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Child Victims and the Law

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Overview

The law has traditionally treated children differently than other victims. State criminal codes define many crimes against children separately from the same offenses committed against adults. Those crimes include:

- Neglect or abandonment;
- Physical, emotional, or sexual abuse;
- Abduction by stranger or by family;
- Pornography or exploitation of children; and
- Statutory rape.

Many states have a distinct set of laws for child abuse or neglect occurring in an institution or facility. (All statutes discussed in this summary are current through 1992 unless otherwise indicated. Source: National Center for Victims of Crime, Legislative Database.)

Child victims are rightfully treated differently by officials in the criminal justice system. States recognize that children need additional sensitivity and guidance as they move through the criminal justice process. To better meet the needs of child victims and their families, states are requiring the use of multidisciplinary teams in the investigation and treatment of child abuse cases. Such teams combine the expertise of a variety of professionals, including child abuse investigators, social workers, child psychiatrists and legal professionals in the handling of a single case. Special "Children's Bills of Rights" have even been enacted in a few states including Louisiana and Illinois as well as on a federal level, to more adequately benefit and protect child victims and witnesses.

Children and the Courts

In the court system, states take care to see that the interests of a child are represented. For years, states have appointed a guardian ad litem to protect the best interests of the child in legal proceedings especially in proceedings adverse to the child's parents or legal guardian. Now, more states are using court-appointed special advocates, who are assigned to a child's case both to protect the best interests of the child and to assist the court in making discretionary decisions such as the best placement for the child victim as well as to determine questions concerning the child's competency to testify. The duties of special advocates frequently include guiding the victim and

victim's family through the investigative and judicial processes. He or she may also assist the child and the child's family in coping with the emotional impact of the offense.

In addition, the Child Abuse Protection Act of 1990, passed by Congress, allows children to submit victim impact statements in a manner "commensurate with their age and cognitive development." Some states are following the Federal government's lead by allowing children to submit hand-drawn pictures or letters to the sentencing court.

Child Abuse Reporting

As states recognize their duty to protect children, strict child abuse reporting laws are being adopted across the country. Child abuse must be reported by specified classes of professionals in every state. Those professionals usually include educators, child care workers and medical professionals. In 1993, California amended its abuse reporting statutes to include animal control and humane society officers in its list of mandatory reporters. In most states, reporting by other people is encouraged, but not required by law. However, a substantial number of states impose a legal duty to report on any person who knows of, or strongly suspects, child abuse to report the abuse to authorities.

The state law specifies the agency to which the report must be made, usually the police or a child protection agency. Typically, the law requires an immediate report by telephone or some other means, followed by a written report within a few days. Most states give immunity from lawsuits for any person who makes such a report in good faith, and frequently provide that the identification of the reporter will remain confidential. However, such confidentiality usually will not prevent the reporter from being identified in any legal proceedings which result from the investigation of the initial report. There are legal time limits imposed for the initiation and completion of the investigation of any abuse or neglect report. In some states, the person who initially made the report of child abuse is entitled to a copy of the resulting investigative report.

Child Abuse Registries

States are also establishing child victim and offender registries to assist in the investigation and prevention of child abuse and neglect. By enabling officials to see a pattern in complaints of child abuse or neglect, states hope to make their protection programs more effective.

Other Critical Issues

There is expanded awareness of the potential for child abuse in institutions, such as schools or day care facilities. As a result, states are requiring criminal history background checks for employees and license applicants for child care facilities and other institutions. Many of these laws allow only for a check of the convictions in a person's record, but others also include a check for prior arrests, and of the state's sex offender registry if there is one.

In order to protect children, state laws allow police and other officials to take a child into protective custody in emergency cases. They also permit courts to issue protective orders, and require hearings at which the accused has an opportunity to contest reports and present evidence in his or her favor. Once a child abuse case reaches the court, states have special provisions for the treatment of child victims and witnesses.

The law of most states provides privacy protection for child victims by striking out identifying information, or prohibiting the release of any information regarding an offense committed against a child. Many states have strict confidentiality laws relating to child abuse reports and investigation records.

States have also adopted laws relating to missing children. States often require a child's birth certificate or school records to be marked in some way when the child is reported missing. Then, if the child's records are requested by someone for instance, if someone requests the records to register the child in another school the officials are put on notice that the child has been reported missing. The official can then follow the state's procedure for investigation of the request. Another trend in the law is to require police to file an immediate report of a missing child into a statewide computer system, rather than permitting police to wait for a period of time to ensure that the child is really missing.

Child protection laws are continuing to change, as states seek to find the most effective means to combat and treat child abuse and neglect. A past history of domestic violence must now be considered by courts making custody and visitation decisions in many states. A number of states are also addressing the issue of the need to notify members of a community when a convicted sex offender moves into their neighborhood.

For information regarding the laws in your area, contact your state Attorney General, your local prosecutor or your local law library.

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National Center for Prosecution of Child Abuse

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National Child Welfare Resource Center for Management and Administration

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Portland, ME 04103
(800) HELP - KID
(207) 780 - 4430

National Children's Advocacy Center

106 Lincoln Street
Huntsville, AL 35801
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National Court Appointed Special Advocate Association

2722 Eastlake Avenue East Suite 220
Seattle, WA 98102
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National Resource Center on Child Abuse and Neglect

American Humane Association
63 Inverness Drive, East Englewood, CO 80112
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National Resource Center on Child Sexual Abuse

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Resource Center on Child Custody and Child Protection

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Your state Attorney General, county/city prosecutor, or county/city law enforcement:

Check in the Blue Pages of your local phone book under the appropriate section heading of either "Local Governments," "County Governments," or "State Government."

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