

Child Advocacy Guide for Caregivers: The Legal System

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The Investigation

The investigation of child abuse will take place by a team of professionals. Law enforcement, child protection, medical professionals, counselors, State's or County Attorneys, and victim advocates all work together to coordinate an effective response for the children and their family.

The process

- Someone reports suspicion of abuse to authorities, either law enforcement or Child Protection Services (CPS).
- The investigating agency investigates the reports of possible abuse.
- The child may then be referred to a child advocacy center for further evaluation.
- At the child advocacy center:
 - A Forensic Interviewer conducts the interview
 - A medical exam is conducted by the medical provider
 - The Family Advocate will meet with you during the evaluation to offer support

When the investigation has started:

- Law enforcement or CPS will continue the investigation. This may include interviewing the person the child first reported to, interviewing any witnesses, or interviewing the alleged perpetrator (offender).
- Law enforcement may refer the case to the State's or County Attorney's office. The State's or County Attorney determines if charges will be brought up and what charges to pursue. Victim's Services will notify you as soon as a decision has been made. You can call your Victim Witness Specialist if you have any questions.
- Social Services has a responsibility to make sure your child is being protected. They can offer services for you and your family. Social Services or law enforcement do not want to remove the child from your care if you are able to provide the care needed to raise your child.

The legal process may be slow in moving towards legal action. The team is working to gain the best outcome for you and your family. You and your child's healing often occur outside of the criminal justice system.

The Legal System

It is very hard to know what will happen for you and your child after the report has been made, and the case is in the legal system. Speaking up about what happened can be a good thing for the child-whether or not the abuser is convicted. Many children are relieved to think that someone more powerful will help protect them and tell the offender that he or she was wrong. For other children, the events following the report can be upsetting.

The legal process moves at its own pace, different from your child's need to heal. The emotional wounds may be reopened by the many proceedings, which often take place over 1 to 2 years. The court date may be delayed many times. It is best to remember that people are working for the best outcome for you and your child. The team approach to these cases keeps the process as simple as possible.

You can make the process easier for your child by working with the authorities. The legal system may be able to protect your child from future unsupervised contact with the offender. This will help to keep other children safe.

To help guide you through the legal process, you may be assigned a Victim Witness Specialist or Advocate through the State's or County Attorney's office. This person will be able to:

- Help you through this difficult period.
- Answer your questions.
- Explain the types of victim assistance and services you may be eligible for.
- Be your liaison to the State's or County Attorney's office and the particular attorney assigned to prosecute your case.

When the investigation in your case is completed and your case is received in the State's or County Attorney's office for prosecution, you will be notified by letter the name of your Victim Witness Specialist or Advocate.

Please contact your Specialist or Advocate as soon as possible for assistance throughout the entire process.

The legal system's response to abuse

The legal system's response to abuse can be confusing to children and families. This confusion can be:

- 2 different "legal systems" can be working on the same case at the same time.
- These 2 systems are the "criminal" system and the "civil" system.
- These 2 different court systems work on child abuse case
 - Criminal court
 - Civil court
- Both courts may work on the same case at the same time, but they have different purposes.

Types of court systems

Criminal court

This court is concerned with guilt or innocence of the accused and often uses trial to decide on the suspect's guilt or innocence. The criminal trial focuses on issues such as:

- Is there evidence to prove the child was abused?
- What illegal acts happened?
- If proven guilty, what punishment should the offender receive?

Civil court

This court is concerned with the safety of the child. The focus is on issues like custody, supervised visitation, and counseling. A number of different court hearings can be held to decide these issues. The decisions in the civil system do **not** depend on whether or not the criminal system finds guilt.

Working with the system

The system is responsible for protecting children and holding offenders accountable. The more information and cooperation you give to the team of professionals working in the system, the better job they can do on the case.

Support people are available to help you. A Family Advocate is familiar with the legal system and child abuse and is available to help. You may be assigned a Victim Witness Specialist or Advocate (at the State's or County Attorney's office). They will:

- Keep you informed about the status of the case (for example court dates)
- Help you work through the legal system
- Help you to get financial help, if you are eligible.

Working with professionals in the legal system

- Be calm and reassuring to your child. Please do not coach your child on what to say. It is important for the information to come out in your child's words and in your child's own time.
- Try to provide as many facts as you can when you are asked for information. Cases are built on the four W's: who, what, when, and where.
- Do not guess if you do not know the answer to a question. It is much better to say you do not know.
- Tell how you feel and why you feel that way. Your feelings are valuable in giving investigators information. Only the facts are allowed in court, but feelings can help give investigators ideas for how to proceed.
- Always be honest, even though the truth may not seem favorable to yourself or others

- Try to keep your emotions calm. It is a difficult time and can be emotional. Losing control can hurt the case and hide the needs of the innocent victim, your child.
- Love, support, and protect your child at all costs. If the suspected offender is a significant person to you, balancing your feelings for the offender and your child can be very difficult. Remember that your child has only you to make healthy, protective decisions.
- Please cooperate with investigators. You will probably feel as if investigators are prying into your personal life, but this is necessary to the case and your child's welfare. The facts can help resolve the case.
- Try to understand the investigator's perspective. You may feel that investigators do not care because they avoid showing emotions. Investigators do care. They show caring by staying objective and calm in the face of extremely emotional situations.

Getting ready for court

If there is to be a trial, your Victim Witness Specialist or Advocate will take your child to the courtroom for a tour (you may need to request this). You will also be involved in this process. Giving the child an early look at the courtroom and preparing him or her on what to expect. This can ease some of the child's fears, which may include the following:

- Seeing the abuser again
- Not wanting to go
- Wanting it to be over
- Wondering where you will be

If you are a witness, you will not be allowed in the courtroom when your child is testifying. In some cases, it might be easier on your child not to have you there. Your child should never be in the courtroom without a trusting, friendly face, so make sure your Victim Witness Specialist or Advocate, a best friend, or a family member stay with your child at all times.

Limits of the legal system

While the legal system is very important to your child's case, it is only one step in the process and is **not** needed for your child's recovery. Focusing on your child's well-being will help you manage your emotions and lessen the frustrations of the legal process.

Celebrate when the court case has ended. No matter what the outcome, conviction or not, tell the child it is over. Acknowledge that you both did your best and worked hard. Recognize your efforts and the end of this stage of the process.

Talking with Your Child About the Legal Outcome

It is best to be honest and direct with your child. The amount of information you talk about depends on your child's age and level of understanding about the case. The most important thing is to let your child know that you are proud of him or her for being brave.

When the case is completed, you may feel let down or have a period of depression. This happens to many parents even if the legal proceedings had a positive outcome. If your child hears you express disappointment in the outcome, your child may think you are disappointed in him or her. Find a supportive friend with whom you can share your feelings and frustrations.

You have done your best in trying to prevent further abuse and hold the offender responsible for what he or she did. Even if the case does not happen, making sure your child is safe is the most important thing.

Some things you can say to your child if the alleged offender is not found guilty:

- Just because they did not find _____ guilty, that does not mean they did not believe you. They have to follow the court's rules, and sometimes it is hard for other people to prove that it happened.
- You may be wondering how someone can do something wrong or against the law and not be punished. It does not make sense to me either.
- It does not matter what the court process did. What matters is that you did what you needed to do, you told us the truth.
- You are safe. You have been very brave.

Definitions of Legal Terms

48/72 Hour Hearing (Temporary Hearing) - A hearing that is held within 48 to 72 hours of a child or children being placed into custody. The judge advises parents, information is presented about the reason the child came into custody, and the judge then makes a determination on the temporary custody of the children. This might mean that the child remains in custody pending investigation by CPS, that the child is returned to parents, or something else. The judge makes this decision based on what would be safest for the child.

Adjudicated - to pronounce or decree by judicial sentence; to settle or determine by the judge and court

Felony - a crime for which a person can be imprisoned for more than a year. The procedure in regard to a felony case may be considerably more prolonged. A felony charge may result in several court appearances - first a hearing in regard to the setting of bond, then an arraignment, then a preliminary hearing, then an appearance for the setting of a trial date, then the appearance for any pretrial motions, and then finally the appearance for trial

First Court Appearance - early in the course of a criminal proceeding, the defendant will be brought into court and the charges brought against him/her by the government will be formally read. The defendant will be asked by the court whether he or she pleads guilty or not guilty to the charges

Grand Jury - a group of citizens who are convened by the court for the purpose of reviewing criminal cases as presented to them by the prosecutor. They determine again whether there is probable cause to believe that the defendant committed the crime with which he or she is charged. The evidence that is presented at a grand jury is chosen by the prosecutor. Grand jurors do not hear from the defendant

Memorandum or Memoranda - a record or written statement of something

Misdemeanor - an offense for which a person can be imprisoned for up to a year

Motions Hearing - provides judges with an opportunity to hear oral arguments, in addition to the written motion and memoranda submitted to the court

Plea - at any point during the process, the defendant may plead guilty to the charge against him. Also at any stage, the defendant and his/her attorney may conduct negotiations with the prosecutor to determine whether a plea to some lesser charge may be agreeable to the government

Preliminary Hearing - where some or all of the prosecution witnesses will be called for the purpose of presenting evidence to determine whether there is probable cause to support the arrest made by police. If probable cause is found to exist, then the next stage in the proceeding is presentation of the case to a grand jury

Prosecutor - a governmental employee charged with the responsibility of bringing suspects to trial, they have absolute discretion in deciding to prosecute an offense or not to prosecute an offense

Subpoena - command, issued under a court's authority, to a witness to appear and give testimony

Subpoena duces tecum - a command to a witness to appear and produce documents

Substantiated - supported by proof or evidence; something that is supported or verified by corroborating information

Verdict - the decision of a trial jury or a judge that determines the guilt or innocence of a criminal defendant, or that determines the final outcome of a case

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