

# How can we ensure that separating children from their families is an intervention of last resort?

SANKARAN, V., CHURCH, C. AND MITCHELL, M. (2019). "A CURE WORSE THAN THE DISEASE? THE IMPACT OF REMOVAL ON CHILDREN AND THEIR FAMILIES." *MARQ. L. REV.* 102(4), 1163-94

## What can we learn from this study?

Child welfare professionals remove children from their parents more than 250,000 times per year. Across the country, removal decisions are based on inconsistent standards and practice — often applied disproportionately — and result in [trauma for children and families](#). While separating children from their parents should be an intervention of last resort in child welfare practice, there is little guidance about how to prevent removal, mitigate trauma, and connect families to more appropriate supports when needed. This article examines the practice, policy, and research gaps that contribute to the unnecessary removal of children, and illustrates the considerable variation across states in when and how children are removed from their parents.

### Study details:

- **Data source:** AFCARS data FFY 2009-2017; state codes and statutes through 2019
- **Methodology:** Descriptive data analysis and literature review

## Why is this important for our work?

The current process for deciding when to remove a child is flawed and inconsistent, which causes harm and prevents families from getting the support they actually need. Revisiting the standards for removal with a diverse group of stakeholders (to include families and community members) is critical. Only public officials with training in both the legal standards for removal and how to mitigate trauma should remove children, and only when all other interventions have been exhausted.

## What are the critical findings?

An analysis of data and statutes shows variation in:

- **Who can immediately remove children without a court order:** In some states, law enforcement and/or child welfare professionals may remove children, while in other states that authority is extended to private individuals (including doctors, nurses, and attorneys) who may not have appropriate training in the legal standards for removal or how to mitigate trauma.
- **The legal standard for emergency removal:** Some states allow children to be removed based on the suspicion of child abuse or neglect (making it easier to remove), while other states allow removal only when there is imminent danger and all other options have been exhausted (a higher threshold for removal).
- **How quickly courts have to review emergency removal orders:** The timeframe ranges from 24 hours in many states, to 20 days in one state, before parents are able to participate in decision-making for their child.
- **If and when counsel is appointed:** Some states never require that parents be appointed an attorney, while others do but often not before the first hearing.
- **How data is collected and used:** The data captured about why children are removed is insufficient and biased toward the deficits of parents, which makes it challenging to evaluate what services may be needed to support children and families more effectively.

This summary synthesizes the findings from a single report. To learn more, please review additional resources on [prevention](#) and the importance of [quality legal representation](#).

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