

Child Abuse Prosecution Expert Program (CAP Program) And Database of Experts on Child Abuse (DECA List)

Introduction

The Ohio Attorney General has dedicated a portion of his budget to a child abuse prosecution expert program which is intended to help prosecutors pay for expert witness testimony in the prosecution of child abuse cases. A child abuse case can often become “a battle of the experts” due to the proliferation of alleged experts who consistently testify for the defense. If a jury hears from a defense expert in a child abuse case, that jury may very well anticipate that the prosecution will present a consulting expert who can testify in support of the literature and studies surrounding the issues in the case, and who can affirm the findings of the treating or emergency room physicians.

The purpose of the Child Abuse Prosecution Expert Program (CAP Program) is to give prosecutors access to consulting experts that their office budget would not normally permit. CAP Program funds are not intended to pay for expenses that typically occur in these types of cases, such as the costs of examination or testimony by a treating or emergency room physician.

Funding Considerations

Approval for funding is subject to the discretion of the Attorney General, who takes into consideration the number of times the county has previously requested funding, the county’s population, the county’s other resources, the amount of the request, and matching funds proposed (if any). In determining whether funding will occur, the Attorney General also considers the number of victims and defendants in the case, the seriousness of the crime (i.e. the level of misdemeanor or felony involved), the existence of a constitutional question, areas where appellate jurisdictions conflict, and issues of first impression or interpretations of recent legislation. Typically, funding is limited to experts located within the State of Ohio. National experts may be considered in significant cases.

Areas of Expertise Covered

CAP Program funds are dedicated to consulting experts who assist in the investigation and/or prosecution of child abuse cases in the following areas: general sexual or physical abuse; victim interviews; suspect interrogations; medical aspects of sexual abuse; psychological or psychiatric aspects of child abuse; pornography; abdominal trauma; burns; emergency medicine; acute evaluations; ambulatory medicine; head trauma or shaken baby syndrome; Munchausen syndrome by proxy; ophthalmology (eye injuries); orthopedics; osteogenesis imperfecta (brittle bone disease); pathology; and radiology. This list is not exclusive, and may be expanded at the discretion of the Attorney General.

Databank of Experts on Child Abuse

The Attorney General has also established a Databank of Experts on Child Abuse (DECA) which is a list of expert witnesses who have been recommended by county prosecutors, children's hospitals, national organizations, and/or other professionals. This list will be up-dated and distributed accordingly based upon recommendations from the prosecutors working in the field. DECA lists qualifying experts by area of expertise and contains information on prior testimony. DECA is not all inclusive; experts can be added upon the recommendation of a prosecutor, who has worked with the expert, and the agreement of the expert. For specific information about an expert, please contact grantsmanagement@ohioattorneygeneral.gov, as the office may have copies of resumes, CVs, trial transcripts, appellate cases, or newspaper articles concerning those cases.

Minimum Qualifications for Consulting Experts

Experts who are currently on DECA have already been pre-screened for minimum qualifications. A prosecutor can obtain CAP funds for an expert who is not on DECA. An expert who is not on DECA must complete a pre-screening application and must be recommended by a prosecutor who has previously worked with the expert. Prior testimonial experience and board-certified or board-eligible medical experts with emergency room experience are preferred. In addition, experts must have the following prerequisites:

- **Medical expert:** MD, DO, DDS, OD degree and more than three years' experience.
- **Psychological/psychiatric expert :** PhD, MA, or MD degree and more than three years' experience.
- **Forensic expert:** BA or BS degree and more than five years' experience.

After receiving a request for inclusion on DECA or an "Application for Approval for those not currently on DECA List," the office of the Attorney General will verify the information and determine if the individual should be designated as a qualified consulting expert and included on DECA.

Expenses Covered

A request for reimbursement of expenses must be presented on an application form that has been prescribed by the Attorney General and must be signed by the expert and the county prosecutor, with appropriate documentation of expenses incurred. If the expert requires more funding than that authorized, the prosecutor may still use the expert, if the county is willing to pay for costs above those covered by the CAP Program. Funding per case shall be limited to not more than \$2,500.00. If a prosecutor can show a compelling reason for additional funding, the Attorney General may consider funding higher amounts on a case-by-case basis. The items which are eligible for funding include:

- **Testing costs.** Fees for objective tests may be funded.
- **Record/file review, consulting, testing, preparing court presentation.** Maximum of \$150 per hour.

- **Waiting to testify.** Maximum of \$100 per hour.
- **Time testifying.** Maximum of \$175 per hour, less court witness fee.
- **Telephone consultations.** Maximum of \$100 per hour; to be filled and reported in 15 minute increments, with a 5 hour limit per case.
- **Travel time.** Maximum of \$100 per hour.

Application Procedure

1. The prosecutor shall complete and sign the attached application form and email it with appropriate documentation of the expenses incurred to OhioCAP@ohioattorneygeneral.gov. The prosecutor shall provide the consultant with a copy of the CAP protocol which contains limitations on expenses covered.
2. If the consultant is not currently on the DECA list, the prosecutor and the consultant shall complete and sign form CAP-3, Application for Approval for Those Not Currently on DECA List and shall email it to OhioCAP@ohioattorneygeneral.gov or mail it to the Special Prosecutions Section of the Attorney General's Office at 150 E. Gay St, 16th Floor, Columbus, OH 43215, Attn: CAP Program.
3. The Attorney General shall review applications, shall notify the prosecutor if additional information is required, and shall notify the prosecutor of the results of the review.
4. Once the consultant has been approved, and all appropriate documentation is received, payment shall be remitted to the county.