

# The Sounding Board

## Defining Child Neglect

It cannot be said too often that child protection systems in the United States investigate or assess reports of child neglect in far greater numbers than reports of physical abuse or sexual abuse. In annual *Child Maltreatment* reports that utilize NCANDS data submitted by states and U.S. territories, child victims of neglect outnumber victims of physical abuse by 4-1 and victims of sexual abuse by more than 10-1. Arguably, the ratio of alleged and substantiated child neglect to physical abuse and sexual abuse is related to a country's child poverty rate (see Jane Waldfogel's, *The Future of Child Protection*, 1998) and to the strengths and deficiencies of its family support systems. In recent years, destitution and homelessness, and risk of homelessness, have also had an increasing influence on child welfare systems. Kathryn Edin's and H. Luke Shaefer's, *\$2 a Day: Living on Almost Nothing in America* (2015) asserts that in recent years 4% of U.S. children were living in families with a cash income of \$2 per day or less per family member. Many of these families received food stamps, but as Edin's book makes clear, in many respects food stamps are no substitute for cash, a reality which often compels destitute parents to trade food stamps for cash, at a discount.

### Statutory definitions of neglect

Almost without exception, states and U.S. territories define neglect in terms of the "failure", "refusal", "inability", or "fault" of parents, guardians or custodians to provide their children with "proper", "essential", "necessary" or "adequate" care, or by reference to "negligent treatment or maltreatment" of caregivers, that harms (or creates a substantial risk of harm) to a child's health, welfare, safety or well being. Many statutory definitions of neglect combine 'fill in the blanks' terms such as "proper, necessary or essential care" with concrete lists of children's needs such as food, shelter, clothing, medical and (sometimes) dental care and supervision. Education is mentioned in some statutes and ignored in others, while some states such as Washington and Oregon, explicitly exclude stand alone allegations of educational neglect from CPS investigation.

The emphasis on parental responsibility for care of children is so pervasive in state statutes that it's easy to overlook. It's difficult to notice ways of thinking so fundamental to a society that they do not have to be mentioned, much less defended, in discussions of social policy. After all, what else might these statutes say if they were not wholly focused on parental failure, fault or inability to provide adequate care for children? The answer to this question lies in how some states frame a poverty exception to their neglect statutes.

### The Poverty Exception

Many (but not all) state statutes contain an exception to the legal requirement that parents and guardians provide adequate, necessary or essential care to their children based on poverty. Wisconsin law, for example, defines neglect as a parent's or guardian's "refusal, failure or inability" to provide necessary care "for reasons other than poverty." South Carolina's statute contains the usual list of children's basic needs, e.g., food, clothing, shelter, etc. which if parents do not provide "though financially able to do so", or when "offered financial or other reasonable

means” to meet these needs, constitutes child neglect. There is not a single state statute that follows a poverty exception such as “unless financially unable to do so” with the requirement that “in which case, the public agency investigating or assessing allegation of child neglect is responsible for assisting the parents to find the necessary resources to meet the child's basic needs,” or even more strongly, “if no such resources are available in the community, the agency investigating or assessing the report is obligated to provide essential resources.” State statutes that define child neglect are almost wholly focused on parental responsibility to feed, clothe, shelter, supervise and otherwise adequately care for children, but are silent regarding the child welfare agency's responsibility, or juvenile court's authority, to assist caregivers in carrying out their parenting responsibilities when poverty prevents them from providing adequate care.

The most important exception to the insistence on parental responsibility for meeting a child's needs in state statutes is the religious/spiritual beliefs exception to the requirement that parents provide children with urgently needed medical care. Colorado law, for example, states that “No child who, in lieu of medical treatment, is under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing shall not, for that reason alone, be considered neglected.” **The religious rights of the parent shall not limit the access of a child to medical care in a life threatening situation.**” This carefully worded statute is concerned with a child's need for (and right to) medical care in a life threatening situation while exempting a parent who refuses to seek medical treatment for the child based on religious belief from a finding of neglect. There is no similar insistence in any state statute on a child's need for and right to food, shelter, clothing, etc. when parents are unable to provide these necessities due to inadequate income. Policymakers across the country and in U.S. territories have been careful to separate legal definitions of neglect from any statement of public agency responsibility or community responsibility to meet a child's basic needs, regardless of parents' financial circumstances.

State laws that contain a poverty exception in their definitions of neglect would seem to put caseworkers in the difficult position of applying a means test during CPS investigations. However, in most serious neglect cases family poverty is combined with substance abuse, parental mental illness and/or domestic violence, and often other impairing conditions as well. So, as a practical matter, caseworkers and administrative law judges may not frequently encounter situations in which poverty is the sole cause of inadequate parenting. Nevertheless, in states that lack a poverty exception (and there are several) in their neglect definitions, caseworkers can hold parents legally responsible for inability to meet a child's basic needs, and can file legal actions alleging neglect even when a parent is willing and able to provide adequate care but cannot do so for financial reasons. State statutes that lack poverty exceptions in their definitions of neglect should be legally challenged by parent advocates, if indeed this has not already occurred.

### **Substance abuse and other impairing conditions in states' neglect statutes**

State statutes that define child neglect have much to say regarding substance abuse, including prenatal substance abuse and other impairing conditions, in their definitions of neglect. Some of this language regarding substance abuse and mental illness seems redundant in statutes that have already defined neglect generally (e.g., lack of proper care) and concretely (failure to provide food, clothing, shelter, etc.) as described above, and then add statements such as (in California) “the inability of the parent or guardian to provide regular care due to the parent's mental illness, developmental disability or substance abuse.” Perhaps this statutory language makes it easier for agency staff to substantiate neglect, or prove in court that children have been neglected by demonstrating that a parent is engaged in drug or alcohol abuse, rather than having to show in detail how substance abuse is impairing the capacity to be an adequate

parent.

In a number of states, prenatal substance abuse as indicated by a positive tox screen at delivery is defined as neglect. Ditto for children living in a home where an illegal drug is manufactured, or where there is drug paraphernalia, or where illegal drugs are sold; these children are neglected by legal definition regardless of other parenting behavior in many states.

Many states have lists of impairing psychological conditions such as a parent's mental illness, developmental disability or intellectual impairment that appear to create a presumption of neglect, though in almost all of these statutes public agencies still have to show the connection between the impairing condition and the inability or failure to meet a child's basic needs, to justify a finding of neglect. Incarceration that renders parents unable to care for their children is defined as neglect in several states and in the District of Columbia.

Massachusetts is one of very few states that exempt parents from being found neglectful "solely due to a handicapping condition." There are a few state statutes (including Washington State's) that explicitly name blindness and deafness as conditions which cannot be used to demonstrate parental incapacity, and Washington State law adds developmental disability to this list. Such exemptions are unusual in states' statutory definitions of neglect. In most states, evidence of a parent's mental/emotional impairment supports a finding of child neglect, rather than serving to protect parents from substantiation or legal action on behalf of children.

### **Washington's statutory definitions of child neglect**

Washington State's approach defining child neglect in law is unusual in several respects:

- State law refers to "negligent treatment or maltreatment" that "evidences serious disregard of consequences" and presents a "clear and present danger" to a child's health, welfare or safety. The statute does not list concrete needs of children such as food, clothing, medical care, etc., though at first glance the term 'negligent treatment and maltreatment' appears to cover a wide range of parental acts or failure to act.
- Washington law does not offer a definition of emotional abuse or emotional harm, a highly unusual omission in states' definitions of child abuse and neglect. Given that the state statute defining child neglect does not explicitly mention a child's emotional needs for attachment, nurturance, guidance, etc., the lack of any reference to emotional abuse or mental/emotional injury is taken by some child welfare staff and training staff to mean that Washington law does not recognize emotional abuse or neglect in its child protection statutes. This is a questionable interpretation of the law's intent, and is an illustration of what can happen when state law is not concrete and explicit.
- Washington is one of two states (the other is Oklahoma) to include a definition of chronic neglect in its statute: *"the cumulative effects of a pattern of conduct, behavior or inaction that evidences a serious disregard of consequences (and presents) a clear and present danger to a child's health, welfare or safety."* This reference to chronic neglect was added to state law after two children were found starved to death in an apartment littered with empty beer cans more than a decade ago, one of the few times a neglect related child death has led to a media firestorm in Washington. The reference to "cumulative effects" of neglect makes the lack of mention of emotional harm and developmental harm in state law even more puzzling, as LONGSCAN research conducted in Washington State has emphasized the cumulative effects of chronic neglect on

- children's social and emotional development.
- Washington's statutory definition of neglect is the only state statute that exempts homelessness, "in and of itself", and child witnessing of domestic violence from findings of neglect. Many states (including Washington) have poverty exceptions in their neglect statutes (see above), but Washington has the only state statute which explicitly asserts that homelessness "in and of itself" is not neglect, and that excludes DV witnessing by a child from the grounds for a CPS investigation/assessment. These unusual exceptions in the state's definitions of child neglect are a testimony to the influence and concerns of influential advocates more concerned with the possibility that CPS investigators might blame homeless parents or adult victims of DV for conditions and events outside their control than with utilizing child welfare involvement to obtain essential resources for children and their parents.

In Washington, homelessness advocates and DV advocates have viewed CPS investigations as punitive and more likely to emotionally harm parents than assist them in accessing urgently needed services and resources. As a result, it's possible in Washington for CPS reports of children living with a parent in a cardboard box under a bridge to be screened out, absent mention of "negligent treatment or maltreatment" by parents or guardians in that situation, while a CPS report of a 6 year old child left alone for a few hours after school is screened in and investigated or assessed! Washington State's neglect statute is designed to avoid intrusive and potentially punitive CPS investigations of parents widely viewed as victims. It is not about helping parents to meet the basic needs of vulnerable children. This ridiculous state of affairs can be changed by revising the state's poverty exception and homelessness exception. The statutory language around neglect can be changed to make helping low income children and families a primary goal of state child welfare policy, while screening CPS reports based on consideration of whether a child's basic needs (including shelter) are being met.

#### Reference

The Child Welfare Information Gateway contains voluminous information regarding states' and territories' child abuse and neglect statutes. This information can be accessed at <https://www.childwelfare.gov/topics//systemwide/laws-policies/state/>.

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