Legal 1: Legal Basis for Child Protection Power Point Slides

Slide 1

LEGAL I: LEGAL BASIS FOR CHILD PROTECTION

Slide 2

Module 1: Legal Basis for Child Welfare

Objectives:

- Describe primary legal references used in dependency cases.
- Describe main principles of federal laws that impact child protection.
- Identify legislature’s goals for dependent children.
- State statutory definitions of abandonment, abuse, neglect, & harm.
- Identify elements of abandonment, abuse, & neglect (AAN) to decide if allegation scenario meets the definition of AAN.

Slide 3

The Legal Hierarchy

- Constitution
- Federal Statutes
- State Statutes
- Administrative Rules
- FL Rules of Juvenile Procedures
- Operating Procedures
Slide 4

**Reading the Statutes**

<table>
<thead>
<tr>
<th>Chapter Number/Title: 39</th>
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<tbody>
<tr>
<td>Sections: 39.001</td>
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<tr>
<td>Subsections: 39.001(7)</td>
</tr>
<tr>
<td>Paragraphs: 39.001(7)(6)</td>
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<tr>
<td>Subparagraphs: 39.001(7)(c)4</td>
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<tr>
<td>Sub, subparagraphs: 39.001(7)(c)4.a</td>
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Slide 5

**Florida Administrative Codes**

65C-28: Guidelines: how to carry out the Florida statutes that pertain to children living in out-of-home care

65C-29: Guidelines: how to carry out statutory requirements for the Abuse Hotline and Protective Investigation functions

65C-30: Describes services, interventions, geographic & case conduct expectations specific to the child protection system

Explains the scope of responsibilities attached in various positions at critical stages throughout the case

Slide 6

**Reading the F.A.C.**

<table>
<thead>
<tr>
<th>Chapter Number/Title: 65C-30</th>
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<tbody>
<tr>
<td>Sections: 65C-30.007</td>
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<td>Subsections: 65C-30.007(10)</td>
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<td>Paragraphs: 65C-30.007(10)(g)</td>
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<td>Subparagraphs: 65C-30.007(10)(g)(3.a)</td>
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<tr>
<td>Sub, subparagraphs: 65C-30.007(10)(g)(3.a)2</td>
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Slide 7

Federal Laws

<table>
<thead>
<tr>
<th>Law</th>
<th>Date</th>
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<tbody>
<tr>
<td>Adoption and Safe Families Act</td>
<td>P.L. 105-89</td>
</tr>
<tr>
<td>Multi Ethnic Placement Act/</td>
<td>P.L. 103-382</td>
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<tr>
<td>Inter Ethnic Adoption Provision</td>
<td>P.L. 104-188</td>
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<td>Interstate Compact on the Placement of Children</td>
<td>P.L. 109-239</td>
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<td>Indian Child Welfare Act</td>
<td>P.L. 95-608</td>
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<tr>
<td>Immigrant Children</td>
<td>P.L. 104-93, 104-208</td>
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Slide 8

Adoption Assistance and Child Welfare Act of 1980

Case plan permanency goals must be reviewed, revised & updated every 6 months at a minimum.

Focus: “Foster Care Drift”
Move children toward permanency goal as quickly as possible.

Slide 9

Adoption and Safe Families Act

- Preserve & reunify families
- Timely placements
- Finalize permanent placement within 12 months
Slide 10

### Adoption & Safe Families Act of 1997

- **NOT intended to:**
  - unnecessarily disrupt families
  - inappropriately intrude into family life
  - prescribe particular parenting method(s)
- Allows for reasonable methods of parental discipline.

Slide 11

### Module 2
**Introduction to Evidence**

- Define evidence in child protection cases.
- Identify examples of the four types of evidence.
- Describe evidence collection and documentation.
- Explain the standard of proof required by the evidence in judicial dependency cases.

Slide 12

### Gathering Evidence

- Make & document observations of home & household members.
- Evaluate interactions among family members.
- Assess if alleged victims & other children are in proper stages of development.
- Evaluate prior histories (abuse and criminal).
Slide 13

Gathering Evidence

- Conduct victim, caregiver & perpetrator interviews.
- Take photographs when necessary.
- Consider input from relevant collateral contacts.
- Decide if maltreatment is occurring.
- Involve other stakeholders as needed to complete thorough investigation & provide services.

Slide 14

Types of Evidence

- Direct Evidence: Eyewitness account of an event
- Circumstantial Evidence: Judge may deduce a certain fact from other proven facts
- Demonstrative Evidence: Things or objects
- Expert Testimony: Presented by someone with relevant, specialized knowledge/experience

Slide 15

Collecting Evidence

- Document all observable information accurately.
- Work effectively with law enforcement.
- Evidence connected to criminal investigation must be secured by law enforcement.
- If drugs or weapons are present - notify LE immediately (if LE is not already present).
- Never place personal safety at risk.
Slide 16

**Photographs**

39.304(1)(a)

You may take (or arrange to have taken) photographs of any visible trauma on a child.

CPT must photograph any visible areas of trauma to a child during examination.

Copies of all photographs become part of the case file.

Exception: Photographs of sexual abuse trauma are only kept in the CPT file.

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Slide 17

**Photographs**

Law Enforcement is responsible for taking photographs when completing a criminal investigation, & then, only when appropriate.

Handle all photographs according to agency protocol.

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Slide 18

**Documentation**

- Note & photograph any injury you observe.
- Note any inconsistencies or circumstances surrounding the maltreatment.
- Out of court statements by a child under age 11 describing a child maltreatment act is admissible evidence as a hearsay exception.

**Direct evidence**

- Written description of the witnessed event
- Name, address, physical description & any other contact information about the witness

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**Slide 19**

**Documentation**

- **Demonstrative Evidence**
  - Describe the object
  - Identify who will present the object in court
  - Record how the object was discovered & maintained

- **Circumstantial Evidence**
  - Document as you would direct evidence

- **Expert Witnesses**
  - Make sure they are available & provide identifying information to CLS

**Slide 20**

**Medical Evidence**

- **CPT will**
  - Assess extent of the injury
  - Protect case from defense accusations that the injury occurred after the crime scene incident
  - Find corroborating evidence of acute or chronic trauma
  - Photograph any injuries

**Slide 21**

**Sexual Abuse**

- **If occurred:**
  - Within 72 hours of intake – take child to rape treatment center or hospital:
    - Collected physical evidence
  - Outside 72 hour timeframe, schedule appointment with CPT or rape treatment center:
    - Determine presence of old injuries
Slide 22

**Evidence Required at Shelter Hearing**

- 39.402(8)(e)-(f)

- Copies of: available LE/medical/other professional reports, abuse hotline intakes (excluding reporter information), any current or previous case plan

- Information on any of the parents/caregivers’ adjudication(s) of delinquency

- Past/current injunctions for domestic violence protection

- All child’s residences during the prior 12 months

Slide 23

**Standards of Proof**

- Probable Cause

- Preponderance of the Evidence

- Clear & Convincing Evidence

Slide 24

**Summary**

- Evidence collected & documented at case onset is used during entire life of case.

- Provide all evidence to CLS.

- Judge uses full, formal “rules of evidence” at hearings (except shelter hearings).
Module 3: Exposure to Liability

Objectives
- Describe how you can avoid exposure to liability claims.
- Recognize the legal consequences for falsifying records.

Slide 26

Liability is...
- an obligation imposed by law
- responsibility for an act or failure to act
- the state of being legally obliged & responsible

Slide 27

Falsification:
Misrepresentation, falsification or omission of any fact (verbal or written) on such records as, but not limited to:
- Case notes
- Court documents/reports
- Other forms
- Time sheets
- Mileage reports
Slide 28
Module 4: Confidentiality and Case Records

Objectives
- Identify who has access to dependency case records.
- Identify records that may be shared with children.

Slide 29
Releasing Information on Missing Children

- Name & date of birth
- Physical description (at a minimum): height, weight, hair color, eye color, gender, & any identifying physical characteristics
- Photograph
- In concurrence with law enforcement, any additional information likely to help locate the child or promote their safety/well-being

Slide 30
FSFN Access

- Only for legitimate business purposes
- Do not access FSFN for the following reasons:
  - Persons/Cases in the new or about which you are curious
  - Persons/Cases involving you or family members
  - Persons/Cases of friends, neighbors or acquaintances
  - Any other Person/Cases for which there is no legitimate business reason for you to access
Sharing Records with Children

- Must receive approval from attorney prior to release
- §63.162, F.S.: Governs access to adoption records
- Consider child’s age and maturity level
- Know your agency/unit protocol
- Never simply hand over records to the child