

Child Welfare Policy Manual

2. CAPTA

2.1 CAPTA, Assurances and Requirements

1. Question: Must the policies that are the subject of the CAPTA assurances be embodied in State statutes?

Answer: There are five assurances in CAPTA that require provisions in State law. Those are: 1) a law for mandatory reporting by individuals required to report child abuse and neglect (section 106(b)(2)(B)(i)); 2) provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect (section 106(b)(2)(B)(vii)); 3) upon implementation of provisions, procedures or mechanisms to assure that the State does not require reunification of a surviving child with a parent who has committed certain felonies, that conviction of any one of those felonies constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (section 106(b)(2)(B)(xvii)); 4) authority under State law for the State CPS system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions (section 106(b)(2)(C)(iii)); and 5) authority under State law to permit the State's CPS system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatments from disabled infants with life-threatening conditions (section 113(b)).

However, if a State has a law in effect which conflicts with the provisions in any assurance, or the State's statutory definitions of "child abuse and neglect" and "sexual abuse" do not meet the minimum standards in sections 3(2) and 111(4) of CAPTA, it must modify its statute to correspond with the CAPTA requirements.

- Source/Date: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 12/9/11
- Legal and Related References: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3, 106, 111 and 113

2.1D CAPTA, Assurances and Requirements, Guardians Ad Litem

1. Question: What is the meaning of the requirement in section 106(b)(2)(B)(xiii) of CAPTA for guardians ad litem, including the requirement that they obtain a first-hand understanding of the situation and needs of the child?

Answer: In order to provide States with more flexibility in appointing a guardian ad litem, the CAPTA clarifies that such guardian does not have to be an attorney, but also may be a court-appointed special advocate for the child. The Congress (in 1996) noted that, under the current system, there are more and more cases where an appointed guardian ad litem has no contact with the child and makes uninformed recommendations to the court. Therefore, language was added to clarify that the role of such individuals include obtaining a first-hand understanding of the situation in order to make an informed recommendation to the court (Congressional Record - House, September 25, 1996, p.

H11149). In addition, Congress added language to this provision in 2003 via Public Law 108-36 to require that States train guardians ad litem appropriate to their role in representing children. Public law 111-320 (2010) further amended section 106(b)(2)(B)(xiii) to require that the training include early childhood, child, and adolescent development.

- Source/Date: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11
- Legal and Related References: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xiii)

2. Question: The Child Abuse Prevention and Treatment Act (CAPTA) provision at section 106(b)(2)(B)(xiii) requires that attorneys or court-appointed special advocates who are appointed as guardians ad litem (GAL) receive training appropriate to their role. What are the minimum conditions for this requirement?

Answer: The statute is clear that the State must have provisions and procedures in place to assure that every child who is the subject of an abuse or neglect proceeding is appointed a GAL, and that the GAL receive training appropriate to the role, including training that addresses early childhood, child, and adolescent development, prior to being appointed to represent the child in the proceeding regardless of whether the GAL is an attorney or court-appointed special advocate. The specifics of a State's plan for training its guardians ad litem may vary, depending upon individual State circumstances and needs. So long as the GAL is trained before s/he is appointed to represent a child, the CAPTA requirement will be met.

- Source/Date: 05/02/06; updated 12/9/11
- Legal and Related References: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xiii)

2.1E CAPTA, Assurances and Requirements, Reunification

1. Question: If a State does not "require" reunification, in general, must it do anything further regarding the mandate in section 106(b)(2)(B)(xvi) which requires that provisions, procedures, and mechanisms be implemented to assure that the State does not require reunification with a parent who has been convicted of murder, manslaughter, felonious assault or sexual abuse of the surviving child or another child of the parent, or who is required to register with a sex offender registry?

Answer: Yes. To comply with this section of CAPTA, States must have provisions, procedures, and mechanisms in place which address the fact that reunification is not required in the circumstances enumerated under 106(b)(2)(B)(xvi).

- Source/Date: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11]
- Legal and Related References: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xvi)

2. Question: Section 106(b)(B)(xvi) of CAPTA requires that provisions, procedures, and mechanisms be implemented to assure that a State does not require reunification with a parent who has been convicted of certain felonious acts, a parent who has been convicted of sexual abuse against the surviving child or another child of the parent, or a parent who is required to register with a sex offender registry. On the other hand, the Indian Child Welfare Act (ICWA) requires that "any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs

designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful" (25 U.S.C §1912(d)). Does a conflict exist between the two statutes?

Answer: No. There is no conflict between the CAPTA provision and the ICWA requirement noted above. The CAPTA provision does not prohibit States from making reasonable efforts to reunify families as required under ICWA (as well as under title IV-E); it merely ensures that States not require reunification under certain circumstances. Therefore, it does not conflict with the ICWA requirement regarding efforts to prevent the breakup of Indian families.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 2/3/05; 12/9/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106 (b)(2)(B)(xvi); Indian Child Welfare Act (25 U.S.C §1912(d))

3. Question: Does section 106(b)(2)(B)(xvii) of CAPTA mean that children cannot be reunified with a parent who has committed the specific crimes therein or must be registered with a sex offender registry pursuant to section 113(a) of the Adam Walsh Child Protection and Safety Act of 2006?

Answer: No. This provision is not a prohibition against reunification, but rather assures that reunification is not required in cases where the parent has committed the crimes listed in 106(b)(2)(B)(xvii) or had to register with the Adam Walsh sex offender registry. The decision as to whether to reunify or seek termination of parental rights is within the sole discretion of the State and is determined on a case-by-case basis.

- **Source/Date:** ACYF-NCCAN-PIQ 97-01 (3/4/97); updated 2/3/05; 12/9/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xvii)

2.1F CAPTA, Assurances and Requirements, Infants Affected by Illegal Substance Abuse

1. Question: We understand section 106(b)(2)(B)(ii) of the Child Abuse Prevention and Treatment Act (CAPTA) to mean that health care providers must notify Child Protective Services (CPS) of all infants born and identified as affected by illegal substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder. We do not believe that this provision requires the health care provider to refer such children and families to CPS as a report of suspected child abuse or neglect. Is this interpretation accurate?

Answer: Yes, this interpretation is accurate. CAPTA requires that the health care provider must notify CPS of *all* infants born and identified as affected by illegal substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder. Such notification need not be in the form of a report of suspected child abuse or neglect. It is ultimately the responsibility of CPS staff to assess the level of risk to the child and other children in the family and determine whether the circumstance constitutes child abuse or neglect under State law. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA requirement.

- **Source/Date:** 05/02/06; updated 12/9/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) – section 106(b)(2)(B)(ii)

2. Question: If drug-exposure is not defined as child abuse or neglect in the State's reporting statute, are health care providers still required to "notify" child protective services under section 106(b)(2)(B)(ii) of the Child Abuse Prevention and Treatment Act (CAPTA)?

Answer: Yes. The State is required to have policies and procedures to implement section 106(b)(2)(B)(ii) of CAPTA regardless of how child abuse and neglect is defined in the State. Health care providers must notify CPS of all infants born and identified as affected by illegal substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

- **Source/Date: 05/02/06; updated 12/9/11**
- **Legal and Related References: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(ii).**

2.1G CAPTA, Assurances and Requirements, Triage

1. Question: Section 106(b)(2)(B)(v) of the Child Abuse Prevention and Treatment Act (CAPTA) requires the State to have triage procedures, including the use of differential response, for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary protective service. At what point must the State Child Protective Services (CPS) agency refer a child – at the point there is a report of abuse or neglect on a child; at the point the child is screened out of CPS; or after the results of the investigation determine that there is no imminent risk of harm to the child?

Answer: The statute does not prescribe a point in time in which a referral to a community organization must be made. Thus, the State has the flexibility to determine appropriate procedures for when and how to refer a child it determines is not at imminent risk to a community organization or voluntary protective services provider. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

- **Source/Date: 05/02/06; updated 12/9/11**
- **Legal and Related References: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) – section 106(b)(2)(B)(v); Sections 1171 through 1179 of the Social Security Act; and 45 CFR Parts 160 and 164, Subpart E**

2.1J CAPTA, Assurances and Requirements, Criminal Background Checks

1. Question: Are fingerprints required as part of the criminal background check requirement in section 106(b)(2)(B)(xxii) of CAPTA?

Answer: Yes. Public Law 111-320 amended section 106(b)(2)(B)(xxii) of CAPTA in 2010 to require that States have provisions and procedures that require criminal background checks for prospective foster and adoptive parents and other adults residing in the household that meet the title IV-E criminal background check requirements. The title IV-E requirements in section 471(a)(20) of the Social Security Act require fingerprint-based criminal record checks of national crime information databases.

- **Source/Date: 05/02/06; updated 12/9/11**

- **Legal and Related References: Social Security Act – section 471(a)(20); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) – section 106(b)(2)(B)(xxii)**

2.3 CAPTA, Definitions

2. Question: Definitions are found in sections 106(b)(4), as well as in sections 3 and 111. What is the difference between the definitions found in these sections?

Answer: The differences in the definitions found in these sections is in what they govern. The definitions of "near fatality" and "serious bodily injury" in sections 106 (b)(4) of CAPTA refer to those specific terms as used in subsection (b) of section 106 of CAPTA. For instance, whenever the terms "near fatality" or "serious bodily injury" are used in subsection (b), the definitions found in section 106(b)(4) would apply.

Section 111, on the other hand, provides the broader definitions of "sexual abuse" and "infant or toddler with a disability," which are used for all other purposes of Title I of CAPTA.

The definitions in section 3 provide still broader definitions such as "child abuse and neglect" and "child with a disability," which are used throughout all of CAPTA.

- **Source/Date: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11**
- **Legal and Related References: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3, 106(b) and 111**