

Does Removing a Child After Substantiating Child Maltreatment Sometimes Make a Bad Situation Even Worse?

To use the vernacular, is CPS sometimes taking children out of the frying pan and consciously placing them into the fire?

By **Daniel Pollack and Christine M. Sarteschi** | June 10, 2021 at 10:00 AM



In the blink of an eye, parents can be substantiated for neglecting or abusing their children. In a recent case, *Matter of Cecile D. (Kassia D.)*, 189 A.D.3d 1036, a Supreme Court of New York held: "Although parents have a right to use reasonable physical force against a child in order to maintain discipline or to promote the child's welfare, the use of excessive corporal punishment constitutes neglect" ([Matter of Cheryale B. \[Michelle B.\]](#), 121 AD3d 976, 977, 995 N.Y.S.2d 135; see [Matter of Laequise P.](#), 989 N.Y.S.2d 292[Brian C.], 119 AD3d 801, 802,

[989 N.Y.S.2d 292](#)). Even "a single incident of excessive corporal punishment is sufficient to support a finding of neglect" ([Matter of Elicora B. \[Kennedy B.\]](#), 146 AD3d 772, 773, 45 N.Y.S.3d 144)." If such a finding is made, the child may be immediately removed from the home.

Of course, no one is condoning a child being maltreated, but too rarely is the question asked: Is removing the child sometimes more traumatizing than leaving the child at home? In other words, is Child Protective Services (CPS) knowingly, legally – yet ironically – committing an acknowledged act of child maltreatment that is more detrimental than the original act for which the parents were “substantiated”? To use the vernacular, is CPS sometimes taking children out of the frying pan and consciously placing them into the fire? Such removals are not in the best interest of the child. Unspoken, but quietly acknowledged, is that the child may be removed because CPS is concerned about its own liability more than it is concerned about the long-term safety of the child.

[Statistics show](#) that as of September 2018, there were approximately 437,283 children in foster care. About one third of these children were in the homes of relatives and nearly half were placed in foster nonrelative care homes.

Approximately [250,000](#) children are removed from their parents in the United States each year.

[Vansaran, Church and Mitchell \(2019\)](#) highlight the many issues regarding the removal of children in the United States. For instance, why a child is removed from the home, and who has that authority, varies considerably. In many states, law enforcement officers are authorized to remove children from their parents. In other states, child welfare agency staff have this authority. Some other states allow

private citizens including doctors, prosecuting attorneys, nurses or nurse practitioners to decide whether or not to remove a child.

At what point and for what reason a child can be removed varies by state. Florida and North Carolina, for instance, allow a child to be removed if an “authorized individual” has a reason to believe that a child is a victim of abuse or neglect. Other states have imminent danger standards that are much stricter. Uniformity is desperately lacking.

Circumstances that surround removal of children are also inconsistent across states. [Vansaran and colleagues](#) explain that there may be circumstances in which a removal is categorized as neglect, but the federal definition of neglect can vary from state definitions of neglect. The lack of specificity and fidelity in reporting across definitions continues to be a problem, prohibiting a deeper understanding of precisely why children are removed from their families.

Also complicating matters is the fact that [Black children are overrepresented in the child welfare system](#). [Studies](#) have found that Black children are more likely to have been reported for suspected maltreatment and subsequently more likely to proceed to investigation when compared to white children. [Studies](#) also show that Black children are less likely than their white counterparts to be reunified with their families, have increased placement instability and spend more time awaiting a permanent home.

As alluded to earlier, the perceived risk of civil or criminal liability for an improper failure to remove a child is impossible to quantify. Yet, under the guise of relying on expert advice, or following the letter of the law rather than its spirit, the too hasty removal of a child, with time, has often been shown to have been misguided. The removal may outwardly appear to have been done in good faith, yet the child’s

best interest may have been sacrificed for the individual investigator's or agency's peace of mind.

Attorneys, judges, social workers, educators, health care workers, and the general public all need to reflect on our special responsibility to act deliberately and with great care on behalf of every child.

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