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## Mother Loses Custody of Obese Son

December 27, 2011 By [Keith Ecker](#)



In October, authorities removed an 8-year-old boy from his home in Cleveland and placed him in foster care because county officials said the mother was not doing enough to control the child's weight. At the time the boy was seized, he weighed more than 200 pounds, which is well over three times the normal weight of a child his age. The boy has since been placed with his uncle.

The case has ignited a debate about whether extreme childhood obesity should be reason enough to [remove a child from his family](#). To date, there have only been a handful of cases in the U.S. where authorities intervened to remove a minor from a home

due to excessive weight. However, as childhood obesity rates continue to climb, some believe the trend may grow.

"My research in this area leads me to believe that this is a rising trend," says [Grant Varner](#), a lawyer at [Varner & Segura](#), who is representing a mother in a similar high-profile case. "I've seen a couple cases out of Texas and the Midwest. Sometimes they allow parents to keep custody and sometimes not. There doesn't seem to be a steady precedent."

### Growing Waistlines Are a Growing Problem

The [Centers for Disease Control \(CDC\)](#) maintains [statistics on childhood obesity](#). The data points to a dramatic increase in childhood obesity in recent years, which gives reason to believe the Ohio case may be part of a trend. For instance, according to the CDC:

- Childhood obesity has more than tripled in the last 30 years.
- The percentage of children aged 6 to 11 years in the U.S. who were obese increased from 7 percent in 1980 to nearly 20 percent in 2008.
- The percentage of adolescents aged 12 to 19 years who were obese increased from 5 percent to 18 percent over the same period.
- In 2008, more than one third of children and adolescents were overweight or obese.

Although each state has a different threshold for what it considers a reason to intervene to remove a child from his family, most states use a fairly simple and broad definition that leaves a lot of room for interpretation.

C, Grant Varner



"Here in South Carolina, the Department of Social Services can intervene if there is possible abuse or neglect," Varner says. "It doesn't go into any more detail than that."

Still, there are few that deny that childhood obesity, if left unchecked, could result in chronic illness or death. According to [a paper](#) co-authored by Harvard Law and Public Health research associate [Lindsey Murtagh](#) and [Dr. David Ludwig](#), a childhood obesity specialist, states have long pursued cases where parents have dangerously underfed

children. But only a handful of states have “legal precedent for applying this framework to overnourishment and severe obesity.”

“An increasing proportion of U.S. children are so severely obese as to be at immediate risk for life-threatening complications including type-2 diabetes,” the authors wrote in their paper. “As an alternative [to pediatric surgical weight loss programs], involvement of state protective services might be considered...”

## Systemic Problem Can't Be Solved in Court

To some extent, Varner agrees that childhood obesity should be considered a reason for [the state to intervene](#). However, he believes the situations that call for such action are beyond the norm.

“I feel you have to look at it in a very narrowly tailored way with the parent either force feeding or withholding food from the child in such a manner that is within their control,” Varner says. “So if a family is on food stamps and can't afford to properly feed their child, that would be considered beyond their control and not a reason to intervene necessarily.”

Varner also adds that it can be difficult to determine whether a child's obesity is due to parental neglect or a completely unrelated outside factor. He is currently representing [Jerri Gray](#), a South Carolina woman who in 2009 lost custody of her 14-year-old son and was charged with criminal neglect after he hit 555 pounds.

“I will be one of the first to admit that it's hard to deny that 555 pounds is not a problem,” Varner says. “The question is what's the problem? Was it medical or overfeeding? And if it was related to eating, how can you hold a mother responsible for what a high school student is doing? He may have been acquiring food elsewhere, like from friends at school.”

Gray's family court issues are nearly resolved, though some criminal charges are still pending. Meanwhile, her son is now 17 and working on controlling his weight.

But beyond deciphering the root of the problem in cases like Gray's and the one in Ohio, Varner says there just isn't a framework in place to help these overweight minors.

“I think the system is broken,” Varner says. “It's not prepared to handle cases like this. Should weight be considered? At this point in time, we just aren't prepared to deal with it. But I think ultimately it will become a consideration in custody cases.”

[Keith Ecker](#) is a news reporter for Lawyers.com.

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