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# Parenting Evaluations for the Court

*Care and Protection Matters*

Lois Oberlander Condie

A large, light-colored silhouette of a child and an adult holding hands, positioned on the right side of the cover. The child is on the left, and the adult is on the right, with their hands clasped together. The background is a dark, textured grey.

# Parenting Evaluations for the Court

## *Care and Protection Matters*

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# **Parenting Evaluations for the Court**

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# Preface

The impetus for this book came from the applied clinical work and research of a group of professionals at the University of Nebraska Department of Psychology, the University of Nebraska Law School, the University of Virginia Law School, the University of Massachusetts Medical Center, and Harvard Medical School. Combining the research methods of psychology with the concerns of the law, this volume explores important aspects of the care and protection system. It is based on a review of critical issues in care and protection regulations, laws, and procedures concerning the well being of children whose parents face the scrutiny of the child protective services system. It will be of special interest to forensic mental consultants and evaluators, attorneys, judges, child protective system administrators and workers, and policy makers. Applied researchers will find that the book provides valuable insights into the complexity of the psychological aspects of the care and protection system.

Psychology and law subsumes many specialty areas. Children and the law is a specialty that is coming of age in terms of its heavy emphasis on scientific integrity, forensic relevance, and standards of practice. This book builds upon the work of clinical psychologists and psychiatrists, developmentalists, and forensic mental health experts who are concerned with the relevance of the mental health professions to care and protection

matters. It is intended as an introductory overview to consultation and forensic evaluation in the subspecialty of children and law, with an emphasis on children whose parents are involved with the care and protection system and parents who potentially might face termination of their parental rights. Although termination of parental rights cases are the predominant focus of the book, attention also is given to consultation and evaluations for service planning purposes, the impact of maltreatment on children, diagnostic and treatment planning purposes, issues of family process, amenability to treatment, potential family reunification, and post-termination pre-adoption questions.

One purpose of this book is to increase the legal relevance of forensic consultation and evaluations in care and protection matters. The proposed assessment models are based on an analysis of common features of regulations and statutes relevant to parental rights termination. Questions of the care and protection of children frequently require courts to make legal decisions about children based on legally defined infringements by parents of their caregiving responsibilities. In recent decades, courts have turned increasingly to mental health professionals to assist them in considering a range of factors that are relevant to statutes governing the care and protection of children and termination of parental rights. At the same time, the legal system has challenged the role of experts by setting high admissibility standards for scientific integrity and objectivity in forensic consultation and assessment practice. The purpose of this book is to lay a foundation for solid conceptual and methodological approaches for use by mental health professionals in making an effective response to relevant legal standards and to the needs of individuals about whom the law makes care and protection decisions.

The second purpose of this book is to promote the scientific integrity of forensic consultation and assessment in care and protection matters. During the last three decades, research has produced findings that are advancing the subspecialty in a number of ways. Although there is much applied research to be done, it is possible to use leading theories and research findings to advance the standards of practice for psychological consultation in care and protection matters. This book was written to provide examples of ways to integrate theory and research into practice. It offers conceptual models for consultation and assessment of parenting concerns that reach the level of state scrutiny, and consultation and assessment of the impact on children. It is hoped that this book will further enhance both research and practice in the subspecialty of children and the law.

This work is the product of my association with many individuals over the course of my career. It represents the culmination of research with Dr. Gary Melton, a post-doctoral fellowship with Dr. Tom Grisso, and

grant funding on a project early in my career from Dr. John Monahan. Each of these associations provided the framework for my research and clinical consultation that naturally segued into this topic. It also is an extension of clinical work with Ms. Bev Amazeen, the Honorable Jay Blitzman, Dr. Linda Cavallero, Dr. Geri Fuhrmann, Attorney Margaret Geary, Attorney Barbara Hannigan, Mr. Mark Horwitz, Ms. Susie King, Dr. Peter Metz, Ms. Felicia Rao-Hagberg, and Attorney Thomas Stylianos.

This book was strongly influenced by my association with Dr. Linda Forsythe, Dr. Steven Nickman and the members of the Adoption Study Group at Massachusetts General Hospital. Their seminal work and presentations in this area of study provided me with a rich source of data, articles, theories, and professional consultation. I am grateful to individuals who reviewed early drafts of chapters of this book, including Dr. David Doolittle, Ms. Jessica Geier, Dr. Alan Tomkins, and Dr. Vicky Weisz. I am grateful for the expert assistance of Dr. Ronald Roesch in his capacity as editor of this Kluwer-Plenum series. Finally, a warm thanks to Dr. Don Condie and Dr. Alan Goldstein, who listened to and provided feedback on my ideas and concerns as I completed this project; and to Ms. Emma Condie, who made meaningful most of what I know about developmental psychology.

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# Introduction to Care and Protection Evaluations

This introductory chapter describes the landscape of psychology, law, ethics, and standards of practice for forensic mental health evaluations in care and protection matters. Parenting involves a broadly defined set of skills and abilities embedded in cultural and other contextual features. Measures for child safety within families, within cultural groups, and within legal definitions and statutes, vary across jurisdictions. However, statutorily defined infringements of parenting responsibilities also contain some common elements across jurisdictions. Most statutes address physical abuse, sexual abuse, and physical and emotional neglect. The breadth and specificity of definitions vary widely, as will be illustrated in later chapters. Some statutes increase specificity by adding inclusionary or exclusionary criteria based on child developmental trajectories, sometimes incorporating developmental principles or constructs into statutory language. Definitions in state statutes show some correspondence to mental health and social service definitions of child maltreatment, but there are many differences in constructs and definitions across the legal, social services, and mental health systems.

The decision-making process used by courts in determinations of whether to assume jurisdiction over a care and protection matter has evolved over the past century. Societal developments have influenced judicial judgments concerning the nature and seriousness of harm that merits jurisdiction, the weight accorded to children's right and the rights of parents, and the responsibilities of the child protective services system after jurisdiction is assumed. Courts face more and more nontraditional familial structures and dynamics, challenging traditional notions of family functioning and family safety. Mandated reporting requirements have influenced the variety and frequency of maltreatment concerns that enter the legal and child protective services system. Each of these factors has influenced the court's interest and willingness to turn to forensic evaluation and consultation. Conducting parenting evaluations in the context of care and protection matters requires a broad foundation of theoretical knowledge and forensic clinical assessment skills. A realistic appraisal of cases dynamics and the reasonableness of referral questions requires knowledge of the history of the child protective services system, and how the current evaluation context is similar to and different from past concerns about families and child safety. Evaluators must be familiar with relevant statutes, case law, ethical codes and practice guidelines, and research relevant to evaluating parents and children in the context of court proceedings.

The first two chapters of this book cover foundations of forensic psychology and its application to the legal and social service systems in care and protection matters. Content includes legal tension between children's rights and the rights of parents, the role of state intervention in the lives of families, legal and regulatory exceptions to family privacy, the ethical contours of evaluations, and existing guidelines for practice. Chapter three addresses the need to frame referral questions in a manner conducive to good assessment practice and legal concerns for evaluations. Typical problem questions are addressed, along with suggestions for avoiding or redefining problem referral questions. Chapters four through seven cover theory and empirical research relevant to parenting evaluations for the court. Foundational issues include the psychology of parenting, theories and associated features of parenting behavior, child development and the parenting needs of children, and research on the impact of child maltreatment on children, families and society. Multicultural issues in parenting and child maltreatment are reviewed. Specific issues related to parental self report, children's competence as reporters of maltreatment, children's suggestibility, embellishments, and minimization are addressed. Chapter eight addresses evaluation methodology for caregivers and children. Interview and assessment methods for parents and children are reviewed, along with the relevance to parenting evaluations of risk assessment, the assessment

of malingering and dissimulation, and parental amenability to rehabilitation. The final chapter gives suggestions for report preparation, report organization, and strategies for interpretation. Research relevant to interpretive points is described, providing the reader with ready access to recent research developments on issues that commonly are the subject of direct and cross-examination. Pragmatic issues relevant to testimony preparation are reviewed.

## LEGAL AND REGULATORY ISSUES IN CARE AND PROTECTION CASES

### A PROTOTYPE OF CURRENT CHILD PROTECTIVE SERVICE SYSTEM STATUTES AND REGULATIONS

Each state has statutorily defined jurisdiction over strengthening and encouraging family life for the protection and care of children (Kantrowitz & Limon, 2001). States have the authority to encourage the use by any family of available resources to promote the safety of children. State statutes governing care and protection matters contain provisions for mandatory reporting of maltreatment, specifying who is required to make mandatory reports, what conditions must be reported, and the level of identifying information and of confidentiality in the state's central registry of reported information (Kalichman, 2000). When families fail to protect and care for children, as defined by statute, states have the authority to provide substitute care of children (Goldstein, 1999). The state's goal is to ensure the rights of children to sound physical, mental, and moral development. The prevailing standard for the care and protection of children is the *best interest* standard, described more fully in subsequent chapters. Factors that court may consider in making best interest determinations include precipitating factors, previous living conditions, the current status of factors and precipitating conditions, and an assessment of the likelihood of their amelioration or elimination. Courts may consider the child's fitness, readiness, abilities, and developmental level. Courts may intervene, giving orders for specification or modification of service plans designed to meet the needs of the child within a particular placement or within the child's family. The court may request written documentation or evidence of the effectiveness, suitability and adequacy of services and placements provided to the child. The court also may request information relevant to the child's prognosis. The court may require that services be provided in a timely manner in order to facilitate permanency planning for the child (Kantrowitz & Limon, 2001).



Statutory definitions of jurisdiction or custody usually include the power to determine the child's placement, medical care and educational care (Goldstein, 1999). They contain provisions for emergency placements for children, usually of about three days. The child might then be returned to the parents if the matter is resolved, or the case will go to a hearing for evidence relevant to whether the state should assume jurisdiction (Melton, Petrila, Poythress, & Slobogin, 1997). States assume automatic jurisdiction over children born to incarcerated mothers or adolescent mothers committed to the juvenile justice system. The child protective service system, usually in consultation with the commissioner of the state's correctional department, then makes provisions for placement of the child (Kantrowitz & Limon, 2001). When jurisdiction of any child is assumed, the state is granted power to place the child in foster or residential care, to control parental or other caregiver visits to the child, and to consent to military enlistments, marriages and other contracts usually requiring parental consent. There is a provision for a hearing if the parent objects to the decisions of the child protective service system or the judge (Goldstein, 1999).

Evidence in support of assuming jurisdiction may include an investigation of the facts related to the safety of the child, and it includes a mechanism for subjecting investigators and investigation records to cross examination (Goldstein, 1999). Evidence might also include the testimony of foster parents or pre-adoptive parents if the child has been in placement for a specified duration, usually six months or more. It may include the testimony of the child if the court determines that a child is competent and willing to provide testimony (Kantrowitz & Limon, 2001). Under certain circumstances, state care and protection statutes are linked to criminal codes and jurisdiction results in an automatic referral to the criminal justice system. Administrative regulations specify the roles and responsibilities of child protective service system officials, and procedures for petitioning for jurisdiction, disposition requests and pretrial motions (Goldstein, 1999).

In care and protection matters, children usually are appointed their own counsel (Melton et al., 1997), with indigent funding, for individual representation in care and protection matters. A child may not independently petition the court for care and protection jurisdiction. Placement in foster care with biological relatives is encouraged. Separation of siblings is discouraged. When separation of siblings takes place, sibling visitation is provided for by statute. Court jurisdiction of sibling visitation is retained even after adoption of the siblings into separate homes. Children cannot be removed by foster parents or by residential transfer from one state to another while in state custody, unless a specific arrangement is made for an interstate compact (Kantrowitz & Limon, 2001).