



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

January 7, 2010

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

Washington Association of Prosecuting Attorneys (WAPA)
Email regarding Guidelines for Law Enforcement and Prosecutors

From: Andy Miller [mailto:andy_miller@co.benton.wa.us]
Sent: Thursday, January 07, 2010 2:33 PM
To: Huber, Sheila (ATG)
Cc: Lisa Johnson; Tom McBride
Subject: Fwd: FYI - child interviews and the recent Camreta decision

>>> "Tom McBride" <tmcbride@waprosecutors.org> 1/5/2010 12:02 PM >>>

To all Prosecutors - a great deal of attention is being given to a recent 9th Circuit case. Your special assault deputies, local law enforcement, and CPS are talking about how to integrate this opinion into current practices. Andy Miller, Chair of the Special Assault Committee, Lisa Johnson, Vice-Chair, and myself have been somewhat concerned that the email debate has settled on no interviews without a court order - in our view that is not always required and could place children at risk. The following short memo recommends first deciding whether you have a seizure (an issue conceded and not litigated in Camreta), as well as reminding to consider whether exigent circumstances justify a seizure and interview. FYI

The recent case of Greene v. Camreta, 2009 WL 4674129 (9th Cir.), a civil case that originated out of Oregon, has produced a number of questions regarding our practice in Washington State regarding protocols and practices for interviewing suspected victims of child abuse. It is our understanding that the defendants (police and DSHS) are making a motion for the case to be heard En Banc. However, in the interim, prosecutors, law enforcement and CPS caseworkers should be mindful of the holding of this case, while taking the opportunity to clarify your own practices and procedures.

Relevant facts of Camreta:

Defendant Greene was arrested for the sexual abuse of a 7 y.o. neighborhood boy. During the investigation, the victim's mother, who knew the defendant and his wife, reported that the defendant's wife mentioned that she didn't like the way her husband would make their two daughter sleep in his bed when he was intoxicated and that she didn't like the way he acted when they sat on his lap. Upon hearing of this statement and having learned that the defendant was released and was having contact with his minor daughters, Camreta, a DHS worker (CPS equivalent), accompanied by a uniformed police officer, went to the nine y.o. daughter's school to interview her. (This reportedly occurred three days after the receipt of the initial report). They requested a private office to conduct the interview, the interview lasted between 1-2 hours, the interview was not recorded. Based upon the interview "Camreta believed" that the defendant had sexually abused his daughter. When contacted, the defendant and his wife denied any sexual abuse but agreed to a safety plan where the defendant would not have unsupervised contact with either of his daughters. The defendant was later indicted for the abuse of his daughters.

The defendant's wife sued DHS and the law enforcement agency alleging, in addition to other claims, an unlawful seizure of her daughter without a warrant, probable cause or parental consent - contrary to the 4th Amendment. A three-judge panel from the Ninth Circuit agreed.

Considerations for law enforcement officers and CPS caseworkers:

I. Is the interview a seizure?

Not all interviews of child victims will necessarily be seizures for purpose of 4th amendment. If the interview is not a seizure, there is no need to obtain consent or court order for the interview.

Whether an interview is a seizure will depend on the totality of the circumstances of the interview. One test for determining whether a person has been seized is whether a reasonable person would have felt free to leave or otherwise decline the officer's request and terminate the interview, California V. Hodari D., 111 S. Ct. 1547, 1551, 113 L. Ed. 2d 690.

Under the facts and reasoning of Green v Camreta, the interview of the child at the school was a seizure.

Many factors will determine whether an interview is a seizure. For example:

- the length of the interview;
- the location of the interview (home, school or street);
- who initiated the interview (the victim called police or told someone who called the police vs. police contacting the victim pursuant to an ongoing investigation);
- the number of interview participants and their roles;
- the attire of the investigators, including whether a firearm was present or visible;
- the language and tone of the investigator/interviewer;
- how aggressive or confrontational the questioning (volunteered report or denial followed by questions that challenge the denial);
- physical contact between the investigator and the person being interviewed.

Officers and CPS workers should document in detail the circumstances of the interview, including the above factors. This documentation may determine whether a subsequent court will decide if the interview was a seizure.

II. If the interview does constitute a seizure do exigent circumstances allow for the interview absent parental consent or court order?

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

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

An argument that "exigent circumstances" exists will be more compelling if the interview is conducted with urgency and before the child returns home to either the alleged abuser or the perceived threat. Law enforcement officers should include language in their report as to why the officer believed there were exigent circumstances to interview the child without the consent of the parent. Information that the child has been abused, access by the suspect to the child, prior injuries or concerning behavior by or to the child, may justify a warrantless interview of a child. The report should also reference whether a decision was made, following the interview, to place the child into protective custody, and if so, why or why not.

Documentation of interviews pursuant to exigent circumstances is very important. Recording the interview is encouraged, insofar as it satisfies the documentation requirement and documents the length of the interview. At a minimum, law enforcement and CPS caseworkers should document who was present for the interview, the circumstances and physical set up of the interview, and provide a near verbatim summary of the questions asked and the responses by the child. In deciding the method of documentation, consideration should be given to the Children's Administration policy that all interviews of children, who are suspected victims of sexual abuse, should be audio-recorded.