



## Shadow removals: How safety plans allow CPS to avoid judicial oversight

BY ANDREW BROWN, OPINION CONTRIBUTOR — 05/31/19

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An [investigative report](#) by WDRB in Louisville, Kentucky recently exposed a particularly innovative — although likely illegal — method that the state’s child protective services caseworkers came up with to remove children from their families without court approval.

According to the report, Cabinet for Health and Family Services workers kept stacks of blank emergency removal orders that were pre-signed by local district court judges. This allowed caseworkers to take custody of children without having a judge properly review the allegations or evidence beforehand. Attorneys and judges interviewed for the report compared the practice to a police officer creating their own search warrant without a judge’s approval.

While the Kentucky practice is shocking for its utter brazenness, it is a symptom of the larger problem of the child welfare system’s disregard for the most basic constitutional rights. More than 100 years of U.S. Supreme Court precedent has recognized that the parent-child relationship is a fundamental liberty interest, and has afforded it the highest level of protection available in our judicial system. Yet despite these clear limitations, state child welfare bureaucracies continue to infringe upon these rights — often without strong justification or judicial oversight.

One common (yet little-noticed) example of how CPS routinely denies families their right to due process is the use of so-called “safety plans.” A safety plan is a written agreement between CPS and a family that requires parents to comply with the demands of CPS in order to keep their family intact. These demands, couched in the seemingly innocuous term “services,” are purportedly for the purpose of ensuring child safety. In reality, they amount to little more than the arbitrary and open-ended micromanagement of a family by an unaccountable government worker.

Safety plans are most commonly used during the initial stages of an investigation. Following a call to the CPS Hotline alleging suspected abuse or neglect, a caseworker will interview the family and sometimes other collateral witnesses to determine if the allegation has merit.

A safety plan generally comes into play when the caseworker has concerns about a family, but lacks sufficient evidence to convince a court to support a removal. The terms of a safety plan may require parents to participate in counseling, submit to 24/7 supervision, or even send their children to live with relatives until CPS is satisfied that there is no risk of abuse or neglect. Proponents of safety plans tout them as a legitimate investigation tools that provide less intrusive ways of ensuring child safety until concerns are allayed.

Critics, however, argue that safety plans unconstitutionally infringe on the rights of families by allowing CPS to circumvent judicial oversight. Although presented as voluntary agreements, safety plans present families with a false choice — either comply with CPS’s open-ended demands or have their children taken away. A safety plan form used by the [Nevada Division of Child and Family Services](#), for example, clearly states in bold letters that a child may be removed into protective custody if the parents are unwilling to participate in the activities listed. The form used by the [Texas Department of Family and Protective Services](#) contains a clause informing the family that the safety plan will remain in effect until notified by the caseworker.

In recent years, a number of [lawsuits](#) have been filed against state child welfare bureaucracies challenging the use of safety plans as a sort of “shadow removal.” These lawsuits allege that safety plans are unconstitutionally coercive because they subject families to separation and other restrictions on their liberty under the threat of permanent removal of children into the custody of the state.

Just like Kentucky’s pre-signed removal orders, safety plans separate families or impose significant restrictions on their rights without any meaningful oversight. Both practices also operate in the shadows as neither states nor the federal government currently maintain reliable data on the use of safety plans by state child welfare authorities.

As the public is becoming more aware of [the trauma suffered by children and families](#) as a result of involuntary separation, states must take a closer look at the practices employed by their child welfare systems to ensure that they comport with constitutionally-mandated protections.

Reforming the use of safety plans by requiring states to report on their use, mandating meaningful judicial oversight, and affording families the right to consult with an attorney before signing a safety plan is a good first step.

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