

Safety and the Legal Process Part 1: The Temporary Custody Hearing

Introduction

Here are three common observations related to CPS safety intervention and court involvement. First of all, virtually all cases that CPS takes to court are done so because of threats to child safety. Secondly, often CPS prepares for and presents a case to the court without effectively expressing the need for court authority based on fundamental safety intervention concepts. And lastly, generally speaking, those who participate in the court process may not fully understand concepts, practices and decision-making that comprise safety intervention. Confusion about the differences between maltreatment, risk of maltreatment and threats to child safety is fairly common among a wide spectrum of professionals associated with the court process. This includes judges, agency/state's attorneys, defense attorneys, GALs and CASA representatives. To confuse matters further, even CPS caseworkers and supervisors are often not well schooled in how to effectively use safety intervention concepts when taking a case to court. This problem exists in spite of the fact that CPS staff are those most likely to have been exposed to the state-of-the-art for the longest time and who, presumably, are using it in their daily work.

The apparent disconnect in the use of safety intervention concepts when invoking court involvement is no minor issue for everyone involved, most notably, the family and the child's caregivers. This month we begin a two-part series concerned with using safety concepts in presenting cases to the court. This article addresses initial CPS intervention, which results in temporary/immediate protective action that requires court involvement. Our concern is how to effectively communicate safety concepts to the court during the temporary custody hearings that justify child removal.

The following case example provides an illustration of how safety concepts and criteria can be used in court and subsequently support CPS practice decision-making. Specifically, we will attempt to demonstrate how safety related information can be provided to the court in order to promote and achieve necessary judicial decisions.

(Note: We recognize that the legal process, legal concepts, rules of evidence, etc., and all the CPS responsibilities related to invoking the legal process is complicated and far too large an undertaking for two articles. So, for this two-part series, we will keep our attention focused on the use of child safety concepts as the basis for information presented in temporary custody and adjudicatory hearings only.)

Maria Delgado

Maria Delgado has an 8-year-old son named Jose. The school reported to CPS that Jose's teacher noticed bruises on his face and on both arms. Jose was not explicit about the bruising but indicated that his mother had grabbed and hit him the previous evening. Jose has appeared at school in the past with unexplained bruises. This is Jose's first year attending this school and the first report to CPS from the school.

CPS interviewed Jose at school following lunch. The interview revealed that Maria, Jose's mother, had exploded over the television being too loud and grabbed Jose by the upper arms and shook him repeatedly, then slapped his face twice. The assault left "gripping" kind of bruises on Jose's upper arms and a distinct handprint bruise on the left side of his face. Jose was extremely fearful about possible repercussions from CPS involvement. His affect was generally apprehensive; he was shy and hesitant in talking about himself, his mother and his situation. He is small for his age and, while not frail, he is physically vulnerable.

Maria was contacted by phone at her place of employment to identify a time when she could meet with CPS. She was evasive and indicated she would call back immediately. Within a few minutes, she returned CPS' call and was outraged. She refused to meet with CPS. She refused to discuss or explain Jose's injuries. She demanded that Jose be allowed to take the school bus home.

CPS transported Jose home with an intention of intercepting Maria when she arrived home from work. Maria continued her hostile response to CPS and was totally uncooperative. After several attempts to engage Maria in a conversation about the current circumstances, CPS advised her that the first and primary responsibility was to assure that Jose was protected until additional time could be spent understanding what was going on in the Delgado family. Maria objected to CPS involvement and refused to participate in planning for an immediate/temporary protective action. She did confirm that there was no one in town (relatives or others) that could assist in providing protective care of Jose.

Jose is in Present Danger

Following the exchange with Maria, CPS determined that Jose was in present danger and must be protected while the initial assessment (investigation) continued. CPS judged that Jose's situation was consistent with the definition of present danger. Present danger is an immediate, significant and clearly observable threat to a child occurring in the present. Using its standard for present danger, CPS identified the following threats of present danger:

- Injuries to the face;
- Child extremely afraid of home situation;
- Caregiver who is out-of-control now; and
- Caregiver cannot/will not explain child's serious injuries.

Present danger must be managed immediately so that the initial assessment (investigation) can proceed. CPS recognized that, given Maria's reaction, a protective action was required. Reasonable efforts determined that Jose had no relatives or others who could provide for his immediate protection (same day as initial contact with the child). During the point of initial contact with the family, reasonable efforts to keep the child in the home or locate a less intrusive placement setting with relatives were unsuccessful because it was determined that the current circumstances and the need to promptly secure Jose's safety were not conducive to the development of a sufficient in-home protective plan and, further, there appeared to be no immediate viable resources (relative, friends, services, etc.) to prevent placement out of the home. This resulted in the necessary decision that CPS would place Jose in an emergency foster home while the initial assessment continued.

The Temporary Custody Hearing: Seeking Immediate Custody

CPS attempted to involve Maria in a discussion and plan to temporarily place Jose, but Maria refused. Maria was fully informed of CPS' intentions regarding the protective action to be taken and informed that follow-up with her would occur within the following day. Jose was placed with an approved agency foster family.

In all states when removing a child in circumstances such as these, CPS files an affidavit or petition that invokes court involvement. The petition results in a hearing. Although this first hearing is given a variety of names among states (e.g., shelter care, detention or temporary custody hearing), it generally serves the same purpose: to determine whether Jose should be temporarily placed outside his home pending the ultimate disposition of the case. When a child is already in emergency out-of-home care like Jose, this hearing is used to decide whether this temporary custody arrangement should be continued. While court hearing timelines vary somewhat among the states, in most instances a temporary custody hearing is convened within 72 hours in order to determine whether CPS

can detain a child in custody or must return a child to his or her caregivers. The emergency order petition must contain the basis for CPS maintaining physical custody of a child.

Presenting Present Danger

Our contention is that the basis for maintaining immediate temporary physical custody should usually, if not always, be related to safety – in this instance present danger.

Following Jose's placement in emergency foster care, CPS prepared a petition based on present danger. The petition contained the following facts:

- The Delgado family moved to this city 4 months ago; no previous history is known about the family.
- Jose has been enrolled in this school for 2 ½ months.
- No previous reports of child maltreatment have been filed on Jose's behalf.
- Mrs. R., Jose's teacher, observed bruises on both arms and his neck one other occasion (date); Jose denied mistreatment.
- Mrs. R., Jose's teacher, observed bruising to Jose's face and his upper arms; she consulted with Miss O, the school nurse, who believed the bruises to be suspicious; the teacher and nurse consulted with Mr. B., the school principal, who reported the concerns to CPS.
- CPS interviewed Jose in the presence of his teacher; the interview lasted for 25 minutes.
- Jose is notably small for an 8-year-old boy; he is slight of build.
- Jose appeared tense, frightened and hyper-vigilant as a child who is extremely upset about what might happen to him.
- Jose had distinct bruises on his upper arms consistent with marks that could be left by roughly squeezing or grabbing; he had a handprint bruise on his left cheek; the face bruise extended under his left eye.

- Jose was reluctant to explain the injuries; he indicated that his mother had grabbed him and slapped him on the evening prior to the report to CPS. *(The petition should contain exactly the words that were used.)*
- Jose indicated that the reason for being slapped was he had not turned the volume of the television down promptly when Maria had told him to do so. *(The petition should contain exactly the words that were used.)*
- Maria was contacted by phone in order to proceed with the initial assessment; she was first evasive, then openly hostile and overtly resistant to CPS involvement.
- CPS arrived at the Delgado home to confer with Maria at the end of her workday. She remained hostile and totally uncooperative; she would not explain Jose's injuries; she refused to continue discussions with CPS; she demanded that CPS leave with Jose remaining with her. *(The petition should contain exactly the words that were used.)*
- Maria refused to participate in a discussion or plan to assure Jose's immediate/temporary protection, which would allow the initial assessment to continue.
- These facts are consistent with child abuse as defined in the statute and as now understood represent an immediate threat of serious harm to Jose.
- Jose is in present danger as evidenced by:
 - Injuries to Jose's face, which is viewed by CPS as evidence of caregiving behavior that is impulsive and reactionary.
 - Jose is extremely afraid of the home situation which, a reasonable person would conclude, that Jose believes the home environment to be unsafe.
 - Maria appears to be emotionally, socially and behaviorally out-of-control as evidenced by the physical assault as reported by Jose, by her emotional reaction when contacted by CPS and by her refusal to meet with CPS.
 - Maria refuses to offer any explanation for Jose's injuries or circumstances that led to them.

- The circumstances are such that CPS cannot proceed with the initial assessment unless Jose's safety is secured. By taking immediate/temporary protective action, CPS can proceed with information collection and analysis to ascertain a fuller understanding about what is occurring within the Delgado family and to establish whether Jose is subject to impending danger.

CPS petitioned the court for physical custody of Jose pending completion of the initial assessment (investigation) in order to determine what is occurring in the Delgado family; to fully assess Jose's safety; and, if Jose is not safe, to decide how best to assure Jose's safety.

Reasonable Efforts

Federal law requires that the judge determine that reasonable efforts have been made to keep Jose in his home. The fact that CPS can be convincing about the existence of present danger and the need for protection of Jose while the initial assessment continues does not obviate this requirement of demonstrating what was done to explore options other than out-of-home placement. CPS reasonable efforts justification can be predicated on three positions:

- A description of the specific effort, action, attempts to engage Maria in a discussion about current circumstances and the need for Jose's protection;
- A description of Maria's hostile resistance; and
- A description of exploration of resources known to the family who could provide immediate/temporary protection.

The reasonable efforts conclusion is that CPS made reasonable attempts to involve Maria. Maria was totally uncooperative. Maria would not allow outside

(service) resources to be involved. No family relatives or associates reside in the county.

The Judicial Determination

The temporary custody hearing results in a judicial determination that a child is in danger and that reasonable efforts have occurred but were not successful in protecting a child in his own home. The judge may make a temporary protective or removal order. When an emergency custody has already been initiated, as in Jose's situation, the court will either ratify the child's removal or return him home.

We believe that the use of safety concepts, in particular present danger, provides a convincing CPS position that effectively empowers the court to make the necessary judicial determination. In the Delgado case, the judge can clearly see the need for immediate/temporary protection and can understand it to be required in order to enable the initial assessment to continue. This judicial determination should be viewed and accepted by all parties to the case as *temporary* and subject to prompt re-examination once more information can be evaluated and brought to the court's attention.

We mentioned that in most states the temporary custody hearing occurs within 72 hours – 3 days. In the Delgado case, Jose was removed on day 1 and a petition was filed requiring the temporary custody hearing. CPS should feel compelled to meet with Maria as promptly as possible – by day 2. It is likely that she would remain inaccessible in terms of participation but alternatively she could provide additional information that could be provided to the court at the hearing on day 3. That additional information could clarify the nature of the present danger and could have an effect on the judicial determination such as Jose's early return home. Of course, we think that in the Delgado case that would be unlikely. However, what about other cases where *temporary* really was

realized because of prompt CPS follow-up? But that's a subject for another article.

Next Month

In February, 2005, we continue with the second part of the series "Safety and the Legal Process." In that feature, we will focus on the use of safety concepts during the adjudicatory hearing.