

# Judging Home Conditions as a Present Danger

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## Introduction

Reports are received every day by Child Protective Services (CPS) about families living in dangerous living conditions. These kinds of reports and subsequent assessments challenge CPS with a variety of questions: What is a dangerous home condition? What does “deplorable” mean? Is the home condition a matter of poverty, lifestyle, or dysfunctional individuals? Do the home conditions result in an unpleasant living circumstance for a child or exist as a danger to a child? When do weapons in the home or unsavory characters or questionable behavior constitute a present danger? Do families have a right to live in unsanitary, unpleasant conditions without CPS interference? What if parents lie about the home conditions, should one conclude that a child might be in danger? What influence do personal values or community values have in judging home conditions?

These are not easy cases to judge in terms of how CPS should respond. Some are skeptical about referrals concerned with home conditions and question whether they should be accepted by CPS for assignment. Others contend that troubling social or physical home situations could be symptomatic of serious

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<sup>1</sup> The pictures in this article are for illustration only. The pictures are not associated with the example case. Additionally you should not conclude that the pictures by themselves represent present danger.

family problems. And (as related to this article) some believe that there are living conditions that represent a present or impending danger to a child.



### *Health Hazards in the Home*

In this article we won't be able to cover all the opinions or concerns about reportable home conditions and related CPS action and decisions. Here we are only going to concentrate on judging home conditions as a present danger. Our motivation is really to emphasize that you observe and identify present danger in order to judge whether immediate, necessary CPS action is required. So, what we will do is discuss the issue of judging home conditions as a present danger from the standpoint of whether an emergency exists requiring an immediate CPS protective response.

In order to make the necessary points about this subject, we will use a real case that made its way through the United States Court of Appeals. We will summarize the important facts of the case and will include a summary of the Court of Appeals judgment. We will write about the case example in general terms rather than concerning ourselves with dealing with where the case occurred or who the worker was.

Before we begin, it may be useful to define what we are talking about when we refer to "home conditions." "Home conditions" refers to what is occurring socially and physically within and around a house which can jeopardize the well-being and safety of a child. We mention all three outcomes since CPS agencies vary in

the scope of issues accepted for case assignment. Our concern in this article is only with home conditions that affect a child's safety. However, some CPS agencies assess and serve cases in which home conditions affect well-being too. Remember, the standards for judging safety are different from judging that which affects child well-being. The home conditions we refer to here include such things as dangerous physical structural problems, toxic substances, acute hygiene and health hazards, criminal or dangerous social behavior, weapons, and hazardous outside surroundings.



*Dangerous People or Activities In or Around the Home*

**Case Example**

The civil suit in this case addressed the question of whether the CPS social worker, in her official capacity, incorrectly removed children from their home and thereby violated the parents' Fourth and Fourteenth Amendment rights (i.e., guarantees that parents will not be separated from their children without due process of law except in emergencies; guarantees privacy against search and seizure, right to live together without governmental interference; protects children from removal from their homes absent a showing that, at the time of the removal, there is reasonable cause to believe that the children were in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury).

The CPS and safety issue in question is whether the action taken (emergency removal) was indicated by the existence of imminent danger. And, that the imminent danger was sufficient to justify taking children into temporary custody without petitioning the court because to do otherwise might have resulted in serious bodily harm (during the time it would take to get a court order).



*Dangerous Physical Structure*

The CPS agency received a report of child neglect in the family's home. The caller stated that a 3-year-old girl and a 5-year-old boy were not toilet-trained, were locked in their rooms at night and in a room at their parents' business during the day, were not receiving medical or dental care, that the 5-year-old boy had lost his teeth due to bottle rot, that the 3-year-old girl was still being fed with a bottle, that their home was dirty and maggot-infested, and that there were unsecured guns in the home. The intake unit accepted the report and assigned it a 10 day response. Three days later, before any action had been taken to investigate the report, CPS received a second, similar report regarding the children and once again assigned a 10-day response.

The CPS worker visited the family's home on the 11<sup>th</sup> day following the first report, but, finding no one there, departed without leaving a message or a note. She returned a week later at 8:30 a.m. Upon observing that the family was home, the worker called for the assistance of law enforcement and waited for the officers to arrive before making contact with the family. Two police officers responded.

The family was just getting up when the worker and the officers entered their home. The worker stated that following her entry she heard the 3-year-old girl knocking and asking for her mother from inside a bedroom. The mother claimed, however, that her daughter was neither knocking nor calling for her.



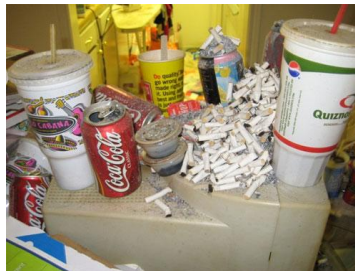
### *Hazards in the Home*

A police officer asked to see the whole family. The mother went to the 3-year-old girl's bedroom and unfastened a latch-type lock to open the door. The girl emerged from the room dressed in a diaper that, according to the worker, appeared to be soiled. The mother then retrieved the 5-year-old boy from his bedroom. The boy emerged wearing pajamas and a pull-up diaper. The worker saw a thumb lock similar to those used in bathroom doors on the outside of the boy's bedroom door. The worker believed that both children had been locked in their bedrooms, but the mother testified that the boy's bedroom door was not locked. The father also got out of bed to talk with the worker and the police officer.

The worker asked why the children had locks on their bedroom doors. The mother testified that she told the worker that they had never locked the boy's door, that his room had a lock on the door when they moved into the house, and that they had simply never removed it. The mother also stated that they locked the 3-year-old girl in her room at night because otherwise she would roam the house and get into things while the rest of the family were sleeping. The worker said that the mother first stated that she locked the children in their rooms only

when she showered, and that only after the worker pointed out that the mother had not been showering when they arrived did she say that she locked the girl in at night. The worker believed the mother had tried to lie to her and that this concerned her. She said that she was also concerned about the children being locked in their bedrooms because it could result in injury due to lack of supervision or as a result of a fire and could restrict their access to the bathroom. The worker told the parents that they would have to remove the locks. The mother testified that she agreed to do so, but the worker contended that the parents did not respond to her statement.

The worker asked why the children were still in diapers. The parents replied that they were “working with” their 5-year-old son, and that while they put a pull-up diaper on him at night, he was “doing good during the day.” They said that their daughter was not yet toilet-trained. The worker said, however, that the mother told her that “she hadn't had time” to toilet-train the children.



### *Lifestyle and Living Conditions in the Home*

The worker and the police officer inspected the 5 year old boy's mouth. The boy suffered from severe bottle rot. Several of his teeth were missing and his remaining teeth were yellow and showed signs of decay. His mother acknowledged during her deposition that his mouth had looked “horrible.” The mother told the worker that the boy had never complained of pain. She said that a dentist had told her that the boy needed surgery, and she had scheduled an appointment, but she cancelled it out of fear that boy would be harmed after she

and her husband saw a television program about a child dying while under general anesthesia. The worker said that she believed that this meant the parents were unwilling to take the boy to the dentist.

The worker asked if the family had medical insurance. According to the mother, she answered that they did not have medical insurance at the moment but that she was waiting for an application, at which point the worker asked for proof that she had ever had insurance and the mother showed her old membership cards for Kaiser. The mother testified that the worker then asked her if the cards were active and she replied that they were not. The worker, however, stated that the mother first told her that they had medical insurance and then attempted to deceive her by showing her inactive cards when she asked for proof. This, according to the worker, caused her further to doubt the mother's honesty.



### *Hazards Outside the Home*

The worker observed that the children had multiple circular bruises on their legs. The mother stated that the children were always falling down. The worker also observed that the 3-year-old girl had a large scratch on the side of her face. The mother and father told the worker that the girl sustained the scratch when she fell off a chair at their workplace. They explained that they worked in an auto shop and that they took the children with them to work every day. The worker said that she did not think that the children were being physically abused. She was concerned, however, that, because the children were taken to their parents' place of business every day, they were isolated and would not be seen by pre-school teachers or others who would be required to report suspected abuse.

The worker also observed that the 3-year-old girl had unkempt hair that appeared to be thin and missing in some areas and that both children were very pale. She believed that the thinning hair could indicate malnutrition and the pale skin could be due to a vitamin deficiency or lack of sunlight. She observed, however, that the refrigerator and kitchen cabinets were well stocked with food and that the bathroom had the necessary toiletries. She told the parents that the children looked very pale and sickly and that they could be suffering from a vitamin deficiency or from lack of sunlight. The mother responded that their pale complexion and the girl's thin hair were due to the fact that their father has pale skin and fine hair.

The parents, worker, and primary police officer disagreed about the condition of the family home. The worker and police officer stated that they observed piles of dirty dishes and an overflowing garbage receptacle in the kitchen, as well as piles of dirty clothing scattered about the kitchen, living room, and bedrooms. The father said, however, that the garbage receptacles were only partly full. He also stated that the reason for the piles of clothing was that the washer and dryer were broken.



### *Sanitary Conditions in the Home*

The worker stated that she observed that the children had dirty bedding and mattresses without frames. In the girl's room, she saw clothing that she believed was dirty scattered on the floor. The parents did not dispute that the children did not have bed frames, but said that the clothing and bedding were clean. The father also explained that girl's clothes were on the floor because she had a habit



of pulling them out of her dresser to play dress-up. In the 5-year-old boy's room, the worker observed a brown substance that she believed to be feces smeared on the wall and a substance that she thought was rat droppings on the floor. The police officer observed what he thought was vomit in the bottom drawer of a night stand. The 5-year-old boy told the worker that the substance on the wall was a smashed graham cracker. The parents said that the alleged rat droppings on the floor actually consisted of small grains of filling that came out of a broken hacky sack ball, and the purported vomit, like the smears on the wall, were the remains of broken graham crackers.

There were five guns in the parents' bedroom, four of which were unloaded and stored in the closet and one of which was loaded and kept in the dresser next to the parents' bed. The father testified that ammunition for the guns remained in the closet in a childproof container. The mother testified that the gun in the dresser had a trigger lock with a key, and the key was located in a jewelry box mounted on the wall.



### Weapons in the Home

The worker stated that after her conversation with the parents and her observations of the condition of the home, she believed that the children had been neglected for some time and that there was an imminent risk to their physical health and safety. Based on this opinion, the worker chose to remove them from their home immediately and place them in the custody of CPS. The worker did not offer the parents alternative accommodations, medical referrals for the children, or in-home safety services from the agency whereby the children

could remain at home. The worker also did not obtain a court order but proceeded to conduct an emergency removal. The worker and the police officer disagreed about who made the decision to remove the children, with both claiming that the other did so. The worker concedes, however, that she was ultimately responsible for the decision and could have reversed it if she had disagreed.

The worker called for a car seat and, when it arrived, transported the children to the hospital. She testified that the boy complained of mouth pain while at the hospital. She also testified that an attending nurse stated that the children appeared to be malnourished and suffering from a vitamin deficiency. The doctor who saw the children stated in his evaluation that both were “alert” and “playful,” but had “poor hygiene.” The doctor wrote that the boy had “many teeth missing” and that the girl’s hair was “sparse, brittle.” The doctor also wrote that the purpose of the visit was “medical clearance prior to CPS placement” and classified the visit as routine rather than emergency.



*Symptoms of Neglect in the Home*

After the medical clearance, the children were placed in a shelter. The 5-year-old boy did not receive any dental care that day or at any time while in CPS custody. The children were returned to their parents within 10 days after the parents made changes to their home and lifestyle as required by CPS, obtained medical insurance, and arranged for the boy to have oral surgery. As a result of their time in custody, according to their mother, the children became concerned about being separated from their parents. The mother further testified that the boy, in particular, “lost trust in people in general” because of the experience.



*Dangerous Activity and Substances in the Home*

### **The Standard for Judging Home Conditions**

In the example case, the worker concluded that the following home conditions collectively represented imminent danger to both children: locked bedrooms, unsanitary living situation, poor hygiene, and neglect of dental care. It isn't clear that the worker drew a conclusion about whether the guns represented a danger. The worker's concern about the mother lying appears to have influenced her assessment of the home conditions.

Do you believe these children should have been removed? What is the standard you would use to determine what action was necessary at the time of the initial contact? The CPS and safety intervention standard is present danger. The

legal standard (usually applied in relationship to law enforcement) is exigent circumstances. In the example case that you just read, the U.S. Court of Appeals was concerned with whether the worker correctly acted based upon exigent circumstances.<sup>2</sup> As the standard for judging, we will consider present danger and exigent circumstances as concerned with the same thing - an emergency situation requiring an immediate intervention.

From Webster's New World Law Dictionary, exigent circumstances are defined as events that justify a departure from usual legal procedures such as the obtaining of a warrant, typically in order to save a life, preserve evidence, or prevent a suspect from fleeing. An exigent circumstance allows law enforcement to enter a structure without a warrant, or if they have a "knock and announce" warrant, without knocking and waiting for refusal under certain circumstances. It must be a situation where people are in imminent danger, evidence faces imminent destruction, or a suspect will escape. This is an emergency situation requiring swift action to prevent imminent danger. That same is true for present danger.

Exigent circumstances was explained in *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984):

"Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts."

[Our underlining for emphasis]

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<sup>2</sup> The case example involved a civil suit for wrong removal of the child. The legal concept that applied in relationship to establishing whether the parents' Constitutional rights were infringed upon was exigent circumstances. Since the standard for exigent circumstances and present danger are basically the same, we thought it would be helpful to consider both (legal and CPS standards) to clarify how to judge home conditions that create present danger.

Relevant prompt action to prevent physical harm of a child is what CPS performs when present danger exists.<sup>3</sup>

Present danger is an immediate, significant, and clearly observable threat to a child occurring in the present which if allowed to continue without intervention could result in severe harm. Present danger requires immediate protective intervention. Just like exigent circumstances, when you see present danger you should stop whatever else you are doing (like proceeding with your initial assessment) and begin the process of assuring the child is protected.

The present danger definition is primarily concerned with a caregiver's behavior. The caregiver may be directly a danger to a child or may not be protective of the child with respect to other present danger. This could involve physical aggression; failure to protect a child from aggression or a dangerous situation; or neglectful behavior which deprives a child of essential, immediate safeguards and/or life necessities. Like exigent circumstances, the present danger *situation* is concerned with the circumstances a vulnerable child is in which includes his location, his condition, his proximity to dangerous events and social or physical conditions happening or in existence which endanger him. Also, like exigent circumstances, present danger is *actively occurring* which means the danger is in evidence (occurring) during the same day of your contact with the family. You observe the circumstance - danger unfolding before you. This means that the threatening behavior or situation is in the process of happening as you encounter and first observe what is going on in the family and/or the home.

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<sup>3</sup> It is important to emphasize that relevant prompt action to protect a child can involve in-home and out-of-home safety management. It can involve threatening people leaving the home. The point is that removing a child is not the only relevant prompt action CPS considers based on best practice.

There are several qualifiers for judging present danger/exigent circumstances of which you should be mindful:

- Imminent danger

This means that jeopardy is at hand; it is in the process of occurring. A child is in peril. The emphasis here is a child who is exposed to immediate and potentially extreme outcomes. The liability the child faces is the possibility of severe injury, pain, or suffering. Imminent means you have no time to do other than pursue some kind of protective action – immediately.

- Uncontrollable

This means at the time the present danger/exigent circumstances is observed the situation is uncontrolled. No responsible adult or family member is available to manage the circumstance that endangers the child. At the time of the initial contact, there is no indication that internal family controls exist. “At the time” is important to emphasize because almost exclusively a person making the judgment about present danger/exigent circumstances does not have sufficient information to know whether the lack of control is strictly situational (at a given point in time – namely the initial CPS contact) or a usual, common characteristic of the family. For that reason, present danger/exigent circumstances that exist are not definitive of a child’s safety within a family in general. You can only say that the family situation was out of control at the time of the initial contact. You have to look at the family in more depth to understand

whether “out of control” is an enduring characteristic of the family (and therefore an indicator of impending danger).

- Clear evidence of probable cause

This refers to the basis for concluding the need to act immediately because of present danger/exigent circumstances. The circumstance must be observable and specific. What is happening must be a fact, a reality that one can testify to. The facts that lead you to believe that a child is in present danger/exigent circumstances which could lead to severe harm must be transparent. What causes you to conclude that present danger/exigent circumstances exist must be credible. A test of that would be whether your supervisor or a judge or even a lay person would agree with you about the probability of serious physical injury, pain, or suffering if immediate action is not taken.

- Reasonable person

This qualifier is related to clear evidence of probable cause since the standard being applied is that a reasonable person would be responsible for observing and drawing conclusions about evidence of present danger/exigent circumstances. The legal term “reasonable person” refers to a hypothetical person in our society who possesses average everyday knowledge, skill, and judgment. This person would be like the lay person referred to above. So this qualifier is telling us that a lay person who knows little to nothing about safety intervention would conclude the same thing as you if you identified present danger/exigent circumstances and were

correct in doing so. To say it another way – if present danger/exigent circumstances exist at the initial contact (a child is in present danger) the average 7 – 11 clerk would conclude that something should be done immediately just as you would even though you are a CPS professional.

- Seriousness

The circumstance must be such that it will result in severe harm (i.e., bodily harm, physical injury, terror, pain). The suffering resulting from the circumstance is expected to be extreme. Should something happen as a result of the circumstances, the cost to the child – physically or emotionally – could be great.

- Urgency

The reason for assessing and recognizing present danger/exigent circumstances is to guide you in what action you must take as a CPS worker. The questions are:

- ✓ Have you encountered something that requires you to act immediately?
- ✓ Do the circumstances at initial contact represent an emergency?
- ✓ Could some horrible thing happen to a child if you do not act immediately?
- ✓ Is there time for you to return and continue your assessment and/or take other action tomorrow without the child being in jeopardy of bodily harm?



- ✓ If removal is the only option you have for protecting the child, do you have time to get a court order so that the court endorses your conclusion and assures that parents' civil rights are protected?
- Clear indications of exigency

There are two things you should consider with respect to this qualifier. What you are observing must be extremely serious and obvious in relationship to posing a danger to a child and it must be an emergency requiring immediate action. As stated earlier, present danger/exigent circumstances require a relevant, prompt action. This qualifier determines that you conclude there is reasonable cause (the present danger/exigent circumstances) to believe that a child is in imminent danger of serious bodily injury and that the scope of the CPS intrusion (whether in-home or out-of-home) is reasonably necessary to avert that specific injury.



*Toxic Substances in the Home*

## **U.S. Court of Appeals Decision**

If you came to the conclusion that there was no present danger in the example case, you are right. We agree. And so does the U.S. Court of Appeals.

The family brought this action alleging that the worker, in removing their children from their home without a court order, violated their Fourth and

Fourteenth Amendment rights. Both parties filed motions for summary judgment, although the parents' was as to liability only. The District Court granted the worker's motion on the basis of qualified immunity. Because the U.S. Court of Appeals held that it was clearly established that removal of children without a court order is permissible only in cases of exigency, and that it would have been apparent to a reasonable social worker that no exigency existed in this case, the U.S. Court of Appeals reversed both the grant of summary judgment to the worker and the denial of partial summary judgment to the parents.

Here are the conclusions the Court reached:

- The worker could have obtained a court order within hours and so short a delay could not have resulted in a significant worsening of the children's physical conditions or an increase in the prospects of long-term harm.
- The worker did not believe that the boy's dental condition would worsen during the time it took to get a court order.
- The "pain" the boy was in was not so serious that he ceased to be "playful" and "alert," and the pain which likely had existed for some time did not justify a failure to obtain a court order or did not justify the immediate removal of the children from their parents' custody.
- The malnourishment in this case was not sufficiently serious to justify the children's immediate removal as both were alert and active, and there was no indication of imminent danger.
- Medical staff conducted non emergency care to the children once they were taken to the hospital which is further evidence of no exigency.

- There was no imminent danger of serious bodily harm as a result of the 3-year-old girl being locked in her room, as this occurred only at night.
- The allegations that the children were also locked up during the day at their parents' workplace, even if true, do not support a finding of imminent risk of serious bodily harm. Such a remote risk of a fire or some other calamity at the parents' workplace did not establish reasonable cause to believe that the children were in immediate danger.
- The conditions of the home, even if as unsanitary as the worker concluded, failed to indicate any imminent risk of serious bodily harm. Like the bottle rot, the mess in the family's living quarters to the extent that it may have existed was a chronic, ongoing problem. The presence of disorderliness and a small amount of droppings, feces, and other matter may increase the risk of eventual illness, but there was no indication in the record of any particular risk that the children would become seriously ill during the few hours that it would take the worker to obtain a court order. Furthermore, parents indicated that they were in agreement with and cooperative about CPS' instruction to correct the conditions in the home.
- The family's lack of medical insurance and daycare presented no imminent danger of harm. The Court stated, "It would certainly be preferable for all children to have medical insurance and quality daycare; given the absence of universal provision of such services, however, reliance on factors so closely related to economic status as a justification for removal would border on the unconstitutional."
- Even viewing the factors cumulatively, there was no doubt that there was no imminent danger to either or both of the children.

- The general Child Protective Services response to this case stands against staff believing that present danger/exigent circumstances existed. Intake staff classified the case as a 10-day response indicating that they did not think that any emergency existed. The worker did not make contact with the family for 18 days from when the first report was received. Upon seeing the children, the worker did not take relevant prompt action to obtain medical care as a reasonable person would have expected her to do if she believed that the children faced imminent danger of serious harm to their health. Instead, she spent close to two hours talking with the family before deciding to remove the children from the parental home.

The U.S. Court of Appeals final conclusions were:

“Child abuse and neglect are very serious problems. We applaud the efforts of social workers to address these matters and to protect the vulnerable victims of these crimes. No one can doubt the importance of this goal. However, the rights of families to be free from governmental interference and arbitrary state action are also important. Thus, we must balance, on the one hand, the need to protect children from abuse and neglect and, on the other, the preservation of the essential privacy and liberty interests that families are guaranteed under both the Fourth and Fourteenth Amendments of our Constitution.

Assuming the worker’s version of the facts, the family’s children were in a sorry state and suffering from neglect of a type that could, if their parents’ conduct was not modified within a reasonable period of time, lead to long-term harm. Still, the conditions here did not present an imminent risk of serious bodily harm. It would have taken the worker only a few hours to obtain a warrant. In removing the children from their home without obtaining judicial authorization, the worker violated the parents’ clearly established Fourth and Fourteenth Amendment rights. The lack of exigency would have been apparent to any reasonable social worker. Accordingly, we conclude that the district court

erred in granting qualified immunity to the worker and in denying the parents' motion for partial summary judgment as to the worker.

We reverse the grant of summary judgment to the worker and we likewise reverse the denial of the parents' partial summary judgment motion with respect to her. We remand with instructions to grant partial summary judgment to the parents and for further proceedings consistent with this opinion.”



*Vulnerable Children in the Home*

**Closing**

We hope you take the following away from this article:

→ A judgment about present danger can be qualified or justified by imminence, uncontrollable, probable cause, reasonable judgment,

- seriousness of potential effects, urgency to act, and clear indications of exigency.
- Child removal without court jurisdiction is justified based on judging that to take the time to seek a court order could result in bodily harm to a child.
  - The only exception for infringing on a parent's civil rights is present danger/exigency.
  - The least intrusive principle compels CPS to always consider all protective options that might be available besides removal.
  - Present danger can occur yet no impending danger exists; present danger can be symptomatic of impending danger; present danger may not exist but impending danger does.

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<sup>1</sup> United States Court of Appeals, Ninth Circuit  
ROGERS v. COUNTY OF SAN JOAQUIN & CITY OF LODI  
No. 05-16071. Argued and Submitted April 16, 2007. Filed May 29, 2007