Chapter 2
Legal Requisites for Social Work Practice in Child Abuse and Neglect

John S. Wodarski and Jessica W. Johnston

Introduction

Since 1962, when the “battered child syndrome” first began to generate national concern over the problem of child maltreatment, immense progress has been made in efforts to protect children (Kempe et al. 2013). The prevalence and negative consequences of abuse and neglect are now recognized, and systems have been established to identify and ameliorate child maltreatment. Although intervention efforts have saved lives and benefited thousands of children, the systems that address child maltreatment are still evolving, and their limitations have been widely acknowledged (Fallon et al. 2010)

There is considerable confusion and concern among social workers regarding the workings of child protective services (CPS) and the legal systems that deal with child abuse and neglect. Social workers in agencies, schools, institutions, and private practice are expected to identify and report suspected cases of maltreatment and, increasingly, to testify in court proceedings in these cases. Certainly, those in the helping professions want to comply with reporting laws and protect endangered children, yet many are unclear as to what constitutes abuse and neglect in the eyes of CPS and the law. Others know from firsthand experience that involving CPS may result in adverse consequences for children and their families, may interfere with therapeutic relationships, and may lead to reprisals by clients or employers. To make responsible and effective decisions, social workers must understand the written and unwritten laws and procedures followed in child maltreatment cases (Broadhurst et al. 2010). However, at the same time, it must be noted that literature indicates that CPS systems are overburdened by ongoing maltreatment cases, hundreds of thousands of referrals (for which many turn out to be unsubstantiated), and a high burn out rate for staff (Goldman and Grimbeek 2011).
Societal efforts to protect endangered children have resulted in increased responsibilities for social workers, who are expected to identify, report, and provide testimony in suspected cases of abuse and neglect. Their decisions in these cases may have profound consequences for children, families, and themselves (Bergman 2013). This chapter will increase social workers’ knowledge of legal requisites and system realities in child protection to help them make high-quality decisions.

What is Child Abuse?

There is no universal agreement on what constitutes child abuse or neglect. The 1974 Child Abuse Prevention and Treatment Act (CAPTA) established broad parameters for defining child maltreatment, but permitted each state to develop its own definition within these parameters (Price et al. 2012). The Keeping Children and Families Safe Act of 2003 is an amendment that improved and reauthorized the CAPTA through 2008, but did not change its stance on the definition of child abuse (NASW 2011; U.S. Department of Health & Human Services 2011a). Although most state definitions are clear in cases of severe or deviant maltreatment, they are vague in defining the full continuum of maltreatment. The vagueness is not necessarily inappropriate, because cases vary widely in their particulars, and local child care standards differ as well. Hence, considerable latitude may be necessary for case-by-case discretion by CPS workers and judges. Such discretion may not always be applied evenhandedly but generally reflects community and societal views regarding the protection of children (Bergman 2013).

In 1986, more than 1½ million children were abused or neglected according to the National Center on Child Abuse and Neglect U.S. Department of Health and Human Services 2011. This represented a 66% increase since 1980. During this time, the most frequently occurring subcategories of maltreatment identified by professionals are physical neglect (9.1 per 1000 children), physical abuse (5.7), educational neglect (4.6), emotional neglect (3.5), emotional abuse (3.4), and sexual abuse (2.5). Over the last 25 years, many of these definitions have changed. There are now four categories of maltreatment, which include physical abuse, sexual abuse, neglect, and emotional abuse. More recently, additional subcategories have been defined, including abandonment, which is considered to be a specific type of neglect in which the child has been left alone for an extended period of time and the whereabouts of the parents are unknown. Another recently added subcategory of child abuse and neglect is substance abuse, which is defined as when the child is exposed to the manufacturing, distribution, or use of illegal substances (U.S. Department of Health & Human Services 2011b).

Moreover, there is now a debate being waged regarding the difference between broad and narrow definitions of child maltreatment. One side argues for a narrow definition, indicating that before any state or federal agency steps into the private lives of citizens, observable and measurable harm must have been done to a child. Those advocating for a broader view indicate the long-term effects of maltreatment in any form, recognizing that sometime this “harm” might not manifest for years (Pecora et al. 2012).
This broader view idea has roots already laid within the mandated reporting framework. One aspect that cannot be ignored is that of reasonable or just cause or reporting, the belief behind this being that it is better to report suspected cases of maltreatment that turn out to be invalid than to have a child slip through the cracks with no hope of help. However, as with other frameworks, this creates problems. There is a vagueness written into child maltreatment laws that does not extend well across different circumstances, which could correlate to certain mandated reporters being unsure of the proper steps to take (Levi and Crowell 2011).

In 2006 there were approximately 3.3 million referrals to CPS, representing 6 million children, made to CPS organizations asking for an investigation into child maltreatment (U.S. Department of Health and Human Services 2008). Of these, 61.7% (3.6 million children) received a CPS investigation or assessment (Lee et al. 2013). Of these assessments/investigations, it was determined that 30% found that at least one child had suffered from, or was suffering from, some type of maltreatment. Moreover, it seems that, based upon the 1986 child maltreatment figures, the number of child maltreatment cases discovered actually decreased. In 2006, the U.S. Department of Health and Human Services (2008) indicates, that 905,000 children were found to have been abused or neglected. Of these 905,000 children, it was determined that 64% were neglected, 16% experienced some form of physical abuse, nearly 9% experienced sexual abuse, and about 6% experienced emotional maltreatment (U.S. Department of Health & Human Services 2008). Another staggering figure is represented by the estimated 1530 children who died as a result of maltreatment in 2006, as reported by The National Child Abuse and Neglect Data System (NCANDS). These figures have remained rather consistent in recent years, as approximately 3.3 million referrals were also made to CPS agencies in 2010, of which 90.3% were investigated (U.S. Department of Health and Human Services 2011c).

It is clear that some areas of discovered maltreatment have decreased since 1986, while others have actually increased. However, what is not clear are the reasons why. Have the actual number of maltreatment cases decreased/increased since 1986, or have the number of mandated reporters increased therefore causing an increase in certain cases of reporting (Lee et al. 2013)?

Given the prevalence of child maltreatment, social workers can hardly avoid discovering suspected cases. To respond effectively, they must be aware not only of the legal definitions, but also of how these definitions are interpreted and practiced. For instance, legal definitions emphasize that intervention decisions should be based on acts of the parents rather than on the degree of physical or emotional harm to the child. This preventative measure is aimed at stopping maltreatment before it results in injury or death. In practice, however, overburdened CPS systems must filter out less severe cases, and evidence of harm is the primary factor in these decisions (Alter 1985). Indeed, experts support this practice, reasoning that social workers should not intervene in borderline cases when a child is functioning adequately (Kempe et al. 2013). It follows that social workers should also consider the degree of harm to the child in deciding whether a case fits the working definition of child abuse or neglect. Of course, children who are maltreated and left within the abusive
environment also suffer more than just physical or emotional damage. It can affect a child’s development in relation to coping skills, social interaction skills, and attachment ability (Asawa et al. 2008).

Legal and working definitions differ regarding who may be considered victims or perpetrators under the law. The 1974 Child Abuse Prevention and Treatment Act is clear that any child under the age of 18 may be a victim, and any person who is responsible for the child’s health and welfare may be a perpetrator, including parents and legal guardians, other relatives, babysitters, day care workers, teachers, youth group directors, and institutional staff. However, state and local policies have sometimes circumvented the intent of the law by declaring that certain classes of individuals (especially school personnel) be immune from child maltreatment prosecution (Davidson 1988). In some states, victims who are 17 years old are not served by CPS because the juvenile courts in these states have jurisdiction over youths only until their 17th birthday. Thus, CPS cannot petition the court for custody or court-imposed conditions in these cases.

Adolescents are generally under-served by CPS because they are less likely than younger children to show signs of serious physical damage from abuse or neglect. Adolescent victims of maltreatment (especially physical abuse) are more likely to respond with antisocial or disruptive behaviors that mask the underlying family problems. These youths are often inappropriately referred to juvenile authorities and labeled offenders, with little chance of being reclassified as abused or neglected (Phillips et al. 2010). In addition, recent research in this area suggests that both Ph.D. psychologists and Masters level social workers favored some bias toward reporting potential victims of maltreatment when the child is younger rather than older (Levi and Crowell 2011). It also appears that the child’s socioeconomic status affects reporting statistics, with children from a lower socioeconomic class being reported at a higher incidence (Levi and Crowell 2011). Social workers who identify cases of adolescent maltreatment must be aware of system limitations and the need to expend extra efforts (that is, advocacy, documentation) to obtain appropriate services for these youths.

While the purpose of Child Protective Services is clear, and the role they play in working with maltreated children is vital, there are a plethora of flaws within the system. Dr. Kempe, best known for “discovering” battered child syndrome, initiated the International Society for Prevention of Child Abuse and Neglect, which has influenced public policy over the last 40 years. What eventually became of this was the CPS or DCS system that is in place across the United States. However, the child protective system that was created with the help of Dr. Kempe is now outdated and obsolete when faced with child maltreatment today (Melton 2005). Moreover, it has been suggested that some referrals to CPS could be simple calls for help from neighbors or friends of a family that is struggling economically, and are not actual calls of maltreatment—further suggesting that the CPS system is outdated and obsolete (Melton 2005).
Physical Abuse and Neglect

There is no question that acts such as physical battering, torture, or the withholding of essential nourishment by parents fit the legal and working definitions of abuse or neglect. Nonaccidental, repeated, or unexplained injuries and extreme or persistent lack of adequate food, shelter, clothing, protection, supervision, or medical and dental care are grounds for official investigation. On the other hand, although less-than-optimal parenting behaviors and living conditions are cause for legitimate concern, poor child care cannot be classified as abuse or neglect. For example, the reasonable use of corporal punishment by parents is not illegal, and many working parents cannot afford child care services. Further, millions of children are damaged by living in poverty, but they cannot all be labeled neglected and provided with services. CPS funding limitations preclude such broad interpretation of child abuse and neglect statutes. Working definitions of physical abuse and neglect require evidence of a degree of harm that exceeds community standards (Phillips et al. 2010).

Emotional Abuse and Neglect

Definitional problems are particularly troublesome when harm to the child is less tangible than physical injury. Many state laws give scant attention to emotional abuse or neglect or rely on broad designations such as “mental cruelty.” Yet emotional maltreatment, which may involve distorted parental behaviors such as habitual verbal assault, rejection, tying a child to a bed, or confining a child to a closet may cause severe psychological harm to children. Symptoms can include extreme anxiety, withdrawal, depression, aggression, suicide attempts, fire setting, and other serious emotional difficulties (Walker 2010).

Emotional maltreatment cases are under-served by CPS because they are difficult to substantiate and treat. To obtain services for these children and their families, concerned social workers must supplement CPS efforts by accumulating documentation by witnesses to incidents of emotional maltreatment and evidence of harm to the child. Horwitz and colleagues offer guidelines for collecting and presenting competent evidence (2010).

Sexual Abuse

No subcategory of maltreatment continues to generate as much consternation and controversy as sexual abuse. Legal definitions encompass a wide range of activities from rape, prostitution, and child pornography to fondling and intentional exposure. Legally, sexual abuse is defined wholly on the basis of acts of the perpetrator, not specific harm to the child; it is considered inherently harmful for children to be used
for the sexual gratification of older caretakers (Stoltenborgh et al. 2011). Research on sexually abused children tends to support this view, although initial symptoms of emotional damage are generally shown to be moderate rather than severe.

On the other hand, studies of adult women who are sexually abused as children indicate that the long-term effects of such abuse are serious and may include depression, anxiety, isolation, negative self-concept, self-destructive behavior, substance abuse, and sexual maladjustment (Sousa et al. 2010). Studies that could guide practice by establishing the short-term effects of various forms and intensities of sexual abuse have yet to be conducted. Most likely, childhood symptoms involve dissociative processes that are difficult to detect (Sousa et al. 2010).

The number of identified sexual abuse cases increased threefold from 1980–1986 (Walker 2010), undoubtedly caused in part by greater awareness (that is, less denial) of the problem. It is now generally acknowledged that sexual abuse may involve very young children (including infants) and male children as well as adolescent females. Professionals no longer assume that natural fathers are never involved, that parental denials are reliable, or that children’s allegations are fantasies (Walker 2010). However, recognition of the problem has been so recent that many communities have not yet developed adequate response mechanisms or community-based treatment programs. As a result, sexually abused children are often exposed to additional trauma through the intervention process, which may include multiple interviews, court appearances, family breakups, foster care placements, imprisonment of the perpetrator, and loss of family income (Phillips et al. 2010). Some progress has been made in this area with the establishment and growth of the National Children’s Advocacy Center (NCAC) since 1985. The NCAC works to streamline the reporting and investigation of child abuse cases in a therapeutic and child friendly environment that does not prolong the traumatic experience of repeatedly describing the abuse (NCAC 2011).

Certainly, sexual abuse must be stopped, and social workers must report known cases, but advocacy, activism, and public awareness efforts are essential if children are to be spared additional victimization. Social workers must press for the implementation of interagency protocols, modified courtroom procedures, and family treatment programs, which can reduce the negative impact of interventions on sexually abused children (Sousa et al. 2010).

Since the early 1980s, a plethora of sex offender legislation has passed on both State and Federal levels. Tennessee implemented the Containment Model to Sex Offender Treatment in the late 1980s in conjunction with a community corrections/probation program. In 1996, Tennessee also implemented the Sex Offender Registry. However, the most controversial aspect of sex offender legislation came in 2006 with the Adam Walsh Act. Title 1, the Sex Offender Registry and Notification Act (SORNA) requires all states to have a sex offender registry, and further regulates the registry requirements and defines terms, etc. (National Center for the Prosecution of Child Abuse 2007). The Adam Walsh act also requires that Tennessee have a juvenile sex offender database, and mandates that if states wish to receive federal funds, they must implement this policy. The effectiveness of a juvenile sex offender database must be left for another discussion, and its implications are far reaching.
Mandatory Reporting of Child Maltreatment

Federal statutes mandate that many professionals, including social workers, report child maltreatment. The mandate requires reporting even in relationships where confidentiality is otherwise protected. For instance, the National Association of Social Workers (NASW) Code of Ethics specifically states that an exception to client confidentiality is when a social worker has reason to believe that child abuse has occurred (NASW 1999). Although state statutes vary considerably, all specify when, how, and to whom reports should be made. Typically, mandated reporters who suspect that abuse or neglect has occurred must promptly report their suspicions, in writing, orally, or both, to designated authorities (police, CPS, juvenile services, or the local child abuse and neglect council or hot line). The reporter should provide his or her name and information on the name, age, address, and whereabouts of the child, the nature and extent of the maltreatment, and any other information that led the individual to suspect abuse or neglect. The name of the reporter is confidential and cannot be released without a court order (Phillips et al. 2010).

While mandated reporting continues to cause controversy, it is without a doubt a legal and ethical issue. The very term “mandated” indicates the level of seriousness at which professionals must consider this. Again, research suggests that only a few (if any at all) professionals actually report all suspected cases of maltreatment. Several reasons are given for this phenomenon within the literature, and they include such beliefs as not having enough evidence to make a report, the belief that CPS will not intervene as needed, cultural differences/competency, and the belief that reporting suspected maltreatment will cause further harm to a child (Levi and Crowell 2011).

All state reporting statutes guarantee immunity from civil liability to mandated reporters who act in good faith (without malice) (Sousa et al. 2010). This is true even when the report is not substantiated by CPS investigators. However, immunity applies only after a report is filed with the proper authorities. Social workers and others who conduct their own investigations before reporting are not protected from civil action. In certain maltreatment cases, especially those involving emotional maltreatment or adolescent victims, the decision to intervene may depend on supplemental documentation provided by reporters. In these cases, a report should be filed early in the documentation process, as soon as there is reasonable cause to suspect abuse or neglect (Horwtiz et al. 2010).

Most states outline criminal penalties or civil penalties for failure to report suspected abuse or neglect (Phillips et al. 2010). Even so, there is evidence that professionals report fewer than half of maltreatment cases known to them. This may reflect a general lack of familiarity with reporting responsibilities or denial of the reality of child maltreatment, but other concerns also contribute to reluctance to report, including negative perceptions about the functioning of CPS, fear that the treatment process will be disrupted, and pressure from supervisors not to report. Additionally, abuse or neglect occurring in out-of-home care often goes unreported because states are still developing adequate laws and procedures to address the problem of institutional maltreatment (Sousa et al. 2010).
Negative Perceptions of Child Protective Services

Clinical experience suggests that CPS interventions may have harmful consequences. The investigation may be traumatic for the child and family, appropriate treatment may not be provided, and removal of the child or parent from the home may increase the child’s sense of victimization and produce psychological difficulties. These legitimate concerns reflect the serious underfunding of CPS agencies. For instance, research has shown that family therapists report having negative experiences with CPS that can most frequently be traced to issues of underfunding and understaffing of CPS agencies (Strozier et al. 2005).

Nevertheless, there is evidence that maltreated children are helped more than harmed by CPS involvement. Social workers must carefully assess suspected cases of maltreatment and judge whether a particular case is serious enough to warrant the interventions that may follow reporting. Behavioral indicators alone, without physical evidence or statements by the child or others, should not be considered sufficient grounds for reporting. Further, observable conditions must be linked to specific caregiver behaviors or omissions to be classed as abuse or neglect (Walker 2010).

Child Protective Services plays an invaluable role in protecting children; however, just as is the case of most agencies and professionals, mistakes are sometimes made. It is not fair to CPS to judge the entire process on a few select cases that did not end as hoped. There is a belief by some professionals that CPS is useless in terms of doing good. Those who subscribe to this ideology may further believe that one reason that maltreatment statistics rise and/or fall is due to CPS screening out certain cases. Research suggests that this is not the case, and that the statistics rise and/or fall based upon the actions of the mandated reporters and nothing else (Alvarez et al. 2010).

Reluctance to report may also reflect social workers’ anxiety about the possibility of testifying in court regarding their observations. At least one commentator has suggested that the principle of immunity from liability for mandated reports should be extended to include exemption from court involvement (Levi and Crowell 2011). However, a social worker’s testimony may be the key component in ensuring that a child will not continue to be abused or neglected. Thus, although the majority of cases do not require the reporter to testify in court, social workers should be prepared to testify when necessary. One publication that can help alleviate anxiety is Child Abuse and the Law: A Legal Primer for Social Workers, which explains courtroom procedures and offers guidelines for potential witnesses (Phillips et al. 2010).

Fear of Disruption of the Treatment Process

Social workers involved in therapeutic relationships with clients may assume that reporting will lead to termination of treatment by clients. Some research has found that as many as 27% of clients terminate therapeutic services after mandated reporting by a therapist (Bean et al. 2011). However, studies do not support this
assumption (Levi and Crowell 2011). In Watson and Levine’s study, fewer than one fourth of clients terminated treatment following the filing of a report by a therapist. The authors concluded that “reporting abuse is not always detrimental to the goals of therapy and under some circumstances may even be helpful” (p. 255). At the outset of treatment, of course, practitioners should openly acknowledge limits and the promise of confidentiality. When evidence has become apparent that reportable offenses have occurred, trust may be maintained through candid discussion of the dilemma faced by the therapist, who must by law file a report despite personal reluctance to do so. The client’s fear that termination while under CPS investigation will negatively affect the outcome of the case may also encourage continuation in therapy.

This issue of disruption of the treatment process or therapeutic alliance after mandated reporting has not been thoroughly explored in current research, as the most recent results come from Rokop (2003). This research examined the client’s perspective of how the therapeutic relationship changes after mandated reporting. Clients who had positive experiences in therapy after mandated reporting typically reported having a strong therapeutic relationship before the report was made, and reported that the therapist was direct and apologetic about having to make the report. On the other hand, clients who had negative experiences in therapy after mandated reporting generally reported having a poor alliance with the therapist pre-report, and reported that the therapist was inexperienced, indirect about making the report, and lacked empathy (Rokop 2003). This research indicates that it is not the act of mandated reporting itself that can be harmful to the therapeutic relationship, but the manner with which the reporting is handled by the therapist. However, it is critical that this issue be revisited with more current data.

Pressure from Supervisors Not to Report

Many agencies, schools, and institutions have developed written or ad hoc procedures for the management of child abuse and neglect cases identified by staff. Often, one person or a team is designated to receive information from an employee, who is discouraged or even prohibited from reporting directly. Unfortunately, the designated staff member or team may then fail to report the employee’s suspicions. In most states, the law is unclear as to who is ultimately liable for the failure to report in these cases, or what recourse an employee may have for adverse job-related action taken against him or her for direct reporting (Horwitz et al. 2010). Social workers in agencies, schools, and institutions may thus find that their ability to protect child victims is seriously compromised. When in-house channels fail, workers who report their suspicions directly to the authorities may be reprimanded or fired.

Although all states provide immunity from liability for reporting in good faith, and a few states have passed specific legislation to protect employees who report, redress often proves to be time-consuming, costly, and traumatic (Horwitz et al. 2010). Complaints must show that the adverse employment action was taken in
retaliation for filing the report and was not based on other factors, such as budgetary cutbacks or a history of conflict with supervisors. One CPS director suggested that employees who are dissatisfied with their agency’s response can report anonymously (although this weakens the case) or can explain the situation and request that extra precautions be taken to keep their identity confidential (although this cannot be guaranteed if the case goes to court). Legislative reforms are needed that provide full protection against retaliation to mandated reporters (Levi and Crowell 2011).

**Reporting Institutional Maltreatment**

There is evidence that the incidence of out-of-home maltreatment may be double the rate of familial maltreatment (Walker 2010). In 1984, the Child Abuse Prevention and Treatment Act was amended to require the reporting of suspected abuse and neglect in out-of-home settings. A growing number of states now require reports of maltreatment in foster and residential care homes and day care settings. However, already overburdened CPS systems have been slow to respond. Out-of-home cases are time consuming and require specialized skills beyond the scope of CPS personnel, who were trained to investigate and manage familial maltreatment. Media attention, political pressure, and the capacity of institutions to protect themselves often increase the difficulty of these cases. Additionally, the issue of conflict of interest arises when CPS offices must investigate sites they rely on as placement resources. For the reporter, these complexities mean that complaints are likely to be discouraged or minimized (Levi and Crowell 2011).

To address these problems, CPS offices should establish specialized units for out-of-home care investigations (Horwitz et al. 2010). In the meantime, social workers who suspect institutional abuse or neglect must be aware of the current limitations in the system. Liability for failure to report is not the primary concern in these cases; the concern is over inadequate response from CPS and job-related repercussions for reporting maltreatment occurring within one’s own agency. Concerned social workers should carefully document incidents of institutional abuse or neglect, consequent harm to the child, and their own actions in the matter. Expert consultation may be necessary, particularly when agency policies are questioned, such as the improper use of physical restraints and psychotropic medications in controlling child residents. Adolescent offenders in residential placement are especially likely to suffer from overlooked or ignored abuse (Walker 2010).

**Implications for Social Work**

Because of the growing recognition of the extent and consequences of child maltreatment, child protective legislation has been enacted in every state. However, state laws are vague in describing a variety of reportable conditions, and the
Evidence-Informed Assessment and Practice in Child Welfare
Wodarski, J.S.; Holosko, M.J.; Feit, M.D. (Eds.)
2015, X, 304 p., Hardcover
ISBN: 978-3-319-12044-7