

2021

Infant removal from birth parents - how does health information impact court decisions? A scoping review

Rachel Gregory-Wilson

Liesel Spencer

Elizabeth Handsley

Toby Raeburn

Follow this and additional works at: https://researchonline.nd.edu.au/nursing_article



Part of the Nursing Commons

This article was originally published as:

Gregory-Wilson, R., Spencer, L., Handsley, E., & Raeburn, T. (2021). Infant removal from birth parents - how does health information impact court decisions? A scoping review. *Collegian, Early View (Online First)*.

Original article available here:

[10.1016/j.colegn.2021.08.009](https://doi.org/10.1016/j.colegn.2021.08.009)

This article is posted on ResearchOnline@ND at . For more information, please contact researchonline@nd.edu.au.



©2021. This manuscript version is made available under the CC-BY-NC-ND 4.0 International license <http://creativecommons.org/licenses/by-nc-nd/4.0/>

This is the accepted manuscript version of an article published as:

Gregory-Wilson, R., Spencer, L., Handsley, E., & Raeburn, T. (2021). Infant removal from birth parents – how does health information impact court decisions? A scoping review. *Collegian, Early View (Online First)*. <https://doi.org/10.1016/j.colegn.2021.08.009>

This article has been published in its final form at:

<https://doi.org/10.1016/j.colegn.2021.08.009>



ELSEVIER

Contents lists available at ScienceDirect

Collegian

journal homepage: www.elsevier.com/locate/collegn

Review

Infant removal from birth parents - how does health information impact court decisions? A scoping review

Rachel Gregory-Wilson^a, Liesel Spencer^b, Elizabeth Handsley^c, Toby Raeburn^{d,*}

^a School of Law, Western Sydney University, Campbelltown, Sydney, Australia

^b School of Law, Western Sydney University, Sydney, NSW, Australia

^c Western Sydney University, Parramatta, Sydney, NSW, Australia

^d Associate Professor in Nursing (Mental Health), Faculty of Medicine, Nursing & Midwifery and Health Sciences, University of Notre Dame Australia, Sydney, NSW, Australia

ARTICLE INFO

Article history:

Received 11 March 2021

Revised 16 August 2021

Accepted 20 August 2021

Available online xxx

Keywords:

Courts

Decisions

Foster care

Health information

Infant removal

Out of home care

ABSTRACT

Problem: Courts make complex decisions daily regarding removal of infants from birth parents and placement in out-of-home care. Nurses and other health professionals often take part in such processes, either as court informants, witnesses, or via their role delivering healthcare to infants and/or birth parents involved. To date there has been very little research exploring how health information impacts upon decision-making about infant removal.

Aim: To explore how health information impacts court decisions about removing infants from birth parents.

Methods: Using Arksey and O'Malley's five-stage method for scoping reviews as a guide, eight electronic databases were searched to identify relevant studies published in peer reviewed journals between 1990 and 2020. After initial screening, 154 articles were assessed for eligibility, resulting in 10 relevant studies. **Findings:** Three overarching themes emerged: (1) Communication between courts and health professionals; (2) Professional bias; (3) Infant attachment and reunification.

Discussion: In many jurisdictions, children's courts operate as closed courts making scrutiny of decisions difficult. Across jurisdictions there is also a widespread lack of recognition in legislation of infancy as a unique developmental stage. Clarity of communication and understanding between health professionals and courts is needed for health information to be applied in consistent ways in court decision making.

Conclusion: The role of health information in court decision-making is unclear and heterogeneous. More research is needed if nurses and other healthcare professionals are to have clarity regarding best practice provision of information, to assist courts with decisions about infant removal.

© 2021 Australian College of Nursing Ltd. Published by Elsevier Ltd.

Summary of Relevance

Problem: Nurses and other health professionals are often required to provide health information about clients for court decision-making purposes. Little is known however about how health information influences court decisions about removing infants from birth parents.

What is already known: Child abuse occurs at high rates and in an effort to protect infants, courts sometimes decide to remove infants from their birth parents.

What this paper adds: This paper reveals a lack of transparency and heterogeneous nature of court decisions regarding infant removal and suggests that greater clarity is needed about how health information may contribute to decisions about infant removal.

1. Introduction

The World Health Organization has estimated that one in seven children every year are affected by abuse, neglect, and associated death (World Health Organization (WHO), 2020). Sadly, infants aged less than 12 months (Australian Institute of Health and Welfare, 2019; WHO, 2013) are the most likely group to be removed from their birth parents and placed in out-of-home care (OOHC). Between 2017-2019, the number of infants in OOHC in the United

* Corresponding author at: Associate Professor in Nursing (Mental Health), Faculty of Medicine, Nursing & Midwifery and Health Sciences, University of Notre Dame Australia, Sydney Campus, 160 Oxford Street, Darlinghurst NSW 2010, (PO BOX 944), Broadway NSW 2007, Australia

E-mail address: toby.raeburn1@nd.edu.au (T. Raeburn).

States was 30,626 (The United States Children's Bureau, 2020), in the United Kingdom it was 4,820 (National Society for Prevention of Cruelty to Children, 2019) and in Australia, 2,251 (Australian Institute of Health and Welfare, 2018). Infants do not have the capacity to advocate or make decisions for themselves. When parenting is unhealthy, nurses and other health professionals often play crucial roles identifying the negative effects of early trauma on infants, assessing risk and protective factors and advocating for safe environments (Australian Nursing and Midwifery Foundation 2019; Jack et al., 2021; Parry, Maio-Taddeo, Arnold, & Nayda, 2009).

In most developed countries, when a court deems it not in an infant's best interests to remain with their birth parents, the State becomes responsible for protecting the rights of the infant and ensuring appropriate alternative care (Chinitz, Guzman, Amstutz, Kohchi, & Alkon, 2017). In the past, leaving at-risk infants with birth parents was often considered in their best interests, but it is now recognised that removal of an infant should occur if there is maltreatment and when it is deemed the least detrimental alternative. Recourse to alternative care is ideally only used when necessary, and generally aims to provide a stable and safe long-term response, including, where possible, reuniting the infant with their birth family (Britner & Mossler, 2002).

Longitudinal studies have shown that court decisions which remove infants from birth parents and place them in OOHC often have long-lasting impacts on the lives of infants, their families, and their communities (Chinitz et al., 2017; Humphreys & Kiraly, 2011; MacMahon, 1997; Wightman, 1991). More than any other group in society, due to their completely dependent developmental stage, infants require evidence-based decision-making frameworks for optimal health outcomes. Despite the profound significance of infant removal, however, health professionals such as nurses are often uninformed about how such court decisions are made. While many governments provide guidelines that include principles for courts to consider when making decisions about removing infants from birth parents, when court decisions regarding infant removal have been examined, studies show that factors such as individual bias, values, beliefs and attitudes of judges and other legal actors play a significant role (Mosteiro, Beloki, Sobremonte, & Rodríguez, 2018).

In contrast to the subjective and heterogeneous nature of court decision-making processes, health research has produced a large amount of consistent biological, psychological and social findings regarding the developmental life course of infants (Stamoulis, Vanderwert, Zeanah, Fox, & Nelson, 2017; John et al., 2019). Studies suggest that the positive effects of healthy emotional attachment and bonding, and conversely, the negative long-term effects of trauma, should be considered when infants' needs are evaluated, and factored into court decision-making (John et al., 2019; Lillas, Langer, & Drinane, 2004). There is limited information, however, about how information describing such phenomena is considered by courts (Chinitz et al., 2017). In this scoping review we investigate what peer-reviewed studies have established about how health information impacts court decisions regarding removal of infants from birth parents. For the purposes of this review, we adopted the notion of health information outlined by the Australian Federal Government's, *Privacy Act* (1988). Accordingly, health information regarding infants is taken to mean any information regarding the infant or their parents that has potential to impact healthy infant development such as play, sleep, feeding, bonding and attachment as well as personal information about illness, disability or injury (*Privacy Act*, 1988).

2. Method

The research team included a Professor and Associate Professor of Law, an Associate Professor in Nursing, and a PhD student

who has qualifications in both law and nursing. To enhance transparency, quality, reliability, and possibility of replication, we followed Arksey and O'Malley's five-stage framework for scoping reviews (2005). Stages included: 1) Establishing a research question; 2) Identifying relevant studies; 3) Study selection; 4) Charting the data; and 5) Collating and reporting findings. Steps taken in each stage are outlined below.

2.1. Establishing the research question

Following reflection on grey literature, and the authors' shared interest in the nexus between health information and legal practice, the following research question was identified for the review: How does health information impact court decisions regarding removal of infants from birth parents?

2.2. Identification of studies

Identification of relevant research involved electronic searching of international peer-reviewed literature for studies related to the research question that were published in English between 1990 and 2020. A 30 year time frame was chosen, with 1990 as the start date because it was during that decade that delivery of child and family health in many developed countries began incorporating modern neuroscientific knowledge into infant healthcare (Fitzgerald, Hiram, Weatherston, & Mann, Tammy, 2011; Hudson, 1999). The search was conducted in July 2020 using the following eight health- and law-related databases: Scopus, CINAHL; PsychInfo; Medline; Heinonline; LexisNexis; Proquest; Westlaw. A consistent search string was used across all the databases, see Table 1 for linked search terms.

Inclusion and exclusion criteria were established to allow for specific focus on decision-making regarding infants as distinct from older children and excluding a range of other factors such as studies related to adoption and permanence. The list of inclusion and exclusion criteria was then applied to refine and focus the search on the question, namely, how health information is used in court decision making about infant removal. Authors of studies were not contacted as part of this research. Inclusion and exclusion criteria can be found in Table 2 below.

2.3. Study selection

The initial database search produced 1,658 articles which then underwent a three-stage screening process based on titles and abstracts. Initial screening was conducted by the first and second author independently, which led to the exclusion of 1,504 papers. A second screening was then undertaken by the first and second authors to ensure papers were empirical studies (qualitative, quantitative or mixed methods) with a focus on the influence of health information on decision making about infant removal. Thirdly, remaining papers were reviewed by the first and fourth authors, to ensure all adhered to the inclusion/exclusion criteria and consensus was reached through discussion. No significant disputes arose during screening. The Preferred Reporting of Items for Systematic reviews and Meta-Analyses extension for Scoping Reviews (PRISMA-ScR) checklist was used to inform this process. A summary of the study identification process can be found in Fig. 1.

2.4. Data charting and collation

Studies were synthesised with reference to the research question, meaning that we focused on dimensions of articles relevant to our question (Levac, Colquhoun, & O'Brien, 2010). An Excel spreadsheet was used to chart the following details: author(s) and year; location of study; method (participant characteristics, procedure, and aim).

Table 1

Table 1: Search terms

(protecti* OR welfare OR care) AND ("foster care" OR "out of home care" OR "infant removal") AND (process* OR decision* OR "decision making" OR judg*) AND (infan* OR Child OR bab*) AND (legal OR law OR right OR eviden*)

Table 2

Inclusion and exclusion criteria

Inclusion	Exclusion
<p>Timeframe: Published between 1990 - 2020.</p> <p>Language: English.</p> <p>Types of articles: Peer reviewed, empirical studies.</p> <p>Study focus: Court decision making regarding infant removal from birth parents.</p> <p>Literature focus: Studies specifically related to infants which examine decision making regarding placement in OOHC and studies that explore the influence of health information on court decisions about removal of infants from birth families.</p> <p>Population and sample: Infants removed from birth parents and placed in OOHC due to protection issues. Legal decision makers, health professionals, social workers and foster carers.</p> <ul style="list-style-type: none"> Articles that specifically related to infants and examined decision-making regarding placement of infants into OOHC. Articles that explored the influence of health information on court decisions about removal of infants from birth families. <p>Population and sample</p> <ul style="list-style-type: none"> Infants removed from birth parents and placed in OOHC due to protection issues. Legal decision makers, health professionals, social workers and foster carers. 	<p>Any other dates</p> <p>Non-English</p> <p>Non-empirical studies</p> <p>Non peer reviewed papers</p> <p>Opinion, commentary and discussion papers</p> <p>Letters</p> <p>Textbooks</p> <p>Articles that did not relate to infants.</p> <p>Articles that did not relate to decision-making for infants in child protection.</p>

2.5. Collating and reporting findings

Arksey and O'Malley's (2005) 5- stage framework for scoping reviews was used to summarise and report findings. Included studies were initially categorised by geographical origin and the research questions they addressed are presented in Appendix A. Each study was scrutinised regarding what it suggested about the impact of health information on court decisions about infant removal. This was done inductively by grouping the main findings as individual codes before merging them based on overlap of health and legal aspects. An example to illustrate how this was achieved, was our grouping of papers that focused on the experiences of birth parents in accessing rehabilitative mental health support programs under the heading 'Rehab studies'. Importantly, because this was a scoping review, our aim was to provide a broad overview of the field of research, and identify gaps in published literature, rather than to examine the quality of studies or develop frameworks of understanding, as done in systematic reviews or meta-analyses (Arksey & O'Malley, 2005).

2.6. Findings

A total of ten studies from five nations were identified. Of these, half the studies were conducted in the United States (n = 5), two were from Australia, with one each from Norway, Sweden and Scotland. Three major themes were evident following analysis: (1) Communication between courts and health professionals; (2) Professional bias; (3) Infant attachment and reunification.

2.7. Communication between courts and health professionals

Health is a wide and varied topic, but a resounding theme across all identified studies was that when courts are required to make decisions about infant removal, concerns about substance misuse and mental health dominate (Chinitz et al., 2017; Humphreys & Kiraly, 2011; MacMahon, 1997; Wightman, 1991). A study by MacMahon (1997) tracked the judicial placement of 53 infants who had illicit substances detected in urine samples to determine how long the infants remained separated from their birth mothers. The results showed that court decisions facilitated the return of nearly half (46%) of the infants to their mothers within one week of birth and the reunion of three quarters of infants with a relative within the first month of life. By 12 months of age, just 10 of the initial 53 infants (19%) remained in foster care and this was successfully reduced to zero by age 18 months. Although they were returned to their birth mother, however, the infants remained under the protection of court orders for 1 month to >5 years. The study found a lack of communication between monitoring by the court and health services involved. In addition, although a correlation was found between birth mothers who failed random drug tests and not regaining full custody, the impact of OOHC placement decisions on infants' development and behaviour was never monitored or formally considered when making court orders. The study suggested a need for improved communication between courts and health care professionals regarding the removal of infants from their mothers and monitoring.

A similar conundrum was identified by Wightman's (1991) qualitative study of nine welfare workers in the United States which found relative consistency among welfare workers in

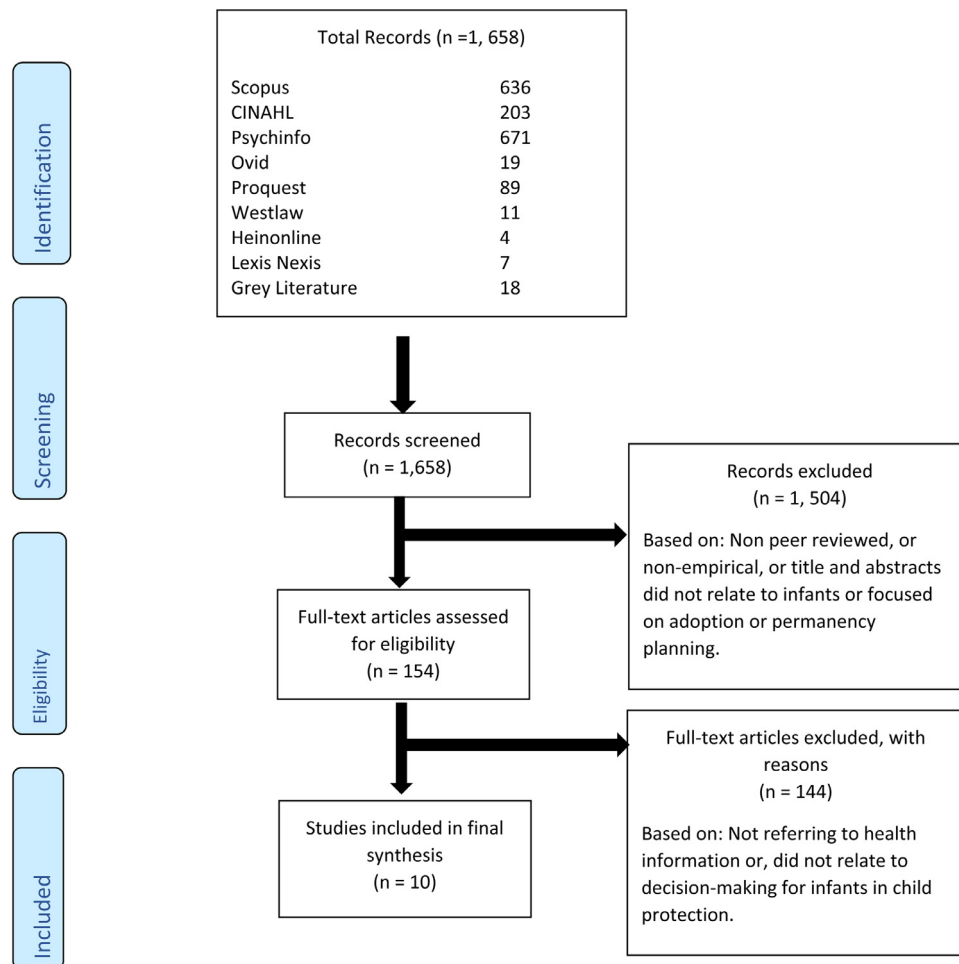


Fig. 1.

terms of how investigations regarding removal of cocaine exposed infants were conceptualised, but considerable variation in how courts approached the needs of such infants. This finding was supported by a Scottish study by [Turner-Halliday et al. \(2017\)](#) who conducted interviews and focus groups with 63 participants in the implementation of the New Orleans Intervention Model (NIM), a multi-disciplinary infant mental health service. Researchers found that the physical presence of mental health professionals when reporting health information was perceived by the Children's Court as adding 'clout' (influence and power) to decisions.

2.8. Professional bias

Although mental health and substance use concerns dominated health information provided to courts, several studies identified that the way information was presented tended to reflect the bias of professional groups, rather than prioritising the health of the infants concerned. [Britner and Mossler's \(2002\)](#) study explored how judges, guardians, court appointed advocates, social workers, and mental health professionals interpreted and responded to four case studies of child physical abuse. Results showed respondents tended to make decisions according to ideas about the quality of information provided by different professional groups, rather than factors such as the age of, or chronicity of abuse experienced by infants. Judges and Legal Guardians who participated in the study tended to rely on health professionals' predictions about the likelihood of recurrence of abuse and a child's ability to recount abuse,

thereby disadvantaging infants. Court appointed advocates mostly relied on their assessment of information about the stability of the family involved. Community based social workers and mental health professionals on the other hand, prioritised information describing their interpretation of severity of abuse and parental responses to services offered in the past.

In an Australian study, [Douglas and Walsh \(2013\)](#) interviewed 26 lawyers who worked with Aboriginal Australian communities in Queensland, regarding their perceptions about the higher than average rates of infant removal by courts in Aboriginal communities. The study found that historical factors related to British invasion and colonisation, past child removal policies, loss of identity, poverty and the aptitude of child protection workers were significant factors impacting court decisions about removal of Aboriginal infants. Participants reported that professional bias, systematic discrimination and antiquated legal processes are perpetuating high rates of removal. Lawyers interviewed suggested that some child protection workers lacked cultural competence and that there was often a lack of will to organise kinship placements and work towards reunification with birth parents.

In Norway, [Christiansen and Anderssen \(2010\)](#) interviewed 83 social workers and found that court decisions regarding infant removal were not influenced so much by health information, as they were the dual administrative role of social workers as street level bureaucrats and the back and forth requirements of their day to day work. Researchers found that sudden response to a trigger event was the most common reason for infant removal and that

court decisions often focused more on concerns about the health of birth parents than the health of infants. The study concluded that there is such a scarcity of policy and research, that infant removal is almost an invisible anomaly in Nordic child welfare systems, despite infants making up a distinct category within the universal services provided for families by the welfare state (through maternal-child health care, child benefits etc). The study drew attention to how little governments guide key professional groups and courts about how to consider the needs and rights of infants in potentially harmful situations (Christiansen & Anderssen, 2010).

2.9. Infant attachment and reunification

The final theme evident in this review involved the role of information pertaining to infant attachment and reunification with birth parents in court decision-making. In the United States, Dozier, Stoval, Albus, and Bates (2001) studied the phenomenon of 'attachment', with reference to infants' ability to organise their behaviours around the availability of their caregivers. The attachment quality of 50 foster mother-infant families was measured at 12 and 24 months of age. Authors found that 52% of children had secure attachments, 34% disorganised, 6% avoidant and 8% resistant. Contrary to expectations, the study found that age at placement by courts was not related to attachment quality.

Along with attachment, included studies repeatedly found that the phenomenon of family reunification on court decisions has been under-researched. This was largely because contact between infants and birth parents was viewed as a challenging issue for court decision makers (Chinitz et al., 2017; Dozier et al., 2001; Humphreys & Kiraly, 2011; Turner-Halliday et al., 2017). In an Australian case file audit, Humphreys and Kiraly (2011) examined court decisions about contact orders for infants under the age of 12 months. The study considered the cases of 119 infants, of whom two-thirds were placed in care within 2 months of birth. A high incidence of Aboriginal infants (18%) was identified in the sample. Of the 40 cases where there was at some stage a high frequency contact order, significant substance abuse by birth parents was evident in the majority, usually involving both parents (29 mothers and 23 fathers of 40 cases). Domestic violence was also evident (26 of 40). In half of all high frequency contact orders, scheduled contact visits were reported to take place 76%-100% of the time. Humphreys and Kiraly (2011) found that the pattern of court ordered reunification was similar for infants with both high-frequency and lower-frequency family contact arrangements, suggesting that court decisions which ordered high-frequency contact between infants and birth parents, did not improve the chances of family reunification.

3. Discussion

Court decisions regarding whether infants should be removed from birth parents are complex and an unenviable responsibility. The right of infants to safe care, and to have their best interests taken as a primary consideration may sometimes mean their rights come into conflict with, and need to be prioritised over, parental rights. Matters are further complicated by the uniqueness of each child protection case, making it important for courts to balance consistency against the need to address the individual facts of the case. Findings from studies included in this scoping review suggest that it is often unclear how courts decide what is in an infants best interests. While it is widely acknowledged that infants are people, who have rights, at present there is no infant-centred theory of rights that renders improved outcomes for them in legal practice (Ferguson, 2013). Interpretations regarding what is in the infants 'best interests' of infants generally tends to reflect the values and attitudes of a person or group with the position and

power to make decisions, and what constitutes 'best interests' is not always well-defined in legislation (Humphreys & Kiraly 2011).

Findings from studies included in this scoping review supported the notion that health information regarding issues such as parental substance misuse, mental health, attachment and reunification, should contribute to court decisions about removal of infants' from birth parents. Despite this, studies showed that nurses and other health professionals who are required to provide courts with information often exhibit a tendency to provide information tarnished by professional bias, which often appears to focus more on assessments about the health of birth parents than the well-being of the infants involved. Because so little is known about how health information informs court decisions health professionals who are required to provide healthcare to infants and families in the midst of court processes, often fly blind, regarding how information may or may not contribute to court decision-making. Substance misuse by birth parents, for example, is a well-known contributing factor to removal of infants, yet no studies examined the consistency with which substance misuse concerns are considered by courts or how visitation rights are decided for infants with substance-using parents. Such a gap in evidence is compounded by the fact that, although information provided by nurses and other health professionals to child protection agencies regarding infant safety may be used to arrange frequency of court ordered parental contact, there is limited data on how this information leads to reunification of the infant and birth parent (Fernandez & Lee, 2013).

From birth parents' perspectives, court decisions to remove infants may be viewed as a "Catch 22", in which they (birth parents) are unable to keep their infant at home, but if the infant develops a close attachment with their foster family, reunification might be compromised (Karmsteen, Frederiksen, Mørch, & Hestbæk, 2018). There was general agreement in the studies identified in this review that attachment and reunification are healthcare concerns vital for promoting emotional connection between infants and their primary caregivers. However, there was no clear research identified regarding how the phenomenon of attachment influences courts' decision-making. The lack of monitoring and communication by health services to inform of infant development and attachment on OOHC decision making, and reunification processes has particular relevance to nurses and midwives who work with these families (MacMahon, 1997).

The over representation of Aboriginal infants in OOHC (Humphreys & Kiraly, 2011) is alarming.

As of 30 June 2020, approximately 46, 000 children were in OOHC and 18, 900 of these children were Indigenous (Australian Institute of Health and Welfare, 2021). In addition to the emotional impact on birth parents, the impact of separation on the infant can have profound damaging physical and psychological effects (Christiansen & Anderssen, 2010; Douglas & Walsh, 2013). Decision-making regarding Aboriginal infants, by courts, nurses and midwives, must respect and foster partnerships with Aboriginal community groups to promote access to culture, which is imperative for the infants identity formation and sense of belonging (Davis, 2019). With studies showing that Indigenous children who grow up in OOHC more likely to have contact with the criminal justice system (McFarlane, 2017) it is crucial that decision making practices for infants respond to the intergenerational trauma that has been caused to First Nations people.

One reason for the paucity of research investigating court decision making processes about infant removal may be that in many jurisdictions, children's courts operate as closed courts, meaning there is little opportunity to scrutinise decisions they make. There is also a widespread lack of recognition of infancy as a unique developmental stage in legislation and guidelines (Hestbæk, Höjer, Pösö, & Skivenes, 2020). Work in the United States and Scotland has suggested that integrating infant mental health mod-

els into child welfare practice can aid in informing decision-making and have direct benefits for infants and their families (Chinitz et al., 2017; Turner-Halliday et al., 2017). Despite this, legislation and guidelines in many jurisdictions do not have any infant-specific decision-making criteria. For example, child protection legislation in Australia does not specifically identify 'infants' as a defined group. This means they are considered as indistinct from other children in the child protection system (Hestbæk et al., 2020).

Infants who come into the sphere of court protection services are often already disadvantaged by the effects of prior neglect or maltreatment. There is little doubt however that if nurses and other health professionals are provided with clarity about how health information impacts legal decisions, then such professionals will be in a more informed position to guard against professional bias in documentation and decision making and provide information relevant to court decision making processes. A challenge that was evident throughout the studies identified in this paper, was that although researchers referred in general terms to 'infants' best interests', they did not explicitly describe what 'infants best interests' were, or how they are defined or measured in court decision-making. The United Nations Conventions on the Rights of the Child suggests that 'best interests' should stand at the centre of child protection law. Article 3 of the convention states "In all actions concerning children...the best interests of the child shall be a primary consideration" (United Nations General Assembly, 1989). An ongoing lack of court transparency and a paucity of infant-specific care order criteria, therefore, is arguably not in an infants' best interests. The findings of this review imply a need for future studies that examine how Conventions on the Rights of the Child is applied to decision-making for infants when removed from birth parents.

3.1. Limitations

This review was restricted by its exclusion of peer reviewed studies published in languages other than English. Several factors may have impacted the way we discussed our findings, such as differences in legal, cultural and socioeconomic forces, that might influence how health information is understood in different jurisdictions and nations. Also, a wide range of guidelines, legislation and other court documents may have revealed influences of health information on court decisions, but reviewing such documents was outside the scope of this review.

4. Conclusion

Courts play a vital role in society, and court decisions about removal of infants from birth parents can have a significant influence on long term health outcomes. Despite the potential for research to influence development of law and policy, this review found very few studies have investigated how health information impacts court decisions about infant removal. While health issues such as substance misuse and mental health and the importance of attachment and reunification have been broadly identified, there is clear need for more intensive focus on the nexus between infant development and legal concerns when courts make decisions about infant removal. Greater clarity will enable nurses and other health professionals involved in submitting health information to courts to guard against professional bias and provide information that increases the chances of court decisions that are in the best interests of infants.

Nurses and other health professionals who act as health informants to courts have potential to make a major contribution in the identification of infant neglect, maltreatment and long term adverse sequelae including death. Ongoing development of such important roles will be hampered however if the current lack of transparency about how courts consider health information continues. Future studies into how health concerns related to infants and their birth parents are understood and acted upon by courts, may hold potential to provide guidance for nurses and other health professionals.

Author contribution

With reference to authorship, the first author conducted the primary research and wrote the initial draft. The second and third authors are legal academics who contributed by providing expert legal and textual analysis. The fourth author is a nursing academic who took the lead role verifying the research and provided health analysis and contextualisation.

Data availability statement

The literature review results data and search strings have been retained.

Funding

Not applicable.

Ethics statement

No ethics approval was required for this scoping review.

Conflict of interest

There is no conflict of interest for any author.

Patient consent statement

Not applicable.

Permission to reproduce material from other sources

Not applicable.

Appendix A

Australia

Author Year	Aim / Method	Participant Setting/Sample/Characteristics	Results Summary /Limitations
Douglas and Walsh (2013).	<p><u>Aim:</u> To find out how lawyers experience their role in the context of working with Indigenous parents in child protection matters.</p> <p><u>Method:</u> Qualitative – 21 individual Interviews and one larger group interview.</p> <p><u>Ethics:</u> No mention of ethics.</p>	<p>- 29 lawyers with experience in child protection law.</p> <p>-Three paralegal workers.</p> <p>-Five of the interviewees in the study were Indigenous people.</p>	<p>-The study found that historical factors related to the colonisation process, past child removal policies / practices, loss of identity, poverty and approaches of child protection workers are significant factors in child protection and Indigenous people.</p> <p>-Many lawyers interviewed suggested that the policies of the past are continuing by stealth.</p> <p>-The loss of identity experienced by Stolen Generation children continues to be experienced by many Indigenous children who are removed from their families and placed into OOHC.</p> <p>-Lawyers interviewed supported cultural competence, however claimed that child protections workers sometimes lacked cultural competence and understanding of history and domestic violence.</p> <p>-There is a lack of will on the part of child protection officials to place Indigenous children in kinship placements and a lack of commitment to maintain contact and work towards reunification.</p> <p><u>Limitation:</u> The study was based on the perceptions and accounts of lawyers who work in the child protection setting and not a literal description of the child protection system. The potential for 'rule of optimism' when evaluating client's versions of events.</p>
Humphreys and Kiraly (2011).	<p><u>Aim:</u> To contribute to the understanding of family contact for infants in OOHC.</p> <p><u>Method:</u> Mixed Methods/Data mining/Focus groups /interviews/case studies.</p> <p><u>Ethics:</u> Ethics approved.</p>	<p>-119 Infants under the age of 12 months (placed into care within two months of birth) were selected as the focus of the study.</p> <p>-11 focus groups and five interviews were undertaken.</p> <p>Focus groups involved a total of 118 participants, consisted of:</p> <ul style="list-style-type: none"> - foster carers - foster carer staff - child protection workers - child protection case support staff - legal representatives - staff of the Children's Court Clinic. 	<p>-Results found a high incidence of Aboriginal infants (18%) in this sample which reflects the overrepresentation of Aboriginal children in care.</p> <p>-One third of all cases (40 out of 199) had a high frequency contact order at some stage.</p> <p>-Substance misuse was evident in most cases involving the birth parent (29 mothers and 23 fathers out of the 40 cases).</p> <p>-Domestic violence was also evident (26 out of 40).</p> <p><u>Limitation:</u> The study was unable to directly capture the perspective of family members, including infants, mothers, and fathers. High-frequency contact was a relatively new phenomenon, and most parents were still involved in the court process.</p>

Norway

Author Year	Aim / Method	Participant Setting/Sample/Characteristics	Results Summary /Limitations
Christiansen and Anderssen (2010).	<u>Aim:</u> To explore how Norwegian Child Welfare Services present their reasons as well as their work processed in deciding to place children in OOHC. <u>Method:</u> Mixed Methods/ Interviews /Structured Questionnaire. <u>Ethics:</u> No mention of ethics.	-83 Social Workers -109 children (6-12 years of age) removed from their homes over a 15-month period. -Within 3 months of placement semi-structured interviews with the same social workers 1-2 months apart were undertaken.	-The reasons why children were placed into OOHC fell into three central elements: 1) Fixation of worrying conditions; 2) Experiences and (e)motions; 3) A trigger appears. -It was found that the typical course of many cases that end with a placement into OOHC is characterised by a focus on the parents' characteristics more than on the child. <u>Limitation:</u> Child Welfare Service Workers gave accounts of the decision-making process at a later stage; accounts were shaped by topics the interviewers found interesting to pursue.

Scotland

Author Year	Aim / Method	Participant Setting/Sample/Characteristics	Results Summary /Limitations
Turner-Halliday et al. (2017).	<u>Aim:</u> To explore the context of the New Orleans Intervention Model (NIM) to generate explanatory power to explain why NIM may, or may not, be effective in Glasgow. <u>Method:</u> Qualitative / focus groups. <u>Ethics:</u> Ethics approved	Interviews and focus groups with 63 participants in different categories. Categories included. - Social workers - Foster carers - Legal decision makers - The New Orleans Intervention Model team	-In summary the New Orleans Intervention Model is bringing greater influence to decision-making. -The study found that the Children's Panel saw health professionals as providing an additional level of expertise, which often strengthened recommendations. -The results of these studies suggest the need for child protection practices to be more closely aligned with the current science of infant brain development. <u>Limitation:</u> The study was unable to comment on the relative weights of different forms of evidence in different legal fora, given participants spoke generally about the legal system.

Sweden

Author Year	Aim / Method	Participant Setting/Sample/Characteristics	Results Summary /Limitations
Wisso and Johansson (2018).	<u>Aim:</u> The aim was to: 1) Identify reasons provided by district courts in their decisions on custody transfers; 2) analyse how contact between children and their birth parents is reflected in decision making; 3) Examine how children's views are reflected in court decisions. <u>Method:</u> Mixed Methods/ Quantitative/Qualitative Document analysis / Interviews. <u>Ethics:</u> Ethics approved.	Analysis of 32 Decisions from four District Courts regarding custody transfer over a one-year period.	-The study found that there are variations in how District Courts argue and report on decisions in relation to custody transfers and foster parents. Variations were noted within the same District Court. -Reasons for why custody transfers are in question included: 1) Attachment and family belonging; 2) Child had a sense of belonging to the foster family. -The findings indicated that: 1) There is vagueness and confusion about whether or not contact between the child and birth parents is a hindrance for custody transfer; 2) The District Court pays more attention to birth parents views and their circumstances than to children's voices. <u>Limitation:</u> The small number of cases in the sample.

United States

Author Year	Aim and Method	Participant Setting/ Sample/Characteristics	Results Summary /Limitations
Britner and Mossler (2002).	<p><u>Aim:</u> To study how different groups of child welfare professionals prioritise and use information for placement decisions following instances of child abuse.</p> <p><u>Method:</u> Mixed Methods/ interviews /questionnaires / vignettes.</p> <p><u>Ethics:</u> Ethics approved.</p>	<p>A total of 90 professionals including:</p> <ul style="list-style-type: none"> - Six Juvenile Court Judges. - Eight guardians. - 10 court appointed specialists. - 43 social workers - 23 mental health professionals 	<p>-The study found that professional groups use different kinds of information when making decisions about foster care placements.</p> <p>-Social workers and mental health providers rely on information about severity, pattern of abuse, information about services offered in the past as well as parental responses to those services.</p> <p>-Judges and guardians rely more on information about the likelihood of a reoccurrence of abuse and the child's ability to recount the abuse.</p> <p>-Court Appointed Special Advocates volunteers rely on information about the stability of the family.</p> <p><u>Limitations:</u> The study was limited by the sample and methodology. A majority of the judges and guardians were male, whereas majority of the members of the other professional groups were female. Regardless of group membership, years of experience in their position had some effect on professional ratings and characteristics considered in placement decisions.</p>
Chinitz et al. (2017).	<p><u>Aim:</u> To improve parenting interactions; improve safety, permanency and wellbeing of infants and toddlers; and review the impact on child welfare practice and policy related to the needs of infants and toddlers.</p> <p><u>Method:</u> Mix Methods/ Quantitative /Interview</p> <p><u>Ethics:</u> Ethics approved</p>	<p>-142 families participated in the intervention.</p> <ul style="list-style-type: none"> - 26 weekly sessions of child-parent psychotherapy (CPP). - Parent-specific measures obtained through screening tools. - Children under the age of three. 	<p>-The study identified that standards of parenting quality interactions improved during the project.</p> <p>-Of the 142 families who participated in the project, 59 achieved program completion.</p> <p>-21% demonstrating a high-quality score at intake and 39% achieving a high-quality score after intervention.</p> <p>-In the area of safety, of the 142 families, five children (3.5%) experienced a recurrence of maltreatment.</p> <p>-For permanency, 35 (86%) children were reunified with their parents at the completion of the project.</p> <p>Overall, the study found that integrating infant mental health services and expertise into child welfare practice appears to have direct benefits for infants.</p> <p><u>Limitations:</u> Lack of a control group, reduced sample size.</p>
Dozier et al. (2001).	<p><u>Aim:</u> To examine the nature of attachments formed by infants in foster care with their new foster carers.</p> <p><u>Method:</u> Quantitative /Longitudinal study / Interview</p> <p><u>Ethics:</u> No mention of ethics.</p>	<p>- Examined attachment quality for 50 foster mother–infant families</p>	<p>Attachment quality was assessed between 12 and 24 months of age. The study found that.</p> <p>52% of children had secure attachments.</p> <p>34% disorganised.</p> <p>6% avoidant.</p> <p>8% as resistant.</p> <p><u>Limitations:</u> Not discussed</p>

MacMahon (1997).	<p><u>Aim:</u> To explore the criteria for placement decisions concerning cocaine-exposed infants</p> <p><u>Method:</u> Mixed Methods/ data review</p> <p><u>Ethics:</u> Ethics approved</p>	<p>The study examined 53 infants whose urine tests were positive for illicit substances.</p>	<p>The results showed:</p> <ul style="list-style-type: none"> -26 (46%) of the 53 infants were returned to their mothers within one week of birth. -39 (76%) of the infants were reunited with some relative within the first month of life. -At 12 months of age, 10 infants (19%) remained in foster care. -No infants remained in foster care beyond 18 months. -Length of time infants were dependents of the court ranged from 1 month to >5 years. -70% of the cases were "closed" between 6 and 30 months of life. <p><u>Limitation:</u> Small sample size</p>
Wightman (1991).	<p><u>Aim:</u> To explore the criteria for placement decisions concerning cocaine-exposed infants.</p> <p><u>Method:</u> Qualitative / 90 min interviews.</p> <p><u>Ethics:</u> No mention of ethics.</p>	<p>Nine specially trained workers in child protection.</p>	<p>-In summary, it was noted that there was consistency among workers in terms of how this type of investigation was conceptualised and carried out.</p> <ul style="list-style-type: none"> -There were variations among worker's reflections of how each community approached the needs of cocaine-exposed infants. -The availability of support systems for parents and infants was a critical decision-making factor. <p><u>Limitations:</u> Not discussed.</p>

References

- Arksey, H., & O'Malley, L. (2005). Scoping studies: towards a methodological framework. *International Journal of Social Research Methodology*, 8(1), 19–32. <https://doi.org/10.1080/1364557032000119616>.
- Australian Institute of Health and Welfare. (2018). *Children in care*. <https://aifs.gov.au/cfca/publications/children-care>
- Australian Institute of Health and Welfare. (2019). *Child protection Australia 2017–2018*. <https://www.aihw.gov.au/getmedia/e551a2bc-9149-4625-83c0-7bf1523c3793/aihw-cws-65.pdf.aspx?inline=true>
- Australian Institute of Health and Welfare. (2021). *Child protection Australia 2019–2020*. <https://www.aihw.gov.au/getmedia/c3b0e267-bd63-4b91-9ea6-9fa4d14c688c/aihw-cws-78.pdf.aspx?inline=true>.
- Australian Nursing and Midwifery Foundation. (2019). *Child abuse and neglect*. https://anmf.org.au/documents/policies/PS_Child_abuse_and_neglect.pdf
- Britner, P. A., & Mossler, D. G. (2002). Professionals' decision-making about out-of-home placements following instances of child abuse. *Child Abuse & Neglect*, 26(4), 317–332. [https://doi.org/10.1016/S0145-2134\(02\)00311-3](https://doi.org/10.1016/S0145-2134(02)00311-3).
- Chinitz, S., Guzman, H., Amstutz, E., Kohchi, J., & Alkon, M. (2017). Improving outcomes for babies and toddlers in child welfare: a model for infant mental health intervention and collaboration. *Child Abuse & Neglect*, 70, 190–198. <https://doi.org/10.1016/j.chiabu.2017.05.015>.
- Christiansen, O., & Anderssen, N. (2010). From concerned to convinced: reaching decisions about out-of-home care in Norwegian Child Welfare Services. *Child & Family Social Work*, 15(1), 31–40. <https://doi.org/10.1111/j.1365-2206.2009.00635.x>.
- Davis, M. (2019). *Family is Culture: Review report: Independent review of Aboriginal children and young people in OOHc*. Sydney: Department of Communities and Justice.
- Douglas, H., & Walsh, T. (2013). Continuing the stolen generations: child protection interventions and indigenous people. *The International Journal of Children's Rights*, 21(1), 59–87. <https://doi.org/10.1163/157181812x639288>.
- Dozier, M., Stoval, K. C., Albus, K. E., & Bates, B. (2001). Attachment for infants in foster care: the role of caregiver state of mind. *Child Development*, 72(5), 1467–1477. <https://doi.org/10.1111/1467-8624.00360>.
- Ferguson, L. (2013). Not merely rights for children but children's rights: The theory gap and the assumption of the importance of children's rights. *The International Journal of Children's Rights*, 21(2), 177–208. <https://doi.org/10.1163/15718182-55680015>.
- Fernandez, E., & Lee, J.-S. (2013). Accomplishing family reunification for children in care: an Australian study. *Children and Youth Services Review*, 35(9), 1374–1384. <https://doi.org/10.1016/j.chilyouth.2013.05.006>.
- Fitzgerald, Hiram, E., Weatherston, Deborah, & Mann, Tammy, L. (2011). Infant mental health: an interdisciplinary framework for early social and emotional development. *Current Problems in Pediatric and Adolescent Health Care*, 41(7), 178–182. <https://doi.org/10.1016/j.cppeds.2011.02.001>.
- Hestbæk, A.-D., Höjer, I., Pösö, T., & Skivenes, M. (2020). Child welfare removal of infants: exploring policies and principles for decision-making in Nordic countries. *Children and Youth Services Review*, 108, Article 104572. <https://doi.org/10.1016/j.chilyouth.2019.104572>.
- Hudson, D. (1999). Families First: A support network for families raising children. *N S W Public Health Bulletin*, 10(7), 84–85. <https://doi.org/10.1071/NB99038>.
- Humphreys, C., & Kiraly, M. (2011). High-frequency family contact: a road to nowhere for infants. *Child & Family Social Work*, 16(1), 1–11. <https://doi.org/10.1111/j.1365-2206.2010.00699.x>.
- Jack, S. M., Gonzalez, A., Marcellus, L., Tonmyr, L., Varcoe, C., Van Borek, N., et al. (2021). Public health nurses' professional practices to prevent, recognize, and respond to suspected child maltreatment in home visiting: an interpretive descriptive study. *Global Qualitative Nursing Research*, 8 2333393621993450–2333393621993450. <https://doi.org/10.1177/2333393621993450>.
- John, S. G., Brandt, T. W., Secrist, M. E., Mesman, G. R., Sigel, B. A., & Kramer, T. L. (2019). Empirically-guided assessment of complex trauma for children in foster care: a focus on appropriate diagnosis of attachment concerns. *Psychological Services*, 16(1), 120–133. <https://doi.org/10.1037/ser0000263>.
- Karmstien, K., Frederiksen, S., Mørch, F. H., & Hestbæk, A. D. (2018). Continuity in care. when parents and child protection agency meet. *Copenhagen: The Danish Center for Social Science Research*.
- Levac, D., Colquhoun, H., & O'Brien, K. K. (2010). Scoping studies: Advancing the methodology. *Implementation Science: IS*, 5(1) 69–69. <https://doi.org/10.1186/1748-5908-5-69>.
- Lillas, C. M., Langer, J. L., & Drinane, M. (2004). Addressing infant and toddler issues in the juvenile court: challenges for the 21st century. *Juvenile & Family Court Journal*, 55(2), 81–96. <https://doi.org/10.1111/j.1755-6988.2004.tb00163.x>.
- MacMahon, J. R. (1997). Perinatal substance abuse: The impact of reporting infants to child protective services. *Paediatrics*, 100(5) e1–e1. <https://doi.org/10.1542/peds.100.5.e1>.
- Mosteiro, A., Beloki, U., Sobremonte, E., & Rodríguez, A. (2018). Dimensions for argument and variability in child protection decision-making. *Journal of Social Work Practice*, 32(2), 169–187. <https://doi.org/10.1080/02650533.2018.1439459>.
- National Society for Prevention of Cruelty to Children. (2019). *Child protection plan statistics: England 2015–2019*. <https://learning.nspcc.org.uk/media/1181/child-protection-register-statistics-england.pdf>
- Parry, Y., Maio-Taddeo, C., Arnold, L., & Nayda, R. (2009). *Professionals protecting children: Child protection and nursing and midwifery education in Australia*. Adelaide: Australia Centre for Child Protection Privacy Act 1988 (Cth) s. 6FA. (Austl).
- Stamoulis, C., Vanderwert, R. E., Zeanah, C. H., Fox, N. A., & Nelson, C. A. (2017). Neuronal networks in the developing brain are adversely modulated by early psychosocial neglect. *Journal of Neurophysiology*, 118(4), 2275–2288. <https://doi.org/10.1152/jn.00014.2017>.
- (1989). In *Convention on the Rights of the child: 1577* (p. 3). Treaty Series.
- The United States Children's Bureau. (2020). The AFCARS report (Publication No. 27). Washington: U.S. Department of Health and Human Services <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf>.
- Turner-Halliday, F., Kainth, G., Young-Southward, G., Cotmore, R., Watson, N., McMahon, L., & Minnis, H. (2017). Clout or doubt? Perspectives on an infant mental health service for young children placed in foster care due to abuse and neglect. *Child Abuse & Neglect*, 72, 184–195. <https://doi.org/10.1016/j.chiabu.2017.07.012>.
- Wightman, M. J. (1991). Criteria for placement decisions with cocaine-exposed infants. *Child Welfare*, 70(6), 653.
- Wisso, T., & Johansson, H. (2018). Transferring custody from birth parents to foster parents - an ambiguous matter. *The Journal of Social Welfare & Family Law*, 40(3), 321–339. <https://doi.org/10.1080/09649069.2018.1493653>.
- World Health Organization. (2013). *Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection*. Geneva: World Health Organization <https://www.who.int/hiv/pub/guidelines/arv2013/intro/keyterms/en/#:~:text=An%20infant%20is%20a%20child,effective%20response%20to%20the%20epidemic>.
- World Health Organization. (2020). *Global status report on preventing violence against children 2020*. Geneva: World Health Organization.