

GLOSSARY

ad litem

adj. legal Latin meaning "for the purposes of the legal action only." Most often the term applies to a parent who files a lawsuit for his or her minor child as "guardian at litem" (guardian just for the purposes of the lawsuit) or for a person who is incompetent.

Adoption and Safe Families Act (ASFA)

Signed into law November 1997 and designed to improve the safety of children, to promote adoption and other permanent homes for children who need them, and to support families. The law requires CPS agencies to provide more timely and focused assessment and intervention services to the children and families that are served within the CPS system.

burden of proof

n. the requirement that the plaintiff (the party bringing a civil lawsuit) show by a "preponderance of evidence" or "weight of evidence" that all the facts necessary to win a judgment are presented and are probably true. In a criminal trial the burden of proof required of the prosecutor is to prove the guilt of the accused "beyond a reasonable doubt," a much more difficult task.

bylaws

n. the written rules for conduct of a corporation, association, partnership or any organization. Bylaws generally provide for meetings, elections of a board of directors and officers, filling vacancies, notices, types and duties of officers, committees, assessments and other routine conduct. Bylaws are in effect a contract among members and must be formally adopted and/or amended.

case law

n. reported decisions of appeals courts and other courts which make new interpretations of the law and, therefore, can be cited as precedents. These interpretations are distinguished from "statutory law," which is the statutes and codes (laws) enacted by legislative bodies; "regulatory law," which is regulations required by agencies based on statutes; and in some states, the common law, which is the generally accepted law carried down from England. The rulings in trials and hearings which are not appealed and not reported are not case law and, therefore, not precedent or new interpretations. Law students principally study case law to understand the application of law to facts and learn the courts' subsequent interpretations of statutes.

Child Abuse Prevention and Treatment Act (CAPTA)

the law (P.L.93-247) that provides a foundation for a national definition of child abuse and neglect. CAPTA defines child abuse and neglect "at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm."

child custody

n. a court's determination of which parent, relative or other adult should have physical and/or legal control and responsibility for a minor (child) under 18. Child custody can be decided by a local court in a divorce or if a child, relative, close friend or state agency questions whether one or both parents is unfit, absent, dead, in prison or dangerous to the child's well-being. In such cases custody can be awarded to a grandparent or other relative, a foster parent or an orphanage or other organization or institution. While a divorce is pending the court may grant temporary custody to one of the parents, require conferences or investigation (in some states, if the parents cannot agree, custody is automatically referred to a mediator, commissioner or social worker) before making a final ruling. There is a difference between physical custody, which designates where the child will actually live, and legal custody, which gives the custodial person(s) the right to make decisions for the child's welfare. If the parents agree, the court can award joint

custody, physical and/or legal. Joint legal custody is becoming increasingly common. The basic consideration on custody matters is supposed to be the best interests of the child or children. In most cases the non-custodial parent is given visitation rights, which may include weekends, parts of vacations and other occasions. The court can always change custody if circumstances warrant.

confidentiality

Pursuant to section 552a of title 5, United States Code, the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232 g), or any other provision of law, agencies of any Indian Tribe, of any state, or of the federal government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian Tribe, any state, or federal government that need to know the information in performance of their duties. For purposes of this section, Indian Tribal governments shall be treated the same as other federal government entities.

date rape

n. forcible sexual intercourse by a male acquaintance of a woman, during a voluntary social engagement in which the woman did not intend to submit to the sexual advances and resisted the acts by verbal refusals, denials or pleas to stop, and/or physical resistance. The fact that the parties knew each other or that the woman willingly accompanied the man are not legal defenses to a charge of rape, although one Pennsylvania decision ruled that there had to be some actual physical resistance.

domestic violence

a pattern of assault and controlling behavior perpetrated by one partner against the other. It can include physical, sexual and psychological attacks, as well as emotional intimidation, verbal abuse, stalking, destruction of pets and property, marital rape, and social isolation. Other terms used to describe this pattern of behavior are battering, partner abuse, spouse abuse, family violence, and intimate partner violence.

domicile

n. the place where a person has his/her permanent principal home to which he/she returns or intends to return. This becomes significant in determining in what state a probate of a dead person's estate is filed, what state can assess income or inheritance taxes, where a party can begin divorce proceedings, or whether there is "diversity of citizenship" between two parties which may give federal courts jurisdiction over a lawsuit. Where a person has several "residences" it may be a matter of proof as to which is the state of domicile. A business has its domicile in the state where its headquarters is located.

due process of law

n. a fundamental principle of fairness in all legal matters, both civil and criminal, especially in the courts. All legal procedures set by statute and court practice, including notice of rights, must be followed for each individual so that no prejudicial or unequal treatment will result.

expert testimony

n. opinions stated during trial or deposition (testimony under oath before trial) by a specialist qualified as an expert on a subject relevant to a lawsuit or a criminal case.

expert witness

n. a person who is a specialist in a subject, often technical, who may present his/her expert opinion without having been a witness to any occurrence relating to the lawsuit or criminal case. It is an exception to the rule against giving an opinion in trial, provided that the expert is qualified by evidence of his/her expertise, training and special knowledge.

foster child

n. a child without parental support and protection, placed with a person or family to be cared for, usually by local welfare services or by court order. The foster parent(s) do not have custody, nor is there an adoption, but they are expected to treat the foster child as they would their own in regard to food, housing, clothing and education.

full faith and credit

n. the provision in Article IV, Section 1 of the U.S. Constitution which states: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other state." Thus, a judgment in a lawsuit or a criminal conviction rendered in one state shall be recognized and enforced in any other state, so long as the original judgment was reached by due process of law. Each state has a process for obtaining an enforceable judgment based on a "foreign" (out-of-state) judgment.

guardian ad litem

n. a person appointed by the court only to take legal action on behalf of a minor or an adult not able to handle his/her own affairs. Usually a guardian ad litem is appointed by the court to represent and act in the best interest of a child.

immunity

n. exemption from penalties, payments or legal requirements, granted by authorities or statutes. Generally there are three types of immunity at law: a) a promise not to prosecute for a crime in exchange for information or testimony in a criminal matter, granted by the prosecutors, a judge, a grand jury or an investigating legislative committee; b) public officials' protection from liability for their decisions (like a city manager or member of a public hospital board); c) governmental (or sovereign) immunity, which protects government agencies from lawsuits unless the government agreed to be sued; d) diplomatic immunity which excuses foreign ambassadors from most U.S. criminal laws.

in loco parentis

prep. (in loh-coh pah-rent-iss) Latin for "instead of a parent" or "in place of a parent," this phrase identifies a foster parent, a county custodial agency or a boarding school which is taking care of a minor, including protecting his/her rights.

incest

n. sexual intercourse between close blood relatives, including brothers and sisters, parents and children, grandparents and grandchildren, or aunts or uncles with nephews or nieces. It is a crime in all states, even if consensual by both parties. However, it is often co-existent with sexual abuse since usually the younger person is a victim of the predatory sexual activities of an older relative.

in chambers

adj. referring to discussions or hearings held in the judge's office, called his chambers. It is also called "in camera."

judgment

n. the final decision by a court in a lawsuit, criminal prosecution or appeal from a lower court's judgment

judicial proceedings

n. any action by a judge re: trials, hearings, petitions or other matters formally before the court.

jurisdiction

n. the authority given by law to a court to try cases and rule on legal matters within a particular geographic area and/or over certain types of legal cases. It is vital to determine before a lawsuit is filed which court has jurisdiction. State courts have jurisdiction over matters within that state, and different

levels of courts have jurisdiction over lawsuits involving different amounts of money. Tribal Courts have jurisdiction over all misdemeanor and civil actions in Indian Country.

juvenile court

n. a special court or department of a trial court which deals with under-age defendants charged with crimes or who are neglected or out of the control of their parents. The normal age of these defendants is under 18, but juvenile court does not have jurisdiction in cases in which minors are charged as adults. The procedure in juvenile court is not always adversarial (although the minor is entitled to legal representation by a lawyer). It can be an attempt to involve parents or social workers and probation officers in the process to achieve positive results and save the minor from involvement in future crimes. However, serious crimes and repeated offenses can result in sentencing juvenile offenders to prison, with transfer to state prison upon reaching adulthood with limited maximum sentences. Where parental neglect or loss of control is a problem, the juvenile court may seek out foster homes for the juvenile, treating the child as a ward of the court.

juvenile delinquent

n. a person who is under age (usually below 18), who is found to have committed a crime in states which have declared by law that a minor lacks responsibility and thus may not be sentenced as an adult.

local child protective services agency

the agency of the federal government, of a state, or of an Indian Tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian Country.

local law enforcement agency

the federal, Tribal, or state law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian Country involved.

mandatory

adj., adv. absolutely demanded or required.

mediation

n. the attempt to settle a legal dispute through active participation of a third party (mediator) who works to find points of agreement and make those in conflict agree on a fair result. Mediation differs from arbitration, in which the third party (arbitrator) acts much like a judge in an out-of-court, less formal setting but does not actively participate in the discussion. Mediation has become very common in trying to resolve domestic relations disputes (divorce, child custody, visitation) and is often ordered by the judge in such cases. However, mediation does not always result in a settlement.

molestation

n. the crime of sexual acts with children up to the age of 18, including touching of private parts, exposure of genitalia, taking of pornographic pictures, rape, inducement of sexual acts with the molester or with other children and variations of these acts by pedophiles. Molestation also applies to incest by a relative with a minor family member and any unwanted sexual acts with adults short of rape.

multidisciplinary Team (MDT)

Multi agency, multi jurisdictional team that is responsible for the coordination of investigations involving child abuse and/or neglect cases. A key responsibility of the MDT is to reduce trauma to the child victim. The MDT shall have members who have experience and training in prevention, identification, investigation, and treatment of incidents of child abuse and neglect.

nolo contendere

(no-low kahn-ten-durr-ray) n. Latin for "I will not contest" the charges, which is a plea made by a defendant to a criminal charge, allowing the judge to then find him/her guilty, often called a "plea of no contest."

offender

n. an accused defendant in a criminal case or one convicted of a crime.

officer of the court

n. any person who has an obligation to promote justice and effective operation of the judicial system, including judges, the attorneys who appear in court, bailiffs, clerks and other personnel. As officers of the court lawyers have an absolute ethical duty to tell judges the truth, including avoiding dishonesty or evasion about reasons the attorney or his/her client is not appearing, the location of documents and other matters related to conduct of the courts.

parent

n. the lawful and natural father or mother of a person. The word does not mean grandparent or ancestor, but can include an adoptive parent as a replacement for a natural parent.

parental neglect

n. a crime consisting of acts or omissions of a parent (including a stepparent, adoptive parent or someone who, in practical terms, serves in a parent's role) which endangers the health and life of a child or fails to take steps necessary to the proper raising of a child. The neglect can include leaving a child alone when he or she needs protection; failure to provide food, clothing, medical attention or education to a child; or placing the child in dangerous or harmful circumstances, including exposing the child to a violent, abusive or sexually predatory person.

pedophilia

n. an obsession with children as sex objects. Overt acts, including taking sexually explicit photographs, molesting children and exposing one's genitalia to children, are all crimes. The problem with these crimes is that pedophilia is also treated as a mental illness, and the pedophile is often released only to repeat the crimes or escalate the activity to the level of murder.

pornography

n. pictures and/or writings of sexual activity intended solely to excite lascivious feelings of a particularly blatant and aberrational kind. The printing, publication, sale and distribution of "hard core" pornography is either a felony or misdemeanor in most states.

pro bono

adj. short for pro bono publico, Latin for "for the public good," legal work performed by lawyers without pay to help people with legal problems and limited or no funds, or provide legal assistance to organizations involved in social causes such as environmental, consumer, minority, youth, battered women and education organizations and charities.

protective custody

n. the act of law enforcement officials in placing a person in a government facility or foster home in order to protect him/her from a dangerous person or situation. Most commonly a child who has been neglected or battered or is in danger from a violent person is taken in as a temporary ward of the state and held in probation facilities or placed in a foster home until a court can decide the future placement of the child. Protective custody is sometimes used to help women threatened by a husband, boyfriend or a stalker, and also for witnesses who have been threatened with physical harm or death if they testify.

prosecute

v. 1) in criminal law, to charge a person with a crime and thereafter pursue the case through trial on behalf of the government. This is normally the function of the District Attorney (called States Attorney or city prosecutor in some places) and the U.S. Attorney in federal criminal cases.

prosecutor

n. generic term for the government's attorney in a criminal case, including District Attorney, States Attorney, U.S. Attorney, Attorney General, Solicitor General, or special prosecutor.

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protocol

a set of policies, procedures and agreements. A protocol is a written document outlining each agency's role and responsibility. The agencies and individuals signing the document signify their mutual commitment to the team and the team's mission statement.

rape

1) n. the crime of sexual intercourse (with actual penetration of a woman's vagina with the man's penis) without consent and accomplished through force, threat of violence or intimidation (such as a threat to harm a woman's child, husband or boyfriend). What constitutes lack of consent usually includes saying "no" or being too drunk or drug-influenced for the woman to be able to either resist or consent. "Date rape" involves rape by an acquaintance who refuses to stop when told to. Defense attorneys often argue that there had to be physical resistance, but the modern view is that fear of harm and the relative strengths of the man and the woman are obvious deterrents to a woman fighting back. Any sexual intercourse with a child is rape and in most states sexual relations even with consent involving a girl 14 to 18 (with some variation on ages in a few states) is "statutory rape," on the basis that the female is unable to give consent. 2) v. to have sexual intercourse with a female without her consent through force, violence, threat or intimidation, or with a girl under age.

sex offender

n. generic term for all persons convicted of crimes involving sex, including rape, molestation, sexual harassment and pornography production or distribution. In most states convicted sex offenders are supposed to report to local police authorities, but many do not.

waiver of parental consent

- A. Examinations and interviews – Photographs, x-rays, medical examinations, psychological examinations, and interviews of an Indian child alleged to have been subject to abuse in Indian Country shall be allowed without parental consent if local child protective services or local law enforcement officials have reason to believe the child has been subject to abuse.
- B. Interviews by Law Enforcement and Child Protective Services Officials – In any case in which officials of the local law enforcement agency or local child protective services agency have reason to believe that an Indian child has been subject to abuse in Indian Country, the officials of those agencies shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian.
- C. Protection of the child – Examinations and interviews of a child who may have been the subject of abuse shall be conducted under such circumstances and with such safeguards

as are designed to minimize additional trauma to the child and, where time permits, shall be conducted with the advice, or under the guidance, of a local multidisciplinary team established pursuant to section 411 or, in the absence of a local team, a multidisciplinary team established pursuant to section 410.