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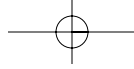
**CENTER FOR FAMILIES, CHILDREN
AND THE COURTS**

**CINA Attorney Practice Manual:
A Guide for Representing Children
in Child Abuse and Neglect Cases**

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CINA ATTORNEY PRACTICE MANUAL: A Guide for Representing Children in Child Abuse and Neglect Cases

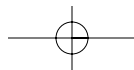
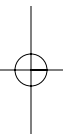
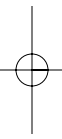




TABLE OF CONTENTS

Foreward.....i

Introductioniii

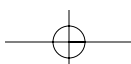
Chapter I
 The Role of Counsel for Children in Child Protection Proceedings 1
*Authored by Hon. Richard FitzGerald, Chief Judge (ret.),
 Jefferson District Court, Louisville, Kentucky*

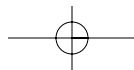
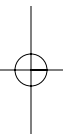
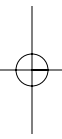
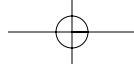
Chapter II
 Medical Aspects of Child Abuse and Neglect for CINA Attorneys 19
*Authored by Dr. Charles Shubin and Dr. Howard Dubowitz,
 Mercy Medical Center, Baltimore, Maryland*

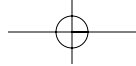
Chapter III
 Important Considerations in the Psychosocial and Cognitive Development of
 Abused and Neglected Children 41
*Authored by Dr. Catherine Koverola and Dr. Laura Murray,
 University of Maryland Center for Families, Baltimore, Maryland*

Chapter IV
 Child in Need of Assistance Proceedings 61
Authored by Staff of Legal Aid Bureau, Inc., Baltimore, Maryland

Glossary of Resources 93







FOREWARD

The Maryland Legal Services Program (MLSP) has established a much-needed education and resource program for Maryland attorneys who provide representation for children in cases where the Department of Social Services is a party to a child protection matter. Pursuant to the Maryland Annotated Code, children have the right to legal counsel in such matters. Moreover, counsel must be appointed to represent the interests of a child.

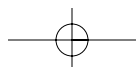
Specialized training and experience are critical requirements for quality performance by the attorneys who represent children in child protection proceedings. As state and federal laws regarding child protection matters continue to increase in complexity, MLSP – unlike many other states – has emphasized the importance of such training and experience. Nevertheless, the 1997 Report of the Maryland Judiciary Foster Care Court Improvement Project confirms that nearly half of attorneys representing children in Maryland do so without formal training and that nearly all attorneys who represent Maryland’s children in need of assistance believe they would benefit from additional training.

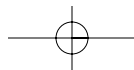
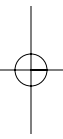
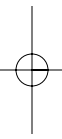
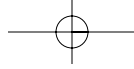
This manual is one component in a comprehensive program designed to address this gap in training and education. The program includes training workshops, continuing education programs, and this manual, which provides critical expertise and insights into the many considerations that go into representing the interests of children. There are four major chapters in this manual, which are designed to give an attorney important information about the development and medical aspects of abused and neglected children, as well as the role of counsel and the steps involved in representing a child in a Child in Need of Assistance (CINA) proceeding.

“The Role of Counsel for Children in Child Protection Proceedings,” by The Honorable Richard Fitzgerald, looks at the development of the role of independent counsel for children and several of the most important aspects of representing children, including a child’s considered judgment, communicating with children, identifying a child’s particular needs and background, the stages of a trial, and working with experts in order to ensure active and zealous representation of the child. “Child in Need of Assistance Proceedings,” by Joan Little, Jessica Rae, and L. Fillpot of the Legal Aid Bureau, Inc., offers an invaluable guide to the preparation, hearings, statutes, cases, and procedures involved in the CINA process.

In addition, two chapters cover the medical and psychological aspects of children. Dr. Charles I. Shubin has written a practical survey of the medical aspects of child abuse and neglect, providing specific information in areas such as the components of a general examination of a child when abuse and neglect is suspected, rules for interviewing the child and caregivers in this situation, and the psychological and physical problems associated with abuse and neglect. Catherine Koverola, Ph.D., and Laura Murray, Ph.D., give us a conceptual framework from which to consider the impact of child abuse and neglect, offering clear insights into the development and functioning of a child who has been abused and/or neglected.

See: IMPROVING COURT PERFORMANCE FOR ABUSED AND NEGLECTED CHILDREN, A report prepared by the Administrative Office of the Courts of the State of Maryland, September 1997, pages 35-36.





CHAPTER I

THE ROLE OF COUNSEL FOR CHILDREN IN CHILD PROTECTION PROCEEDINGS

by Hon. Richard FitzGerald, Chief Judge (ret.),
Jefferson District Court, Louisville, Kentucky

“You come to court. It’s like you don’t really understand what they do. They do it amongst themselves. You just happened to be standing there. Then at the end they tell you.”

—Fred (nine years in foster care)

(Source: Dave Thomas Foundation videotape)

The development of the role of independent counsel for children in child in need of assistance (CINA) proceedings has its origin both with the emergence of the recognition of children’s rights and with children’s need for protection. The fundamental right of a person with a disability to maintain as near as possible a normal attorney-client relationship takes precedence over the historic substitute judgment models of paternalistic practices in protection. These had become known as “best interest” and “client-directed” approaches to representation.

The Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, as adopted by the Maryland Court of Appeals effective July 1, 2001¹, have addressed the confusion concerning the duties of the child’s attorney. The fundamental duty of an independent attorney for a child is competent, focused advocacy, reflecting the *Guidelines*’ underlying recognition that the child’s interests are to be represented relative to the interests of any other party or the court.

The establishment of counsel for children, with attention to the special circumstances of children, originated in the history of child protection, with its “best interest” standard, and assumed an emphasis on due process with a “client-directed” standard for individual children’s rights vis-a-vis their parents.

Since 1967, there has been exponential development of pediatric law. The debates on the dual nature of representation, on the one hand, and counsel’s ethical obligations, on the other, forced the legal community to recognize this inherent duality and formulate clear standards of practice. In other words, there

¹Md. Rule 1.14 (2001) The Maryland Foster Care Court Improvement Project prepared *Guidelines for Advocacy for Attorneys Representing Children in CINA and Related Termination of Parental Rights*, which was made into an appendix to the rules. Available at: <http://www.courts.state.md.us/attygrievance/rules.htm>.

are times when a child needs a traditional lawyer, and times when a child needs a “best interest” advocate. Each role carries clear expectations of active competent advocacy.

In 1967, in *The Application of Gault*², Justice Abe Fortas noted that “the juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings and to ascertain whether he has a defense and to prepare and submit it.”³ States responded by enacting or amending juvenile codes to provide counsel in delinquency proceedings. In 1974, the Child Abuse Prevention and Treatment Act (CAPTA)⁴ required that, for states to receive certain federal funding, children subject to court action for maltreatment had to be provided with a *guardian ad litem* (GAL) representing the best interest of the child. As the Act did not require that the *guardian ad litem* be a lawyer, few states set out clear expectations of the GAL’s responsibility to the child and to the court. As child advocates focused increasingly on the need of children in court to have their interests, rights and voice heard, the necessity for clear standards of ethical practice became apparent.

In December of 1995, the Fordham University School of Law convened a conference on ethical issues surrounding the legal representation of children. The conference recommendations supported the client-directed approach.⁵ The “best interest” approach was rejected in part because it was viewed as giving lawyers overly broad discretion without providing the safeguards of objective criteria governing their legal positions. The fear was that lawyers would impose their own values, culture, biases, and beliefs regarding the child’s interest, unfettered by children’s own positions or ascertainable objective criteria.

In 1996, the American Bar Association (ABA) adopted *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*.⁶ The ABA Standards support the client-directed approach and recommend that counsel represent “the child’s expressed preferences and follow the child’s direction throughout the course of the litigation.”⁷ That same year the National Association of Counsel for Children (NACC) resolved to support the ABA *Standards* contingent on changing the standard relating to client preferences because, according to NACC, the ABA Standards gave too much autonomy to the client-child and were not realistic when it came to children who were young or unable to exercise considered judgment.⁸

²*In Re Gault*, 371 U.S. 1 (1967).

³*Id.* at 36.

⁴42 U.S.C.A. §5103(b) (1974).

⁵*Proceedings of the Conference on Ethical Issues in the Legal Representation of Children*, 64 Fordham L.Rev.1281 (March 1996).

⁶ABA Center on Children and the Law, *Standards of Practice of Lawyers Who Represent Children in Abuse and Neglect Cases* (developed by the ABA Family Law Section), Washington, DC (1996). <<http://www.abanet.org/child/childrep.html>>.

⁷*Id.* at B-4.

⁸*ABA Standards of Practice For Lawyers Who Represent Children in Abuse and Neglect Cases (NACC Revised Version, Legal Representation of Children*, National Association of Counsel for Children, Denver, CO (2001) at 27.

The publication of ABA Standards (NACC Revised Version)⁹ reflects the balancing of protection and rights advocacy, noting that client-directed representation involves counseling by lawyers and an outcome which is mutually agreed upon by both attorney and client. They also recognize that there are cases where a substituted judgment process based on certain criteria may be appropriate at different stages of a proceeding and suggest criteria for consideration.¹⁰

The articulation of Maryland Standards builds on both the history of GAL representation and the more recent trend of client-directed or client autonomy models to clarify expectations of ethical practice.¹² The commentary, while supporting the default position of client-directed practice, recognizes the reality of different degrees of competency, which may exist at different stages of the proceedings, and sets forth clear criteria to assess the considered judgment of the client.¹³

TOOLBOX:

There are a number of articles regarding the development and evolution of the role of counsel for children that set forth both ethical and legal analyses of the “best interest” and “client directed” approaches to representation, including:

Duquette, D., “Legal Representation for Children in Protection Proceedings: Two Distinct Roles are Required,” 34 *Family Law Quarterly* 441 (2000).

Federle, K., “Children’s Rights and the Need for Protection,” 34 *Family Law Quarterly* 421 (2000).

Grasso, K. (ed.), *A Judge’s Guide to Improving Legal Representation of Children*, State Justice Institute, American Bar Association Center on Children and the Law (1998).

Peters, J., “The Roles and Content of Best-Interests in Client Directed Lawyering for Children in Child Protective Proceedings,” 64 *Fordham Law Review* 1500 (1996).

Ventrell, M., “Evolution of the Dependency Component of the Juvenile Court,” 49 *Juvenile and Family Court Journal* 17 (1998).

Ventrell, M., “Legal Representation of Children in Dependency Court: Toward a Better Model—The ABA (NACC Revised) Standards of Practice,” *NACC Annual Children’s Law Manual Series*, 1999 Edition.

American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996), available at <http://www.abanet.org/child/childrep.html>.

“Proceedings of the Conference on Ethical Issues in the Legal Representation of Children,” 64 *Fordham Law Review* 1281 (1996).

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³*Id.*

CONSIDERED JUDGMENT

“Society treats me like I’m a failure. Boy, are they wrong! How many failures maintain a 3.8 GPA, hold down a part time job, volunteer extensively and have plans for the future? A failure I am not. But society doesn’t see that. To them I’m just a foster kid; a typical juvenile delinquent, a failure... I understand your job is tougher than most. Well, so is mine. If we worked together, we could both do a better job. Just give me a chance, ok?” —Foster child, 16 years old

“When someone said soon, I thought they meant a couple of months or days, not years” —Jason, ten years in care

“You have your own language man, I have no idea of what you are saying other than I’m not going home.” —Robert, two years in care

“How come if that’s my lawyer everything I talked about was told to the worker?” —Joe, ten months in care

(Quotes from Videos of the Dave Thomas Foundation for Adoption and *Children Can’t Wait* (1993) Child Welfare League)

As we have moved from the more paternal models of representation to the independent client-driven model, new communication skills are needed. In focus groups of adolescents in care, a constant theme is that their lawyer was a nice person whom they saw briefly in the courtroom, but who was not available for contact or communication. In contrast, these adolescents wanted to be prepared for what was going to happen in court and subsequently to get an explanation of what had actually happened in court. One child describes the lawyer he remembers as the best: “This one, she was good. When I was placed or moved, she always called a day or so later and asked how was I doing.”¹⁴

The determinations as to a client’s considered judgment involve an ongoing process for the child’s attorney. The *Guidelines*¹⁵ set forth factors for consideration. These factors must be considered in light of the practice expectations set out elsewhere in the *Guidelines*. These active practice expectations are based on the attorney’s obligation to serve the client rather than the court or protective service process. Active advocacy requires the attorney to meet with the child in different environments, interview and obtain evaluations as necessary, prepare for a hearing, and gather or elicit information regarding the child’s cognitive and emotional development. The *Guidelines* clearly state that counsel can shift to the use of a substitute judgment position for safety, well-being, and services only after counsel has determined that the

¹⁴Reasonable Efforts Video Notebook (National Council of Juvenile and Family Court Judges).

¹⁵See *supra* n. 1.

client lacks considered judgment at each stage of the proceedings.¹⁶ The attorneys need to make clear to the court when and why they are adopting and advocating best interest rather than client-directed roles. If the child does have a position on an issue, it needs to be made part of the record.

Considerations regarding the child's judgment should not be based on the child's decision about one issue, but on a number of factors regarding his or her decision-making process. Beginning with the child's cognitive ability, as well as emotional and mental development, the interview and ongoing client contact becomes the key to developing a sense about the child's understanding of the various outcomes resulting from his or her legal position. Certain issues may require the assistance of third parties in developing the communication flow. If the attorney has not had specific training in interviewing severely physically or sexually abused children, or in conducting an interview using language appropriate to the communication skills of children, a trained counselor or guidance from other professionals would be essential to determining if the client has the capacity to understand and communicate regarding issues at hand.¹⁷

Considered judgment is not a linear process. A child may not be able to articulate a position regarding safety, but could perhaps indicate a preference between two care providers. Given the diverse needs of children in court, sound practice calls for a wide range of service providers and support to facilitate communication. We must also be constantly aware of the impact of legal and social service agency decision-making on children of diverse cultural, racial, and ethnic backgrounds, who tend to come into the states' care more frequently and linger longer because we have failed to address our own bias or provide culturally competent supports for the child or family. The use of trained language interpreters or advocates from the community to which the child belongs can be essential in determining his or her ability to express a reasoned choice during this process.

A Few Keys to Communicating with Children:

- Develop a standard form which asks for relevant background information regarding family, community of origin, attachments to community (schools, church, etc.), culture, disabilities, other court-related contacts, and how the family functions.
- Decide where the interviews will take place, how you will take notes or otherwise record the interviews, and who else, if anyone, should be present.
- Turn off the phone and other gadgets that will distract you both. Listen to the client. Your client is entitled to your undivided attention.
- Make note of the child's language, especially the use of nicknames and descriptions of relationships, noting both general knowledge and examples of reasoning.
- Explain the confidential nature of the attorney-client relationship.

¹⁶*Id.*

¹⁷*Id.*

- Work on developing a rapport by listening to the client’s narrative.
- Thank your client for sharing information and ensure that he/she leaves with a sense of what to expect from the process, the key decision that will be made at the next hearing, and when the next contact will take place. If age appropriate, a visual prompt such as a written calendar or timeline may be helpful in explaining or understanding the process. Explain who is in the courtroom and what they do.
- Review court orders or case plans with your client that set forth behavioral expectations in a language that your client can understand. Look for ways to reinforce information shared with the client after they have left your presence. These could include, for example, written notes, copies of behavior contracts, ongoing schedule of client contacts etc.

TOOLBOX:

References for Interviewing Children:

Saywitz, K., “Children in Court: Principles of Child Development for Judicial Application,” in Bulkley, J. (ed.), *A Judicial Primer on Child Sexual Abuse*, American Bar Association (1994), pp. 15-48.

Saywitz, K. and D. Elliot, “Interviewing Children in a Forensic Context,” American Psychological Association.

Walker, Anne Grafton, *Handbook on Questioning Children: A Linguistic Perspective*, American Bar Association (1999).

SCOPE AND CONTINUITY OF REPRESENTATION— A THERAPEUTIC APPROACH

The concept of therapeutic jurisprudence is the recognition that the law—with its rules, roles, ritual and process—is itself a social force that may have therapeutic and non-therapeutic consequences for the client. In reviewing the role of counsel at various stages of the proceeding, we must, as a key principle of practice, be attentive to the client’s perceptions and understanding of what is happening and what is expected. Courts are trauma centers at times of crisis. We know that trauma produces short-term memory loss, that grieving behaviors follow separation and loss. A judge often asks the parties if they understand what is going on or what is expected. They say or nod yes, yet when they leave the courtroom the first question they ask is, “What happened?” An effective and accurate determination of a client’s judgment or position at each stage of the proceedings calls for the attorney to consider the impact of the court’s ritual and process on that client.¹⁸

¹⁸For more information on therapeutic jurisprudence, refer to works by David B. Wexler, University of Arizona College of Law and Department of Psychology, Tucson, Arizona 85721 or the International Network of Therapeutic Jurisprudence at www.therapeuticjurisprudence.org.

Moreover, the safety and well-being of children is not the exclusive province of the court or agency, but the duty of the entire community. The attorney's role in representation extends from the time of appointment to the end of proceedings or closure of the case, with the child in a safe and permanent home. In order to advocate vigorously for the client who has a broad array of needs, it is essential that the attorney develop a working knowledge of social, medical, educational, mental health, and service sources available without protective service intervention. The capacity to link a client to customer driven services that will meet his or her needs (as identified by the child, the attorney, the state, and/or the client's family) increases the likelihood that the risks which initially led to state intervention become manageable.

While the attorney's obligation to the child-client begins with the specific appointment, that attorney's legal practice and participation in community child protection will enhance his/her ability to provide linkages with service providers.¹⁹

The scope of representation includes conducting a thorough and independent investigation "as necessary or appropriate to the representation."²⁰ It is not unusual for families with active child protection issues to also have multiple agency involvements, many of which may be neither coordinated nor known to the child's caseworker. Obtaining releases or court orders for records from collateral service providers and governmental agencies as early in the process as possible may prevent unnecessary delay or surprise at a later date. Developing a family strength and problem checklist with your client can assist you in identifying and obtaining information regarding family functioning and records of agencies and institutions relevant to the case.

Most agencies have a deficit model checklist for problems affecting a client's family. In order to ensure the development of a more complete picture of that client's environment, the attorney should focus on identifying family strengths. The development of potential witnesses to those strengths can help provide balance to your independent investigation. The attorney should not overlook lay witnesses, babysitters, day care workers, teachers, foster parents, church members, and community observers of the social interaction in the family. Many case records include reports from professionals but lack notations or information from the very people who spend the most time with your client.

"I read and reviewed a number of reports regarding Maria and how well she was progressing in her second year of foster care. So, I decided to meet her. That's when I met Mario, the young man whose case records I had been reviewing." —Peter Forsythe, *Child Advocate*²¹

¹⁹See Leigh Goodmark, "Keeping Kids Out of the System: Creative Legal Practice as a Community Children Protection Strategy," American Bar Association Center on Children and the Law: Washington, DC (2001) for information on developing case strategy.

²⁰See *supra* n. 1.

²¹Peter Forsythe, Director of Children's Programs, Edna McConnell Clark Foundation (National Council of Juvenile and Family Court Judges Conference, July 1985).

TOOLBOX:

Works of David Wexler, website of International Network on Therapeutic Jurisprudence:
<http://www.therapeuticjurisprudence.org>

FIRST CONTACT AND PRE-TRIAL PRACTICE

The attorney is legally and ethically bound to exercise diligence, zealously and thoroughly at each stage of the child protection proceedings. The basic obligations as identified in the ABA Standards set out in Section B1²² provide an excellent process checklist for the attorney. In undertaking the representation, it is important that he or she communicate the fact of representation to all parties, their representatives, and collaterals who will have client contact. The attorney should share business cards, self-addressed envelopes, and all forms of phone, fax or e-mail contact, and should put this information in and on the record to emphasize the importance of notification of circumstances affecting the client. Given the likelihood that social workers may change during the process, the attorney should request notification of any new personnel assigned to the client's case in order to update contacts and expectations.

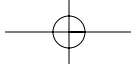
In recent years many court improvement projects have brought to light a critical component in reforming the court process and ensuring timely decision-making essential to the safety and well-being of children: improve the quality and practices of the first hearing affecting the child. *The Resource Guidelines for Improving Court Practice in Child Abuse and Neglect Cases*²³ focuses on the importance of front end practice and services in avoiding unnecessary separation of children and families and initiating timely decisions regarding the efforts of the state and of the family in providing a healthy and safe childhood for the child. While there are time constraints in all dockets and law practice, a diligent and thorough approach begins by examining the reasons for the state intervention and identifying those safety risks indicated by the court as affecting the client.

Early identification of a child's special needs, educational background, physical and mental health, developmental disability, and/or economic support assists both in developing a trial strategy and advocating for services that are appropriate, available, accessible and culturally competent. This assessment should also include information on any risk-matrix used to substantiate the investigation. The attorney, together with his/her client, should examine family and/or service responses to the identified risks. In addition, early identification and involvement of absent parents and extended kin in the agency and court planning process may assist in developing a family-based case strategy.

It is also diligent practice to look at the Indian Child Welfare Act (ICWA)²⁴. If the child's family history indicates eligibility for enrollment, there are a number of requirements covering notice to the tribe,

²²Revised Standards for Lawyers who Represent Children in Abuse and Neglect Cases in *Improving the Professional Response to Children in the Legal System* (National Association of Counsel for Children & the American Bar Association 2001).

²³*Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (National Council of Juvenile and Family Court Judges 1995).



expert witness testimony, determination of active and reasonable efforts, and placement preferences.²⁵ Reasonable efforts to locate relatives on both the maternal and paternal sides of the family include examination of extended family eligibility under the ICWA.

The attorney's preparation for trial—including standard pre-trial motion practice, discovery, motions or memoranda regarding issues in preparation for trial (including admissibility of evidence), and decisions as to witnesses—should include measures to avoid unnecessary continuances. Some jurisdictions have used mediation, case management, or settlement conferences scheduled soon after the initial hearing but prior to the trial date as a means of focusing the litigation on issues in dispute and addressing trial preparation.

Evaluations should be conducted as early as possible in the process. The health and educational needs of children active with protective services, indeed children in foster care generally, are often overlooked. These children have been identified as having an increased susceptibility to certain chronic and acute medical problems.²⁶ A number of court systems have developed checklists that serve as a guide for client-focused advocacy for physical health issues.

Similarly, the impact of court and agency decisions on educational placement is often missed, but should be included in the attorney's front-end considerations in advocating for services for children at home, in kinship care, or foster care. Evaluations may be needed for trial preparation or, in some cases, for development of a service plan. The attorney should not assume that basic health and educational needs are being met through the process of state intervention. The attorney should obtain a copy of the client's Individual Education Plan and review whether the school placement meets the child's individual needs.

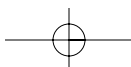
“Every time I was moved or ran they put me in a new school. The records were never there. I missed a lot of school waiting for them to figure out where I belonged. Once they wouldn't let me in because no one could show the shots. I was in six schools in two years.” —Precious, 14 years in care²⁷

²⁴25 U.S.C. §1901 et seq. (1978).

²⁵*Id.*

²⁶Chernoff, R.; Combs-Orme, T.; Risley-Curtiss, C.; Heisler, A., *Assessing the Health Status of Children Entering Foster Care*, 93 *Pediatrics* 594–601 (1994).

²⁷*Reasonable Efforts Video Notebook for Judges*, “Children Can't Wait” (National Council of Juvenile and Family Court Judges).



TOOLBOX:

American Bar Association Center on Children and the Law, *American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, Sections B-1, C-1 – C-6 (developed by ABA Family Law Section), Washington, DC (1996), available at <http://www.abanet.org/child/childrep.html>.

American Humane Association, *Protecting Children Journal—Children Birth to Three in Foster Care*, vol. 16, no. 1 (2000).

Dicker, S., Gordon, E., Knitzer, J., *National Center for Children in Poverty—Improving the Odds for the Healthy Development of Young Children in Foster Care*, Joseph L. Mailman School of Public Health, Columbia University: New York (2001).

Checklist for the Healthy Development of Foster Children, New York State Permanent Judicial Commission on Justice for Children, 140 Grand Street, Suite 404, White Plains, New York 10601.

TRIAL STAGES

In addition to developing a trial strategy with the client, diligent and zealous advocacy generally requires good case management practices to avoid delay. The tone of the case is very often determined by the manner of presentation. Representation of the child in the juvenile session of family court should be no different in expectation of professionalism than the representation of a client in any other court or in any other important litigation. The attorney should emphasize due process for his or her client—introduction of the attorney and the parties on the record; opening statement; preparation of exhibits; preservation of legal issues; independent evidence; prepared examination and cross-examination; closing arguments and, where appropriate, briefs or proposed findings of fact. Key principles of law or process are often overlooked in the informalities of actual practice in juvenile court, when closing arguments are focused on the statutory basis for jurisdiction and on findings of fact and conclusions of law. The judge can be reminded of the need to follow the same instructions of law that would be given to a jury, including, where appropriate, issues regarding fairness to parties of different class, race, or ethnic origin. Moreover, fact and law specific findings are important in developing any subsequent case plan regarding safety and permanency.

Explanations about findings and the course of the trial are important elements in the client's well-being and comfort level with the court's ultimate decisions. Focus groups of children in care constantly raise issues relating to the absence of explanations for their removal from their families. A client's willingness to accept the need for case plan services or for safety measures may increase with his or her understanding of the judge's or the state's position.

Such explanations are also essential to any discussion of the “possibility and ramifications of an appeal.”²⁸ In this case, the attorney must file the necessary notice or participate in appeals filed by other parties, remaining constantly attentive to the need for timely decisions. The limbo of the appellate process should be understood within the context of a child’s sense of time. Appeals should be processed on an expedited track, which the attorney can facilitate by insisting on timely preparation and transmission of the trial record and using mechanisms to assure priority in the scheduling of cases.

Counsel should obtain a court time and date for the next hearing as well as any agency case plan conference that may occur prior to the next court date. The client’s perspective should be incorporated in any agency case plan in response to the findings of the court. The attorney should review the plan to ensure that it reflects the findings of the court and that services to be provided meet the client’s needs for safety and well-being.

TOOLBOX:

National Council of Juvenile and Family Court Judges Publication Development Committee, Victims of Child Abuse Project, *The Resource Guidelines for Improving Court Practice in Child Abuse and Neglect Cases*, Reno, NV (1995), and the subsequent *Adoption and Permanency Guidelines: Improving Court Practice In Child Abuse and Neglect Cases*, Reno, NV (2000). The Guidelines contain a checklist concerning what should happen, who should be present, and questions that should be answered at each stage of the proceeding and are available on-line on the NCJFCJ Permanency Planning For Children Department website, <http://www.pppncjfcj.org>.

PERMANENCY PLANNING, REASONABLE EFFORTS, THE REVIEW, AND PERMANENCY HEARINGS

“I wish kids didn’t have to go from place to place. It’s the pits! But I guess that’s life.” —Michael, 10 years old, eight years in care before adoption at 11 years old

“My mother was an alcoholic but I wasn’t treated that way. I was treated like I was the problem. Being pushed and prodded and asked questions. Being naked in front of people I didn’t even know.” —Michael, 18 years old, reflecting on his years in care

Quotes from the NCJFCJ Video Notebook

In 1980, Congressional committees heard extensive testimony concerning the lack of state planning for children in care, the impact of foster care drift on the population in care, and the number of children

²⁸See *supra* n. 1.

unnecessarily placed in state care. The government took action, requiring states that received federal dollars for foster care and protective services to provide a framework for state agency and court protection. The focus was on preventing unnecessary placements of children in out-of-home care and providing reunification service if the child's safety or an emergency called for removal from the home. The Adoption and Child Welfare Act of 1980²⁹ required the states to develop: a plan for the delivery of services; an inventory of children in placement; a data system for tracking children in care; and a written case plan for each child, including the reasons for intervention, development of case goals, identification and delivery of services, and a timeline for achieving desired outcomes.

In an affirmation of the rule of law and trust in the state's judiciary, the Act further required judicial oversight as a condition of federal funding. In order for the agency to be eligible for federal support in a given case, the court must find that "continuation in the home was contrary to the welfare of the child"³⁰ and that "reasonable efforts" were made prior to the child's placement into care, or that "reasonable efforts" were made at reunification before other permanency options were sought.³¹

Recognizing the gate-keeping function of the court, limits were placed on "voluntary" placements. The Act imposed a two-tiered system: 1) ongoing court and agency reviews of the case plan; and 2) a "dispositional" hearing (permanency hearing) to identify the final goal within eighteen months of the child's placement.³² These requirements led to the development of a vast array of educational tools for the legal profession, which needed to be attentive to the emerging rights of a child to be placed in a permanent home in the shortest time frame possible. Pediatric law now demanded the integration of new skills into an attorney's practice regarding placement decisions, conditions of children in care, and knowledge of and delivery of services that were appropriate, available, accessible, and culturally competent.

Attorneys and judges not historically trained in such issues were faced with new expectations of competency, including familiarity with areas such as child development, causes and treatment of child abuse and neglect, the delivery system for service needs of families, the development of case plans, and/or reasonable expectations of good social work practice. Faced with a new requirement of findings regarding the reasonableness of state interventions—a requirement that was not defined in the law—the legal profession began to seek training to acquire the necessary competencies to represent their clients. National organizations, particularly the American Bar Association, the National Association of Counsel for Children, the National Council of Juvenile and Family Court Judges, the Child Welfare League of America and the Children's Defense Fund, developed training tools for the various competencies needed.

During the 1980s, the curricula of these programs focused on keeping families together through family-based and family preservation services and addressing a backlog of children who had entered the system before the planning requirement and timelines were established. While "reasonable efforts" findings were never intended to require exhaustive efforts or that state agencies take unnecessary risks to the

²⁹42 U.S.C. §620 et seq. (1980).

³⁰*Id.*

³¹*Id.* The 1978 Indian Child Welfare Act had required "active and reasonable efforts."

³²*Id.*

child, there were a number of cases in which children continued to be seriously harmed. These cases attracted national attention and caused a Congressional inquiry into the question of whether the reforms of the 1980s had failed to emphasize safety and whether the “reasonable efforts” requirements were being unreasonably applied.

In 1997, Congress passed the Adoption and Safe Families Act (ASFA),³³ which amended the 1980 Act to modify but not repeal the “reasonable efforts” requirements in certain circumstances affecting the safety of the child. The Act created a new expectation that the state make reasonable efforts to find permanent homes for children when reunification with the parents was not the goal. The roles of the court and legal system were expanded to include judicial review of state agency efforts regarding safety and placements in adoptive homes or with legal guardians if children were unable to return to their families.

The purpose of ASFA remains the same as that of the earlier law: no child should be placed into care who can be safely protected in his/her home or with his/her family. In cases where removal is necessary, reunification may be attempted if it can be done safely. If, however, there is a determination by the court that reunification efforts are not required, the agency must focus its services on providing an alternative safe and permanent home by making reasonable efforts to achieve the individual child’s stated goal.

The ASFA requirements have presented a new educational challenge for counsel for children. In order to adequately represent the client, the attorney needs to be thoroughly familiar with best agency practices and services available to meet the goal in a timely fashion. Given the new twelve-month limit in permanency hearings, counsel needs to develop adequate competency in new areas of state social service practice such as the following:

- the child welfare, family-based, and family preservation services in the community;
- kinship or family support opportunities available for legal guardianships;
- best practices in the recruitment, training, licensing, and support of adoptive families (in order to understand the reasonableness of the efforts in the client’s individual case).

In addition, attorneys need to identify and help develop the availability of testimony and capacity of local experts who can address the entire spectrum of services, from family preservation to subsidized adoption. As consultants, they support the knowledge base needed for child-focused decision-making. Moreover, an attorney’s “sufficient skill and experience in child advocacy”³⁴ includes not just the specific subjects set out by the *Guidelines*, but also ongoing education in the development of emerging best practice service delivery models.

The knowledge base and competencies necessary to provide active, zealous representation for the client are constantly evolving. Thirty years ago, the juvenile court’s function was viewed as being limited to adjudication and disposition of the status of certain children. As the role of the court has expanded to

³³42 U.S.C. §1305 (1997).

³⁴Maryland Guidelines F1, F2.

encompass oversight of child safety and well-being, and of the state's response to child maltreatment and a child's right to a safe and permanent family, the process involved in representation and adjudication continues to evolve.

Attorneys must constantly learn new skills in order to represent and work with clients who become enmeshed in the child welfare system. This is especially true as the legal system recognizes the child's rights to due process, considers the least restrictive alternatives regarding state intrusion into the child's and family's autonomy, and upholds the child's right to be nurtured and supported by the community. The attorney needs to exercise the same diligence as he/she would devote to other complex litigation. This is not rocket science; it is a lot harder than rocket science. It is about the client's right to live in a safe, nurturing family.

TOOLBOX:

The state social service agency is the source for the "State Plan" and policy manuals for social work practice. The state agency will also have ongoing data regarding agency performance in meeting the state goals. Providing the agency with attorney training manuals regarding child protection proceedings can promote understanding of the roles and obligations of each profession.

The Child Welfare League of America, in partnership with the National Council of Juvenile and Family Court Judges (NCJFCJ), developed a "Reasonable Efforts Video Notebook" for implementing the Adoption and Child Welfare Act of 1980, which is available from the NCJFCJ in Reno. While it was prepared before ASFA was enacted, it contains good basic information regarding bonding and attachment, child development, and family-based and family preservation services. Contact: NCJFCJ at University of Nevada in Reno at 1041 North Virginia Street, P.O. Box 8970, Reno, NV 89507 Telephone: (775) 784-6012 Fax: (775) 784-6628 E-mail: admin@ncjfcj.unr.edu.

The following organizations provide important and useful tools in developing good permanency planning practice for lawyers and for judges (including information on ASFA requirements):

- Youth Law Center has published *Making Reasonable Efforts: A Permanent Home for Every Child* (2000), which includes checklists for expectations of diligent practice by attorneys. Contact the Youth Law Center, 417 Montgomery Street, Suite 900, San Francisco, CA 94104 Telephone: (415) 543-3379.
- The American Bar Association's National Child Welfare Resource Center on Legal and Judicial Issues provides and supports a number of Internet sites and list serves on child law practice and court improvement, promoting discussion and support of knowledge-based child advocacy. The lists are well run and offer an excellent way of following developments in both court process and agency practices. Contact: National Child Welfare Resource Center on Legal and Judicial Issues, ABA, 740 15th Street NW, Washington, D.C. Telephone: (202) 662-1720.
- The National Council of Juvenile and Family Court Judges' *Adoption and Permanency Guidelines* (2000) contains working checklists for each hearing subsequent to original disposition. The checklists address: who should be present, the questions to be answered, and information that should be included in findings and conclusions. They include suggestions for the review hearing that follows an original permanency hearing (12 months or earlier) and termination of parental rights. Information on adoption opportunities for all children with references is also included. Contact: P.O. Box 8970, Reno, NV 89507 Telephone: (775) 327-5300 Fax: (775) 327-5306 Email: ppp@pppncjfcj.org.
- Maryland Adoption Resource Exchange (MARE), 311 W. Saratoga Street, Baltimore, MD 21201 Telephone: (410) 767-7359 web: http://www.dhr.state.md.us/adpt_pgl

SPECIAL ISSUES

The majority of children coming into the child welfare system are exposed to substance abuse and domestic violence. Specific training is necessary to understand the dynamics of both of these conditions. It is important to develop community protocols for addressing in a timely manner the sobriety support needs of families. In cases where there is a co-occurrence of domestic violence and child maltreatment—which is projected to include 30 percent of substantiated reports³⁵—an underlying community protocol between domestic violence advocates and child protection workers can support keeping children with non-offending parents while holding the batterer accountable. Attorneys for children should be familiar with ways to access client-driven services and understand how the time lines of ASFA may affect the service response.

“Help my mom watch the clock. I don’t think she knows that she only has a little time to kick before she loses us.” —Robert, 9 months in care

(Reasonable Efforts Video Notebook)

TOOLBOX:

Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases, National Council of Juvenile and Family Court Judges, Reno, NV (1992). Includes a series of checklists for consideration at each stage of the proceedings and discussions of safety considerations.

Schechter, S. and Edelson, J., *Effective Interventions in Domestic Violence and Child Maltreatment Cases*, National Council of Juvenile and Family Court Judges, Reno, NV (1998). Referred to by the color of its cover as the “Greenbook,” it examines effective interventions at the intersection of family violence and child maltreatment and recommends policies for social agencies, courts and domestic violence advocates to consider in supporting safe and stable families. Contact: NCJFCJ, P.O. Box 8970, Reno, NV 89507 Telephone: (775) 784-6012 Fax: (775) 784-6628 Email: admin@ncjfcj.unr.edu.

MINORITY CHILDREN IN CARE

The number of minority children in foster care is out of proportion to their numbers in the general population. Some attribute this to a complex series of economic and social factors that extend far beyond the child welfare system. While there are legitimate considerations concerning many social factors, the fact remains that, as a system, the juvenile court has failed to meet the needs of minority families. It is

³⁵Edelson, J., *The Overlap between Child Maltreatment and Woman Battering*, National Resource Center on Domestic Violence, <http://www.vaw.umn.edu>, Harrisburg, PA (1997).

not just the number of children who are found in the system, but the reality that minorities are more likely to come into placement, receive fewer services, and have their parental rights terminated.³⁶

Data on children of color in foster care should be constantly reviewed as we examine why our system's practices lead to this unfortunate outcome. Agency changes in practice, such as the Casey Foundation's Family to Family Initiative,³⁷ provide some hope for a more community-driven focus on service delivery. The need for a minority client to maintain contact with the community of origin can too often be forgotten in a system that matches children to an available bed rather than developing a planned client-driven placement.

“I was snatch [sic] from a lot of places. I found it hard to maintain friendships because I was constantly lying about my situation. I spent most of my time feeling left out.” —Marton, five years in care, 10 foster or group homes (Children Can't Wait)

We can increase our effectiveness in representing children of a different class, ethnic group, or race in a number of ways:

- Recognize one's own biases or assumptions about groups resulting from ways in which one has compartmentalized information. Make a conscious effort to act fairly. Cultural competence is not a one time learning experience but an ongoing process.
- Recognize the strengths in families of different races or cultures.
- Become familiar with the natural supports that exist in each neighborhood or community. Identify and work with individuals from the minority community who can help in understanding the dynamics of the family.
- Insist that the families be treated with dignity by all players. A partnership with extended family members or community supports (as identified by your client) in developing a case strategy may provide alternatives to removal from the community of origin.
- Insist on participants' cultural competence on an ongoing basis as you facilitate service issues for your client, such as visitation or choosing a site for education or counseling programs.
- Integrate your own life and social experience.

³⁶National Clearinghouse on Child Abuse and Neglect Information. Various articles regarding minorities in the child welfare system are available at www.calib.com/nccanch.

³⁷Materials regarding this initiative for reform in the recruitment and training of foster families and the change in the role of family foster are available from the Anne E. Casey Foundation website at <http://www.aecf.org>.

TOOLBOX:

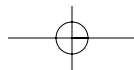
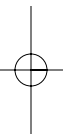
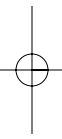
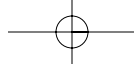
The National Clearinghouse on Child Abuse and Neglect Information publishes “Articles on Overrepresentation and Disproportionate Representation of Minorities in Child Welfare,” which can be accessed at <http://www.calib.com/nccanch>.

In addition to the above-recommended additions to your toolbox in building an active practice representing children, the following Bibliography may be of some assistance:

- *ABA Child Law Practice*, ABA Center on Children and the Law, Washington DC (a monthly publication of the Center on Children and the Law).
- Haralambie, A., *The Child's Attorney: A Guide for Representing Children in Custody, Adoption and Protection Cases*, Chicago: ABA (1993).
- Ratterman, D., *Reasonable Efforts: A Manual for Judges*, Washington, DC: American Bar Association (1987).

Web sites for support of active and competent advocacy:

- ABA Center on Children and the Law <http://www.abanet.org/child>
- American Humane Association—<http://www.americanhumane.org>
- Child Welfare League of America—<http://www.cwla.org>
- Children's Defense Fund—<http://www.childrensdefense.org>
- National Association of Counsel for Children—<http://www.naccchildlaw.org>
- National Council of Juvenile and Family Court Judges—<http://www.ncjfcj.unr.edu>



CHAPTER II

MEDICAL ASPECTS OF CHILD ABUSE AND NEGLECT FOR CINA ATTORNEYS

Charles I. Shubin, M.D.

PHYSICAL ABUSE

DEFINITION

Under Maryland Law, physical abuse is defined as “physical injury of a child by any parent or other person who has permanent or temporary care, custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child’s health or welfare is significantly harmed or at risk of being significantly harmed.”

The inclusion of the requirement of significant harm or risk of significant harm in the definition of physical abuse allows for certain instances of corporal punishment of children. When, then, does corporal punishment cross the threshold to abuse? There is no consensus, but most agree that in those cases when marks are left beyond the initial redness, an injury constituting abuse has occurred. Less severe corporal punishment should still be discouraged, and preferable alternatives to physical discipline should be encouraged.

ETIOLOGY

There is no single cause of physical abuse; rather, there are multiple and interacting factors, such as:

- Child – e.g., difficult temperament, disabilities
- Parent – e.g., substance abuse, poor impulse control, history of abuse themselves
- Family – e.g., stress (unemployment), social isolation
- Community – e.g., limited social supports, stress
- Society – e.g., poverty, tolerance of violence

For example, a single mother who has lost her job and has a child with cerebral palsy may be at high risk for maltreatment, especially if she is depressed and has little support from family and friends.

RED FLAGS IN THE CHILD’S HISTORY

The child’s history is critical to determining the likelihood of abuse. The main question is: Does this history offer a plausible and acceptable explanation for the child’s condition? Be aware, however, that

even if it does, that does not assure that the injury occurred as described in the history. “Red flags” include:

1. Unexplained injury
2. Implausible history
3. Inconsistent history – differing explanations for the injury
4. Repeated injuries or illnesses beyond what is expected in most children
5. Delay in seeking medical care

Less commonly, “red flags” include:

6. Child accuses an adult
7. One parent accuses another
8. Perpetrator confesses
9. Eyewitness history
10. Alleged self-inflicted injury, especially in a baby
11. Alleged sibling-inflicted injury

ANY of the above should make you consider the POSSIBILITY of child abuse!

IMPORTANT ASPECTS OF THE GENERAL EXAMINATION

1. Nutritional status, growth (as plotted on growth charts)
2. Hygiene
3. Appropriateness of clothing for the weather
4. Affect – bland, sad, frightened, appropriate
5. Interaction with parent, family members, examiner
6. Behavior – aggressive, resistant, withdrawn, age-appropriate

BRUISES

Common sites of non-inflicted (accidental) injuries: forehead, palms, elbows, shins, most areas with bony prominences beneath

Suspicious aspects of bruising:

1. Shape – clear imprint of belt (and/or buckle), hand, electric cord (loop)
2. Location – circumferential bruises of wrists, ankles; bruising in unusual sites, such as genitalia, inner buttocks
3. Pattern – symmetry, pairing of bruises (pinch or squeeze marks)
4. Number – multiple bruises of differing ages (requires different explanations)
5. Color – ages of bruises not compatible with history

Age of bruise is not precise and only serves as a rough guide – if red, less than seven days old; if yellow and/or green, greater than one to two days old.

When to consider a “bleeding problem”:

- History in child or family of bleeding problem, especially mucosal or joint bleeding
- Be aware that history of “easy bruising” without mucosal or joint bleeding is not likely to be a bleeding disorder
- Even if a bleeding disorder exists, bruising can still be inflicted. Children with bleeding problems can still be abused!
- Clotting tests are rarely indicated
- In rare, unclear cases, a hematology consultation may be needed

Differential diagnosis

Mongolian Spot: a normal variation (“birthmark”) in Black, Asian (including Mongolian) and occasionally White babies, usually on the buttocks and lower back, but can extend up back to shoulders and even upper arms and legs. Does not change over days or weeks and is not swollen or tender as is immature pigment distribution, not bruising

Henoch-Schonlein Purpura: an allergic-type reaction that can produce multiple small points of bleeding on buttocks and legs (dependent areas of the body). Its typical appearance and distribution differentiate it from inflicted bruises

Diagnostic dilemmas:

- Corporal punishment versus child abuse – at what point does corporal punishment (hitting a child) become child abuse? Always? When bruises or worse injuries result? Our society has not resolved this question
- Folkloric remedies – traditional “medicine” that results in bruising or worse, such as cao gio (coin rubbing) in Southeast Asian cultures; cupping (application of hot cup/glass) in Middle Eastern and N. African cultures

BURNS***Non-inflicted (accidental) burns***

- When a child reaches for a pot on a stove, counter or table, and spills hot liquid onto himself/herself, resulting in burns on face, chin, neck, shoulder, chest and armpit (as with an outstretched arm) in an irregular pattern consistent with splashing and the downward flow of the hot liquid
- When a child reaches and grabs a hot object (curling iron, heater, radiator, etc.) resulting in burns of the palm, arms, trunk, often with regular edges and not very extensive

Infant’s or child’s skin is not as thick as an adult’s skin; therefore, less time is required for a full-thickness (3rd degree) burn.

Water Temperature Time Needed for 3rd Degree Burn:

120 degrees (Fahrenheit)	10 minutes
125 degrees	2- 4 minutes (the typical temperature setting for hot water heaters)
130 degrees	20 seconds
140 degrees	5- 6 seconds (the typical setting for hot water heaters until recently)
150 degrees	2 seconds

It is strongly recommended that ALL hot water heaters should be set at 125 degrees Fahrenheit.

Cigarette Burns

- Full (3rd degree) or deep partial-thickness (deep 2nd degree) – tip of burning cigarette is 900F!
- Circular, about eight millimeters in diameter (width of cigarette)
- Often found on palms, hands
- Differential diagnosis
- Chicken pox – heals without a mark unless scratched, leading to impetigo
- Impetigo – not as deep, substantial variation in lesion size

Immersion Burns

- When child is forcibly held in hot water
- Regular (sharply demarcated) border between burned and healthy skin, no splashing
- Glove or stocking distribution, often symmetrical
- Doughnut pattern on buttocks — central area, pressed against cooler tub surface, is spared while surrounding skin, in contact with hotter water, is burned
- Other areas that may be spared: parts of the body protruding out of the water, body creases, folds of skin, skin of palms or soles (thicker skin is more resistant to burns)

Rigid Contact Burns

- Usually clear and regular edge to burn
- Suspicious if on back of hand (a child reaching for something is more likely to burn his/her palm) and/or extensive (suggesting more than fleeting contact, as if held there)
- Children very quickly try to escape painful stimuli

BITES

- Toddlers do bite, making it important to differentiate their bites from those of older persons. If the distance between the marks made by the canines is greater than three centimeters (1.2 inches), then the bite was almost certainly made by someone over eight years old
- At times it is necessary to distinguish human from animal bites
- The human dental arch is wider and shallower than the longer and narrower animal dental arch

ABDOMINAL INJURIES

- Any of the abdominal organs or structures might be injured by substantial inflicted trauma, such as a punch or kick to the abdomen. As the abdominal wall is flexible, the blow may not leave any bruises to the skin, while causing significant, even life-threatening internal injuries.

Internal injuries can include:

- Bruising of the wall of the small intestine (intramural hematoma)
- Intestinal perforation
- Ruptured liver (most common cause of death in abdominal injury)
- Ruptured spleen
- Torn blood vessel(s)
- Injury to the kidney, pancreas

FRACTURES

Most inflicted fractures occur in children under three years old.

Metaphyseal Fractures

- At the end of the long bones
- Due to sudden pulling or twisting of limb
- Often chips the metaphysis, can give the “bucket handle” appearance
- STRONGLY suggestive of abuse as it is very difficult to cause these fractures accidentally

Diaphyseal Fractures

- Involves the shaft of the bone
- Transverse fracture – due to substantial perpendicular force, such as a pedestrian motor vehicle accident or severe direct blow
- Oblique/spiral fracture – due to substantial twisting force, such as a fall during which a limb is twisted, or a child is held firmly by an extremity and twists to get loose, or the violent twisting of an immobile child’s extremity
- Spiral fractures of the femur in an infant are STRONGLY suggestive of abuse

Chest Wall Fracture

- Posterior and/or lateral rib fractures are highly suspicious for abuse. CPR rarely causes fractures
- Clavicle fractures
- Mid-clavicular fractures are often accidental, resulting from falls onto the shoulder
- Suspect abuse in cases of distal (at the end) clavicular fractures (especially with avulsion)

Multiple Fractures

- Suspect abuse in cases of multiple fractures involving multiple sites and of varying ages. While there are conditions that render the bones susceptible to fractures, such as osteogenesis imperfecta, or rick-

ets, these are extremely rare. If suspected, consultation with a pediatric radiologist and/or geneticist can be helpful.

- Diagnoses that can be confused with fractures, such as infections of the bone (osteomyelitis) or malignancies, should have other characteristics which make the correct diagnosis apparent.

Fractures to the fetus or infant can result from prenatal trauma (automobile accidents, battering of the mother) or birth trauma (fracture of the clavicle is by far the most common).

Further Evaluation for Fractures

- Skeletal survey (also known as Occult Trauma Series, etc.) should be done if physical abuse is suspected:
 - Under three years old – low threshold if physical abuse is suspected
 - Three to five years old – moderate threshold
 - Over five years old – only if clear indication

Such an x-ray survey should include one or more views of the skull, two views of the chest, lateral view of the spine, and frontal views of the upper and lower extremities, including pelvis, hands and feet.

If skeletal survey is normal but there is a strong suspicion of abuse, then a bone scan can be performed.

Bone Scans

A *nuclear medicine test* where a radioactive material is injected into the child, is taken up by the bones, and a scan is done to look for abnormalities.

- Better for recent trauma (less than ten days)
- Good for ribs, hands, and feet
- May miss bilateral symmetrical injuries, as these may be interpreted as normal variants
- Abnormal scans should be confirmed by x-ray and/or CT scan
- Involves more radiation to rapidly growing tissues
- More costly

HEAD INJURIES

Cause of greatest morbidity and mortality in abused children

Injuries include:

- Black eyes (if bilateral, unlikely to be accidental)
- Subgaleal (under the scalp) bleeding (hematoma)
- Traumatic alopecia (hair pulled out)
- Scalp bruises from direct trauma
- Intracranial (inside the head) bleeding

- Subarachnoid (most superficial)
- Subdural (most common)
- Parenchymal (deepest, in the brain tissue)

IMPORTANT! Falling off a bed or changing table RARELY results in a skull fracture and almost never causes intracranial bleeding. Yet a simple linear skull fracture can result from minor trauma. Significant force, such as from an automobile accident, a fall from considerable height (e.g., a third story window) or a forceful blow to the head are probably needed to produce skull fractures that are wider than three millimeters, complex (more than a single fracture line), bilateral, or involving other than the parietal bone (the side of the skull).

Evaluation of Head Injuries

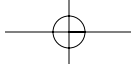
- Thorough history and physical examination
- Fundoscopy (examination of the inside of the eyes) to look for retinal bleeding. May need ophthalmology consultation
- Skull x-rays – mainly for medico-legal purposes (not the best test)
 - NOTE: these tests cannot date skull fractures, although soft tissue swelling means of recent origin
- CT scan – the best way to diagnose the usual intracranial bleed. Contrast material injection is needed to diagnose small bleeds
- MRI – most definitive test for small bleeds, cerebral (parenchymal) contusions. Requires sedation and sometimes general anesthesia for small children
- Skeletal survey – in infants with head injuries, many have other new and old fractures There should be multidisciplinary team involvement, as these are frequently complicated cases.

Shaken Baby Syndrome

- Definition: Intracranial hemorrhages, especially subdurals, retinal hemorrhages, and often NO external signs
- Mechanism: Not fully clear, thought to result from VIGOROUS, FORCEFUL shaking of a poorly supported head (relatively large head and weak neck muscles in infants), which causes an acceleration/deceleration injury (like whiplash). Blunt head trauma from the infant's head striking a hard surface is frequently also a factor.

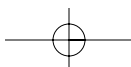
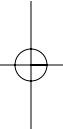
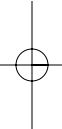
IMPORTANT: It seems extremely unlikely that rough-housing or playfully throwing an infant up in the air (and catching him/her!) would lead to this injury.

Clinically: Highly variable, ranging from subtle presentations such as failure to thrive, to seizures, to overt neurological signs, to coma or death



BEHAVIORAL MANIFESTATIONS OF PHYSICAL ABUSE

Many behavioral problems have been described in abused children, indeed, almost all abnormal child behaviors can be seen in children who have been maltreated. The difficulty is that these abnormal behaviors are NOT specific to abuse; they could be due to other causes. The major behavioral problem associated with abuse appears to be aggression toward parents, peers, or in general. The bottom line is: when considering behavioral problems, it is important to include the possibility of abuse as a cause or contributory factor, being careful, of course, not to jump to conclusions.



NEGLECT

Howard Dubowitz, M.D.

Purpose: The purpose of identifying children who are or have been neglected, or who are at high risk of being neglected, is to provide or facilitate appropriate interventions in order to enhance the care and well-being of the child, NOT to blame the parents. In most situations, the challenge is to work WITH the parents and enable them to take better care of their child(ren).

DEFINITIONS

Legal: Under Maryland law, neglect is defined, in part, as “the leaving of a child unattended or other failure to give proper care and attention to a child by the child’s parents, guardian, or custodian under circumstances that indicate that the child’s health or welfare is significantly harmed or placed at risk of significant harm.” Children under eight years old may not be left unattended, and caretakers of such children must be at least thirteen years old. “Proper care and attention” and “significant harm” are not further defined under the law and are thus open to widely differing interpretations.

Another possible definition: Child neglect occurs when a child’s basic needs are not met. Basic needs include: adequate food (nutrition), clothing, health care (physical and mental), supervision, education, protection (including protection from abuse as well as other harm), nurturance (“love”, emotional support), and a stable, safe and secure home (with proper sanitation). The advantages of this definition are that it focuses on the needs of the child, not on the acts or omissions of a caretaker, fosters a comprehensive view of conditions that harm and endanger children, and encourages consideration of a broader array of possible interventions.

Etiology: There are many possible reasons for parental failure to meet these needs, including, among others, lack of resources (poverty), inadequate access to care, parental substance abuse, parental psychopathology (such as depression, schizophrenia), parental priorities that relegate the needs of the child to a lower rank, or even the abuse and/or neglect of the parent as a child (the effects of which may diminish their recognition of the neglect as maltreatment).

EFFECTS OF NEGLECT

- Difficult to measure, often serious physical neglect
- More fatalities due to neglect than abuse
- Can leave severe damage (brain damage from starvation)
- Psychological/emotional: can leave long-term effects, including major mental illness, inability to trust, and, as above, the abuse or neglect of their own children

IMPORTANT CONSIDERATIONS

1. *The child's age/vulnerability*

During infancy, there is a total dependence on parents for catering to the needs of the young child. With increasing age, the child becomes relatively more autonomous and independent. Naturally, leaving a two-year-old alone is very different from leaving a twelve-year-old alone. Age and developmental level are associated with vulnerability; younger children are particularly susceptible to harm if their needs are not met.

2. *Severity of harm – actual or potential*

Some oversights are likely to be trivial and should be ignored. For example, after a bout of pneumonia in an otherwise generally healthy child, the child seems fine and the follow-up appointment is forgotten. Such an incident probably does not cross the threshold of causing actual or potential harm to the child.

What about potential harm or endangerment of the child, without actual harm? Most in the field would agree that this can be sufficient to be considered neglect. For example, a parent who refuses treatment for her child's lead poisoning is neglecting an important medical need, even though the child appears fine. Apparent or potential harm that can be reasonably attributed to a failure to meet a child's crucial needs constitutes child neglect.

3. *Chronicity/frequency*

In general, the concern is with a pattern of repeatedly not meeting a child's needs. For example, missing a dose of antibiotic is almost expected, but not getting any at all is different. A dilemma arises with allegedly singular lapses that have terrible consequences, such as an infant drowning after being left alone in the bath tub. Clearly, there is a risk of actual or potential harm with a single neglectful incident.

4. *Intentionality*

Does it make a difference if a parent deliberately intended his/her child to be neglected? The great majority of neglectful (and abusive) parents probably do not intend to harm their child. Also, intentionality is virtually impossible to assess in most situations. For these reasons, the assessment of intentionality is generally not useful, and can even be harmful in establishing a rapport with the family.

THE CONTEXT OF CHILD NEGLECT

A number of factors might contribute to the neglect of a child. While these do not influence the definition of neglect, they are crucial to understanding the etiology of the neglect and guiding appropriate interventions.

1. *Parental understanding*

A useful question to consider is "What constitutes reasonable expectations of a parent in a given situation?" For example, no one should expect a parent to recognize a diet deficient in iron. Alternatively,

a diet of only candy is clearly inappropriate. It is important that parents understand directions given to them if we are to expect them to carry out these directions.

An assessment of the parent's understanding does not alter the interpretation of when a child's need is not being met – the child is still neglected. But an assessment of the parents' understanding and the efforts that have been made to assist that understanding are critical in guiding the intervention.

2. Religious/cultural beliefs

There are many cases where medical care is denied to children because of their parent's adherence to Christian Science, Jehovah's Witnesses, or other belief systems. Generally, "alternative treatment" is provided, such as prayer. These cases represent the tip of an iceberg, and there are many less dramatic examples in which health care and child rearing beliefs and practices of different cultural subgroups deviate from the mainstream. This might manifest, for example, as disdain for psychotherapy or strict adherence to a vegan diet.

At what point might the imposition of such beliefs be reasonably considered to constitute neglect? If they can be shown to be clearly harmful or dangerous to the child, or if substantially preferable approaches exist but are denied to the child, the needs and the rights of the child should take precedence. Only then should the view of the majority or mainstream prevail over that of a minority.

3. Poverty

Strong associations have been found between poverty and child neglect, although obviously not all poor people neglect their children – indeed, most do not. It is not hard to understand that the burdens and stresses of poverty can make parenting very difficult. It is also apparent that poverty per se is the most important cause of children's needs not being met.

The following are examples of the consequences of poverty: lack of access to health care, inability to buy enough food, paucity of low income housing, exposure to hazardous environments, and the low quality education provided by many school systems.

However, the child welfare system has focused on inadequate parents, and has paid little attention to the broader societal factors which harm and jeopardize children, and which compromise the ability of parents to adequately nurture their children.

MANIFESTATIONS OF NEGLECT

Historical Indicators:

- Lack of appropriate well-child care, including immunizations
- Failure to seek or adhere to medical care, resulting in harm or risk of harm
- Absence of necessary health aids, such as eyeglasses or hearing aids
- Absence of appropriate dental care
- Munchausen by proxy, in which the child has a fictitious illness from the parent

Physical Indicators:

- Undernutrition on examination, or as evidenced by poor rate of growth on curves
- Poor hygiene, such as being extremely dirty or having severe diaper rash
- Developmental delay from lack of stimulation
- Untreated medical conditions
- Rampant dental caries

Behavioral Indicators (*most are non-specific for neglect*):

- Depression
- Anxiety
- Sleep disturbances
- Impaired interpersonal, including peer group, relationships
- Discipline problems, aggressive behavior
- Poor school performance
- “Role reversal”, in which the child assumes a caretaker role toward the parent
- Excessive household responsibilities, including care of other children

MANAGEMENT OF NEGLECT

Short-term:

- Address child’s needs
- Assess why needs were not met
- Convey concern, interest in helping
- Intervene, arrange follow-up care
- Need for long-term support and monitoring
- Need to understand family structure, beliefs, skills, strengths, stressors, barriers
- Continually convey interest in helping
- Provide extra education and guidance
- Coordinate care
- Make treatments clear and simple, and prioritize them
- Consider parent’s needs
- Need flexibility, humility and sensitivity — cultural and religious differences

A Call to Advocacy:

“Too many of today’s children will reach adulthood unhealthy, illiterate, unemployable, and lacking moral direction and a vision of a secure future. This is a personal tragedy for the young people involved and a staggering loss for the nation as a whole. We must begin today to place children and their families at the top of the national agenda.”

– Sen. John D. Rockefeller IV, *National Commission on Children*, 1991.

SEXUAL ABUSE

DEFINITIONS

Maryland Law: “Sexual abuse” means any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by a household or family member. Sexual abuse includes: incest, rape, or sexual offense in any degree, sodomy, and unnatural or perverted sexual practices.

Sexual abuse includes, but is not limited to, contact or conduct with a child for the purpose of sexual gratification, and may range from sexual advances, kissing or fondling, to sexual crimes in any degree, rape, prostitution, or allowing, permitting, encouraging or engaging in any inappropriate sexual activity with or by the child, including obscene or pornographic display, photographing, filming or depiction of a child as prohibited by law. Exposing the child to developmentally inappropriate sexual situations would constitute conduct that is sexual abuse.

Sexual assault would include many of the above acts but committed by someone other than those listed.

PREVALENCE

Retrospective studies indicate that 19-38 percent of girls and 5-15 percent of boys are sexually abused during childhood. These numbers are just the tip of the iceberg and it is not clear that the iceberg is so asymmetric with respect to gender.

EPIDEMIOLOGY

- **Child characteristics:** About 15 percent of reported cases involve males (female/male= 13/1) Peak ages: 4-6 years and 14-15 years for girls; and 5-7 years for boys.
- Note the absence of a peak for older boys. As we are more willing to accept the sexual abuse of adolescent boys, this will change.
- We have yet to accept male victims and female perpetrators to the extent that they appear to actually occur.

PERPETRATOR CHARACTERISTICS

- There is NO typical perpetrator profile
- Many perpetrators appear normal, successful and do not have criminal records
- Most are male (see above)
- Most are familiar to the child, NOT strangers
- Many enjoy and take advantage of a position of trust and authority with the child
- 20- 40 percent are adolescents
- MOST perpetrators were themselves abused as children, whether male or female

CHARACTERISTICS OF SEXUAL ABUSE

Children are often afraid to tell, especially if threatened, delaying disclosure. Threats can be obvious (“I’ll kill you if you tell.”). Threats can be subtle (“If you tell, I’ll go to jail and it’ll be your fault.”). Fondling is the most common form of sexual abuse, especially in younger children. Intercourse or sodomy are more common in older children.

WHEN TO THINK ABOUT THE POSSIBILITY OF SEXUAL ABUSE

- Child discloses (not common) or hints at the possibility (much more common)
- Parent or other caretaker has reasonable basis for suspecting sexual abuse
- Child has genital problems, acute or chronic, that could be due to sexual abuse
- Child has developmentally inappropriate sexualized behavior
- Others (family members, including siblings, etc.) have witnessed abuse acts
- There are psychological, emotional or educational problems that could be explained as resulting from the child’s sexual abuse.

Any of the above warrant further clarification, but be careful not to jump to conclusions

TIMING AND LOCATION OF EVALUATIONS FOR THE POSSIBILITY OF SEXUAL ABUSE

All children suspected of having been sexually abused should have a medical evaluation. Many children, however, disclose their abuse some time after it occurred. For these children, their assessment is NOT a medical emergency. Considerations include the child’s emotional state, the possibility of gathering forensic evidence (sperm and acid phosphatase in semen are present for only three days), and the expertise of the examiner.

- Indications for and urgent evaluation include:
 - If the child may have been abused within three days
 - If the child has major medical problems, such as rectal or genital bleeding
 - If the child has major psychological problems, such as self-harm ideation
- Therefore, MOST children do not need an urgent evaluation in an emergency room. Rather they need:
 - A screening evaluation by their primary care provider
 - A report to Child Protective Services and the police, who will arrange an evaluation at a child advocacy center in the local jurisdiction

GOALS OF THE EVALUATION OF CHILD SEXUAL ABUSE

- Identify those children who have been sexually abused
 - Detect and treat medical problems:
 - Physical injury
- Determine if the child has sexually transmitted diseases (STD’s).

- Pregnancy can be *prima face* evidence of sexual abuse with paternity testing.
- Detect and address psychosocial problems of the child and his/her family.
- Gather forensic evidence, where appropriate.
- Help ensure the child's safety and protection.
- Facilitate appropriate referrals for further evaluation, medical care, mental health care.

INTERVIEWING THE CHILD AND CAREGIVERS

Try to conduct separate interviews in a quiet, comfortable and private location.

Interviewing caregivers (not usually done by child's attorney, but occasionally may happen that way):

- Ask about prior interviews and assessments.
- Clarify involvement of child protective services and law enforcement.
- Ask about prior history of maltreatment.
- History of the disclosure – to whom, under what circumstances
- Medical history – related to the abuse (ano-genital symptoms, past trauma)
- Family situation – household members, sleeping and babysitting arrangements, exposure to sexual activity, materials, substance abuse, domestic violence
- Caregiver's response to the alleged abuse – feelings and actions. Did they believe the victim?

Interviewing the child:

- Start by building rapport, making the child comfortable and not threatened.
- Encourage the child's participation, invite their questions.
- Maintain confidentiality (where possible) – particularly an issue for older children. Be realistic and honest (don't promise you won't tell if you may eventually have to report it).

Ground rules for the child:

- It's OK to say "I don't know."
- It's OK to decline to answer a question.
- It's OK to ask for clarification of a question.
- Inform the child that some questions may be asked more than once.
- The only answer you want to your questions is "the truth."
- Assess the child's developmental level, especially language. Remember psychological trauma, such as that involved in sexual abuse, can lead to developmental regression, so the child will be functioning at a lower level than is appropriate for their age.
- Find out the child's terms for genitalia, perhaps using an anatomically correct drawing.
- Avoid leading and "yes" and "no" questions.
- Begin with open-ended questions, perhaps using multiple choice questions if necessary.
- Use simple tenses, one-word verbs (example: "who touched you").
- Use active rather than passive tense.
- Use actual names of individuals where possible rather than pronouns.

- Younger children can tell “who,” “what,” and “where.”
- Older children can add “when” and “how.”
- Don’t ask “Why?” The child cannot really answer, and it may suggest blame.
- Gather specific details, which may help to discern if and how the child may have been coached – Where were you touched? By whom? How many times? How did it feel? What were you wearing? What were they wearing? What did you say/do? What did they say/do? Was anyone else there? Did they touch anyone else? Did anyone tell you what to say?
- Obtain sexual history, especially in post-pubertal children.
- Note body language and mood shifts related to questions, answers, discussion.
- Praise child for helping and doing such a good job.
- Tell child you believe them. No one else may!
- Prepare child for what’s next.

PSYCHOLOGICAL PROBLEMS ASSOCIATED WITH CHILD SEXUAL ABUSE

The psychological effects of sexual abuse have been theorized to result from four main problem areas: a traumatic sexual experience; a sense of betrayal by a trusted person or persons; a feeling of powerlessness to protect oneself; and the stigma of having been abused. In the following list, the underlined items are experiences which often take place in the first few years following the abuse; the items which are not underlined are more long-term experiences. It is important to remember that most of these are NOT specific to sexual abuse. Each of these should raise the possibility of sexual abuse.

- Traumatic Sexual Experience
 - Precocious sexual activity
 - Sexual aggression (as an adult)
 - Compulsive masturbation
 - Promiscuity, prostitution
- Betrayal
 - Anger
 - Depression
 - Grief
 - Impaired ability to trust
- Powerlessness
 - Anxiety, hypervigilance
 - Fear, phobia, nightmares
 - Aggressive behavior (as a child)
 - Delinquency, running away from home

- Perception of self as a victim
- Vulnerability to further abuse
- Vulnerability to perpetrating abuse
- Stigmatization
 - Guilt, shame
 - Lowered self-esteem
 - Social isolation
 - Suicidal ideation, which may lead to attempted and even successful suicide

Preparation for the Physical Examination

For the child and family, the first evaluation following sexual abuse may be frightening and stressful. Repeated questioning by physicians, social workers, psychologists, protective service workers, law enforcement personnel, and attorneys, in addition to the physical examination, may add to the trauma of the abuse. The child would benefit from having an advocate to act as his/her liaison to those listed above. Once appointed, the child's attorney can fill that role, but initially a physician who has a relationship of trust with the child may provide the support and advocacy needed.

Although it is essential to obtain clear information regarding the abuse which has occurred, it is equally important to protect the victim from further psychological trauma. The initial contact should, therefore, be supportive and not painful. The patient and family should be informed in understandable terms of the evaluation's purpose and goals. They should be told about tests, procedures, and especially the nature of the physical examination to be performed on the child. It is particularly important that all involved understand that an internal gynecological examination will NOT be done. This is very rarely necessary (only when there is internal bleeding indicating internal injury) and, if done, the child is under sedation or anesthesia. Even an external examination of the ano-genital area can cause distress, and a forced exam of a distraught, struggling child is unacceptable. Under such circumstances, the exam may have to be done under different conditions, perhaps by a more experienced examiner or under sedation. The usual approach is to perform a general pediatric-type exam first, to put the child at ease, and then to include the ano-genital exam as a continuation of the general exam. This is almost always successful.

THE PHYSICAL EXAMINATION

Girls

The exam of the female ano-genital area is best done with the child in the supine (on her back) frog-leg position. The prone knee-chest position may reveal a different and helpful view and should also be done, particularly when the supine exam appears equivocal or abnormal.

The external genitalia is visualized by gentle lateral and posterior traction of the external labia, causing no discomfort but revealing the tissue inside the opening. While it previously had been thought that the size of the vaginal opening was a useful sign of abuse, research and experience have shown that not to be true.

- There are several normal variations of the hymen:
 - Most are circular (go all the way around) or crescentic (only appear posteriorly).
 - It need not be totally symmetrical to be normal.
 - Bumps are often normal, especially if connected to a ridge inside the vagina.
 - Clefts may be normal, especially if anterior and the remaining rim of the hymen is greater than one millimeter.
 - Estrogen effects, as in the newborn (from the mother) or pubertal children, cause the hymen to become pale and fleshy, and more easily stretched without injury.
- Signs of acute trauma include abrasions, lacerations, bruising and bleeding.
 - Especially if anterior, would indicate accidental injury, as in straddle injuries
- Signs of old trauma include:
 - Area(s) of missing or very little hymen (less than 1 millimeter rim)
 - Posterior notches
 - Scarring – areas of altered color, blood supply, texture, shape
- Signs of infection:
 - Inflammation – redness (erythema)
 - Discharge – especially if appears like pus (purulent)

Boys

The penis and scrotum are examined for signs of old or acute trauma or infection.

Anal Examination – Boys and Girls

- Anus may be examined in supine position with knees drawn onto chest (child can maintain eye contact with examiner and be reassured that exam will not hurt), in prone knee-chest position, or in the lateral position with the knees again drawn onto chest (difficult to tell symmetry in this position).
- Digital rectal examination is rarely needed. If there is rectal bleeding, exam can be done with sedation.
- Normal variations include pigmentation (not bruising), midline smooth areas, and gaping of the anal opening if there is stool ready to be passed.
- Signs of acute trauma include abrasions, lacerations, bruising and bleeding.
- Signs of old trauma include scarring and gaping (with no stool present) greater than 15 millimeters (3/5 inch).
- Signs of infection are quite rare, but can include inflammation (redness) or pus draining.

INTERPRETATION OF THE PHYSICAL EXAM

IMPORTANT – A normal exam does NOT rule out sexual abuse! Most abused children will have a normal examination!

The examiner may interpret the physical examination as:

- Normal, including normal variations, which does NOT rule out sexual abuse
- Equivocal/uncertain
- Abnormal, consistent with abuse
- Abnormal, indicative of abuse
- Abnormal, not due to abuse

Interpretation of the Overall Assessment

- The examiner can reach the following interpretations of the overall assessment:
 - No evidence of abuse
 - Possible abuse (non-specific findings on history and/or exam)
 - Probable abuse (clear history, possibly corroborative exam findings)
 - Definite abuse (sperm or semen found on child, definite exam findings, STD)
- The term “rule-out sexual abuse” should not be used in either the interpretation of the exam or the overall assessment.

SEXUALLY TRANSMITTED DISEASES (STD’S)

While STD’s in sexually abused children are very rare, they do occasionally occur and may, indeed, be the indicator of sexual abuse. It is possible for children to have an STD but have no symptoms and a normal examination, but this is also very rare. The history of sexual abuse (including the child’s revelations) may be incomplete, as children may not reveal all that has happened to them or may reveal more and more as time goes by. STD’s can also be transmitted perinatally (mother to fetus or newborn baby) and there may be a long latent period. It can take up to two or three years for Human Papilloma Virus (HPV, also known as venereal warts) to appear; for HIV it can be at least several years (cases have been reported of perinatally acquired HIV not appearing clinically for more than ten years); and we do not know how long the latent period is for chlamydia. In addition, the laboratory tests for STD’s are not 100 percent reliable, with mostly false negatives being reported (the patient has the STD but the lab test is negative). In light of all of the above, testing for STD’s in children who may have been sexually abused but who have no history or examination findings indicative of STD’s, is not routine. See below for considerations for laboratory testing.

Considerations for Laboratory Tests

- Local epidemiology of STD’s – any reports of a high incidence of STD’s among adults in the community
- Characteristics of the alleged perpetrator – known IV drug user, prostitute, etc.
- Type of abuse – genital to genital contact (body fluid contact), fondling, etc.
- Duration since abuse occurred
- Presence of signs or symptoms of genital injury – indicating genital to genital contact
- Presence of signs or symptoms of STD’s – such as a genital discharge

- Possible medical complications of missing the diagnosis of a STD – not a real issue except in adolescents where an untreated STD could cause medical *sequellae*
- Forensic issues – whether DNA testing can help in identifying the perpetrator, etc.
- Traumatic effect on the child – the insertion of a Q-tip into a child's genitals who was only fondled is more of an abuse to the child than are the actions of the abuser
- Child and family concerns – anxiety about STD's may warrant testing

Interpretation of STD's in Relation to Sexual Abuse

The possibility of sexual activity separate from the abuse in pubertal and older children must be considered, as must the possibility of perinatal transmission in younger children, as above

ABUSE – CERTAIN

- Gonorrhea, beyond the neonatal period
- Syphilis, beyond age three months (primary) or beyond one year (secondary)
- HIV, if transmission perinatally or via blood transfusion can be excluded
- Hepatitis B or C, again if transmission perinatally or by blood transfusion is excluded

ABUSE – PROBABLE

- *Trichomonas vaginalis*
- Genital Herpes, usually type 2
- Condyloma Acuminata (venereal warts, HPV), beyond two to three years of age
- Ano-genital Chlamydia, beyond two years of age, culture proven

Treatment of STD's

The risk of acquiring STD's after sexual abuse is low, so prophylactic treatment for STD's is not recommended unless the patient is symptomatic, has been abused by a known infected abuser, or has a positive test for a STD. Specific treatment recommendations for individual STD's under these circumstances are available in the *American Academy of Pediatrics Report of the Committee on Infectious Diseases* (the "Red Book") and from the Centers for Disease Control (CDC) in Atlanta. Follow-up, including tests of cure, should be assured for all children treated for STD's.

MANAGEMENT OF SEXUAL ABUSE

Treatment of STD's — as above

- Repair of physical injuries should be performed as needed, usually under sedation or anesthesia
- Possible pregnancy can be managed in various ways. "Morning after" pills should be offered where appropriate.
- Protection against further abuse must be assured, as victims are very vulnerable to repeat abuse. To accomplish this, the courts may be needed.

- Psychological support and treatment is almost always needed, but not always easy to get. For the child, insurance issues and other barriers can be problems. For the family, support and treatment are usually needed, rarely received, frequently resisted, and may call for judicial intervention.

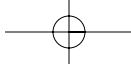
CHART DOCUMENTATION

The medical record (chart) is the main means of communication between the health care provider treating the abused or neglected child and the other professionals involved with the child. It can be used to assure that the proper investigation and intervention occur. The record of the health care provider's evaluation should be in language understandable to individuals not familiar with medical terms, legible, and clearly indicate any conclusion reached and the basis for that conclusion. A note written according to this "formula" will help the child and can also ameliorate any inconvenience involved in these cases.

While Maryland law provides for immediate access to these records by the Department of Social Services worker and law enforcement, others, including attorneys representing the children, will need to follow less direct routes for obtaining copies of these charts. This issue can be a sticking point between the health care system and the legal system, as described below.

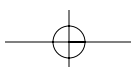
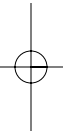
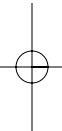
ISSUES BETWEEN ATTORNEYS AND HEALTH CARE PROVIDERS IN CHILD ABUSE AND NEGLECT CASES

- **Medical Records** – *see above*. Many health care providers are not aware of their obligations with respect to providing these charts to the authorities, nor do they know how to document their findings and conclusions to make them useful in helping the child and in the processing of the case.
- **Subpoenas and Summonses**: It is common practice to issue these to health care providers with no other communication indicating what is wanted from the health care provider, who wants it, and how it can be provided in the most reasonable way. Juvenile court documents do not contain the date of birth or other identifying information on them, making it difficult to identify the child, much less the issues. Documents do not even include the name of the child or of the attorney, so that it is difficult, if not impossible, to track down answers to questions about the purpose of the information requested, as well as who has made the request and why. A phone call to the health care provider to discuss the above information can be instrumental in the development of a strong, positive working relationship between the provider and the attorney, especially if a court appearance is possible (see below).
- **Testifying in Court**: With the above in mind, whenever a health care provider is needed to testify in court, appropriate and adequate discussion between the provider and the attorney must clarify what information is desired and the extent to which the provider is comfortable offering that information. Where the provider is being called as an expert witness, appropriate compensation for expenses and



time should routinely be arranged. Alternatives to a court appearance may be considered, such as stipulation to the provider's testimony, sworn statements, or even video depositions. If there is no alternative to a court appearance, the attorney should consider the disruption to the health care provider's schedule and patients, including placing the provider on call in a realistic way. It is imperative that the providers be informed of changes in the schedule and developments in the case, as these have an impact on their other activities. All too often, cases are settled, postponed, or otherwise changed so that the provider's involvement is not needed, but the provider is not informed of this change.

- **Professional Courtesy:** Most of the above difficulties could be avoided if professional courtesy were the standard of behavior in these cases. Many health care providers feel that they are not respected by attorneys who show little, if any, courtesy and consideration to them. The simple solution to this problem is for the attorney to treat the health care provider as he/she would want to be treated. The attorney can demonstrate this kind of professional courtesy by keeping the health care provider continuously informed about the progress of the case and about the expectations of the provider's involvement in it. Just a little communication can go a long way!



CHAPTER III

IMPORTANT CONSIDERATIONS IN THE PSYCHOSOCIAL AND COGNITIVE DEVELOPMENT OF ABUSED AND NEGLECTED CHILDREN

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INTRODUCTION

It is essential that an attorney who represents minors have a strong understanding of how children's psychosocial and cognitive development intersects with their respective needs in the legal arena. While our society acknowledges the needs and rights of children as distinct from adults, to a large degree this is only a superficial acknowledgement. More often, adults view children as miniature adults and interact with children from an exclusively "adultocentric frame". This chapter highlights the critical importance of understanding the unique and ever-changing needs of a child from a developmental perspective. The chapter also provides practical guidelines on the representation of vulnerable children.

Children who have been abused and neglected are among the most vulnerable of youngsters, and they are the ones who the attorney will most often be called upon to represent. This chapter will provide an overview of considerations in the psychosocial and cognitive development of abused and neglected children, focusing specifically on how abuse and neglect affects child development and in turn the implications of this for practice.

The chapter begins with a conceptual framework from which to consider the impact of child abuse and neglect. The issue of considered judgment, including parameters for determining whether a child has considered judgment are discussed. The chapter then provides a review of developmental issues, manifestations of trauma, and implications for practice for each developmental stage. The chapter concludes with a number of important general considerations in practicing with this population.

COMPREHENSIVE MODEL OF TRAUMA IMPACT: A CONCEPTUAL FRAMEWORK

The Comprehensive Model of Trauma Impact (CMTI) was developed by Koverola and colleagues (Koverola, 1992) to provide a framework for examining how abuse and neglect affects an individual. The model has four main components: (1) the nature of trauma/abuse and neglect, (2) the individual's areas of functioning, (3) the systemic context, and (4) the passage of time/developmental considerations.

Nature of Trauma

Children and adolescents can experience numerous forms of trauma. These include: physical abuse, sexual abuse, neglect, and emotional abuse. Witnessing domestic violence has increasingly been identified as a form of trauma, which frequently co-occurs in children who have been abused or neglected. It is important for an attorney to have a thorough understanding of the characteristics of trauma endured by the child. There is strong empirical evidence indicating that abuse characteristics are significantly related to child outcomes. The more severe and chronic the abuse experiences are, the more negative and enduring are the outcomes (Kendall-Tackett, Williams & Finkelhor, 1993). Further, there is strong evidence that when a child has experienced a multiplicity of types of abuse, there is a corresponding increase in negative impact upon the child (Rossman & Rosenberg, 1998).

It is important for the attorney to acquire a thorough understanding of the nature of the abuse that has been disclosed by the child and/or has been documented. In cases of physical abuse and sexual abuse, it is important to obtain information regarding: age at onset, relationship of perpetrator to child, number of perpetrators, frequency, duration, and type of injury. Additionally, in cases of sexual abuse, the attorney should obtain information about the child's perception of coercion, threat, and use of force. With respect to emotional abuse, it is important to have specific information about type and frequency, as well as who emotionally abused the child, and types of threats used. Neglect spans a broad spectrum of omissions in care. In contrast to abuse, which includes acts of commission, neglect consists of acts of omission that result in significant harm to a child. These acts of omission include situations such as not providing adequate medical care, resulting in serious physical danger and injury to the child and not providing adequate nutrition, resulting in failure to thrive. Characteristics of exposure to domestic violence include: child present during violence/child in another room overhearing it; severity of injuries; frequency; duration; number of perpetrators; and use of firearms and other weapons.

The attorney should endeavor to obtain information that is as complete as possible about the nature of the victimization, bearing in mind that they will likely find conflicting information about the type of trauma in the record. The process of disclosure is complex and typically gradual for children. It is often accompanied by periodic recanting and denial of abuse, frequently following the child's realization that the act of "having told" actually made the situation worse from the child's perspective (Berliner, Murphy & Hardoon, 1998). Furthermore, this process may also be linked to post traumatic stress disorder (PTSD), in which the child does not have the capacity to recall and disclose all aspects of the victimization because of trauma specific memory impairment (Koverola & Foy, 1993). The attorney should not be surprised if the client gives very different accounts of his/her abuse and neglect history. Similarly, it is not unusual to find contradictory statements and accounts about the abuse in the child's files.

Investigators often do not explore the full range of abuse experiences. For example, when a child is reported as having been sexually abused, the investigation often focuses exclusively or primarily on this type of victimization. However, the child may actually also have been neglected throughout his/her life and/or exposed to chronic domestic violence.

In sum, it is critical that the attorney representing a child who has suffered one form of abuse or neglect explore the full continuum and range of other types of abuse. It is important to know as much as possible about the characteristics of the abuse at issue and to be prepared for an ever-changing account.

Areas of Functioning

Affective Functioning. Children who have been abused and neglected have significant difficulties in the domain of affective functioning (Beitchman, Zucker, Hood, daCosta & Akman, 1991; Trickett, 1998). The child's capacity to experience and express affect in a developmentally appropriate manner is often compromised and manifested in both internalizing and externalizing behaviors. Internalizing behaviors include depression, anxiety, fear, and somatization; externalizing behaviors include the continuum of aggression, hostility, impulsivity, self-injurious behaviors, and delinquent behaviors. There is extensive empirical evidence to indicate that children who have been abused and neglected experience significantly higher levels of both internalizing and externalizing behaviors than do children who have not been abused or neglected (Kendall-Tackett, Williams & Finkelhor, 1993). The disturbance in affective functioning observed in abused and neglected children is often conceptualized as a problem with regulation of affect. Thus, these children may exhibit a flooding of affect, that is, intense displays of emotions. The same child may also exhibit blunted affect, that is, a complete absence of any emotion. Abused and neglected children have not had the opportunity to develop age appropriate ways of managing their feelings.

Cognitive Functioning. There is evidence that child abuse and neglect interferes with cognitive development. This can be demonstrated in language delays, academic difficulties (Trickett, McBride-Chang & Putnam, 1994), difficulties concentrating, as well as cognitive components noted in PTSD symptoms such as intrusive thoughts and memory impairments (Deblinger, McLeer & Henry, 1990; Kendall-Tackett, Williams & Finkelhor, 1993; McLeer, Deblinger, Atkins, Foal & Ralphe, 1988).

The majority of children who suffer from cognitive functioning difficulties secondary to abuse and neglect will experience considerable difficulty at school. In many cases, the child's difficulty is misdiagnosed as purely behavioral. It is critical that the attorney representing the child be attuned to the fact that while the child may indeed be challenging from a behavioral perspective, an underlying factor may be significant cognitive impairments resulting from or exacerbated by the abuse and neglect.

Interpersonal Functioning. Abuse does not occur in an interpersonal vacuum. Rather, quite the contrary, it is a highly emotionally charged interpersonal event. Abuse is inflicted by an individual of significant emotional import to the child. It is therefore not surprising that abuse has a massive negative impact upon the child's interpersonal functioning. There is considerable empirical evidence to document the significant interpersonal impairment suffered by abused children, most often manifested in disrupted relationships throughout life (Cole-Detke & Kobak, 1998). In fact, the disruption in healthy interpersonal relationships caused by abuse is posited by many to be the primary dynamic that perpetuates inter-generational abuse (Spatz-Widom, 1989). Similarly, neglect, which involves the profound rejection and disregard of the child, has a deleterious effect upon the child's capacity for healthy interpersonal relationships. Some have argued that neglected children are in fact the most powerfully impacted in the domain of interpersonal relationships (Gaudin, 1999).

Healthy interpersonal relationships are based upon the development of an attachment. There is considerable research on the process of attachment, and in particular on how attachment is disrupted in the lives of abused and neglected children (Cicchetti & Barnett, 1991; Crittenden, 1985; Egeland & Sroufe, 1981). Establishment of a secure attachment in infancy positions the child to develop other healthy relationships throughout life. The attachment research suggests that abuse and neglect that occurs in early life, specifically during infancy and toddlerhood, will set the stage for an extremely difficult life course. This highlights the importance of investigating the age at which abuse and neglect began, as well as the quality of caregiving received by the child during this extremely important stage of life.

Some argue that children who have suffered significant abuse in later childhood have a greater likelihood of resilience if they were fortunate enough to have had an emotionally available and consistent caregiver during the early stages of their life. This may account for significant variability in siblings who respond to similar victimization experiences quite differently. It is possible that an older sibling, for example, may have experienced a very positive first few years of life, developing a healthy attachment. Family circumstances may then have deteriorated significantly, with the result that younger siblings experienced a significantly more chaotic infancy period and inadequate care during a critical phase of development. While all the children may have experienced similar degrees of physical abuse and exposure to domestic violence, the eldest sibling may have a more positive outcome due in large measure to the early years of adequate care.

It is important to bear in mind that when abused children have significant impairments in interpersonal functioning, this will also include tremendous difficulty in establishing a relationship with their attorney. Regardless of how warm, engaging, and trustworthy the attorney may be, a child who has a significantly compromised capacity to develop an appropriate interpersonal relationship will pose a major challenge to the attorney.

Moral Functioning. There is growing evidence to suggest that abuse and neglect have a significant impact on a child's sense of justice and hopefulness about the future. The child who has been abused by his/her parents has the very difficult task of integrating painful realities at a premature stage of development. The child is cognitively unable to make sense of these very complex situations. From the child's perspective, "The person who I love and depend upon has deliberately injured me, causing me pain and in many cases disfigurement." Indeed these are perplexing dilemmas even for adults. They are existential issues: "Why do bad things happen?" "Is there justice?" "Why me?" An abused and neglected child somehow must grapple with these very difficult issues, usually in the absence of a consistent loving caregiver. It is important for the attorney to be respectful of the child's concept of right and wrong, of the child's seemingly idiosyncratic way of making sense of the cruelty of his/her own life.

Sexual Functioning. Children who have been sexually abused often manifest developmentally inappropriate sexual behaviors, most notably sexually acting out behaviors. (Friedrich et al, 1998). Sexualized behaviors are thought to emerge as a result of sexual abuse and, tragically, this itself results in the child being at significantly higher risk for further sexual victimization (Koverola, Proulx, Battle & Hanna, 1996). The continuum of sexualized behaviors include: excessive masturbation; preoccupation with other genitalia; exposing oneself to others; boundary violations (for example, grabbing or touching other peo-

ple's genitals); attempting to engage in sexual behaviors with other children, toys, or animals. In adolescence, sexualized behavior can include promiscuity and prostitution (Nadon, Koverola & Schluderman, 1998).

Physical Functioning. Children who have been abused and neglected often suffer from impairments in physical functioning. These may be obviously related to physical injuries, ranging from, for example, shaken baby syndrome, when a child has suffered significant damage such as blindness, seizure disorder, and paralysis, to injuries such as broken limbs and burns. Children who have been neglected may present with less obvious sequelae, but suffer from consequences of neglect nonetheless. For example, a child who has suffered medical neglect may have intensified symptoms of their disease resulting from a lack of appropriate medical care. Similarly, the rate of growth in a child who has received inadequate nutrition may be significantly lower than a child who has had adequate care. Lack of nutrition is associated with negative outcomes such as cognitive and developmental delays (Dubowitz, Black, Starr & Zuravain, 1993).

Intersection of Areas of Functioning. The CMTI model depicts all areas of functioning as intersecting and overlapping. It is important to note that all of these areas of functioning impact upon one another. The intersection of these discreet areas of functioning are of considerable significance. For example, a child who has significantly impaired affective functioning will also have considerable difficulty navigating healthy interpersonal relationships with peers and/or adults. In planning interventions for a child, one must consider the child's areas of strengths as well as weaknesses, in addition to ways in which certain areas of functioning may compromise other areas of functioning.

Systemic Context

The child exists within a complex system, namely, a family, community and society. It is important to consider the relationships between each level of the system. The first level of analysis is the family, and the immediate family is of greatest importance to the child. The family has positive protective factors as well as negative factors that may predispose the child to trauma and negative outcomes (Koverola, 1992). When evaluating the family, it is absolutely necessary to evaluate both the protective and predisposing factors, including an evaluation of the parents' strengths as well as limitations, the strengths and needs of siblings, and the family dynamics, particularly communication styles. In families where there has been abuse and neglect, generational boundaries are often blurred or non-existent. The role of the extended family should also always be considered when evaluating a child in need of assistance. As with the immediate family, one will find both protective factors and predisposing negative factors. Frequently, one will observe a re-enactment of previous intergenerational patterns (Widom, 1989).

The child also exists within the context of a community -- school, neighborhood groups, faith community, medical and social service providers. It is important to recognize the components of the child's community that may serve a protective and healing role for the child. It is important to consider how to integrate current components of the child's community as resources and strengths in providing assistance for the child.

The child exists within the context of a society. The tragic reality is that our society does not in fact value children. It is arguably, in part, society's devaluation of children that is responsible for the plight of the children represented by attorneys. While children will not articulate this to you as their attorney, it is painfully real to them that they are marginalized and viewed as unimportant. Each time their case is continued, they experience firsthand the fact that somehow they are not important enough for the powers at be to "figure it out and come to a decision to meet their needs."

Developmental Context

The CMTI model highlights the critical importance of considering when the abuse and neglect occurred in the child's developmental trajectory. As has already been noted in the discussion on interpersonal functioning, there is some evidence to suggest that abuse and neglect during infancy has a significantly deleterious effect on the capacity to develop later relationships.

It is also very important to bear in mind that many abused and neglected children experience re-victimization after one type of abuse by one perpetrator has ceased. The child must be adequately evaluated in order to achieve a complete understanding and knowledge of the abuse and, at a minimum, to ensure that the child is not in a situation in which he/she continues to experience abuse.

Considered Judgment

The traditional client-attorney relationship is based upon the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. In the case of a child, this assumption cannot always be made, particularly when the child is very young and/or is suffering from a physical, emotional or mental disability. In order to address this issue, we have developed guidelines of advocacy for attorneys representing children in CINA and related TPR and adoption proceedings. These guidelines are as follows:

Guideline A. Role of the Child's Counsel

The attorney should determine whether the child has considered judgment as defined in Guideline B1. If the child has considered judgment, the attorney should so state in open court and should advocate a position consistent with the child's wishes in the matter. If the attorney determines that the child lacks considered judgment. The attorney should so inform the court. The attorney should then advocate a position consistent with the best interests of the child as defined in Guideline B2.

Guideline B1: Assessing Considered Judgment

The attorney should advocate the position of the child unless the attorney reasonably concludes that the child is unable to express a reasoned choice about issues that are relevant to the particular purpose for which the attorney is representing the child. If the child has the ability to express a reasoned choice, the child is regarded as having considered judgment.

- a. To determine whether the child has considered judgment, the attorney should focus on the child's decision-making process rather than the child's decision. The attorney should determine whether the child can understand the risks and benefits of the child's legal position and whether the child can reasonably communicate his/her wishes. The attorney should consider the following factors when determining whether the child has considered judgment:
 - (1) Development stage:
 - i. Cognitive ability
 - ii. Socialization
 - iii. Emotional and mental development
 - (2) Child's expression of a relevant position
 - i. Ability to communicate with the attorney, and
 - ii. Ability to articulate reasons for the legal position
 - (3) Relevant and available reports such as from social workers, psychiatrists, psychologists, and schools
- b. A child may be capable of considered judgment even though the child has a significant cognitive or emotional disability.
- c. At every interview with the child, the attorney should assess whether the child has considered judgment regarding each relevant issue. In making a determination regarding considered judgment, the attorney may seek guidance from professionals, family members, school officials, and other concerned persons. The attorney should also determine if any evaluations are needed and advocate for them when appropriate. At no time shall the attorney compromise the attorney-client privilege.
- d. An attorney should be sensitive to cultural, racial, ethnic, or economic differences between the attorney and the child because such differences may inappropriately influence the attorney's assessment of whether the child has considered judgment.

Guideline B2. Best Interest Standard

When an attorney representing a child determines that the child does not have considered judgment, the attorney should advocate for services and safety measures that he/she believes to be in the child's best interests, taking into consideration the placement that is the least restrictive alternative. The attorney may advocate a position different from the child's wishes if the attorney finds that the child does not have considered judgment at that time. The attorney should make clear to the court that he/she is adopting the best interest standard for that particular proceeding and state the reasons for adopting the best interest standard, as well as the reasons for any change from a previously adopted standard of representation. Even if the attorney advocates a position different from the child's wishes, the attorney should ensure that the child's position is made a part of the record.

Impact of Child Abuse and Neglect: Implications for Practice

We will now turn to a consideration of each developmental stage and highlight (1) the developmental issues, (2) manifestations of the trauma, and (3) implications for practice, with specific reference to considered judgment.

INFANT/TODDLER

Developmental Issues:

Infants experience rapid growth across physical, cognitive, emotional and social areas. Physically, an infant progresses from reflexive activity to more voluntary, coordinated behavior. An infant learns to lift his/her head, roll over, sit up, stand, and walk. Life dramatically changes for infants and parents when the infant begins to crawl. With this new mobility, infants are able to explore the objects around them and interact with others. The experience of learning to move contributes to cognitive, social, and emotional development (Bertenthal, Campos, & Kermoian, 1994). By the middle of the first year, infants are able to grasp objects and will progress to scribbling with a crayon at around 16 months of age.

Cognitively, infants are in the sensorimotor stage, which involves learning about the world through one's senses and actions. Infants are beginning to understand how to coordinate their sensory input (e.g., seeing or tasting) with their motor output (e.g., grasping). By two years of age, toddlers learn to use images, words, or gestures to represent or stand for experiences and objects. Another important area of cognitive growth is in object permanence, or the understanding that objects continue to exist when they are no longer visible.

Development of social and moral reasoning begins early. Children learn at a relatively early age that some acts have distressing consequences. Research shows that children must learn: (1) to experience negative emotions when they violate rules, and (2) to control their impulses to engage in prohibited behaviors (Kochanska, 1993). It is through being rewarded for good behaviors and being reprimanded for poor behavior that many children learn their sense of right and wrong.

Emotional development in infants and toddlers consists of gaining knowledge about different emotions and understanding how actions affect their and others' emotions. Babies learn from caregivers which emotions are appropriate in which situations (Denham, 1989; Halberstadt, 1991). Infants also develop strategies for an affect regulation—the processes involved in initiating, maintaining, or altering emotional responses (Bridges & Grolnick, 1995). For example, young infants may turn away from negative arousal or unpleasant stimuli.

Attachment is a particularly important developmental consideration when working with abused and/or neglected children. Attachment is reciprocal, in that parents become attached to infants and infants become attached to their parents, according to one theory, which was developed to account for the difference between those parents who abused or neglected their children and those who nurtured them. Parents' attachment to the infant begins even before birth. For example, a parents' wishes, expectations, and preparation are important preceptors to a healthy attachment. Literature suggests that a par-

ent's ability to view his/her child accurately and respond to his/her needs appropriately greatly influences attachment throughout a child's development. The difficulty is that different infants demonstrate different needs, so there is no "hard rule" on the best way to develop a healthy attachment to one's child. Moreover, parents need to learn to "read" their child and respond to him/her. Abusive and neglecting parents experience considerable difficulty in this domain of parenting.

Infants require some time before they are developmentally ready to form attachments. Research indicates that infants progress through the following phases (Ainsworth, 1973; Bowlby, 1969):

- (1) Undiscriminating social responsiveness (birth to two to three months). Young infants are responsive to any human and do not yet show a clear preference for one person over another.
- (2) Discriminating social responsiveness (two to three months to six to seven months). Infants begin to show a preference for familiar companions.
- (3) Active proximity seeking/true attachment (six to seven months to three years). Infants and toddlers show clear attachment to their primary caregiver.

Attachment to a caregiver is an essential part of healthy human development. An infant needs to feel he/she belongs to another human and that his/her needs will be met by this person. Attachment begins with a nurturing environment and basic elements such as food and shelter. However, a child also needs positive physical and emotional stimulation, including holding, playing, and communicating.

The formation of a healthy attachment also facilitates exploratory behavior. As an infant grows to be a toddler and begins to actively explore his/her world, a primary goal is to balance autonomy and shame/doubt. The child begins to explore his/her world alone for a time, knowing that he/she can return to the caregiver at any time for nurturing. A healthy attachment enables the child to learn to trust his/her environment and other people. The ability to trust leads to a healthy sense of self, positive self-esteem, and a foundation for establishing good interpersonal relationships.

Manifestations of Trauma

When these different areas of development are not nurtured, as in the case of abused and neglected children, a number of different responses are seen in infants and toddlers. Many abused and neglected infants are classified as "Failure to Thrive." These infants present as withdrawn, and they do not meet the normative physical growth standards. They often appear to have a diminished curiosity about the world and will not develop a sense of autonomy. These infants will frequently refuse to eat for their caregiver or appear very detached from all people. Some will display aggressive, and/or violent behaviors. The outward expression of the trauma experienced may manifest in excessive crying, clinginess, difficulty in being soothed, lethargy, non-responsiveness to stimulation, and/or developmental delays. These infants and toddlers will not respond to others in a positive manner and will rarely smile.

Implications for Practice:

Children at this stage of development are the most vulnerable and defenseless, partly due to their size, but also because of their inability to communicate their needs and experiences through language. Further, time is of particular concern because of the rapidity of development. For example, a three month delay in trial for a one year old represents one quarter of his/her life, and experientially is more akin to an eternity. It is very important to move very swiftly in cases of very young infants and toddlers. This is reflected in the movement to proceed with permanency planning almost immediately. This often conflicts, however, with the movement to proceed with family reunification and with providing biological parents with adequate resources and time to maximize the likelihood that they could ultimately care for their children permanently.

With respect to the issue of considered judgment, it is self evident that an infant or toddler does not have considered judgment. Therefore, the attorney must proceed with advocacy that is in the best interest of the child. The attorney will need to rely very heavily upon the reports and evaluations of other professionals and individuals involved in the case. In determining what is in the best interest of the child, the attorney must consider any special needs of that child, whether cognitive, emotional or physical, together with the parent's capacity or potential capacity to meet these needs in the future. A very thorough psychological/psychiatric assessment of the parent, as well as a developmental assessment of the child, is needed.

The question often comes down to "Is it in the best interest of this child to delay adoption in the hope that the biological parent will pull it together?" If the scenario is one of a thirty-year-old mother with a fifteen-year severe substance abuse problem and periodic substance abuse treatment followed by relapses, the prognosis for a full recovery is extremely low. This would be a situation where it would likely be in the child's best interest to advocate for permanency planning and adoption. Similarly, if the situation is one of a developmentally delayed mother who is currently severely depressed, with a medically fragile or otherwise high-needs infant, the prognosis is again poor. While the depression may be treated, the developmental delay, coupled with the high needs of the child, does not lead to a positive prognosis for reunification. In contrast, a more optimistic scenario would include the following. An assessment reveals that the parent is in an acute crisis and presents with psychological or psycho-social issues that are amenable to intervention, and the child does not present with obvious complex needs. This is more likely to be a situation in which it would be in the child's best interest to advocate for family reunification services.

PRESCHOOLERS

Developmental Issues

Cognitive development in the preschooler is rapid and strongly linked to the development of verbal communication skills. The preschooler is discovering all the advantages to having words. They are quickly learning to ask for what they need and communicate better with their caregiver(s). Pretend and fantasy play flourish at this age, including games, imaginary friends and even elaborate, make-believe worlds. However, preschoolers are still highly influenced by their immediate perceptions, focusing on the most

perceptually salient aspects of a situation, and often easily fooled by appearances. They have great difficulty with tasks requiring them to use logic to arrive at the correct answer. Preschoolers have a tendency to view the world solely from their own perspective and cannot easily recognize other points of view. Consequently, preschool children typically assume that everyone views the world from their perspective.

Socially, the preschool age represents an increase in interpersonal interactions. These young children often experience a school-like environment for the first time, including the demands of interacting with many peers at the same time. Most children at this age engage in parallel play, or playing alongside another child. However, children at this age are also asked to begin sharing with others. This can be a difficult concept for a preschooler and will sometimes cause behavior problems when one does not get his/her way.

Manifestations of Trauma

Preschool age children who have experienced abuse and/or neglect often show poor interpersonal boundaries. These young children may be very intrusive toward both adults and children, described as “not keeping their hands to themselves.” They may be overly solicitous of strangers, which in fact results in their being at higher risk for victimization by other adults in their environment. Preschoolers with an abuse and neglect history may also fall at the other end of the continuum, and present as very closed and defended, with almost impenetrable interpersonal boundaries, making it difficult for adults or peers to engage in warm interpersonal relationships.

These children also often have a diminished or damaged sense of self. Because of their egocentrism, children at this age may believe that they caused and are responsible for the situation, which fuels their very low self-esteem. At this age, children also believe that the prominent adults in their life know everything. This makes it even more difficult to discern that a violent act performed by someone close to them is wrong. When the child repeats aggressive acts at school, they are quickly punished. This may create confusion as to what is wrong and right, and a belief that they themselves are “bad.” Finally, often in the case of abuse—particularly child sexual abuse—a child is sworn to secrecy by the perpetrator. When the perpetrator is a primary caregiver, the violation of this promise of secrecy causes intense confusion and difficulty in the disclosure process for the child.

Behaviorally, preschoolers may respond in an outward way, demonstrating externalizing behavior problems; or in an inward fashion, showing internalizing behaviors. Externalizing behavior patterns in children who have been abused and/or neglected may include: aggression, noncompliance, oppositional behavior, destructive behavior, cruelty to animals, or being overly demanding. Internalizing behaviors may include excessive neediness, withdrawal, shyness, sadness, or anxiety. They may also have frequent somatic complaints, such as headaches or stomach aches. Often, young children who have experienced victimization will have nightmares in which they re-experience the victimization experience. Finally, these children may demonstrate regressive behaviors, such as bed-wetting, soiling and clinginess.

Implications for Practice

As with infants and toddlers, preschoolers do not have the capacity for considered judgment, largely due to their stage of cognitive development. Preschoolers can often be quite verbal, and some precocious children can in fact present an argument for a position. It is, however, very important to be cognizant of

the limitations of the child's capacity to reason. The preschool child does not have the cognitive capacity to anticipate complex interactions and the implications of complex choices.

Despite the fact that the preschooler does not have considered judgment, he/she can provide the attorney with important information that must be considered in the development of the attorney's plan for what is in the child's best interest. The child's preferences, worries, fears, likes, dislikes and so forth, about potential caregivers, for example must be seriously considered. While the child may not have the cognitive capacity to argue for or against a specific plan, if a child loudly protests placement with a particular individual it may be because there is a good reason. These protests should not be lightly dismissed or automatically interpreted, as, for example, a reaction to the person because he/she is a strong disciplinarian and the child wants a lenient environment. Rather, the child may experience emotional rejection or even abuse when in the care of this person. In sum, it is important that the attorney obtain input from a broad range of sources, including professional evaluations, as well as interviewing the child directly.

SCHOOL-AGED CHILDREN

Developmental Issues

Physically, a school-aged child progresses to more fluid and rhythmic activity and participation in sports. Reaction time improves, along with speed in all physical movements. Although there continues to be growth through these years, the changes are not as dramatic as those seen in adolescence.

Cognitively, the school-age child is said to be in the concrete operations stage. This involves mastery of logical operations such as performing mental actions on objects. School-age children are developmentally able to compute math in their heads and classify and arrange objects. Much of the prior egocentrism is overcome, and these children are better at recognizing other people's perspectives. It is important to recognize that school-age children are still very concrete in their thinking and have difficulty considering abstract ideas, such as those involved in the legal arena.

Morally, school-age children seem to reason on a concrete level, defining "right" behavior as acts that are rewarded and "wrong" behavior as acts that are punished. Socially, school-age children are beginning to gain skills in cooperation and problem-solving. In the realm of interpersonal development, younger school-age children seek out friendships with peers who have similar interests, possess "cool toys," or live nearby. As they develop, friendships with peers become increasingly important and complex.

Manifestations of Trauma

School-age children who have experienced abuse or neglect present with a damaged sense of self and an inhibited capacity for interpersonal relationships. They have difficulty understanding a healthy relationship, and the role that they play in an interpersonal relationship. They are often found at extreme ends of behavior, either being selfless or very demanding of others. School-age children can demonstrate many of the same externalizing or internalizing behavior patterns as the preschool child. Specifically, a school-age child may show aggressive, noncompliant, or oppositional behavior patterns and will often miss school. This child may be destructive to property, such as setting a fire. Often children who have

been traumatized will be cruel to other children or even animals. School-age children may also begin to engage in substance use and/or abuse, especially if it is available in the home.

A child who has experienced trauma may also show internalizing symptoms. These may include excessive neediness, withdrawal, shyness, sadness, or anxiety. These children may have frequent somatic complaints such as headaches or stomach aches. They also may experience nightmares about re-occurrences of the trauma. School-age children may also begin to be “overachievers,” believing that they have to be perfect in order to avoid rejection by family members.

Socially, these children struggle as they watch their peers become more socially skilled. Abused and neglected children often have little to no experience or modeling of appropriate interpersonal relationships. As such, these are often the children who have few friends. Children who have experienced trauma often have inappropriate and/or intrusive interpersonal boundaries. They will in many cases be very clingy with their friends, not allowing any time away from them and constantly seeking reassurance that they are liked. On the other end of the continuum, some abused and neglected children may become very distant and unwilling to spend time with peers.

School-age children also demonstrate poor problem-solving skills. They lack the competence to solve typical age appropriate problems and this inability invariably grows throughout the school years. The more trouble they have in school, the more they fall behind and feel, once again, that they are “bad” and have failed. This situation frequently becomes a never-ending cycle: as these children fall behind, they begin to have difficulty paying attention in class, thus leading to future academic difficulties. These children often worry during the school day about what has happened or what will happen at home. As they feel increasingly that they are a failure at school, these children will begin to act out in negative ways or avoid school all together.

Implications for Practice

Many school aged children will be determined to have considered judgment. A child of average cognitive abilities with relatively appropriate social and emotional development will typically be able to understand risks and benefits of many of the child’s legal choices. It is, however, important to bear in mind that there are some more complex issues for which the child does not have the capacity to have considered judgment. It is therefore important for the attorney to carefully evaluate the child’s capacity with respect to each specific issue. It is also important to focus on the child’s decision-making process and not the child’s decision. This becomes critical when a child is making a decision that is significantly different from one that the attorney would make.

School aged children who have cognitive delays and/or who present with significant emotional or psychiatric disorders will often not have the capacity for considered judgment. For these children, as well as for younger school-aged children who are not yet cognitively able to have considered judgment, it is essential that the attorney carefully interview the child, but also obtain comprehensive input from professionals and others involved in the child’s life. As noted above regarding preschoolers, if a child voices a strong opinion and it is not readily apparent why the child has that opinion, there is cause for pause. There is inevitably a reason why a child has formulated their position, regardless of whether it is well rea-

soned. In these situations the attorney should carefully and thoroughly search for additional data that would help to account for and explain the child's position and develop a plan that is in the child's best interest.

ADOLESCENCE

Developmental Issues

Physically, adolescence is a time of rapid change as children experience puberty. Different parts of the body develop at different rates, and females tend to experience a growth spurt at a younger age than do males. Sexual maturation is a part of this process, with the most dramatic event being a female's first menstruation. Puberty also brings with it further development of the sex organs and the growth of body hair. These physical changes alone create numerous and varied psychological effects, even for the most healthy, well-adjusted adolescents. For example, females often become concerned about appearance and worry about how others will respond to them (Greif & Ulman, 1982). Some develop poor body images because they are disturbed by the weight gains that typically accompany menarche (Duncan et al., 1985). Males tend to have more positive body images after such physical changes. The most difficult experience for males is when they are "late" in developing. Late-maturing boys tend to be more anxious and attention seeking; they tend to feel unsure of themselves and inferior (Livson & Peskin, 1980).

Cognitively, adolescents are said to be in the formal operation stage, where they can now think logically about things that cannot be seen, heard, tasted, smelled, or touched. In other words, they develop the skill for hypothetical or abstract thought and reasoning. They also become better at a more systematic and scientific approach to problem-solving (Keating, 1980). This skill allows an adolescent to think through ideas in a new way, and often to challenge rules and standards that before were just accepted.

Morally, adolescence is a period of considerable growth, even though most teenagers break the law at one time or another. Adolescence is thought to be a time of transition from a focus on external rewards and punishments to a concentration on living up to the moral standards of role models and/or authorities.

Socially, adolescents spend even more time with peers and less time with parents (Fallon & Bowles, 1997). During this period, peers are the greatest influence on their behavior. Friendships become more focused on intimacy and self-disclosure rather than common interests (Berndt & Perry, 1990). Although same-sex friendships remain important, adolescents increasingly enter into close cross-sex friendships and relationships. Another major development during adolescence is awareness of one's personal sexuality. Adolescents must learn how to express their sexuality in the context of interpersonal relationships.

Manifestations of Trauma

Victimized adolescents may experience a number of manifestations, largely dependent on the severity of trauma, the number of occurrences, and the type of relationship that they had with the perpetrator (Rossman & Rosenber, 1998). These adolescents have significant difficulty developing healthy interper-

sonal relationships and often reject true intimacy. They have little knowledge about what constitutes a healthy relationship, and often communicate poorly with friends and partners. One frequent interactive pattern is overly self-reliant and independent behavior. These adolescents may appear to “have a chip on their shoulder” and are usually very resistant to close friendships and relationships. Stemming from a history of abuse, these adolescents have been hurt by those close to them and have not learned how to trust other people. Their response is to be on guard, a very practical and effective approach in most areas of life except for interpersonal relationships. Another pattern of interaction is compulsive behavior in relationships, ignoring healthy interpersonal boundaries. These teens become very involved in a relationship, and are often perceived as overly dependent and/or needy. Finally, adolescents who have experienced trauma often have difficulty with sexuality, especially if there is a history of sexual abuse. There is often a rejection of sexuality altogether, or an over-sexualized behavior pattern that may include violence (Nadon, Koverola & Schluderman, 1998).

Abused and/or neglected adolescents may also experience numerous externalizing behavior patterns. Some of these may be similar to those seen in childhood years, such as destructive behaviors, aggression, or cruelty to animals. However, it is important to keep in mind that an adolescent has more freedom. Thus, aggressive behavior may now be directed toward others during unsupervised events. Due to physical growth and strength, these aggressive acts may cause more harm than they would have done at younger ages. In addition, due to confusion about sexuality and difficulty with interpersonal relationships, these adolescents may engage in risky sexual behavior. These individuals are also more likely to be the victims of other violent crimes, such as rape. Finally, adolescents who have been involved in externalizing behaviors are often aligned with a group of peers with similar negative behaviors, which, combined with their search for their true identity, often leads to gang affiliation and an early introduction to drugs and alcohol.

Adolescents may also show internalizing behavior patterns, such as withdrawal, depression or anxiety. As teenagers develop cognitively, they may experience greater feelings of guilt and self-blame for their trauma. Many adolescents feel a loss of control over their life events and develop feelings of hopelessness. These symptoms make this group of young adults highly susceptible to suicide attempts. In addition, eating disorders are commonly seen in adolescents who have experienced trauma (Rossman & Rosenberg, 1998,b).

Overall, it is important to remember that many of our adult behaviors have been learned throughout our lives. Many interpersonal behavior patterns of children and adolescents are re-enactments of what they learned in their home environments. Many of these children may grow up believing that the violence they experienced is “normal.” Consequently, violence becomes a recurring behavior pattern, as these young people seek out the familiarity of violent relationships and are tragically re-victimized.

Implications for Practice

Typically an adolescent will have the capacity for considered judgment. The exceptions to this are developmentally delayed adolescents and those who experience serious emotional and/or psychiatric disturbances. Perhaps one of the greatest challenges faced by an attorney representing an adolescent with considered judgment is when a youngster puts forth a position that the attorney fears will have disastrous

consequences and that is clearly not in the adolescent's best interest. An example of this would be a child's request to return to an abusive parent who denies the abuse. In these situations, it is very important to seek out consultation from wise colleagues. Further, it is often advisable to endeavor to assist the adolescent in obtaining ongoing mental health services. These are clearly very difficult situations requiring careful consideration.

FINAL CONSIDERATIONS

Connecting with the Child

Equipped with knowledge about the developmental impact of abuse and neglect on children and a well thought out plan, coupled with a commitment to his/her client, the attorney may anticipate a warm reception from his/her child client. Instead, he/she will meet with stony silence or outright obnoxious behavior. The child client may refuse even to acknowledge the attorney's presence or direct profanities at him/her. It may be helpful to ask: "What basis does this child have for trusting me anyway?" This client may have had no experience with a reliable, trustworthy adult.

It is a challenge to approach the attorney-client relationship from the child's perspective, particularly when one has a burgeoning caseload. It is easier to move quickly to the more openly cooperative youngster. However, each client—silent, belligerent, or openly cooperative—deserves the same degree of patience and care. How, then, does the attorney establish a relationship with this challenging client? First and foremost, trust must be established. This can only be accomplished by demonstrating honesty throughout the relationship. It is often more expedient not to be fully honest—for example, it takes longer to explain the repercussions of decisions to a child and it increases the likelihood that the child will adopt a position that is more challenging for the advocate to defend in court. Nevertheless, dishonesty will invariably backfire and cause irreparable damage to the attorney's relationship with the child. It will also create future problems for any colleague who later represents this child.

Another critical component in building a relationship with the child client is communicating respect for that child. Abused and neglected children are acutely intuitive and will detect the slightest hint of sarcasm, derision, or lack of respect for them and for their families.

Respect for the Child's Family

Regardless of the extent of the abuse suffered by the child, the child nonetheless has a profound connection to his/her family of origin. This connection and bond must always be respected. It is potentially very dangerous to make negative comments about a child's family, or even to acknowledge agreement with the child when he/she makes disparaging comments. The child will invariably shift his/her position at some future date, and develop positive feelings for this same family member. One of the most significant psychological tasks for a child who has been abused by his/her parent is to resolve the intense ambivalence that they experience toward the parent, the feelings of both hate and love. If the attorney has engaged with the client in disparaging the family member, the child will undoubtedly fear that the

attorney will reject his/her new positive feelings towards that family member. This is an extremely difficult tightrope to walk because when a child expresses outrage and anger towards the parent who injured him/her, the attorney must demonstrate that he/she is supportive and understanding of the child's rage and pain. The best course of action is to remain focused on the acts committed by the abuser rather than allowing oneself to engage in vilifying commentary on the personality of the offending parent. It is in the best interest of the child if he/she can honestly acknowledge the continuum of these ambivalent feelings of love and hate.

The Child's Needs

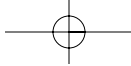
Every abused and neglected child needs, at a minimum, a comprehensive assessment of: the child's strengths and challenges, as well as the family's strengths and limitations. The sources of information for this evaluation should include: the child, the caregiver, all mental health professionals involved with the child and family, school personnel, and child protective workers. A comprehensive dynamic plan should be developed that takes into consideration the needs of the child and the capacity of the family or system to meet these needs. The plan must also encompass developmental issues and acknowledge that the plan will need to be revised as the child grows and develops.

Each child is unique, as is each situation. Each child is deserving of an individualized plan to ensure that his/her needs are met. In the press of a burgeoning caseload and multiple demands, it is important to take the time to understand the unique needs of each child. It is important to remember that the child whom you represent has only one life. Honor it as you would your own.

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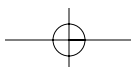
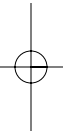
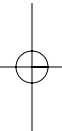
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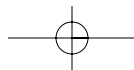
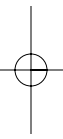
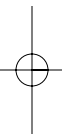
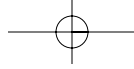


CINA ATTORNEY PRACTICE MANUAL: A Guide for Representing Children in Child Abuse and Neglect Cases

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CHAPTER IV

CHILD IN NEED OF ASSISTANCE PROCEEDINGS

New Hearings

Legal Aid Bureau, Inc.

Introduction

*Joan F. Little
Legal Aid Bureau, Inc.*

The area of child welfare is an exciting and ever changing area of the law. It is an area where two professions which function under problem solving theories that are diametrically opposed, social work and legal work are forced together and charged with the responsibility of resolving issues in the best interest of the children whom they serve. The social work model of problem solving relies on concepts of working together, team building, and support; the legal model is adversarial and based on the protection of the rights of the parties. In child welfare, each profession performs absolutely essential functions. The social work functions include referrals, direct support, and assistance to families. The legal function focuses on changes in custody and the implementation of permanency plans for children who have to enter the foster care system. Together, the two professions develop and implement permanency plans for children in the child welfare system.

This portion of the Child In Need of Assistance handbook is a collaboration of the work of Legal Aid Bureau attorneys who have worked in this field. The Legal Aid Bureau has been involved in the representation of children in Child In Need of Assistance (CINA) proceedings throughout the state of Maryland since September of 1982. It is designed to be a guide from which any attorney who represents a child can develop a basic understanding of the CINA process. Of course, it is impossible to predict every issue that an attorney may encounter in a given case and consequently, the writers of this section strongly encourage attorneys who represent children to review all the relevant rules, statutes, and case law for themselves before they represent a child in a CINA case.

SHELTER CARE

What is the purpose of the hearing?

The purpose of the shelter care hearing is to determine whether temporary placement of the child outside the home is warranted.

How do I prepare for the hearing?

- Arrive at court at the appropriate time.
- Read the petition.
- Obtain and read any police, medical, educational reports.
- Interview the child protection services or intake worker.
- Interview the out-of-home placement worker.
- Interview the child.
- Interview any relatives.
- Interview the parents if they are proceeding pro se. Always advise them of their right to counsel.
- Interview any prospective caregiver.

What will happen at the hearing?

What will happen if the parties are in agreement?

- The parties can come to an agreement (oral or written) and present that agreement to the court.
- The court can decide whether or not to accept that agreement
- The petitioner can withdraw the petition.

What will happen if the parties are not in agreement?

- The parties can present testimony and evidence in support of their position
- The parties can proffer their position (common in Baltimore City)

What will the court order?

- The court will determine whether it is contrary to the welfare of the child to return to the home.
- The court may make a “reasonable efforts” finding in that the Department of Social Services (DSS) has made reasonable efforts to prevent removal or there was an absence of efforts due to emergent circumstances based on evidence presented at the shelter care hearing. The court can also make no finding as to reasonable efforts. (See the next section.)
- The court can decide to deny the petitioner’s request for shelter care.
- The court can grant an order of shelter care custody to an agency or an individual under terms that the court considers appropriate.
- The court may issue an order controlling the conduct of any person properly before the court.
- Unless the petition is withdrawn, the court will schedule an adjudication and disposition hearing.

REASONABLE EFFORTS

The court shall make a determination as to whether reasonable but unsuccessful efforts were made to prevent or eliminate the need for removal, or if there was an alleged emergency that prevented those efforts. If the court continues shelter care beyond thirty days, it must make a written determination whether reasonable efforts are being made to make it possible for the child to return home or whether the absence of such efforts is reasonable.

What statutes form the basis for the hearing?

§§3-801, 3-815, 3-819.2

What are some cases that apply to this type of hearing?

- *In re Vanessa C.*, 104 Md. App. 452, 656 A.2d 795 (1995). Shelter care cannot be ordered for more than 30 days. Adjudication must be held within 30 days. “Held” does not mean completed.
- *In re Barry E.*, 107 Md. App. 206, 667 A.2d 931 (1995). If the Court takes testimony from the Baltimore City Department of Social Services (BCDSS), it must hear from the parents.
- *In re Rachel S.*, 60 Md. App. 147, 481 A.2d 520 (1984). The results of polygraph not admissible, and dismissal of shelter care petition does not preclude filing of a second CINA petition where the dismissal was not based on the merits.
- *Wildberger v. State*, 74 Md. App. 107, 536 A.2d 718 (1988). A police officer may remove child from parent’s home without a court order after observing signs of abuse. Because the officer had a reasonable belief that the child was in immediate danger, the officer was authorized to remove the child without first obtaining the court’s permission to do so.
- *Weller v. DSS of Baltimore*, 901 F.2d 387 (4th Cir. 1990). Although constitutionally permissible to temporarily deprive parents of custody in an emergency, the state bears the burden to initiate prompt judicial proceedings to ratify its emergent action.

What is the standard of evidence for this type of hearing?

The Court must find, by a preponderance of the evidence, that the return of the child to the child’s home is contrary to the safety and welfare of the child, and removal of the child from the child’s home is necessary due to an alleged emergency and in order to provide for the safety of the child; or reasonable but unsuccessful efforts were made to prevent or eliminate the need for removal of the child. The rules of evidence are relaxed.

Who has the burden of proof at this hearing and why?

The petitioner has the burden of proof because they are requesting a change in the child’s placement or legal status.

ADJUDICATION/ DISPOSITION

ADJUDICATION

What is the purpose of the hearing?

The purpose of the adjudication hearing is to determine whether the allegations, other than the allegation that the child requires the court's assistance, are true. The adjudication is the hearing at which facts are either sustained or denied.

How do I prepare for the adjudication?

- Review the petition and consider what facts are needed for a CINA finding.
- Interview the child.
- Interview the caregiver.
- Interview the caseworkers.
- Interview any witnesses.
- Gather and read any pertinent documents pertaining to the allegations and any other activities that have taken place during the shelter care period.

What will happen at the adjudication?

What will happen if the parties are in agreement?

- The parties present their agreement as to the facts to the court. The court then decides whether or not to accept that agreement.
- The petitioner (the Department of Social Services) can also withdraw the petition.

What will happen if the parties are not in agreement?

- The parties can present testimony and evidence in support of their position.
- The parties can proffer their respective positions (common in Baltimore City).

What will the court order?

- The court is required to make a “reasonable efforts” finding based on the proposed agreement or evidence presented, in which it determines whether the Department of Social Services (DSS) made reasonable efforts to prevent placing the child into DSS' custody. (See next section).
- The court will determine if the allegations presented in the petition are true by a preponderance of the evidence.
- The court can decide to grant or deny a request for continued shelter care.
- The court may issue an order controlling the conduct of any person properly before the court.
- The court will proceed immediately to a disposition hearing, unless there is good cause to separate the disposition from the adjudication.

Reasonable Efforts

The court must make a written determination that reasonable efforts were made by DSS to prevent the child's removal or that the absence of such efforts was reasonable under the circumstances. The court must consider certain factors in evaluating DSS efforts as either reasonable or not, but cannot consider the potential loss of federal funding for the care of a child when evaluating whether reasonable efforts were made. If the court finds that DSS failed in its obligation to make reasonable efforts to prevent removal, then it must send its written findings to entities charged with reviewing the placement of and/or providing care to the child.

What statutes form the basis for the hearing?

- MD Code Ann. Cts. & Jud. Proc. §§ 3-801(c), 3-816.1, 3-817

What are some cases that apply to this type of hearing?

- *In re Blessen H.*, 163 Md. App. 1, 877 A.2d 161 (Md. App. 2005). Once a CINA petition is filed, an adjudication must be held on the allegation(s) in the petition. The allegation(s) in the petition must be proved by a preponderance of the evidence. In general, CINA actions are non-punitive civil actions whose purpose is to protect the best interests of the child and could infringe on a parent's "important" right to raise his or her child.
- *In re Rachel T.*, 77 Md. App. 201, 549 A.2d 27 (1988). The rules of evidence apply in adjudication even though the hearing can be informal. Child's statements to social worker on pediatric gynecological team about father's "big secret" is admissible hearing under two exceptions: 1) statements made to a treating physician consulted for treatment, and 2) as business records. Also, the "tender years" exception to hearsay statements, which allows the out-of-court statements of child abuse victims, are not recognized in CINA proceedings. The child's statements to her psychologist were admissible as data on which the psychologist formed her opinion.
- *In re Wanda B.*, 69 Md. App. 105, 516 A.2d 615 (Md. App. 1986). The court does not need to conduct a hearing prior to ordering psychiatric evaluations of the parties, and, therefore, parents do not need counsel. The testimony of the psychiatrist performing the evaluation is admissible at adjudication, while the written report is admissible at disposition.
- *In re Keith W.*, 310 Md. 99, 527 A.2d 35 (Md. 1987). Where the adjudication is not held within 30 days of the shelter or detention hearing, the court must look at the totality of the circumstances before dismissing the case. The circumstances must be extraordinary and egregious for dismissal.
- *In re Collin R.*, 63 Md. App. 684, 493 A.2d 1083 (Md. App. 1985). The rules of evidence apply in CINA proceedings. The results of lab tests are admissible without testimony of the performer of the test if they are admitted through properly authenticated hospital records. Medical testimony of the child's condition, physical evidence seized from the home, and complete absence of any answer by the parents to inferences from the evidence can support a CINA finding. Persons evaluating parties

pursuant to 3-818 (now replaced with 3-316) are not required to prepare a written report and can testify in court, unless it can be shown that the evaluator deliberately failed to reduce findings into written form in order to avoid discovery. Refusal is within the discretion of the court and will only be disturbed on appeal if there is an abuse of discretion. The right of confrontation is not available to parents of an alleged CINA. Standard of evidence is by preponderance of the evidence.

- *Woods v. DDS*, 11 Md. App. 10, 272 A.2d 92 (Md. App. 1971), cert denied, 404 US 965. Evidence that five other siblings had died following incidents of difficulty breathing in mom's presence and that the child was hospitalized following such an incident sustained a neglect finding. The right to confront witnesses is inapplicable to CINA proceedings.
- *In re Erica S.*, 71 Md. App. 148, 524 A.2d 108 (Md. App. 1987). Following report of sexual abuse by mother's long time live-in boyfriend, the court found that he was not a proper party to the proceedings and that the removal and CINA finding was not proper despite his being named as "father" in school records. The identification as a father in school records does not constitute a declaration of paternity.
- *In re Danielle B.*, 78 Md. App. 41, 552 A.2d 570 (1989). Juvenile court judges have the obligation to order and enforce delivery of specific services and treatment of CINA children. The right to a de novo hearing is waived when an exception is filed before master's report is served or filed.
- *In re Michael G.*, 107 Md. App. 257, 667 A.2d 956 (1995). The Rules of Evidence apply in CINA proceedings. A child's out-of-court statement to a social worker is not admissible under the party-opponent exception where the statement is not offered against the child. The party-opponent exception to the hearsay rule requires that the out-of-court statement is made by a party and offered against that same party. Here, the child made the out-of-court statement to the social worker, and the social worker offered the statement in court against the mother. Therefore, the statement was inadmissible under the party-opponent exception to the hearsay rule.
- *In re John P.*, 311 Md. 700, 537 A.2d 263 (1988). The trial court had authority to reconsider its order dismissing CINA petition on its merits under rule permitting judge to modify or vacate order in juvenile proceeding if it is in best interest of child. Double jeopardy prohibition is inapplicable when no sanctions of criminal nature are sought by state in either first or second "child in need of assistance" proceeding.

What is the standard of evidence for the adjudication?

The allegations in the petition must be proved by a preponderance of the evidence. Also, the Rules of Evidence under Title 5 of the Maryland Rules apply.

Who has the burden of proof at the adjudication and why?

The Petitioner, most often DSS, has the burden of proof because the petitioner is requesting that the child's legal status be changed.

DISPOSITION

What is the purpose of the disposition hearing?

The purpose of the disposition is to determine whether the child is in need of assistance and, if so, the nature and extent of the court's intervention to protect the child's health, safety, and well-being. The disposition takes place on the same day as the adjudication unless the court, either on its own motion or through a motion of a party, finds good cause to separate the two hearings.

How do I prepare for the disposition?

- Ascertain the relevant facts to the case through interviews with the client, caseworkers, witnesses, and reviews of relevant documents.
- Attempt to locate possible placement resources, including parents, relatives, and non-relatives.
- Determine where the child would like to be placed.
- Factors to consider in evaluating placement resources include health, safety, and welfare of the child; connection/bond to the immediate environment of the potential placement; proximity of the potential placement to school; and the effect of the placement on the well-being of the child.

What will happen at the disposition?

Where the parties reach an agreement as to the disposition:

- The parties present their agreement and proposed disposition to the court.
- The court decides whether or not to accept the parties' proposal.
- The petitioner, most often DSS, can withdraw the petition.

Where the parties do not agree as to disposition:

- The parties can present testimony and evidence in support of their respective positions.
- The parties can proffer their position (common in Baltimore City).

What will the court order at the disposition?

- The court may find that the child in fact needs assistance and court intervention.
- The court may not find the child is in need of assistance if the alleged facts in the petition are sustained as to one parent, but there is another parent willing and able to care for the child.
- The court may find that the child is not in need of assistance and dismiss the case. The court may still grant the available parent custody prior to dismissing the petition.
- The court can decide to grant or deny a request, if any, for continued shelter care.
- The court may find that the child is in need of assistance, but not change the child's custody status.
- The court may find that the child is in need of assistance and commit the child, on terms the court considers appropriate to the custody of either a parent, relative, non-relative, or local department, including DSS and/or the Department of Health and Mental Hygiene, or both, including designation of the type of facility where the child is to be placed.
- The court may find that the child is in need of assistance and issue an order controlling the conduct of any person properly before the court.

- The court may find that the child is in need of assistance and place the child under the protective supervision of the local department (“order of protective supervision”) on terms the court considers appropriate, including the grant of limited guardianship to DSS, another individual, or both, to provide ordinary care to the child. (If the court commits the child to DSS and any emergency decisions are made with respect to the child, then DSS is required to notify the child’s parents and attorneys as soon as possible).
- The court may commit the child for inpatient care and treatment to a psychiatric facility or a facility for the developmentally disabled. However, in such a case, the court must first find on the record and based on clear and convincing evidence that such a need exists and is in keeping with the best interests of the child.
- The court may find that the child is in need of assistance. If it makes a disposition removing the child from his or her home, the order must make factual findings necessitating the need for the removal and notify the parents, custodian, or guardian that the agency to which the child is committed may change the permanency plan for the child from reunification (with the parent, custodian, or guardian) to another permanency plan, which may include the filing of a petition for termination of parental rights.
- For children placed outside their home, the court will schedule a review hearing.
- For children who are placed pursuant to any other order of custody, the court may schedule a review hearing.

Where the court finds a child in need of assistance and commits the child to the custody of a local department, the court may notify the county superintendent, the supervisor of pupil personnel, or any other official designated by the county superintendent that the child is in need of assistance and has been committed to the custody of a local department. However, the notice may not include any order or pleading related to the CINA case.

In making any of the above dispositions, the court may also:

- Order the child and the child’s parent, guardian, or custodian to participate in rehabilitative services that are in the best interest of the child and family.
- Determine custody, visitation, support, or paternity of a child in accordance with applicable law.
- If the court determines that the child is in need of assistance and removes the child from his/her home, it must give priority, for placement purposes, to the child’s relatives over non-relatives when committing the child to the custody of an individual other than a parent.

Reasonable Efforts

The court must make a written determination that reasonable efforts were made by DSS to prevent the child’s removal or if the absence of such efforts was reasonable under the circumstances. The court must also determine whether reasonable efforts are being made to return the child to his or her home or, again, if the absence of such efforts is reasonable under the circumstances.

What statutes form the basis for the disposition?

MD Code Ann. Cts. & Jud. Proc. §§3-819, 3-816.1 (2005)

What are some cases that apply to this type of hearing?

- *In re Michael W.*, 89 Md. App. 6212, 599 A.2d 458 (1991). The determination of whether a child is in need of assistance is an element of the disposition. The juvenile court retains the right to accept, reject, or modify a master's recommendation. The juvenile court can reject a master's recommendation as to whether a child is in need of assistance if a party takes an exception to the disposition but not to the adjudication.
- *In re Blessen H.*, 163 Md. App. 1, 877 A.2d 161 (2005). If the facts alleged in a CINA petition are sustained, the court will promptly schedule a disposition hearing, which is, generally, conducted on the same day, immediately after the adjudication.
- *In re Russell G.*, 108 Md. App. 366, 672 A.2d 109 (1996). A child may only be found in need of assistance if both parents are unwilling and unable to care for the child, including where one parent fails to act to protect a child being abused or neglected by the other parent.
- *In re Ashley E.*, 387 Md. 260, 874 A.2d. 998 (2005). The application of the Rules of Evidence in a disposition hearing is discretionary and informal, citing MD Rules 5-101(c), 11-115.
- *In re Andrew A.*, 149 Md. App. 412, 815 A.2d 931 (Md. App. 2003). In evaluating a CINA petition, the juvenile court does not have to wait for actual injury to a child; rather, the court may evaluate if there is a substantial risk of harm to a child based on the circumstances of the case. Also, proof of neglect of a child or children not the subject of a CINA petition may be relevant to a determination that a child who is the subject of a petition is in fact a CINA. See also, *In re Nathaniel A.*, 160 Md. App. 581, 864 A.2d 1066 (Md. App. 2005) (affirming the juvenile court's finding of a CINA where the juvenile court took judicial notice of the record of a prior CINA hearing involving the child's siblings, who were both found to be CINA).
- *In re Kaela C.*, 162 Md. App. 315, 873 A.2d 1251 (Md. App. 2005). The juvenile court may award custody of children who are the subject of a CINA petition to a non-CINA parent, i.e., the parent against whom the allegations in the CINA petition are not sustained.
- *In re Dustin T.*, 93 Md. App. 726, 614 A.2d 999 (1991). A mother's prenatal care is probative of her ability to provide ordinary care to her child. A child does not have to have actual injury to determine that child has been neglected or abused, but a CINA finding may be justified where the child is placed at risk of significant harm. The past actions of a parent can be the basis for judging present and future actions for the purposes of determining the risk (of abuse and/or neglect) to a child for purposes of CINA.

An objection only as to the relevancy of a statement or particular testimony waives the right to appeal that statement or testimony as inadmissible hearsay. Mom's admission to physician consti-

tuted admission of party opponent and not hearsay. A preponderance of the evidence supported the juvenile court's finding it was in Dustin's best interests that he should remain in foster care. When an objector objects to statements on a specific ground—e.g., relevance—even when s/he is not required to do so, then the objector is bound by those grounds and will be deemed to waive all other grounds of objection (citing *Brecker v. State*, 304 Md. 36, 497 A.2d 479 (1985)).

- *In re William B.*, 73 Md. App. 68, 533 A.2d 16 (1987). A court may find that parental dependency on alcohol causes them to fail to give a child ordinary care and attention, thus requiring the removal of a child from their care and custody. Mere alcoholism alone, however, is not grounds for removing the child.
- *In re Jertrude O.*, 56 Md. App. 83, 466 A.2d 885 (1983). A child is in need of assistance when he or she is not receiving ordinary care or attention, as according to the mores of the United States, not those of a foreign country. Speculation of potential cannot be the basis of removal, but the court must make specific determinations of abuse to warrant removal. The standard for removing a child from his or her home is more stringent than finding that the child is in need of assistance.
- *In re Owen F.*, 70 Md. App. 678, 523 A.2d 627 (Md. App. 1987). The juvenile court can commit a child to a particular agency, such as the Charles Hickey Jr. School. The court cannot, however, mandate the specific terms of the commitment.
- *In re Caya B.*, 153 Md. App. 63, 834 A.2d 997 (Md. App. 2003). The juvenile court has the authority to order or deny visitation between a child and his or her parent, including the amount of visitation and any basic conditions the court believes should apply to the visits. See also, *In re Mark M.*, 365 Md. 687, 782 A.2d 332 (2001) (the court cannot delegate the authority to determine the visitation rights of a parent to a therapist); and, *In re Justin D.*, 357 Md. 431, 745 A.2d 408 (2000) (the juvenile court erred by delegating decisions regarding whether and how much visitation should occur between mother and child to the local Department of Human Services).
- *In re Barry E.*, 107 Md. App. 206, 667 A.2d 931 (1995). Parental visitation is not an absolute right and may be limited if it is in the best interests of the child to do so. Visitation, however, is not an easy privilege to be denied. A finding that a parent has mental or emotional problems and is less than a perfect parent, or that children may be happier with foster parents, is not a legitimate reason to remove children from a natural parent who is competent to care for the children in favor of a stranger.
- *In re Roger S.*, 338 Md. App. 385 (1995). The juvenile court cannot order a school system to provide educational services.
- *In re Yve S.*, 373 Md. 551, 819 A.2d 1030 (2003). There is a rebuttable presumption that leaving children in the care of their parents is in the children's best interests and that the parents act in their children's best interests.

What is the standard of evidence for this type of hearing?

The evidentiary standard requires that, by a preponderance of the evidence, the disposition ordered by the court be in the best interests of the child, in keeping with the child's health, safety, and well-being.

Who has the burden of proof at this hearing and why?

The petitioner, most often DSS, has the burden of proof because it is the party requesting a change in the child's legal status, and in dispositions, in the placement status of the child.

THE TEN-MONTH REVIEW HEARING

What is the purpose of the hearing?

The purpose of the ten-month review hearing is to determine the permanency plan for the child.

How do I prepare for the hearing?

- Meet with your client and interview him or her. Who does he or she want to live with?
- Speak with the caretaker regarding your client's progress.
- Has your client had any contact with his or her natural parents? If yes, how much contact? If no, why?
- Has the Department of Social Services (DSS) located any relatives who could be resources for your client? Does your client know of any relatives with whom he or she could live? Attempt to contact those relatives and see if they could be resources for your client.
- Speak with the social worker regarding your client's progress and the permanency plan. Ask the social worker what reasonable efforts he or she has made to achieve the permanency plan.
- Gather relevant documents about your client, including any psychological evaluations, school records, and medical reports. If your client receives special education services, get a copy of his or her IEP.
- Ask yourself, "What reasonable efforts has DSS made to return my client home or place my client in a permanent placement?" Ask yourself, "What services does this child need from DSS?"

When will the ten-month review hearing occur?

The hearing takes place 11 months after the shelter hearing.

What will happen at the hearing?

At the ten-month review hearing, the court will decide upon a permanency plan for the child. In doing so, the court will consider the safety and health of the child and what is in the best interests of the child. The local department is supposed to have developed a plan for the child within 60 days of placement and the plan is supposed to be in the best interests of the child.

The court can choose from the following permanency plans, in descending order of priority:

- *Reunification (Return Home)*: The court can send a child home to his or her parent. Reunification is always the first priority. According to Maryland Code, Family Law Section 5-525(d), unless a court orders that reasonable efforts are not required under Section 3-8123 of the Courts Article or Section 5-313 of the Family Law Article, reasonable efforts shall be made to preserve and unify families.
- *Placement with a Relative for Adoption or Custody and Guardianship (Relative Placement)*: The court can place a child with a relative. The intent of this plan is that the relative would ultimately take custody of the child or adopt the child. A relative, or “kinship parent,” is a person who is related by blood or marriage within five degrees of consanguinity under civil law. (FL, Section 5-534)
- *Adoption by a Nonrelative*: The court could allow the child to be with a nonrelative and order DSS to move toward termination of parental rights so that the non-relative could adopt the child.
- *Guardianship by a Nonrelative*: The court could appoint a permanent guardian for the child.
- *Continuation in a Specified Placement on a Permanent Basis Because of the Child’s Special Needs or Circumstances*: The court could allow the child to be placed in a foster care placement on a permanent basis because of the child’s special needs, but it must clearly document what those specific needs are and why that plan is most appropriate. Because of the new federal law, the Adoption and Safe Families Act, the court cannot simply allow a child to stay in “long-term foster care” or allow a child to stay in foster care indefinitely unless there is a valid reason.
- *Continuation in Placement for a Specified Period Because of the Child’s Special Needs or Circumstances*: The court could keep the child in his or her current placement for a specified period of time because of the child’s special needs or circumstances.
- *Independent Living*: The court could allow the child to work with DSS toward independence, because of the child’s age.

What statutes form the basis for the hearing?

- Maryland Code, Courts and Judicial Proceedings, Section 3-823
- Maryland Code, Courts and Judicial Proceedings, Section 3-812
- Adoption and Safe Families Act, 42 U.S.C. Section 675

What are some cases that apply to this type of hearing?

- *In re Damon M.*, 765 A.2d 624 (January 2001). An order amending a permanency plan calling for reunification to foster care or adoption is immediately appealable.
- *In re Norberto C.*, 133 Md. App. 558, 758 A.2d 637 (August 2000). The circuit court has an obligation to provide for the delivery of specific services and treatment for a child who has been adjudicated to be a child in need of assistance (CINA).

- *In re Adoption/Guardianship Nos. CAA92-10852 and CAA92-10853*, 103 Md. App. 1, 651 A.2d 891 (1994) (citing FL Section 5-525(I) holding that once DSS determined that reunification of children with father was not possible, it was required to consider placement of children with his relatives as “next best option”).
- *In re Danielle B.*, 78 Md. App. 41, 552 A.2d 570 (1989). Juvenile court judges have an obligation to monitor cases in order to review, order, and enforce the delivery of specific services and treatment for children who have been adjudicated CINA. The judges have broad discretionary powers in these matters, which flows from their *parens patriae* jurisdiction.
- *In re Beverly B.*, 72 Md. App., 433, 530 A.2d 766, 769 (1987). Removal of a child from a parent is a drastic remedy which should be avoided, citing *In re Jertrude O.*, 56 Md. App. 83, 466 A. 2d 885 (1983).
- *In re Christina G.*, 72 Md. App. 443, 530 A.2d 771 (1987). The option of removing a child from his/her parents should be exercised only “for the most urgent reasons.”

What is the standard of evidence for this type of hearing?

Preponderance of the evidence

Who has the burden of proof at this hearing and why?

DSS has the burden to prove why the child should not return home and why the court should select a certain permanency plan for the child.

How will the court rule?

The court will make a ruling on reasonable efforts and will determine the permanency plan for the child. The court will look at the facts of the case to make its rulings. As the attorney for the child, you should present the relevant facts to the court. You can also make requests for a court order. For example, you can request that the permanency plan be “placement with a relative for adoption or custody and guardianship.” You need to make sure that you present facts that support the order you are requesting.

The court will decide if DSS has made reasonable efforts to reunify the child with his or her family. You should present facts to the court that show the efforts, or lack of efforts, that DSS has made toward reunification. To prepare, ask questions such as, “Has the DSS social worker had contact with the mother? If not, what efforts has the DSS social worker made to get in touch with the mother?”

The court will also decide upon a permanency plan for the child. (See the list above.) You should present facts to the court that show which permanency plan would be appropriate for the child.

What are reasonable efforts?

The phrase “reasonable efforts” refers to the efforts that DSS has to make in order to achieve a specific goal. The meaning of “reasonable efforts” can change depending on the type of hearing that is before the court.

For the ten-month review hearing, DSS should have made reasonable efforts in at least two ways.

- *Reasonable efforts toward reunification:* DSS shall have made reasonable efforts to preserve and unify a family. In other words, DSS should have made reasonable efforts to prevent placement of the child into care or to reunify a child with his or her parent(s) before the hearing. DSS should have made attempts to contact the parents and to prepare a service agreement with the parents. Ideally, DSS should have established contact between the parent(s) and the child. There are exceptions to this “reasonable efforts” requirement. DSS does not have to make reasonable efforts to preserve or reunify a family if reasonable efforts are waived under Maryland Code, Courts and Judicial Proceedings, Section 3-812.
- *Reasonable efforts to effectuate a permanent placement:* DSS shall make reasonable efforts to effectuate a permanent placement for the child. According to Courts and Judicial Proceedings 3-823(h)(3), “Every reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement.” DSS should be making efforts to find a permanent place for the child. For example, DSS should be actively looking for relatives in the child’s family who can care for the child.

What must the court consider in making its determination that reasonable efforts exist in a particular case?

Md. Cts. & Jud. Proc. Code Ann. (“CJP”) §3.816.1(c) directs juvenile courts to consider:

- The extent to which a local department has complied with the law, regulations, state or federal court orders, or a stipulated agreement accepted by the court regarding the provisions of services to a child in an out-of-home placement;
- Whether a local department has ensured that: (i) a caseworker is actively responsible for the case at all times; (ii) the identity of the caseworker has been promptly communicated to the court and the parties; and (iii) the case worker is knowledgeable about the case and has received on a timely basis all pertinent files and other information after promptly receiving the assignment from the local department;
- For a review hearing, whether a local department has provided appropriate services that facilitate the achievement of a permanency plan for the child;
- Whether the child’s placement has been stable and in the least restrictive setting appropriate, available, and accessible for the child during the period since the most recent court hearing held by the court;

- Whether a local department notified the court and all parties before any change of placement for the child, or, if emergency conditions made a change necessary, as soon as possible after the change in placement;
- On receipt of a report of maltreatment of a child occurring while the child is in the custody of a local department, whether the local department provided the appropriate parties, including the child's attorney, with a report or notice of a report of the suspected maltreatment of the child and of the disposition of the investigation within five business days of the incident; and
- Whether a local department has provided appropriate and timely services to help maintain the child in the child's existing placement, including all services and benefits available in accordance with state law, regulations, state and federal court orders, stipulated agreements, or professional standards regarding the provision of services to children in out-of-home placements.

Note: The determination of reasonable efforts should be based upon a consideration of all the above factors, with an overall assessment of whether the needs of the child and family were met reasonably and appropriately.

SIX-MONTH REVIEW HEARING

What is the purpose of the hearing?

The purpose of the hearing is to review the permanency plan in effect for the child and determine whether the child's needs are being met. At the hearing, the court should "assess progress, evaluate the child's safety, and change the permanency plan if necessary." The child's attorney should also advocate for any services that the child might need while he or she is in care (e.g., sibling visits, therapy, medical appointments, etc.).

How do I prepare for the hearing?

- Basic preparations (that could apply to almost any hearing)
- Interview the client – this will help to assess reasonable efforts and whether the child's needs are being met
- What does the client want to happen?
- Who does he or she want to live with?
- Are there any relative resources?
- How does client like placement?
- How is school performance?
- What does client want from social worker?
- Interview parties who have additional information:
 - caretaker
 - social worker

- therapist
- school personnel (if relevant)
- CASA worker (if appointed)
- Gather relevant documents
 - mental health evaluations
 - health records (medical, dental and vision)
 - list of medications, if any
 - school records (attendance, grades)
 - if special education, get IEP records

What will happen at the hearing? (*specific to Baltimore City.*)

Since this is treated as a settlement conference, you and the BCDSS attorney will meet to try to negotiate an agreement that is known as a “stipulation.”

- a. The stipulation is a written document in the form of a proposed order that will provide information about the child to the court.
- b. The stipulation contains preliminary facts that you and the BCDSS attorney will write, stating when the child was found to be in need of assistance and changes in child’s placement. The fact section of the stipulation should generally state the child’s current placement (location and type), whether the child likes the placement, the grade in which the child is enrolled at school, whether the child receives special education services, health information (physical/dental/medications), whether the child attends therapy, etc. If there are any specific services that the child needs, you will also include the basis for that need in the stipulation. Finally, the fact section will include information about the biological parents, sibling visits and the permanency plan.
- c. The BCDSS attorney will probably want to state that BCDSS has made reasonable efforts to achieve the permanency plan in effect and has met the needs of the child. Ask the BCDSS attorney and social worker, “What reasonable efforts have you made?” BCDSS should be able to list specific efforts that it has made to achieve the permanency plan and meet the child’s needs since the last hearing.

If you and the BCDSS attorney cannot reach an agreement (i.e., you cannot agree to a stipulation), then you will need to set the case for “contest” (which is another word for trial).

What is the standard of evidence for this type of hearing?

Preponderance of the evidence.

Who has the burden of proof at this hearing and why?

DSS has the burden to prove that it has made reasonable efforts to achieve the permanency plan and meet the child’s needs.

What will the Court determine?

The court will determine:

1. the need for and appropriateness of the child to continue to be committed to DSS
2. whether, since the last hearing, DSS has made reasonable efforts* to finalize the permanency plan that is in effect for the child
3. the progress that has been made toward curing the circumstances that led to the child being committed to DSS
4. a reasonable date by which the child can be returned home, placed in a preadoptive home, or placed under a legal guardianship
5. the safety of the child and take steps necessary to protect the child
6. change in the permanency plan if it would be in the child's best interest.

**the considerations are the same as explained above in the "Reasonable Efforts" section.*

OTHER REVIEW HEARINGS

REASONABLE EFFORTS HEARING

What is the purpose of the hearing?

A reasonable efforts hearing is conducted for different reasons. In a shelter care, adjudicatory, dispositional and permanency planning hearing, the purpose of a reasonable efforts hearing is to determine whether DSS made reasonable efforts to prevent placement of the child in DSS' custody.

In a permanency planning hearing or hearing on the compliance with time limits, where a child has been placed under guardianship, committed or is sheltered, the purpose of a reasonable efforts hearing is for the judge to determine whether reasonable efforts have been made to finalize the permanency plan in effect for the child and reasonable efforts have been made to meet the health, educational and safety needs of the child and preparation for independence.

What are some examples of reasonable efforts?

- *Reasonable efforts toward reunification:* DSS shall have made reasonable efforts to preserve and unify a family. In other words, DSS should have made reasonable efforts to reunify a child with his or her parent(s) before the hearing. DSS should have made attempts to contact the parents and to try to prepare a service agreement with the parents. Ideally, DSS should have established contact between the parent(s) and the child. There are exceptions to this "reasonable efforts" requirement. DSS does not have to make reasonable efforts to preserve or reunify a family if reasonable efforts are waived under Maryland Code, Courts and Judicial Proceedings, Section 3-812.

- *Reasonable efforts to effectuate a permanent placement:* DSS shall make reasonable efforts to effectuate a permanent placement for the child. According to Courts and Judicial Proceedings 3-823 (h) (3), “Every reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement.” DSS should be making efforts to find a permanent placement for the child. For example, DSS should be actively looking for relatives in the child’s family who can care for the child.

How do I prepare for the hearing?

- Interview the child.
- Interview the worker.
- Obtain and read any police, medical, and educational reports if it is a shelter care hearing.
- Interview the child protection services or intake worker if applicable.
- Interview the out-of-home placement worker.
- Interview any relatives.
- Interview the parents if they are proceeding pro se. Always advise them of their right to counsel.
- Review the DSS records and take appropriate notes regarding evidence in support of your position and the names of possible witnesses.
- Gather relevant records about your client, including psychological evaluations, school and medical records.
- Have the court issue subpoenas for witnesses.
- Arrive at court at the appropriate time.

What will happen at the hearing?

The court will require DSS to provide evidence of its efforts. Only efforts made after the last hearing will satisfy this requirement. The court has to consider whether DSS has complied with court orders or stipulated agreements, whether a worker was timely assigned, whether his/her identity was made known to the court, and whether the worker is knowledgeable about the case. The court will also assess whether DSS provided appropriate services that would facilitate a permanency plan for the child; whether the child’s placement has been stable; whether DSS has provided services to keep the child in that placement; and if maltreatment has occurred in foster care, whether DSS provided notice of the report to all parties.

What is the court prohibited from considering?

The court may not consider a potential loss of federal funding to DSS in its reasonable efforts findings.

What will the court do if it finds that reasonable efforts have not been met?

The court will make the finding in writing if it finds that reasonable efforts are being made regarding DSS compliance with court orders and caseworker assignment, but that DSS efforts are not reasonable in other enumerated areas. The court will send a notice of the writing to the director of the local depart-

ment, the social services administration, the citizens' review board, and an individual or agency identified by DSS or the court as having authority to monitor the care and services provided by DSS to children in its care.

What statutes form the basis for the hearing?

Courts and Judicial Proceedings 3-816.1.

What are some cases that apply to this type of hearing?

(Please see cases referenced under specific type of Hearing)

What is the standard of evidence for this type of hearing?

The court will determine if the allegations presented in the petition are true by clear and convincing evidence.

Who has the burden of proof at this hearing and why?

DSS has to prove why it does not have to make reasonable efforts.

How will the court rule?

- The court will make a ruling on reasonable efforts and determine the permanency plan for the child. The court will look at the facts of the case to make its rulings. As the attorney for the child, you should present the relevant facts to the court. You can also make requests for a court order. For example, you can request that the permanency plan be "placement with a relative for adoption or custody and guardianship." You need to make sure that you present facts that support the order you are requesting.
- The court will decide if DSS has made reasonable efforts to reunify the child with his or her family. You should present facts to the court that show the efforts, or lack of efforts, that DSS has made toward reunification. To prepare, ask questions such as, "Has the DSS social worker had contact with the mother? If not, what efforts has the DSS social worker made to get in touch with the mother?"
- The court will also decide on a permanency plan for the child. You should present facts to the court that show which permanency plan would be appropriate for the child.

REVIEW OF CUSTODY AND GUARDIANSHIP/ ORDER OF PROTECTIVE SUPERVISION/ REVIEW OF COURT ORDER

What is the purpose of the hearing?

The purpose of the custody and guardianship review hearing is to review the stability and permanency of the child's placement and to determine whether the Court's jurisdiction may be terminated.

How do I prepare for the hearing?

- Interview the client—this will help to assess stability and whether the child's needs are being met
- What does the client want to happen?
- Who does he or she want to live with?
- Are there any relative resources?
- How does client like placement?
- How is school performance?
- Interview parties who have additional information
 - caretaker
 - social worker – there is a caseworker who usually visits once before the hearing
 - therapist
 - school personnel (if relevant)
 - CASA worker (if appointed)
- Gather relevant documents
 - mental health evaluations
 - health records (medical, dental, and vision)
 - list of medications, if any
 - school records (attendance, grades). If special education, get IEP records

What will happen at the hearing?

Since the initial hearing date is treated as a settlement conference, you and the BCDSS attorney will meet to try to negotiate a stipulation. The DSS attorney will probably ask to terminate jurisdiction. Jurisdiction can remain open only if there is good cause to do so [See CJP §3-823(h)(2)(iii)]. If you and the BCDSS attorney cannot reach an agreement (i.e., you cannot agree to a stipulation), then you will need to set the case for “contest.”

What is the standard of evidence for this type of hearing?

Preponderance of the evidence.

Who has the burden of proof at this hearing and why?

Anyone requesting that jurisdiction remain open has the burden of proof to show that there is good cause not to terminate jurisdiction.

What will the court determine?

The court will determine the stability and permanency of the placement. The court is required to see the child in person prior to terminating jurisdiction.

TERMINATION OF PARENTAL RIGHTS (TPR) and POST TPR PROCEEDINGS

TERMINATION OF PARENTAL RIGHTS (TPR) HEARING

What is the purpose of the hearing?

The purpose of a termination of parental rights hearing (TPR) is to provide children who are under the age of eighteen and committed to DSS the opportunity to be adopted. Termination of parental rights can occur through parental consent or court determination,

Generally, termination of parental rights involves a series of separate court proceedings. The court process begins with one or more pretrial conferences, followed by a settlement conference, and ending with a termination of parental rights hearing.

How do I prepare for the hearing?

Preliminary Matters: Prior to a termination of parental rights hearing, DSS must file a petition for guardianship with the right to consent to adoption or long term care short of adoption with the court (the child may also file a petition). The petition must contain: 1) all written consents for the guardianship, 2) notice of filing of the petition, and 3) if applicable, certification and proof of guardianship or relinquishment of parental rights awarded by a judicial body.

Within five days after the petition for guardianship is filed, the clerk will send a copy of the petition and notice of filing to DSS, the child's parents, the parent's last attorney, and the child's last attorney.

DSS shall give notice of the filing of the petition for guardianship to each parent, the attorney who represented the parent in a juvenile proceeding, the child, and the attorney who represented the child in a juvenile proceeding. Notice of the filing of the petition need not be given to consenting parties who have waived the right to notice of the filing of the petition.

The notice of filing must contain the date of the petition, persons whose consent was filed with the petition, obligations of a parent to give changes of address, and the department website address. The notice of filing must not contain any identifying information that would violate an agreement or consent.

Promptly after the petition is filed, the court must issue a show cause order requiring a response from each recipient. The show cause order must be sent to all the child's living parents who have not consented to the guardianship, the parent's last attorney, and the child's last attorney. Because of the new requirement to serve the child's parents with the show cause order, the court must make reasonable efforts to locate the parents and their address. Reasonable efforts include investigating within DSS, the

State Department of Public Safety and Correctional Services, juvenile court, the State Motor Vehicle Administration, caregivers, family members of the missing parent, and last known employers. If the court made attempts to serve the show cause order and could not locate the parents, then the show cause order must be published in both a newspaper and the Department's website for at least 30 days.

Child's Position: Upon receipt of a show cause order and petition for guardianship, child's counsel should meet with the child as soon as possible to determine whether the child is in agreement with or objects to the DSS petition for guardianship.

Consent/Objection Motions: Once a position has been determined, child's counsel should file a consent or an objection to the DSS petition for guardianship with the court, with copies mailed to other parties or their counsel. The filing must be made within 30 days of service to child's counsel, as required by statute. If a position is not filed within the 30 day period, the court shall consider the child to have consented to the adoption or guardianship and shall treat the petition in the same manner as a petition to which consent has been given. Children may revoke their consent within 30 days after filing a written consent with the court or 30 days after signing the consent.

The consent may include a waiver of the right to notice of the petition or hearing. Consents are not valid unless they are given in a language the party understands, the party received written notice or is on the record before the judge, and they are signed under the review of counsel.

Conditional Consent: A governmental entity or person may make their consent or acquiescence to adoption conditional on placement with a specific family that DSS approves for placement. The conditional consent only applies to placement into a specific family and not any other issue.

Review the DSS Record: Child's counsel should closely review the DSS case record. While reviewing the record, counsel should make note of any entries that support or negate the child's position. Section 5-323 of the Family Law Article clearly sets out the factors to be considered by the court when making a termination of parental rights determination. Note should also be made of entries that support or negate these factors. These notes will be helpful in preparing direct and cross-examinations to be used during the TPR. The notes will also help to identify witnesses that counsel may wish to have testify at the TPR.

Witnesses: Through discussions with the child, the child's caretakers, and other individuals related to the case, counsel should determine any witnesses needed to testify at the TPR hearing. After identifying specific witnesses, necessary subpoenas should be issued as required by statute.

What will happen at the hearing?

During the TPR process, the court may grant the DSS petition at such time as all the parties to the TPR consent to the DSS petition. If any party objects to the petition for guardianship, a TPR hearing must occur, with the court granting or denying the petition at the end of the hearing. The court must make a ruling on a guardianship petition within 180 days after it has been filed and within 45 days after either the consents were received by the court or a trial on the merits takes place. The court may not enter an order for guardianship before the latter if: the child turning 30 days old, the revocation of consent expires, or the time to respond to the show cause order lapsed.

Pretrial Conference (PTC): The PTC is designed to give notice to the court, child's counsel and parents' counsel, if counsel exists, as to whether or not DSS has properly served the necessary parties with show cause orders and petitions for guardianship with the right to consent to adoption or long term care short of adoption. Scheduling orders are also issued at the PTC.

Motion Hearings: Motion hearings may be heard at any time prior to a TPR hearing. Motion hearings include requests made by DSS for alternate service of parties and for notice by publication.

Settlement Conference: The settlement conference, held before a judge, provides an opportunity for the parents and child to agree to the DSS request for guardianship, or for DSS to withdraw its request. If an agreement cannot be reached, the parties proceed to the TPR trial.

Termination of Parental Rights Hearing: At the TPR hearing, the Court makes a ruling, based on statutorily defined criteria, as to whether or not it is in the child's best interest to terminate parental rights, allowing the child to be adopted.

The parties that have objected to the TPR in a timely manner are given the opportunity to call witnesses, cross examine adverse witnesses, and present any other admissible evidence on behalf of their position. Despite the opportunity given to all parties to present evidence, DSS has the burden of proving that it is in a child's best interest to have parental rights terminated.

What statutes form the basis for the hearing?

- FAMILY LAW ARTICLE §1-201; §5-301 through §5-330; §5-501 through §5-547; §9-105; §5-313. Guardianship or Adoption Without Consent of Natural Parent: Clearly states the factors to be considered by a court making a determination to terminate parental rights.
- MD RULES OF COURT 2-121; 9-101 through 9-113; 11-105; 11-501
- MD CODE, COURTS AND JUDICIAL PROCEEDINGS §3-804; §3-826; 3-837; §6-201 through §6-203

What are some cases that apply to this type of hearing?

- **Party Status, Service of Process, Appointment of Counsel & Status**

In re Adoption/Guardianship No. 97036005

Washington County Department of Social Services v. Mary Alice Clark, 296 Md. 190; 461 A.2d 1077 (1983)

In re Adoption/Guardianship No. 11387 & 11388, 354 Md. 574, 731 A.2d 972 (1999)

In re Adoption/Guardianship No. 3153, 103 Md. App. 300, 653 A.2d 521 (1995)

L.F.M. v. Department of Social Services, 67 Md. App. 379, 507 A.2d 1151 (1986)

In re Adoption/Guardianship No. A91-71A, 334 Md. 538; 640 A.2d 1085 (1994)

In re Adoption/Guardianship No. 6Z980032, No. 2766, Sept. Term, 1999 (December 8, 2000)

- **Objection & Consent**

In re Adoption/Guardianship No. 11137, 106 Md. App. 308; 664 A.2d 443 (1995)
In re Adoption/Guardianship No. 93321055/CAD, 344 Md. 458; 687 A.2d 681 (1997)
In re Adoption/Guardianship Nos. 2152A, 2153A, 2154A, 100 Md. App. 262; 641 A.2d 889 (1994)
In re Adoption/Guardianship No. CCJ14473, No. 1561, Sept. Term, 2000 (April 27, 2001)

- **§5-313 Factors**

In re Adoption/Guardianship No. 87A262, 323 Md. 12; 590 A.2d 165 (1991)
In re Adoption/Guardianship No. 94339058, 120 Md. App. 274; 706 A.2d 144 (1998)
In re Adoption No. 2428, 81 Md. App. 133, 567 A.2d 139 (1989)
Knowles v. Binford, 268 Md. 2; 298 A.2d 862 (1973)
In re Adoption No. 10941, 335 Md. 99, 642 A.2d 201 (1994)
In re Adoption/Guardianship Nos. CAA92-10852 and CAA92-10853, 1030 Md. App. 1; 651 A.2d 891 (1994)
In re Adoption No. 09598, 77 Md. App. 511, 551 A.2d 143 (1989)
In re Joshua W., 94 Md. App. 486; 617 A.2d 1154 (1993)
Washington County Department of Social Services v. Clark, 296 Md. 190, 461 A.2d 1077 (1983)
In re Adoption/Guardianship Nos. 2152A, 2153A, 2154A, 100 Md. App. 262; 641 A.2d 889 (1994)
In re William B., 73 Md. App. 68; 533 A.2d 16 (1987)
In re Adoption No. 10941, 335 Md. 99, 642 A.2d 201 (1994)
In re Adoption/Guardianship No. 07J4TPR, No. 1105, Sept. Term, 2000 (February 16, 2001)
In re Adoption/Guardianship No. CCJ15244, No. 1392, Sept. Term, 2000 (March 6, 2001)
In re Adoption/Guardianship No. CCJ14473, No. 1561, Sept. Term, 2000 (April 27, 2001)
In re Adoption/Guardianship No. 6Z980032, No. 2766, Sept. Term, 1999 (December 8, 2000)
In re Adoption/Guardianship No. T99158002, No. 176, Sept. Term, 2000 (March 27, 2001)
In re Adoption/Guardianship No. T99201013, etc., No. 2203, Sept. Term, 2000 (May 10, 2001)
In re Adoption/Guardianship No. CCJ14473, No. 1561, Sept. Term, 2000 (April 27, 2001)
In re Adoption/Guardianship No. T97328008, etc., No. 2104, Sept. Term, 2000 (June 15, 2001)
In re Adoption/Guardianship No. T99200007, No. 1855, Sept. Term, 2000 (July 2, 2001)
In re Adoption/Guardianship No. T98063001, No. 1727, Sept. Term, 2000 (July 26, 2001)

- **180 Rule**

In re Abigail C., 138 Md. App. 570, 772 A.2d 1277 (2001)

- **Expert Witnesses**

In re Adoption No. CCJ14746, 360 Md. 634, 759 A.2d 755 (2000)

- **Effect of Termination of Parental Rights**

In re Adoption No. 10941, 335 Md. 99, 642 A.2d 201 (1994)

In re Adoption/Guardianship Nos. 2152A, 2153A, 2154A, 100 Md. App. 262; 641 A.2d 889 (1994)

- **Visitation after TPR**

Weinschel v. Strople, 56 Md. App. 252; 466 A.2d 1301 (1983)

L.F.M. v. Department of Social Services, 67 Md. App. 379, 507 A.2d 1151 (1986)

In re Adoption No. 92A41, 662 A.2d 150 (1993)

- **Invalid Bases for Granting Guardianship**

In re Adoption No. 9979, 323 Md. 39, 591 A.2d 468 (1991)

Scott v. Prince Georges County Department of Social Services, 76 Md. App. 357, 545 A.2d 81 (1988)

Kenney v. Prince Georges County Department of Social Services, 43 Md. App. 668, 406 A.2d 955 (1979)

Carroll County Department of Social Services v. Edelmann, 320 Md. 150 (1990)

In re Adoption/Guardianship No. CCJ14473, No. 1561, Sept. Term, 2000 (April 27, 2001)

- **Invalid Bases for Denying Guardianship**

Cecil Department of Social Services v. Goodyear, 263 Md. 611, 284 A.2d 426 (1971)

Carroll County Department of Social Services v. Edelmann, 320 Md. 150 (1990)

In re Adoption No. 10941, 335 Md. 99, 642 A.2d 201 (1994)

In re Adoption/Guardianship Nos. 2152A, 2153A, 2154A, 100 Md. App. 262; 641 A.2d 889 (1994)

What is the standard of evidence for this type of hearing?

The standard of evidence is clear and convincing.

Who has the burden of proof at this hearing?

The petitioner bears the burden of proving that it is in a child's best interest to terminate parental rights.

How will the Court rule?

If all the parties consent to the TPR (or fail to file a timely objection), the parent's consent was voluntary and in writing, and the court finds TPR to be in the child's best interests, the court shall grant the DSS petition for guardianship. If any of the parties object to the TPR, pursuant to MD Rule 9-107, the Court shall hold a hearing on the merits of the matter.

The court's decision is primarily based on considerations of the health and safety of the child, and is also based on other factors relevant to the best interest of the child. The other factors include: services offered to the parent before placement, timeliness of services offered by DSS for reunification, fulfillment of service agreement obligations, parent's effort to make adjustments within their lives in order to have the child returned home, parent's regular contact with the parties, parent's contribution to care and support, parental disability, any abuse or neglect by the parent, drug toxicologies, convictions of certain crimes, and child's adjustment to home and community.

The court can bypass consideration of any factors listed above to determine the best interest of a child if DSS made a thorough investigation and could not find the identity of the parents and, after 60 days following a CINA adjudication, no one has claimed to be a parent.

Although not required, the court may enlist a neutral governmental unit or person to carry out the investigation to determine a child's best interest in ruling on a petition for guardianship.

At the conclusion of a hearing on the merits, the court shall make finding of facts, pursuant to Family Law Article, §5-313. These findings shall be made on the record. After the findings of fact have been made, the court will grant a decree of guardianship if it finds by clear and convincing evidence that it is in the child's best interest to terminate the natural parent's rights as to that child. If the court does not find by clear and convincing evidence that it is in the child's best interest to terminate the natural parent's rights, the petition for guardianship will be denied.

GUARDIANSHIP REVIEW HEARINGS

What is the purpose of the hearing?

The purpose of a guardianship review hearing is to provide the court with information regarding the child's progress toward adoption and whether the child's current placement and circumstances are in the child's best interests. Note: there are significant changes as to the purpose and scheduling of guardianship review hearings effective January 1, 2006. In addition, there are very specific notice requirements effective January 1, 2006.

How do I prepare for the hearing?

Interview the client: Discuss the child's position as to adoption in general and adoption by the current caretaker in particular. The child's overall circumstances should also be discussed, as is age appropriate.

- *Interview the caretaker:* Discuss the caretaker's position as to adoption. The child's overall circumstances should also be discussed, as is age appropriate.
- *Interview the social worker:* Discuss the progress made toward adoption. If there are impediments to adoption, discuss the steps taken by DSS to remove the impediments. The child's overall circumstances should also be discussed, as is age appropriate.
- *Interview other relevant individuals:* These individuals may include therapists and/or other mental health providers, doctors, teachers, day care providers, etc. Discuss issues specific to the child's relationship with the interviewed individual.
- *Service Needs:* After discussions with all relevant individuals, determine whether or not the child is receiving all services particular to his/her circumstances.

What will happen at the hearing?

At a minimum, annual guardianship reviews must be held, to allow the court to review the progress made towards adoption and the child's current placement and circumstances. This information can be presented to the court through testimony, stipulations of fact as agreed to between the parties, or proffer by the parties.

The guardianship review can also provide an opportunity for child's counsel to request the court to order that the necessary services be provided by DSS. A request may also be made for the court to order sibling visitation, facilitated by DSS if necessary. *Note: There are significant changes as to what will and can happen at a guardianship review hearing effective January 1, 2006.*

What statutes form the basis for the hearing?

- §5-317
- §5-319

What are some cases that apply to this type of hearing?

- **Delay in Adoptions & Adoptive Resources**

In re Adoption No. 90072022, 87Md. App. 360, 590 A.2d 1094 (1991)

In re Adoption/Guardianship No. 3598, 347 Md. 295, 701 A.2d 110 (1997)

In re Adoption/Guardianship No. 2633, 101 Md.App. 274, 640 A.2d 1036 (1994)

In re Adoption/Guardianship No. 3155, 103 Md.App. 300, 653 A.2d 521 (1995)

- **Visitation after TPR**

Weinschel v. Strople, 56 Md. App. 252; 466 A.2d 1301 (1983)

L.F.M. v. Department of Social Services, 67 Md. App. 379, 507 A.2d 1151 (1986)

In re Adoption No. 92A41, 662 A.2d 150 (1993)

In re Tamara R., 136 Md. App. 236, 764 A.2d 844 (2000)

What is the standard of evidence for this type of hearing?

The standard of evidence is clear and convincing.

Who has the burden of proof at this hearing?

DSS bears the burden of proving that it has used reasonable efforts to achieve the permanency plan determined by the court or agreed upon by the parties.

How will the court rule?

After hearing the information presented by DSS and child's counsel, the court shall take whatever action the court considers appropriate and in the child's best interest.

TERMINATION OF PARENTAL RIGHTS HEARINGS and GUARDIANSHIP REVIEW HEARINGS

AFTER JANUARY 1, 2006

Notice Requirement:

The court must give the child's attorney 30 days notice before each guardianship review hearing. The court must also give 30 days notice to DSS and each of the child's living parents who has not waived the right to notice and that parent's attorney. DSS must give the caregiver at least seven days notice before a guardianship review hearing.

What is the purpose of the hearing?

At the first guardianship review hearing (which must be scheduled within six months of the date of order granting guardianship) and at each subsequent yearly guardianship review hearing, the court will determine: if the child's current circumstances and placement are in the child's best interest; if the permanency plan in effect is in the child's best interest; and if reasonable efforts have been made to finalize the permanency plan. The court will also: evaluate the child's safety and act as needed to protect the child; determine the extent of compliance with the permanency plan; change the permanency plan if the change would be in the best interest of the child; and project a reasonable date by which the permanency plan will be finalized.

At guardianship review hearings held one or more years after the order of guardianship, the court can also designate an individual guardian if:

- The court finds that adoption is not in the child's best interest and that custody and guardianship is the least restrictive alternative available;
- DSS certifies the child's successful placement with the individual for at least six months (unless the time is shortened by DSS recommendation); and
- DSS files a report as to the stability of the individual to be the child's guardian.

How do I prepare for the hearing?

- *Interview the client:* Discuss the child's position as to adoption in general and adoption by the current caretaker in particular. The child's overall circumstances should also be discussed, as is age appropriate. The child's permanency plan in order of priority is adoption, custody and guardianship to an individual, or another planned permanent living arrangement. If the child will not consent to adoption, custody and guardianship or another planned permanent living arrangement should be discussed.
- *Interview the caretaker:* Discuss the caregiver's position as to adoption. The child's overall circumstances should also be discussed. If the caregiver does not wish to adopt, he/she can still care for the child by seeking custody and guardianship or through another planned permanent living arrangement.

- *Interview the social worker:* Discuss the progress made toward adoption. If there are impediments to adoption, discuss the steps taken by DSS to remove the impediments. The child's overall circumstances should also be discussed. At least ten days prior to each guardianship review hearing, DSS should have prepared a written report and forwarded a copy to the child's attorney and each of the child's living parents who have not waived the right to notice.
- *Interview other relevant individuals:* These individuals may include therapists and/or other mental health providers, doctors, teachers, day care providers, etc. Discuss issues specific to the child's relationship with the interviewed individuals.
- *Interview parents who have not waived right to notice:* Parents are entitled to be heard and to participate in guardianship review hearings, but are not parties solely on the basis of the right to notice or opportunity to be heard or participate.
- *Service Needs:* After discussions with all relevant individuals, determine whether or not the child is receiving all services particular to his/her circumstances.

What will happen at the hearing?

At the initial guardianship review hearing, held no later than 180 days after the date of the order granting guardianship, the court will establish a permanency plan for the child. In order of priority, this plan may be: 1) adoption of the child, 2) custody and guardianship of the child by an individual, or 3) another planned permanent living arrangement.

In addition, the court must hold a guardianship review hearing at least once a year after the initial guardianship review hearing until the juvenile court's jurisdiction terminates. At each guardianship review hearing (initial review hearing and annual reviews following initial review), the juvenile court shall:

- evaluate the child's safety and, if necessary, take action to protect the child
- consider the written report of a local out-of-home placement review board required under §5-545
- determine the extent of compliance with the permanency plan
- make a specific factual finding on whether reasonable efforts have been made to finalize the permanency plan and document the finding
- change the permanency plan if a change would be in the child's best interest
- project a reasonable date for finalization of the permanency plan
- enter any order that the court finds appropriate to implement the permanency plan
- take any other action that the court considers to be in the child's best interest

Finally, at a guardianship review hearing held one year or more after an order of guardianship has issued, the court can designate an individual guardian of the child if the following conditions are met:

- The local department certifies the child's successful placement with the individual, under DSS supervision, for at least 180 days or a shorter period if permitted by the court;
- The local department files a report by a child placement agency regarding the suitability of the potential guardian;

- The court makes a specific finding that, for a compelling reason, adoption is not in the child's best interest, and that custody and guardianship is in the child's best interest, and is the least restrictive alternative available.

The information above can be presented to the court through testimony, stipulations of fact as agreed to between the parties, or proffer by the parties. The guardianship review can also provide an opportunity for child's counsel to request that the court order DSS to provide services for the child. A request may also be made for the court to order sibling visitation, which can be facilitated by DSS if necessary.

What statutes form the basis for the hearing?

- §5-326
- §5-324(b)(1)(vi)

What are some cases that apply to this type of hearing?

- **Delay in Adoptions & Adoptive Resources**

In re Adoption No. 90072022, 87 Md. App. 360, 590 A.2d 1094 (1991)

In re Adoption/Guardianship No. 3598, 347 Md. 295, 701 A.2d 110 (1997)

In re Adoption/Guardianship No. 2633, 101 Md. App. 274, 640 A.2d 1036 (1994)

In re Adoption/Guardianship No. 3155, 103 Md. App. 300, 653 A.2d 521 (1995)

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L.F.M. v. Department of Social Services, 67 Md. App. 379, 507 A.2d 1151 (1986)

In re Adoption No. 92A41, 662 A.2d 150 (1993)

- **What is the standard of evidence for this type of hearing?**

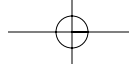
The standard of evidence is preponderance of the evidence.

- **Who has the burden of proof at this hearing?**

DSS bears the burden of proving that it has made reasonable efforts to achieve the permanency plan determined by the court or agreed upon by the parties.

How will the court rule?

After hearing the information presented by DSS and child's counsel, the court shall take whatever action the court considers appropriate and in the child's best interest.



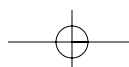
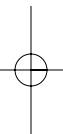
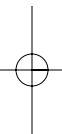
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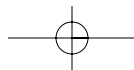
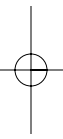
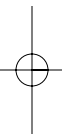
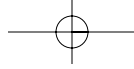
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GLOSSARY OF RESOURCES

This resource list is adapted from the excellent list on the American Bar Association's Center on Children and the Law web site. This web site contains a wealth of information about a wide range of children's legal issues. The Center provides technical assistance, training, and research programs addressing a broad spectrum of law and court-related topics affecting children. These include child abuse and neglect, adoption, adolescent health, foster and kinship care, custody and support, guardianship, missing and exploited children, and children's exposure to domestic violence.

740 Fifteenth Street NW, Washington, DC, 20005

Tel: 202/662-1720

Fax: 202/662-1755

www.abanet.org/child/about.html

Child Welfare League

CWLA is an association of more than 1,100 public and private nonprofit agencies that assist over 3.5 million abused and neglected children and their families each year with a wide range of services. CWLA conducts research, develops standards of best practice, hosts regional and national conferences, and offers comprehensive, field-based consultation and professional development activities to both governmental and private child-serving organizations.

440 First Street NW, Washington, DC 20001-2085

Tel: 202/638-2952

Fax: 202/638-4004

www.cwla.org

Children's Rights, Inc.

A leading litigator on behalf of abused/neglected children and kids languishing in foster care, this organization has helped prod considerable reform throughout the country by use of statewide or local class action law suits, brought with the help of local child advocates.

404 Park Avenue, 11th Floor, New York, NY 10016

Tel: 212/683-2210

Fax: 212/683-4015

info@childrensrights.org

The Dave Thomas Foundation for Adoption

Dave Thomas (founder of Wendy's) established a foundation to promote adoption and works with many national adoption organizations, individuals, and public and private agencies to raise awareness about waiting children and to provide direct support for programs that meet specific Foundation objectives.

4288 West Dublin Granville Road, Dublin, OH 43017

Tel: 1-800-ASK-DTFA (1-800-275-3832)

Fax: 614/766-3871

www.davethomasfoundationforadoption.org

National Adoption Information Clearinghouse

The Clearinghouse is a federally-funded comprehensive adoption information resource. Their National Adoption Directory Online permits access to a database of state adoption and licensing specialists; adoption exchanges; photo listings; reunion registries; attorney referral services; listings of public and private adoption agencies; adoptive parent, adoptee, and birth parent support groups; a searchable database of over 3,700 adoption-related documents; on-line statistics; adoption search-related information; on-line publications and fact sheets; and much more.

330 C Street SW, Washington, DC 20447
 Tel: 703/352-3488
 Fax: 703/385-3206
www.calib.com/naic

National Association of Child Advocates

This national organization is devoted to building the capacity of state and local child advocacy organizations. It is a nationwide network of child advocacy organizations working at the statehouse, county commission, and city council levels on critical reforms for children and establishing links between state and local child advocates and national experts.

1522 K Street NW, Suite 600, Washington, DC 20005-1202
 Tel: 202/289-0777
 Fax: 202/289-0776
www.childadvocacy.org

The National Association of Counsel for Children

Begun over 20 years ago by Don Bross, the NACC now has several thousand members and the best-attended annual children's law conference in the country.

1825 Marion Street, Suite 340, Denver, CO 80218
 Tel: 1/888/828-NACC
www.naccchildlaw.org

National Center for Prosecution of Child Abuse

This Center, a program of the American Prosecutors Research Institute at the National District Attorneys Association, trains prosecutors and those who work with them on issues related to the criminal justice system handling of child abuse cases. The website includes a list of their training courses and past issues of the Center's *Update* newsletter, each highlighting a critical topic related to child maltreatment investigation and prosecution. There is also material on this site summarizing state laws on various issues related to child abuse-related crimes and evidence issues.

90 Canal Center Plaza, Suite 510, Alexandria, VA 22314
 Tel: 703/549-9222
 Fax: 703/836-3195
www.ndaa-apri.org

National Center for Youth Law

This non-profit legal program has evolved into a major resource for information on children's legal issues. It publishes the subscription periodical *Youth Law News* and its website has materials on adolescent/child health, child support, child welfare/adoption, fair housing, juvenile justice/institutions, public benefits, etc.

405 14th Street, 15th Floor, Oakland, CA 94612-2701
 Tel: 510/835-8098
 Fax: 510/835-8099
www.youthlaw.org

National Clearinghouse on Child Abuse and Neglect Information

The National Clearinghouse on Child Abuse and Neglect Information was established by the Child Abuse Prevention and Treatment Act of 1974. The Clearinghouse provides information products and technical assistance services to help professionals locate information related to child abuse and neglect and related child welfare issues,

including on-line databases of over 22,000 records on child abuse and neglect and child welfare issues. The Clearinghouse can help you find research, statistics, state laws, and resources on such topics as prevention, child protection, out-of-home care, and permanency planning.

P.O. Box 1182, Washington, DC 20013-1182

Tel: 1/800/FYI-3366

www.acf.dhhs.gov/program/cb

National Conference of State Legislatures' Adoption and Safe Families Act Searchable State Law Database

This site, part of the NCSL's website material addressing state laws related to children, youth, and families provides information on various state laws enacted to implement the federal Adoption and Safe Families Act. The legislation is organized according to state and topic (e.g., permanency hearings, child safety assurance, reasonable efforts clarification, termination of parental rights, criminal records checks).

NCSL, 444 North Capitol Street, Suite 515, Washington, DC 20001

Tel: 202/624-5400

Fax: 202/737-1069

www.ncsl.org

The National Council of Juvenile and Family Court Judges

NCJFCJ has produced an important publication on improving the way that courts handle child abuse/neglect, foster care, and termination of parental rights cases. That book, *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, can be purchased from this site, but the entire text of the book can also be downloaded on this site. Also on this site, a Child Victims Model Courts Initiative is described, and you can learn about other ways in which this organization is helping the nation's courts be more responsive to child maltreatment victims.

P.O. Box 8970, Reno, NV 89507

Tel: 775/327-5300

Fax: 775/327-5306

www.pppncjfcj.org

The W.K. Kellogg Foundation's Families for Kids Initiative

This foundation has a special initiative focused on securing permanent families for children in the foster care system.

W.K. Kellogg Foundation, One Michigan Avenue East, Battle Creek, MI 49017-4058

Tel: 269/968-1611

Fax: 269/968-0413

www.wkkf.org www.wkkf.org

WEB SITES

The E-Magazine for Children's Advocates

There are separate legal and federal legislation pages, as well as links of interest to children's advocates.

www.childadvocacy.com

Child Abuse Prevention Network, Cornell Family Life Development Center

From this website, you can access the American Professional Society on the Abuse of Children, the International Society for Prevention of Child Abuse, the National Committee to Prevent Child Abuse's New York Chapter, and other related links. You can also sign up for child abuse-related mailing lists (ListServes), and be connected to many other child abuse-related websites, including Cornell's National Data Archive on Child Abuse and Neglect.

www.child-abuse.com

The Child Welfare Home Page

Professor Duncan Lindsey at the UCLA School of Public Policy and Social Research has put together this voluminous site on child abuse, foster care, and adoption research and practice. The *Child Welfare Review* is an electronic journal that has current papers on important topics in child welfare, drawn from material throughout the world, and a Child Welfare Library that contains links to major journals, think tanks, and research organizations in the field. There is also a page of "Hot Links" to other child welfare-related sites. The Child Welfare Home Page site is fully searchable.

www.childwelfare.com

Information on Children and the Court System

Chuck Bennett, a Missouri lawyer and guardian ad litem for children, has assembled this site, which discusses various types of court cases involving children and the responsibilities of guardians ad litem and court-appointed special advocates (CASA), and provides links to a host of relevant child advocacy resources on the Web as well as information about child abuse and foster care.

www.rollanet.org/bennett.bbchild.htm

Legal Information Institute

Cornell University has established this web site, which assembles laws, appellate court decisions, and other legal material on adoption. This is part of the Adoption Law and Reforms website that provides useful information on state, federal, and international adoption laws.

www.law.cornell.edu/topics/adoption.html

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