



Empirical evidence on legal levers aimed at addressing child maltreatment



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ABSTRACT

Law is a powerful tool for combatting public health issues. This article reviews existing empirical research on the effect of eight legal levers on outcomes related to child maltreatment. Laws created with the intent to address child maltreatment are often enacted without empirical basis. Further, following implementation, there is little empirical research on whether such statutes reduce or deter child maltreatment and improve child outcomes. This is in part due to the difficulty in studying the effects of a specific statute on measurable child outcomes.

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Law is a powerful tool for combatting public health issues (Mello, Studdert, & Brennan, 2006; Mensah et al., 2004). Public health triumphs are credited to law changes—including reductions in morbidity and mortality from smoking (Levy, Benjakul, Ross, & Ritthiphakdee, 2008) and motor vehicle accidents (Foss, Feaganes, & Rodgman, 2001; Harper, Strumpf, Burris, Smith, & Lynch, 2014; Mannix et al., 2012; Masten, Foss, & Marshall, 2011). Laws influence behavior, support adoption of best practices, and alter the resources available to address an issue (Burrus et al., 2010). Despite the large-scale impact that the law can have, there is relatively limited empirical inquiry into how laws affect child abuse and neglect (maltreatment), or even on the juvenile dependency process more generally (Summers, Dobbin, & Gatowski, 2008). While scholars have examined the impact of federal child protection laws on state and local laws and practices (Davidson, 1999), research on specific state statutes and actual impact on a case level is lacking.

This article reviews the published empirical literature on eight legal levers designed to prevent and deter child maltreatment: mandatory reporting, family drug treatment courts, central registries for child abuse, corporal punishment, exposure to domestic violence as child abuse, failure to protect, alternative response, and representation of children in child maltreatment proceedings. We seek to answer

whether the legal mechanisms reviewed are effective in preventing or deterring child maltreatment.

1. Constitutional framework

Child maltreatment laws operate under a framework created by the United States Constitution. Two conflicting objectives operate in this framework, family autonomy versus surveillance of child well-being (Dingwall, Eekelaar, & Murray, 1995). There are two protections afforded by the constitution that are most relevant to our discussion. The first is parental rights. In the United States, the Supreme Court has deemed the rights of a parent to conceive and raise one's children as essential (*Meyer v. Nebraska*, 262 U.S. 390, 262 U.S. 399 (1923)) and protected by the constitution (Wallace & Pruitt, 2012; U.S. CONST. amend XIV, Section 1). The U.S. Supreme Court has stated that the private interest of a parent “undeniably warrants deference and, absent a powerful countervailing interest, protection.” (*Stanley v. Illinois*, 405 U.S. 645, 651 (1972)). States have instituted legislative and procedural protections for parental rights, in particular custody and termination of parental rights. Child protective services agencies must operate within these protections. Removal of a child from the home requires state agencies to evaluate the risk in the home. When a risk level that is set by the state is present, removal is justified (Wallace & Pruitt, 2012). At a constitutional level, government intervention into the rights of parents to care for their children can only occur with due process, which,

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in the United States, generally means a fair hearing and legal representation (Duquette, 1997).

The second right important to our discussion is the right to follow a chosen profession. The Supreme Court has determined this right falls under the liberty and property concepts of the Fifth Amendment of the U.S. Constitution. In order to deny an individual the right to work in a particular profession, there must be due process, as guaranteed by the Fifth and Fourteenth Amendments. This is relevant to our discussion of central registries as placement on these registries frequently prevents an individual from working with children, e.g., teacher, coach, or daycare provider.

2. Methodological difficulties in studying child maltreatment laws

Legal levers related to child maltreatment are challenging to study. For one, law is difficult to measure. There is variation in the interpretation of laws, which leads to variation in how laws are implemented (Tremper, Thomas, & Wagenaar, 2010). No central database documents when and where laws are enacted, implemented, enforced, or even repealed. Measuring maltreatment is also challenging as definitions vary by jurisdiction and context and may rely on subjective observation rather than validated measures (Whitaker, Lutzker, & Shelley, 2005). Further, child maltreatment often occurs in private settings and frequently goes unreported. Data collection and quality confound true estimates of child maltreatment (Fallon et al., 2010). Therefore, evaluating the effect of laws, policies, and regulations is laborious and requires researchers to develop clever mechanisms to isolate the causal relationship.

This article reviews the empirical evidence on eight legal levers designed to affect child maltreatment within the child's family context. Some of these measures center on responding to child maltreatment (e.g., mandatory reporting, alternative response, legal representation). Other measures focus on preventing or deterring child maltreatment (e.g., family drug treatment courts, parental corporal punishment, exposure to domestic violence as child abuse, and failure to protect). Most studies use outcome measures such as reporting rates and compliance with the statute but not whether child health and welfare is improved or if perpetrator's behavior has changed.

3. Review methodology

Articles were identified through two major search engines, ISI Web of Science and Google Scholar. Web of Science is a standard search engine for identifying peer-reviewed studies. Google Scholar was preferred over PubMed because a previous study comparing both search engines revealed that articles found using Google Scholar were more relevant, had more citations, and were published in journals with higher impact scores (Nourbakhsh, Nugent, Wang, Cevik, & Nugent, 2012). Inclusion criteria required that the study be published in a peer review outlet, focused on a U.S. sample, and examined the extent to which a change in the law or practice was causally related to change in maltreatment prevalence or incidence.

The eight legal levers were selected following discussions with several experts in child maltreatment research including a child psychologist, a physician, and an attorney specializing in poverty and family law. The levers were divided into primary and secondary prevention based on the intended goal of the lever. Primary prevention policies aim to reduce the victimization of children. For example, laws that ban corporal punishment can be viewed as primary prevention in that they aim to reduce the victimization of children. Such legal levers include corporal punishment, exposure to domestic violence as child abuse, and failure to protect. These laws aim to change the behavior of caretakers. Secondary prevention measures are those designed to improve detection of child maltreatment and protect children from future occurrences of abuse. Mandatory reporting laws are a secondary prevention tool and aim to change the reporting behavior of potential witnesses—notably

medical and education professionals. Legal levers that fall in this category are mandatory reporting, central registries for child abuse, family drug treatment courts, alternative response, and representation of children in child maltreatment proceedings.

Search terms were entered for each of the eight legal levers in both Web of Science and Google Scholar. For mandatory reporting, we entered the following combinations of keywords: "mandatory reporting" AND ("child abuse" or "child maltreatment" or "child neglect"). Family drug treatment courts used, ("Drug Treatment Court" or "treatment court") AND "family;" alternative searches included "dependency treatment court." Central registries for child abuse we searched for the terms, "central registry" AND ("child abuse" or "abuse" or "child"). Searches for parental corporal punishment used ("corporal" or "corporal punishment") AND ("parent*" or "spanking"). Exposure to domestic violence searches used the terms "domestic violence" AND "exposure." Failure to protect searches used the terms "failure to protect." Searches for alternative response used the search terms, ("alternative response" or "differential response" or "multiple response") AND ("child abuse" or "child maltreatment" or "child neglect"). Legal representation used the search terms, "legal representation" AND ("children" or "child").

In addition to search engines, we conducted searches on specific journal websites, including, *Child Abuse and Neglect*, *Child Maltreatment*, *Children and Youth Services Review*, *Child Welfare*, and *Protecting Children*. We also used professional and governmental websites to search for relevant publications (National Quality Improvement Center on Differential Response in Child Protective Services, 2009, 2010, 2011, 2014; U.S. Department of Health and Human Services Administration for Children & Families; University of Illinois at Urbana-Champaign Children and Family Research Center).

Finally, the bibliography of relevant articles was also reviewed to identify literature that had not appeared in these search engines. For each study that was identified as relevant to the legal lever, we documented details on the sample (e.g., make-up of treatment and control groups), outcome measures, and findings.

4. Review of major findings: legal levers

4.1. Mandatory reporting

The United States Children's Bureau drafted a model mandatory reporting statute in 1963 that required physicians to report children with serious physical injuries inflicted other than by accidental means; by the late 1960s, all fifty states had enacted reporting laws (Besharov, 1985). Mandatory reporting laws vary dramatically by state (Matthews & Kenny, 2008). Specifically, as implemented, statutes fall into four main categories (1) who is identified as a mandatory reporter (e.g., law enforcement, health professionals, every adult), (2) what should be reported (e.g., physical abuse, signs of neglect, emotional abuse), (3) sanctions for violating the statute (e.g., fines, no penalty), and (4) identification and liability of the reporter (e.g., immunity, protection or release of the reporter's identity). As of 2013, professionals such as health care workers, educators, and childcare providers were mandated to report in all but two states (Child Welfare Information Gateway, 2014b). In some states, in addition to professionals, any person who suspects child abuse is mandated to report abuse (Child Welfare Information Gateway, 2014b).

The condition of the victim that triggers a report is another dimension by which states vary. States typically define the standard for making a report when an individual suspects, has reason to believe the child has been maltreated, or observes or has knowledge that a child is being subjected to conditions that would result in harm (Child Welfare Information Gateway, 2014b). In the same way, the repercussions for failing to report evidence of abuse, (e.g., fines, no penalty) vary by state. Failure to report is a criminal misdemeanor in 39 states, a felony in one state, and subject to a non-criminal fine in the remaining ten (Child Welfare Information Gateway, 2014b; Kim, Gostin, & Cole, 2012).

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