

**Hamline University School of Law**  
**Child Abuse and the Law**  
**Selected Topic**  
**3 credits**  
**Spring 2009**

**Faculty**

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**Catalog description:**

This course is for students who have an interest in public service and children's issues. The course is designed to provide an overview of the prosecution process in civil and criminal cases involving child abuse and neglect. Students will learn the internal path of both a criminal child abuse case as well as the civil process for protecting children from further abuse or neglect. This course will explore the necessity of working with a multi disciplinary team of professionals in preparing a case for the court process as well as the necessary skills needed to communicate with child victims. The course will require observation of a criminal and civil child abuse case. Ethical responsibilities of prosecution will be addressed. Recommended courses: Evidence and Professional Responsibility.

**Major focus and objectives of the course:**

The course is designed for law students who have an interest in practicing in the area of civil child protection and/or prosecution of child abuse cases. The purpose of the course is to prepare young lawyers to recognize the legal definitions of child abuse and neglect according to Minnesota statute. Students will learn about multidisciplinary approaches to prosecuting cases both civilly and criminally and learning to advocate for the best interests of children with the goal of protecting young victims who cannot advocate for themselves. This goal will be addressed through the following objectives:

**Students completing this course will:**

- Be able to identify the indicators of child abuse and neglect.
- Be able to identify the different forms of abuse and neglect.
- Understand the vulnerability of children and child development factors.
- Understand the need for a multidisciplinary team approach.
- Understand the investigation process for both civil and criminal process.
- Be able to identify possible common problems in child abuse prosecution.
- Be able to identify potential grounds for charging or petitioning.
- Be able to identify necessary witnesses for a successful prosecution
- Be able to prepare a child for testimony using age appropriate language.

**Week I: Introduction to Child Abuse Law**

- I. Why are we here—Victor Vieth and presentation of Unto the Third Generation: A call to end child abuse in 120 years.
- II. Administrative goals for the semester
- III. Present case scenario which will be used throughout the class
- IV. Process of civil cases
  - A. What constitutes a report of abuse and neglect?
  - B. Cross reporting between child protection and law enforcement
  - C. Use of multidisciplinary team and the importance of building professional relationships
    1. Who should be on your multidisciplinary team?
      - a. medical doctor
      - b. law enforcement
      - c. social worker
      - d. psychologist
      - e. county attorney
      - f. forensic interviewer
      - g. victim witness
  - D. Results of investigation
    1. MN Maltreatment of Minors Act 626.556, Federal Child Abuse Prevention and Treatment Act (CAPTA)
  - E. Timing of Juvenile Court Events
    1. Petition Filed
    2. Emergency Protective Care hearing
    3. Admit/Deny
    4. Pre-trial conference
    5. Trial
    6. Adjudication
    7. Dispositional review
- V. Process of criminal case
  - A. Results of criminal investigation and submission to County Attorney
  - B. Discussion of MN criminal statutes
    1. 609.221-224, 609.22.42, 609.322, 609.334, 609.342-45, 609.377-78, 617.246
  - C. Filing of criminal complaint- content of criminal complaint
    1. What constitutes probable cause
      - a. Use of summons
      - b. Use of warrant
    2. Potential conditions of release of defendant
    3. Coordination with Civil (CHIPS) case

4. Timing of court events
  - a. Arraignment
  - b. Pre-trial Conference / Omnibus Hearing
    - i. Spreigl issues
    - ii. Rasmussen issues
  - c. Trial

**Week II & III: What constitutes abuse?**

- I. What is the legal definition of abuse?
  - A. Physical abuse
  - B. Sexual abuse
  - C. Neglect
  - D. Exposure to domestic violence
- II. How do you prove abuse?
  - A. Use of expert witnesses
    1. Child Abuse Specialist
    2. Psychologist
    3. Pediatrician
    4. Therapist
    5. Forensic Interviewer
      - a. Best practices in child forensic interviews.
  - B. Witnesses to statements of victim
  - C. Eye witnesses to abuse
  - D. Other victims of abuse
  - E. Physical evidence of abuse
    1. Bruising, STD's
  - F. Defendants statements
  - G. School records
  - H. Defendants past pattern of behavior
- III. Use of medical professionals as expert witness
  - A. Understanding medical findings
  - B. Understanding medical terminology
  - C. Preparation of potential alternative explanations

**Week IV & V: Charging or Petitioning Decisions**

- I. Difference in evidentiary standards of review
  - A. Beyond a reasonable doubt
    1. Criminal standard
    2. Standard for termination of parental rights in ICWA case
  - B. Clear and convincing for civil petition

- II. Statutory grounds for CHIPS-MN Statute 260C.007, Subd 6
  - A. Abandonment
  - B. Victim of physical or sexual abuse
  - C. Without necessary food or clothing
  - D. Without special care
  - E. Medical neglect
  - F. Custodial relief of care
  - G. Placed for adoption in violation of law
  - H. Injurious environment
  - I. Growth delays
  - J. Prostitution
  - K. Runaway
  - L. Habitual truant
  - M. Incompetent for delinquency proceeding
  - N. ICWA
- III. What is permanency-discussion of Adoption and Safe Family Act
  - A. Reunification
  - B. Transfer of legal and physical custody
  - C. Termination of parental rights-statutory grounds
    - 1. Abandonment
    - 2. Failure to comply with duties of parent
    - 3. Non-payment of child support
    - 4. Palpably unfit
    - 5. Failure of case plan
    - 6. Child has experienced egregious harm as defined in 260C.007 (subd. 14)
      - a. Murder
      - b. Criminal vehicular homicide
      - c. Assault with dangerous weapon
      - d. Assault in the 3<sup>rd</sup> degree
      - e. No identified father
      - f. Child neglected in foster care
      - g. Parent convicted of crime (260.012 b, 1-3)
  - D. Consent to adopt
  - E. Customary adoption – ICWA Cases
  - F. Long term foster care
- IV. Criminal charging decisions
  - A. Who makes the charging decisions?
    - 1. Consultation with experienced prosecutors
    - 2. Vertical prosecution
    - 3. Handling of sensitive cases
    - 4. Potential problems with evidence
      - a. Crawford v Washington, 461 U.S. at 54
  - B. Charging Child Sexual abuse cases
    - 1. Basic considerations
      - a. Determining suspect’s factual guilt
      - b. Determining date of offense
      - c. Standard for charging criminal case
      - d. Deciding what crime to charge

- e. What counts used in charging decision
- f. Statute of limitations
- g. Sensitivity to name of victim
- h. When to file charges
- i. Teaming with child protection
- C. Charging physical abuse and homicide cases
  - 1. Understanding the basics
  - 2. How to sort the evidence
  - 3. Failure to protect by other parent and coordination with child protection
  - 4. Potential charges to consider
    - a. Intentional homicide
    - b. Depraved indifference to human life
    - c. Review of felony murder statutes
    - d. Homicide by abuse
    - e. Murder by torture
    - f. Manslaughter
    - g. Child abuse or endangerment
  - 5. Declining to file charges
    - a. Effects on children and families
    - b. How to protect the child from future harm
    - c. Effects on CHIPS case

**Week VI- VIII: Pre-Trial Preparation for criminal case**

- I. Theme and Theory
  - A. Mold your story –
  - B. Identify strengths and weaknesses
  - C. Formulate voire dire questions
    - 1. Assess juror’s views on children as victims
    - 2. Assess juror’s views on children testifying
    - 3. Assess juror’s opinions of reliability of children’s testimony
  - D. Begin structuring questions for potential witnesses both direct and cross
- II. Review of statements
  - A. What to look for in statements
    - 1. Cross corroboration
    - 2. Inconsistencies
    - 3. Impeachment material
    - 4. Basis for admissibility
- III. Period of abuse
  - A. Chart victims ages
  - B. Chart age with school grade
  - C. Prior address
  - D. Teachers names and dates they taught the victim
- IV. Review applicable case law and pre-trial motions
  - A. Prepare for potential arguments during the trial
    - 1. Have statutes and case law at your fingertips
  - B. Possible pre-trial motions
    - 1. Motions in limine

- V. Discovery and notice to defense
  - A. Verify that you have turned over all discovery
  - B. Check on reciprocal discovery
  - C. File any necessary notices
    - 1. Departure motions
- VI. Prior Bad Acts and Convictions of Defendant-608 (b) & 609
  - A. Be prepared to use prior arrests and convictions
  - B. Ensure defendant is not harassing victim or victim's family
- VII. Subpoenas and record checks
  - A. Ensure all necessary witnesses have been subpoenaed
  - B. Ensure all appropriate records have been turned over to defense
  - C. Subpoena work records of defendant
  - D. Subpoena military records of defendant
  - E. Subpoena family court records
- VIII. Witness preparation
  - A. Organize your witness list
    - 1. Defense witnesses
      - a. Prepare cross exam questions
      - b. Notes regarding witnesses
        - i. Criminal history
        - ii. Relationship to defendant
        - iii. Qualifications or personal history
        - iv. Recent statements
    - 2. Prosecution witnesses-remember your elements
      - a. Prepare outline for direct exam
      - b. Prepare for possible holes in testimony
      - c. Review recent statements
      - d. Meet with witness and go over testimony
- IX. Preparing a child for testimony
  - A. Use of age appropriate language
    - 1. Understanding linguistic barriers
  - B. Competency of child
    - 1. Review of MN Rules of Evidence 601 and 603
  - C. Developmentally age appropriate oath
  - D. Ethics of working with child victims
    - 1. Trauma to child
    - 2. Ethical and unethical questioning of child victims
  - E. Recantation
  - F. Memory and Suggestibility
- X. Elements of the offense & Jury Instructions
  - A. Review elements of charged crime
    - 1. Ensure all key elements are covered during course of trial
    - 2. Possible use of elements during opening and closing
- XI. Physical Evidence and Exhibits
  - A. Review evidence seized by police
    - 1. Pornography
    - 2. Diagram of scene compared to description by victim
  - B. Make exhibit list
    - 1. Chain of custody witnesses

2. Authentication witnesses
  3. Note potential objections or problems during introduction of evidence
- XII. Demonstrative evidence
- A. Be creative
    1. Charts
    2. Graphs
    3. Diagrams
    4. Models
    5. Use of PowerPoint
    6. Live video clips
    7. Create time lines
- XIII. Use of science
- A. DNA
  - B. Ballistics
  - C. Medical testing
- XIV. Victim issues
- A. Use of victim-witness advocate
  - B. Introduction of photos of victim or injuries

**Week IX & X: Preparing for Trial on CHIPS or Permanency case**

- I. Difference between preparation between Civil process and criminal process
  - A. Difference between preparations for CHIPS versus Permanency
  - B. CHIPS process
    1. Review original report
      - a. Talk to reporter and prepare them to testify if necessary
      - b. Prepare investigator for trial
    2. Prepare witness list
    3. Prepare cross of parents
      - a. Investigate parents' history
        - i. Check cp history
        - ii. Check criminal history
        - iii. 911 recap on parents home
        - iv. Check for any recent police reports
  - C. Permanency process
    1. Review permanency petition
    2. What is the desired outcome?
      - a. Transfer of legal and physical custody
      - b. Termination of parental rights
      - c. Consent to adopt
      - d. Customary adoption
      - e. Long term foster care
    3. Prepare witness list
      - a. Prepare necessary professional witness
      - b. Psychologist
      - c. Forensic interviewer
      - d. Medical expert
      - e. Parenting assessor

- f. Parenting worker- in home or program
- g. Child protection social worker(s)
- h. Tribal expert (ICWA Case)
- 4. File necessary memorandums of law and notices
  - a. Business records memorandum
  - b. Public records memorandum
  - c. Notice of intent to offer Hearsay
  - d. Victim under 10 years of age
  - e. Prior bad Acts
  - f. Prior convictions

**Week XI: Settlement issues:**

- I. Plea bargains-criminal case
  - A. Thorough review of evidence
  - B. Consequences to victim
  - C. What is the desired sentence?
  - D. Alford Plea – When is it appropriate?
- II. Settlement of civil case-effect on children
  - A. CHIPS case
    - 1. Review petition
      - a. What are key areas of concern?
        - i. Domestic violence
        - ii. Physical abuse
        - iii. Sexual abuse
        - iv. Neglect
        - v. Failure to protect
        - vi. Chemical dependency issues
        - vii. Criminal behavior
      - 2. What are the desired case plan components?
    - B. Permanency case
      - 1. What is the desired result?
      - 2. Settlement options available
        - a. Transfer of custody
        - b. Termination of parental rights
          - i. Consent to adopt
          - ii. Customary adoption
          - iii. Contact agreements
- III. Self-Care
  - A. Be aware of the stress
  - B. Ask for help
  - C. Consult with colleagues
  - D. Within your office and jurisdiction
  - E. Reach out to national organizations
    - 1. APRI
    - 2. NDAA
  - F. Know when you have reached burnout

**Week XII & XIII:**

- I. Field trip to criminal and civil case

## II. Review for final exam and final exam

### **Course Materials:**

Required: **APRI National Center for Prosecution of Child Abuse, Investigation and Prosecution of Child Abuse, 3d ed. 2004.**

### Additional References

Crawford v Washington, 541 U.S. 36 (2004)

Russell, Amy, Best Practices in Child Forensic Interviews: Interview Instructions and Truth-Lie Discussions, 28 Hamline Journal of Public Law & Policy. 99-130, (Fall 2006).

Vieth, Victor, Unto the Third Generation: A Call to End Child Abuse in the United States Within 120 Years, 28 Hamline Journal of Public Law & Policy. 1-74, (Fall 2006).

Minnesota Rules of Juvenile Protection Procedure, October 2006

Chapter 260C of the Minnesota Child Protection provisions

Chapter 609 of the Minnesota Criminal Code

Minnesota Rules of Evidence

Minnesota Rules of Professional Responsibility

<http://works.bepress.com/thomaslyon/>- Tom Lyon, Professor University of Southern California

Minnesota Maltreatment of Minors Act- Minnesota Statute: 626.556

### **Attendance Policy:**

Attendance is mandatory. If a student misses more than 2 classes, they may be dropped from the Course. Makeup work may be authorized under special circumstances.

Attendance will be taken at each class.

### **Course Requirements & Evaluation Methods**

Criminal Complaint	30%
Civil CHIPS petition	
Witness list and summary of purpose of witness'	10%
Attendance log of criminal and civil case	10%
Class participation	10%
Final Exam	40%

### **Assignments**

Due Date: January 22, 2009

Read pages xxix-xliv Benefits of Working as a Multidisciplinary Team