



## California falling behind in child abuse death disclosure

By Robert C. Fellmeth

Wednesday, May 30, 2012

Imagine a 7-year-old child, starved by a parent, shrinking from 60 to 50 to 25 pounds before dying, despite periodic visits by local social workers. Imagine a child dying from a potentially curable disease whose family is withholding treatment and who is known to local officials. Imagine a child who has been repeatedly and severely beaten, yet remains under the roof of a stepfather with a long record of violent assault.

Tragically, these are true stories of real children left in their homes by child protective services programs here in California. Nationwide, more than 1,700 children die each year from abuse or neglect, and many more suffer near-death injuries.

Most of these deaths are the result of abuses previously reported to state child protective services. What is worse, in California and many other states, the public may never know about the deaths or the policies and practices that fail these children, which, if changed, could save lives.

State and federal governments have set up and funded a sophisticated and involved system purportedly to protect children, including mandated reporting, emergency responses and juvenile dependency courts. The system also considers family cohesion and privacy rights, as it should. There are many “checks” to prevent improvident removal of children from their homes.

But what happens after a decision not to remove a child from an abusive environment, leading to continued nightly rapes or beatings, or death? Nothing. The only opportunity we have to see that a mistake may have been made is public disclosure, which is the major “check” in the system. To be sure, it is a check traditionally opposed by social workers and public officials who may suffer criticism.

Discouragingly, a recent report on the laws in all 50 states shows a persistent culture of secrecy around child abuse and neglect deaths and near-deaths. The report, “State Secrecy & Child Deaths in the U.S.,” published by the Children’s Advocacy Institute at the University of San Diego School of Law and First Star, revealed that many states’ laws and regulations fail to strike the right balance between protecting family privacy and public disclosure of the facts which would promote systemic reforms to better protect children.

The study’s first survey in 2008 drew similar conclusions, but the second edition released this month showed 10 states improving their laws, many now complying with federal requirements. Unfortunately, California moved the most of any state – in the wrong direction. We actually regressed from a praiseworthy A-, backsliding to a mediocre C+.

Ironically, part of the problem is a set of regulations adopted recently by the state’s Department of Social Services, intended to implement a statute (SB 39) broadening disclosure. Instead the regulations actually restrict the release of information to cases where the death is caused by the parent, foster parent or guardian. Regardless of the culprit, we need to know the circumstances around these deaths. Restricting disclosure only to certain perpetrators and limited circumstances violates the clear terms and intent of the state statute as well as applicable federal law. The new rules also substantially ignore “near deaths” – which are also covered by federally required disclosure. Those rules are now being challenged in state court, but it should not take court action to compel California to comply with federal and state law.

California should emulate the best practices of the states that earned As and revisit the rules around SB 39. It should encourage the efforts of Los Angeles and Sacramento counties (and others) that are scrutinizing systemic problems with an eye toward reform. The goal is to better protect children through state policies – codified in law – that mandate broad and easy public access to information about child abuse-related deaths, as well as to state proceedings involving allegations of child abuse and neglect.

On the national level, Congress should withhold federal funding for foster care and protection for states that flout federal disclosure laws. Congress should also approve the Protect Our Kids Act, a bipartisan proposal that would establish a Commission to Eliminate Child Abuse and Neglect Fatalities. These actions would advance our ability to assess the scope of the tragedy and pave the way for additional reform.

Until all states have laws mandating the timely release of accurate, unfiltered information, and until the U.S. adopts a holistic strategy to stem the tide of child-abuse deaths, we shall remain blind to the cracks in our child welfare systems. California should set the national standard in transparency rather than regress into concealment.

Fellmeth is the Price Professor of Public Interest Law and director of the Children’s Advocacy Institute at University of San Diego School of Law.

© Copyright 2012 The San Diego Union-Tribune, LLC. An MLIM LLC Company. All rights reserved.