

Guide to Children's Services Legal Mandates

Laws, regulations and rulings govern virtually every aspect of public child protection. Directives come from Congress, the U.S. Department of Health and Human Services (HHS), Ohio General Assembly and Ohio Department of Job and Family Services (ODJFS) as well as federal, state and county courts. Here are brief descriptions of some of the major mandates.

Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272)

- Landmark legislation spells out philosophy behind the national child welfare legal system.

This law requires states to:

- Provide in-home supportive services to prevent separation of children from their families (family preservation)
- Make "reasonable efforts" to reunify children in placement with their primary families, and
- Place children into other permanent placements, with relatives or adoptive families, as quickly as possible.

When placed outside their primary families, children must be in the least restrictive, most family-like setting in keeping with their needs. Parents have rights of due process if children are removed. The permanency planning mandated by this law was a major impetus to developing more intensive, home-based and family-centered child protection services. Federal funds may be withheld from states that don't meet this mandate.

Adoption and Safe Families Act (Public Law 105-89)

This is a federal statute signed into law in November 1997 that requires states to move children more quickly through foster care into permanent homes. The act is a package of reforms modifying the Adoption Assistance and Child Welfare Act of 1980 (see above). The new law:

- Clarifies the intent of the "reasonable efforts" clause of the earlier law by stressing that the child's health and safety shall be the paramount concern in determining what is reasonably required to try to keep a family intact. "Reasonable efforts" to keep a family

together may be waived in circumstances such as severe physical abuse, abandonment, torture, chronic abuse or sexual abuse.

- Reinforces the philosophy that foster care should be temporary. Absent compelling reasons, child protection agencies must file a court motion to terminate parental rights if a child has been in temporary custody of the agency for at least 12 out of the previous 22 consecutive months. Termination of parental rights is the first step toward making a child available for adoption.

Ohio Law 5153.16

- Establishes the authority and responsibilities of a county public children's services agency.
- Gives caseworkers authority to conduct investigations, accept custody of children from the court and provide services.

Ohio Law 5153.17

- Makes Children's Services case records confidential.

Ohio Law 2151.421

- Requires professionals such as doctors, lawyers, teachers and psychologists to report suspected cases of abuse or neglect.
- Mandates that reports and investigations remain confidential.

Ohio Revised Code (ORC) Chapter 2151

A chapter of state law that:

- Outlines Juvenile Court.
- Defines Juvenile Court jurisdiction
- Defines abuse, neglect and dependency
- Sets out Juvenile Court procedures upon filing complaints in court, taking children into custody and reviewing case plans.

Ohio Department of Job and Family Services Rules 5101:2-34 to 5101:2-42

Covers various provisions dealing with key aspects of child welfare practices. Details procedures for handling abuse reports, providing services and documenting actions. Gives guidelines for placing children with relatives or friends. Provide precise definitions of abuse and neglect terms ranging from "abused child" to "verified report."

An abused child is defined as any child who:

- Is a victim of sexual activity
- Is endangered
- Shows signs of non-accidental physical or mental injury or death, or injury or death at variance with reported history
- Suffers physical or mental injury that harms or threatens the child's health or welfare because of acts or omissions of parents, guardians or custodians.

A neglected child includes any child whose parents, guardians or custodians:

- Abandon the child
- Provide improper parental care because of their faults or habits
- Neglect or refuse to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for health, morals or well-being
- Neglect or refuse to provide special care made necessary by the child's mental condition
- Place or attempt to place the child in violation of state law.

A dependent child is one who:

- Is homeless, destitute or without proper care through no fault of his or her parents, guardians or custodians
- Lacks proper care or support due to mental or physical conditions of parents, guardians or custodians
- Is in a condition or environment that warrants the state to assume guardianship
- Resides in a home where parents, guardians, custodians or other household members have abused or neglected a child and have put this child in danger of similar treatment.

Ohio Department of Job and Family Services Rule 5101:1-1-03

- Protects privacy of public assistance applicants, recipients and former recipients.

Ohio Department of Job and Family Services Rule 5101:2-33-21

- Makes child abuse and neglect reports and investigations confidential.
- Tells when information may be shared by parties such as law enforcement officials and service providers.

Federal Court Consent Decree in *Roe v. Titus* (no term set for expiration)

- 1983 settlement of class action lawsuit filed by the Legal Aid Society of Cincinnati on behalf of putative fathers whose children were temporarily placed in foster care by agreement of their mothers.
- Requires notification of fathers before removal by agreement of the mother, unless this is impractical or an emergency exists.
- Current limits for VAC's provide legal avenue for father to present case in court early in the process

Federal Court Consent Decree in *Roe v. Thomas* (negotiated outcome)

- 1986 settlement of class action lawsuit against Hamilton County Department of Job and Family Services (HCJFS) and ODHS filed by Legal Aid of Cincinnati on behalf of families whose children were in placement.
- Established strict criteria for removal and return of children and mandated implementation of pre-placement prevention services, training of casework staff, internal review procedures and planning responsibilities.
- Led to statewide reforms of Children's Services agencies. Legal Aid monitored conditions until U.S. District Court terminated the decree in May 1998 because HCJFS had achieved full compliance.

***Doe vs. Hamilton County, et al.* (5 year term expired)**

A 2002 settlement of a class action lawsuit alleging racial discrimination in adoption program. Established a court-appointed monitor to monitor HCJFS' compliance with federal and state laws and the Consent Decree.

Local Court Practice

- Unique procedures Hamilton County Juvenile Court has established to process child abuse, neglect and dependency cases.