

GIVING UP CUSTODY TO OBTAIN SERVICES:
OVERALL AND MULTICULTURAL IMPLICATIONS

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My husband and I adopted Heather when she was two months old. At an early age it became apparent that she had significant psychological problems that have worsened as she has grown older. Heather is currently in a residential treatment center. This care costs approximately \$60,000 per year. We have exhausted our insurance benefits and all of our other available financial resources. We requested support services from the Idaho Department of Health and Welfare and were told that financial and other assistance would be available for Heather only if we committed her to the custody of the state.

The question of custody is a very emotional issue for us. It deeply affects our family's commitment to Heather. We had to go through home study placement and post placement visits by a social worker before we could legally become her parents. If the state takes custody where does that leave us? We are not her biological parents and we would not be her custodial parents either. We have lost count of the times we have been asked "Which ones are your own children?" If the state has custody will they all still be our own children or will our perspective change? The whole idea threatens and frightens us. Heather and her younger sister are currently grappling with the issue of belonging and ask, "Why didn't my other mother want me?" Clearly, it would be emotionally damaging to all of us as a family to lose custody of one of our children. I think it is somehow even more difficult to consider giving up custody of an adopted child than a biological child. Whether we had custody of a biological child or not, we would always have our biological link; but what is left if we lose custody of a child we adopted? (Dorling, 1990, p. 4-5).

Introduction

This paper addresses the issues created when parents are required to relinquish legal custody of their children who have physical, mental or emotional disabilities solely for the purpose of obtaining services at public expense (McManus & Friesen, 1989a,b). Despite a variety of negative outcomes for individual families and unintended public policy consequences, this practice is only now emerging from "private problem" to "public issue" status, using Mills' distinction (Mills, 1971). Further, it is a complex

and controversial issue. There is considerable difference of opinion about whether there is a problem, and, if there is, what should be done about it. In this paper we take the position that the issue is both a policy problem that requires policy reform and a practice problem for social workers and other service providers.

This problem affects thousands of families whose children have a wide range of physical, mental and emotional problems and is manifested in many child-serving systems including child welfare, mental health, health and juvenile justice. Because the issues are very complex, and may be different according to the child's disability or the system in question, we have limited this analysis to families whose children have serious emotional, behavioral or mental disorders, with an emphasis on child welfare policies. Presentation of the substance of the policy-practice problem is followed by a discussion of the dilemmas posed for social work. The paper concludes with recommendations for action in four arenas: social welfare research, legal and policy reform, examination and revision of agency practice standards, and changes in social work education.

The issue: Trading custody for services.

The cost of obtaining necessary and appropriate treatment services for children and youth with serious mental, emotional, or behavioral disorders is beyond the reach of most families, particularly where the child requires residential treatment, psychiatric hospitalization or other out-of-home placement. Even for families who have insurance coverage, the costs of extended out-of-home placement rapidly exceed the limits of insurance coverage. Some families must refinance their homes in an effort to meet mounting bills, and may declare bankruptcy or find themselves in contempt of court for their failure to pay expenses that may total hundreds of

thousands of dollars (Smith, 1989; Strickland, 1989). Accordingly, families turn to state child-serving agencies for assistance in securing vital services for their children.

Families seeking state assistance in financing out-of-home services are often advised that they must surrender legal custody of their children to the state in order to receive publicly funded services. This requirement presents families with a very difficult choice; they either surrender their children into the state's custody and thereby receive essential services or retain custody of their children with serious mental health problems but deny them the services they require (McManus & Friesen, 1989a).

The family situations in question are not those involving neglect, abuse or abandonment. The families who constitute the focus of this analysis are simply unable to pay the total high cost of out-of-home care for their troubled children. In the absence of their children's needs for special services, these parents would not consider transferring custody of their children to the state, nor would state authorities consider taking legal custody.

Legal Arrangements for Out-of-Home Placement. States authorize out-of-home placements through one or more of the following methods: (a) voluntary placement agreements; (b) voluntary custody agreements; or (c) court orders. *Voluntary placement agreements* do not involve a relinquishment of legal custody by parents to state authorities. Such agreements are time limited and, must undergo judicial review after a specified period of time to determine whether the voluntary placement should continue. Parents or guardians entering into *voluntary custody agreements* temporarily surrender legal custody of their children to state child-caring agencies. When parents enter into voluntary custody

agreements they not only surrender their children into the custody and care of others, they may also lose (among others) their rights to participate in their children's education and health care, although the terms of voluntary custody arrangements vary across jurisdictions. *Court orders* are a third method through which out-of-home placement may be authorized. Here, in states that have no provisions for voluntary placement or voluntary custody agreements, publicly funded out-of-home services are available only to children who have been made wards of the court following a finding of dependency (due to abuse, abandonment, or neglect) or delinquency.

It is important to note that the degree of parental choice may not necessarily be directly reflected in the legal status surrounding a child's placement. As Yoshikami & Emlen (1983) point out, the legal authority for placement and the level of parental choice, agreement and initiative should be considered as two separate dimensions. Their schema for thinking about this issue is presented in Figure 1.

Figure 1
Legal authority and parental choice in initial placement decision

		<u>Legal Authority for Placement</u>	
		Voluntary Agreement	Court Order
<u>Level of Parental Choice</u>	High	(1) True Voluntary	(3) Voluntary Judicial
	Low	(2) Quasi-Voluntary	(4) True Court-Ordered

Within this framework, it can be seen that although the legal authority for a given placement is often clear and can be determined through case review or other objective means, the level of parental choice is a subjective phenomenon that cannot be inferred from the legal status of the child. Determining the level of parental choice must include a case-by-

case assessment of the parents' perceptions regarding the circumstances of out-of-home placement. The use of the term "voluntary" to describe placements under a voluntary custody arrangement is of questionable accuracy because the child's access to services are dependent upon the transfer of custody and therefore the parents' decision cannot be made freely.

The scope of the problem: Who is affected?. The number of children and families affected by this problem can only be estimated. Approximately 12 percent of children between the ages of 0-18 (7.5 million children) are in need of mental health services (Institute of Medicine, 1989) and between 3 and 5 percent of all children have problems that are so serious and persistent that they are considered to have "serious emotional disorders." Whether or not these children enter out-of-home placements is dependent upon a number of factors, most particularly whether appropriate community alternatives to out-of-home placement are available (Stroul & Friedman, 1986, 1988) and whether families receive appropriate services and support (Friesen & Koroloff, 1990).

Drawing from several sources, we estimate that at least 20,000 children are in group care at any given time because of their emotional, behavioral or mental problems. In a national survey of residential facilities conducted in 1981-82, Young, Dore and Pappenfort (1988) found 20,381 children considered to have an emotional disturbance in residential facilities designed primarily for that population; Gilliland-Mallo and Judd (1986) put the number at 29,000. Whittaker (1987) correctly points out that policies related to out-of-home care are affected by the reality that it is a relatively "small" problem; all children in substitute care constitute only 1 percent of all children 0-17 in the U.S. Another approach to calculating the magnitude of this problem, however, suggests

that it is is a much larger problem, both numerically and socially. Combining our conservative estimate of 20,000 children with mental health problems in group care settings at any one time with the information provided by Young, et al. (1988) that the average length of stay is less than one year, suggests that literally millions of families are affected by this issue over the 17 years of a family's life during which "substitute care" is a relevant concept.

Limited research efforts have been undertaken to date to identify the extent to which parents are asked to relinquish custody of their children for the purpose of receiving publicly-funded out-of-home services. In a national study (Friesen, 1989) conducted by the Research and Training Center on Family Support and Children's Mental Health, parents were asked, "Has it ever been suggested to you that you give up custody of your child in order to get services?" Of the 966 parents who responded, 25% (240 parents) reported that giving up custody had been suggested to them. The proportions of parents of minority and non-minority children to whom custody relinquishment had been suggested were virtually identical. Of the group of parents to whom custody relinquishment had been suggested, 38% of the parents of minority children had actually given up custody as compared to 34% of the parents of non-minority children.

In 1988, thirty-nine states, the District of Columbia, and Puerto Rico responded to a questionnaire concerning their provisions for out-of-home placement of children with emotional disorders (Friesen & Exo, 1988). Of the 41 responding jurisdictions, 29 had provisions that enable parents to voluntarily place their children out-of-home for a limited period of time and retain legal custody of their children (voluntary placement). Twenty-two states reported that legal custody of a child could be temporarily

given to the state by parents (voluntary custody), and 4 states had no provision for either voluntary placement or voluntary custody; in those instances a court must declare a child dependent or delinquent in order to receive publicly funded out-of-home services.

In the Friesen & Exo (1988) study data were gathered only about policy options; the responses of states do not provide information about actual practices employed in each state. Information from parents and concerned advocates around the country suggests that the practice of requiring families to give up legal custody is widely employed even in jurisdictions where voluntary placement is possible. This suggestion is supported by the findings of Cohen, et al. (1990), who surveyed the fifty states for the purpose of determining the policies and practices of state agencies with respect to requiring a transfer of custody as a prerequisite to receiving publicly funded services. Of the 45 states that responded to the survey, officials in 28 states indicated that surrender of custody to state or local agencies occurred in their respective states for the purpose of providing services for children with serious emotional disorders at public expense.

Rationale for current policy and practice. Why must parents or other legal guardians relinquish custody of children with serious emotional disorders in order to receive publicly funded out-of-home treatment services? Financial, legal, and therapeutic issues all appear to contribute to the rationale upon upon which current practice and policy are based.

Financial considerations: Federal reimbursement. The major source of federal reimbursement related to the custody relinquishment issue appears to be Title IV-E of the Social Security Act, although other federal sources, such as reimbursement under Title XIX (Medicaid) may also be

involved in many states. States may receive federal reimbursement for out-of-home placement expenses under conditions set forth in Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, also known as Title IV-E of the Social Security Act and as the Permanency Planning Law. The law provides for payments to states for children placed in foster care or institutional settings and provides safeguards to ensure that appropriate case planning and review occur, with the goal of returning children to their own homes whenever possible, or to adoptive homes or other permanent arrangements when they could not return to their birth parents. The law was enacted to prevent "foster care drift," a condition where children remain in foster care without appropriate steps taken to reunite them with their families or to release them for adoption when reunification was not possible.

In addition to funds for court-ordered placements, federal reimbursement is available to states for children who have been removed from their homes pursuant to a written voluntary placement agreement. Differences exist *between the states* as well as *between the states and federal authorities* about whether the Act requires legal custody to rest with the states where children are physically placed with a private child-caring facility. (M. Hardin, personal communication, November 14, 1990; Stubbee, 1990; Washington Department of Social and Health Services, 1982).

Fiscal considerations still appear to exert a very powerful influence on the policies and practices of state and county child welfare agencies, despite the fact that the inclusion of voluntary placement as an option under P.L. 96-272 was designed to address this problem. Yoshikami & Emlen (1983, p. 13) assert:

By removing fiscal incentives for states to use court-ordered placements unnecessarily and by tying Federal financial participation in voluntary foster care expenditures to the implementation of [P.L. 96-272] ... is intended to reduce placement by default and to increase the likelihood that voluntary entry into foster care occurs under conditions of high voluntariness and parental choice ... rather than through coercion or unnecessary court authority.

Legal considerations. A second reason is that many state child welfare officials and others believe that a transfer of legal custody is desirable and/or necessary when children are placed out of their homes is the reduction of legal liability. Yoshikami and Emlen (1983) also summarize child welfare research related to special risks of voluntary placement. These include coercion applied to parents (i.e., threatened court-ordered placement if parents don't agree to place their children), lack of full articulation of the rights of parents and children (lack of information or unclear information provided), differential services (fewer, or less intensive) given to children in voluntary placements, and lack of appropriate legal authority of the agency regarding major medical and educational decisions. These concerns, it appears, could all be adequately addressed by careful crafting of regulations regarding voluntary placement. They do, however, constitute part of the resistance to more extensive use of placement without the transfer of legal custody.

Therapeutic considerations. The financial and legal forces that lead toward the requirement that parents relinquish legal custody are also supported by professional attitudes and practices related to the child's treatment. Many residential treatment facilities restrict the contact (visits, telephone calls, mail) family members may have with their children in treatment in the belief that such contacts may jeopardize treatment. Accordingly, treatment staff may prefer that the state child welfare agency

have custody which thereby reduces, controls, or eliminates parent involvement. For example, a New Jersey parent group recently formally complained to the director of the state child welfare agency about the informal policy of many New Jersey residential facilities to allow no visits between children and their families during the first 30 days of the child's residence in the treatment center (C. Bednarsh, V. Del Guidce, P. Sattilaro, F. Warnick, personal communication, October 5, 1989). In the past, social workers and other treatment staff:

...often viewed the parents as pathogenic agents who were solely responsible for disrupting what would have been the normal psychological development of their children. Phrases emerged such as 'parentectomy'; at times it was simply felt that the recommended treatment approach that could produce the best results for the child was the removal of the parent from the child's life. More commonly discussed was the treatment goal of 'inoculating the child against the parents', or helping the child to continue on a healthier developmental path by making him or her more immune to the influence of the parent. (Mooney, 1990, p. 20).

Professional attitudes and beliefs associated with limiting the involvement of parents in their child's treatment directly contradict a philosophy of family participation and empowerment such as that suggested by Jenson and Whittaker (1987), and are at odds both with the intent of P.L. 96-272 and the Child Welfare League of America (CWLA) standards for residential services for children (CWLA, 1982). The CWLA standards address services for parents, participation of parents in the placement, the protection of parental rights, the determination of religious affiliation, and contact between children and parents, among other issues. The CWLA standards explicitly address the issue of legal custody and spell out the rights that parents have, "Even after a court has vested legal custody or guardianship of the child's person in the agency" (p. 32).

Effect of Custody Relinquishment on Families and Children.

Although parents (Borden, 1990; Smith, 1989; Strickland, 1989) and advocates (Franz, 1990; Kosnoff, 1990; Marchbanks, 1990) assert many negative effects of custody relinquishment for the purposes of receiving services no systematic study of this issue has been undertaken to date. Nevertheless, several possible negative consequences can be suggested. First, it can be objectively documented that parents or other guardians lose valuable legal rights and responsibilities when a state assumes custody of their children (McManus & Friesen, 1989b). For example, where parents *temporarily* relinquish custody they may (depending upon the law of the particular state) lose their right to make decisions regarding their child's medical, dental, or psychiatric care. They may lose the right to participate in decision-making about their child's education. Children may be moved from one residential setting to another without the consent (or even the knowledge) of family members.

In addition to a loss of basic parental rights, four other sets of possible negative consequences are proposed here. These are in the areas of: (1) differential implementation of custody policies and practices with poor, minority and single-parent families; (2) effects on parents' self-concept and the perception of families by society, (3) negative influences on relationships between parents and agencies, and (4) erosion of relationships between parents and children. Because formal study is required, they are presented as research hypotheses, and documented by information from parents and advocates when available.

1. Compared to parents who retain custody, parents who give up legal custody of their children are more likely to be poor, members of ethnic or racial minority groups, or the heads of single-parent households.

The suggestion that relatively poorer families are more likely to

relinquish custody in order to obtain needed services is simply related to the fact that the custody relinquishment issue appears to be fundamentally financial. If parents could pay the full cost of care for needed residential treatment, the issue would not arise. Burns (1991) reports that minority children are more likely to be placed in residential treatment settings than non-minority children. Within the entire group of children placed in residential treatment, it is unlikely that members of racial or ethnic minority groups would be more successful in retaining legal custody of their children than non-minority families. In our study (Friesen, 1989), parents of minority children were more likely to report that they had relinquished custody than parents of non-minority children, although these differences were not statistically significant. Comparing court-ordered with out-of-home placement, Yoshikami & Emlen (1983) found that single mothers were the most likely to have entered into voluntary placement agreements.

2. Compared to parents who retain custody, parents who give up legal custody of their children will experience additional stigma in addition to that associated with the mental or emotional problems of their children.

Parents report that even though they are assured by child welfare personnel that transfer of custody is "only a formality," they are treated as if they are "bad parents," i.e., those who neglect or abuse their children. As one parent noted, "We had to go through court proceedings, terminating our parental rights and giving the state custody of Scott. Through the judge's eyes we were seen as neglectful. The pain and frustration of that experience was humiliating to us as parents." (Weinmann, 1989).

3. Compared to parents who retain custody, parents who give up legal custody of their children for the purpose of obtaining residential services (a) will have less opportunity to participate, (b) will be given less encouragement to participate, and (c) will be less likely to participate in their child's treatment and education.

This assertion is related to the assumption that, in the absence of incentives and/or mandates, child welfare and residential treatment staff will

be less likely to seek to involve parents extensively, or keep them fully informed. This phenomenon may stem from either conscious choices related to the attitudes and philosophy of treatment staff, or to inadvertent neglect because of high caseloads, competing priorities, or other reasons.

4. Compared to families where custody is not transferred, parent-child relationships will be adversely affected with respect to (a) the child's sense of security, belonging and acceptance by parents, (b) the parent's authority with respect to the child, and (c) the parents' and/or the child's belief that the family will be successfully reunited.

One example of the effect on the children involved is illustrated by the testimony of an attorney before the Minnesota House of Representatives' Judiciary Committee: "One of my fourteen year old clients, awaiting a juvenile court hearing on the county's petition to transfer legal custody, asked me, 'When this is over, will my mom still be my mom?'" (Kosnoff, 1989). If, as we hypothesize, parents who have relinquished custody are less likely to be involved in the residential treatment program, the outlook for successful family re-unification is likely to be negatively affected. Jenson & Whittaker (1987) summarize research demonstrating that family participation in the treatment of children placed out-of-home is one of the strongest predictors of children's abilities to successfully adapt once they return to the community.

Implications for Social Work

Despite the apparent negative consequences of requiring that parents give up legal custody when they cannot afford the full cost of out-of-home treatment, until now, it has been a "non-issue" for most social workers, at least as reflected in the professional literature. We could locate only a few direct references to this problem (Knitzer & Allen, 1978; Knitzer, 1982; Yoshikami & Emlen, 1983). Questions regarding the efficacy of custody relinquishment policies have generally been raised--not by practitioners--but by families and legal advocates. Practitioners have largely failed to

recognize the conflict created for families by custody relinquishment requirements.

It appears that many state administrators, agency staff, and other practitioners share a common belief that the custody transfer is simply a formality and does not necessarily mean they will lose any parental rights (Ranalli, 1990; K. Pierson, personal communication, October 5, 1989). Other professionals may believe that such a request or requirement represents good practice because of "therapeutic considerations" related to their beliefs about the etiology and appropriate treatment of emotional disorders in children (Caplan & Hall-McCorquodale, 1985; Mooney, 1990; Wahl, 1989). Most likely, a large number of social work practitioners, educators, and students are simply unaware of this issue.

Lack of awareness of this issue does not, however, reduce the dilemma that it poses for social work. The dilemma springs from the serious discrepancy that exists between professional values such as family-centered service, family preservation, and client self-determination (NASW Code of Ethics, 1986; NASW, 1985) and prevailing policies and practices requiring that parents of children with disabilities relinquish custody.

Resolving this dilemma will require action in a number of arenas. These include: (1) research, both policy and legal analysis and empirical research about the effects on families and children; (2) legal and policy reform, which has begun in some parts of the U.S.; (3) analysis and reform of agency practice standards; and (4) changes in social work education to assure that practitioners are aware of this issue, and to prepare them with policy-practice knowledge and skills (Wyers, 1991). Policy-practice knowledge and skills will help social workers play a role in initiating or furthering efforts to change policies and examine practice at agency and state levels, as well as in empowering families to advocate for such a change.

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