Reference No.: E-09
Updated: 2/23/01

Social Services Investigations: The Removal of Children From The Home

Parents in the United States are subject to increasing government involvement in their lives as they seek to properly raise their children. Administrative agencies of the government, which are created by statute to carry out broad directives such as maintaining the health and welfare of minor children, are given more and more discretion in performing those duties.

Each state, and the federal government, has a social service agency. These agencies have various titles such as Department of Social Services, or Department of Health and Human Services. Regardless of title, each has a division concerned with the protection and welfare of minor children. These are the agencies given the charge of investigating reports of child abuse.

All fifty states have laws which require an individual or organization to report actual or suspected abuse.[1] Those who may be compelled to make such reports include schools, churches, day care facilities, and civic clubs such as Boy Scouts and Girl Scouts.[2] With these reporting requirements in force, the child protective services division of a state's social service agency is continually investigating citizens who have been reported under these laws.

1. When may a social worker or law enforcement officer enter a private home to investigate child abuse?

Social service agencies often receive anonymous reports of actual or suspected child abuse. These reports are based on another citizen's observations, suspicions, and possibly the desire to avoid liability for failing to report abuse. Social service agencies then investigate such reports.

The Fourth Amendment guarantees citizens the right ?to be secure in their persons, houses, papers, and effect from unreasonable searches and seizures,? and states that this right shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized. [3]

The courts are divided as to whether probable cause or a warrant are required before a social worker is justified in demanding entry into a residence. It is well established that physical entry into the home is the chief evil against which the . . . Fourth Amendment is directed. [4] At the very core [of the Fourth Amendment and the personal rights it

secures] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion. [5] The Fourth Amendment's prohibition of unreasonable searches establishes the cardinal principle that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated exceptions. [6]

Case law has established that the state satisifies the reasonableness component for a full-scale search through a showing of probable cause. Probable cause exists when sufficient information warrants the belief that a crime has been committed, and evidence of that crime will be found in the place to be searched.[7] Upon a showing of probable cause, a neutral magistrate may issue a warrant. Warrantless searches are only permissible under the well defined exceptions of consent to the search,[8] exigent circumstances,[9] and administrative searches.[10] As one case notes, these principles should generally be applied to child abuse cases, as well as all other forms of warrantless invasions of a home:

> It is true that the [prior] caselaw applying these principles specifically in the context of a warrantless invasion of a home based on an alleged need to prevent child abuse is relatively sparse. In this context, [defendants] suggest that they were entitled to assume until told otherwise by the courts that child abuse cases would not be controlled by the well established legal principles developed in the context of residential intrusions motivated by less pressing concerns. We reject this suggestion. As we have noted . . . a prior case on all fours is not necessary; a public official may not manufacture immunity by inventing exceptions to well settled doctrines for which the case law provides no support. It evidences no lack of concern for the victims of child abuse or lack of respect for the problems associated with its prevention to observe that child abuse is not *sui generis* in this context. The Fourth Amendment caselaw has been developed in a myriad of situations involving very serious threats to individuals and society, and we find no suggestion there that the governing principles should vary depending on the court's assessment of the gravity of the societal risk involved.[11]

Consent to Search

Obviously, if a parent or other legal guardian gives consent to search the residence or child, no probable cause or warrant is necessary. Consent must be judged by the totality of circumstances and lack of knowledge of the right to refuse a search cannot, standing alone, invalidate consent.[12] Consent must be freely given, and is ineffective if it is extracted under threat of force or under claim of government authority.[13] In these contexts, it is not unusual for a parent to engage in a ?submission to a claim of lawful authority.?[14] This occurs when a parent demands a warrant and is informed that the state officials need no warrant and demand entry, despite the parent's repeated protests and demands for a warrant. Under these cases, no reasonable law enforcement officer could believe that the parent had given

legally effective consent to the entry or following search.[15] Without legally effective consent the search is unlawful unless it falls within some other exception, such as exigent circumstances.

Exigent Circumstances

Courts use the term "exigent circumstances" as a shorthand for a group of related exceptions to the probable cause and search warrant requirements. These exceptions are established in a line of cases wherein emergency intrusions are undertaken in order to protect or preserve life or to avoid serious bodily injury. "The right of the police to enter and investigate in an emergency . . . is inherent in the very nature of their duties as peace officers, and derives from the common law."[16] However, in order to qualify for the "exigent circumstances" exception to probable cause there must be a showing of true necessity--that is, an imminent and substantial threat to life, health, or property."[17] To put it another way, state actors making the search must have reason to believe that life or limb is in immediate jeopardy and that the intrusion is reasonably necessary to alleviate the threat.[18]

Administrative Searches

When a case involves some type of official intrusion into one's home, the Fourth Amendment's protections are called into play. An individual need not be suspected of criminal behavior to invoke the protection of the Fourth Amendment.[19] Prior to 1967, the Supreme Court held that administrative searches were not covered by the protections of the Fourth Amendment.[20] In 1967, the Supreme Court decided *Camara v. Municipal Court*,[21] wherein Camara refused to permit San Francisco Public Health inspectors to make a routine annual inspection of his home for possible violations of the city housing code. Criminal charges were made against Camara for refusing to allow an inspection. The Supreme Court, noting that the only way a resident could challenge the inspection was by refusing entry and risking criminal conviction, determined that the practical effect of this system was to leave the occupants subject to the unbridled discretion of the inspector.[22] This unbridled discretion was found unconstitutional, and thus, the Court held that a warrant should be sought in such a context.[23]

The Supreme Court later sanctioned a warrantless caseworker ' s visit to the home of a recipient of Aid to Families with Dependent Child, even though it characterized the visit as a "search"24 The Court found that the search was nevertheless reasonable and did not violate the Fourth Amendment since:

1) the family received written notice specifying the date of the visit was received several days in advance;
2) the means of conducting the visit emphasized privacy and minimized any burden upon a homeowner's right against unreasonable intrusion;
3) the visit was not shown to have as its purpose the obtaining of information as to criminal activity and was not equatable with a criminal investigation, and was not in aid of any criminal proceeding;
4) sources of information other than a home visit would not always assure verification of a dependent child's actual residence or of actual physical presence in the home or of impending medical needs;
5) the use of search warrant procedures would have seriously objectionable features in the welfare context; and
6) the recipient's refusal to permit the visit was not a criminal act, the only consequence of such refusal being that the payment of benefits would cease.[25]

The Court found, in this particular situation, that the caseworker's home visit was not a search triggering traditional Fourth Amendment protection. Alternatively, the Court found that even assuming that the home visit was a search, it did not offend the Fourth Amendment. The Court reached this result by examining the focus of the home visit requirement. Because the focus of the home visit was the welfare of the child, the intrusion was reasonable even without a warrant or probable cause, due to the visit's "rehabilitative" and "service" orientation. Additionally, the Court recognized that although the fruits of the caseworker's home visit might lead to criminal prosecution, it noted that such a result was merely an "expected fact of life and a consequence no greater than that which necessarily ensues upon any other discovery by a citizen of criminal conduct."[26]

Courts are divided over whether or not an in-home investigation of child abuse constitutes a search requiring probable cause or a warrant.[27] Courts have held that Fourth Amendment jurisprudence is sufficiently well developed to place persons investigating child abuse on notice of its applicability to their work, particularly when those cases involve searches or seizures by or with the participation of police officers, whose conduct is regularly governed by the Fourth Amendment.[28] Yet other courts distinguish between social workers and police officers noting:

> However, to permit [a police officer investigating a child abuse complaint] to benefit from these critical distinctions by heralding the primacy of the protection of children cannot be supported by the circumstances of this case. What the district court perceived, and what cannot be overlooked, is that defendant's focus was not so much on the child as it was on the potential criminal culpability of her parents. That focus is the hallmark of a criminal investigation. In contrast, a social worker?s principal focus is the welfare of the child. While a criminal prosecution may emanate from the social worker's activity, that prospect is not a part of the social worker's cachet. This distinction of focus justifies a more liberal view of the amount of

probable cause that would support an administrative search.[29]

Thus, while some cases find that neither probable cause nor warrant are required, others hold that they are required for police and not social workers. Still, the best reasoned case indicates that "[c]aseworkers investigating child abuse, however, like police officers, routinely conduct investigative seizures and searches. Requiring familiarity with the Fourth Amendment will not, therefore, be unduly burdensome."[30]

Probable cause requires that a judge "make a practical, commonsense decision whether, given all the circumstances . . . before him . . . there is a fair probability that the facts to which the probable cause determination is addressed exist."[31] Under the probable cause requirement, anonymous reports alone do not justify searches or seizures to further the investigation, but must be supplemented by sufficient corroboration in order to pass constitutional muster.[32] Even under the lesser standard of reasonable suspicion, an entirely uncorroborated anonymous tip would generally not provide grounds for a search or seizure.[33]

In any event, probable cause and a warrant, or, in the alternative, clearly articulated guidelines restricting the unbridled discretion of an investigator, are required in order to permit the search of one's household. Law enforcement officers and social workers may enter a home without a search warrant if they have a reasonable belief that a child is abused or in imminent danger[34] and they may search in a manner that is reasonable in investigating the suspected child abuse or neglect.[35]

When a social worker or law enforcement officer seeks to enter a home, a parent should ask to see a search warrant. If no warrant has been issued, the social worker or law enforcement officer will be forced to decide whether there is imminent danger to a child inside in order to proceed into the home. Often, the social worker or law enforcement officer will not wish to make such a conclusion if there is no evidence. The state may then either close the investigation or obtain a warrant.

2. When may a child be interviewed?

In most child abuse investigations, an interview of the child is necessary to give a social worker information about the situation from the child's perspective.[36] The Fourth Amendment is not violated when school administrators question a student in order to determine whether there is "reason to believe" that a child is abused.[37] One court has noted that there is a distinction between questioning by the school teachers or administrator and a full-blown investigation by the child protective service.[38] Similarly, where caseworkers arranged for a psychologist to examine an allegedly abused child, a court found that this did not violate the parents' rights.[39] Courts have held that a social worker's interview with the child may actually be less intrusive than that social worker interviewing a family's neighbors or the child's teachers or friends. This is due to the stigma that may attach to a family when third parties are interviewed.[40]

3. When may a child be physically searched?

"The state protects its children from neglect, ill treatment, and abuse, by statutes providing for the removal of ill-treated children from their present custodian to another, or by statutes providing for punishment of the offender. On occasion, the right of an individual to be free from unreasonable search and seizure may conflict with the state's interest in protecting juveniles."[41]

In balancing these interests, a court must examine whether the officials "are justified in requiring submission to a physical search, and whether the means and procedures employed respect relevant Fourth Amendment standards of reasonableness."[42] "A search of a child's person . . . no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy."[43] As one court noted, "it does not require a constitutional scholar to conclude that a nude search of a thirteen-year-old child is an invasion of constitutional rights of some magnitude. More than that: it is a violation of any known principle of human dignity."[44] While a physical examination conducted as part of a child abuse investigation has the purported purpose of protecting the child,[45] a strip search, for the child, is "akin to sexual abuse."[46]

The courts, however, are not in agreement whether probable cause and a warrant are necessary prior to a strip search of a child. In *Darryl H. v. Coler*,[47] the Seventh Circuit Court of Appeals found that the visual inspection conducted by government officials of those parts of the human body usually covered by clothing implicates Fourth Amendment concerns where the search was conducted by caseworkers in an attempt to discern whether a child had been the victim of child abuse. The *Darryl H.* court determined that the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, but requires a balancing of the need for the particular search against the invasion of the personal rights that the search entails. The Court used two inquires:

(1) was the action "justified at its inception;" and
(2) was the conduct of the search "reasonably related in scope to the circumstances which justified the interference in the first place."[48]

The court concluded:

> we cannot say that the Constitution requires that a visual inspection of the body of a child who may have been the victim of child abuse can only be undertaken when the standards of probable cause or a warrant are met. On this point, we believe the district court was correct.[49]

The court held that visual inspections of the unclothed bodies of children for evidence of child abuse could be justified without a warrant or probable cause upon a showing of

reasonableness by "balancing . . . the need for the particular search against the invasion of personal rights that the search entails."[50] The court concluded that the searches in question could be conducted without meeting the strictures of probable cause or the warrant requirement because the caseworker's discretion was circumscribed by hot-line standards established in the Department of Child & Family Services *Handbook*. The court in *Darryl H.*, noted the guidelines may not be sufficient to ensure that a search is necessary and reasonable, however:[51]

> As our analysis in the companion case reveals, we are not yet convinced that the hot-line criteria alone are sufficient to ensure that a search is necessary and reasonable. In this case, by the time the visual inspection of the children was undertaken, the caseworker was in possession of information which cast serious doubt on the validity of the charge. The children?s home situation revealed no evidence of abuse; the children themselves denied any mistreatment; there was some evidence that the complainant was, in light of her earlier disagreement with the parents, not entirely objective. More importantly, it appears that additional information could have been obtained quite easily and without creating any appreciable embarrassment for the children or the parents. The principal?s only source of information that Lee H. was tied up for punishment was the report of an undisclosed number of children in one of the primary grades. There is no indication in the record that the caseworker made any effort to corroborate the principal?s complaint by discrete inquiry of faculty members who had frequent contact with the students to ascertain the basis, if any, for this allegation.[52]

The court did not, however, reach definitively the question whether the searches at issue were reasonable. Later, the Seventh Circuit decided a similar case finding that caseworkers were immune from claims under the Fourth Amendment because its application to child abuse investigations was unsettled.[53]

Conversely, liability was found in the cases of *Tenenbaum v. Williams*,[54] *Franz v. Lytle*,[55] and *Good v. Dauphin County Social Servs.*,[56] wherein both probable cause and warrants were required before intrusive examinations of children for evidence of abuse were permitted. In *Tenenbaum*, the federal court for the Eastern District of New York found that both probable cause and a warrant were necessary, absent consent or exigent circumstances, prior to Child Welfare Administration officials arranging for doctors to conduct a medical examination of a child?s genitalia.[57] The court in *Tenenbaum* distinguished the search from the search in the *Darryl H.* case:

> While this court does not necessarily disagree with the holding in *Darryl H.*, it regards the examination in the present case as categorically different from the examination conducted in that case. . . .Requiring a warrant for a mere visual inspection (following an emergency removal based on probable cause)--particularly of asexual parts of the anatomy--could frustrate child welfare workers in their efforts to uncover child abuse by converting a quick inspection into a time-consuming

procedure.[58]

Similarly, in *Franz*, the Tenth Circuit held that a warrant issued on probable cause was required before a police officer investigating alleged child abuse could constitutionally probe a child?s genitals for evidence of abuse and subject her to a medical examination by a doctor.[59] The *Franz* court distinguished visual inspections, such as those in *Darryl H.*, and those inspections involving touching a child?s nude body, such as occurred in *Franz*.[60] In *Good*, the Third Circuit held that a strip search of a child as part of an investigation of abuse was constitutional only if conducted pursuant to a warrant issued on probable cause, absent consent or exigent circumstances.[61] Other types of examinations of children, including investigatory x-rays, may violate the Constitution?s Due Process requirements:

> We believe the Constitution assures parents that, in the absence of parental consent, x-rays of their child may not be undertaken for investigative purposes at the behest of state officials unless a judicial officer has determined, upon notice to the parents and an opportunity to be heard, that grounds for such an examination exist and that the administration of the procedure is reasonable under all the circumstances.[62]

4. When may a law enforcement officer or social worker take a child into emergency protective custody?

The Fourteenth Amendment to the United States Constitution provides that ?no person shall be deprived of life, liberty, or property without the due process of law.?[63] There is both procedural[64] and substantive[65] protection afforded parents by the Fourteenth Amendment to ensure their familial relationship will not be subject to unwarranted state intrusion.[66] These protections are not only provided to "perfect parents." "The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents. . . . ."[67]

When the state seeks to remove a child from the care of its parents, it is an infringement of this parental liberty which requires that the state provide the parents with due process of law.[68] Due process of law does not, however, require a state to provide parents with a hearing or other procedure before taking a child into custody.[69] Courts have held that the state?s temporary assertion of custodial authority in the face of a reasonably perceived emergency does not violate due process.[70] "When a child's safety is threatened, that is justification enough for action first and hearing afterwards."[71] Thus, while the courts have acknowledged that a parent's rights to retain care and custody over their children are fundamental, they have also held that the state has a compelling interest in the health and safety of its children which may justify interference with that care and custody.[72]

The Supreme Court has never answered the question of whether probable cause, or some lesser standard governs the removal of children in cases of suspected abuse or neglect, although some lower courts have indicated that "probable cause" is the appropriate

standard.[73]

All fifty states give some degree of authority to social services personnel investigating child abuse to take a child into emergency protective custody without the parent's consent and without a court order.[74] However, a judicial hearing to review the state's action must be provided within a specified amount of time; usually between 48 and 96 hours. Most states provide that a child may be taken from the home if there is a reasonable belief that a child is in imminent danger.[75] States differ on who may actually take physical custody, however. Some states allow a law enforcement officer or a social worker to take a child into emergency protective custody, and others allow only a law enforcement officer to do so.[76]

A strip search, or other intrusive examination, unsupported by probable cause and a warrant, will rarely be justified once a child has been removed from the alleged emergency situation.[77] Even if a child is removed from the home based on probable cause to believe that an emergency exits, that circumstance ceases when the child is removed from the parents? custody. The child is then no longer in what is perceived to be harm?s way, and thereafter, due process requires notice to the parents and judicial authorization before the child can be subjected to intrusive examinations.[78]

When a social worker or law enforcement officer seeks to take custody, a parent should ask to see a court order. If the social worker or law enforcement officer does not possess a court order they will be forced to determine whether the child is in imminent danger in order to proceed with the removal of the child into protective custody. Often a social worker or law enforcement officer will not wish to make such a conclusion and will leave the home. The investigation may be closed if there is no evidence of imminent danger, or the investigator may obtain a court order. In either case, the parent has forced the state to accord him/her due process before the removal of the child occurs.

5. What happens after a child is taken into emergency protective custody?

Emergency protective custody is a temporary measure taken by the state because of an emergency situation. A court will review the state's action within a specified period of time.[79] At this hearing the state must justify its action by showing its belief that the child was in imminent danger was reasonable.[80] If the court finds that the state's action was indeed reasonable, the state may ask the court to issue an order for prolonged custody of the child. The state may then seek to have the child placed in a state run foster care home.

Unlike the removal of a child into emergency protective custody, the state may not retain custody for a prolonged period of time without making "reasonable efforts" to reunite the family.[81] Such "reasonable efforts" may include counseling services for the child, or the family.[82]

If the state determines that no reunification is possible, after it has made reasonable efforts to that end, then it may ask a court to terminate the parents rights. If the court does

terminate these rights, the child then becomes a ward of the state and is placed in permanent foster care. Since such an action is a final decision about the parents' fundamental right to retain custody and care over their children, the state must present "clear and convincing evidence" of its need to do so to the court.[83] The "clear and convincing evidence" standard is a high burden for the state to meet. This demonstrates that a court will not look lightly on a permanent deprivation of fundamental parental rights. A court ultimately will determine what is in the best interest of the child. Some things a court may consider in making such a determination are: the parents' ability to care for the physical, mental, and emotional needs of the child; acts of abuse; parents? excessive use of intoxicating substances; and parents' efforts to reunite the family.[84]

6. When should parents contact an attorney?

Parents who have not come under investigation for child abuse should not necessarily establish a client relationship with an attorney (this could be costly), but it would be a wise precaution to identify an attorney with experience in dealing with social services.

If a social service agency seeks to enter the home to investigate a report of child abuse, interview the child, or physically examine the child without a search warrant or court order, the parent should contact an attorney before allowing the state agent to enter their home. This will give the parent access to sound advice, and will also force the state to consider its actions carefully.

7. Conclusion

Today, individuals and organizations are required by law to report actual or suspected child abuse. Various penalties may attach for failure to report. These laws lead individuals and organizations to report even the most attenuated suspicions to avoid liability under the reporting laws. When a state agency receives a report of neglect or abuse they must investigate and are given the authority by statute to remove a child from the home if conditions demand it. This kind of discretionary authority to override fundamental parental rights is a cause for concern.

Parents should be aware of their state's provisions regarding child abuse investigation and removal of a child into protective custody. Parents should know just how much time can pass by law before the state must provide judicial review of a removal. Please see the provisions and citations for each state in the endnotes of this paper for this information. Parents may obtain more specific details by contacting local and state agencies.[85] Knowledge of the limits within which government agencies must work will allow parents to assert their rights when such limits are transgressed.

State Law Regarding Removal of Children from the Parents' Custody:

Alabama

A law enforcement officer, social worker, or doctor may take a child into protective custody if the child is in imminent danger. Judicial review must occur within 72 hours. Ala. Code ? 26-14-6 (2000).

Alaska
A social worker may take a child into protective custody as the department determines necessary. A petition must be filed with the court within 12 hours, and a hearing must occur within 48 hours excluding weekends and holidays. Alaska Stat. 47.10.142 (2001) and Alaska Children In Need of Aid Ct.R. 10(a)(1) (2001).

Arizona
A law enforcement officer or social worker may take a child into protective custody if the child is suffering or will suffer abuse. Judicial review must occur within 48 hours excluding weekends and holidays. Ariz.Rev.Stat.Ann. 8-802, 8-821, 8-822 (2001).

Arkansas
A law enforcement officer, social worker, or doctor may take a child into protective custody if the child is in immediate danger of severe maltreatment. Judicial review must occur within 72 hours, or on the next business day in the event of a weekend or holiday. Ark. Stat. Ann. 12-12-516 (Michie Supp. 2000).

California
A law enforcement officer may take a child into protective custody if he/she has reasonable cause to believe that a child is in imminent danger. Petition to court must be filed within 48 hours excluding non-judicial days. Cal.Welf. & Inst.Code 303, 305, 313 (West 1984 & Supp. 2000).

Colorado
A law enforcement officer may take a child into protective custody when it is necessary for the protection of the child, or an emergency situation exists. Judicial review must occur within 72 hours excluding weekends and holidays. Colo.Rev.Stat. 19-3-401,403,405 (Supp. 2000).

Connecticut
A law enforcement officer or social worker may take a child into protective custody if he/she has probable cause to believe the child is in immediate physical danger. Petition must be filed with the court within 96 hours. Conn.Gen.Stat.Ann. 17a-101g (1999).

Delaware
A police officer or physician may take a child into protective custody if he/she reasonably suspects the child is in imminent danger. A social worker may take a child into protective custody only from a school, day care facility or child care facility. A petition must be filed with the court "forthwith." Del.Code Ann. tit. 16 907 (Supp. 2000).

Florida
A law enforcement officer or social worker may take a child into protective custody if he/she has reasonable grounds to do so. A hearing must occur within 24 hours. Fla. Stat.Ann. 39.401, 402 (West 1988 & Supp. 2000).

Georgia
A law enforcement officer may take a child into protective custody if he/she has reasonable grounds to believe that the child is suffering from injury or is in immediate danger. Judicial review must occur within 72 hours excluding weekends and holidays. Ga.Code Ann. 15-11-45, 49 (2000).

Hawaii
A law enforcement officer may take a child into protective custody if in his/her discretion it is necessary and appropriate under the circumstances. Petition must be filed with the court within three working days excluding weekends and holidays. Haw.Rev.Stat. 587-21 (Michie 2000).

Idaho
A law enforcement officer may take a child into protective custody if a child is endangered in his/her circumstances and prompt removal is necessary. Judicial review must occur within 48 hours excluding weekends and holidays. Idaho Code 16-1612 (Supp. 2000).

Illinois
A law enforcement officer may take a child into protective custody if he/she has reasonable cause to believe a child may be in danger. Judicial review must occur within 48 hours excluding weekends and holidays. Ill. Ann.Stat. Ch. 705, 405/2-5,/2-9 (Smith Hurd 1992 & Supp. 2000).

Indiana
A law enforcement officer, probation officer or caseworker may take a child into protective custody if there is probable cause of immediate danger, and no time to obtain a court order. Judicial review must occur within 48 hours excluding weekends and holidays. Burns Ind.Code Ann. 31-34-2-1, 31-34-2-2, 31-34-2-3 (Supp. 2000).

Iowa
A law enforcement officer may take a child into protective custody if the child is in imminent danger. A petition must be filed with the court within 3 days. Iowa Code Ann. 232.79 (West 1985 & Supp. 2001).

Kansas
A law enforcement officer may take a child into protective custody if he/she has probable cause to believe the child will be harmed. Judicial review must occur within 48 hours excluding weekends and holidays. Kan. Stat.Ann. 38-1524, 38-1527 (1999).

Kentucky
A law enforcement officer may take a child into custody if he/she has reasonable grounds to believe the child is in imminent danger. An emergency custody order must be requested of the court within 12 hours. Ky.Rev.Stat.Ann. 620.040(5)(c) (Supp.2000).

Louisiana
A law enforcement officer may take a child into protective custody if he/she has a reasonable belief that the child is in imminent danger. A social worker must obtain a court order before taking a child into protective custody. La.Children's Code art. 621 (West 2000).

Maine
A social worker may take a child into protective custody if the child is threatened with serious harm. Judicial review must occur within 72 hours. Me. Rev. Stat. Ann. tit. 19A 1748 (Supp. 2000).

Maryland
A social worker, accompanied by a law enforcement officer, may take a child into protective custody if such action is required to protect the child, or continuation in the home is contrary to the welfare of the child, and removal is reasonable due to an emergency situation. Judicial review must occur on the next court day. Md.Cts. & Jud.Proc.Code. 3-815, Md. Rule 11-112 (1999).

Massachusetts
A social worker may take a child into protective custody if he/she reasonably believes such action to be necessary. A petition must be filed with the court on the next court day. Mass.Gen.Laws.Ann. ch. 119, 51B(3) (West Supp. 2000).

Michigan
A law enforcement officer or county agent (social worker) may take a child into protective custody if the child's surroundings endanger his/her health. Judicial review must occur within 24 hours excluding Sundays and holidays. Mich.Comp.Laws Ann. 712A.14 (West 1993 & Supp. 2000) (and Mich.Ct.R. 5.965 (West 2000)).

Minnesota
A law enforcement officer may take a child into protective custody if he/she has a reasonable belief that the child?s health is in imminent danger. A petition must be filed with the court within 72 hours. Minn.Stat. Ann. 260C.175 (2000).

Mississippi
A law enforcement officer or social worker may take a child into protective custody if they have probable cause to believe a child is in immediate danger. The child may be held no longer than 24 hours without a court order. Miss.Code.Ann. 43-21-303 (1981 & Supp. 2000).

Missouri
A law enforcement officer or doctor may take a child into protective custody if they have reasonable cause to believe the child is in imminent danger. The child may be held no longer than 24 hours without a court order. Mo.Ann.Stat. 210.125 (West 1999).

Montana
A law enforcement officer, or social worker may take a child into protective custody if they have reason to believe the child is in immediate danger. The state must file a petition with the court within 48 hours. Mont.Code Ann. 41-3-301 (2000).

Nebraska
A law enforcement officer may take a child into protective custody if the child is endangered in his/her surroundings and immediate removal is necessary. Judicial review must occur within 48 hours. Neb.Rev.Stat. 43-248,250 (2000).

Nevada
A law enforcement officer or social worker may take a child into protective custody if he or she has reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect. Judicial review must occur within 72 hours excluding weekends and holidays. Nev.Stat.Rev. 432b.390,470 (2000).

New Hampshire
A law enforcement officer may take a child into protective custody if the child is in imminent danger. A social worker must obtain a court order first. A hearing must occur within 24 hours excluding Sundays and Holidays. N.H.Rev.Stat.Ann. 169-C:6 (2000).

New Jersey
A doctor may take a child into protective custody if he/she has a reasonable belief that a child is in danger. A social worker may take a child into protective custody with the consent of the parents, or with a court order which will issue on the social worker's reasonable belief that the child is in imminent danger. Judicial review must occur on the next court day. N.J.Rev.Stat.Ann. 9:6-8.29, 8.31 (2000).

New Mexico
A law enforcement officer may take a child into protective custody if he/she has reasonable grounds to believe that the child is in imminent danger. A petition must be filed with the court within 48 hours. N.M.Stat.Ann. 32A-3B-3, 4 (2000).

New York
A law enforcement officer of social worker may take a child into protective custody if there is reasonable cause to believe the child is in imminent danger, and there is no time to get a court order. A petition must be filed with the court "forthwith," and a hearing must occur "as soon as practicable." N.Y.Fam.Ct. Act 1024, 1026-27 (2000).

North Carolina
A law enforcement officer or social worker may take a child into protective custody if he or she has reasonable grounds to believe that a child is in imminent danger. A petition must be filed with the court within 12 hours. N.C.Gen.Stat.. ? 7B-500, 501 (2000).

North Dakota
A law enforcement officer or juvenile supervisor may take a child into protective custody if he/she has reasonable grounds to believe the child is in imminent danger. Judicial review must occur within 96 hours. N.D.Cent.Code ? 27-20-13,17 (2000).

Ohio
A law enforcement officer may take a child into protective custody if he/she has reasonable grounds to believe a child is in imminent danger. Judicial review must occur within 72 hours. Ohio Rev.Code Ann. ? 2151.31,314 (Anderson 2000).

Oklahoma
A law enforcement officer may take a child into protective custody if he/she has a reasonable belief that the child's surroundings are such as to endanger the welfare of the child. Judicial review must occur within 2 judicial days. Okla.Stat.Ann. tit. 10, 7003-2.1 (1999).

Oregon
A law enforcement officer or a social worker may take a child into protective custody if he or she has reason to believe the child may be harmed. Judicial review must occur within 24 hours excluding weekends and holidays. Or. Rev. Stat. Ann. 419B.020, 150, 155 (1998).

Pennsylvania
A law enforcement officer may take a child into protective custody if he/she has reasonable grounds to believe that a child is in imminent danger. Judicial review must occur within 72 hours. 42 Pa.Cons.Stat.Ann. 6324, 6332 (2000).

Rhode Island
A law enforcement officer, social worker, or doctor may take a child into protective custody if he or she has reasonable cause to believe the child is in imminent danger. The child may be held no longer than 48 hours without a court order. R.I.Gen.Laws 40-11-5 (2000).

South Carolina
A law enforcement officer may take a child into protective custody if he/she has probable cause to believe that a child is in imminent danger from abuse or neglect. A petition must be filed with the court on or before the next working day. S.C.Code.Ann. 20-7-610 (2000).

South Dakota

A law enforcement officer, or court services officer may take a child into protective custody if he or she has a reasonable belief that the child may be in imminent danger and there is no time to obtain a court order first. Judicial review must occur within 48 hours excluding weekends and holidays. S.D. Codified Laws Ann. 26-7A-12, 26 -7A-14 (2000).

Tennessee
A law enforcement officer or social worker with reasonable grounds to believe that a child is neglected, or faces an imminent threat may take a child into protective custody. Judicial review must occur within 3 days excluding weekends and holidays. Tenn.Code.Ann. 37-1-113,114, 117 (2000).

Texas
A law enforcement officer or social worker may take a child into protective custody if there are facts which would lead a reasonable person to believe there is an immediate danger to the child. Judicial review must occur on the next working day. Tex.Fam.Code.Ann. 262.104 (West 1996 & Supp. 2001).

Utah
A peace officer with reasonable grounds may take a child into protective custody if it would be unsafe to leave the child in the home. Judicial review must occur within 48 hours excluding weekends and holidays. Utah Code Ann. 78-3a-113, 301 (2000).

Vermont
A law enforcement officer may take a child into protective custody if he/she obtains a court order. A court order will issue based upon the officer's reasonable belief that the child is in immediate danger. Judicial review must occur within 48 hours. Vt.Stat.Ann. tit. 33, 5510, 5513, 5515 (2001).

Virginia
A law enforcement officer, social worker, or doctor may take a child into protective custody if an imminent danger to the child exists, and there is no time to obtain a court order. Judicial review must occur within 72 hours. Va.Code 63.1-248.9 (2000).

Washington
A law enforcement officer or doctor may take a child into protective custody if he or she has probable cause to believe a child may be injured, or is in imminent danger. Judicial review must occur within 72 hours excluding weekends and holidays. Wash.Rev.Code. Ann. 26.44.050,056 and 13.34.060 (2000).

West Virginia
A law enforcement officer may take a child into protective custody if the child is believed to be neglected or abused. Judicial review must occur within 96 hours. W.Va. Code 49-6-9 (2000).

Wisconsin
A law enforcement officer may take a child into protective custody if he/she has reasonable grounds to believe a child is in imminent danger. Judicial review must occur within 24 hours excluding weekends and holidays. Wisc. Stat. 938.19 (2000).

Wyoming
A law enforcement officer may take a child into protective custody if he/she has reasonable grounds to believe that a child is in danger. Judicial review must occur within 72 hours. Wyo.Stat. 14-3-208, 14-6-205, 209 (Supp. 2000).

ENDNOTES

1. Danny R. Veilleux, *Validity, Construction, and Application of State Statute Requiring Doctor or Other Person to Report Child Abuse*, 73 A.L.R. 4th (1989) & Supp. (1994).

2. This list is not comprehensive, and will vary from state to state.

3. U.S.Const. Amend. IV.

4. *United States v. United States District Court*, 407 U.S. 297, 313 (1972).

5. *Silverman v. United States*, 365 U.S. 505, 511 (1961). *See also Payton v. New York*, 445 U.S. 573, 586 (1980)(?It is a ?basic principle of Fourth Amendment law? that searches and seizures inside a home without a warrant are presumptively unreasonable.?); *Coolidge v. New Hampshire*, 403 U.S. 443, 474-75 (1970)(?It is accepted, at least as a matter of principle, that a search or seizure carried out on a suspect?s premises without a warrant is *per se* unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of ?exigent circumstances.??).

6. *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) *quoting Katz v. United States*, 389 U.S. 347, 357 (1967).

7. *Beck v. Ohio*, 379 U.S. 89, 91 (1964).

8. *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973).

9. *Mincey*, 437 U.S. at 390.

10. *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967).

11. *Good v. Dauphin County Social Services*, 891 F.2d 1087, 1094 (3rd Cir. 1989) (citations omitted); *Franz v. Lytle*, 997 F.2d 784, 792 (10th Cir. 1993)(same).

12. *Schneckloth*, 412 U.S. at 233; *Immigration and Naturalization Service v. Delgado*, 466 U.S.210, 104 S.Ct. 1758 (1984).

13. *Schneckloth*, 412 U.S. at 233 (?[I]f under all the circumstances it has appeared that the consent was not given voluntarily--that it was coerced by threats or force, or granted only in submission to a claim of lawful authority--then we have found the consent invalid and the search unreasonable.?); *Amos v. U.S.*, 255 U.S. 313, 317 (1921)(?[T]he contention that the constitutional rights of defendants were waived when his wife admitted to his home the Government officers, who came, without search warrant, demanding admission to make search of it under Government authority, cannot be entertained . . . . for it is perfectly clear that under the implied coercion here presented, no such waiver was intended or effected.?).

14. *Schneckloth*, 412 U.S. at 233; *Good*, 891 F.2d at 1095.

15. *Good*, 891 F.2d at 1095.

16. *See Good*, 891 F.2d at 1093; *United States v. Barone*, 330 F.2d 543, 545 (2d Cir.), *cert. denied*, 377 U.S. 1004 (1964). *See also Mincey*, 437 U.S. at 392.

17. *Good*, 891 F.2d at 1094; *People v. Smith*, 7 Cal.3d 282, 286, 101 Cal. Rptr. 893, 895, 496 P.2d 1261, 1263 (1972).

18. *Good*, 891 F.2d at 1094.

19. *Camara*, 387 U.S. 523.

20. *Frank v. Maryland*, 359 U.S. 360 (1959). *Frank* held that health officials did not need a search warrant to enter a residence and investigate sanitation conditions. In 1967, the landmark companion cases, *Camara*, and *See v. Seattle*, 387 U.S. 541 (1967), reversed *Frank* and held that administrative inspections of commercial and non-commercial premises are generally subject to the warrant requirement of the Fourth Amendment.

21. *Camara*, 387 U.S. 523 (1967).

22. *Id.*, at 532-33.

23. *Id.*, at 532-33; *accord Marshall v. Barlow?s*, 436 U.S. 307, 320-21 (1978)(OSHA?s warrantless inspection program invalid because of the unbridled discretion invested in government officials who could ?roam at will? throughout any industrial establishment to look for health and safety violations).

24. *Wyman v. James*, 400 U.S. 309 (1971).

25. *Id.*; 86 Am. Jur. 2d *Searches and Seizures* ? 105 (1993).

26. *Id.*, 400 U.S. at 323.

27. *Compare Tenenbaum v. Williams*, 862 F.Supp. 962, 976 (E.D.N.Y. 1994), *cert. denied City of New York v. Tenenbaum*, 529 U.S. 1098 (2000)(?Therefore, the court concludes that the probable cause and warrant requirements apply to child abuse searches and seizures under the Fourth Amendment.?); *Good*, 891 F.2d at 1092 (?The decided case law made it clear that the state may not, consistent with the prohibition of unreasonable searches and seizures found in the Fourth and Fourteenth amendments, conduct a search of a home or strip search of a person?s body in the absence of consent, a valid search warrant, or exigent circumstances.?); *Franz v. Lytle*, 997 F.2d 784, 791 (10th Cir. 1993)(?[T]he Fourth Amendment draws a bright line around these facts, not as refined to address the concerns of an administrative setting like the school search in *T.L.O. v. New Jersey*, but in its application to a criminal setting in which

only a showing of probable cause, absent consent or exigency, can establish the reasonableness of the search.?); *Parents of Two Minors v. Bristol Division of the Juvenile Court Department*, 397 Mass. 846, 494 N.E.2d 1306 (1986)(While no determination regarding federal constitutional rights to be free from non-emergency home visits by employees of the DSS investigating anonymous reports of child abuse, Supreme Court found that Juvenile Court judge did not have authority to order plaintiffs to submit to such a visit); *with Donald M. v. Matava*, 668 F.Supp. 703, 709 (D.Mass. 1987)(?[Case law] demonstrate[s] that there was, and remains, a substantial question whether warrantless home visits by social workers investigating claims of child abuse violate the Fourth Amendment.?); *Darryl H. v. Coler*, 801 F.2d 893, 901 (7th Cir. 1986)(?On this record, we believe that the district judge was correct in holding that the searches in question here could be conducted without meeting the strictures of probable cause or the warrant requirement,? where DCFS Handbook criteria may supply ?reasonableness? where they circumscribe caseworker?s discretion); *E.Z. v. Coler*, 603 F.Supp. 1546, 1555-60 (N.D.Ill. 1985)(no constitutional violation where social worker investigating child abuse report made warrantless home visit without informing parents of right to refuse entry and asserted statutory authority to enter home); *Wildauer v. Frederick County*, 993 F.2d 369 , 372 (4th Cir. 1993)(?[I]nvestigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context.?). *See also*, Michael R. Beeman, *Notes, Investigating Child Abuse: The Fourth Amendment and Investigatory Home Visits*, 89 COLUM.L.REV. 1034, 1051-53 (1989) (arguing that *Wyman* is inapposite to child abuse investigation searches and seizures).

28. *Tenenbaum*, 862 F.Supp. at 977; *Franz*, 997 F.2d 784; *Good*, 891 F.2d at 1094.

29. *Franz*, 997 F.2d at 791. Additional considerations in the *Franz* case included ?the uncontroverted facts he was in uniform and carrying a gun at all times; he recorded his meeting with Mrs. Franz, following police policy; he filed standard KBI reports of his investigation; and he informed his superior officer he was investigating a possible child molestation.? *Id.*

30. *Tenenbaum*, 862 F.Supp. at 976.

31. *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *Tenenbaum*, 862 F.Supp. at 975.

32. *Gates*, 462 U.S. at 241-43; *Tenenbaum*, 862 F.Supp. at 976. *Tenenbaum* states that ?[a]busive or neglectful conduct witnessed by neighbors and other identified individuals, and signs of abuse in the appearance and behavior of children detected by teachers and child care workers, routinely provide probable cause to believe that a child has been abused or neglected.? *Tenenbaum*, 962 F.Supp. at 975.

33. *Alabama v. White*, 496 U.S. 325, 329 (1990); *Tenenbaum*, 862 F.Supp. at 976.

34. Mark Hardin, *Legal Barriers in Child Abuse Investigations*, 63 WASH.L.REV. 493, 520 (1988).

35. *Id.*, note 8.

36. *Darryl H.*, 801 F.2d at 901-902.

37. *Picarella v. Terrizzi*, 893 F.Supp. 1292, 1302 (M.D.Pa. 1995); *Landstrom v. Ill. Dep?t of Children & Family Serv.*, 892 F.2d 670 (7th Cir. 1990); *Darryl H.*, 801 F.2d 893.

38. *Picarella*, 893 F.Supp. at 1300.

39. *Fitzgerald v. Williamson*, 787 F.2d 403, 408 (8th Cir. 1986).

40. *Darryl H.*, 801 F.2d at 901-902; *E.Z.*, 603 F.Supp. at 1561.

41. Deborah Sprenger, *Annotation: Physical Examination of Child?s Body for Evidence of Abuse as Violative of Fourth Amendment or as Raising Fourth Amendment Issue*, 93 ALR Fed. 530, 531 (1989).

42. *Id.*

43. *New Jersey v. T.L.O.*, 469 U.S. 325, 337-38 (1985); *Good*, 891 F.2d at 1093.

44. *Doe v. Renfrow*, 631 F.2d 91, 92-93 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1981).

45. Hardin, *supra* note 34, at 568.

46. *Tenenbaum*, 862 F.Supp. at 973 (quoting Shatz, Donovan & Hong, *The Strip Search of Children and the Fourth Amendment*, 26 U.S.F.L.REV. 1, 11-14 (1991)).

47. *Darryl H.*, 801 F.2d at 902.

48. *Id.* at 903 (quoting *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968)).

49. *Id.* at 902.

50. *Id.* at 902-03.

51. *Id.* at 907. *Cf. Camara*, 387 U.S. at 532-33 (lack of guidelines invalidates administrative search exception to probable cause and warrant requirement); *accord*, *Marshall v. Barlow?s*, 436 U.S. 307, 320-21 (1978)(OSHA?s warrantless inspection program invalid because of the unbridled discretion invested in government officials who could ?roam at will? throughout any industrial establishment to look for health and safety violations). See also *Wildberger v. State*, 74 Md. App. 107, 536 A.2d 718 (1988)(?reasonableness? standard substituted for probable cause and warrant standard in strip search case); *Donald M. v. Matava*, 889 F.Supp. 703 (D.C.Mass. 1987) *later proceeding*, 668 F.Supp. 714 (D.C.Mass. 1987)(same).

52. *Darryl H.*, 801 F.2d at 907.

53. *Landstrom*, 892 F.2d at 676-77. In *Landstrom*, parents sued a school district charging violation of their rights in the course of a child-abuse investigation, when one child who had complained

of discomfort in the part of the body normally covered by clothing, was stripped searched. The court determined that each of the individual defendants in the case was entitled to either qualified or unlimited immunity, due to his or her position in the school district, but acknowledged that the search did in fact raise Fourth Amendment issues.

54. 862 F.Supp. 962 (E.D.N.Y. 1994).

55. 997 F.2d 784 (10th Cir. 1993).

56. 891 F.2d 1087 (3d Cir. 1989).

57. *Tenenbaum*, 862 F.Supp. at 977-78.

58. *Id.* at 978.

59. The facts of *Franz*, 997 F.2d 784, are set forth at *Franz v. Lytle*, 791 F.Supp. 827, 829 (D.Kan. 1992).

60. *Franz*, 997 F.2d at 790-91.

61. *Good*, 891 F.2d at 1092-93.

62. *Van Emrik v. Chemung County Dep?t of Social Servs.*, 911 F.2d 863, 867 (2d Cir. 1990). *Cf. Chayo v. Kaladjian*, 844 F.Supp. 163, 169 (S.D.N.Y. 1994)(?The instant case [*Chayo*] is distinguishable . . . [from *van Emrik*] because the x-ray examination [of the Chayo child] were ordered not by the caseworkers but by Dr. Ibrahm Ahmed, a pediatric resident at St. Vincent?s Hospital, and for medical rather than investigative purposes.?).

63. U.S.Const., amend XIV.

64. *Santosky v. Kramer,* 455 U.S. 745, 754 (1982).

65. *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977) (plurality).

66. *Santosky*, 455 U.S.at 753; *Quillion v. Walcott*, 434 U.S. 246,255 (1978); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). *Prince v. Massachusetts*, 321 U.S. 158,166 (1944); *Pierce v. Society of Sisters*, 268 U.S. 510,534-535 (1925); *Meyer v. Nebraska*, 262 U.S. 390,399 (1923). Such liberty interests is ?substantially attenuated where the proposed removal from the foster family is to return the child to his natural parents.? *Smith v. Organization of Foster Families*, 431 U.S. 816, 847 (1977); *Wildauer*, 993 F.2d at 373. Several courts have explicitly held that foster parents do not have a constitutionally protected liberty interest in a continued relationship with their foster child. *Wildauer*, 993 F.2d at 373; *McComb v. Wambaugh*, 934 F.2d 474, 483 (3d Cir. 1991); *Renfro v. Cuyahoga County Dep?t of Human Servs.*, 884 f.2d 943, 944 (6th Cir. 1989); *Backlund v. Barnhart*, 778 F.2d 1386, 1390 (9th Cir. 1985); *Drummond v. Fulton County Dep?t of Family & Children?s Servs.*, 563 F.2d 1200, 1206 (5th Cir. 1977)(*en banc*), *cert. denied*

437 U.S. 910 (1978).

67. *Santosky*, 455 U.S. at 753.

68. *Jordan by Jordan v. Jackson*, 15 F.3d 333, 342-346 (4th Cir. 1994)("The State's removal of a child from his parent's home indisputably constitutes an interference with a liberty interest of the parents and thus triggers the procedural protections of the 14th amendment. . . . Forced separation of parent from child, even for a short time, represents a serious impingement on those rights.")

69. "It is well settled that the requirements of process may be delayed where emergency action is necessary to avert imminent harm to a child." *Jordan by Jordan*, 15 F.3d at 343 (citing *Weller v. Department of Social Servs.*, 901 F.2d 387,393 (4th Cir. 1990); *Doe v. Hennepin County*, 858 F.2d 1325,1329 (8th Cir. 1988), *cert denied* 490 U.S. 1108 (1989); *Donald v. Polk County*, 836 F.2d 376,380-81 (7th Cir. 1988); *Hooks v. Hooks*, 771 F.2d 935,942 (6th Cir. 1985); *Duchesne v. Sugarman*, 566 F.2d 817, 826 (2d Cir. 1977)).

70. *Cecere v. City of New York*, 967 F.2d 826, 830 (2d Cir. 1992).

71. *Lossman v. Pekarske*, 707 F.2d 288, 291 (7th Cir. 1983). *See also Doe v. Connecticut Dep?t of Child and Youth Servs.*, 911 F.2d 868 (2d Cir. 1990); *Chayo v. Kaladjian*, 844 F.Supp. 163 (S.D.N.Y. 1994).

72. *Jordan by Jordan*, 15 F.3d at 346 ("These substantial private interests are not without public counterpart in the context of protective custody by the state. The State (commonwealth) as *parens patriae* also has at stake compelling interests - those in the safety and welfare of its children."); *Lassiter v. Department of Social Services*, 452 U.S. 18, 27 (1981); *Santosky*, 455 U.S. at 766; and *Parham v. R.*, 442 U.S. 584, 603 (1979). A "State is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." *Santosky*, 455 U.S. at 766-67.

73. Some cases have indicated that ?probable cause? is the standard. *See Doe*, 712 F.Supp. at 284 (?The emergency removal of John Doe requires ?probable cause? to believe that he was in immediate physical danger from his surroundings and that removal was necessary to insure his safety.?), *aff?d*, 911 F.2d 868 (2nd Cir. 1990); *Van Emrik*, 911 F.2d at 867; *Tenenbaum*, 862 F.Supp. at 974.

74. See discussion of individual state laws regarding the state removal of children from their parents? custody at the end of this brief.

75. *Id.*

76. See specific state provisions in particular state as provided above.

77. *See e.g.*, *Tenenbaum*, 862 F.Supp. at 977-78 (invasive search of child, given the fact that the

emergency which justified her removal no longer existed, was not justified at the time of the investigatory medical examination). ?In the rare event that investigating officials reasonably believe that evidence of abuse is likely to disappear before a warrant can be obtained exigent circumstances arguably would permit an intrusive examination without a warrant. *Cf. Schmerber v. California*, 384 U.S. 757, 770-71 (1966)(evanescent nature of defendant?s blood-alcohol level permitted blood test without a warrant).? *Tenenbaum*, 862 F.Supp. at 977, n. 12.

78. *Tenenbaum*, 862 F.Supp. at 972.

79. *Id.*, at note 27.

80. State's standards for removal into protective custody will vary.

81. Adoption Assistance and Child Welfare Act 42 U.S.C. ? 671 (a)(15) (West Supp. 1997). If a state fails to make "reasonable efforts," it will not receive federal funding to subsidize its care of the particular child. This statute does not create a private right of action for parents and it?s provisions are merely Congress?s ?hortatory? instructions to the states, rather than mandatory. *Suter v. Artist M.*, 112 S.Ct. 1360, 1365 (1992); *Wildauer*, 993 F.2d at 373.

82. 45 C.F.R. ? 1357.15(e)(2) (1994).

83. *Santosky*, 455 U.S. at 767 (1982).

84. This is not a comprehensive list, but is rather, a summary, intended to provide a general conception of things which a court may consider.

85. Addresses:

Alabama Dept. of Public Health 434 Monroe St. Montgomery, AL 36130 (205) 242-5095 www.alapubhealth.org/ 201 Monroe St. Montgomery, AL 36104 (334) 206-5300	Georgia Division of Public Health 47 Trinity Ave., SW Atlanta, GA 30334 (404) 894-7505 www.ph.dhr.state.ga.us Two Peachtree St., NW Atlanta, GA 30303-3186 (404) 657-2700	Maryland Dept. of Health and Mental Hygiene 201 West Preston St., Fifth floor Baltimore, MD 21201 (410) 225-6500 www.dhmh.state.md.us/ (410) 767-6860	New Jersey State Dept. of Health P.O. Box 360 John Fitch Plaza Trenton, NJ 08625-0360 (609) 292-7834 www.state.nj.us.health/	South Carolina Department of Health & Environmental Control 2600 Bull Street Columbia, SC 29201 (803) 734-5000 www.dhhs.state.sc.us/

Alaska Division of Public Health P.O. Box 110610 Juneau, AK 99811-0610 (907) 465-3090 www.hss.state.ak.us/dph/dph_home.htm	Hawaii Dept. of Health 1250 Punchbowl St. Honolulu, HI 96813 (808) 586-4410 www.hawaii.gov/health	Massachusetts Dept. of Public Health 150 Tremont St. Tenth floor Boston, MA 02111 (617) 727-0201 www.state.ma.us/dph 250 Washington St. Boston, MA 02108-4619 (617) 624-6000	New Mexico Public Health Division Dept. of Health and Environment 1190 St. Francis Dr. P.O. Box 26110 Santa Fe, NM 87502-6110 (505) 827-2389 www.health.state.nm.us/ (505) 827-2613	South Dakota Department of Health 445 E. Capital Avenue Pierre, SD 57501 (605) 773-3364 www.state.sd.us/health 1 (800) 738-2301
Arizona Dept. Of Health Services 1740 West Adams St. Phoenix, AZ 85007 (602) 542-1062 www.state.az.us/health	Idaho Division of Health Towers Building, Fourth Floor 450 West State St. Boise, ID 83720-0036 (208) 344-5945 http://www2.state.id.us/dhw/hwgd_www/home.html (208) 334-5500	Michigan Dept. of Public Health 3423 N. Logan St. P.O. Box 30195 Lansing, MI 48909 (517) 335-8024 www.mdch.state.mi.us/	New York State Public Health Division Empire State Plaza, Corning Tower Albany, NY 12237 (518) 474-0180 www.health.state.ny.us/	Tennessee Health Services Cordell Hull Building, 3rd Floor 425 5th Avenue, North Nashville, TN 37247 (615) 741-3111 www.state.tn.us/health
Arkansas Dept. of Health State Health Building 4815 West Markham St. Little Rock, AR 72205 (501) 661-2111 http://health.state.ar.us/	Illinois Dept. of Public Health 535 West Jefferson St. Springfield, IL 62761 (217) 782-4977 www.idph.state.il.us/	Minnesota Dept. of Health 717 Delaware St. SE Box 64975 Minneapolis, MN 55164 (612) 623-5510 www.health.state.mn.us/ (651) 215-5800	North Carolina Health Services Office P.O. Box 27687 Raleigh, NC 27611 (919) 733-4984 www.dhhs.state.nc.us/	Texas Dept. of Health 1100 W. 49th St. Austin, Tx 78756-3199 (512) 458-7375 www.tdh.texas.gov/ (512) 458-7111
California Dept. of Health Services 714 P St., Room 1253 (916) 657-1425 www.dhs.cahwnet.gov/	Indiana State Board of Health 1330 W. Michigan St. P.O. Box 1964 Indianapolis, IN 46206 (317) 633-8400 www.state.in.us/isdh/index.html 2 North Meridian St. Indianapolis, IN 46204 (317) 233-1325	Mississippi Dept of Health P.O. Box 1700 Jackson, MS 39215 (610) 960-7948 www.msdh.state.ms.us/ (601) 576-7400	North Dakota Dept. of Health 600 East Boulevard Ave Bismarck, ND 58505 (701) 224-4619 www.ehs.health.state.nd.us/ndhd/ (701) 328-2372	Utah Dept. of Health PO.Box 1010 Salt Lake City, UT 84114-1010 (801) 358-6101 http://hlunix.ex.state.ut.us/

Colorado Dept. of Health 4300 Cherry Creek Dr. South OEA-PR-A5 Denver, CO 80246-1530 (303) 692-2020 www.cdphe.state.co.us/cdphehom.asp	Iowa Dept. of Public Health Lucas State Office Building East 12th and Walnut St Des Moines, IA 50319-0075 (515) 281-4958 www.idph.state.ia.us/ (515) 281-5787	Missouri Dept. of Health P.O. Box 570 Jefferson City, MO 65102 (314) 751-6001 www.health.state.mo.us/ (573) 751-6400	Ohio Dept. of Health 246 North High St. Columbus, OH 43216-0118 (614) 466-2253 www.odh.state.oh.us/ (614) 466-3543	Vermont Dept. of Health 108 Cherry Street Burlington, VT 05402-0070 (802) 863-7280 www.state.vt.us/health (802) 863-7200 1 (800) 464-4343
Connecticut Dept. of Health Services 150 Washington St. Hartford, CT 06106 (203) 566-8401 www.state.ct.us/dph 410 Capitol Ave. P.O. Box 340 Hartford, CT 06134 (860) 509-8000	Kansas Dept. of Health and Environment Office of Public Information Landon State Office Building 900 SW Jackson, Tenth Floor Topeka,KS 66612 (913) 296-6231 www.kdhe.state.ks.us/index.html	Montana Dept of Public Health and Human Services A107 Cogswell Building Helena, MT 59620 (406) 444-1374 www.dphhs.state.mt.us/	Oklahoma Dept. of Health 1000 NE Tenth St. P.O. Box 53551 Oklahoma City, OK 73117 (405) 271-5601 www.health.state.ok.us/	Virginia Dept of Health Box 2448 Richmond, VA 23218 (804) 786-3561 www.vah.state.va.us/
Delaware Division of Public Health P.O. Box 637 Dover, DE 19903 (302) 739-3008 www.state.de.us/dhss/irm/dph/index.htm	Kentucky Dept. for Health Services 275 East Main St. Frankfort, KY 40621 (502) 564-3970 http://publichealth.state.ky.us/	Nebraska Dept. of Health & Human Services P.O.Box 95044 Lincoln, NE 68509-5044 (402) 471-2133 www.hhs.state.ne.us/hew/hewindex.htm (402) 471-2306	Oregon Health Division 800 NE Oregon St. Portland, OR 97232 (503) 731-4000 www.ohd.hr.state.or.us/	Washington State Dept. of Social and Health Services Mail Stop OB-44 Olympia, WA 98504 (206) 753-3395 www.doh.wa.gov/ State Dept. of Health 1112 SE Quince St. P.O. Box 47890 Olympia, WA 98504 1 (800) 525-0127

District of Columbia Commission of Public Health 801 N. Capitol St., NE Washington, D.C. 20002 (202) 673-7700	Louisiana Office of Public Health Services P.O. Box 60630 New Orleans, LA 70160 (504) 568-5052 www.dhh.state.la.us/ 1201 Capitol Access Rd. P.O. Box 629 Baton Rouge, LA 70821-0629 (225) 342-9500	Nevada State Health Division 505 E. King St. Room 201 Casron City, NV 89710 (702) 687-4740 www.state.nv.us/health (775) 684-4200	Pennsylvania Dept. of Health Health & Welfare Building P.O. Box 90 Harrisburg, PA 17108 (717) 787-1783 www.health.state.pa.us/ 1 (877) PA HEALTH	West Virginia Bureau of Public Health Building 3, Room 519 State Capitol Complex Charleston, WV 25305 (304) 558-2971 www.wvdhhr.org/
Florida Dept. of Health and Rehabilitative Services 1317 Winewood Blvd. Tallahassee, FL 32399 (904) 488-4854 www.doh.state.fl.us/index.html	Maine Bureau of Health 151 Capitol St. Statehouse Station 11 Augusta, ME 04333 (207) 287-3201 http://janus.state.me.us/dhs/boh/index.htm (207) 287-8016	New Hampshire Division of Public Health Services Health and Human Services Building 6 Hazen Drive Concord, NH 03301 (603) 217-4501 www.dhhs.state.nh.us/index Dept. of Health & Human Services 129 Pleasant St. Concord, NH 03301-6805 1 (800) 852-3345	Rhode Island Dept. of Health 3 Capitol Hill Providence, RI 02908 (401) 277-2231 www.health.state.ri.us/ (401) 222-2231	Wisconsin Division of Health P. O. Box 7850 Madison, WI 53707 (608) 267-2832 www.dhfs.state.wi.us Dept. of Health & Family Services 1 W. Wilson St. Madison, WI 53702 (608) 266-1865
				Wyoming Dept. of Health 117 Hathaway Building Cheyenne, WY 82002 (307) 777-7439 http://wdhfs.state.wy.us/ (307) 777-7656