

MODEL PROTOCOL

For Advocates Working with Battered
Women Involved in the
Child Protection System



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Washington State Coalition
Against Domestic Violence

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**The Washington State Coalition Against Domestic Violence
is a statewide non-profit organization committed to ending
domestic violence through advocacy and action for social change.**

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MODEL PROTOCOL FOR ADVOCATES WORKING WITH BATTERED WOMEN INVOLVED IN THE CHILD PROTECTION SYSTEM¹

INTRODUCTION

Across the country, child protection agencies are working with battered women's agencies to develop guidelines and protocols for responding to the co-occurrence of domestic violence and child maltreatment. While the development of collaborations and guidelines are an important advance, they are not an end product. In many cases, even where guidelines exist, battered women are penalized for "failure to protect or neglect" and can be separated from their children for not cooperating with a directive from the child protection agency to leave their batterer, when doing so may increase risk to both adult and child victims. This problem is particularly acute for women of color.² At the same time, child protection agencies often fail to design interventions that hold the perpetrator accountable for his violence.

Last year, in the first class action lawsuit of its kind, a federal court judge ruled on behalf of battered women whose children were separated from them by New York City Administration for Children's Services (ACS). The judge ordered that ACS stop removing children from battered women and improve its response by adopting new policies and practices.³ Commenting on the lawsuit, Linda Spears, Associate Vice President for Program Operations at the Child Welfare League of America, said that it is important to recognize that New York is not unique, that similar problems are occurring across the country and there is still quite a bit to learn about how we can together help keep mothers and children safe.⁴

It is important that advocates understand the problem in the child protection system's response is not the individual child protection caseworker's level of sensitivity for battered women. Rather, most state and national reform efforts, including Praxis International,⁵ have identified the problem as structural in nature, rooted in the myriad

¹ Excerpted and adapted with permission from *Responding to the Dual Issues of Battering and Child Abuse: Promising Practices for Battered Women's Programs*, Rose Thelen and Sandra Davidson, Minnesota Coalition for Battered Women, 2003.

² African American and American Indian children were over seven times more likely to be determined victims of maltreatment than were white children and were placed in out-of-home care at a rate of more than five times their representation in the Minnesota child population, according to the Minnesota's Child Welfare Report for 2000 (Report to the 2002 Legislature, edocs.dhs.state.mn.us/live/MS-1943b-ENG.pdf).

³ Article/news release, published by the National Council of Juvenile and Family Court Judges, Fall 2002.

⁴ *Speaking Up*, Family Violence Prevention Fund, Fall 2002.

⁵ Praxis International used its audit method to work with local, state and national domestic violence and child protection experts to analyze battered women's CPS, police and protection order files from Minnesota and two Greenbook Demonstration Sites in Colorado and Missouri; the purpose was to identify and make recommendations regarding problematic features in the institutional responses to battered women's cases.

assortment of state and federal mandates, standardized child protection procedures, risk and parenting assessments, decision-making tools, psychological testing and other governing and organizing processes (See “Closing the Distance Between Domestic Violence Advocacy and Child Protective Services,” *A-Files*, Vol. 5, No. 3, pgs. 184 – 199, Washington State Coalition Against Domestic Violence, September 2003).

In the future, it is expected that model initiatives and other reform efforts will develop and implement changes at the national and state levels. In the meantime, it is imperative that battered women have the advocacy they need to avoid involvement with the child protection system, or where involved, to assure that the rights and safety needs of both child and adult victims are met.

The Origins of the Child Protection System⁶

The child protection movement began more than 100 years ago and galvanized around a highly publicized New York City case involving a young child, Mary Ellen, who was brutally beaten by her caretakers.

This case led to the creation of the first child protection agency and state statute providing agents to conduct court investigations into child maltreatment. Early activists sought protection for children and punishment for abusers. As the child protection movement evolved, new mechanisms emerged to support this work, including:

- the first juvenile court, in Illinois, in 1899;
- a federal oversight agency—The Children's Bureau—which still exists today; and
- the Social Security Act in 1930, which provided the first national directive and funding for child welfare services.

Each of these events was critical in the development of the nation's child protection system. Nonetheless, much of our modern system has emerged over the last 37 years, beginning in 1962, when Dr. C. Henry Kempe identified the “battered child syndrome.” His work resulted in the first broad public awareness of child abuse and neglect and led to the first mandated reporting law in 1964.

Since then, both state and federal governments have created new legislation to direct child protection efforts. Throughout this period, there have been dramatic increases in the number of children and families served, the array of services and the scope of legal requirements guiding the system. The key components in the current system are highlighted in the following table.

The report, *Building Safety for Battered Women and Their Children: A Summary of Three Consultations*, by Terri Taylor and Ellen Pence, 2003, can be downloaded at www.praxisinternational.org.

⁶ This section is excerpted from L. Spears, *Building Bridges Between Domestic Violence Organizations and Child Protective Services*, 1999 (revised 2000).

Key Features of the Child Protection System

Federal Legislative Framework	<ul style="list-style-type: none"> • Child Abuse Prevention & Treatment Act of 1974 • The Indian Child Welfare Act of 1978 • Adoption Assistance & Child Welfare Act of 1980 • The Adoption & Safe Families Act of 1997
Primary Service Mandate	<ul style="list-style-type: none"> • Safety for children
Secondary Service Goals	<ul style="list-style-type: none"> • Permanency for children by strengthening family or seeking alternative permanent families (e.g., adoption) • Well-being of children
Service Providers	<ul style="list-style-type: none"> • Government agencies providing statutorily mandated services • Contracted and community services used to reduce risk and address family problems
Support and Authority Used to Assist Victims	<ul style="list-style-type: none"> • Child protection worker responsible (through state and tribal statute) to monitor families and offer supportive services • Supportive and authoritarian roles also carried by community agencies and police/courts
Examples of Services and Tools Used to Respond	<ul style="list-style-type: none"> • Child Abuse and Neglect Hotline • Joint police and child protective services response, including investigation and removal of children in need of immediate protection • Shelter, kinship, and foster care placements • Treatment services like parenting classes, substance abuse treatment and counseling • Case management and referral • Temporary and permanent custody of child
Court Role	<ul style="list-style-type: none"> • Civil Juvenile or Family Courts provide protection (e.g., legal custody) and oversee decision-making of CPS • Criminal Courts used when criminal charges are filed

RECOMMENDED POLICY

[Name of agency] shall work to ensure meaningful advocacy with Child Protective Services (CPS) for all recipients of services by developing and implementing a comprehensive assistance plan that includes:

1. Informing service recipients of the statutory requirement to report child abuse or neglect (RWC 26.44.030).
2. Developing policies and procedures for identifying and assessing the needs of battered women who are involved in the CPS system.
3. Addressing the potential impact of CPS involvement when safety planning.
4. Providing relevant government materials about CPS and the rights of service recipients.
5. Periodic training of staff on advocacy issues related to CPS.
6. Developing a budget plan to implement comprehensive support services and advocacy activities relevant to service recipients and their children who are involved with CPS.
7. Monitoring of the program procedures.

RECOMMENDED PROCEDURES

Individual Advocacy Practices for All Battered Women with Children Who Access Your Program

Most battered women are concerned about their children. It can be both the reason they stay with their abuser and the reason that they seek help. If a battered woman has children, it is always a good idea to address her concerns about her children.

The extent to which the following suggestions for practice can be implemented in your program will be determined by the victim's circumstances and amount of contact with you, whether there is contact with her children and/or specialized programming for them.

1. During initial contact, verbally inform her that you are a mandatory reporter of child abuse and neglect and what this means to her.
2. Inform her of the services provided by your agency for women with children.
3. Discuss the availability of supportive community resources and any cautions regarding resources that may not be sensitive to her needs.
4. Provide her with information regarding available legal options and any risks when accessing them.

5. Where available, provide information regarding appropriate services for batterers, in particular those which include parenting curricula specifically designed for batterers.
6. Dialogue with her about how batterers will use the children to further control her, their impact on children and/or the maternal bond, and, where needed, methods that can help her rebuild the mother/child bond (see Appendix A).
7. Address any concerns she has about her batterer's relationship with the children.
8. Ask if she has any concerns for the children that you can assist her with. If she thinks that she may be at risk of involvement with the child protection system, help her identify the strategies that she has used in the past and additional steps that she can take to protect her children.
9. Discuss how child protection may help in her situation, including the risks, and the advocacy you can provide if she becomes involved with them.
10. Assist her with risk assessment and safety-planning options.
11. If her children are having behavioral problems, assist in determining her eligibility to receive specialized services from the state (e.g., mental health or developmental disability services for children with behavioral problems).

Individual Advocacy Practices when Determining Whether an Incident Requires a Mandatory Report to Child Protection

Advocates are often confronted with the task of deciding whether a report to child protection is necessary. In most cases advocates will not observe the batterer's behavior, but will be informed by the woman or the children that an incident has occurred.

1. Completely familiarize yourself with Washington state mandatory reporting law and the state child protection agency's interpretation and practices.
2. If the battered woman informs an advocate that her children are being abused by any person, Washington state mandatory reporting law requires that a report be made to either CPS or law enforcement. Advocates can assist the battered woman in taking legal action and advocating on her behalf with CPS or law enforcement.
3. Invite your child protection agency to provide an in-service regarding what is or is not reportable. When you have concerns, get another opinion from a supervisor or co-worker with more experience and training in child protection issues.
4. When in doubt, consult with the appropriate child protection agency. This can be done by posing the question hypothetically, without revealing the identity of the involved parties.

Everything Questionable Does *Not* Have to be Reported

In cases where an advocate has concerns about the woman's behavior either as reported by her or directly observed, the following discussion is intended to assist in determining whether a report to child protection is necessary. Actions employed by the battered woman with her children *not* requiring a report to child protection are more common than those requiring a report.

- Just because someone makes a statement does not mean that it is reportable. For example, an abuser may call your program and say that the battered woman is beating the children. If you think that the abuser is merely trying to cause problems for the woman, it is reasonable to disregard the statement. The reporting threshold is "reasonable cause to believe." You are not required to report anticipatory action. If a battered woman is thinking about abusing her children, that is not a reportable offense. For example, if a woman says "I could" or "I will hit my child if they get out of bed again," it is not reportable.
- Moderate physical discipline that does not result in a visible mark or injury is not considered physical abuse.

Further Considerations

When trying to determine the types of actions requiring a report, there are often gray areas that require careful consideration. In particular, neglect can be more difficult to discern. It is important for advocates to consider explanatory factors, such as: the abuser's attempts to undermine the battered woman's parenting; the ways the abuser uses the children to monitor or continue access to the battered woman or forces the children to participate in abuse or coercion of the adult victim/parent; the protective strategies employed by the woman to protect the children from greater harm; and personal, family and cultural differences. In order to avoid making mistakes and erroneously reporting a woman for maltreatment, it is important for advocates to check for these extenuating factors in determining whether a report is necessary.

Accounting for Situational Stress

Advocates are often in a position to observe a battered woman and her children when they are most vulnerable. She in turn is subjected to a scrutiny that most of us would not want to endure. When women access our programs, they may interact with their children in ways that make advocates uncomfortable. It is important to remember that it is a time of enormous stress and increased safety, and therefore children are often more prone to acting out, particularly when safe from the battering parent's negative reaction to their behavior. At the same time, mothers, under stress, do not always utilize their best parenting skills. While held solely responsible for their children's behavior, mothers struggle to adapt to life away from familiar surroundings, with rules and routines which may seem unnatural to both mother and children, while assisting the children to function as a family without the damaging effect of the batterer.

Behaviors that a child exhibits that are reminiscent of the batterer's behavior can be particularly disturbing to a battered mother at this time. Recent research has found that battered mothers' interactions with their children improved dramatically six months after leaving their batterer and the shelter.⁷

The Batterer's Impact on Adult Victim's Parenting

Although research has demonstrated that battered women are no better or worse parents than non-battered women in the general population,⁸ Lundy Bancroft posits that batterers can have a negative impact on the mother/child relationship through direct or indirect devaluation of the mother's parenting, the ways that they dehumanize their victim, and their use of the children to establish and maintain power and control over her. He says that this can present obstacles to the mother's ability to parent effectively.⁹ Where this is the case, it is important to assist these mothers in restoring their capacity to parent effectively (see Appendix A).

The Battered Woman's Protective Strategies

It is important to figure out whether the observed or reported parenting behavior used by a mother was a protective strategy she employed to prevent greater harm to the children. An example of a protective strategy may be a woman's decision not to leave her batterer. This can often be misinterpreted, seen as a "failure to protect" her children. Although some protective strategies may result in a CPS report, it is important when reporting to document and describe the reasons she used a particular strategy (see Appendix B).

Some Issues to Consider: Individual, Family and Cultural Differences

Our individual backgrounds influence our beliefs and values and in turn how we perceive relationships between mothers and children. They also influence how we parent. In many situations, advocates will question whether a parent should have responded the way she did. We must do our best to allow for the differences that make families unique. Accounting for these differences must also occur when attempting to differentiate between what is or is not reportable. For example, in some cases, women have been penalized for having too many children in a bedroom or having extended family staying in a small apartment. For many families, having a lot of living space is a luxury they can't afford and in some cultures, is not something they would consider a necessity.

⁷ George W. Holden, Joshua D. Stein, Kathy L. Ritchie, Susan D. Harris, and Ernest N. Jouriles, "Parenting Behaviors and Beliefs of Battered Women," in G.M Holden, R. Geffner, & E.N. Jouriles (eds.) *Children Exposed to Marital Violence*, American Psychological Association, 1998.

⁸ Ibid.

⁹ Not necessarily, though. It is important to remember that the incidence of poor parenting is not any greater among battered women than a control group of non-battered community women.

Advocacy Practices for Making a Report to Child Protection

If after careful consideration and in consultation with others in your program, you believe that a report to child protection is necessary regarding a battered woman's or her batterer's suspected maltreatment of the children, the following steps are recommended.

These steps are important whether she or her partner is being reported for suspected maltreatment because the file is often placed *in her name*, regardless of who the perpetrator is, and she may be held responsible for her partner's failure to stop the abuse. When/if she fails to do so, it can result in serious repercussions for her, including a determination that she has failed to protect the children, findings of neglect, and in some cases, removal of the children.

1. Inform her that you will be making a report and describe how you determined that a report was necessary, including information about statutory obligations and your concern for her welfare and that of her children.
2. Provide information regarding the steps the child protection agency will take once the report has been made. Highlight the fact that not all reports result in continued involvement with child protection and, in particular, that not all reports result in findings of maltreatment, involvement with the court or the need for mandated services.
3. Provide her with a copy of the brochure *Protecting the Abused and Neglected Child: An Explanation of the Mandatory Reporting Act*.¹⁰
4. Share with her what you know about specific screening or risk assessment criteria used by CPS in Washington.
5. Inform her that you will work with her to avoid unnecessary involvement with child protection by providing a thorough report, including an explanation of how domestic violence has affected her situation, the steps that she has taken in the past and is currently taking to end the violence and protect the children, and what she feels she needs from the child protection system and the community.
6. Assure her that if continuing involvement with child protection becomes necessary, you will work with her and child protection to assure that they account for the impact of the batterer's abuse on her and the children. Also let her know that that you will advocate with her throughout her involvement with child protection (of course, this requires that you are prepared to do so, or ensure another advocate will follow up with her).
7. Discuss actions that she could take now which might help her avoid continued involvement with CPS (caution: do not assume that any of the options will make her and the children safer, rather determine with her what she believes works in her case). These actions can include: safety planning for herself and children; getting a civil protective or restraining order; leaving the batterer; chemical

¹⁰ DSHS Publication Number 22-163X can be ordered at no cost from the Washington State Department of Printing General Store website at <https://www2.wa.gov/prt/printwa/wsprt/default.asp>.

dependency treatment for her or the batterer; attending support and education groups for her and/or the children; appropriate parenting education groups for her or the batterer; state certified batterer's intervention group; accessing other supportive community resources or whatever else might enhance safety for her and her children.

8. Assist her with making concrete changes to enhance safety for her and her children, such as changing locks on doors and windows, finding food and safe shelter.
9. Work with her to develop an ongoing safety plan for her and her children.
10. Identify and document her past and present protective strategies, including the help she has sought, whether this was successful or not and what she needs to be safe from the batterer's harm. Do not attach the safety plan to her case file because the batterer may have access to the file.
11. A written report is not required and reports can be made by phone. Written reports are required from law enforcement, but CPS or the law enforcement agency can waive the written report requirement. Even if waived, the DV program should provide written information as outlined above, as it is likely to be helpful in her case.
12. Encourage her to also report and offer her support during the reporting (note: this does not release a mandatory reporter from their legal obligations to report).
13. Inform her that you will contact her within a week to see if she has heard from CPS and remind her that she can contact you if she has any concerns.

Advocacy Practices for Battered Women Involved in the Child Protection System

Once a report has been made to child protection, it is critical that advocates maintain contact with the woman to provide advocacy as needed throughout the process. You will come into contact with battered women in different stages of their involvement with child protection. Depending upon where she is in the process, it is recommended that advocates provide the following assistance to a battered woman.

Any contact with CPS or others must occur at her request, with her approval and written release, and when possible, with her present.

1. If an interpreter is needed at any step in the process, advocate for services with CPS.
2. Determine where her case is in the child protection process. Explain what is happening and what to expect from child protection services.
3. Find out what she has done on her own behalf regarding her case.

4. If her case has recently been reported to child protection by someone *outside of your agency*, and you don't know if the case will advance to the assessment stage:
 - if she thinks that the report was incomplete, work with her to make a supplemental report to child protection, including describing the strategies used by the woman to increase safety and her (and her children's) experience of abuse and its impact.
5. If available in your area, her case may be suitable for alternative response services (ARS). ARS are provided through local community social service agencies and can provide support services to families experiencing crisis. Some agencies may have expertise working with families experiencing domestic violence. Check in with ARS providers to assess their level of expertise. It is important to note that Washington does *not* have ARS with specialized domestic violence services. Discuss the risks and benefits of using alternative response services, so she can decide whether to accept or decline services as allowed under this program.
6. Review and give her a copy of the booklet *The Parent's Guide to CPS*¹¹ and if needed, advocate on her behalf with CPS.
7. Explain that she has a right to know what is in her case file, and that you are available to review it with her to see if any additions or corrections are needed. She can request a copy by filing for public disclosure.
8. Inform her that you can contact her caseworker and others if she would like you to advocate for her directly. Find out the name and contact information of her child protection caseworker, lawyer and other people involved in the case. Make contact with them to assist her.
9. Discuss confidentiality with her, the limits of what you will share, the use of releases and other considerations.

Advocacy Practices When Reviewing Case File Documentation

As a general practice, when advocating on behalf of a battered woman with her caseworker, the advocate and woman should conduct a comprehensive analysis of case file documents and create an advocacy plan for responding to missing, inaccurate or incomplete information. Thoroughly review materials in the case file with her and make sure the following items are addressed within the materials:

- The existence of and description of domestic violence that *both* the adult victim and children have experienced.
- Whether her version of events is accurately reflected and recorded.
- Whether behavior on her part is fairly represented or is represented as dysfunctional¹² (when examining CPS tools, this may require a review of every

¹¹ DSHS Publication Number 22-484X can be ordered at no cost from the Washington State Department of Printing General Store website at <https://wws2.wa.gov/prt/printwa/wsprt/default.asp>.

question and answer to determine how “points” are allocated and to whom they are allocated).

- Determine if appropriate and all available CPS procedures were followed.
- When working with Native American women and the Indian Child Welfare Act (ICWA), consult with domestic violence advocates who have experience working with ICWA and determine if appropriate and all available ICWA procedures were followed.
- Assist with any corrections or additions to the file documentation by providing explanations and alternative recommendations and submitting these to her child protection worker.

In cases where the abuser is reported for maltreatment (abuse or neglect), carefully review case file documentation and interventions by CPS that are directed at her and not her abuser. In consultation with the battered woman, consider the following questions, issues and strategies when planning your advocacy efforts:

1. Is the adult victim expected to stop the abuser’s behavior?
2. Is the file in the adult victim’s name instead of the abuser’s?
3. Where the report is about the batterer’s maltreatment of the children but the case file is listed in her name, suggest that it be filed under his name.
4. Is his abuse of her still ongoing?
5. Is child protection making any effort to directly intervene (such as take legal action against him or cooperate with other criminal or civil court proceedings currently in progress)?
6. Has he cooperated in any way?
7. Advocate with child protection for strategies that shift responsibility for the abuse to the batterer, including asking CPS to work with current criminal proceedings; to contact his probation officer; to file for a protection order on behalf of her and/or the children; or to initiate other civil or criminal proceedings against him.
8. Has the adult victim’s experience of violence been documented in the file? And, how is this information described?
 - If not, advocate with her child protection worker to conduct a domestic violence assessment or submit one on her behalf.
9. Has the adult victim’s efforts to protect the children, and the results of her past efforts to seek help, been represented accurately in the file?

¹² Some psychological evaluations can suggest that battered women’s perceptions and actions are dysfunctional, when they fail to account for the reality of the violence and control exerted by her batterer.

10. Consider whether specific CPS-identified expectations place her (or her children) at greater risk.¹³
11. Has CPS considered whether other services might be more helpful?
12. Examine how the individual needs of her children are accounted for in any recommendations or evaluations.
13. Assist her in reviewing the safety plan completed by the child protection worker to address any missing information and minimize harm to the adult victim and children.
14. To prevent court involvement to remove her children, help her identify whether temporary placement with relatives or family friends is needed. Help her to figure out who could provide safe placement for the children and are likely to be approved by CPS (her choice of temporary placement may not need to be approved by CPS unless court action is taken).
15. Help her prepare for home visits by CPS.

In cases where the adult victim has a finding of maltreatment (abuse or neglect) against her, consider the following issues when planning your advocacy strategies with the battered woman:

1. Assist her in appealing a determination of maltreatment, where appropriate, or if that fails, assist her with seeking counsel to appeal a decision.
2. If there are findings of maltreatment, but CPS does not mandate protective services, an advocate can help a parent determine whether the parent and/or her child is entitled to services, if the services are useful and will help alleviate or reduce future problems. For example, a child may have some behavioral problems related to a disability and be eligible for mental health services or developmental disability services. Without supportive services the child's behavior may worsen and if the parent responds inappropriately, child protection may become involved again, and the outcome may be more negative for the parent and child. An advocate can help a parent view the situation as an opportunity to receive services that might benefit the entire family.
3. When there is a finding of maltreatment and CPS-mandated services, she will first be offered these services and asked to cooperate voluntarily. If she refuses, child protection may start a dependency proceeding. Work with her to determine if the offered services enhance safety and security for her and the children and hold the perpetrator responsible. If not, suggest and submit alternative, more appropriate services and interventions to CPS.
4. She may be presented with the option of "voluntary placement" where she can enter into an agreement with CPS to place the children in out-of-home care.

¹³ For example, requiring a civil protection order when it might not be helpful in her case. Also, she may be required to take another job as part of her welfare to work requirement, yet adequate daycare is not available, leaving her vulnerable to findings of neglect.

Before she decides, inform her of the risks as well as the benefits of such an agreement.

5. Sometimes the state will decide that services are not necessary because she has placed the children temporarily with a grandparent or other relative. The grandparent and/or child may benefit from services CPS could provide to help ensure this living situation is stable and safe. The parent may not be aware that they and/or their child are eligible for services.

Advocacy During Court Proceedings

72-hour Shelter Care Hearings

Police can remove a child without a court order, if they determine that the child is at imminent risk for harm or neglect and the parent is not able to care for or protect the child. CPS works with law enforcement to remove children and may file a court order to get temporary custody of the child.

If there has been an emergency placement of her children:

1. Help her enforce her right to visitation.
2. Assist her in setting up phone contact and visits with the children.
3. A 72-hour shelter care hearing is held within 72 hours of removal, per Washington statute, to determine whether the child will be returned home or ordered into state custody, such as foster care.
4. In emergency removal situations, the parent can request that the child be placed with a relative or a standby custodian instead of a shelter care facility. Assist her in assessing who might be available and appropriate to provide this function.
5. An advocate can also help a parent complete a temporary custody agreement that must be approved by CPS. In a temporary custody agreement, placement for the child could be with relatives or friends of the family.
6. Prepare her for the visit with her children, suggesting that she not discuss the case. Take a support person along and plan for activities with the children.

Juvenile Dependency Court Proceedings

A dependency petition is a court action that is filed on behalf of a child who is alleged to be in need of protection or services. It is the first step in what may be a series of hearings in juvenile court, including 72-hour and 30-day shelter care hearings, dispositional hearings, review hearings and trials.

The Division of Children and Family Services goal is to prevent the removal of children from their homes and to work to reunite children with their families once they are removed.

1. Explain the dependency process and provide an overview of juvenile court; explain the processes, hearings, case plans, the importance of compliance, maintaining contact as outlined, concurrent planning¹⁴ and safety issues regarding relative care as a custody option in out-of-home placement.
2. Inform her of her right to an attorney, and if she cannot afford one, her right to a court-appointed attorney.
3. Inform her that you are available to talk with her attorney, if she wishes, to provide assistance where needed. You might be more aware of appropriate services than her court-appointed attorney.
4. Stress the importance of her attendance at all court hearings in a child protection case.
5. As in other types of out-of-home placement, the law says that where available and appropriate, children are to be placed with a relative or family friend. Review with her who might be an appropriate placement.
6. If there is a relative or friend who can provide an out-of-home placement, it is best if they can attend the first court hearing.
7. Contact her caseworker and/or attorney to find out what is needed to assist in her situation. Ascertain their reasons for a particular course of action and if necessary determine whether there might be alternatives to the removal of the children that would satisfy child protection, the court, the battered woman and her children.
8. Continue to advocate for the inclusion of specifics regarding how domestic violence impacts her situation and her children. Also continue any other relevant advocacy practices, as outlined in this protocol.
9. Prepare her and be available to attend CPS or police interviews and court appearances. Make suggestions to her regarding the importance of having support person(s) present at all interviews and court appearances, maintaining a positive cooperative attitude and dressing appropriately.

Court Cases Involving American Indian Children¹⁵

The Indian Child Welfare Act (ICWA)¹⁶ provides additional protections for an American Indian child, provided the child is eligible for membership in a federally recognized tribe or Alaska Native village.

1. If needed, consult with domestic violence advocates who have experience working with the ICWA when assisting a battered woman to determine if she or

¹⁴ Concurrent planning means that at the same time the state makes reasonable efforts to preserve or reunify a family, the state is also developing an alternative plan for permanency in case reunification efforts do not work.

¹⁵ This section written by Nancy Mischel in *Responding to the Dual Issues of Battering and Child Abuse: Promising Practices for Battered Women's Programs*, Rose Thelen and Sandra Davidson, Minnesota Coalition for Battered Women, 2003.

¹⁶ 25 U.S.C. §§ 1901-1963.

her child is eligible for enrollment in an Indian tribe and when informing her of her rights under the Indian Child Welfare Act.

2. Explain and explore options regarding state or tribal court. For some women, staying in state court might be a better choice. Others may be treated more fairly and less punitively in tribal court.
3. Help women with Indian children by collaborating with ICWA workers to assure that children are placed in another Indian home, preferably with relatives or someone from the same tribe.
4. Be prepared to educate ICWA workers regarding the impact of a batterer's behavior on both the mother and the child(ren), safety issues and advocacy strategies.
5. Advocate on behalf of battered Native American women to ensure *active efforts*¹⁷ regarding ICWA are adhered to.

Other Hearings

Once a case plan has been established, a process of hearings and proceedings will take place to determine compliance. If the parties are not in compliance, the court will hold additional hearings regarding permanency and termination of parental rights.

Case Plans and Advocacy Strategies

A parent whose child has been removed from the home must have a written case plan completed within thirty days after the child is placed outside of the home.¹⁸

1. Review parents' rights in the development of a case plan.
2. An advocate can make recommendations on the woman's behalf to the public defender and the caseworker regarding appropriate services for the parent and/or child to be included in the case plan.
3. Review the case plan with her as addressed previously to help assess its reasonableness and whether she has the ability to do what is required under the case plan.
4. A parent who does not comply with their case plan may never have their child returned. If the case plan is unreasonable or jeopardizes her safety (for example, requiring the adult victim to petition for a protection order may increase risk), assist the adult victim in making additions and corrections or write up a new plan

¹⁷ A stricter standard than reasonable efforts, *active efforts* are only required for American Indian children. The state must make active efforts to prevent placement and to unite the family. As part of active efforts, the state should assist the family in making connections to their tribe, and in enrolling the child if that has not already been done and must be proactive in helping the family. At each point of court review, the burden is on the state to demonstrate that they have been and are making active efforts to provide services and reunite the family where required.

¹⁸ This is an internal DSHS policy because a written plan must be submitted to the court for the 30-day shelter care hearing.

which addresses the concerns listed in the dependency petition. For example, if she is being required to go to an anger management group, is this an appropriate referral? Does she have transportation to get to group?

5. A case plan can be changed by agreement of the parties or by court order. A party can request a court review of the reasonableness of the case plan upon showing a substantial change of circumstances.¹⁹
6. An advocate should encourage a parent to ensure appropriate activities are included in a case plan. A parent must then comply with the case plan or work with CPS to have the case plan modified if the activities are no longer appropriate.

Making a Complaint about Child Protection Services

Contact the Office of the Children and Family Services Ombudsman to report concerns about the Children's Administration (800-571-7321).

¹⁹ At any point in the dependency process, an emergency hearing can be held to discuss a change in circumstances.

APPENDIX A

Helping Battered Mothers Rebuild Their Mother/Child Relationships

Excerpted and adapted with permission from *Responding to the Dual Issues of Battering and Child Abuse: Promising Practices for Battered Women's Programs*, Rose Thelen and Sandra Davidson, Minnesota Coalition for Battered Women, 2003, pgs. 146-149.

The negative impact that a batterer can have on the mother/child relationship can last long after the mother has left the batterer or he has stopped his use of physical violence. It is important for advocates to understand that their interactions with the mother and the child can begin the process of restoring the bond that was broken by the batterer.

The following examples of supportive interventions are targeted at rebuilding the mother/child relationship.

1. Help her to validate, expand upon and re-frame her understanding of what she and the children have been through, as well as build upon her strengths and resiliency to effectively parent, provide for and protect her children:
 - Listen to her and believe her.
 - Acknowledge her experience and feelings. Give her permission to feel angry, helpless, powerless, fearful.
 - Remind her that no one deserves to be abused and that she's not alone.
 - Explain to her the importance of letting the children know that she's doing everything in her power to keep them safe.
 - Help her identify the protective strategies she has used in the past.
 - Help her to develop a safety plan with and for her children.
 - Help her understand the dynamics of domestic violence and its effect on children.
 - Help her understand that some negative behaviors children may exhibit are coping skills, which they developed as a result of being exposed to a batterer's behavior.
 - Provide playful, stress-free activities that women and their children can do together.
 - Help her understand how she can start reclaiming fun memories and building new memories that children can always remember.
 - Provide her with age-appropriate books or videos that she can read with her children together so they can understand the dynamics of family violence, give them a language to share their experience and open the doors to communication.
 - Help her to explore things she can say and do to validate her children's fear, powerlessness, sadness, conflicting loyalties, anger and helplessness.
 - Help her to understand that behaviors are learned and that children may acquire annoying and hurtful behaviors that they learned from the batterer.
 - Help her explore ways she can address and modify these behaviors in non-violent ways that don't attack a child's body or spirit.

- Ask her what kind of help she needs, what would help her the most in helping her children heal and repairing the damage that's been done to their relationship.
- Help her explore ways to assist her children's adjustment to the changes they will be going through. Provide her with communication, resources and other practical skills to:
 - Advocate for the kids with the schools, as needed
 - Help her kids deal with bullying, gangs, peer pressure or teasing
 - Acknowledge and ease their fear of relocating to a new home or community, attending a new school, making new friends
 - Help the children manage the separation from their father, visitation and other changes in the family structure
 - Talk to them about their anxieties regarding all of the above
- Help her find resources (e.g., chemical dependency, mental health, educational or vocational classes, or job training) that understand (or will at least be respectful of) her experience as a battered woman, the dynamics of abuse, the batterer's impact on children and parenting, the experiences of her children. And, give her permission to keep seeking resources that believe and validate her perceptions and her experiences.
- Model gentle, non-violent communication, play and discipline.
- Tell her when you see her interacting in a positive way with her children. This reminds her that she is a good parent and that her child(ren) need this to heal from what they have experienced and encourages positive interactions.
- Assist her in listing the ways in which she is a successful parent.
- Notice and tell her good things about her kids. Avoid telling her about negative behaviors her children exhibit—instead find opportunities to discuss the concept that what may seem like negative behaviors are quite typical that most kids will exhibit. Explore with her ways to deal with these behaviors in healing ways (i.e., non-violent, non-blaming, non-shaming, non-punitive).
- Encourage her to spend peaceful, quiet time alone with each of her children. Offer to watch her other children so she can do this or help her explore options to make this happen with friends and family.
- Let her know that it takes time to recover—that no one can ever totally sever the mother/child relationship; that usually children will come to realize all she has done for them; that she has not been abusive; that they'll come around but not necessarily in the time we want or expect.
- Talk with her about the future—what she wants for her children: now; 5 years from now; 10 years from now.
- Define abuse (physical, sexual, emotional), what is reportable, what is not and how she can help her children heal from what they have experienced.
- Provide her with tips on how to give her children positive attention, even when she's terrified, confused or angry.
- Help her strengthen healthy ties with family and friends who support her changes and have a positive influence on the children.
- Help her see how the batterer has undermined her ability to parent. Explain both covert and overt ways batterers undermine a mother's parenting.
- Provide parenting books and videotapes related to the effects of battering.

The following suggestions are most applicable to advocates working in a shelter or for programs who have specialized parenting or children's programming.

2. Acknowledge and validate children's pain, fear, sadness and anger (age-appropriate—start where they're at).

- Acknowledge that the children have been afraid, and may continue to be.
- Validate their feelings without trying to “fix” them, change them or define them. Let them give voice to whatever it is they're feeling so they know their feelings are okay—there's a time and place to talk about “choice” and the difference between “feeling” angry enough (to lash out at someone) but it's important to “choose” not to hurt someone even when you feel like it.
- Assist children in understanding their experience and their mother's experience to help them recover respect for her:
 - define abuse (physical, sexual, emotional) in terms they can understand, let them know they're not alone—that many families live with violence but it's not okay and that you and others are trying to help mom to be safe because she doesn't deserve to be hit, hurt, scared or made fun of
 - let them know that you are proud of their mother for seeking help because you know she wants to protect herself and protect them
- Acknowledge that the children may miss their father, but wait until you have built some trust before gently letting them know that his behaviors are not okay, that hitting hurts and that mom (or anyone) doesn't deserve to be hit, scared or made fun of. Support and reinforce the children's closeness to their mother.
- Assist children in understanding that the batterer is responsible for the violence and coercive behavior, introducing the concept of choice and personal responsibility in age-appropriate ways.

3. Address problems in children's attitudes and belief systems.

- In their book, *The Batterer As Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, Lundy Bancroft and Jay Silverman suggest that children will need assistance to begin the emotionally charged process of re-evaluating their understanding of the battering that their mother experienced. They recommend that programs for children exposed to domestic violence assist children to correctly attribute responsibility to the abuser rather than their mother or to themselves. They also recommend that attention be directed at addressing and overcoming the negative socializing process which may have instilled in them the following beliefs and attitudes that they learned from the batterer:
 - victims are to blame for provoking the violence or for causing the violence in other ways;
 - power over others is the route to safety and self-esteem;
 - perpetrators of violence are not responsible for their violence;
 - it is appropriate for males to be aggressive and demanding and females should cater to males;

- females are passive and victimized;
- people who complain of mistreatment should be ridiculed, and
- other distorted values and perceptions.¹

Provide conjoint classes with the mother and the children which emphasize restoring damaged family relationships and re-establishing the mother's parental authority.²

¹ Lundy Bancroft and Jay Silverman, *The Batterer As Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, Sage Series on Violence Against Women, 2002, p. 193.

² Ibid.

APPENDIX B

How Adult Victims Survive and Try to Protect Themselves and Their Children from Domestic Violence

Excerpted and adapted with permission from *Responding to the Dual Issues of Battering and Child Abuse: Promising Practices for Battered Women's Programs*, Rose Thelen and Sandra Davidson, Minnesota Coalition for Battered Women, 2003, pgs. 151-152.

“An adult victim’s behavior must be evaluated in light of how she is protective of the children. While personal resources vary greatly among victims, battered women have developed many survival skills and most have taken many actions to protect children. For example, a victim might comply with the perpetrator to reduce danger to a child.”¹ Advocates should document as many positive behaviors as possible when working with women in the child protection system.

Often a battered woman’s behaviors can be misinterpreted and taken outside of the context of her batterer’s ongoing violence, resulting in labeling of her as dysfunctional. It is important when advocating on behalf of a victim to help the system understand her behavior as functional and document her attempts to protect herself and her children.

Information to Consider in Assessing Protective Factors²

1. Victim resources include factors such as the victim’s:
 - resistance to the perpetrator’s or community’s victim blaming
 - belief in herself and/or her children
 - willingness to seek help
 - use of available money, time and material goods
 - work skills
 - parenting skills
 - ability to plan for the children’s safety
 - knowledge of the abuser and the situation
 - health and physical strength
 - use of safety strategies for herself and the children

2. Children’s resources include such factors as the children’s:
 - age and developmental stage
 - positive relationships with adult victim, siblings, other family members and neighbors
 - actions during violence

¹ Anne Ganley and Susan Schechter, *Domestic Violence: A National Curriculum for Child Protective Services*, Family Violence Prevention Fund, 1996, p. 109. Available from FVPF: 415-252-8900 (phone), 415-252-8991 (fax), fund@fvpf.org.

² Ibid., p. 110.

- help-seeking behavior
- instructions from the adult victim or perpetrator about what to do
- ability to carry out safety plans

3. Community resources for victim safety and perpetrator accountability include:

- victim advocacy and support groups
- effective criminal justice response to domestic violence (i.e., available and consistent response by police, prosecutor, courts and corrections)
- effective civil or family court response to domestic violence
- welfare and social services
- effective health care
- safe and affordable housing
- religious community
- family/friends of the victim and/or perpetrator
- rehabilitation programs for domestic violence perpetrators
- accessible substance abuse treatment

Other behaviors that the victim may have engaged in to protect herself and the children:

- Fighting back and defying perpetrator
- Pleasing and placating the perpetrator, complying with demands
- Not telling anyone about the violence for fear of making it worse
- Leaving to try to make things better
- Returning to try to make things better
- Avoiding the perpetrator, working separate shifts
- Protecting the kids by sending them away from the home
- Searching for help, getting a protective order, going to a shelter, trying to find help for the perpetrator
- Dropping the search for help as a way to protect herself and her children
- Being “devious” as a way to survive, lying to the perpetrator and others
- Encouraging the perpetrator to drink so he’ll pass out and not hurt anyone
- Reasoning with the perpetrator and expressing disapproval of his behavior
- Trying to improve the relationship
- Creating an internal space through fantasies that the perpetrator cannot touch
- Having sex to placate the perpetrator and protect the children from violence
- Drinking and using drugs to numb the pain
- Lying about the perpetrator’ criminal activity or child abuse so that he will not hurt the victim or the children

APPENDIX C

Introduction to the Rules and Regulations of Child Protective Services

Compiled by Kristin Bryant for the Washington State Coalition Against Domestic Violence

This is a basic overview of the rules, regulations, and procedures that Child Protective Services should follow. The information in this guide was compiled from the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), the Children's Administration Case Services Policy Manual (CSPM), the Children's Administration Practices and Procedures Guide (PPG), and the Department of Social and Health Services website in August 2003. This introduction is designed to provide domestic violence advocates with a basic understanding of how Child Protective Services should function when investigating and responding to allegations of child abuse or neglect. This guide is not intended to provide legal advice, and it should not replace consultation with an attorney.

Q. Legally, what is considered child abuse or child neglect?

A. Washington law defines abuse or neglect as “the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which indicate that the child’s health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100.” (RCW 9A.16.100 allows parents, teachers, and guardians to use reasonable, moderate physical discipline to restrain or correct children.)

RCW 26.44.020 (12)

The law defines negligent treatment or maltreatment as “an act or omission that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child’s health, welfare, and safety.”

RCW 26.44.020 (15)

Q. Who responds to allegations of child abuse and neglect?

A. The Department of Social and Health Services (DSHS) responds to child abuse and neglect. Within DSHS, the Children's Administration (CA) is responsible for issues concerning children's safety and well-being. Within the CA, the Department of Children and Family Services (DCFS) deals with issues of abuse and neglect. Child Protective Services (CPS) is the division of DCFS that screens and investigates alleged child abuse and neglect. CPS provides short-term, in-home and out-of-home services to children and families. Child Welfare Services (CWS) is the division of DCFS that is responsible for providing long-term services to abused and neglected children living in their homes or in out-of-home care. The majority of CWS cases are cases of child abuse or neglect that are transferred from CPS to CWS.

Q. What does CPS do to protect children from abuse or neglect?

A. CPS provides services and interventions ranging from services such as parenting classes to placing children in out-of-home care.

The intent of the legislature is “to minimize the trauma to a child involved in an allegation of sexual or physical abuse”; the legislature notes “removing the child from the home often has the effect of further traumatizing the child,” so it intends that “the alleged offender, rather than the child, shall be removed from the home.” As an alternative to removing children from their homes and placing them in out-of-home care, CPS can file for a restraining order or preliminary injunction that will remove the abusive individual from the home.

In any court proceeding, any party may make a motion for the court to issue a temporary restraining order removing the alleged abuser from the family home. The court may also make this motion itself, if no other party makes the motion. If the court finds reasonable grounds to believe that the child has been physically or sexually abused, the court may issue a temporary restraining order against the alleged abuser. The restraining order may prevent the alleged abuser from:

- 1) Molesting or disturbing the peace of the victim;
- 2) Entering the victim’s family home when the court has not specifically authorized him or her to do so;
- 3) Having any contact with the alleged victim that is not authorized by the court; or
- 4) Knowingly coming within, or knowingly remaining within, a certain distance of a specific location.

The court may also order any other restrictions that are necessary to protect the child from more abuse or emotional trauma.

If the court issues a restraining order against someone who abused a child while acting in a parental role, it shall require the alleged abuser to complete a treatment and education program that will protect the child from future abuse before allowing the alleged abuser to return home.

The court should issue a temporary restraining order prohibiting the alleged abuser from entering the family home if it finds that the restraining order will protect the child’s nurturance, health, and safety, and protect the child from further sexual or physical abuse or coercion.

If the court issues a temporary restraining order against the alleged abuser, the person who has physical custody of the child has a duty to assist in enforcing the order. The person who has physical custody of the child must notify the court of violations of the restraining order, request law enforcement assistance to enforce the restraining order, and notify CPS of violations of the restraining order. If the person who has custody does not help enforce the order, he or she may be charged with contempt of court.

RCW 26.44.063, RCW 26.44.140

Q. Who reports suspected child abuse and neglect?

A. Anyone can report suspected child abuse or neglect. Some people are required by law to report suspicions of child abuse or neglect. When these “mandated reporters” suspect that a child has been abused or neglected, the law requires them to report their suspicions to CPS or a law enforcement agency within forty-eight hours. Mandated reporters include:

- Medical practitioners (any person licensed by the state to practice medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, optometry, chiropractic, nursing, or dentistry, or to provide other health services, including accredited Christian Science practitioners) RCW 26.44.020(3)
- Nurses
- Dentists
- Social service counselors and therapists (anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual's capacity, or as an employee or agent of any public or private organization or institution) RCW 26.44.020(8)
- Psychologists
- Medical examiners and state coroners
- Pharmacists
- Professional school personnel
- Licensed or certified childcare providers and their employees
- Law enforcement officers
- Department of Corrections employees
- DSHS employees
- State family and children's ombudsmen and volunteers in the ombudsman's office
- Adults who live with children that they have reasonable cause to believe have been severely abused

RCW 26.44.030 (1) and (3)

Q. How does a CPS investigation start?

A. When CPS receives a report that a child is abused or neglected, it shall make reasonable efforts to learn the name, address, and telephone number of the person making the report. If CPS cannot learn who made the report it will only start an investigation if:

- 1) CPS believes there is a serious threat of substantial harm to the child;
- 2) The report indicates conduct involving a criminal offense that has happened or is about to happen and the child is the victim; or
- 3) CPS received a report of abuse or neglect of a member of the same household within the last three years and investigation revealed that the previous report was probably true.

RCW 26.44.030(15)

When someone reports suspected child abuse or neglect to CPS, an intake social worker must complete the intake process within three working days of receiving the referral unless the referral indicates that there is an emergency situation that requires a faster response. The intake social worker will conduct a sufficiency screen to determine whether the referral will be “screened in” (accepted for further investigation), or “screened out” (not investigated). The intake social worker will determine whether:

- 1) He or she has enough information, using all available resources, to locate the child;
- 2) The alleged perpetrator is the child’s parent, caretaker, or another person acting *in loco parentis* or a parent or guardian negligently failed to protect the child from harm by a third party; AND
- 3) There is a specific allegation or a collection of behavior that imply an allegation of child abuse or neglect that meets the legal definition, or risk factors indicate that there is a significant possibility or likelihood that the child will suffer serious physical or emotional harm in the near future.

CPS accepts for investigation referrals that meet these criteria. CPS keeps records of screened out referrals so they can be used if there are future allegations of abuse in the same household.

Once a referral has been screened in, CPS uses a risk assessment model to assign each referral a level of risk based on a six point scale, in which 0 = no risk, 1 = low risk and 5 = high risk. Cases that are assigned a 0 need not receive investigation. Cases assigned a risk level of 1 or 2 can receive a low standard of investigation and receive community-based services or be diverted to alternative response systems, while cases assigned a 3, 4 or 5 must receive a high standard of investigation.

A low standard of investigation requires that CPS review its past involvement with the family and obtain information from sources such as whoever made the referral or a child’s teacher to determine whether more investigation is needed; this type of investigation does not require face-to-face contact with the child or caretaker. A high standard of investigation requires that CPS review its prior involvement with the family, obtain information from other sources, conduct face-to-face interviews with the child and caretaker, and conduct any additional assessments that are needed to determine whether abuse or neglect has occurred or is likely to occur in the future.

PPG 2220, PPG 2331, PPG 2332

Q. What will CPS do as part of its investigation?

A. In conducting its investigation, CPS gathers information from a variety of sources. CPS may interview people, including the person who reported the abuse, the child, and the parent. CPS may look at relevant records, including the records of the mandated reporter if a mandated reporter reported the abuse. CPS will also consult its own records to determine if previous allegations of abuse have been made against the same person. CPS can photograph the child. With a court order, CPS may get a physical or psychological evaluation of the parent or child.

RCW 26.44.030(10), (11), RCW 26.44.050, RCW 26.44.053

Q. What happens when CPS interviews a child as part of its investigation?

A. CPS may interview the child as part of its investigation. CPS may interview the child at school, daycare, the child's home or any other suitable location outside the parent's presence. CPS must notify the parents about the interview as early as is possible without jeopardizing the safety of the child or the course of the investigation; this means that CPS may wait until after the interview to notify the parents. Before the interview starts, CPS should determine whether the child wants another person to be present and make reasonable efforts to accommodate the child's wishes. Generally, CPS shall make reasonable efforts to have a third party present unless the child objects or the presence of the third party will jeopardize the course of the investigation.
RCW 26.44.030(10).

Q. Is a CPS investigation the same as a police investigation into child abuse?

A. No. Though they may coordinate their investigations, the police and CPS each conduct their own investigations, which have different goals. The purpose of the CPS investigation is to determine whether children are being abused and neglected so that they can protect the children. The purpose of the police investigation is to determine whether a crime has been committed and whether arrests should be made.
RCW 26.44.035

Q. What are the possible results of a CPS investigation?

A. After investigating, CPS will assign each referral to one of three categories: founded, unfounded, or inconclusive. A case is founded if the information obtained in the investigation indicates that, more likely than not, abuse or neglect did occur. A case is unfounded if the information indicates that, more likely than not, abuse or neglect did not occur. A case is inconclusive if based on the information the social worker cannot determine that, more likely than not, child abuse or neglect has or has not occurred.
PPG 2540

Q. How long will the CPS investigation last?

A. Within 90 days of receiving a referral, CPS must get a court order declaring a child dependent, get a voluntary service agreement from the parent allowing CPS to provide services to and be involved with the family, or close the case.

Q. What is a dependency petition?

A. A dependency petition is a document that is filed with the Superior Court. A dependency petition says that the person filing it believes there is a dependent child in the state.
RCW 13.34.040

Q. What does it mean when a child is declared legally dependent?

A. “A dependent child is a person under eighteen who:

- 1) Has been abandoned;
- 2) Is abused or neglected by a person legally responsible for the care of the child; OR
- 3) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child’s psychological or physical development.”

RCW 13.34.030 (2) and (5)

Q. Who may file a dependency petition?

A. Anyone may file a dependency petition. They are often filed by representatives of DCFS, but anyone else, including family and friends, may file them.

RCW 13.34.040.

Q. Who can take a child into custody without a court order? When can they do this?

A. Law enforcement officers and some medical personnel can take a child into custody without a court order.

Law enforcement officers can take a child into custody without a court order when they have probable cause to believe that:

- 1) The child is abused or neglected; and
- 2) The child will be injured OR it will become impossible to take the child into custody if it is necessary to get a court order first.

RCW 26.44.050

Law enforcement officers can also take a child into custody without a court order if directed to do so by authorized medical personnel.

RCW 26.44.056(2)

If doctors or hospital administrators have reasonable cause to believe that allowing a child to remain at home or in the care or custody of his or her parent or legal guardian would be an imminent danger to the child’s safety, they can either:

- 1) Detain the child, even if the child does not need medical treatment; OR
- 2) Notify a law enforcement agency, which will take the child into custody.

RCW 26.44.056

Q. Where does a child go when the police take him or her without a court order?

A. The police turn the child over to CPS, and CPS places the child in shelter care. CPS must first make reasonable efforts find a relative with whom the child can safely stay. If CPS determines that there is no relative available, or that staying with a relative will endanger the child or make it harder to eventually return the child to his or her parents,

then CPS will place the child in foster care or some other care facility. CPS *may not* put the child in a secure detention facility such as a jail or juvenile detention center.
RCW 13.34.060(1)

Q. How does a parent know that a child has been taken into custody?

A. Within twenty-four hours of taking a child into custody or learning that another agency or person has taken a child into custody, CPS must notify the parents that the child has been taken into custody and why the child was taken into custody. CPS must also tell the parents about their legal rights, including the right to a shelter care hearing within 72 hours. CPS can give notice through any means that will actually notify the parents, but if it is given in any form other than writing, CPS must also give the parents written notification.

RCW 13.34.060(2) and RCW 13.34.062

Q. What happens after the police take a child into custody without a court order?

A. Within seventy-two hours (not including weekends or holidays) of taking a child into custody, the court must hold a shelter care hearing at which it will determine whether the child should be kept in out-of-home care or returned home.

RCW 13.34.060(1)(b)

Q. What is shelter care?

A. Shelter care is out-of-home placement of a child. Children in shelter care may live with relatives, in foster homes, or in group care facilities.

Q. What does the court do at a shelter care hearing?

A. The court hears evidence about whether the child needs to be removed from the home to be safe. The parents have a right to present testimony about the need or lack of need for shelter care. The court hears evidence about whether the parents received notice of the shelter care hearing, including details about how CPS tried to notify the parents if they were not successful.

RCW 13.34.062

Q. What are the possible outcomes of a shelter care hearing?

A. The court may order that the child should stay in shelter care or that the child should return home.

RCW 13.34.065

Q. How will the court decide whether to place a child in shelter care?

A. The court must return the child to his or her home unless it finds that there is reasonable cause to believe that:

- 1) Reasonable efforts already have been made to provide services to prevent or eliminate the need for the child to be removed from the home and to make it safe for the child to be at home; AND
- 2) a. Releasing the child creates a serious threat that the child will be substantially harmed; OR
- b. The child has no parent, guardian, or legal custodian to provide supervision and care for the child; OR
- c. The parent, guardian, or custodian to whom the child could be released has been charged with custodial interference.

RCW 13.34.065

Q. What if a parent cannot attend the scheduled shelter care hearing?

A. If the parent has a good reason that he or she cannot attend the shelter care hearing, he or she may request that another shelter care hearing be held. The parent should make this request to the clerk at the court where the dependency petition was filed. When the clerk receives a request to reschedule for good cause, the clerk must schedule another hearing within seventy-two hours (excluding weekends or holidays).

RCW 13.34.062(6)

Q. Where will a child go when he or she is placed in shelter care?

A. CPS should first attempt to place the child in the care of a relative. If there is no relative willing, available and able to care for the child and to meet any special needs of the child, CPS may place the child in another form of out-of-home care. CPS should attempt to place the child in the most family-like setting available, and in a location as close to the child's home as possible. CPS shall consider the natural parent's wishes regarding placement, including preferences about family constellation, sibling relationships, ethnicity and religion.

RCW 13.34.130, RCW 13.34.260, CSPM 4222

Q. What is a case conference?

A. A case conference is a meeting that can occur as part of dependency proceedings. It takes place after the shelter care hearing and at least twenty-five days before the fact-finding hearing. Case conferences are only required when parents request them. The purpose of the case conference is to develop a written service agreement that describes the expectation of both CPS and the parents.

RCW 13.34.067(1)

Q. How does a parent request a case conference?

A. The parent or the parent's attorney contacts CPS to request a case conference. The parent or the parent's attorney may request a case conference at any point in the dependency proceedings.

RCW 13.34.067

Q. Who attends a case conference?

A. CPS should invite the parent, the parent’s attorney, the foster parent or other out-of-home care provider, the caseworker, the guardian ad litem, the child’s counselor or other health care provider, and any other person connected with the development and well-being of the child.

RCW 13.34.067(1)

Q. What happens in a case conference?

A. The parties collaborate to create a written service agreement that describes the expectations that both the parent and CPS will be required to meet. The service agreement must correlate with the court’s findings at the shelter care hearing, and it must set forth specific criteria that allow the court to measure both CPS and the parent’s progress toward meeting those expectations. The parties must agree to and sign the case conference agreement.

RCW. 13.34.067(1)

Q. What has to be proved for the court to find that a child is dependent?

A. The court may find that a child is dependent if it finds that based on the facts presented show by a preponderance of the evidence that the child fits the legal criteria of a dependent child.

RCW 13.34.130

Q. What happens if the court finds that a child is dependent?

A. The court will either order that the child remain in his or her home while the family receives services or be removed from the home and placed in out-of-home care.

If the court orders that the child remain in the home, a program shall be designed to alleviate the immediate danger to the child, to help or cure any harm the child has already suffered, and to aid the parents so the child will not be in danger in the future. In developing the program, the court should choose services that protect the child but interfere the least with family autonomy.

The court may only order out-of-home placement for the child if it finds that reasonable efforts have been made to prevent or eliminate the needs for removal of the child from the home and to make it possible for the child to return home. If the court orders out-of-home placement, it must describe the services that have been provided but have failed to eliminate the needs for out of home placement, and the court must also find that:

- 1) There is no parent or guardian available for the child;
- 2) The parent is not willing to take custody of the child; OR
- 3) There is clear, cogent and convincing evidence that there is a manifest danger that the child will suffer serious abuse or neglect if the child is not removed

from the home, and that a restraining order against the alleged abuser (RCW 26.44.063) would not protect the child from danger.

If the court does not specifically find the required elements, the child shall not be ordered into out-of-home placement.

RCW 13.34.130

Q. How often does the court evaluate cases of children it has held are dependent?

A. The court must evaluate these cases at least once every six months. At these hearings, the court will determine whether court supervision should continue.

RCW 13.34.138