

COCHISE COUNTY  
INTERAGENCY PROTOCOL  
OF  
CHILD ABUSE

REVISION 5 Dated 6-29-99

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## **APPENDIX**

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## **Policy Statement**

The Cochise County Child Abuse Task Force is an interagency council comprised of representatives of those agencies with primary statutory responsibility for the investigation and prosecution of child abuse in Cochise County. The purpose of the interagency council is to assist professionals dealing with children exposed to all types of abuse. The Protocol is the result of a collaborative effort of those in law enforcement, child protection, and legal advocacy. The intent of this group was to develop a document that would not only provide guidance to professionals who address issues of child abuse in Cochise County, but also one that would be adaptable to the advances in legal and professional areas.

The goal of the Task Force is to treat all children involved in trauma with both dignity and respect through a unified systemic approach that not only recognizes the knowledge, standards and contribution of each discipline, but places paramount importance on the well being of the child victim. The purpose of this Protocol is to provide guidelines and reference sources for those who investigate and work with the victims of child abuse. It is expected that improved response, investigation, and prosecution of abuse will assist victims, witnesses and legal agencies in reducing trauma to children and increasing successful prosecution and convictions.

## **Background/History**

The Cochise County Child Abuse Task force was formed in March 1999 to address the issues of investigations and prosecution of child abuse.

The Cochise County Attorney's Office served as the lead agency in the development of the Task Force and was, therefore, named as the recipient of the grant funds from the Governor's Office For Children.

## **Task Force Coordinator**

As a result of the grant funding received from The Governor's Office For Children, a Cochise County Child Abuse Task Force Coordinator has been contracted to act as a consultant. The duties of this consultant are to:

- A. Arrange for training of different agencies and persons involved in the investigation and prosecution of child abuse in Cochise County.
- B. Set up all interagency meetings and notify all participants, prepare agendas and information packets.
- C. Set up all case review team meetings.
- D. Act as liaison with all agencies.
- E. Develop, publish and distribute Protocol.
- F. Work and answer directly to council members to keep each informed as to activities of the council.
- G. Arrange for training of interviewers.
- H. Coordinate/schedule training team sessions.
- I. Secure on-site technical assistance to local council as needed or requested.
- J. Provide training needs assessments.
- K. Do on-site monitoring.
- L. Develop and administer project evaluations.
- M. Cooperate with local hospital to furnish the interview room.
- N. Prepare minutes of meetings.
- O. Maintain the records of the council.
- P. Cooperate with the The Governor's Office For Children.
- Q. File all reports required by The Governor's Office For Children Grant
- R. Maintain centralized record of reports and cooperate with Child Protective Services to assure complete reporting.

# Investigation Protocol

## Child Protective Services (C.P.S.)

Beginning November 7, 1994, Child Protective Services (C.P.S.) implemented a Central Intake referral process, whereby all suspected cases of child abuse and neglect are now reported to 1-888-767-2445. Central Intake will decide if a report is to be assigned to the local C.P.S. office for investigation. Anyone wanting to make a C.P.S. report, including local law enforcement agencies, must notify Central Intake in order to initiate a C.P.S. investigation.

The foremost responsibility of C.P.S. is the protection of children from abuse, neglect, or exploitation by their parents or caretakers. In conjunction with this responsibility, C.P.S. has the associated responsibility of rehabilitating the parents or caretakers. When children are at risk of suffering serious harm if left in the custody of their parents, C.P.S. has the authority to remove them until the children can be safely returned. All C.P.S. actions do not result in removal of children from the home of the parents. In order to obtain legal authority to control the care of a child, C.P.S. must file a dependency petition at the juvenile court. The office of the Attorney General advises C.P.S. as to the existence of a legal basis for instituting a dependency action and represents C.P.S. in all the court proceedings which follow the filing of the dependency petition.

## Investigation By Law Enforcement

Initial law enforcement contacts with the victims of child abuse are usually made by uniformed patrol officers. The three forms of child abuse are: **physical abuse**, **sexual abuse**, and **neglect**. Physical abuse ranges from minor injury to near death and is a felony by statute, although minor cases can be treated as misdemeanors by the county attorney's office. Sexual abuse of a minor is a felony in the State of Arizona. There are three forms of neglect which are most often treated as misdemeanors: lack of supervision, dirty house, and medical neglect.

Arizona has mandated reporting requirements for suspected child abuse cases in A.R.S. 13-3620 of Arizona Revised Statutes. The Department Policies and Procedures of the various agencies dictate how different types of investigations are conducted. The Protocol requires that the investigatory task be handled by the appropriate officers as dictated by their departmental policies. If the law enforcement agency has received the report of child abuse from C.P.S. then the officer does not need to report the incident to them. The contact between law enforcement and the victim may take place in the victim's home, school or day care center, a hospital, park, or many other possible sites. The investigation will include social, cultural and physical factors on the child victim. Interviews with victims, siblings, parents/caretakers, witnesses, and others with relevant information will be the focal point of the investigation. All of the necessary facts for a criminal investigation must be collected; however, limiting the times a child is questioned is important to avoid traumatizing the victim. In addition, the investigating officer must

decide if the child/victim needs medical care or if a danger persists which requires protective custody for the child.

Any evidence that may exist of the incident must be collected. In physical abuse or neglect cases, immediate documentation of visible injuries or conditions is necessary. If any instruments were used in the abuse, they should be collected as evidence. In sexual abuse cases, the evidence of molestation may be discernable through a detailed medical examination or through the victim's actions and statements. Physical evidence from the victim should only be collected by qualified personnel and can be used to confirm the victim and/or witness's statement.

### **Joint Investigation**

Whenever possible, law enforcement and C.P.S. should work together to investigate child abuse reports. During joint investigations, the initial interviews with the child, family, witnesses and other parties may be conducted together. Initial interviews may be short and cursory, with a more detailed interview later with a trained interviewer. Follow-up interviewing may be done by either or both agencies; however, it should be coordinated and all testimony and evidence shared. This level of coordination helps to not only reduce the trauma of those involved, but also reduces the chance that conflicting statements will be made to investigators.

The lack of communication between agencies working the same case may leave investigators with a one-dimensional view of the case. For that reason, information that is necessary for the successful investigation, intervention, and prosecution of any case needs to be shared. State law allows for information sharing between agencies in child abuse cases under A.R.S.13-3620. (Appendix C). Law enforcement and C.P.S are both concerned primarily with the protection of the child/victim; however, each agency has its own set of time constraints and legal response and reporting requirements. Procedural conflicts may result which can impact not only the investigation, but also the emotional well-being of the child. This makes joint training of the involved personnel imperative, and the agencies are reminded to include colleagues from other agencies in the development of and attendance at training sessions. This Protocol recognizes that there will be circumstances where it will not be possible for a joint investigation to occur.

### **Homicide Investigations**

In most law enforcement agencies, a homicide division will handle those cases where children are murdered by strangers. Depending on the agency involved, child abuse related homicide investigations may be investigated by a special child abuse unit consisting of local officers and CPS personnel from other agencies who have developed expertise in this area. These homicide investigations are conducted in the same manner as other homicides, the distinction being that the perpetrator is usually known. Given the dynamics of familial abuse, the special training child abuse detectives receive justifies separating these two types of investigations.



## **Special Investigative Considerations**

Services will be provided to victims of child abuse regardless of citizenship status. Perpetrators and victims who remove themselves from this jurisdiction will be pursued to the extent of the law, regardless of the jurisdiction removed to (e.g., crossing state or national boundaries).

Whenever, efforts will be made to communicate with people in their native language. In addition, investigations will be conducted regardless of the social status of the victim or alleged perpetrator and what their financial resources may be.

# **Prosecution Protocol**

## **Superior Court**

The Cochise County Attorney's Office is the agency charged with the prosecution of all felonies committed in Cochise County and those misdemeanors not committed within a municipal jurisdiction. Felony prosecution takes place in Superior Court. Juvenile perpetrators are prosecuted in the Juvenile Division of the Superior Court. The County Attorney's Office handles all criminal prosecutions of offenders involving child abuse, including sexual molestation, physical abuse, neglect and homicide. The cases are initially screened for prosecution purposes and assigned to an attorney who remains with the case through closure.

## **Special Considerations In Juvenile Cases**

When a juvenile is the perpetrator, it is common to have young victims. Since juvenile sex offenders are thought to be extremely treatable the Juvenile Court Center has a strong preference for treatment. If treatment is not successful or if insufficient time remains before the defendant's 18th birthday, he or she may be transferred to an adult court.

## **Municipal And Justice Courts**

In cases where there have been no previous acts of violence or reports to C.P.S. and law enforcement, cases involving minor injuries may be waived from felony to misdemeanor charges. Each case is reviewed individually, and when appropriate, jurisdiction will be vested in municipal or Justice Courts.

## **Investigation**

Child abuse/molest cases are difficult to investigate and to prosecute. A jury is asked to decide whether the child/victim or the suspect/defendant is telling the truth. This credibility battle is difficult for a jury to resolve "beyond a reasonable doubt" without some other evidence to tip the scales in favor of the victim. This evidence can be physical or medical evidence that corroborates the victim's statement, unusual details or descriptions in the victim's statements that are corroborated by other evidence, or by evidence that contradicts the statements of the defendant.

## **Collection Of Evidence**

Generally, physical evidence refers to any item or data that can be legally submitted to a tribunal to ascertain the truth of a matter. To facilitate the collection of evidence, the crime scene should be secured and proper procedures for evidence collection conducted by qualified experts. Crime scenes, including the persons and clothes of the victims, must be secured to protect against destruction of evidence. Fingerprints, biological and other evidence is easily lost or destroyed by careless

disruption of the crime scene. Any evidence that is collected by another agency, other than a law enforcement agency, should be turned over to the law enforcement agency involved with the case. When not collected by a law enforcement team, all evidence should be labeled with an identifying mark by the collector of the evidence for future reference and possible court proceedings. Once labeled, the evidence should be properly secured and stored. Biological evidence must be handled, packaged and stored in accordance with the guidelines of the Arizona Department of Public Safety Crime Laboratory (See attached copy of guidelines).

Collection of evidence includes and is not limited to:

A. Photos

B. Measurements:

1. With burn victims, measure tub/sink or incident site.
2. Test water/liquid temperatures at all settings and at implied setting at incident site.
3. Test water heater/appliances for working conditions and temperatures.
4. Collect test instrument used for determination of results of liquid temperature testing.
5. With fall/accident victims, measure items and distance of fall, etc.

C. Information obtained from the victim/witness will give indications of other described items to be photographed and collected as evidence.

D. Collect records of occupancy.

E. Collect utility records.

F. Collect diaries, calendars, etc.

G. Collect pornographic or sexual type items.

H. Collect all implements of the crime.

### **Medical Investigations**

Medical investigations are done for the dual purpose of assessing injuries to the victims and to acquire physical evidence, should the case move to prosecution. Examinations are to be conducted by qualified medical personnel, and should occur when sexual or physical abuse is alleged. An interview with the victim is usually conducted to determine the necessity of a physical examination. Details from the interview may provide guidance to the medical examiner or assist in making the decision to proceed

with a medical evaluation should the need for an exam be in question. A glossary of medical terms can be found in Appendix E.

### **Sexual Abuse Examinations**

An examination for sexual abuse debris is required when such abuse has been alleged with children, when there is suspicion of penetration or fresh genital injury or when the possibility of the existence of recoverable evidence is suspected, regardless of whether the perpetrator is an adult or a juvenile.

#### **Examination Within 72 Hours of Incident:**

The victim should be advised not to bathe, change clothing, wash, wipe, or remove any evidence prior to the exam. When a medical examination is conducted within 72 hours of the incident, the examination consists of:

- a. Collection and proper storage of the victim's clothing.
- b. Collection of other physical debris/material present.
- c. Collection of specimens to detect body fluids of perpetrator (saliva, semen, blood,).
- d. Collection of sample specimens from the victim (hair, saliva, blood).
- e. Proper air drying and handling of specimens to prevent deterioration.
- f. Examination of the genital and anal areas to detect any evidence of injury.
- g. Examination of the entire body to detect any other sign of abuse, neglect, or abnormal medical condition (e.g. unexplained fractures).
- h. Testing for sexually transmitted diseases as necessary.
- i. Testing for pregnancy and offering postcoital contraceptive medication (if needed).
- j. Proper photography of any observable external injuries.
- k. Such other tests or procedures as the examiner deems appropriate.

Instruction for the collection of this evidence and materials to assist with it are found in the Department of Public Safety sex crime evidence kit distributed to local hospital emergency rooms by law enforcement. Care has been taken with the development of the procedures for these sexual assault kits to ensure that evidence is properly collected and preserved and the victims are not traumatized unduly. Appendix G contains guidelines for the evaluation of sexual abuse of children from the American Academy of Pediatrics.

### **Examination After Time Has Elapsed Since Incident:**

When a circumstance occurs where an examination of a victim is required some time after the incident has passed, possibly days, weeks, or even years later, the examination consists of:

- a. Examination of the genital and anal areas to detect any evidence of injury.
- b. Examination of the entire body to detect any other sign of abuse, neglect, or abnormal medical findings (e.g., unexplained fractures).
- c. Testing for pregnancy and sexually transmitted diseases as indicated.
- d. Proper photography of any observable external injuries.
- e. Such other procedure as the examiner deems appropriate.

### **Payment For Evidence Collection/Medical Examination**

By statute, the County Attorney's Office pays for the collection of evidence of a dangerous crime against a child or a sexual assault (See Appendix H, Arizona State Attorney General's Opinion on Responsibility to pay for medical expenses incurred during investigation). Cost for the collection of evidence - in most cases the medical examination - is to be paid by the county in which the crime occurred. Other possible costs include the cost of evidence collection, the cost of pregnancy test, medication and medical treatment for the victim/patient. Victim should be expressly informed that expenses of medical treatment will not be paid by law enforcement agencies nor by the County Attorney's office.

### **Physical Abuse Examination**

Physical abuse ranges from minor injury to near death and includes malnutrition. Physical abuse is considered a felony by Arizona Statute, but minor cases can be designated as a misdemeanor offense. If designated as a misdemeanor, these cases are then handled in municipal or justice courts.

A medical examination may be required when: 1) physical abuse is alleged and there is little or no history available, as with infant; 2) when the injury is inconsistent with the history given; 3) an injury is traumatic enough to require medical care; 4) When a medical examination is necessary to identify and/or confirm long-term abuse. Medical examinations are needed in almost all physical abuse incidents wherein legal proceedings are anticipated. The examination must be performed by a physician familiar with the medical conditions caused by physical abuse and who is willing to provide a statement for evidence and, if necessary, go to court as a witness. The examination for physical abuse often requires the use of x-ray and laboratory tests depending on the location and nature of the injuries in question. Instructions for conducting the examination and the collection of this evidence are found in the Non-Accidental Injury and Physical Neglect Report Form (Appendix I) distributed to local hospital emergency rooms by the Arizona

Department of Economic Security Administration for Children, Youth and Families or by local police agencies. Appendix I also includes tips for examining child abuse victims, and a law enforcement form to request medical records.

Injuries sustained by children may be either accidental or non-accidental in origin. Multiple injuries may be due to accidents in play or sports, however, in such cases there is usually a witness to provide information consistent with the physical evidence. When there are suspicious injuries for which there are no witnesses available, it may be necessary to collect evidence related to the child's condition or injuries for further investigation. Photographs, if properly identified and especially if they include reference standards (measuring rule or tape, color spectrum, etc.) can supplement written descriptions and sketches of the child's injuries or condition. Photographing of bruises and injuries is provided for in A.R.S. 13-3620 and 8-546 (Appendices C and J).

### **Sexual And Physical Abuse**

Young children with clear signs of physical abuse or neglect may also have been abused sexually, although, perhaps at different times. A child with an indicator for one form of abuse or neglect, including psychological trauma, should have an assessment for other forms of abuse. The Non-Accidental Injury and Physical Neglect Report Form (Appendix J) also includes reporting information on sexual abuse. It is especially important to use this form to document sexual abuse examinations in those cases where time has elapsed since the incident occurred and where it is no longer appropriate to use the law enforcement sexual assault kits.

### **Interviewing the Victim**

Interview techniques are very important. The victim's statement is technically "hearsay", and is ordinarily not admissible at trial. Usually the victim must testify and this fact needs to be emphasized. Victims and their families must not be lead to believe that your interview will be the last time the victim will have to tell the story. In fact, any statement made by the victim is more likely to be used by the defendant as a prior inconsistent statement to impeach the victim, than to be used substantively by the State.

As to interview techniques, the main point is to let the child describe the events in his/her own words without prompting or use of leading questions. Use non-leading questions and encourage narrative answers. If leading questions are asked to elicit the information, the witness may be tainted for future use.

After the child has told the general story in narrative form, continue to use non-leading questions to determine details of the offense, items involved and place where the offense occurred. A search warrant may be necessary if the victim has given "any" detail that can be verified. For instance, the victim describes magazines or videos that he/she was shown by suspect, or that the suspect put lotion on his penis and he kept the lotion on the night stand drawer, etc. Details like this corroborates the child's account of the crime and finding the items greatly enhances the child's credibility. Getting this detail is an important reason to interview the child.

## **Videotape Project**

Videotaping facilities have been established at the Sierra Vista Police Department. The purpose of this facility is to provide the opportunity to videotape the interviews of children between the ages of 3 and 17 years of age who are alleged victims of sexual abuse. This is done to reduce the trauma to a child victim by reducing the number of times they are interviewed about the molestation. Care is taken to ensure that participants in the videotaping understand that the taping may not preclude them from the necessity of appearing in court. Operating procedures for the videotaping project, including eligibility criteria for participants, referral and interviewing procedures, as well as the storage and retrieval of videotapes, are included in Appendix K. In dependency cases, victim video interviews are strongly encouraged.

## **Interviewing with Subject**

It is very important to at least attempt to interview the suspect. Whatever statement the suspect makes will enhance the prospects for a successful prosecution. There may be no truth to what the suspect tells you, but it will give you leads, and most importantly, it will lock him into a story that the investigation may subsequently refute. Remember, that these cases are generally a contest between the credibility of the child victim and the suspect. A jury will need some evidence that either undermines the suspect's credibility or corroborates the victim's story, and thereby enhances the victim's credibility.

Sometimes your questioning might do nothing more significant than to have the suspect confirm seemingly innocuous details of the victim's account. Even this can be helpful in a prosecution.

Hopefully, your discussion with the suspect will result in admissions or a complete confession. But even if it doesn't, the interview will be helpful. It will be much easier for the defendant to come with an explanation/story after he has received the State's disclosure, had several months of time to reflect, and discussed the case with an attorney, than when you conduct your interview. Even a false statement by a defendant at the beginning of the investigation is better than no statement at all. A **detailed** interview of a defendant early in the investigation will pin him or her to that story and will greatly improve chances for a successful prosecution.

Miranda warnings are only required when two circumstances coincide: 1) defendant is in custody; and 2) defendant is being interrogated. Thus, a visit with the suspect in his home or place of work prior to any arrest does not require any Miranda warnings even if probable cause exists and an arrest is anticipated to take place at a later time.

## **Arresting Defendant**

A move to arrest a suspect too quickly is not advisable unless the suspect represents an immediate threat to other children. This may not be a concern where the

children are no longer under the control of, or in contact with the suspect. The downside of a quick arrest is that the suspect, now defendant, is much less likely to discuss the case with you and you have locked yourself and The County Attorney's Office into the time limits set forth in the Arizona Rules of Criminal Procedure. These time limits will require you to quicken the pace of your investigation and could lead to inadequate investigations.

### **Proactive Interview**

If the suspect is unaware of the investigation and your victim is of suitable maturity and intelligence, you might try a proactive interview with the suspect. In such an interview, your victim contacts the suspect on a recorded telephone line or in person with a recording device, and confronts the suspect with his conduct. This type of recorded confrontation may result in some very damaging admissions by the suspect. There is no legal roadblock to the recording of these conversations so long as the victim is aware of the taping and consents to it. The suspect does not need to be informed.

### **Complete Investigation**

It is extremely important in these cases to explore collateral issues. These may include the motive of the victim or some member of the victim's family to falsely accuse the suspect. The quintessential example is where mom and dad are involved in a divorce and the child suddenly comes forward with allegations that dad/mom has molested them.

You should explore the credibility of the victim and persons supporting the victim, as well as the suspect. For instance, the mother of the victim can be a primary focus of the defense attack on credibility. If the suspect can ascribe to the mother some motive to have the victim make up a story then you should explore this thoroughly. For example, if the mother and suspect have had a relationship which has ended, the defendant may say he broke up with mom for some reason (she used drugs, she was a thief, etc.), and she is seeking revenge by coaching the victim into making up a story.

The credibility of the victim may also be attacked directly by the defendant at trial, especially if she is in the 8-18 year old group. You need to explore the victim's credibility with teachers, parents, friends, etc. The suspect may also be a prime source of this type of information, which you won't get if you don't interview the suspect.



## **Agencies With Ancillary Statutory Responsibility**

### **Adult Probation**

Generally, after a plea of guilty or a plea of no contest, the court orders a pre-sentence investigation, which is a study of the defendant and his or her life background, and events of the criminal offense, as conducted by the Adult Probation Department of the Superior Court in Cochise County (Arizona Rules of Criminal Procedure, Rule 26, and A.R.S. 13-901, 13-914). Juvenile Probation Officers prepare a similar report called a social history. They also prepare an investigative report for transfer proceedings.

### **Pre-sentence probation officers take the following steps to investigate offenders:**

Interviews with the offender are conducted for the purpose of obtaining social history and a statement concerning the offense. The offender is asked for his or her adult view of the discipline of children and on the sexual abuse of children. Issues of culpability, remorse, or denial are also examined. Major issues explored with the offender include family and substance abuse history. The defendant is interviewed about his or her early life, and whether he or she was abused as a child. Ongoing marital and sexual relationships are also explored.

Offenders may be referred for psychological evaluations. Objectives of the evaluation are an assessment of the risk of recidivism and a suggested treatment plan. Juvenile sex offenders will almost always be psychologically evaluated.

The investigating probation officer also seeks information about any history of counseling from the offender. If the offender is participating, or has previously participated in treatment, the investigating officer requests collateral information regarding the nature of the treatment. The treatment professional is contacted to verify treatment and also asked to provide a statement concerning prognosis.

Other routine procedures, including checks of national law enforcement criminal records and employment references are conducted.

Victim impact statements are sought during the pre-sentence investigation, in accordance with A.R.S. 13-4410 (Notice of conviction, acquittal, or dismissal, impact statement); A.R.S. 13-4424 (impact statement pre-sentence report); and 13-4426 (sentencing).

Investigating probation officers send a letter to the victim or guardian/parents of the victim as soon as possible during the investigation. (See Appendix M, letter to victim). The probation officer shall consider the economic, physical and psychological impact that the criminal offense has had on the victim and the victim's immediate family (A.R.S. 13-4424)(B). Along with the primary interviews of offenders, the investigating probation officer also conducts interviews with the victims. The age of minor victims is considered; parents, foster parents, or C.P.S. workers are contacted regarding possible

interviews and the submission of written victim statements. The victim or parent/guardian is consulted regarding possible home or office interviews. If the minor victim submits a statement, then the guardian's/parent's statement becomes a collateral statement in the pre-sentence report. In some situations when the County Attorney's last interview with the victim may have been several months prior to the plea or pre-sentence investigation and/or if C.P.S. has closed the case, the investigating probation officer may become involved with evaluating medical needs, medical reports and expenses in order to provide documentation for restitution that may be ordered at sentencing (A.R.S. 13-804, 13-808). A separate court hearing may be held to establish the amount of restitution. The victim, through the prosecutor's office, may request a copy of the pre-sentence report to review the information pertaining to the criminal offense, the offender's conduct, and the economic, physical, psychological or emotional harm that is suffered by the victim (A.R.S. 13-4425).

### **Cochise County Juvenile Court Services**

**Probation:** Intake screening, informal and formal supervision, submission of reports and recommendations to the Court at all phases of court processing, numerous crisis interactions, and community education and intervention activities.

**Programming:** Development and delivery of supervised activities designed to meet the balances probation module of therapeutic need, accountability and public protection of those juveniles brought under the jurisdiction of the Court. This area of service has broadened its base to work with prevention and early intervention in addition to its jurisdictional obligations. In-house/out-of-house contracts for services are maintained under this division, as well as collaborative efforts being coordinated throughout the county as focus.

**Detention:** Incarceration of juveniles with an emphasis of providing a safe and secure environment for staff and youth; coordinate and tracking of county-wide youth through an electronic monitoring program to reduce overcrowding in detention, as well as give Juvenile Intensive Probation additional strength in juvenile accountability and public protection.

**Juvenile Court Delinquency:** As a result of a new legislation enacting Senate Bill 1446, Cochise County Juvenile Court Services entered an intergovernmental agreement with the County Attorney's Office outlining applicable delinquency cases for handling through a Diversion process. Cases not initially authorized for adjustment through Diversion are reviewed for possible filing of a formal petition (court action required) or may be returned to the probation officer for possible adjustment. If formal court proceedings are required, the County Attorney's Office is responsible for prosecution of these cases on behalf of the state. The County Attorney also assigns one prosecutor to each sex crime, child abuse case, this attorney will handle the case to completion. Deputy Juvenile Probation Officers routinely conduct staffings to determine the best treatment and community protection program for youth pending disposition of their case.

## **Juvenile Court Dependency**

The juvenile court adjudicates matters involving the protection of minors who have been abused or neglected or have no parent or guardian willing or able to care for them. When a child is taken into protective custody, a petition must be filed within 48 hours, excluding weekends and holidays, or the child must be released. Once a petition has been filed, a hearing must be held within 21 days; however, if the case is considered for Model Court, then Model Court times lines will be implemented, a temporary custody hearing must be held within five days. At either hearing the parents or guardians enter a plea and temporary offers are made. A hearing will be held at a later date at which time the court will make a decision with input from the parents, the child's attorney, and C.P.S. to determine dependency. C.P.S. prepares a report to the court presenting the facts and making recommendations. The court may follow the recommendations or may modify them, or the parties may challenge them at a hearing. It is C.P.S.'s mission to reunify the family, but when reunification is not possible, then the mission is to develop a permanent plan of long-term foster care, guardianship, severance of parental rights, or adoption.

Attorneys appear for parents, children, and the Arizona Department of Economic Security. The child victim may have to testify at court, although there has been some success in the use of videotapes and in testimony by witnesses regarding statements made to them by the child in lieu of testimony in dependency cases. The court appoints attorneys for the child and those parents who are financially eligible are also provided legal assistance. There may be parallel criminal (Superior Court) and dependency (Juvenile Court) proceedings.

## **School Districts**

Educators are often the sources of referral for child abuse victims because of their extensive contact with children on a daily basis. They are often the first persons to whom children disclose abuse or who suspect abuse because they recognize resultant behavioral changes. **School personnel are required by law to report all cases of suspected child abuse. Reports are to be made to the Central Intake # 1-888-767-2445.** This extends to private as well as public schools and includes day care centers. If school personnel fail to report known or suspected child abuse or neglect, then they are guilty of a misdemeanor, punishable under A.R.S. 8-237 and 8-244 (B). See also Appendix N, Arizona Attorney General's Ruling on school district cooperation with C.P.S.

After an abuse report has been filed, it is important that schools have some mechanism to provide acceptance, support, consistency, and structure to the children involved. Each school district in Cochise County should develop policies and procedures for reporting suspected child abuse cases. Information sharing between the agencies (e.g., school, law enforcement, and C.P.S.) will be facilitated if the role of school personnel in reporting and investigating abuse is clearly delineated. Therefore, educators personnel should be trained in the legal requirements for the identification and reporting of child

abuse. Agencies represented on the Cochise County Task Force are available to assist with the development of training programs for the school districts.

School personnel have legal rights and constraints as participants in the reporting and investigatory process and it is important that educators be familiar with them. Changes to school policy and procedures need to be implemented to promote school district understanding and cooperation in permitting C.P.S. access to a child on the school grounds for the purpose of investigating reported abuse. It is suggested that a uniform, county-wide policy be developed by the school districts because, currently, many districts allow administrators at each school to establish their own policies regarding on-site interviewing of child victims. Uniform policies and procedures that cross school district lines are essential to the development of a sensitive and effective investigation. Appendix N contains a draft of a policy as a model for all districts.

Upon receiving a report of abuse, C.P.S. or a law enforcement agency may send an investigator to the school to interview the child(ren) involved. **School personnel are not to conduct or sit in on the interview.** They may be present during the investigation only if the child requests their attendance. If their presence is requested, their role is to document information and support the child during the investigation, but not to attempt to direct the interview.

**School personnel are not to notify parents** or other school staff members that a report has been made. School personnel are not to pre-interview children or call school mental health practitioners to try to determine if the report is credible or if a report should be made. The agencies of primary statutory responsibility that were notified are responsible for informing families. School personnel should continue to provide reassurance to the child as needed throughout the investigation, questions about the abuse should not be asked.

### **Physical, Mental Health And Social Service Agencies**

The role of physical, mental health and social services agencies in providing services to child victims may begin at any time in the process. In some cases, it may be the agency who makes the child abuse report. In other cases, one or more agencies may be brought into a case on referral from C.P.S. or Juvenile Court. This may be prior to, during, or after legal procedures have begun. When a child discloses abuse in therapy, following the filing and/or investigation of a child abuse report, the therapist should report these abuse disclosures through normal channels.

Often representatives of physical, mental health and social service agencies are reluctant to report allegations of sexual abuse learned in therapy or treatment, believing such a report is a betrayal of professional ethics and the client's confidentiality and trust. A.R.S. 13-3620 (Appendix C) requires that certain professionals and others having responsibility for the care or treatment of children, and whose observation or examination of any minor discloses reasonable cause to believe that a child has been abused or neglected is mandated to report this matter immediately to the appropriate law enforcement agency or C.P.S.

When an agency or therapist reports sexual abuse, the agency of primary statutory responsibility for the case will contact the reporting party for assistance in contacting, interviewing, and providing services to the abused and family members. When possible, efforts are made to preserve and reinforce the working therapeutic relationship between the physical, mental health or social service agency, the child and family. The primary goal is to provide necessary services to assist children who have been victimized. This may include working with family members to negotiate changes in both the child's environment and the family relationships. Representatives of the agencies should be prepared to be called as witnesses, although this may not always be necessary. Participation in court cases may be done by deposition and/or through court appearances. Agencies must plan for their written records to be subpoenaed. C.P.S. makes efforts to keep the identity of reporters confidential but confidentiality cannot be guaranteed in every case.

## **Victim's Rights**

A victim can ask for a restitution hearing. In addition, there is a victim compensation fund which provides for restitution. Compensation funds must be applied for within one year after the date of the offense. The law enforcement officer who makes the report of the incident is responsible for informing the victim of his/her right to restitution and for providing the appropriate forms. Appendix O contains copies of the forms used by local police agencies to inform victims of crimes and the victim restitution verification form used by the Adult Probation Department.

Victims of crime have a constitutional right to refuse an interview in criminal cases and in juvenile cases, A.R.S. 13-4433 and A.R.S. 8-412, establish statutory criteria and the enabling legislation for the right to refuse an interview. These statutes provide the lawful mechanism for defense interviews. A.R.S. 13-4433(B) and A.R.S. 8-290.22, provide the defendant shall only initiate contact with the victim through the prosecutor's office. Appendix P contains a copy of A.R.S. 13-4433 and A.R.S. 8-412.

## **Conclusion**

The policies and procedures outlined in this Protocol are intended to facilitate the joint investigation of child abuse in Cochise County. In order to do so, this must be a flexible, living document, one that provides for change in the involved agencies and professional fields. With that in mind, the protocol offers guidance for reporting and investigating child abuse, but is not overly prescriptive to each area as to how they shall conduct its business. To meet the changing needs of the areas involved, appendices have been included. It is easier to change the contents of an appendix, thus providing the flexibility necessary for advances in the legal or professional areas, than to redesign a Protocol. This flexible format is provided with the intent of facilitating the interagency investigation of child abuse with the result of reducing trauma to child victims and increasing successful prosecution.



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**PROTOCOL FOR COOPERATION IN  
INVESTIGATION OF ALLEGATIONS  
INVOLVING EXTREMELY SERIOUS CONDUCT**

**November 1, 2005**

## APPLICABILITY

This protocol is developed to comply with the requirements of Arizona Revised Statutes Section 8-817. This protocol applies to the investigation of an “extremely serious conduct allegation” as that term is defined in A.R.S. §8-801.2.

“Extremely serious conduct allegation” means an allegation of conduct by a parent, guardian or custodian of a child that, if true, would constitute any of the following:

- (a) A violation of §13-3623 involving child abuse.
- (b) A felony offense that constitutes domestic violence as defined in §13-3601.
- (c) A violation of §13-1404 or §13-1406 involving a minor.
- (d) A violation of §§13-1405, 13-1410 or 13-1417.
- (e) Any other act of abuse that is classified as a felony.

Extremely serious conduct includes:

- Sexual conduct with a minor
- Sexual abuse
- Sexual assault
- Molestation of a child
- Incest
- Child prostitution
- Commercial sexual exploitation of a minor
- Sexual exploitation of a minor
- Child abuse (physical abuse)
- Death of a child
- Certain domestic violence offenses that rise to the level of a felony (pursuant to A.R.S. §13-3601).

Additional definitions:

- “Abuse” means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist pursuant to section 8-821 and is caused by the acts or omissions of an individual having care, custody and control of a child. Abuse includes:
  - a. Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation



of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.

b. Physical injury to a child that results from abuse as described in section 13-3623, subsection c.

- “Child”, “youth” or “juvenile” means an individual who is under the age of eighteen years.
- “Custodian” means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court of competent jurisdiction.
- “Custody” or “legal custody” means a status embodying all of the following rights and responsibilities:
  - a. The right to have physical possession of the child
  - b. The right and the duty to protect, train and discipline the child.
  - c. The responsibility to provide the child with adequate food, clothing, shelter, education and medical care, provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person and subject to the residual parental rights and responsibilities if they have not been terminated by judicial decree.
- “Guardianship of the person” with respect to a minor means the duty and authority to make important decisions in matters affecting the minor including but not necessarily limited either in number or kind to:
  - a. The authority to consent to marriage, to enlistment in the armed forces of the United States and to major medical, psychiatric and surgical treatment, to represent the minor in legal actions, and to make other decisions concerning the child of substantial legal significance.
  - b. The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order.
  - c. The rights and responsibilities of legal custody, except where legal custody has been vested in another individual or in an authorized agency.
  - d. When the parent-child relationship has been terminated by judicial decree with respect to the parents, or only living parent, or when there is no living parent, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child’s parents could make.
- “Parent” means the natural or adoptive mother or father of a child
- “Parent-child relationship” includes all rights, privileges, duties and obligations existing between parent and child, including inheritance rights.

Nothing in this protocol should be construed as limiting the use of outside resources such as previously developed protocols, protocols from other agencies or experts, learned treatises,

intra agency policies, guidelines, directives, etc. so long as they do not conflict with this protocol. Agencies are free to adopt policies and procedure to implement this protocol or to comply with statutory or departmental requirements so long as those policies and procedures are not in conflict with this protocol. This protocol does not countermand policies and procedures already in place that do not conflict with the protocol or abrogate any duty imposed by statute.

### **NOTIFICATION**

When a Child Protective Service Worker (CPSW) receives information regarding an in-progress extremely serious conduct allegation that indicates a child is in danger, they shall immediately notify the appropriate law enforcement agency using 9-1-1. When the information received by a CPSW indicates the child is not in immediate danger but further investigation is warranted, the CPSW shall contact the appropriate law enforcement agency dispatch/communications center and provide all relevant information and request notification be made to the on-duty supervisor. Upon receiving this information the responsible law enforcement supervisor will contact the CPSW as soon as possible and they will coordinate an appropriate response based on: the circumstances of the call; individual agency guidelines; availability of resources; and, the need for a coordinated multi-agency on-scene response. The law enforcement supervisor is responsible for determining whether or not a criminal investigative response will be initiated.

When a law enforcement officer or an employee of a law enforcement agency receives information concerning an allegation of extremely serious conduct that person will immediately refer the matter to Child Protective Services (CPS) by calling the child abuse hotline and provide sufficient information for CPS to coordinate their response with law enforcement.

### **CONDUCT OF INVESTIGATION**

CPS and law enforcement agencies are required to coordinate their respective investigations of allegation of extremely serious conduct. During an investigation of extremely

serious conduct allegations, CPS and law enforcement investigators will promptly share relevant information, maintain on-going contact and monitor and/or participate in forensic interviews conducted by their counterparts. These efforts will clearly be documented in reports prepared by each agency.

An investigation of an allegation of extremely serious conduct should be conducted, in many respects, identically to any other investigation. However, an investigation into an allegation of extremely serious conduct should have as one of its primary objectives the gathering of as much information as possible with the least amount of intrusion and stress upon the child. Whenever possible a single interview of the child should be done by one interviewer. All relevant information gathered during the course of the investigation should be given to the interviewer. If appropriate, the interview should be done in a forensic setting. Only a single medical examination, if required, should be conducted to document injuries, physical abuse, neglect or sexual abuse. When disputes arise concerning procedures, etc. those disputes must be resolved prior to the investigation going forward.

### **TRAINING**

Each agency agrees that they will conduct training at least yearly on this protocol. Such training should be provided for all personnel involved in receiving, evaluating and investigating reports of extremely serious conduct allegations, including dispatch/communications personnel, patrol officers, patrol supervisors, detectives, administrative personnel, child protective services workers and child protective services supervisors. Training should include review of the elements of the protocol, definition of extremely serious conduct allegations and the elements of the listed offenses, orders of protection, conduct of investigations, coordination of joint investigations, notification requirements of statutes and the protocol, and available resources.

## **ANNUAL REPORT**

An annual report shall be submitted by each agency by August 15 to the governor, the speaker of the house and the president of the senate.

## **DISPUTE RESOLUTION**

Disputes between CPS and law enforcement agencies should be resolved at the lowest level possible and in as informal a method as possible. Only when disputes can not be resolved between CPS and law enforcement will they be referred to the Cochise County Attorney's Office for resolution. The Cochise County Attorney or his designee shall promptly resolve all disputes and that decision is final.

## **REVIEW AND EVALUATION**

Each signatory to this protocol will submit a quarterly report to the Cochise County Attorney's Office. The reports shall be submitted by the 15th day of the month following the end of the quarter. This report shall include information on all investigations into extremely serious conduct allegations over which the Cochise County Attorney's Office has jurisdiction. This report shall contain sufficient information to allow for evaluation of the procedures of the protocol, including problems encountered and solutions reached. The report may consist of reports of investigation or departmental reports. If reports of investigations have been submitted to the Cochise County Attorney's Office for review or charging, the report may consist of references to previously submitted reports. There shall be a quarterly meeting on the first Tuesday of the month following the submission of the report at the Cochise County Attorney's Office to discuss and evaluate investigations.

By signing below I agree to the revision set forth in the preceding pages titled “Protocol for Cooperation in Investigation of Allegations Involving Extremely Serious Conduct, November 1<sup>st</sup>, 2005”:

\_\_\_\_\_ Date \_\_\_\_\_  
Edward G. Rheinheimer  
Cochise County Attorney

\_\_\_\_\_ Date \_\_\_\_\_  
Larry A. Dever  
Cochise County Sheriff

\_\_\_\_\_ Date \_\_\_\_\_  
Deborah Nishikida  
ACYF Program Manager for District VI

\_\_\_\_\_ Date \_\_\_\_\_  
Glenn Nichols  
Chief of the City of Benson Police Department

\_\_\_\_\_ Date \_\_\_\_\_  
James Elkins  
Chief of the City of Bisbee Police Department

\_\_\_\_\_ Date \_\_\_\_\_  
Charles E. Austin  
Chief of the City of Douglas Police Department

\_\_\_\_\_ Date \_\_\_\_\_  
Dennis L. Grey  
Chief of Huachuca City Police Department

\_\_\_\_\_ Date \_\_\_\_\_

David Santor  
Chief of the City of Sierra Vista Police Department

\_\_\_\_\_ Date \_\_\_\_\_

Illario Talvy  
Marshal of Tombstone

\_\_\_\_\_ Date \_\_\_\_\_

Jacob Weaver  
Chief/Director of the City of Willcox Police Department