

Child protection issues and the law

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Different aspects of medicine and law come together within the field of child protection. This contribution examines the interface between child maltreatment and the law in England and Wales, as it relates to psychiatry.

The law

Both the criminal and civil arms of the law may be involved in child protection:

- criminal law, because all forms of child abuse and neglect are potentially criminal offences
- civil law because of child protection.

There are, however, significant differences between these two aspects of the law.

Criminal law – the function of criminal law is to establish the innocence or guilt of a defendant – in this context, an alleged abuser. Sentencing may indirectly influence the protection of the child, since one purpose of imprisonment is protection of the public from the offender. However, the child is only an accessory to the criminal legal process – a witness who has no legal rights. The standard of proof in criminal law is stringent, namely ‘beyond reasonable doubt’. In practice, this amounts to 80% certainty.

Civil law – the standard of proof in civil law, ‘on balance of probabilities’, is lower. Civil law is concerned with ensuring the welfare of the child, and the child’s interests are paramount within the (civil) Children Act, 1989.

Criminal law, which serves the public interest, takes precedence over civil law. These two arms of the law proceed in parallel, with greater or lesser coordination of the proceedings. Different outcomes may result from criminal and civil legal processes relating to the same case. Families understandably find this very confusing. The differences between criminal and civil proceedings are summarized in Figure 1.

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In practice, relatively few cases of child maltreatment reach criminal prosecution. Nevertheless, this possibility enters the child protective, professional intervention at the outset, and influences the process of investigation. Cases reach the criminal courts if the police, in consultation with the Crown Prosecution Service, consider there to be evidence sufficient for the likelihood of securing a conviction. In the US more than in England, it has come to heavily influence professional thinking.

Responsibility for child protection in England and Wales rests with the social services department of the local authority. There is no mandatory law in England that compels clinical professionals to report suspected or actual child abuse, but professional guidelines and codes of practice stress the need to report these cases to social services.¹

Cases of child maltreatment are initially dealt with by social services. This includes:

- working in partnership with the family
- possibly placing the child's name on the Child Protection Register
- implementing a protection plan.

Cases reach the civil courts only if social services consider that their child protection procedures fail to secure the safety of the child. In this case, social services would then initiate public law care proceedings under the Children Act, in which they enlist the court's help to protect the child.

Private law proceedings within the Children Act can be initiated when there are disputes between family members over:

- whom the child should live with (residence)
- contact between the child(ren) and parents or other family members.

These proceedings usually occur in the course of parental divorce, but disputes can also arise between parents and grandparents or other family members who have an interest in the child when, for instance, one of the parents has a serious mental illness or is deceased. In the course of private law proceedings, allegations or concerns about child abuse are sometimes raised. In private law proceedings, the state does not have concerns about the welfare of the child, the dispute being intra-familial.

Civil law

Care proceedings

In care proceedings, the adjudicators may be magistrates or a judge, depending on the complexity of the case. The court has two roles: the first is to establish whether the threshold enabling the court to grant an order has been reached. If the threshold is reached, the second is the power to grant an order – either a care order or a supervision order. The threshold is termed 'significant harm', from which the child concerned is suffering, or is likely to suffer.

Harm, or likelihood of harm is attributable to:

- the care given to the child or likely to be given to him if the order were not made
- the child being beyond parental control.

Harm is subdivided into ill-treatment, and the impairment of health or development (Figure 2).

The Children Act states that 'Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child'.

Even if the threshold is reached, the court may decide not to grant an order, although in practice an order is nearly always granted to the local authority. Before this can happen, the local authority has to present the court with a 'Care Plan', in which it details how it would ensure the child's welfare. The main elements of the Care Plan concern:

- with whom the child will reside
- what contact there will be between the child and family members if the child will not live with the whole original family
- the child's health, therapeutic and other needs.

Differences between criminal and civil legal proceedings

	Criminal law	Civil law
Subject	Defendant	Child
Function	To establish innocence or guilt of defendant	To protect child
Outcome	If guilty – (non)custodial sentence	If significant harm found – order concerning child likely
Child	Appears as witness; has no legal rights	Child's interests paramount; child does not appear in court
Standard of proof	Beyond reasonable doubt	Balance of probability
Child mental health expert	Rarely permitted	As expert (+/- professional) witness

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Defining 'significant harm'

Ill-treatment	Impairment of health	Impairment of development
Sexual abuse	Physical or mental	Physical
Physical abuse		Intellectual
Non-physical abuse		Emotional
		Social
		Behavioural

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