

Removing a child: A painfully imperfect calculation

Daniel Pollack and Kathryn Krase | February 15, 2024



There are too many instances of child welfare officials leaving children with their families when later catastrophic events suggest that a removal from that environment could have been protective, or even life-saving.

However, the opposite is also true. There are abundant instances of children being removed from their families when evidence necessitating removal was lacking, or even when actual evidence indicated that the family should have been left alone.

And then, there are many cases when a child protective services worker is truly not sure what to do, but the system “errs on the side of caution” and removes a child from their family anyway.

Uncertainty when evaluating family system functioning can stem not from incompetence, a lack of training, being underpaid or being overworked. Uncertainty can just happen. When a child dies, it is a tragedy, but not always one that could have been prevented by Child Protective Services (CPS). There is no crystal ball to accurately predict the outcome of these cases, and there is no mathematical calculation to plug in known variables to a logical conclusion.

Even Major League Baseball umpires cannot call every pitch correctly even when they see the pitcher, the catcher, the batter and the ball all with their own eyes. Do we really expect professional reporters of suspected child maltreatment, along with child protective workers, directors, supervisors and family court judges to always get it “right”? If so, that expectation is naive.

One hundred and fifty years ago, there was a major shift in societal expectations around the care of children. Parents were responsible for their children and had an ironclad authority over their care. In the late 1800s, societal structures were designed to hold parents accountable for appropriate care of their children, lest they lose control of them altogether. These first “child welfare systems” were run by private organizations like Children’s Aid Society and the New York Society for the Prevention of Cruelty to Children. These organizations largely removed children from poor, often immigrant, families in urban areas,

placing them in orphanages, early forms of “foster care,” or on trains to the Midwest to be adopted or serve as farm labor.

In the 1960s, these privatized systems gave way to the government run CPS system that exists today. While there has always been a stated commitment of these systems to providing the resources necessary to prevent removal of children from their families, the realities of practice have often bent toward removal.

From a policy perspective, when factors are weighed on a scale considering a child’s removal from their home are seemingly balanced, the default should be to leave children in their homes. Why?

First, because the U.S. Supreme Court has held that parents have a fundamental constitutional right to raise their children (*Meyer v. Nebraska*, 262 U.S. 390 (1923); *Stanley v. Illinois*, 405 U.S. 645 (1972)), and children have a constitutional right to remain with their family, whenever possible (*Santosky v. Kramer*, 455 U.S. 745, 760 (1982); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977)).

Second, governments are not parents. Yes, there is the concept of *parens patriae*, Latin for “parent of the country”—often invoked as a doctrine granting an inherent power and authority to states to oversee and protect the health and welfare of its population.

Indeed, in the child welfare arena, the *parens patriae* doctrine may be used to place dependent children under the control of the state under certain circumstances—which proves the point. From a policy perspective, the default presumption is that children should remain under the care and control of their parents, not the state.

From a practice perspective, professionals want to be safe rather than be sorry. It doesn't take much to explain why. In states across the country judges get berated for sending a young child back to parents who turned out to be unfit. Later, the child is abused, and dies of their injuries. Any child's death is a tragedy. It is worse when it seems the death could have been prevented.

So, we are in a dilemma. Our current system seems to prioritize the prevention of child death over concern for family preservation. A review of the data suggests the system's priorities are not that effective.

An estimated 1,820 children died from child abuse and neglect in 2021 (a rate of 2.46 per 100,000 children), and more than 100,000 children were removed from their homes in that same year. Importantly, this number and rate of deaths is hardly different from an estimated 1,760 deaths (and rate of 2.35 per 100,000 children) in 2007, when nearly 300,000 children were removed from their homes. The current estimates are not drastically different when compared to 1970, although there were much fewer removals.

These figures suggest that all that has been done through the entire CPS system over the past 50+ years has failed to significantly reduce child fatalities from child abuse and neglect.

Of the children who die from child abuse and neglect, it estimated that 10-40% have prior or current CPS involvement. That means 60-90% of these child victims were not even known to CPS. Many deem these statistics a reflection of the failure of CPS and call for more reports, investigations and removals.

But, of the more than 100,000 children removed from their homes into foster care each year, there are estimates that at least 10%—and as many as 30% —are returned when it is determined that there is not enough evidence to keep that family separated. This means 10,000-30,000 children are traumatized through separation from their families, to “err on the side of caution.” This “caution” creates harm with long-term consequences.

The reality of these numbers should make us question the existing system. Practice and policy should prioritize intervening as minimally as necessary. Next time you consider blaming a caseworker, supervisor or judge for failing to protect a child, recognize that the real perpetrator is: the perpetrator.

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