

MISCONCEPTIONS AND FACTS

REGARDING

PROTECTING PARENTS' CONSTITUTIONAL RIGHTS DURING

CHILD ABUSE AND NEGLECT

INVESTIGATIONS AND ASSESSMENTS

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In collaboration with
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Prepared for:

The Ohio Department of Job and Family Services

and

The Ohio Child Welfare Training Program

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Please note: During the revision of this paper, Ohio's Statewide Automated Child Welfare Information System (SACWIS) was implemented, which required PCSAs utilize The Comprehensive Assessment and Planning Model - Interim Solution (CAPMIS). Some Ohio Administrative Code Rules were revised to be consistent with CAPMIS. In this paper the revised rule numbers are included in parentheses following the former rule number. For example, OAC 5101:2-33-04 (post SACWIS 5101:2-33-20).

Misconceptions and Facts

Regarding Protecting Parents Constitutional Rights During Child Abuse and Neglect Investigations and Assessments

Misconception #1: Non-custodial parents cannot be notified regarding a children services' investigation of alleged child maltreatment of their children.

Fact: In the majority of cases where parents do not live in the same home, both custodial and non-custodial parents should be notified regarding the children services investigation of alleged maltreatment of their children. Notifying the non-custodial parent is normally advisable because he/she may provide relevant information about the allegation, and may provide placement or other resources for the child. Finally, non-custodial parents have rights to due process. Notifying them is consistent with due process and best practice.

If there is concern about notifying the non-custodial parent, workers should contact their prosecutor or agency legal counsel regarding the best course of action.

Misconception #2: When a PCSA investigates alleged maltreatment, where the parent is not the alleged perpetrator, the agency may not disclose the identity of the alleged perpetrator to the parent. (Example: babysitter gets high in front of children she is babysitting and passes out leaving the toddlers unsupervised)

Fact: The parent of the alleged child victim is a principal in the case, (the principals in the report or case are the parent or caretaker, alleged child victim, and alleged perpetrator) and can and should be informed about the allegation and the identity of the alleged perpetrator.

Misconception #3: During investigations, workers cannot contact collateral sources of information without parents' permission.

Fact: OAC 5101: 2-34-32 (post SACWIS 5101:2-36-03) states that when conducting investigations of alleged child maltreatment, PCSA workers may contact "any persons identified as possible sources of information during the assessment/investigation to obtain relevant information regarding the risk to the children." For example, if the agency receives an allegation that a toddler was wandering outside unsupervised, the worker could speak with neighbors that may have seen the child. Keep in mind that caseworkers should exercise discretion when contacting sources in order to protect the family's right to privacy. To protect the confidentiality of the principals, persons shall not be randomly interviewed.

One word of additional caution: PCSAs are authorized to contact collateral sources only *after the referral has been accepted as a report* of alleged maltreatment which will be investigated. In other words, caseworkers must not contact collateral sources of information prior to accepting the referral as a report. Furthermore, *caseworkers must not contact collateral sources of information in order to determine* whether to accept the referral as a report.

Misconception:#4: If the parent refuses to cooperate with the investigation, (e.g., refuses access to the child or the home, or refuses to speak with the worker) the investigation must stop.

Fact: A parent's refusal to cooperate with the investigation does not negate the PCSA's responsibility to investigate alleged maltreatment. While it is not advisable to return to the home if the parent has ordered the worker off his/her property, the worker should use his/her social work skills to engage the parent through phone calls, letters, etc. Furthermore, other aspects of the investigation, such as contacting collateral sources may be performed without the parent's permission (see Misconception #3). If attempts to engage the parent are unsuccessful, the worker should consult with counsel to determine if there is enough evidence to initiate an action in juvenile court for an order compelling the parent to cooperate with the investigation.

Misconception #5: CAPTA's 2003 Amendments define all parental rights.

Fact: The U.S. Constitution protects parents rights, which are further defined in judicial decisions interpreting constitutional law. The CAPTA 2003 Amendment supports these rights by requiring that PCSA's inform the subject of the investigation of the allegations against him/her at the time of initial contact, and that caseworkers be trained on protecting the legal rights and safety of children and families.

Furthermore, ORC 5153.122 requires in-service training for PCSA caseworkers and supervisors on protecting the constitutional and statutory rights of children and families, including the limitations that the Fourth Amendment places upon caseworkers and their investigations.