

**CAPTA RE-AUTHORIZATION ISSUE:
EXPANDING LAW ENFORCEMENT'S ROLE IN
CHILD ABUSE INVESTIGATIONS**

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Over the last two or three decades a shift has emerged in how policy makers and professionals in the child abuse field view the social character of child abuse. Assaults on children are no longer just a social welfare problem; they are now considered a crime.¹ Reflecting this emerging paradigm, there has been an increasing involvement of the police in child abuse investigations. Multi-disciplinary response teams and children's advocacy centers are being implemented across the country, and in some states such as Florida and Arkansas, the role of law enforcement is being expanded and the police are sometimes taking the lead in child abuse investigations.² Justice for Children (JFC) believes that law enforcement's role is critical if states are to combat effectively all forms of child maltreatment. For the reasons set out below, JFC proposes that CAPTA require state law enforcement personnel to take the lead in investigating all reports of serious child abuse and neglect.

JFC offers the following arguments in support of its position:

1. Law Enforcement's Superior Training in Investigative Techniques, Ability to Obtain Search Warrants, and Socially Recognized Position of Authority Improves the Probability that Perpetrators of Child Abuse Will Be Indicted -- While Sparring Child Victims the Trauma of a Criminal Trial.

The primary objective of child abuse investigators should be to build as strong a case as possible.³ Strong cases encourage defendants to accept plea bargains and often eliminate the need for child victims to testify in criminal trials. However, allegations of child abuse may be very difficult to prove beyond a reasonable doubt because the cases lack third-party witnesses, physical evidence, or a victim old enough to be a credible witness.⁴ Accordingly, the employment by law enforcement officers of investigative crime-scene procedures may play a critical role in building a strong case. Placing the police in the lead of child abuse investigations permits them to make the initial investigative decisions and avoid, for example, mistakes made by child protection workers who may unwittingly tamper with or destroy physical evidence.⁵ **Law enforcement priorities focus on effective prosecution and protection of its complaining witness (in child abuse cases, naturally, the child), unfettered by CPS's mandate to preserve the family unit.** Moreover, unlike police officers, child protection workers cannot obtain search warrants or employ techniques such as monitoring "pretext conversations" between a victim or family member and a suspect.⁶ **Nor can they make arrests when probable cause exists.** In sum, law enforcement personnel possess better investigative methods and tools than child protective services workers. These advantages should positively affect case outcomes and increase the state's ability to protect children.

Additionally, a 1994 empirical study conducted by the Denver, Colorado-based Center for Policy Research reported that where police officers attended interviews with child victims and suspects, investigations were “significantly more likely to result in perpetrator confessions and victim corroborations.”⁷ The researchers concluded that the law enforcement officer’s presence served to apply pressure on suspects to cooperate with the investigation or face arrest.⁸ Perpetrator confessions and victim corroborations help in building strong cases, and protect children from further abuse as well as the trauma of testifying in court.

When a proper investigation by a trained professional is not performed, evidence is lost or not collected altogether. As a result, the evidence needed to both successfully prosecute the perpetrator of the abuse and to remove the child from the abusive environment does not exist. This invariably results in the child being left in the home with the offender, a situation arguably made more dangerous by the failure of the investigation.

In summary, based upon our own empirical data and experience, the anecdotal data of other jurisdictions and child advocates, and the commentary of several leading researchers (Gelles, Bollenbacher, etc.), Justice for Children believes that law enforcement must have the lead role in the investigation of children for the following reasons: (1) Child abuse is by definition a crime; (2) Law enforcement has the exclusive authority as a matter of law to investigate all criminal activity; (3) Law enforcement alone has the training and experience to gather the necessary evidence to make a criminal case; (4) Law enforcement’s priorities are the proper investigation of criminal cases, bringing offenders to the bar of justice, and protection of their complaining witness; (5) law enforcement is unfettered by the objective of family preservation in pursuit of their investigation; (6) CPS role is to conduct a *civil* investigation into allegations of abuse or neglect and determine whether the child should be removed from the home; (7) CPS preferred objective in every civil investigation is to keep the family unit together; (8) Both law enforcement and CPS have equal authority to make an emergency removal of any child that they believe to be in danger and to place the child in protective custody;(9) Much of the physical evidence in child abuse cases is evanescent and time is of the essence in these investigations. Accordingly, we believe that it is self-evident that law enforcement’s criminal investigation of child abuse should take priority over all others. Placing law enforcement at the beginning of the investigation and allowing it to lead the process will remedy errors made at intake involving the prioritization, investigation, and referral of cases by CPS and will eliminate counterproductive complexity and ambiguity in the roles of the agencies involved in the child’s case.

- 2. Putting Law Enforcement in the Lead of Child Abuse Investigations Will Decrease Problems Stemming from Child Protective Services’ Dual Role in Child Welfare. Moreover, Where Multidisciplinary Teams Are Used, the Lead Role of Law Enforcement Will Reduce the Likelihood that**

Philosophical Conflicts Between Child Protective Services and Law Enforcement Will Detrimentially Impact a Child Abuse Investigation.

Child protective service (CPS) caseworkers are charged with a dual role in addressing child abuse and neglect case, and state law mandates this role in most jurisdictions.⁹ CPS workers are not only responsible for protecting children from further abuse and neglect, but also must make all reasonable efforts to preserve the ~~natural~~ **biological** family.¹⁰ In 1997, the Arkansas legislature addressed the child protective services worker's conflicting role and transferred certain responsibilities for child abuse investigations to the state police. "The reasons cited for the transfer were the need to separate the dual roles of investigator and service provider, the compromise of investigations that arises as a result of this dual role, and the need for investigators with special expertise in crimes against children and related domestic abuse."¹¹

In jurisdictions that use a multidisciplinary team approach, the problem of conflicting roles continues to cause disagreements in child abuse investigations, generally, and competition among team members in evaluating cases, specifically.¹² **Consistent with the belief that child abuse is an illness and that families (even criminally dysfunctional ones) should be preserved,** child protective caseworkers typically hold a pro-therapeutic perspective in addressing child abuse and neglect. On the other hand, police are charged with obtaining the facts of a case, determining whether a crime has been committed, and taking appropriate action against the perpetrator. By placing law enforcement in the lead of child abuse investigations, many of these conflicts will tend to recede and cause fewer problems in investigating child abuse. Under this model, police will be able to control the initial investigation, decide whether a crime has been committed, and then take appropriate action. Subsequently, child protective workers can offer social or other services to the family if these services are deemed necessary.

3. By Placing All Forms of Child Maltreatment Within the Domain of Law Enforcement and Criminal Justice, Physical Abuse and Neglect of Children May Be More Effectively Addressed in Society Generally.

Traditionally, child welfare agencies have been charged with the responsibility of receiving child abuse/neglect reports and investigating allegations. With the increasing publicity and public abhorrence of child sex abuse, this area of child maltreatment has seen an increase, over other areas, of police involvement and the filing of criminal charges. For example, beginning in 1987, all child sex abuses reports in Dupage County Illinois were referred to the Children's Sexual Abuse Center for investigation. The Center's staff takes a pro-prosecution approach to child sex abuse cases, and believes that criminal prosecution is necessary to force offenders into treatment and maintain criminal records substantiating any patterns of behavior.¹³ Moreover, in another study of 1,828 suspected child abuse reports gathered from five different states by the Colorado-based Center for Policy Research, the police were involved in 75% of the sex abuse cases but in only 49% of the serious physical abuse cases.¹⁴ Additionally, according to an analysis in a U.S. Department of Justice publication, "[n]eglect accounts for a large proportion of

child maltreatment cases, but is often not considered criminal in nature and frequently may not be reported to law enforcement.”¹⁵

Physical abuse and neglect represent serious threats to children’s psychological development and physical safety. These types of maltreatment are also responsible for child fatalities across the United States. JFC supports the position that more aggressive arrest and prosecution of caretakers who physically assault their children raises awareness about the problem, reinforces norms of conduct, reduces recidivism, and empowers victims.¹⁶ Similarly, placing the serious neglect of children into the domain of the criminal justice system will significantly reduce this form of maltreatment, especially by those parents whose neglect of their children stems from drug addiction or involvement in other criminal activities. These parents might, for example, benefit from the DuPage County model: that is, be forced into treatment programs to address the underlying reasons causing them to physically abuse or neglect their children.

This approach does not deny the legitimate role that CPS fulfills in the protection of children but properly, indeed, critically, reorients the focus of the investigation by placing law enforcement at the forefront of the investigation of crimes against children, instead of CPS.

In conclusion, placing law enforcement in the lead of all child maltreatment cases will increase public awareness of this phenomena, criminalize all forms of serious child abuse and neglect, and, consequently, serve to increase the protection of children at risk.

4. The DC Problem: The District of Columbia Has Placed the Primary Responsibility for the Investigation of Physical and Sexual Child Abuse with the Metropolitan Police Department. Unfortunately, Due to Poor Management and Lack of Resources, DC Legislators Are Now Considering a Change to “Co-Leadership” that would be Shared by the Police and the DC Children and Family Services Agency (CFSA).

As early as 1977, according to my research, the District of Columbia recognized the benefits of placing the responsibility for child abuse investigations with the police. At that time, the Metropolitan Police Department was charged with investigating all cases of physical child maltreatment. The police developed two special units, one for sexual abuse cases and another for physical abuse cases; in 1999, these entities were merged into one child abuse unit. During this time period, the DC Children and Family Services Agency (CFSA) has been responsible for investigating all reports of child neglect. In spite of these directed efforts to improve the District of Columbia’s ability to protect its children, DC’s child abuse protection system as a whole has suffered from lack of resources and poor management.

Captain Enzalo, the Deputy Director of the DC Police Department’s Child Abuse Unit, reports that the District of Columbia is considering changing its current child abuse and neglect investigative system to a “co-lead” on physical abuse cases that would be equally shared by the police and the CFSA.¹⁷ Captain Enzalo cites three factors

underlying the proposed change: the lack of police department resources; poor case screening at the CFSA-operated hotline; and the police child abuse unit's case overload. In the first six months of 2001, the police department's child abuse unit received 1600 cases for investigation -- to be pursued by a detective staff of only thirty-five. According to Captain Enzalo, moreover, the CFSA hotline refers cases to the police department without proper screening. Vital man-hours and resources are being expended on investigating reports of spanking. In addition, the officers working for the child abuse unit complain of lack of training, lack of expertise among current staff due to the promotion system within the police department, and the absence of a centralized computer system to log and track the existing cases.¹⁸

Even though CFSA is reported to have more resources than the police department, the former agency suffers from a detrimentally high turnover rate among caseworkers and the effects of burnout among many of those remaining.¹⁹ JFC believes that changing the physical/sexual child abuse investigative system to a co-lead between the police and CFSA may not solve the existing problems and may further prevent the District of Columbia from effectively protecting its children at risk. Further debate and recommendations are forthcoming from Ward 3 DC Councilmember Kathy Patterson (who recently held a public hearing on these issues).²⁰ JFC hopes more effective solutions will be proposed and implemented.

1 This proposition has been recognized by advocacy organizations even on the opposite side of the ideological spectrum. See, e.g., Susan Orr, *Child Protection at the Crossroads: Child Abuse, Child Protection, and Recommendations for Reform*, Policy Study No. 262, Reason Public Policy Institute, October 1999. (The Reason Public Policy Institute [RPPI] supports a lead role for law enforcement in child abuse investigations and the criminalization of child abuse. JFC, however, presumably does not support most other RPPI positions, such as calling for a reduced role for government in addressing child abuse).

2 David Finkelhor and Richard Ormrod, *Child Abuse Reported to the Police*, U.S. Department of Justice, *Juvenile Justice Bulletin*, May 2001 (specifically citing Florida as an example where, in four counties, the sheriff's offices have been given the responsibility for child abuse investigations). **NOTE:** A research study of child abuse investigations in these four Florida counties is currently being conducted under the direction of Professor Richard Gelles of the University of Pennsylvania. Although Professor Gelles has not yet publicly released any of his preliminary data, his research director suggested in an e-mail to Kimberly Randall that the research group might be willing to release some of the data to JFC staff if JFC were to make a formal and detailed request.

3 Donna Pence and Charles Wilson, *The Role of Law Enforcement in the Response to Child Abuse and Neglect*, Washington, D.C.: National Center on Child Abuse and Neglect, 1992, at 25.

4 Patricia Tjaden and Jean Anhalt, *The Impact of Joint Law Enforcement-Child Protective Services Investigations in Child Maltreatment Cases*, Center for Policy Research, Denver, CO., September 1994, at 83.

5 Pence and Wilson, *supra*, note 2 at 10.

6 *Id.* at 59.

7 Tjaden and Anhalt, *supra*, note 5 at 86.

8 *Id.*

9 Pence and Wilson, *supra*, note 2 at 9.

10 *Id.*

11 See *Child Abuse Investigations Transferred to State Police*, *Youth Law Review* 9, May-June 1998.

12 Pence and Wilson, *supra*, note 2; see also, Tjaden and Anhalt, *supra*, note 3 at 91.

13 Tjaden and Anhalt, *supra*, note 3 at 11.

14 *Id.* at 36.

15 Finkelhor and Ormrod, *supra*, note 1 at 2.

16 Id. at 7.

17 Telephone Interview with Captain Enzalo, Deputy Director of the Child Abuse Unit, District of Columbia Metropolitan Police Department (June 22, 2001).

18 *Public Oversight Hearing on the Investigation of Child Abuse and Neglect and Child Fatalities, June 28, 2001 before the Committee on the Judiciary, Council of the District of Columbia* (statement of Thurman Hampton, Interim Director, Safe Shores: The DC Children's Advocacy Center).

19 Telephone interview with Captain Enzalo, *supra*, note 17.

20 *Public Oversight Hearing on the Investigation of Child Abuse and Neglect and Child Fatalities, June 28, 2001 before the Committee on the Judiciary.* (Councilmember Kathy Patterson, Chairperson, Committee on the Judiciary, *The Investigation of Child Abuse and Neglect and Child Fatalities.*) **NOTE:** A report of findings and recommendations will be issued at a later date.