

**ON SUNBURNED KIDS, ARBITRARY SHERIFFS,
AND THE FOLLY AND DANGER
OF THE CHILD “PROTECTIVE” SYSTEM**

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Explains that a recent highly publicized case of a mother being jailed for child endangerment because her children were sunburned must be understood in the context of a systemically abusive, unaccountable, and anti-parent child “protective” system in the U.S. Argues that citizen action and legislative change is needed to alter this system.

There’s a knock at your door. It’s the police. “What do you want, officer?” you ask. “You’re under arrest.” “For what?” “Your kids got sunburned yesterday.”

The case of Mrs. Eve Hibbits, the woman jailed in Jefferson County, Ohio (Steubenville area) because her three young children were sunburned, highlights the dangerous trends in the criminal justice system today and, even more prominently, the tyrannical character of the so-called child protective system.

In their recent blockbuster book, *The Tyranny of Good Intentions*, Paul Craig Roberts and Lawrence M. Stratton show how citizens are prosecuted for crimes that do not appear on the statute books. Mrs. Hibbits was charged with child endangerment, even though Ohio law, like the laws throughout the country, do not say what behaviors that includes. It certainly says nothing about sunburned kids. The case showed how arbitrary and subjective law has become. The sheriff kept changing the facts as the days went on in an obvious attempt to justify his actions. Eventually, after recognizing there was no case, the county dropped three charges, but a misdemeanor charge remains. Since this charge is based on the fact that one child (a twin) had a collapsed lung from birth (a common consequence of multiple births), and not because of anything the parents did, continuing to prosecute this case at all makes it look as if the system is just trying to cover for itself. Officials refuse to admit that the whole thing was a fiasco from the start.

Roberts and Stratton say the criminal justice system is increasingly impervious to guilt or innocence. Often, it just wants to put someone behind bars to claim that it is doing its job. This case bears marks of that. Irrespective of how the case turns out, the sheriff said the need to protect children justified his actions. He said the arrest was a “wake up call” to parents.

The setting of bail at \$15,000 by a local judge underscored another way the criminal justice system is breaking down. Judges are supposed to be independent checks on prosecutors and law enforcement. In this case—and all too many like it—the judge apparently accepted the claims made by the sheriff’s department without sufficient inquiry. The result was that the hapless woman, whose family has little money and could not post bail, languished in jail for eight days. This level of bail imposed on a poor woman in a frivolous case raises Eighth Amendment constitutional questions.

It will be interesting to see if the prosecutor’s next step confirms another point of Roberts and Stratton: that plea bargaining thwarts justice. Few cases go to trial anymore. Many are plea-bargained to conclusion. Will the prosecutor’s office try to arrange a plea

bargain on the remaining misdemeanor count to get this innocent woman to admit to something to justify the heavy-handed actions of law enforcement?

The prime significance of this case, however, rests not with law enforcement, but with the spotlight it shines on the so-called child protective system. In Ohio, as in many other states, local and county law enforcement work hand in glove with the child protection-social service bureaucracy. By this association and their role in training police, this bureaucracy transmits their pathological anti-parent, “big brother knows better,” children-as-government-property mentality to law enforcement.

As the sheriff took the heat for his arbitrary behavior, the silence of the county child protective agency was deafening—even though it will now check up on Mrs. Hibbits twice a week. The agency did not want to call attention to its own practices. Like the sheriff and child protective agencies around the country, it makes up the law on child abuse and neglect as it goes along, targets parents daily on the basis of nothing more than anonymous complaints, intrudes into innocent families at the drop of a pin, interrogates young children to get incriminating information about their parents, forcibly separates children from their parents without thinking of the harm they do them, and refuses to acknowledge that its actions or judgments could ever be wrong.

The Department of Health and Human Services concluded that there are over a million false child abuse reports a year. Various studies and authorities have shown that upwards of 65% are flatly unfounded. In Ohio in 1994, the state was forced to purge 78% of the names in its central child abuse registry, where the names of supposed abusers (mostly parents) are entered, for lack of proof. The state’s child protective agencies apparently just routinely entered anyone who was even accused, no matter how outrageously.

Families are routinely investigated by agency social workers, and in some cases have their children legally abducted, for such things as home schooling (even though it is legal in all states), spanking (even though no state forbids it), determining that preteens are too young to babysit their younger siblings (the laws impose no limits), having home births (even when legal), botched medical diagnoses of burns—which just *had* to have come from parents—when a child really has a rash (and assorted other emergency room blunders), misinterpreted comments and behaviors of a child, and a million other things. My favorite is when an agency took custody of a toddler because she pulled the buttons off her shirt. Somehow, this indicated sexual abuse to them.

The child protection agencies bubble when officials like the Jefferson County sheriff urge people to snitch on their neighbors. It means more business and helps them to justify their budgets. They have convinced the American people that they are essential to fight the “epidemic” of child abuse, even though they do little of that in any real sense and mostly impose their childrearing preferences on innocent parents. Even a former director of the Jefferson County agency admitted a few years ago that the cases of serious physical abuse were rare.

The so-called child protective agencies are essentially unaccountable to the public. Confidentiality statutes that were meant to protect the accused have become bureaucrat shield laws. One-sided liability laws encourage social workers to remove children for fear of prosecution or suit if they err on the side of lenity, but they have outright immunity under the law—except for Section 1983 actions, which are always

difficult—and face no consequences regardless of what they do to innocent parents. Parents are accorded few legal rights by the agencies.

While law enforcement and social workers are responsible for their outrageous conduct, the real culprit is the Child Abuse Prevention and Treatment Act (CAPTA)—the “Mondale Act”—that set up and sustains this system nationwide. Even though one national publication spoke of “systemic abuse,” legislation reauthorizing CAPTA is now working its way through Congress with little criticism or objection.

Two initiatives are needed now. An alliance of civil liberties and pro-family groups must be forged to motivate a serious Congressional investigation of the system with the aim of changing CAPTA, or preferably scrapping the troublesome parts of it. This has not happened with the current hearings and deliberations on CAPTA. Second, a serious, coordinated legal effort must be undertaken to secure case precedents protecting the civil rights of parents when facing the system. Ultimately, we need a Supreme Court decision declaring parental rights to be “fundamental rights,” so they can be abridged only for a compelling public interest. An *amici* brief by the Society of Catholic Social Scientists in the Court’s last major parental rights case, *Troxel v. Granville* (2000), urged the Court to do this and sought to educate it about the abusive child protective system.

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