

The Constitutionality of the Child Abuse and Neglect Registry: Taking Names, Who's to Blame?

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No person should ever be abused or neglected by any other individual – especially an innocent child who looks towards the people raising them for protection. Unfortunately safety is not guaranteed, which leads to a variety of laws and the creation of Child Abuse and Neglect Registries (CANRs) throughout the United States. Most people agree in fully supporting protections for child welfare, safety, and health (Hollenbeck, 2001). However, throughout the U.S. there exists a well-known and increasingly alarming problem with the flawed system of Child Protective Services (CPS). Individual states have enacted their own laws under federal mandates, but laws are not uniform across the board in every state. In essence, lack of federal protection has allowed some states to infringe on the Fourteenth Amendment of the U.S. Constitution and violate the rights of some parents whose names are placed on the Child Abuse and Neglect Registry, thus branding them as abusers in some states forever.

The Fourteenth Amendment addresses citizenship rights and equal protection under the law¹, but processes related to the Child Abuse and Neglect Registry often circumvent these protections. The sole power to place a parent's name on a registry list often does not rest with a jury or a judge's order,

¹ The Fourteenth Amendment states: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

but rather is deemed by a lone child protective agency worker. Many times the parent or registrant is not convicted of a crime but their name is still placed on this official list, which has serious consequences for years to come (Child Welfare Information Gateway, 2012).

Child abuse is an issue that needs to be addressed with a strong focus on laws and enforcement, which some have translated into the need for registry systems. Many argue that individuals who commit the crime of child abuse need to face repercussions that simply do not end with the initial punishment. Many states have set up registries that aim to ensure that people who have committed acts of child abuse and neglect are identified accordingly far into the future (Hussey et al., 2005). All U.S. states have criminal laws on child abuse and child neglect, but those laws do not necessarily have any bearing on whether your name goes on the list or not. Some names added to these ever-growing lists have never been charged with the crimes of child abuse or child neglect. Since the registry standards for listing a person as a child abuser or child neglecter are very low, anyone who is reported can have their name placed on the list. Some people are not even aware that their name is even on a list until it is brought to their attention by outsiders (Regehr et al., 2010). It is important to note that inclusion on a registry can cost a person their career, ban them from being foster parents or adopting children, and have additional long-reaching ramifications in the future. Inclusion in a registry inhibits some parents from being able to attend and chaperone field trips or to be a volunteer at their child's school (Fluke et al., 2008).

This process is deeply problematic under the Fourteenth Amendment, since it basically punishes someone for a crime before they are fairly tried and found guilty beyond a reasonable doubt. This is a drastically different process than being listed on a sex offender list, which requires that a person first be convicted by a jury of his/her peers before being put on the list (Fluke et al., 2008). In the case of child abuse or neglect, a civil juvenile case in family court can simply be adjudicated – allowing someone's name to forever be placed on a list of child abusers. Indeed, many argue that the Child Abuse and Neglect Registry has become a weapon of sort that is violating constitutional rights. Many cases have

gone to state supreme courts and appellate courts, where judges often side with the parents (or petitioning party) to remove names from the registry list (for instance: *Taryn Williams v. Department of Social Services*; *Hessel v. Missouri Department of Social Services*; *Frye v. Levy*). Missouri and Michigan court judges have gone so far as to call the list unconstitutional and to demand change (Fluke et al., 2008).

While it is vital to point out the problems and the need for change in relation to the Child Abuse and Neglect Registry, implementing changes and working toward a solution are difficult tasks. Litigation seems never-ending as states try to strike the fine balance between the legitimate right of the state to protect and preserve the safety of the children and trying not to infringe on the rights of parents. Yet currently, anyone who is identified as a perpetrator in Department of Children and Families investigations of child abuse and neglect can be listed in a registry – even when the individual is not convicted of a civil or criminal offense. The U.S. Supreme Court has not had a case come before it to rule decisively on the issue, so at this time there is no uniform national precedent. Thus, interpreting people's due process rights on the CANR still varies from state to state across jurisdictions (Hollenbeck, 2011).

Social and Historical Background of the Child Abuse and Neglect Registry

Child abuse is a major issue in today's world, and the government and other organizations face stiff challenges in order to solve the issues associated with it. There are several factors that help explain increases in child abuse and neglect, including unemployment, poverty, sex trafficking, globalization, institutional challenges, and discrimination against children (Graham et al., 2012). The major factors are poverty and lack of education, especially since the U.S. justice system does not offer resources to help families but rather penalizes them and further hinders victims who are trapped in this endless cycle. When the Child Abuse and Neglect Registry was initially created, it was meant to perform the role of

collecting the names of abusers in its database and keeping children safer. Over time, it has unfortunately turned the lives of some innocent people upside-down; they are individuals caught in the crosshairs of a system that brands them for life with little recourse to fix the problem (Grabell, 2009). The CANR includes the names of many abusers, but also quite a few parents or individuals who have actually not committed the crime of child abuse and child neglect. These errors are repeated on a continuous basis, so it is important for the flaws in this system to be remedied immediately. Due to lack of proper awareness and proper methodological approaches to this problem, there has been little forward movement to change the broken system. Various states have enacted different laws to curb this system, but there is no federal solution to this problem (Becerra-Garcia et al., 2012).

The Child Abuse and Neglect Registry has a history beginning around 1962, when calls for social justice and child protection led to the government-led Child Protective Services that we know today. The Child Abuse and Neglect Registry began as a means to assist doctors and social workers in uncovering child abuse and keeping a record for research and gathering statistics. However, the passing of the Federal Child Abuse Prevention and Treatment Act of 1974 (CAPTA) made the use of gathered names more prevalent in mainstreaming the registry. Creating and cultivating this database to keep track of accused child abusers seemed like a wonderful idea during the 1970s, in theory at least, as did mandated reporting and abuse awareness campaigns to combat instances of child abuse and neglect (Tidefors et al., 2011). Sadly, what legislators completely underestimated at the time was the modest agency's remarkable ability to grow into the massive governmental agency that would become truly international in its own realm by the mid-1990s. While it was a well-intentioned way to detect and keep track of child abuse in order to prevent future cases, Child and Protective Services eventually took on its own behemoth purpose to help create laws that were deemed to be in the best interest of the child – with negative rights consequences along the way.

State constitutions has already defined the laws pertaining to the protection of child rights (Sherman, 2011), but there are no set provisions federally to protect the rights of many adults – including to remove names from the Child Abuse and Neglect Registry if a person is not convicted of a crime. The need for the CANR is generally accepted across various states; each and every child has the rights to live and grow and prosper without fear of abuse. The Child Abuse and Neglect Registry has taken on the responsibility of making individuals accountable for their actions, yet some critics contend that laws need to expand in order to ensure that the registry works within a rights framework – including balancing the goals of child protection with parental rights (McClain & Garrity, 2011).

The federal Child Abuse Prevention and Treatment Act of 1974 (P.L. 93-247) is an important starting point for considering the Child Abuse and Neglect Registry. Its key provisions include:

1. Provide assistance to states to develop child abuse and neglect identification and prevention programs (Jespersen et al., 2009);
2. Authorize limited government research into child abuse prevention and treatment;
3. Create the National Center on Child Abuse and Neglect (NCCAN) within the Department of Health and Human Services, Education, and Welfare to administer grant programs;
4. Identify issues and areas needing special focus for new research and demonstration project activities;
5. Serve as the focal point for the collection of information, improvement of programs, dissemination of materials, and information on best practices to states and localities;
6. Create the National Clearinghouse on Child Abuse and Neglect Information;
7. Establish Basic State Grants and Demonstration Grants for training personnel and to support innovative programs aimed at preventing and treating child maltreatment (Sherman, 2011).

Importantly, the Fourteenth Amendment (which ensures equal treatment before the law) is rarely discussed in relation to the Child Abuse and Neglect Registry, even though the amendment can be used to question the constitutionality of CANR (Fallon et al., 2013). Among other things, the amendment restricts states from denying any person "life, liberty, or property, without due process of law" or to "deny to any person within its jurisdiction the equal protection of the laws." The amendment is cited the most in civil and criminal litigation, more than any other of the amendments of the United States Constitution (Leventhal, 2003). It is crucial for considering the case studies of Michigan, Missouri, and Texas.

Case Study: Michigan

Michigan's laws on child abuse and neglect registration are similar to many other laws around the United States. Basically, state law dictates that there needs to be a registry for those who have been *accused* of child abuse and neglect and lays out exactly what types of offenses should be included in that registration process (Miller & Greenwood, 2004). In Michigan, there are currently 275,000 names registered in the central registry. Prior to September 2014, when a name was placed on the Child Abuse and Neglect Registry it was registered for life – often without due process or notification to the registrant. After September 2014, new laws require that a person placed on the list be notified and given six months to appeal. The registrant's name is only allowed to remain on the Child Abuse and Neglect Registry for ten years and then it is expunged (Graham et al., 2012). "Expunged" basically means that the name of the individual is no longer on the list, so they will no longer be considered an offender under the state of Michigan and the law of that state. The name will remain on the list forever in many extreme cases, however, including life-threatening injuries to a child, criminal sexual conduct, exposing a child to methamphetamine production, or child abandonment (Jugluic, 2008). These distinctions are important when looking at the law in Michigan because there is a clear division between different levels

of child abuse and neglect. Michigan draws a clear line between levels of severity, putting some cases on a ten-year list and others on a lifetime registry (Fallon et al., 2013).

Case Study: Missouri

Missouri state law reminds us that wording is important. Regarding registration of child abuse and neglect offenders, law stipulates that registries should be the “the results of all investigations, family assessments, and serves. Identifying information on the subjects of the report and those responsible for the care of the child. Other relevant dispositional information” (Jugluic, 2008). The requirement for the registry to include detailed accounts shows that the state is extremely dedicated to making sure that those accused of child abuse and neglect are easily identified by the public. Under the Missouri Child Abuse and Neglect Registry, a registrant’s name is on the list forever once it is placed. This shows yet another difference when it comes to the different states and the ways that they choose to enforce the law and their registry; In Michigan, the type of child abuse or neglect determined the length of time on a registry list. This is obviously not the case when it comes to Missouri, although a registrant does have 60 days to appeal (Sherman, 2011).

Political reactions are mixed regarding Missouri’s strong stance on CANR. More socially conservative commentators would most likely agree with Missouri’s handling of the law, reasoning that most people on these lists have committed crimes and inclusion on the list is fair punishment. Rellini (2007) argues that if someone believes it is OK to commit any type of child abuse, then there is nothing saying that they do not believe that the other forms of child abuse also acceptable. Therefore, there is no excuse for any form of child abuse and no reason for anyone to eventually have their name expunged from a registry. However, it’s important to note that the list can limit the individual registrant from employment opportunities that include employment around children and the elderly, such as being a teacher, or nurse or volunteering in a church nursery or in public schools (McClain & Garrity, 2011).

Court cases and legal appeals related to CANR in Missouri have had diverse results, although CANR review boards usually side with the state. If a case is brought to court for dependency and the case is adjudicated or the accused abuser takes a “no contest” plea, the registrant’s name is automatically placed on the registry forever. There have been bills introduced before the Missouri Senate to try and alleviate the negative consequences with the state’s CANR, including Missouri House Bill 1849, but they have not passed. Within the last few years, courts have been increasingly ruling that the registry violates the Due Process Clause of the U.S. Constitution. Starting in 2007, state courts in Missouri have found significant due process violations in state registry procedures. The courts ruled that the state's method of placing people on the central abuse registry is unconstitutional since it allows the listing of names based solely on a state investigator's determination. Now, a hearing is required beforehand unless the case is adjudicated (Regehr et al., 2010).

Case Study: Texas

Texas is much different when it comes to child abuse laws, with provisions regarding CANR being much more general than states such as Missouri. The most descriptive sentence in state law regarding this matter is: “The rules shall provide for cooperation with local child services agencies and with other States in exchanging reports” (Tidefors et al., 2011). This is not a very precise statement, but it does allow for opening doors for cooperation among states for shared registries (Navid, 2011).

The Texas Child Abuse and Neglect Central Registry contains the names of over 500,000 people, including almost 6,000 minors between the ages 10 and 17. According to the state of Texas, a minor can commit child abuse – but this raises important ethical questions. For instance, at what point does someone realize they are committing child abuse? Although investigating a minor for child abuse is not particularly common, there are cases; for instance, a child under the age of 17 may have an altercation with another child. Should this be considered child abuse? There seems to be a lot of unresolved issues

within Texas state law that need to be cleared up – particularly since inclusion on an abuse registry has consequences for the accused and their communities (Hollenbeck, 2001).

In Texas, offenses are measured from moderate to serious and severe with various listing periods. Most people are listed as serious offenders; their names stay on the registry for 5 to 99 years before they are expunged. The registrant can appeal, but only about one-third of the appeal cases are removed from the list. Texas is obviously unique when it comes to the process of having the names on the list expunged. Although states such as Michigan also have different listing periods based on severity of the offense, as noted above, Texas offers a wide time range. Without a definite amount of time, the lines can become blurred (Jespersen et al., 2009).

Reflections and Recommendations

Despite good intentions, CANR violate protections under the Fourteenth Amendment and require reform to protect basic human rights. Names are placed on registries even in cases when people are not convicted of a crime, punishing individuals outside of the law. There are no uniform legal standards or guidelines for these registries, instead allowing states to adopt various policies that dictate how long a name remains on a registry and what penalties are allowable for inclusion. I believe these problems defeat the purpose of the CANR, which is to prevent child abuse and neglect. Instead of working toward prevention and recovery, these registries prohibit employment and take children away from their families; they mark a person as being a “no good” person rather than working toward the betterment of society (Navid, 2011). Many individuals listed on these registries have never been charged with a crime, much less convicted; such registries are often hodgepodes worked together by state workers with quick strokes of a keyboard. There is no order to these lists, such as tiers based on criminal activity or offenses, and these non-credible lists have serious consequences for people around the United States. It is vastly unfair to make decisions that dictate employment, parental custody, and

parental rights without clear judicial procedures, including specifications on how someone is listed and how they can appeal that listing. I believe that many states have overlooked their constitutional obligations and their approaches to CANR are simply careless.

In order to eliminate the root problems of the Child Abuse and Neglect Registry, officials must first determine whether an actual crime has occurred and follow the rule of law. This means registering people *after* someone has been found guilty of a crime in a court of law. Once that happens, then a perpetrator should be punished according to the severity of their crime. From this perspective, an individual should be listed on a CANR based on the decisions and processes of the courts, not a social worker who is unqualified to make such a determination. Once the punishment duration is over, however, most names should be removed from the registry so they can move on with their lives. Unless a crime was so heinous and malicious (such as perhaps in cases causing the death or permanent injury of a child) that they remain a threat, a name should be removed after the period of punishment has ended. Spreading awareness on the issues of child abuse and child neglect are key for preventing future crimes, so punishment alone is not the desired objective (Navid, 2011). These changes are necessary across the United States, which means that federal standards must be implemented in order to protect constitutional and human rights.

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