD PROTECTIVE SERVICES (CPS)

by Northwest Women's Law Center reprinted here with permission.

1. What is Child Protective Services (CPS)?

Child Protective services (CPS) is a statewide government agency. It is part of the Department of Social and Health Services (DSHS). The Office of the Attorney General of the State of Washington represents DSHS and CPS. The people who work at CPS are called "caseworkers" or "social workers."

2. When does CPS get involved in a case?

By law, CPS is required to investigate allegations of child abuse or neglect that meet a statutory (state law) definition. Generally, the definition covers physical abuse, neglect, sexual abuse, or maltreatment under circumstances which indicate that the child's health, welfare, or safety is harmed. If there is an imminent danger of harm to the child, CPS must begin an investigation within 24 hours of receiving the report. If there is no imminent danger of harm, CPS has up to 90 days to respond to the report.

During the investigation, the caseworker may interview the child as well as anyone else that can provide information necessary to the caseworker.

3) Know the CPS workers in your region and establish relationships with them.

Establish relationships with the CPS investigators in your community. Understand their roles and responsibilities. Ask them about the limits of their jurisdiction.

4) Participate in Multidisciplinary Team meetings.

Attend MDT meetings and be very clear about what your role is. If you are participating in the MDT meeting in your general capacity as an advocate, be the voice of the victim. If you are staffing the MDT meeting for a specific case, make sure the appropriate waivers are in place concerning confidentiality.

Communicate your role and the limitations of your participation clearly to the other MDT members and to your clients.

3. Can CPS interview a child without a parent's permission and without the parent present?

Yes. The CPS caseworker can interview the child at any suitable place (i.e. school, home, day care) without the consent of the parent or notice to the parent. The child may be interviewed alone or in the presence of a third party if the CPS caseworker believes the third party will not jeopardize the investigation. This is true whether the parent is the suspected abuser or not. The CPS caseworker can also photograph the child for the investigation.

4. What are the limits on the investigation and what are the possible results?

CPS must notify both parents of its investigation, if both parents can be located, and must make reasonable efforts to locate the parents. The investigation is limited to 90 days from the date the report is made. After the 90 days, CPS must make one of the following choices:

- (1) end the investigation and close the file;
- (2) file a dependency petition; or
- (3) enter into a voluntary contract with the parents.

However, CPS can reopen a closed case for good cause.

5. Who represents the parents' interests?

In general, during the initial stages of an investigation or when the parents and CPS have agreed to a voluntary contract, the parents deal with caseworkers on their own. If the children have been removed from the home by CPS, or if a caseworker files a dependency petition, then a court case begins.

Once a dependency petition has been filed, then it is highly recommended that the parents have an attorney to represent them. (Please see the NWWLC memo: Parents' Rights in a Dependency Action at www.nwwlc.org). Parents may hire one attorney to represent them both or, if the parents are not living together and/or have different interests, then they may each want their own attorney. Some parents may be eligible for a court-appointed attorney. This depends on each person's financial situation and is reviewed by the court. The court-appointed attorney is commonly known as the "Public Defender."

6. When and how can a parent inspect a CPS file?

A parent who is the subject of a CPS child abuse/neglect

5) Find out who the GALs and CASAs are in your county.

In dependency actions or family law matters, GALs and CASAs often hold a lot of power when it comes to informing the court. Both types of professionals only receive a limited amount of training on CSA or DV and cannot be expected to fully understand the dynamics of oppression occurring within the client population we serve. It is important to know which GALs and CASAs are trained and well educated on these issues so that you can advocate for the proper appointment on the child (client's) behalf.

allegation has the right to inspect the CPS file on his or her child. It is the legal policy of the State of Washington under RCW 42.56, the Public Disclosure Act, to provide access to public records. However, CPS records fall under a special category of exemptions so that some of the material from the file may be omitted from the parents' review.

When a parent requests to see the CPS file on his or her child, then he or she is making a "public records request." DSHS (Department of Social and Health Services) is the state agency which is responsible for these records. The parent making the request may ask a caseworker at CPS to explain how the agency's public records request process works. CPS may have a "public records request" form that they may want you to use. The agency is required to provide the necessary information and assistance to obtain the records.

(See also www.atg.wa.gov/openrecords/index.shtml for more information). In general, a written request asking to see the records is required.

Once the parent has made a written request, then the agency (DSHS) has five business days to respond. DSHS must do one of the following: (1) provide the record; (2) acknowledge receipt of the request and give a reasonable estimate of the time in which it will respond to the request; or (3) deny the request and state the reasons for the denial. DSHS may charge a nominal fee for copying costs of the record, which is not to exceed (15) fifteen cents per page. This fee is sometimes waived if a person is indigent.

If DSHS denies the request for records, it must explain the reasons for the denial. The person requesting the records will have the opportunity to appeal that decision within the agency. If that appeal is denied, the person can "make a motion to the court" (this is a specific written legal request) for an order to release the records. In determining whether the records should be released, the court will consider confidentiality issues and what is in the best interests of the child.

DSHS may remove or "black out" any information that has been determined to be confidential. For example, the names of the foster parents may be withheld. Often the person who made the referral to CPS wants to remain anonymous. If this is the case, that person's identity will be kept confidential. CPS is not required to

6) Inform your clients about who has confidentiality and who doesn't.

Most of the agencies and individuals responding to child sexual abuse victims, including most of those working at Child Advocacy Centers, are not in confidential relationships with the victims. There is no confidentiality.

But the communications between a sexual assault advocate and minor client are confidential under the law. It is important for child and teenage clients to know that what they tell you is totally private and you won't share information with others. Help your clients understand the roles of the various people involved in their case and how to protect their rights when interacting with these professionals.

disclose witness statements or other parts of the record which would identify the source of the referral.

7. What is a voluntary contract with CPS and how is it terminated?

The caseworker or social worker will usually offer a voluntary contract for services or a voluntary placement agreement to the parents. A contract with CPS means that the caseworker and the parents have mutually agreed to complete a list of requirements and responsibilities. The parents may be asked to participate in drug or alcohol treatment, parenting classes, counseling, or some other services. CPS has the responsibility to make reasonable efforts to provide the required services to try to keep families together.

It is reasonable to argue that the voluntary contract is terminated once the parents have complied with its provisions. However, this cannot be assumed. This issue is not specifically addressed in the statutes and regulations; thus it is dealt with on a case-by-case basis.

If the parents do not fulfill their obligations in the contract, CPS may start a dependency court case and try to have the parents ordered to comply with the services. If the caseworker feels that the child is in danger, then the court has the authority to have the child removed from the parents' care.

8. What is the best way to work with CPS?

Whether or not an attorney is involved, it is a good idea for parents to document every time they talk to anyone from CPS. Parents should do all they can to understand what caseworkers have said. It is acceptable to ask them questions, to ask them to repeat what they have said, and then for the parent to restate the important issues so that there is no misunderstanding. It is acceptable to take notes when meeting with a caseworker. Parents should log the dates and times of all their calls to CPS and should record their efforts to comply with the obligations of the voluntary contract.

It is best for parents to speak calmly and clearly. They can ask to have a trusted friend or relative at their side if that keeps them calm and provided that the person does not interfere with and is not involved in the case.

If there is a language issue, the parents should not delay in stating

that they need a translator. Not speaking English perfectly is not a problem; however, not fulfilling the CPS contract may cause many problems.

CPS has the responsibility to make reasonable efforts to provide services to try to keep families together. The parents must show that they have made reasonable efforts to make use of and participate in these services.

9. What if a parent feels that CPS is treating him or her unfairly?

Parents should document every time they call CPS. If calls are not returned within several days, a parent should try to reach the caseworker's supervisor. If they still do not hear from the caseworker, then the parent should call the DSHS regional manager.

The Office of the Family and Children's Ombudsman (OFCO) is an independent voice for families and children who are under state supervision due to allegations or findings of child abuse or neglect. OFCO can help with complaints involving government services to state-supervised families and children. OFCO requests that the parent first try to resolve the complaint by contacting the agency directly. If it is not in the best interest of the family or child to contact the agency, or if the parent has made a contact, but has not received a satisfactory response, then it is time to contact OFCO. The office has complete access to official files. If it is necessary, then OFCO will contact key officials or persons in upper management to investigate a complaint and see that action is taken.

10. What is the role of CPS if my case is in Unified Family Court?

In some counties, and where there are special circumstances, a dependency case will be heard in Unified Family Court. This means that the case will be transferred out of juvenile court. This can happen when there is another case going on which will affect the care, custody, and control of the child(ren). For example, if a dependency case and dissolution (divorce) both involve the same children and both need to be decided by a court, then it may be best to merge or unify the proceedings. The role of CPS may change from being a party to the action to serving as an advisor to the court. The court will likely appoint someone to represent the best interests of the child(ren). Also, parents may lose their

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eligibility for a court-appointed attorney. Contact the Northwest Women's Law Center's Information and Referral Line, listed under resources in this publication for more information about Unified Family Court.

RESOURCES

Northwest Women's Law Center Statewide Legal Information and Referral Line (206) 621-7691 (206) 521-4317 TTY

Office of the Family and Children's Ombudsman
(206) 439-3870/1-800-571-7321 (206) 439-3789 TTY

Sexual Violence Law Center (SVLC)
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The Sexual Violence Law Center works with survivors, the legal community, and tribal governments and service agencies within Washington and throughout the United States to advance the legal rights of sexual assault victims. Our mission is to improve the legal response to survivors of sexual violence through advocacy, education, legal consultation and referral services.

SVLC provides program assistance to those serving survivors of sexual violence, legal consultation, and training on a wide range of legal issues impacting sexual assault survivors and produces legal resource materials for lawyers, advocates and survivors of sexual violence.

Check out our website at www.svlawcenter.org. On our site, under WA LAWS you will find much of what you seek!