

By Daniel Pollack



With 1,200 children entering foster care each day (Children’s Defense Fund, 2010, p. xv)¹, it’s bound to happen—seemingly, the foster home and the foster child are just not a good match for each other. Let’s envision three scenarios:

- 1) The foster parents notice that the foster child appears to have an unusual fascination with fire.
- 2) The medical needs of the foster child are far more demanding than the foster parents feel they can handle.
- 3) The foster parents think there may be sexual activity between the foster child and their biological children.

In the above situations, if the foster parents request the emergency removal of the foster child from their home, how quickly must the agency respond and what legal procedural safeguards must be followed?

We constantly live with potential danger. Generally, a public human service agency may remove a child from his or her home in order to protect the health, safety, or welfare of that child. Following removal of the child, the appropriate court conducts an emergency removal hearing, often no later than 24–48 hours after the child has been taken into custody. At this dispositional review, the court makes a determination to ascertain if the child should be removed for an indefinite or extended period of time and be placed into foster care. Such placement takes into account such things as the child’s age, health, and developmental needs. With more than 400,000 children in foster care, some of these children will unfortunately be harmed in foster homes that were meant to protect them from further abuse; and some foster children may themselves be abusive or dangerous to others in their foster home.

Connecticut provides that “in the case of an emergency removal, the

Emergency Removal of a Foster Child—the Foster Parents’ Rights



department shall provide notification to the foster parents, the child’s attorney and the child’s guardian *ad litem*

- ♦ in writing
- ♦ at the time of the removal, or as soon thereafter as possible
- ♦ of the reasons for the decision to remove the child
- ♦ of the provider’s right to request a removal hearing if the provider disagrees with the removal” (Connecticut Department of Children and Families, 2012).²

Just as Connecticut provides for the immediate removal of a foster child when the agency deems the foster home too dangerous, it also provides that, “when foster parents/caretakers request that a child be removed from their home, the child’s worker or the worker’s supervisor shall meet with them and the child *on the same day in the case of immediate removal* request

or within five working days in non-emergency situations” (Connecticut Department of Children and Families, 2012; emphasis added).

Attorney Harvey Schweitzer, co-author of the book *Foster Care Law*, notes that public agencies “will almost always remove foster children quickly when there is obviously imminent or actual harm to the foster child or others in the foster home. A very different situation occurs when the risk of harm seems manageable and the agency knows that it has no readily available home for a child with extraordinary needs. In these cases the agency may delay removal and try to convince the foster parents to keep the child. Although it is impossible to force foster parents to keep a foster child, there are rare instances where foster parents have been threatened with a report of ‘child neglect’ for seeking the rapid removal of a foster child.”

When a child protection agency seeks to remove a child from parental care this must be done, of course, with due process of law. But that due process does not necessarily require that the state provide the parents with a hearing, other administrative remedy, or a court order before taking the child into custody when the child's safety is at risk. Only later will the agency have to justify the emergency removal to the court. Should foster parents, who are acting on the state's behalf, expect that a foster child will be immediately removed if they believe the foster child is a danger to him/herself or others?

Child abuse and neglect are defined by the federal government as "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" (42 U.S.C.A. § 5106g(2) (2003)). Ironically, by failing to timely remove a foster child who is a risk to the foster parents' own children, their other foster children, or to themselves, the parents and the placing agency could be cited for neglect.

The health and safety of residents in a foster home should not be jeopardized by a foster child any more than the foster child should be jeopardized by any of the foster home residents. What research and regulatory gaps exist in this area? Which methods of identifying and ranking potential danger in foster homes are most valid? The main objective of developing a method of identifying and ranking dangerousness in a foster home is to be able, in a proactive way, to improve the placement

process. In turn, this will enable us to implement effective policies and practices to minimize unnecessary child abuse, neglect, and replacements. ■

Reference Notes

1. Children's Defense Fund. (2010). *The State of America's Children*. Washington, DC: Retrieved October 17, 2012. <http://www.childrensdefense.org/child-research-data-publications/data/state-of-americas-children.pdf#page=150>.
2. Connecticut Department of Children and Families. (2012). *Policy Manual: Treatment Foster Care*. Retrieved September 20, 2012. <http://www.ct.gov/DCF/cwp/view.asp?a=2639&Q=394376>.

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