

Introduction to Child Welfare

By William L. Grimm

The practices and procedures of child welfare agencies and juvenile courts vary from state to state. Definitions of abuse and neglect, the jurisdiction of juvenile courts, and the allocation of power between the child welfare agency and the juvenile court are all dictated by state law.¹ Child welfare agencies, however, are bound by certain federal laws, such as the Adoption and Safe Families Act, the Indian Child Welfare Act, and the Child Abuse Prevention and Treatment Act.² These federal laws require, among other mandates, that states conduct foster care review hearings at certain intervals while a child is in foster care, permit foster parents to participate in court reviews, and file termination of parental right petitions after a child has been in foster care for fifteen months.³ Some provisions of these federal statutes create enforceable rights on behalf of children in care.

Child Protective Services

All states require the reporting of suspected child abuse and neglect to the child welfare agency or police or both.

State statutes specify mandatory reporters—those individuals who have a legal obligation to report abuse and are granted immunity for making such reports. Mandatory reporters include a broad range of professionals who come into contact with children on a regular basis (e.g., schoolteachers, day care provider, nurses, physicians, and dentists).

Once a report of suspected abuse or neglect is received, an investigation must be completed within a limited time, often thirty to sixty days from when the report is received. The severity of the complaint determines how quickly the investigation must begin. Some states have developed a type of diversion system for less severe reports. In those cases the family may be referred to a community agency without a formal investigation being conducted.

The procedure for conducting a child abuse investigation is set forth in state statutes, regulations, or policy manuals. Child abuse investigations, whether conducted by police or caseworkers, are also subject to the limitations of the Fourth Amendment. A body of case law has

¹ See www.calib.com/nccanch and www.ncsl.org for a comparison of many states' provisions regarding child welfare.

² Adoption and Safe Families Act, 42 U.S.C. §§ 671 *et seq.*; Indian Child Welfare Act, 25 U.S.C. §§ 1901 *et seq.*; Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5106a *et seq.*

³ See www.acf.dhhs.gov/programs/cb for further information about the federal laws.

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developed in the federal courts on searches of children who are the subject of a child abuse investigation.⁴

At the conclusion of the investigation, the agency must determine if the complaint is either substantiated or unsubstantiated. If the report is substantiated, the perpetrator is usually listed in the state's central registry of child abuse or neglect. This listing may affect an individual's ability to obtain a license as a day care provider, foster parent, adoptive parent, teacher, or to otherwise be entrusted with the care of children in the future. Persons listed on the registry may have a right to an administrative hearing to appeal the finding of substantiated abuse. Unsubstantiated or false reports should be expunged and may not be accessible to the general public or used for purposes of employment or other background checks.⁵

Juvenile Court Dependency Proceedings and Foster Care

Following receipt of a report of suspected abuse, and even before the investigation is completed, the child who is the subject of the report as well as other children or siblings in the home may be removed from the home. Some states authorize caseworkers to make the decision to remove a child while others require the intervention of police. In either case, the decision to remove the child is subject to prompt review by the court.

Shelter care or temporary custody

hearings are often held with little notice to parents, the rules of evidence are relaxed, and reports and other hearsay may be used as bases for the decision to continue the child outside the home. Generally the agency must show that there is imminent risk to the child if the child is returned to the parents' home. The agency is also required to give evidence that reasonable efforts have been made to prevent the child's placement in foster care.⁶

Most states assign appointed counsel for indigent parents whose children are the subjects of juvenile court abuse or neglect proceedings.⁷ Children are also entitled to appointed counsel, a guardian ad litem, or a Court-Appointed Special Advocate (CASA).⁸

The next stage in juvenile court proceedings is the adjudicatory or jurisdictional hearing. At this hearing the agency has the burden of proving that the allegations of abuse or neglect are true. Most such hearings are uncontested. The parties frequently stipulate to the grounds for jurisdiction over the child.

Once the court sustains the petition, it usually holds a dispositional hearing. At this point the court has several options. Most common, the court leaves the child at home and orders the agency to supply protective supervision or remove or continue the child in out-of-home care. If the child remains outside the home, reunification services are ordered unless the case falls within an exception allowing the

⁴ *Tenebaum v. Williams*, 193 F.3d 581, 605–6 (2d Cir. 1999) (analyzing under the Fourth Amendment the state's seizure of a child during an abuse investigation and holding caseworker violated child's constitutional rights); *Calabretta v. Floyd*, 189 F.3d 808 (9th Cir. 1999) (strip search); *H. v. Coler*, 801 F.2d 893 (7th Cir. 1986) (strip search); *Van Emrik v. Chemung County Dep't of Soc. Servs.*, 911 F.2d 863, 867 (2d Cir. 1990) (X-ray examination). The Fourth Amendment extends beyond criminal "arrests" to civil "seizures of children," *Brokaw v. Mercer County*, 235 F.3d 1000, 1010 n.4 (7th Cir. 2000); *Wooley v. City of Baton Rouge*, 211 F.3d 913, 925 (5th Cir. 2000) (including a child's removal by social workers). *B. v. Wash. County*, 127 F.3d 919, 928–31 (10th Cir. 1997) (county officials' temporary removal of child is a seizure implicating the Fourth Amendment); *Wallis v. Spencer*, 202 F.3d 1126, 1137 n.8 (9th Cir. 2000) (removal of children should be assessed under the Fourth Amendment).

⁵ 42 U.S.C. § 5106a(b)(2)(A)(viii).

⁶ *Id.* § 671 (a)(15).

⁷ See *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 32 (1981) (holding that "the decision whether due process calls for the appointment of counsel for indigent parents in termination [of parental rights] proceedings to be answered in the first instance by the trial court, subject, of course, to appellate review").

⁸ 42 U.S.C. § 5106a (b)(2)(A)(ix).

agency to implement an alternative permanent plan for the child without providing such services to the parent.⁹

If the child is placed in foster care, periodic reviews of the child's status must be conducted. In some states these periodic reviews are held before the juvenile court judge, while in other jurisdictions they may be conducted before citizen review panels who then submit their findings and recommendations to the court. Periodic reviews are held at six months' intervals or more frequently. Review hearings focus on the parents' compliance with the written case plan prepared with the agency and on their progress in remedying the conditions that led to the child's entry into care. They also must determine if the child is receiving proper care and if the child's current placement is meeting the child's needs.

A permanency hearing must be held within twelve months of the child entering care.¹⁰ At this hearing the court should decide if the child can safely be returned home or if efforts to reunite the child with her family should end. Alternative permanent plans include adoption, legal guardianship, or a permanent living arrangement with a specified family.

At any time during this process, the agency may petition for termination of

parental rights. Federal law now requires that, after the child has been in foster care in fifteen of the most recent twenty-two months, the agency must file a petition to terminate parental rights. The three exceptions to this mandate are that the child is being cared for by a relative, the agency failed to provide to the parents the reunification services identified in the case plan, or there is a documented compelling reason for not severing parental rights.¹¹

Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) is a federal law that regulates states' proceedings involving Indian children. It applies to foster care, adoption, guardianships, termination of parental rights action, and other proceedings affecting the placement of Indian children. It is not applicable in divorce proceedings. ICWA was passed by Congress in 1978. It applies to Native American children who are unmarried and under 18. The child must be either a member of a federally recognized Indian tribe or must be eligible for membership in a federally recognized Indian tribe. ICWA includes protections for children who live off the reservation. Under ICWA an Indian child's tribe is entitled to notice of the pending proceedings and of their right to intervene.¹²

⁹ Federal law specifies some of the situations in which the agency may dispense with exerting reasonable efforts to reunite a child in foster care. 42 U.S.C. § 671 (a)(15). States are free to expand this list to include other "aggravated circumstances."

¹⁰ A child is considered to have entered care (1) on the date of the jurisdictional hearing or (2) sixty days after the child is removed from the child's home, whichever is earlier. 42 U.S.C. § 675(5)(F).

¹¹ *Id.* § 675 (5)(E).

¹² See ICWA Judges' Benchguide at www.calindian.org/icwa.htm for more detailed information about the Indian Child Welfare Act.