



Jennifer Renne

National Resource Center on Legal and

Judicial Issues

ABA Center on Children and the Law

**Child Safety: A Guide for
Judges and Attorneys**

Protecting Delaware's Children

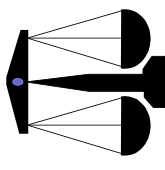
June 3-4, 2010

Dover Downs, Delaware

“Child Safety: A Guide for Judges and Attorneys”

Background and purpose

Partnership between RC for Child Protective Services and RC on Legal and Judicial Issues



- Safety planning as a shared responsibility
- Judges make ultimate safety decisions: whether to remove a child, return a child home, etc.
- Judges and lawyers often lack sufficient training in basic principles of safety assessment and planning
- Caseworkers often make safety recommendations based on inadequate information or faulty assessments
- Judges asking the agency the right questions in each and every case leads to an improvement in agency practice

Purpose of Guide

Provide for judges and attorneys practical information about child safety so they can:

- Assess whether agency recommendations are based on sufficient information; and ask for additional information to be gathered and reported to court;
- Assess whether agency recommendations are based on thorough analysis of specific criteria to child safety decision making;
- Make good decisions about child safety.
 - **How do you know whether a severe injury of a child represents a pattern of dangerous family conditions or is a one-time incident?**
 - **How do you determine whether a child is safe?**
 - **How do you determine whether to return a child?**
 - **What criteria do you use to determine safety?**





How to Use the Guide: Chapters & Benchcards

Chapter 1. Introduction

Chapter 2. Information Drives Decisions About Safety

Chapter 3. Key Elements for Safety Decision-making: Standardizing Criteria for Threats, Vulnerability, and Protective Capacity

Chapter 4. Putting the Information Together and Making a Safety Decision

Chapter 5. Safety Plans

Chapter 6. When an In-Home Safety Plan Is Sufficient, Feasible and Sustainable: Reasonable Efforts to Prevent Placement



Chapter 7. The Out-of-home Safety Plan: Tasks and Responsibilities

Chapter 8. The Court-Ordered Case Plan

Chapter 9. Evaluating Progress Using Safety Criteria

Chapter 10. Reunification: A Safety Decision

Chapter 11. Safety Criteria Help Determine When to Terminate Court Jurisdiction



How to Use the Guide

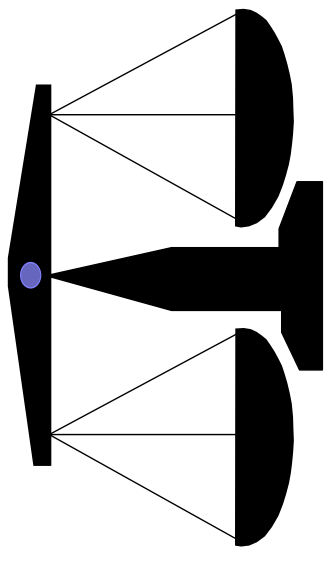


- **Text explains basic principles of safety decision-making**
 - **Information that needs to be gathered**
 - **How to process and understand that information to make appropriate safety decisions**
- **Benchcards**
 - **To be used as tools to remind judges and attorneys of essential criteria for safety decision-making**
 - **Creates accountability for agency**
 - **All parties can be using benchcards to prepare**
- **Case examples**
 - **Illustrate principles; apply concepts to case scenarios**

Legal Terms

Statutes may have language similar to:

- Imminent risk
- Risk of harm
- Imminent risk of severe harm
- Threat of harm
- Threat of imminent harm



Distinction between safety and “at risk”

Safety → concerned about imminence and severe consequences due to things being out of control

Risk → vague concept regarding whether something might occur if there is not intervention; risk may be mild or serious.

Regardless of the terminology in your statute, the critical question is whether or not the child is safe.

Definitions

Safe child

“*Vulnerable*” children are safe when there are no “*threats of danger*” within the family or home **OR** when the caregivers possess sufficient “*protective capacity*” to manage or control any threats.

Unsafe child

Children are unsafe when they are “*vulnerable*,” there are “*threats of danger*” within the family or home **AND** the caregivers have insufficient “*protective capacities*” to manage or control the threats, making outside intervention necessary..



6 categories of information to collect on each case so that the judge can assess threats of danger, protective capacities, and child vulnerability.

- 1 - What is the nature and extent of the maltreatment?**
- 2 - What surrounding circumstances accompany the maltreatment?**
- 3 - What are the overall, pervasive parenting practices used by the caregiver?**
- 4 - What are the disciplinary approaches and typical context in which such discipline is used by the caregiver?**
- 5 - How does the caregiver function overall in managing his or her own life?**
- 6 - How does the child function on a daily basis?**

Threats of Danger

- 15 universal safety threats
- A child is unsafe when one or more of these threats exist, and the parent/caregiver lacks sufficient protective capacity to manage or control the threats to a vulnerable child
- Threats of danger present in the form of behavior, emotion, attitude, perception or situations
- Guide contains a description of these conditions, and several examples of how these conditions might be manifested within a family

Threats of Danger

Safety Threshold Criteria

- A family condition is **out-of-control**
- A family condition is likely to result in a **severe** effect
- The severe effect is **imminent**
- The family condition is **observable** and can be **clearly described and articulated**
- There is a **vulnerable child**

Threats of Danger

1. No adult in the home is routinely performing basic and essential parenting duties and responsibilities.
2. The family lacks sufficient resources, such as food and shelter, to meet the child's needs.
3. One or both parents lack parenting knowledge, skills, and motivation necessary to assure a child's basic needs are met.
4. One or both parents' behavior is violent and/or they are behaving dangerously.
5. One or both parents' behavior is dangerously impulsive or they will not/cannot control their behavior.
6. Parents' perceptions of a child are extremely negative.
7. One or both parents are threatening to severely harm a child, are fearful they will maltreat the child and/or request placement.
8. One or both parents intend(ed) to seriously hurt the child.

9. Parents largely reject CPS intervention; refuse access to a child; and/or the parents may flee.
10. Parent refuses and/or fails to meet child's exceptional needs that do/can result in severe consequences to the child.
11. The child's living arrangements seriously endanger the child's physical health.
12. A child has serious physical injuries or serious physical symptoms from maltreatment and parents are unwilling or unable to arrange or provide care.
13. A child shows serious emotional symptoms requiring immediate help and/or lacks behavioral control, or exhibits self-destructive behavior and parents are unable to provide care.
14. A child is profoundly fearful of the home situation or people within the home.
15. Parents can not, will not or do not explain a child's injuries or threatening family conditions.

Protective Capacities

- Refers to personal and caregiving characteristics that specifically and directly can be associated **with being protective** to one's young
- **Personal qualities or characteristics** that contribute to vigilant child protection
- Fundamental **strengths** that prepare and empower the person to be protective
- Guide contains a description of **behavioral, cognitive and emotional protective capacities**, and several examples of how a parent might express these strengths

Cognitive Protective Capacities

- refers to *knowledge, understanding, and perceptions* contributing to protective vigilance.
- parents with low intellectual functioning can still protect their children

Does the parent recognize she is responsible for her child, and recognize clues or alerts that danger is pending?

For example, the parent:

- articulates a plan to protect the child
- is aligned with the child
- has adequate knowledge to fulfill care-giving responsibilities and tasks
- is reality oriented; perceives reality accurately
- has accurate perceptions of the child
- understands his/her protective role
- is self-aware as a parent

Behavioral Protective Capacities

- refers to *actions, activities, and performance* that result in protective vigilance.
- behavioral aspects show it is *not enough to know* what must be done, or recognize what might be dangerous to a child; the parent must *act*.

Behavioral protective capacities demonstrated when the parent:

- is physically able
- has a history of protecting others
- acts to correct problems or challenges
- demonstrates impulse control
- demonstrates adequate skill to fulfill care-giving responsibilities
- possesses adequate energy
- sets aside her/his needs in favor of a child
- is adaptive and assertive
- uses resources necessary to meet the child's basic needs

Emotional Protective Capacities

- refers to *feelings, attitudes and identification* with the child and motivation resulting in protective vigilance.
- 2 issues (1) the attachment between parent and child, (2) the parent's own emotional strength.

Emotional protective capacities can be demonstrated when the parent:

- is able to meet own emotional needs
- is emotionally able to intervene to protect the child
- realizes the child cannot produce gratification and self-esteem for the parent
- is tolerant as a parent
- displays concern for the child and the child's experience and is intent on emotionally protecting the child
- has a strong bond with the child, knows a parent's first priority is well-being of the child.
- expresses love, empathy and sensitivity toward the child; experiences specific empathy with the child's perspective and feelings

Vulnerability of Child

- Assessing the **child's ability to protect himself** from threats
- **Criteria** to consider include age, physical ability, cognitive ability, developmental status, emotional security, and loyalty to the family
- Vulnerability must be **judged in light of the threats** that are occurring in a family and the lack of protective caregivers
- **Danger of oversimplifying** the assessment of whether the child is vulnerable

The following help determine or increase a child's vulnerability:

- lacks capacity to self-protect
- susceptible to harm based on size, mobility, social/emotional state
- young children
- physical or mental developmental disabilities
- isolated from the community
- lacks the ability to anticipate and judge presence of danger
- consciously or unknowingly provokes or stimulates threats and reactions
- poor physical health, has limited physical capacity, is frail
- emotional vulnerability
- impact of prior maltreatment
- feelings toward the parent – attachment, fear, insecurity or security
- ability to attach and vulnerability to future separations
- ability to articulate problems and danger

Overview of the decision process

- Court receives sufficient information about the family (the six questions).
- The court weighs the information against criteria for threat of danger (15 threats) and determines if one or more threats exists.
- Court receives sufficient information to understand if the children are vulnerable, analyzes it, then determines if they are vulnerable
- Court considers the criteria for protective capacities (protective capacities), determines whether protective capacities exist, and if they are sufficient to manage specific threats.

-
- If no threats are present, the child is safe.
 - If threats are present, but the child is not vulnerable, the child is safe.
 - If threats are present with a vulnerable child, but sufficient protective capacities exist, the child is safe.
 - If threats are present, child is vulnerable and protective capacities are insufficient, the child is unsafe.

How does sufficient information inform necessary safety decisions throughout the life of a case?

- Court is **presented with information** that meets criteria that there is **present danger** and **immediate protective action is necessary**
- **Court prompts a revisiting** of **protective action** as soon as possible, based on **full information** collection by CPS and parties
- Revisiting the protective action implies that **full information** allows for **consideration of whether impending danger exists**, whether the immediate **protective action taken can be modified** and if necessary, what type of **comprehensive plan to assure safety** can be put into place. (in-home safety plan to out of home safety plan)

How does sufficient information inform necessary safety decisions throughout the life of a case?

- An **out of home safety plan** is selected only when it can be shown that **insufficient protective capacities** by adult caregivers exist; that an **in-home safety plan** managed by CPS is **not sufficient to control for safety**.
- If out of home safety plan is the option, **conditions for return** are clear to court and family. These conditions are related to behaviors and circumstances that must exist that would allow for an **in-home safety plan** managed by CPS that is both **feasible and sustainable**.

Reasonable Efforts

Actions or Services to Control or Manage Threatening Behavior

This type of service in a safety plan is concerned with aggressive behavior, passive behavior or the absence of behavior – any of which threatens a child's safety. Activities or services that are consistent with this action can include, for example:

- In-home health care
 - Supervision and monitoring
 - Stress reduction
 - Out-patient or in-patient medical treatment
 - Substance abuse intervention, detoxification
 - Emergency medical care
 - Emergency mental health care
-
- **Actions or Services that will Manage Crises**
 - **Actions or Services Providing Social Support**
 - **Actions or Services that Can Briefly Separate Parent and Child**
 - **Actions or Services to Provide Resources (Practical Benefits the Family Might Otherwise Be Unable to Afford)**

How does sufficient information inform necessary safety decisions throughout the life of a case? CONDITIONS FOR RETURN: SAFETY INFORMS THE REUNIFICATION DECISION

- **Threat to safety:**

- **Caregiver cannot control behavior**

Mother is so depressed that she cannot provide basic care to her 3 children, ages 7, 2 & 3. Lethargic, sleeps, refuses to take meds, cannot keep home safe. She allows the 7 year old to basically parent her 2 and 3 year olds in terms of food, clothing, supervision.

How does sufficient information inform necessary safety decisions throughout the life of a case? CONDITIONS FOR RETURN: SAFETY INFORMS THE REUNIFICATION DECISION

Treatment based conditions for return

- Mother gets evaluation and follows recommendations
- Mother keeps house clean
- Mother demonstrates ability to feed and provide basic care to children
- Mother's depression lessens or in control
- Mother cooperates with agency

Safety based conditions for return

- Adults are available to assist with childcare supervision and protection as often and for as long as necessary
- Responsible adult assures home is safe and clean
- Mother follows necessary regimen to treat her depression
- Mother allows for in-home safety plan including access to providers and services

Case plan that targets safety

Mother participates in services (identified in plan) that:

- Decrease her lack of control over her depression
- Demonstrate effective coping
- Demonstrate effective energy and activity to perform basic parenting duties of feeding, clothing, supervision, protection from harm
- Carry out essential tasks related to self-care, finances, food/clothing
- Demonstrate ability to delay own needs to meet needs of children
- Demonstrate appropriate expectations of and sensitivity to children and their needs.

The Out-of-home Safety Plan: Tasks and Responsibilities

An out-of-home safety plan becomes necessary whenever an in-home safety plan is not sufficient, feasible or sustainable.

An out-of-home safety plan poses two issues the court must decide:

- 1) What kind and amount of contact will there be?**
- 2) What are the minimum expectations or conditions for the child to return home?
(establishing clear objectives)**

Federal law requires the court to hold annual permanency hearings (periodic reviews every 6 months), and determine:

- Safety of the child;
- Continuing necessity for and appropriateness of the placement;
- Extent of compliance with the case plan;
- Extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and
- A likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship. 42 U.S.C. 675(5)(B).

Unclear, imprecise, vague conditions for the child's return produces bad outcomes.

Parents being **confused** about what they must do or accomplish creates barriers to the child's safe and timely return.

Failing to identify and explain conditions for return leads to lower rates of reunification.

Some courts and agencies **decide to reunify based entirely on parents following case plan requirements** such as attending service classes, or appointments. **More important is whether parents' participating in classes or counseling changes their skills, behavior, attitudes, and conditions** that brought the family before the court.

Perfect attendance may do nothing to make the home safe. Or a parent may not attend services and yet still satisfy conditions for return.

Federal law also establishes time limits for children in an out-of-home placement. These time limits make it essential that:

- The case plan lays out an **effective and expedient strategy to prepare parents** to ensure children's safety; and
- **Progress** under the case plan is **evaluated frequently** and **revised** when needed.

Evaluating Progress Using Safety Criteria

Judge must evaluate progress during the review hearing no matter how many other many issues need to be resolved. The judge evaluates progress to determine whether:

- The safety plan and case plan are appropriate;
- Services, actions, tasks and responsibilities are being carried out according to plan;
- Parents and others are participating according to commitments made in both plans;
- Progress is occurring;
- Conditions for return have been met; and
- The safety plan or case plan must be modified or revised.

Checklists for judges:

- **Safety related questions for judges to consider**
- **Determining whether to reunify**
- **Case closure**

Contact Information

Jennifer Renne,

NRC on Legal and Judicial Issues

202-662-1731

Rennej@staff.abanet.org

