

RCW 74.13.640(d)



**Department of Social and Health Services
Children's Administration
Child Fatality Review**

A.A.

October 2005

Date of Child's Birth

April 15, 2012

Date of Child's Death

September 13, 2012

Child Fatality Review Date

Committee Members:

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Executive Summary

On September 13, 2012, the Department of Social and Health Services (DSHS), Children's Administration (CA) convened a Child Fatality Review¹ (CFR) to examine the department's practice and service delivery to six-year-old A.A. and his family. On April 15, 2012, A.A. died from blunt force injuries caused by his biological father Anthony Viles,² with whom he was living in Bannock County, Idaho.

Prior to going to live with his father in Idaho, A.A. was alleged to be a victim of both neglect and physical abuse by his mother and stepfather³ in Vancouver, Washington, which resulted in his placement in out-of-home care on September 29, 2011 and the subsequent filing of a dependency petition in Clark County Juvenile Court on October 5, 2011. On January 30, 2012, while A.A. was still in foster care but before dependency was established,⁴ the court granted Mr. Viles' motion to allow A.A. to temporarily stay with him in Idaho. The court held a review hearing on February 21, 2012, and it placed A.A. with his father in Idaho. The department then dismissed the dependency petition, which ended the department's and the court's legal authority as to A.A.

A CFR is required under RCW 74.13.640(1)(a) because the child was in the care of the department within a year of his death from abuse. The CFR Committee was comprised of CA staff not connected with the case and community members with pertinent expertise from a variety of fields and systems, including legal, parenting, public child welfare, foster care, and child advocacy. Although some Committee members were aware of the fatality incident, none had any previous direct involvement with the family.

Prior to the review each Committee member received the following information: (1) a summarized chronology of CA involvement with the family that included a synopsis of Idaho Child Protective Services (CPS) involvement with the mother and the stepfather; (2) non-redacted CA case documents from the initial contact with the family in May 2011 to the court's order placing A.A. with his father in late February 2012; (3) documents from two service providers involved with the family in Washington prior to A.A.'s move to his father's home in Idaho; (4) transcripts from the January 30, 2012 and

¹ Given its limited purpose, a Child Fatality Review should not be construed to be a final or comprehensive review of all of the circumstances surrounding the death of a child. The Child Fatality Review Committee's review is generally limited to documents in the possession of or obtained by DSHS or its contracted service providers. The Committee has no subpoena power or authority to compel attendance and generally will only hear from DSHS employees and service providers. It does not hear the points of view of a child's parents and relatives, or those of other individuals associated with a deceased child's life or fatality. A Child Fatality Review is not intended to be a fact-finding or forensic inquiry or to replace or supersede investigations by courts, law enforcement agencies, medical examiners or other entities with legal responsibility to investigate or review some or all of the circumstances of a child's death. Nor is it the function or purpose of a Child Fatality Review to recommend personnel action against DSHS employees or other individuals.

² The father's name is used in this report because the Bannock County Prosecutor in Idaho charged him with First Degree Murder in connection with his son's death. See RCW 74.13.500.

³ The names of A.A.'s mother, stepfather, and half-siblings are not used in this report as they were not involved in the fatality that occurred in Idaho.

⁴ See RCW 13.34.065

February 21, 2012 Clark County Juvenile Court hearings; (5) various Idaho media reports regarding the death of A.A.; and (6) a summary of the father's criminal history in Idaho.

During the course of the review CA employees involved in the case were made available to the Committee. Two social workers, a supervisor, and an Area Administrator were interviewed.

Following review of the case file documents, completion of the staff interviews, and discussion regarding department activities and decisions, the Committee made findings and recommendations which are detailed at the end of this report.

Case Overview

The family first came to the attention of the Children's Administration in May 2011 when CPS investigated numerous allegations of neglect and physical abuse of then five-year-old A.A. by his mother and stepfather. While the allegations were determined to be unfounded,⁵ the family's history of previous involvement with Idaho CPS for similar concerns resulted in the department's decision to keep the case open for Family Voluntary Services (FVS). During an unannounced home visit for health and safety monitoring by the assigned FVS worker on September 29, 2011, A.A.'s mother admitted she had put pepper water in her son's mouth for punishment. Following placement into foster care under a Voluntary Placement Agreement, A.A. disclosed other instances of physical punishment by his mother and stepfather, which resulted in founded findings of physical abuse by the mother and stepfather.

On October 5, 2011, the department filed dependency petitions as to both A.A. and his half-sibling. A.A.'s biological father Anthony Viles, who had no prior involvement with his son, was contacted in Idaho. Mr. Viles requested and was appointed legal counsel in the dependency proceeding. The father then requested that the court place A.A. with him in Idaho.

The father appeared in person on January 30, 2012 in Clark County Juvenile Court for the hearing on his motion for placement of his son. During the hearing, the department's counsel noted that under a 2010 Court of Appeals decision⁶ the Interstate

⁵ "Unfounded" is defined as "the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur." RCW 26.44.020(24). "Founded" is defined as "the determination following an investigation by the Department that, based on available information, it is more likely than not that child abuse or neglect did occur." RCW 26.44.020(9).

⁶ *In re Dependency of D.F.-M.*, 157 Wn. App. 179, 236 P.3d 961 (2010) (in which the court found that the ICPC did not apply to out-of-state placement with a parent, and stated the following: "[C]ourts can and should demand information about the absent parent's fitness. However, courts, not administrative agencies or individual social workers, are the ultimate evaluators of a parent's ability to care for his child, and the ultimate decision-makers as to whether placement with a fit parent is in the child's best interests." *D.F.-M.*, 157 Wn. App. at 192-93.)

Compact on the Placement of Children (ICPC)⁷ did not apply to the out-of-state father, as he had not been proven unfit in the dependency proceeding. Counsel stated that if the court placed the child out of state without Idaho's approval in the ICPC process, the department could not ensure the child's safety as it could not monitor the placement or provide transition services, which would have occurred if the placement took place under the ICPC. The mother was not present for the hearing, but she was represented by counsel who did not object to A.A.'s placement with his father. The department did not offer evidence that the father was unfit, reported that background checks had been completed on the father and his live-in girlfriend and neither had disqualifying information, and further reported that the father had been cooperative. The court granted the father's motion to allow A.A. to immediately leave for Idaho with his father.

When it ordered that A.A. would leave to stay with his father in Idaho, the court also set a review hearing to occur 30 days after the hearing on the father's motion for placement. In doing so, it ordered the assigned department caseworker and the child's therapist to have frequent contact with both the child and the father during the temporary placement/visit with the father. This review hearing was held on February 21, 2012. At the hearing the court placed A.A. with his father, and the department therefore dismissed its dependency petition, which ended the department's and the court's legal authority as to A.A.

On April 12, 2012, during an argument over homework, Mr. Viles allegedly struck his son in the head, knocking the boy to the floor where he hit his head and became unconscious. Two hours passed before Mr. Viles called for an ambulance. A.A. was airlifted to Primary Children's Hospital in Salt Lake City, where he was placed on life support. He died on April 15, 2012, and Mr. Viles was charged with First Degree Murder by the Bannock County Prosecutor in Idaho.

Committee Discussion

Committee members reviewed and discussed the documented CA activities and decisions from the initial contact with the family in May 2011 through February 21, 2012, when the court placed A.A. with his father in Idaho. While some discussion occurred as to the CA involvement with the mother and stepfather that resulted in A.A. and his half-sibling being placed in out-of-home care, the primary focus of the review was on the department's activities and decisions in the four-month period from October 2011 to February 2012, during which time A.A.'s father in Idaho emerged as a placement resource.

In an effort to evaluate the reasonableness of decisions made and actions taken by CA, the Committee considered Washington law, CA policy, practice, and system response

⁷ The Interstate Compact on the Placement of Children (ICPC), a uniform reciprocal law enacted in every state, governs the interstate placement of foster children, among other situations (e.g., adoptions). The Compact prohibits states from sending a dependent child to live with an out-of-state caregiver without first obtaining approval from the receiving state's child welfare agency following a home study and other assessments of the caregiver. *See* ch. 26.34 RCW.

(including the legal system), as well as CA case documentation and interview responses from the CA staff that occurred during the review.

Three core areas of concern were identified: (1) documentation by the Child and Family Welfare Services (CFWS) worker and supervisor (October 2011 through February 2012); (2) information gathering efforts regarding the father and his partner and her two children; (3) legal and CA policy limitations when the ICPC is not applied in cases involving out-of-state parents seeking placement of their children.

Findings

Documentation

There were obvious violations of CA documentation policy⁸ by the CFWS social worker who was assigned the case in October 2011. Almost all case note entries by the worker were entered after the death of A.A. in April 2012, thus many activities were entered into FamLink⁹ six months after they reportedly occurred. Information provided to the Committee as to worker caseloads in the Vancouver DCFS office at the time, and in particular the workload associated with the assigned worker's cases at the time he was assigned this case, did not appear to account for the exceptional time delay in the documentation. The worker and his supervisor stated that despite the failure to document case information in FamLink in a timely manner, case-related information gathered by the worker was utilized at numerous decision points in the case such as shared planning meetings, monthly supervisory reviews and preparation for court testimony. While there were credible indications the worker kept a log of activities which he later converted into FamLink entries, the Committee found numerous entries that appeared to contain documentation of multiple activities that may have actually occurred on different days but were all entered as having occurred on one particular date. Also, the quality of a case note narrative appeared to vary depending on whether the data was entered timely or not timely (e.g., post-fatality). In sum, while there is no evidence of record falsification, review of the documentation primarily from October 2011 through February 2012 raises questions as to reliability, credibility, and accuracy of the information documented.

Information gathering

The information gathering effort by the CFWS worker as to A.A.'s father and his partner was found to be inadequate and reflective of a significant practice deficit. The committee's concern was not about the information that was gathered, but rather the

⁸ As a means to increase child safety, to ensure quicker availability of electronic information, and to simplify documentation requirements, CA revised documentation timeframes effective July 31, 2010. Variable timeframes were revised depending on specific activity types, and designated as required within 3, 7, or 10 calendar days. [See DSHS/CA Practices and Procedures Guide and CA Operations Manual available online at <http://www.dshs.wa.gov/ca/pubs/manuals.asp>]

⁹ FamLink is the case management information system that Children's Administration implemented on February 1, 2009, and it replaced CAMIS, which was the case management system CA had used since the early 1990s.

information that was likely available but was not sought. The Committee heard from several CA staff (field, supervisory, and administrative) who reported being confused as to what information-seeking activities were permissible and expected when the department is considering out-of-state placement with a parent to whom the ICPC is not applied. Under the ICPC, there are clear rules requiring extensive vetting of out-of-state caregivers for placement of dependent children, utilizing information from both the state sending the child and the state receiving the child. In this case these rules did not apply because the ICPC was not applied to this placement.

The information gathered by the CFWS worker primarily derived from contact with personal references provided by the out-of-state father and overall was positive and did not reveal any obvious indicators that the father was unfit to be a parent. The worker and supervisor relied heavily on this information, and in particular relied on a family friend and licensed social worker in Idaho who agreed to provide parenting instruction to the father and his partner. The limited information gathered appears to have been the basis of the department's lack of any objection to the child going to Idaho to stay with his father.

However, the Committee concluded that there was information available but not sought by the worker that may have been sufficient to cause the court to consider slowing down the move of the child. Most pronounced was the lack of any discernible effort by the worker to seek Idaho CPS history on the father or on his domestic partner and her two children. Information provided by Idaho CPS after the fatality reasonably suggests that had such information been requested and obtained prior to the January 2012 court hearing, and presented to the court, it may have resulted in a decision to slow down the move (as was suggested by the CASA¹⁰) or court-ordered additional vetting of the father and his live-in girlfriend.

Uniqueness of the case and legal and policy limitations

The situation involving A.A. appears to be unusual in that he was not yet a dependent child and his father from Idaho, whom A.A. had never met, sought placement of him. The department did not have evidence that the father was unfit; thus, under *In re D.F.-M.*,¹¹ an appellate court decision that is now law, the ICPC did not apply, which resulted in no assistance from Idaho in determining the appropriateness of placing the child with his father. The circumstances of this case do not permit authorized use of the National Crime Information Center (NCIC) database to obtain criminal background information as the database may only be accessed for limited to specific purposes, which likely do not apply in this case.¹² Further, if the child had been dependent, state law would have

¹⁰ Court Appointed Special Advocate (CASA) volunteers are community volunteers who are appointed by judges to represent the best interests of a child in dependency proceedings. [Source: RCW 13.34.030(10).]

¹¹ 157 Wn. App. 179 (2010).

¹² The National Crime Information Center (NCIC) system is a name and date-of-birth based national database of criminal history information operated by the Federal Bureau of Investigations (FBI). Children's Administration is authorized to access this database only for limited purposes: to ensure worker

required a background check (including a criminal and CPS history check) on the parent and the parent's partner.¹³ The uniqueness of the situation in this case may have contributed to the confusion reported by the CA staff involved with regard to their authority to pursue more information as to both the father and his partner. As noted previously in this report, the lack of a more substantive inquiry was determined by the Committee to be a serious practice issue in this case.

Recommendations

- It is recommended that at the next Central Case Review scheduled for the Vancouver DCFS office that special focus be placed on evaluating required documentation standards (including timeframes for entry of information into FamLink) as a quality assurance review measure.
- Whereas legal requirements and CA policies are clear as to expected CA activities for gathering information on parents living in Washington who are under consideration for placement of their child who has been placed in out-of-home care, and are clear for out-of-state caregivers in ICPC cases, more guidance is needed for workers with cases involving non-offending out-of-state parents not under the ICPC but who are placement options for their non-dependent child involved with DCFS. It is recommended that CA, in collaboration with legal consultation with the Attorney General's Office, develop guidelines to provide clarity as to (1) what system search activities are authorized, (2) what other strategies for information gathering may be used (e.g., internet searches, social media sources), and (3) what other criminal and CPS history should be sought.
- CA should review the current statutory and policy requirements for vetting parents and their partners prior to placement of dependent children (e.g., Sirita's Law) and consider how these standards might be applied when children who are not yet dependent are placed with an out-of-state parent, as occurred in this case. The key aspect of this recommendation is to strengthen practice such that the department identifies the risks associated with placement with an out-of-state parent when the department lacks information about that parent, their partner and/or their living environment, rather than presenting this situation as neutral, with no evidence of unfitness.

and child safety in CPS investigations; and for emergency placements in out-of-home care. See 109 P.L. 248 (Adam Walsh Act); 28 C.F.R. §20.33; *see also* RCW 26.44.240.

¹³ See Laws of 2007 ch. 410 § 9, known as Sirita's law (codified in RCW 13.34.138(2)).