

Child Protective Services

What Every Prosecutor Needs To Know

Intersections of Violence Conference

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Child Protective Services

- Objectives:
 - Provide an overview of Child Protective Services
 - Highlight how the CPS process intersects with the investigation & prosecution of child abuse/neglect, why the CPS process important to the prosecution
 - How to engage your CPS team

Child Protective Services

- § 63.2-1503 of the Code of Virginia designate local social services departments are responsible for conducting child abuse and neglect investigations and family assessments
- How CPS works is defined in the Code of Virginia, Virginia Administrative Code & VDSS guidance
- Social Services is state-governed, but locally administered in Virginia

Child Protective Services

- Validity criteria for Child Protective Services response:
 - Jurisdiction
 - Child is under age 18 at the time of the CPS report
 - Alleged abuser/neglector is a caretaker to the child
 - Meets the definition of abuse/neglect

Child Protective Services

Types of abuse/neglect:

- Physical abuse
- Physical neglect, abandonment
- Sexual abuse
- Medical neglect (includes mental health and dental)
- Mental abuse/neglect
- Substance-exposed newborns

Child Protective Services Differential Response

Family Assessments vs. Investigations:

- BOTH meet 4 validity criteria
- BOTH require the same interviews, safety and risk assessments and provision of services to reduce the risk of further abuse/neglect
- BOTH engage the same CPS authorities
- FAMILY ASSESSMENTS involve less serious allegations of abuse/neglect, require a determination about whether abuse/neglect occurred, but the focus is on services
- INVESTIGATIONS involve more serious allegations of abuse/neglect, require a formal finding/disposition of abuse/neglect and when investigations are founded, the alleged abuser is listed in the child abuse/neglect central registry

Child Protective Services Mandates

- 1st meaningful contact to establish safety within response time
- Face to face interviews:
 - Victim(s)
 - Siblings of victim(s)
 - Alleged abuser/neglector (Miranda)
 - Parent/caretaker/legal guardian
 - Collateral witnesses
- Collection of evidence (medical records, photographs, mental health evals, ...)
- Home visit & site visit where alleged abuse/neglect occurred
- Safety Assessment, Risk Assessment, Service needs & determination about ongoing case management

Child Protective Services Timelines

- Response Time
 - R1-24 hours
 - R2-48 hours
 - R3-5 business days
- Completion of CPS investigations § 63.2-1505 (5)
 - 45 days
 - Extension to 60 days – when unable to complete needed or mandated contacts
 - Extension to 90 days – joint investigations with law enforcement
 - Suspension – joint investigations with law enforcement awaiting autopsy & forensic reports

Child Protective Services Joint Investigations

- Law enforcement
- Child care licensing
- Local school administrators
- State DOE and MH authorities

Child Protective Services Authorities

- Interview alleged victims & their siblings without the consent of the parents/caretakers (§ 63.2-1518)
- Take or arrange for photographs and x-rays without consent of the parent and outside of their presence (§ 63.2-1520)
- Take a child into emergency custody (§ 63.2-1517)

Child Protective Services Judicial Proceedings

- Emergency Protective Orders § 16.1-252
- Emergency Removal Orders § 16.1-251
- CHINS (Services)

Child Protective Services Judicial Timeline

- Timeline:
 - Ex parte hearing – affidavit/sworn testimony to support petition for abuse/neglect
 - 5-day due process hearing – affidavit provided to all parties
 - 30-day adjudicatory hearing – DSS required to put on all evidence that is the basis for the petition for abuse/neglect
 - 60-day dispositional hearing – establishment of child protective order or foster care
 - Review hearings
 - Particularly with foster care, funding is tied to timely and accurate court proceedings
 - Communication is critical when victim and witness testimony might have negative implications for the criminal proceedings

Child Protective Services Appeals

- Appeals § 63.2-1526
 - In founded investigations, appellants have the right to appeal the finding (local conference, state administrative hearing, & judicial review by Circuit Court)
 - Appeals are stayed while criminal proceedings are in process & access to the DSS record is suspended until the Court enters a final, appealable order (a case taken under advisement does not constitute a final appealable order) § 63.2-1526 C

Child Protective Services

How we can work together

- MDTs & joint investigations between CPS and law enforcement
- Communication:
 - § 63.2-1503 D: DSS shall report potential criminal violations to law enforcement & the CA's office within 2 hours of receiving the report, to include releasing all associated records AND the identity of the complainant
 - § 63.2-1516.1 (B): When conducting a joint investigation with law enforcement, DSS shall not release information unless approved by law enforcement or the CA's office

Child Protective Services

How we can work together

- Domestic violence cases & other cases where immediate arrests are made
 - When the report is valid for DSS, the assigned worker will be required to interview all children who reside in the home, the alleged abuser and all other caretakers, and collateral witnesses
 - Interviews conducted by DSS with the alleged abuser (post-arrest) can only be used in the criminal proceedings if the CPS worker has given Miranda warning/advised of rights against self-incrimination

Child Protective Services

How to engage your CPS team

Some local strategies that have worked for us:

- Joint investigation protocol (MDT)
- Monthly case review
- Bi-monthly old case review
- Bi-monthly training
- Inclusion in meetings when evidence and investigations are discussed
- System set up for requesting records
- MDT social & wellness activities