

Child Maltreatment Law

Child Maltreatment Law

Foundations in Science, Practice and Policy

SECOND EDITION

Roger J.R. Levesque

PROFESSOR OF CRIMINOLOGY AND CRIMINAL JUSTICE
INDIANA UNIVERSITY BLOOMINGTON



CAROLINA ACADEMIC PRESS

Durham, North Carolina

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ISBN 978-1-5310-2904-3
eISBN 978-1-5310-2905-0
LCCN 2024936414

Carolina Academic Press
700 Kent Street
Durham, NC 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

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Preface

This book examines how society, researchers, and the law conceptualize and respond to child maltreatment. It provides a wide variety of cases and situations to help us understand how the legal system views children and responds to their environments. The approach suits readers with a broad variety of interests, needs, and backgrounds. The materials have been used to teach law school students as well as graduate and undergraduate students in psychology and criminology. Courses using these materials have attracted students from other fields of inquiry, especially human development, family studies, political science, social work, education, and journalism. Undoubtedly, many disciplines now seek to understand and address child maltreatment by examining legal issues. That interest mirrors those of practitioners who study and operate in the legal system and voice a need to learn from other fields of study.

Interest in these materials by individuals from diverse fields of inquiry reflects more than a broadening concern for child maltreatment and the emergence of a new specialty, “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. Most of the materials are quite unpleasant and depressing. Child maltreatment is a multisystemic problem with no easy solutions, and efforts 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.

This book rests on the claim that 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, it hopefully 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, it hopefully 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 should be viewed as analytical tools rather than self-contained categories. For example, sexual maltreatment often involves psychological maltreatment and neglect; and many legal systems regulate responses to sexual maltreatment. Likewise, all cases are loaded with information, insights, and points that need further elaboration. As a result, a case often foreshadows discussions developed in other chapters. For example, the termination of parental rights often plays a pivotal role in many forms of state responses to maltreatment. That requires introducing the rules of termination when examining the various forms of maltreatment and then returning to those rules when examining how the law terminates relationships in a manner that protects the rights of parents, children, and broader society. The rules are again revisited when considering broad policy objectives that balance the extent to which families can be preserved or children must be removed from them. Taking a more categorical approach likely would prove unsatisfactory given that it would not allow for really knowing what transpires in the cases selected as illustrative of complex issues and how broad principles guide different responses to maltreatment. The short of it is that understanding what is happening at a particular point in legal responses to child maltreatment requires thinking of that point from a broad, systemic lens.

It may be helpful to provide a brief overview of the manner I have organized the chapters. The beginning chapters explore how the legal system defines what constitutes the major forms of maltreatment and risks of harm deemed worthy of state intervention. It then details the nature of families deemed problematic and how the state directly intervenes in families to address allegations of maltreatment. Chapters then focus on the complexities of how court proceedings and broad legal mandates seek to protect children's rights and safety as well as protect the rights of those entrusted with their care. The last chapters address the challenges of legal reform efforts seeking to stop and prevent child maltreatment, including laws that both directly and indirectly shape the extent to which families protect children. These chapters also complement legal analyses with what empirical research reveals about the law's efforts. The appendices assist those unfamiliar with legal cases, legal terminology, the legal system, and the place of social sciences in law. Together, the materials provide a firm foundation for understanding key social science findings, policy directions, and practices in child maltreatment law.

ROGER J. R. LEVESQUE

Bloomington, Indiana, January 2024

Notes on Case Editing

Many citations and footnotes, as well as sizeable portions of texts, have been omitted 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 nonessential for understanding the cases or child maltreatment law have been omitted without indication.

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