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David Pimentel

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Legislating Childhood Independence

David Pimentel*

Abstract

The legal system has been drawn into the ongoing debate about what constitutes responsible parenting in a world increasingly obsessed with child safety. While statistics show that children are dramatically safer today than ever before, media and popular paranoia about child safety are prompting parents to err on the side of over-protection. Vague statutes exacerbate the problem, enabling law enforcement and child protection authorities to condemn parental choices that fail to adhere to the new hyper-protective orthodoxy. Parents and children are both victimized by this trend. The costs and burdens of parenting have skyrocketed, and children are denied the opportunity to explore and to exercise reasonable levels of independence, levels that were the norm just fifty years ago.

Pushing back against this trend, since 2018, thirteen states have considered, and four states have passed, legislation designed to protect “reasonable childhood independence.” There is reason to expect similar bills in many more legislatures in the next few years. The texts of these bills reflect wide variations in approach. It has proven difficult to craft language to give families the latitude they need without appearing to compromise the compelling interest in child safety. The many states expected to address this problem in the near future can learn important lessons from analyzing the

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various approaches taken and, by following the guiding principles distilled therefrom, pass laws that more responsibly and more effectively promote and protect childhood independence.

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I. INTRODUCTION

When COVID-19 shut down her children's daycare in May of 2020, and Melissa Henderson had to go to work, she asked her 14-year-old daughter, Linley, to babysit the four younger siblings. Linley was engaged in remote learning when her youngest brother, four-year-old Thaddeus, spied his friend outside and went over to play with him. It was about 10 or 15 minutes before Linley realized he was missing. She guessed that he must be at his friend's house, and went to fetch him. In the meantime, the friend's mom had called the police. Now Henderson, a single mom in Blairsville, Georgia, is facing criminal reckless conduct charges for letting her 14-year-old babysit. The charges carry a maximum penalty of one year in prison and fine of \$1,000. The arresting officer, Deputy Sheriff Marc Pilote, wrote in his report that anything terrible could have happened to Thaddeus, including being kidnapped, run over, or "bitten by a venomous snake."¹

This is one of many examples of law enforcement—or Child Protective Services (CPS)—coming down on parents who dare trust their children to exercise some independence.² Here, the mother left her fourteen-year-old in charge of her younger siblings, and that was deemed a criminal act.³ But the mother may have been no better off if she had been home.⁴ The four-year-old might still have gone to his friend's house—while the mother was, perhaps, showering, caring for the child's other siblings, working from home, gardening or doing other yard work, cooking nutritious meals for the family, or cleaning (doing laundry or other tasks associated with maintaining a clean and healthy living environment for the children)—and the mother would stand accused of child endangerment all the same.⁵ Because she failed to give this

1. *Single Mother Handcuffed, Jailed for Letting 14-Year-Old Babysit During COVID*, PARENTSUSA, <https://parentsusa.org/media/> (last visited Nov. 21, 2022) [hereinafter *Single Mother Handcuffed*].

2. See Lenore Skenazy, *Mom Charged with "Child Endangerment" When Tot Wanders Off*, FREE-RANGE KIDS (June 27, 2011), <https://www.freerangekids.com/mom-charged-with-child-endangerment-when-tot-wanders-off/> (describing a case where a mother was charged with child endangerment after her child wandered into the street while she was sleeping).

3. *Single Mother Handcuffed*, *supra* note 1.

4. *Id.*

5. See, e.g., Skenazy, *supra* note 2 (describing the case against the mother whose child got up and wandered into the street while the mother slept). The mother was prosecuted for this, as if the law

child her undivided attention, he could have come to harm.⁶ Of course, the child did not come to harm, but in the imagination of the deputy sheriff, and presumably of the neighbor who called the police in the first place, he could have (given the prevalence of kidnapers and venomous snakes, after all), so the parent needs to be punished.⁷ Or, maybe, the children need to be protected.⁸ The former impulse is used to justify criminal charges against the parents,⁹ the latter imperative is used to justify the intervention of CPS and the threat to remove the children from the custody of those parents.¹⁰

Some believe that this hostility to “Free-Range” parenting—when parents choose, or are compelled by circumstances, to give their kids a long leash and exercise some independence—is misguided, and state legislatures have started to respond.¹¹ In 2018, Utah passed the nation’s first childhood independence bill, designed to protect families who choose to engage in free-range parenting practices.¹² The new law defines “neglect” to exclude allowing children “of sufficient age and maturity” to walk or bike to school, engage in outdoor play, stay home unattended, or “engag[e] in a similar independent activity.”¹³ In the years since, a handful of other states have passed bills with similar provisions, and even more state legislatures are considering such bills.¹⁴

demanded that mothers not be permitted to sleep. *Id.*

6. *See Single Mother Handcuffed*, *supra* note 1 (nothing how the family protested because the child had only been unattended to for several minutes).

7. *See id.* (discussing how the deputy sheriff justified his position by saying a few minutes was all a snake needed).

8. *Id.*

9. *See generally* David Pimentel, *Criminal Child Neglect and the “Free Range Kid”: Is Overprotective Parenting the New Standard of Care?*, 2012 UTAH L. REV. 947, 949 (2012) (“[T]he trend toward overprotective parenting—defined as those aspects of overparenting that address issues of safety—may be reinforced and exacerbated by the fear of criminal liability.”).

10. *See generally*, David Pimentel, *Fearing the Bogeyman: How the Legal System’s Overreaction to Perceived Danger Threatens Families and Children*, 42 PEPP. L. REV. 235, 247 (2015) (“Child removals are lawful in every state, and many states allow emergency removals without first obtaining a court order.”).

11. *See, e.g., Oklahoma “Reasonable Childhood Independence Bill” Signed into Law!*, LET GROW, <https://letgrow.org/oklahoma-reasonable-childhood-independence-bill-signed-into-law/> (last visited Nov. 21, 2022) (“House Bill 2565 . . . modifies the definition of neglect in the Oklahoma Children’s Code, ensuring that parents can permit a child ‘of sufficient age and maturity’ to engage in independent activities like playing outside, walking to school, or staying home alone for a bit, without the threat of being accused of child abuse or neglect.”).

12. Donna De La Cruz, *Utah Passes ‘Free-Range’ Parenting Law*, N.Y. TIMES (Mar. 29, 2018), <https://www.nytimes.com/2018/03/29/well/family/utah-passes-free-range-parenting-law.html>.

13. S.B. 65, 2018 Leg., Gen. Sess. (Utah 2018).

14. *See infra* Parts II–III.

As this type of legislation will undoubtedly arise in even more state legislatures in the coming years, it is timely to consider the legislative approaches proposed.¹⁵ What kind of legislation is politically viable in our increasingly polarized political climate?¹⁶ And which of the various bills in the various states are likely to be most effective in addressing the underlying problem?¹⁷

This Article begins in Part II, with a summary explanation of the societal problem to be addressed—a problem explored in detail in my earlier articles—including (1) an arguably unhealthy shift in parenting norms toward hyper-protective parenting, (2) the role the state has played applying vague statutes to enforce such norms, (3) the consequent subversion of parents' constitutional rights to make their own decisions on childrearing, and (4) the problem of vague statutes.¹⁸ Part III examines childhood independence legislation recently passed in four states (Utah, Oklahoma, Texas, and Colorado) and calls attention to the strengths and weaknesses of these new laws.¹⁹ Part IV looks at selected legislation proposed but not adopted in other states (Arkansas, South Carolina, Nevada, and Idaho), with a similar examination of the bills' comparative merits.²⁰ Part V considers what language might be used in future bills, drawing on the lessons learned from these early attempts to legislate in this area,²¹ with Part VI distilling that discussion into ten discrete recommendations for future legislation aimed at protecting childhood independence.²²

15. See generally Diane Redleaf, *Where Is It Safe and Legal to Give Children Reasonable Independence*, A.B.A. (Sept. 30, 2020), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/where-is-it-safe-and-legal-to-give-children-reasonable-independence/> (discussing the differences that are present when creating child welfare legislation in various states).

16. *Id.* (discussing the political factors that need to be considered when creating child welfare legislation).

17. *Id.* (looking at different states and how the problem would most likely be addressed in each one).

18. See *infra* Part II.

19. See *infra* Part III.

20. See *infra* Part IV.

21. See *infra* Part V.

22. See *infra* Part VI.

II. BACKGROUND ON THE UNDERLYING ISSUES

A. *Cultural Shift in Parenting Norms*

The world of parenting has changed dramatically in the past generation.²³ Long-leash parenting practices that were commonplace forty years ago, including sending kids outside to play in the neighborhood, no longer pass muster for responsible parenting.²⁴ Ironically, now that the stay-at-home, full-time parent is the exception rather than the rule,²⁵ there is a growing expectation that kids should get dramatically more, and closer, supervision than ever before.²⁶ Even though kids are much safer today than they have ever been,²⁷ the popular perception says otherwise, and official tolerance for teaching children independence and self-sufficiency (by allowing them some measure of independence) has all but disappeared.²⁸

23. Pimentel, *supra* note 9, at 947 (“Parenting in American society is a far more demanding enterprise than it once was, and the changes over a single generation are startling.”).

24. *See id.* at 953 (demonstrating recent developments in societal and legal parenting standards).

25. Jacob Galley, *Stay-at-home Mothers Through the Years*, U.S. BUREAU OF LAB. STAT.: MONTHLY LAB. REV. (Sept. 2014), <https://www.bls.gov/opub/mlr/2014/beyond-bls/stay-at-home-mothers-through-the-years.htm>.

26. *See generally* Pimentel, *supra* note 9 (discussing the recent and rapid changes in parenting expectations).

27. BRYAN CAPLAN, SELFISH REASONS TO HAVE MORE KIDS: WHY BEING A GREAT PARENT IS LESS WORK AND MORE FUN THAN YOU THINK 96 (2011) (“Conditions today aren’t merely better [than they were in the 1950s]. They improved so much that government statisticians changed their denominator [for youth mortality] from deaths per 1,000 to deaths per 100,000.”).

28. Pimentel, *supra* note 9, at 952–53. Pimentel discusses modern parenting trends, noting:

The assumption behind this modern trend toward overprotective parenting is one that discounts children’s ability to care for themselves, exercise judgment, or bear responsibility. History demonstrates, however, that young children are capable of much more than is expected of them today. The agrarian economy that prevailed in the United States 150 years ago typically involved putting the youngest members of the family to work. It was widely accepted at that time that children, even very young children, were capable of caring not only for themselves, but also for cows, sheep, chickens, and even younger siblings. Even one generation ago, the norms were different for determining the age at which a child no longer needed a babysitter. The expected minimum age for babysitters has gone up as well, although in the few states that have legislated specific ages the thresholds vary widely. In Illinois, it is illegal to leave a child under fourteen unsupervised for an “unreasonable period of time”; in Maryland, in contrast, a thirteen-year-old is considered old enough not only to care for himself, but also to babysit infants. The days when eleven- and twelve-year-old neighborhood kids were considered competent babysitters appear to be long gone. This development is all the more marked considering that mobile phones have created a virtually instant line of communication between the sitter and the parents, something unheard of in earlier eras when younger sitters were considered acceptable.

In such an era, when helicopter parenting is not only encouraged, but expected, parents who dare defy the hyper-protective parenting norms face serious legal peril.²⁹ Vague and broadly written child neglect laws facilitate the persecution of parents whose children come to harm, and, as in the case of Melissa Henderson, do not come to harm.³⁰ Even the best parents have occasional bad days or lapses of judgment that lead to in-the-moment decisions that, with the benefit of hindsight, they may regret.³¹

Accidents happen to even the most closely supervised children; no parenting style and no degree of supervision can guarantee that a child will not come to harm.³² Every time a child is harmed, our society's reflex will be to find someone to blame—often the parents—if only to reassure ourselves that it could not happen to our own kids, because we would never make that mistake.³³ Thus, even parents who are entirely careful and prudent may be subjected to judgment and opprobrium when their children suffer accidents or are victims of crime.³⁴ Parents may also suffer serious legal consequences as a result of vague child neglect statutes.³⁵

Id. (citations omitted).

29. See Pimentel, *supra* note 9, at 967 (discussing criminal liability for parents who reject protective parenting norms).

30. See *Single Mother Handcuffed*, *supra* note 1 (interviewing the lawyer and the mother-defendant who was charged under vague child neglect law despite zero harm being caused to her child).

31. See, e.g., Kim Brooks, *The Day I Left My Son in the Car*, SALON (June 3, 2014, 11:00 PM), http://www.salon.com/2014/06/03/the_day_i_left_my_son_in_the_car (“I made a split-second decision to run into the store. I had no idea it would consume the next few years of my life”).

32. See generally *9 Everyday Hazards for Young Children*, TENET HEALTH, <https://www.tenethealth.com/healthy-living/corporate-content/9-everyday-hazards-for-young-children> (last visited Dec. 18, 2022) (demonstrating merely a few of the everyday hazards children are exposed to daily).

33. Pimentel, *supra* note 9, at 989 (“Most people like to think that these tragedies should not happen at all, and that when they do, someone must be blamed for them and held accountable. But this is not just retribution; it is driven by a deep human need for reassurance that such tragedies are preventable, and more specifically, that they will not happen to one’s own children. If a child drowns at a local beach while the parent dozes on the sand, it is natural to insist that the parent should have been with the child the whole time. By assuring ourselves that we would never have made that mistake and by condemning the parent for his neglect, we reassure ourselves that it couldn’t happen to us.”) (citations omitted).

34. *Id.*

35. Perri Klass, M.D., *Accidents Happen, but Parents Still Beat Themselves Up*, N.Y. TIMES (Mar. 6, 2017) <https://www.nytimes.com/2017/03/06/well/family/accidents-happen-but-parents-still-beat-themselves-up.html> (“Whenever a child has an accident—and children do have accidents—there is a parent standing by to regret some or all of the choices and permissions that put that child right there at that moment, wishing, as almost every parent does, to shoulder all the pain and suffering.”).

B. The Problem of Parenting in the Shadow of the State

When the state is empowered to punish parents or disrupt families whenever they perceive a departure from the new hyper-protective parenting norms, terrible things happen to parents, families, and the very children the authorities are trying to protect.³⁶ A series of ugly incidents have been documented in the media in recent years:

- The Meitiv family, who were attempting to teach their ten and six-year-old children some independence encouraged them to walk home from the park together.³⁷
- Bridget Kevane left her two young children in the care of their twelve-year-old sister for two hours at a local mall.³⁸
- Valerie Borders' ten-year-old son was kicked off the school bus for misbehavior and attempted to teach her son a lesson by making him walk over four miles to school.³⁹
- Kim Brooks left her four-year-old child in the car for a few minutes.⁴⁰
- Debra Harrell, a McDonald's worker, allowed her nine-year-old daughter to play at a nearby park while she completed her shift at work.⁴¹
- Shaneshia Taylor, an underemployed mom who could not get child-care and, without other options, left her two kids in the car while she

36. See, e.g., *Single Mother Handcuffed*, *supra* note 1 (mother arrested for allowing teenager to babysit child); Dave Lieber, *I'm Going To Let You Walk Home*, 2013 UTAH L. REV. 281, 283 (2013) (explaining the aftermath of being criminally charged for leaving his son in a McDonald's for ten minutes).

37. *These Parents Say Kids Need Freedom. The Law Doesn't Agree.*, WBUR (Mar. 9, 2015), <https://www.wbur.org/hereandnow/2015/03/09/free-range-parenting-meitiv>.

38. Bridget Kevane, *Guilty as Charged*, BRAIN, CHILD (Jan. 14, 2014), <https://brain-childmag.com/2014/01/guilty-as-charged/>.

39. *Mother Who 'Forced 10-Year-Old Son to Walk 5 Miles to School Faces Jail Time for Endangerment'*, DAILY MAIL (Feb. 19, 2012), <http://www.dailymail.co.uk/news/article-2103412/Mother-forced-10-year-old-son-walk-5-miles-school-faces-jail-timeendangerment.html>; *Mom Charged After Forcing 10 Year Old to Walk 4.5 Miles to School*, LIVE 5 WCSC (Feb. 18, 2012), <https://www.live5news.com/story/16963660/mom-charged-after-forcing-10-year-old-to-walk-45-miles-to-school/>.

40. Brooks, *supra* note 31.

41. See Conor Friedersdorf, *Working Mom Arrested for Letting Her 9-Year-Old Play Alone at Park*, ATLANTIC (July 15, 2014), <http://www.theatlantic.com/national/archive/2014/07/arrested-for-letting-a-9-year-old-play-at-the-park-alone/374436>; Chris Branch, *An Important Conversation About the Mom Arrested for Leaving Her Kid at a Park*, HUFFINGTON POST (July 16, 2014), http://www.huffingtonpost.com/2014/07/16/single-mom-jail-child-unattended-park_n_5592799.html.

went to a job interview.⁴²

At the same time, we also know that overly-close supervision causes harm to children.⁴³ The plight of the over-protected child is well known in psychology and parenting literature.⁴⁴ Accordingly, a strong case can be made that the best parents are ones who give their children some independence and who allow them to make mistakes and learn from them, even at the risk of “a bruised knee or ego if things go wrong.”⁴⁵ As any parent knows, striking the right balance is hard; indeed parenting could be characterized as an ongoing exercise in risk management, as just about any precaution a parent may take for the safety of their children comes at a cost, including the cost of exposing the child to other harms.⁴⁶

42. See Emanuella Grinberg, *When Justice is ‘Merciful’ in Child Abuse Cases*, CNN (Aug. 7, 2014), <https://www.cnn.com/2014/08/07/living/shaneshya-taylor-plea-deal/index.html>. Shaneshya Taylor attracted national attention when she, attempting to find work to support her two young children, left them in the car while she interviewed for a job. *Id.* “To many she represented the plight of single and underemployed parents who face tough decisions each day related to child care.” *Id.*; see also Shaila Dewan, *A Job Seeker’s Desperate Choice*, N.Y. TIMES (June 21, 2014), <https://www.ny-times.com/2014/06/22/business/a-job-seekers-desperate-choice.html>.

43. See Laurence van Hanswijck de Jonge, *Helicopter Parenting: The Consequences*, INT’L SCH. PARENT, <https://www.internationalschoolparent.com/articles/helicopter-parenting-the-consequences> (last visited Dec. 18, 2022); Gaia Bernstein & Zvi Triger, *Over-Parenting*, 44 U.C. DAVIS L. REV. 1221, 1274 (2011) (examining negative psychological harms of “Intensive Parenting”).

44. Bernstein & Triger, *supra* note 43. Professors Bernstein and Triger have outlined numerous psychological effects of what they call “intensively parented” children. *Id.* at 1274–78. Negative effects include dependency and inability to cope with life’s challenges, inability “to manage their time, strategize, and negotiate open conflict during play,” decreased “creativity, spontaneity, [and] enjoyment . . . than children raised under different child rearing practices,” decreased empathy, and immaturity. *Id.* at 1275. It may undermine the child’s development of a sense of independence and ability to successfully separate from their parents. *Id.* at 1274; Hara Estroff Marano, *A Nation of Wimps*, PSYCH. TODAY (Apr. 27, 2017) <https://www.psychologytoday.com/us/articles/200411/nation-wimps> (noting that the severity of mental health problems on college campuses has been rising since 1988). Moreover, Harvard psychologist Jerome Kagan has demonstrated that “what creates anxious children is parents hovering and protecting them from stressful experiences.” *Id.*; see also Pimentel, *supra* note 9, at 948 (citing these same sources).

45. Tracy Trautner, *Overprotective Parenting Style*, MICH. STATE UNIV. EXTENSION (Jan. 19, 2017), https://www.canr.msu.edu/news/overprotective_parenting_style; see also Brett McKay & Kate McKay, *The Origins of Overprotective Parenting*, ART OF MANLINESS, <https://www.artofmanliness.com/people/family/origins-overprotective-parenting/> (Sept. 25, 2021); see also Peter Gray, *Survey Reveals Children Coped Well With School Closure*, PSYCH. TODAY (Aug. 3, 2020), <https://www.psychologytoday.com/us/blog/freedom-learn/202008/survey-reveals-children-coped-well-school-closure>; Peter Gray, *Why Parents Should Do Less for Their Kids*, PSYCH. TODAY (May 30, 2022), <https://www.psychologytoday.com/us/blog/freedom-learn/202205/why-parents-should-do-less-their-kids>; Peter Gray, *Why Kids Are Suffering Today*, PSYCH. TODAY (Mar. 30, 2022), <https://www.psychologytoday.com/us/blog/freedom-learn/202203/why-kids-are-suffering-today>.

46. Elizabeth Aura McClintock, Ph.D., *The Risky Business of Parenting*, PSYCH. TODAY (Jan. 11,

Parents' task of balancing risks (e.g., "Do I let my child play outdoors with the neighborhood kids, or keep them inside watching television? Which is healthier and safer for my child?") becomes vastly more complicated when the State is looking over the parents' shoulder, second-guessing those decisions.⁴⁷ The calculus is no longer simply "what is best for my child?" or even "what is best for our family?" but "what are the chances some nosy neighbor will call the police if I let my child play independently outdoors?" or "will CPS think I'm a bad parent if I do that?"⁴⁸ As a result, state laws have created powerful incentives for parents to adopt hyper-protective parenting philosophies, sometimes against the parents' own better judgment, and arguably to the detriment of the very children that state is trying to protect.⁴⁹

What is worse, is that low-income, one-parent families may be singled out for scrutiny and targeted for intervention.⁵⁰ They may be unable to afford nannies to provide constant supervision; they may be forced, for example, to leave children in the care of older siblings while they do a late-night pharmacy run.⁵¹ These families may adopt free-range parenting practices out of practical necessity, rather than their own philosophy of what constitutes ideal child-rearing.⁵² But without other options, these families are very much at risk in

2019), <https://www.psychologytoday.com/intl/blog/it-s-man-s-and-woman-s-world/201901/the-risky-business-parenting> ("Still, all parents expose their children to risks—even driving children to a pediatrician's appointment risks a collision. So, how do we, as a society, draw the line between parental irresponsibility and reasonable differences in how people analyze risks and benefits?").

47. Brett McKay & Kate McKay, *The 3 Keys to Balancing Safety and Risk in Raising Your Kids*, ART OF MANLINESS, <https://www.artofmanliness.com/people/family/3-keys-balancing-safety-risk-raising-kids/> (June 6, 2021) ("Knowing how to balance risk and safety in your kids' lives is one thing; continually putting these principles into practice is another.").

48. Tania Lombrozo, *Why Do We Judge Parents For Putting Kids At Perceived-But Unreal-Risk?*, NPR (Aug. 22, 2016), <https://www.npr.org/sections/13.7/2016/08/22/490847797/why-do-we-judge-parents-forputting-kids-at-perceived-but-unreal-risk> ("So here's another possibility. It's not that risks to children have increased, provoking an increase in moral outrage when children are left unattended. Instead, it could be that moral attitudes toward parenting have changed, such that leaving children unsupervised is now judged morally wrong.").

49. See, e.g., Bernstein & Triger, *supra* note 43, at 1244–45 (showing how standards in child-custody proceedings promote overparenting and negatively effects the children involved).

50. David Pimentel, *Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent While Impoverished*, 71 OKLA. L. REV. 885, 906 (2019).

51. *At What Age Can a Child Stay Home Alone?*, WILLIAMS L. GRP., <https://familylawyersnewjersey.com/blog/at-what-age-can-a-child-stay-home-alone/> (last visited Dec. 19, 2022) (describing the consequence of the high cost of child care resulting in leaving one's child at home while the parent goes to work).

52. Pimentel, *supra* note 50, at 904 ("Ironically, those families bearing the greatest burden, have the fewest resources available to provide that level of supervision.").

the present environment, where close and continual adult supervision is expected.⁵³ If the definition of child neglect begins to overlap too much with the definition of poverty, enforcement of the hyper-protective parenting norms will make it illegal to parent while poor.⁵⁴

Parenting is hard; parents need support if they are going to be successful in fulfilling this exasperating yet vital role.⁵⁵ Threats and condemnations from the legal system are unlikely to help parents or the kids they care for.⁵⁶

C. Parents' Right to Raise Their Children as They See Fit

Often overlooked in these legal proceedings are the constitutional rights of the parents and the fundamental liberty interest they should enjoy to raise their children as they see fit.⁵⁷ The Fourteenth Amendment should require the State to satisfy strict scrutiny before invoking *parens patriae* power to second-guess parental decisions and intervene in the family.⁵⁸

Unfortunately, these rights are rarely asserted.⁵⁹ When the police or a CPS caseworker arrives on the doorstep, investigating a report of child neglect,

53. Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 DUKE L.J. 75, 79 (2021) (“As the literature on racial disproportionality shows, the ideal of the private family especially burdens Black children, who removed from their parents at much higher rates than white children.”).

54. Pimentel, *supra* note 50, at 904.

55. *Supporting Parents to Help Children Thrive*, CDC: CHILDS. MENTAL HEALTH (Apr. 11, 2022), <https://www.cdc.gov/CHILDRENSMENTALHEALTH/FEATURES/SUPPORTING-PARENTS.HTML> (“Parents need help as they support their own child’s mental and physical health.”).

56. Ruth Farrugia, *Parental Responsibility and State Intervention*, 31 CAL. W. INT’L L.J. 127, 127 (2000) (“On paper [state intervention] looks like the obvious solution to what could potentially be a disastrous state of affairs for the child. But then again, those of us who have seen this intervention at work may well think otherwise.”).

57. *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (“[I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment [of the U.S. Constitution] protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

58. David Pimentel, *Protecting the Free-Range Kid: Recalibrating Parents’ Rights and the Best Interest of the Child*, 38 CARDOZO L. REV. 1, 29 (2016) (citing *City of Richmond v. J.A. Croson Co.*, 488 U.S. 470, 470–72 (1989)). This would require the state to show both (1) a compelling state interest in the action it is taking, and (2) that the action is narrowly tailored to serve that interest. *Id.* Some decisions require a showing that the state action is the “least restrictive alternative to advance the Government’s compelling interest.” *Am. Civil Liberties Union v. Mukasey*, 534 F.3d 181, 198 (3d Cir. 2008); *see also Sable Commc’ns of Cal. v. F.C.C.*, 492 U.S. 115, 126 (1989).

59. *See, e.g.*, Pimentel, *supra* note 58, at 19–20 (noting that parents who are reported to law enforcement would rather admit their wrongs and promise that they will never do a certain act again, even though the action they were reported for is within constitutionally protected bounds).

[p]arents . . . are well advised to cooperate quickly, apologize profusely, and promise it won't happen again—effectively waiving their rights to raise their children as *they* see fit—in order to avoid having their children taken away from them. But unless they assert their constitutional rights in these cases, those rights will not be litigated or adjudicated. Indeed, it appears that in many of these cases, those rights are being disregarded altogether.⁶⁰

Accordingly, practical protection and enforcement of these constitutional rights may require help from the legislature (much as the constitutional right to a speedy trial was difficult to enforce before Congress passed the Speedy Trial Act).⁶¹ So, although this Article discusses statutory approaches to the problem of protecting childhood independence, it is important to remember that the issues at play have a constitutional foundation.⁶²

D. *The Problem of Vague Statutes*

The existing statutory definitions of child neglect do not help here; indeed, they are part of the problem.⁶³ The New Mexico Supreme Court recognized the almost unlimited conduct that vague child neglect or endangerment statutes can encompass.⁶⁴ For example, the New Mexico Supreme Court explained:

60. *Id.* at 5 (citations omitted).

61. *See, e.g.*, Shon Hopwood, *The Not So Speedy Trial Act*, 89 WASH. L. REV. 709, 713 (2014) (citing H.R. Rep. No. 93-1508, reprinted in 1974 U.S.C.C.A.N 7401, 7404-05) (“[A]cknowledging that the Supreme Court’s interpretation of the Sixth Amendment right to a speedy trial had not provided ‘adequate guidance’ to lower courts, Congress enacted the Speedy Trial Act to ‘give real meaning’ to a defendant’s Sixth Amendment right to a speedy trial.”).

62. *See* Pimentel, *supra* note 58, at 28–29 (highlighting that the constitutional foundation for the fundamental rights and liberty interests of parents includes the right to marry, have children, and direct the education and upbringing of one’s children).

63. *See, e.g.*, *Definitions of Child Abuse and Neglect*, CHILD.’S BUREAU: CHILD WELFARE INFORMATION GATEWAY 3, <https://www.childwelfare.gov/pubpdfs/define.pdf> (May 2022) (presenting a collection of all fifty states’ statutes defining child abuse and neglect, with neglect most frequently defined as “the failure of a parent or other person with responsibility for the child to provide needed food, clothing, shelter, medical care, or supervision to the degree that the child’s health, safety, and well-being are threatened with harm”)

64. *See* State v. Chavez, 211 P.3d 892, 896 (N.M. 2009) (describing that the New Mexico state legislature broadly punishes a parent for child abuse—a third degree felony—when the adult knowingly, intentionally, or negligently puts their child in a situation that may endanger the child’s life or health).

Child abuse by endangerment, as opposed to physical abuse of a child, is a special classification designed to address situations where an accused's conduct exposes a child to a significant *risk* of harm, "even though the child does not suffer a physical injury." . . . Taken literally, our endangerment statute could be read broadly to permit prosecution for any conduct, however remote the risk, that "*may* endanger [a] child's life or health." However, by classifying child endangerment as a third-degree felony, our Legislature anticipated that criminal prosecution would be reserved for the most serious occurrences, and not for minor or theoretical dangers. Therefore, we have taken a more restrictive view of the endangerment statute, and have interpreted the phrase "*may* endanger" to require a "reasonable probability or possibility that the child will be endangered."⁶⁵

In some cases, the problem is not vagueness but simply breadth.⁶⁶ Montana, for instance, defines the crime of endangerment to include "knowingly . . . violating a duty of care" to a child.⁶⁷ Tort law has taught us that a duty of care can be found in a staggering array of circumstances.⁶⁸

In Connecticut, it is neglect to "den[y] proper care and attention" or to permit a child "to live under conditions, circumstances or associations injurious to the well-being of the child."⁶⁹ The statute, however, gives little guidance on what "proper" care or "proper" attention might be.⁷⁰ The "injurious

65. *Id.* (citations omitted).

66. See *infra* notes 67–68 and accompanying text.

67. MONT. CODE ANN. § 45-5-622 (2021).

68. See *Palsgraf v. Long Island R. Co.*, 162 N.E. 99, 102–05 (1928) (Andrews, J. dissenting) (holding that the duty of care be limited to foreseeable plaintiffs—an iconic opinion authored by Justice Cardozo that has since given way to the far broader conception of duty as described in Justice Andrews' dissent); see also Joseph Little, *Palsgraf Revisited (Again)*, 6 PIERCE L. REV. 75, 86 (2007) (noting that the Third Restatement of Torts has embraced Andrews' formulation of the duty question, suggesting that the law has gravitated in that direction).

69. CONN. GEN. STAT. § 46b-120(4) (2021); see also Diane Redleaf, *Narrowing Neglect Laws Means Ending State-Mandated Helicopter Parenting*, A.B.A. (Sept. 11, 2020) <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/fall2020-narrowing-neglect-laws-means-ending-state-mandated-helicopter-parenting/> (highlighting that an Illinois agency had applied a similar "injurious environment" standard for many years, until litigation forced them to abandon that standard). The challengers to the law were able to demonstrate that the Illinois legislature had deliberately removed the term "injurious environment" from the Illinois Child Abuse and Neglect Reporting Act in 1980. Redleaf, *supra*.

70. See Redleaf, *supra* note 69 (noting that broad statutory phrases like "proper care" invite open-ended, discretionary, and standardless applications, leaving parents in the dark as to what the state will judge as neglect).

environment” standard similarly leaves the door wide open to blame parents for a raft of circumstances that may be beyond the parent’s control, including the safety of the neighborhood, or conditions in the local public school.⁷¹ Is it neglect for the parent(s) to live in such neighborhoods and send their kids to those schools?⁷² Or does the law require them to move to “better” (i.e. more expensive) neighborhoods, or send their kids to private schools that may have fewer problems of drugs, gang violence, or bullying?⁷³

In Florida, neglect is defined as “failure . . . to provide a child with the care, supervision, and services necessary to maintain the child’s physical and mental health” but is expanded to include “failure to make a reasonable effort to protect a child from . . . neglect . . . by another person.”⁷⁴ This suggests that parents may be responsible not only for their own neglect, but for the neglect of others—a dramatic expansion of parental liability, and a powerful incentive for parents to err on the side of overprotection.⁷⁵

Mississippi defines a neglected child as one whose caregiver “neglects or refuses . . . to provide for him proper and necessary care or support” or who “for any reason, lacks the care necessary for his health, morals or well-being.”⁷⁶ This statute not only uses the undefined concepts of “proper” or “necessary” care,⁷⁷ but it also appears to empower a court to find neglect without regard for the fault of the parent or caregiver whenever the children, for any reason, lack the care the court deems “necessary” for their “well-being.”⁷⁸

In Michigan, neglect is defined as “[p]lacing a child at an unreasonable risk to the child’s health or welfare by failure . . . to intervene to eliminate that

71. *See, e.g., id.* (highlighting that the term “injurious environment” is subject to unlimited potential scope, making it a possibility that parents may be reported for those decisions they reasonably think are best for their children).

72. *See generally Acts of Omission: An Overview of Child Neglect*, CHILD.’S BUREAU: CHILD WELFARE INFO. 2 (2018), <https://www.childwelfare.gov/pubPDFs/acts.pdf> (noting that “educational neglect” is most commonly recognized as a failure to enroll one’s child in school, ignoring special education needs, or allowing chronic absenteeism from school).

73. *See generally id.* (noting various factors courts in certain states will examine when evaluating child neglect, including if the child is receiving care adequate to meet a child’s needs, if harm is actual or potential, variety in the types of neglect, and whether the neglect is intentional).

74. FLA. STAT. § 827.03(1)(e) (2017); *see also id.* § 827.03(2) (a criminal neglect provision within the statute notes that the failure to provide “necessary” care, whether done willfully or through “culpable negligence,” is a felony, even if the child suffers no harm at all).

75. *See id.* § 827.03(1)(e)(2) (defining neglect of a child as “[a] caregiver’s failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person”).

76. MISS. CODE ANN. § 43-21-105(J) (2013).

77. *See id.*

78. *See id.*

risk when that person is able to do so and has, or should have, knowledge of the risk.⁷⁹ In Michigan, the determination turns on what risks are deemed “unreasonable,” and imposes duties to intervene to “eliminate” that risk, even if the parent or caregiver is not aware of the risk.⁸⁰ The suggestion that risks can and should be “eliminated” is problematic as well because, as mentioned above and discussed further below, risk can never be fully eliminated, and any attempt to do so is likely to do more harm than good.⁸¹

1. The “Let Grow” Organization

Among the chief advocates for childhood independence is “Let Grow,” an organization helmed by Lenore Skenazy, who coined the term “Free-Range Kids” and wrote the 2009 book *Free-Range Kids: How to Raise Safe, Self-Reliant Children (Without Going Nuts with Worry)* as well as its 2021 second edition *Free-Range Kids: How Parents and Teachers Can Let Go and Let Grow*.⁸² Skenazy acquired some notoriety in 2008 when she published a newspaper column describing how she had allowed her nine-year-old son to take public transit to his home in New York City unaccompanied by an adult.⁸³ She was severely criticized and made a series of appearances on daytime talk shows, where she was dubbed “America’s Worst Mom.”⁸⁴ However, the appearances also gave her an opportunity to very publicly push back against the helicopter parenting that was fast becoming the norm in America.⁸⁵ The

79. MICH. COMP. LAWS § 722.622(k)(ii) (1975).

80. *Id.* It is enough, under the terms of the statute, that the parent “should have knowledge” of the risk. *Id.* That language would, of course, reflect the negligence standards of tort law, where actual knowledge is not required as long as a reasonable person would be aware of it. See *Negligence*, LEGAL INFO. INS., <https://www.law.cornell.edu/wex/negligence> (last visited Jan. 29, 2023). Negligence findings, however, are focused on compensating victims, not on punishing tortfeasors, while child neglect laws like Michigan’s do not merely assign financial liability, but break up families and even impose criminal sanctions. See, e.g., MICH. COMP. LAWS ANN. § 750.136b (West 2020) (providing the criminal penalties for child abuse).

81. See discussion *infra* Section III.C.1 (analyzing “risk” in the context of the Texas childhood independence statute).

82. LENORE SKENAZY, *FREE-RANGE KIDS: HOW TO RAISE SAFE, SELF-RELIANT CHILDREN (WITHOUT GOING NUTS WITH WORRY)* (2009); LENORE SKENAZY, *FREE-RANGE KIDS: HOW PARENTS AND TEACHERS CAN LET GO AND LET GROW* (2d ed. 2021).

83. Lenore Skenazy, *Why I Let My 9-Year-Old Ride the Subway Alone*, THE SUN (Apr. 1, 2008), <https://www.nysun.com/article/opinion-why-i-let-my-9-year-old-ride-subway-alone>.

84. Nancy Gibbs, *The Growing Backlash Against Overparenting*, TIME (Nov. 20, 2009), <https://content.time.com/time/subscriber/article/0,33009,1940697,00.html>.

85. See *id.* (highlighting Skenazy’s thoughts that parents are not only “infantilizing our kids into

experience inspired her to write her book and to start a blog on free-range kids⁸⁶ and later to develop the Let Grow organization to advocate for reasonable childhood independence.⁸⁷

In 2018, Skenazy associated formally with Diane Redleaf as Let Grow's legal consultant.⁸⁸ Redleaf led the Family Defense Center in Chicago for twelve years and had a long public interest law career in pioneering system reform work before the term "family defender" gained currency, and she was already a fierce critic of laws and agencies that unfairly target parents, particularly low-income parents who are ill-equipped to fight back.⁸⁹ At the Family Defense Center, Redleaf frequently defended parents against overreach by CPS.⁹⁰ Much of her experience and perspective is reflected in her own 2018 book entitled *They Took the Kids Last Night: How the Child Protection System Puts Families at Risk*.⁹¹ Among the projects that Redleaf worked on at the Family Defense Center, which led to her eventual affiliation with Skenazy, was a 2015 report, *When Can Parents Let Children Be Alone*, co-authored with Caitlin Fuller, presenting dozens of case examples of state overreach as a result of the vague Illinois neglect laws.⁹²

incompetence" but also that they have "lost our ability to assess risk," explaining that "[b]y worrying about the wrong things, we do actual damage to our children, raising them to be anxious and unadventurous"; cf. *In Japan, First Graders Travel Solo to School on the Train*, CBS NEWS (Dec. 15, 2015, 8:26 AM), <https://www.cbsnews.com/news/japanese-young-children-solo-commute-subway-school/> (explaining how it is common, and even expected, in places like Japan for children as young as six to take subways unsupervised by an adult to get to and from school and run other errands). This trend, and these norms, interestingly enough, have not taken hold nearly so strongly in other cultures. The author was drawn to this topic after spending almost six years abroad raising his six children in post-war Bosnia, Romania, the Netherlands, and Sudan. In all of these countries, young children were permitted a level of freedom and independence that far exceeded American norms.

86. Gibbs, *supra* note 84.

87. See *Meet the Team*, LETGROW, <https://letgrow.org/our-people/> (last visited Dec. 22, 2022) (hosting biographies of the Let Grow team members, specifying various goals of the organization).

88. See Gall Rosenblum, *New Nonprofit Let Grow Urges Parents to Land Those Helicopters and Let Kids be Kids*, STARTRIBUNE (July 12, 2019), <https://www.startribune.com/new-nonprofit-let-grow-urges-parents-to-land-those-helicopters-and-let-kids-be-kids/512640562/>, for an interview with Diane Redleaf where she answers various questions about her association with Skenazy and Let Grow.

89. See H el ene Stelian, *Diane Redleaf from the Family Defense Consulting*, H EL ENE T. STELIAN COACHING (Aug. 6, 2019), <https://helenetstelian.com/diane-redleaf-from-the-family-defense-center/>.

90. See generally DIANE L. REDLEAF, *THEY TOOK THE KIDS LAST NIGHT: HOW THE CHILD PROTECTION SYSTEM PUTS FAMILIES AT RISK* (2018) (detailing Redleaf's various experiences and interactions defending families whose children that have gone through the CPS system).

91. *Id.*

92. Caitlin Fuller & Diane Redleaf, *When Can Parents Let Children Be Alone?*, FAM. DEF. CTR. (Aug. 5, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2643804.

Following the passage of the first law in Utah in 2018, Let Grow launched a campaign to promote state-by-state legislation to protect reasonable childhood independence, with Redleaf leading the charge.⁹³ The new laws and proposed bills, discussed in this article were, in large part, drafted by Redleaf, her Let Grow team, locally based lawyers, and policy advocates in the states in which Let Grow has worked.⁹⁴ This legislation is the direct result of Let Grow's activism and strategic partnerships with policymakers and stakeholders.⁹⁵ It should not surprise us, then, that the language in many of the bills is strikingly similar.⁹⁶

2. Other Organizations that Have Been Involved in Promoting Reasonable Childhood Independence Legislation

Support for reasonable childhood independence legislation has come from all across the political spectrum.⁹⁷ Right-leaning groups are concerned about the sanctity of the family and are reluctant to let big government micromanage what they see as family issues.⁹⁸ Left-leaning groups are

93. See *Playing Outside Should Not Be Against the Law*, LET GROW, <https://letgrow.org/program/policy-and-legislation/> (last visited Dec. 22, 2022) (noting that Let Grow has helped other states follow Utah's lead in passing "Reasonable Childhood Independence" bills that work to provide children independence, and parents the right to give it to them).

94. See *Model Laws: How to Propose and Draft "Reasonable Independence for Children" Law or Proclamation—Model Language*, LET GROW (June 30, 2021) [hereinafter *Model Laws*] <https://letgrow.org/wp-content/uploads/2021/06/model-laws-one-thru-four-june-30-2021.pdf> (detailing the various model laws that Let Grow has been working since 2017, the language of which is largely based off of other recently passed, favorable state legislation).

95. See *generally id.* (recommending legislatures and advocates consider the Oklahoma law passed in May of 2021 when considering how to update their own laws to allow for parents to provide their children reasonable independence, as well as detailing versions of the model law that Let Grow is working to get passed).

96. See, e.g., *id.* (highlighting four versions of reasonable independence model laws that Let Grow has supported, and further noting that five states (Oklahoma, Arkansas, Illinois, Utah, and Colorado) have already passed similarly phrased laws); Fuller & Redleaf, *supra* note 92, at 5 (highlighting the criteria that Redleaf & Fuller suggest states should adopt to remove ambiguity and further the child independence legislation objectives).

97. See Let Grow Staff, *Let's Make 2022 the Year of the Independent Child!*, LET GROW, <https://letgrow.org/2022-year-of-independent-child/> (last visited Dec. 22, 2022) (stating that "[t]he bills passed to date" related to childhood independence have "had overwhelming support from both parties—a rarity these days").

98. See, e.g., Lenore Skenazy, *Colorado Kids Can Finally Play Outside!*, LET GROW, <https://letgrow.org/colorado-signs-law/#> (last visited Dec. 22, 2022) (stating that "Republicans appreciate [that childhood independence legislation] promote[s] can-do kids and keep[s] the government out of everyday family decisions").

concerned about how ethnic, racial, and cultural minorities are unfairly impacted and how those in the lowest tiers of socio-economic privilege are powerless to resist intrusions into their families.⁹⁹ Other organizations concerned about child welfare of parents' rights, but without political orientation, have a stake in these issues as well.¹⁰⁰

Not surprisingly, a startling array of diverse foundations and advocacy groups have weighed in, in various ways, and in various states, in support of reasonable childhood independence legislation.¹⁰¹ A partial list of organizations that have been involved includes the following:

- American Civil Liberties Union (ACLU) - Nebraska¹⁰²
- American Legislative Exchange Council (ALEC)¹⁰³
- Americans for Prosperity - Nebraska¹⁰⁴
- The Centennial Institute¹⁰⁵
- COLOR Latina¹⁰⁶

99. *See, e.g., id.* (claiming that “Democrats appreciate the same thing—especially because while a third of all kids will be reported to child protective services at some point in their childhoods, that number soars to 53% for African-American kids”).

100. *See id.* (noting that Let Grow has “always contended that childhood independence is a bipartisan issue” and has received appreciation from both Republicans and Democrats).

101. *See, e.g.,* Lindsay Whitehurst, *Free-Range Parenting Law Eyed Around U.S. After Utah Gets Buzz*, SFGATE (Apr. 10, 2018), <https://www.sfgate.com/nation/article/Free-rangeparenting-law-eyed-around-US-after-12822320.php> (noting that “lawmakers and policy groups in several states” are pushing for childhood independence legislation).

102. ACLU NEBRASKA, <https://www.aclunebraska.org/> (last visited Dec. 22, 2022) (linking to and describing several campaigns of the ACLU’s Nebraska chapter, which include educational and civil-liberties focused campaigns).

103. *About ALEC*, ALEC, <https://alec.org/about/> (last visited Dec. 22, 2022), (describing the organization as “America’s largest nonpartisan, voluntary membership organization of state legislators dedicated to the principles of limited government, free markets and federalism” and noting that the organization supports a “government that puts the people in control”). ALEC is promoting a version of the statute patterned after the Utah statute. *See Free Range Parenting Act*, ALEC, <https://alec.org/model-policy/free-range-parenting-act/> (last visited Dec. 22, 2022) (noting that ALEC’s model policy, titled the “Free Range Parenting Act,” is “[m]odeled on Utah’s ‘Free Range Parenting Law’”).

104. AMERICANS FOR PROSPERITY NEBRASKA, <https://americansforprosperity.org/state/nebraska/> (last visited Dec. 22, 2022) (advocating for lower taxes and less government regulation).

105. CENTENNIAL INST. COLO. CHRISTIAN UNIV., <https://centennial.ccu.edu/> (last visited Dec. 22, 2022) (describing the Centennial Institute as “Colorado Christian University’s think tank, mobilizing ideas on faith, family, and freedom to strengthen America’s future”).

106. COLO. ORG. FOR LATINA OPPORTUNITY AND REPRODUCTIVE RTS., <https://www.colorlatina.org/> (last visited Dec. 22, 2022) (describing the purpose of the Colorado Organization for Latina Opportunity and Reproductive Rights, or COLOR, as enabling “Latinx individuals and their families to lead safe, healthy, self-determined lives”).

- Christian Home Educators of Colorado¹⁰⁷
- 50Can¹⁰⁸
- Jefferson County [Colorado] Human Services¹⁰⁹
- Homeschool Legal Defense Association¹¹⁰
- Let Grow¹¹¹
- Libertas Institute (Utah)¹¹²
- Madison Liberty Institute (Idaho)¹¹³
- Nebraska Appleseed¹¹⁴
- National Association of Social Workers (NASW)¹¹⁵

107. CHRISTIAN HOME EDUCATORS OF COLO., <https://chec.org/> (last visited Dec. 22, 2022) (advertising the organization as “[d]efending your family’s freedom” as related to homeschooling in Colorado).

108. 50CAN, <https://50can.org/> (last visited Dec. 22, 2022) (advertising 50CAN’s mission as helping to “recover, rebuild and renew our commitment to education”); see also Will Estrada, *Action Alert: Submit Public Comments to Support Reasonable Childhood Independence Bill*, PARENTALRIGHTS.ORG (Feb. 18, 2022), <https://parentalrights.org/action-alert-submit-public-comments-to-support-reasonable-childhood-independence-bill/> (noting that a proposed Nebraska childhood independence law “enjoys broad bipartisan support from advocacy groups” including 50CAN).

109. *Human Services*, JEFFERSON CNTY. COLO., <https://www.jeffco.us/human-services> (last visited Dec. 22, 2022) (linking to various services provided by the Jefferson County’s Human Services Department).

110. HOME SCH. LEGAL DEF. ASS’N, <https://hsllda.org/> (last visited Dec. 22, 2022) (stating that HSLDA “believe[s] every child is unique, that children should learn in ways that meet their needs, and that you want the best for your child”); see also Amy Koons, *Raising Free-Range Kids*, HSLDA (Mar. 22, 2017), <https://hsllda.org/post/raising-free-range-kids> (discussing the relationship between the childhood independence movement and homeschooling); Estrada, *supra* note 107 (noting that a proposed Nebraska childhood independence law “enjoys broad bipartisan support from advocacy groups” including HSLDA).

111. LET GROW, <https://letgrow.org/> (last visited Dec. 22, 2022) (describing Let Grow’s mission in part as “making it easy, normal and legal to give kids the independence they need”).

112. LIBERTAS INST., <https://libertas.org/> (last visited Dec. 22, 2022) (linking to the Libertas Institute organization’s published articles); see also *SB 65: Protect “Free-Range” Parenting*, LIBERTAS INSTITUTE, <https://libertas.org/bill/sb-65-protect-free-range-parenting/> (last visited Dec. 22, 2022) (noting that the “Libertas Institute supports” the Utah childhood independence law).

113. *Madison Liberty Institute*, LINKEDIN, <https://www.linkedin.com/company/madison-liberty-institute/> (last visited Dec. 22, 2022) (“[A]n independent research and educational organization whose mission is to promote the founding principles of the American republic, free-market solutions, and ‘secure the blessings of liberty to ourselves and our posterity.’”).

114. NEB. APPLESEED, <https://neappleseed.org/> (last visited Dec. 22, 2022) (stating that Nebraska Appleseed “fight[s] for justice and opportunity for all Nebraskans”). Nebraska Appleseed, “a progressive public interest organization,” joined forces with Let Grow to push the legislation in Nebraska. Let Grow Staff, *Let’s Make 2022 The Year of The Independent Child!*, *supra* note 97.

115. NAT’L ASS’N OF SOC. WORKERS: NEB. CHAPTER, <https://naswne.socialworkers.org/> (last visited Dec. 22, 2022) (providing the home page for the Nebraska chapter of the National Association of Social Workers).

- New Era Colorado¹¹⁶
- Office of Respondent Parents' Counsel (Colorado)¹¹⁷
- ParentalRights.org¹¹⁸
- Reason Foundation¹¹⁹
- Texas Public Policy Foundation¹²⁰
- United Family Advocates¹²¹
- Voices for Children in Nebraska¹²²
- Yes. Every Kid.¹²³

Both Let Grow and ALEC have gone so far as to publish model laws to help guide legislators interested in promoting such legislation, with Let Grow proffering four alternative approaches.¹²⁴ No doubt many other organizations

116. NEW ERA COLO., <https://neweracolorado.org/> (last visited Dec. 22, 2022) (advertising New Era's organization as "young and powerful," consisting of "the most progressive, the most diverse, the most unstoppable [generation] in history").

117. COLO. OFF. OF RESPONDENT PARENTS' COUNS., <https://coloradoorpc.org/> (last visited Dec. 22, 2022) (noting that the "Colorado Office of Respondent Parents' Counsel provides effective legal advocates for indigent parents" and describing its goal as "[p]rotecting the fundamental right to parent").

118. PARENTALRIGHTS.ORG, <https://parentalrights.org/> (last visited Dec. 22, 2022) (describing the organization with the tagline "Protecting Children by Empowering Parents"). The organization has worked to promote childhood independence legislation in a variety of states, including Nebraska, South Carolina, and Colorado. *See, e.g.*, Will Estrada, *Action Alert: Urge Your State Senator to Support Reasonable Childhood Independence Bill*, PARENTALRIGHTS.ORG (April 20, 2022), <https://parentalrights.org/?s=childhood+independence>.

119. REASON FOUND., <https://reason.org/> (last visited Dec. 22, 2022) (providing the homepage for the Reason Foundation).

120. TEX. PUB. POL'Y FOUND., <https://www.texaspolicy.com/> (last visited Dec. 22, 2022) (noting that the organization "promote[s] liberty, opportunity, and free enterprise in Texas and beyond"); *see also* Let Grow Staff, *Texas Becomes Third State to Enshrine "Reasonable Childhood Independence" into Law*, LET GROW, <https://letgrow.org/texas-becomes-third-state-to-enshrine-reasonable-childhood-independence-into-law/> (last visited Dec. 22, 2022) (quoting senior fellow, Andrew Brown, at the Texas Public Policy Foundation in describing Texas' childhood independence legislation as a popular bipartisan measure "'because it's a commonsense reform'").

121. UNITED FAM. ADVOCES., <https://www.unitedfamilyadvocates.org/> (last visited Dec. 22, 2022). The organization is particularly interested in the problem of treating poverty as child neglect. *Family Poverty is Not Neglect*, UNITED FAM. ADVOCES., <https://www.unitedfamilyadvocates.org/family-poverty-is-not-neglect> (last visited Dec. 22, 2022).

122. VOICES FOR CHILD. IN NEB., <https://voicesforchildren.com/> (last visited Dec. 22, 2022) (stating that, "[f]or thirty-five years and counting, Voices for Children in Nebraska has used data and research to help policy makers and communities make informed decisions on issues impacting our next generation").

123. YES. EVERY KID., <https://yeseverykid.com/> (last visited Dec. 22, 2022) (providing the homepage for the organization's website and stating that the organization seeks to "build a revolutionary new education system").

124. *See Model Laws, supra* note 94; *see also Free Range Parenting Act, supra* note 103 (noting

have been involved in this effort in the various states, as the issues appeal to a wide range of constituencies and interests.¹²⁵

III. THE CHILDHOOD INDEPENDENCE BILLS THAT HAVE PASSED SO FAR

A. *The Utah Bill*

As noted above, the first such law came out of Utah in 2018.¹²⁶ It amended the legal definition of “neglect” to exclude

permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities, including:

- (A) traveling to and from school, including by walking, running, or bicycling;
- (B) traveling to and from nearby commercial or recreational facilities;
- (C) engaging in outdoor play;
- (D) remaining in a vehicle unattended, except under the conditions described in Subsection 76-10-2202(2);

that ALEC’s model policy, titled the “Free Range Parenting Act,” is “[m]odeled on Utah’s ‘Free Range Parenting Law’”).

125. *See, e.g.*, Whitehurst, *supra* note 101 (commenting that “groups in states from New York to Texas are pushing for” childhood independence legislation). The National Association of Parents, or ParentsUSA, has played a role in the greater fight, although it is focused not so directly on childhood independence as on deference to parents and resisting state intervention in the family. *About*, PARENTS USA, <https://parentsusa.org/about-3/> (last visited Dec. 22, 2022). This organization has litigated cases, and appeared as amicus curiae, in a number of cases where parents have been targeted because their parental judgments have been second-guessed, and found wanting, by state authorities, including Melissa Henderson’s case, referenced at the beginning of this article. *See* Skenazy, *supra* note 1. If a childhood independence law had been in place in Georgia—especially one like the Texas bill, discussed in Section III.C, that makes parents liable for neglect only if they leave their child in “immediate danger”—it is likely that the case against Ms. Henderson would never have been filed. *See infra* Section III.C. The fact that, in the imagination of a law enforcement officer, there “could have” been a snake in the child’s path, and that it might have been venomous, and that it might have bitten the child, is unlikely to rise to the standard of “immediate danger.” *See* Skenazy, *supra* note 1 (implying that, if childhood legislation had existed at the time of Henderson’s case, it would have “kick[ed] in only when parents put their kids in likely and obvious danger, not when they make a decision a cop or caseworker disapproves of,” as was the case for Henderson).

126. Lenore Skenazy, *Let Grow Celebrates the Passage of the Utah Free Range Parenting Law*, LET GROW, <https://letgrow.org/utah-free-range-parenting-law/> (last visited Dec. 22, 2022) (describing the 2018 Utah childhood independence law as the “first of its kind in the nation”).

- (E) remaining at home unattended; or
- (F) engaging in a similar independent activity.¹²⁷

The reference in subsection (D) is to a separate statute making it a misdemeanor to leave an eight-year-old (or younger) child in an enclosed motor vehicle without supervision when the conditions present a risk of hyperthermia, hypothermia, or dehydration.¹²⁸

The statute is reasonably straightforward, but it carries important qualifications.¹²⁹ While it purports to allow kids to walk to a school, park, store, or playground, to play outdoors, or to stay home alone, it does so only for kids who are “of sufficient age and maturity to avoid harm or unreasonable risk of harm.”¹³⁰ Accordingly, parents who believe their six-year-old is mature enough to walk to school may still run afoul of state authorities who believe that six-year-olds are too young—or that this particular six-year-old is insufficiently mature—to avoid unreasonable risk of harm.¹³¹

A more serious problem with the Utah bill, however, is its qualification that it protects the independence of children “whose basic needs are met.”¹³² This limitation is deeply problematic for reasons discussed in Section V.E.¹³³

B. *The Oklahoma Bill*

Three years after Utah, in early May 2021, Oklahoma enacted a law of similar import.¹³⁴ The Oklahoma legislature amended the definition of “neglect” in its Children’s Code as follows:

“Neglect” shall not mean a child who engages in independent activities, except if the person responsible for the child’s health, safety or

127. S.B. 65, 2018 Leg., Gen. Sess. (Utah 2018).

128. UTAH CODE ANN. § 76-10-2202(2)(d) (West 2022).

129. *Id.*

130. UTAH CODE ANN. § 80-1-102(58)(b)(iv) (West 2022) (reflecting the recently renumbered statute referenced in subsection D).

131. See David Pimentel, *Free-Range Parenting Gets Legal Protection in Utah—But Should the State Dictate How to Parent?*, THE CONVERSATION (June 5, 2018), <https://theconversation.com/free-range-parenting-gets-legal-protection-in-utah-but-should-the-state-dictate-how-to-parent-97284>.

132. UTAH CODE ANN. § 80-1-102(b)(iv) (West 2022).

133. See discussion *infra* Section V.E (arguing that the provision of the Utah law allowing reasonable independence only to kids “whose basic needs are met” is problematic).

134. See Oklahoma “Reasonable Childhood Independence Bill” Signed into Law!, *supra* note 11 (noting that Oklahoma’s 2021 law “was inspired by Utah’s so-called Free-Range Kids bill passed in 2018”).

welfare willfully disregards any harm or threatened harm to the child, given the child’s level of maturity, physical condition or mental abilities. Such independent activities include but are not limited to:

- (1) traveling to and from school including by walking, running or bicycling,
- (2) traveling to and from nearby commercial or recreational facilities,
- (3) engaging in outdoor play,
- (4) remaining at home unattended for a reasonable amount of time,
- (5) remaining in a vehicle if the temperature inside the vehicle is not or will not become dangerously hot or cold, except under the conditions described in Section 11-1119 of Title 47 of the Oklahoma Statutes, or
- (6) engaging in similar activities alone or with other children.¹³⁵

Many of the provisions reflect closely those in the Utah bill.¹³⁶ Some differences are worth noting, however.¹³⁷ Oklahoma makes no mention of age but roots its definition in terms of the child’s “level of maturity, physical condition or mental abilities.”¹³⁸ This difference helps, because it removes the conclusory argument, heard far too often, that a child under a specific age is simply too young for certain activities.¹³⁹ At the same time, this legal standard is sufficiently vague and subjective that it may not provide complete reassurance to parents.¹⁴⁰ After all, someone else—particularly someone who is enforcing the law—may disagree about your child’s level of maturity.¹⁴¹ But it

135. H.B. 2565, 1st Leg., 2021 Reg. Sess. (Okla. 2021).

136. *Compare id.* (defining “neglect” as not including children engaged in “independent activities,” among other things), with S.B. 65, 2018 Leg., Gen. Sess. (Utah 2018) (similarly couching its definition of “neglect” in terms of whether children are engaged in “independent activity”).

137. See Oklahoma “Reasonable Childhood Independence Bill” Signed into Law!, *supra* note 11 (claiming that the Oklahoma law, which followed the Utah legislation, “tightens the prior definition of neglect” by adding important, new clarifications).

138. OKLA. STAT. tit. 10A, § 1-1-105(5)(a) (2022).

139. See Kate Elizabeth Queram, *Some States Update Child Neglect Laws to Allow ‘Reasonable Independence’ For Kids*, ROUTE FIFTY (May 26, 2021), <https://www.route-fifty.com/health-human-services/2021/05/some-states-tweak-child-neglect-laws-allow-reasonable-independencекids/174327/> (highlighting how the overall goal when assessing laws is to eliminate unclear language about the child’s capabilities).

140. *Id.* (highlighting how the neglect laws are vague and open to interpretation).

141. See Jessica McCrory Calarco, *‘Free Range’ Parenting’s Unfair Double Standard*, THE ATLANTIC (Apr. 3, 2018), <https://www.theatlantic.com/family/archive/2018/04/free-range>

will be hard for anyone to assert that they know a child that is not their own well enough to be a better judge of a child's maturity than the child's own parents are.¹⁴²

Oklahoma's new definition of neglect is far more protective of parents in other ways, though, as it suggests that in order to find neglect, the parent must have acted "willfully," disregarding the harm or the threatened harm to the child.¹⁴³ The list of protected activities is very similar to that of Utah, including the explicit allowance for the law that criminalizes leaving a child unattended in a vehicle.¹⁴⁴

C. *The Texas Bill*

Following closely on the heels of the Oklahoma statute, Texas also passed a statute on this topic in May 2021, but it looks very different from the Utah and Oklahoma laws.¹⁴⁵ It narrows the definition of "neglect," limiting it to "blatant disregard for the consequences of [one's] act or failure to act that results in harm to the child or that creates an immediate danger to the child's physical health or safety."¹⁴⁶ The "blatant disregard" language suggests that mere negligence is not enough, and parents who genuinely thought they were acting in their child's best interest might be shielded from a charge of neglect.¹⁴⁷

parenting/557051/ (providing an example of a "working-class single father [who] regularly left his 9- and 11-year-old daughters home alone after school" because "he had no other choice," but who worried that others might disagree with his choice to do so).

142. Cf. Lenore Skenazy, *Second Thoughts on Keeping Kids Safe By Never Letting Them Out of Our Sight—and the Enduring Myth of Stranger Danger*, LET GROW, <https://letgrow.org/second-thoughts-on-keeping-kids-safe-by-never-letting-them-out-of-our-sight-and-the-enduring-myth-of-stranger-danger/> (last visited Dec. 22, 2022) (arguing that childhood independence is important because "[w]e have to trust parents who know and love their kids more than some passerby who says, 'A child outside! That's crazy!'").

143. See OKLA. STAT. tit. 10A, § 1-1-105(49)(b) (2022) (noting that the definition of "neglect" does apply "if the person responsible for the child's health, safety or welfare willfully disregards any harm or threatened harm to the child").

144. OKLA. STAT. tit. 47, § 11-1119(b) (2022) (making it a crime to leave a child alone in a car under "conditions, including, but not limited to, extreme weather, inadequate ventilation, or hazardous or malfunctioning components within the vehicle present a risk to the [child's] health or safety").

145. TEX. FAM. CODE § 261.001(4) (2021).

146. *Id.*

147. See *id.*

1. Decriminalizing Mere “Risk”

The new statute goes on to expand on what “neglect” includes, replacing in four separate instances the words “substantial risk” with “immediate danger.”¹⁴⁸ This change is important because “substantial risk” is so incredibly broad.¹⁴⁹ Imagine a parent who needs to dash to the drug store for medicine for a sick child.¹⁵⁰ The decision is whether to take the nine-year-old child with them or not.¹⁵¹ Under the previous Texas law, leaving the child at home alone might be deemed a “substantial risk” to the child.¹⁵² At the same time, strapping a child into a vehicle and driving out onto the highways might justifiably be characterized as an even greater “substantial risk” to the child.¹⁵³ Maybe the parent can call on the child’s uncle to come stay with the child while they run to the store, but the uncle, although clean in recent months, has a history of substance abuse.¹⁵⁴ It could be a “substantial risk” to leave the child in the care of that uncle, perhaps a greater one than leaving the child alone.¹⁵⁵

148. *Id.* (“[Neglect includes] the leaving of a child in a situation where the child would be exposed to an immediate danger of physical or mental harm.”).

149. *Id.*

150. *See, e.g.,* Sonja Haller, *Single Mom Locked for Leaving 4-Year-Old Child in Car*, L. OFFS. GLEW & KIM, <https://glewkimlaw.com/stressed-mother-arrested-for-leaving-4-year-old-child-in-car/> (last visited Dec. 22, 2022) (describing a mother who was arrested for leaving her sick child in the car for twenty-five minutes while she went to purchase unsoiled clothes for the child).

151. *See, e.g.,* Sonja Haller, *Single Mom Locks Child in Car with the AC on and a Cellphone; Police Arrest Her at Job Fair*, USA TODAY (last updated July 8, 2019), <https://www.usatoday.com/story/life/parenting/2019/07/07/florida-mom-arrested-leaving-child-locked-car-while-job-fair/1669994001/> (presenting an example of the difficult choice a mother might have to make regarding leaving her children in the car when unable to acquire childcare as well as the consequences of doing so).

152. *See* TEX. FAM. CODE § 261.001(4)(A) (2017) (showing the previous statute defined neglect to include leaving a child “in a situation where the child would be exposed to a substantial risk of physical or mental harm,” which is extremely broad and would include numerous situations that do not usually result in harm, such as leaving a child at home for a short period of time).

153. *See* Kim Brooks, *Motherhood in the Age of Fear*, N.Y. TIMES (July 27, 2018), <https://www.nytimes.com/2018/07/27/opinion/sunday/motherhood-in-the-age-of-fear.html> (“Statistically speaking, a child is far more likely to be killed in a car on the way to a store than waiting in one that is parked.”). Societal norms in America have evolved to support the conclusion that driving a properly secured child around in a car is an acceptable risk, while leaving a child at home alone may not be. *See id.* (describing the shift in societal norms since the 1980s and how perceptions of immorality regarding leaving children alone affect perceptions of how dangerous such parenting may be). And the vague statutes are not helping. *See supra* Part II.D.

154. *See Parental Substance Use as Child Abuse*, CHILD.’S BUREAU: CHILD WELFARE INFO. GATEWAY 1 (last updated July 2019), <https://www.childwelfare.gov/pubPDFs/parentalsubstanceuse.pdf> (asserting that “[s]ubstance use disorders—including abuse of drugs or alcohol—that affect parents and other caregivers can have negative effects on the health, safety, and wellbeing of children”).

155. *See* Vickie Kropenske & Judy Howard, *Protecting Children in Substance-Abusing Families*,

Assume that the parent opts to take the child with them to the store, which is perhaps what most parents would do under these circumstances despite the fact that, until 2020, more kids died in car accidents than any other way.¹⁵⁶ Upon arriving at the store, the parent then decides to leave the sick child in the car for five minutes while dashing into the store for the medicine. This decision, too, might be deemed a “substantial risk” even though the child is far more likely to get hit by a car if he walks through the parking lot, and is far more likely to be exposed to a pandemic contagion in the store, than if the child stays in the car.¹⁵⁷

The upshot is that almost every parenting decision is an exercise in risk management involving a balancing of risks, many of which might be deemed substantial.¹⁵⁸ Therefore, a definition of neglect that requires only a finding that the parent left the child exposed to some such risk will condemn the parental act no matter what the parent chooses.¹⁵⁹ Such a legal standard would leave every Texas parent, making everyday parenting decisions, vulnerable to the whims of CPS caseworkers and arbitrary action by law enforcement.¹⁶⁰

Accordingly, the new statute in Texas helps significantly, affording greater discretion to parents.¹⁶¹ The “immediate danger” standard leaves parents far less vulnerable to the imaginations of state actors, who might otherwise justify intervention under a “substantial risk” standard anytime they can conjure a “parade of horrors” about what could have happened.¹⁶²

U.S. DEP’T OF HEALTH & HUM. SERVS. 68 (1994), <https://www.childwelfare.gov/pubPDFs/subabuse.pdf> (asserting assessment of relatives’ use of drugs and alcohol is critical when deciding on children’s placements, including asking whether the relative has a history of substance or alcohol abuse).

156. See Dustin Jones, *Firearms Overtook Auto Accidents as the Leading Cause of Death in Children*, NPR (April 22, 2022), <https://www.npr.org/2022/04/22/1094364930/firearms-leading-cause-of-death-in-children>.

157. See Andrea Peyser, *Kids More Likely to Die Outside of Hot Cars vs. Leaving Them in One*, N.Y. POST (Aug. 18, 2014), <https://nypost.com/2014/08/18/kids-more-likely-to-die-outside-of-hot-cars-vs-leaving-them-in-one/>.

158. See Pimentel, *supra* note 9, at 961–63.

159. See *id.*

160. See *id.* at 963 (questioning why the judgment of members of law enforcement, prosecutors, case workers, and juries regarding what constitutes reasonable parenting should be trusted over the judgment of parents themselves and noting that the problem with this arbitrary legal standard is “exacerbated by vagueness in the statutes and cultural biases about what constitutes appropriate parenting”).

161. See TEX. FAM. CODE § 261.001(4) (2021) (substituting the substantial risk standard with a higher standard requiring immediate danger for a finding of neglect).

162. See Dept. of Child. & Fam.’s, Div. of Child Prot. & Permanency v. E.D.-O., 82 A.3d 330, 334 (N.J. Sup. Ct. App. Div. 2014) (holding that no evidentiary hearing was required because it was easy

2. Respecting culture

The Texas statute goes on to specify what is not neglect: “allowing the child to engage in independent activities that are appropriate and typical for the child’s level of maturity, physical condition, developmental abilities, or culture.”¹⁶³ This provision reads very much like the Oklahoma statute—referring to maturity and abilities (and excluding age)—except that it includes activities that are appropriate and typical for the child’s “culture.”¹⁶⁴ This inclusion is important because parents should be entitled to raise their children consistent with their cultural norms, beliefs, and traditions.¹⁶⁵ For example, Scandinavians may insist on having their babies nap outdoors, even in frigid weather.¹⁶⁶ Large Latinx and Native American families may have a tradition of having older children care for their younger siblings.¹⁶⁷ Religious traditions may also form the foundation for parenting choices.¹⁶⁸

to imagine the “parade of horrors”: “Although there may be instances in which such an act may be fairly labeled ‘merely negligent,’ we need not describe at any length the parade of horrors that could have attended [E.D.-O.’s] neglect in concluding, as did the Director, that the act of leaving a child alone in a motor vehicle with its engine running, to enter premises 150 feet away, is a reckless act”), *rev’d*, 121 A.3d 832 (N.J. 2015).

163. TEX. FAM. CODE § 261.001(4)(B)(ii) (2022).

164. *See id.* (highlighting that culture may be taken into account when determining which activities are appropriate for a specific child).

165. *See* Marc H. Bornstein, *Cultural Approaches to Parenting*, 2 PARENT SCI. PRAC. 212, 212 (June 14, 2012) (“Central to a concept of culture . . . is the expectation that different cultural groups possess distinct beliefs and behave in unique ways with respect to their parenting.”).

166. *See* Helena Lee, *The Babies Who Nap in Sub-Zero Temperatures*, BBC NEWS (Feb. 22, 2013), <http://www.bbc.com/news/magazine-21537988>.

167. *See* Peter J. Pecora & Diana J. English, *Multi-Cultural Guidelines for Assessing Family Strengths and Risk Factors in Child Protective Services*, WASH. RISK ASSESSMENT PROJECT (Feb. 24, 1993).

168. *See, e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (upholding a parent’s right to withdraw children from school after the eighth grade). Various religious traditions may eschew sex education in schools—or even public education altogether—despite the fact the youth may be seriously endangered by their own resulting ignorance. *See, e.g., id.*; KRISTIN LUKER, *WHEN SEX GOES TO SCHOOL: WARRING VIEWS ON SEX—AND SEX EDUCATION—SINCE THE SIXTIES* 29–30 (2006) (citing the risk that uninformed children in the community impose on the entire community); Jesse R. Merriam, *Why Don’t More Public Schools Teach Sex Education?: A Constitutional Explanation and Critique*, 13 WM. & MARY J. WOMEN & L. 539, 566 (2007). Moreover, some religious traditions go so far as to reject certain aspects of modern medicine in favor of faith-based treatments for sick children. *See, e.g., The Christian Science Tradition: Religious Beliefs and Healthcare Decisions*, PARK RIDGE CTR. (Deborah Abbott ed., 2002), https://www.advocatehealth.com/assets/documents/faith/christian_science_final2.pdf. There are, however, limits to the degree to which society permits parents’ own religious beliefs to endanger the lives of young children. *See* James G. Dwyer, *The Children We Abandon: Religious Exemptions to Child Welfare and Education Laws as Denials of Equal Protection to*

The cultural differences surrounding these issues have been set in high relief by Netflix’s airing, starting in March 2022, of the Japanese reality show “Old Enough.”¹⁶⁹ Japanese society has for a long time recognized the capacity of schoolchildren, even very young schoolchildren, to navigate their way to and from school, through urban centers, and even changing trains.¹⁷⁰ This show takes the concept a step further, and features very young children, some as young as two years old, venturing out alone to run errands on the streets of Japan—something that would be unheard of in America.¹⁷¹ The cultural difference has sparked debate in the U.S. about how much independence is appropriate to afford to children at such young ages, underscoring the lack of a global, or even local, consensus on the subject.¹⁷² But even if the idea that children ages two and three can be trusted to complete meaningful errands and tasks, outside the home and without adult supervision, is a novel one in American society, Japanese society appears to view the question very differently.¹⁷³ As Japanese society and culture appears to be one of the most admired in the world,¹⁷⁴ it is difficult to argue that Japanese society is backward or wrong.¹⁷⁵

Children of Religious Objectors, 74 N.C. L. REV. 1321, 1365–1476 (1996).

169. See Cady Lang, *Why Old Enough is the Show You Should Be Watching Right Now*, TIME (Apr. 22, 2022), <https://time.com/6167580/old-enough-netflix/>.

170. *In Japan, First Graders Travel Solo to School on the Train*, CBS NEWS (Dec. 15, 2015), <https://www.cbsnews.com/news/japanese-young-children-solo-commute-subway-school/> [hereinafter *In Japan*].

171. See Lang, *supra* note 169.

172. See Esther Animalu, *Netflix Series Sparks Debate About Whether Toddler Participants Are Old Enough*, CBS NEWS (Apr. 15, 2022) <https://www.cbsnews.com/news/old-enough-netflix-series-debate-whether-toddler-participants-are/2>.

173. See *In Japan*, *supra* note 170 (“It’s a culturally indoctrinated understanding that children are supposed to be independent by the time they start grade school.”).

174. *Best Countries 2021*, U.S. NEWS (2021), <https://www.usnews.com/media/best-countries/overall-rankings-2021.pdf>. U.S. News observed that Japan is “one of the world’s most literate and technically advanced nations” and ranked it second (behind only Canada, and well ahead of the United States, which was ranked sixth) in its ranking of the world’s “Best Countries.” See *id.*

175. See *In Japan*, *supra* note 170 (describing Japan’s cultural expectation that children would be independent at an early age as well as societal safety tools and programs designed to encourage said independence). Indeed, many cultures have widely divergent approaches to parenting; there is room to learn from these other cultures rather than simply condemn them as ignorant or unenlightened. See, e.g., *id.* (providing an example of a Japanese American sociologist who has decided to embrace Japan’s cultural norm regarding childhood independence while living in Tokyo). Norwegian parents, for example, are less risk-averse than parents in other developed countries; they focus on teaching their children to be independent, empowering them to meet the challenges of life. See generally Patricia Obee et al., *Lessons Learned from Norway on Risky Play in Early Childhood Education and Care (ECEC)*, 49 EARLY CHILDHOOD EDUC. J. 99 (2021) (describing key takeaways from Norwegian education and childcare norms). In Ghana, many young adolescents and sometimes younger children

A legal standard that fails to respect cultural differences would give the enforcing authority power to force their own cultural norms on ethnic and religious subgroups in society.¹⁷⁶ Presumptions of cultural superiority—or the disrespect of another’s culture—have been appropriately condemned in the world today as exercises in cultural imperialism or neo-colonialism.¹⁷⁷ It is bad enough when states tell parents that their best judgment about child rearing is wrong; it is far worse for states to outlaw the cherished traditions of an entire cultural community.¹⁷⁸

migrate to other parts of the country without their parents; the experience is intended to benefit the child and to help socialize them into the culture. Padmore Adusei Amoah, *Perceptions of Neglect and Well-Being Among Independent Child Migrants in Ghana*, 13 CHILD INDICATORS RSCH. 455, 456 (2020). African American and Mexican American parents give greater emphasis to a child’s autonomy than do Chinese American and European American parents. Marie-Anne Suizzo, *Parents’ Goals and Values for Children: Dimensions of Independence and Interdependence Across Four U.S. Ethnic Groups*, 38 J. CROSS-CULTURAL PSYCH. 506, 510–12 (2007). Accordingly, such children are more often, and at an earlier age, integrated into completing daily tasks that might normally be expected of adults in white American society, including housekeeping, food preparation, and childcare. Andrew D. Coppens et al., *Children’s Contributions in Family Work: Two Cultural Paradigms*, FAMILIES, INTERGENERATIONALITY, & PEER GRP. RELS. 1 (S. Punch & R. Vanderbeck eds., 2016).

176. See, e.g., Indian Child Welfare Act, 25 U.S.C. § 1901 (finding “that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions”).

177. David Pimentel, *Rule of Law Reform Without Cultural Imperialism? Reinforcing Customary Justice Through Collateral Review in Southern Sudan*, 2 HAGUE J. ON RULE L. 1, 1, 17 (2010); see also, Indian Child Welfare Act, 25 U.S.C. §§ 1901–1963 (describing Congress as motivated by the need to protect Native culture from the involuntary imposition of white American values or, as the statute puts it, “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902)).

178. See, e.g., Indian Child Welfare Act, 25 U.S.C. § 1901 (“States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.”).

D. The Colorado Bill

The Colorado bill, which cleared both houses unanimously in March 2022,¹⁷⁹ provides:

- (b) A child is not neglected when allowed to participate in independent activities that a reasonable and prudent parent, guardian, or legal custodian would consider safe given the child’s maturity, condition, and abilities, including but not limited to activities such as:
 - (i) traveling to and from school, including walking, running, bicycling, or other similar mode of travel;
 - (ii) traveling to and from nearby commercial or recreational facilities;
 - (iii) engaging in outdoor play; and
 - (iv) remaining in a home or other location that a reasonable and prudent parent, guardian, or legal custodian would consider safe for the child.¹⁸⁰

The list of activities looks very similar to the lists in the Utah and Oklahoma bills.¹⁸¹ Colorado’s law reference to “remaining in a home or other location,” is a difference, as is Colorado’s failure to address leaving children in cars.¹⁸² “In a home” clearly reaches homes other than the child’s own home, unlike the other bills that use the phrase “at home.”¹⁸³ The phrase “or other location” also dramatically broadens the scope of the law, almost certainly to

179. Julia Fennell, *Bill to Foster Independence Among Colorado Youth Unanimously Passes State House*, COLO. NEWSLINE (Feb. 22, 2022, 1:21 PM), <https://coloradonewsline.com/briefs/foster-independence-colorado-youth-unanimously-house/>; Julia Fennell, *Youth ‘Reasonable Independence’ Bill Passed by Colorado Legislature*, COLO. NEWSLINE (Mar. 24, 2022, 12:04 PM), <https://coloradonewsline.com/briefs/reasonable-independence-bill-passes-colorado-legislature/>.

180. H.B. 22-1090, 73rd Gen. Assemb., 2d Reg. Sess. (Colo. 2022).

181. *See* S.B. 65, 2018 Leg., Gen. Sess. (Utah 2018) (explaining what does not count as neglect, which includes similar provisions the Colorado law); H.B. 2565, 1st Leg., 2021 Reg. Sess. (Okla. 2021) (outlining what is not considered neglect).

182. H.B. 22-1090.

183. *See id.* (stating in a home or other reasonable place is acceptable, which goes beyond the child’s home); S.B. 65 (stating at home, which does not include other places); H.B. 2565 (stating at home, which does not include places outside the child’s home).

include leaving kids in cars.¹⁸⁴ There is, however, a far more consequential difference in the Colorado bill.¹⁸⁵ Introducing the list, the legislature posits a “reasonable parent” standard, and it reiterates that standard to qualify the “[r]emaining in a home or other location” provision.¹⁸⁶ According to the language introducing the list, the list consists of mere examples of what “a reasonable and prudent parent . . . would consider safe given the child’s maturity, condition, and abilities.”¹⁸⁷ The language of the statute, however, officially declares all such independent activities, listed or not, to be outside the scope of the neglect statute if a reasonable and prudent parent would deem them safe.¹⁸⁸

It is worth noting that the “reasonable and prudent parent” language came from a federal statute passed in 2014, which was designed to grant greater discretion to foster parents.¹⁸⁹ The Preventing Sex Trafficking and Strengthening Families Act of 2014 was passed to, among other things, give foster parents the power to have greater discretion in day-to-day decisions regarding the activities of youth in their care.¹⁹⁰ The Act requires states to implement a “reasonable and prudent parent” standard of care by which foster parents and other childcare institutions must use in decisions concerning a child’s welfare.¹⁹¹ In doing so, foster parents can make normal parenting decisions with fewer trips to the case worker, and children have greater access to normal childhood activities like playing sports, participating in sleepovers, and learning to drive.¹⁹²

But even if the intent is to liberalize the power of parents and guardians,

184. See H.B. 22-1090 (stating other locations are included as acceptable places if a reasonable parent or guardian would consider it safe, which could include cars).

185. *Id.* (introducing a reasonable parent standard); S.B. 65 (mentioning standards relating to medical decision, but not indicating standard for parental conduct); H.B. 2565 (indicating a conscious disregard for safety standard).

186. H.B. 22-1090 (stating a reasonable parent standard applies and restating that standard when discussing if a child can stay at a location alone).

187. *Id.*

188. *Id.*

189. Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. No. 113-183, § 111, 128 Stat. 1919, 1923 (2014) (explaining reasonable and prudent parent standard and how it applies to foster parents).

190. *Id.*

191. *Id.*

192. *Id.* See generally *Normalcy for Youth in Foster Care*, CHILD.’S BUREAU: CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/outofhome/resources-foster-families/parenting/normalcy/> (last visited Dec. 22, 2022).

crafting the statute with reference to the “reasonable parent” may continue to carry risks for parents, as it may embolden law enforcement, CPS, judges, and jurors to second-guess parental decisions.¹⁹³ If they apply their own judgment of what is reasonable, perhaps with the benefit of hindsight, they may too easily conclude that these parents were not reasonable—particularly in cases where the child comes to harm—and adjudge the parents guilty of neglect.¹⁹⁴ Such standards come dangerously close to authorizing an “I would never do that” approach, which de facto condemns anyone perceived by the decision-maker to be less careful than the decision-maker.¹⁹⁵

Assuming the decision-maker (the officer, judge, or jury applying the statute) exercises care at a median level, that person is likely to condemn half the population for their parenting practices.¹⁹⁶ If I do what I think is reasonable, I might feel justified in condemning anyone who does less than that. In other words, if I think of myself as a “reasonable and prudent parent,” I am likely to view anyone whose care level falls below my personal standard as violating the law.¹⁹⁷ Moreover, if the decision-maker is someone who errs on

193. See Kari Anne Roy: *How Letting my Kid Play Alone Outside Led to a CPS Investigation*, DALLAS MORNING NEWS (Sept. 24, 2014), <https://www.dallasnews.com/opinion/commentary/2014/09/25/kari-anne-roy-how-letting-my-kid-play-alone-outside-led-to-a-cps-investigation/> (describing a case where a mother was under a CPS investigation for allowing her six-year-old son to play with her eight-year-old daughter near a bench 150 yards away from the porch of her home).

194. See Pimentel, *supra* note 9. Pimentel explains the problem of hindsight bias in the context of child neglect and endangerment, stating:

The wrongfulness of the parent’s act is the same whether or not the child comes to harm, but to a jury the fact of actual harm may be taken as proof that the parent’s choice was unreasonable. If the risk of harm is literally one in a million—in the category of “freak accident”—it would be patently unreasonable to expect any significant investment in precaution against that harm. And yet, every time that freak accident occurs, the parent may face liability for endangerment, as jurors are likely to take the fact of the harm itself as conclusive evidence of its likelihood: “[h]ere’s the problem—what might seem prudent precaution *before* an accident occurs might appear, in hindsight, to have been imprudent. That is, if an accident has occurred, the hindsight bias may tell us that the accident was more inevitable than we would have thought before.”

Id. at 981 (quoting ROBERT COOTER & THOMAS ULEN, *LAW & ECONOMICS* 51 (6th ed. 2012)) (other citations omitted).

195. See Kevane, *supra* note 38 (describing a case where a mother was prosecuted for leaving her tween unsupervised at the mall, with the prosecutor justifying the criminal charges on the ground that the prosecutor would never do that with her own child).

196. *Median*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/median> (last visited Dec. 22, 2022). The definition of “median” compels the conclusion that half of the relevant population are below the median and half are above. *Id.*

197. See Bernstein & Triger, *supra* note 43, at 1267 (“Diverse concepts of parenting endorse different values and embody different advantages for child rearing. For example, communities vary in

the side of caution, they might conclude that most parents are neglecting their children—for failing to exercise such caution—under that person’s subjective application of a “reasonable parent” standard.¹⁹⁸

The Colorado statute attempts to avoid that unfortunate application by specifying certain things—walking to school, playing outside, etc.—as independent activities that a reasonable parent would consider safe.¹⁹⁹ The hope is that these examples will help instruct decision-makers that their own fears about walking to school or playing outside should not be applied to prohibit other parents from allowing such activities, at least not if such activities would be considered safe “given the child’s maturity, condition, and abilities.”²⁰⁰ Again, this caveat leaves the door ajar.²⁰¹ Is your child of sufficient maturity and ability to walk to school alone?²⁰² The statute does not help parents know their legal risks with any certainty, and it gives only limited reassurance to the parents who want to trust their own instincts on the question.²⁰³

That said, the Colorado statute is a strong step in a good direction—it

their expectations of whether parents should serve as playmates of the young. Parents exercising Intensive Parenting are often their toddlers’ playmates.”).

198. *Id.* at 1268–69 (“Intensive Parenting is a culture-specific norm of child rearing. Yet, fear of legal liability, child abuse charges, and other state interventions (such as removal of child by social services) may force parents and communities to alter their heritage and traditions. . . . Once child rearing norms are incorporated into law, courts often find it hard to take diverse practices into account.”).

199. H.B. 22-1090, 73rd Gen. Assemb., 2d Reg. Sess. (Colo. 2022) (outlining independent activities a reasonable parent would consider safe).

200. *Id.* (stating factors to consider whether activity is safe).

201. *See* Calarco, *supra* note 141 (discussing how laws like this can still have a negative impact if people do not think your child should be out alone).

202. *Id.* (explaining how people can still be accused of neglect even if they believe their child is ready to do independent activities).

203. H.B. 22-1090. Interestingly, science is continually shedding greater light on children’s development. *See generally* John R. Best & Patricia H. Miller, *A Developmental Perspective on Executive Function*, 81 *CHILD DEV.* 1641 (2010) (reviewing research of executive function development from childhood to adolescence). Cognitive abilities, for example, grow dramatically between the ages of four and seven, so American society may be underestimating the capacity of seven-year-olds in this area. *Id.*; Philip David Zelazo, *Executive Function: Reflection, Iterative Reprocessing, Complexity, and the Developing Brain*, 38 *DEV. REV.* 55, 56 (2015). Theory of mind—the ability to think about one’s own and others’ mental states, including thoughts, desires, beliefs, and feelings—is already substantially developed by age four. HENRY M. WELLMAN, *MAKING MINDS: HOW THEORY OF MIND DEVELOPS* 63 (2014). Spatial abilities develop throughout childhood, particularly when children are exposed to maps, and elementary school students (at least those who walked to school) are apparently able to draw street maps in their community with a skill level comparable to that of adults. *See* Lynn S. Liben, *The Road to Understanding Maps*, 18 *CURRENT DIRECTIONS IN PSYCH. SCI.* 310, 310–11 (2009); Huê-Tâm Webb Jamme et al., *Between “Broken Windows” and the “Eyes on the Street:” Walking to School in Inner City San Diego*, 55 *J. ENV’T PSYCH.* 121, 133 (2018).

gives some guidance and couches the entire inquiry in terms of judgments that parents make into determining “what a reasonable and prudent parent would consider safe.”²⁰⁴ That standard cues the decision-maker to defer to others’ judgment, rather than apply their own idiosyncratic sense of what may or may not be reasonable.²⁰⁵

IV. BILLS PROPOSED BUT NOT SIGNED INTO LAW

Bills have been proposed in a variety of other states, but they have fallen short of enactment.²⁰⁶ A partial list of such bills includes nine states:

- Connecticut²⁰⁷
- Nevada²⁰⁸
- Idaho²⁰⁹
- South Carolina²¹⁰
- Nebraska²¹¹
- Arkansas²¹²
- Illinois²¹³
- Oregon²¹⁴
- Pennsylvania²¹⁵

204. Note from Diane Redleaf to author (Aug. 25, 2022) (on file with author). Diane Redleaf argues that what “a reasonable parent” would consider safe—as a legal standard—is different from what “the [hypothetical] reasonable parent” would consider safe. *Id.* She would argue that if any parent, from the domain of reasonable parents out there, would consider this safe, then the statute protects that judgment; if there is at least one reasonable parent out there who would consider this safe, then the parent is in the clear. *Id.*

205. See Josh Gupta-Kagan, *Confronting Indeterminacy and Bias in Child Protection Law*, 33 STAN. L. & POL’Y REV. 217, 236 (2022) (“While positive court decisions do exist, Gilman concludes that ‘most courts . . . easily find noneconomic’ grounds to explain parents’ neglect. Notably, courts do so through subjective determinations—what Gilman calls ‘euphemisms for poverty’—such as ‘immaturity, nonchalance, poor decisionmaking, inattentiveness, [and] instability.’”).

206. See Redleaf, *supra* note 15 (discussing how some states have proposed similar laws that have not been enacted yet).

207. S.B. 806, 2019 Gen. Assemb., Jan. Sess. (Conn. 2019).

208. S.B. 143, 81st Leg. (Nev. 2021).

209. H.B. 3, 66th Leg., 1st Reg. Sess. (Idaho 2021).

210. S.B. 79, 123rd Gen. Assemb., Reg. Sess. (S.C. 2019).

211. Leg. B. 1000, 107th Leg., 2d Sess. (Neb. 2022).

212. S.B. 12, 92nd Gen. Assemb., Reg. Sess. (Ark. 2019).

213. H.R. 2334, 101st Gen. Assemb. (Ill. 2019).

214. S.B. 368, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

215. H.R. 1022, 2019 Gen. Assemb., Reg. Sess. (Pa. 2019).

It appears that some preliminary work was done on bills in Delaware and Georgia,²¹⁶ and work is underway in Michigan, Virginia, and Washington, D.C..²¹⁷ Although the efforts in these fourteen states have not yet borne fruit, their failure to date has usually been due to factors unrelated to the merits of the bills themselves.²¹⁸ Indeed, in most of the states where the childhood independence bills have been introduced, they have had no identifiable opposition and have garnered general support from both sides of the partisan divide.²¹⁹ But legislatures have various ways of prioritizing their work, and often have sharp deadlines for hearing proposals.²²⁰ Indeed, the Colorado bill was proposed in 2020 and was set for passage when the legislature closed due to the pandemic two days before the bill was set for a vote in the Senate.²²¹ Childhood independence has not always commanded the attention it deserves and has been frequently displaced on legislative dockets by more immediate and compelling political priorities.²²² Nonetheless, a closer look at a few of these as-yet unpassed bills is worthwhile.²²³

216. See Redleaf, *supra* note 15.

217. Note from Diane Redleaf to author (Aug. 25, 2022) (on file with author).

218. Interview with Diane Redleaf (June 17, 2022). Ms. Redleaf has played a major role in drafting and promoting these bills and speaks from her first-hand experience in tracking the various legislations' progress. *Id.* Many bills with bipartisan support fail because the legislature simply runs out of time, and only bills that are identified as high priorities get hearings and votes. *Id.* Other bills suffer because of unrelated political wrangling. *Id.*

219. *Id.* The Colorado bill passed both houses unanimously in 2022. Lenore Skenazy, *Colorado Approves Law That Gives Kids 'Reasonable Independence,'* REASON (Apr. 1, 2022), <https://reason.com/2022/04/01/colorado-approves-law-that-gives-kids-reasonable-independence/>; see *Texas Becomes Third State to Enshrine "Reasonable Childhood Independence" Into Law,* *supra* note 120 (noting that the Texas law "enjoyed bipartisan support, sailing through the Texas Senate unopposed, and winning the House with a vote of 143 to 5"); *id.* ("You had the most right-wing members of the legislature signed on with most left-wing members," said Andrew Brown, distinguished senior fellow for child and family policy at the Texas Public Policy Foundation. The bill was so popular, he said, "because it's a commonsense reform."").

220. See, e.g., *Deadline Schedule for 2023 Colorado General Assembly,* COLO. LEGIS. COUNCIL STAFF (July 21, 2022), https://leg.colorado.gov/sites/default/files/2023_deadline_schedule_1.pdf (outlining deadlines to hear bill proposals and when they must be approved)

221. Note from Diane Redleaf to author (Aug. 25, 2022) (on file with author).

222. *Id.* The bill in South Carolina, for example, was held up for a long time by redistricting issues which commanded priority attention in the legislature. *Id.* It finally got to a hearing the last week of the session and had no opposition, but it still failed to reach a vote. *Id.*

223. See *infra* Sections IV.A–D (discussing bills that were proposed but not signed into law).

A. *The Arkansas Bill*

The Arkansas bill attracted some attention in 2017, but ultimately failed to secure passage.²²⁴ Although it flew through the Senate with bipartisan support, it stalled in the House after House Speaker Jeremy Gillam (R) asserted that according to the “latest statistics” it takes just thirty-seven seconds to carjack a vehicle with a child inside.²²⁵ That bit of fearmongering was enough to sap the bill’s momentum.²²⁶ It languished until the end of the legislative session without further action, despite the fact that carjacking is a threat almost entirely unrelated to childhood independence.²²⁷

Curiously, the Arkansas bill, unlike the statutes enacted above, did not include a catch-all provision.²²⁸ The list itself includes four key, and by now familiar, categories of activities that do not in themselves constitute neglect: (1) getting to and from school, (2) outdoor play, (3) being left in a car, and (4) remaining at home.²²⁹ The proposed bill provided the following definition of neglect:

- (C) “Neglect” does not include a parent, custodian, guardian, or foster parent who permits his or her child to perform the following actions unsupervised if the child is of sufficient capacity to avoid immediate danger and a significant risk of harm:
- (i) Travel to and from school including without limitation

224. Lenore Skenazy, *Arkansas Rejects Free-Range Kids Bill Because Legislators Think They’re Better Parents Than You*, REASON (Apr. 4, 2017), <https://reason.com/2017/04/04/arkansas-rejects-free-range-kids-bill-be/>.

225. *Id.* Indeed, the archetypal carjacking involves forcing the driver from the vehicle at gunpoint. *Preventing Carjacking*, TEX. A&M UNIV. CENT. TEX., <https://www.tamuct.edu/police/campus-safety/safety-carjack.html> (last visited Dec. 22, 2022) (stating carjacking is often a violent crime when “[t]he robber(s) point a gun or other weapon at the driver and force the driver to turn over the car”). The presence of a driver suggests that any children in the car are not, in fact, enjoying any degree of childhood independence at the time of the carjacking. *See id.* The comment appeared calculated to suggest that we live in such very dangerous times that we should be living in constant fear. *See Skenazy, supra* note 224 (noting the prevalence of the “fear of our times—that children are in constant danger”). And fear is the strongest force in resistance to childhood independence initiatives. *See* DANIEL GARDNER, *THE SCIENCE OF FEAR: WHY WE FEAR THE THINGS WE SHOULDN’T—AND PUT OURSELVES IN GREATER DANGER* 155–81 (2008).

226. *See Skenazy, supra* note 224 (noting after House Speaker Gillam stated the “latest statistics,” members of the House Judiciary Committee voted down the legislation to “tweak the legal definitions of child neglect and maltreatment in Arkansas”).

227. *Id.*

228. *See* S.B. 12, 92nd Gen. Assemb., Reg. Sess. (Ark. 2019) (failing to include a catch-all provision).

229. *See id.*

- traveling by walking, running, or bicycling;
- (ii) Engage in outdoor play;
 - (iii) Remain for less than fifteen (15) minutes in a vehicle if the temperature inside the vehicle is not or will not become dangerously hot or cold; or
 - (iv) Remain at home before and after school if the parent, custodian, guardian, or foster parent:
 - (a) Returns home on the same day on which the parent, custodian, guardian, or foster parent gives the child permission to remain at home;
 - (b) Makes provisions for the child to be able to contact the parent, custodian, guardian, or foster parent on the same day on which the parent, custodian, guardian, or foster parent gives the child permission to remain at home; and
 - (c) Makes provisions for any reasonably foreseeable emergencies that may arise on the same day on which the parent, custodian, guardian, or foster parent gives the child permission to remain at home.²³⁰

There is no provision for getting to and from recreational facilities or commercial establishments.²³¹ Far more significant is the fact that it is a closed list: one with no catch-all referencing other “similar independent activit[ies].”²³² Because it lacked the catch-all provision, or “including but not limited to” language, the Arkansas Bill arguably would not have helped parents who sent their kids to the movies or to the store.²³³

The provision about leaving kids in the car stands out because, unlike the other bills, it specified a specific period of time—“less than fifteen minutes”—that would avoid the characterization as neglect.²³⁴ The particular time limit

230. *Id.*

231. *See id.* (failing to include a provision regarding getting to and from recreational facilities or commercial establishments).

232. *See, e.g.*, UTAH CODE § 80-1-102(58)(b)(iv)(F) (containing a catch-all provision).

233. *See* S.B. 12 (failing to include a catch-all provision, thus not including parents who sent their kids to the movies or to the store). It is possible, however, that if they sent their kids to the park, the “outdoor play” provision might have been invoked in their favor, even absent a “travel to and from recreational facilities” clause. *See id.* (noting the bill includes “outdoor play” as an activity that does not in itself constitute neglect).

234. *See id.* (specifying a time less than fifteen minutes and undangerous temperatures for a child to remain in a vehicle to not constitute neglect).

may or may not be helpful; certainly there are kids you could leave in a car without supervision for twenty minutes or more without exposing to serious risk (including, most obviously, children who are old enough to drive).²³⁵ At the same time, the fifteen-minute specification gives concrete guidance to parents, who could take care to comply with the fifteen-minute limit and have some degree of confidence that they could avoid liability if they do.²³⁶

As to the fourth item, the bill seems to get mired a bit in the details.²³⁷ Unlike the simple phrasing ultimately used in the Utah bill—“remaining at home unattended”—the Arkansas bill included some curious qualifications.²³⁸ Arkansas would permit leaving a child unattended only if it is “before and after school,” which means it would not have applied to leaving a child alone on a weekend, or during a holiday or summer break from school, and it is not clear how it might apply to a homeschooled child.²³⁹ But further, leaving a child unattended would avoid a characterization as neglect only if the parent “[r]eturns home on the same day . . . , [m]akes provisions for the child to be able to contact the parent . . . , and [m]akes provisions for any reasonably foreseeable emergencies.”²⁴⁰

Notably, the Arkansas bill’s language proved useful to the Model Law drafters ALEC and Let Grow.²⁴¹ The preamble to the bill has been used in proposed legislative findings in both the model and in other state proposals.²⁴²

235. *See id.* (referencing the fifteen-minute time limit). The most serious risk to children is from the car heating up, so in situations where temperatures are not likely to rise too high, a child could stay much longer than fifteen minutes. *See Heatstroke*, KIDSANDCARS.ORG, <https://www.kidsandcars.org/how-kids-get-hurt/heat-stroke/> (last visited Dec. 22, 2022).

236. *See* S.B. 12 (referencing the notion that no neglect will be found if the child remains in the vehicle for less than fifteen minutes and the temperatures are not dangerously extreme).

237. *Id.*

238. *Compare* Utah Code § 80-1-102(58)(b)(iv)(F) (including more broad category which gives parents more leeway) *with* S.B. 12 (including specific details that do not anticipate other situations).

239. *See* S.B. 12 (referencing the fourth provision of the Arkansas Bill, stating there is no neglect if a parent allows a child to “remain at home before and after school” if certain additional conditions are met, but leaving no mention of weekends, holidays, breaks from school, or homeschool).

240. *Id.*

241. *See Model Laws*, *supra* note 94 (basing Let Grow’s Model Bill Number 2 in part on Arkansas and Illinois Law); *see Child Protection Investigations Reform Act*, AM. LEGIS. EXEC. COUNCIL (July 28, 2022), <https://alec.org/model-policy/child-protection-investigations-reform-act/> (incorporating concepts of parental neglect into ALEC’s model policy).

242. Note from Diane Redleaf to author (Aug. 25, 2022) (on file with author) (citing the Nevada bill as one of the bills that drew on the Arkansas bill for its legislative findings).

B. *The South Carolina Bill*

In 2019, the South Carolina legislature considered a reasonable childhood independence bill,²⁴³ which was approved by the Senate Judiciary Committee that February.²⁴⁴ In 2022, the South Carolina legislature took up the bill again.²⁴⁵ The hearings on these bills attracted some media attention because a couple of children, ages six and nine, testified before the committees, telling them why they felt they needed the law to protect their independence.²⁴⁶ The irresistible appeal of a child witness, simultaneously adorable and impressively articulate, made for good media coverage.²⁴⁷ Nonetheless, the bill stalled in the legislature—never making it through the House on the first round of effort and not getting called for a vote of the full Judiciary Committee on the second attempt—and never reached the governor’s desk.²⁴⁸

The substance of the bill closely tracked the language of the Utah bill, although it included the three-part clarification, seen in the Arkansas bill, of when a child may be left at home unattended:

- (b) ‘Child abuse or neglect’ or ‘harm’ does not occur if the parent, guardian, or other person responsible for the child’s welfare permits the child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities, including:
 - (i) walking, running, bicycling, or taking other independent means of travel to and from school;
 - (ii) walking, running, bicycling, or taking other independent means of travel to and from nearby commercial or

243. S.B. 79, 2019 Gen. Assemb., 123rd Sess. (S.C. 2019).

244. Kirk Brown, *South Carolina’s Free-Range Parenting Bill Explores at What Age Can Kids be on Their Own*, GREENVILLE NEWS (Feb. 19, 2019), <https://www.greenvilleonline.com/story/news/local/south-carolina/2019/02/19/home-alone-free-range-parenting-how-young-too-young-children-their-own/2908116002/>.

245. H.B. 4555, 2022 Gen. Assemb., 124th Sess. (S.C. 2022) (introducing a bill in the House of Representatives to amend the code of laws of South Carolina to enact the “Parental Bill of Rights” in 2022).

246. Lenore Skenazy, *6-Year-Old Testifies: “If I Couldn’t Play Outside Alone, I’d Be Mad”*, LET GROW, <https://letgrow.org/6-year-old-testifies/> (last visited Dec., 2022); Lenore Skenazy, *9-Year-Old Testifies on Behalf of South Carolina’s Free-Range Parenting Bill*, LET GROW, <https://letgrow.org/9-year-old-testifies-on-behalf-of-south-carolinas-free-range-parenting-bill/> (last visited Dec. 22, 2022).

247. See Skenazy, *supra* note 246 (showing videos of Caroline, an adorable six-year-old girl, testifying in front of the South Carolina Senate Judiciary Committee that there should not be specific age limits on when children can start doing some things on their own).

248. S.B. 79; S.B. 288, Gen. Assemb., 124th Sess. (S.C. 2021).

- recreational facilities;
- (iii) engaging in outdoor play;
 - (iv) remaining at home unattended if the parent, guardian, or other person responsible for the child's welfare:
 - (A) returns home on the same day on which the parent, guardian, or other person responsible for the child's welfare gives the child permission to remain at home;
 - (B) makes provisions for the child to be able to contact the parent, guardian, or other person responsible for the child's welfare on the same day on which the parent, guardian, or other person responsible for the child's welfare gives the child permission to remain at home; and
 - (C) makes provisions for any reasonably foreseeable emergencies that may arise on the same day on which the parent, guardian, or other person responsible for the child's welfare gives the child permission to remain at home; or
 - (v) engaging in similar independent activities.²⁴⁹

The three provisions that qualify when a child may be left unattended may sound reasonable in the abstract, but they may do more harm than good.²⁵⁰ The attempt to anticipate particular circumstances, and account for them, ultimately raises questions about any other scenario, not anticipated by the statute.²⁵¹ For example, the “same day” language may seem reasonable, but what if a parent leaves a nine-year-old alone sleeping while she ducks out on a late-night errand that runs from 11:00 p.m. to 12:30 a.m.²⁵² The statute would appear to prohibit this ninety-minute absence (because it bridges two days) when the absence is unlikely to even be noticed by the child, but allows the parent to leave the child during the entire day when the child is awake and far more likely to benefit from the parent's attention and assistance.²⁵³

249. S.B. 79.

250. *See id.* (referencing provisions A, B, and C of subsection (b)(iv)).

251. *See id.* (insinuating whether the specific circumstances described by provisions A, B, and C of subsection (b)(iv) give rise to ambiguities in the statute).

252. *See id.* (referencing the notion that a child may be left home unattended if the parent, guardian, or other person responsible for the child's welfare returns home on the same day, makes provisions for contact on the same day, and makes provisions for any reasonably foreseeable emergencies that may arise on the same day).

253. *See id.* (demonstrating that the “on the same day” language from the statute may be read to

Unlike the Arkansas bill, this one included the catch-all for “similar independent activities.”²⁵⁴ And the South Carolina bill, like Utah, but unlike any other state, mentions “age” in terms of whether the child is of “sufficient age and maturity” to take precautions against harm or the risk of harm.²⁵⁵

C. *The Nevada Bill*

In 2021, the Nevada legislature took up a childhood independence bill.²⁵⁶ The bill would have provided that a person does not commit criminal child neglect solely by virtue of the fact that the person: “(b) Consents to a child engaging in any activity that constitutes an independent activity as provided by the regulations adopted by the Division of Child and Family Services of the Department of Health and Human Services pursuant to subsection 3 of NRS 432B.020.”²⁵⁷ It went on to add that a child would not be abused or neglected based solely on the following reasons:

2. . . .

(c) The child is alone or with other children and is:

- (1) Outside the direct supervision of a parent or guardian of the child, a stepparent of the child with whom the child lives or an adult person who is continually or regularly found in the same household as the child; and
- (2) Engaged in an independent activity.

3. The Division of Child and Family Services shall, in consultation with each agency which provides child welfare services, adopt regulations necessary to carry out the provisions of this section, including, without limitation, regulations that provide which activities constitute an independent activity for the purposes of subparagraph (2) of paragraph (c) of subsection 2. Such activities may include, without limitation:

- (a) Traveling to and from school or nearby commercial or recreational facilities;
- (b) Engaging in outdoor play; or

apply only to the time from 12:00 a.m. to 11:59 p.m. on the any given calendar date).

254. *See id.* (referencing subsection (b)(v) of the statute).

255. *Id.*

256. S.B. 143, 2021 Leg., 81st Sess. (Nev. 2021).

257. *Id.* (proposed Nevada child neglect law).

(c) Remaining at home unattended.²⁵⁸

The Nevada bill presents a very interesting approach: delegating the authority to an agency to define what constitutes an “independent activity” for purposes of the statute.²⁵⁹ This delegation includes some guidance for the responsible agency, suggesting that the regulations permit several of the activities identified in the other statutes, including getting themselves to and from school, business, and recreation facilities; playing outdoors; and staying home unattended.²⁶⁰

This approach enables the legislature to “pass the buck” to the agency, which may be reassuring to legislators who are reluctant to micromanage the prevailing child neglect standards, and who want to defer to more knowledgeable people to draw those lines.²⁶¹ It is impossible to know what regulations the agency might have come up with, because the bill never became law.²⁶² It is possible, however, that the agency would have been reluctant to allow too much child independence, as it would (1) relinquish some measure of the agency’s power and authority, and (2) open the agency up for criticism if a child engaged in such independent activity came to harm.²⁶³

As to this latter point, it is important to note how potential criticism of the agency may motivate agency policies, which, in this case, could include the actual terms of any regulations promulgated under the proposed Nevada statute.²⁶⁴ I explored agency motivations in an earlier article, noting:

258. *Id.*

259. *See id.* (proposing that the Division of Child and Family Services, along with other agencies which provide child welfare services, shall adopt regulations providing which activities constitute an independent activity).

260. *See id.* (referencing Section 1.5.3(a)–(c)).

261. *Id.* (stating the Division of Child and Family Services shall adopt regulations “in consultation with each agency,” suggesting the agencies will carry the burden of determining which activities are independent and which are due to neglect).

262. S.B. 143, NEVADA STATE LEGISLATURE, <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/7523/Overview> (last visited Dec. 22, 2022) (listing history of the bill, specifically that the bill did not pass in the assembly).

263. Kate Hollenbeck, *Between a Rock and a Hard Place: Child Abuse Registries at the Intersection of Child Protection, Due Process, and Equal Protection*, 11 TEX. J. WOMEN & L. 1, 34–42 (2001) (describing the dilemma child protection agencies face when they follow an “underinterventionist” approach).

264. *See* S.B. 143, 2021 Leg., 81st Sess. (Nev. 2021) (leaving discretion to the agency to enforce the actual terms of the Nevada statute).

[A]nother incentive for CPS to swiftly remove children from their family is the fear of public reprisal if it does not intervene. If CPS receives a report but dismisses the allegation as unsubstantiated, the resulting fallout if the child is later harmed reflects poorly on the agency. The pressure exerted by public opinion is illustrated by the media outrage that surrounded the death of a six-year-old girl in New York City in 1995. Responding to the public outcry, the commissioner of the city's child welfare agency initiated an aggressive policy toward parents suspected of child abuse or neglect. The commissioner declared that "any ambiguity regarding the safety of the child will be resolved in favor of removing the child from harm's way. Only when families demonstrate to the satisfaction of [the agency] that their children are safe and secure will the children . . . be returned to the home." The removal rates in that jurisdiction skyrocketed from 8,000 in 1995 to nearly 12,000 just two years later. In addition, the city increased its number of neglect cases from 6,658 in 1995 to nearly 11,000 in 1998.²⁶⁵

It is easy to imagine that a Nevada agency, entrusted with the drafting of regulations, would be slow to authorize independent activities that might later bring a child to harm, even due to fluke or freak accident.²⁶⁶ It may fear the blowback if anything goes wrong.²⁶⁷

At the same time, an agency might well embrace the legislation, seizing any opportunity to divest itself of responsibility for a wide swath of cases where the risk of harm to children is minimal.²⁶⁸ Agencies typically struggle with limited resources under heavy caseloads.²⁶⁹ If the legislation gives the agency enough cover, it may be very happy to have an official reason to ignore

265. Pimentel, *supra* note 10, at 273 (citing Hollenback, *supra* note 263 (citations omitted) (discussing the criticism child protective agencies face if they fail to intervene in a situation)); Symposium, *The Rights of Parents with Children in Foster Care: Removals Arising from Economic Hardship and the Predicative Power of Race*, 6 N.Y. CITY L. REV. 61, 61–62, 64 (2003) (discussing the 1995 case in New York City and its fallout).

266. Pimentel, *supra* note 10 (explaining that child protective agencies may overprotect children in fear of the consequences of not doing so).

267. *Id.* (exploring the pressure of public opinion on child protective agencies).

268. See S.B. 143 (leaving ample room for interpretation on what is deemed to be an "independent activity," thus affording child protection agencies security to intervene less).

269. Rob Geen & Karen C. Tumlin, *State Efforts to Remake Child Welfare: Responses to New Challenges and Increased Scrutiny*, URB. INST. 3–4 (Sept. 9, 1999), <http://webarchive.urban.org/publications/309196.html>.

simple “left at home” cases, or “playing outside” cases.²⁷⁰

In either case, delegating this issue to administrative agencies is a risky and problematic approach to solving the problem.²⁷¹ Indeed, it may be the agency, as much as anyone, that created the problem by overreacting to comparatively innocuous parenting choices.²⁷² Introducing the bureaucratic process of administrative rulemaking is unlikely to simplify the issue or resolve it.²⁷³ Indeed, any hearings or notice-and-comment opportunities may have the opposite effect, giving fearmongers a platform to further advocate for state enforcement of hyper-protective parenting.²⁷⁴

D. *The Idaho Bill*

A bill was introduced in the Idaho house in 2021,²⁷⁵ but it failed to get any traction in committee.²⁷⁶ No hearings were held, and no votes were taken.²⁷⁷ But its language deserves attention.²⁷⁸ It proposed a simple change to the statutory definition of “neglect” as follows.²⁷⁹

(31) “Neglected” means a child:

- (a) Who is without ~~proper~~necessary parental care and control, or subsistence, medical or other care or control necessary for his ~~well being because of the conduct or omission of~~ health and

270. See S.B. 143 (deeming “outdoor play” and “remaining at home unattended” as independent activities and not to be considered neglect). See generally Geen & Tumlin, *supra* note 269, at 5 (noting the belief of many groups that the child welfare system has long been underfunded).

271. See generally Michelle Goldberg, *Has Child Protective Services Gone Too Far?*, THE NATION (Sept. 30, 2015), <https://www.thenation.com/article/archive/has-child-protective-services-gone-too-far/> (noting case where parents were cited for letting the children walk to the park on their own and threatened with having their children removed).

272. *Id.*

273. See generally Josh Gupta-Kagan, *America's Hidden Foster Care System*, 72 STAN. L. REV. 841 (2020) (explaining how the wide discretion given to child protective agencies has created a “hidden foster care system” in which families are frequently separated for inadequate reasons).

274. Paul Chill, *Burden Of Proof Begone: The Pernicious Effect of Emergency Removal in Child Protective Proceedings*, 41 FAM. CT. REV. 457, 461 (2003) (describing the one-sidedness of child removal proceedings which is exacerbated by the resource imbalance between the government and poor families).

275. H.R. 3, 66th Leg., 1st Reg. Sess. (Idaho 2021).

276. *House Bill 3*, IDAHO LEGISLATURE (last visited Dec. 22, 2022), <https://legislature.idaho.gov/sessioninfo/2021/legislation/H0003/> (listing the bill’s history).

277. *Id.* (listing the history of the bill).

278. H.R. 3.

279. *Id.*

safety or who is placed in an obviously dangerous situation given the child's level of maturity, physical condition, or mental abilities due to the conscious disregard of obvious needs or obvious dangers to the child by his parents, guardian or other custodian or their neglect or refusal to provide them and that action or omission results in bodily injury or a substantial risk of bodily injury or a substantial risk of immediate and grave harm to the child due to the conscious disregard of parental or caretaker responsibilities; however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; nor shall any child be considered neglected by virtue of engaging in independent activities, including but not limited to:

- (i) Traveling to and from school, including by walking, running, or bicycling;
- (ii) Traveling to and from nearby commercial or recreational facilities;
- (iii) Engaging in outdoor play;
- (iv) Remaining at home unattended;
- (v) Remaining in a vehicle if the temperature inside the vehicle is not or will not become dangerously hot or cold; or
- (vi) Engaging in other independent activities.²⁸⁰

The listing of permissible activities at the end has been discussed above in the context of legislation in other states,²⁸¹ of course, but what is important in this bill is the more general framing of what it means for a child to be “neglected.”²⁸² The current law in Idaho says children are neglected if they are without “proper” care, control, or subsistence, because of the “conduct or omission” of their parents.²⁸³ Under this statute, parents could be held responsible for child neglect if they merely “omit” to provide care or control that

280. *Id.*

281. *See supra* Sections IV.A–C (discussing the listing of permissible activities in Arkansas, South Carolina, and Nevada legislation).

282. H.R. 3.

283. IDAHO CODE ANN. § 16-602 (West 2018).

someone else—a state authority, presumably—deems “proper.”²⁸⁴ The potential for the State to invade the province of the parents is enormous under this statute—any unconventional parenting approach, no matter what motivates it, is vulnerable to being labeled as falling short of “proper.”²⁸⁵ Substituting the words “necessary . . . [for his] health or safety,” as proposed in this legislation, for the word “proper” would give the parents far more latitude.²⁸⁶

V. BILL STRUCTURE AND CONTENT

A. Listing what is not Child Neglect

As shown above, many of these statutes set forth a specific list of what is acceptable for parents to let kids do.²⁸⁷ Lists are great, in terms of reassuring parents.²⁸⁸ If the parents know that leaving their ten-year-old unsupervised at home for an hour is not alone sufficient to support a finding of neglect, they may be emboldened to do so, trusting their own judgment without fear of official censure or other legal consequences.²⁸⁹ If our purpose is to reassure and protect parents, it may be critical to enable them to cite chapter and verse about why what they are doing is legal.²⁹⁰

But, as noted above, this approach implicitly assumes that parents cannot do anything without permission from the State.²⁹¹ It sets the State up as the ultimate authority on child-rearing activity, which is a problematic premise.²⁹² Ideally, a parent should be permitted to do whatever he or she deems best, without second-guessing by the State.²⁹³ The State should be permitted to intervene in the family—in an exercise of *parens patriae* power—if and only

284. *Id.*

285. *Id.*

286. Compare H.R. 3 (using more broad “necessary” language), with IDAHO CODE ANN. § 16-602 (West 2018) (using more constrictive “proper” language).

287. *Supra* Part IV.

288. See, e.g., H.R. 3 (reassuring parents that the activities listed are not considered neglect).

289. *Id.* (listing activities that are not considered neglect, including “remaining at home unattended,” so parents may allow their children to engage in these independent activities without apprehension).

290. See, e.g., *id.* (cataloging which activities are okay for parents to allow their children to engage in, thus ensuring parents can quote the legislation to ensure they are not culpable).

291. See, e.g., *id.*

292. See Pimentel, *supra* note 131.

293. See *id.* (noting how parents will waive their constitutional rights when threatened with having their children taken).

if it is necessary to protect children.²⁹⁴

The problem, of course, is that there are too many ways children can be harmed or otherwise put at risk.²⁹⁵ If we specify only what parents cannot do in the statute (e.g., anything that subjects a child to immediate danger), then the statutory terms become inevitably vague and open to idiosyncratic interpretation.²⁹⁶ The vagueness of the statutes is precisely what is enabling the authorities to meddle in cases like Melissa Henderson's, where allowing a child to be outside was deemed unacceptable by a deputy sheriff because: snakes!²⁹⁷

Accordingly, there are no simple "quick fixes" to solve the problem.²⁹⁸ No one wants to be casual about genuine child abuse or leave children vulnerable, and at the mercy of, adults in their lives who may mistreat them.²⁹⁹ But it is difficult to crack down on abuse and mistreatment while giving fit (albeit imperfect) parents the grace they need, if not the benefit of the doubt they require, to do their jobs as nature prescribed³⁰⁰ and as the Constitution

294. See Pimentel, *supra* note 58.

295. See generally Child Safety and Injury Prevention, DEP'T HEALTH, STATE GOV'T OF VICTORIA, AUSTRALIA: BETTER HEALTH, <https://www.betterhealth.vic.gov.au/health/healthyliving/child-safety-and-injury-prevention> (last visited Dec. 22, 2022) (noting that you cannot completely childproof a home).

296. See generally Ilya Shapiro, *Vague Laws Defy the Rule of Law*, CATO INST. (Dec. 17, 2009), <https://www.cato.org/blog/vague-laws-defy-rule-law> (noting that vague laws result in discriminatory enforcement because interpretation is left to individual government officials); see, e.g., OHIO REV. CODE ANN. § 2151.31 (West 2013) (requiring "immediate danger" to remove a child); TEX. FAM. CODE ANN. § 262.104 (West 2013) (requiring "immediate danger" to remove a child).

297. See, e.g., *Single Mother Handcuffed*, *supra* note 1 (explaining that Melissa Henderson is facing criminal reckless conduct charges in Georgia because she allowed her 14-year-old to babysit her younger sibling, and the deputy sheriff who intervened cited being bitten by a snake as a hypothetical outcome of the situation).

298. See generally Hollenbeck, *supra* note 263 (explaining the difficulties faced by child protective agencies that intervene both too much and too little).

299. See *id.* (describing that although increasing protection for children may infringe constitutional rights of suspected abusers, many child protection professionals favor increasing protection because higher value is placed on protecting children).

300. See also Pimentel, *supra* note 58. Indeed, natural selection should have weeded any parents—of any species—that do not care adequately for their own kids. See generally *How Does Natural Selection Work?*, AM. MUSEUM OF NAT. HIST., <https://www.amnh.org/exhibitions/darwin/evolution-today/natural-selection-vista> (last visited Dec. 22, 2022) (noting that natural selection means that the breeding cycles should filter out less-desirable traits). Evolution should have brought the human species to the point where parents care for their kids in the ways that are most conducive to the children's success and survival. *Id.* Even those whose faith calls upon them to reject the concept of natural selection would likely argue that parents are endowed by Providence with a sacred trust over their children's welfare, that the family is the best protector of children, and that intrusions and disruptions of the family are contrary to Divine design. Dawn Hill, *What Responsibility Do Parents Have in*

dictates.³⁰¹

B. *Qualifying Neglect in Terms of the Child's Age or Maturity*

It is tempting to define a child's capacity for independence in terms of the child's age.³⁰² In almost every case, a child's capacity for responsibility and self-sufficiency increases with the child's age.³⁰³ At the same time, it is clear that children of the same age exhibit widely varying levels of responsibility.³⁰⁴ Parents can tell you how they may trust their eleven-year-old to care for a baby sibling, but how they are reluctant to leave their thirteen-year-old alone, in charge of no one but him- or herself.³⁰⁵ Of course, the parents know the capacities of their various children better than anyone.³⁰⁶ The innate differences in children's capacities is one of the key problems with applying legal standards that enable a stranger to second-guess the parents' choices.³⁰⁷

Age-based rules are far less sensitive to individual circumstances.³⁰⁸ In

Raising Children?, CHRISTIANITY.COM (March 22, 2022), <https://www.christianity.com/wiki/christian-life/what-responsibility-do-parents-have-in-raising-children.html> (stating that Christians are stewards over children entrusted to them by God). But regardless of whether the design is from natural selection or Divine will, parents (as opposed to meddling neighbors or government authorities) are ultimately the most trustworthy arbiters of what is best for their children. See Pimentel, *supra* note 10, at 256 (stating that parents are in the best position to know what risks their children should take).

301. See Pimentel, *supra* note 58, at 28–32.

302. See *From Neurons to Neighborhoods: The Science of Early Childhood Development*, NAT. LIBR. OF MED., <https://www.ncbi.nlm.nih.gov/books/NBK225568/> (last visited Dec. 22, 2022) (discussing how a child's self-sufficiency develops with age).

303. See *id.* (discussing how a child's maturity is measured).

304. See *id.* (conceding that children's maturity levels vary).

305. See *Leaving Your Child Home Alone*, CHILD.'S BUREAU: CHILD WELFARE INFO. GATEWAY 2 (Dec. 2018), <https://www.childwelfare.gov/pubs/factsheets/homealone/> (explaining how parents should consider the "child's physical, mental, developmental, and emotional well-being," not just the child's age, before leaving them at home alone).

306. See Clare Huntington & Elizabeth Scott, *The Enduring Importance of Parental Rights*, 90 FORDHAM L. REV. 2529, 2533 (2022) (explaining how legal "deference to parental decision-making" is rooted in the "parent's superior knowledge of, and association with, the child as compared with outsiders").

307. See *id.* at 2533–34 (explaining how legal deference to parental decisions is necessary because it "shield[s] the family from intrusive and disruptive state intervention" regarding child-rearing matters where "there often is no 'right' decision").

308. See "Children Age 10 and Up Can Play Outside, Unsupervised." *Why Let Grow Opposes Age Limits*, LET GROW, <https://letgrow.org/children-age-10-and-up-can-play-outside-unsupervised-why-let-grow-opposes-age-limits/> (last visited Dec. 22, 2022) (explaining how age limits in child neglect laws ignore the seemingly infinite number of circumstances for leaving a child alone, including "the activity, the weather, the geography, the child's preparation, [and] whether the child is alone or with others").

the example above, a statute that defined leaving an infant in the care of someone under twelve-years old as neglect would force the parents to make the irresponsible choice.³⁰⁹ Legally, they could not leave their baby in the care of the responsible eleven-year-old.³¹⁰ Faced with the choice, the law would require them to leave the baby in the care of the irresponsible thirteen-year-old.³¹¹

Accordingly, it makes sense to set legal standards in terms of “maturity” rather than “age.”³¹² But a child’s maturity is subjective, and people may disagree about whether a particular child is mature enough to engage in independent activities.³¹³ Therefore, there are also weaknesses in relying on the child’s maturity in a statute designed to protect a child’s independence.³¹⁴

So even if age is a less-than-perfect marker for a child’s capacity, it is objectively measurable, and it is appealing as an easily-applied bright-line test.³¹⁵ In most of America, children must be sixteen before they can be

309. See *id.* (stressing “[a]ge limits are arbitrary” and could give “neglectful [parents] a free pass if their child was at or above the age limit but lacked sufficient maturity”).

310. See, e.g., *id.* (using a hypothetical to show the inconsistencies of a legal age limit).

311. See Jacqueline Stenson, *Home Alone: How Young Can Kids Safely Be Left on Their Own?*, NBC NEWS (Oct. 25, 2019), <https://www.nbcnews.com/health/kidshealth/home-alone-how-young-can-kids-safely-be-left-their-n1071611> (quoting multiple pediatricians who emphasized, in the context of leaving children home alone, that “[e]very child [and situation] is different” and “there is no one-size-fits-all recommendation”).

312. See *id.* (quoting “Dr. Suzanne Haney, chair of the American Academy of Pediatrics Council on Child Abuse and Neglect,” as saying “[it] is really hard to give a safe age [for children to stay at home alone] because of all the factors playing into it”).

313. See Pimentel, *supra* note 58, at 10–11 (discussing the subjectiveness of child parenting and how it can lead to criminalization, and how parents know which kids are more responsible, regardless of their ages). The author’s daughter just graduated from high school, and she wanted to go with four of her fellow graduate girlfriends for an overnight stay in a family-owned cabin on Lake Coeur d’Alene, an hour away. One parent felt strongly that the young women (a couple of whom were still minors) needed adult supervision, particularly for the drive up there. The other parents felt quite comfortable trusting these young people for an overnight trip to such familiar territory. The same group of young women planned a two-night backpacking trip into a remote wilderness area. Again, there was disagreement about whether the young women could or should be trusted to fend for themselves on such an outing. In the latter case, the relevant factors seemed to have more to do with the extent of their experience (or lack thereof) backpacking in wilderness areas than with the maturity of the young women themselves. For a discussion about other factors that enter the determination of whether a child has the capacity to safely engage in independent activities, see *infra* Section V.C.

314. See *infra* Part V (describing why relying on a child’s maturity is not beneficial).

315. See Laura L. Carstensen, *The Influence of a Sense of Time on Human Development*, 312, 5782 SCIENCE 1913, 1913 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2790864/pdf/nihms156796.pdf> (citations omitted) (“[L]iterature shows that chronological age is an excellent (albeit imperfect) predictor of cognitive abilities, language, and sensorimotor coordination.”).

licensed to drive a car.³¹⁶ In all fifty states, they must be eighteen before they can vote, and twenty-one before they can legally consume alcohol.³¹⁷ No one pretends that all sixteen-year-olds are equally responsible, but the rule is a convenient operational standard.³¹⁸ And, as noted above, responsibility and maturity are positively correlated with age.³¹⁹

The Let Grow website lays out a compelling “Case Against Age Limits,” summarizing the reasons age limits should not be “written into law or policy”:

- They inhibit both parents’ and child welfare professionals’ use of judgment.
- Age limits could too easily become a shorthand for an over-taxed child welfare professional, and can also be a way for a more distant decisionmaker (such as a judge, who only gets second- or third-hand information about the child) to insert their personal opinions on child upbringing in place of the parent’s.
- Age limits will force child welfare professionals to expend unnecessary time and resources in trying to make exceptions to a general rule when a child who is clearly safe is nonetheless the subject of a hotline call, and is below the age limit

316. See *Minimum Driving Age by State*, RHINOCARHIRE.COM, <https://www.rhinocarhire.com/Drive-Smart-Blog/Minimum-Driving-Age-Country/Minimum-Driving-Age-State.aspx> (last visited Dec. 26, 2022) (discussing the legal driving age).

317. U.S. Const. amend. XXVI, § 1 (stating that eighteen-year-old citizens’ right to vote “shall not be denied or abridged by the United States or by any State on account of age”); *State Guide to Drinking Age Law*, NAT’L YOUTH RTS. ASS’N, <https://www.youthrights.org/issues/drinking-age/laws-in-all-50-states/> (last visited Dec. 26, 2022) (explaining that “[i]n all US States, you must be at least [twenty-one] years old in order to purchase alcohol”). The author was living in the Netherlands when his oldest children attended high school. In that country, it is legal to drink wine or beer at the age of sixteen, and the Dutch public school his kids attended routinely served beer at official school parties and dances. The author’s Dutch friends, as a rule, were aghast at the thought of allowing a sixteen-year-old to drive, however. It is hard to argue that the Dutch are simply wrong. These are differences attributable to cultural values and circumstances.

318. See Carstensen, *supra* 315 (discussing how age is a convenient marker, but loses precision over time).

319. See, e.g., Laurence Steinberg, *While Adolescents May Reason as Well as Adults, Their Emotional Maturity Lags, Says New Research*, AM. PSYCH. ASS’N (2009), <https://www.apa.org/news/press/releases/2009/10/teen-maturity> (explaining how psychosocial maturity significantly increases when comparing teenagers to those over twenty-two).

set for that activity.

- They will open child welfare professionals to charges of unequal application of the law.
- Age limits are arbitrary. To overgeneralize the point (of course there are exceptions!), a 9-year-old who is an only child is likely to have had quite different experiences from a 9-year-old with four younger siblings.
- At the same time, an age limit could, unfortunately, give a parent who truly is neglectful a free pass if their child was at or above the age limit but lacked sufficient maturity, physical condition, or mental ability for the independent activity the parent allowed. While age limits are proposed as a protection for children, in some cases they could be dangerous.
- Across the 50 states, there is no consistency in age limits. They range from 6 (in Kansas) to age 14 (in Illinois, but read on—this one isn't actually true!), with states like Michigan holding that children can't be alone before the age of 11—on pain of criminal and neglect prosecutions for their parents. But to Let Grow's knowledge, there is no evidence for concluding children in Kansas are more capable of independence than children in Michigan.
- According to [a] Washington Post article on "Latchkey Kids Age Restrictions By State," only five states have adopted age mandates in *statute*, while 14 states (including those five) have a stated age *policy*. But even the five that are reported to have age mandates have had fundamental misunderstandings of the law. Specifically, while it has been widely reported that Illinois has a mandate of 14, this is a misunderstanding. Under Illinois law, 14 is the age after which parents cannot be prosecuted, not a milestone that children have to reach to be alone. This example shows that even something as "simple" as an age limit can be

misinterpreted.³²⁰

The conclusion drawn is that “[a]ny age limit is likely to create a problem of over-inclusion of children who are capable of independence and possible under-inclusion of children who are not yet able to exercise independence.”³²¹

The Utah and the South Carolina bills (only the former of which was enacted) both referenced the child’s “age and maturity,”³²² although neither state set a minimum age for any particular independent activity.³²³ So although age can be a bright-line test, it was not laid out as a bright-line test in these statutes.³²⁴ The other states omitted any reference to age.³²⁵

All of the bills that became law, however, reference “maturity” as critical to determining what independent activities might be appropriate for an individual child.³²⁶ On balance, it seems best not to mention age at all.³²⁷ As suggested above, the mere mention of “age” opens the door to arguments that “X-years-old is just too young”³²⁸ A statute that is based on maturity without reference to age will be harder to enforce against a parent because it requires an intense fact-based inquiry into the child’s maturity level.³²⁹ And because no one knows the child’s maturity level better than the parent, the practical impact may be an entirely appropriate deference to the parents—a presumption that the parents’ judgment of how much independence the child is mature enough to take on—is correct.³³⁰ Figure 1 demonstrates the different

320. See “Children Age 10 and Up Can Play Outside, Unsupervised.” *Why Let Grow Opposes Age Limits*, *supra* note 308.

321. See *Appropriateness of 3 Considerations: Amendment to SB143 Reprint*, LET GROW (Apr. 27, 2021), https://www.leg.state.nv.us/App/NELIS/REL/81st2021/ExhibitDocument/OpenExhibitDocument?exhibitId=52386&fileDownloadName=0428_sb143_adlers_amend.pdf (quoting Let Grow’s statement).

322. Letter from Lenore Skenazy to author (Aug. 23, 2022) (on file with author). Lenore Skenazy notes that the reference to age was removed from the South Carolina bill before it went to a vote. See *id.* That bill never became law, however in either form. See *id.*

323. See *id.* (describing the States’ bills’ requirements).

324. See *id.* (emphasizing how age was not explicitly made as the test).

325. See *id.* (discussing how some states did not reference age in their statutes).

326. See *Let Grow Legislative Toolkit*, LET GROW <https://letgrow.org/legislative-toolkit/> (last visited Dec. 26, 2022) (including a list of the states’ bills and their requirements).

327. See *id.* (seeming to support the removal of the age requirement).

328. See *Appropriateness of 3 Considerations*, *supra* note 321 (describing the effects of mentioning age in such bills).

329. See Pimentel, *supra* note 58, at 31, 49 (erring on the side of broader legislation to protect parental rights).

330. See *id.* (emphasizing how parental judgment should be increasingly valued).

approaches taken by various states attempting to legislate childhood and notes the similarities and differences between the proposed laws as well as their success or lack thereof in being enacted into law.³³¹

Figure 1

State	Age	Maturity	Condition	Abilities / Capacity	Culture
Arkansas*				capacity†	
Colorado		✓	✓	abilities	
Idaho*		✓	physical condition	mental abilities	
Nevada*‡					
Oklahoma		✓	physical condition	mental abilities	
Texas		✓	physical condition	developmental abilities	✓
South Carolina*	(✓)**	✓			
Utah	✓	✓			

* Bill was never enacted.

† “capacity to avoid immediate danger and a significant risk of harm”

‡ The Nevada statute would have left this definition to the administrative agency to determine.

** The original version of the bill included an age limitation, but it was later amended to remove that provision. The bill, however, was never enacted in either form.

C. Other Attributes for Consideration

As noted in the table above, Colorado, Oklahoma, and Texas all added additional factors for consideration, including the child’s “condition” or “physical condition,” as well as the child’s “abilities” (Colorado), “mental abilities” (Oklahoma), or “developmental abilities” (Texas).³³² All of these qualifications are helpful, as they allow a broader array of factors to be considered.³³³ It is in no one’s interest to suggest that parents should base a decision on whether to allow their child some independence only on the child’s

331. See *infra* Figure 1.

332. See *supra* Figure 1 (demonstrating the different factors considered by each state).

333. See *supra* Figure 1 (containing the states’ factors for consideration).

age or only on the child's maturity.³³⁴ A parent facing such decisions will take everything into account, including the child's track record with independence in the past, the child's previous experience with such activities, and the child's individual gifts or challenges.³³⁵ If a parent naturally and reasonably takes such factors into account, the statute should certainly allow them to be taken into account as well.³³⁶

A useful analog comes from tort law, which typically does not hold children to a "reasonable person" standard of care, but rather expects their conduct to "conform to that of a reasonably careful person of the same age, intelligence, and experience."³³⁷ Various states include other factors for the tort standard of care including "knowledge" and "judgment,"³³⁸ or "maturity and capacity to evaluate the circumstances," specifically "to appreciate the dangers and risks of the circumstances."³³⁹ Surely parents should be able to take such factors into account in determining whether and when they should afford their children some measure of independence.³⁴⁰

D. Other Circumstances?

One curious omission from any of these bills is any reference to the full circumstances.³⁴¹ There may be factors that are not peculiar to the child, but to the situation, that will guide or even control parents' decisions.³⁴² For example, what alternatives did the parent have?³⁴³ During the height of the

334. See *Leaving Your Child Home Alone*, *supra* note 305 (discussing how age should not be the sole consideration for a child's independence).

335. See *id.* (mentioning the other considerations, besides age, that parents should consider when making independence decisions).

336. See Pimentel, *supra* note 58, at 31, 49 (urging for broader legislation regarding considerations for child independence).

337. RESTATEMENT (THIRD) OF TORTS § 10 (2022).

338. Stuart M. Speiser et al., 3 AMERICAN LAW OF TORTS § 12:30 (2022).

339. George L. Blum & Glenda K. Harnad, 42 AM. JUR. 2d INFANTS § 121 (2022).

340. See *Leaving Your Child Home Alone*, *supra* note 305 (advising parents to consider "age and maturity," along with a child's "specific skills" needed to "stay home alone safely").

341. See, e.g., UTAH CODE ANN. § 80-1-102(58)(b)(iv) (not mentioning the "full circumstances" or similar language).

342. See "*Children Age 10 and Up Can Play Outside, Unsupervised.*" *Why Let Grow Opposes Age Limits*, *supra* note 308 (noting how parents may consider "the activity, the weather, [and] the geography" when giving children independence).

343. See *id.* (arguing against strict age limits in child neglect laws because the law would ignore the numerous factors going into a parent's decision to give their child independence, such as what alternatives a parent had).

COVID pandemic, for example, it may have been highly advisable to leave children home when dashing out to do grocery shopping.³⁴⁴ Taking a child to the store—particularly before vaccines were available to children—would be far more dangerous than leaving that same child at home.³⁴⁵ Accordingly, the statutes would do well to include a reference to all surrounding circumstances.³⁴⁶ While pulling a child from a moving car sounds like endangerment, doing so when the car was about to go off a cliff would seem like prudent—indeed, heroic—parenting.³⁴⁷

The full range of circumstance is relevant in the far more pedestrian cases as well.³⁴⁸ Indeed, the appropriateness of leaving a child alone, for example, may depend on a range of factors and circumstances unrelated to the child’s capacity and maturity, including the following: how long the child is left, where the child is left, what help may be immediately (or readily) available if the child has a problem, whether the child is equipped with a phone (and people to call for help), whether someone is “looking in” on the child periodically, and what the risks and costs of the available alternatives may be.³⁴⁹ The reasonableness of the child’s independence could be influenced by any of these factors.³⁵⁰ Perhaps the legislation should make that clear.³⁵¹

344. See *High Rate of Symptomless COVID-19 Infection Among Grocery Store Workers*, BMJ PUBL’N GRP. LTD. (Oct. 29, 2020), <https://www.bmj.com/company/newsroom/high-rate-of-symptomless-covid-19-infection-among-grocery-store-workers/> (explaining how “[grocery store employees] in customer-facing roles [were five] times as likely to test positive as their colleagues in other positions” in 2020 before vaccines were widely available).

345. Compare *id.* (noting the high risk of COVID-19 infections among customer-facing grocery store workers), with Marie Hartwell-Walker, *Children Who are Home Alone*, PSYCHCENTRAL (May 17, 2016), <https://psychcentral.com/lib/children-who-are-home-alone#1> (noting how “[seven] million of the nation’s [thirty-eight] million children ages [five] to [fourteen] are left home alone regularly”).

346. See “*Children Age 10 and Up Can Play Outside, Unsupervised.*” *Why Let Grow Opposes Age Limits*, *supra* note 308 (emphasizing that all circumstances factoring into a parent’s decisions to give their child independence “[cannot] be laid out in a neat set of boundaries”).

347. See *id.* (advocating against age limits because the bright-line rules are “arbitrary,” supersede parental decision making, and fail to take into consideration all the circumstances that go into parental decision making).

348. See, e.g., NAT’L ACAD. OF SCIS., ENG’G & MED., *PARENTING MATTERS: SUPPORTING PARENTS OF CHILDREN AGES 0–8*, 48 (Vivian L. Gadsden et. al. eds., 2016) (“Parenting knowledge, attitudes, and practices are shaped . . . by a number of contextual factors, including children’s characteristics (e.g., gender, temperament); parents’ own experiences (e.g., those from their own childhood) and circumstances.”).

349. See, e.g., *Leaving Your Child Home Alone*, *supra* note 305 (enumerating various factors parents should consider when deciding whether to leave children at home).

350. See *id.*

351. See, e.g., 705 ILL. COMP. STAT. 405/2-3(1) (Ill. 2019). Illinois’ civil child neglect statute

E. “Whose Basic Needs are Met . . .”

The Utah law allowed reasonable independence only to kids whose “basic needs are met.”³⁵² This provision is problematic, and the later laws have wisely avoided it.³⁵³ There are two key problems with this provision.³⁵⁴ The first problem is that it provides an excuse to target impoverished parents.³⁵⁵ Parents who are struggling to make ends meet have a particularly burdensome task, especially because neglect is defined in so many states in terms that

includes a substantial list of such factors, in addition to the child’s age, to consider in assessing the reasonableness of leaving a minor unsupervised:

- (2) the number of minors left at the location;
- (3) special needs of the minor, including whether the minor is a person with a physical or mental disability, or otherwise in need of ongoing prescribed medical treatment such as periodic doses of insulin or other medications;
- (4) the duration of time in which the minor was left without supervision;
- (5) the condition and location of the place where the minor was left without supervision;
- (6) the time of day or night when the minor was left without supervision;
- (7) the weather conditions, including whether the minor was left in a location with adequate protection from the natural elements such as adequate heat or light;
- (8) the location of the parent or guardian at the time the minor was left without supervision, the physical distance the minor was from the parent or guardian at the time the minor was without supervision;
- (9) whether the minor’s movement was restricted, or the minor was otherwise locked within a room or other structure;
- (10) whether the minor was given a phone number of a person or location to call in the event of an emergency and whether the minor was capable of making an emergency call;
- (11) whether there was food and other provision left for the minor;
- (12) whether any of the conduct is attributable to economic hardship or illness and the parent, guardian or other person having physical custody or control of the child made a good faith effort to provide for the health and safety of the minor;
- (13) the age and physical and mental capabilities of the person or persons who provided supervision for the minor;
- (14) whether the minor was left under the supervision of another person;
- (15) any other factor that would endanger the health and safety of that particular minor.

Id.

352. See UTAH CODE § 78A-6-105(36)(b)(iv) (2019) (“[P]ermitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities.”).

353. See, e.g., H.B. 567, 87th Leg., Reg. Sess. (Tex. 2021) (narrowing the definition to neglect).

354. See discussion *infra* notes 355–362 and accompanying text.

355. See, e.g., Maren K. Dale, *Addressing the Underlying Issue of Poverty in Child-Neglect Cases*, A.B.A. (Apr. 10, 2014), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2014/addressing-underlying-issue-poverty-child-neglect-cases/> (discussing how, although poverty may be a cause of child mistreatment, “raising a child in poverty does not equate to child maltreatment,” and should not be mistaken as such).

mirror the definition of poverty.³⁵⁶ If a parent is unable to meet a child’s basic needs—to provide medical care, for example—the Utah law arguably would not protect those children’s right to reasonable independence.³⁵⁷ Creating a two-tiered system of rights, where the impoverished get fewer protections, is antithetical to the concept of equal protection and the rule of law.³⁵⁸

Beyond that, the “basic needs are met” proviso is a virtual non-sequitur, as it does not relate to the issue the statute addresses.³⁵⁹ With child welfare being a high public policy priority, certainly the State should try to ensure that children’s needs are met.³⁶⁰ But it makes little sense to single out the unlucky few whose needs are not being met and deny them any right to independence as well.³⁶¹ Indeed, if the parents are struggling to hold it together, that family may have an even greater need for independence: *e.g.*, the ability to leave children alone for a short trip to the store (for food, medicine, or other basic needs), the ability to send children to the store to make the necessary purchase, or even to have children get themselves to and from school.³⁶²

The Oklahoma law offers an excellent counterexample to Utah’s problematic handling of the “basic needs” issue.³⁶³ The Oklahoma law explicitly states that disadvantages are insufficient to support a finding that a child is

356. *See id.* (discussing how only about half of the states have “[included] a poverty exemption in their statutory definition of neglect”).

357. *See Pimentel, supra* note 50, at 906 (discussing how impoverished parents face increased difficulties and scrutiny when granting their children increased independence out of practical necessity).

358. *See Pimentel, supra* note 58, at 33 (discussing the problems entailed when “[e]nforcing intensive parenting norms” disproportionately impacts low-income families who “cannot afford the level of . . . care that would be required of them”).

359. *See* S.B. 65, 2018 Leg., Gen. Sess. (Utah 2018) (laying out the text of the Utah statute).

360. *See, e.g., Child and Family Services Plan: FFY 2020 to FFY 2024*, STATE OF UTAH: DEP’T OF HUMAN SERV.: DIV. CHILD & FAM. SERV. 4 (Jun. 28, 2019), <https://dcfs.utah.gov/wp-content/uploads/2020/02/UT-Child-and-Family-Services-Plan-FFY-2020-2024-Final-6-28-19.pdf> (emphasizing “the overall goals leading to safe children . . . and integrated child welfare system.”).

361. *See, e.g., Pimentel, supra* note 50, at 906–08.

362. *See, e.g., Calarco, supra* note 141. The Utah bill was criticized in an article in the Atlantic, on the ground that it protected childhood independence for upper-income children, but decidedly less so for lower income children. *Id.* Letters from Skenazy and Redleaf called out the author for mischaracterizing the problem: It is not the new legislation that creates the double standard, rather Redleaf’s experience demonstrates that the double standard already exists. *Letters: Legalizing ‘Free-Range’ Parenting Is a Step in the Right Direction*, THE ATLANTIC, (April 12, 2018), <https://www.theatlantic.com/letters/archive/2018/04/letters-free-range-parenting/557558/>. Calarco clarified her argument in response to the letters, suggesting that the “basic needs are met” language in the statute certainly perpetuates the existing double standard, and that this, perhaps is the most serious problem with the bill. *Id.*

363. *See supra* notes 135–138 and accompanying text (citing and discussing the Oklahoma law).

deprived: “Evidence of material, educational or cultural disadvantage as compared to other children shall not be sufficient to prove that a child is deprived; the state shall prove that the child is deprived as defined pursuant to this title.”³⁶⁴ Oklahoma, at least, has acknowledged the potential for impoverished parents to face an uphill battle in child neglect cases³⁶⁵ and put language in its statute to push back on this problem.³⁶⁶

F. *Conscious/Blatant/Willful Disregard*

As noted in the discussion of the Idaho bill above, problems arise when neglect is defined simply in terms of omitting or failing to provide proper care or control.³⁶⁷ The Idaho statute would have introduced a critical element of *mens rea* for findings of child neglect, including that the parent, guardian, or caregiver not merely “omit” to provide that care, but that there be “conscious disregard of obvious needs or obvious dangers to the child.”³⁶⁸ The “omission” standard appears to impose some kind of strict liability for the child’s lack of proper care, whereas “conscious disregard” invokes a much higher standard—more than mere negligence (under which the parent “should have known”) and closer to recklessness (where the parent knew of, but disregarded, the obvious risk to others).³⁶⁹

“Conscious disregard” is far closer to the “blatant disregard” we see in the Texas statute.³⁷⁰ The Oklahoma statute uses the phrase “willfully disregards,” which similarly reflects this higher standard.³⁷¹ Such provisions are critical if a statute is going to protect otherwise conscientious parents from the

364. H.B. 2565, 58th Leg., 1st Reg. Sess. (Okla. 2021) (referencing Section 21 that explicitly defines a “deprived child”).

365. See generally Pimentel, *supra* note 50, at 897–98 (discussing Oklahoma’s acknowledgment of the unique challenges facing poor families, fittingly, in the Oklahoma Law Review).

366. H.B. 2565 (“‘Neglect’ shall not mean a child who engages in independent activities, except if the person responsible for the child’s health, safety or welfare willfully disregards any harm or threatened harm to the child, given the child’s level of maturity, physical condition or mental abilities.”).

367. See discussion *supra* Section IV.D (discussing the Idaho bill).

368. See discussion *supra* Section IV.D (discussing the Idaho bill).

369. MODEL PENAL CODE § 2.02(2)(c) (AM. L. INST., 1962). The Model Penal Code defines “Recklessly” in such terms, to include when a person “consciously disregards a substantial and unjustifiable risk.” *Id.*

370. H.B. 567, 87th Legis., Reg. Sess. (Tex. 2021).

371. H.B. 2565 (allowing a finding of neglect if “the person responsible for the child’s health, safety or welfare *willfully disregards* any harm or threatened harm to the child, given the child’s level of maturity, physical condition or mental abilities.” (emphasis added)). Let Grow embraces this formulation and includes identical language in its preferred model law. Model Laws, *supra* note 94.

occasional inadvertent lapse of judgment, as well as parents who take unconventional approaches to parenting.³⁷²

VI. RECOMMENDATIONS FOR LEGISLATION

Given its recent history, we should expect Reasonable Childhood Independence legislation to be proposed in many states in the coming years.³⁷³ Let Grow, at least, is committed to seeing that happen, and the favorable reception such bills have earned bodes well for future legislative activity in this area.³⁷⁴ It is important, therefore, for future state legislatures to learn from the experience of the states that have taken the first steps.³⁷⁵

If legislatures truly wish to make a difference in protecting reasonable childhood independence in their respective states, they should embrace the following principles in their proposed legislation:

1. Affirmatively list an array of activities that do not constitute neglect.³⁷⁶ This will give parents reassurance that certain choices are acceptable.³⁷⁷
2. Include a catch-all provision that makes clear the list is not exclusive.³⁷⁸
3. Remove language that speaks of neglect in terms of “risk” to children, in favor of stronger language such as “immediate danger,” or “substantial risk of immediate and grave

372. See *supra* Section II.B. (discussing cases in the news where parents were accused of mistreating their children, often due to complicated circumstances or temporary lapses of judgment).

373. See, e.g., Lenore Skenazy, *Mom Who Let Her 7-Year-Old Play at the Park Will Not Be Added to Arizona's Unfit Parent Registry*, REASON (Aug. 30, 2022), <https://reason.com/2022/08/30/tucson-mom-arizona-registry-cops-parents/> (discussing the possibility of childhood independence laws being enacted in Arizona after a county judge “temporarily blocked the state of Arizona from adding a Tucson mother to the state's list of unfit parents” after she let her child play alone at the park).

374. See Model Laws, *supra* note 94 (“Let Grow is working to ensure that parents who give their kids some reasonable independence are not treated as criminals or child neglectors.”).

375. See, e.g., *id.* (“We recommend legislators and advocates consider the Oklahoma law first and then look at the other variants for alternative language.”).

376. See *supra* Section II.D (discussing problems with vague neglect statutes).

377. See *supra* Section V.A (A (“If our purpose is to reassure and protect parents, it may be critical to empower them to cite chapter and verse about why what they are doing is okay.”))

378. See *supra* notes 231–233 and accompanying text (discussing the lack of a “catch-all provision” in the states’ bills).

harm.”³⁷⁹

4. Remove language that suggests a strict liability standard for parents; reject phrases such as “any omission” or “fails to provide,” in favor of standards that speak in terms of “blatant disregard,” “conscious disregard,” or “willful disregard” of substantial dangers to the children.³⁸⁰
5. Direct the decision-maker to take into account the maturity—but not the age—of the child at the time, as well as other relevant attributes, such as the child’s physical condition, developmental abilities, intelligence, education, and experience.³⁸¹
6. Require the decision-maker to take into account the culture of the family at issue.³⁸²
7. Require the decision-maker to take into account the surrounding circumstances, including the costs and risks of the alternatives, and the benefit to be gained (e.g., growth and learning) by affording the child that level of trust and responsibility.³⁸³
8. Avoid language that relies too heavily on a “reasonable parent” standard, which leaves parents vulnerable to second-guessing of their judgment.³⁸⁴ There are better ways to craft a statute that will give parents more robust protection than a reasonable parent standard will.³⁸⁵

379. *See supra* Section III.C (discussing the benefits of the “immediate danger” language in the Texas bill).

380. *See supra* Section V.F (discussing the conscious/blatant/willful disregard standards).

381. *See supra* Section V.B (discussing problems with age-based rules).

382. *See supra* Section III.C.2 (“Parents should be entitled to raise their children consistent with their cultural norms, beliefs, and traditions.”).

383. *See supra* Section V.D (“[T]he statutes would do well to include a reference to all surrounding circumstances.”).

384. *See supra* Section III.D (discussing the “reasonable parent” standard in the Colorado bill).

385. *See supra* note 204 (suggesting, like Diane Redleaf, that “a reasonable parent” standard may be more workable than “the reasonable parent” standards).

9. Do not delegate the determination of what is a reasonable independent activity to an administrative agency.³⁸⁶ Many of the problems we now face come from such agencies' presumptions and practices.³⁸⁷
10. Do not include an exception for children whose basic needs are not met.³⁸⁸ If a child's needs are not met, that should be remedied, but it is no remedy to deny that child reasonable independence as well.³⁸⁹ Indeed, an appropriate measure of independence is one of children's basic needs.³⁹⁰

None of the bills that have been passed, or even introduced, to date reflect all these recommendations.³⁹¹ But most of these elements are included in at least one of the statutes discussed above and in the model bills being promoted by Let Grow and ALEC.³⁹² There is much to learn from the good work of these various legislatures, as well as from some of their missteps.³⁹³ These ten suggestions are reasonable takeaways from the early efforts on such bills.³⁹⁴

VII. CONCLUSION

Reasonable childhood independence legislation is desperately needed throughout the nation to protect parents, to help kids learn and grow, and to ensure that parents are not forced by law (or by fear of legal consequences) to helicopter-parent or overprotect their kids.³⁹⁵ Over a quarter of the states have at least considered such legislation already, and there is reason to believe that there will be more attempts in a lot more places in the coming years.³⁹⁶

386. *See supra* Section IV.C (discussing problems with delegating to agencies in the context of the Nevada bill).

387. *See supra* Section IV.C.

388. *See supra* Section V.E.

389. *See supra* Section V.E.

390. *See supra* Section V.E.

391. *See discussion supra* Parts III–V (discussing passed and proposed bills).

392. *See supra* Parts II–IV.

393. *See supra* Parts III–IV.

394. *See supra* notes 376–390.

395. *See discussion supra* Sections II.A–C.

396. *See supra* notes 116–126 and accompanying text (at least fourteen states have done some work on reasonable childhood independence legislation).

Although the underlying issues often inspire bipartisan sympathy, such laws are not easy to draft.³⁹⁷ And if these laws are to have their intended effect, the legislatures should be paying close attention to the merits, and the flaws, of the various approaches taken.³⁹⁸ We should be grateful to the pioneers in this area—the state governments of Utah, Oklahoma, Texas, and Colorado—and to organizations that have lent their expertise to drafting effective statutes.³⁹⁹

Done right, these legislative efforts have the potential to do great things: empower parents, strengthen families, and liberate children.⁴⁰⁰ Our hopes for future generations may depend on the degree to which we can resist the trend toward infantilizing young people in an overly-enthusiastic and misguided effort to keep them safe and instead, teach them independence and responsibility—attributes they will need to lead and contribute meaningfully to future America.⁴⁰¹ Accordingly, it is imperative that the laws of the land, or at least the laws governing child neglect, should be amended—as suggested above—to support, rather than inhibit, that effort.⁴⁰²

397. See discussion *supra* Section II.D (discussing the problem of vague statutes).

398. See discussion *supra* Part VI (making recommendations for legislation based on existing and contemplated statutes).

399. See discussion *supra* Part III.

400. See discussion *supra* Section II.A.

401. See *supra* notes 27–28 and accompanying text (“History demonstrates . . . that young children are capable of much more than is expected of them today.”).

402. See discussion *supra* Part VI.

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