

CAPTA 74

Kids mysteriously snatched and placed with shady “shacked up” Foster Parents. Good parents accused of incredible offenses, helpless and “guilty until proven innocent”.

- Learn how the Presidential campaign of Democrat Walter Mondale brought the *pseudo-issue* of child abuse to the American consciousness.
- See how CAPTA was implemented so rapidly that a host of poorly written laws were created without legislative investigation.
- See how Federal Funds fuel the relentless attack, causing “overzealous” investigations, and “overstated” findings. *Innocence does not exist!*
- See a new-age version of Nazi government worker emerge
- *Help and Services?* Not at CPS. They assign guilt and punishment.
- See the “dark side” of psychiatry and how it is misused.
- See the civil rights YOU THOUGHT YOU HAD trampled!
- How wild accusations are “*founded*” on Hearsay Evidence and by a highly biased CPS internal “Risk Assessment” which is “*confidential*”!
- Go to meeting after meeting, settle for a Hostage Release, then pay for hours of counseling for which you have to take time off from work.
- Lives, marriages, functioning families destroyed, finances bankrupted.

Welcome to the sheer terror of becoming involved with the Children Protective Services (CPS), a direct creation of the Child Abuse and Treatment Act of 1974.

To say that Child Protective Agencies "do no good" is an understatement. They have NO SUCCESS STORIES. Every life touched by them is damaged. It would be more accurate to say that they "DO ALL HARM".

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TWENTY YEARS OF CAPTA

By Damon Coffman

(Written in 1994)

Analysis of the 1974 Federal
Child Abuse Prevention and Treatment Act
(Public Law 93-247)

**See how the CAPTA act of 1974 is
Destroying the American Family!**

This is an article found on the internet several years ago.

The author is Damon Coffman. We have been unable to find either him or this article since we originally found it.

Any copyright he may have on the article is reserved to him.

We assume that because of the tone and tenor of his article, that he intended this article to receive public attention.

His article reflects a great research of the issues, and we believe he frames the issues well.

TWENTY YEARS OF CAPTA

The background, limitations and results of federal and state child abuse legislation

On January 31st, 1974, President Nixon signed Public Law 93-247, The Child Abuse Prevention and Treatment Act (CAPTA). This act ostensibly addressed a growing awareness of the problem of child abuse (***ranked by some polls as one of the three most pressing national problems in the early '70s***). It resulted in effects more far-reaching and consequences more devastating than the designers could have imagined.

Federal Congress

Congress unsuccessfully proposed multiple child protection bills during the period from 1964 to 1973, but it was Walter Mondale's adoption of this potent issue in his movement toward presidential candidacy that resulted in CAPTA's ultimate success. He championed this relatively non controversial issue, using the well remembered phrase ***"Not even Richard Nixon is in favor of child abuse!"***

Social legislation was not widely popular at that time, but child abuse was a potent archetypal issue that everyone understood emotionally, and therefore acted as a powerful bond tying national "pulse points" to candidate recognition. The success of this unidimensional argument remains remarkably effective - Janet Reno's popularity soared when she claimed child abuse intervention as the purpose for the Waco Texas raid that incinerated 87 children and adults.

It is of interest to consider some of the key testimony before CAPTA during the sub-committee hearings of 1973. Under Walter Mondale's probing, Brandeis professor David Gil linked an increase in factors adverse to family life among the poor to a concomitant increase in abuse found among that social class. Class character distinction then, as now, was politically incorrect, and discussion which should have moved investigation in that direction was actively thwarted. More than once, skillful questioning by Mondale deflected problems of neglect and focused on abuse. This deflection stood in stark contrast to the vastly greater scope of the problem of neglect, which has its roots firmly linked to poverty.

The Director of the Washington DC office of the Child Welfare League of America, William Lunsford, articulated the resultant dichotomy in terms of the medical view versus the state's view. Medical professionals define abuse as an individual problem to which individual treatment must be applied. Child welfare services, however, view the government as a provider with equal or greater responsibility in bringing up a child.

As in most bureaucracies, global programs and universal maxims are easier to apply than individual treatment. The committee's neglect of fundamental problems in favor of a simple **"stop beating the child"** approach, ultimately supported punitive social agency response instead of facilitating family health and stability.

An even more important minimization occurred in debate around the proper role of the state in the upbringing of children. To retain the powerful single issue quality (**necessary for voter support**) of the proposed legislation, child abuse had to be separated from the parent's right to discipline the child. This was accomplished with the help of the gripping testimony of Jolly K., former child abuser and founder of **Parents Anonymous**. She spoke of how her children were almost killed in incoherent rages, and how powerless she felt to stop the frenzy once it began. Her figurative example of sin (**compounded by the complicit lack of public response**) and redemption (**to be supplied by programs to be funded under the law**) skewed the discussion in the direction of physical abuse alone. The subcommittee saw only one 'sin' (**physical abuse**) and one 'redemption' (**governmental intervention**).

In its nascent form, CAPTA primarily provided minimum funds to study and collect information on the extent and nature of child abuse and neglect. Its final form, however, replaced simple investigative funding with a comprehensive series of restrictions and rewards. Most important of these were the criminal penalties to be levied against professionals who did not report suspected child abuse, and the availability of federal funds to those states which passed laws which conformed to the federal act.

As Barbara Nelson states in her seminal book **Making an Issue of Child Abuse**, *"National child abuse legislation was good for its sponsors, good for the professionals who supported it and constructed on the faith of good intentions and the hope that the whole of all categorical social programs will be greater than the sum of their parts. This is rarely so."*

Nelson's statement is born out in numerous incidents, of which the Swan Case (Washington) is a fairly typical example. Bill and Cathy Swan each spent over 3 years in prison on child abuse charges which were supported by evidence so contradictory and misleading that Harvard Senior Law Professor Charles Nessen refers to the Swan case in his classes as the worst miscarriage of justice in the American Legal Profession. Nessen also wrote an amicus curiae brief to the court of appeal urging the case be overturned.

In an ultimate parody of justice, the Swan case is now precedent for the use of hearsay evidence to corroborate hearsay evidence.

who had not even completed law school was appointed to defend her against multiple counts of sexual abuse. Her lawyer's anemic defense allowed the prosecution present evidence to support charges so patently ridiculous that her conviction was a crime. Fortunately, after spending only five and one half years in prison, an appeals court threw out her conviction, stating that the case presented against her was fraudulent.

Most innocent defendants are not so fortunate.

Sir William Blackstone stated famously that it was better for ten guilty men to go free than for one innocent man to be convicted.

Place this statement against the background of child abuse allegations, in which 9 out of 10 reports are false, and where therapists are creating a revenue generating class of victims.

One must ask who is the victim and who is the perpetrator.

This country has not been immune to gross injustice, as a result of hysteria, throughout our 200 plus year history. From the Salem witch trials to McCarthy, special groups have been singled out for disclosure and destruction.

What makes the current injustices so devastating in their application is that they strike directly at the fundamental unit of any structured society -THE FAMILY.

The time is well past to rethink CAPTA.

riding a get-tough-on-crime agenda, and prosecutors were being pressured to bring more and more convictions to prove their effectiveness to the public. Plea bargaining provided a bonanza for the D.A.'s. Defendants who accepted a plea bargain reduced time and money spent on each case, allowing the D.A. extra resources to obtain more convictions, thus validating their effectiveness to the community they pledged to serve.

Criminals and lawyers picked up on the system very quickly and learned to use it to their advantage, bargaining with the D.A. over the plea agreement to maximum advantage. In most areas of activity, criminal indictments were over 98% accurate, and the guilty party could almost always be counted on to acquiesce to plea bargaining. The alternative of jury trial boasted a conviction ratio of better than 3-to-1, and a much harsher sentence.

One significant problem, however, was that in order to motivate plea bargaining, those who refused to bargain had to be made an example of in order to keep the conviction train rolling. ***This problem has been eminently recognized - even entry level college political science courses teach that no matter how many prisons are built, they will be filled to capacity under the current system.***

There is direct empirical evidence for that statement. America incarcerates up to **80 times more per capita than any other civilized nation**. Numerous cases have been documented by columnists like Phil Stanford of the Oregonian where an innocent party was encouraged to plea bargain by their lawyer, completely unaware of the future impact a criminal conviction would have on their life.

Prosecutors will generally bring an indictment if (1) there is credible evidence, (2) the defendant doesn't appear unimpeachable, (3) the prosecution witnesses do appear unimpeachable, and (4) it is politically expedient (*read: popular vote getter*).

Into this environment comes alleged child abuse, which is politically a sure vote getter, where **hearsay evidence is admissible**, where the defendant can be **refused the right to confront his accusers**, and where the defendant is **emotionally devastated and somewhat incoherent due to the absurd nature of the accusations**. Parties guilty of child abuse or molestation, aware of their risk in a court case, almost always plea bargain.

Innocent persons, however, tend to be ignorant of the legal system, and believe they will be acquitted. If they are indigent counsel is appointed. The average case receives about \$600 legal and investigative services, against which is arrayed the unlimited pockets of the D.A.

One such case was that of 22 year old Kelly Michaels, in which a counsel

State Legislative Response

By 1976 many states were well into a funding crisis following the recent recession. Significant potential federal funding provided motivation for rapid passage of laws which conformed to CAPTA's requirements. If one compares the rapidity with which states changed laws related to child abuse with their speed in adopting other federally supported social programs, the results are astonishing. Instead of the 15 to 25 years it usually takes for federal mores to percolate down to the state level, all 50 states passed within 5 years laws that entitled them to take advantage of these federal social welfare funds.

The speed of adoption and the related lack of legislative investigation brought with it a host of problems, many of which will take the next decade to rectify. Not the least of these was the problem of "outplacement." Title IV-E Federal funds require outplacement or removal of children from their immediate and/or extended family to a foster or group home.

One can charitably surmise that the framers of CAPTA considered only the most critical cases deserving of radical intervention. The resultant creation of a vast bureaucracy of children's aid agencies, supported by contradictory and poorly written laws, has instead motivated case workers to strive for outplacement at the expense of reconciliation. The amounts of direct and indirect moneys that states receive from the federal government as a result of CAPTA are substantial.

In addition to Title IV-E funds, Social Services Medicare/Medicaid funds (Title XX) are available for flexible disbursement. These two pots constitute the bulk of federal money flowing into the state child welfare coffers. The state of Oregon in 1992, by way of example, with less than 700,000 total families, receives about \$80 million (direct) per biennium in federal matching funds - or approximately 40% of the total child welfare budget. Most states are much more aggressive in qualifying their programs, receiving 80% or more budget reimbursement from the federal government.

Social Service Agencies

As the burden of mandated child protection has shifted from the parent(s) to the government, a continuous redefinition of what constitutes abuse has occurred. The lines between physical abuse, neglect, and sexual abuse have been blurred, even though the causes and cures for these problems are vastly different.

Child welfare agencies over the last 20 years have re-shaped their original charter of child protection to one of punitive response. Quoting from **The Oregon Child Protective Services Performance Study of 1992**, "*Part of*

*the reason for this change is the increasing disparity between what counts as abuse or neglect from a legal and [mental health] professional point of view and what is imagined by the public when the words "abuse and neglect" are used. The former is a far broader concept than the latter, and in fact the majority of abuse and neglect complaints do not involve any assault, either physical or sexual, upon the child, which is the public's image of abuse. **Indeed, most reports do not involve even an incident which the agency can verify occurred at all.***

From the agency's point of view, however, these changes are sensible, since they contribute to sustained department funding and continuance of existing programs, and provide for increased power, responsibility, and job security. The ultimate well being of the family unit in general or child in particular is usually not of concern.

There remains a significant problem with the redistribution of responsibility from the parent to the government. It requires only an anonymous phone call to start an investigation, in which the first response is to remove the child. Poverty places single mothers in a predicament where they cannot refrain from acts that fall under the new definition of neglect. Case histories abound of good mothers who ran to the corner store for milk, only to have the child removed for years, often life, because of a few minutes of "abandonment." Government funding to provide services which help the indigent mother are rejected in favor of services which provide federal reimbursement.

Discipline in some states has been defined to be abusive if it includes any form of coercion, such as requiring a child to take a time-out when they don't want to. Raising one's voice over a screaming teenager to request quiet can be and has been defined as emotional abuse. Adolescents are taught that they are "violated" if a parent enters their room, even after knocking, without express permission.

Corporeal punishment has been banned in most states for the last decade, and affection in the form of a hug or squeeze from an opposite sex parent is readily defined as sexual abuse by super vigilant social workers. Children are warned to watch for affection as evidence of potential pedophilia in classrooms all around the nation. This is in spite of the famous studies completed in the 1960's that specifically linked childhood development and intelligence to physical touch and holding.

Day care workers must now tell children to hug each other since they as adults are prevented by law from providing what all previous human history had defined as proper nurture of children. Not surprisingly, social workers and psychologists have defined a new form of sexual abuse among children, and are seeking to label even pre-school children as sexual predators.

worse due to hidden personal factors that often led to injustice. Almost every scientific outcome based study (*i.e. utilizing accepted statistical methods and principles*) which examines psychiatry, psychology or mental health has shown that the probability of correct diagnosis is random at best.

In juvenile and criminal court hearings, however, the evaluation of the mental health specialist contributes from 25 to 50% of the weight of the final decision. **Social workers tend to base their entire argument on the mental health input.** This may be in part due to the large case load and inadequate time to investigate as should be done in any proper evaluation of child abuse allegations.

As the public has blindly accepted the inerrant mental health premise, poorly trained or unscrupulous therapists have discovered a gold mine. Insurance companies and the public have become the bank for costly therapies and settlements. Testimony given on various talk shows by recanters (**persons who were convinced by therapists that they were victims of abuse and later denied it ever having happened**), revealed that therapist's fees in excess of \$300,000 over several years are not uncommon.

Other therapists working closely with juvenile courts provide penile plethysmograph diagnosis on demand for a fee. Lawyers unaware of the utter lack of scientific basis (**and rejection as invalid by the AMA**) often recommend that an accused parent comply with the social services agencies' demand for this test. This bizarre investigation hooks the genitals of the accused to sensitive electronics which record responses to previously acquired (**usually confiscated**) videos of child pornography.

Prisoners serving time for sex crimes provide the control group for this "scientific" measurement. Only one diagnosis is possible, regardless of response: subject is a potential pedophile. No social workers have been willing to submit themselves to the same inspection.

Justice for All

A complete understanding of the problem is not possible until the role of the justice system is covered. A quick history of judicial response to criminal law is required. Prior to 1970, criminal law was based on the concept of innocence and guilt, as determined in trial by jury. Then in 1971 a case occurred which had far reaching implications. In Santobello vs New York a plea bargain deal with the district attorney was not honored by the judge during sentencing, and was subsequently appealed to the Supreme Court.

In their review of the case the court made a landmark ruling that established plea bargaining as constitutionally acceptable, and the resulting agreement between the D.A. and accused as binding. At the same time, America was

those that don't won't. Since removal of the children from their family is almost always the first response of children's agencies to any reporting, psychological evaluation is a **required if the agency wishes to continue to deny family reunification where no evidence of abuse exists.**

Mental Health Therapy

Many whose families have been irretrievably damaged have alleged a conspiracy among mental health professionals. Citing debacles like the McMartin case, the Kelly Michaels case, the Daniel Akiki case, the Sousa case, the Swan case, or the Little Rascals Day Care case, a clear argument for complicity can certainly be made (*and may in fact be true for those cases*). In general, however, the mechanism by which psychiatry became enmeshed in law is a labyrinth of paths and agendas, most of which were initially independent of child welfare.

It began with the use and abuse of the insanity plea in the late '50's and grew to such proportions that by 1981 the general public was outraged to see John Hinkely declared not guilty of the assassination attempt on President Reagan, in what was just a classic and well accepted insanity defense.

Not all of the psychiatric profession is happy with the carte blanche power they have been given. The American Psychiatric Association (APA) filed an amicus curiae brief with the Supreme Court in 1983 proclaiming the inability of psychiatrists to predict violent behavior. However, the legal systems in this country have accepted almost universally that a psychiatric evaluation provides an accurate understanding of the current and future potential state of the examined in matters from violence to depression to sex to pedophilia.

This belief has been widely promoted by the media and well accepted in the general population. The Supreme Court responded to the APA argument saying *"The suggestion that no psychiatrist's testimony may be presented with respect to a defendant's future dangerousness is somewhat like asking us to disinvent the wheel,"* and *"To accept such argument would call into question other contexts in which predictions of future behavior are constantly made."*

As Dr. Coleman states in his book *Reign of Error*, the court needed to continue to use the worthless predictions, ***"otherwise the bankruptcy of our society's widespread use of these judgments would become so obvious that dozens of social policies would be suspect."***

Unfortunately it stands in stark contrast to what research psychiatrists have been saying all along. Dr. Coleman goes on to document studies in the 1960's and 1970's which demonstrated conclusively that psychiatric predictions of dangerousness were no better than flipping a coin - and were in fact

Different cultures are also suspect as exemplified in Washington, where two pre-school children were removed from their Swedish parents when the weekly family saunas were uncovered in a "good touch - bad touch" training session at the children's pre-school. The children were unaware of their peril in responding affirmatively to the question "Has anybody seen their parents without clothing?" In this case the children were severely traumatized by the mandated immediate removal and multi-week separation from their parents. Ultimately the family fled back to their native Sweden to prevent further repercussions.

Children are becoming increasingly aware of their power over parents; they learn from peers and schools just exactly what they do and don't have to do. In many states, Florida, Washington, Colorado, and Oregon being key examples, ***children cannot be required by their parents to do anything, from washing dishes to going to school.***

Testimony offered before the 1993 session of the Oregon legislature documented a sharply increasing number of cases where teenagers made false reports on their parents, simply because they were angry about a parental restriction. In every case known to the author, the teenagers were removed from their families, sometimes permanently, and to their great sorrow. It is not possible to reference by name or case the families affected, due to the potential for repercussions against them by the Children Services Division.

Noted child psychiatrist Dr. Richard Gardener of Columbia University addressed this problem of ***punitive agency response*** in several national articles. He notes that proper training of case workers to administer their increased responsibility (*and vastly superior enforcement advantage*) in governmental family control is almost criminally lacking.

Many states require case workers only to have a high school education which is supplemented with a two week course in completing forms. This may explain why two of the compelling indicators of pedophilia the state of Washington Child Protective Services applied to the father of four year old Alicia Wade was that he was in the Navy and he was overweight. ***This in spite of the fact that the police actually apprehended and prosecuted the prowler who did molest Alicia in her bedroom.*** It took 4 and 1/2 years and a federal court order before the Wades were allowed to see their daughter again.

Families in Retreat

How then does the government perceive the effectiveness of the children and family services programs, and how does the public respond? **The Oregon Child Protective Services Performance Study of 1992** provides some universally applicable insights. Contracted to the University of Maine

by the Oregon legislature, participants in the study team included primarily persons with long backgrounds in child welfare social services - hardly an unbiased team. Even so the results were profoundly disturbing to those who read the report carefully.

The study praised Oregon's child protection services as one of the best in the nation, and yet the members were *"immediately struck by the level of public hostility towards Childrens Services Division as an agency. In experiences ranging from newspaper accounts dealing with CSD to attending public meetings to listening to clients, to casual conversations ... the lack of support for CSD has been revealed again and again."*

This experience is in keeping with various family groups across the country who are now recommending that a child be kept home until accidental bruises (***due to normal childhood activities like climbing trees or biking***) completely fade. School teachers are required by CAPTA to report any bruise or statement that might be construed as potential child abuse (***with criminal penalties if personal judgment is used***).

In attempting to understand the ubiquitous animosity toward children's services agencies, one should consider a number of related laws, methods, and networks which combine to create a situation never properly investigated in the simple minded preparation of CAPTA. Again from the Oregon study: *"One might have guessed that, if anything, the law would define a wider range of child maltreatment to be reported and investigated than the range of child maltreatment that can lead to juvenile court proceedings. After all, a far smaller proportion of cases require the drastic remedy of juvenile court proceedings [with the almost rubber stamp long term removal or termination of parental rights] than those which require investigation and services. Yet, the definition for reporting and investigation is in fact narrower [emphasis added] than the definition applicable to juvenile court proceedings."*

The study goes on to state that this is due first in order to comply with the reporting requirements of CAPTA, and second because the *"definitions in the reporting act have fundamentally different effects on the operations of agencies [read: financial impact and reimbursement] and courts than language delineating child maltreatment in the juvenile court act."*

Completely ignored in the study, but documented by experts like psychologists Dr. Gardener (Columbia), Dr. Lee Coleman MD., Dr. Stephen Ceci (Cornell), Dr. Richard Ofshe (Berkeley), is the **effect and industry created by prevailing laws and social agency tactics**. Just as in the 1950's fear of communist domination created the defense industry iron triangle and McCarthyism, in the 1980's and 1990's fears have created an industry which could be called the **VICTIM ABUSE TRIANGLE**.

The players in this triangle are the social protection agencies, the lawyers and juvenile court system, and the mental health profession. The part played by social agencies can be understood in the framework presented above; specifically the power to enforce their decisions coupled with the concept of **government right above personal rights**, and exacerbated by the **abysmal lack of training**. Lawyers and juvenile courts are not disposed to change a system they are familiar with and which provides continuous employment for their profession.

In the state of Oregon in 1993 over 22,000 cases of child abuse were entered, of which a large proportion required one or more juvenile court hearings. Testimony before the 1993 legislature indicated that parents who were not completely indigent were **routinely stripped of thousands of dollars in legal fees** through attempting to regain the rights to their children. Most of these families were low-income and **impoverished by the court proceedings**. Those that were able to retain their children were placed in the position of **extreme financial hardship for years to come**, and usually required to pay for **long term weekly counseling** by a state approved therapist. The dictated counseling is little more than a **hostage release requirement** enforced by agencies with little or no accountability.

An argument in favor the current system would be acceptable if child protection were truly engendered. Douglas Besharov, the first director of the National Center for the Study of Child Abuse and Neglect (*established as a result of CAPTA*), has reported otherwise. In the late 1970's the center stated that the ratio of false reports (*of child abuse or neglect*) to true was about 50%. By the mid 1980's the probability of correct reporting had declined to 1 out of 3, and by the 1990's Mr. Besharov has stated that there are **approximately 9 false reports for every true one**.

Statistics from the **American Humane Association's** 1986 study **"Highlights of Official Child Neglect and House Reporting"**, agree with Mr. Besharov. They reported that 195,000 of the 328,000 child sexual abuse reports were unfounded. Other comprehensive studies of the remaining 133,000 found that 70,000 to 90,000 were **probably falsely accused also**.

These statistics do not sit well with the mental health profession which has seen an unprecedented growth in the area of state-mandated family and child counseling. However, their complicity is suspect just from the manner in which references are supplied from juvenile court hearings. Almost every children's services agency in the country has a core of mental health workers they use to evaluate each child brought in.

Mental health professionals who are willing to validate the pre-disposed conclusions of case workers will continue to receive referrals as a result;