Montana State Legislature

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CHILD PROTECTIVE SERVICES AND THE JUVENILE JUSTICE SYSTEM

A guide to protect the constitutional rights of both parents and children.

"Know your rights before you talk to anyone from CPS, they won't tell you your rights. CPS can't do anything without your consent, demand a warrant and speak with an attorney first before speaking with anyone from CPS, it could cost you your children."

The United States Court of Appeals for the Ninth Circuit said it best, "The government's interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting children's interest in the privacy and dignity of their homes and in the lawfully exercised authority of their parents." *Calabretta v. Floyd, 189 F.3d 808 (9th Cir. 1999)*.

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IT'S UNCONSTITUTIONAL FOR CPS TO CONDUCT AN INVESTIGATION AND INTERVIEW A CHILD ON PRIVATE PROPERTY WITHOUT EXIGENT CIRCUMSTANCES OR PROBABLE CAUSE.

The decision in the case of *Doe et al, v. Heck et al (No. 01-3648, 2003 US App. Lexis 7144)* will affect the manner in which law enforcement and child protective services investigations of alleged child abuse or neglect are conducted. The decision of the 7th Circuit Court of Appeals found that this practice, i.e. the "no prior consent" interview of a child, will ordinarily constitute a "clear violation" of the constitutional rights of parents under the 4th and 14th Amendments to the U.S. Constitution. According to the Court, the investigative interview of a child constitutes a "search and seizure" and, when conducted on private property without "consent, a warrant, probable cause, or exigent circumstances," such an interview is an unreasonable search and seizure in violation of the rights of the parent, child, and, possibly the owner of the private property.

The mere possibility of danger does not constitute an emergency or exigent circumstance that would justify a forced warrantless entry and a warrantless seizure of a child. *Hurlman v. Rice, (2nd Cir. 1991)*

A due-process violation occurs when a state-required breakup of a natural family is founded solely on a "best interests" analysis that is not supported by the requisite proof of parental unfitness. *Quilloin v. Walcott, 434 U.S. 246, 255, (1978)*

PREFACE

This is only a guide to your constitutional protections in the context of an investigation of alleged child abuse and neglect by Child Protective Services ("CPS"). Every state has variances of CPS in one form or another. Some are called DCF, DHS, DSS, DCYS, DCFS, HRS, CYS and FIA, collectively known as "CPS" for the purposes of this handbook. The material in this handbook should be supplemented by your own careful study of the 4th and 14th Amendment and other Constitutional protections that are guaranteed even in the context dealing with CPS.

The intent of this handbook is to inform parents, caregivers and their attorneys that they can stand up against CPS and Juvenile Judges when they infringe upon the rights of both parents and children. As you read this handbook, you will be amazed what your rights are and how CPS conspires with the Assistant Attorney General ("AAG") who then in turn has the Judge issue warrant/orders that are unlawful and unconstitutional under the law. Contrary what any CPS officials, the AAG, Juvenile Judge or any social workers may say, they are all subject to and must yield to the 4th and 14th Amendment just like police officers according to the Circuit and District Courts of the United States and the Supreme Court. CPS workers can be sued for violations of your 4th and 14th Amendments, they lose their "immunity" by those "Deprivation of Rights Under the Color of Law" and must be sued in their "Official and Individual" capacity in order to succeed in a §§ 1983 and 1985 civil rights lawsuit. If the police assisted CPS in that deprivation of rights, they also lose immunity and can be sued for assisting CPS in the violation of both yours and your child's rights when they illegally abduct your children or enter your home without probable cause or exigent circumstances which are required under the warrant clause of the 14th Amendment.

ABOUT THE AUTHORS

The authors of this book are not attorneys and do not pretend to be attorneys. The authors were victims of a false report and were falsely accused by DCF in Connecticut without conducting a proper investigation. The authors fought back for 8-months against this corrupt organization whose order of the day was to deny them their 4th, 6th and 14th Amendment rights and to fabricate false charges without evidence. DCF's charges and petition to the court was nothing more than baseless allegations, never evidence. DCF withdrew the fraudulent petition on December 18, 2002 admitting they had no evidence. The fact of the matter is that they never had any evidence but abused the authors and their children for an 8-month period. As a direct result of the false charges and with manufacturing of evidence and violating the authors 1st, 4th, 6th, 9th and 14th Amendment rights, the authors filed a lawsuit in January 2003 in Federal Court in the District of Connecticut (3:03-cv-109AVC). There are 28 Defendants in this civil action and the authors are representing them selves Pro se. The authors have never been convicted of any child abuse or neglect nor are there any investigations on going. The authors have three children, a 16-year old and 11-year old twins.

The author's goals are that not another child is illegally abducted from their family and that CPS and juvenile judges start using common sense before rushing to judgment and to conduct their investigations the same as

do the police in order to be constitutionally correct and legal and that CPS **MUST** by law comply with the "Warrant Clause" as required by the Constitution and the Federal Courts whereas they are "governmental officials" and are subject to the Constitution as are the police. There are **NO EXCEPTIONS** to the Constitution for CPS.

INTRODUCTION

You as a parent or care giver MUST know your rights and be totally informed what you have a legal right to have and to express, whether you are a parent caught up in a very oppressive, abusive and many times unlawful actions of CPS or if you have never been investigated by CPS. Many individuals come to the wrong conclusion that the parents must have been abusive or neglectful in order for CPS to investigate, this is just a myth. The fact of the matter is that over 80% of the calls that are called in to CPS are false and bogus.

Another myth is that CPS can conduct an investigation in your home without your consent and speak to your child without your consent. CPS employees will lie to you and tell you they do not need your consent. The fact of the matter is they absolutely need your consent to come in your home and speak with your children. If there is no "exigent circumstances" (imminent danger) to your children with "probable cause" (credible witness) to support a warrant, CPS anywhere in the United States cannot lawfully enter your home and speak with you and your children. In fact it is illegal and you can sue the social worker and the police who assist them and they both lose immunity from being sued.

If CPS lies to the AAG and the Judge in order to get a warrant/order and you can prove it, that also is a 4th and 14th Amendment rights violation which is a civil rights violation under § 1983 and conspiracy against rights covered under § 1985. If a CPS official knocks on your door and has no legal warrant and you refuse them entry and the worker then threatens you with calling the police, this is also illegal and unlawful and both lose immunity. This is coercion, threatening and intimidation tactics even if the police only got the door open so CPS official can gain entry. Both can be sued.

Remember, CPS officials will not tell you your rights; in fact they are going to do everything in their power including lying to you, threatening you with police presence telling you that you have to let them in. The police may even threaten you to let CPS in because you are obstructing an investigation. Many police officers do not realize that CPS MUST comply with the warrant clause of the 14th Amendment or be sued for violating it.

CPS does not have a legal right to conduct an investigation of alleged child abuse or neglect in a private home without your consent. In fact removing a child from your home without your consent even for several hours is a "seizure" under federal law. Speaking to your children without your consent is also a "seizure" under the law. If CPS cannot support a warrant and show that the child is in immanent danger along with probable cause, CPS cannot enter your home and speak with your children. Remember, anonymous calls into CPS are **NEVER** probable cause under the Warrant Clause. And even if they got a name and number from the reporter on the end of the phone, that also does not support probable cause under the law. CPS must by law, investigate the caller to determine to see if he or she is the person who they say they are and that what they said is credible. The call alone, standing by itself, is insufficient to support probable cause under the law. Many bogus calls are made by disgruntle neighbors, ex spouses, someone wanting to get revenge so CPS needs to show due diligence as do police to get sworn statements. All CPS agencies all across the country have a much exaggerated view of their power. And what you think is abuse or neglect is or is not, CPS has a totally different definition. That definition is what ever they want it to be. DCF will lie to you, mark my word, they will tell you they can do anything they want and they have total immunity. Tell that to the half dozen social workers sitting in jail in California, they lied to the judge. We will discuss this in further detail on what CPS and the police can do and not do.

SECTION 1

NEVER EVER TRUST ANYONE FROM CPS

You have to under stand that CPS will not give you or your spouse a Miranda warning nor do they have to. If CPS shows up at your door and tells you they need to speak with you and your children, you have the legal right to deny them entry. But before they leave, you should bring your children to the door but never open it, instead show them the children are not in imminent danger and that they are fine. If you do not at least show them your children, they could come back with an unlawful and unconstitutional warrant even though your children are not in imminent danger.

Every thing CPS sees and hears is written down and eventually given to the AAG for your possible prosecution. You also need to know if the focus of the investigation is on your spouse or significant other you may think you may not be charged with anything and that you are the non-offending spouse, wrong. If your spouse gets charged with anything, you are probably going to get charged with allowing it to happen. So if a spouse gets the bright idea and lies and makes things up, he/she is also confessing that he allowed what ever he/she alleges.

What you say will more then likely not be written down the way you said it or meant it. For example, the CPS worker asks the wife, "Does your husband yell at the children?" your response could be once in a while. Then they ask, "Does he yell at you and argue with you. Your response could be "yes we argue sometimes and he may raise his voice." The next question is, "Does your husband drink alcohol?" Your response could be "yes he has several drinks a week." Now let's translate those benign responses and see what CPS may right in her paperwork. "When the father drinks, he yells at children and wife and wife is a victim of domestic violence." This is a far cry on what really took place in that conversation. CPS routinely will take what you say out of context and actually lie in their reports in order to have a successful prosecution of their case. They have an end game in mine and they will misrepresent the facts and circumstances surrounding what may or may not have happened.

Something similar happened to the authors where DCF employees lied in front of the judge and said the husband was a victim of domestic violence even though all 5 members of the family stated clearly that there was never any domestic violence. The husband would like to know when this occurred because he wasn't there. They will also misrepresent the condition of your home, as did DCF with us. Even if you were sick or injured and hadn't had a chance to straighten anything out. CPS will not put anything exculpatory in the record so any one that reads her notes will read that the house was a mess and cluttered. Never give them a chance to falsify the record or twist your words. The best advice we can offer is before letting any CPS official in if you choose to do so is to tell them you want your attorney there when they come and schedule a time for that.

Remember, CPS could care less about your rights or your children's constitutional rights. Removing a child from a safe home is more harmful then most alleged allegation as stated by many judges. They will lie and say they have to come in or you have to comply. Remember CPS has no statutory authority to enter your home when no crime has been committed. They are trained to lie to you in order to get in any way they can and this comes from interviewing employees at DCF. Do not sign anything or agree to anything. Even if you're not guilty and you agree to go through some horse and pony show. That is used against you as if you admitted to it.

SECTION 2

ARE ALL CPS WORKERS IN THE UNITED STATES SUBJECT TO THE 4TH AND 14TH AMENDMENT?

Yes they are, the 4th Amendment is applicable to DCF investigators in the context of an investigation of alleged abuse or neglect as are all "government officials." This issue is brought out best in *Walsh v. Erie County Dept. of Job and Family Services, 3:01-cv-7588*.

The social workers argued, "the Fourth Amendment was not applicable to the activities of their social worker employees." The social workers claimed, "entries into private homes by child welfare workers involve neither searches nor seizures under the Fourth Amendment, and thus can be conducted without either a warrant or probable cause to believe that a child is at risk of imminent harm."

The court disagreed and ruled: "Despite the defendant's **exaggerated view of their powers**, the Fourth Amendment applies to them, as it does to all other officers and agents of the state whose request to enter, however benign or well-intentioned, are met by a closed door." The Court also stated "The Fourth Amendment's prohibition on unreasonable searches and seizures applies whenever an investigator, be it a police officer, a DCFS employee, or any other agent of the state, responds to an alleged instance of child abuse, neglect, or dependency." (Emphasis added) The social worker's first argument, shot down by the court. The social workers then argued that there are exceptions to the Fourth Amendment, and that the situation was an "emergency." They state, the "Defendants argue their entry into the home, even absent voluntary consent, was reasonable under the circumstances. They point to: the anonymous complaint about clutter on the front porch; and the plaintiff's attempt to leave.

These circumstances, the defendants argue, created an 'emergency situation' that led Darnold and Brown reasonably to believe the Walsh children were in danger of imminent harm. (Thus is the old "emergency" excuse that has been used for years by social workers.) The Court again disagreed and ruled: "There is nothing inherently

unusual or dangerous about cluttered premises, much less anything about such vaguely described conditions that could manifest imminent or even possible danger or harm to young children. If household 'clutter' justifies warrant less entry and threats of removal of children and arrest or citation of their parents, few families are secure and few homes are safe from unwelcome and unjustified intrusion by state officials and officers." The Court went on to rule, "They have failed to show that any exigency that justifies warrantless entry was necessary to protect the welfare of the plaintiff's children. In this case a rational jury could find that 'not evidence points to the opposite conclusion' and a lack of 'sufficient exigent circumstances to relieve the state actors here of the burden of obtaining a warrant." The social worker's second argument, shot down by the court.

The social workers then argued that they are obligated under law to investigate any reported case of child abuse, and that supersedes the Fourth Amendment. They argued, "Against these fundamental rights, the defendants contend that Ohio's statutory framework for learning about and investigation allegations of child abuse and neglect supersede their obligations under the Fourth Amendment. They point principally to § 2151.421 of the Ohio Revised code as authority for their warrantless entry into and search of the plaintiff's home. That statute imposes a duty on certain designated professionals and persons who work with children or provide child care to report instances of apparent child abuse or neglect." This is the old "mandatory reporter" excuse.

The Court disagreed and ruled: "The defendant's argument that the duty to investigate created by § 2151.421(F)(1) exempts them from the Fourth Amendment misses the mark because, not having received a report described in § 2151.421(A)(1)(b), they were not, and could not have been, conducting an investigation pursuant to § 2151.421(F)(1)." The social worker's third argument, shot down by the court.

The Court continues with their chastisement of the social workers: "There can be no doubt that the state can and should protect the welfare of children who are at risk from acts of abuse and neglect. There likewise can be no doubt that occasions arise calling for immediate response, even without prior judicial approval. But those instances are the exception. Other wise child welfare workers would have a free pass into any home in which they have an anonymous report or poor housekeeping, overcrowding, and insufficient medical care and, thus perception that children may be at some risk." The Court continues: "The anonymous phone call in this case did not constitute a 'report' of child abuse or neglect." The social workers, Darnold and Brown, claimed that they were immune from liability, claiming qualified immunity because "they had not had training in Fourth Amendment law." In other words, because they thought the Fourth Amendment did not bind them, they couldn't be sued for their "mistake."

The police officers, Chandler and Kish, claimed that they couldn't be sued because they thought the social workers were not subject to the Fourth Amendment, and they were just helping the social workers. The Court disagreed and ruled: "That subjective basis for their ignorance about and actions in violation of the fourth Amendment does not relieve them of the consequences of that ignorance and those actions." The Court then lowers the boom by stating: "The claims of defendants Darnold, Brown, Chandler and Kish of qualified immunity are therefore denied."

THE 9TH CIRCUIT COURT SAID, PARENTS HAVE THE CONSTITUTIONAL RIGHT TO BE LEFT ALONE BY CPS AND THE POLICE.

The 9th Circuit Court of Appeals case, *Calabretta v. Floyd, 9th Cir. (1999)* "involves whether a social worker and a police officer were entitled to qualified immunity, for a coerced entry into a home to investigate suspected child abuse, interrogation of a child, and strip search of a child, conducted without a search warrant and without a special exigency."

The court did not agree that the social worker and the police officer had "qualified immunity" and said, "the facts in this case are noteworthy for the absence of emergency." No one was in distress. "The police officer was there to back up the social worker's insistence on entry against the mother's will, not because he perceived any imminent danger of harm." And he should have known better. Furthermore, "had the information been more alarming, had the social worker or police officer been alarmed, had there been reason to fear imminent harm to a child, this would be a different case, one to which we have no occasion to speak. A reasonable official would understand that they could not enter the home without consent or a search warrant."

And now the 9th Circuit Court of Appeals defines the law: "In our circuit, a reasonable official would have known that the law barred this entry. Any government official (CPS) can be held to know that their office does not give them unrestricted right to enter people's homes at will. We held in *White v. Pierce county (797 F. 2d 812 (9th Cir. 1986)*, a child welfare investigation case, that 'it was settled constitutional law that, absent exigent