



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Children's Administration
Olympia, Washington 98504

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TO: Children's Administration CPS Staff
Regional Administrators
Deputy Regional Administrators

FROM: Tammy Cordova
Interim Director of Policy and Practice Improvement
Children's Administration

SUBJECT: URGENT POLICY AND PROCEDURE UPDATE REGARDING INTERVIEWS
OF CHILDREN BY CHILD PROTECTIVE SERVICES SOCIAL WORKERS

This memorandum is in response to the anticipated impact of a recent 9th Circuit Court of Appeals decision in *Greene v. Camreta*, a case that originated out of Oregon. This case focuses on in-school interviews of children by Child Protective Services (CPS) social workers.

Court Decision

Oregon CPS and Law Enforcement jointly interviewed a child alleged to have been sexually abused. The interview took place in the child's school. The Court determined that the in-school interview violated the child's Fourth Amendment right.

The parties in the case agreed that the interview was a seizure (the child was not free to leave the interview) for Fourth Amendment purposes. The Court said this particular seizure and interview was unreasonable and, therefore, unconstitutional.

To justify this interview (interrogation), the seizure would have to be based on "exigent circumstances," a court order or warrant, or parental consent.

Exigent circumstances permit an officer or social worker to seize a child without a warrant or parental consent if the investigator "reasonably believes" that:

- Medical issues need to be addressed immediately, or;
- The child is or will be in danger of harm if the interview or physical exam is not immediately completed.

CPS Impact

It appears that CPS is only impacted by this court decision when an alleged victim interview is conducted **and**:

1. Law enforcement is directly involved in the seizure and interrogation of the child, and law enforcement and/or CPS believe a crime has been committed; and
2. The child is "seized" in order to be interrogated – that is, the child is not free to leave or believes he or she is not free to leave, and is questioned involuntarily.

The decision does not likely apply to:

- Interviews of children where law enforcement is not present and a crime is not suspected (e.g., neglect cases);
- Interviews or contacts with children, where the child is not "seized" (example, the child previously told an adult or school staff or is asked by CPS, "Would you be willing to talk with me about . . .?" and agrees to talk).

New Interview Procedure

The following new procedure is **effective immediately**. CPS social workers will:

1. Ensure alleged child abuse interviews are voluntary (not seizures) by:
 - a. Asking the child during the introduction if they will talk with the social worker.
 - b. Re-asking the child during the interview if it is okay to continue talking or if they want a break. This can be done when they appear uncomfortable during the interview, or at any time.
 - c. Asking school staff, in the presence of the child, where they will be, if the child wants to return to class, wants to have a third party present, or wants to ask a question of school staff.
2. Document when interviews are not audio recorded, the following information in case notes:
 - a. That the questions above were asked and the child's responses.
 - b. Who was present for the interview?
 - c. Where the interview occurred.
 - d. A near verbatim summary of the questions asked and the responses by the child.

Current Policy and Procedure

To further ensure that interviews are voluntary, CPS must continue to follow these current policies:

- Ask children if they would like a third party to be present at the interview. CPS will make reasonable efforts to have the interview observed by a third party so

long as the child doesn't object and the presence by a third party will not jeopardize the investigation Practices and Procedures 2331 (D)(2)(c).

- Make reasonable efforts to use audio recordings on physical and sexual abuse cases whenever possible and appropriate Practices and Procedures 2331 (D)(2)(e). CPS is also encouraged to use audio recordings on neglect cases where law enforcement is present.

Next Steps

There will be further review in the *Greene* case. Meanwhile, CA, Washington Association of Prosecuting Attorneys (WAPA) and law enforcement will work together in developing guidelines for joint in-school interviews. WAPA has issued guidelines for law enforcement and for prosecutors (see below).

The Practice and Procedures Manual, chapter 2000, will be updated to reflect the new procedures.

Resources

If you have questions about this policy clarification, please contact Colette McCully, CPS Program Manager at 360.902.7918 or colette.mccully@dshs.wa.gov