

Protection of the Welfare of Children by the Youth Welfare Office - Implementation of the Guidelines and Requirements of the Bavarian State Youth Welfare Office in Individual Cases

René Gordon Holzheimer^{1*}, and Detlef Ballhorn²

¹Hernia specialist, Family Practice, Straßlach-Dingharting, Munich, Germany.

²Attorney at Law Munich, Germany.

*Correspondence:

Prof. Dr. med. René Gordon Holzheimer, Hernia Specialist, Family Practice Isartal, Grünwalderstr. 5, D-82064 Straßlach-Dingharting/Munich, Germany, Tel: 0049-8104-668454, Fax: 0049-8104-668453, E-mail: professor.holzheimer@gmail.com.

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ABSTRACT

Introduction: Violence against children and young people: recognizing and acting of the Bavarian State Ministry of Labor and Social Affairs (StMAS), physicians are requested to act with the involvement of the youth welfare office (YWO) to protect the child's well-being. The handling of the welfare of children by the YWO may be of relevance for citizens from the USA and European countries in case of joint custody.

Methods: The Bavarian State Youth Welfare Office (BSYWO) published on 15.03.2006 recommendations for the local youth welfare offices in Bavaria on how to react to threats to the child's welfare. Guidelines of the BSYWO set the path for the local YWO on how to analyze and decide in every single case of child welfare endangerment. Examples of how the local youth welfare office doesn't comply with the guidelines are presented. The analysis of the application may reflect the observance of the recommendations of the state youth welfare office by the local youth welfare office. Since the YWO is designated as the "central contact" in the event of a suspected threat to the welfare of the child, the guidelines of the state YWO are particularly important when implementing the legal requirements and case law.

Results: These targets of the BSYWO are suitable to reduce the suffering of the children, provided they are applied correctly by the YWO. However, the guidelines may have been ignored and the child's welfare may have been damaged.

Conclusion: The basic goal of youth welfare, to help young people and their families, would be changed into its opposite, especially if by the measures of the youth welfare office the young person has been harmed to such an extent that his livelihood and future would have been endangered. The credibility of an institution that is important for the family and children would be damaged by a lack of transparency and the embezzlement of files.

Keywords

Child welfare, Domestic violence, Guardianship of the youth welfare office, Child protection, Compliance with guidelines.

Introduction

“What is staggering is not the suffering of children per se, but the fact that they suffer undeservedly. If we cannot build a world

where children no longer suffer, we can at least try to reduce the suffering of children.” (Albert Camus) [1].

Child protection concerns us all, according to the "Handout to promote the recognition of child abuse and the appropriate handling of suspected cases" (2008). Helping abused children "effectively and promptly" is not only part of the "protective

mandate of the responsible authorities and institutions". Society and the professions that have to do with children and young people should recognize signs that give possible indications of a child's welfare at risk are in demand [2]. These are the employees of the youth welfare office (YWO), teachers, and doctors. Every doctor has to reckon with being confronted with a traumatized child. The Bavarian State Youth Welfare Office (BSYWO = German Bayerisches Landesjugendamt BLJA) and the Independent Commissioner for Questions of Child Sexual Abuse (UBSKM) called for participation in the dialogue process on standards for the participation of those affected. The handling of the welfare of children by the YWO may be of relevance for citizens from the USA and European countries in case of joint custody.

Material and Methods

The BSYWO published on 15.03.2006 recommendations for the local youth welfare offices in Bavaria on how to react to threats to the child's welfare. Together with guidelines "Violence against children and young people: recognize and action. Guidelines for doctors" released by the Bavarian State Ministry for Labor and Social Affairs further 14 statements (I. Violence against children and young people: Recognize and action. Guidelines for doctors, II. The mission statement of the Bavarian state youth welfare office, III. Child hazards, IV. Definition of important indicators by the BSYWO, V. Nationwide research for risk assessment by the YWO, VI. YWO Duties in the event of latent child endanger VII. Taking into care in acute child welfare endangerment, VIII. Requirement profile General Social Service (ASD), IX. Hearing of the YWO by the family court, X. Appeal to the family court, XI. Participation of the YWO in proceedings before the family courts, XII. Exercise of custody and rights of contact, XIII. Procedural curator, XIV. When must the YWO intervene? An authority between parental rights and the benefit of the child, XV. Child safeguarding – A message to think) by the BSYWO set the path for the local YWO on how to analyze and decide in every single case of child welfare endangerment. If the system is to work, compliance with the guidelines and the specifications of the BSYWO must be reflected in each case of dealing with a threat to the welfare of children. This can be checked if a doctor has informed the YWO of an acute threat to the child's well-being following the specifications of the practical guidelines of the Bavarian StMAS/BSYWO. Sections I-XV contain the relevant recommendations for the local YWO. Two cases among others are given as examples of how the guidelines may be circumvented. The analysis of the application should reflect the observance of the recommendations of the state youth welfare office by the local youth welfare office. Since the YWO is designated as the "central contact" in the event of a suspected threat to the welfare of the child, the guidelines of the state YWO are particularly important when implementing the legal requirements and case law.

Results

I. Violence Against Children and Young People: Recognize and Action. Guidelines for Doctors

On behalf of the Bavarian State Ministry for Labor and Social

Affairs (StMAS), the child-protection outpatient clinic of the Institute for Forensic Medicine of the LMU, the Medical Association, and the Department for Youth Welfare in the StMAS, among others, have specified the "obligation to act and report" for doctors and the YWO to prevent children from being endangered.

- a. "Violence against children ... is unfortunately still a daily reality, in the form of physical, sexual, psychological violence or neglect. Doctors play a key role in identifying violence and supporting those affected. ... We hope that these guidelines will encourage you to take up suspicions ... and to take further steps involving the YWO to ensure the child's well-being." (Graw and Mützel, Institute for Forensic Medicine, LMU Munich).
- b. "We doctors have the task of protecting children from further danger and preventing permanent physical and psychological damage through early detection and action. ... By working more closely with the YWOs, we can help ensure that the affected children and their families receive the existing child and youth welfare support earlier and more effectively." (Kaplan and Lux, Bavarian State Medical Association)
- c. "Doctors are regularly obliged to avert damage to the well-being of the child being treated by the protective guarantor position based on the treatment contract or actual assumption of liability. This also includes the information and involvement of suitable bodies (YWO, police) if the occurrence of the damage cannot be prevented by other means and, in particular, the legal guardians are not willing or unable to cooperate in averting the danger (duty to act) (2008). In cases where, from a medical point of view, a child's well-being can only be averted by involving the YWO, the standard of authorization standardized there also condenses into an obligation to involve the YWO." (Gold, StMAS)
- d. "Children ... have the right to respect for their dignity, to physical and mental integrity, to the development of their personality and the protection of the state. Everyone is responsible for ensuring that our children grow up without violence and that they can develop and unfold in the best possible way because they are our future and therefore of fundamental importance to society as a whole. ... The specialists from the YWOs are available as central contacts. Physicians have a special responsibility when they are confronted with injuries to children, the cause of which is doubtful." (Haderthauer and Sackmann StMAS) [3].

II. Mission Statement of the Bavarian State Youth Welfare Office

The Bavarian State Youth Welfare Office (BSYWO) has formulated "principles (mission statement) concerning the satisfaction of their beneficiaries and cooperation partners, which should be observed and applied by all employees"(Table 1) [4].

Table 1: Mission statement of the Bavarian state youth welfare office [4].

	Mission statements
A	Procedures and decisions are transparent and comprehensible to the outside world
B	Administrative and organizational processes are characterized by short decision-making processes
C	Flexible forms of processing ensure that processes are completed quickly
D	For the orientation and profiling of youth welfare, clear positions are taken that are represented by all employees
E	The competence of the employees is characterized by expert knowledge that is constantly kept up to date
F	Qualified answers are given to inquiries that are characterized by short, correct, clear statements that take various aspects into account
G	Promises and commitments are reliably kept
H	The responsibilities are clearly defined and are exercised responsibly
I	The customer is taken seriously as a partner and his experience and knowledge are taken into account. Even in stressful situations, we don't lack friendliness
J	The personal contact on-site guarantees practice-oriented work results
K	The self-image of all employees is characterized by a sense of responsibility, self-confidence and self-criticism, loyalty and helpfulness
L	Management behavior is characterized by commitment, equal treatment of all employees, and transparency of decisions
M	The organization of the cooperation is committed to the principle that every employee finds the best possible support to complete their tasks. Organizational and communication structures are practical and effective
N	The best possible personnel and technical equipment are guaranteed. Resources are used cost-consciously and economically

III. Child Hazards

The central concept is the "welfare of the child" (German Civil Code BGB). According to Textor (2010), the well-being of the child includes the promotion of the child's development into a "self-reliant and socially competent personality" and the "protection of the child from dangers to his well-being" (Table 2).

Table 2: Child Hazards [9].

	Child hazard classification	Subgroups
A	Neglect	
B	Mental abuse	
C	Physical abuse	
D	Sexual abuse	
E	Abusive exercise of parental authority	Withholding necessary medical treatment Discontinuation of school attendance Isolation of the child Mental dependency (symbiosis) Development delays Psychosomatic illness
F	Parental failure through no fault of their own	Detention Mental disorders Personality deficits
G	Endangerment by third parties	Life partner Pimp Drug dealers

Parental rights are protected by the Basic Law, but are restricted by the child's right to integrity and non-violence: "Care and upbringing are the natural right of parents and their primary duty." The state community (guardian's office), represented by the YWO and family court, monitors (Art. 6 GG) the exercise of parental rights and the well-being of the child following Section 1666 of the Civil Code and Section 8a of the Eighth Book of the Social Code (SGB VIII). According to Section 1666 of the German Civil Code, the family court will have to decide if the child's physical, mental, or psychological well-being and assets are threatened when the YWO calls it. The property of the child is at risk if one of the parents does not fulfill his or her maintenance obligations for the child, the duties of looking after the property or the orders of the court in this regard are not observed. The family court then has to take measures that can avert the danger: youth welfare, observance of school attendance (compulsory schooling), blocking contact, ban on approaching, allocation of housing, and withdrawal of custody [5].

According to the "principle of proportionality", the family court, taking into account the information provided by the YWO, must examine whether a threat to the child's well-being can be prevented by milder measures (youth welfare) before custody [6]. According to Section 8 of Book VIII of the Social Code, children are to be involved "in all decisions affecting them" by the YWO "according to their level of development. Children are to be "advised appropriately to their rights in administrative proceedings and proceedings before the family court, ... and the administrative court" [7].

The protective mandate of the YWO in the event of a child's welfare is endangered is specified in Section 8a of the VIII Book of the Social Code (inserted by the Child and Youth Welfare Development Act (KICK) - October 1, 2005) [8]. "It has to assess the risk of danger in the interaction of several specialists." The parents and the child should be involved insofar as this does not call into question the effective protection of the child's dangers. The YWO has to appeal to the family court if the legal guardians are not willing or unable to cooperate. In the event of "urgent danger" and if the "court decision cannot be awaited", the YWO is "obligated to take the child into care." The YWO must take action if it becomes aware of "weighty indications" that a child is endangered. These are indications from neighbors, educators, teachers, and childcare workers, which suggest that the child's well-being is threatened. The specialist from the YWO must turn on the helpers' conference for risk assessment .

"Experienced specialists" have relevant professional training, further training, and practical experience in dealing with traumatized children and their parents, cooperate well with the police and family court, and are characterized by their resilience, professional distance, and ability to judge. Even with the first risk assessment, taking into account the child's age, stage of development, and state of health, it must be recorded whether an immediate home visit or taking into care is required, whether the police or the public prosecutor's office or the family court should

be called. The child's environment must be examined. The home visit can be announced or carried out unannounced to get an idea of the situation, living conditions, and prospects for development. Before being taken into care, help with education, and assistance plan procedures are announced; only if these means fail is the family court involved. Several indicators in parents and children of a risk to children's welfare (2007) are presented (Table 3).

Table 3: Indicators for risk to children's welfare [9].

	Risk indicators	Subgroups
I	Indicators in parents	
A	Psychiatric disorders and personality traits of a parent	
B	Inappropriate expectations of the child	
C	Limited empathy	
D	Controlling behaviors	
E	Forms of punishment	
F	Explanatory patterns for conspicuous behavior	
G	Assaults when bathing and/or putting to bed	
II	Indicators in children	
A	Poor cognitive/school performance	
B	Restrictions on social development	
C	Externalizing behavioral problems	
		Aggressiveness
		Restlessness
		Hyperactivity
		Inappropriate sexual behavior
		Self-injurious behavior
		Psychosomatic illnesses
		Post-Traumatic Stress Disorder
D	Internalizing behavioral problems	
		Fear
		Nightmares
		Depression
		Avoidance talking about abuse

The guidelines from the BSYWO shows how educators, nannies, and other qualified professionals should fulfill the protection mandate according to Section 8a of the VIII Book of the Social Code:

1. Legal obligation to protect children from endangering their well-being
2. Knowledge of important indications of child endangerment
3. Look for strong evidence (observation sheets/checklists)
4. Determining whether there are important indications
5. If no invalidation then assessment of the risk of danger
6. If the suspicion is confirmed, youth welfare services are offered
7. Accurate documentation of the case [9].

IV. Definition Of "Important Indicators" By The Bavarian State Youth Welfare Office

Definitions of the important points of reference in the "Recommendations for the implementation of the protection order according to §8a SGB VIII" of the Bavarian State Youth Welfare Office (2006) are listed in Table 4.

Table 4: Definition of important clues of child welfare endangerment by the Bavarian state youth welfare office [10].

	Clues of child welfare endangerment	Description of clues
I	Clues in the child	
A		Visible injuries that cannot be explained plausibly, including self-harm
B		Physical or mental symptoms of illness (wetting, fears, compulsions)
C		Inadequate fluid or food intake
D		Lack of necessary medical care and treatment
E		Delivery of substances hazardous to health
F		Lack of supervision for old age
G		Poor hygiene
H		Unknown whereabouts and continued unexcused absences from school
I		Violations of the Law
II	Clues in family and living environment	
A		Violence in the family
B		Sexual/criminal exploitation of the child
C		Parents mentally ill, addicted
D		Financial material hardship
E		Desolate the housing situation
F		Traumatizing life events
G		Educational behavior of parents
H		Social isolation of the family
I		Disorienting social milieu
III	Clues to willingness and ability to participate	
A		Endangerment of the child's welfare by legal guardians cannot be avoided
B		Lack of problem insight
C		Insufficient willingness to cooperate
D		Unwillingness to accept help
E		Previous attempts at support have been inadequate
F		Previous custody incidents

All symptoms and situations indicating a child endangerment should have been recorded. Child welfare workers should have taken into account that "Children who have been physically, psychologically or sexually abused... often blame themselves for the abuse and therefore rarely talk about their situation, especially if they have had to endure psychological pressure for a long time, or feared being put into a children's home [10-12].

V. Nationwide Research For Risk Assessment by the Youth Welfare Office

A nationwide research into the procedures and instruments used in practice by the YWOs for risk assessment to compare in Thuringia, Brandenburg, Bavaria, Saarland (2007) revealed that in Bavaria there were no quality standards for child protection services, no continuous training of employees, no professional recommendations for taking into care, no forms or minutes or checklist suggestions for risk assessment, no recommendations for service regulations regarding procedures, no recommendations for dealing with suspected sexual abuse. Of the 17 criteria mentioned, 10 criteria were not available in Bavaria. The risk assessments that endanger the child's well-being had to be comprehensively queried.

In terms of risk indicators, the following had to be recorded: the economic situation, the socially integrative situation, the overall situation at home, in particular the spatial conditions, the relationship situation and communication within the family, and the health situation of the upbringing or care situation. This required a structurally binding, multi-stage, and process-oriented procedure with the appropriate working materials - reporting form, checklist, interview guidelines – to be used by the specialist responsible for the case in the general social service (Allgemeiner Sozialer Dienst ASD) for up to five risk assessments. The process of risk assessment should have included notification, file management, the collaboration of several specialists, and consultation of a specialist experienced in this respect [14].

VI. Youth Welfare Office Duties in the Event of “Latent Child Endangerer”

A latent endangerment of the child's well-being (Hillmeier BSYWO) [15] is more difficult to recognize because there is no clear fact description of latent endangerment available. The YWO offers parents help with education to avoid endangering the welfare of their children [16]. Hillmeier warned against postulating a lack of educational ability putting single parents, turning to the YWO for help, under general suspicion and with the accusation of a high-risk family being threatened with legal notices.

In summary, the YWO has the following obligations:

1. "Latent" child endangerment should not be filed away.
2. Contact with the affected family would have to be maintained repeatedly in person, by telephone, and in writing.
3. Professionals, teachers, and doctors have to keep an eye on the child.
4. The family court should be informed about suspicions and suggestions for possible court measures.
5. Viewpoints and observations and the decisions based on them are to be carefully documented.

Compliance with these obligations is labor-intensive [17] and does not release anyone from their legal, technical, and professional ethical responsibilities (guardian function) [10].

VII. Taking Into Care In Acute Child Welfare Endangerment

"The primary goal of SGB VIII is to support parents in their educational task and to offer them a system of advisory and support services geared to the different life situations of families. This understanding also underlies taking into care as a short-term and temporary protective measure." Taking into care is a temporary, socio-pedagogical intervention measure in a current crisis to offer needs-based, targeted, and timely help in an overall concept.

The prerequisites for this are the accommodation of the child in a protected environment, ensuring that the child is cared for, diagnostic clarification, medical therapy, age-appropriate advice, and support for crisis management. The situation leading to the taking into care must be clarified with all parties involved. Based on a socio-educational diagnosis and a support plan a perspective must be developed for the child without delay; return to the family of origin, accommodation with relatives, and help.

Taking into care is a "temporary measure to protect children" (§42 SGB VIII). The YWO is obliged to take into care if there is an urgent danger for the child and the decision of the family court cannot be awaited. There is a regular obligation to directly involve the child concerned and the legal guardians. The possibility for legal guardians to object is expressly pointed out. Taking into care is an administrative act and, in the case of longer-term taking into care, the legal guardians must be notified of the possibility of objecting to the taking into care. The YWO ensures an on-call service at all times of the day and night for the child. The risk of danger must be assessed in cooperation with several specialists. Parents and affected children must be included if this does not endanger the protection of the child. The family court is to be called by the YWO in case of danger. If, in the case of urgent danger, it is no longer possible to wait for the decision of the family court, the child must be taken into care. "The necessity and proportionality of taking into care depend on the assessment of the risk of danger."

A family court decision cannot be obtained in good time if an urgent danger cannot be delayed. The risk assessment is the responsibility of the responsible specialist in the YWO. The threshold of § 1666 BGB must have been exceeded, and the danger must be urgent, i.e. the occurrence of the damage is imminent. To weigh up and evaluate correctly, the specialist must form his or her picture of the child's condition, living conditions, and development prospects. The main criteria are the type and severity of the use of violence, neglect, abuse, or sexual violence. The need for protection is depending on age, level of development, personal and social resources, and current health situation. The specialist at the YWO must convince himself of the appearance and behavior of the child, the relationship between family members and their behavior towards the child, the domestic and social situation of the family, and the cooperative behavior of family members. The acceptance of the problem by all affected family members must be checked [10,18].

In case of an acute endangerment of the child's well-being, a protection concept with concrete, precisely formulated, and written agreements or protective measures must be drawn up and continuously checked for risks, compliance with the agreements and protective measures, even if the suspicion or in the event of a threat to the welfare of the child by several specialists, including experienced specialists. If the legal guardians do not consent to the child being taken into care, the YWO must appeal to the family court in the event of imminent danger, concerning the purpose of the measure, to avert a danger in good time.

The child should be accompanied and supported by a person of trust. Careful taking into care presupposes that the child is involved in the decisions in an age-appropriate manner and that the next steps are communicated to him/her in an age-appropriate manner. Standardized framework conditions should be in place for crisis operations. Home visits, which are carried out based on acute dangerous situations concerning a decision to take into care, should take place in the presence of another specialist. Tasks

during the taking into care, such as clarifying the circumstances that led to the taking into care, are to be discussed with the child. The child is to be involved in all decisions affecting the child according to its level of development.

The YWO is obliged to inform the child in an appropriate manner of his rights in the administrative proceedings and the proceedings before the family court, and administrative court. His wishes should be met. Upon being taken into care, the child must be allowed to notify a person they trust without delay. The notification can only be prevented "in an extremely exceptional case" such as a significant danger to the child, e.g. "pimp, dealer as a person of trust" with justification for the decision.

The YWO has to ensure the well-being of the child - environment, regulation for school attendance, maintenance, and medical help. Supervision, upbringing, determination of whereabouts, and legal acts for the benefit of the child should take into account the presumed will of the legal guardians. The legal guardians should be informed immediately of the child being taken into care and assess the risk of harm together with the parents. This must be well-documented. A contact person must be named at the YWO and the family court must be informed of this. The taking into care is a "socio-pedagogical offer of help" and "not locked away, locked up or safely kept". The purpose is fulfilled when the problems underlying the taking into care have been clarified and those involved have agreed on common perspectives.

In the event of a conflict, the YWO can only inform the parents about the taking into care, but not about the reason and place of accommodation. This must be documented. In the event of an objection to taking into care, the child must be handed over if, in the opinion of the YWO, there is no danger to the child's well-being or the remaining parent is willing and able to avert the danger. Otherwise, the family court must be switched on to ensure the protection of the child. The use of cost sharing is to be refrained from if otherwise the goal and purpose of the service are endangered or if particular hardship arises. A contribution to costs can only be charged if the maintenance claims of the beneficiary are not reduced! The administrative effort must be proportionate [19].

VIII. REQUIREMENT PROFILE General Social Service (ASD)

Requirement profile (knowledge, skills, attitudes) of a specialist after the BSYWO are 1. Technical and professional competence, 2. Methodological competence, 3. Social skills, 4. Personal competence or self-competence" [20].

IX. Hearing Of The Youth Welfare Office By The Family Court

Similar to the obligation of the YWO to cooperate, the family court must hear the YWO before deciding matters relating to children or protection against violence. For this purpose, the specialist of ASD must personally attend the court hearing, in particular, because of the acceleration requirement and prioritization of dispute resolution [21].

X. Appeal To The Family Court

In the event of acute danger to the child's well-being, the family court is to be called by the YWO. The invocation is obligatory. "The YWO provides information in particular about the services offered and provided, brings educational and social aspects to the development of the child ... and points out other possibilities for help." It is obligatory to examine the individual case in cooperation with several specialists as to whether educational competence can be promoted through help for the upbringing and state protection of the child, and thus stricter measures such as taking into care can be avoided to agree that the child in their care will not be harmed by foreseeable, intentional abuse [22-26].

XI. Participation Of The Youth Welfare Office In Proceedings Before The Family Courts

The YWO supports the family court in all measures relating to the care of children. In addition, the YWO has to participate in proceedings related to childhood matters, family matters, matrimonial housing matters, and matters relating to protection against violence. In cases of family matters (matrimonial matters, matters relating to children, matrimonial home and household matters, matters relating to protection against violence, matters relating to pension equalization, alimony matters, matters relating to matrimonial property law, and other family matters), the YWO must be heard and cooperate. There is an obligation to provide support if the court wants to hear the YWO as part of its official investigation duty. The YWO has the task of informing the court about the services offered or provided, bringing in educational and social aspects of the development of the child or young person, and pointing out possibilities for help. The YWO acts as a specialist authority according to its statutory mandate. Participation serves to support the court in its decision-making and to ensure that aspects of the child's well-being are taken into account in the decision. In particular, the YWO works to strengthen the conflict-avoiding and resolving elements in family court proceedings [27].

The higher regional court (Oberlandesgericht) Dresden, April 30th, 2013 - 1 U 1306/10 made a statement on the obligation to cooperate and inform the family court through the YWO: The YWO is obliged to clarify ambiguous and dubious information in its examination order given according to § 8a SGB VIII. The YWO works toward the court in a way that enables the court to carry out a proper examination and consideration for a correct decision. There are parallels to the case law issued by the public prosecutor's office, according to which the complete and correct information of the court is a central obligation. The facts of the case when filing arrest warrant applications are comparable to the obligation to assist in the 8a SGB VIII case (constitutionally protected rights). The withdrawal of custody is the most severe imaginable measure of permitted interference with the constitutionally protected parental custody and the right of the child. Not every error in the application of the law justifies the accusation of culpability, but it is when the application of the law by the acting public official is no longer justifiable [28].

XII. Exercise of Custody and Rights of Contact

The YWO advises and supports parents in exercising their right to access, including child support [29].

According to the Child Rights Reform Act, the right of access is not so much a parent's right, but rather a child's right to the protection and promotion of its development opportunities (UN Convention on the Rights of the Child, Article 9).

The Civil Code not only emphasizes the independence of access rights from parental custody but also the autonomy of access rights alongside custody rights. Maintaining the child's relationships with others is conducive to the child's development and must then be considered. However, a restriction of contact for a short or longer period is only permissible if the well-being of the child is endangered. The court can order that contact may only take place in the presence of third parties willing to cooperate. The legal obligation for youth welfare to provide advice and support is intended to help ensure that important emotional and social ties and relationships are maintained and can be further developed. The primary goal is to reduce conflicts, mediate them, and create development-promoting contacts. The will of the child is of great importance here. Providing the personnel, organizational and financial requirements for this "accompanied contact" is the task of the YWO. YWO should mediate and assist in its implementation and execution. There are three possible constellations for accompanied contact: The parents agree out of court that contact between a parent and the child should be temporarily accompanied by a third person; with the support of the family judge, the parents agree on accompanying contact between the parent and the child; the third option is accompanied contact, which is ordered based on a family court decision in cases where the child needs to be protected from the person entitled to contact.

The child's right to personal safety and in particular, to protection from additional psychological stress and emotional overload must take precedence over the parent's right to contact. A careful balance between the benefits to the child and possible risks is essential. In the case of proven sexual abuse, protected contact cannot represent a perspective. In this case, the exclusion of contact can do more for the good of the child. Long-term accompanied handling is neither sensible nor affordable and also not intended by the legislator [30].

XIII. Procedural Curator

To protect the interests of the child in court custody and access rights proceedings, the court appoints a guardian ad litem (curator), even if the personal hearing of the child is required by law. The procedural curator must determine the interest of the child and bring it to bear in the proceedings, taking into account objective aspects of the child's well-being.

The appointment of a procedural guardian is usually necessary if the interests of the child are in significant conflict with those of his legal representatives [31].

XIV. When Must the Youth Welfare Office Intervene? An Authority Between Parent Rights and the Benefit of the Child

The German constitution can make a significant contribution towards answering the question of when the YWO has to intervene (Human dignity, the right to free development of their personality, the right to life, and physical integrity). Marriage and family are under the special protection of the state order. The care and upbringing of children are the natural right of parents and their primary duty. The state community monitors their activity. Against the will of the legal guardians, children may only be separated from the family based on law if the legal guardians fail or if the children threaten to be neglected for other reasons. The Constitutional Law expressly places parental rights under the special protection of the constitution, since "as a rule, parents care more about the well-being of the child than any other person or institution".

According to the case law of the Federal Constitutional Court, the well-being of the child is at the center of all constitutional considerations [32]. The basic law contains a right for parents to protect the child [33], but no "unbound claim to power (of parents) over their children", the "constitutional guarantee of parental rights applies primarily the protection of the child". The well-being of the child takes precedence over the protection of the family. The "definition" of the best interests of the child, which from a constitutional point of view can be the "least harmful alternative" [34], must be sufficiently taken into account concerning the perception of the state guardianship of the time factor [35]. "Any state measure in the field of child law must take into account the peculiarities of the child's sense of time so that even the periods that appear relatively short for an adult can be very significant for a child."

In connection with the exercise of parental rights, the constitution of the state community transfers a state guardian's office as an obligation. This is due to the child's special need for protection, and therefore to safeguard the child's well-being, which is anchored in the constitution [36]. The overall responsibility for exercising the state guard office and for youth welfare remains with the state. For this reason, it has a monitoring and control function [37]. The scope of monitoring and control depends on the individual case. State guardianship serves to prevent violations of the child's welfare. According to the basic law, a child may only be separated from the parents against their will if the latter fails or threaten to neglect the children. This regulation confirms that the exercise of state guardianship, especially when parents and children are separated, cannot be about guaranteeing a better or optimal upbringing for the child (e.g. educational ability), but about protecting the child from harm.

Interventions in parental rights must observe the "principle of proportionality". The principle of proportionality states that every state intervention in fundamental rights - here the fundamental right of parents - is suitable (to pursue the intended purpose), necessary (i.e. not equally effective with milder means), and proportionate in the narrower sense (i.e. reasonable) must be [38]. Preserving

the ability of the family to function is a priority since a child is generally in the best of hands in the family and that is where it is usually given everything it needs for its well-being. In principle, the available helping and supporting measures must be exhausted before further intervention is chosen [39]. The state is obliged to ensure the care and upbringing of the child. It is thus imposed on him as a duty to exercise the state watchman's office. He must take measures that are suitable for ensuring the protection of the child's well-being most effectively. The principle of proportionality, therefore, requires an approach by the YWO that also depends on the degree to which the child's welfare is endangered.

The YWO must differentiate between activating parental resources and taking appropriate measures to avert the child's welfare endangerment, if necessary in the form of removing the child. The danger of traumatization through separation [40] and the danger of constant endangerment of the child's well-being can only be countered by the need for a high professional standard and particularly high professional qualifications. "Inadequately qualified people can do more harm than they can do good".

To fulfill the tasks assigned by the constitution, qualified and trained personnel must be available in the necessary quantity. A warning must be given of the danger of prematurely removing the child from the family of origin. In terms of child well-being, the child must not become the defenseless object of state intervention aimed at rehabilitating problem families [41].

Summary XIV

1. The welfare of the child is particularly protected under constitutional law. 2. The protection of the child's welfare ultimately takes precedence over parental rights and the protection of the family. 3. The YWO is the carrier of the state guardian's office for the protection of children! 4. The state guardian's office has constitutionally to respect the primacy of the child's well-being. 5. The principle of proportionality must be observed: suitability of the measure to achieve the defense against endangerment of the child's well-being, which the constitution emphasizes as a priority. 6. The YWO must assess the extent and the probability of the impairment of the child's well-being that is to be granted for every measure it takes. The YWO has to weigh up the advantages and disadvantages of all available measures against each other. In case of doubt, the state and thus the YWO must always choose the measure that most effectively ensures that the child's well-being is safeguarded [42,43].

XV. Child Safeguarding – A Message To Think

Under the title "Child Protection – Time to Think" on September 5th, 2009, Dr. Robert Sauter, Chairman of the Bavarian State Youth Welfare Office, took a critical look at child safeguarding and extended interventions in parental rights.

"If there are strong indications that a child is at risk, a home visit is a professional standard and must be carried out as quickly and carefully as possible. Of course, the children in question must be seen in person, and looked at so closely that a responsible decision

can be made on the spot (!) as to whether the child can (still) stay with the family or be taken into care immediately must become. This is the standard of professional and responsible action in the district social work, in the social services in the YWO. Anyone who does not act accordingly is overwhelmed by the task."

"The "legal" provision must be sufficiently specific; otherwise, it turns out to be ineffective prose that is not able to ensure a reasonably uniform and orderly execution."

The Federal Ministry for Family Affairs (June 18th, 2009) on risk assessment: "If the YWO becomes aware of important indications of a risk to the well-being of a child, it must assess the risk situation in cooperation with several specialists. Insofar as the effective protection of this child ... is not called into question, the YWO must include the legal guardians as well as the child ... in the risk assessment and, if this is necessary according to professional assessment, get a direct impression of the child and his environment."

The home visit is carried out based on a professional assessment (socio-pedagogical action, state guardianship). The urgency of a home visit must be determined. The different risk assessments by the YWO and the public prosecutor's office/police are problematic. It's about how best to protect the child, not what decision is most compliant with the law. There is only a limited certainty in the evaluation of perceptions as a trigger for help or intervention. The YWOs are criticized for taking children into care too early or for no reason, or for intervening too late. The ambiguity of the cases seems to be responsible. In the "Recommendations for the implementation of the protection order according to § 8a SGB VIII," a standard was set in Bavaria in 2006. 25 indications are to be checked if there is a suspicion of endangering the welfare of the child [10]. However, the assessment of indicators of child endangerment is difficult to weigh. The credibility of hints in the event of separation is vague. The YWO should focus on: Promotion of young people in their individual and social development as well as the reduction and avoidance of disadvantages; enabling or facilitating young people to interact in a self-determined manner in all areas of life that affect them, supporting parents in bringing up children; protection against endangerment of the child's well-being; contribution to maintaining or creating positive living conditions for young people and their families as well as a child and family-friendly environment [44]. Specific services should support family education and the promotion of the development of young people with home visits as a family's entitlement to benefits.

"In the event of a significant endangerment of the child's well-being, if there is imminent danger to the life and limb of the child, the necessity of encroaching on the private sphere of the family through the home visit should not be discussed at all."

The guardianship of the state does not generally appear to be preventive. The use of violence in family upbringing is prohibited (independent fundamental right of the child to integrity, to the dignity of his person). There is an increase in uncertainty about

"correct" educational behavior and threatening gestures under regulatory law. The relationship between the political public and the professional public in the local practice of child and youth welfare is difficult: The YWO had to participate in court hearings with "a specialist familiar with the matter" but not the discussions in the court hearing have to be carried out by "a family judge familiar with the matter" (Sauter 2009) [45].

XVI: Two Examples Including Aspects of I-XV

Presented are two family court procedures in connection with the question (Ballhorn) of how the custody or contact rights of the separated parents with the existing common children should be regulated by the court with the help of the youth welfare office in this context:

1. The mother breaks out of an existing family consisting of a father, mother, and approx. 5-year-old daughter and goes without prior notice from her home in Saxony-Anhalt to the other federal state of Bavaria to live there together with her new partner from now on to live in his house. Since the mother moved out, the father has been solely concerned with the welfare of their daughter, who lives with him in the same household. The mother objects to an application submitted by the father to the competent family court to transfer sole custody of the child to him, although the mother did not contact the father and the child who remained behind for six months after moving out. Due to the legal situation, the family court that has been called upon cannot avoid asking the youth welfare office responsible for the mother's new center of life for an opinion as to whether the mother is still capable of caring for and bringing up the child. A representative of the youth welfare office then visits the mother at her new place of residence and conducts an appropriate conversation with her. In it, the mother states that she feels fully capable of continuing to exercise (joint) custody of the child. In the conversation, her behavior towards the child was not discussed at all, although the youth welfare office could read the behavior described above from the files. In a written statement to the family court responsible for making the decision, the employee of the youth welfare office stated only briefly and succinctly that the mother was suitable for continuing to have custody of the child since she had explained this to the employee of the youth welfare office in the aforementioned conversation. The youth welfare office did not make any further considerations in this regard. It should only be mentioned in passing that the competent judge of the family court did not follow the opinion of the youth welfare office and gave the father sole custody of the child with a corresponding justification (the mother's behavior towards the child). Finally, the mother agreed to the transfer of custody to the father, thereby making it clear that the child is simply in better hands with the father since the mother's behavior ultimately showed that the well-being of the child comes second to her. Their interest in their well-being comes first. The youth welfare office, on the other hand, lacked any sense of reality when making its decision and did not recognize the position the mother had taken towards her still a young child to its disadvantage: she simply left the child and initially did not make contact for six months. As a result, the child felt abandoned by her mother and was in a state that could easily have led to trauma. For the child's soul,

the loss of the mother is an injury that is difficult to heal in later years. The reason for this development is solely the statement of the youth welfare office by an employee who lacked any competence in the work she carried out. 2. After the divorce of a couple with a joint underage child, a dispute arose about the right to access. The youth welfare office advocated contact in such a way that the child alternately spends one day with the mother and the following day with the father, etc. Several child psychologists consulted for their opinion have been tearing their hair at the court's decision based on the youth welfare office's proposal, stating that this decision is counterproductive and a blatant and extreme violation of the child's best interests. Here it is particularly important to consider that a child who is still a minor needs a stable parental environment to be able to develop in a correspondingly healthy manner, both mentally and physically. However, this basis for a positive development of a still young person was withdrawn from the child by the statement of the youth welfare office. It was now migrating from one parent to the other days and was ultimately "at home" nowhere. The well-being of the child was not only endangered here but simply destroyed. The child lacked any stability and security, both parents could not offer the child any support for his life development. A greater catastrophe for the well-being of the child can hardly be imagined and was only brought about by the complete incompetence of the decision-makers at the youth welfare office.

Due to a lack of competence and qualifications on the part of the youth welfare office working in the field, it is always possible for the courts to reach decisions that cannot be more negative and hurtful in their impact on the well-being of the child. It should only be mentioned in passing that the family courts are happy to rely on the often unqualified opinions of the youth welfare office and base their decisions on them. This is because the deciding court in this case does not have to commission a generally extensive report from a child psychologist to clarify the issues at hand. Experience has shown that these expert opinions are very long and take a lot of time for the court to work through and later process in the legal process. A statement from the youth welfare office, on the other hand, often only has 3 to 4 pages, can be read quickly and easily, and saves the court effort and work, especially the sometimes difficult discussion of the specialist statements of the expert (Ballhorn).

Summary and Conclusion

As shown above, the BSYWO provided the YWOs with comprehensive recommendations, instruments, and guidelines for dealing with the endangerment of children's welfare from 2006 until now. From the contributions by Heilmeyer and Sauter, it is clear that knowledge, understanding, and commitment are required to protect a child (duty to guarantee). The two examples show how the guidelines could be circumvented. If, however, these requirements would not be applied in serious endangerment of the child's well-being, - the child is not spoken to, no home visits are made, and no assessment of the endangerment to the child's well-being is carried out, then the basic protective measures which are referred to by third parties involved (doctors, school, childcare, public prosecutor's office) are waived, the constitutionally protected

rights of the child are disregarded, - one would ask about the causes, especially if inspection of the files would not be granted. Evidence of intervention by non-participants in the proceedings would have to be clarified. A doctor respecting the guidelines of StMAS and BSYWO would feel abused and abandoned when the YWO would push aside medical indications of a threat to the welfare of the child. A YWO that would prohibit the legal investigations of other state authorities, would violate the child's constitutional rights, and would cause further, unnecessary damage to the child's well-being would give evidence against the guidelines. It is alarming when serious recommendations by StMAS and BSYWO are ignored. The fundamental goal of youth welfare, to help young people and their families, would be thus turned into the opposite, especially when the measures taken by the YWO cause serious damage to the young person. Needless to say, child protection reforms by the legislature come to nothing if their day-to-day implementation or effectiveness is not controlled.

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