Contemporary American Law Regarding Child Protection

1970 – Present

Adapted from the Ohio Child Welfare Training Program's curriculum:
Caseworker Core 101: Family-Centered
***Child Protective Services*, May 2001**

Indian Child Welfare Act (ICWA) (P.L. 95-608) - 1978

In 1978, the U.S. Congress passed the Indian Child Welfare Act (ICWA). Congress passed this law when it became evident supposedly helpful interventions in Native American communities were actually eroding Indian families. Child welfare services for Native American children had been assigned to private contractors, most often churches, whose missionaries felt compelled to convert the children to Christianity and educate them to "American" ways of life. They were often removed from their families and placed in boarding schools far from home.

The Indian Child Welfare Act of 1978 assigned sole responsibility to tribal governments for child welfare and adoption decisions for children of Native American descent. This ensured child welfare interventions remained consistent with the Native American concept that the tribal community is responsible for the care of its own children. The Indian Child Welfare Act takes precedence over state and federal laws (including the Adoption and Safe Families Act and MEPA, as amended (1996)) and mandates that child welfare agencies notify the Bureau of Indian Affairs in Washington, D.C. if a child is identified by the family as being of Native American descent.

The Adoption Assistance and Child Welfare Act (P.L. 96-272) – 1980

In 1980, Public Law 96-272, the Adoption Assistance and Child Welfare Act, was passed by the federal government to assure permanent homes for children and to strengthen the capability of families to care for their own children. This legislation forms the foundation of current child welfare practice.

Under this law, case managers were required to demonstrate "reasonable efforts" had been made to prevent placing a child in substitute care. The concept of reasonable efforts means every possible effort has been

made by the child welfare agency to provide carefully planned, individualized supportive and therapeutic services to strengthen families and enable them to retain care of their children. With such services, it was believed most children could be assured safety in their own homes.

P.L. 96-272 mandates that an assessment be conducted and case plans be developed for all children in substitute care. When reasonable efforts cannot prevent placement, the law requires that the child be placed in the "least restrictive, most home-like environment" possible. The agency must then engage in activities toward prompt reunification of children with their families or provide a timely permanent alternative home for children who cannot be returned to their families.

Multi-Ethnic Placement Act (MEPA) (P.L. 103-382) and MEPA, as amended (P.L. 104-188) - 1996

In October 1994, Congress passed P.L. 103-382, the "Multi Ethnic Placement Act" (MEPA). The Act was amended in 1996 (P.L. 104-188). The purpose of this act and its amendment was to promote permanence for the tens of thousands of children in foster care waiting to be placed in appropriate foster or adoptive homes. The provisions of this act were intended to do the following: 1) decrease the length of time children must wait before they are adopted; 2) prevent discrimination in child placement on the basis of race, color, or national origin; and 3) facilitate identification and recruitment of foster and adoptive families that can meet the special needs of the children in care.

Specifically, the provisions of MEPA, as amended (1996) prohibit agencies or entities receiving Federal assistance and involved in adoption or foster care from:

- Denying to any person the opportunity to become an adoptive or a foster parent on the basis of the race, color, or national origin of the adoptive or foster parent or the child involved; or

- Delaying or denying the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved.

Agencies or entities may, however, consider the total needs of the child, including the needs associated with safety, social development, or

identity formation and/or cultural continuity. The best interests of the child must be paramount. States and agencies should target recruitment efforts to identify adoptive and foster families from the cultural backgrounds of the children who need homes.

The impetus for the act and its amendment was the adherence, in some states and agencies, to policies that discouraged cross-racial placements, or that sanctioned lengthy searches for same-race families before authorizing cross-racial placements. In some cases, families were informally discouraged from applying to foster or adopt children from a different race or ethnicity. These policies contributed to placement delays and in some cases prevented appropriate placement or adoption for many children, since the number of potential available families for the child was reduced (U.S. Department of Health and Human Services, Internet, 1995).

Adoption and Safe Families Act of 1997 (P.L. 105-89) - 1997

The Adoption and Safe Families Act (ASFA) was enacted by Congress in 1997. O.R.C. Section 2151.419 was amended in December of 1998, to implement the provisions of the Adoption and Safe Families Act. Several Ohio Administrative Code Rules were promulgated to implement O.R.C. Section 2151.419. Significant provisions of the state law and OAC rules include the following:

1. Agencies may seek and receive permission from juvenile courts to be released from the reasonable efforts requirements in the following situations: (Once the court approves the request, the agency must proceed directly to terminate parental rights.)

    - Murder, aggravated murder, or voluntary manslaughter of a sibling or another child who lived in the parent's household at the time of the offense;

    - Felonious assault, aggravated assault, assault, endangering children, rape, sexual battery, corrupting a minor (sex-related offense), gross sexual imposition involving the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

    - Conspiracy or attempt to commit, or complicity to commit, an offense of murder or any sex-related offense, as described above;

- Repeatedly withholding medical treatment or food from the child when the parent has the means to provide the treatment or food (other than to treat the physical or mental illness or defect through spiritual means through prayer alone with the tenets of a recognized religious body);

- The parent has placed the child at risk due to alcohol or drug abuse two or more times and has rejected treatment two or more times or refused to participate in further treatment two or more times, after a case plan requiring treatment of the parent was journalized or an order was issued by another court requiring treatment of the parent;

- The child is presumed to be abandoned (i.e., the parents have failed to visit or maintain contact with the child for more than 90 days, regardless of whether the parent resumes contact with the child after 90 days);

- Parental rights have been involuntarily terminated for a sibling of the child.

2. Supplemental planning (i.e., planning for alternative permanent placement as a contingency plan in case the reunification plan fails) is allowed. An agency may develop a supplemental plan for placing the child in an alternative permanent home concurrently with the plan for reunification.

3. Permanency hearings must be held within 12 months of the child's entry into foster care, unless there are compelling reasons why termination of parental rights is not in the child's best interest. Time starts at the point of adjudication or 60 days after the out of home placement.

Child Abuse Prevention and Treatment Act (CAPTA) (P.L. 93-247), as amended (and reauthorized) 2003 (in Keeping Children and Families Safe Act, P.L. 108-36)

CAPTA requirements reinforce public children services' responsibility to uphold clients' Constitutional rights and that workers receive training on protecting parents' rights. It specifically requires caseworkers to notify the adult subject of the investigation of the allegations of abuse or neglect (in general terms) made against

him/her upon first contact with that person. This upholds individual's Fourteenth Amendment rights to due process. Additionally, the Fourth Amendment guarantees a parent's right to be secure from unreasonable search and seizures during the course of child welfare work. It is especially pertinent during investigations (i.e., "searches").

Additional information about CAPTA and parents' Constitutional rights is provided in the workshops, Module III: *Legal Aspects of Family Centered Child Protective Services,* and "*CAPTA, Fourth and Fourteenth Amendment Rights."*

Ohio Senate Bill 89 (O.R.C. Chapters 2151 and 5103) and Ohio House Bill 274 (O.R.C. Chapter 2151)

Ohio Senate Bill 89 (passed in 1988) directed public children services agencies to make "reasonable efforts to prevent removal of the child from his home" and directed the court not to grant temporary custody unless the court "*determines and specifically states in the order that continued residence of the child in his current home will be contrary to his best interest and welfare*."

This led to the development and integration of a systematic protocol for data gathering and analysis known as risk assessment. Ohio H.B 274, which mandated a risk assessment process in Ohio, became law in 1996.

In addition, our conception of who should be included in a family has been broadened to acknowledge children may have significant emotional attachments to persons other than their biological parents and siblings. These people may include extended family members, adoptive parents, and other persons who may or may not be related to the child biologically or legally. The term "primary family" is often used instead of the more narrow term "*biological family*."

In family-centered practice, the family is the primary unit of intervention. This requires that case managers first determine *who* is included in a child's family, taking care to consider all persons, particularly primary caregivers, with whom the child has strong emotional attachments.

Adoption Assessor Bill: Ohio House Bill 448 (O.R.C. Chapters 3107 and 5153)

In 1996, with the passage of Ohio House Bill 448, there were significant additions to improve the process of adoption and to formalize the process of open adoptions. Certified adoption assessors were established who would be trained to conduct adoption services. The duties of the assessors would include: preparing and educating potential adoptive parents; participating in a mutual assessment process resulting in approval or disapproval/withdrawal for placement in the applicant's home; child preparation, collection, and documentation of social and medical histories; birth parent adoption services; giving an assessment of the adjustment of the parties to the adoptive placement prior to finalization; and provision of services as requested or needed after legalization.

This legislation also provided for the parent who consents to adoption to authorize the release of identifying information about herself to the child when the child attains the age of 21. Further, non-binding open adoption was authorized, whereas the adoptive parents and birth parents agree that the birth parents may have contact with and/or receive information about the child. Such agreement is not enforceable by either party and may be terminated by either party at any time.