



Attorney Perspectives of Child Protective Services “Legal Kidnapping”

Critics call it “legal kidnapping,” a somewhat derogatory term that refers to the alleged overreaching that Child Protective Services (CPS) effectuates by improperly removing a child from its parent(s), seemingly without sufficient cause. Does it really happen often? If it is occurring, what can attorneys do to address it? We asked these questions of four experienced attorneys who have litigated many child protection cases. Here are their responses:

1. Angenette Stephenson, North Carolina

As a former foster care social worker, now social services attorney, I have learned there are multiple ways CPS social workers can address overreaching before it occurs. Attorneys for the CPS agency need to be able to proactively discuss the importance of this issue with CPS social workers and their supervisors. When we staff cases at the county I represent, I try to summarize the relevant law in a way that makes sense from a social worker’s perspective. Here are four of the areas I cover in training:

a. Read the entire record. I know social workers are busy and often feel like they don’t have the luxury of reading the record for a newly assigned case. However, there is almost always at least one important clue in the record that provides guidance about which approach will work best. Spending the time needed to read the record when first assigned is a valuable investment that will pay dividends down the road.

b. Write excellent documentation. I cannot emphasize enough the importance of thorough, behavioral documentation for multiple reasons.



Detailed documentation can make the difference between a proper and an improper removal. Often social workers have very good instincts that are based on evidence they haven’t shared and possibly haven’t written down. Help the social workers you advise to understand the importance of making time in their schedule for thorough documentation.

c. Focus on safety. So often we hear about distinguishing between safety and risk. Child welfare work is value-laden and interaction with parents can at times be unpleasant. The social workers I advise impress me with their ability to differentiate between the parent who cannot safely parent his or her child and the parent who is emotionally volatile and blames everyone else for his or her circumstances. Often, they can be the same person, but sometimes they are not. Sometimes the difficult parent with the vendetta against the social worker can actually parent fairly well. It takes a strong social worker to recognize this when allegations of “legal kidnapping” occur.

d. Regularly staff cases with a supervisor. Good supervision is one of the key ingredients to competent, individualized social work practice. Encourage the social workers you advise to consult with their supervisors often. The supervisor can help the social worker make good decisions and will “have the social worker’s back” at critical junctures if the supervisor has been providing continuous advice.

2. Michael L. Rich, Massachusetts

Separation of children from their families is not just an issue at the border with Immigration and Customs Enforcement (ICE) officers or Customs and Border Patrol (CBP). Across the country children are removed from their families when a doctor or other health or mental health professional convinces CPS that a child’s medical or behavioral condition raises concerns that the child’s caregivers have caused physical injury, have caused emotional disturbance to the child, or have ignored or embellished medical conditions.

A growing number of physicians, defense attorneys, accused parents, judges, and others are raising concerns that thousands of caregivers are having their children removed by CPS based on faulty assumptions that various medical findings, especially in conjunction with each other, must have been caused by abuse or neglect. The list of conditions that mimic abuse is lengthy

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but child abuse pediatricians who have been turned into arms of the law enforcement and justice systems often forego thorough medical evaluation in favor of interrogating caregivers to determine who is at fault.

Attorneys preparing to represent accused caregivers or children entering the legal system as alleged subjects of abuse must become familiar with a large and growing body of literature about how to evaluate the accusers' assumptions, and must seek out attorney collaboration groups to get referrals to experts familiar with the specific range of medical signs and symptoms reported in a particular case. Attorneys and clients need to get every medical record of the child from birth through any pre-incident medical and hospital visits for the reported incident as well as records of medical encounters the child has had since initially interacting with CPS. The parents' medical histories are also relevant to many genetic and congenital conditions. As an attorney, you will want to retain consulting, evaluating, and testifying experts to lead you to the flaws in the reporters' diagnoses, and suggest lab and other studies that may not have been performed and are plausible explanations for the child's condition.

3. Lily Eagle Dorman Colby, California

As an alumna of the foster care system, I think it's important we talk about the harmful impacts on children and youth when the child welfare system doesn't act. Although I believe there are some sorrowful cases of children who should have remained at home and didn't, state and societal inaction is another failure that may be just as devastating and far more pervasive.

Each year in the United States, there are more than three million calls to report child abuse. But overburdened child protective agencies have to triage these calls and don't have the funding or personnel to investigate, let alone intervene, in every incident that's reported. Only a small fraction of calls results in formal foster care placement.

What happens to the children who should have entered care but didn't? Through my personal experiences and training I've been made aware of cases where dozens of reports were made but abuse continued for months or years before removal took place. For some children, their abuse or neglect may never lead to foster care placement, but they end up being picked up later by the juvenile or adult justice systems. A recent study found that only a fraction of the youth in Los Angeles County's probation system were formally foster youth, but that four-fifths of these children were subjects in a child abuse report, many early in life.


A disturbing trend has also been noted by legal aid agencies and those that represent homeless youth. In many incidences, abused and neglected homeless youth get no formal support from state child welfare agencies. According to Brian Blalock from Tipping Point Community, there are so many hurdles to entering the child welfare system that sometimes abused and neglected teenagers face insurmountable barriers to being taken in by the system. Blalock explains, "In some ways, our foster care system is like a hospital. People who go to hospitals may have harrowing and tragic results compared to people who not. But in emergency situations, we want hospitals to exist and for there to be as few barriers as possible to accessing urgent care. When that's broken, there are dire consequences. Similarly, youth who do not need the level of care the foster care system provides should not be placed in foster care. But when youth do need that level of care, it should be provided as quickly as possible. From what we are hearing from people on the ground, there are currently dire consequences happening every day from the child welfare system not being responsive to older youth who are experiencing abuse and neglect. This creates a human cost that is unacceptable."

State and societal inaction is rampant. For every child who was abused and neglected who ended up in care, I believe there is another child victim of abuse and neglect who never

entered care, but instead continued to endure abuse—perhaps for years—without support from the system that was designed for the very purpose of taking care of them.

4. Ellen Babb, South Carolina

"Legal kidnapping" can occur when CPS fails to notify a parent prior to placing his or her child(ren) in DSS [Department of Social Services] custody. For example, I had a case where law enforcement removed a child from relatives while they were vacationing in South Carolina. The legal adoptive father drove to South Carolina and arrived the following day to pick up his son. But CPS refused to release the child alleging that the Final Decree of Adoption from another state was not valid. Incredulously, CPS made no efforts to call the neighboring state to confirm the certificate. Instead, CPS claimed they needed to complete an Interstate Compact procedure prior to placing the child in the home of his legal father. The legal father tried to work with CPS for several months. Finally, after exhausting all avenues, he retained counsel. We immediately filed a Notice of Appearance and Ex Parte Expediated Motion to Intervene and For Return of the Child(ren) to the Parent. Fortunately, we were able to find out the day and time of the next court appearance on the case. We attended the hearing and spoke up from behind the bar because CPS refused to acknowledge the legal father as a party to the action. The judge ordered that the matter be continued until the Expediated Motion could be heard. Eventually, the legal father regained custody of his son.

The lesson is clear: Due process of law means exactly what the phrase implies. Due process applies to CPS as well as every citizen. This means that everyone is treated fairly in an impartial judicial system that operates according to law. 

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