

# **Update on Legal Issues in CPS 2007**

*Monday, September 10, 2007*

**Participant Materials**



**New York State  
Office of  
Children & Family  
Services**

New York State  
Office of Children and Family Services Bureau of Training  
and  
SUNY Training Strategies Group

**UPDATE ON LEGAL ISSUES IN CPS, 2007**  
**September 10, 2007**  
**1pm – 3pm**

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**ANNUAL TELECONFERENCE ON CPS CASES**  
**Margaret A. Burt, Esq. 9/10/07**

**General Abuse and Neglect Issues and Temporary Orders**

**Matter of Jan V 38 AD3d 912, 831 NYS2d 331 (2<sup>nd</sup> Dept. 2007)**

A father sought to have his unfounded report of neglect expunged under SSL 455(5)c. The SCR had refused to expunge the unfounded report and he appealed to the Second Department. While it should not have been transferred to the Second Department as there is no “administrative hearing” to review, the Appellate Court decided to review the matter in any event for judicial expediency. The Second Department ordered the SCR to expunge the unfounded report as the father had provided clear and convincing evidence that the child’s absences from school were justified.

**Matter of Annmarie R. 37 AD3d 723, 831 NYS2d 217 (2<sup>nd</sup> Dept. 2007)**

The Second Department ordered Nassau County Family Court to hold a new fact finding hearing in a sex abuse matter. The court failed to weigh the respondent’s due process rights against the risk to the child in testifying in open court or in chambers. The lower court allowed the law guardian to make the judgment that should be the court’s after appropriately balancing the rights involved.

**Matter of Nyasia J. 41 AD3d 479, 838 NYS2d 138(2<sup>nd</sup> Dept. 2007)**

The Second Department reversed a temporary order of visitation in a Kings County Art. 10 matter. The Family Court had ordered 2 visits a week for 2 to 3 hours each in an unsupervised setting. ACS appealed and the Second Department found that the visits would pose a risk to the children. The “safer course” in this case is to allow only supervised visitation prior to consideration of the merits of the petition.

**Matter of Jacob P. 37 AD3d 836, 831 NYS2d 252 (2<sup>nd</sup> Dept. 2007)**

The Second Department stayed and then reversed a Kings County Family Court’s order to return a child to his parents after a 1028 hearing. The child was 2 months old when taken to the hospital with signs of seizures. The child had a large bilateral subdural hematoma in the frontal lobe and underwent emergency surgery. In surgery, a second injury was found – bleeding in the posterior part of the brain that was of a more recent vintage. After surgery, it was discovered that the child also had a fractured rib and clavicle which were less than a week old. The medical testimony was that these injuries were due to non accidental trauma and were consistent with shaken baby syndrome. An emergency removal was done and the parents requested a FCA 1028 hearing. The caseworker testified that the parents offered no explanation as to how the child sustained the injuries. The mother testified that she and the father were the child’s primary

caretakers and that the father had been alone with the child for several hours on the evening before the injury. The father did not testify at the 1028. The mother had complied with ACS' requests to have a visiting nurse in the home, to have the parents attend the child's medical appointments and early intervention therapy. The mother also complied with a request that she not allow the father to be with the child alone. Given mother's cooperation, Family Court allowed the child to be returned to both parents pending the fact finding. ACS sought and obtained a stay and the Second Department reversed the ordered return. In light of the serious nature of the injuries, the father's failure to testify at the 1028, the lack of explanation for both old and new injuries, the child was at imminent risk and should remain in care while the case is pending. The parents should have supervised visitation and relatives should be looked at as resources. The appeal of the 1028 took a year and the Appellate Court ordered that the fact finding be set down for an immediate hearing on which the court was not suggesting "any particular determination"

## **Derivative Issues**

### **Matter of Cadejah AA., 33 AD3d 1155, 823 NYS2d 276 (3<sup>rd</sup> Dept. 2006)**

The Third Department reviewed a neglect finding from Otsego County Family Court. In this matter the stepfather admitted neglect in that he had enlarged a hole in the wall of his teenage stepdaughter's bedroom wall and was "spying" on her. He expressly waived any right to appeal with his admission to the petition. The court also found that he had derivately neglected his son. The stepdaughter was placed out of the home and the stepfather was prohibited from any contact with her and ordered to be evaluated in a sex offender program. The father consented to all these conditions and also waived his right to appeal the order of disposition. Nonetheless, the father did appeal. His first appellate counsel filed an Anders brief which the Third Department rejected. Newly appointed appellate counsel then argued that the waiver of appeal should not preclude the respondent from arguing that he should not have been found to have derivately neglected his son. The Third Department found that the respondent clearly understood his explicit waiver of his right to appeal but instead choose to "exercise our inherent authority to review any matter involving the welfare of a child in a Family Court proceeding". The Appellate Court then found that Family Court had failed to make any specific finding as to how the "single act of voyeurism with regard to his teenage stepdaughter" constituted derivative neglect to the 3 year old son. The court pointed out that the stepdaughter was not sexually abused. The court reversed the derivative finding regarding the younger biological son.

### **Matter of Suzanne RR., 35 AD3d 1012, 826 NYS2d 785 (3<sup>rd</sup> Dept. 2006)**

The Third Department reversed a Clinton County Family Court's granting of a summary judgment motion to find derivative neglect on a mother's newborn child. The mother had consented to a prior finding of neglect regarding her three children based primarily on her former boyfriend who had an indicted report for the sexual abuse of a three year old. The former boyfriend had criminal charges for endangering the welfare of children. She had failed to protect her children from his excessive corporal punishment and failed to protect them from domestic

violence. The children had been present when the former boyfriend had become violent to the children's grandmother. She had also left her children with relatives for over 2 months without any contact. Nine months after the dispositional order regarding those children, the mother gave birth to another child by a new boyfriend and DSS moved for a summary judgment of derivative neglect regarding the newborn baby. The Appellate Division found that the lower court erred in granting summary judgment. The father of this child was a different man, there was no evidence that she was not participating services that had been ordered, no evidence was presented of any violation petitions on the prior matter or that the other children were not the subjects of termination petitions. The dissent argued that summary judgment for derivative neglect was appropriate. The prior matter was still proximate in time, all of the prior allegations were in the new petition as well as allegations that the father of this new baby was a person who had three prior child neglect adjudications against him, including domestic violence with prior girlfriends in front of other children. The dissent claimed that mother's neglect continues, albeit with another man.

**Matter of Summer Y-T., 32 AD3d 212, 819 NYS2d 743 (1<sup>st</sup> Dept. 2006)**

The First Department agreed with Bronx County Family Court that the parents did not derivately neglect a new born child even though there had been a finding of neglect regarding three older children 18 months earlier. The parents were participating in mandated counseling and had adequately prepared for the newborn. They had repaired and improved their apartment and the conduct regarding the older children had not been so egregious.

**Matter of Landon W., 35 AD3d 1139, 826 NYS2d 822 (3<sup>rd</sup> Dept. 2006)**

The Third Department concurred with Chemung County Family Court that a mother derivately neglected a newborn baby. In 2004 the mother and her then boyfriend consented to a neglect finding regarding her then 2 year old who had a burn on his palm and abrasions on his neck and lower back. There were allegations of domestic violence and mental health concerns as well. The child was placed in foster care. Shortly before that matter was resolved and when the mother was 8 months pregnant, there was a knife fight in her apartment. Within 2 weeks of that there was a break-in to the apartment, allegedly by people the mother knew. When the caseworker visited 2 days later, the person who had engaged in the knife fight – who appeared to have mental health problems - was still living there. There were few provisions for the expected baby. The mother had a new boyfriend who was only 19 years old and the police were frequently called to her home for underage drinking, domestic violence and fights with the neighbors. When the baby was born and located, DSS placed the infant in foster care and alleged that the child was derivatively neglected. The mother violated the prior order in many respects. She failed to notify DSS of the changes in her household; she failed to attend DV counseling, parental education programs and individual counseling. While she ended her relationship with her prior abusive boyfriend, she was involved with a new boyfriend and a circle of people where the police often intervened. The new baby was born within a month of the prior disposition, the mother had not complied with needed counseling under the prior order and

therefore the newborn was derivatively neglected. The court properly also considered evidence of the mother's irresponsible prenatal care.

**Matter of Daniel W., 37 AD3d 842, 831 NYS2d 244 (2<sup>nd</sup> Dept. 2007)**

The Second Department reversed a Queens County Family Court dismissal of derivative abuse allegations regarding the 4 siblings of a child who was found to have been sexually abused by the respondent. Given the nature of the abuse of the one child, the duration of that abuse and the circumstances of its commission, the other children are at a substantial risk of harm as the respondent has a fundamentally flawed understanding of the duties of parenthood. The Second Department remanded the matter to Family Court for a dispositional hearing. The court did note that a dispositional hearing is not needed for the 2 of the children who are now over 18 years of age.

**Matter of Amber C. 38 AD 538, 831 NYS2d 478 (2<sup>nd</sup> Dept. 2007)**

In the fall of 2002, two Dutchess County parents admitted to neglecting their four children based on a failure to maintain a safe and sanitary home and education neglect. Nine months later, another child was born and a derivative neglect petition was filed regarding that child. While the parents did improve the condition of their home, the prior finding is so proximate in time that the court must presume that the conditions still exist and the parents have the burden of proving that they do not. Here the parents failed to demonstrate that the circumstances leading to the earlier finding were not still a problem or could be in the foreseeable future. The parents had not completed the programs required under the prior order.

**Matter of Ian H. \_\_\_AD3d\_\_\_, 7/12/07 (3<sup>rd</sup> Dept. 2007)**

The Third Department affirmed a Tioga County Family Court derivative neglect finding against the father of twin boys. The mother ran a day care center out of her home and the father was criminally charged with sexually abusing three young girls in the day care. The Third Department concurred with Family Court that the out of court statements of the children in day care were properly admissible in evidence even though those children were not the subjects of the Article 10 proceeding as FCA 10469a)(vi) only refers to out of court statements of children alleged to have been abused or neglected and does not require that the children be the subjects of the proceeding. The court also found that the father was a person legally responsible for the day care children and had abused them based on those children's out of court statements, including a video tape of the 7 year old girl's interview. These out of court statements were cross-corroborated by the statements of the 3 year old girl. Also the 7 year olds statements were spontaneous in that she saw the respondent's arrest on the evening news and upon being told that he was arrested for touching little girls said "just like he did to me". The respondent's failure to take the stand also allowed the court to make a strong inference against him and was further corroboration. Lastly the court noted that the twin sons were at home when at least one of the day care girls was abused.

## **General Neglect**

### **Matter of Christian Q., 32 AD3d 669, 821 NYS2d 282(3<sup>rd</sup> Dept. 2006)**

The Third Department reversed Saratoga County Family Court's dismissal of a neglect petition. The petition alleged that the mother failed to cooperate with a plan to obtain housing and had been denied emergency housing assistance due to her failure to comply with requirements that resulted in her children being homeless. The lower court dismissed the petition at the end of petitioner's case for failure to establish a prima facie case. The Appellate Court remanded the matter for the continuation of the fact finding and for any proof the mother wished to offer. DSS had provided testimony that for 6 months the mother and the children had been provided with emergency housing in various hotels and an Independent Living Plan had been arranged to help her seek permanent housing that included transportation and childcare to help seek housing. The mother was frequently found out of compliance and on 2 occasions lost her emergency housing for 30 days. The mother then rejected an apartment found in another county for her and was facing another 30 day sanction and loss of emergency housing. At that time she agreed to a FCA 1021 placement of the children in foster care and a neglect petition was filed. The Third Department found that this evidence, if credited, demonstrated parental behavior that lead to potential harm to her child and was prima facie evidence of neglect.

### **Matter of Christian EE. 33AD3d 1106, 822 NYS2d 666 (3<sup>rd</sup> Dept. 2006)**

A Warren County mother neglected her 11 year old by leaving the child alone on multiple occasions in a motel. The mother and child had been living in the motel for over a month since coming from out of state and the child had not been enrolled in school. The child was being left alone for 5 or 6 hours up to 5 times a week while the mother was out drinking. The child had no adult supervision and would seek food from others. The mother also disciplined the child by slapping and kicking her, pulling her hair and throwing things at her. The child had bruises on her legs. The court issued a temporary order against the mother to not to drink while supervising the child and she violated the order by consuming alcohol in the child's presence.

### **Matter of Lester M. 13 Misc3d 1222A ( Fam. Ct. Richmond County 2006)**

A Richmond County mother neglected her 3 year old. A year earlier the mother's boyfriend had severely abused the child by inflicting 2<sup>nd</sup> and 3<sup>rd</sup> degree burns on 30% of the child's body. Although the mother had also been a respondent in that action, the matter was dismissed after fact finding as to her. Less than a year later, the child sustained 1<sup>st</sup> and 2<sup>nd</sup> degree burns on his arm when he was playing near a hot curling iron. The mother did not take precautions with the curling iron even though she had burned herself with the iron that same day. Further the mother waited 2 days to bring the child to a doctor. This child had special vulnerabilities given his prior

extensive burns that he was still recovering from at the time. The mother also continued to fail to acknowledge that the child had been burned by the boyfriend.

**Matter of Alaina E. 33 AD3d 1084, 823 NYS2d 227 (3<sup>rd</sup> Dept. 2006)**

A Broome County mother appealed neglect findings regarding four of her children claiming that only the father of two of the children, who lived in another home, had neglected the children. (The father had admitted the neglect and had not appealed) The mother allowed the children to visit the father's home on virtually a daily basis. She was aware that the father's home was so unsanitary that it was inappropriate for the children to be there and ignored caseworker warnings that she should not allow visits when the father's home was filthy and unsafe. The proof showed that the mother was aware that the father drank excessively and that the children were exposed to violence between the father and his brother. Further she knew that the father's brother was a sexual predator and she knew that this man was alone with the children at times. One of the children was sexually abused by the father's brother. A reasonable and prudent parent would have denied visitation to the other parent in this situation. The mother was not a "protective ally" for the children. Even though the caseworkers did not tell mother that contact with the father's brother was prohibited, the mother was still expected to act reasonably and prudently. The court properly placed the children in foster care. The mother had now relocated several hundreds of miles away and had no funds or transportation. The children should remain in their present setting so that their special educational needs will be met.

**Matter of Debraun M. 34 AD3d 587, 826 NYS2d 76 (2<sup>nd</sup> Dept. 2006)**

The Richmond County Family Court's adjudication of neglect by a father was upheld on appeal. The father had locked one child out of the home and changed the locks so he could not return and he left an 8 year old unsupervised in a busy airport. His explanation that the 8 year old wandered away was not credible. This behavior was sufficient to support a derivative finding regarding the older child as well.

**Matter of Selena J. 35 AD3d 610, 825 NYS2d 749 (2<sup>nd</sup> Dept. 2006)**

The Second Department upheld Queens County Family Court's neglect adjudication against a mother. The mother allowed a cousin access to her home and her children even after a counselor informed her that the youngest child had revealed that the cousin had touched her buttocks. The mother chose not to believe the child. A few months later she learned that the cousin had sexually abused her 14 year old daughter and she still allowed him access to the home. A reasonable and prudent parent would have taken steps to protect the children.

**Matter of Mary MM 38 AD3d 956, 831 NYS2d 273 (3<sup>rd</sup> Dept. 2007)**

The Third Department affirmed a finding of neglect regarding a Broome County mother. The mother's 8 year old daughter had been the victim of sexual abuse by a 13 year old boy in another state. DSS found a convicted sex offender at the family home on two occasions after specifically advising the mother on the first occasion that the offender, who was about to begin a prison sentence, should not be in the home. The DSS brought both a sexual abuse petition against the convicted offender who appeared to be residing in the home and a neglect petition against the mother. DSS was unable to prove the sex abuse but the lower court did make a finding of neglect against the mother. The Third Department agreed that the mother was neglectful even though there was no proof that the current paramour had abused the child. The mother had a known history of associating with sex offenders. The child's father had been a convicted sex offender, she had dated a man convicted of indecent exposure and she was aware that this new boyfriend had plead guilty to sexual abuse in the first degree and was about to be incarcerated as a second felony offender. Allowing this man to be in the presence of her child is more than sufficient for find that she neglected the child. Further it was appropriate to place and keep the child in foster care given that the mother "has used what Family Court charitably termed "extremely poor judgment" in associating with known sex offenders". Until the mother and the child receive counseling and services, it is in the child's best interests to remain in foster care.

**Matter of Stephen C., 39 AD3d 132, 834 NYS2d 346 (3<sup>rd</sup> Dept. 2007)**

The Schenectady father of a 5 and 6 year old brought an Art. 78 proceeding regarding a fair hearing to unfound a CPS report. The Third Department ruled that the fair hearing decision that the matter was properly indicated should not be overturned. The caseworker found the children alone in the house and waited 30 minutes before the father appeared. The father claimed he had the house in his field of vision at all times. However, the home was on property of over 19 acres, the caseworker had driven up the driveway, walked around the outside of the home, knocked on the windows and shouted through the windows and communicated with the children and at no time was confronted by the father. The house was also unlocked. The father admitted that a few months earlier he had also been found leaving the home area in a vehicle when one of the children was in the home alone.

**Matter of D-C Samuel 40 AD3d 853, 837 NYS2d 170 (2<sup>nd</sup> Dept. 2007)**

The Second Department reversed Queens County Family Court's dismissal of a neglect petition. The father left his 3 week old baby unattended and in an unheated car for approximately 15 minutes. This demonstrated that he does not understand the special needs of a newborn child.

**Matter of Nurayah J. 41 AD3d 477, \_\_NYS2d\_\_ (2<sup>nd</sup> Dept. 2007)**

The Suffolk County mother of a newborn was herself in foster care when she consented her newborn infant being removed under FCA 1021. Suffolk County DSS then filed an Art. 10

petition alleging that the teen mother had a history of behavioral problems that would put the newborn at risk of neglect. Suffolk County Family Court dismissed the Art. 10 on the ground that the mother's due process rights were violated but found the newborn baby to be "destitute" under SSL 371 (3). On appeal, the Second Department agreed with the dismissal but on different grounds. The Appellate Court found that the procedures regarding the 1021 removal were not in violation of the mother's due process rights. The petition was filed within 3 days, the consent was attached to the petition and the mother had been informed of her rights. No special duty was owed to her given that she herself was a foster child. However, DSS did not prove a prima facie case of neglect and the lower court properly refused to allow the petition to be modified to include conduct that had occurred after the petition had been filed. The mother would have been unduly prejudiced by the additional allegations. Given that the circumstances were unusual, the lower court did not err in finding the child to be "destitute" as the teen mother of this child is currently unable to provide the child with food clothing or shelter and therefore the child is in a state of want.

**Matter of Hailey W., \_\_AD3d\_\_, 7/6/2007 (4<sup>th</sup> Dept. 2007)**

The Fourth Department affirmed Steuben County Family court's finding that a father had neglected his two children. He abused drugs in front of the children and was hospitalized for an overdose. He told the caseworker that he used illegal drugs on a daily basis. The father claimed that the presumption of neglect under FCA 1046 (a)(iii) did not apply to him as he had previously been enrolled in drug treatment program. The exception to the presumption does not apply in this matter as there was no proof that his participation in the drug treatment program was voluntary. More importantly, he was not in any program at the time of the filing of the petition or at the fact finding.

## **Medical Neglect**

**Matter of Notorious YY., 33 AD3d 1097, 822 NYS2d 670 (3<sup>rd</sup> Dept. 2006)**

The Third Department concurred with Otsego County Family Court that a custodial father medically neglected his infant son by failing to bring the child to multiple medical appointments regarding a large umbilical hernia. The father was clearly aware that the child needed medical attention, including surgery. Although the child was not injured, the potential injury to him could have been life threatening.

**Matter of Shawndel M., 33 AD3d 1006, 824 NYS2d 335 (2<sup>nd</sup> Dept. 2006)**

A Suffolk County mother medically neglected her child although the Second Department reversed the derivative neglect finding on a sibling. Here the child was a diabetic and required emergency hospitalization. The mother, although aware of the seriousness of her daughter's condition, refused to consent to the child being moved to a pediatric intensive care unit at another hospital as recommended by the doctors. Further she encouraged the child to pull her IV

needle out of her arm and leave the hospital. The Appellate Court however found that this evidence did not warrant a derivative finding regarding the sibling who had no medical needs.

**Matter of Terrence P. 38 AD3d 254, 831 NYS2d 384 (1<sup>st</sup> Dept. 2007)**

The First Department reversed a neglect finding from Bronx County Family Court. The mother and ACS were in disagreement regarding the treatment needed by one of the mother's 4 children. ACS had worked with the mother for over a year and ultimately filed a neglect petition alleging her failure to deal with one child's diagnoses of ADHD. The lower court found she had neglected the child and derivatively neglected the other children and had placed the child in care but the Appellate Division reversed. There was not a preponderance of evidence of neglect. The mother did not follow a recommended course of psychiatric therapy and medication (Adderall) She had indicated that she wanted a second, nonagency opinion on the need for the medication and its' potential side effects. She wanted time to speak to the child's pediatrician and her concerns were reasonable and appropriate. ACS had told her that she had a "right" to refuse to provide the child the medication. ACS did not assist her in obtaining a second opinion from a nonagency medical provider. Although the mother did miss a number of the child's counseling sessions, she was not advised that her failure to go to these appointments were result in a neglect petition and a removal of the child. She did not refuse the counseling and did attend some of them

## **Excessive Corporal Punishment**

**Matter of Poli K., 34 AD3d 354, 824 NYS2d 283 (1<sup>st</sup> Dept. 2006)**

The First Department affirmed New York County Family Court's neglect finding. The mother had used corporal punishment on her daughter by repeatedly hitting her with a sneaker and a toilet plunger handle for over 20 minutes. The child was observed to have reddish bruises on her shoulder, arm, elbow, knees and ankle. The child also disclosed that the mother hit her with a sandal 2 months earlier. There were inconsistent claims that the child had been in a fight with a sibling that the court did not believe. The severity of the corporal punishment supported a finding of derivative neglect although the court should have stated in its decision the grounds for all findings of neglect and derivative neglect.

**Matter of Maria Raquel L. 36 AD3d 425, 826 NYS2d 252 (1<sup>st</sup> Dept. 2007)**

A New York County mother used excessive corporal punishment on her child. The child reported to the caseworker that her mother had hit her with a belt. The child had several significant marks on her back and extremities. The caseworker, hospital records and photographs all confirmed the marks on the child's body. The mother failed to testify at the fact finding and this permitted a strong inference against her. The child was properly placed with the biological father.

**Matter of Jedidah A., 39 AD3d 742, 833 NYS2d 626 (2<sup>nd</sup> Dept. 2007)**

The Second Department concurred with Suffolk County Family Court that a mother had used excessive corporal punishment. The oldest child made out of court statements which were corroborated by the caseworker's observations of her injuries. The youngest child told the caseworker that the mother had hit all three children with a belt in the past.

**Matter of Fred Darryl B. 41 AD3d 276, 836 NYS2d 878 (1<sup>st</sup> Dept. 2007)**

The First Department affirmed New York County Family Court's finding of excessive corporal punishment. The child disclosed to the caseworker and the police that the father had struck him with a belt. These out of court statements were corroborated by the results of a physical examination of the child. The dispositional order placing the child in foster care is moot as the child has since been freed for adoption.

## **Sex Abuse**

**Albany County Dept. CYF v Ana P. 13 Misc3d 855 (Fam. Ct. Albany County 2006)**

Albany County Family Court dismissed a sex abuse case against a mother. The three year old child had gonorrhea. Both parents tested positive for gonorrhea and all other suspects tested negative. CYF argued that the father had infected the child as the medical proof indicated that it would be highly unlikely that an adult female could infect a three old child with gonorrhea. While the mother could not explain what happened to the child, it was the mother who noticed the child's vaginal discharge and took her to a hospital. The mother cooperated with the agency and the medical providers. There was no proof that the mother infected the child herself, no proof that she did not knowingly protect the child from someone who did infect her, and no proof that she left the child with someone she knew was a risk to the child. The presumption of FCA 1046(a) is not applicable as it relates to the mother.

**Matter of Meredith DD., 13 Misc3d 894, 821 NYS2d 741 (Fam Ct. Chemung County 2006)**

The Chemung County Family Court made findings of sexual abuse and neglect against a mother's boyfriend but would not make a "severe abuse" finding against him. The child was abused over a 4 year period starting when she was 11 years old. The abuse consisted of fondling, oral and vaginal intercourse, on average 3-4 times a week. The child contracted herpes from the abuse and was often required to perform sexual acts in order to receive privileges such as visiting a friend's home. There was no doubt that the respondent was a "person legally responsible" to the child but he was not a legal custodian or a bio or adoptive parent. Since the purpose of severe abuse definition is to terminate diligent efforts toward reunification and speed the termination of parental rights, the severe abuse definition in SSL 384-b requires that a parent of the child be the perpetrator. This respondent is not the parent of the child in question so he cannot be found to have "severely abused" the child under the statutory definition. It may be

helpful to make such a finding but the clear definition does not permit the finding. If and when the respondent is himself a parent, then the finding might be made that his own child is derivatively severely abused as the Court of Appeals describes in **Marino S.**

**Matter of Latifah C., 34 AD3d 798, 826 NYS2d 333 (2<sup>nd</sup> Dept. 2006)**

The Second Department reviewed an abuse case from Kings County. There was sufficient proof that the father had sexually abused one of the children. This also resulted in a proper finding that a second child was derivatively abused however as to the third child a derivative abuse finding was procedurally improper as that child had not been alleged to be derivatively abused in the petition and no amendment of the petition was requested. The court reviewed the finding of severe abuse as to all three of the children and reversed that finding. The Appellate Court concluded that in order to make a “severe abuse” finding the agency had to prove “diligent efforts toward reunification upon clear and convincing proof” which had not been offered. (NOTE : It would appear that the court confused the severe abuse termination ground requirements in SSL 384-b with the definition of severe abuse under FCA 1051 (e) and 1039-b)

**Matter of Fantaysia L. 36 AD3d 618, 826 NYS2d 744 (2<sup>nd</sup> Dept. 2007)**

A Kings County 3 year old had contracted gonorrhea and had clearly been sexually abused by someone. The evidence was inconclusive as to who had abused the child. The child resided with her mother and stepfather but also visited regularly with her father who lived with the paternal grandmother and her three adopted children. The Family Court and the Appellate Division concluded that this established a prima facie case of sexual abuse against the mother, the stepfather, the father and the grandmother. The fact that the child could have contracted the disease in either household does not defeat the petitioner’s prima facie case and does not preclude the application of res ipsa loquiter. The prima facie case was made that the child had been sexually abused by someone and this shifted the burden of going forward to the caretakers. The mother and the stepfather did rebut the presumption. The stepfather demonstrated that he was not a caretaker of the child and the mother had responded appropriately to the discovery of the child’s venereal disease. The father and the grandmother failed to rebut the presumption case and explain how the child contracted gonorrhea.

**Matter of Teonia B. 37 AD3d 1101, 831 NYS2d 301 (4<sup>th</sup> Dept. 2007)**

A physician’s testimony of physical evidence of sexual abuse corroborated the 12 year old girls out of court statements that her father had sexual abused her. This was a proper basis for Erie County Family Court to make a finding of abuse of that child and derivative abuse of the other children.

**Matter of Kalifa K., 37 AD3d 1180, 829 NYS2d 794 (4<sup>th</sup> Dept. 2007)**

The Fourth Department reversed an Erie County Family Court's adjudication of sexual abuse of one child and derivative abuse of the siblings. There was no corroboration of the child's out of court statements regarding the abuse. Although validation evidence, consisting of a child abuse expert opining that the child exhibited behaviors consistent with abuse children, can corroborate an out of court statement, no such evidence was offered. The witnesses all testified to what the child had said but repeated out of court statements by the child to various persons do not constitute corroboration. Here none of the witnesses purported to be child sexual abuse experts and none discussed the behaviors commonly seen in sexually abused children.

**Matter of Beverly R., 38 AD3d 668, 831 NYS2d 717 (2<sup>nd</sup> Dept. 2007)**

Kings County Family Court was affirmed on appeal. The father sexually abused his twin daughters and committed repeated acts of domestic violence against the mother in front of all of the children. The 6 year old twins out of court statements corroborated each other and were also corroborated by the testimony of sisters that the father had sexually abused them in the same way years earlier.

**Matter of Kayla F., 39 AD3d 938, 833 NYS2d 742 (3<sup>rd</sup> Dept. 2007)**

The Third Department reversed a sex abuse and neglect findings against two parents. An Otsego County father had been placed on probation due to a criminal conviction involving photographing girls undressing in the locker room at the high school where he worked. A condition of his probation was that he not be responsible for the care of any child although he was permitted to live at home with his two children. His 7 year old daughter was in special education and was diagnosed with anxiety and selective mutism and it was alleged that she told a school counselor that she had been alone with her father and that he had put his penis between her legs. The child told the caseworker and law enforcement that she had been alone with her father but did not repeat any allegations of sexual abuse. The older brother also alleged that he knew that his sister had been alone with the father and that he had been alone with the father on at least 2 occasions. Otsego County Family Court found that the father had abused the daughter and derivatively neglected the son and that the mother had neglected both children by allowing them to be alone with the father. The Third Department found that the out of court statement by the child about sexual abuse was not sufficiently corroborated, There was no medical evidence offered and there was no expert witness called to interpret any behavior on the part of the child. Given the child's problems, there would need to be specific interpretation of any behaviors of the child. The child did not repeat the allegations to the caseworker or to law enforcement - although that in and of itself would not serve as corroboration as repetitious out of court statements by the same child are not enough. The court can take a strong negative inference from the father's lack of testimony but that cannot be used to corroborate the child's out of court statement. Since the child's out of court statements were not corroborated, abuse cannot be adjudicated and neither can the derivative neglect on the son as there was no underlying abuse for the basis. As to the mother, one parent permitting the child to have contact with the other

parent in violation of an order of protection may be, but is not automatically, neglect. Here there was no order of protection and no court had ruled that this father was a danger to his own children. The probation terms specifically allowed him to live in the same house as the children. The mother testified that she had no reason to not trust him with his own children as she had never been aware of any sexual contact. She did know that he had been convicted and what the probation conditions were but leaving them alone with the father on a few occasions is not proof that she failed to exercise reasonable care.

**Matter of Candace S. 38 AD3d 786, 832 NYS2d 613 (2<sup>nd</sup> Dept. 2007)**

The Second Department reviewed a Dutchess County finding of sexual abuse and neglect of one child, derivative abuse and neglect of two other children as well as a severe abuse finding against a father. The lower court placed the children in the custody of the mother and the father was ordered to stay away. The Appellate Court affirmed the sex abuse, neglect and derivative findings given that the child's out of court statements were corroborated by the brother's out of court statements and the testimony of a validator. However, the court reversed the finding of severe abuse finding that the statute requires a "diligent efforts" finding on clear and convincing grounds which the court did not find. (Note: the court seems to have confused the requirement of a diligent efforts finding in the TPR of severe abuse under SSL 384-b(4)(e) with the processes in FCA 1039-b in which the court can rule that no diligent efforts are needed ) The Second Department also found that since the respondent was the biological father of the 2 children, the court erred in issuing an order of protection that continued until each of the children's 18 birthdays.

## **Physical Abuse**

**Matter of Seamus K., 33 AD3d 1030, 822 NY2d 168 (3<sup>rd</sup> Dept. 2006)**

A Broome County abuse and medical neglect finding was affirmed by the Third Department. The two month old child was alleged to have injuries consistent with shaken baby syndrome. When brought to the doctor and then to a hospital early on a Tuesday morning, the child was found to have multiple areas of bleeding in the brain. The medical opinion was that this was evidence of serious traumatic nonaccidental injury and that the parents offered no explanation. The child's step grandmother testified that the child was fine on Sunday when she had cared for him and the court found this evidence credible. Thereafter the child was in the sole care of the parents. The evidence showed that the father was a young and first time parent and became frustrated with the baby. A stepsister testified that the respondent parents spoke of the father shaking the baby. Neither parent would admit to having done anything to the baby and offered no explanation as to what had in fact happened. The court found that the parents appeared unemotional and flat in court. While there was no proof of the timing of the baby's injury, the parents never accused anyone else who had access to the child of having inflicted the injury, other than implying that perhaps a 7 year old stepbrother could have done it. The father also medically neglected the child. When the 2 month old displayed seizure like symptoms and was

screaming and vomiting, he did not seek emergency medical attention for the child for over an hour and a half until the mother returned from work. The dissent argued that the evidence did not prove the timing of the injury and therefore there was no proof that the child was in the sole care of the parents when the injuries occurred.

**Matter of Jason S. 36 AD3d 618, 826 NYS2d 744 (2<sup>nd</sup> Dept. 2007)**

Kings County Family Court found a mother abused her month old child and the Second Department affirmed the finding. The child had an evulsion laceration at the base of his nose and 10 to 14 day old wrist fractures of his radius and ulna bones. The mother had no explanation for either the facial injury or the wrist fractures. The injuries which occurred while she was the caretaker established a prima facie case of abuse and the mother offered no explanation.

**Matter of Kai B. 38 AD3d 882, 834 NYS2d 216 (2<sup>nd</sup> Dept. 2007)**

A Kings County mother abused and neglected her seven month old son. The child's pediatrician had advised the mother on 2 occasions to bring the child to a neurologist due to a swelling on the child's scalp. The mother failed to do so and more than a week later the child was hospitalized with fractures of the skull, tibia and ribs. The injuries occurred while the child was in the care of the mother and are injuries that normally would not occur accidentally. The mother had no reasonable explanation for the injuries

**Matter of David R. 39 AD3d 1187, 834 NYS2d 796 (4<sup>th</sup> Dept. 2007)**

The Fourth Department affirmed an abuse finding but reversed a neglect finding on appeal from Onondaga County Family Court. The four month old child had a spiral fracture of his right leg. The injury was one that would not normally occur in the absence of an act or omission by the caretakers. The mother and father did not provide any explanation that was reasonable and the severity of the injury itself made it suspicious for inflicted trauma. The child was in the care of the both of the parents at the time. However, the court found that there was not sufficient proof of neglect based on the evidence that the parents delayed 2 to 3 hours in obtaining medical treatment for the infant.

**Matter of Julia BB. AD3d \_\_, 837 NYS2d 398 (3<sup>rd</sup> Dept. 2007)**

The Third Department reversed Saratoga County Family Court's finding of abuse and severe abuse regarding one child and the derivative findings as to 2 older siblings as well as the severe abuse termination regarding the youngest child. Within the first month after birth the youngest child began showing odd symptoms of skin discolorations and bruising and the swelling of her fingers and toes. Upon examination, the infant was also diagnosed with a superficial skull fracture, fractures of the ribs, forearm and left leg. The testing for osteogenesis imperfecta - "OI" or brittle bone disease - came back negative but the test does have error rates. The child continued to have skin discolorations and other unusual symptoms. When the child was 2 months old, the DSS removed the child based on the orthopedic surgeon concluding that the

child was being abused. Family Court permitted the child to be returned to the family. When the child was 5 months old, and under treatment and medication for an ear infection, the baby experienced an airway obstruction and became gravely ill. The doctors treating her believed that she had been the victim of a smothering child abuse incident. The child was then placed in foster care where she did continue to experience some skin discolorations and swelling of her fingers and toes but there were no more broken bones or airway issues that occurred. The lower court found that the baby had been severely abused by the parents and also terminated their parental rights to the child, the older siblings were to remain with the parents and be supervised by DSS.

The Third Department reviewed the decision in much factual detail and found several errors in the lower court's decision. First the court found that even if the baby had been abused or neglected, this would not support a finding of derivative neglect regarding the other children as there is no evidence that the condition was impaired or in danger of becoming impaired. The Third Department found that Family Court should have allowed the proof to be re-opened upon the motion of the parents to take testimony of 2 more doctors who had examined the child. The case involved complex and contested medical issues and the respondents moved within days of the summation to have the doctors testify. The discolorations, fractures and bruises that this infant had did not constitute "severe" injuries to support any finding of severe abuse in that they were not life threatening nor did they result in protracted impairment of her health. While the airway obstruction incident was a "serious physical injury", there was not sufficient evidence that the parent's caused the injury in that the evidence could also lead logically to the conclusion that the breathing issue was related to her ear infection and medication taken for that and not in any way related to the fractures. The court finds that the evidence of the parent's devotion and skills are at odds with the interpretation that the parents would abuse a child when they were already under suspicion and being monitored closely. The Appellate Court was critical of the testimony of the one of the doctors called on direct who had "embarked" on a "crusade" to remove the child from the parents and have them charged. His testimony and medical opinion should be discounted due to his "personal animus" toward the parents. The respondents had offered medical proof from several doctors that the child could possibly have OI even though she did not test for it. Their witnesses concluded that the parents did not behave the way abusive parents would. On the dispositional hearing, a clinical and forensic psychologist testified in detail to her examination of the parents and her professional opinion that they did not have any mental illness of emotional instability but were loving parents. The Appellate Court also found that there was no evidence of the parents' intentional or reckless behavior or depraved indifference to the child – only much evidence on their attempts to unravel what they claim is a medical problem of the child.

**Matter of Tony B., 41 AD3d 1242, \_\_NYS2d\_\_ (4<sup>th</sup> Dept. 2007)**

The Fourth Department affirmed Erie County Family Court's dismissal of an abuse petition. The 3 month old child had a fractured skull that was unexplained. The parents were both caretakers as were several others during the 48 hours before the injury. DSS failed to prove a prima facie case that any particular person or persons were the abusers.

**Matter of Sara B. 41 AD3d 170, 838 NYS2d 49 (1<sup>st</sup> Dept. 2007)**

A New York County mother was abusive of her 4 month old baby where the child had a fracture of the right temporal bone, an epidural bleed and a fracture of the leg, These injuries were such that would not ordinarily occur but for abuse. The mother's explanation was implausible and unreasonable and she did not rebut the presumption of culpability with a credible explanation. The court had discretion to clarify testimony and question her regarding her history of substance abuse. The trial court also properly precluded the mother's witness – a social worker – from giving her opinion on the mother's fitness to parent. The witness had not been qualified as an expert.

## **Dispositional Issues**

**Doe v Mattingly 06-CV-5761 LEXIS 88320 (EDNY 11/6/06)**

A custodial mother filed a federal 1983 action against ACS. The father of the child had been the respondent in a neglect matter and the Family Court had issued an order of supervision. The father was alleged to have been violent to her and the child. The mother, who lived apart from the father with her family and the baby, was not accused of neglect and was not a respondent in the neglect matter. While enforcing the supervision order, ACS visited the mother's home repeatedly attempting to ascertain the status of the child, interview the mother and examine the baby. The federal court issued a preliminary injunction restraining ACS from requiring that the mother allow ACS into her home or conducting any searches of the baby. The federal court ruled that the Family Court order only mandated that the father be supervised and therefore, ACS' "supervision" could only extend to those periods of time where the father was have supervised visitation with the child and ACS had no authority to "supervise" the mother.

**Matter of Martin F. 13 Misc3d 659, 820 NYS2d 759 ( Fam. Crt, Monroe County 2006)**

During a permanency hearing, Monroe County Family court learned that the 3 year old child in foster care had been prescribed a psychotropic medication – "depakote sprinkles" – that the birth mother objected to her taking. The court held that if a parent of a child in foster care opposes psychotropic medication for the child, DSS cannot prescribe the medication and the court must hold a hearing on the issue with the parent having a right to counsel. The language of SSL 383-b that gives the agency authority to make medical decisions for foster children should not be interpreted to mean that a parent and a child's constitutional rights regarding consent for such medications can be ignored. Where a parent opposes psychotropic medication, the agency must prove by clear and convincing evidence that the medication is needed, that the benefits outweigh the adverse side effects and that there is not a less intrusive alternative that could be used.

**Matter of Alexander L. 34 AD3d 1359, 824 NYS2d 698 (4<sup>th</sup> Dept. 2006)**

The Fourth Department reversed a disposition on a FCA 1039-d “NRE” matter from Onondaga County Family Court. In the consented dispositional order on a severe abuse Article 10, DSS reserved its right to seek a “no reasonable efforts” disposition at a later date. Although the lower court did order the NRE when DSS later made the motion, the Family Court refused to apply the order retroactively to the original dispo date. On appeal, the Fourth Department reversed, citing the Court of Appeals in **Marino S.**, that a NRE order is applied retroactively

**Matter of Victoria X. 34 AD3d 1117, 824 NYS2d 477 (3<sup>rd</sup> Dept. 2006)**

A St. Lawrence County Family Court’s disposition in an Article 10 matter was reviewed by the Third Department. The father admitted that he knew his 17 year old son was sexually abusing his 13 year old sister and had done nothing to stop it. He also admitted that he had fired an arrow from a compound bow at his son to ‘scare him’. Based on these admissions, the court held a dispositional hearing at which the 13 year olds therapist testified. The therapist opposed any visitation for the father as the child expressed fear of him and indicated that she did not want to see him. The child said she had been sexually abused by her brother and her father. The court denied visitation and the Appellate Court concurred that visitation was not in the child’s best interests.

**Matter of Elijah Q. 36 AD3d 974, 828 NYS2d 697 (3<sup>rd</sup> Dept. 2007)**

A Clinton County law guardian brought a neglect petition regarding a mother and her three children. The mother did consent to a finding and the law guardian sought a dispositional order to require DSS to supervise the mother and the children. However, the court placed all the children in foster care. Since she had consented to the finding, the neglect was not appealable. The Third Department reviewed the dispositional order of placement. The Appellate Court found that the fact that neither DSS nor the petitioning law guardian had sought a placement was an important consideration but was not binding on the court. The placement in foster care was proper based on the aggregated behavior of the mother. A boyfriend had to be removed from her home by the police. Thereafter she allowed a man she had met through a telephone dating line, who she had only seen in person twice, to move into her home with her three children – all of whom have mental health issues and two of whom have physical problems. This man inflicted excessive corporal punishment on one of the children and was not allowed to be around the children unsupervised – however he continued to live in the house. The children reported being exposed to inappropriate physical contact between this man and their mother. The mother refused to attend to her own mental health issues, used excessive corporal punishment and undermined all the children’s mental health therapy. The children continually missed appointments with their therapists and the three year old had fallen out of a second story window under questionable circumstances. The mother did not properly attend to one child’s asthma and another child’s heart condition. One of the children had attempted suicide on two occasions and the mother minimized this disturbing behavior. The court found the mother’s “evasive

testimony” “particularly troubling”. One or some of the incidents may justify leaving the children in the care of the mother but in the aggregate, the mother’s actions fully support the lower court’s decision to place the children even though it had not been requested.

**Matter of Janyce B. 37 AD3d 459, 831 NYS2d 189 (2<sup>nd</sup> Dept. 2007)**

Suffolk County Family Court has no authority to order DSS to report a mother’s failed drug test results to the mother’s employer. The Court Attorney Referee exceeded any authority under FCA 255 in ordering DSS to notify an employer of the results of a drug test. Family Court is a court of limited jurisdiction.

**Matter of Sheena D. 8 NY3d 136, 831 NYS2d 92 (2007)**

The Court of Appeals reversed the Fourth Department ruling in this closely watched case and found that Family Court has no authority to issue an Art. 10 order of protection that continues until a child’s 18<sup>th</sup> birth day against a person who is related to the child by blood or marriage. The Family Court can only issue orders of protection against those related to the child by blood or marriage with an expiration date such as with a supervision order or with a placement order where the order is being reviewed and possibly extended in permanency hearings. The Court cited historical appellate case law to the contrary and indicated that it was wrongly decided.

**Matter of Alexander S. 39 AD3d 358, 833 NYS2d 489 (1<sup>st</sup> Dept. 2007)**

On appeal, the First Department modified the dispositional order of New York County Supreme Court regarding a neglect finding against a mother. The Appellate Division found that there was no evidence supporting the court’s order that the visitation with the children needed to be supervised as there was no proof that unsupervised visitation would be detrimental to the children. The lower court’s ruling that the mother pay a portion of the expense of the privately retained agency to supervise was therefore also reversed. Further the record did not support the order that the mother needed to be supervised by ACS or to undergo psychotherapy or medication.

**Matter of Kayla T. 15 Misc3d 606, 835 NYS2d 829 (Family Court, Chemung County 2007)**

Chemung County Family Court found the parents of a morbidly obese child to have violated an order of supervision and placed the child in foster care. The court reviewed the attempts that had been made for years with the family to try to reduce the child’s weight, have her eat healthy and exercise. The parents however seem unwilling to follow the doctor’s advice and the court’s orders. There is a severe danger to the child and removal is justified given years of efforts.

**Matter of Matthew E. 41 AD3d 1240, \_\_NYS2d\_\_ (4<sup>th</sup> Dept. 2007)**

The Fourth Department reversed an Erie County Family Court order that had placed a child in the custody of the maternal grandfather. The child had been placed in foster care when she was 3 months old with severe physical injuries. She had a lacerated liver and fractures to her legs, wrists, ribs and skull which had occurred when she was in the care of her parents. Although DSS had asked the grandfather if he wished to take custody at the time, he refused and thereafter only had one hour of supervised visitation with the child on a weekly basis. After the child had been in foster care for over 5 months, when it became obvious that the child was unlikely to be returning home, the grandfather then filed for custody of the child. The foster parents also filed for custody, which the lower court dismissed with prejudice. DSS did not support the grandfather's request for custody but the lower court awarded him custody after a hearing. On appeal, the Fourth Department reversed finding that the court had failed to find "extraordinary circumstances" to support the award of custody to a non-parent and that the lower court had given undue weight to the grandfather's biological connection to the child when the test should be extraordinary circumstances and then best interests. "A nonparent relative of the child does not have a greater right to custody than the child's foster parents" The Appellate Court reversed the dismissal of the foster parent's custody petition but made no further comment on the "right" of foster parents to file an Art. 6 custody petition.

**Matter of Damion D \_\_AD3d\_\_, 7/12/07 (3<sup>rd</sup> Dept. 2007)**

After terminating the rights of a Columbia County mother to her older children, the Family Court also found that she had neglected her youngest child. DSS then made an oral motion for a 1039-b order for order for no reasonable efforts regarding the youngest child based on the TPR of the older children and the lower court granted the motion. On appeal, the Third Department reversed saying that the statute clearly contemplates that such a motion will be on papers to allow the opportunity for the respondent to request a hearing on the motion. The fact that DSS had indicated previously on the record that it might seek such an order in the future was not sufficient notice. Also although the statute does not require an actual hearing on the motion, due process would require a hearing if the respondent alleges genuine issues of fact.

# The New CPS Access Law

Chapter 740 of the Laws of 2006

Effective 1/18/07

By Margaret A. Burt, Esq.

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## Amends FCA 1034 (2) and SSL 424

- Purpose is to give local CPS ability to seek assistance from the court when unable to access a child during a CPS investigation
- Legislature concerned about several reported cases where DSS did not see the child and child was injured
- Legislature felt current 1034(2) inadequate to meet need to see child

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## WHEN?

- CPS would have to have an open investigation for which no petition had been filed
- CPS needs fuller access to the child and/or the home to assess the situation then the parent is willing to consent to
- CPS has advised parent that they may consider seeking a court order for access

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## Two Different Types of Orders

“ACCESS” to the child  
“ACCESS” to the home

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### “Access to the child” would require proof that:

- CPS has “reasonable cause to suspect” that the child’s “life or health may be in danger”
- CPS cannot locate child or has been denied access to the child “sufficient to determine their safety”
- CPS has advised parent or PLR that they may seek an order from the court

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- Court can consider:
  - nature and seriousness of allegations
  - source’s relationship and ability to observe
  - age and vulnerability of child
  - prior relevant CPS or criminal history
  - all relevant information so far obtained in investigation
  - potential harm to child if investigation not complete

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What can be ordered?  
Require the parent or PLR  
to produce the child at a  
particular location for an  
interview or observation  
outside of the presence of  
the parent or PLR

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The court must determine  
what actions are necessary  
in light of the child's safety  
but are the least intrusive to  
the family and must specify  
what action is to be taken  
and by whom

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"Access to the home" would require  
proof:

- CPS has "probable cause to believe that an abused or neglected child may be on the premises"
- CPS has been denied access to the home sufficient to evaluate the home
- CPS has advised parent or PLR that they may consider seeking a court order

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- Court can consider:
- nature and seriousness of allegations
- source's relationship and ability to observe
- age and vulnerability of child
- prior relevant CPS or criminal history
- all relevant information obtained so far in investigation
- potential harm to child if investigation not complete

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What "access to the home" can be ordered?

- Authorize CPS to enter the home
- CPS to determine if child is present
- CPS to conduct a "home visit"
- CPS to evaluate the home environment

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The court must determine what actions are necessary in light of the child's safety but are the least intrusive to the family and must specify what action is to be taken and by whom

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### How does is it actually work?

- CPS in the field, has issue, discusses internally
- CPS advises parent, hopes parent changes mind
- CPS CAN but does not HAVE to call law enforcement
- If called, law enforcement must come

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### How does it actually work?

- If court is open, agency must personally appear, can apply orally or in writing (OCA forms will be available) – application is ex parte and should be immediate
- If court is not open, a Family Court Judge must “be available at all hours” and such requests can be done by phone or in person
- Papers or person must be sworn, process recorded
- Report within 3 days

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Are you telling me that they are gonna wake me up in the middle of the night???

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**What is role of law enforcement?**

- If called, they must come
- If they are there, must remain at the location where the child is believed to be while order is sought
- Can not enter premises without a search warrant or another constitutional basis for entry

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**Consider:**

- What kind of cases is this likely? educational neglect vs bruises on infant's face
- Vast majority of parents do allow access
- Use of law to obtain consent to access
- No reason to do this if removal necessary BUT no reason to do a removal if this could resolve issue
- Not likely to have many requests after hours – wait until morning to seek an order if safe to do so, if not safe, might need a removal anyway

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**Consider:**

- May need to be VERY specific, exactly who to bring child where – statute mentions CAC but could also consider other locations
- May need to specify when action must occur – “immediately” or “by 10 AM on Friday the 19<sup>th</sup> of January”
- Authorization of role of law enforcement?

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**Also:**

- Court still has authority to issue appropriate orders when Art. 10 petition filed – removal, o/p, warrants. order to produce the child

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## Continuing Legal Education Credits Instructions

The CLE attendance roster and evaluation form is attached.

For your convenience, you may mail the CLE roster and evaluation in the same envelope you use for regular rosters and evaluations.

Thank you,

Marti Murphy  
SUNY TSG  
(518) 474-2424  
[Gg7252@dfa.state.ny.us](mailto:Gg7252@dfa.state.ny.us)

The UB Law School has been certified by the New York State Continuing Legal Education Board as an accredited provider of continuing legal education in the state of New York for a period of March 11, 2005 – March 10, 2008. The University of Buffalo Law School has a financial hardship policy. For further information on the policy, contact:  
Lisa Mueller CLE Coordinator at (716) 645-3176.

# REGISTRY FOR CERTIFICATE OF PARTICIPATION

NYS Office of Children and Family Services/BT  
and the University at Buffalo Law School

## *“Updates in Legal Issues in Child Protective Services”*

Trainer: **Margaret Burt**

Location Site: \_\_\_\_\_

Date: **September 10, 2007**

Time: **1 – 3 pm**

*You must sign in and provide a mailing address to receive a certificate of attendance. Certificates will be mailed to the address provided below. **PLEASE PRINT CLEARLY!***

### **For Attorneys Only**

<b>Name (Printed)</b>	<b>Mailing Address</b>	<b>E-Mail or Phone #</b>
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**Continuing Legal Education Evaluation**

**Course date** \_\_\_\_\_

Please complete this form following the Continuing Legal Education Course. **Thank you!**

Directions: Please circle the appropriate answer or ranking.

Are you taking this course to fulfill your Mandatory Continuing Legal Education requirements?                      Yes                      No                      N/A

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	<b>Poor</b>	<b>Average</b>			<b>Excellent</b>
• How would you rate this session?	1	2	3	4	5
• How would you rate the instructor Margaret A. Burt, Esq.	1	2	3	4	5
• How would you rate the quality of this presentation?	1	2	3	4	5
• How would you rate the written materials?	1	2	3	4	5

What did you like about this course?  
\_\_\_\_\_  
\_\_\_\_\_

Do you have any suggestions that would improve this course?  
\_\_\_\_\_  
\_\_\_\_\_

Do you have any suggestions for future CLE courses?  
\_\_\_\_\_  
\_\_\_\_\_

**Name (Optional):** \_\_\_\_\_ **Phone:** \_\_\_\_\_  
**Thank you!**