

The Connecticut Child Abuse/Neglect Registry

By Atty. Michael H. Agranoff

The Bad Old Days

Before the year 2000, a person could be investigated by DCF, substantiated for child abuse and/or child neglect, be placed on the Child Abuse/Neglect Registry, and not even know about it. There was no right of appeal, and if you found out that you had been placed on the Registry, it was just too bad. If you lost employment opportunities or the right to adopt, well, that was your fault.

And you thought those human rights violations only occurred in third-world countries.

The Better But Still Bad Old Days

After 2000, but before October 1, 2005, you had the right to notice of the charges against you and the right to an appeal; in other words, the same rights that mass murderers had. However, anyone substantiated for abuse or neglect was still automatically placed on the Child Abuse/Neglect Registry. Whether you committed a one-time, non-serious incident of neglect, admitted the fact, and moved forward from there with an exemplary life; or whether you committed serious and repeated acts of physical and/or sexual abuse and were an obvious threat to children; you were all placed on the same Registry.

There is a principle in due process of law jurisprudence that the punishment must fit the crime; but somehow that did not apply in child protection cases.

To prove that fiction is not necessary, here is another true story. I once had a case in which everyone, including DCF, agreed that the child should be temporarily taken from the parents and placed with an uncle in Massachusetts. Everything was set; we were awaiting the formality of Mass. DCYS performing its family study. But the result: the child could not be placed with the uncle, because the uncle was a "convicted sex offender." His crime: he had been caught, eight years earlier, urinating on the side of the road.

A foolish thing he did, to be sure; but was it enough to cause this innocent child the agony of placement with strangers? Yes, according to child protection laws, which gave very little discretion to judges. The point is that "automatic" placement on a Registry, without consideration of the facts, without allowing for human judgment, can be more cruel than lack of a Registry itself.

The Modern Day

Fortunately, this situation has changed. It is now possible to be substantiated but not placed on the Registry.

Registry placement has several negative consequences, such as denial of certain employment or child care opportunities, denial of the opportunity to be a foster parent, a teacher, or of the ability to adopt children. The Registry is supposed to be private and not available to the public. It is only for authorized persons with a

specific need to know, in order to protect children. Be that as it may, I have less faith in Government than many; and I would not want to be on a Registry for no good cause.

In a recent case, a distraught couple came to see me. They were in their early 40's, the man had three young adult children, but his new wife was childless. They wanted to adopt. They were a solid middle-class couple, clean records, and all seemed good. At the last minute, however, the adoption agency said that they were unqualified.

The reason: in 1998, the man had been substantiated by DCF.

The reason for the substantiation: he had had a fight with his teenage daughter. Both were arrested, and both had the charges dropped. Yet he was substantiated and placed on the Registry without his knowledge; and eight years later, it came back to haunt him and his new wife!

Although the substantiation was prior to 2000, he was allowed to appeal, because he had had no right of appeal then, and it was shown to be affecting his right to adopt.

At the hearing, without belaboring the facts, the "incident" turned out to be a one-time non-serious episode in the life of a man undergoing a divorce, who lived an otherwise exemplary life that including coaching children and taking kids on church trips and visiting elderly and ill persons for his church. His new wife was a psychiatric nurse who worked with disturbed children all the time. His employment and community records were spotless.

The DCF Hearing Officer removed him from the Registry in record time, but it remains to be seen if he and his wife will in fact be able to adopt.

In other words, under the new law, you might be substantiated, but not placed on the Registry. Or, if DCF recommends you for the Registry, the administrative hearing can uphold the substantiation but remove you from the Registry.

Of course, if the administrative hearing upholds your placement on the Registry, that placement can be appealed to the Superior Court. The point is, you have some rights, whereas before you had none.

It helps to see a lawyer, because the above-listed law can also change. If you count on DCF social workers to interpret the law for you, then nothing I can say will help.

The Future

And what are the criteria for deciding if someone who has been substantiated should be placed on the Registry?

As of this writing, the criteria are in development by DCF.

Most DCF officials interpret the law as stating that a person who is not a

continuing danger to children should not be placed on the Registry. Nevertheless, reasonable persons differ as to what that means.

At least one senior DCF official wants to use a psychological test instrument to determine if a person can be "predicted" to be a danger to kids, and thus should be placed on the registry. In my view, this violates the intent of the Connecticut State Legislature, and if he prevails, I would be prepared to appeal the decision to the State Supreme Court.

There is also discussion that a person who is arrested for an offense relating to the substantiation should automatically be placed on the Registry. Again, I would contest that for obvious reasons. The charges could be dropped. Further, persons often plea-bargain to avoid further time and financial expenditure; it does not automatically mean that they are guilty.

There is also, at present, a difference of opinion as to whether or not a person's showing remorse, and taking steps to change his actions, should factor into Registry placement.

The point is that bureaucrats do not give up easily. It is a great thing that a person who is substantiated now has the right to fight against his or her lifetime placement on the Child Abuse/Neglect Registry. But that new opportunity brings new challenges; a lawyer is advisable to protect your rights.

Do You Need A Lawyer?

As the Registry criteria develop, and more cases are heard, and some appealed, there will develop what lawyers call "Registry jurisprudence." In time, this web site article will be expanded to reflect those cases.

DCF, if it follows custom, will publish a pamphlet purporting to tell clients what the Registry means and what their rights are.

Again, I warn against taking legal advice from unlicensed lawyers who are on the other side.

Placement on the Registry can have lifetime adverse consequences. It pays to protect your legal rights.

One possible trend has been noticed even at this early date: using the Registry as a bargaining chip.

Suppose DCF substantiates you for a minor offense. Minor or not, DCF will invariably recommend your placement on the Registry.

Then, if you contest the action, DCF may offer to take you off the Registry, if you agree to the substantiation. Many people will agree to this, to avoid the time, expense, and aggravation of paying a lawyer to do a contested hearing; to say nothing of the risk that the Registry finding may be upheld.

This is similar to an innocent person's pleading guilty to avoid prison time or

the death penalty. It is a consequence of our system.

Only a qualified DCF defense lawyer can explain the consequences of having a substantiation without the Registry. Whatever you do, please do not let DCF social workers give you legal advice.

WHAT IF YOU WERE LATE IN APPEALING ?

Under current law, if DCF substantiates you (with or without placement on the Registry), you have sixty (60) days in which to request an appeal.

DCF will then review the matter internally. You or your lawyer may submit documentation to assist in your cause.

If the internal review upholds any or all substantiations and/or Registry finding, you have thirty (30) days to request an Administrative Hearing in front of a DCF Hearing Officer.

What happens if you miss a deadline?

Most lay persons pay little attention to legal niceties, and many people have been denied hearings because they missed a deadline. As a result, a law effective October 1, 2005 requires that when DCF substantiates you, it must, among other things:

1. Inform you of the consequences of placement on the Registry.
2. Inform you of your right to appeal.
3. Include a written form for the person to appeal.

Of course, some people do not get the word. Old forms continue to be used. "Communication problems" occur often. I have seen several substantiation notices which did not contain the necessary consequence warnings. I have seen several forms which tell you to send the appeal form "to the address listed below", but there is no address listed!

Lay persons often get discouraged, give up, and when they contact a lawyer, they may find out that it is too late.

That happened with a recent client. She was substantiated for a relatively trivial incident and placed on the Registry. The DCF notice and appeal forms were unclear, so she made phone calls to straighten it out. By the time she thought to file a written appeal, the 30 days had passed, and she was denied the right to appeal. Then she found me.

What happened was interesting. I reviewed the paperwork and called a highly-placed DCF lawyer. The lawyer agreed that DCF had not followed correct form, but she herself could not overrule the decision. She "invited" me to appeal to the Superior Court, and it seemed as if she hoped I would win.

We filed an appeal to the Superior Court, asking for the right to appeal to DCF! The appeal contained the law and the actual DCF paperwork, so that it was clear that my client's due process rights had been violated. A different DCF lawyer reviewed the file, and I kept after him.

DCF finally agreed to a deal without a Superior Court trial: DCF would allow the client to pursue her DCF administrative appeal of the Registry finding only (not the underlying substantiation), and the client would drop her Superior Court appeal. DCF would not admit to wrongdoing (this is a standard feature that fools no one; in this case, DCF probably conducted an internal review of its compliance with the law; but I will never know).

So, it took a lot of paperwork and research and pleading, but we won the right to appeal. The client can at least be heard. And, I assure you, she does not deserve to be placed on the Registry under the facts of this particular case; but at least someone will decide that on the merits.

The process was expensive and time-consuming. And, of course, risky. DCF might not have agreed to a deal, and if it went to trial, we might have lost.

Better, by far, to see a lawyer right away. But if you do miss a deadline, do not automatically give up. There may be a chance.