Reforming Child-Neglect Laws

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By the time children reach the age of eight or nine, most American parents are faced with a pressing question: Can I leave my child alone?

This question will take many forms: Can my child cross the street without an adult? Can he walk to school by himself? What about the playground? Can I go to the supermarket without taking the kids with me? Or if I do take them, can I leave them in the car for just a few minutes while I run in to grab some milk? In many states, the answer to all these questions—at least, as a legal matter—is “no.”

Parents know that no matter how reasonable their decisions may seem, there is always a chance that some passerby will report them to child-protective services. It seems like every few months, we hear about an outrageous case of well-meaning parents allowing their children some measure of independence and getting caught up in the legal system as a result.

In 2015, there was the case of the Meitiv children (ages ten and six), who were picked up by police while walking home from a park a mile from their home in suburban Maryland. In 2018, Illinois mother Corey Widen was investigated when an anonymous caller reported that her eight-year-old daughter was walking a dog around the block by herself. In 2011, police in Virginia put out a warrant for the arrest of Kim Brooks, who left her four-year-old son in a car for a few minutes on a cool day in March while she ran an errand. As Brooks later wrote in the New York Times:

We now live in a country where it is seen as abnormal, or even criminal, to allow children to be away from direct adult
supervision, even for a second…. And so now children do not walk to school or play in a park on their own. They do not wait in cars. They do not take long walks through the woods or ride bikes along paths or build secret forts while we are inside working or cooking or leading our lives.

Concerns over these and other incidents have motivated concepts like “free-range parenting,” an approach that aims to foster children’s independence by granting them increased levels of autonomy. Many advocates of free-range parenting believe that some of our child-protection laws unfairly target them and discourage other parents from using similar child-rearing strategies. Indeed, even for mothers and fathers sympathetic to the philosophy, the tales of the Brooks and Widen families loom large in their imagination, lurking behind every decision they make regarding their children’s independence.

One way to quell the concerns of parents hoping to raise children who are more confident and capable is by changing state statutes regarding what constitutes unlawful neglect. Though child neglect is a real problem, vagueness in the law has led to confusion on the part of parents, caseworkers, and community members over the distinction between dangerous neglect and beneficial independence — which has had its own harmful consequences.

THE CULT OF SAFETY

Lenore Skenazy made headlines more than a decade ago when she wrote a column for the New York Sun about letting her nine-year-old son ride the subway alone. The outrage it provoked suggested to her that parents have become irrationally fearful of giving children any independence.

This trend has been well documented in works like those of Peter Gray, a professor of psychology at Boston College who specializes in the evolutionary link between education and play. According to Gray, free play among children is one of the primary means by which they develop new interests and competencies, make friends, experience joy, and learn to exert self-control and regulate their emotions. Yet since the 1950s, American children have had fewer and fewer opportunities to play on their own “at least partly because adults have exerted ever-increasing control over children’s activities.” Gray attributes this in some measure to parents’ fears of their children becoming prey to strangers who seek
to do them harm. In one survey he cites, 49% of parents reported that they restricted outdoor play because they feared their child “may be in danger of child predators.”

These fears persist despite the fact that the chances of a child being abducted and killed by a stranger are miniscule. According to the FBI, abductions by strangers constitute just 0.1% of missing-child cases. A study by the U.S. Justice Department found that over 99% of children reported missing in 2002 were found alive. Yet thanks in no small part to breathless news coverage of high-profile kidnapping cases, American parents have developed an irrational obsession with eliminating threats to children, both real and imagined. In their bestselling book *The Coddling of the American Mind*, Jonathan Haidt and Greg Lukianoff call this fixation “the cult of safety,” or “safetyism,” and contend that instead of protecting children, it is causing them harm.

The authors cite the work of scholar Nassim Nicholas Taleb, who asserts that human beings are “antifragile” in the sense that they require stressors in order to learn how to cope with opposition, adapt to it, and ultimately mature. If parents never allow their children to encounter age-appropriate challenges, they will fail to develop the skills and capacities they need to handle life’s inevitable trials and disappointments without an adult. As Skenazy put it, “[t]he problem with this everything-is-dangerous outlook is that over-protectiveness is a danger in and of itself. A child who thinks he can’t do anything on his own eventually can’t.”

This exaggerated concern for children’s safety has crept into the realm of emotions, with adults becoming ever more preoccupied with protecting children not only from physical threats, but from any sort of emotional discomfort. For those wondering why today’s college students cannot navigate a difficult situation with a friend or listen to a political opinion with which they disagree without being “triggered,” it’s because we’ve rarely let them out of our sight, never expecting them to solve problems on their own. Gray links this trend with the increasing rates of anxiety, depression, and suicide we have witnessed in recent decades among adolescents and young adults, while Haidt and Lukianoff point out how it corresponds with the rise of de-platforming efforts and mounting calls for safe spaces and trigger warnings on college campuses.

Concerns over such safetyism have elicited a corresponding corrective movement that emphasizes the virtues of free-range parenting—a child-rearing philosophy designed to help parents raise more self-reliant
children. Free-range parenting encourages parents to teach children essential life skills, grant them greater responsibility and independence as they age, and guide them through any challenges they encounter while still allowing them to take the reins. It emphasizes outdoor play and leaving children time to engage in unscheduled, unstructured activities with friends — precisely the kind of play Gray identifies as key to child development.

Free-range parenting is not the same as permissive parenting — a style characterized by extreme leniency and a general lack of rules or structure. Nor is it a form of child neglect. Free-range parents are loving and attentive toward their children and responsive to their needs. The strategy does not advocate leaving children to their own devices in situations that are objectively dangerous or beyond their capabilities. Rather, as Kyle Pruett — a clinical professor of child psychiatry — observes, free-range parents permit their children to explore the world just enough “to come up against limits naturally,” which enables them to learn to manage increasingly difficult tasks on their own.

Advocates say free-range parenting benefits children by promoting their creativity, increasing their problem-solving skills, improving their resourcefulness, strengthening the formation of their personalities, and building confidence. The philosophy has gained in popularity in recent years, with organizations like Let Grow springing up to offer resources to parents and teachers hoping to give children a greater degree of independence.

Unfortunately, many families and schools don’t encourage children’s independence, in part because they are legally hamstrung. “[I]t dawned on me that I could be arrested for leaving my kids in the car, or letting them play unattended in a public space,” says writer and mother Emma Waverman, who hesitated when her 11-year-old son asked to remain in the car while she ran into the pharmacy. With stories like that of Kim Brooks floating along the airwaves, it’s difficult to blame her.

Though fear of a visit from the authorities is not the only reason why parents today engage in a greater degree of helicopter parenting, it is certainly a motivating factor. Diane Redleaf, a legal consultant for Let Grow and the founder of United Family Advocates, suggests that one way to end reports of perfectly reasonable parenting decisions to the authorities is by changing state laws surrounding child neglect.
So what constitutes child neglect in the eyes of the law? The answer to that question is as complicated as it is opaque.

Child-neglect cases are handled at the state level, and each state is responsible for providing its own description of the term. State laws commonly define neglect as the failure of a parent or other caregiver to provide a child with necessities like food, clothing, and shelter, as well as the failure to provide adequate supervision. While many state laws list specific instances where a caregiver can be held liable for neglect, others include provisions that are quite vague.

Virginia’s child-neglect law, for instance, applies to juveniles who are without care due to the caregiver’s “unreasonable absence.” North Carolina includes in its definition a failure to provide a child with “proper” care or supervision. Georgia’s child-abuse provision simply notes that abuse “includes neglect or exploitation of a child by a parent or caregiver” without bothering to specify what the term “neglect” means. Tennessee defines a “[d]ependent and neglected child” as, among other possibilities, one “[w]ho is suffering from abuse or neglect.”

The ambiguity of these definitions has allowed neglect to become a catchall category for cases that don’t involve physical abuse — though even that constraint is flexible. A mother can be charged with neglect if she allows her child to be abused by someone else. Some forms of corporal punishment can also be classified as neglect, as can failure to seek medical care for a child who needs it.

To get a sense of how broadly the charge is being applied, we can look to national data on foster care from the Children’s Bureau as compared to state-level data. Of the children placed in foster care throughout the United States in 2019, 63% involved a charge of neglect. Yet in the state of Illinois, 89% of cases involved such a charge. Nationwide, 34% of neglect cases involved parental substance abuse, 10% involved inadequate housing, and 14% involved a parent’s “inability to cope.” But in Illinois, only 12% involved substance abuse, less than 1% involved inadequate housing, and a mere 4% involved a parent’s inability to cope. The differences between these statistics suggest that caseworkers often throw cases into the general category of “neglect” while failing to provide more specific information.

That the law is ambiguous wouldn’t be so much of a problem if the number of referrals aligned with the number of cases in need of
investigation. Unfortunately, the data tell us otherwise. In 2018, there were 4.3 million referrals of child maltreatment nationwide, involving about 7.8 million children (one report can mention multiple children in the same family). Of those referrals, 44% were immediately screened out and no further action was taken. Approximately 2.8 million of the remaining children were classified as “nonvictims,” meaning that although they were investigated and something was clearly amiss, they were deemed at a low risk of abuse or neglect, so the agency may have directed parents to other forms of community assistance or preventive services. That left 678,000 children classified as “victims,” of whom 146,706 received foster-care services that year.

So regardless of whether calls to abuse hotlines are coming from mandated reporters or neighbors who see something that worries them, they include plenty of cases that don’t warrant investigation, let alone any further action. The “front door” of child-welfare agencies, so to speak, is wide open. In a recent article for the American Bar Association, Diane Redleaf explains why:

Typically, the child neglect laws that authorize child protection investigations are very broad and vague. When coupled with demands that professionals and members of the public should call hotlines to “say something” whenever they “see something,” it has become extraordinarily easy for anyone to call a hotline to start a neglect investigation concerning any child who looks “too young” to be alone and for state systems to register findings of neglect or endangerment when parents make decisions they reasonably think are best for their kids.

Indeed, many states have cast an exceptionally wide net when it comes to child-neglect referrals. This means there will inevitably be cases reported that have little or no merit. Even if most of these cases are immediately screened out, the consequences for innocent parents ensnared in the system can be severe. Lenore Skenazy wrote about the case of a Colorado father who was put on a registry of child abusers after he left his sleeping three-year-old in the car while he ran an errand at the hardware store. Though the child came to no harm and the father was cleared of wrongdoing, his presence on the registry means that he and his wife are no longer eligible to adopt another child as they had planned.
The lack of clarity surrounding child neglect also leaves parents without any guidance as to what age, and under what circumstances, the law considers a child mature enough to manage certain activities alone. It leaves community members in the dark over whether what they are witnessing is unlawful child neglect. And it overpowers child-abuse hotline operators and caseworkers, who are forced to sift through millions of meritless reports instead of spending time and resources on cases that are truly worth investigating.

Broad child-neglect laws also tend to grant caseworkers less-than-limited discretion in deciding whether to pursue a case, opening the door to double standards, discrimination, and other capricious applications of the law. Moreover, racial disparities in the reports and investigations of child abuse and neglect have become cause for concern, which puts additional pressures on child-protective services. Marie Cohen, a former child-welfare worker who now serves on the District of Columbia Citizen Review Panel for child welfare, wonders whether agencies target parents of certain races who are obviously not doing anything wrong in order to address racial disparities in child-welfare interventions. In other words, it’s possible authorities are giving white parents a hard time in order to make the numbers look more even. “I do think there’s a desire not to have disproportionality,” she said in response to the Meitiv case. Redleaf, too, wonders about this possibility in her book *They Took the Kids Last Night*.

Paradoxically, the wide-net approach also discourages witnesses from reporting potential cases. There is already a great deal of suspicion surrounding child-welfare agencies, and investigating a family or removing children from their home based on a vague charge of neglect sows further distrust between child-welfare agencies and the public. This only makes it less likely that people will be willing to report what they’re seeing around them—even if they witness a genuine instance of neglect.

The vagueness of a neglect charge also means that parents who have had their children removed from their homes may not have a clear path to re-unification. A caseworker or judge may tell parents what they must do to remove themselves from scrutiny and be re-united with their children, but there is a high rate of caseworker turnover in the field, and cases can easily be transferred between courtrooms. If the original caseworker or judge failed to record a specific problem, the replacement caseworker or judge can easily move parents’ goalposts for reform.
This kind of bureaucratic sloppiness and legal ambiguity would not be acceptable in a criminal matter. In fact, a well-established doctrine in the criminal context renders a law invalid if it fails to specify what sort of conduct is punishable, or if it delegates too much discretion to the state in making that determination. Such standards in the context of child-welfare laws—where parents can lose custody over their own children—should fare no better.

THE REALITY OF CHILD NEGLECT

That so many child-maltreatment referrals are without merit should not diminish the fact that child neglect is a real problem that can cause severe harm. Maura Corrigan, who served as chief justice of the Michigan Supreme Court before becoming director of the state’s Department of Human Services, recalls a heartbreaking case of neglect from when she was first working as a probation officer in Detroit:

I remember going into a home where [the smell] was nauseating…. There was a four-year-old and one-year-old who were basically left alone by a drug-addicted mother who was asleep and couldn’t be roused. The four-year-old was trying to feed the one-year-old. The filth and stench were overwhelming.

Corrigan’s story reveals a common thread among child-neglect cases. Each year, the federal government collects data from the states regarding child maltreatment and removals of children into foster care, and each year, the vast majority of neglect cases are related to substance abuse. In 2017, to take just one example, substance abuse was listed as a reason for a child’s removal to foster care in 36% of the cases, while another 5% listed alcohol abuse. Fourteen percent cited “caretaker inability to cope,” which is often code for substance abuse, mental-health issues, or both.

In reality, these numbers are likely much higher. Most experts I’ve spoken to put the number of substance-abuse-related neglect cases closer to 80%. The foster parents I’ve interviewed over the past three years are hard-pressed to think of a single child they’ve cared for who did not have a caretaker with substance-abuse issues. As Corrigan remarks, “much more than a majority of cases of neglect that stick in my mind are ones that are related to drugs or alcohol abuse. They are horrendous
cases where there is blatant disregard by parents of their responsibilities toward a child.”

There is another aspect of Corrigan’s story that is typical in neglect cases: the age of the children involved. According to Jill Duerr Berrick, a professor at Berkeley’s School of Social Welfare, “the vast majority of child neglect cases involve very young children.” The data back up her claim. As the Children’s Bureau reported in 2018, “[n]ationally, more than one quarter (28.7%) of victims are younger than 3 years old. Victims younger than 1 year are 15.3 percent of all victims. The victimization rate is highest for children younger than 1 year old at 26.7 per 1,000 children in the population of the same age.” Additionally, children three years old and younger made up more than three-quarters of child-maltreatment fatalities in 2017.

That the youngest children are the most vulnerable when it comes to neglect makes sense. Children under the age of one require an enormous amount of attention — constant feeding and changing and burping and rocking. They cannot do anything for themselves. As a result, even a few hours of a parent not paying attention can have grave consequences.

Soon after, children enter what one might call the “mobile but totally irrational stage.” This is the age at which children need constant supervision — to ensure they are not touching a hot stove, or walking out a door that has accidentally been left open, or are left unattended in a bathtub or near small objects that can be easily swallowed. It is hard enough for a sober parent to monitor such situations; a parent regularly under the influence of drugs or excessive amounts of alcohol will be overwhelmed by this responsibility.

It’s also worth noting that a disproportionate number of children caught up in neglect investigations have some kind of intellectual or developmental disability. According to some estimates, children with disabilities are between 1.5 and 3.5 times more likely to be victims of neglect or abuse than children without disabilities. And children with disabilities, of course, need more supervision than the typical child of similar age.

In many cases, the disabilities themselves are related to substance abuse. Mothers who drink to excess or use drugs while pregnant may be contributing to higher rates of developmental disabilities and delays in children. It’s also not uncommon to hear stories of foster children whose parents denied their children had disabilities, even after doctors
explained the situation to them. As a result, the parents may have refused to provide their children with the necessary medical care or rehabilitative services. Children who have developmental delays and could benefit from early interventions are also routinely failed by parents with substance-abuse problems, who cannot be relied upon to seek medical advice, let alone follow it.

There is thus little overlap between the families who are intentionally giving their children increased independence as they age and those who are, and should be, the subject of neglect investigations. Parents we should be investigating for neglect tend to have either very young children or children with intellectual or developmental disabilities. These parents are also frequently in a state of incapacitation and cannot or will not properly care for their charges. Such qualities are rarely seen in well-meaning, responsible parents trying to help their children learn how to navigate the world on their own.

**Abolishing Neglect**

If it seems as if there are two competing narratives about children in America right now, it’s because there are two different kinds of children in America—the ones who need to grow up but are babied by their parents, teachers, and communities to the point where they can’t do anything for themselves, and the ones who should be able to stay children longer but are exposed to the drugs, alcohol, crime, and sexual advances of the adult world and forced to fend for themselves. The fact that the two can be caught up in the same system—that the mother of a third-grader who walks home from a park by himself and the mother of a two-year-old who leaves the child alone at night to score drugs can both be accused of something called “neglect”—is a problem.

Which is why it may be time to simply eliminate the category of “neglect” altogether. After all, what benefit do we gain from giving caseworkers the option of simply checking off a box labeled “neglect”? Finding evidence of something instead of, or in addition to, physical abuse doesn’t mean it should all be swept into the same category, especially when doing so is causing problems of its own.

That there are prominent consistencies among neglect cases—including the child’s age or disability, as well as the presence of parental drug or alcohol abuse—gestures toward a narrower, more concrete definition of the term, or perhaps a mandate that the caseworker identify
specific indicators of neglect before pursuing an investigation. Requiring caseworkers to say that parents have substance-abuse issues, or that they have left their child with insufficient food, in filthy conditions, or in dangerous situations they cannot handle due to age or intellectual ability, would go a long way toward resolving the issue. It would also give caseworkers less discretion in deciding which cases are worthy of investigation, making it more difficult for them to pursue cases on arbitrary or discriminatory bases. It would give parents more concrete guidance about when they can safely grant their child more independence and when doing so might violate the law. And it would help give the public a better sense of when a call to child-protective services may in fact be necessary.

To be sure, determining exactly which situations are dangerous for children will not always be easy. And some of those decisions will, by necessity, take into account factors beyond the child’s age and maturity level or the parent’s attentiveness. It is certainly more dangerous for children to walk home alone after dark in some neighborhoods than it is in others, for instance. As James Dwyer, a professor at William and Mary Law School who specializes in children and the law, notes, “neglect is highly contextual.”

This, of course, will inevitably lead to the claim that free-range parenting and similar strategies are fine so long as the family lives in a middle- or upper-class neighborhood. But it’s perfectly legal—and reasonable—to take into account non-familial factors in making legal decisions. We use such information in child-custody disputes, in approving adoptive families, and in deciding whether to re-unify children with biological parents. As Dwyer observes, a caseworker investigating a neglect referral has to note what an apartment is like, what a neighborhood is like, and whether people on the corner are posing a danger to children. We expect parents themselves to make decisions about supervision that take into account more than just a child’s age, so it isn’t unusual for the law to do the same.

PUTTING FEARS IN PERSPECTIVE

The free-range-parenting movement was built on the idea that parents’ fears need to be right-sized. A handful of high-profile kidnappings does not change the fact that a child’s likelihood of being taken by a stranger is infinitesimal.
Similarly, a few high-profile cases of stable middle-class families being harassed by child-protective services do not change the fact that the likelihood of a parent being separated from their children by the authorities is next to nothing. However, just as we should not ignore kidnappings by strangers when they do occur, the fact that innocent parents have been swept into the child-welfare system should give us pause. No one wants stable, loving parents to lose custody of their children for letting their eight-year-old walk home from a nearby park, or for leaving their nine-year-old home alone for a few hours. And no responsible parent should have to live in fear of this occurring.

With so many of today’s young adults becoming overwhelmed by life’s ordinary challenges—and the results spilling out into the public square—we should be encouraging more mothers and fathers, not fewer, to adopt parenting practices that build stronger, more capable citizens. The key to those strategies is giving children the space they need to learn and grow.

Requiring greater specificity in child-neglect cases will help everyone involved distinguish between neglected and independent children. This will help give parents raising the next generation of Americans the freedom to teach their kids how to navigate the world on their own.