Liability in Child Welfare

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ABSTRACT: Child welfare workers and agencies are vulnerable to lawsuits. Recent court rulings have more clearly defined the liability of workers. The distinguishing variable is custody. Children injured while in the custody of the state are entitled to sue for damages. Children injured by their parent, even if under the supervision of a child welfare agency, are not entitled to claim a violation of their 14th Amendment rights. These cases are reviewed and strategies designed to minimize vulnerability are offered.

Reportedly, less than two percent of social workers have ever been sued [Besharov & Besharov, 1987]. This is a small number and it is unknown how many of these lawsuits are dismissed, settled out of court, or decided in favor of the social worker. Nevertheless, being sued is an anxiety producing, expensive, and stressful experience. Social workers, especially in child welfare settings, are increasingly vulnerable to lawsuits. This article examines recent liability issues in child welfare and discusses in detail significant court decisions which have defined liability. It will also suggest specific strategies to both minimize the legal liability of child welfare workers and improve services to clients.

Conflicting Demands in Child Welfare

The child welfare worker is beset by a number of conflicting demands and environmental exigencies which can impede the effective exercise of professional judgement and service provision. The judgements of workers are subject to scrutiny and criticism by actors both inside and outside of the employing agency. Workers with diverse educa-
tional backgrounds are attempting to intervene in complex and intractable problems in an atmosphere that has become litigious and characterized by multiple levels of extensive regulation.

While social workers in every field of practice face potential liability, child welfare practice provides a fertile field for litigation. The number of actors and their diverse needs combined with the decision making authority of the child welfare agency increases the risks. There does not appear to be any other field of practice in which every decision, from intake to termination, will anger or disappoint one or more actors. As the number of actors increase, the potential for conflict can increase exponentially. It is not atypical for the child welfare worker to deal with biological parents who may have different agendas, maternal and paternal grandparents, other relatives, foster parents, referring parties, attorneys for these parties, medical and health personnel, school employees, religious leaders or clergy, and consumer groups which support parents and view child welfare workers as violators of the Bill of Rights or consumer groups which advocate for children and view child welfare workers as unable or unwilling to protect children.

Services for endangered children are generally provided by large public agencies. Staff turnover and large caseloads are not uncommon. National surveys of the educational backgrounds of workers reveal that less than 20% of workers have a B.S.W. or M.S.W. degree [Shyne & Schroeder, 1978; Vinokur-Kaplan & Hartman, 1986]. Workers are dealing with increasingly complex and intractable problems such as children with AIDS, homelessness, and parental chemical dependency. In the last 14 years, there has been a 300 percent increase in the reports of child maltreatment [American Public Welfare Association, 1990].

The extensive regulations which accompany public child welfare practice can add to the stress level of the staff. Workers are subject to federal, state, and in some areas of the country, county and city regulations. Federal regulations, such as those contained in Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980 are complex. One section of this legislation requires states to make "reasonable efforts" to keep children with their families. However, the legislation does not define what is reasonable. This has resulted in litigation [In Interest of A.L.W., L.R.W., A.M.W., and H.A.K., 1989; In re Kristina L., 1986]. There is still no definition of what constitutes reasonable efforts. Each state has a reporting law and statutes which establishes and defines the authority of the juvenile court and the