

## Section 9 Due Process

A child's four-month separation from his parents can be challenged under substantive due process. Sham procedures do not constitute true procedural due process. *Brokaw v. Mercer County* (7th Cir 2000)

Post-deprivation remedies do not provide due process if pre-deprivation remedies are practicable. *Bendiburg v. Dempsey* (11th Cir. 1990)

Children placed in a private foster home have substantive due process rights to personal security and bodily integrity. *Yvonne L. v. New Mexico Dept. of Human Services* (10th Cir. 1992)

When the state places a child into state-regulated foster care, the state has duties and the failure to perform such duties may create liability under § 1983. Liability may attach when the state has taken custody of a child, regardless of whether the child came to stay with a family on his own which was not an officially approved foster family. *Nicini v. Morra* (3rd Cir. 2000)

Social worker who receive a telephone accusation of abuse and threaten to remove a child from the home, unless the father himself left and who did not have grounds to believe the child was in imminent danger of being abused, engaged in an arbitrary abuse of governmental power in ordering the father to leave. *Croft v. Westmoreland Cty. Children and Youth Services* (3rd Cir. 1997)

Plaintiffs were arguably deprived of their right to procedural due process because the intentional use of fraudulent evidence, into the procedures used by the state, denied them the fight to fundamentally fair procedures before having their child removed, a right included in Procedural Due Process. *Morris v. Dearborne* (5th Cir. 1999)

When the state deprives parents and children of their right to familial integrity, even in an emergency situation, the burden is on the State to initiate prompt judicial proceedings for a post-deprivation hearing, and it is irrelevant that a parent could have hired counsel to force a hearing. *K.H. through Murphy v. Morgan*, (7th Cir. 1990)

When the State places a child in a foster home it has an obligation to provide adequate medical care, protection, and supervision. *Norfleet v. Arkansas Dept. of Human Services*, (8th Cir. 1993)

Children may not be removed from their home by police officers or social workers without notice and a hearing unless the officials have a reasonable belief that the children were in imminent danger. *Ram v. Rubin*, (9th Cir. 1997)

Absent extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation procedures. An ex parte hearing based on misrepresentation and omission does not constitute notice and an opportunity to be heard. Procurement of an order to seize a child through distortion, misrepresentation and/or omission is a violation of the Fourth Amendment. Parents may assert their children's Fourth Amendment claim on behalf of their children as well as asserting their own Fourteenth Amendment claim. *Malik v. Arapahoe Cty. Dept. of Social Services*, (10th Cir. 1999)

A Plaintiff's clearly established right to meaningful access to the courts would be violated by suppression of evidence and failure to report evidence. *Chrissy v. Mississippi Dept. of Public Welfare*, (5th Cir. 1991)

A Mother has a clearly established right to an adequate, prompt post-deprivation hearing. A 17-day period prior to the hearing is not a prompt hearing. *Whisman V. Rinehart*, (8th Cir. 1997)