Chapter 3
The Interplay Between Child Maltreatment Legislation and Caseworker Practice

Children had little legal protection from maltreatment until the early 20th century when addressing child abuse and neglect became a component of the new juvenile court movement. Court practices varied, but generally were inadequate to meet the needs of abused and neglected children and their families. The identification of battered child syndrome in 1962 heightened public interest in child maltreatment and resulted in the passage of legislation in most States to enhance protections for children. As recently as the late 1970s, it was common that the only people in the courtroom in child maltreatment cases were the caseworker, the judge, and sometimes the parents. Children rarely participated in the process and none of the parties, including child protective services (CPS), had legal representation. Nor were there Guardians ad Litem (GALs) or court-appointed special advocates (CASAs). The court's role was limited. If it found abuse or neglect, it would place the child in the custody of CPS, and that ended its responsibility. There were no case plans, no court reports, no periodic reviews, no reasonable efforts requirement, and no permanency planning.

Since then, sweeping changes have occurred in the law, CPS practice, and the litigation of child maltreatment cases. Family dynamics and problems (e.g., AIDS, homelessness, substance abuse) have become more complex as well. These changes have increased the frequency of interaction between the courts and CPS dramatically and have transformed the nature of their relationship. Therefore, it is imperative that CPS caseworkers understand the implications of significant legislation on successful outcomes for families.

The case example in Exhibit 3-1 illustrates a family experiencing multiple issues needing intervention. Following the case example are summaries of relevant legislation, including:

- The Child Abuse Prevention and Treatment Act;
- The Individuals with Disabilities Education Act;
- The Indian Child Welfare Act;
- The Adoption Assistance and Child Welfare Act;
- The Adoption and Safe Families Act;
- The Interstate Compact on the Placement of Children.

Following each summary is a discussion of how that legislation may be applicable in the case example.
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The 12-year-old child's poor academic performance and possible learning disability are significant in the case of the 12-year-old child without any adult supervision;

- The 4-year-old and 12-year-old children reported witnessing violent, physical attacks against Ms. Smith;
- The 12-year-old child reported that Robert Johnson had touched her inappropriately on three occasions;
- The 12-year-old attempted suicide, is failing academically in school, is suspected of having a learning disability, and was suspended from school on two occasions for fighting with peers;
- The rental home was littered with broken glass, animal and human feces, molding food, and hazardous electrical fixtures;
- The domestic violence perpetrator, Mr. Johnson, is the biological father of Ms. Smith's 16-month-old and 4-year-old children, but Ms. Smith and Mr. Johnson are not married;
- Ms. Smith abuses alcohol and cocaine;
- Mr. Johnson also abuses alcohol and cocaine;
- Ms. Smith was employed by a cleaning service, but recently lost her job;
- Mr. Johnson is employed as a landscaper.

The initial hearing granted CPS temporary legal and physical custody of the three children. At the adjudication hearing, the court ordered that the children be placed in foster care, that CPS develop a case plan for reunification, and that Ms. Smith and Mr. Johnson cooperate with CPS in receiving services. (See Chapter 4, The Juvenile Court Process, for definitions of “initial hearing” and “adjudication hearing.”)

The CPS caseworker assigned to the Smith family faced several issues:

- The siblings were not placed in the same foster home. While the 16-month-old and 4-year-old children were placed in the same foster home, the lack of available therapeutic foster homes or residential facilities prompted placement of the 12-year-old child in a temporary receiving shelter until approval was granted for placement into a therapeutic residential facility or home located in a neighboring State. There were no known relatives available for placement.
- The whereabouts of Eric Lequoi, the alleged biological father of the 12-year-old child, were unknown.
- Mr. Lequoi's last known whereabouts were with his family at a Native American reservation in Wyoming.
- Ms. Smith denied having a substance abuse problem and wanted to maintain her relationship with Mr. Johnson.
- Mr. Johnson refused to participate in substance abuse treatment, sexual offender assessment, or a batterer intervention program and denied that he was the biological father of the 16-month-old child. Ms. Smith maintained that Mr. Johnson was the biological father of the 16-month-old and 4-year-old children.

Considerations and actions regarding this case and how existing legislation affects the provision of services are discussed throughout the remainder of this chapter.

The Child Abuse Prevention and Treatment Act

The first Federal legislation to address child maltreatment became law in 1974 with the passage of the Child Abuse Prevention and Treatment Act (CAPTA) (P.L. 93-247). In return for Federal funding, CAPTA required that States adopt mandatory child abuse reporting laws, ensure the confidentiality of agency records and court proceedings, and appoint a GAL for every child in maltreatment proceedings in juvenile court. CAPTA has been reauthorized periodically and amended by Congress, most recently as part of the Keeping Children and Families Safe Act of 2003 (P.L. 108-36).

The recent amendment to CAPTA changed the confidentiality requirements so that States now are obligated to share confidential information with any agency or individual who has a statutory duty to protect children. This amendment also contains language that allows States flexibility to determine State policies that permit public access to child abuse court proceedings.

- Caseworkers follow the definitions established by CAPTA and State laws to substantiate child abuse and neglect against Ms. Smith and Mr. Johnson. The condition of the home and the act of leaving three under-aged children without adult supervision for 3 days meet the threshold for substantiating neglect.

The Individuals with Disabilities Education Act

Originally enacted in 1975, the Individuals with Disabilities Education Act (IDEA) (P.L. 94-142) entitles eligible children to education programs that meet their special needs. An Individual Education Plan (IEP) is developed for eligible children to identify their specific educational needs as well as strategies for meeting them. In its most recent reauthorization, CAPTA contains a provision that requires CPS to refer children under the age of three for evaluation of IDEA eligibility in substantiated cases of abuse or neglect.

- The 12-year-old child’s poor academic performance and possible learning disability are significant
The Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) (P.L. 95-608) of 1978 requires specific protections to Native American children involved in CPS and juvenile court proceedings. If a child is affiliated with a tribe, the tribe has the right to intervene in proceedings or to petition to have the case transferred to tribal court. Eric Lequoi, the alleged father of the 12-year-old child, is Native American. The CPS caseworker will need to locate Mr. Lequoi to establish paternity. If he is the child's biological father, the caseworker will need to determine whether he is a viable permanency option for the child or can provide child support and medical insurance. Once the paternity of the child is established, the caseworker will need to determine whether the child is entitled to the protections of ICWA.

The Adoption Assistance and Child Welfare Act

The Adoption Assistance and Child Welfare Act (P.L. 96-272) of 1980 requires that CPS make reasonable efforts to avoid unnecessary removals of children from their homes and to reunify foster children with their biological parent, legal guardianship with a relative or caregiver, adoption, or an alternative planned permanent living arrangement. In 1997, Congress passed the Adoption and Safe Families Act (ASFA) (P.L. 105-89) in response to concerns that many children were remaining in foster care for long periods or experiencing multiple placements. ASFA emphasizes that the child's safety is the paramount concern in any child maltreatment case.

Reunification Is Not Attempted

In this case example, the requirements for bypassing reunification efforts are not met, so the caseworkers should assume that the goal is to reunify the children with their biological parent, Ms. Smith. In order to meet the reasonable efforts requirement, the CPS caseworker must conduct a comprehensive and thorough family assessment to identify specific services that will address the issues prompting removal of the children. The CPS caseworker, for example, may recommend that a domestic violence specialist conduct a domestic violence assessment with Ms. Smith and that Mr. Johnson participate in a batterer intervention program.

The Adoption and Safe Families Act

In 1997, Congress passed the Adoption and Safe Families Act (ASFA) (P.L. 105-89) in response to concerns that many children were remaining in foster care for long periods or experiencing multiple placements. The law requires timely permanency planning for children. Permanency for children involves either reunification with the biological parent, legal guardianship with a relative or caregiver, adoption, or an alternative planned permanent living arrangement. ASFA emphasizes that the child's safety is the paramount concern in any child maltreatment case.

In addition, ASFA addressed the lack of clarity regarding what constituted making "reasonable efforts" to keep families together. The legislation:

- Restricts the reasonable efforts requirement of attempting to keep families intact by permitting it to be waived under specified circumstances, such as severe or chronic maltreatment or the death of another child in the household due to maltreatment;
- Expands the reasonable efforts requirement to make it applicable to CPS efforts to secure permanent homes for children who will not be reunited with their families;
Mandates a permanency hearing to occur no more than 12 months after a child is placed in foster care;

Dictates, with some exceptions, that petitions for termination of parental rights need to be filed for children who have been in foster care for 15 of the previous 22 months;

Includes several provisions to promote, to facilitate, to fund, and to support adoptive placements;

Gives substitute care providers the right to receive notice of court hearings and the opportunity to be heard;

Requires criminal record checks on all substitute care providers;

Directs that compliance with these provisions and other performance standards be carefully monitored and enforced.19

ASFA has a significant impact on caseworker practice, guiding caseworkers through family reunification, the provision of services to the family, and alternative permanent placements, if necessary.

Ms. Smith and Mr. Johnson abuse alcohol and cocaine, which exacerbates the incidence and severity of physical violence perpetrated by Mr. Johnson. Substance use disorder and domestic violence are commonly known to be chronic issues that typically require extensive time for successful treatment and resolution. ASFA requires that Ms. Smith and Mr. Johnson address and resolve their substance abuse and domestic violence issues in a shortened and restricted length of time. If Ms. Smith and Mr. Johnson cannot resolve their issues within 12 months, the CPS caseworker is faced with the possibility of making a recommendation at the permanency hearing that parental rights be terminated and the children be placed for adoption. The caseworker also could utilize concurrent planning, which seeks to reunify children with their birth families while, at the same time, establishing an alternative permanency plan if reunification cannot take place.20 In either case, the CPS caseworker needs to be diligent and expeditious in engaging Ms. Smith and Mr. Johnson in services. It is equally important for the caseworker to ensure compliance with the court-ordered case plan. The caseworker also may collaborate with service providers to assist Ms. Smith and Mr. Johnson with addressing their issues in a timely manner.

Establishing paternity is another critical piece of casework practice to prevent further delays in achieving permanency. If the permanency plan’s goal is adoption, the children cannot be freed for adoption unless the parental rights of their biological parents are terminated. In this case, Mr. Johnson denies paternity of the 16-month-old child. The CPS caseworker must ascertain if Mr. Johnson’s claims are true and, if so, begin proceedings to locate the biological father. Additionally, if the children remain in foster care placement, child support needs to be established and paid to the CPS agency by Ms. Smith and Mr. Johnson. If Ms. Smith and Mr. Johnson are separated, each parent will need a separate child support order. The CPS caseworker can utilize the Child Support Enforcement (CSE) office that is responsible by law for establishing and for enforcing paternity, child support, and medical insurance obligations for children in foster care. Collaboration with the CSE office is an example of the CPS caseworker’s ability to demonstrate reasonable efforts to the courts and to ensure timely permanency for Ms. Smith’s children.

The Interstate Compact on the Placement of Children

In addition to Federal legislation, the Interstate Compact on the Placement of Children (ICPC) also can play an important role in caseworker practice. ICPC is an agreement among all 50 States, the District of Columbia, and the U.S. Virgin Islands regarding placement (e.g., kinship care, adoption, foster care) across State lines. The placement must be approved by the ICPC offices of each of the affected States before it can occur.

Due to the special needs of the 12-year-old child and the lack of an appropriate therapeutic foster care placement, an alternative foster care placement located in a neighboring State was recommended. This process can be time consuming and can prolong the quest for permanency. Thus, the CPS caseworker will need to contact the State ICPC office immediately, follow all ICPC requirements, and pursue timely completion of the ICPC process.

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