

# LEGAL ASPECTS OF FAMILY-CENTERED CHILD PROTECTIVE SERVICES

Kansas Child Welfare Professional  
Core Training Program



# WELCOME AND INTRODUCTIONS

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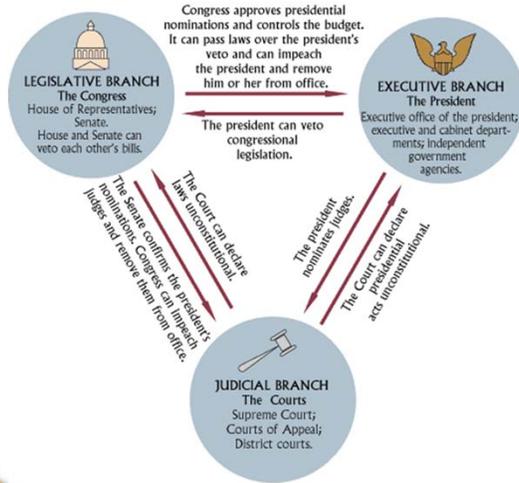
# CIVICS 101

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A refresher in basic government and DCF's role in government



# THREE BRANCHES OF FEDERAL GOVERNMENT

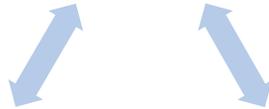


<https://federalistfuture.wordpress.com/1787/09/18/3-brancheschecksandbalances/>

# THREE BRANCHES OF STATE GOVERNMENT

**Executive Branch**  
Governor, Lt. Governor,  
Executive and Cabinet  
Agencies

Similar checks and  
balances to the  
federal government.



**Judicial Branch**  
Kansas Supreme Court  
Court of Appeals  
District Courts

**Legislative Branch**  
House of  
Representatives, Senate



# WHO DO WE WORK FOR?

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DCF  
Secretary

Executive Branch

Ultimately, the citizens of the  
State of Kansas

## FEDERAL V. STATE LAW

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### **Federal Preemption, HIPAA, ADA, etc.**

The preemption doctrine derives from the Supremacy Clause of the U.S Constitution, which states that the "Constitution and the laws of the United States...shall be the supreme law of the land...anything in the constitutions or laws of any State to the contrary notwithstanding." This means of course, that any federal law—even a regulation of a federal agency—trumps any conflicting State law.

Reference: Article 6, U.S. Constitution



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Some of the Kansas statutes provide more rights than the federal law, for instance Kansas "HIPAA" statutes are more protective than the federal statute, and therefore the Kansas Statute governs. The Kansas discrimination laws are more protective than the Federal ADA laws, and therefore the Kansas Statute governs.

## SOURCES OF LAW-CONSTITUTION

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- Federal Constitution and State Constitutions are the primary source of law
- Describes power and authority of each individual branch
- Describes the relationship between legislative, judicial and executive branches
- Protects rights of citizens

Primary source of law – the constitution provides the basis for the creation of other laws

## SOURCES OF LAW - STATUTES

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Federal Statutes: United States Code (U.S.C.)

- Passed by both houses of the U.S. Congress and submitted to the President for signature
- May be cited as U.S.C. or as a Public Law (P.L.)

## SOURCES OF LAW - REGULATIONS

### Code of Federal Regulations (C.F.R.)

- Federal agencies promulgate regulations to implement and amplify U.S.C.
- Has the force and effect of law and provides foundation for some state laws.

## SOURCES OF LAW-STATUTES

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### State Statutes: Kansas Statutes Annotated (K.S.A.)

- Passed by the Kansas Legislature and submitted to the Governor for signature
- Some K.S.A. bring the State into compliance with federal legislation
- Primary Kansas statutes regulating child welfare practices are in the Child in Need of Care Code (K.S.A. 38-2201 *et. seq.*)



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Examples for bullet point 2: ASFA, CAPTA (Child Abuse Prevention and Treatment Act), Preventing Sex Trafficking and Strengthening Families, all have portions that have been adopted into State Law for the purposes of ensuring compliance with the federal statute. S.B 418 changes to the CINC code from PSTSF. E.g. reasonable and prudent parenting standard was added to the definitions, findings regarding 14 yoa being part of their case planning.

## SOURCES OF LAW-REGULATIONS

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### Regulations: Kansas Administrative Regulations (K.A.R.)

- Agency promulgates regulations to implement and amplify K.S.A.
- Regulates investigations, expungement from registry, etc.
- Has the force and effect of law and takes precedent over agency policy



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Regulations have to be approved and there is a process to approve those. Regulations go through Sec. of State. and have to have a comment period and public hearing and go through the joint rules and regs committee. The process is somewhat onerous, and while sometimes it is said to be easier than statutory changes, that is not always true, given the process for approval and publication.

## SOURCES OF LAW-CASE LAW

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- Case law is found in the written decisions of the courts in an action or controversy/lawsuit.
- Judges interpret and apply applicable statutes and regulations to cases.
- Precedent is established by prior case decisions that are either binding or persuasive to determine how to rule in the current case if they have similar facts – Stare Decisis

Trainer may want to provide an example

## SOURCE OF PRACTICE—AGENCY POLICY

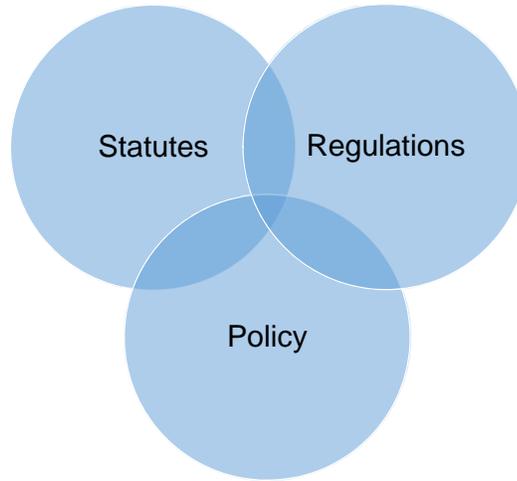
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- Established by DCF to provide guidance and instruction for workers regarding impact of law on worker child welfare practice
- Child welfare workers shall comply with applicable policies and procedures. They are not law, but set out to support best practices in the child welfare process.
- In situations where law and policy are in conflict, workers should consult with legal and program staff to determine the appropriate course of action.

# DCF CHILD WELFARE AGENCY—SOURCE OF MANDATES

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## FEDERAL LAW

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- Indian and Child Welfare Act of 1978/New ICWA Regulations, effective Dec. 12, 2016
  - Requires workers find out if children needing placement are Indian Children as defined by applicable law and individual tribal standards
  - Requires specified notification to Indian tribe
  - Protects stability and security of tribes. Each tribe is a sovereign nation
  - Provides preferences for placing Indian children in foster and adoptive homes
  - Gives tribal courts sole authority in custody decisions heard by such courts



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If a child who has no Indian Heritage is adopted into a family who has Indian Heritage, the tribe of the adopting family is the only entity who can determine if the adopted child is an Indian child as defined by their individual tribe.

## FEDERAL LAW

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- Adoption Assistance and Child Welfare Act of 1980 P.L. 96-272
  - Provides funding to states that are in compliance with federal standards/outcomes
  - Requires reasonable efforts to prevent out-of-home removal
  - Requires ongoing reasonable efforts to reintegrate/achieve permanency for children in out of home placement

## FEDERAL LAW

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- Adoption and Safe Families Act of 1997 P.L 105-89
- Allows supplemental/concurrent case planning
- Requires filing for TPR at 15/22 months in placement unless compelling reasons are documented that it is not in child's best interest
- Allows exceptions to reasonable efforts to prevent placement

## FEDERAL LAW

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- Multi-Ethnic Placement Act of 1994 P.L. 103-82
- Child welfare agencies that receive federal funding may not:
  - Deny opportunity to foster or adopt based on race, color, handicap, age or national origin
  - Delay or deny placement on basis of race, color, national origin

## FEDERAL LAW

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- Child Abuse Prevention and Treatment Act 1974 P.L 93-247 (original) multiple subsequent amendments and reauthorizations
- Provides funds to states to improve child protective services
- Parent's Rights in Abuse/Neglect Investigations:
  - Notification of allegations at initial contact
  - General description of nature of allegation
  - Notification does not include referral source



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Verify bullet point 2

## FEDERAL LAW

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- CAPTA Continued
- Established Citizen Review Panels and Child Death Review Board
- Requires a child and family services plan every five years and annual updates
- Comprehensive Addiction and Recovery Act of 2016 (CARA) (P.L. 114-198) aims to address problems related to the opioid epidemic in the U.S.
  - Expands prevention and education efforts to prevent the abuse of methamphetamines, opioids, heroin and promote treatment and recovery.

## FEDERAL LAW

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- Preventing Sex Trafficking and Strengthening Families Act 2014
  - Provided for multiple changes to existing law regarding child welfare, including some State action in the areas of fostering, case planning, APPLA, adoption incentives, expanded definition of sibling and others

Added the human and labor trafficking definitions to the definition of sexual abuse, added staff secure care to the CINC Code, created the rapid response teams, removed human trafficking victims from the JO code. Decriminalized the victims behavior (i.e. focused on the traffickers/pimp as the offender rather than the victim as a violator of prostitution statutes).

## FEDERAL LAW

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- Preventing Sex Trafficking and Strengthening Families Act 2014
  - The bill requires certain data collection and reporting by states regarding sex trafficking victims and those who may be at high risk of becoming sex trafficking victims (particularly children who are currently or have been in foster care)
  - SB 418 was passed and signed by the Governor in 2016 to bring Kansas into full compliance

## FEDERAL LAW

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- Every Student Succeeds Act (ESSA) of 2015 P.L. 114-95 (replaced No Child Left Behind)
  - Reauthorization of the Elementary and Secondary Education Act includes provisions to strengthen and improve education of homeless children and youth (raises authorized funding level for McKinney-Vento Act's Education for Homeless Children and Youth program)
  - Includes core protections for school stability and school access for children and youth in foster care

# RIGHTS

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## CIVIL RIGHTS

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- A civil right is an enforceable right or privilege. If interfered with, these rights give rise to an action for injury.
- States cannot deny a person the rights that are guaranteed to them under the Federal Constitution.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

14<sup>th</sup> amendment to the U.S. Constitution

## INDIVIDUAL RIGHTS (U.S. CONSTITUTION)

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- The **1st Amendment** protects the people's right to practice religion, to speak freely, to assemble (meet), to address the government and of the press to publish.
- The **4th Amendment** protects the people from the government improperly taking property, papers or people, without a valid warrant based on probable cause – Freedom from unreasonable search and seizure.

## INDIVIDUAL RIGHTS (U.S. CONSTITUTION)

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- The **9th Amendment** says that individuals have other rights, not specifically listed in the Constitution, and those rights are still protected.

## RELIGIOUS FREEDOM AND PARENTING

"While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

Meyer v. Nebraska, 262 US 390 (1923)



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Nebraska had a law requiring that only English language instruction be given to children who had not yet reached 8<sup>th</sup> grade. Meyer was an instructor in a parochial school, and was using German to teach reading to students younger than 8<sup>th</sup> grade. The purpose of the law was to ensure that English was the native language for children of immigrant families rather than the children initially learning the language of the country that the family immigrated from as a primary language.

The Court found that it was a violation of the first amendment and found that it was appropriate for a parent to determine what language their child communicates in and whether the child learns a second language and at what age.

## PARENT'S RIGHTS

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It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.

Prince v. Massachusetts, 321 US 158 (1944)



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Appellant Sarah Prince was the mother of two young sons and had legal custody of her niece. Appellant as well as her children are Jehovah's Witnesses. They would distribute "Watchtower" and "Consolation" each week on the streets. She had allowed the children to do so previously, and had been warned against doing so by the school attendance officer. On December 18, 1941, she allowed the children to accompany her for the first time in the evening to distribute "Watchtower" and "Consolation" and engage in preaching work. The pamphlets were sold for five cents each, but no one accepted a copy from the niece or her aunt that evening. Appellant appeals a resulting conviction for violating Massachusetts' child labor laws.

The state's interest in protecting children through the child labor laws overrides the parent's constitutional right to raise her children and the children's constitutional right to practice religion as they choose.

## PARENTS RIGHTS

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The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the 14th Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. A parental rights termination proceeding interferes with that fundamental liberty interest. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

Santosky v. Kramer, 455 US 745 (1982)



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Petitioners John II and Annie Santosky were the natural parents of Tina and John III. After incidents reflecting parental neglect, respondent Kramer initiated a neglect proceeding and had Tina removed from the home. 10 months later John III was placed with foster parents. On the same day Annie gave birth to a third child, Jed. Respondent transferred Jed to a foster home when he was three days old. In October 1978 respondent petitioned the court to terminate petitioner's parental rights. Petitioners challenged the applicable preponderance standard, and the Family Court rejected this constitutional standard. The court found that the Santosky's had maintained contact with the children, but found the visits to be at best superficial. The court determined the agency had made diligent efforts to encourage and strengthen the parental relationship, and concluded the Santoskys were incapable of planning for the future of their children. The judge ruled that the best interests of the children required permanent termination of parental custody.

The Due Process Clause of the Fourteenth Amendment requires more than a preponderance of the evidence standard in a termination of parental rights hearing.

## PARENS PATRIAE DOCTRINE

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- Latin for Father of the People
- Refers to the public policy power of the State to intervene against the rights of an abusive or negligent natural parent, legal guardian or caregiver, and to act as a “parent” to a child or individual who is in need of protection

# JUDICIAL AND QUASI-JUDICIAL PROCEEDINGS

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Civil Law, Criminal Law and Administrative Law



## STRUCTURE OF KANSAS COURT SYSTEM

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- Courts – 31 Judicial Districts in Kansas
  - Kansas Supreme Court
  - Kansas Court of Appeals
  - District Courts: CIVIL: Juvenile Court-Child In Need of Care, Domestic Relations/Family Law, Probate CRIMINAL: Adult and Juvenile Offender
  - Small Claims Courts
  - Municipal Courts



# CIVIL LAW

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- **Domestic Relations/Family Law Cases**
  - Protection from Abuse (PFA) Protection from Stalking (PFS)
  - Divorce/Legal Separation/Custody/Parentage
- **Probate**
  - Guardianship/Conservatorship
  - Adoption
  - Powers of Attorney
- **Child in Need of Care (CINC)**

What is our role in these cases?

How do the cases relate to each other, how do our investigations relate to different types of cases for families.

What of our work is used by the courts and the parties and how is that information obtained.

## POWER OF ATTORNEY

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- Gives a third party the power to act in place of a parent or legal guardian by the parent or guardian's permission.
- The grant of power can be limited or all encompassing and can be time limited.
- The power of attorney can be terminated at the request of the parent.

## PROBATE COURT: GUARDIANSHIP

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- Guardianship Proceedings
  - A guardian is generally responsible for overseeing the day-to-day physical well-being of the child needing a guardian
- Guardianships can be set aside upon a showing that the guardianship is no longer necessary.
- A guardianship can be established both by consent or over the objection of a parent.
- Conservators are appointed separately to handle financial matters.



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This can be used to avoid a CINC case if there is an appropriate 3<sup>rd</sup> party who can care for the child and is willing and able to do so, but lacks appropriate legal documentation to obtain medical treatment or enrollment in school. Has limited court oversight (yearly reporting) and requires a court order to be set aside.

## JUVENILE COURT: PERMANENT CUSTODIANSHIP - CINC

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- Permanent custodians are appointed, only in CINC cases, to serve in a parental capacity, with some limited exceptions.
- The only way to appoint a new permanent custodian is to file a new CINC case based on the permanent custodian's inability or unwillingness to continue to serve.

## BURDENS OF PROOF

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- The duty to establish by evidence a requisite degree of belief concerning one or more facts
- The party bearing the burden of proof will go first in presenting his/her case.

## PREPONDERANCE OF THE EVIDENCE

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- Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it
- Probable Cause—facts discovered that would lead a reasonable and prudent person to have a reasonable belief that certain things happened or condition exists
- Used in most civil and domestic relations cases, as well as temporary custody hearings in Non-ICWA cases, also used in agency case findings.

## CLEAR AND CONVINCING

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- Clear and convincing evidence is evidence that shows that the truth of the facts asserted is highly probable. Both quantity and quality of evidence is considered.
- Burden of proof used when a fundamental right is at stake
  - Civil commitments
  - Interference by the State into the family: CINC
  - Guardianships

## BEYOND A REASONABLE DOUBT

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- Highest level of proof
- Used in criminal trials
- Satisfied to a moral certainty
- Clear, precise, indubitable
- ICWA cases

# **PARTIES, DEFINITIONS AND ROLES**

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Who's who?



## THE TRIER OF FACT

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The person or person(s) who are charged with determining whether or not a fact is true rather than the person who determines interpretation of law

- Judge

In CINC cases or guardianships and other cases where the right to a jury trial has been waived.

- Jury

Six or 12 persons who have sworn to fairly and impartially hear the facts of a case

- Administrative Law Judge or Hearing Officer

In administrative hearings or other quasi-judicial proceedings

## THE JUDGE

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- A Judge Shall Uphold the Integrity and Independence of the Judiciary
- A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities
- A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

Kansas Code of Judicial Conduct

## AN ATTORNEY'S BASIC ROLE

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As a representative of clients, a lawyer performs various functions.

- As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications.
- As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.
- As negotiator, a lawyer seeks a result advantageous to the client, but consistent with requirements of honest dealing with others.
- As an evaluator, a lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client or to others.

Kansas Rules of Professional Conduct

## **PROSECUTOR (COUNTY/DISTRICT ATTORNEY)**

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- The primary responsibility of a prosecutor is to see that justice is accomplished.
- Prosecutors are under a positive duty, independent of court order, to disclose exculpatory evidence to a defendant.
- Represents the State of Kansas, not DCF

Explain exculpatory,

## GUARDIAN AD LITEM (GAL)

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A Guardian ad Litem should:

- Conduct an independent investigation
- Determine the best interests of the child
- Representing in Court
- Explaining to the child
- Making recommendations for services
- Monitoring



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Admin Order Rule 110A  
Standards for Guardians Ad Litem

*Ad Litem*-Appointed by the Court to act on behalf of another party

## PARENT'S ATTORNEY

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- Parents have the right to an attorney, which can be appointed under certain circumstances by the Court.
- Parent's attorney has an obligation to represent the parent's position.
- The parent's attorney may be an adversary.
- The parent's attorney also has a right to information about the case and progress in a CINC case.

# AGENCY STAFF

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- **Licensed Staff**
  - Abide by the ethical duties of their individual regulatory boards as well as the agency policy and procedure
- **Unlicensed Staff**
  - Limited provision of services since certain tasks are restricted to licensed professionals
- Provide testimony in Court regarding actions taken and recommendations for further services.

## COURT APPOINTED SPECIAL ADVOCATE (CASA)

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- A responsible adult who is appointed by the Court to represent the best interest of a child in a child in need of care (CINC) proceeding
- The primary duties of a CASA volunteer are to investigate and become acquainted with the facts, conditions and circumstances affecting a child's welfare, to advocate the best interests of the child, and to assist the court in obtaining the most permanent, safe and homelike placement possible.
- May also be appointed in domestic cases
- Not all judicial districts have CASA programs.

# ABUSE AND NEGLECT

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## DCF AUTHORITY

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- Agency (DCF) and law enforcement to investigate reports of alleged child abuse or neglect (K.S.A. 38-2226)
- Provide services
- Recruit foster/adoptive homes
- DCF Licensing Division to license foster homes
- Receive custody, place children (DCF contractors)

## RIGHTS OF ALLEGED PERPETRATORS (ALP)

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- To refuse to talk with DCF
- To know what was reported
- To request DCF services
- To know the DCF finding decision
- To appeal a substantiated or affirmed finding decision

The other rights listed in previous slides are determined either by the constitution, case law, or statutes, these particulars are provided to parents specifically by policy.

## REPORTING REQUIREMENTS

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- Certain persons as set out in statute (K.S.A. 38-2223) are mandated/required to report.
- Mandated reporters who fail to report may be subject to criminal, regulatory or civil liability.
- Anyone may report.
- Good faith reports are immune from liability.
- Reporters' names shall remain confidential.



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Mandated reporters include, not limited to, law enforcement, firefighters, teachers, medical providers, mental health professionals, etc.

Call attention to how to find in their code books.

## KANSAS PROTECTION REPORT CENTER

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- Reports of alleged abuse and/or neglect of children are made to the Kansas Protection Report Center (KPRC) by phone to 1-800-922-5330 or via letter, fax or online report form.
- KPRC determines whether report information meets criteria to assign for investigation/assessment and response time is indicated, based on the allegation type. Some reports may not be assigned for further assessment.
- KPRC has staff present and receiving reports 24/7, after hours emergency calls are referred to law enforcement.



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If PRC staff determines that the allegations do not meet on their face meet the definitions of abuse and/or neglect. They will not assign for further assessment. Reports that may not be assigned may deal with ex spouses or co parents calling in on each other and alleging only things that fall within the realm of legitimate parenting choices. E.G. differences in non abusive discipline choices or medical decision making. Cases which are already assigned for investigation under a separate report are generally not assigned, those are generally sent to the assigned worker for information purposes and to assess under the open investigation.

Investigating social workers can add allegations if the same allegation assigned meets the definition of another abuse/neglect type, if the worker observes a different situation that may require that a new report be made so that new allegations can be assigned.

## INVESTIGATION AND ASSESSMENT

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- DCF is the agency required, by law, to investigate reports of abuse and/or neglect and to assess a child's safety and determine if the report is valid. (K.S.A. 38-2226(a)).
- DCF's primary goal is investigation and assessment of allegations. Workers then refer families to community agencies for the provision of services, if appropriate.
- DCF workers will also prepare, with the cooperation of the family, safety plans to provide immediate guidance to the family about ways to keep the child safe, as well as providing information to the family regarding the consequences of failure to take action.



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Safety plans generally indicate steps the family should take, voluntarily, to ensure safety. It also educates the family about the consequences of failing to take such steps.

## INVESTIGATION AND ASSESSMENT

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- Are you comfortable with this role?
- Why not?
- What are your struggles?
- What are your strengths?

Discuss role of investigator, general issues for investigation. Share ideas for addressing things that are uncomfortable.

# INVESTIGATION AND ASSESSMENT

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## Interviewing Preparation

- Preparation is the key to all interviews in an investigation
  - What are the allegations?
  - What is needed to prove the elements of each allegation?
  - Does the perpetrator or victim have DCF history?
  - Are there known safety concerns for the worker?
  - Is this potentially a criminal issue or a required joint investigation with law enforcement? DCF generally follows law enforcement's guidance on how to proceed.

PPM 2025 History search for the investigation and assessment- requires workers to review unless immediate safety concerns exist. Workers are required to review history before making a finding.

## INVESTIGATION AND ASSESSMENT

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### **Joint investigations with Law Enforcement**

When a report of child abuse or neglect indicates there is serious physical harm to, serious deterioration of or sexual abuse of the child, and that action may be required to protect the child, the investigation shall be conducted as a joint effort between the secretary and the appropriate law enforcement agency. K.S.A. 38-2226(b)

## INVESTIGATION AND ASSESSMENT

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- DCF meets its statutory responsibility when a request for law enforcement assistance is made and documented.
- If law enforcement does not respond, DCF must still determine if abuse or neglect occurred and must not delay any necessary protective action.

## INVESTIGATION AND ASSESSMENT

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- If a law enforcement officer requests assistance from DCF in the investigation of a report of child abuse or neglect, the department should assist.
- When the safety of a child cannot be reasonably assured without removal of the child or the alleged perpetrator, and removal of the perpetrator from contact with the child is not feasible, a law enforcement officer should be contacted to determine whether, in the officer's opinion, the child should be removed from the home and placed in police protective custody.



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Law enforcement may contact the Agency for assistance on reports that we would not otherwise have knowledge or that we might not otherwise take action on (3<sup>rd</sup> party perpetrators) the agency will generally assist with those reports. Human Trafficking is an exception to the general rule that 3<sup>rd</sup> party perpetrator reports are not investigated by the agency.

## INVESTIGATION AND ASSESSMENT

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### **Police Protective Custody (K.S.A. 38-2231)**

- Law Enforcement shall take a child into police protective custody when law enforcement
  - REASONABLY believes that the child WILL be harmed if not immediately removed; or
  - Probable cause to believe that the child is a runaway or missing person; or
  - Reasonably believes the child is a human trafficking victim or commercial sexual exploitation of a child
- Individual officers have discretion in determining these



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Training note: Police protective custody may occur before a DCF intake, during an investigation, or even during a CINC case, if children are placed at home. It may also occur independently of an investigation. Only law enforcement has the authority to take children in to PPC, while a worker may suggest a PPC placement, the worker does not get to make this decision, only law enforcement can make the PPC decision.

## INVESTIGATION AND ASSESSMENT

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- The law enforcement officer should deliver the child to a safe environment according to local arrangements.
- A DCF employee is **not** authorized to take physical custody of, or transport a child, without a written order of a court placing the child in the custody of the Secretary of DCF.
- A child not in the custody of the Secretary may be transported by DCF if a parent voluntarily accompanies the child or the parent provides **written** parental permission.

## INVESTIGATION AND ASSESSMENT

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- Considerations for conducting interviews
  - Perpetrator's and victim's identity and relationship
  - Location where abuse occurred
  - Type of allegation
  - One on one interviews/avoid multiple persons present
  - Age
  - Abilities or Disabilities – physical or intellectual
  - Identifying relevant collateral witnesses
  - Interview reporter

Collateral witness – Be sure to ask all witnesses about possible collateral witnesses including ALP. Remember school resources are potential collateral witnesses. Interview reporter if reporter is not anonymous.

## INVESTIGATION AND ASSESSMENT

As child welfare staff you are not the police, but you may be the first point of contact for the child and family. If you fail to preserve evidence or otherwise compromise a case, you may be standing in the way of achieving the child's best interest.

### **Document, Document, Document**

There is only one way to show that you did what you were supposed to do, and to get credit for the work that you have done – document!



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Evidence may be preserved through photographs, contemporaneous written statements, copies of diaries on social media, text messages, and social media. Photographs of the scene, injuries, exterior door locks are examples of evidence that can change. Some evidence of bruises etc. will fade. Some evidence can be altered i.e. clean up the house, change the exterior lock. These are examples of why it is important to preserve evidence. Urgency of preserving can not be underestimated.

## FINDINGS

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- Review the allegation assigned for assessment.
- Review the definition of the specific act of abuse or neglect.
- Review the facts and evidence and determine if they meet the elements of the assigned allegation or a different allegation type.
- Determine if the facts and evidence meet the burden of proof.
- Staffing with supervisor (PPS PPM 2530)
- Staffing with legal, as needed



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For instance a case may be assigned for medical neglect. Medical neglect requires a diagnosed medical condition. If a child has received burns and did not receive medical attention, the child does not have a diagnosed medical condition and therefore cannot be a victim on a medical neglect case. However, the failure to obtain medical treatment may be sufficient to meet the definition of physical neglect, and the case should be reviewed to determine if a finding should be made as to that allegation which may need to be added by the worker and/or supervisor.

## FINDINGS

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- Staffing with legal
- Schedule in advance, whenever possible.
- Be prepared and review file prior to staffing.
- Provide requested documents to the attorney beforehand. A draft of your finding may be requested.

Investigation questions or emergency situations are different from staffing case to determine a finding or the sufficiency of the finding.

# FINDINGS

Based on the preponderance of evidence:

Would a reasonable person conclude that more likely than not abuse/neglect occurred?



No -  
Unsubstantiated



Yes -  
Affirmed  
Consider whether  
substantiation is  
appropriate

Utilize specific  
criteria (PPM 2502)  
to determine the  
finding



## Substantiated

The perpetrator's name is then placed on the Central Child Abuse and Neglect Registry. That person is prohibited from working, residing, or volunteering in a licensed facility

# FINDINGS

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## Notice of Department Findings

- Affirmed and substantiated findings must include enough factual information in the section labeled Basis of Decision to give the perpetrator notice of what he or she did wrong.
- The date on the Notice of Department findings must be the date it was mailed. Print a copy for the file!
- Notice of Department Findings = Final Agency Action
- All affirmed and substantiated findings go to the Licensing Division, and all substantiated findings to the CA/DA's office

# ADMINISTRATIVE APPEALS

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## ADMINISTRATIVE APPEALS

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- Office of Administrative Hearings (OAH) contracts with the agency to provide Administrative Hearings.
- If someone wants to file an appeal, you **may not** tell them that they cannot.
- The Notice of Department Finding provides the information regarding appeal rights.
- If you receive an appeal request directly, you **MUST** send this to OAH immediately.



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Any request in writing is sufficient to create a notice of appeal request, this can be as simple as a paper napkin with red crayon, and must still be sent to OAH. If in doubt send it over. Email is also sufficient.

## ADMINISTRATIVE APPEALS

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### Attorney involvement guidelines

- **Abuse & Neglect Cases** – Where the appellant is represented by counsel, DCF attorneys will represent DCF in every appeal in an abuse (including physical, sexual and emotional) or neglect case.
- **Sexual Abuse Cases** – Even if the appellant is not represented by counsel, DCF attorneys will represent DCF in every appeal in a sexual abuse case.

## ADMINISTRATIVE APPEALS

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### Attorney involvement guidelines

- DCF attorneys, following collaboration between the worker and DCF attorney about serious cases of physical/emotional abuse/neglect, will provide representation even when the appellant is not represented by counsel.
- The regional attorney shall ultimately decide whether a case is serious enough to warrant a DCF attorney's representation.

## ADMINISTRATIVE APPEALS

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- Initiation of appeal by appellant
  - Initial review
    - Must be filed within 33 days of the final agency action
    - Must be filed after a final agency action
    - Not for ICPC or CINC case where the court has exclusive jurisdiction
    - Only a perpetrator can file an appeal.
    - Must be an adverse action (unsubstantiated findings cannot be appealed)

## ADMINISTRATIVE APPEALS

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### Appeal Summary:

- Must include a summary of the facts
- Must attach a copy of the Notice of Department Finding
- Electronically upload one copy to the administrative hearing office and mail one copy to the appellant.



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Discuss particulars for each region individually. Each hearing officer and region handles these differently.

\*Pass out a copy of an acknowledge and order, show where the dates are found

\*Pass out a sample of an appeal summary that conforms to regional expectations

# ADMINISTRATIVE APPEALS

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## Prehearing Questionnaire

- OAH provides a form which must be completed
- Series of questions to help the hearing officer make decisions about how the hearing is going to proceed
- Must be electronically uploaded to OAH and a copy mailed to the opposing party one week before the prehearing conference

## ADMINISTRATIVE APPEALS

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### Prehearing Conference

- Typically over the phone
- The hearing officer will go through the prehearing questionnaire submitted by each party and set deadlines and the hearing date
- Have your calendar available to determine hearing dates and calendar all deadlines.
- The hearing officer may ask questions regarding the facts.
- Following the hearing a prehearing order will issue.



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There will be deadlines for pro se to review the file, witness and exhibit lists, requesting subpoenas, prefiling exhibits.

Carefully review the prehearing order to ensure all deadlines are met. Failure to meet deadlines can result in the appeal being dismissed.

## REQUESTS FOR DISCOVERY

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If you receive a request for discovery (Interrogatories, Requests for admission, a notice of deposition or Requests for Production), let the regional attorney know immediately. There are strict deadlines for the return of these to the party who served them on you.

One day outside of the deadline, and the statements in Request for Admissions are admitted.

## ADMINISTRATIVE APPEALS

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### Final Witness and Exhibit Lists

- Refer to the prehearing order and follow all instructions
- Electronically upload the final list of witnesses and list of exhibits to OAH and mail copy(ies) to the opposing party if represented by counsel.
- Mail or deliver the exhibits to OAH for the hearing officer. Be sure to leave time for delivery if mailed.

Stress that each hearing officer's orders are worded differently and should be reviewed prior to preparing and filing documents. The prehearing order can change from case to case and the order needs to be read for EACH case individually.

## ADMINISTRATIVE APPEALS

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### Subpoenas

- Electronically upload a letter to OAH to request a subpoena for witness appearance. Include the name and address of the witness.
- If you want the witness to bring documents, include that in the subpoena request.
- You are responsible for serving the subpoena either in person or by certified mail.
- You are responsible for electronically uploading the return of service, which is provided to you with the subpoenas.



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Remind them to do a return of service for each subpoena, generally only one return of service is included in the packet of subpoenas, and workers will need to copy and create a return for each subpoena.

Examples of documents that may be requested: LEO may need to bring reports/photos, Doctors may need to have reports and records,

# ADMINISTRATIVE HEARINGS

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## Hearings

- Opening Statements give each party an opportunity to summarize their case. You can waive opening statements.
- DCF presents witnesses and exhibits first.
- Both parties have the opportunity to present witnesses and cross examine witnesses.
- Hearsay is generally allowable. Hearsay evidence may not be given as much weight.
- Weight and credibility of evidence is determined by the Hearing Officer.
- Credibility of witnesses, including DCF workers, is determined by the Hearing Officer.

# ADMINISTRATIVE HEARINGS

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## Hearing Decisions

- An Initial Order (decision) by the hearing officer will be completed and sent to the parties.
- This decision can be appealed to the State Appeals Committee by either party. Appeals must be submitted within 15 days.
- Contact your regional attorney who will handle ALL appeals after an Initial Order has been made.



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Good opportunity to discuss bad facts making bad case law. Just because we receive an adverse decision does not mean that we necessarily will appeal. Each additional level of appeal widens the effect of the finding on the agency. We may wish to keep the effect of the finding local.

## ADMINISTRATIVE APPEALS

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### **Workers handling appeals should:**

- Talk to DCF Legal who will provide guidance in document preparation, witness preparation, etc.
- The hearing officers will likely allow the appellant to view the file in the DCF Office, if they wish.
- Ask OAH to require no copies be made, in any form, and that the appellant only be allowed to view the files in the DCF office.
- Prior to allowing viewing, the worker must redact all the reporter information, and must make arrangements to have someone stay with the appellant when he/she reviews the file.
- Conversations or notes from attorney client meetings must also be redacted and are not to be shared with the appellant.

## CHILD IN NEED OF CARE - CINC

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- Proceeding is under the parens patriae doctrine.
- The purpose of a CINC case is to provide a framework for judicially ensuring safety and permanency
- Orders take precedence over all other custody and parenting time (visitation) orders.
- Kansas Statutes Annotated (K.S.A.) 38-2202  
Statutory Definitions

Discuss CINC code book provided with training materials.

## **CHILD IN NEED OF CARE - CINC**

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- Usually filed by County/District Attorney (CA/DA)
- Parties include the child, parents, State, petitioner and an Indian Tribe intervening pursuant to ICWA.
- Grandparents are interested parties. Others may be granted interested party status upon request and per the order of the court

## CHILD IN NEED OF CARE - CINC

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KSA 38-2202(d)(2) defines a child in need of care as:

- Without adequate care and control
- Physically, mentally or emotionally abused or neglected or sexually abused
- Abandoned or illegally placed for care or adoption
- Truant
- Committed a crime under 10
- Runaway
- Living with an abused sibling
- Has a permanent custodian who is not willing or able to serve.
- Human trafficking victim

# DOCUMENTATION AND WRITING SKILLS

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## WHO IS YOUR AUDIENCE?

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Anything and everything you write or prepare for court may be seen by varying audiences.

- Parents
- Parent's attorneys
- Child
- Guardian ad Litem
- County/District Attorney
- Law enforcement
- Court Appointed Special Advocate (CASA)
- Grandparents/other interested parties
- Judges and Counsel in Criminal or Domestic Cases
- Medical professionals
- Other witnesses

## A GOOD CASE STARTS WITH GOOD DOCUMENTATION

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- Documentation is your proof that something did or did not happen.
  - To get credit for your work, you must document
- Your files could be subpoenaed at any time, by any party, and be admitted as evidence in court.
- Anyone who picks up your file should be able to determine what is going on in your case and be able to move forward. Document as though you might not be available tomorrow.
- What is not in your file may be more important than what is in your file.

## MAKING SURE YOU HAVE EVERYTHING

- Who
  - Names and contact information spelled CORRECTLY
- What
  - Information from your five senses
- When
- Where
- Why
- How

# DOCUMENTATION

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The home was cluttered.



## DOCUMENTATION

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- Documentation needs to clearly describe the surroundings and situation.
- Use descriptive word choice
  - The house was cluttered, or
  - The table was covered with broken egg shells and dried egg yolks on the counter. There was a white powdery substance and a razor blade on a low coffee table. The youngest child in the home is 18 months old.
  - The child said that her daddy touched her.
  - The child curled up in a ball, and cried uncontrollably while saying that daddy had touched her.

# DOCUMENTATION

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- Documentation should be:
  - Timely created
  - Accurate – direct quotes, if possible
  - Relevant
- Potential items to include:
  - Emails
  - Instant messages
  - Phone calls
  - Text messages
  - All documents gathered through the investigation
  - Photographs
  - Forensic interviews
  - Police reports
  - Medical records
  - School records
  - Therapist records
  - Journals and diaries

# DOCUMENTATION

---

- Write with a purpose in mind.
  - Write clearly.
  - Write concisely.
  - Write objectively.
- Think about more than one way to document.
  - Chronologically
  - Per child or family member
  - Per issue

The purpose may be the actual document: case finding, cinc application, logging, etc. which provides the framework for what you are actually working on and what information is needed.

## DOCUMENTATION

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- Marked changes in appearance or functioning
  - Have you had frequent contact with the family, and suddenly they “forgot” who you were?
- All in-person or phone contact with the client
  - Note the date, time and topic.
  - Unsuccessful attempts should also be logged.
- If logged, all contacts with agency attorney should be logged and filed separately (separate folder in the file marked LEGAL). If attorney client consultation is included in the file, it could cause it to lose its privileged status.
- Referrals for services

## DOCUMENTING REPORTER INFORMATION

It is often important to interview the reporter as a witness or collateral witness to the event being investigated.

The word “reporter” should never actually appear in log notes as that then becomes discoverable information.

- “SW spoke to the reporter and obtained an electronic text containing a photograph of an individual”
- “RP stated she received the image from...”
- “RP stated staff showed her the image...”
- “SW thanked RP”

When logs are sent out through legal, they are redacted; however, redaction leaves a big black mark, which sometimes gives as much away as it hides.

- “SW spoke to the [REDACTED] and obtained an electronic text containing a photograph of an individual”
- “[REDACTED] stated she received the image from...”
- “[REDACTED] stated staff showed her the image...”
- “SW thanked [REDACTED]”

## DOCUMENTING REPORTER INFORMATION

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### Don't

- Jane Smith, reporter, told us that her neighbor Jack Jones was seen out in his yard with his "wang" out near his 2-year-old daughter.
- Worker received a call from Jane Smith wanting to follow up with additional information to what she had reported. She stated that at the time she observed Jack Jones in his yard, he had a "boner"

### Do

- Jane Smith stated that she observed Jack Jones in his yard with his "wang" out near his 2-year-old daughter.
- Jane Smith contacted this worker and stated that she had observed Jack Jones in his yard with "his wang out and he had a boner." She noticed that his 2-year-old daughter was very nearby at the time that this occurred.

## DEFINITIONS

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- Definitions for abuse and neglect allegations can be found in:
  - Kansas Statutes Annotated (K.S.A. 38-2202)
  - Kansas Administrative Regulations (K.A.R. 30-46-10)
  - Policy and Procedure Manual (CFS PPM 0160)

## DOCUMENTING FINDINGS

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When completing CFS 2011 Case Finding include:

1. Summary of relevant facts
2. Include the relevant definition and burden of proof
3. Explain how the facts meet each element of the definition

## DOCUMENTING FINDINGS

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- Medical Neglect is the failure to use resources available to treat a diagnosed medical condition **if** the treatment would make the child substantially more comfortable, reduce pain and suffering, correct or substantially diminish a crippling condition, lengthen the life span, or prevent the condition from worsening
- The child is diagnosed with juvenile diabetes and the parents failed to regularly monitor the child's blood sugar levels and administer insulin. The parents failed to follow up with the child's endocrinologist. The parents' failure attend medical appointments and to monitor and administer medications has created a situation where the child now needs to have a toe amputated. Amputation of a toe will effect the child's balance and gait throughout her life and causes permanent internal damage. Medical professionals state that had the child's insulin levels been monitored appropriately that amputation would not likely have been necessary.

## KANSAS ADMINISTRATIVE REGULATIONS (K.A.R.) DEFINITIONS

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**Medical Neglect** means any act or omission resulting in harm to a child or presenting a likelihood of harm if the act is not due solely to the lack of financial means of a child's parent or other custodian. This term may include the following: failure to use resources available to treat a diagnosed medical condition if the treatment would make the child substantially more comfortable, reduce pain and suffering, correct or substantially diminish a crippling condition, lengthen the life span, or prevent the condition from worsening.

K.A.R. 30-46-10

## K.A.R. DEFINITIONS

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- **Mental or Emotional Abuse** means the infliction of mental or emotional injury on a child or the causation of a child's deterioration. This term may include the following:
  - Any act or omission that impairs a child's social, emotional or intellectual functioning;
  - Terrorizing a child, by creating a climate of fear or engaging in violent or threatening behavior toward the child or toward others in the child's presence that demonstrates a flagrant disregard for the child;

K.A.R. 30-46-10



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## K.A.R. DEFINITIONS

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- Emotionally abandoning a child, by being psychologically unavailable to the child, demonstrating no attachment to the child, or failing to provide adequate nurturance of the child;
- Corrupting a child, by teaching or rewarding the child for unlawful, antisocial or sexually mature behaviors; or
- Engaging in any behavior having substantially the same effect on the child as that of any of the actions specified in paragraphs (e)(1) through (e)(3).

K.A.R. 30-46-10

## K.A.R. DEFINITIONS

---

**Physical Neglect** means any act or omission resulting in harm to a child or presenting a likelihood of harm if the act or omission is not due solely to the lack of financial means of a child's parent or other custodian. This term may include the following: failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child.

K.A.R. 30-46-10

## K.A.R. DEFINITIONS

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- **Abuse** means any act or failure to act which results in death, physical harm, emotional harm, or which presents a likelihood of harm to a person under age 18.
- **Physical Abuse** means the infliction of physical harm on a child or the causation of a child's deterioration. This term shall include any non-accidental or intentional action or inaction that results in bodily injury or that presents the imminent risk of serious injury.

K.A.R. 30-46-10

## K.A.R. DEFINITIONS

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- **Sexual Abuse** means any act committed with a child that is described in, K.S.A. 21-3501 et seq. and amendments thereto and the acts described in KSA 21-3602 and KSA 21-3603 and amendments thereto.

This term may include the following:

- Any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person;
- Allowing, permitting or encouraging a child to engage in prostitution or to be photographed, filmed or depicted in obscene or pornographic material.

K.A.R. 30-46-10



## CASE ASSESSMENT

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- Finding
  - A finding determination must be made based on the incident as well as the allegation of abuse and neglect.
- Request for Filing
  - Determinations are made child safety, definitions of abuse and neglect and K.S.A. definitions of child in need of care
- A request for CINC filing can be made with or without an affirmed or substantiated case finding.

## REFERRAL FOR COURT ACTION

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- Each county requires a different form to initiate a child in need of care petition:
  - Affidavits – written statements under oath
  - Applications
  - Petitions
  - Reports to the CA/DA
- The basic content is the same for each kind of document. The difference is the format in which it is presented. The required information is set out in statute.

## REFERRAL FOR COURT ACTION

---

- If you have questions about what you are supposed to submit, consult with your supervisor, DCF legal or ask the Prosecutor.
- All attorneys and judges handle things somewhat differently. Figure out the unique preferences and approaches and work with them, not against them.

# A REVIEW OF WRITING SKILLS

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## WELL-WRITTEN SENTENCES

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- Simple sentences promote understanding.
- Sentences should contain complete thoughts.
- When you finish your thought, finish your sentence. Usually this is done with a period.
- Writing should clearly and concisely communicate the information.

I wash my hair on a daily basis v. I wash my hair daily

Available evidence tends to indicate that it would not be unreasonable to suppose v. probably

His past history tends to indicate that you should not count on him to adhere to his future plans. – Past and history are redundant as are future plans.

## AVOIDING AMBIGUITY

---

- Depending on how a sentence is written and read, the meaning can be VERY different.  
*“Because of the agency’s oversight, the corporation’s behavior was sanctioned.”*
- General ways to fix ambiguous sentences:
  - Synonym
  - Full Explanation
  - Rearrange
  - Capitalization
  - Punctuation
  - Spelling
  - Grammar Signals
  - Successive Modifiers

## COMMONLY MISUSED PHRASES

---

### **Incorrect**

- Nip it in the butt
- Statue of limitations
- For all intensive purposes
- Extract revenge
- I'm giving him leadway
- Irregardless
- A lot
- All be it

### **Should be:**

- Nip it in the bud
- Statute of limitations
- For all intents and purposes
- Exact revenge
- I'm giving him leeway
- Regardless
- A lot
- Albeit

## COMMONLY MISUSED PHRASES

---

### **Incorrect**

- Scott (scotch) free
- Curl up in the feeble position
- Home in
- Supposably
- Pacifically
- Of the upmost importance
- Air on the side of caution
- He balled his eyes out
- He had whelps on him

### **Should be:**

- Scot free
- Curl up in the fetal position
- Hone in
- Supposedly
- Specifically
- Of the utmost importance
- Err on the side of caution
- He bawled his eyes out
- He had welts on him

## USE OF LANGUAGE

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### **Not This**

Mrs. Thompson was not dressed for the day.

### **This**

When this social worker arrived, Ms. Thompson was wearing what resembled a nightgown, house slippers, and her hair was matted.

## USE OF LANGUAGE

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### **Not This**

The house was very dirty.

### **This**

Upon arrival at the house for an unscheduled walkthrough, the house smelled of urine, there was animal feces on the floor and there were cigarette butts in an ashtray on the coffee table.

## USE OF LANGUAGE

---

### **Not This**

Mrs. Thompson appeared more concerned with meeting her own needs than Andy's.

### **This**

This worker had to remind Ms. Thompson repeatedly that Andy was in the room, when she was focused on a jigsaw puzzle she was working on, and Andy was playing in trash that was on the floor.

## USE OF LANGUAGE

---

### **Not This**

The crib was in disrepair.

### **This**

The crib that was in the bedroom, which Ms. Thompson reported the baby slept in, had missing slats, the paint was chipping and was positioned at an angle.

## USE OF LANGUAGE

---

### **Not this**

Andy's real father is absent.

### **This**

While Ms. Thompson has a man living in her home, this man is not Andy's biological father. Ms. Thompson states that she does not know who Andy's father is.

# PUNCTUATION

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- Commonly misused or forgotten
  - Periods
  - Commas
  - Quotation marks
  - Apostrophes

Why punctuation matters.  
Some people find inspiration in  
cooking their families and their  
dogs.  
Others find inspiration in  
cooking, their families,  
and their dogs.



someecards  
user card

[www.writerswrite.co.za](http://www.writerswrite.co.za)



Image taken from previous PPS training prior to 2017.

## WORD CHOICE

---

- **Pronouns** need to clearly identify who they refer to. If there are multiple people mentioned within the sentence, a pronoun may make it difficult to determine who you are referring to.
- Choose simple, descriptive words.
  - Inebriated v. drunk
- Avoid clichés and jargon

This is one sick puppy. He threatened to "stab" a girl with his pencil last week. He is deliberately acting inappropriately (lying, sneaking, triangulating) in the home. Foster mom is at her wits ends.

## FROM ACTUAL LOGS

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“Mother stated that she told her father [ALP] about the report last night. Mother stated that in October 2012 that she and her husband would talk to the boys about puberty after there was some incident involving “racking” and that he was not to talk to their sons’ about such matter.”

“She said that she took her out of the bed and walked her to the shower. She said that she grabbed her on the arm.”

He who?

## FROM ACTUAL LOGS

---

“Child was clean and appeared to be smiling and happy.”

Not descriptive

## FROM ACTUAL LOGS

---

“10 minutes during the interview the counselor came by and peaked in and asked to see Worker when she finished her interview. The school counselor reported that the father contact them this morning about the concerns and said that someone might be out and he was going later today to see Child. Worker asked her if she knew why Worker was there and Child said because my grandma hit me.”

# COURT PROCEEDINGS

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Understanding the CINC proceedings, rules of evidence and testifying effectively



## REASONABLE EFFORTS AND CONTRARY TO WELFARE REQUIREMENTS

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- Derived from federal law
- Designed to ensure children are not unnecessarily removed from their homes
- Reunify children with their families after removal, when possible.
- The prosecutor has to prove reasonable efforts. The agency has to provide reasonable efforts.
- Reasonable efforts are not required when an emergency exists.
- In all cases, it must be shown that remaining at home is contrary to the welfare of the child.

## PETITION: CHILD IN NEED OF CARE

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- Petition alleges child to be a child in need of care. Petition is filed by the Prosecutor (County/District Attorney).
- Summons notifies parents and others of the case.
- A final adjudication or dismissal shall be entered within 60 days of filing of petition “unless good cause” shown for continuance.

## EX PARTE PROTECTIVE CUSTODY ORDERS

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- Ex Parte means a decision is made without a hearing for an emergency situation.
- Child is likely to sustain harm if not immediately removed from the home, an emergency exists or remaining at home is contrary to the child's welfare.
- Protective custody orders are only valid for 72 hours.
- DCF cannot take a child into custody without receiving the actual court order.



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Carefully review the order of protective custody as it may provide details regarding visitation or other specific court orders.

## TEMPORARY CUSTODY HEARINGS

- Held within 72 hours of child having been taken into protective custody
- Purpose: Determine probable cause to enter a temporary custody order
  - Grant, limit or eliminate visitation rights
  - Order to determine necessity of temporary custody order and who should be granted custody
  - Order to restrain conduct of a party not in child's best interest
- DCF workers may be called to provide testimony at this hearing.



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Differences between recommendations and orders of the Court.

What to do when you disagree with an order of the Court:

(PPM 0260) Staff shall make every effort to comply with every court order. When a court order is received, which appears to exceed statutory authority or requires actions that the Department has no ability to perform, a referral shall be made to the regional attorney for guidance and any necessary action.

## ORDER OF INFORMAL SUPERVISION

---

- Procedural tool to avoid adjudication.
- Can occur at any time after the filing of the petition and before adjudication.
- Contains conditions that the family must meet
- Typically children remain in home and in parents' custody; however, they may be in agency custody and may be out of home.
- Orders can be in force for up to 6 months, with extensions up to 2 years, with 6 month court reviews.
- Can be revoked if the conditions are violated.

## ADJUDICATORY HEARING

---

- Purpose is to determine if the child is a child in need of care.
- Evidence regarding the facts alleged in the petition.
- Clear and convincing standard not a best interest determination.
- If the allegations are not proved, case is dismissed.
- If the allegations are proved, the case moves to disposition.

## DISPOSITIONAL HEARING

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- Court will consider testimony regarding child safety and well being and enter orders regarding:
  - Case planning
  - Custody
  - Timelines for permanency

## PERMANENCY GOALS

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- Reintegration
- Adoption
- Permanent Custodianship
- APPLA
  - Only appropriate if the child is 16 or older and there are compelling reasons why other permanency goals are not in the child's best interest.

Termination and relinquishment of parental rights are required for adoption

Another Planned Permanent Living Arrangement

## PERMANENCY HEARINGS

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- Agency reports on reasonable efforts to achieve the case plan goal.
- The court makes orders regarding ongoing custody.
- Permanency goal is reviewed and revised as necessary.
- Reasonable and prudent parenting standard
- Must be held every 12 months through the life of the case.



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The reasonable and prudent parenting standard is the standard characterized by careful and sensible parenting decisions to allow the child to participate in extracurricular and social activities as are appropriate for the child's age and development.

Court will also pre PRT determine if reintegration is a viable option.

## MANDATORY FILING OF PRT

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When the court determines that reintegration is no longer viable, and that adoption or permanent custodianship may be in the child's best interest, the county or district attorney is required to file a motion for PRT within 30 days.

This review should be happening no later than when the child has been out of home for 15 of the last 22 months.

DCF workers may be required to testify at the termination hearing regarding their earlier involvement with the family.

## SUBPOENAS

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- Subpoena
  - A written command to appear and testify before the Court or be subject to contempt of court
- Subpoena Duces Tecum:
  - Subpoena for the production of evidence
- Business Records Subpoena
  - Subpoena requiring that records of the agency be provided.

## SUBPOENAS

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- Notify the regional attorney immediately.
- When appearing to testify concerning information not authorized to be disclosed, answer the first substantive questions with the following:

*The information requested is confidential and I am not authorized to disclose that information without an order from the court to do so.*
- In a CINC proceeding, the only information that would not be authorized for disclosure would be the identity of the reporter.
- Testify further according to the ruling and instructions of the court.

The statement is to be used only when DCF does not have a role in the court hearing which is specified by statute or DCF policy. It is not to be used when the court action is being taken under the Kansas Code for Care of Children (child protection services, foster care, etc.) at the request of DCF.

Whenever possible, inform the court and the attorneys before the proceedings that this statement will be made and that upon instruction from the bench, testimony will be given.

## PREPARING FOR COURT

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- Review your case, make notes if you need to.
- Practice the questions you expect to be asked.
- Figure out what the key issues are, and be ready to respond to those.
- Does your DA/CA or ADA/ACA know who you are?
  - Curriculum Vitae
  - Training Logs

## COURTROOM BEHAVIOR

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- The courtroom is not a place for conversations with families or each other.
- Make sure cellphones are off or silenced
- Stand when the judge enters
- Be aware and follow any local court room rules
- The court's impression of you will begin before the judge sees you, and that impression will be formulated long before you take the stand. Your behavior and appearance in the courtroom will form the basis for your credibility before you have spoken one word.

## BASIC EVIDENCE

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What it is and how the rules can help you



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Discussion:

What is the social worker's job? To punish the parents, to find out the truth of what happened, something else?



Things presented to prove or disprove a fact in question.

Testimony has to be clear and concise

Credibility has to be established and maintained over a period of time. In a CINC case, where the supervisor was put on the stand and asked how long she had been at her current employment, she said that she had worked for 2 weeks as a support worker, was promoted to case manager did that for 2 weeks and then was promoted to supervisor. During the testimony, the judge rolled his eyes and just looked at the attorneys. Later at the end of a Chambers conference, the judge pondered out loud, what did she do before she was the support worker, was she the janitor?

Documents need to be reliable. For instance during a 7 day termination, questions came up about paternity, the mother had consistently said for 2+ years that Mr. X was dad to 4 of 6 children. At the time of termination, she decided to throw a wrench in the works by claiming he was not the father to some of the kids. The case manager had saved a scrap of paper that she had mom write out a family tree on, in the file. When mom tried to testify as to the new daddy, the prosecutor was able to display the piece of paper, and discuss it.

Objects—one of my favorite stories is one that Jackie Spradling tells during dv trainings,

during a dv incident a guy had banged his wife's head against the wall, creating a hole in the drywall. The officer went out with a sawzall, and cut out a portion of the wall, they then framed it and drug it into the courtroom.

## TYPES OF EVIDENCE

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- Direct
  - Fact
  - Expert
- Circumstantial
- Corroborative
- Cumulative
- Demonstrative
- Documentary
- Exculpatory
- Forensic
- Real/Physical
- Hearsay

Fact witnesses may under certain circumstance be allowed to testify to very limited opinions. All other opinion testimony is given by experts.

Exculpatory evidence – prosecutors are under an affirmative duty to produce any evidence that may be exculpatory. We have to share this information with the prosecutor, while it doesn't make our case stronger the defendant has the right to that information. That concept only applies to criminal cases, however, most prosecutors also apply this to CINC cases. As an agency our responsibility is to provide the information to the prosecutor to support the CINC case. The prosecutor "has" the evidence held by Law Enforcement (LE) and State agencies, even if he/she has never seen it. Failure to provide this information to the defendant is grounds for a case to be dismissed.

## EVIDENCE

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- Relevant information is generally admissible
- Admissible Evidence
  - Evidence that is relevant and of such character (e.g. not unfairly prejudicial, based on hearsay or privileged) that the court should receive it
- When relevant information may not be admissible:
  - Privilege
  - Prejudicial
  - Settlement negotiations (including mediation)
  - Cumulative

In a CINC or Administrative Hearing some of the privileges are waived (social worker/client, therapist/patient) however other privileges still exists, such as priest/penitent, attorney/client and those conversations may never come in as evidence.

Cumulative evidence is saying the same thing over and over.

## EVIDENCE

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- **Direct Evidence**
  - Evidence based on personal knowledge or observation and that, if true, proves a fact without inference or presumption
  - Surveillance tapes
  - Eyewitness testimony
- **Circumstantial Evidence**
  - Evidence based on inference and not on personal knowledge or observation
  - There is no difference in the weight given to circumstantial evidence and direct evidence.

Child is with mother in the morning, baby sitter in the afternoon for 5 min and starts limping and whimpering. Mother states that the child was fine at drop off. The child is unable to tell the source of the injury, i.e. non verbal. Circumstantial evidence that the injury occurred in the care of the sitter.

Circumstantial evidence requires more gathering of information from the worker, because the worker must gather enough information to allow the trier of fact to draw the inference necessary to prove the allegations.

# EVIDENCE

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- **Corroborative Evidence**
  - Evidence that differs from but strengthens or confirms what other evidence shows
- **Demonstrative Evidence**
  - Physical evidence that one can see and inspect and is used to clarify testimony

## EVIDENCE

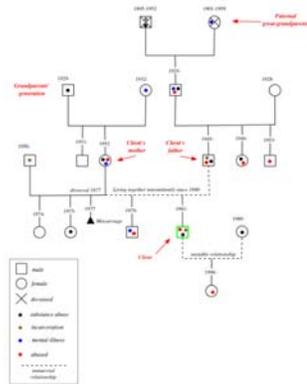
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### Two types of Demonstrative Evidence:

- Photographs and video recordings that were made depicting the incident in question
- Forensic interviews and anatomical drawings
- Maps, charts and graphs that do not have to do with the incident in question but clarify testimony

# EVIDENCE

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Some pieces of demonstrative evidence show circumstances at the time of the injury or occurrence, others are created later to explain a fact or situation.

Genogram: created during the course of the case to help explain relationship between individuals.

Pictures: can depict the injuries at or near the time of occurrence, conditions of the home etc.

## PICTURES AND DESCRIPTIONS

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## PICTURES AND DESCRIPTIONS

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## PICTURES AND DESCRIPTIONS



## PICTURES AND DESCRIPTIONS

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I observed the home to be cluttered with unwashed dishes on the counters, sink and stove. The stove was observed as being extremely filthy with grease and crumbs of leftover food covering the entire top of the stove. The kitchen floor was observed as having a film of grease, dirt and grime including cigarette butts and trash consuming much of the floor. There were clothes and trash on the floors and furniture. The entire apartment smelled of marijuana, soiled clothing and urine. Baby's bottles were stored with her formula and dried food. (continued...)

## PICTURES AND DESCRIPTIONS

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I observed the bottles having a film of what appears to be formula in the bottles. I asked Mom if these are the clean bottles and she indicated they were. I asked to see the nipples for the bottles and observed them to be moldy with a dried filmy substance that appears to be formula still in the tip of the nipple. I observed unwashed clothes in laundry baskets on the floor, on beds and on couches throughout the entire apartment. (continued...)

## PICTURES AND DESCRIPTIONS

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I observed cigarette butts on the kitchen and living room floors. Baby's toys and her walker were observed in the kitchen and living room with all the trash and cigarette butts. Child appeared dirty with food and dirt on her face. Mom was asked if Baby was mobile. Mom stated that baby would get on the floor and rock back and forth but does not yet crawl. (Baby is 8 months old).

## EVIDENCE/HEARSAY

- Hearsay evidence:
  - A statement made, other than in court, to prove the truth of the matter asserted
  - A statement can be **verbal** or **non verbal**.
- There are numerous exceptions to the hearsay rule.
- Hearsay evidence is not admitted UNLESS one of the exceptions can be utilized.
- Hearsay is admissible in administrative hearings.



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**Dana and Bruce were fighting, and Dana shouted "Bruce, you are a lousy bastard." Marla heard the argument and was asked to testify at Dana and Bruce's divorce trial. Marla was permitted to repeat the statement "Bruce, you are a lousy bastard," because it is not hearsay. It was not introduced at the trial to prove that Bruce has lice or is an illegitimate child, but rather to show that Dana was angry.**

"my cousin saw the crime." In this case, the cousin might well have seen the crime, but unless the cousin can be brought to court to testify, this evidence is treated as hearsay because it has not been verified by the person who actually witnessed the crime.

### **1 finger salute as non verbal statement (peace sign).**

The term 'statement' means more than an oral declaration. If a witness engages in conduct that is designed to be assertive, that conduct may be considered a statement for the purposes of the hearsay rule. Thus, for example, if an eyewitness to a crime is shown a lineup of suspects, asked if the perpetrator is in the lineup, and points to an individual, that pointing will generally be considered to be a statement.

Other examples of statements that are not offered for their truth include statements that are offered to show the state of mind of the person making the statement ("I'm so mad at you I could explode!" Is not offered for its literal truth, just to show anger) or the effect the statement had on the person hearing the statement (the person hearing the above statement is understandably frightened).

## EVIDENCE/HEARSAY

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- Overall, the concern in disallowing and allowing hearsay evidence is a concern for the truth. The question is whether the statement is somehow so reliable that it should be allowed it to be presented in court without having the original speaker available for cross examination.
- Examples
  - Excited Utterances
  - Admission against interest



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If a parent, who is not available at trial, makes a statement showing they have knowledge of an injury or how the child was injured, the statement of the parent may be admissible despite a hearsay objection.

Excited utterances, we generally see these with small children, who blurt out “mommy hurt me” as soon as you walk in the room before you have even asked questions.

## EVIDENCE/HEARSAY

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- Spontaneous present sense impression
- Then existing mental or physical condition
- Statements for medical diagnosis or treatment
- Recorded recollections
- Business records
- Statements against interest
- Statements by a party opponent

## WITNESS IDENTIFICATION

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- Because hearsay is generally not allowed, when you interview a collateral witness you need to get at very least the following:
  - Name (spelled CORRECTLY)
  - Address (spelled CORRECTLY)
  - Telephone number (ACCURATELY)
  - Family members or other people who can help find them later if they are needed to testify
  - Employer
  - Email address



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Therapist name = Mullin

You write = Muller

Can the prosecutor or another social worker at a later date find the therapist to ask questions, or see if the children are still attending therapy?

Passerby/collateral witness is transient, but you know (because during your interview he had verbal diarrhea about all his financial and other problems) that a great aunt is providing her money on a regular basis by visiting her at different addresses, it is important then to have the information for the great aunt, because obviously she is somehow keeping track of mom.

## HOW DOES THIS RELATE TO THE COURTROOM?

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- When you can't attack the facts, attack the messenger.
  - The best defense when a parent has no defenses is to attack the social worker. The more questions you don't ask or more information you don't document, the more vulnerable you are to attack.
  - Its not personal, the defense attorney doesn't have anything against you. Remember, he/she is obligated to mount a zealous defense for his/her client.
  - Each and every thing you did or didn't do will be in the spotlight. The worse the defense attorney's case, the more your behavior is going to be the target.

# WORKERS AS WITNESSES

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Working in the Courtroom



## EXPERT WITNESSES

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- An expert witness is a witness who, by virtue of education, experience, training or skill, is believed to have knowledge in a particular subject beyond that of the average person sufficient that others may officially and legally rely on that person's opinion about evidence or a fact at issue.
- Expert opinions have to be consistent with what is accepted in the field (i.e. the study of social work).

## LAY WITNESSES

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- A person who testifies under oath not as an expert
- This person must show that he/she has personal knowledge of the facts to which he/she is testifying.

## TESTIFYING

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Things to know, things to do, things to remember:

- Tell the truth
- Testifying is telling a story (not creating fiction).
- You want to engage the listeners and explain who, what, when, where, why and how.
- Good descriptions are key to a good story.
- Listen to the question.
- Answer only the question asked.
- Don't be defensive or argumentative in your answer.



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Not just telling the basics.

Context. You have to give a good enough description that the judge sees what you see. Add enough detail that your listener can appreciate the gravity of the situation that you are trying to describe.

When you are listening to the question don't try to guess what the attorney is trying to get you to say, just answer the question. Don't try to anticipate what you think the question will be.

## IMPORTANCE OF COMPLIANCE WITH LAW AND COURT ORDERS

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- Penalties for not telling the truth and following statutes, regulations and court orders
  - Contempt of court
  - Lawsuits
  - Credibility and dignity

# TIPS FOR TESTIFYING

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## IT IS BUSINESS, NOT PERSONAL

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- All the people in the room have a job to do.
  - GAL
  - Prosecutor
  - Parent's attorney
  - Judge
- While they may all like you before and after the hearing, while you are on the stand and while the case is being heard, you are fair game.
- Reasonable minds can differ.

## THE DEVIL IS IN THE DETAILS

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- Document, document, document
- Prepare every case as though it is going to trial, even if you don't think that it ever will.
- The little things will make or break your case.
  - Typos/grammatical errors
  - Inconsistencies in dates and times
  - Incorrect quotes

## PREPARE, PREPARE, PREPARE

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- In the same way that location is the key to real estate, preparation is the key to good testimony.
- Know where documents and facts are located in your file.
- Know your case, know yourself, know your prosecutor, know your judge, know the parent's attorneys and the GAL.
- Help the prosecutor or agency attorney prepare you.



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Be prepared to testify regarding your training, education, experience, licensure, etc.

## THINKING AHEAD

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- There is no such thing as an airtight case.
- You know your case better than anyone in the courtroom, which means that you *should* know what the weaknesses in it are.
- Be ready to respond to the weaknesses.
- Consider the questions that you will be asked by each party.

## BE INTERESTING

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- Be interesting. Don't distort the facts.
- Engage your listeners in what you are saying.
- Don't jump around. Speaking chronologically of the relevant facts is generally the easiest for the listener.
- Consider your tone and body language.

## BE CONCISE

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- Answer the questions asked.
- If you are not answering the question, you are creating fertile ground for objection.
- Don't give more information than is needed to respond to question asked; you are not the whole case.
- If you don't understand the question, ask for it to be rephrased or repeated.

“can I elaborate”

“I can't answer that with a yes or a no”

“one of the things I considered” (cues the attorney to ask about the other things you considered)

## BE PROFESSIONAL

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- Dress professionally and be punctual.
- Speak professionally.
  - Clear
  - Understandable
  - Without jargon
  - Loud enough to be heard and slow enough to be understood
- Be respectful of everyone in the courtroom.
  - This means that you may NOT sit in the back of the courtroom and chat with one another
  - Do not make it personal.



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Saw social worker on the stand, on being questioned by a GAL that she did not care for, nor did she care for his position, answer a question by starting out "Well, Mr. GAL..."

Deliberately slow down, because while you feel like you are speaking slowly, you are likely speaking faster than you realize, people are taking notes.

The Judge = Your Honor

Attorney's are all Mr. or Ms. Lastname – Not by first names

## KNOW THE RULES

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- Objections means stop talking, immediately.
- Courtroom etiquette
  - Stand when judge enters and leaves
  - Learn the layout of the courtroom, if you don't know, ask.
  - Know any special rules for your judge.
- When is it okay to offer your opinion

Some courts have specific rules regarding dress in the Courtroom, whether or not outside persons can sit in the hearing, where DCF and KVC staff wait.

When you take the stand, stand to take the oath, then you can sit, then wait until you are questioned.

# WORKER LIABILITY

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What happens if I get sued?



## TORT CLAIM IMMUNITY

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State law provides protection for State employees, acting in good faith, working within their job duties.

Tort claims are legal actions alleging negligence, failure to act, or actions taken by a State employee.

Kansas Tort Claims Act, K.S.A. 75-6101

## TORT CLAIM IMMUNITY

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- Workers are protected when:
  - Acting on behalf of, or in service of, a governmental entity in any official capacity, whether with or without compensation
  - Named in a suit
- Employees are provided legal representation, through the Attorney General's office, or through their agency or through outside counsel.
- Judgments entered in covered cases are paid by the State.

KGP Volunteers and Interns as well as other unpaid persons engaging in the equivalent of state employment are covered under tort claims.

## TORT CLAIM IMMUNITY

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- Workers are **NOT** protected when:
  - Acts or omissions of employees while off the job (on their own time)
  - Things you should not be doing on the job
- Legal representation is not provided, and if desired must be obtained by the employee.
- Any judgment entered is the employee's responsibility.

## I GOT SERVED, NOW WHAT?

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First and foremost, make no statements regarding the service. Do NOT say “I knew this was coming” or negative statements.

Accept service silently and then:

- Contact regional legal counsel.
- DO NOT talk to friends or coworkers about the suit
- STAY OFF social media
- Do not make copious notes before talking to your attorney, these may not be protected, and may be discoverable.
- Follow advice provided by the attorney.

**“WE ARE WHAT WE REPEATEDLY DO.  
EXCELLENCE, THEN, IS NOT AN ACT, BUT A  
HABIT.”**

~ ARISTOTLE

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**“NEVER DOUBT THAT A SMALL GROUP OF  
THOUGHTFUL, COMMITTED PEOPLE CAN  
CHANGE THE WORLD. INDEED, IT IS THE ONLY  
THING THAT EVER HAS.”**

~ MARGARET MEAD



# EVALUATION AND CLOSE

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