Welcome!

Legal Aspects of Family-Centered Child Protective Services

Sources of Law

- Constitutions (federal and state)
- Statutes (federal and Ohio Revised Code)
- Case Law
- Rules (Ohio Administrative Code)

Constitutions

- Primary source of law
- Describes power and relationship between legislative, judicial, executive branches
- Protects rights of citizens
Sources of Law
- Provides funding to states that conform to federal standards
- Requires reasonable efforts to prevent placement and in assessment and case plans

Sources of Law
Indian Child Welfare Act 1978
- Protects stability and security of tribes
- Provides standards for placing Indian children in Indian foster and adoptive homes
- Gives tribes sole authority in custody decisions
- Requires Indian officials to be notified when child is to be placed
- Requires workers find out if children needing placement are of Indian descent

Sources of Law
Multi-Ethnic Placement Act and Inter-Ethnic Placement Act
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
Sources of Law

Adoption and Safe Families Act 1997

- Proclaims a child’s health and safety are paramount
- Allows supplemental case planning
- In Ohio: Requires filing for TPR at 12/22 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
- Establishes 90 day abandonment presumption

Sources of Law

Child Abuse Prevention and Treatment Act

- Provides funds to states to improve child protective services
- Sets forth practice standards; requires states to submit a 5-year plan

Child Abuse Prevention and Treatment Act 2003 Amendment

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
Sources of Law
Ohio Revised Code (O.R.C.)
- State law regulating child welfare practices
- Defines abuse, neglect, dependency
- Some O.R.C. implements federal legislation

Sources of Law
Ohio Administrative Code (OAC)
- ODIFS promulgates rules to implement and amplify O.R.C.
- Regulates investigations, case planning, visitation, etc.

Sources of Law
Case Law
- The law laid down in the decisions of the courts in a suit, action, or controversy
- Judges apply statutes and rules to cases
- “Stare decisis” – Courts bound by precedents
Structure of the State Court System

Adversarial Interventions to Help Children

Civil Action:
- Wrongful act: “tort”
- Compensate victim
- Punitive damages

Adversarial Interventions to Help Children

Divorce or Domestic Relations Actions
- Action brought by parent’s attorney
- Makes orders regarding custody, visitation, companionship
- Appoints GAL or CASA
Adversarial Interventions to Help Children

Criminal Action:
- Punish the perpetrator
- Evidence beyond a reasonable doubt
- Must prove guilt of alleged perpetrator

Adversarial Interventions to Help Children

Crime Victim Reparations Award
- Compensation for Child Victim
- Reparations
- Prove only that child was victim

Child Protective Services Action
- To protect the child
- Usually filed by PCSA
- Parties include the child, parents, state, others upon request
**Children Services Authority**

- Only agency to investigate reports of maltreatment
- Provide services
- Recruit, train, certify foster/adoptive homes
- Receive custody, place children
- **May provide:** preventive, unruly and delinquent services

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**The Role of Juvenile Court**

**Jurisdiction for:**

- abuse, neglect, dependency, unruly and delinquent cases
- child custody and support
- parentage cases
- some criminal actions
- protection and rehabilitation of children

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**Reporting Requirements**

- Acting in official/professional capacity, mandated reporters **must** immediately report knowledge or suspicion.
- Mandated reporters include attorneys, healthcare professionals, psychologists, staff at school and day care, social workers, counselors, providers of spiritual treatment, agents of county humane societies.

Statutes p.14
**Reporting Requirements**

- Anyone may report
- Good faith reports are immune from liability
- Reports are confidential

**Parent’s Rights**

- Right to Family Integrity
- Right to Privacy
  - Sharing Case Information
  - HIPAA

**Due Process: 5th and 14th Amendments**

- Informed Consent
- Notifying and Informing
- Grievance Procedures
Equal Treatment: 14th Amendment

- Equal access to law, equal treatment
- Similar situations treated similarly

Freedom from Unreasonable Search and Seizure: 4th Amendment

Consent or warrant required for search (some aspects of investigations) or seizure (removing children) unless there are exigent circumstances

Two concepts

Less Than Adequate Care (Unfitness)
Child’s Best Interest
**An Abused Child**

Any child who:
- Is the victim of “sexual activity”
- Is endangered
- Is physically injured
- Is mentally injured
- Suffers out-of-home care abuse

**Sexual Activity**

**Sexual Conduct, Sexual Contact, or Both**
- Sexual conduct: vaginal intercourse between a male and female, anal intercourse, fellatio, cunnilingus regardless of sex, and vaginal/anal penetration by body part or object
- Sexual contact: touching of an erogenous zone of another for the purpose of sexually arousing or gratifying either person

Statutes, p.6

**Endangering Statute (B)**

Violating a duty of care, protection, or support (except by spiritual means through prayer alone)

**No Person Shall:**
- Abuse the child
- Torture or cruelly abuse the child
- Use punishment/restraint which is excessive and creates substantial risk of serious physical harm

Statutes p.11
**Corporal Punishment Exclusion**

It is only abuse if child:
- Suffers physical or mental injury by parent, guardian, or custodian that harms health or welfare
- Is prohibited by the child endangering statute
- Is subjected to out-of-home care abuse

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**Endangering Statute (B)**

No Person Shall:
- Discipline child if it could seriously impair/retard mental, physical development
- Involve child in obscene, sexually-oriented, nudity-oriented matter
- Operate a vehicle with a child in violation of O.R.C. 4511.19

Statutes p. 11

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**Abused Child**

O.R.C. 2151.031 (C)

Exhibits evidence of physical or mental injury or death, by other than accidental means… at variance of history given

Statutes, p.6
**Mental Injury**

O.R.C. 2151.031 (D)

Any behavioral, cognitive, emotional or mental disorder … by act or omission in endangering statute… committed by parent or person responsible for child

Statutes, p. 6

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**A Neglected Child**

- Is abandoned by parent, guardian, or custodian;
- Lacks adequate parental care because of faults or habits of parent, guardian, or custodian;
- Has a parent, guardian, custodian who refuses subsistence, education, medical care, or other treatment for child’s health, morals, or well-being;

Statutes, p. 7
**Deserted Child**

Parent voluntarily takes child to:
- Hospital
- Emergency medical worker
- Peace officer

Within 72 hours of birth
No intent to return for child
(O.R.C. 2151.3515)

Statutes p. 8

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**Dependent Child**

- Homeless or destitute through no fault of parent, guardian, or custodian
- Lacks parental care by reason of mental or physical condition of parent, guardian, or custodian

Statutes p. 8

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**Dependent Child**

- Whose condition or environment warrants the state, in best interests of child, to assume guardianship
- Who resides where a child was abused or neglected by parent, guardian, custodian and is in danger of abuse or neglect by that person
Liability

- Privilege
- Neglect of duty (Nonfeasance)
- Wrongful act, acting outside the scope of your job (Malfeasance)
- Improper performance of job (Misfeasance)

Liability Issues: Documentation

- Case notes should be “fresh”
- No pejorative language or mental health diagnoses
- Never falsify information

Preventing Liability

- Learn and follow O.R.C., OAC, policy and procedures
- Do job in a reasonable manner
- Document: timely and accurately
- Obtain training
- Consult with supervisor and/or counsel
**Taking Custody: Regular Court Orders**

- Complaint alleges abuse or neglect
- Summons notifies parent
- Adjudicatory hearing in 30 days

HO #4, p. 12

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**Methods of Notice**

- Service at residence by sheriff or process server
- Certified mail
- Regular mail
- Newspaper publication
- Posting and mail

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**Emergency Court Orders**

- Child in immediate danger of serious harm and must be removed immediately
- Ex parte orders: used only when notifying the parent would result in harm to child
- Complaint must be filed next day, or in 72 hours

HO #4, p. 13 - Statutes, p. 21
**Shelter Care Hearings**
- Held next court day or within 72 hours of placement
- Purpose: determine probable cause to keep in shelter care or safely return home, pending hearing
- Temporary Orders:
  - Grant, limit, or eliminate visitation rights
  - Order to vacate residence
  - Order to restrain conduct of a party not in child’s best interest

HO #4, p. 19 - Statutes, p. 27

**Reasonable Efforts Requirement**
- Derives from P.L. 96-272
- To assure children aren't unnecessarily removed; returned ASAP; in permanent homes as soon as possible
- Burden is on the agency
- Not required under serious aggravated circumstances

Statutes, p. 25

**Discovery**
- Right to receive and review information in control of other parties to the case
- Is reciprocal
**Adjudicatory Hearing**

*within 30 days, may be continued*

- Purpose
- Burden of proof
- Order of proof
- Preliminary motions

HO #4, p. 30

**Adjudicatory Hearing**

*within 30 days, may be continued*

- Evidence regarding statutory definitions
- Considers unfitness, not best interests
- If not proved, case over
- If proved, moves to dispositional hearing
- Interim (temporary) orders

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**Dispositional Hearing**

*within 30 days, within 90 days of complaint*

- Purpose
- Burden of Proof
- Standard of Proof
- Order of Proof
- Type of Evidence
- Provides for Best Interests of Child

HO #4, p 33

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Dispositions

Child Abuse, Neglect, and Dependency

- Order of Protective Supervision
- Temporary Custody to PCSA
- Legal Custody (usually to relative or other parent)
- Permanent Custody to PCSA
- Planned Permanent Living Arrangement

Dispositions

Unruly: CAN/D plus options to address rehabilitation:

- Probation
- Community service
- Enrollment in school, vocational program or employment
- Temporary or permanent custody to the court
- Substance abuse, medical, psychological treatment
- Truancy prevention or mediation
- Loss of driving privileges

Dispositions

Delinquent: CAN/D and unruly plus options to address rehabilitation:

- Commitment to ODYS if felony; or other school or institution for delinquents
- 90 days local detention
- Fines and restitution
- Curfew, house arrest
- Loss of driving privileges
**Post-Dispositional Proceedings**

- Modify court orders
- Extend temporary custody
- Terminate custody
- Two 6-month extensions of protective supervision

HO #4, p. 38

**Permanent Custody**

- Permanently divests parents of parental rights
- Adoption is the intended result
- Can be granted through court action or voluntarily by surrender

Statutes, p. 36 - HO #4, 44

**Planned Permanent Living Arrangements (PPLA)**

- Child problems: needs residential or institutional care
- Parent problems: unable to care, adoption not best interest, positive significant relationship with parent or relative
- Child 16-17, unwilling or unable to be adopted, in independent living program

HO #4, p. 38
Mandatory Filing of Permanent Custody

✓ When child is in foster care 12 of last 22 months, child is abandoned, or if specific kinds of assault are committed against child or sibling
✓ Reasonable efforts, again
✓ Permanency hearing within 12 months of entry into foster care

HO #4, p. 48

Types of Evidence

Direct
  Fact vs Opinion
  Expert
Real
  Documents
  Case Records
Circumstantial
Hearsay

Concepts of Admissibility

Generally:

■ Relevant information is admissible

■ Irrelevant information is not admissible
When Relevant Information May Not be Admissible

- Privilege
- Prejudicial
- Settlement negotiations (including mediation)
- Cumulative

Some evidence may be permitted in one hearing, but not another

- Adjudicatory hearings
- Dispositional hearings

Exceptions to Hearsay Rule

- Present-sense utterance
- Excited utterance
- Statement for Medical diagnosis or treatment
- Recorded recollection
- Records of activity
- Public records and reports
- Judgment of previous convictions

Statutes, p. 37
Conduct of a Trial in Juvenile Court

- Introductory
- Procedures (Motions)
- Opening Statements
- The State’s Case
  - Direct Examination
  - Cross-Examination (areas include narration, memory, sincerity, and perception)
  - Re-Direct and Re-Cross Examination

Conduct of a Trial in Juvenile Court

- Motion to Dismiss
- Defendant’s Case
- Rebuttal
- Examining the Competence of the Witness
- Closing Argument

Thank you....

Good Luck at Module IV
LEGAL ASPECTS OF CHILD PROTECTIVE SERVICES

COMPETENCIES

Skill Set #1: Ability to access the juvenile court to protect children from maltreatment and to assure permanency within legally established time frames

1. Aware of the importance of adhering to the provisions of federal and state statutes in child welfare casework

2. Knows legal protections afforded to families and children by juvenile court intervention and the potential detrimental consequences if legal procedures are not followed

3. Knows Ohio Revised Code and Ohio Administrative Code definitions for various forms of child maltreatment

4. Knows the unique role and responsibility of the juvenile court system in child protection

5. Knows legal rights of children, parents, and caregivers in court actions related to allegations of child maltreatment including parents’ rights to due process, freedom from warrantless search and seizure, and equal protection under the law

6. Knows roles and responsibilities of all parties in child protection proceedings in the juvenile court

7. Understands the nature, purpose, and processes of juvenile court hearings and the associated casework responsibilities

8. Understands the nature and purpose of juvenile court dispositions for abused, neglected, and dependent children and the associated casework responsibilities

9. Understands types and degree of discretion afforded caseworkers and prosecutors when determining what kind of court action to file
10. Understands how personal bias and lack of cultural knowledge can influence a caseworker’s judgment about what constitutes child maltreatment and contribute to disproportionality.

11. Understands circumstances under which a case disposition of Permanent Planned Living Arrangement (PPLA) can be considered.

12. Understands provisions of federal and state laws regarding reasonable efforts to prevent out-of-home placement of children.

13. Understands family and case circumstances in which waiver of reasonable efforts may be considered and the necessary juvenile court processes for seeking a waiver.

14. Knows how to collaborate with Court Appointed Special Advocacy (CASAs) and Guardians ad Litem (GALs) to serve the best interests of children in the court system.

15. Can use Ohio Revised Code definitions to determine the type of child maltreatment in a family.

**Skill Set #2: Ability to gather, prepare, and document case information for court**

1. Knows liabilities for children and families of poorly organized, incomplete, or inaccurate case documentation.

2. Knows penalties and resulting agency and caseworker liability of submitting falsified documents, case notes, and case plans to the court.

3. Knows applicable juvenile court rules of evidence for child protection cases.

4. Knows the caseworker’s responsibilities in locating and contacting absent biological parents and putative fathers for court actions.

5. Knows what types of evidence must be gathered, documented, and maintained in family case records to support court proceedings.
6. Knows the importance of documenting casework efforts to reunify families while concurrently developing and filing a supplemental case plan for permanence.

7. Knows the importance of documenting efforts to protect parent’s constitutional rights during casework activities.

8. Understands how case documentation is used in legal proceedings, including custody hearings.

9. Understands how inaccurate or insufficient case documentation contributes to agency liability.

11. Understands how failure to follow case procedures required by statute and policy can result in the inadmissibility of evidence to the court.

12. Knows how to collaborate with prosecuting attorneys to gather and prepare case documentation for filing and presentation to the juvenile court.

15. Can apply rules of evidence in gathering and preparing documentation to submit to the juvenile court.

**Skill Set #3: Ability to testify in juvenile court hearings**

1. Knows the importance of a calm and confident demeanor, professional physical appearance, and appropriate use of language when giving testimony in juvenile court hearings.

2. Knows rules of evidence that apply to court testimony including rules of hearsay, exceptions to hearsay, and proper use of case notes.

3. Knows how to apply rules of evidence to testimony and how to choose information that will support the case filing.

4. Knows strategies to present concise descriptions of facts and to avoid presenting more detailed information than is warranted.

5. Knows strategies to respond effectively to direct and cross-examination.
6. Can present well-organized, relevant information during court testimony and cross-examination
LEGAL ASPECTS OF CHILD PROTECTIVE SERVICES

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OHIO SUPREME COURT

Courts of Appeal
(12 Districts)

Common Pleas
Probate Division
General Division: Civil & Criminal
Domestic Relations Division
Juvenile Courts

Municipal Courts
Housing Division
Small Claims Division

Small Claims Division
County Courts
SECTION I: TAKING IT BACK TO THE JOB- LEGAL FRAMEWORK

This section of Module III provide an overview of the legal basis for court-ordered protective services, the sources of child protection law, the structure of the court system as it pertains to child welfare, and the importance of respecting parental rights.

Knowledge Review: What Did I Learn?

1. What is the legal criterion for agency intervention with a family?
   a. Best interests
   b. Unfitness
   c. Community values

2. What is “unfitness” and who can determine a caregiver or parent to be unfit?

3. Explain the concept of due process and relate how it affects your actions as a child welfare worker.

4. Child protection law comes from many sources; name three:

5. Why is it important for you to understand the Indian Child Welfare Act (ICWA). How might this law affect your work with families?

   REMEMBER: If you have a case that might fall under the guidelines of this law, you should consult with your supervisor and agency counsel right away.

6. Caseworkers can become involved in a variety of court actions including:
   - Civil Actions
   - Criminal Actions
   - Domestic Relations/Divorce Actions
   - Delinquency/Unruly child Actions
   - Crime Victim’s Reparations Actions
   - Child Protective Actions
7. What is the most common type of court action that a caseworker participates in?

8. What are the purposes of a child protective action filed in the Juvenile Court?

9. Who has a legal mandate to report child abuse and neglect?

**Emotional Connections: How Do I Feel?**

The legal criterion for agency intervention is “unfitness” of the parent (abuse/neglect and/or dependency). Think about that word for a moment, and answer the following questions:

- How does the word make you feel?

- Should we use the word “unfit” when talking with families and others outside of the court process? Why or why not?

The many different types of legal interventions are sometimes overwhelming. You are expected to understand and participate in child protective legal actions, while a criminal, civil, juvenile (delinquency), or other legal action may also occur on the same case. Failure to consider the potential for criminal actions during a child protective investigation/assessment could negatively affect the criminal cases, and vice versa. Coordination among the different agencies involved in a particular case is critical, and requires a thorough understanding of law enforcement, prosecution, and child welfare interventions.

- How does it feel to have to learn something about each court process?

- What can you do to help yourself gain a better understanding of the legal processes described in this section? When will you try some of these things?
What Does It All Mean for Me?

Think about your work in child welfare:

- Are your decisions to seek court intervention based on standards of parental unfitness as defined by law, or do you allow your own personal views to affect these decisions?

- Do you use risk assessment to justify decisions you have already made? Or do you complete the assessment and then draw conclusions?

- If you were a parent and were called unfit, how would it make you feel?

- How else might the use of legal terminology affect your work and relationship with your clients?

You will be involved in many different types of court hearings. It is important that you remember to always collect as much information on a case as possible, and to be familiar with all of the information available to you. Below are a few examples of information you may need for different court hearings:

- Name and location of the non-custodial parents and other relatives
- Compliance with the case plan or other court orders
- Reports from service providers, including doctors, hospitals, and chemical dependency and mental health counselors
- Progress reports from schools
- Records of additional criminal involvement by parents or caregivers
- Family risk assessment and safety plan documentation in behaviorally-specific language
- Your professional judgment in clear, concise, and logical terms
- A thorough understanding of all information in the case record

Many agency attorneys and county prosecutors do not want you to bring the entire case record to court because it may become admissible evidence. Therefore you should bring notes with you reflecting important information to jog your memory while on the stand. Check with the agency attorney and exercise your individual county policies and procedures regarding taking case records to court. Consult with your supervisor and agency attorney or county prosecutor several weeks
before the date of the hearing in order to have sufficient time to gather necessary information.

What have you learned in this section that you can go back and apply on your job? When will you try it?

**One More Thing…May We Suggest**

The TOOL Manual, Section 8, “Getting Acquainted with Juvenile Court Procedures,” provides activities to help you learn more about your own county’s court system.


This article offers a rich overview of all aspects of the juvenile/family court and the evolution of juvenile court intervention. The article will help you understand child protective actions, as well as other types of juvenile court interventions.

**Pearls of Wisdom**

Understanding the legal basis for intervention into the life of a family is critical for the appropriate use of our authority as child welfare workers. However, it is also critical that we learn the proper use of authority in protecting children and building relationships with families and children. We gain more information through rapport and relationship than the court can ever force a parent to provide.

Remember: It is critical to understand the different types of legal actions that may occur concurrently with a child protective action. Ask your supervisor or prosecuting attorney/agency attorney for help in sorting out the various legal actions, and for guidance on how to proceed with your case so that you do not impede the progress of other related legal actions. This is especially critical when there is a criminal case against the alleged perpetrator. Remember that successful prosecution of the
criminal case may be the best way to assure that the child victim and other victims are protected.

Developing collaborative relationships with juvenile court staff and attorneys will also help you navigate juvenile court processes. It is critically important to understand the roles and responsibilities of all juvenile court staff as well as prosecuting and defense attorneys. You must also clearly explain your role and responsibilities to them. Remember that juvenile court is a partner in child protection; through collaboration we can help families get the services they need, and we can develop the most appropriate methods for protecting children. Building relationships with people in the legal community (and of course all other community members) can lead to successful outcomes for children and families.
SECTION II: TAKING IT BACK TO THE JOB- ABUSE, NEGLECT, DEPENDENCY STATUTES

The law on child abuse and neglect is sometimes confusing. It is important for workers to know and understand the definitions of “child abuse,” “neglect,” “sexual abuse,” “abandonment,” and many other legal terms. It is also important for workers to use statutes and regulations to guide decision-making.

Knowledge Review: What Did I Learn?

1. What are the differences between the abuse, neglect, and dependency provisions?

2. How is the abuse statute related to the criminal child endangering statute? If a criminal prosecution for child endangering is unsuccessful, can the agency still file a child protection complaint alleging abuse?

Emotional Connections: How Do I Feel?

How would you feel if your child was adjudicated abused? Neglected? Dependent?

Does this classification make any difference in your willingness to work with the agency and to accept services to remedy the problems that the agency identified?
What Does It All Mean for Me?

Working with the prosecutor to file an appropriate complaint and then to prove those allegations at the adjudicatory hearing is one of the most important tasks of a worker. How will your knowledge of the language of the abuse, neglect, and dependency statutes help you with this task?

What have you learned in this section that you can go back and apply on your job? When will you try it?

One More Thing…May We Suggest

Review the definitions of “child abuse,” “neglect,” “abuse,” and “child endangering” you received during this workshop. These are excellent job aides for you to use on your job. Keep them with you or in a place where you can quickly refer to them. Use these definitions to evaluate a situation, and muster factual observations that support your conclusions.

Pearls of Wisdom

It is critical that you not only understand what the terms “abuse”, “neglect” and “dependency” mean legally, but that you develop the ability to determine which, if any, of these definitions applies to each particular case you’re dealing with, and to articulate clearly the specific facts or circumstances which cause you to believe that a child is abused, neglected or dependent. The ability to protect the children whose lives you investigate may depend upon it.
SECTION III: APPLICATION: TAKING IT BACK TO THE JOB- AVOIDING LEGAL LIABILITY

This section of Module III provides an overview of the mandates of the reporting law, the need for confidentiality, and the limits of legal liability. How do confidentiality laws impact child protection practice? These questions are answered in this section of the training.

Knowledge Review: What Did I Learn?

1. Explain Ohio’s Neglect and Abuse Reporting Statute and when a worker must report suspected child abuse or neglect.

2. Explain the confidentiality provision of Ohio’s Neglect and Abuse Reporting Statute, and the agency’s regulation interpreting it.

3. What are the steps that workers can take to avoid liability?

4. When is the worker most protected from being sued? When s/he is exercising judgment, but fails to foresee an unknown risk to a child and the child gets hurt? When the worker fails to complete his/her mandatory tasks in a timely fashion, and, as a result, protective services are not provided and a child becomes hurt in the absence of this protection?

Emotional Connections: How Do I Feel?

Imagine that someone calls in an abuse complaint on you and a child welfare worker comes to your door. You demand to know who called, but they explain that they cannot tell you. How do you feel and how might you react?
What Does It All Mean for Me?

You are a child protective social worker in McDonald’s eating your lunch when a man begins to hit his son (approximately 4 years of age) in the face and back. The child is crying and yelling at the man to stop. Do you have a duty to report this incident?

What would you do? Why?

What issues do you need to consider in deciding if you will intervene in the situation immediately, call the police, or gather identifying information for later use?

Considering your answer to the question in “Emotional Connections”: You are conducting an investigation/assessment on a family concerning a complaint of neglect. The mother demands to know who the reporter is. What do you do? Describe some of the things you might say to her?

What have you learned in this section that you can go back and apply on your job? When will you try it?

One More Thing…May We Suggest

Review Ohio Administrative Code Section 5101:2-34-38 to fully understand your confidentiality boundaries. If you are unsure of legal terminology, please consult with the county prosecutor or agency attorney assigned to child protection cases. Remember, it is a criminal offense for you to improperly release information. Review this section and make sure you understand it!
Pearls of Wisdom

In this section, we have discussed issues of confidentiality. You will have the opportunity in the field to deal directly with this issue on many occasions.

When people are the subject of child protection actions, it is normal for them to feel angry and upset. They often want to focus this energy on you and/or on the reporter. It is important for you to practice your explanations of the confidentiality clause in many different situations. Practice with a co-worker or with your supervisor BEFORE you go out in the field.

Review Ohio Revised Code Section 2151.421 to fully understand your reporting obligations. Remember that it is a criminal offense for you to fail to report suspected abuse/neglect.
SECTION IV: PROCESSES AND PROCEDURES INVOLVED IN CHILD PROTECTION ACTIONS IN JUVENILE COURT

A. Social Worker as Fact Gatherer

1. Initial Investigation

2. The Decision to Take a Child into Custody
   a. Voluntary Agreement with Parents
   b. Court-Ordered Custody
   c. Emergency Custody
      i. Authority of police
      ii. Authority of PCSA worker

3. Reasonable Efforts Burden
   a. Finding/Effect
   b. Failure to Show Reasonable Efforts

Sometimes when we investigate allegations of abuse, neglect or dependency we find parents who willingly work with us—who welcome our services and voluntarily comply with our recommendations. At other times they refuse to have anything to do with the caseworker/agency, and in those situations, if the concern is strong enough, it becomes necessary to ask the juvenile to use its power to force the parents to cooperate.

B. Taking a Child into Custody: Who May Remove Children

When possible, you should attempt to avoid placement by implementing a plan for the child's immediate safety, and a longer term plan to resolve the problems that contributed to abuse, neglect or dependency
If, however, this is not possible, you have two options: voluntary placement, where the parent agrees to place the child with relatives, or another capable caretaker, or involuntary placement.

C. Who May Remove Children

O.R.C. § 2151.31 lays out the terms and conditions under which a child may be taken into custody. They are:

1. Pursuant to an order of the court

If there is no emergency (child not in imminent danger, time isn't of the essence, no concern that the parents will abscond with the child, etc.), you can seek a court order. To do this you must file a formal complaint with the juvenile court.

Once the complaint is filed, the court schedules a hearing. The parents must be notified of the complaint and the exact time and place of the hearing. An adjudicatory hearing is then scheduled for within 30-60 days after the complaint is filed, at which time the court would award or deny the agency custody.

This type of action is sought in non-emergency situations, e.g., when a child is being cared for by relatives who can provide care for a limited period.

2. By a law enforcement officer or duly authorized officer of the court when removal is necessary to prevent immediate or threatened physical or emotional harm

D. Emergency Court Orders

O.R.C. § 2151.31 (D) says that the juvenile court can grant an emergency order authorizing the PCSA to take the child into custody if there are reasonable grounds to believe that removal of the child is necessary to prevent immediate or threatened harm. (See Relevant Statutes and Rules)

Emergency orders are often awarded ex parte, which means after hearing only one side of the story—without notifying the parents. Ex parte orders are extraordinary measures that deprive parents of important rights. They are therefore only awarded if notifying the parents would result in harm to the child.
Emergency orders may be granted without a formal complaint having been filed. Such orders are often granted over the telephone. But a formal complaint must be filed before the end of the next business day following the granting of the emergency order. This is extremely important, because without a complaint the court cannot make any further order regarding the child (can’t hold adjudicatory or dispositional hearings).

E. Guidelines for Removal

- No child should be removed from the home without a court order. In the case of emergency removal, the caseworker must seek court approval within 24 hours in order to continue placement.

- A child may be removed from the home either by court order or by a duly authorized officer of the court when:

  a. reasonable grounds exist to believe that the child suffers from illness or injury, and is not receiving proper care and removal is necessary to prevent immediate or threatened physical or emotional harm;

  b. reasonable grounds exist to believe that the child is in immediate danger from his surroundings and removal is necessary to prevent immediate or threatened physical or emotional harm;

  c. reasonable grounds exist to believe that a member of the child’s household has been abused or neglected and the child is in danger of immediate or threatened physical or emotional harm from that person. (O.R.C. § 2151.31)

- Completion of a safety or risk assessment will further substantiate the ground for the removal. OAC § 5101:2-39-12 suggests that the risk assessment will help the worker determine

  1) The risk of harm to the child if he remains in his home is greater than the risk of harm to the child if he is removed from the home;

  2) The potential for serious physical or emotional harm the child may suffer if he remains in his home;
3) The likelihood that such harm will occur and the extent to which the risk can be alleviated by the provision of supportive services; and

4) The emotional trauma or other harm the child may suffer if he is removed from the home. (quoting § 5101:2-39-12).

- A juvenile judge or referee, after determining that reasonable efforts have been made to keep the child in the home, may grant by telephone an ex parte emergency order authorizing removal. If this is done, a sworn complaint shall be filed by the end of the next business day after the day the child was removed. (O.R.C. § 2151.31)

- Removal in good faith will prevent a successful claim for damages.

- When emergency removal of a child from his own home is necessary, the PCSA shall consider emergency removal procedures in the following order:

  1) Filing a complaint in the juvenile court with a motion requesting emergency removal of child and providing advance notice to the parent, guardian, or custodian regarding the time of the court hearing;

  2) Petitioning the court for an ex parte emergency order to remove the child and requesting a determination from the court that reasonable efforts were not possible due to the urgent nature of the child's removal;

  3) Requesting the assistance of a law enforcement officer or a duly authorized officer of the court; or

  4) Following the most preferred procedure for the emergency removal of a child that will not endanger the child (quoting OAC § 5101:2-39-12).
EMERGENCY CUSTODY PROCEDURES

Is there an intention to take the child into custody?

YES

§ 2151.31(D)  
Are there reasonable grounds to believe:

§ 2151.31(A)(3)

(a) The child is:
- Suffering from illness or injury
- Not receiving proper care as described in § 2151.03?

(b) The child is:
- in immediate danger from surroundings?

(c) A parent/guardian, custodian, or other household member has abused or neglected another child in the household?

AND

REMOVAL IS NECESSARY TO PREVENT IMMEDIATE OR THREATENED PHYSICAL OR EMOTIONAL HARM

Child should not be removed. (The Agency may enter into a voluntary agreement for temporary custody of the child)

Social worker can demonstrate Probable Cause to believe the conditions of 2151.31 (A)(3) exist and that reasonable efforts have been made to notify parent/guardian/custodian of intent to place the child.

Ex parte motion authorizing the agency to take custody before a complaint has been filed

Continued on next page
**EMERGENCY CUSTODY PROCEDURES CONTINUED**

**Ex parte denied**
- Agency files complaint and motion requesting 10 day shelter care hearing [§ 2151.33(D)].

**Ex parte granted**
- Court completes findings of fact and pretrial order granting temporary custody. They are filed (the next business day).

- Agency files Complaint for Abuse, Neglect, and/or Dependency by the end of the next business day after *ex parte order* is granted.

- Court terminates *ex parte order*. New order to return child is issued.

- Shelter care hearing is held before Court

- **FILED**
  - Probable cause hearing is set (for next business day)
    - GAL assigned and notified
    - Worker/agency provides notice to the parents
    - Service & summons of Complaint is served
    - Public Defender is notified (if needed)

- Preliminary/Adjudicatory Hearing set, to be held within 30 days of filing the Complaint or when the child was taken into custody, whichever is earlier

- **NOT FILED**
  - Probable Cause Hearing held before Court with parent/guardian, agency attorney, Public Defender or parent’s attorney or social worker
F. Agency's Reasonable Efforts to Prevent an Out-Of-Home Placement

At the hearing in which the court removes the child, the court shall review whether the agency made reasonable efforts to

* prevent the removal of the child from his home
* eliminate the continued removal of the child from his home
* make it possible for the child to remain in or return to the home.

The agency shall have the burden of proving that it has made those reasonable efforts. [Remember that there are now certain circumstances where the agency does not have to make reasonable efforts.] (O.R.C. § 2151.419.) (See Relevant Regulations and Rules) Thus the worker should be prepared to testify as to what steps she took to prevent and out-of-home placement.

G. Pre-Hearing Procedures

1. Intake (Juv. R. 9)

   Juvenile Court is permitted to divert referrals to other community resources and to handle matters unofficially.

2. Filing of Complaint (Juv. R. 10; O.R.C. § 2151.27) [effective 4-11-05]

   The complaint is, simply, a sworn written document that says “We believe that this child is abused, neglected or dependent, and here are the specific facts which have caused the agency to believe that the juvenile court needs to become involved.” The complaint is filed either by the prosecutor or by the agency's attorney (if it has one), using information supplied by the caseworker. Attached to the sworn complaint is the “summons,” which provides the parents with the date, time, and place of hearing.

   a. Any person may file a complaint. [§ 2151.27(A)(1)]

   b. Legal requirements of a complaint:

      • Based on information and belief[§ 2151(A)(2)];
• Facts contained in ordinary and concise language; [Juv. R. 10(B)(1)]

• Must allege that child is abused, neglected, or dependent with supporting facts;

• Name and address of parent and guardian; [Juv. R. 10 (B)(2)]

• Made under oath; [Juv. R. 10 (B)(3)]

• If the Agency desires permanent or temporary custody, or placement in a planned permanent living arrangement, the Complaint must specifically request one of these dispositions and state facts as to why. [Juv. R. 10] (D)-(F)]

c. If child is taken into custody by emergency order (§ 2151.31), a complaint must be filed before the end of the next business day.

d. Venue (Juv. R. 10 and 11; O.R.C. § 2151.27) [effective 4-11-05]

  i. Delinquency, unruly, neglect, dependency, and abuse complaints may be filed in the county of the child's residence or legal settlement, or in the county in which the act occurred.

  ii. Complaints concerning custody (i.e., applications to determine custody or applications for writ of habeas corpus) must be filed in county where child is found or was last known to be.

H. Shelter Care Hearings

When a child is removed from his/her home, either by police or by an emergency custody order, the law requires that the court review the issuance of that order on the next business day or within no more than 72 hours after the child is placed. That is done at what is known as a “shelter care hearing,” or a “temporary hearing.”

The shelter care hearing is informal in nature. The court looks at all relevant information, without the restrictions that must be followed at trial. (Hearsay and opinion evidence can be considered without regard to the formal rules of evidence).
What happens at this shelter care hearing? This is regulated by O.R.C. § 2151.314. (See Relevant Statutes and Rules)

- The purposes of the hearing are to:
  
  - Determine if there is probable cause that any of the conditions set forth in the emergency custody statute were present
  
  - Determine that the agency used reasonable efforts to prevent removal of the child from the home, eliminate the continued removal of the child from his home, and make it possible for the child to remain in or return to the home
  
  - Determine if the continued residence of the child in or return to the home will be contrary to his/her best interest and welfare for the reasons indicated in the Complaint
  
  - If so, determine the child may be safely returned home pending the next hearing
  
  - Ensure the safety of the child pending the next hearing. Counsel for the PCSA may request the juvenile court to issue one of the following temporary orders:
    
    - An order granting, limiting, or eliminating visitation rights
    
    - An order requiring a party to vacate a residence that will be lawfully occupied by the child
    
    - Any other order that restrains or otherwise controls the conduct of any party that would not be in the best interest of the child

In addition, the court must:

1. Make sure there’s probable cause to believe that the child is abused, neglected, or dependent.

2. Make sure that the parents understand that they have the right to counsel, and appoint counsel for them if necessary.

3. Appoint a Guardian Ad Litem to represent the child.
4. Determine whether an alleged abused, neglected, or dependent child **should remain or be placed in shelter care.**

5. Determine if there are any relatives who can care for the child (more time may be required for investigation of this issue).

6. Determine if there is any need for **testing of the child or parents**, and order it if appropriate (psychological, medical, drug testing of; child, parents).

7. Determine whether there might be a need for **interim orders** pending trial. E.g. physical or mental exam of the child, temporary support order, interim custody orders, restraining orders. Generally, the court looks to the parties (e.g. caseworker) to request any orders at this shelter care hearing; don’t count on the court to make orders on its own).

   (Any party may request an interim order from the court at any time between the filing of the complaint and trial. As the circumstances of the case change, causing the risk to the child to go up or down the caseworker may want to request a change in the interim orders. The parent is generally entitled to notice and hearing, but the worker can request an ex parte order, with the understanding that if such a request is granted it must be followed by a shelter care hearing.)

8. Set a date for the next court hearing.

I. **Temporary Orders Pending Hearing of Complaint** (found in O.R.C. § 2151.33, [effective 12-13-02]; Juvenile Rule 34)

Before the adjudicatory hearing, the worker may request and the court can order any action that would protect the best interests of the child. The court can also restrict or control the conduct of any party that would not be in the best interests of the child. In essence, this is the **safety plan** that the worker creates for the child.

**§ 2151.33 states:**

“(A) Pending hearing of a complaint filed under section 2151.27 of the Revised Code or a motion made under division (B) of this section ... the juvenile court **may make any temporary disposition of any child that it**
considers necessary to protect the best interests of the child and that can be made pursuant to division (B) of this section. Upon the certificate of one or more reputable practicing physicians, the court may summarily provide for emergency medical and surgical treatment that appears to be immediately necessary to preserve the health and well-being of any child concerning whom a complaint or application for care has been filed ... [and] may order the parents, guardian, or custodian, if the court finds the parents, guardian, or custodian able to do so, to reimburse the court for the expense involved in providing the emergency medical or surgical treatment.(emphasis added). . . . ”

“(B)(1) After a complaint, petition, writ, or other document initiating a case dealing with an alleged or adjudicated abused, neglected, or dependent child is filed ..., the court, prior to the final disposition of the case, may issue any of the following temporary orders to protect the best interests of the child:

a. An order granting temporary custody of the child to a particular party;

b. An order for the taking of the child into custody pursuant to § 2151.31 of the Revised Code pending the outcome of the adjudicatory and dispositional hearings;

c. An order granting, limiting, or eliminating visitation rights with respect to the child;

d. An order requiring a party to vacate a residence that will be lawfully occupied by the child;

e. An order requiring a party to attend an appropriate counseling program that is reasonably available to that party;

f. Any other order that restrains or otherwise controls the conduct of any party which conduct would not be in the best interest of the child."

The court prior to the final disposition of the case shall issue an order requiring the payment of child support and the maintenance of health insurance coverage that existed at the time of the filing of the complaint.

[paraphrased from § 2151.33 (B)(2)].
If an ex parte order is issued, that is, the parents were not present at a hearing prior to the court making the order, the parties must thereafter be notified in writing and have right to a hearing concerning continuing effects of such order within 72 hours or before end of next business day, whichever comes first. [paraphrased from 2151.33(D); see also Juv. Rule 13].

J. Roles of the Players Involved in Court Hearings

1. **The County Prosecutor** is not a party to the action. In many counties he fulfills two roles: as representative of the state and as the attorney for the PCSA. The prosecutor has the obligation to assist in the presentation of the evidence, O.R.C. § 2151.40, and to represent the people of Ohio. This division of roles may be difficult for caseworkers to understand, when the prosecutor, in his role as representative of the people of the state of Ohio, wishes to proceed in a manner that is at variance with the wishes of his client, the PCSA. Some public children services agencies are able to hire attorneys to represent them in juvenile court. Agency attorneys do not have a responsibility to be representatives of the people of the state.

The prosecutor fulfills the following responsibilities:

   a. Interviews social workers and helps prepare them for court
   b. Provides legal advice to the agency
   c. Prepares and files complaints for abuse, neglect, and dependency (However, in some counties caseworkers or court liaison staff fulfill this function.)
   d. Tries the case in court
   e. Requests and complies with discovery demands
   f. Files objections and appeals to orders, decision, and judgments

2. **Defense counsel** - The parents may hire their own attorney or the court may appoint a public defender or assign counsel to represent the parents' interests. Defense counsel conduct the following activities:
a. Assists parents in understanding their legal rights and remedies regarding case plan compliance and reunification
b. Seeks discovery from the PCSA
c. Files motions and briefs
d. Cross-examines the prosecutor’s witnesses
e. Presents witnesses who support the defense’s case
f. Files objections and appeals to adverse decisions, orders, and judgments
g. Advocates on behalf of the parents

3. The PCSA caseworker may or may not be a party to the action. The trainer should provide examples as to when the “party” status applies. The caseworker fulfills the following duties related to juvenile court:

   a. Initiates court proceedings to protect children
   b. Provides testimony regarding the child’s and family’s situation
c. Files case plans with the court
d. Obtains progress reports from service providers
e. Informs family members regarding court processes and their rights and responsibilities regarding court processes
f. Provides notice, as required by agency policy and procedure and statute regarding court hearings
g. Works with the prosecutor or agency attorney to prepare the case for court

4. Grandparents, relatives, foster parents, adoptive parents - According to Ohio statute, relative caregivers and foster and adoptive parents have a right to be present at juvenile court hearings and to present testimony. They must be provided notification of the date, time, and location of juvenile court hearings. In some counties the court provides notification; in other counties the public children services agency provides notification. They may also be made a party to the case, but not unless designated as such by the court. Most often, the caseworker, law enforcement personnel, foster caregivers, and service providers are mere witnesses to the case, not parties. Their role is to provide testimony during the court hearing.
5. **Guardian-ad-litems** - Frequently, during domestic relations hearings, and especially child protection hearings, the court assigns a GAL to protect the best interests of the child. The role of Guardian-ad-litems is stipulated in state statute. Courts usually consider GALs to be the most objective party representing the child’s best interest. They are officers of the court, and are parties to juvenile court cases. As such, they must be provided with notice of all court hearings, administrative reviews, and other proceedings in the same manner as notice is given to parties to the court action. Their role is powerful in juvenile court hearings. The GAL role can be filled by a paid attorney or social worker or by a volunteer citizen advocate known as a court appointed special advocate (CASA). They receive specialized training in child welfare issues, court procedures, and legal issues. The GAL and CASA can present evidence and question witnesses, if they are attorneys. Caseworkers should cooperate with CASAs and GALs and provide any information they request. The GAL should perform any functions that are necessary to protect the best interest of the child and make recommendations to the court regarding the best course of action for the child. Their responsibilities include, but are not limited to the following:

a. Meet with the child  
b. Monitor court proceedings  
c. Monitor services provided to children in the temporary or permanent placement of the PCSA  
d. File any motions or court papers in the best interest of the child  
e. Review case records and records from school, mental health, physician, etc.  
f. Provide testimony in court as to the safety and needs of the child  
g. If they are attorneys, they may question witnesses and present evidence in court

K. Case plan

- The case plan should be filed with the court prior to the child’s adjudicatory hearing, but no later than 30 days after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care.
• If the Agency does not have sufficient information prior to the adjudicatory hearing to complete any part of the case plan, the Agency shall specify in the case plan the additional information necessary to complete each part of the case plan and the steps that will be taken to obtain that information.

• All parts of the case plan shall be completed by the earlier of 30 days after the adjudicatory hearing or the date of the dispositional hearing for the child.

• The law (2151.412(G) gives agencies and courts some guidelines to follow when creating a case plan. To summarize, the statute says that the child’s health and safety shall be the paramount concern when developing a case plan. The agency and the court shall be guided by the following general priorities:

1. If at all possible, child should be kept or returned to his/her parents’ legal custody (court may simultaneously order protective supervision);

2. If that isn’t possible/appropriate, the court should place child in legal custody of a relative;

3. If that’s not possible/appropriate, child should be placed in legal custody of a suitable non-relative (e.g. family-friend);

4. If not possible/appropriate, child should be placed in the temporary custody of PCSA or private child placing agency

5. Permanent custody/adoption

6. If child is to be placed for adoption or foster care, placement shall not be delayed or denied on the basis of the child’s or adoptive/foster family’s race, color or national origin. (state’s codification of MEPA/IEPA)

• These general priorities are simply guidelines—not mandatory. There are also prerequisites to some of these guidelines.

• Note that “planned permanent living arrangement” is not listed in this priority statute because it is not a preferred status. It is not looked on favorably because it leads to instability, limbo.
L. Discovery – sharing information with the parent’s attorney and the G.A.L

Between shelter care hearing and adjudication there is discovery where both sides get to learn what information that the other side has. The purpose of trial is to get to the truth. So the law developed the discovery rules. (Juvenile Rule 24). Juvenile Rule 24 (A) says that each party has the right to inspect, copy, and photograph the following material that is in the hands of the other side:

1) Names and addresses of witnesses
2) Copies of any written statements by any party or witness
3) Transcripts/records of oral statements by any party or witness
4) Scientific or other reports, photographs and physical evidence
5) Any other relevant evidence

Full disclosure allows each party to make an informed decision as to whether they should go to trial or try to settle the matter.

For social workers, the item most likely to be sought in discovery is your “ROA” (record of activities). So be careful what you write. Anticipate that it may have to be turned over to the other side’s counsel. Keep it factual, unbiased, and succinct.

The parents’ attorneys are just waiting to attack your credibility. If you include negative opinions about a person in your record of activities, that person’s attorney is likely to say “Isn’t it correct, Mr. or Ms. Caseworker, that you just don’t like my client, and that’s why you’ve brought this action against him?”

Some Ohio courts also allow the Family Risk Assessment Matrix to be shared with the other side.

If a party believes that disclosing certain information may subject a child or a witness to risk of harm that party may request a protective order relieving the party of the obligation to disclose. The court will usually review the information privately and decide whether or not to require disclosure of the information.

If a party fails to disclose required information, the court can impose sanctions. (E.g. the court may prevent the party from introducing the withheld information.)
M. Working with Guardian Ad Litem

1. The Importance of the Caseworker to the GAL

The importance of the caseworker should not be underestimated. He/she is frequently the primary source of information for the GAL. It is essential for the GAL to establish a working relationship with the caseworker, and visa versa.

2. The Stereotypic Notions: Antagonism between the lawyer and social worker.

The disciplines of law and social work have been described as polarized - the "legal technicalities" and the "bleeding heart." The mutual ignorance of the other profession's services and the lack of collaboration between lawyers and social workers have promoted a certain amount of alienation from each other.

a. The Lawyer’s View of the Social Worker

The legal profession sees social work as offering charity and not as a profession. Every social worker has a "savior syndrome," and their socio-psychological principles are simply a utilization of common sense with a smattering of emotional overtones. They see their clients as victims of society and blameless for their problems. The social worker operates from the heart, not the head.

b. The Social Worker’s View of the Lawyer

The social worker sees the lawyer as an egocentric combatant who is ready at the drop of a hat to end a dispute through adversary action rather than through mediation or conciliation. The lawyer lacks sensitivity to the human condition and has no insight into the true meaning of "counselor." He/she is obsessed with the technical, rigid, and logical approach to problem solving and has no understanding of the complexities of the human personality. He/she is akin to the bull in the China Shop. The social worker believes that Charles Dickens’ character, Mr. Bumble, accurately sums up their view of the law and the lawyer when he said, "If the law supposes that, the law is an ass, an idiot."
c. Mutual Education

The professions of law and social work are attempting to bridge the gap. Dual degrees in law and social work are offered in graduate studies, and the mutuality of trust and respect is growing.

3. Investigating the Case.

Convey objectivity and respect for the work of the GAL. Promote cooperation on the immediate case and on subsequent assignments.

4. Avoiding the Conflict Over Territory

• The casework’s perception of his/her goal:

By taking a case to court, the caseworker believes it is necessary to force legal sanctions on the parents to protect the interests and well being of the child. Although the caseworker still wants to maintain or rehabilitate the family as a unit, the focus shifts to the concerns and needs of the child. The caseworker believes he/she is representing the best interests of the child.

• The GAL’s perception of his/her goal:

Both the GAL and the caseworker have mutual and overlapping interests in promoting the welfare of the child. The GAL’s job is different in that he/she investigates all sides of the matter, legally advocates for the child, and presents to the court his/her dispositional recommendation. The GAL does not have to agree with the caseworker.

5. Information Provided by the Caseworker

The social summary, prepared by the caseworker, gives the GAL an overview of the case. A discussion with the caseworker provides other valuable information. Besides additional first-hand information, the worker can tell the GAL about the parents, the witnesses and the nature of their involvement, the relatives, relevant records and reports (i.e., psychological evaluations, medical records, school reports, and law enforcement reports), and the whereabouts of the child he/she is assigned.
6. Communicating with the Child

The social worker can be helpful in preparing the GAL to talk to the child. There are a variety of situations in which communication with the child will be difficult (i.e., severe neglect, sexual abuse, or when the child has emotional problems). The caseworker can also give an opinion on the advisability of having the child testify.

7. Disagreeing with the GAL

As caseworker, you can disagree with the GAL. Make sure your disagreement is based on sound principles and you have the experts necessary to justify your conclusion.

N. Adjudicatory Hearing (found in O.R.C. § 2151.35 [eff. 04-03-03]; Juv. R. 27; Juv. R. 29)

1. Scheduling of Hearing

The time for the adjudicatory hearing must be set no later than 72 hours after the complaint is filed.

If the child is in shelter care, the adjudicatory hearing is supposed be held no later than 10 days after the filing of the complaint (will have already had a probable cause/shelter care hearing by the business day after the child was taken into custody, but no later than 72 hours). But this rarely happens because the law also requires that parents be notified of the trial, and the notice rules say that the parents must be given 21 days notice of any hearing or trial. So in practice, trial is usually scheduled for 30-60 days following the date of removal.

If child is not detained, hearing must be held 30 days after the complaint was filed, or earlier. For good cause, the hearing may be postponed for an additional 30 days, but in no event later than 60 days after the complaint was filed (i.e., for parties to obtain counsel or to complete any necessary evaluation).
2. Notice

The parents have the right to be notified of the trial. This happens through what is called service of process. This can happen in three ways:

a. Personal Service. The sheriff’s department goes out to where the parent is and personally hands him/her the notification; (typically more expensive, this method is used when you think a parent won’t sign to accept service by certified mail).

b. Certified or Express Mail. The notification is sent to the last known address of the parent/s and they must sign for it; or

c. Publication. If the parents’ whereabouts are unknown, an affidavit can be filed stating that efforts had been made to locate the parents, but they could not be found.

3. Conduct of Hearing (Juv. R. 29 (B)(3))

Every abuse/neglect/dependency action is a two step process:

Adjudication (trial)—did it happen?
Disposition—what are we going to do about it?

The purpose of the adjudicatory hearing is to determine whether or not the child is abused, neglected or dependent. The **focus at adjudication is what happened**—i.e. whether or not the parents did anything wrong to the child. Only evidence of “unfitness” is admissible during this hearing. The best interests of the child is **not** considered at the adjudicatory phase.

a. Prior to accepting plea, parents must be advised of right to counsel.

b. Standard of proof is "clear and convincing evidence" in dependency, neglect, and abuse cases. [§ 2151.35 (A)(1)]. It is up to the state to prove that the parents are unfit—not the other way around. The parents do not have to prove that they are fit.

c. Split of authority. Several cases have held that the neglect or dependency must be established as of the date specified in the complaint. Other cases require that evidence of neglect or
dependency be established both at the time specified in the complaint and the time of the hearing.

d. Formality. The court follows the formal rules of evidence, and witnesses give sworn testimony.

e. Procedure. The adjudicatory hearing occurs in several stages:

1. Introductory Procedures (pre-trial motions)
2. Opening Statements
3. State’s Case:
   - direct
   - cross
   - re-direct
   - re-cross
4. Motion to Dismiss
5. Parents’ Case:
   - direct
   - cross
   - re-direct
   - re-cross
6. Rebuttal
7. Closing Arguments
8. Decision

4. Procedure upon Determination of Issues (§ 2151.35(B)(1); Juv. R. 29 (F)) If the allegations of the complaint are not proved, the complaint must be dismissed.

If the allegations are admitted or proved, the court may:

a. Enter an adjudication and proceed immediately to disposition if the parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing; or

b. Adjudicate and continue for disposition for not more than 30 after the adjudicatory hearing and not more than 90 days from when the complaint was filed. Upon request of any party, the court may postpone the dispositional hearing for not more than 90 days.
c. The court may make any appropriate temporary orders before the dispositional hearing.

d. If the dispositional hearing is not held within the time period as required by law, the court shall dismiss the complaint without prejudice.

O. Dispositional Hearing  (found in O.R.C. § 2151.353 [effective 4-11-05]; O.R.C. §§ 2151.354 [effective 1-1-01]; Juv. R. 34)

Once a child is adjudicated neglected, dependent or abused, the court must hold a separate hearing called the dispositional hearing. The purpose of the dispositional hearing is to determine what to do with the child who has been adjudicated dependent, neglected or abused.

1. It may be conducted immediately after the adjudicatory hearing, if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing, and all parties consent to proceeding immediately to disposition, but it may be conducted no later than 90 days after the complaint was filed [paraphrased from Juv. R. 34 (A)]. However, in many courts the 90 day rule is routinely waived.

2. Any material and relevant evidence, including hearsay and opinion evidence, may be admitted in order to determine disposition [paraphrased from Juv. R. 34 (B)(2)].

3. Medical examiners, probation officers, and each investigator who prepared a social history may not be cross-examined, except upon the consent of all the parties or as the court directs [paraphrased from Juv. R. 34 (B)(3)].

4. As in the adjudication, the State bears the burden of proof at the dispositional hearing of convincing the court that its case plan for the child should be approved. And it must do so by a preponderance of the evidence, except for a disposition of PPLA or TPR (permanent custody) where the burden is clear and convincing evidence.

5. The primary consideration at the dispositional hearing (unlike at the adjudicatory hearing where it is not considered at all) is the best
interests of the child. The court must focus its disposition on providing for the care, protection and mental and physical development of the child.

P. Dispositional Alternatives (found in O.R.C. § 2151.353 effective 9-21-06)

"If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:" [2151.353(A)]

1. Protective Supervision: “Place the child in protective supervision” [2151.353(A)(1)]: That is, permit child to remain with the parents subject to conditions and limitations the court may set (visitation, order support and maintenance, order a party into counseling, etc.) “If the court issues an order for protective supervision ..., the court may place any reasonable restrictions upon the child, the child’s parents, guardian, or custodian, or any other person, including but not limited to any of the following:

   a. **Order a party**, within 48 hours after the issuance of the order, to **vacate the child’s home** indefinitely or for a specified period of time;

   b. **Order a party**, a parent of the child, or a physical custodian of the child to **prevent any particular person from having contact with the child**;

   c. **Issue an order restraining** or otherwise controlling the conduct of **any person** which conduct would not be in the best interest of the child.” [O.R.C. § 2151.353(C)].

2. Temporary Custody: “Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home or in any other home approved by the court.” [2151.353(A)(2)] If a motion is filed that requests permanent custody of the child, the court may grant permanent custody of the child to the movant in accordance with section 2151.414 of the Revised Code (paraphrase from O.R.C. § 2151.353 (B)(1)).
3. **Legal Custody:** “Award legal custody of the child to **either parent** or to **any other person who, prior to the dispositional hearing, files a motion** requesting legal custody of the child; or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings” [2151.353(A)(3)]. The statute further stipulates that the person receiving custody must sign a statement agreeing to the following: a) that the person is able to assume legal responsibility for the child; b) that the legal custody will be permanent, until the child reaches the age of majority; that legal custody will continue, if at the age of majority the child is still in school or completing an individualized educational program; and that it will continue until the child is no longer pursuing or is excused from high school or the individualized educational program until the child completes high; c) that parents have residual rights, privileges and responsibilities, including, but not limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child’s religious affiliation, and the responsibility of support; and d) the person must be present at the dispositional court hearing to affirm the person’s intent to become a legal custodian, that they understand the custodianship, and to answer any questions.

4. **Permanent Custody of Public or Private Agency:** “Commit the child to the **permanent custody of a public children services agency or private child placing agency,** if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the **child cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent, and** determines, in accordance with division (D) of section 2151.414 of the Revised Code, that the permanent commitment is in the **best interest of the child.** If the court grants permanent custody, the court, upon request of any party, shall file a written opinion setting forth its findings of facts and conclusions of law in relation to the proceeding” [2151.353(A)(4)].

5. **Planned Permanent Living Arrangement with Public or Private Agency:** “Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned
permanent living arrangement, and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

a. The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.

b. The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, and adoption is not in the best interest of the child, as determined in accordance with division (D) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

c. The child is sixteen [16] years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living." [2151.353(A)(5)].

6. Removal of Harmful Persons: "Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, or who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings (emphasis added)" [2151.353(A)(6)].

Q. Mediation – as a method to use instead of court

In recent years, juvenile courts across the state have turned increasingly to mediation as an alternative to the traditional adversarial court process in child protective actions. In mediation, an impartial third party (the mediator) facilitates a process of negotiation and problem solving between the parties, with the goal of helping them to reach an agreement that meets the most important interests or concerns of each.
The mediator does not take any position as to who is “right” and who is “wrong” in the situation; nor does the mediator try to get to the “truth” of the conflict. Finally, the mediator does not advise the parties as to what would be a “fair” resolution of their dispute. The philosophy of mediation is that the parties themselves are in the best position to make such determinations. The mediator’s job is to create an environment and provide a structure within which the parties can communicate about their differences, find new and creative alternatives for resolving those differences, and reach agreement.

Mediation can reduce the crowded court dockets that sometimes delay the court’s ability to hear and decide cases. Studies have also shown that it tends to reduce recidivism because the parties are more likely to feel a sense of ownership of the decisions that are made and, therefore, are more likely to adhere to them. Not every case is suitable for mediation, however. In order to mediate, both parties must be willing to participate fully in the process, to consider the needs of the other party as well as their own, and to negotiate in good faith.
SECTION V: POST-DISPOSITIONAL PROCEEDINGS IN CHILDREN’S CASES

A. Continuing Jurisdiction (Juv. R. 35)

1. Applies typically to modification of child support and child custody orders

2. Commitments to departments of youth services or permanent custody of child welfare agencies terminate jurisdiction of Court, except that

   Agency having permanent custody may apply for termination of custody.

B. Terminating of Temporary Orders, Sunset Hearings (O.R.C. § 2151.353 effective 4-11-05)

1. Termination of Temporary Orders – General Rule

   a. “Any temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care.” [quoting O.R.C. § 2151.353 (F)].

   b. However, “upon filing a motion pursuant to section 2151.415 of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section.” [2151.353 (F)].

2. Extension or Termination of Temporary Order - Procedure [quoting O.R.C. § 2151.353 (G)(1)]

   Temporary Custody of a Child

   If an agency is given temporary custody of a child, that temporary custody order will last for one year.

   But under certain circumstances, the one-year termination date can be extended. At least thirty days prior to the end of that year,
the agency must file a motion asking that the court order one of the following:

- that the child be returned home, to his/her parent’s custody, without any restrictions
- protective supervision
- legal custody to a relative or other interested individual
- permanent termination of parental rights
- a planned permanent living arrangement if the agency requests a PPLA it must present evidence indicating why a PPLA is appropriate, including evidence that the agency has tried or considered all other possible dispositions for the child.
- an extension of temporary custody (§ 2151.415 (D)(1)).

If asking for an extension of temporary custody, the agency must include in its motion an explanation of the progress on the child’s case plan and of the prospects of reunifying the child with his family or placing the child in a permanent placement within the extension period.

A hearing is required. (Can be combined with the permanency hearing required under § 2151.) At this hearing, the agency must show, by clear and convincing evidence, that:

- the extension is in the child’s best interests;
- there has been significant progress on the child’s case plan;
  AND
- there is reasonable cause to believe that the child will be reunified with one of his parents or otherwise permanently placed within the extension period.

If the agency meets this burden, the court can grant the extension.

At the end of the six month extension the agency may request another 6 month extension. Same requirements as for the first extension, except agency must show that there’s been additional progress since the last extension was awarded.

But don’t forget the 12/22 rule. Once the child has been in foster care for any 12 months (needn’t be consecutive) out of a consecutive 22 month period, the agency must file for permanent custody unless 1) there is a compelling reason not to, 2) the agency
hasn’t provided services it was supposed to; or 3) the agency has already filed for permanent custody.

The only way a worker can ask for an extension of temporary custody is if one of these three exceptions applies.

Protective Supervision

If the court originally ordered protective supervision, then at the end of one year a party may ask for termination of the order or for a 6 month extension.

No hearing is required unless someone asks for one. If no one asks for a termination or extension, the court may terminate or extend the order on its own, without a hearing. The court has to notify everyone that it’s going to make a decision without a hearing unless someone asks for one within 7 days.

If someone does ask for a hearing, one must be held within 30 days. In any event, the court must decide whether to, in the best interests of the child, terminate the protective supervision order, or extend it for 6 months.

If the court extends the order for 6 months, the same process is repeated at the end of the 6 months. The court may at that time grant one more 6 month extension of protective supervision if it’s in the child’s best interests. But at the end of the second extension the court has to terminate the protective supervision order.

a. **Timing:** “No later than one year after the earlier of the date the complaint in the case was filed or the child was first placed in shelter care, a party may ask the court to extend an order for protective supervision for six months or to terminate the order.”

b. **Request by Agency:** “If a public children services agency or private child placing agency requests termination of the order, the agency shall file a written status report setting out the facts supporting termination of the order at the time it files the request with the court.”

c. **Result of Failure to Request:** “If no party requests an extension or termination of the order, the court shall notify the parties that the court will extend the order for six months or terminate it, and that
it may do so without a hearing unless one of the parties requests a hearing."

d. Notice of Termination or Extension: “All parties and the guardian ad litem shall have seven days from the date a notice is sent ... to object to and request a hearing on the proposed extension or termination."

3 If Hearing Requested by Party: [quoting O.R.C. § 2151.353 (G)(1)(a)]

a. Timing of Hearing: “If [Court] receives a timely request for a hearing, the court shall schedule a hearing to be held no later than 30 days after the request is received by the court.” (Court shall give notice of hearing to all parties)

b. Conduct of Hearing:

i. “At the hearing, the court shall determine if extension or termination of the order is in the child's best interest.”

ii. “If termination is in the child's best interest, the court shall terminate the order.”

iii. “If extension is in the child's best interest, the court shall issue and order extending the order for protective supervision six months.”

4 If No Hearing Requested by a Party: [quoting O.R.C. § 2153.353 (G)(1)(b)]

a. “[T]he court may extend the order for six months or terminate it without a hearing, and shall journalize the order of extension or termination not later than fourteen [14] days after receiving the request for extension or termination or after the date the court notifies the parties that it will extend or terminate the order.”

b. “If the court does not extend or terminate the order, it shall schedule a hearing to be held no later than thirty [30] days after the expiration of the applicable fourteen-day [14-day] time period and give notice of the date, time, and location of the hearing to all parties and the child's guardian ad litem.”
5. If the court grants an extension of the order for protective supervision ... a party may, prior to the termination of the extension, file with the court a request for an additional extension of six months or for termination of the order.” The procedures for requesting this additional extension or this termination are the same as for requesting the initial extension or termination as set forth, above. [quoting O.R.C. § 2151.353 (G)(2)].

If an additional extension is granted, the court shall terminate the order for protective supervision at the end of the extension. O.R.C. § 2151.353 (G)(3).

C. Appeals

The Court of Appeals has jurisdiction as to questions of law relative to the finding, order, or judgment of a Juvenile Court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such Court. (O.R.C. § 2501.02; See also, O. Const. Art IV).

Applications for stays of Juvenile Court order must be initially made in the Juvenile Court (App. R. 7(A)), and will be stayed only if suitable alternative provision is made for the child (App. R.7(c)).

Appeals of children’s cases take precedence over all other cases in the court to which the appeal is taken (App. R. 7(c)).

The timeline for the entire juvenile court processes is on page 67.
### Timeline of a Case Through the Court and Agency

<table>
<thead>
<tr>
<th>DAY 1</th>
<th>BY DAY 30</th>
<th>BY DAY 90</th>
<th>6 MONTHS</th>
<th>12 MONTHS</th>
<th>18 MONTHS</th>
<th>24 MONTHS</th>
</tr>
</thead>
<tbody>
<tr>
<td>File Complaint/Enter Shelter Care</td>
<td>File Case Plan in Court</td>
<td>Administrative Review with Parents, Guardians, Foster Parents</td>
<td></td>
<td></td>
<td>“Sunset” Dispositional Hearing on temporary custody and protective supervision</td>
<td></td>
</tr>
</tbody>
</table>

#### Adjudicatory Hearing
- Determine abuse, neglect or dependency by clear and convincing evidence

#### Dispositional Hearing
- Determine the best interests of the child by a preponderance of the evidence
- Filed, approved and journalized by the court

#### Possible Dispositions
- Return child home with no restrictions
- Return child home with protective supervision
- Legal custody
- Guardian
- Terminate parental rights/permanent custody to agency
- Planned permanent living arrangement
- Extend temporary custody up to six months

#### Hearing
- Disposition of temporary custody cases
- **Hearing** on extended temporary custody and protective supervision cases
- Can extend temporary custody and protective supervision for another 6 months
- **“Sunset” Dispositional Hearing** on temporary custody and protective supervision
- Review reasonable efforts at reunification
- Can extend temporary custody and protective supervision for another 6 months

**Module III: Legal Aspects of Family-Centered Child Protective Services**

**Ohio Child Welfare Training Program**
SECTION VI: REQUESTING PERMANENT CUSTODY – WHEN AND ON WHAT GROUNDS

(O.R.C. § 2151.413 (was formerly known as HB 471) (effective 7-1-00), § 2151.414 (effective 10-5-00), § 2151.419 (effective 10-29-99).

The permanent custody statutes have as their stated purpose to ensure safety and permanency for all children. They take the position that foster care is a temporary setting and not a place for children to grow up.

A. Concurrent Contingency Planning.

Under the belief that every child deserves permanency, the law requires agencies to do concurrent contingency planning with families. That means that at the same time as it is making reasonable efforts to keep a child at home or reunify a child with his parents, the agency can develop a contingency plan for permanency for the child, just in case the reunification efforts don’t work.

B. Permanency Hearings.

In all cases where reasonable efforts are required, there must be a permanency hearing within twelve months after the child entered foster care. Permanency plans considered by the court must include whether and when the child should be returned home, placed for adoption, or be under the guardianship of another individual. Agencies must document the steps taken to recruit and find a permanent home for the child.

C. Permanent Custody.

Permanent custody is the most drastic dispositional alternative available to the juvenile court. Permanent custody is a legal status which takes away the parent’s rights and responsibilities concerning their child and gives them to the agency. With temporary and legal custody the parents still have “residual” parental rights—the right to reasonable visitation, to consent to adoption, to determine their child’s religious affiliation, and the responsibility for support. With permanent custody, the parents lose even these residual rights and responsibilities.

The agency may ask for permanent custody as part of the initial abuse, neglect or dependency proceeding. If it does, the court may hear the permanent custody motion at the time of the dispositional hearing. But because of the value that our culture places on maintaining the family structure and protecting the rights of parents, as well as protecting the child’s right to the companionship of his/her siblings, permanent custody is used only
as a last resort, and the agency will often first seek temporary custody and file later for permanent.

Because so much is at stake, permanent custody cases are more likely to be appealed. And the procedural requirements are a lot stricter. Unlike temporary custody and legal custody, which often rely on informal hearings, with permanent custody the entire process is a full blown trial—because we’re terminating parental rights—a high value. The formal rules of evidence apply.

Following are **requirements** regarding granting permanent custody:

1. The court may grant permanent custody at the initial disposition or at any subsequent disposition if it determines

   **Either:**

   that the child can’t be placed with one of his/her parents within a reasonable time or should not be placed with them,

   the child has been in custody 12 out of the most recent 22 consecutive months,

   **OR**

   the child is orphaned or abandoned

   **and**

   that permanent custody is in the child’s best interest. (2151.414(B)(2)).

   This happens only in extreme situations where reunification is not possible. The third topic that the court will look at is whether the agency used **reasonable efforts** to reunify, unless reasonable efforts are not required because of an aggravated circumstance (see factors g – k below.)

2. If the court finds, by clear and convincing evidence, that any one of the following circumstances exists with regard to each parent, it must find that the child can’t be placed with parents within a reasonable time, or shouldn’t be.

   a. parent has failed continuously and repeatedly to substantially remedy the conditions that led to placement

   b. chronic mental or emotional illness, retardation, physical disability or chemical dependency that is so severe that parent is unable to provide an adequate permanent home for the child within a year after hearing:
c. parent has abused or neglected child since the filing of the original complaint

d. parent has shown a lack of commitment by failing to regularly support, visit or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child

e. parent is incarcerated for a crime against the child or a sibling

f. parent has been convicted or pleaded guilty to a covered crime (there are many, including assault, domestic violence, abduction, prostitution) against the child or a sibling and poses an ongoing danger to the child or a sibling

g. parent has been convicted of or pleaded guilty to a certain offenses against a child, and the victim was a sibling or the victim lives in the same household

h. parent has repeatedly withheld medical treatment or food (Jehovah Witness exception if treating child through prayer alone)

i. parent has placed the child at substantial risk two or more times due to alcohol or drug abuse and has rejected or refused to participate treatment two or more times

j. parent has abandoned the child

k. parent has had parental rights terminated for a sibling

l. parent is incarcerated for a crime and isn’t scheduled to get out for 18 months or more

m. parent is repeatedly incarcerated so prevent from caring for the child

n. parent is unwilling to provide food, clothing, shelter and other basic necessities or to prevent child from suffering...abuse or...neglect

o. parent committed abuse or neglect against the child and the seriousness of it makes the parent a continued threat to the child

p. any other factor the court considers relevant.

   In determining the best interest of a child at a permanent custody hearing, the court must consider all relevant factors, including:

   a. the interaction and interrelationship of the child with his/her parents, siblings, relatives, foster parents and out-of-home providers — anyone who may significantly affect the child;

   b. The wishes of the child;

   *If court is asked to consider child’s wishes it must do so, (with due regard to child’s maturity) child is presumed not mature/capable, unless the court determines otherwise. (This is a rule of evidence). Child must understand it’s not good to lie, must know the difference between right and wrong, must not be under undue pressure.*

   c. The custodial history of the child (including whether in temporary custody for 12 out of 22 consecutive months ending on or after 3/18/99)

   d. Child’s need for a legally secure permanent placement and whether it can be achieved by any other means

   *What kinds of situations would fall here? If parents are harassing caretakers, legal custody alone might not be sufficient to protect the caretakers and the child.*

   e. Whether any of the aggravated circumstances that eliminate the need to use reasonable efforts apply:

      • Whether the parent has been convicted of or pleaded guilty to a certain offenses against a child, and the victim was a sibling or the victim lives in the same household

      • Whether the parent has repeatedly withheld medical treatment or food (Jehovah Witness exception if treating child through prayer alone)

      • Whether the parent has placed the child at substantial risk two or more times due to alcohol or drug abuse and has rejected or refused to participate treatment two or more times
• Whether the parent has abandoned the child
• Whether the parent has had parental rights terminated for a sibling

D. Permanency Plan.

When the agency seeks permanent custody, it must file a permanency plan with the court. That permanency plan can \textit{not} include a goal of returning the child home if the court has determined that reasonable efforts are not required.

The court must hold a hearing to approve the permanency plan. This hearing may be held immediately following the determination that reasonable efforts aren’t required—but must be held within 30 days.

One year after it approves the permanency plan, the court must review it in order to make any necessary changes to placement and custody arrangements. Practically speaking, courts will often combine this permanency hearing with the one-year temporary custody or protective supervision hearing.

E. When Agency \textbf{Must} Seek Permanent Custody

Agencies have long had the authority to file for permanent custody of a child at any time that a case is open. There are now certain circumstances in which agencies are now \textit{required} to file for permanent custody.

The agency \textbf{must} file for permanent custody (a.k.a. termination of parental rights) if:

1. \textbf{12/22 Rule}

  - the child has been in foster care for 12 out of the last 22 consecutive months \textbf{12/22 Rule (2151.413 (D)(1)). (needn’t be 12 consecutive months)}

    Exceptions to the 12/22 Rule. (2151.413 (D)(3)):

    The agency shall not file for permanent custody under this rule if

    $\quad$ ➢ the child is in the care of relatives

    $\quad$ ➢ the agency documents in the case plan \textit{compelling reasons} why adoption is not in the child’s best interests;
2. The agency must also file for permanent custody if:

- the child is an abandoned infant
- parent has committed murder or voluntary manslaughter of a sibling
- parent has committed felony assault against child or a sibling
- parent has repeatedly withheld medical treatment or food
- parent has placed the child at substantial risk two or more times due to alcohol or drug abuse and has rejected or refused to participate treatment two or more times
- parent has had parental rights terminated for a sibling

In these same cases, reasonable efforts are not required.

And the court must grant the motion if it determines that the child cannot be placed with one of his/her parents within a reasonable time or should not be placed with them and that permanent custody is in the child’s best interest. (2151.414(B)(2)).
SECTION VII: TAKING IT BACK TO THE JOB: COURT PROCEDURES, POST-DISPOSITIONAL PROCEEDINGS AND REQUESTING PERMANENT CUSTODY

While it is preferable to work with families without court intervention, many times court action is necessary to protect children. This section describes the methods for family/juvenile court involvement from first encounter through permanent custody.

**Knowledge Review: What Did I Learn?**

1. How can a child enter into the emergency custody of children services? (Hint: There are three main ways.)

2. Describe the requirement to make reasonable efforts to avoid removal of a child from his/her home.

3. Are there exceptions to the reasonable efforts requirement? If so, please list them and state what law allows for these exceptions.

4. Why is determining reasonable efforts important to...
   - The agency?
   - The family?

5. Define the purpose of the following hearings, describe the role of the caseworker for each one, and state the burden of proof required:
   - **Adjudicatory:**
     - Caseworker role:
   - **Dispositional:**
     - Caseworker role:
   - **Permanent Custody:**
     - Caseworker role:
6. Under what conditions can a public child services agency seek court approval for a Planned Permanent Living Arrangement?

Emotional Connections: How Do I Feel?

You are working on a case involving a child (1½ years of age) who has been sexually abused. The child has evidence of vaginal bleeding and tearing; however, you cannot identify the perpetrator. Working with the agency attorney, you file an action in Juvenile Court for the child to be removed from her home pending further investigation. You are allowed to remove the child overnight, pending a shelter-care hearing the next morning. At the shelter care hearing the parents claim that the abuser could be any number of other people, such as the babysitter or the neighbor boy who plays with their oldest son. You cannot provide any documentation or other real evidence that either parent was involved. The judge orders protective supervision while your investigation/assessment continues:

1. How do you feel about this situation?

2. What steps can you take to assure the child’s safety during the investigation?

3. Since you cannot remove the child from the home, what types of interim orders might you request? Here are some ideas. What else can you suggest?
   - Sexual offender evaluation
   - No contact with the babysitter
   - No contact with the neighbor boy unsupervised by parents
   - Protective day care

What Does It All Mean for Me?

It is often difficult to remember timelines for each hearing, the purpose of each hearing, and the information needed for each hearing. Consider developing your own organizational system. When you are in court at a hearing, subsequent hearings are often scheduled. Write them immediately on your calendar and confirm these dates when you receive a judgment (JE) entry. Check the JE for dates of upcoming hearings and record these on your calendar immediately. Many agencies already have tickler systems to remind you of these events. Learn about and use them.
Read the JE carefully to ensure the information is accurate and you understand any court orders. If there are discrepancies between what you thought was said in court and what appears in the JE, make sure you go to your supervisor and then to the agency/prosecuting attorney for clarification. During the court hearing, take notes and be sure you are clear on all orders. You are responsible for implementing the terms of the JE that pertain to your work with the family, so make sure you understand each item and its timeframe. Your understanding of the court process is also valuable for the family. Properly explaining each stage of the child protective court action to families often helps them to better comply with court orders.

What have you learned in this section that you can go back and apply on your job? When will you try it?

**One More Thing…May We Suggest**

Make it a point to observe court hearings after this workshop. Pay attention to the process and become familiar with the clerks and other staff at your county’s juvenile court. This often makes the court process easier.

Review the TOOL Manual, Section 8, “Getting Acquainted with Juvenile Court Procedures.” Look through the section, “How a Child Gets to Court,” provided by the Ohio CASA/GAL Association.

**Pearls of Wisdom**

Juvenile court involvement often puts caseworkers and families in adversarial relationships with each other and can harm the development of the casework relationship. Try to get families to cooperate with you before involving juvenile court. Use the court as a tool to protect children, not to punish parents. Engage the court only after you have made every effort to protect the children without court intervention.
SECTION VIII: PREPARATION FOR COURT

A. Preparing Case Information

1. Read the Case File

2. Organize the information

   a. Prepare a chronology/time line
   b. Prepare a narrative summary of the case – what happened in two pages or so
   c. Break down the information by topics that the law will focus on
   d. Read the applicable law
   e. Identify topics that the agency will have to prove
   f. Prepare a case/trial abstract which:
      • What information do you want to present?
      • What evidence do you have that will prove the information?
      • How can that evidence be presented to the court? Who will present the evidence? What can present the evidence?
   g. Schedule a meeting with the lawyer and provide her with a narrative summary, time line, and case abstract ahead of time
   h. Meet with the attorney shortly before trial to prepare for testimony and cross-examination.

B. Preparing to Testify

1. Know the Process
2. Know My Role
3. Know My information

   a. Organize from notes
   b. Prepare answers
   c. What do I know? What don’t I know?
   d. Know the basis for my opinion; know whether I will be able to offer my opinion
   e. Get information into long-term memory

4. Understand the Relationships of the Stakeholders/Players: the judge, the attorneys for the agency and parents, the GAL
5. Gain Experience
   a. Role play
   b. Rehearse
   c. Shadow

C. Sample Narrative Summary

Preparation for an Adjudicatory Hearing
Adapted with permission from Mark Hardin, ABA Center on Children and the Law

Data:

Children: Marissa Smith, age 2  
           Joseph Smith (Joey), age 4

Mother: Alicia Smith, age 20

Biological father: Robert Hall, whereabouts unknown, but may be in Georgia

Hotline referral: August 11, this year

Emergency removal of children from the home: August 11, this year

Shelter care hearing, at which time court granted the agency temporary custody of the two children: August 12, this year

Adjudicatory hearing scheduled: September 12 this year

Narrative

Circumstances under Which the Children Came Into Care: Marissa and Joseph Smith were taken into protective custody on August 11 after being left alone by their mother, Alicia Smith. The agency received a call from a neighbor of the Smiths, who had observed the two Smith children, 4-year-old Joseph and 2-year-old Marissa, looking out of an upstairs bedroom window of their home. The referral source reported that the children lived in the home with their mother, Alicia Smith, but the reporter was concerned that the children might be alone.

The worker immediately went to the home, where s/he was met by the police. No one responded to knocks on the door. However the worker saw
two children looking down from a closed upstairs window. The worker and the police officer tried to enter the home through the front door, which was locked and dead bolted. They subsequently entered through a side door, and found Joseph and Marissa alone upstairs in a bedroom that was locked from the outside. There was no one else present in the home.

The children seemed frightened but unhurt, although Joey had a bump and a large purple bruise on his forehead above his right eye.

**Condition of the Home:** The home was very cluttered and dirty. Dirty dishes were stacked on the kitchen table and in the sink, and there was a strong, unpleasant odor in the kitchen. The toilet in the bathroom was clogged and not usable. There were papers and clothing strewn all over the house, which was sweltering hot and filled with flies. There was one jar of peanut butter and a quart of milk in the refrigerator, and a partial loaf of bread on the counter. Joseph and Marissa’s only bed was a dirty, unsheeted mattress lying on the floor in the upstairs bedroom in which they were found.

**Granting of Emergency Custody:** The Juvenile Court granted an emergency custody order by telephone, and the police officer transported the children to the emergency foster home. The worker following in his/her vehicle.

A shelter care hearing (also sometimes known as a preliminary hearing) was held on August 12th. At that hearing the court granted the agency a temporary order of custody, ordered that Joseph and Marissa remain in foster care, and scheduled an adjudicatory hearing.

**First Contact with the Mother:** On the evening of August 13th, Ms. Smith called the agency frantic about the whereabouts and safety of her children. Ms. Smith indicated that she had left the children in the care of her fifteen-year-old girlfriend, Lanie, while she had traveled to Atlanta with a friend of hers who was delivering a load of furniture (he is a moving van driver). Ms. Smith insisted that the children be returned to her immediately since it was “not her fault” that Lanie had left them alone. The worker explained that the children would have to remain in foster care until the adjudicatory hearing, whereupon Ms. Smith became very angry and verbally abusive. She had no explanation for how the bump and bruise over Joey’s eye may have occurred.

**Subsequent Contacts with the Mother:** The worker has scheduled four interviews with Ms. Smith since his/her first contact with her—three at her home and one at the agency. Ms. Smith failed to answer the door for one of the home visits. She insists that the worker came on the wrong day, but the worker had the date written down on the calendar and is sure there was no
mistake. Ms. Smith also failed to show up for the interview that had been scheduled at the agency. She says she had a doctor’s appointment. In all, she’s missed half of her scheduled appointments with the worker.

Relative Search: The worker contacted maternal grandmother who is lives in Atlanta, Georgia. She daughter (Ms. Smith) and the two children lived there, together, until three months ago when Ms. Smith moved with the children to Ohio with a boyfriend (who has since deserted Ms. Smith.) Maternal grandmother says she is unable to care for the children. Maternal grand-aunt lives an hour away from Ms. Smith. She was contacted by the worker who left a message on her answering machine, and sent her a letter asking her to call the agency. The grand-aunt has not returned the worker’s call or letter.

Alicia has told the worker that she and the children’s father never married. He has never visited the children, nor paid child support, and his name is not on their birth certificates. The last she knew, he was living in their home town in Georgia. Due to this father’s historical lack of involvement or support, the worker has not attempted to contact him, although s/he knows his name.

Mother’s Visits with Children: The worker scheduled visits between the children and their mother. Ms. Smith has missed three of the nine visits scheduled during the four weeks since the shelter care hearing. On two occasions Ms Smith called on the day of the visit to cancel. On the third she simply failed to show up. Joey and Marissa were extremely disappointed on each occasion.

During visits the children seem pleased to see their mother; however Ms. Smith were not very affectionate with the children, and vice versa. The family played games and colored, and Ms. Smith sometime read to the children. Ms. Smith has occasionally allowed Marissa to sit on her lap; however, the worker has not seen Ms. Smith kiss or hug either of the children. Ms. Smith cries when the visits are over and it is time to say goodbye. Joey and Marissa also become tearful.

Children’s Condition: The children’s foster mother reports that Marissa becomes listless and withdrawn for several hours after visits with her mother, and that Joey becomes agitated has nightmares in which he cries out for his mother. Although his mother reports that he is potty trained, Joey is now wetting himself during the day, as well as at night.

Both children have been seen by a physician, and are reported to be in good health. However, the foster mother believes that Marissa seems underweight for her age and that this is the result of a lack of nutritious food. Joseph has a slight speech impediment. At age four he has never attended preschool, and his social skills seem somewhat delayed. He has trouble
sharing and, although he is protective of Marissa, he sometimes becomes aggressive with other children.

**Children’s Adjustment in Foster Home:** Joey and Marissa are doing quite well in their foster home. They seem to be thriving under their foster mother’s consistent and nurturing care. Their foster family has grown quite fond of the children. Marissa tends to cling to her foster mother, while Joey has formed a particularly close relationship with his foster father. They have enrolled Joey in preschool, where he is performing well academically.

**Current Condition of the Home:** Ms. Smith lives in a rented house with two bedrooms. Three weeks after the children were taken into custody little had been done to improve the dirty conditions inside the home. Some of the dirty dishes had been cleared away, but that was about it. The dirt, clutter, and unpleasant odors still remained. The toilet was still broken. Although the worker had spoken with Alicia during their first meeting about the need for her to ask the landlord to fix her broken toilet, Ms. Smith hadn’t called him.

**Mother’s Current Situation:** Alicia appears to be isolated and overwhelmed. Only 20 years old, she moved to this area from Atlanta three months ago with her two children and a boyfriend who is not the biological father of the children. He deserted her a month ago. She has no family or friends in the area. Her only family is her mother, who lives in Atlanta, and is unwilling or unable to assist Alicia or the children at this time. She has no employment and is illegally living on temporary assistance checks from Georgia, forwarded to her by her mother from Atlanta.
D. Bad Examples of Working with the Agency Attorney

Sample Attorney-Caseworker Meeting In Preparation for an Adjudicatory Hearing-
Presentation of Case by Unprepared Worker to Unhelpful Attorney

ATTORNEY: Hi Sean, good to see you. What can I do for you?

WORKER: Hi Robbie. I made an appointment with your secretary last week to see you today about the Smith case. I sent the file at the end of last week. We have the adjudicatory hearing scheduled for this Friday. What do you think?

ATTORNEY: Oh, I haven’t had a chance to look at it. I’ll read it later. Why don’t you just tell me what you think we should argue.

WORKER: Okay. I want the children declared abused or neglected at the adjudicatory hearing and for them to remain in foster care. This mother is not willing to admit she abused her son Joey. She’s also not willing to clean up her house, or meet with me to work on her problems. She doesn’t seem to be looking for a job. The foster parents adore the kids and really want the children to remain with them. If fact, they are even considering adoption. I think the mother is too young and immature to handle the responsibility of raising children. The kids should have some stability, and the foster parents, as an intact, two-parent household who have financial resources, can offer that.

ATTORNEY: Well, before we can talk about disposition, we first have to prove that the children were abused, neglected or dependent at the adjudicatory hearing. Will the mother be contesting this?

WORKER: Yes. She has been very defensive and has hired a lawyer. She says that she will be arguing the agency had no right to take her children.

ATTORNEY: So what legal basis is there for our allegation of neglect?

WORKER: I’m not sure; I was hoping you could tell me that.

ATTORNEY: (Sighing) I really don’t have time for this right now. Well, let’s get some background on the case. Why did the children originally come into care of the agency?
WORKER: I think they were home alone after school. No wait; maybe that is another case I have. Oh yes, now I recall. The mom was on a vacation and left the kids in the house. Uh, maybe it wasn’t a vacation, but she was out of the state. (Worker starts to look through the file.)

ATTORNEY: For how long were the children left alone?

WORKER: I don’t remember. I know it’s in here somewhere (looking through the file).

ATTORNEY: Well, what was the reason for suspecting abuse to the children?

WORKER: I think mom disciplined them harshly. She may have hit them. The son was bruised.

ATTORNEY: Where and when was he bruised?

WORKER: I think he had a bruise on his arm, but I would have to look it up to be exact. I don’t know when. It was an old bruise.

ATTORNEY: How long have the children been in foster care?

WORKER: Since we took emergency custody when I found the children alone.

ATTORNEY: What have you been doing with the mother?

WORKER: I’ve talked to her about finding work, and about cleaning her house. She has done neither. I don’t think she’s applied for employment yet. And her house is a wreck.

ATTORNEY: What about visitation?

WORKER: Oh that has been going on, but poorly. I arranged for ten visits, I think. (Again starts looking through the file again.)

ATTORNEY: I don’t have time for you to be reviewing the file now. Just tell me what you think, if you don’t remember.

WORKER: Let me see. We took custody of the children about four weeks ago and I think I scheduled about two visits a week, so I guess it would be more like seven or eight visits.
ATTORNEY: What do you mean that the visits are going poorly? What facts to you have that support your opinion?

WORKER: Uh . . . I haven't really thought about that. I guess it is just that the mom does not relate well to her children. It is pretty obvious when you see them together.

ATTORNEY: What about the father?

WORKER: Mom says he has never been in the picture. I think he is in Georgia, but I don't know. I'll have to get back to you on that one.

ATTORNEY: Can you tell me why you believe that this mother is neglecting her children?

WORKER: She's not a good parent! She shouldn't be raising kids and the children should be able to stay with the foster family.

ATTORNEY: Why do you say that?

WORKER: They just seem so happy with the foster parents. They're great. They really like the kids. They want to adopt. I think they bought a new dog.

ATTORNEY: Can you be a little more specific? How are you going to explain to the court why the children can't be returned to their mother now that she is home?

WORKER: I thought I already told you that! She has not ever admitted to hitting her kids. Her living conditions are unsuitable for kids because her home is dirty. She is not working. And she might leave the kids alone again. There is no guarantee that she won't just take off again. Her mom said as much to me on the telephone.

ATTORNEY: Are there any witnesses to—what did you say?—her hitting the boy? Didn't you say he had a bruise?

WORKER: I don't think there is any way we can prove she did it. I just don't believe her story.

ATTORNEY: How about the children being left alone? Any witnesses?

WORKER: Well there's me. I can testify, and there is the neighbor who called in the report.
ATTORNEY: Okay, that’s something. But look Sean, I don’t think we have enough specific facts to support our allegations of abuse or neglect. You know Judge Judy, she’s a stickler when it comes to families. Always thinks that the agency overstepped its obligation to respect the rights of parents. I know that she will dismiss our complaint, and find that the children belong with the mother, unless you can prove otherwise. And we don’t have the proof. Maybe it would be better to voluntarily dismiss our complaint and return the children to their mother at this time.

WORKER: Oh, no. That would be just awful. Can’t you just read the file and figure out the facts which would justify a finding of abuse or neglect?

ATTORNEY: I don’t have time. Besides that’s your job.
E. Good Examples of Working with the Agency Attorney

Sample Attorney-Caseworker Meeting In Preparation for an Adjudicatory Hearing - Presentation of Case by Skilled Worker to Knowledgeable and Cooperative Attorney

ATTORNEY: Hi Sean, what can I do for you?

WORKER: Well Robbie, I wanted to talk to you about the Smith case in preparation for the upcoming adjudicatory hearing. Did you get the case record and the abstract I sent last week?

ATTORNEY: Yes. Thanks for writing up a narrative summary. Also I appreciate the case abstract which summarizes the legal basis for finding the children abused, neglected, or dependent. It’s very helpful. Thanks too for all the names and addresses of possible witnesses and what they could testify to. Unfortunately, I haven’t been able to get any further into the case than that. I’ve been in trial all week. Why don’t you give me a quick rundown and bring me up to speed.

WORKER: Okay. (The worker briefly reviews the information that is in the Narrative Summary.)

ATTORNEY: That’s helpful, thanks. There are several things that must be proven in order to prevail at the adjudicatory hearing. First, we have to have clear and convincing evidence that both children are abused, neglected or dependent. That means we need facts to back up the allegations contained in the complaint that we filed. Also, we should discuss how the mother’s conduct is predicted to continue to have an adverse impact on the children such as would warrant continued state intervention. As the Supreme Court of Ohio has held, the determination that a child is abused, neglected or dependent must be based on evidence as to conditions at the time of the hearing. We also need to show the agency’s reasonable efforts to prevent an out-of-home placement. Finally, we should discuss the agency’s efforts to place the children with relatives before turning to a third party foster placement.

I see that you want to find that the mother abused her son Joey. What do you have to show intentional physical abuse?

WORKER: Well, I went out on the initial referral and saw the bruise and bump above Joey’s right eye. The bruise was purple in color, about three
inches long and three inches wide, just above Joey’s eyebrow, on his forehead. It looked kind of like a partial handprint. You could see fingers. I took a picture of it, which is in the file. I asked Joey how it occurred, but at four years of age, he could not give me a good answer.

ATTORNEY: If he was older, he could testify or see the judge in chambers, but asking a four-year-old questions isn’t going to get us anywhere with the judge. A four-year-old child is too impressionable. Anything else that could help prove this allegation?

WORKER: There is also the medical record for Joey that suggests abuse.

ATTORNEY: When did you take Joey for a medical evaluation?

WORKER: I took him on August 12th, the day after he came into the agency’s care.

ATTORNEY: Why does the doctor think the bruising was intentionally caused?

WORKER: Based on the bruise pattern. The doctor, Dr. While, indicated a pattern such as Joey’s is generally intentional. She thought the bump could have occurred from a hard slap to Joey’s forehead with a hand because of the bruise pattern. She did not think it would have come from a fall.

ATTORNEY: And what is the mother’s explanation?

WORKER: She thinks that the baby sitter, Lanie, with whom she left the children, may have caused Joey’s bruise and bump. That is a weakness of this allegation. We really don’t know who the perpetrator is. But the mother’s explanation is still suspect, and I don’t think it is credible. Dr. While is willing to testify that the injury to Joey’s forehead was one to two weeks old, and would have occurred before Ms. Smith left the children with Lanie.

ATTORNEY: What does the babysitter Lanie say about the bump and bruise?

WORKER: She says that it was there when she started to care for the children.

ATTORNEY: Is Lanie available to testify?

WORKER: Not easily. She has moved out of the state. I have written down her current address and phone number.
ATTORNEY: Okay, although I could still subpoena her. I'll decide later if I need her testimony. Any other reasons that you think that the court should find Joey or Marissa abused?

WORKER: We could suggest that there was child endangering. The mother, Ms. Smith, created a substantial risk to the safety of the children, and violated a duty of care when she left them with a 15-year-old sitter for several days, a sitter whom she did not know well, and who was too young to assume care for that period of time. The fact that the sitter became overwhelmed and eventually left the children locked in the bedroom after almost four days helps show the mother's poor choice.

ATTORNEY: Those facts might work to show both children were abused. How about the neglect allegations? They might be stronger, at least for the younger child Marissa.

WORKER: Well, I think that several of the provisions apply. First, although the Smith children were not abandoned by their mother, because we don't have a long enough period of time, and she didn't really want to give up her parenting rights, I do think that Joey and Marissa lacked adequate parental care because of the fault of the mom. Couldn't we argue, like we did for the child endangering allegation, that it was her fault to choose an inappropriate sitter for the child when she left Ohio for several days? Lanie, the sitter, said Ms. Smith didn't even call to check up on her and the children after she left. Also, there was virtually no food in the house when I got there—only one jar of peanut butter, a quart of milk in the refrigerator, and a partial loaf of bread on the counter. But the children couldn’t get to this food anyway since they were locked in the bedroom when Lanie became overwhelmed and left her post.

ATTORNEY: Those facts could support a finding of inadequate parental care, but it might be better to suggest that she neglected the children by refusing to provide them the necessary care while she was away, using sub-section 3 of 2151.03, rather than sub-section 2. The problem with either of these arguments is that we must show that that situation still exists now, or is likely to repeat, so that the children are neglected now, they are still at risk, not just when Ms. Smith left them alone three weeks ago.

WORKER: You're right. I could testify that as a 20-year-old she is without a support system—her mother is in Georgia, and cannot care for the
children. She has no friends in Ohio. Her boyfriend with whom she moved to Ohio deserted her. Alicia also will probably admit that she has no one to turn to, as she has said that to me, repetitively.

ATTORNEY: What about her financial situation?

WORKER: It is unstable as she does not have a job. She is getting welfare checks from Georgia even though she lives in Ohio now, and isn't that illegal?

ATTORNEY: Yes. We may have to inform Georgia, if Ms. Smith refuses to tell them. I'll check on that.

WORKER: She hasn't applied for financial assistance in Ohio, although I have asked her to. She has told me she might have to travel again with Bobbie to get more furniture, if he agrees to pay her, but she hasn't found a reliable sitter to stay with the children. She told me that she would again leave her children with a sitter, but she does not have anyone in mind yet. Maybe another acquaintance from the laundromat, she says.

ATTORNEY: Would the condition of Ms. Smith's home also demonstrate the lack of proper care necessary for the children's well-being?

WORKER: Yes I think so. The Smith home was very cluttered and dirty when the police officer and I first entered it to rescue the children. There were dirty dishes stacked on the kitchen table and in the sink. There was a strong, unpleasant odor in the kitchen, like rotting garbage. The garbage can was filled to overflowing and had spilled out on the floor. There was food caked on the counters and the stove. The pots and pans had food burnt inside and outside of them. When I open the dishwasher, I found it was filled with water which was green and slimy. The toilet in the bathroom was clogged with feces and toilet paper, and would not flush. There were newspapers and clothing strewn all over the house. The temperature was about 95 degrees with all of the windows closed. Yet the house was filled with flies, both alive and dead. The only bed for the children was a dirty, mattress with not sheets lying on the floor in the upstairs bedroom. It smelled of urine.

During my last visit to Alicia's home, one week ago, little had been done to improve the dirty conditions inside the home. Some of the dirty dishes had been cleared away, but that was about it. The dirt, clutter, and unpleasant odors still remained. The dishwasher still was
filled with slimy water. The toilet was still clogged with toilet paper and feces, even more than before. Although I spoke with Alicia during our first meeting about the need for her to ask the landlord to fix her broken toilet, she didn’t call him until yesterday.

**ATTORNEY:** These are good facts and concrete proof for the judge that the situation which required the children to come into the agency’s care still exists and that they are neglected. We should be appearing before Judge Judy. Although she is sympathetic to parents, she is willing to find children to be abused or neglected, as long as there are sufficient facts backing the agency’s position. In this case, I think we have enough. Now, you mentioned in your email to me that Ms. Smith says she has hired a lawyer. Do you know who that would be?

**WORKER:** Yes. Tom Brown.

**ATTORNEY:** OK. He is tough on witnesses, but we can get you ready for his cross examination. He also will likely ask that this be reduced to a dependency, showing that it was not his client’s fault.

**WORKER:** I would not have any problem with that as long as the children can remain in foster care while we continue to work on strengthening Ms. Smith’s parenting skills, and her home and financial situation.

**ATTORNEY:** At the dispositional hearing, we can ask for the same services and the continuation of temporary custody, no matter whether the children are adjudicated abused, neglected, or dependent.

The last thing I want to talk about is our reasonable efforts to reunify Alicia Smith with her children.

**WORKER:** I set up a visitation schedule, twice a week, and there have been nine scheduled visits at the agency visitation center, thus far. Alicia has missed three of the nine visits. I have supervised all six of the visits that she made and can talk in detail about how they’ve been going. In general, the children seemed pleased to see their mother. She is not very affectionate with them as I’ve never seen her either kiss or hug any of the children. She pushes them away when they try to cling to her. She does play games and colors with them. They all cry when the visit is over. And the foster parents report that Joey is agitated after the visits. He has nightmares in which he cries out for his mother. Although his mother reports that he is potty trained, Joey is now wetting himself during the day as well as at night.
Marissa becomes listless and withdrawn for several hours after visits with her mother.

**ATTORNEY:** Have you offered her other services?

**WORKER:** I have scheduled four appointments for her to meet with me and discuss her progress – three at her home and one at the agency. She missed the agency appointment, without an explanation. She was not home for one of the scheduled home visits and says that I confused the date. I have a notation in my file that I telephoned her the day before this scheduled visit to confirm it.

**ATTORNEY:** That documentation will help prove it was not your mistake.

**WORKER:** Good. When I have met with her, she’s been defensive. I’ve offered her homemaker services and transportation; however, she’s angrily rejected all offers of help. She insists she doesn’t want me to interfere in her life.

**ATTORNEY:** What about other relatives?

**WORKER:** Although the birth certificates of both children do not list a father, Alicia gave me his name. She said that he was 25 when they met, a car insurance sales person. Because they never married, and since it seems he has been out of the picture for a while, I have not really tried to search for him in Georgia, where she said he still resides. Alicia says that he has never paid any financial support for the children. She did not give me either a phone number, or an address.

**ATTORNEY:** I would like to show a better effort to contact him. Could you make some additional attempts and report back to me later this week if you have located him? See if you can turn up an address or phone number through the telephone pages, Google, or the worker’s compensation and child support bureaus in Georgia.

**WORKER:** Ok. I have talked Alicia’s mother who says that she cannot care for the children at this point. Alicia’s mother mentioned that Alicia had an aunt living close by, only an hour away from where she lives now. I have tried contacting her, both by phone and by letter. I have not received a response yet. Alicia and her mother have given me no other names of relatives.

**ATTORNEY:** What about the kids? How are they doing emotionally?
WORKER: They’re doing really well with the foster family. They seem to be thriving under their foster mother’s consistent and nurturing care. I think Joey and Marissa clearly know their mother, but are more comfortable with their foster family. And their foster family has grown quite fond them. Marissa tends to cling to her foster mother, while Joey has formed a particularly close relationship with his foster father. They read, play ball, and do chores together. They have enrolled Joey in preschool, where he is performing well.

ATTORNEY: How about physically?

WORKER: Both are looking healthy. Marissa, who was somewhat underweight for her age back in August when we took custody, has gained weight. She is increasing her verbal and motor skills somewhat. Not at the normal progression, but better than when we first took her into custody. Joey has a slight speech impediment. At age four his social skills seem somewhat delayed. But in the past four weeks, both of these impediments seem to be lessening. Joey does have trouble sharing and sometimes becomes aggressive with other children over toys at the preschool. But he shares well with his sister.

ATTORNEY: Okay, you’ve been really helpful. Thanks for coming over today. I’ll look at the file again, and talk to the doctor to make sure that she will testify. If not, I’ll subpoena her. But it sounds like she is pretty much on our side. Let’s meet one more time on Thursday of this week before the court date, to go over your testimony, okay?

WORKER: Sounds good. Four o’clock?

ATTORNEY: Yes, that would be fine.

WORKER: Okay, thanks. Bye.
### F. Expanded Case Abstract

**Started by Caseworker and Completed by Attorney**

**Area of proof:**
Legal Basis for Abuse, Neglect or Dependency

<table>
<thead>
<tr>
<th>Facts that Support</th>
<th>Evidence Witnesses and documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joey has an unexplained bruise and bump above his right eye. Mom says she did not cause, but the sitter may have done during her absence. Doctor says that the injury is old—more than two weeks—so sitter could not have caused. Bruise pattern suggests a hand may have caused.</td>
<td>Medical records for Joey regarding bruise and bump above his eye</td>
</tr>
<tr>
<td>Testimony from examining doctor, Dr. While</td>
<td></td>
</tr>
<tr>
<td>Extracts from Casework File and CW testimony</td>
<td></td>
</tr>
<tr>
<td>Picture taken by caseworker on August 11th</td>
<td></td>
</tr>
</tbody>
</table>

| Mom failed to make an adequate plan for Marissa and Joey and thus endangered them. Mom left 2- and 4-year-old with 15-year-old sitter for seven days while traveling out of state. Fifteen-year-old became overwhelmed after four days and left after locking children in a bedroom. Children alone with little food in the house. | CW testimony and documentation |
| Police officer testimony |
| Neighbor (reporter) testimony |
| Babysitter testimony (has moved out of state) |
### 2151.031(D)
Abused child:  
Because of acts of his parents, the child suffers physical or mental injury that harms or threatens the child’s health or welfare

| Act of leaving the children with immature sitter during seven day absence, resulting in physical and mental harm as they were eventually alone, locked in a bedroom without food (limited food was in kitchen). Also act of hitting Joey on the face, causing a bruise and swelling, although mom denies. | CW testimony  
Police officer testimony  
Neighbor (reporter) testimony  
Medical records for Joey regarding bruise and bump above his eye  
Testimony from examining doctor, Dr. While  
Babysitter testimony (has moved out of state) |

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### 2151.03(A)(2)
Neglected child: Lacks adequate parental care because of the faults or habits of the parent

| Children lacked adequate care when left by mother at home with 15-year-old. Home conditions at time of removal – cluttered and dirty. Dirty dishes, odors, clogged toilet, paper and clothing strewn all over house, 95 degrees in house, flies, dirty, one bed – an unsheeted mattress. Limited food to which children had no access—one jar of peanut butter, a quart of milk in the refrigerator, and a partial loaf of bread in kitchen. Smells, clutter, clogged toilet and sleeping arrangements continue three weeks later. Mom accepting aid from Georgia when no longer a resident. Illegal aid. | CW testimony  
Police officer testimony  
Babysitter testimony (has moved out of state)  
Pictures of the home  
CW documentation and testimony about current condition  
Mother’s admissions as to the state of the home?  
Welfare/AFDC records of Georgia  
Current address |
<table>
<thead>
<tr>
<th>2151.03(A)(3)</th>
<th>Mom has not remedied the home conditions. Refused homemaker services. Marissa underweight due to lack of nutritious diet. Joey has speech impediment – have discussed his need for speech therapy, but mom is angry, defensive and says that she does not want the agency to interfere in her life.</th>
<th>CW documentation and testimony about current condition. Mother’s admissions as to the state of the home? Medical evaluation of Marissa—reported in “good health” so does not help. Foster parent testimony who believes Marissa is underweight for her age. Evaluation of Joey’s speech – haven’t arranged yet.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2151.03(A)(6)</td>
<td>Mom left for seven days. Appears not to have checked up on children during absence. Children ended up locked in bedroom without care and food.</td>
<td>Babysitter testimony (has moved out of state). Mom’s phone records?</td>
</tr>
<tr>
<td>2151.04(A)</td>
<td>Mom is 20 years old. No support system. No job. Expenses exceed her available assistance from Georgia welfare check (and she will lose that payment). Boyfriend deserted her. Children have inadequate care as a result, both when she left them with Lanie, and now due to financial peril.</td>
<td>Testimony of Mom, CW. No evidence of Mom applying for financial assistance in Ohio.</td>
</tr>
</tbody>
</table>
### 2151.04(C)
**Dependent child:** Condition or environment is such as to warrant the state in the interest of the child in assuming child’s guardianship.

- Emergency custody granted because children left alone.
- Mom’s instability remains—has not complied with temporary orders for services and agency recommendations.
- Court order for protective custody (and transcript of shelter care hearing)
- No evidence of Mom applying for financial assistance in Ohio
- Extracts from caseworker’s file
- Copies of letters to client and referral for services
- Records of missed appointments
- Testimony of CW

### 2151.04(D)
**Dependent child:** Child resides in household where a sibling adjudicated abused, neglected, or dependent and because of circumstances surrounding A, N, or D, this child is in danger of being abused or neglected.

- Joey adjudicated abused? (bruise and bump) and because Mom refuses to admit, refuses to work on anger management or parenting skills, Marissa at risk.
- Extracts from caseworker’s file
- Copies of letters to client and referral for services
- Records of missed appointments
- Testimony of CW
- Testimony/admission of Mom
## Area of proof:

<table>
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<tr>
<th>Reasonable Efforts of Agency To Prevent Removal of Children</th>
<th>Facts that Support Evidence Witnesses and documents</th>
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<tr>
<td>No available relative placement</td>
<td>CW testimony and documentation</td>
</tr>
<tr>
<td>Contacted Maternal Grandmother –living in Georgia – says she is unable to care for the child</td>
<td>Letters to Grand-aunt</td>
</tr>
<tr>
<td>Attempted to contact Maternal Grand-aunt of children – no reply</td>
<td>Documentation and telephone records of attempts to call</td>
</tr>
<tr>
<td>Father abandoned children? No contact or support since born.</td>
<td>Family genealogy completed with Mom</td>
</tr>
<tr>
<td>Unknown telephone and address.</td>
<td>Birth certificates of children showing no father named</td>
</tr>
<tr>
<td><strong>Agency Reasonable Planning for Return of Children</strong></td>
<td>Testimony of Mom regarding biological father and his lack of support/contact</td>
</tr>
<tr>
<td>Offered Mom homemaker services, parenting classes, transportation.</td>
<td><strong>Children’s emotional state and special needs</strong></td>
</tr>
<tr>
<td>Offered Mom homemaker services, parenting classes, transportation.</td>
<td>CW testimony of Mom’s lack of comfort, and of children’s behaviors and agitation during supervised visits</td>
</tr>
<tr>
<td>Offered Mom homemaker services, parenting classes, transportation.</td>
<td>Foster parent testimony of children’s behavior after visits</td>
</tr>
<tr>
<td>Offered Mom homemaker services, parenting classes, transportation.</td>
<td>Pre-school records for Joey of progress and teacher testimony?</td>
</tr>
<tr>
<td><strong>Children’s emotional state and special needs</strong></td>
<td>Medical records</td>
</tr>
<tr>
<td>Offered Mom homemaker services, parenting classes, transportation.</td>
<td>Mother-children relationship sometimes seems cool and non-nurturing. Children are bonding with foster parents and physical and mental health is improving.</td>
</tr>
</tbody>
</table>
G. Working Cooperatively with the Agency Attorney

Communication and cooperation between the caseworker and the agency attorney [or prosecutor] lawyer are important throughout the legal process, including deciding whether to go to court, drafting the petition, preparing to testify, and evaluating dispositional options. Both lawyers and caseworkers should keep in mind the following tips for maintaining a healthy working relationship:

- Be accessible and interact regularly. For example:
  - return phone calls promptly;
  - schedule regular visits by the attorney to the agency offices (if the attorney works “in-house,” he/she could even set aside a few minutes each day to visit caseworker offices to talk informally); and
  - establish a system to designate at least one attorney to be available each day to handle caseworker questions.

- Define attorney and caseworker roles clearly.

- Encourage attorney participation in agency activities, such as case conferences and foster care reviews.

- Establish guidelines for decision making and procedures for resolving disagreements between caseworker and attorneys.

SECTION IX: TESTIFYING IN COURT
805.31 Guidelines for Proper Conduct and Effective Testimony

A. Guidelines for testifying

1. Be prepared and knowledgeable about the case.

2. Be civil and pleasant to all present. Do not chew gum in the courtroom. Refer to the judge or referee as “Your Honor,” and always treat the Court with respect. Dress conservatively.

3. Do not volunteer information. Respond to the question asked, then stop. Be concise and complete without rambling. On cross-examination, if a question can be answered “yes” or “no,” do so without elaboration.

4. If a question can only be answered with an explanation, insist on an opportunity to explain your answer.

5. Respond truthfully even if you think the answer will hurt the case. You are under oath and are criminally liable for lying.

6. If you do not understand a question, say so and force the examiner to make the question understandable.

7. If you do not know the answer to a question, say so. Never guess at an answer, for you risk the belief by the judge that other answers have also been guesses.

8. Be exact and consistent in your testimony. Say “1:00 p.m.,” instead of “about noon,” or “nine visits,” instead of “many visits.”

9. If you must refer to notes or records to refresh your recollection, say so. You will be able to make such reference.

10. Think about your answer before you begin speaking. Never allow the examiner to rush you and get you flustered. The examiner can only ask questions as fast as you answer them.

11. Be as objective as possible. Your role is to present evidence to the Court, not to “win” the case. Be confident about your professional abilities and try not to become nervous or defensive.
12. Unless specifically asked for your opinion, limit your testimony to factual observations and acts.

13. In the event an attorney objects to a question, wait until the judge rules on the objection before you answer. If the objection is sustained, you do not answer; if the objection is overruled, proceed to answer.

14. If you realize that an answer to a previous question was in error, ask to correct the mistake.

15. If, during cross examination, you say something that you'd like to clarify, signal that to your attorney, so he/she can ask about it during re-direct examination.

15. If you have been requested to bring documents with you, keep them until the examiner asks to see them. If no reference is made to them, or the examiner never requests to see them, do not offer them. Take them with you when you leave.
### B. Tactics of Cross Examination

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<th>Your Response</th>
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<tr>
<td>Condescends</td>
<td>To show you to be inept</td>
<td>Form answers—ask for question to be repeated</td>
</tr>
<tr>
<td>Is friendly</td>
<td>To lull you into a false sense of security</td>
<td>Be alert—his purpose is to discredit your testimony</td>
</tr>
<tr>
<td>Mispronounces your name</td>
<td>To draw you away from accurately answering the question</td>
<td>Ignore the mistake and answer the question</td>
</tr>
<tr>
<td>Badgers; is belligerent</td>
<td>To make you angry</td>
<td>Be calm—give your counsel time to object</td>
</tr>
<tr>
<td>Demands “yes” or “no” answer</td>
<td>To limit details</td>
<td>Explain that the question cannot be answered “yes” or “no”</td>
</tr>
<tr>
<td>Reverses your words</td>
<td>To confound you</td>
<td>Listen carefully—correct him</td>
</tr>
<tr>
<td>Repeats questions</td>
<td>To show inconsistency</td>
<td>Explain that you have already answered this question</td>
</tr>
<tr>
<td>Points out a conflicting answer</td>
<td>To show inconsistency</td>
<td>Be calm</td>
</tr>
<tr>
<td>Stares</td>
<td>To get you to offer more information than the question called for</td>
<td>Wait</td>
</tr>
<tr>
<td>Asks rapid questions</td>
<td>To confuse you</td>
<td>Ask to have questions repeated—be calm</td>
</tr>
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1 Child Abuse and Neglect: The Legal Aspects. Springfield, IL, Center for Legal Studies: developed by US Department of Health and Human Services. OHD 90 CT A51/03.
SECTION X: TAKING IT BACK TO THE JOB—CONDUCT OF A TRIAL AND EVIDENCE FOR THE SOCIAL WORKER” AND “PREPARATION FOR AND TESTIFYING IN COURT

Perhaps some of the most difficult skills to master are those of court preparation and testimony. This section of Module III helps workers understand their obligations in the courtroom.

Knowledge Review: What Did I Learn?

1. What is “hearsay?” Give some examples of hearsay.

2. Can hearsay ever be used as evidence in child protection court actions? When?

3. What is “real evidence?” Give some examples of items that might be considered real evidence. How might these items be introduced in court?

4. What is “testimonial evidence?”

5. Explain the difference between direct and circumstantial evidence.

6. What does it mean when a piece of evidence is considered?

7. How can the family risk assessment process assist you in preparing for court?

Emotional Connections: How Do I Feel?

Attorneys wear many different hats. In one case, an attorney may represent the parents and in another may be the child’s Guardian Ad Litem (GAL). The attorney’s obligation to defend an abusive parent in one case may seem contradictory when the same attorney represents the best interests of another abused child as the GAL. It is important for the caseworker to understand the attorney’s role at each court hearing.

It is critical to remember that the attorney must represent her client to the fullest extent, even if that means challenging a caseworker’s credibility. As a
Caseworker, you may feel angry and frustrated when this happens. These emotions are perfectly normal, but must be handled in a professional manner so that you can effectively present your testimony. The key is to not take these attacks personally.

- When you return to the office, take a few moments and inquire about ways in which other workers have handled these issues.
- Think of other situations in which you have felt criticized and yet had to appear calm and professional. What did you learn during that situation that would help you handle the situation appropriately?

How do you feel about remembering all the material presented during this workshop?

**What Does it All Mean for Me?**

Court preparation and testimony are often difficult to master. Agency attorneys and county prosecutors may not have time to prepare you for court; therefore you must make sure we prepare ourselves by:

- knowing the purpose of each hearing and the required burden of proof
- ensuring you have completed an assessment, including risks and strengths
- requesting information from service providers well in advance of the hearing (social, psychological, educational, and medical).
- reviewing all of the information in the case file, including issues related to the case plan
- talking with collaterals, such as foster parents, relative caregivers, and teachers
- practicing discussions on difficult issues with your supervisor or a colleague

What have you learned in this section that you can go back and apply on your job? When will you try it?
One More Thing...May We Suggest


This easy-to-read book covers court testimony and processes for child welfare and other social work areas through the use of actual court cases. It also discusses liability and other important topics for social work practitioners.

Pearls of Wisdom

- In court: answer ONLY the question asked of you, even if the county prosecutor/agency attorney asks it.
- If a question confuses you, ask that it be repeated.
- If you are not sure how to answer, or are nervous, remember to BREATHE! (Trust us...it really helps.)
- BE PREPARED! Do not wait for the attorney to prepare you; do it yourself by reviewing the file and making notes of important facts, such as treatment recommendations and the number of appointments offered versus the number actually accepted. Be prepared to talk about family strengths.
- Make sure you know, understand, and use the language of the court.
- Review the handouts and other materials from this workshop before you go to court.
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Note: This document consists of excerpted portions of Ohio Revised Code (O.R.C.) statutes and Ohio Administrative Code (OAC) rules pertaining to child protective services. The entire set of statutes and regulations are available on http://codes.ohio.gov. Statutes and rules change periodically; we recommend that you check the web site occasionally for updates.
SECTION I. The Confidentiality Regulation

Confidentiality Protection is mandated by § 5101:2-33-21 of the Ohio Administrative Code

***The release of confidential information is a misdemeanor of the 4th degree resulting in a maximum of 30 days in jail and/or a $250 fine.***

Ohio Administrative Code § 5101:2-33-21
Confidentiality and Dissemination of information relating to child abuse or neglect
(current as of 1-1-07) (emphasis added)

(A) Each report and investigation of alleged child abuse or neglect is confidential and may be shared only when dissemination is authorized by this rule.

(B) The identities of the referent/reporter and any person providing information during the course of a child abuse or neglect assessment/investigation shall remain confidential. The identities of these individuals shall not be released or affirmed by the public children services agency (PCSA) to any party except for those listed in paragraphs (B)(1) to (B)(4) of this rule, without the written consent of the individuals involved. The PCSA shall inform the referent/reporter and any person providing information that a subpoena for judicial testimony may be issued if court intervention is deemed necessary. The PCSA shall release the identity of the referent/reporter and/or persons providing information only to the following persons or entities:

(1) Ohio department of job and family services (ODJFS) staff with supervisory responsibility for child protective services.

(2) Law enforcement officials who are investigating a report of child abuse or neglect or a report that a person violated section 2921.14 of the Revised Code, by knowingly making or causing another person to make a false report.

(3) The county prosecutor who is investigating a report of child abuse or neglect or a report that a person violated section 2921.14 of the Revised Code by knowingly making or causing another person to make a false report.

(4) Any PCSA or children services agency (CSA) assessing/investigating a child abuse or neglect report involving a principal of the case.

(C) The PCSA shall promptly disseminate any information requested by:

(1) ODJFS staff with supervisory responsibility for child protective services and/or children services licensing.

(2) ODJFS staff responsible for responding to complaints received by ODJFS that involve the PCSA.
The PCSA shall promptly disseminate all information it determines to be relevant to the following persons or entities:

(1) Any federal, state, or local governmental entity, or any agent of such entity, with a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect including but not limited to:

(a) Law enforcement officials, as set forth in the child abuse and neglect memorandum of understanding, to investigate a PCSA report of child abuse or neglect, a report of a missing child, or a report that a person has violated section 2921.14 of the Revised Code, by knowingly making or causing another person to make a false report of child abuse or neglect.

(b) The county prosecutor, to provide legal advice or initiate legal action on behalf of an alleged child victim; and to prosecute any person who has violated section 2921.14 of the Revised Code, by knowingly making or causing another person to make a false report of child abuse or neglect.

(c) A guardian ad litem or court appointed special advocate.

(d) Any PCSA or CSA which is currently assessing/investigating a report of child abuse or neglect involving a principal of the case or providing services to a principal of the case.

(e) A coroner, to assist in the evaluation of a child’s death due to alleged child abuse and/or neglect.

(f) Child abuse and neglect multidisciplinary team members, for consultation regarding investigative findings or the development and monitoring of a case plan.

(g) Public service providers working with caretakers or children of the family about whom the information is being provided, including but not limited to:

(i) Probation officers and caseworkers employed with the court, adult parole authority, rehabilitation and corrections, or the department of youth services.

(ii) Employees of the local boards of mental retardation and developmental disabilities and employees of the local boards of alcohol drug addiction and mental health.

(h) A school administrator or designee when a PCSA intends to place a child in a foster home in a county other than the county in which the child resided at the time the child was removed from the home.

(i) The licensing and supervising authorities of a public or non-public out-of-home care setting in which child abuse or neglect is alleged to have occurred.

(j) Administrators of public out-of-home care settings in which child abuse or neglect is alleged to have occurred including but not limited to:

(i) Psychiatric hospitals managed by the Ohio department of mental health.

(ii) Institutions managed by county courts for unruly or delinquent children.

(iii) Institutions managed by the Ohio department of youth services.
(iv) Institutions or programs managed by the **Ohio department of mental retardation and developmental disabilities** or local boards of mental retardation and developmental disabilities.

(k) Child abuse citizen review boards and community evaluation teams recognized by ODJFS, upon request.

(l) A **child fatality review board** recognized by the Ohio department of health, upon request except when a county prosecutor intends to prosecute or a judge prohibits release according to procedures contained in sections 5153.171, 5153.172 and 5153.173 of the Revised Code.

(m) A **grand jury or court**, as ordered.

(n) A **children’s advocacy center**, as set forth in the PCSA child abuse and neglect memorandum of understanding, to comply with the protocols and procedures for receiving referrals and conducting investigations, to coordinate activities, and to provide services for reports alleging sexual abuse or other types of abuse.

(o) **ODJFS or county departments of job and family services (CDJFS)**, pursuant to rule 5101:2-33-22 of the Administrative Code, to assist the agency in completing its evaluation of the applicant seeking licensure or renewal of licensure as a type A family child care home, pursuant to section 5104.01 of the Revised Code, or certification or renewal of certification as a type B family child care home, pursuant to section 5104.01 of the Revised Code, and determining whether the applicant may endanger the health, safety or welfare of a child.

(i) The PCSA shall provide ODJFS and the CDJFS all of the following:

(a) A summary document of the chronology of substantiated and indicated child abuse and neglect reports contained in the uniform statewide automated child welfare information system for which the person is the alleged perpetrator.

(b) The PCSA that conducted the assessment/investigation of each report contained in the chronology.

(ii) If the applicant is not listed in the uniform statewide automated child welfare information system as the subject of a substantiated or indicated child abuse or neglect report, the PCSA shall provide ODJFS or the CDJFS with a statement to that effect.

(iii) The PCSA may not release:

(a) The name of the person or entity that made the report or participated in the making of the report of child abuse or neglect.

(b) Any information pertaining to an unsubstantiated report.

(p) Any of the following individuals or non-public agencies with a need for information:

(i) A mandated reporter who makes a report of child abuse or neglect. Upon request, the reporter shall be informed of all of the following:

(a) Whether the PCSA has initiated an investigation.

(b) Whether the PCSA is continuing to investigate.

(c) Whether the PCSA is otherwise involved with the child who is the subject of the report.
(d) The general status of the health and safety of the child who is the subject of the report.

(e) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

(ii) Principals of the case, in accordance with rule 5101:2-36-03 of the Administrative Code, to inform them of the following:

(a) Each allegation contained in the report.

(b) The report disposition of the assessment/investigation.

(iii) The non-custodial parent of the alleged child victim when the PCSA believes such sharing would be in the best interest of the child.

(iv) A physician, for the diagnostic assessment of a child where there is reason to believe the child may be a victim of abuse or neglect.

(v) Private service providers, for diagnostic evaluations of and service provision to the alleged child victim and the family or the caretaker.

(vi) The administrator of a non-public out-of-home care setting in which child abuse or neglect is alleged to have occurred.

(vii) An individual, agency, or organization conducting research in the area of child welfare. The PCSA shall determine what information is appropriate to make available to the researcher. Prior to disseminating information to the researcher, the PCSA shall require the researcher to sign an agreement which addresses all of the following:

(a) Information provided by the PCSA shall remain the property of the PCSA.

(b) The researcher shall not disseminate confidential information containing names or data by which any individual or out-of-home care setting could be identified or deductively disclosed.

(c) The PCSA shall review the research prior to its dissemination or publication to ensure that the research is void of names or data by which any individual or out-of-home care setting could be identified or deductively disclosed.

(d) The researcher shall accept liability for unauthorized dissemination of information.

(viii) A foster caregiver as required by rule 5101:2-42-90 of the Administrative Code.

(2) With written authorization from the PCSA director, any individual or agency when it is believed to be in the best interest of any of the following:

(a) An alleged child victim, the family, or the caretaker.

(b) Any child residing within, or participating in an activity conducted by an out-of-home care setting when necessary to protect children in that setting.

(c) A child who is an alleged perpetrator.

(3) A CDJFS pursuant to rule 5101:2-33-28 of the Administrative Code.
(4) With written authorization from the PCSA director, public disclosure of the findings or information about the case of child abuse or neglect which has resulted in either of the following:

(a) A child fatality.

(b) A near fatality that, as certified by a physician, places the child in serious or critical condition.

(E) When any information is disseminated, the PCSA shall notify the receiver of the information that all of the following apply:

(1) The information is confidential and is not subject to disclosure pursuant to section 149.43 or 1347.08 of the Revised Code by the agency to whom the information was disclosed. The agency receiving the information shall maintain the confidentiality of information disclosed pursuant to this paragraph.

(2) Unauthorized dissemination of the contents of the information is in violation of section 2151.421 of the Revised Code.

(3) Anyone who permits or encourages unauthorized dissemination of the contents of the information is in violation of section 2151.99 of the Revised Code and such a violation is a misdemeanor of the fourth degree.

(F) The PCSA shall document in the case record that the dissemination of information occurred. Documentation shall include a summary of all of the following:

(1) The specific information disseminated.

(2) The date the information was disseminated.

(3) The agency, organization, or individual to whom the information was disseminated.

(4) The reason for the dissemination of information.

(5) If required, written authorization to disseminate information pursuant to paragraphs (D) and (E) of this rule.

(G) When any person commits, causes, permits, or encourages unauthorized dissemination of information, the PCSA shall give written notification of such unauthorized dissemination to the county prosecutor or city director of law. A copy of the written notification shall be maintained in the case record.

END OF REGULATION
SECTION II. Ohio Revised Code (O.R.C.) and Ohio Administrative Code (OAC) Pertaining to Child Abuse, Neglect, Dependency

A. Abused child (effective 8-3-89)

Ohio Revised Code § 2151.031 – As used in this chapter, an “abused child” includes any child who:

(A) Is the victim of “sexual activity” as defined under Chapter 2907 of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(B) Is endangered as defined in section 2919.22 of the Revised Code [note: see page 11 of Relevant Statutes and Rules] except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child if the measure is not prohibited under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens the child's health or welfare.

(E) Is subjected to out-of-home care child abuse.

B. Sexual Activity

O.R.C. § 2907.01 Definitions (effective 8-17-06)

As used in sections 2907.01 to 2907.37 of the Revised Code:

(A) "Sexual conduct"** means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or if the person is female, a breast, for the purpose of sexually arousing or gratifying either person.
(C) "Sexual activity" means sexual conduct or sexual contact, or both.  * * * *
**See page 26 and 27 for a chart on when sexual conduct is illegal depending on the age of the victim and the perpetrator.

C.  **Neglected child** (fault of parents) (effective 8-3-06)

Ohio Revised Code § 2151.03:  Neglected child defined; failure to provide medical care for religious reasons

(A) As used in this chapter, "neglected child" includes any child:

(1) Who is abandoned* by the child's parents, guardian, or custodian;
  [*A child is presumed to be abandoned when the parents of the child have failed to visit or maintain contact with the child for more than 90 days, regardless of whether the parents resume contact after that 90-day period.  O.R.C. § 2151.011; O.A.C. § 5101:2-1-01]

(2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;

(3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;

(4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;

(5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;

(6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

(7) Who is subjected to out-of-home care child neglect.

(B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child.  This division does not abrogate or limit any person's responsibility under section 2151.421 of the Revised Code to report child abuse that is known or reasonably suspected or believed to have occurred, child neglect that is known or reasonably suspected or believed to have occurred, and children who are known to face or are reasonably suspected or believed to be facing a threat of suffering abuse or neglect, and does not preclude any exercise of the authority of the state, any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.
D. Dependent Child (no fault of parents) (effective 8-8-96)

Ohio Revised Code § 2151.04 – As used in this chapter, “dependent child” means any child:

(A) Who is homeless or destitute or without adequate parental care, through no fault of the child’s parents, guardian, or custodian;

(B) Who lacks adequate parental care by reason of the mental or physical condition of the child’s parents, guardian, or custodian;

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship;

(D) To whom both of the following apply:
   (1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.
   (2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

E. Adequate parental care O.R.C. 2151.011(B)(1)

Adequate parental care means the provision by a child’s parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child’s health and physical safety and the provision by a child’s parent or parents of specialized services warranted by the child’s physical or mental needs.

F. Deserted Child O.R.C. 215 O.R.C. § 2151.3515

A child whose parent has voluntarily delivered the child [who is seventy-two (72) hours old or younger] to an emergency medical service worker, peace officer, or hospital employee without expressing an intent to return for the child.” Note that this is different from the definition of an abandoned child.

END OF STATUTES
### When Sexual Conduct Is Illegal

<table>
<thead>
<tr>
<th>Age of Child Victim</th>
<th>Conduct: vaginal/anal intercourse; felatio; cunnilingus; penetration (however slight)</th>
<th>Contact: touching of erogenous zone(s) (thigh, genitals, buttocks, pubic region, breast (if female)) for purpose of sexually arousing/gratifying</th>
<th>Contact: vaginal/anal intercourse; felatio; cunnilingus; penetration (however slight)</th>
<th>Contact: touching of erogenous zone(s) (thigh, genitals, buttocks, pubic region, breast (if female)) for purpose of sexually arousing/gratifying</th>
<th>Felonious, apparatus, or other object into another’s vaginal/anal cavity</th>
<th>Depicting Child in Pornographic Material: photo or performance that is obscene, sexually-oriented, or nudity-oriented</th>
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<tr>
<td>Age Range</td>
<td>Perpetrator:</td>
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<td>&gt; 15 and &lt; 18 (or mentally/physically handicapped and &lt; 21)</td>
<td>NATURAL/ADOPTIVE/STEP-PARENT/PERSON IN LOCO PARENTIS/SUPERVISOR OF CHILD IN CUSTODY OF STATE OR IN A HOSPITAL/INSTITUTION RC 2151.031(A) BY REASON OF VICTIM OF SEXUAL ACT</td>
<td>THIS IS NOT CONSIDERED TO BE IN VIOLATION OF CHAPTER 2907 SEX OFFENSES THIS COULD BE TRIED AS NEGLECT UNDER RC 2151.03(C)</td>
<td>ANYONE/ANY AGE</td>
<td>ANYONE/ANY AGE</td>
<td>ANYONE/ANY AGE</td>
<td>ANYONE/ANY AGE</td>
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</tbody>
</table>
Note: Portions of the following statutes can help prove an abused child: Child Endangering Statute, Permitting Child Abuse Statute, Illegal Manufacture of Drugs, Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs, Driving While Under the Influence of Alcohol or Drugs and applicable definitions.

G. Child Endangering O.R.C. § 2919.22 (effective 8-17-2006) (emphasis added)

(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen [18] years of age, or a mentally or physically handicapped child under twenty-one [21] years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(B) No person shall do any of the following to a child under eighteen [18] years of age or a mentally or physically handicapped child under twenty-one [21] years of age:

(1) Abuse the child;
(2) Torture or cruelly abuse the child;
(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;
(4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child’s mental health or development;
(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually-oriented matter, or is nudity-oriented matter.
(6) Allow the child to be on the same parcel of real property and within one hundred feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within one hundred feet of, any act in violation of section 2925.04 [Illegal manufacture of drugs or cultivation of marihuana] or 2925.041 [Illegal assembly or possession of chemicals for the manufacture of drugs] of the Revised Code when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of section 2925.04 or 2925.041 of the Revised Code that is the basis of the violation of this division.
(C) (1) **No person shall** operate a vehicle, streetcar, or trackless trolley within this state in violation of division (A) of section 4511.19 [drive while under the influence of alcohol or drugs or with certain concentration of alcohol in bodily substances] of the Revised Code when one or more children under eighteen years of age are in the vehicle, streetcar, or trackless trolley. . . .

* * * * *

(E) (1) Whoever violates this section is guilty of endangering children.

(2) If the offender violates division (A) or (B) (1) of this section, endangering children is one of the following:

(a) Except as otherwise provided in division (E)(2)(b), (c), or (d) of this section, a misdemeanor of the first degree;

(b) If the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(2)(c) or (d) of this section, a felony of the fourth degree;

(c) If the violation is a violation of division (A) of this section and results in serious physical harm to the child involved, a felony of the third degree;

(d) If the violation is a violation of division (B)(1) of this section and results in serious physical harm to the child involved, a felony of the second degree.

(3) If the offender violates division (B)(2), (3), (4), or (6) of this section, except as otherwise provided in this division, endangering children is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender has been previously convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children is a felony of the second degree.

* * * * *

END OF STATUTE

**H. Permitting Child Abuse O.R.C. § 2903.15** (effective 8-25-99)

(A) No parent, guardian, custodian, or person having custody of a child under eighteen [18] years of age or of a mentally or physically handicapped child under twenty-one [21] years of age shall cause serious physical harm to the child, or the death of the child, as a proximate result of permitting the child to be abused, to be tortured, to be administered corporal punishment or other physical disciplinary measure, or to be physically restrained in a cruel manner or for a prolonged period.

(B) It is an affirmative defense to a charge under this section that the defendant did not have readily available a means to prevent the harm to the child or the death of the child, and that the defendant took timely and reasonable steps to summon aid.

(C) Whoever violates this section is guilty of permitting child abuse. If the violation of this section causes serious physical harm to the child, permitting child abuse
is a felony of the third degree. If the violation of this section causes the death of the child, permitting child abuse is a felony of the first degree.

END OF STATUTE

I. Illegal manufacture of drugs or cultivation of marihuana. O.R.C. § 2925.04.

(A) No person shall knowingly cultivate marihuana or knowingly manufacture or otherwise engage in any part of the production of a controlled substance.

J. Illegal assembly or possession of chemicals for the manufacture of drugs. O.R.C. § 2925.041.

(A) No person shall knowingly assemble or possess one or more chemicals that may be used to manufacture a controlled substance in schedule I or II with the intent to manufacture a controlled substance in schedule I or II in violation of section 2925.04 of the Revised Code.

K. Driving while under the influence of alcohol or drugs or with certain concentration of alcohol in bodily substances; chemical analysis. O.R.C. § 4511.19.

(A) (1) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

(a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

L. Definitions O.R.C. § 2901.01 (effective 4-08-03)

(A) As used in the Revised Code:

(1) "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

(2) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.

(3) "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(5) "Serious physical harm to persons" means any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
Relevant Statutes and Regulations

(b) Any physical harm that carries a substantial risk of death;
(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
(d) Any physical harm that involves some permanent disfigurement, or which involves some temporary, serious disfigurement;
(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.

* * * * *

(7) “Risk” means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(8) “Substantial risk” means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

END OF STATUTE

M. The Reporting Statute

Ohio Revised Code § 2151.421 Duty to report child abuse or neglect; investigation and follow-up procedure. (effective 9/21/06) (emphasis added)

(A)(1)(a) No person described in division (A)(1)(b) of this section

[attorney; physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center; administrator or employee of a residential camp or child day camp; administrator or employee of a certified child care agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; person, other than a cleric, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; superintendent, board member, or employee of a county board of mental retardation; investigative agent contracted with by a county board of mental retardation; or employee of the department of mental retardation and developmental disabilities; employee of a facility or home that provides respite care in accordance with section 5123.171 of the Revised Code; employee of a home health agency; employee of an entity that provides homemaker services; a person performing the duties of an assessor pursuant to Chapter 3107. or 5103. of the Revised Code; or third party employed by a public children services agency to assist in providing child or family related services.]

______________________________
who is acting in an official or professional capacity and knows, or has
reasonable cause to suspect based on facts that would cause a reasonable
person in a similar position to suspect, that a child under eighteen years of
age, or a mentally retarded, developmentally disabled, or physically
impaired child under twenty-one years of age has suffered or faces a threat
of suffering any physical or mental wound, injury, disability, or condition of
a nature that reasonably indicates abuse or neglect of the child shall fail to
immediately report that knowledge or reasonable cause to suspect to the entity
or persons specified in this division. Except as provided in section 5120.173 of
the Revised Code [which requires a report to be made to a state highway patrol if
the child is an inmate of a state correctional institution] the person making the
report shall make it to the public children services agency or a municipal or
county peace officer in the county in which the child resides or in which the
abuse or neglect is occurring or has occurred.

* * * * *

(B) Anyone, who knows, or has reasonable cause to suspect based on facts that
would cause a reasonable person in a similar circumstances to suspect, that a
child under 18 years of age or a mentally retarded, developmentally disabled,
or physically impaired child under 21 years of age has suffered or faces a
threat of suffering any physical or mental wound, injury, disability, or condition of
a nature that reasonably indicates abuse or neglect of the child, may report
or cause reports to be made of that knowledge or reasonable cause to suspect
to the entity or persons specified in this division. . . .

* * * * *

(C) Any report made pursuant to division (A) or (B) of this section shall be made
forthwith either by telephone or in person, and shall be followed by a written
report, if requested by the receiving agency or officer. The written report shall
contain:

(1) The names and addresses of the child and the child's parents or the person
or persons having custody of the child, if known;
(2) The child's age and the nature and extent of the child's injuries, abuse, or
neglect that is known or reasonably suspected or believed, as applicable, to
have occurred or of the threat of injury, abuse, or neglect that is known or
reasonably suspected or believed, as applicable, to exist, including any
evidence of previous injuries, abuse, or neglect;
(3) Any other information that might be helpful in establishing the cause of the
injury, abuse, or neglect that is known or reasonably suspected or believed,
as applicable, to have occurred or of the threat of injury, abuse, or neglect
that is known or reasonably suspected or believed, as applicable, to exist. . .
Any person, who is required by division (A) of this section to report child
abuse or child neglect that is known or reasonably suspected or believed to
have occurred, may take or cause to be taken color photographs of areas of
trauma visible on a child and, if medically indicated, cause to be performed a
radiological examinations of the child.

* * * * *
(F) (1) Except as provided in section 2151.422 of the Revised Code [where children are living in a shelter for victims of domestic violence or a homeless shelter] or in an interagency agreement entered into under section 2151.428 of the Revised Code that applies to the particular report, the public children services agency shall investigate, within twenty-four hours, each report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency and in accordance with the memorandum of understanding prepared under division (J) of this section. A representative of the public children services agency shall, at the time of initial contact with the person subject to the investigation, inform the person of the specific complaints or allegations made against the person. The information shall be given in a manner that is consistent with division (H)(1) of this section and protects the rights of the person making the report under this section. * * *

(2) The public services agency shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention.

(G)(1)(a) Except as provided in division (H)(3) of this section, anyone or any hospital, institution, school, health department, or agency participating in the making of reports under division (A) of this section, anyone or any hospital, institution, school, health department, or agency participating in good faith in the making of reports under division (B) of this section, and anyone participating in good faith in a judicial proceeding resulting from the reports, shall be immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the making of the reports or the participation in the judicial proceeding. * * *

(H) (1) Except as provided in divisions (H)(4) [requires the agency to report a child fatality to the review board of the county] and (M) [requires agency to give written notice to the administrator of a out-of-home care entity that is the subject of the report] informing those persons involved as alleged perpetrators of neglect or abuse of existence of investigation] of this section, a report made under this section is confidential. The information provided in a report made pursuant to this section and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.
(2) No person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.

* * * * *

(5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made pursuant to this section, including a report alleging sexual abuse of a child or another type of abuse of a child referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports.

(I) Any report that is required by this section . . . shall result in protective services and emergency support services being made available by the public children services agency on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact. The agency required to provide the services shall be the agency conducting the investigation of the report pursuant to section 2151.422 of the Revised Code.

(J) (1) Each public children services agency shall prepare a memorandum of understanding that is signed by all of the following:

(a) If there is only one juvenile judge in the county, the juvenile judge of the county or the juvenile judge's representative;

(b) If there is more than one juvenile judge in the county, a juvenile judge or the juvenile judges' representative selected by the juvenile judges or, if they are unable to do so for any reason, the juvenile judge who is senior in point of service or the senior juvenile judge's representative;

(c) The county peace officer;

(d) All chief municipal peace officers within the county;

(e) Other law enforcement officers handling child abuse and neglect cases in the county;

(f) The prosecuting attorney of the county;

(g) If the public children services agency is not the county department of job and family services, the county department of job and family services;

(h) The county humane society;
(i) If the public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, each participating member of the children's advocacy center established by the memorandum.

(2) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (C) of section 2919.21, division (B)(1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code and shall have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to division (A) or (B) of this section and, when feasible, providing for only one interview of a child who is the subject of any report made pursuant to division (A) or (B) of this section. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from any reported case of abuse or neglect or the suppression of any evidence obtained as a result of any reported child abuse or child neglect and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person.

(3) A memorandum of understanding shall include all of the following:

(a) The roles and responsibilities for handling emergency and nonemergency cases of abuse and neglect;

(b) Standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and reported cases of child neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected.

(4) If a public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, the agency shall incorporate the contents of that memorandum in the memorandum prepared pursuant to this section.

(K) (1) Except as provided in division (K)(4) of this section, a person who is required to make a report pursuant to division (A) of this section may make a reasonable number of requests of the public children services agency that receives or is referred the report, or of the children's advocacy center that is referred the report if the report is referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, to be provided with the following information:
(a) Whether the agency or center has initiated an investigation of the report;
(b) Whether the agency or center is continuing to investigate the report;
(c) Whether the agency or center is otherwise involved with the child who is the subject of the report;
(d) The general status of the health and safety of the child who is the subject of the report;
(e) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

(2) A person may request the information specified in division (K)(1) of this section only if, at the time the report is made, the person's name, address, and telephone number are provided to the person who receives the report.

When a municipal or county peace officer or employee of a public children services agency receives a report pursuant to division (A) or (B) of this section the recipient of the report shall inform the person of the right to request the information described in division (K)(1) of this section. The recipient of the report shall include in the initial child abuse or child neglect report that the person making the report was so informed and, if provided at the time of the making of the report, shall include the person's name, address, and telephone number in the report.

Each request is subject to verification of the identity of the person making the report. If that person's identity is verified, the agency shall provide the person with the information described in division (K)(1) of this section a reasonable number of times, except that the agency shall not disclose any confidential information regarding the child who is the subject of the report other than the information described in those divisions.

*  *  *  *  *

(L) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The department of job and family services may enter into a plan of cooperation with any other governmental entity to aid in ensuring that children are protected from abuse and neglect. The department shall make recommendations to the attorney general that the department determines are necessary to protect children from child abuse and child neglect.

*  *  *  *  *

N. Duty to report child abuse or neglect of an inmate in a state correctional facility
O.R.C. § 5120.173

Any person who is required to report abuse or neglect of a child under eighteen years of age that is reasonably suspected or believed to have occurred or the threat of which is reasonably suspected or believed to exist pursuant to division (A) of section 2151.421 of the Revised Code, any person who is permitted to report or cause a report to be made of reasonably suspected abuse or neglect of a child under eighteen years of age pursuant to division (B) of that section, any person who is required to report suspected abuse or
neglect of a person with mental retardation or a developmental disability pursuant to division (C) of section 5123.61 of the Revised Code, and any person who is permitted to report suspected abuse or neglect of a person with mental retardation or a developmental disability pursuant to division (F) of that section and who makes or causes the report to be made, shall direct that report to the state highway patrol if the child or the person with mental retardation or a developmental disability is an inmate in the custody of a state correctional institution. If the state highway patrol determines after receipt of the report that it is probable that abuse or neglect of the inmate occurred, the patrol shall report its findings to the department of rehabilitation and correction, to the court that sentenced the inmate for the offense for which the inmate is in the custody of the department, and to the chairperson and vice-chairperson of the correctional institution inspection committee established by section 103.71 of the Revised Code.

END OF STATUTE
SECTION III: Statutes and Rules Regarding Taking Children into Custody

A. The Emergency Custody Statute and Regulation

The general rule is that, after taking a child into custody, you have 24 hours to initiate proceedings (file a complaint). See the emergency custody chart on pages 44–45 of Handout 4.

O.R.C. § 2151.31 (effective 05-16-02) (emphasis added)

(A) A child may be taken into custody in any of the following ways:

(1) Pursuant to an order of the court . . .
(2) Pursuant to the laws of arrest;
(3) By a law enforcement officer or duly authorized officer of the court when any of the following conditions are present:

   (a) There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, as described in section 2151.03 of the Revised Code, and the child’s removal is necessary to prevent immediate or threatened physical or emotional harm;

   (b) There are reasonable grounds to believe that the child is in immediate danger from his surroundings and that the child’s removal is necessary to prevent immediate or threatened physical or emotional harm;

   (c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child’s household has abused or neglected another child in the household and to believe that the child is in danger of immediate or threatened physical or emotional harm from that person.

* * * * *

(6) By a law enforcement officer or duly authorized officer of the court when…

(a) There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.

* * * * *
(C) (1) Except as provided in division (C)(2) of this section, a child taken into custody shall not be confined in a place of juvenile detention or placed in shelter care prior to the implementation of the court's final order of disposition, unless detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm, because the child may abscond or be removed from the jurisdiction of the court, because the child has no parents, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.

(2) A child alleged to be a delinquent child who is taken into custody may be confined in a place of juvenile detention prior to the implementation of the court's final order of disposition if the confinement is authorized under section 2151.04 of the Revised Code, or if the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code and is not released on bond.

(D) Upon receipt of notice from a person that the person intends to take an alleged abused, neglected, or dependent child into custody pursuant to division (A)(3) of this section, a juvenile judge or a designated referee may grant by telephone an ex parte emergency order authorizing the taking of the child into custody if there is probable cause to believe that any of the conditions set forth in divisions (A)(3)(a) to (c) of this section are present. The judge or referee shall journalize any ex parte emergency order issued pursuant to this division. If an order is issued pursuant to this division and the child is taken into custody pursuant to the order, a sworn complaint shall be filed with respect to the child before the end of the next business day after the day on which the child is taken into custody and a hearing shall be held pursuant to division (E) of this section and the Juvenile Rules. A juvenile judge or referee shall not grant an emergency order by telephone pursuant to this division until after he determines that reasonable efforts have been made to notify the parents, guardian, or custodian of the child that the child may be placed into shelter care, and of the reasons for placing the child into shelter care, except that, if the requirement for notification would jeopardize the physical or emotional safety of the child or result in the child being removed from the court's jurisdiction, the judge, or referee may issue the order for taking the child into custody and placing the child into shelter care prior to giving notice to the parents, guardian, or custodian of the child.
(E) If a judge or referee pursuant to division (D) of this section issues an ex parte emergency order for taking a child into custody, the court shall hold a hearing to determine whether there is probable cause for the emergency order. The hearing shall be held before the end of the next business day after the day on which the emergency order is issued, except that it shall not be held later than 72 hours after the emergency order is issued.

If the court determines at the hearing that there is not probable cause for the issuance of the emergency order issued pursuant to division (D) of this section, the court shall do all of the following:

1. Ensure that a complaint is filed or has been filed;
2. Comply with section 2151.419 [2151.41.9] of the Revised Code;
3. Hold a hearing pursuant to section 2151.314 [2151.31.4] of the Revised Code to determine if the child should remain in shelter care.

(F) If the court determines at the hearing held pursuant to division (E) of this section that there is probable cause to believe that the child is an abused child, as defined in division (A) of section 2151.031 [2151.03.1] of the Revised Code, the court may do any of the following:

1. Upon the motion of any party, the guardian ad litem, the prosecuting attorney, or an employee of the public children services agency, or its own motion, issue reasonable protective orders with respect to the interviewing or deposition of the child;
2. Order that the child’s testimony be videotaped for preservation of the testimony for possible use in any other proceedings in the case;
3. Set any additional conditions with respect to the child or the case involving the child that are in the best interest of the child.

(G) This section is not intended, and shall not be construed, to prevent any person from taking a child into custody, if taking the child into custody is necessary in an emergency to prevent the physical injury, emotional harm, or neglect of the child.

* * * * *
B. Procedure Upon Apprehension O.R.C. § 2151.311 (effective 01-01-02)

(A) A person taking a child into custody shall, with all reasonable speed..., either:
   (1) Release the child to the child's parents, guardian, or other custodian, unless the child's detention or shelter care appears to be warranted or required as provided in section 2151.31 of the Revised Code;
   (2) Bring the child to the court or deliver the child to a place of detention or shelter care designated by the court and promptly give notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian, and to the court.

(B) If a parent, guardian, or other custodian fails, when requested by the court, to bring the child before the court as provided by this section, the court may issue its warrant directing that the child be taken into custody and brought before the court.

C. Removal of a Child From His Own Home

OAC § 5101:2-39-12 (effective 4-17-06)

(A) Removal of a child from his own home shall be considered necessary when the child is at imminent risk and in need of protection from child abuse or neglect. When considering the need to remove a child from his home the public children services agency (PCSA) shall complete the JFS 01510 "Family Decision Making Model: Safety Plan for Children" (rev. 1/2001) if applicable. The PCSA shall also complete or update the risk assessment form. The risk assessment will assist the PCSA in determining:

   (1) The risk of harm to the child if he remains in his home is greater than the risk of harm to the child if he is removed from the home.

   (2) The potential for serious physical or emotional harm the child may suffer if he remains in his home.

   (3) The likelihood that such harm will occur and the extent to which the risk can be alleviated by the provision of supportive services.

   (4) The emotional trauma or other harm the child may suffer if he is removed from the home.

END OF STATUTE AND REGULATION
D. The Reasonable Efforts Statute

O.R.C. § 2151.419. Determination as to whether agency made reasonable efforts to prevent removal or to return child to home (effective 10-21-99)

(A) (1) Except as provided in division (A)(2) of this section, at any hearing held pursuant to section 2151.28, division (E) of section 2151.31, or section 2151.314 [2151.31.4], 2151.33, or 2151.353 [2151.35.3] of the Revised Code at which the court removes a child from the child’s home or continues the removal of a child from the child’s home, the court shall determine whether the public children services agency or private child placing agency that filed the complaint in the case, removed the child from home, has custody of the child, or will be given custody of the child has made reasonable efforts to prevent the removal of the child from the child’s home, to eliminate the continued removal of the child from the child’s home, or to make it possible for the child to return safely home. The agency shall have the burden of proving that it has made those reasonable efforts. If the agency removed the child from home during an emergency in which the child could not safely remain at home and the agency did not have prior contact with the child, the court is not prohibited, solely because the agency did not make reasonable efforts during the emergency to prevent the removal of the child, from determining that the agency made those reasonable efforts. In determining whether reasonable efforts were made, the child’s health and safety shall be paramount.

(2) If any of the following apply, the court shall make a determination that the agency is not required to make reasonable efforts to prevent the removal of the child from the child’s home, eliminate the continued removal of the child from the child’s home, and return the child to the child’s home:

(a) The parent from whom the child was removed has been convicted of or pleaded guilty to one of the following:

(i) An offense under section 2903.01 [aggravated murder], 2903.02 [murder], or 2903.03 [involuntary manslaughter] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent’s household at the time of the offense;

(ii) An offense under section 2903.11 [felonious assault], 2903.12 [aggravated assault], or 2903.13 [assault] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent’s household at the time of the offense;

(iii) An offense under division (B)(2) of section 2919.22 [child endangering] of the Revised Code or under an existing or former law of
this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent’s household at the time of the offense is the victim of the offense;

(iv) An offense under section 2907.02 [rape], 2907.03 [sexual battery], 2907.04 [unlawful sexual conduct with a minor], 2907.05 [gross sexual imposition], or 2907.06 [sexual imposition] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent’s household at the time of the offense;

(v) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (A)(2)(a)(i) or (iv) of this section.

(b) The parent from whom the child was removed has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food. If the parent has withheld medical treatment in order to treat the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body, the court or agency shall comply with the requirements of division (A)(1) of this section.

(c) The parent from whom the child was removed has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 [2151.41.2] of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring such treatment of the parent.

(d) The parent from whom the child was removed has abandoned the child.

(e) The parent from whom the child was removed has had parental rights involuntarily terminated pursuant to section 2151.353 [2151.35.3], 2151.414 [2151.41.4], or 2151.415 [2151.41.5] of the Revised Code with respect to a sibling of the child.
E. Detention or Shelter Care Hearing

O.R.C. § 2151.314 Detention or shelter care hearing (effective 7-5-2002) (emphasis added)

(A) When a child is brought before the court or delivered to a place of detention or shelter care designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and shall release the child unless it appears that the child's detention or shelter care is warranted or required under section 2151.31 of the Revised Code.

If the child is not so released, a complaint under section 2151.27 or 2152.021 or an information under section 2152.13 of the Revised Code shall be filed ... and an informal detention or shelter care hearing held promptly, not later than seventy-two hours after the child is placed in detention or shelter care, to determine whether detention or shelter care is required. Reasonable oral or written notice of the time, place, and purpose of the detention or shelter care hearing shall be given to the child and, if they can be found, to the child's parents, guardian, or custodian. In cases in which the complaint alleges a child to be an abused, neglected, or dependent child, the notice given the parents, guardian, or custodian shall inform them that a case plan may be prepared for the child, the general requirements usually contained in case plans, and the possible consequences of the failure to comply with a journalized case plan.

Prior to the hearing, the court shall inform the parties of their right to counsel and to appointed counsel or to the services of the county public defender or joint county public defender, if they are indigent, of the child's right to remain silent with respect to any allegation of delinquency, and of the name and telephone number of a court employee who can be contacted during the normal business hours of the court to arrange for the prompt appointment of counsel for any party who is indigent. Unless it appears from the hearing that the child's detention or shelter care is required under the provisions of section 2151.31 of the Revised Code, the court shall order the child's release as provided by section 2151.311 of the Revised Code. If a parent, guardian, or custodian has not been so notified and did not appear or waive appearance at the hearing, upon the filing of an affidavit stating these facts, the court shall re hear the matter without unnecessary delay.
(B) When the court conducts a hearing pursuant to division (A) of this section, all of the following apply:

(1) The court shall determine whether an alleged abused, neglected, or dependent child should remain or be placed in shelter care;

(2) The court shall determine whether there are any relatives of the child who are willing to be temporary custodians of the child. If any relative is willing to be a temporary custodian, the child would otherwise be placed or retained in shelter care, and the appointment is appropriate, the court shall appoint the relative as temporary custodian of the child, unless the court appoints another relative as temporary custodian. If it determines that the appointment of a relative as custodian would not be appropriate, it shall issue a written opinion setting forth the reasons for its determination and give a copy of the opinion to all parties and to the guardian ad litem of the child. The court's consideration of a relative for appointment as a temporary custodian does not make that relative a party to the proceedings.

(3) The court shall comply with section 2151.419 [2151.41.9] of the Revised Code.

(C) If a child is in shelter care following the filing of a complaint pursuant to section 2151.27 or 2152.021 [2152.02.1] of the Revised Code, the filing of an information, or the obtaining of an indictment or following a hearing held pursuant to division (A) of this section, any party, including the public children services agency, and the guardian ad litem of the child may file a motion with the court requesting that the child be released from shelter care. The motion shall state the reasons why the child should be released from shelter care and, if a hearing has been held pursuant to division (A) of this section, any changes in the situation of the child or the parents, guardian, or custodian of the child that have occurred since that hearing and that justify the release of the child from shelter care. Upon the filing of the motion, the court shall hold a hearing in the same manner as under division (A) of this section.

* * * * *

END OF STATUTE
SECTION IV: Statutes Related to Permanent Custody

A. Permanent Custody Summary

Summary of Language of Statutes Requesting Permanent Custody—When and on What Grounds

(O.R.C.§ 2151.413 (was formerly known as HB 471)(effective 7-1-00;), § 2151.414 (effective 10-5-00), § 2151.419 (effective 10-29-99).

1. “Any agency that files a motion for permanent custody under this section shall include in the case plan of the child who is the subject of the motion, a specific plan of the agency's actions to seek an adoptive family for the child and to prepare the child for adoption” [quoting O.R.C. § 2151.413(E)].

2. When an agency may file a motion:
   
   a. “A public children services agency or private child placing agency that ... is granted temporary custody of a child who is not abandoned or orphaned may file a motion in the court that made the disposition of the child requesting permanent custody of the child. (If the child is abandoned or orphaned, the agency may file a motion whenever it can show that no relative of the child is able to take legal custody of the child.) [quoting O.R.C. § 2141.413(A) and (B)]

   b. “A public children services agency or private child placing agency that ... places a child in a planned permanent living arrangement may file a motion in the court that made the disposition of the child requesting permanent custody of the child.” [quoting O.R.C. § 2151.413(C)]

3. When an agency shall file a motion: [quoting O.R.C. § 2151.413(D)]

   a. “[If] a child has been in temporary custody for 12 or more months of a consecutive 22 month period ending on or after 3-18-99, the public children services agency or private child placing agency with custody shall file a motion requesting permanent custody of the child. ... For the purposes of this division, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicate pursuant to section 2151.28 of the Revised Code or the date that is 60 days after the removal of the child from the home” (emphasis added).

   b. “Except as provided in 2151.413(D)(3), if a court makes a determination pursuant to 2151.419 (A)(2) [that reasonable efforts
are not required*], the public children services agency or private child placing agency required to develop the permanency plan for the child under division (K) of section 2151.417 of the Revised Code shall file a motion in the court that made the determination requesting permanent custody of the child.” [quoting O.R.C. § 2151.413(D)(2)(emphasis added)] [* See H, below]

“An agency shall not file a motion for permanent custody ... if any of the following apply: [quoting § 2151.413 (D)(3)(emphasis added)]

a. The agency documents in the case plan or permanency plan a compelling reason that permanent custody is not in the best interest of the child;

b. If reasonable efforts to return the child to the child’s home are required under section 2151.419 of the Revised Code, [and] the agency has not provided the services required by the case plan to the parents of the child or the child to ensure the safe return of the child to the child's home;

c. The agency has been granted permanent custody of the child;

d. The child has been returned home pursuant to court order in accordance with division (A)(3) of section 2151.419 of the Revised Code.”

B. Scheduling of Hearing, Notice to Parties  [quoting O.R.C. § 2151.414 (A)(1)](emphasis added)

“Upon the filing of a motion pursuant to section 2151.413 of the Revised Code for permanent custody of a child,

1. the court shall schedule a hearing and give notice of the filing of the motion and of the hearing … to all parties to the action and to the child’s guardian ad litem

2. The notice … shall contain a full explanation that the granting of permanent custody permanently divests the parents of their parental rights, a full explanation of their right to be represented by counsel and to have counsel appointed … if they are indigent….

3. The court shall conduct a hearing … to determine if it is in the best interest of the child to permanently terminate parental rights and grant permanent custody to the agency that filed the motion. The adjudication
that the child is an abused, neglected, or dependent child and any dispositional order that has been issued in the case under section 2151.353 of the Revised Code pursuant to the adjudication shall not be readjudicated at the hearing and shall not be affected by a denial of the motion for permanent custody.


1. “The court shall hold the hearing ... not later than [120] days after the agency files the motion for permanent custody, except that, for good cause shown, the court may continue the hearing for a reasonable period of time beyond the [120]-day deadline.”

2. “The court shall issue an order that grants, denies, or otherwise disposes of the motion for permanent custody, and journalize the order, not later than [200] days after the agency files the motion.”

3. “The failure of the court to comply with the time periods set forth in ... this section does not affect the authority of the court to issue any order ....”

D. Factors Court Shall Not Consider

1. “In making the determinations required by this section or division (A)(4) of section 2151.353 of the Revised Code, a court shall not consider the effect the granting of permanent custody to the agency would have upon any parent of the child.” [quoting § 2151.414 (C)(emphasis added)].

2. “The court shall not deny an agency’s motion for permanent custody solely because the agency failed to implement any particular aspect of the child’s case plan.” [quoting O.R.C. § 2151.414 (A)(2)(emphasis added)].

E. When Court May Grant Permanent Custody of Child to Movant
[paraphrasing O.R.C. §§ 2151.413, 2151.414 and 2151.419].

1. The court may grant permanent custody to a movant if the motion is made pursuant to O.R.C. § 2151.413(D)(2) (requiring the agency to make a permanent custody motion)

• and pursuant to O.R.C. § 2151.419(A)(2), the agency is not required to use reasonable efforts to prevent removal of the child from the
child’s home or to return the child safely to the child’s home;

- and the child cannot be placed with the parent;

- and granting of the motion is in the child’s best interest; and

- If there has not been a dispositional hearing in the case at the time this motion is filed, the court may issue its order for permanent custody at the dispositional hearing. (O.R.C. § 2151.414)

2. If the above is not applicable, the court may grant permanent custody of a child to a movant if:

- the court determines that the agency that filed the complaint in the case, has custody of the child, or will be given custody of the child has made reasonable efforts to prevent the removal of the child from the child’s home, to eliminate the continued removal of the child from the child’s home or to make it possible for the child to return safely home;

- The agency shall have the burden of proving that it made those reasonable efforts.

- In determining whether reasonable efforts were made, the child’s health and safety shall be paramount. (O.R.C. § 2151.419(A)(1))

3. and the court determines by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody; and that any of the following apply:

- The child is abandoned;

- The child is orphaned, and there are no relatives of the child who are able to take permanent custody;

- The child has been in the temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition issued under section 2151.353 of the Revised Code for [12] or more months of a consecutive [22] month period ending on or after the effective date of this amendment; or

- If none of the above apply, and the child cannot be placed with either
of the child’s parents within a reasonable time or should not be placed with the child’s parents.

F. Determining the Best Interests of the Child
[quoting O.R.C. § 2151.414(D)(emphasis added)].

“[T]he court shall consider all relevant factors, including, but not limited to, the following:

1. The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child;

2. The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

3. The custodial history of the child, including whether the child has been in the temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition issued under section 2151.353 or 2151.415 of the Revised Code for 12 or more months of a consecutive 22 month period ending on or after the effective date of this amendment;

4. The child’s need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

5. Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child. [See the list below.]

G. Determining if the Child Cannot or Should Not Be Placed with Either Parent (quoting O.R.C. § 2151.414 (E)(emphasis added)].

Section (E) “[T]he court shall consider all relevant evidence.”

“If the court determines, by clear and convincing evidence …, that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

1. Following the placement of the child outside the child’s home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to
be placed outside the child’s home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

2. Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing.

3. The parent committed any abuse, caused the child to suffer any neglect of the Revised Code, or allowed the child to suffer any neglect as described in section 2151.03 of the Revised Code between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody.

4. The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child.

5. The parent is incarcerated for an offense committed against the child or a sibling of the child.

6. The parent has been convicted of or pleaded guilty to an offense [numerous child endangering offenses listed]...and the child or a sibling of the child was the victim of the offense, and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

7. The parent has been convicted of, is incarcerated for, or pleaded guilty to [certain offenses against a child – (e.g. murder, manslaughter, assault, endangering children, or a sex-related offense) and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent’s household at the time of the offense],[paraphrased from 2151.414 (E)(7)].

8. The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.
9. The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse, and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child, or an order was issued by any other court requiring treatment of the parent.

10. The parent has abandoned the child.

11. The parent has had parental rights involuntarily terminated pursuant to this section or section 2151.353 or 2151.415 of the Revised Code with respect to a sibling of the child.

12. The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing and will not be able to care for the child for at least 18 months after the filing of the motion for permanent custody or the dispositional hearing.

13. The parent is repeatedly incarcerated, and the repeated incarceration prevents the parent from providing care for the child.

14. The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

15. The parent has committed abuse as described in section 2151.031 of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

16. Any other factor the court considers relevant.”
H. Determining whether Reasonable Efforts to Prevent Removal of a Child are Required [paraphrasing O.R.C. § 2151.419 (A)(2)]

1. Except as provided in (2) (see below), at any hearing at which the court removes a child from the child's home or continues the removal of a child from the child's home, “the court shall determine whether the public children services agency ... made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home. The agency shall have the burden of proving those reasonable efforts. In determining whether reasonable efforts were made, the child's health and safety shall be paramount” [quoting 2151.419(A)(1)].

2. If any of the factors lettered numbered 7-11 listed in O.R.C. § 2151.414 (E) apply (see page 146), the court shall make a determination that the agency is not required to make reasonable efforts to prevent the removal of the child from the child’s home, eliminate the continued removal of the child from the child’s home, and return the child to the child’s home.

3. The court may issue an order that returns the child to the child's home even if factors 7, 8, 9, 10, or 11 listed in O.R.C. § 2151.414 (E) are present. 2151.419 (A)(3).

4. “Except as provided in 2151.413(D)(3), if a court makes a determination pursuant to 2151.419 (A)(2) [that the public children services agency or private child placing agency is not required to make reasonable efforts], the agency required to develop the permanency plan for the child under division (K) of section 2151.417 of the Revised Code shall file a motion ... requesting permanent custody of the child.” [quoting O.R.C. § 2151.413 (D)(2)].

I. If the Court Grants Permanent Custody of a Child to a Movant Under This Division

The court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding. [O.R.C. § 2151.414(C)]

“The parents of a child for whom the court has issued an order granting permanent custody pursuant to this section, upon the issuance of the order, cease to be parties to the action. This division is not intended to eliminate or restrict any right of the parents to appeal the granting of permanent custody of their child to a movant pursuant to this section.” [quoting O.R.C. § 2151.414(F)]
SECTION V: Rules of Evidence

A. Relevant Evidence Rule

RULE 401. Definition of “Relevant Evidence” (2006)

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.


All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio. Evidence which is not relevant is not admissible.

RULE 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay (2006)

(A) Exclusion mandatory. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

(B) Exclusion discretionary. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay or needless presentation of cumulative evidence.

B. Hearsay Rule


The following definitions apply under this article:

(A) Statement. A “statement” is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion.

(B) Declarant. A “declarant” is a person who makes a statement.

(C) Hearsay. “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
(D) Statements which are not hearsay. A statement is not hearsay if:

1. **Prior statement by witness.** The declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with his testimony, and was given under oath subject to cross-examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (c) one of identification of a person soon after perceiving him, if the circumstances demonstrate the reliability of the prior identification.

2. **Admission by party-opponent.** The statement is offered against a party and is (a) his own statement, in either his individual or a representative capacity, or (b) a statement of which he has manifested his adoption or belief in its truth, or (c) a statement by a person authorized by him to make a statement concerning the subject, or (d) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

### C. Hearsay Exceptions

**RULE 803. Hearsay Exceptions; Availability of Declarant Immaterial (2006)**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1. **Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter unless circumstances indicate lack of trustworthiness.

2. **Excited utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

3. **Then existing, mental, emotional, or physical condition.** A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will.

4. **Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
(5) **Recorded recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown by the testimony of the witness to have been made or adopted when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or as provided by Rule 901(B)(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) **Absence of entry in record kept in accordance with the provisions of paragraph (6).** Evidence that a matter is not included in the memoranda, reports, records, or data compilation, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) **Public records and reports.** Record, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, unless offered by defendant, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) **Records of vital statistics.** Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirement of law.

(10) **Absence of public record or entry.** To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 901(B)(10) or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) **Records of religious organizations.** Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar
facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) **Marriage, baptismal, and similar certificates.** Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergymen, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) **Family records.** Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) **To the extent** called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) **Reputation concerning personal or family history.** Reputation among members of his family by blood, adoption, or marriage or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in
the community, and **reputation as to events of general history important to the community or state or nation in which located.**

(21) **Reputation as to character.** Reputation of a person’s character among his associates or in the community.

(22) **Judgment of previous conviction.** Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of no contest or the equivalent plea from another jurisdiction), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) **Judgment as to personal, family, or general history, or boundaries.**
Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.