



Let's Confront Child Welfare Law Buzzwords

In the world of child welfare law, three of the best-known culprits are “best interest of the child,” “neglect,” and “Post-Traumatic Stress Syndrome (PTSD).”

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June 18, 2021 at 10:00 AM

Buzzwords are words or phrases that seemingly are very meaningful but in truth are open to great interpretation. While politicians are probably best known for their overuse of buzzwords, legislators, courts, attorneys and policymakers must also plead guilty. In the world of child welfare law, three of the best-known culprits are

“best interest of the child,” “neglect,” and “Post-Traumatic Stress Syndrome (PTSD).”

Depending on the situation, “best interest of the child” usually refers to taking into account a number of factors. To name just a few:

1. The child’s current housing arrangement;
2. The presence or availability of drugs and alcohol;
3. The mental stability of the child’s caretakers;
4. Whether there is a history of domestic or child abuse;
5. The financial stability of the caretakers;
6. The caretakers’ plans for the child now and in the future;
7. The unique health, mental health, and education needs of the child.

The [NYCourts.gov website](https://www.nycourts.gov) acknowledges the inexactness of the “best interest” phrase: “When there is a court case that affects a child, like custody, parental rights, or adoption, the court will consider the "best interest" of the child when making its decision. There is no standard definition of "best interest" of the child. In general, it refers to the factors that the Judge considers when deciding what will best serve the child and who is best suited to take care of the child. In New York, the "child's health and safety shall be the paramount concerns" when making a decision.”

Regarding “neglect,” New York Consolidated Laws, Social Services Law - SOS § 371, [states](#) that “Neglected child” means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(ii) who has been abandoned by his parents or other person legally responsible for his care.”

Post-Traumatic Stress Disorder (“PTSD”) may impact child welfare cases.

However, the term “PTSD” is constantly evolving. What constitutes a “stressful event” of sufficient magnitude to merit the diagnosis? In 1980, the [DSM-III](#)

mandated a “recognizable stressor that would evoke significant symptoms of distress in almost anyone”. By 1987, the [DSM-III-R](#), the term was further refined, to require that the stressful event had to be “. . .outside the range of normal experience and that would be markedly distressing to almost anyone . . .” In 2013, the [DSM-V](#) included a new category of Trauma and Stressor Related Disorders. Eight criteria for PTSD were established for individuals over six years of age in the DSM-V, including:

1. A stressor, such that the person was exposed to: death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence;
2. Intrusion Symptoms, such that the traumatic event is experienced over and over again;
3. Avoidance of trauma inducing experiences;
4. Negative alterations of mood and/or memory;
5. Alterations in arousal and/or reactivity;
6. Duration of symptoms of more than one month;
7. Symptom that impact upon the ability to function (socially, professionally);
8. Exclusion of other factors, such as symptomology being attributable to alcohol, drugs or illness.

Child custody evaluations are predicated on the presumption that mental health professionals who are appointed by the court and/or retained to accurately assess parents and their children can assess situation that do not yet exist:

1. The parties may not yet have divorced;

2. A change in primary custody is contemplated but has not yet occurred;
3. A change in one or both parties' rights of access to or possession of the child may not yet have changed;
4. A parent's rights may not yet have been terminated.

Child welfare is a complex alphabet-soup of buzzwords. If even the above three key terms can't be more precisely defined, how can the laws which use them – and many others – be fairly and consistently enforced? When charges of biased implementation are levelled, how can they be defended against?

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