

Excerpts and Adaptations from: “Protecting Parents’ Constitutional Rights during Child Abuse and Neglect Assessments”

Below are excerpts from a guidance paper on protecting parent's rights during the holistic assessment process. The entire guidance paper is available at www.ocwtp.com.

INTRODUCTION

This document provides guidelines to address commonly asked questions and dilemmas regarding these two CAPTA provisions. A statewide work group of child welfare professionals developed this guidance document. The state work group consisted of county agency and prosecuting attorneys, Ohio Department of Job and Family Services legal and child protective services staff, and staff from the Institute for Human Services (the State Coordinator of the Ohio Child Welfare Training Program). This group considered best practice standards, available Ohio Revised Code (ORC) and Ohio Administrative Code (OAC), and the dilemmas faced by PCSAs.

ISSUE 1: NOTIFICATION OF INDIVIDUAL SUBJECTS OF THE REPORT

The CAPTA Amendment of 2003 requires that, at the initial time of contact, the PCSA must notify the individual subject of the child abuse or neglect report of the allegations against the individual.

Questions:

- *To which types of cases does this requirement apply?*
- *What constitutes initial contact?*
- *How much detail regarding the allegation should the caseworker provide to the subject of the report?*
- *Should the caseworker inform the subject of the report that his/her cooperation is voluntary?*
- *What if the caseworker is unsure who the perpetrator is?*
- *What if, during the course of the fact gathering contacts, there are allegations of another instance or different type of maltreatment?*

- What if there may be a criminal investigation of the alleged maltreatment?

To which types of cases does this requirement apply?

Discussion:

CAPTA is federal legislation and, as such, refers to the federal term “child abuse and neglect.” Ohio’s definitions of abused and neglected children, as well as other related definitions, do not strictly fit this federal term. Therefore, a question has been raised as to which types of cases this notification requirement applies.

It appears the intent of the CAPTA amendment was to ensure that subjects are informed of the allegations against them, irrespective of whether the allegation strictly fits within the federal statutory definitions of abuse and neglect.

This requirement includes notifying youth of the allegations against them, for example, in cases of sibling abuse or adolescent perpetrators of sexual abuse.

Guideline:

The CAPTA notification requirement applies to the **initial time of contact** with the individuals who are the subjects of the complaint or allegation, regardless of how the agency defines the nature of the complaint (abuse, neglect, dependency, other, etc.) or allegations. The subject of the report may be persons other than the parent, such as a boyfriend or caretaker of the child.

What constitutes initial contact?

Discussion:

The CAPTA requirement reflects an interest in ensuring the civil rights of subjects of reports are protected. This includes the Fourteenth Amendment right to due process. In accordance with the Fourteenth Amendment, subjects must be aware of the allegations made against them so they may be fully informed prior to giving consent to proceed with the fact gathering process. Therefore, notification must be made prior to engaging the subject in conversation about the alleged maltreatment.

There is no stipulation that the subject be the first person interviewed during the fact gathering process. In some cases, collateral sources of information or the alleged child victim will be interviewed prior to the subject of the report.

Guideline:

Initial contact means either the first face-to-face contact or the first phone contact (whichever is first) with the individual subject of the report where the PCSA worker is gathering information as part of the investigative process. The notification must be made prior to discussing the allegation with that individual.

How much detail regarding the allegation should the caseworker provide to the subject of the report?**Discussion:**

The Fourteenth Amendment right to due process includes the right to make fully informed, voluntary consent to searches. Therefore, prior to proceeding with the information gathering phase of the interview, the worker must provide enough information so that the individual subject of the report knows to what he/she is consenting. Workers are not required to and should not give Miranda warnings. Miranda warnings are given by law enforcement officers to individuals suspected of crimes when the individuals are in law enforcement custody.

However, the identities of the reporter and any person providing information during the course of the fact gathering process must remain confidential as specified in the OAC. In many cases, the individual subject of the report can easily determine who knew about the alleged maltreatment and who was likely to report it. The worker's responsibility is to not refute or affirm these identities, regardless of whether the individual subject can make these determinations.

Guideline:

Workers should provide enough information so the subject of the report understands why the agency is conducting fact gathering activities, but must protect the identity of the reporter at the same time. Prior to asking the individual subject any questions about the alleged maltreatment, workers should consider using direct, non-inflammatory techniques that address the following elements:

- That a report was made to the agency
- That the agency is required by law to investigate the report
- That the report states abuse or neglect (whichever is the case) may have occurred
- A general description or paraphrase of the report

- That the report states that he/she was possibly involved in the situation

For example, the worker should state that there was a report that the children were possibly neglected in that they were left unsupervised, that a child may have been abused and has bruises on his face, or that a child may have been abused by being touched in a sexual way.

Because of concern about releasing the identity of the reporter, it may be advisable not to provide detailed information from the report regarding how the alleged maltreatment occurred, the frequency of the maltreatment, or any other details. For example, the name of the reporting source cannot be disclosed, nor should the identity of witnesses or specific items of evidence.

Example of appropriate level of detail needed during notification:

“My name is Cathy Caseworker. I am a caseworker with Franklin County Children Services. We are required by law to investigate all reports of possible abuse or neglect. We have received a report about your daughter, Cyndi. May I come in so that we can talk about this?”

Then... (in cases where the subject of the report is identified by the reporter):

“Thank you. We received a report that Cyndi may have been abused, because there are bruises on her face. The report also states that you may have been involved in this situation. However, I’m hoping that you will answer my questions and we can get this straightened out.”

Another Example (in cases where the subject of the report is not known):

“My name is Cheryl Smith. I am a caseworker with Shelby County Children Services. We are required by law to investigate all reports of possible abuse and neglect. We received a report about your son, Terry. May I come in so that we can talk about this?”

Then...

“Thank you. We received a report that Terry was possibly neglected because he was walking around outside, unsupervised last Tuesday evening. I’m hoping that we can discuss it so that we can get it straightened out. Can you tell me about the situation?”

Each worker will need to develop his/her unique interviewing style and adapt it for different situations and different individuals.

Further Suggestions:

ODJFS has two booklets under development on parental rights. These booklets notify parents of their rights and explain agency and juvenile court procedures. It is advisable that agencies develop procedures for distributing these booklets, if they do not already have agency booklets to distribute.

When parents are uncooperative the worker should inform the parents of the agency's legal obligations if the child is believed to be at risk of serious harm. That is, to consult with legal counsel about legal options for protecting the child. Once it is determined that the agency will initiate court action, the worker should notify the individuals as to where and when the court hearing will be held; what the agency will ask the court to do; how the parent can obtain an attorney; and that the individual should attend the court hearing.

CAPTA also requires that individual be apprised of their rights to appeal agency actions. OAC 5101:2-33-20) states that clients have the right to appeal any decision or action the PCSA may take, including the right to appeal the disposition or resolution of child abuse or neglect report. The agency is required, under CAPTA and OAC, to inform parents of these rights.

Should the caseworker inform the subject of the report that his/her cooperation is voluntary?**Discussion:**

Being forthright about the voluntary nature of cooperation can help develop a trusting relationship with clients. However there are some other considerations to keep in mind: a) CAPTA does not require that we inform subjects of the voluntary nature of their involvement; b) the subject's involvement may become involuntary by court order (e.g., orders to access the child or Protective Supervision); and c) communication regarding the voluntary nature of the subject's involvement may invite some subjects to refuse to cooperate.

Guideline:

Workers are not required to inform the subject of the voluntary nature of the fact gathering process. The worker will need to use his/her judgment and the advice of his/her supervisor to make decisions on a case-by-case basis. If the subject directly asks if his/her cooperation is voluntary, the worker should reply honestly that it is. If the parent asks about what would happen if he/she refuses to cooperate, the worker should explain that: a) he/she must continue to investigate the allegations, b) there are several

options, including legal intervention that may be implemented, and c) the worker will speak with his/her supervisor regarding the best course of action. The worker should deliver this information as fact, not threat.

What if the caseworker is unsure who the perpetrator is?

Discussion:

In many cases, the identity of the perpetrator is not initially known. Many reports allege harm to the child without identifying anyone as the person responsible for that harm.

Guideline:

In the course of the fact gathering process, information may be obtained from one individual that another individual could have caused the maltreatment. In these situations, the worker must notify that individual of the allegation against him/her prior to gathering information from him/her.

What if, during the course of the investigative interviews, there are allegations of another instance or a different type of maltreatment?

Discussion:

It is not uncommon during the fact gathering process for different or additional maltreatment to be identified or alleged. CAPTA focuses on the initial contact, and does not specifically address this issue. However, it is considered best practice to give the individual a chance to make an informed decision about whether to continue with the fact gathering process in light of the additional allegations.

Guideline:

It is considered best practice (but not required by CAPTA) for the worker to notify the subject of the report of additional allegations prior to seeking information about those allegations from him/her.

Example:

“Mrs. Jones, I need to talk with you further about the situation we've been investigating. We have additional information regarding Carol that that she was touched in a sexual way and that you may have been involved in this. I need to talk with you about any information you have about that situation. As I said when we talked the first time, your cooperation is

voluntary, and I hope that you will answer my questions so that we can be sure that Carol is safe. Can you tell me what you know about this?"

What if there is a criminal investigation of the alleged maltreatment?

Discussion:

Although CAPTA is silent on this issue, guidance has been provided by the U. S. Department of Health and Human Services, Administration for Children and

Youth, (www.hhs.gov April 2005, Children's Bureau, Initiatives):

"... states should be careful not to compromise their own investigations or a concurrent criminal investigation that may lead to criminal charges against a perpetrator of serious child maltreatment. In cases alleging severe physical abuse or sexual abuse, for example, it is critical that CPS and law enforcement investigations be either jointly conducted or at the least carefully coordinated. Investigation of cases involving alleged perpetrators of serious crimes against children should be synchronized between CPS and law enforcement so that relevant evidence of offenses not be concealed or destroyed, child victims not be subjected to undue influence to give or not give information to CPS or law enforcement caseworkers, or that actions get taken that would place children at greater risk. Such coordination should help ensure that criminal investigations are not undermined."

Guideline:

The PCSA should coordinate investigative activities with law enforcement so as not to compromise a criminal investigation. In Ohio, this is stipulated in each county's Memorandum of Understanding (MOU).

In cases involving criminal investigations, law enforcement officers should determine how and when to notify the subject of the report and workers should follow their lead.

However, if coordination of the fact gathering process cannot be accomplished within OAC time line requirements for the safety assessment and protective services fact gathering process, PCSA workers should proceed with the fact gathering process. They should first notify law enforcement of the agency's determination to pursue its investigation. Then, in conducting their fact gathering process, PCSA public children services workers should act carefully to avoid compromising the criminal investigation.

At times, there are cases where referral information indicates that the child is not in immediate danger of serious harm and law enforcement requests the agency to "hold

off" on investigative activities in order to build a criminal case. In these cases, workers should consult with their supervisors as well as the county prosecutor or agency attorney, as needed.

Further Suggestion:

PCSA managers should review their MOU and use these Guidelines to revise it as necessary.

ISSUE #5: CONDUCTING INTERVIEWS WITH CHILDREN AT SCHOOL WITHOUT PARENTAL KNOWLEDGE OR AGAINST PARENTAL WISHES

When parents send their children to school they may expect that only school system staff members will be interacting with their children, and people outside of the school system will not be talking with their children. Conducting interviews at school, without parental permission or against their wishes, may impact their rights to parent their children without governmental interference.

On the other hand, failing to interview a child at school may result in an incomplete fact gathering process, and the agency may fail to protect the child from further maltreatment.

The agency must balance the two dangers inherent in this dilemma: failure to protect the child vs. violating parents' rights to due process.

When is it permissible to conduct investigative interviews with the alleged child victim at school without first informing the parent about this activity?

Guidelines:

Investigative interviews should not be conducted at schools as a matter of standard operating procedure or because it is convenient to do so. Each case should be evaluated to determine the need to interview the child at school.

Specific facts about the allegation should indicate the need to conduct investigative interviews at the child's school. For example, a child who discloses at school that there is current or ongoing physical or sexual abuse may need to be interviewed at the school, if there is good reason to believe that the child will be in danger upon returning home. Indications that the child would be unwilling to discuss the alleged maltreatment in his home would also necessitate interviewing him/her at school. On the other hand, there would be no reason to interview a child at school regarding neglect due to unsanitary conditions at home. It is more reasonable to interview that child at home.

Fact gathering interviews at school without the parent's knowledge should be limited to the following situations OAC 5101:2-36-03 [H])

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- There is credible information indicating the child is in immediate danger of serious harm
- There is credible information indicating that the child will be in immediate danger of serious harm upon return home from school or other locations away from home
- There is credible information indicating that the child may be intimidated from discussing the alleged abuse or neglect in their home
- The child requests to be interviewed at school or other location due to one of the circumstances listed above

The worker must follow school protocol in conducting investigative interviews at school. These usually include procedures for gaining permission from a school administrator and specify when a school staff member must be present during the interview. Some schools do not allow investigative interviews. The worker should follow agency procedure for how to proceed in those situations.

The worker must document the necessity of interviewing the child at school in the case record and must, on the same day, attempt a face-to-face contact with the child's parent, guardian, or custodian to inform them that the interview occurred. (See OAC 5101:2-34-32; post SACWIS OAC 5101:2-36-03). This guidance also applies to interviewing children in other out of home care setting such as day care centers, day camps, etc.

ISSUE #6: INTERVIEWING COLLATERAL SOURCES WITHOUT THE SUBJECT'S KNOWLEDGE

A complete fact gathering process requires gathering information from a variety of sources.

What are the limits of a caseworker's authority in contacting collateral sources of information?

Discussion:

A complete fact gathering process often requires gathering information from collateral sources that may have information about the family. In most cases, it is possible to gain the subject's cooperation in contacting those people. In some circumstances, it may

be necessary to contact collaterals without parental knowledge. In other cases, the worker may need to gather information from collateral sources to support a request to juvenile court for an order compelling the subject to allow access to the home or the alleged child victim. However, doing so may interfere with the individual subject's right to privacy.

On the other hand, failure to gather complete information may result in failure to protect the child from further abuse. The agency is faced with balancing protecting parents' rights while at the same time fulfilling their duty to investigate.

Guidelines:

Workers may make collateral contacts without the parent's or alleged perpetrator's knowledge. OAC 5101: 2-36-03) states that PCSA staff may contact collaterals "identified as possible sources of information during the assessment/investigation to obtain relevant information regarding the risk to the children." However, collaterals may be contacted only after the referral has been screened in for investigation/assessment by an Ohio PCSA. In other words, caseworkers must not contact collaterals prior to accepting the referral as a report. Furthermore, PCSA staff must not contact collaterals *in order to determine* whether to accept the referral as a report.

The identity of collateral sources should be gathered from the person who made the referral, from each person interviewed, and from the worker's knowledge of the situation. For example, if the worker knows the child visits her grandmother regularly, the worker could contact the grandmother.

During collateral contacts, the worker should protect the privacy of the family being investigated as much as possible. During the interviews the worker should focus on gathering information about the child, not on making allegations or identifying the perpetrator. The worker should not provide details about the allegation.

Example:

" Mr. Smith, my name is Alice Jones. I am from Guernsey County Children Services. We received a report your nephew, Charles, has two black eyes. We are trying to figure out what happened to Charles. Can you share with me any information that would be helpful in understanding the current situation?"

If Mr. Smith asks for details about the report, the worker could state something like the following: "Mr. Smith I'm sure you can understand the importance of protecting the family's privacy in this situation. I really can't tell you about the details of the report. However, I am

very interested in finding out what happened, so we can make sure Charles is safe. Do you have any information that would be helpful in understanding this situation?"

Workers are not required to obtain permission to contact collaterals. However it is also advisable to proceed with the fact gathering process in an open and transparent manner in order to develop trust with the client, as long as doing so does not compromise the safety of the child. For example, the worker could explain the requirement to conduct an fact gathering process and a fair assessment of the family's situation. The worker could ask the subject for a list of people who could help the worker gather information about the family. The worker should ask the subject to complete a "release of information" form to be included in the case record. Following is an example of how to ask for information about collateral sources of information:

Example:

"Ms. Jones, as you know, I gather comprehensive facts about this situation. I would like to have a fair approach to understanding your family. Would you please give me the names of people I could contact who could help me gain a good understanding of your family?"

Interviewing collaterals against parental wishes is different from interviewing collaterals without parental knowledge. A case-specific analysis should be made to determine whether it is necessary and appropriate to contact a collateral source over the parent's opposition. The worker should consult with his/her supervisor and agency attorney or prosecutor regarding these situations. The worker should consider the following factors in determining whether to proceed with contacting collaterals against the parent's wishes:

- The parent's reasons for objecting (e.g. confidentiality concerns, safety concerns, vs. an unwillingness to cooperate)
- The value of the information the collateral can provide
- Whether the information can be gathered from another source