

Excerpts from “Protecting Parents”

Below is based upon a guidance paper on protecting parents’ rights during investigations. The entire guidance paper is available at www.ocwtp.com. Provisions related specifically to Ohio may be disregarded.

Introduction

Guidelines regarding these two Child Abuse Prevention and Treatment Act (CAPTA) provisions:

Issue 1: Notification of Individual Subjects of Investigations

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

Discussion:

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

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

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

Guideline:

The CAPTA notification requirement applies to the **initial time of contact** with the individuals who are the subjects of the report of an allegation of abuse or neglect, regardless of how the agency defines the nature of the report or allegation for purposes of assignment to be assessed or investigated (abuse or neglect). The subject of the investigation may be persons other than the parent, such as a boyfriend or caregiver of the child.

What constitutes initial contact?

Discussion:

The CAPTA requirement reflects an interest in ensuring the civil rights of subjects of investigations are protected.

There is no stipulation that the alleged perpetrator (ALP) be the first person interviewed during the investigation. In some cases, collateral sources of information or the alleged child victim will be interviewed prior to the ALP.

Guideline:

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

How much detail regarding the allegation should the investigator provide to the ALP (the subject of the investigation)?

Discussion:

Prior to proceeding with the information-gathering phase of the interview, the worker must provide enough information so the individual ALP may be fully informed about the allegation.

The identity of the reporter must remain confidential, as specified in the Kansas Child in Need of Care (CINC) Code. In many cases, the individual subject of the investigation (ALP) can easily determine who knew about the alleged maltreatment and who was likely to report it. The worker's responsibility is to not refute or affirm these identities, regardless of whether the individual ALP can make these determinations.

Guideline:

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

- That a report was made to the agency
- That the agency is required by law to investigate the report
- That the report states abuse or neglect (whichever is the case) may have occurred
- A general description or paraphrase of the report
- That the report states that he/she was possibly involved in the situation

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

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

Example of appropriate level of detail needed during notification:

“My name is Cathy Jones. I am a worker with the Kansas Department for Children and Families. We are required by law to investigate all reports of possible abuse or neglect. We have received a report about your daughter, Cyndi. May I come in so that we can talk about this?”

Then... (in cases where the ALP is identified by the reporter):

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

Another Example (in cases where the ALP is not known):

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

Then...

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

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

Further Suggestions:

The DCF PPS brochure PPS 2010 titled “Kansas Child Protective Services-What You Need to Know about Investigations of Child Abuse or Neglect” should be distributed to the parents and alleged perpetrator prior to them being interviewed. This brochure notifies such persons of their rights and explains agency and juvenile court proceedings.

When parents are uncooperative, the worker should inform the parents of the agency’s legal obligations if the child is believed to be at risk of serious harm, that is, to consult with legal counsel about legal options for protecting the child. Once it is determined that the agency will request the county/district attorney initiate court action, the worker should notify the individuals

as to the following: where and when the court hearing will be held; what the agency will ask the court to do; how the parent can obtain an attorney; and that the individual should attend the court hearing.

CAPTA also requires that individual be apprised of their rights to appeal agency actions. Kansas Statutes Annotated (K.S.A.) and Kansas Administrative Regulations (K.A.R.) state that clients have the right to appeal the Kansas Department for Children and Families' (DCF) final decision regarding a finding. The agency is required, under CAPTA and K.A.R., to inform parents of these rights. The appeal information is included on the agency's Notice of Department Finding (PPS-2012).

Should the investigator inform the subject of the investigation that his/her cooperation is voluntary?

Discussion:

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

Guideline:

Workers are not required to inform the subject of the voluntary nature of the investigation. The worker will need to use his/her judgment and the advice of his/her supervisor to make decisions on a case-by-case basis. If the subject directly asks if his/her cooperation is voluntary, the worker should reply honestly that it is. If the parent asks about what would happen if he/she refuses to cooperate, the worker should explain that: a) he/she must continue to investigate the allegations; b) there are several options, including legal intervention that may be implemented; and c) the worker will speak with his/her supervisor regarding the best course of action. The worker should deliver this information as fact, not threat.

What if the investigator is unsure who the perpetrator is?

Discussion:

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

Guideline:

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

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

Discussion:

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

Guideline:

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

Example:

“Mrs. Jones, I need to talk with you further about the situation we’ve been investigating. We have additional information regarding Carol that that she was touched in a sexual way and that you may have been involved in this. I need to talk with you about any information you have about that situation. As I said when we talked the first time, your cooperation is voluntary, and I hope that you will answer my questions so that we can be sure that Carol is safe. Can you tell me what you know about this?”

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

Discussion:

Although CAPTA is silent on this issue, guidance has been provided by the U. S. Department of Health and Human Services, Administration for Children and Youth, (www.hhs.gov April 2005, Children’s Bureau, Initiatives):

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

Guideline:

The worker should coordinate investigative activities with law enforcement so as not to compromise a criminal investigation.

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

However, if coordination of the investigation cannot be accomplished within timeline requirements for the safety assessment and protective services investigation, workers should proceed with the investigation unless law enforcement has specifically requested DCF not to do so. A finding may in part be based upon information in the law enforcement investigation documentation if the worker has been asked by law enforcement not to do further investigation. They should first notify law enforcement of the agency’s determination to pursue its investigation. In conducting their investigation, workers should act carefully to avoid compromising the criminal investigation.

At times, there are cases where referral information indicates that the child is not in immediate danger of serious harm and law enforcement requests the agency to “hold off” on investigative activities in order to build a criminal case. In these cases, workers should consult with their supervisors as well as the county prosecutor or agency attorney, as needed.

Issue 5: Conducting Interviews with Children at School without Parental Knowledge or Against Parental Wishes

When parents send their children to school, they may reasonably expect that only school system staff members will be interacting with their children, and people outside of the school system will not be talking with their children. Conducting interviews at school, without parental permission must only occur consistent with K.S.A. 38-2217.

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

Guidelines:

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

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

Conducting investigative interviews at school without the parent’s knowledge should be conducted only as set out in K.S.A. 38-2217

The worker must document the necessity of interviewing the child at school in the case record and must, on the same day, attempt a face-to-face contact with the child’s parent, guardian or custodian to inform him/her that the interview occurred. This guidance also applies to interviewing children in other out-of-home care settings, such as day care centers, day camps, etc.

Issue 6: Interviewing Collateral Sources without the Alleged Perpetrator’s Knowledge

A complete investigation requires gathering information from a variety of sources.

What are the limits of a worker’s authority in contacting collateral sources of information?
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Discussion:

A complete investigation often requires gathering information from collateral sources who may have information about the family. In most cases, it is possible to gain the subject’s cooperation in contacting those people. In some circumstances, it may be necessary to contact collaterals without parental knowledge. In other cases, the worker may need to gather information from collateral sources to support a request to the county or district attorney to file a CINC petition.

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

Guidelines:

Workers may make collateral contacts without the parents’ or alleged perpetrator’s knowledge. Staff may contact collaterals during the assessment/investigation to obtain relevant information regarding the safety of the children. However, collaterals may be contacted only after the report has been assigned for further assessment/investigation. In other words, workers must not contact collaterals prior to the report of abuse or neglect being assigned for further assessment/investigation.

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

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

Example:

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

If Mr. Smith asks for details about the report, the worker could state something like the following: “Mr. Smith I’m sure you can understand the importance of protecting the family’s privacy in this situation. I really can’t tell you about the details of the report. However, I am very interested in finding out what happened, so we can make sure Charles is safe. Do you have any information that would be helpful in understanding this situation?”

Workers are not required to obtain permission to contact collaterals. However it is also advisable to proceed with the investigation in an open and transparent manner in order to develop trust with the client, as long as doing so does not compromise the safety of the child. For example, the worker could explain the requirement to conduct an investigation and assessment of the family’s situation. The worker could ask the subject for a list of people who could help the worker gather information about the family.

Following is an example of how to ask for information about collateral sources of information:

“Ms. Jones, as you know, I need to complete an investigation. I would like to have a fair approach to understanding your family. Would you please give me the names of people I could contact who could help me gain a good understanding of your family?”

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

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