

NEW ATTORNEY BASICS

Overview of Child Maltreatment and Dependency-Neglect

By: Sarah Ross

Primary State Laws

Child Maltreatment Act § 12-18-101 et seq –

- Reporting and investigations of child maltreatment
- Authority to protect and place maltreated children.
- Track maltreatment victims and offenders – Child Maltreatment Registry
- Have an administrative review of true findings

Juvenile Code § 9-27-301 et seq –

- Court supervision required. (Civil Lawsuit)
- Emergency removal and placement of children in DHS custody
- On-going placement of children in DHS custody
- Ordering services for parents and children for reunification
- Ensuring permanency for children who cannot be reunited with their families

Child Maltreatment Act (CMA)

Investigations

- What are the range of options permitted by law during a maltreatment investigation?
 - Divert to Differential Response at time of Hotline report
 - Children left in home without a protection plan
 - Children left in home with a protection plan
 - Removal if immediate danger. State law **REQUIRES** that if a juvenile cannot safely remain in the home, the child must be removed. 12-18-1001(c). If the child is safe at home, but a parent/custodian poses an immediate danger to the child, and must be restricted from access to that child, a protection plan is not sufficient. A less than custody may be an option. 9-27-314(a)(2)

CMA Investigations Continued

- The Maltreatment Act states that "no unreasonable action shall be construed to permit the finding of abuse without having established the elements of abuse".
- Even if someone acts unreasonably and a child is injured, that does not necessarily mean abuse occurred. Bad parenting does NOT equal abuse/neglect.
- You have to meet each and every element of the alleged abuse/neglect, as defined by the CMA
 - Environmental Neglect - Dirty House ≠ Hazardous to Health and Safety
 - Physical Abuse (Age/Actor/Injury/Body Part) – Each element has to be satisfied. Abuse is not what we think it is but what the legislature defines it as
 - Drug Use is Not Defined as Maltreatment – It is often the underlying cause

CMA Investigations Continued

- Investigator has limited time in which to complete the investigation.
- If a true finding is entered, notice is then given to the alleged offender (AO).
- Within 30 days from receipt of notice, the AO can appeal the finding to the Office of Appeals and hearings. The administrative appeal should be completed within 180 days. However, this time will be extended and the matter stayed if criminal charges have been filed or there is an ongoing criminal investigation.
- If upheld, the AO can then petition a circuit court for judicial review.
- Though they are dependent upon one another in some aspects, opening and continuing a dependency-neglect case is not dependent on a true finding.
- If there is a DN court case and the Circuit Court adjudicates and finds abuse or neglect, the OAH cannot override that. The attorney handling the admin appeal can file for summary judgment based on preclusion

Separate Issues

- True finding under CMA – Preponderance of the evidence that the act OR omission meets the definition under the Child Maltreatment Act, dangerous situation with risk of harm. USE LANGUAGE FROM THE DEFINITION
- DN (30 day) JV Code – **Substantial** risk of **serious** harm due to abuse/neglect, dependency or parental unfitness. True finding irrelevant
- Removal/Less than – CMA & JV Code – Immediate danger and services cannot be provided to prevent removal. True finding irrelevant if parent is unfit.
- Most removals occur at the outset of an investigation and even if the allegations are eventually unsubstantiated, it does not necessarily mean the court case closes or that the children are returned home.

Protective Services (No Court Involvement)

- Services to prevent removal ARE REQUIRED by both Federal and State laws unless an emergency exists which prevents them.
- FINDING OF RE must be made for EACH new removal episode within 60 days or there will be no federal matching funds for that child for his or her entire stay in foster care. It cannot be remedied.
- Drug treatment, home visits, shelter referrals, parenting classes, etc.

DN (30 Day)

"Dependent-neglected juvenile" means any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile:

- Abandonment;
- Abuse;
- Sexual abuse;
- Sexual exploitation;
- Neglect;
- Parental unfitness (NOT defined); or
- Being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of his or her parent, guardian, or custodian.

NO EMERGENCY ORDERS REQUESTED!! Usually used to have court supervision of a protective services case ensuring the parent completes the services to prevent removal. However, after adjudication the disposition of foster care is still an option.

30 Day

- So called because once the suit is filed, the parent(s) have 30 days from date of service to respond. The court cannot hear the case until the 30 days runs, but it can take longer to hear based on the court's calendar.
- Used for noncompliance with non-court involved Protective Services (PS) cases or cases with out-of-home offenders, especially in sex abuse cases.
- Since the child remains in the home, the first hearing is the adjudication hearing.
- Just remember, if the court thinks removal is warranted the child may be placed in foster care at the disposition

< (Less Than) Custody (Orders for Protection)

DCFS seeks emergency orders but for something less than custody/foster care...

- In any case in which there is probable cause to believe that an emergency order is necessary to protect the health or physical well-being of the juvenile from immediate danger, the court shall issue an ex parte order to provide specific appropriate safeguards for the protection of the juvenile.
- Specific appropriate safeguards shall include without limitation the authority of the court to **restrict a legal custodian** from:
 - (i) Having any contact with the child; **or**
 - (ii) Removing a child from a placement if the:
 - (a) Legal custodian placed or allowed the child to remain in that home for more than six (6) months; and
 - (b) Department of Human Services has no immediate health or physical well-being concerns with the placement.
- DCFS must have a recommendation at Adjudication, so DCFS will need a written home study on the placement if the child is not remaining with the custodial parent.

Examples of < Custody

- Child discloses sexual abuse by father who has every other weekend visitation as part of a divorce custody order. Can you just tell mom not to let the child go for visitation? NO! DCFS does not have the authority to incite contempt of DR court orders.
- Mom is drug dependent. You are involved because of a Garrett's Law report on her newborn. The newborn is taken into custody because mother had an active meth lab in her home. Mom also has a 4 year old who has lived with maternal grandmother for the past 2 ½ years, but grandmother never actually got legal custody of the child. Does DCFS just take the 4 year old into care because the mother has the legal right to come over and get him now that the baby is in foster care?
 - If, after a walkthrough, there are no apparent health or safety risks in that home, DCFS can ask the court to restrict mother from removing the child from grandmother's home pending the completion of a home study.
 - If the home study is not approved, the child must then be removed.

Emergency Custody

- If DCFS finds: “[c]ircumstances or conditions of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian, or caretaker **presents an immediate danger to the health or physical well-being of the child**”, then DCFS has the legal authority take an immediate 72 hour hold on the child.
- EXCEPTION: a 72 hour hold can be taken on Garrett’s Law newborns with only a substantial risk of serious harm....You still will have to show immediate danger to obtain the emergency order if the hold is not released within the 72 hours.

- Physical possession of the child is required for a 72 hour hold to be taken. If DCFS does not have physical possession, an emergency order can be sought and LLE can assist DCFS in obtaining physical custody pursuant to that court order.
- Courts, hospitals, LLE, etc can also initiate 72 hour holds, but it is still DCFS who then has the duty to fully assess the health and safety of the child and make a decision on whether to proceed with obtaining custody. AALs can also seek emergency custody orders.

Time Frames for Court Hearings

- PRE-HEARING: 72 Hour Hold OR Emergency Custody, Emergency Petition, Emergency Order, & HIPPA Order
- Probable Cause Hearing (5 Days from any emergency order)
- 30 Day Petition- Straight to Adjudication Hearing
- Adjudication Hearing – 30 days; 60 days for good cause shown. This is tricky if a parent is incarcerated. They have 60 days to respond, so the 60 deadline will likely not be met
- Review Hearings - At least one every 6 months
- Permanency Planning Hearing (PPH) - 12 months from removal OR out of home 15 of the last 22 months

- 15 Month Hearing – MUST have compelling reason to continue REUNIFICATION
 - Termination of Parental Rights (TPR) Hearing
 - Guardianship Hearing
 - Annual PPH until Permanency is Achieved for Child
 - Adoption Hearing
- *AT ANY TIME, No Reunification Services Hearing OR Fast Track to TPR

FAST TRACK (No Reunification Services)

Fast Track Grounds, by Clear & Convincing Evidence, of Aggravated Circumstances:

1. Abandonment
2. Chronic Abuse
3. Extreme or Repeated Cruelty
4. Sexual Abuse
5. Determination by Court that Services are Unlikely to Lead to Reunification
6. Committed or Aided in Murder/ Manslaughter of Child
7. Felony Battery or Assault resulting in Serious Bodily Injury to Child
8. Involuntary Termination of Parental Rights on Sibling
9. Abandoned Infant of Less than 9 months

PPH Statutory Preferences

- Placing custody with A fit parent (*immediately*)
- Returning custody to the guardian or custodian from whom custody was removed (*immediately*)
- Continuing the goal of reunification “Authorizing a PLAN to place custody with a parent/guardian/custodian (PGC)” **ONLY IF** the Court finds:
 - The PGC is complying and making SIGNIFICANT MEASURABLE PROGRESS and is diligently working towards reunification
 - Reunification **MUST** be expected to occur within 3 months
 - A PGC beginning to comply or resuming contact only in the months or weeks right before the hearing is NOT enough to warrant this goal. This is statutory
- Authorizing a goal of adoption with DHS to file a TPR Petition within 30 days UNLESS:
 - The JV is already being cared for by a relative AND
 - They are willing to make a long-term custodial commitment, OR
 - The relative is a parent in foster care AND
 - TPR is not in the JVs best interest
 - DHS has documented a compelling reason in the case plan why its not in the JVs best interest AND the court approves the compelling reason
 - DHS has not provided the necessary services. If this is the case, another PPH must be held in 6 months.
- Plan to obtain a guardian
- Plan to obtain a custodian, including a custody with a fit and willing relative
- APPLA