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Effective Removal Policy Not Effective

State's coercive practice violates parents' constitutional rights

By BARRIE GOLDSTEIN

A gaping hole exists in the statutory framework that Connecticut has created to satisfy a parent's fundamental right to due process when his custodial rights are altered by the Department of Children and Families on the basis of child safety. This fatal constitutional flaw occurs when the department insists that a parent leave his home to avoid the department's removal of his child and placement into foster care. The statutory scheme provides no opportunity for a post-deprivation hearing. Months often pass before a parent in this circumstance is afforded a hearing. The department's coercive practice affects thousands of bewildered parents every year. Connecticut must correct this blatant unconstitutional practice.

The department performs an essential mission to protect the safety of children. On a daily basis, its workers and supervisors must make difficult judgment calls to avoid child abuse. When workers believe that a child's safety is threatened, they must marshal resources to provide for either a home environment that is safe or remove the child and place him in foster care. However, the very circumstances that take them to a home may cause them to tread heavily on the constitutional rights of the purported perpetrator.

The constitutional flaw exists in the agency's exercise of its investigative function. The state has established procedures, which comport with basic principles of due process, for parents to challenge the actual removal of their children from their homes. However, no process exists when the agency "effectively" removes a child from his parent by providing the parent with the Hobson's choice of either leaving the family home or seeing his child removed and placed in foster care, a fate that may be worse than the conduct at issue. Statistics reflect the potential scope of the constitutional wrong. In 2008, DCF received approximately 38,000 child abuse and neglect reports. The agency accepted approximately 21,000 of those cases for investigation. While data is not available, experts in child protection believe that "effective removals" occur in many of the thousands of cases which DCF investigates.

Safety Plan

Complaints of child abuse or neglect come to DCF from numerous sources. Depending upon the severity of the allegations, DCF, often accompanied by a police officer, will visit the child's home without notice anywhere between 2 and 72 hours after the receipt of the complaint. Almost by definition, this visit is a parent's worst nightmare. It is common for a parent to feel disoriented and frightened. Case workers cloaked with the authority of the state determine whether the child should be removed from the home or remain there with a "safety plan" in place. The process is not explained. A parent has no time to consult counsel or even take a deep breath. He is told what must be. And, the threat of arrest looms in some cases.

There is no doubt that the removal of a child from his parent causes deep emotional pain both to the parent and the child. However, a parent may take solace in the state's child protection statutes, which require judicial review of the agency's decision after 96 hours if the child has been taken without a court order or within 10 days if a court has allowed a removal. In both instances, the parent is provided with a lawyer and principles of due process are observed.


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The same cannot be said for "effective removals," which occur when a case worker turns to an anguished parent and says, 'If you don't leave — we will remove.' In these instances, the departing parent not only loses his child but also is deprived of any judicial recourse because Connecticut's statutory scheme is devoid of any procedure that would permit review of DCF's action. In effect, a removal without any due process has occurred. *See Croft v. Westmoreland Co. Children and Youth Services*, 103 F.3d 1123, 1126 & n.4 (3d Cir. 1997) (no difference between a removal and order to leave). Given that the home is now regarded to be "safe," DCF has no incentive to prioritize the case. It may take months before DCF commences an abuse or neglect proceeding, which would allow for review of the charge. In the meanwhile, the family's life has been completely disrupted.

Cynical Approach

DCF's approach to this problem is truly cynical. It offers a "game of chicken." If the purported perpetrator wants to be afforded due process, DCF states that he should advise the agency that he is moving home. The agency will then decide whether or not to remove the child. This is totally unacceptable

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conduct for a government agency, and it is cruel.

The Second Circuit addressed this issue in *Gottlieb v. County of Orange*, 84 F.3d 511 (2d Cir. 1996), where the court affirmed the basic proposition that the state must provide a parent with an opportunity to be heard when he has agreed to leave the home rather than seeing his child removed. The court ruled that Section 1028 of New York's Family Court Act provided the parent with the right to petition given the alteration of his custodial status. Unlike New York, Connecticut has no statutory procedure that would allow for the filing of such a petition. Accordingly, the state's statutory framework is susceptible to constitutional attack.

The department should consider this critical issue and offer legislation to cure this serious constitutional defect. The department's implementation of safety plans that prevent removals is not the problem. Rather, it must correct the denial of procedural due process that results from the total absence of post-deprivation remedies. ■

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