

# **Child Maltreatment Law**

*Carolina Academic Press  
Law Casebook Series  
Advisory Board*



Gary J. Simson, Chairman  
*Cornell Law School*

Raj K. Bhala  
*The George Washington University Law School*

John C. Coffee, Jr.  
*Columbia University School of Law*

Randall Coyne  
*University of Oklahoma Law Center*

John S. Dzienkowski  
*University of Texas School of Law*

Paul Finkelman  
*University of Tulsa College of Law*

Robert M. Jarvis  
*Shepard Broad Law Center  
Nova Southeastern University*

Vincent R. Johnson  
*St. Mary's University School of Law*

Thomas G. Krattenmaker  
*Director of Research  
Federal Communications Commission*

Michael A. Olivas  
*University of Houston Law Center*

Michael P. Scharf  
*New England School of Law*

Peter M. Shane  
*Dean, University of Pittsburgh School of Law*

Emily L. Sherwin  
*University of San Diego School of Law*

John F. Sutton, Jr.  
*University of Texas School of Law*

David B. Wexler  
*University of Arizona College of Law*

# Child Maltreatment Law

*Foundations in Science,  
Practice and Policy*

Roger J.R. Levesque

CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2002  
Roger J.R. Levesque  
All Rights Reserved.

ISBN: 0-89089-067-6  
LCCN: 2002106142

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

For my Family



# Contents

---

Table of Cases	xv
Preface	xvii
Notes on Case Editing	xix
 Chapter 1. The Scope and Nature of Child Maltreatment	 3
Executive Summary of the Third National Incidence Study of Child Abuse and Neglect	3
Notes and Queries	5
Child Maltreatment 1999: Reports from the States to the National Child Abuse and Neglect Data System	5
Notes and Queries	7
Research Comments	7
Understanding Child Maltreatment and State Responses	8
Arizona as A State Case Study	8
Children in the States: 2000 Arizona Profile	8
Notes and Queries	9
Child Victims, 1999 State Analyses	9
Arizona's Reports of Child Maltreatment Cases	10
Arizona Reporting Statutes	10
Arizona Privileged Relationships	11
Arizona Criminal Code, Family Offenses	11
Arizona Juvenile Code Definitions	13
Notes and Queries	15
Review Problems	15
Recurring Themes and Considerations	16
Review Problems	18
 Chapter 2. Controlling Child Development	 19
Notes and Queries	21
Meyer v. Nebraska	22
Notes and Queries	25
Pierce v. Society of Sisters	25
Notes and Queries	27
Prince v. Massachusetts	27
Notes and Queries	34
Wisconsin v. Yoder	35
Notes and Queries	47
Review Problems	48

Chapter 3. Psychological Maltreatment	49
Notes and Queries	51
Research Comments	51
Review Problems	52
In the Matter of Catherine W.	53
Notes and Queries	56
Research Comments	56
In the Matter of Shane T.	60
Notes and Queries	62
In the Interests of M.A.	63
Notes and Queries	65
Research Comments	65
Review Problems	67
Chapter 4. Physical Maltreatment	69
Research Comments	70
Notes and Queries	72
In re S.K. and V.L.	72
Notes and Queries	79
Keser v. State	79
Notes and Queries	83
People v. Whitehurst	84
Notes and Queries	86
Chapter 5. Neglect and Passive Maltreatment	87
Notes and Queries	89
Research Comments	89
Review Problems	89
In the Matter of Billy Jean II.	90
Notes and Queries	91
Research Comments	91
In the Interest of S.H.A.	92
Notes and Queries	108
Research Comments	108
Walker v. Superior Court	111
Notes and Queries	118
Review Problems	119
In re E.G.	120
Notes and Queries	124
Review Problems	124
Research Comments	125
Bowen v. American Hospital	126
Notes and Queries	135
Research Comments	136
Review Problems	138
Chapter 6. Sexual Maltreatment	139
Notes and Queries	142
Review Problems	144



Commonwealth v. Rhodes	145
Notes and Queries	149
State v. Etheridge	150
Notes and Queries	153
Research Comments	153
Rider v. State	154
Notes and Queries	155
In re M.D.	156
Notes and Queries	159
Research Comments	159
In re Washington	160
Notes and Queries	163
In the Matter of Juvenile Action No. JV-121430	164
Notes and Queries	165
Review Problems	166
In the Interests of C.P. & R.D.	166
Notes and Queries	168
Michael M. v. Superior Court	168
Notes and Queries	172
Review Problems	176
State v. Yanez	176
Notes and Queries	182
State v. Tevay	182
Notes and Queries	183
Review Problems	183
New York v. Ferber	184
Notes and Queries	189
Massachusetts v. Oakes	190
Notes and Queries	191
Free Speech Coalition v. Reno	192
Notes and Queries	198
Ginsberg v. New York	198
Notes and Queries	203
 Chapter 7. Considering Child Welfare in Different Families	 205
Review Problems	206
Research Comments	206
Reynolds v. United States	207
Notes and Queries	210
Loving v. Virginia	211
Notes and Queries	213
Zablocki v. Redhail	213
Notes and Queries	216
Review Problems	216
Singer v. Hara	218
Notes and Queries	219
Rust v. Sullivan	219
Notes and Queries	224
In re Clausen	225

Notes and Queries	228
Stanley v. Illinois	229
Notes and Queries	233
Research Comments	234
Michael H. v. Gerald D.	234
Notes and Queries	243
Review Problems	243
In re Thomas S.	243
Notes and Queries	248
Review Problems	248
Buck v. Bell	248
Notes and Queries	249
Review Problems	250
Research Comments	250
Pena v. Mattox	251
Notes and Queries	254
Bartasavich v. Mitchell	254
Notes and Queries	257
Review Problems	257
Research Comments	258
Whitner v. State	258
Notes and Queries	266
Research Comments	266
Palmore v. Sidoti	267
Notes and Queries	269
Bottoms v. Bottoms	270
Notes and Queries	274
Research Comments	275
In the Interests of Tiffany	276
Notes and Queries	279
Troxel v. Granville	280
Notes and Queries	285
Mississippi Band of Choctaw Indians v. Holyfield	286
Notes and Queries	293
 Chapter 8. Seizing Children, Terminating Relationships and Providing Alternative Care	 295
Lassiter v. Department of Social Services	299
Notes and Queries	308
Santosky v. Kramer	310
Notes and Queries	318
Croft v. Westmoreland	318
Notes and Queries	321
Review Problems	322
Research Comments	322
M. L. B. v. S. L. J.	323
Notes and Queries	326
Deshaney v. Winnebago	327
Notes and Queries	333

Ernst v. Child and Youth Services	334
Notes and Queries	338
Research Comments	339
Youngberg v. Romeo	340
Notes and Queries	348
Research Comments	349
Review Problems	350
Suter v. Artist	351
Notes and Queries	354
Smith v. O.F.F.E.R.	355
Notes and Queries	363
Research Comments	364
Baltimore v. Bouknight	367
Notes and Queries	373
 Chapter 9. Expertise and Testimony in the Courts	375
Federal Rules of Evidence	377
Daubert v. Merrell Dow	378
Notes and Queries	385
G.E. v. Joiner	386
Notes and Queries	391
Kumho Tire v. Carmichael	391
Notes and Queries	396
Estelle v. McGuire	396
Notes and Queries	402
Research Comments	403
Review Problems	405
Research Comments	410
 Chapter 10. Representing and Protecting Children in Courts and Other State	
Interventions	413
Wheeler v. United States	414
Notes and Queries	415
Kentucky v. Stincer	416
Notes and Queries	422
Coy v. Iowa	422
Notes and Queries	427
Maryland v. Craig	428
Notes and Queries	435
Research Comment	436
Review Problems	436
Globe Newspaper Co. v. Superior Court	437
Notes and Queries	440
Research Comments	440
Idaho v. Wright	442
Notes and Queries	450
Research Comment	451
White v. Illinois	451
Notes and Queries	455

Parham v. J.R.	455
Notes and Queries	468
Review Problems	469
Research Comments	469
Chapter 11. Specific Prevention of Maltreatment	473
Landeros v. Flood	474
Notes and Queries	477
Review Problems	477
Gross v. Myers	478
Notes and Queries	481
Research Comments	481
Zamstein v. Marvasti	482
Notes and Queries	486
Illinois v. Maness	487
Notes and Queries	492
Campbell v. Wyoming	492
Notes and Queries	497
Review Problems	498
Research Comments	498
Pope v. State	499
Notes and Queries	503
Review Problems	503
Research Comments	504
Review Problems	505
Swartz v. Swartz	506
Notes and Queries	507
Review Problems	508
Wyman v. James	508
Notes and Queries	514
Research Comments	514
Franz v. Lytle	516
Research Comments	519
Review Problems	520
Valmonte v. Bane	521
Notes and Queries	529
Research Comments	529
Review Problems	529
Seling v. Young	531
Notes and Queries	536
Research Comments	536
Review Problems	536
Doe v. Poritz	538
Notes and Queries	544
Research Comments	544
Chapter 12. General Prevention of Maltreatment	547
Research Comments	549
King v. Smith	550

Notes and Queries	557
Review Problems	558
Research Comments	558
Dandridge v. Williams	559
Notes and Queries	569
Research Comments	569
United States v. Moreno	570
Notes and Queries	576
Research Comments	577
Bowen v. Gilliard	578
Notes and Queries	585
Harris v. McRae	585
Notes and Queries	596
United States v. Morrison	597
Notes and Queries	610
Bowen v. Kendrick	610
Notes and Queries	618
Research Comments	619
Davis v. Monroe County Board of Education	621
Notes and Queries	632
Research Comments	633
Review Problems	633
Chapter 13. Legal Advocacy and Advancing Child Welfare Policy	637
Mallard v. United States District Court	640
Notes and Queries	645
Research Comments	646
Legal Services Corporation v. Velazquez	646
Notes and Queries	654
Baby Neal v. Casey	656
Notes and Queries	665
Research Comments	666
Appendix A. Key Federal Constitutional Provisions	667
Appendix B. Understanding Case Law	669
Appendix C. Understanding Legal Reasoning	670
Appendix D. Understanding the Place of Social Science in Law	672
Appendix E. Glossary of Legal Terms	674
About the Author	683
Index	685



# Table of Cases

---

Principal cases are in italic type. Cases in roman type are those cited or discussed in the notes, comments or review problems. Cases cited within cases are not referenced.

- Addington v. Texas*, 672  
*Adoption of J.S.P.L., In the Matter of the*, 257  
*Alison D. v. Virginia M.*, 248  
*Amanda L.L., In the Matter of*, 258  
*Baby “K”, In re*, 135  
*Baby Neal v. Casey*, 656  
*Baehr v. Lewin*, 219  
*Baehr v. Miike*, 219  
*Baltimore v. Bouknicht*, 367  
*Barefoot v. Estelle*, 537  
*Bartasavich v. Mitchell*, 254  
*Billy Jean II., In the Matter of*, 90  
*Board of Regents v. Roth*, 570  
*Borne v. Northwest Allen County School Corp.*, 477  
*Bottoms v. Bottoms*, 270  
*Bowen v. American Hospital*, 126  
*Bowen v. Gilliard*, 578  
*Bowen v. Kendrick*, 610  
*Brown v. Board of Education*, 666  
*Buck v. Bell*, 248  
*Campbell v. Wyoming*, 492  
*Catherine W., In the Matter of*, 53  
*Chaney v. Superior Court*, 508  
*City of Cleburne v. Cleburne Living Center*, 577  
*Clausen, In re*, 225  
**Commonwealth v. \_\_\_\_\_ (see opposing party)**  
*Coy v. Iowa*, 422  
*C.P. & R.D., In the Interests of*, 166  
*Croft v. Westmoreland*, 318  
*C.S. v. Prince George’s County Department of Social Services*, 529  
*Dandridge v. Williams*, 559  
*Danner v. Kentucky*, 436  
*Darryl H. v. Coler*, 520  
*Daubert v. Merrell Dow*, 378  
*Davis v. Monroe County Board of Education*, 621  
*Degren v. State*, 503  
*DeShaney v. Winnebago*, 327, 348, 349  
*Doe v. Poritz*, 538  
*Dost, v. United States*, 189  
*E.G., In re*, 120  
*Ernst v. Child and Youth Services*, 334  
*Estelle v. Gamble*, 349  
*Estelle v. McGuire*, 396  
*Etheridge, v. State*, 150  
*Fabritz, v. State*, 498  
*Fabritz v. Taurig*, 498  
*Falvo v. Owasso Independent School District*, 68  
*Franz v. Lytle*, 516  
*Free Speech Coalition v. Reno*, 192  
*G.E. v. Joiner*, 386  
*Ginsberg v. New York*, 198  
*Globe Newspaper Co. v. Superior Court*, 437  
*Goldberg v. Kelly*, 569  
*Gross v. Myers*, 478  
*Guardia, v. United States*, 404  
*Harris v. McRae*, 585  
*Hodge v. Jones*, 530  
*Hopkins v. Fabritz*, 498  
*Idaho v. Wright*, 442  
*Illinois v. Maness*, 487  
**In re \_\_\_\_\_ (see name of party)**  
**In the Interest(s) of \_\_\_\_\_ (see name of party)**  
**In the Matter of \_\_\_\_\_ (see name of party)**

- J.R., In the Interest of, 166  
*Juvenile Action No. JV-121430, In the Mat-  
 ter of*, 164  
*Kansas v. Hendricks*, 536  
*Kennedy v. Schafer*, 350  
*Kentucky v. Stincer*, 416, 672  
*Keser v. State*, 79  
*King v. Smith*, 550  
*Knap, v. Commonwealth*, 183  
*Kumho Tire v. Carmichael*, 391  
*Landeros v. Flood*, 174  
*Lassiter v. Department of Social Services*,  
 299  
*LeCompte, v. United States*, 405  
*Legal Services Corporation v. Velazquez*, 646  
*Logerquist v. McVey*, 406  
*Loving v. Virginia*, 211  
*M.A., In the Interests of*, 63  
*McNichols, v. People*, 415  
*Mallard v. United States District Court*, 640  
*Maryland v. Craig*, 428  
*Massachusetts v. Oaks*, 190  
*M.D., In re*, 156  
*Mathews v. Eldridge*, 308  
*Meyer v. Nebraska*, 22  
*Michael H. v. Gerald D.*, 234  
*Michael M. v. Superior Court*, 168  
*Michelson v. United States*, 403  
*Miller v. Youakim*, 365  
*Mississippi Band of Choctaw Indians v.  
 Holyfield*, 286  
*M. L. B. v. S. L. J.*, 323  
*Molineux, v. People*, 403  
*Montoya v. Bebensee*, 486  
*Moreno, v. United States*, 570  
*Morrison, v. United States*, 597  
*New Jersey Division of Youth & Family  
 Services v. J.B.*, 440  
*New York v. Ferber*, 185  
*Palmore v. Sidoti*, 267  
*Parham v. J.R.*, 455  
*Pena v. Mattox*, 251  
**People v. \_\_\_\_\_ (see opposing party)**  
*Pierce v. Society of Sisters*, 25  
*Planned Parenthood v. Casey*, 225  
*Plyler v. Doe*, 577  
*Pope v. State*, 499  
*Prince v. Massachusetts*, 27  
*Reynolds v. United States*, 207  
*Rhodes, v. Commonwealth*, 145  
*Richardson v. City of Philadelphia*, 322  
*Rider v. State*, 154  
*Rivera v. Marcus*, 365  
*Roe v. Wade*, 224  
*Romer v. Evans*, 577  
*Romero, v. United States*, 408  
*Roth v. United States*, 203  
*Rust v. Sullivan*, 219  
*San Bernardino County v. Superior Court*,  
 441  
*Santosky v. Kramer*, 310  
*Saxe v. State College Area School District*,  
 634  
*Seamons v. Snow*, 633  
*Seling v. Young*, 531  
*Shane T., In the Matter of*, 60  
*S.H.A., In the Interests of*, 92  
*Singer v. Hara*, 218  
*S.K. and V.L., In re*, 72  
*Smith v. OFFER*, 355  
*Stanley v. Illinois*, 229  
**State v. \_\_\_\_\_ (see opposing party)**  
*Stockton Pregnancy Control Medical  
 Clinic, v. People*, 477  
*Suter v. Arist*, 351  
*Swan, In re*, 125  
*Swartz v. Swartz*, 506  
*Tevay, v. State*, 182  
*Thomas S., In re*, 243  
*Tiffany, In the Interests of*, 276  
*Troxel v. Granville*, 280  
*Turner v. Safley*, 216  
**United States v. \_\_\_\_\_ (see opposing  
 party)**  
*Valmonte v. Bane*, 521  
*Velarde, v. United States*, 408  
*Walker v. Superior Court*, 111  
*Washington, In re*, 160  
*Wheeler v. United States*, 414  
*White v. Illinois*, 451  
*Whitehurst, v. People*, 84  
*Whitner v. State*, 258  
*Wisconsin v. Yoder*, 35  
*Wyman v. James*, 508  
*Yanez, v. State*, 176  
*Youngberg v. Romeo*, 340  
*Zablocki v. Redhail*, 213  
*Zamstein v. Marvasti*, 482



# Preface

---

This book examines how society, researchers, and the law conceptualize and respond to child maltreatment. To do so, it provides a wide variety of cases and situations that help us understand how we view children and respond to their environments. The approach suits readers with a broad variety of interests, needs and backgrounds. I have used the materials to teach law school students as well as graduate and undergraduate (300 & 400 level) students in psychology and criminal justice. In most instances, the courses attracted students from other fields of inquiry, especially human development, family studies, political science, social work, education and journalism. While researching and teaching these materials, I have been amazed to find that numerous disciplines now seek to understand and address child maltreatment by examining legal issues. I have been equally pleased to find that those who study and operate in the legal system also now voice a need to learn from other fields of study.

That the materials we present and analyze here may be of interest to individuals from diverse fields of inquiry is more than a reflection of a broadening concern for child maltreatment and the emergence of a new speciality, “Child Maltreatment Law.” The broad reach is deliberate. How diverse fields of inquiry and practice can talk to each other remains one of the most challenging issues confronting efforts to address the maltreatment of children. The position taken in the pages that follow is that we learn about issues foreign to us by examining others’ real life situations. To do so, we examine cases and research to see how the law works, how it often fails, and how we can envision alternative approaches. The vast majority of the materials are quite unpleasant and depressing. Child maltreatment is a multisystemic problem with no easy solutions, and our effort to understand it must adapt to that reality. Understanding what we know about maltreatment is no easy task. It means acquiring a very broad understanding of cultural diversity, human development, and interdisciplinary research. It also means understanding basic principles guiding many areas of law that regulate human relationships, ranging from child welfare law, criminal law, juvenile justice, civil/tort law, family law, labor law, education law, poverty law, constitutional law, laws of evidence, and civil rights law to human rights law. Equally importantly, it means understanding the limits of our knowledge and determining how to proceed in directions fraught with uncertainties.

Proposing that we must take a comprehensive approach is not without controversy. Yet and as we will soon see, understanding how to respond to maltreatment means moving beyond the boundaries of the child welfare system and examining, for example, the welfare system and how the legal system privileges some family dynamics and structures over others. If there is only one point that emerges from this text, I hope it is that we only will be situated to respond more effectively to child maltreatment when we understand the many ways the legal system addresses and can address the ways we treat children, those with whom they interact, and one another. If there is any other point

that emerges, I hope it is the realization that legal systems remain profoundly limited and that addressing intractable social problems like child maltreatment requires broad social reform guided, but not straightjacketed, by law.

Given the multiple areas of law and the remarkable complexity of maltreatment, it is important to note that the categories of maltreatment and the legal topics we will discuss should be viewed as analytical tools rather than self-contained categories. For example, the reality is that sexual maltreatment often involves psychological maltreatment and neglect; and many legal systems regulate responses to sexual maltreatment. Likewise, when we review cases, we will find that they often foreshadow discussions. For example, the termination of parental rights often plays a pivotal role in many forms of state responses to maltreatment. We must introduce the rules of termination when we examine the various forms of maltreatment and then return to them when we examine how the law terminates relationships in a manner that protects the rights of parents, children, and broader society. We even return to them again when we consider broad policy objectives that balance the extent to which we want to preserve families or remove children from them. We could take a much more categorical approach, but that likely would prove unsatisfactory given that we would not really know what transpires in the cases selected as illustrative of complex issues and we would not know how broad principles guide different responses to maltreatment.

It may be helpful to provide a brief overview of the manner in which I have organized the chapters. Part I explores how the legal system defines what constitutes the major forms of maltreatment deemed worthy of state intervention in the lives of children, families and communities. Part II details the nature of families assumed problematic and how the state directly intervenes in families to address maltreating conditions. Part III addresses the challenges faced by efforts to stop and prevent child maltreatment as well as advocacy and legal reform efforts. The appendices assist those unfamiliar with legal cases, legal terminology, the legal system, and the place of social sciences in law. Taken together, the materials provide what I hope will be a firm foundation for understanding key social science findings, policy directions, and practices in child maltreatment law.

# Notes on Case Editing

---

Many citations and footnotes, as well as sizeable portions of texts, have been omitted in order to keep materials at a manageable size and to facilitate reading. Ellipses, or brackets containing summaries of omitted material, indicate where other text has been deleted. Notes often appear at the end of the cases; those notes are not from the cases unless specifically noted. Many citations and footnotes considered non-essential for understanding the cases or child maltreatment law have been omitted without indication.

