Ideas In-ACTION

Child Welfare Institute

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A Public Misunderstanding

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> "We can't just put the child in the car," Ann Williamson, secretary of the (Louisiana) state Department of Social Services, said of the role of her department's caseworkers. "Child protection only has that ability to the degree the courts afford it."

This recent statement in a Louisiana newspaper by the Secretary of the Louisiana Department of Social Services speaks a truth that most of the public and even many mandated reporters do not understand. While child protective services (CPS) have the legal authority to investigate family situations in which abuse or neglect is suspected, it has limited power to mandate anything when it substantiates a report of child maltreatment. In the criminal justice system, any conviction for a crime can be accompanied with court imposed conditions or punishments. A finding of child maltreatment is not the same. In child maltreatment cases, the court generally can intervene only when CPS can make the case that a child is in "imminent danger of serious harm," and it can only remove a child when a child's remaining in the family is "contrary to the welfare of the child." When this can be established, the court can impose a required service plan and hold a family accountable for improvements relative to a child's safety. The distance between substantiating maltreatment and proving imminent danger of serious harm is a vast expanse.

According to data from the National Child Abuse and Neglect Data System (NCANDS), in 2003, CPS agencies received approximately 2.9 million referrals regarding about 5.5 million children. More than two-thirds of these were accepted for investigation. An estimated 906,000 children were determined to be victims of child abuse and neglect. Much of the public may mistakenly believe that this is sufficient basis for CPS to do something to protect these children. But it isn't.

Approximately 92,258 children, or about 15.1% of all victims, were removed from their homes in 2003. This is down from 2002, in which 134,456, or 18.9% of all victims, were removed from their homes. As stated previously, to be removed a child must generally meet the standard of being in imminent danger of serious harm. NCANDS does not clearly reveal the number of children not removed from their homes that may have had court involvement to protect them. The data suggests that 66,645 children were victims with a court petition. NCANDS defines court petition as any legal action initiated by a representative of the CPS agency on behalf of the child. This includes authorization to place the child in foster care, filing for temporary custody, dependency, or termination of parental rights. It does not include criminal proceedings against a perpetrator. The difficulty in interpreting this data is illustrated by the appearance that fewer children were involved in a court petition than were removed, an unlikely event.

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Whatever the case, it is unlikely that a significant number of families in which child maltreatment is substantiated end up under an order of the court other than those that had a child removed. Even many in-home safety plans are consensual. This gets to a point of public misunderstanding. For the overwhelming majority of child maltreatment reports that are substantiated, any continuing intervention requires the consent of the family. Substantiation does not automatically mean that the state can impose an intervention on a family. Yet, it is often the case that families do receive services following a substantiated report. According to data from NCANDS, 57.1% or 394,871 child victims received some form of post-investigative services. But, little appears to be known about the nature, extend or duration of such services or whether this data element in NCANDS is actually good proxy for case opening.

In many child abuse fatality or serious injury cases, a family may have had multiple reports, and perhaps even multiple substantiations. The press and the public understandably ask, "Why was nothing more done to protect the child?" The simple answer may be that the family refused further intervention and, lacking current severity or dangerousness, the CPS agency could do no more.

Many CPS systems have attempted to change their approach with families, from a more law enforcement based model, to a more family-centered and supportive approach. Evidence suggests that alternative response approaches reduce alienation and increase the likelihood that families will more readily engage in ongoing interventions and that these interventions can reduce the occurrence of future re-maltreatment. For example, a recent evaluation of Minnesota's alternative response system found that alternative response caseworkers were significantly more likely to find families cooperative and motivated to change than their investigative counterparts. Other systems, e.g., Illinois, have simply sought to change the culture of the investigation to an approach that better engages families and reduces alienation.

While strategies such as alternative response may be able to successfully engage more families, communities have not necessarily made policy and financial commitments to serve more families. No system is funded sufficiently to serve 100% of all maltreated children and their families. Nor is it necessarily the case that all maltreated children need a continuing intervention to protect them from future harm. The problem exists with finding the place in the middle that ensures children in need of protection are protected.

Some states seek to bolster CPS by strengthening forensic approaches. The assumption seems to be that cases are not being substantiated because of investigative failures. Such strategies are often initiated without any real evidence that forensic failures resulted in a failure to substantiate, and therefore the agency's failure to prevent a tragedy. Even if this were the case, one is still left with the reality that substantiation does not come with automatic legal authority to intervene beyond the conclusion of the investigation.

One hope might come from better research linking multiple reports and the severity of future maltreatment. For now, CPS agencies are left with a conundrum. While it is possible to substantiate maltreatment in a family, it may not be possible to take further protective measures without family consent until a child is in imminent danger of serious harm. Unfortunately, the evidence of this imminent danger may be serious harm that has just occurred. It might help if both the public and the legislature more fully understood this reality and accepted the inherent risk built into the design of the current child protection system, specifically that CPS is not legally equipped to do more than investigate all suspected child maltreatment cases, except for those children deemed in imminent danger of serious harm. Alternatively, there may be different designs that offer lower risk. Given the nature of human behavior, there will be no design that offers no risk. In no way should the latter reality be an argument against continuous practice improvement. Such improvements will come from a better understanding of how cases that result in a tragic conclusion differ from those that result in maltreatment recurrence without serious harm.