



Child Law Practice

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Helping Lawyers Help Kids

IN PRACTICE

Maintaining Families When Parents Have Disabilities

by Ella Callow

A child whose parent has a disability faces a serious threat of removal by child welfare authorities. Parents' attorneys and children's representatives must have information and knowledge about the special challenges these families face in child welfare cases. Disability-aware advocacy can help prevent unnecessary traumatic removals of children from parents with disabilities.

There are times when children must be removed from parents with disabilities, just as they sometimes must be removed from able-bodied parents. Not all parents will succeed in regaining custody, though their odds greatly improve when they are provided proper accommodations and strong advocacy. Attorneys in such cases must aim to protect a child and parent, uphold the legitimacy of the proceedings, and satisfy due process.

The exact services, accommodations, expertise, and equipment a parent will need is based largely on the parent's individual disability. A full discussion of specific disabilities is beyond the scope of this article. What follows is a general discussion of families with disabilities and key steps advocates can take to improve the odds that they remain intact.

Families with Parental Disability

A person with a disability is "a person who... has a physical or mental impairment that substantially

limits one or more major life activities...has a record of such an impairment...or, is regarded as having such an impairment."¹

Fifteen percent of all American families contain a parent with a disability. Among some communities the number of parents with disabilities is higher still:

- 16.3% among Hispanics
- 18.7% among African Americans
- 24% among single-parent families
- 25% among Native Americans²

It is a community with significant numbers of foreign-born members (33% of the deaf community is foreign born).³

Despite gains over the last 20 years, the disability community still experiences disparate treatment and greater social problems than the general American population. People with disabilities are three times more likely to be in poverty and twice as likely to be unemployed as able-bodied people, and twice as likely to drop out of school. They are three times as likely as

able-bodied people to be unable to access needed health care. They are also twice as likely to be unable to access transportation, though they are far more likely to need those services than the general population.⁴

Children in such families face staggering removal rates: 70-80% when the parent has a psychiatric disability, and 40-60% when the parent has an intellectual disability. In families where the parental disability is physical, 13% have reported pathologically discriminatory treatment in custody cases, and the deaf and blind communities report extremely high rates of child removal and loss of parental rights.⁵

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ABA Child Law PRACTICE

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CASE LAW UPDATE

Editor's Note: In the following two cases, the Oregon Supreme Court considered the admissibility of expert testimony in child sexual abuse cases. The first case limits the role of experts when offering a diagnosis of child sexual abuse. The second case permits experts to testify about how child sexual abuse victims disclose abuse.

Physician's Medical Diagnosis of Child Sexual Abuse Inadmissible at Trial

State v. Southard, 2009 WL 3127745 (Or.).

Holding: A physician's medical diagnosis that the alleged child victim had been sexually abused was inadmissible at trial. The physician's diagnosis did not further the jury's ability to evaluate the evidence but instead created a risk that the jury would defer to the physician's diagnosis. Therefore, the probative value of the physician's testimony was outweighed by a risk of unfair prejudice.

A man was prosecuted on three counts of sodomy involving his girlfriend's six-year-old son and three-year-old daughter. The jury based its judgment in part on testimony by a physician who diagnosed the boy as having been sexually abused. Before admitting his testimony, the state offered evidence establishing that a diagnosis of sexual abuse is generally accepted in the medical community and the methods used by the physician were valid. The appellate court affirmed the trial court's ruling.

The man challenged the physician's testimony, claiming the physician's diagnosis of sexual abuse was inadmissible scientific evidence under the circumstances in the case.

The Supreme Court of Oregon reversed. The physician was part of child advocacy center team that evaluated the children for alleged sexual abuse upon a referral from a child protection agency. The physician worked with a social worker to gather the children's history from their caregivers, interview the children, and medically examine the children. The medical exam revealed no physical evidence of sexual abuse. However, substantial credible evidence to support the physician's diagnosis included the boy's own statements describing being forced by the defendant to engage in oral sex and

the history provided by the children's caregivers.

The man argued that without physical evidence of abuse, the physician's diagnosis was unreliable and not sufficiently verifiable to be scientifically valid. The state countered that physicians often base diagnoses solely on a patient's history and that well-established scientific principles supported the diagnosis in this case.

To be admissible, scientific evidence must be relevant, scientifically valid and helpful to the jury, and its prejudicial effect must not outweigh its probative value.

Regarding the first factor (relevance), the supreme court found that whether sexual abuse occurred is a material fact when proving a charge of sodomy and that the physician's testimony regarding his diagnosis was relevant to help the jury determine if that fact occurred.

The second factor (the evidence must be scientifically valid and helpful to the jury) required evaluating the methodology used by the physician and the child advocacy center when making the sexual abuse diagnosis. The methodology generally involved taking the children's history from their caregivers, interviewing the children, and conducting a physical exam.

The court found this methodology met established standards of scientific validity. Taking a patient's history is a standard medical practice that doctors use to diagnose many medical conditions. Similarly, interviewing patients is standard practice and the interviewing practices the child advocacy center used in this case were guided by generally accepted techniques. Finally, conducting a physical exam is often used to find evidence to confirm a diagnosis or offer an alternative

explanation, and the absence of physical evidence is common in sexual abuse cases.

In considering the third factor—whether the probative value of the diagnosis outweighed the risk of unfair prejudice—the court noted that the physician’s diagnosis did not tell the jury in this case anything it could not determine on its own. It explained that whether the defendant forced the boy to engage in oral sex was not a complex determination that only an expert could make. Further the criteria used by the physician and the

child advocacy center when deciding to credit the boy’s statements about the abuse were the same that a jury would use to evaluate a witness’s credibility.

Since the physician’s diagnosis was one that a jury was equally capable of making, the court found its value was slight and the risk of prejudice was high. Since the diagnosis was made by a highly credentialed expert and was based primarily on an assessment of the boy’s credibility, it created a risk that the jury would not make its own determination but would instead defer to the expert.

The court recognized that expert testimony about aspects of child sexual abuse that helps a lay person understand the evidence may be admissible. But when an expert’s diagnosis of sexual abuse does not tell the jury anything it could not determine on its own, the diagnosis is inadmissible.

The court held that under the circumstances in this case, the trial court improperly admitted the physician’s diagnosis of sexual abuse. It reversed the appellate and trial court’s decisions and remanded for further proceedings.

Physician’s Testimony Regarding Delayed Reporting Phenomenon Admissible at Trial

State v. Perry, 2009 WL 3127738 (Or.).

Holding: A physician’s testimony at trial that delayed reports are common in child abuse cases was admissible. The physician’s testimony was not outweighed by a danger of unfair prejudice and was relevant to rebut the defendant’s claim that the alleged child victim’s delay signaled that she fabricated the report.

A couple served as foster parents for their 10-year-old niece and her eight-year-old brother. During a visit with her biological father, the niece told her father that the foster father touched her sexually several times months earlier. She repeated her story to a child welfare agency caseworker, who referred her for an evaluation.

The child was evaluated by a child advocacy center. The staff who examined the child found no physical evidence of abuse, but concluded her sexual abuse report was credible.

Before his trial, the defendant filed a motion challenging the admissibility of expert testimony about “delayed reporting” by children. At a hearing on the motion, the state’s expert, a physician from the child advocacy center, stated that “delayed reporting” is a common phenomenon and well-documented by a body of literature. She said the child advocacy center’s own research on delayed reporting was consistent with the national trends reported in the literature and that delayed reporting is common in child abuse cases with abnormal physical findings. She said there is no way to decide if a child who delays reporting child abuse

is telling the truth, but explained that the field generally finds that denial is often the first stage in the disclosure process.

The defendant claimed the physician’s testimony was inadmissible because it was not scientifically valid, was irrelevant, and was unfairly prejudicial. The trial court rejected these claims, however, and ruled the physician’s testimony about delayed reporting as a characteristic of sexual abuse was admissible.

At the trial, the state presented the victim’s testimony, a videotaped interview of the victim by the child advocacy center, and testimony from several witnesses, including the child advocacy center physician. The jury convicted the defendant on several counts of child sexual abuse. The appellate court affirmed.

The Supreme Court of Oregon affirmed. The defendant limited his appeal to the trial court’s ruling in the hearing on the admissibility of the physician’s testimony. He argued again that the testimony was not relevant, was unfairly prejudicial, and was not scientifically valid.

The court first considered if the testimony was relevant. The defendant had argued that the victim was fabricating and that the victim’s delay in reporting supported a finding that the events she described never happened. Since the physician’s testimony countered the defendant’s claim—by establishing that delayed reporting is common in child sexual abuse cases—it was relevant to disprove the defendant’s claim.

Regarding the second factor (risk of

unfair prejudice), the defendant argued the physician’s testimony increased the likelihood that the jury would find the victim was abused based on the fact that she waited to disclose the alleged abuse. The court disagreed, finding the physician’s testimony that delayed reporting is common in child sexual abuse cases contained no inherent risk of prejudice. It advised that if the defendant believed the testimony somehow suggested that delayed reporting affirmatively indicated abuse, then he should have made an objection at trial.

Regarding the third factor, the defendant argued the physician’s testimony did not meet the standard for admissibility of scientific evidence. The court applied several well-established factors to determine the scientific validity of the testimony. It first observed the physician was an expert in her field and her knowledge was based on studies, research, and scientific literature. It found the delayed reporting theory had achieved general acceptance in the field. Specialized, peer-reviewed literature supported the theory. And the state’s use of the delayed reporting phenomenon was not unduly novel and did not improperly rely on the physician’s subjective interpretation. Based on these factors, the court found the testimony was scientifically valid.

Since the physician’s testimony was relevant, did not unfairly prejudice the jury, and was scientifically valid, the trial court properly admitted and considered the evidence at trial.

Alabama

M.S. v. Alabama Dep't of Human Resources, 2009 WL 2659180 (Ala. Civ. App.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO REHABILITATE Although mother's completion of inpatient alcohol abuse program showed some compliance with her case plan, she made no further efforts to overcome her alcohol dependency and she was unable to parent her child at time of termination hearing because of her mental health issues, thus termination was warranted; child welfare agency was not required to make reasonable efforts to rehabilitate mother but chose to anyway, making mother's rehabilitation and ability to parent critical to prevent ending her rights.

Alaska

In re Danielle A., 215 P.3d 349 (Alaska 2009). DEPENDENCY, ICWA In dependency review where custody of child was extended, trial court failed to make required findings under ICWA; statute requiring court to find agency made active efforts and complied with placement preference provisions at removal also applies when court extends custody.

State v. Jacob, 214 P.3d 353 (Alaska 2009). DEPENDENCY, ATTORNEY'S FEES

Grandparents, who obtained an injunction compelling state to provide notice of dependency proceedings, were entitled to enhanced attorney's fees; while grandparents may have had a constitutional argument which could have entitled them to full fees under state statute, they failed to plead them in their complaint but were entitled to enhanced fees since their request for notice was reasonable and state repeatedly ignored their statutory right to notice.

California

In re L.M., 99 Cal. Rptr. 3d 350 (Ct. App. 2009). VISITATION, TRAVEL EXPENSES Trial court properly denied juvenile's request for payment of parents' travel expenses because he failed to prove order would be appropriate; while court has power to order the agency to pay for travel and make reasonable efforts in dependency cases, the court may consider the parents' ability to pay, the permanency goal, and the benefits of visitation when

exercising its power, and there was little documentation or testimony to support the motion presented at trial.

Yolo County Dep't of Child Support Servs. v. Lowery, 98 Cal. Rptr. 3d 490 (Ct. App. 2009). DEPENDENCY, SUPPORT In dependency case in which man's son was placed in foster care after son molested his stepsisters, father was still required to pay child support for son's placement in county's juvenile system; exception to support obligation when a minor is placed or detained for committing a crime against the person liable for support did not apply to father since son committed his crime against stepsisters, not father.

Colorado

In re A.H., 2009 WL 2916697 (Colo.). DEPENDENCY, APPEALS Where child was removed from mother but father was not found to have neglected child and father filed a writ of prohibition to challenge the court's decision not to place the child with him, action was inappropriate as father could have taken expedited appeal or intervened in dependency case; direct action to Supreme Court is appropriate only in extraordinary circumstances when no other adequate remedy exists.

Connecticut

In re Jordan R., 2009 WL 3068747 (Conn.). TERMINATION OF PARENTAL RIGHTS, REUNIFICATION Trial court properly terminated mother's parental rights after child was severely beaten on multiple dates and mother continued relationship with the father who she identified as the abuser; statute allows termination without the need to prove reasonable efforts where the court finds that a parent was unwilling or unable to benefit from services.

Delaware

Short v. Dep't of Servs. for Children, 2009 WL 3111419 (Del.). TERMINATION OF PARENTAL RIGHTS, TIME IN CARE Trial court properly terminated father's rights because he failed to plan for his child while he was in custody for a year; father failed to cooperate with agency, visit his son, or otherwise provide for him emotionally or financially, aside from efforts after termination proceeding started that were too little too late.

Florida

Davis v. State, 14 So. 2d 289 (Fla. Dist. Ct. App. 2009). STATUS OFFENDERS, SENTENCING Case required remand to resolve whether youth successfully completed boot camp program after he was sentenced for violating his probation; under *ex post facto* clause, if youth successfully completed boot camp program he could only be sentenced to maximum of 364 days incarceration under the statute applied when he was originally sentenced, whereas if he did not complete program he could be legally sentenced to a longer term.

L.D.S.J. v. State, 2009 WL 2392894 (Fla. Dist. Ct. App.). DELINQUENCY, REPRESENTATION

Even though juvenile and his mother signed rights form waiving juvenile's rights, trial court still had duty to ensure juvenile intelligently and voluntarily waived his right to counsel in delinquency proceeding; no evidence was presented showing mother or anyone else discussed with juvenile decision to waive right to counsel.

Indiana

McReynolds v. State, 901 N.E.2d 1149 (Ind. Ct. App. 2009). ABUSE, PARENTAL PRIVILEGE

In prosecution for battery of child, defendant was not entitled to assert parental privilege since he was not a person *in loco parentis*; defendant was an in-home babysitter and was not the child's stepparent, was not romantically involved with mother, did not act as a father figure, and did not participate in parenting decisions.

Maine

In re Anthony J., 2009 WL 2780458 (Me.). TERMINATION OF PARENTAL RIGHTS, SUPPORT

Probate court's order requiring mother to pay child support to grandparents after her parental rights were terminated was void; termination of parental rights severs all rights and obligations of a parent including the ongoing duty to pay child support.

In re Cody T., 2009 WL 2756723 (Me.).
TERMINATION OF PARENTAL RIGHTS,
NONRESIDENT FATHER

Trial court improperly terminated father's rights since evidence that father had abandoned or was unable to provide for child was lacking; lack of relationship was not due to father's actions but to mother's deliberate actions in not disclosing child's whereabouts, and father's incarceration for drug charges, without more, did not show he was a risk to child.

Maryland

Kamp v. Dep't of Human Servs., 2009 WL 2986130 (Md.). SUPPORT, PATERNITY

Trial court improperly ordered DNA testing in support modification hearing without determining if it was in child's best interests; since father openly acknowledged child as his daughter for 13 years, provided support, and maintained joint custody, further evidence was needed to determine if testing was in child's best interests.

New York

In re Jada, 874 N.Y.S.2d 113 (App. Div. 2009). TERMINATION OF PARENTAL RIGHTS, BEST INTERESTS

Terminating father's rights to free child for adoption by her foster mother was in child's best interests even though father had made some efforts toward rehabilitating himself; child had been in foster care for six years while father struggled to overcome drug abuse, foster mother provided nurturing home and met all of child's needs for most of her life and had adopted child's half sister, and child could not be denied permanence that adoption would provide by giving father more time to show he could be a fit parent.

North Carolina

In re J.V., 2009 WL 1987389 (N.C. Ct. App.). DEPENDENCY, PERMANENCY PLAN

Trial court order awarding custody to aunt and uncle failed to comply with permanency planning statute requiring specific findings, including analysis of steps required for reunification and whether child was likely to be able return home within next six months.

Yurek v. Shaffer, 2009 WL 1981870 (N.C. Ct. App.). CUSTODY, CONSENT
Where a consent judgment was entered

giving custody to child's aunt while mother worked to resolve substance abuse and domestic violence issues, trial court correctly found mother's consent was not obtained as a result of undue influence or duress; without showing that mother was in fact under the influence at time of agreement, fact that she had substance abuse issues did not show she was unable to consent.

Oregon

In re J.S.B., 214 P.3d 827 (Or. Ct. App. 2009). DEPENDENCY, GUARDIANSHIP
Where a permanency hearing was held in June and trial court found active efforts were made to reunify Indian child, but only that reasonable efforts were made at August hearing, August order changing goal to guardianship violated ICWA; although court may have relied on earlier findings in August hearing and could have found that conditions had not changed, it did not do so on the record.

Pennsylvania

Adoption of M.M.H., 2009 WL 2840549 (Pa. Super. Ct.). ADOPTION, ATTORNEY'S FEES

Trial court lacked authority to reduce attorney's fees for legal services performed while representing grandmother in termination of parental rights and adoption proceedings; attorney's fees were supported by documentation and work performed was for actual legal services, and public policy concerns that (1) attorney's fees deprived economically disadvantaged people from adopting, and (2) a person should not profit from adoption were misplaced.

South Carolina

Michael P. v. Lisa P., No. 4621 (S.C. Ct. App. 2009). ADOPTION, FOSTER PARENTS

Former foster parents who had cared for newborn for one year, but declined to adopt in favor of having a young childless couple adopt child, lacked standing to bring private adoption action after child welfare agency placed baby in preadoptive home with 34-year-old lesbian foster parent; foster parents rights relating to child ended when the chose not to challenge child's removal from their care.

Texas

In re V.G., 2009 WL 2767040 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, ENDANGERMENT

Evidence was legally and factually sufficient to support trial court's findings that parents knowingly allowed their five children to be placed in surroundings that endangered their physical and emotional well-being and that termination of parental rights was in children's best interests; one child's severe emotional abuse by parents over several years resulted in psychosocial dwarfism that impacted siblings and would make it traumatic for children to return home.

In re V.R., 2009 WL 2356906 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, SUBSTANCE ABUSE

Evidence supported terminating mother's parental rights based on significant risk of endangerment posed by mother's substance abuse; mother obtained vicodin prescriptions under false pretenses, she took vicodin while pregnant and after child's birth, and she failed to participate in treatment or admit she had drug problem.

Utah

In re A.H., 2009 WL 2619221 (Utah Ct. App.). TERMINATION OF PARENTAL RIGHTS, CRIMINAL ACTIVITY

In termination of parental rights proceeding held after children were removed from mother's care due to her incarceration on robbery charges, trial court properly considered alleged robbery charges and other subsequent convictions in determining mother was unable to parent; while unproven criminal allegations should not form sole basis for finding parent unfit, court may make that inference based on continued criminal activity, especially during pending termination proceeding.

Martin v. Colonna, 2009 WL 2527649 (Utah Ct. App.). ABUSE, PROTECTION ORDER

In proceeding in which daughter sought protection order against father after she turned 18, although evidence of father's physical abuse when daughter was a minor could not be used to establish "abuse" to support protection order, trial court could consider this evidence when determining reasonableness of daughter's fear of harm.

U.N. Convention on the Rights of People with Disabilities, Article 23

The U.N. Convention on the Rights of People with Disabilities has been signed by President Obama and sent for ratification by the United States Senate. Featured prominently in the Convention is Article 23: Respect for Home and the Family. Its provisions include:

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that . . . [examples omitted].
2. States Parties shall ensure the rights and responsibilities of persons with disabilities with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States parties shall render appropriate assistance to persons with disabilities in the performance of their child rearing responsibilities.
3. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures that such separation is necessary for the best interests of the child. *In no case shall a child be separated from parents on the basis of disability of either the child or one or both of the parents.**

This last sentence shows where good minds are on the issue. It stresses the need to show a nexus between the behavior of the parent and the need for removal and termination of parental rights versus basing the removal/termination on status, speculation, and guesswork.

* U.N. Convention on the Rights of Persons with Disabilities, 8th Session, at 14, A/61/611 (2006). Available at www.un.org/disabilities/convention/conventionfull.shtml.

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This is the only class of children facing loss of family integrity due not to the behavior of their parents, but to their parent's disability status and how this is perceived and understood by child welfare professionals.

Attitudinal Bias and Remedial Legislation

In the mid-20th century, the Eugenics movement spawned policy that led to institutionalizing millions and sterilizing tens of thousands of people with disabilities for the "good of society."⁶ In the latter part of the century, the Rehabilitation

Act and the Americans with Disabilities Act (ADA) were passed, making it illegal to discriminate against someone based on their actual or perceived disability.⁷ Nonetheless, discrimination is still pervasive due to attitudinal bias: the pathologizing of people with disabilities based on their status.

The ADA specifically includes child welfare agencies and courts in the continuum of state affiliates that, based on the taking of federal funds, may not discriminate against people with disabilities. However, the language is broad and vague on what that means. Parents with disabilities have a right to participate in pro-

grams and activities and to accommodations that will aid their participation. The state affiliates can raise defenses where their participation or accommodation requires major alteration of the program or is financially too burdensome.

What does this mean practically for families in child welfare cases? That question is being decided differently all over the country. If you are going to represent a parent with a disability or that parent's child, you must know how this question is being answered in your jurisdiction.

Disability-Specific Interviewing and Investigation

In addition to whatever you typically include in your initial interviews, for this population you also need to be familiar with the disability, the parent's circumstances, and what the parent needs vis-à-vis the disability. You must know the following disability-specific information:

- Which specific disability or disabilities does the parent have? This could include 'invisible' or medical disabilities like HIV or cancer. Does the child have any disabilities?
- If a parent is deaf, do they sign? If so, what form of sign is used in the home? Does the child sign? If not, what other means of communication are they using?
- Has the parent been prescribed medication and are they taking it? Parents will often forgo medications and live with pain or other symptoms of their disability because the side effects interfere with parenting.
- Is the parent now in pain, suffering from other symptoms of their disability or impaired by medication? Does the parent need medical attention?
- Does the parent have needed equipment (e.g., is the parent's wheelchair working)?

- Is the parent literate? If blind, can the parent read braille? If deaf, does the parent sign and, if so, what type of sign?
- Does the parent have accessible housing? Accessible transportation?
- Has the parent experienced attitudinal bias/discrimination in the case so far?
- Has the parent received accommodations from the court or child welfare agency so far?

Similarly, you will need to add some features to your usual background investigation:

- **Talk to the social worker and review the case file** to determine how much is known about the parent's disability, how concerning the worker finds it, and any misdiagnosis or attitudinal bias.
- **Verbally establish an agreement that the parent is disabled within the meaning of the ADA**, and then document it in a correspondence immediately. Note any immediate equipment or medication needs of the parent.
- **If an 'incident report' (i.e., domestic violence) initiated the case, determine if the domestic violence perpetrator or even the child was used by police to interpret or explain what happened.** This is common and obviously undermines the credibility of the report.
- **If a report from hospital staff after the child's birth or a neonatal intensive care unit (NICU) stay initiated the case, review notes by nurses, hospital social workers and doctors.** It can be powerful to show there was no behavior, just the parent's status, that motivated a staff member to call child welfare.

Accommodations Hearings and Meetings

The success of the case will turn in

part on whether the parent can meaningfully participate in formal decision making. To ensure the parent has that opportunity, begin immediately using the existing ADA legal structure to ensure accommodation occurs. To this end:

- **Establish with the parent what accommodations the parent will need** to be aware of and participate in the meetings and hearings.
- **Contact the courthouse and child welfare agency ADA coordinators and request the accommodations** before any further child welfare agency meetings or any court hearings occur.
- **If the parent is denied a reasonable accommodation, be prepared to appeal** where such process exists or to file a complaint with the departmental, state, or federal agency empowered to investigate discrimination by the court or child welfare agency. At the federal level a complaint can be filed with the Department of Justice, Civil Rights Division, 950 Pennsylvania Ave., NW, Disability Rights Section-NYAV, Washington, DC 20530 (www.usdoj.gov).
- **While accommodations can be straightforward, like an interpreter, they can also be less obvious.** An example is a client

with multiple sclerosis (MS). In some people with MS, their condition is exacerbated by stress and heat. If this is true for your client, you may wish to ask the court to break up hearings into parts to allow the parent to rest and cool down periodically.

Visitation and Services

Each disability requires different, specialized assessments and experts to allay the fears of child welfare agencies and courts and show parental fitness. However, there are also general guidelines for accommodating visitation and services that apply across disabilities:

- **Visitation should occur frequently and last longer.** This is especially true with young children to give the child and parent time to adapt to one another. It also gives the child a visual and auditory history of the parent, who may look, move, or sound different from people without disabilities, or use unfamiliar equipment. Also, visitation should occur in the family's home since this population relies more on physical environment and, sometimes, adaptations to enable or enhance parenting. For example, blind parents rely heavily on their knowledge of the placement of objects and

Accommodations for Hearings and Meetings

Accommodations for parents at hearings and meetings may include:

- phone contact, e-mail, or brailled notices of hearings and meetings to blind parents
- meeting or hearing rooms that a parent with a physical disability can use with their equipment
- real-time transcription or other technology so deaf parents can follow proceedings
- meetings held at a time of day when a parent with psychiatric disabilities is least impaired by psychotropic medications
- allowing an advocate to accompany a parent with intellectual disabilities to help them meaningfully participate in the proceedings

Parenting Adaptations

Adaptations that can help meet the needs of parents with disabilities include:

- **talking thermometer**—so parents who are blind can monitor the health of their child
- **vibrating bed fire alarm system**—so parents who are deaf can react early to a fire alert system and help their child safely exit the home
- **walker with an attached baby carrier**—so a parent with a physical disability involving mobility can safely transport their child
- **chart to manage feedings and other child care tasks**—for parents with developmental disabilities
- **medication protocol for parents with psychiatric disabilities**—to reduce impact of medication regimens on capacity to parent

furniture in their home to facilitate parenting. You can view adaptive baby care equipment on the Through the Looking Glass Web site (www.lookingglass.org).

- **Help the parent access disability community resources.** Independent Living Centers can usually help with a personal assistant, employment, medical and/or housing benefits and support. Specialized help with these needs is usually required if a parent is to comply with visitation and other case plan requirements. Specialized institutions like schools for the deaf or blind or dedicated agencies, like The National Association of the Deaf, The National Federation of the Blind, and The ARC can provide additional resources.
- **Help the parent access general community resources that will address special disability-related concerns in their cases.** For instance, work with the parent to get the child involved in an Early Head Start or other child development program as a preemptive strike against the common child welfare allegation that the child's development will be undermined by the parent's disability.
- **“Parent education” is a common case plan service that**

should begin immediately with this population because locating properly trained practitioners and completing the process can take longer. A properly trained practitioner is informed by both infant mental health or child development *and* disability perspectives. Universities, rehabilitation hospitals, and Zero to Three (a dedicated think tank focused on the health and development of young children) are all good resources for locating such individuals.

- **Find out what tests, assessments, and evaluations you want and don't want for a parent with a disability.** Some of these measures are necessary in light of the parent's disability. An example is the Adapted Baby Care Assessment for parents with physical disabilities. While not commonly provided, this assessment is crucial for the finder of fact because it is the only assessment that actually addresses the current functioning of the parent and identifies whether, after introducing proper techniques and adaptations (including baby care equipment) the parent can safely parent the child.

Other measures are completely inappropriate in light of the disability, but are commonly required. An example is the

traditional I.Q. test for a parent with a developmental disability. This is commonly provided, however, it is the supported opinion of many experts in parenting with developmental disabilities that it is an inappropriate measure for this population in general. It is also a poor predictor of parenting capacity, and tends to be used as a poor substitute for more reliable evaluation methods, such as long-term observation of parent-child interaction.

- **All services and visitation should be located in places that are physically accessible** to parents. Transportation should be accessible and able to accommodate the parent's disability.

Courtroom Advocacy

Zealous advocacy for families where a parent has a disability differs from what a practitioner typically does in a child welfare case. Practitioners need to take special steps once in the trial or courtroom phase. This is in addition to ensuring the child welfare agency and court provide needed accommodations so the parent can meaningfully access the legal process and participate in services and visits.

- **Identify witnesses.** Subpoena people who can attest to the child being adequately cared for by the parent. Begin thinking about this early in the case so steps can be taken to generate witnesses by involving the parent and child in appropriate activities and programs (church/Sunday school, Mommy and Me classes, Early Head Start, etc.).
- **Use video.** This is the 21st century. Make a short film of the parent with the child. Good ones include simple text explaining how the parent is performing a certain child care task with a special technique or piece of equipment. Include simple clips

of the parent and child doing average things together, both at home and in the community. For balance, also film the parent and child during play or other interaction where the disability is less salient.

- **Contact experts.** Practitioners cannot learn enough about this subject once they come into a case to make the arguments without an expert. There is nothing more dangerous in these cases than the practitioner who doesn't know what they don't know. Depending on the disability, you may need an occupational therapist, a psychiatrist, an infant mental health specialist, psychologist, or cultural expert. These professionals can evaluate whether removal was warranted early on, help shape case plans, analyze whether services provided were reasonable, and provide insight into outcomes for children in these types of families.
- **Raise the ADA.** Raise it early and often. Consider appealing and/or filing an ADA complaint in the federal court if:
 - the removal was based solely on the parent's disability;
 - the court will not order accommodations of hearings, meetings, or services; or
 - a decision of the court to continue jurisdiction over the child is not reasonable based on witness and expert testimony and other evidence.
- **Say No.** Do not allow the state to humiliate the parent in proceedings. In one case, a parent was made to get out of her wheelchair and crawl across the floor to show she could escape in a fire. In another case, a parent was told to hold a vase over his head and run around a table to show he could carry a heavy child. Evaluations can answer these safety

Case Example

Jaime was a developmentally disabled Onondaga tribal member and the mother of a five-year-old girl, Kayla. Jaime's need to access services for her disability led the child welfare agency to open a case on Kayla. Jaime contacted the legal program of the National Center for Parents with Disabilities and their Families/Through the Looking Glass for help. The child welfare agency had told her the social worker's report would recommend that Kayla be removed based on Jaime's:

- disability;
- reliance on personal assistants in managing her household;
- inability to help Kayla with her school work by the time she was 8 or 9; and
- difficulty remaining the authority figure in the household.

When Jaime found and requested a copy of this report at Through the Looking Glass's urging, she was told it was illegal for her to give it to anyone and she would go to jail if she did. Jaime persevered and located outside counsel through her local Native American Legal Services. With Through the Looking Glass's free technical assistance, the new attorney began documenting the disability bias, poor practice, and speculation that was occurring. Ultimately, the case was closed and Kayla and Jaime remained together as a family.

Now they only have to make it through 13 more years and they can stop worrying that this might happen again.

Practitioners are encouraged to contact the Legal Program of the National Resource Center for Parents with Disabilities and their Families/Through the Looking Glass for free technical assistance and litigation strategies for their specific cases.

The National Center for Parents with Disabilities and their Families/Through the Looking Glass

2198 Sixth Street, Suite 100
Berkeley, CA 94710
800/644-2666 ext. 115

questions far more adequately without denigrating the parent.

Conclusion

Understanding the history of people with disabilities and their special challenges in society and in child welfare cases is important to help prevent the unnecessary traumatic removal of children who have parents with disabilities. Learning to adapt how you interview, investigate, and litigate in these cases is even more important. Not every removal can or should be prevented. However, every removal should be about the behavior of parents and the well-being of children, not the

status of the parent as disabled or baseless speculation about the parent's caregiving potential.

Ella Callow is the legal program director at the National Center for Parents with Disabilities and their Families Through the Looking Glass in Berkeley, CA.

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at the First National Parents' Attorneys Conference, held May 2009 by the ABA National Project to Improve Representation of Parents Involved in the Child Welfare System. Learn more at: www.abanet.org/child/parentrepresentation/home.html

Endnotes

¹ Americans with Disabilities Act, 42 U.S.C. §12101 et seq.

² McNeil, J. American with Disabilities: 1991-1992. Current Population Reports P70-33. Washington, DC: U.S. Bureau of the Census, 1993. The number of Native Americans is actually the percentage with disabilities in general; the number of Native American parents with disabilities is unknown.

³ National Organization for Disabilities/Harris Survey, 2004.

⁴ Ibid.

⁵ Kennedy, R., L. Garbus and S. Davis. *Different Moms*. Arlington, TX: ARC Publications, 1999; Larson, S., et al. "Characteristics of and Service Use by Persons with MR/DD living in their Homes or with Family Members: NHIS-D Analysis." *MR/DD Data Brief* 3(1), 2001. [Research and Training Center on Community Living, University of Minnesota]; Josheph, J.G., et al. "Characteristics and Perceived Needs of Mothers with Serious Mental Illness." *Psychiatric Services* 50(10), 1999, 1357-1359; Mowbray, C.T, et al. "Motherhood for Women with Serious Mental Illness: Pregnancy, Childbirth, and the Postpartum Period." *American Journal of Orthopsychiatry* 65(1), 1995, 21-38; Toms Barker, L. and V. Maralani. *Challenges and Strategies of Disabled Parents: Findings from a National Survey of Parents with Disabilities*, Berkeley, CA: TLG Publications, 1997. Notably, most survey participants tended to be European American, middle-income and educated, not the demographic expected to report experiencing high levels of discrimination or involvement with custody litigation with the state.

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⁷ Americans with Disabilities Act, 42 U.S.C. §12101 et seq.; Section 504 of the Rehabilitation Act, 29 U.S.C. §724.

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Advocating for Nonresident Fathers in Child Welfare Court Cases

The ABA Center on Children and the Law, as part of the National Quality Improvement Center on Non-Resident Fathers and the Child Welfare System (QIC NRF), recently released a book and training curriculum on Advocating for Non-Resident Fathers in Child Welfare Court Cases. This book compiles the recent CLP series on nonresident fathers and a variety of new material geared to child welfare practitioners.

The book and curriculum include practical guidance on engaging nonoffending, noncustodial fathers in their children's cases. Topics addressed include:

- advocating for fathers' constitutional rights
- understanding male help-seeking behaviors
- engaging fathers in the child welfare process
- out-of-court advocacy strategies
- addressing special advocacy issues (e.g., immigration, child support, domestic violence)
- addressing ethical issues when representing nonresident fathers

Order free hard copies of the book (S&H charges will apply): Call 800-285-2221

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www.fatherhoodqic.org/book.shtml.

Download the training curriculum at:
www.fatherhoodqic.org/curriculum.shtml.



Product Code:
3490003B

Healthy Beginnings, Healthy Futures: A Judge's Guide

This Guide is the result of a collaboration with the National Council of Juvenile and Family Court Judges and the Zero to Three National Policy Center. It addresses the wide array of health needs of very young children in the child welfare system.

By sharing current research on physical health, child development, attachment, infant mental health, and early care and education, the authors provide tools and strategies to help judges promote better outcomes for babies, toddlers, and preschoolers who enter their courtrooms.

While the Guide is written for judges, the information it provides can be useful for both parents' and children's attorneys, guardians ad litem, CASAs, and other child advocates.

Order free hard copies of the Guide (S&H charges will apply): Call 800/285-2221.

Download the Guide for free at:
www.abanet.org/child/baby-health.shtml.

Four Strategies to Implement the Fostering Connections Act's Education Provisions

On September 15, 2009, Kathleen M. McNaught, director of the ABA's Legal Center for Foster Care and Education, testified on behalf of the ABA before the United States House Ways and Means Subcommittee on Income Security and Family Support. McNaught outlined a series of education-related improvements that could be made to the Act's implementation. An adapted version of her testimony appears below.

The Fostering Connections Act contains education provisions that are essential to breaking the cycle of poor education outcomes for children in foster care. The Act requires the child welfare agency to coordinate with local education agencies to ensure children remain in their same school even if their living placement changes. If it is not in the child's best interest to remain, the agencies must coordinate to ensure immediate and appropriate enrollment in a new school. The Act also clarifies that federal child welfare funds can be used by states for reasonable travel costs to allow children in foster care eligible for IV-E reimbursement to stay in the same school.

The Act has brought attention at the federal and state levels to the poor education outcomes of children in care, and the critical need for collaboration between child welfare and education agencies to improve these outcomes.

Many state and local child welfare agencies are now mobilizing to implement the education provisions in their states. Some have organized state or local interagency work groups and developed interagency agreements to address education stability. Some states have adopted, or are in the process of adopting, legislation, regulations, or guidance to identify the responsibilities of each agency in implementing these provisions of the Act.

Advocates who represent children and those working at the systems level are becoming better informed about the law's requirements, and have started to advocate

for education stability and immediate school access. As a result, some students in foster care are experiencing improved stability and continuity in school. While much more work needs to be done, the past 10 months have included positive changes to policy and practice to align with these new mandates.

Despite these efforts, four main barriers remain to fully and effectively implement the education provisions of the Act. These barriers and strategies to address them are:

#1: Agencies' Responsibilities:

Create reciprocal mandates in education law requiring education agencies to coordinate and collaborate with child welfare agencies to ensure stability and continuity of students in care.

#2: Transportation: Clarify that the mandate to ensure school stability includes a mandate to provide, arrange, and fund transportation whenever necessary.

#3: Agency Collaboration: Provide added support, guidance, and resources to states on how to collaborate across agencies and set clear lines of responsibilities for each agency. Federal level collaboration between the U.S. Department of Health and Human Services and the U.S. Department of Education is needed to serve as a model for states. Some collaboration issues states are struggling with include:

- determining which agency will make the best interest determination for the child;
- what factors to consider in those

best interests determinations;

- how to identify and involve all necessary individuals, including youth, in these decisions;
- how to create and fund clearly identified points of contact in both the child welfare and education agencies, at the state and local level, a desperately needed support to ensure stability and resolve disputes;
- how to ensure a child's right to transportation to remain in school;
- how to provide, arrange, and pay for a child's transportation.

#4: Data Collection: Improve collection of data that tracks education outcomes and improvements for children in care. Even in the states that have already made great strides to improve education stability, minimal data documents these advances. States must collect this data, and receive support and guidance to track improvements for children in care. Tracking data such as attendance, number of school changes and enrollment delays, is necessary to document the implementation of the education stability provisions of the new law and must be linked to improvements in education outcomes for children in care.

Without effective information and data-sharing across child welfare and education agencies it is impossible to capture this information.

For more guidance on meeting the education needs of foster children, visit: www.abanet.org/child/education/home.shtml

To Terminate Parental Rights or Not?

Study Uncovers Judges' Views on Terminating Parental Rights and Adoption

Judges who must decide whether to terminate parental rights (TPR) of a child with no known permanent placement are often conflicted. The swift timelines of the Adoption and Safe Families of 1997 (ASFA) ensure children don't linger unnecessarily in foster care and support freeing them for adoptive placements. But freeing a child with nowhere to go has benefits and risks.

A new Child Trends study looks at the challenges judges face when making TPR and adoption decisions. The researchers found judges are concerned about creating *legal orphans*, children who have lost ties to their birth parents and do not yet have an adoptive family. They also struggle with the decision to cut ties to birth parents for older youth who oppose adoption. And they are concerned about ending children's ties to their siblings, and preventing them from claiming child support and survivor benefits.

Delaying TPR is equally challenging. In some states, adoption recruitment cannot begin until parental rights are terminated, making TPR a key step before efforts can begin to identify adoptive homes. Reluctance by prospective adoptive caregivers to care for a child who still has ties to birth parents also creates pressure to move forward with termination or risk losing these caregivers as adoption resources. ASFA's timelines also create pressure to move forward with TPR.

The study's findings provide a rare look at judges' mindsets when they face tough TPR decisions. They also help shape recommendations for future practice and policy to address some concerns judges have and to improve TPR decision making.

Judges' Decision Making

For the study, 20 dependency court judges in 18 states participated in

phone interviews with researchers from Child Trends. The judges were asked to rate on a scale of one (not very important) to five (very important) how they consider various factors when approving adoption as a permanency goal and deciding to terminate parental rights.

Factors Judges Consider: Adoption

Parent-specific factors. The factors that were most critical in judges' decisions when approving adoption as a permanency goal tended to relate to the parent, including:

- the parents' progress in meeting case plan requirements;
- whether the child welfare agency made reasonable efforts to reunify the child;
- current parent-child visitation; and
- severity of abuse or neglect.

Child-specific factors. Judges tended to rate as *not very important* factors relating to the child, such as:

- the child's age; and
- the child's feelings about adoption (but note later finding relating to TPR emphasizing the importance of children's views, especially older children).

Adoption resources. While the presence of or likelihood of finding an adoptive resource was viewed as *very important* by some judges when considering adoption as a permanency goal, most judges gave

it little weight when deciding to change the goal from reunification to adoption.

Child's consent. Few judges (15) required the child's consent when approving a permanency goal of adoption. The five judges who required consent reported they either required the child's written consent or just considered the child's wishes when making the decision. The age of consent in the five jurisdictions that required consent ranged from 10, 12, and 14.

When approving a specific family for adoption, more judges (60%) required or desired the child's consent when approving the decision, with the age of consent again ranging from 10, 12, and 14. Judges in jurisdictions in which the child's consent was considered, but not required, reported giving greater weight to older children's wishes, since it can be difficult to find adoptive homes for teens who do not favor adoption.

Child's attendance at hearings. Requiring children to attend permanency hearings gives judges a chance to see parent-child interaction firsthand. Judges (14) who routinely required children to attend permanency hearings said it also gave them a chance to confirm information in the record, obtain the child's views about adoption, and clear up any fears or misconceptions. Fewer judges (7) reported having children attend TPR proceedings; five judges said they particularly liked to hear from older youth about how they view TPR.

Factors Judges Consider: TPR
Statutory grounds/best interests.
When deciding to TPR, the factor

judges viewed as *most important* was whether the parents met state statutory grounds for termination (e.g., physical/sexual abuse, abandonment). After this determination, decision making became much harder as judges moved to the best interests determination where they had to weigh a range of factors:

- likelihood of identifying an adoptive resource;
- child's desire to be adopted;
- level of bonding between child and parent and/or child and sibling;
- severity of maltreatment;
- parent's compliance in working towards case plan goals;
- likelihood of reunification;
- presence of a relative who will provide a permanent home, but does not want to adopt;
- whether the agency made reasonable efforts towards reunification; and
- whether the child would lose benefits as a result of TPR.

Adoption recruitment. Some judges reported the lack of a TPR affects adoption recruitment, as some states will not list a child in an adoption exchange Web site before a TPR occurs. Others said prospective adoptive caregivers find children who lack a TPR are less appealing because of the risk that they will never become available to adopt. Concurrent planning provides some judges with reassurance that children are in placements in which caregivers are committed to adopting once TPR occurs.

Adoptive resources. About half the judges said they would not grant a TPR until a specific adoptive resource was identified. This practice grew from judges' concerns over creating legal orphans. However, several judges described strategies for addressing these concerns, including ordering family visitation at TPR hearings, supporting open

adoption arrangements, and using "legal risk" placements that assure a child is placed in an adoptive placement before the TPR.

Child's views. Judges found the child's own views about TPR varied. Two judges found any negative views tend to subside once adoption occurs. Others focused on older children and their conflicting views, with some opposing TPR and others viewing it with a sense of relief and realizing it is necessary. For children who oppose adoption, four judges stressed the need to take time to address their concerns and help them understand what it means to be adopted and clear up any misconceptions.

Practice Tips

Drawing from the study's findings, the researchers offered the following practice tips to improve practice around TPR and adoption decision making:

Become familiar with adoption recruitment efforts. Understanding what specialized adoption recruitment strategies are in place for children in jurisdictions that do not start recruitment until TPR occurs can alleviate concerns about creating legal orphans. It also helps judges better monitor the agency's reasonable efforts in this area. A lack of specialized adoption recruitment strategies can create opportunities for judges to lead efforts to include and expand them.

Make a regular practice of learning how the child views TPR and adoption and address any concerns. Judges can supplement efforts by child welfare agency caseworkers to prepare a child for TPR and adoption. This can include taking the time to explain what TPR and adoption mean legally, and identifying and addressing children's fears and concerns. This can be especially helpful for

older youth.

Maintain family connections.

Judges can use several strategies to help children maintain their ties to birth parents and siblings, even after adoption. This can include ordering family visitation at TPR hearings. Open adoption arrangements also allow children to stay connected to siblings and birth parents as long as adoptive parents are supportive.

Understand ASFA's requirements.

Some judges reported pressure to TPR because of ASFA's timeframes. Although ASFA shortened timeframes, judges may still choose to deny agency requests to TPR if the evidence does not support the request or a compelling reason exists. More fully understanding this discretion and ASFA's mandates through targeted training is one way to improve how judges proceed in these cases.

Conclusion

This study offers a snapshot of the factors judges often weigh when making TPR and adoption decisions. Judges consider whether TPR will render a child a legal orphan, end ties to siblings, and cut off important financial benefits. Older youths' views about TPR are especially important. Judges also realize that TPR can promote adoption by jumpstarting the adoption recruitment process, and by legally freeing children so they are more attractive to prospective adoptive caregivers. Often, creative use of available strategies can help judges overcome challenges and strengthen their decisions.

—Claire S. Chiamulera, CLP Editor

This study, "The Timing of Termination of Parental Rights: A Balancing Act for Children's Best Interests," by Raquel Ellis, Karin Malm, and Erin Bishop, appeared in *Child Trends Research Brief*, Pub. No. 2009-40, September 2009, available from www.childtrends.org

New Housing Resources for Child Welfare Families and Aging-Out Youth

On Wednesday September 30, 2009, Deputy Secretary Ron Sims of the U.S. Department of Housing and Urban Development (HUD) invited public housing authorities (PHAs) nationwide to apply for \$15 million for new Section 8 vouchers to provide permanent housing and services to families who are separated from their children because of homelessness or inadequate housing.

A portion of these FUP vouchers will also be available to ease the transition to adulthood for youth age 18 or older who left foster care after the age of 16 and are at risk of homelessness.

Mr. Sims also announced \$5 million in funding for 11 PHAs who will receive vouchers immediately for FUP in the following six states: California, Delaware, Florida, Illinois, Massachusetts, and Washington.

- View the complete list at www.nchcw.org.
- Visit www.hud.gov/offices/adm/grants/nofa09/fupsec.pdf to view the Notice of Funding Availability.
- Applications are due: December 3, 2009.

Q&A How does FUP work?

HUD's Family Unification Program (FUP) is administered through local level partnerships between public housing authorities and public child welfare agencies. Public housing authorities administer the Section 8 vouchers to families and youth who have been certified as eligible for FUP by the child welfare agency. The child welfare agency assists clients in gathering the necessary Section 8 paperwork, finding housing, and provides aftercare services to help the household obtain and

maintain safe, stable and permanent housing.

Q&A Who is eligible for FUP?

FUP is a program under which vouchers are provided to families for whom the lack of adequate housing is a primary factor in:

- the imminent placement of the family's child, or children, in out-of-home care; or

. . . homeless and precariously housed parents who have overcome great personal struggles with the help of the child welfare system all too often remain separated from their children because they lack a safe place to raise them.

- the delay in the discharge of the child, or children, to the family from out-of-home care.

Youths at least 18 years old and not more than 21 years old (have not reached their 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing are also eligible to receive housing assistance under the FUP. Individuals and families must be certified as eligible for FUP and referred to a local public housing authority by a public child welfare organization.

Q&A How does our community apply for new FUP vouchers?

In November, HUD issue a notice of funding availability (NOFA) inviting public housing authorities (PHAs) to apply for up to 100 Section 8 vouchers for FUP. To apply for this funding, a PHA must have a signed memorandum of understanding (MOU) with the local child welfare agency documenting that these

systems will work in partnership to support FUP families and youth. The MOU must match the requirements listed in the NOFA. Everything that communities need to provide is clearly listed in HUD's NOFA.

Examples and templates of this material can be found on the National Center for Housing and Child Welfare (NCHCW) Web site: www.nchcw.org/fup/. Child welfare administrators interested in FUP

should reach out to their counterpart at the public housing authority soon. PHAs have until December 3, 2009 to submit an application to HUD.

Q&A Why should we apply for FUP?

Families and aging-out youth in the child welfare system face enormous economic challenges. Child welfare agencies go to great lengths to remediate these issues and as a result, the majority of children reunite safely and successfully with their parents. However, homeless and precariously housed parents who have overcome great personal struggles with the help of the child welfare system all too often remain separated from their children because they lack a safe place to raise them.

Keeping these children in foster care rather than providing affordable housing solutions is a costly practice. On average, it costs nearly \$50,000 per family for children to enter foster care. By contrast, it

costs just over \$15,000 annually to house one family and provide supportive services to support their stability in housing.

Q&A How can I get more information about FUP?

The best resource for information on how to apply for FUP is HUD's Notice of Funding Availability, available at www.hud.gov/offices/adm/grants/nofa09/fupsec.pdf. For more information about how to apply for and implement the Family Unification Program in your community, visit the NCHCW at www.nchcw.org.

The NCHCW was created in May 2008 to serve as a bridge between affordable housing resources and the child welfare system on behalf of vulnerable families and youth and professional staff and advocates with whom they work. The Center works to build the partnerships to ensure children do not enter or linger needlessly in foster care as a consequence of their parents' inability to afford safe, decent, permanent housing. It also aims to ensure that each young person who ages out of the foster care system has a solid plan for housing stability. NCHCW worked with Congress to secure this \$20 million in new FUP funding.

Resource:

NCHCW provides outreach, education, and technical assistance to prepare child welfare professionals to be active participants in discussions about how to best create and distribute housing resources in their communities to strengthen families and youth through increased access to affordable housing.

To learn more, visit www.nchcw.org, or call 301/699-015.1

Many Kids Experience Family Homelessness

A new multisite study by the University of California, Los Angeles and RAND Corp. has found that seven percent of fifth-graders and their families have experienced homelessness at some point in their lives and that the occurrence is even higher—11 percent—for African American children and those from the poorest households.

The study also found that children who had experienced homelessness at some point during their lives were significantly more likely to have an emotional, behavioral, or developmental problem; were more likely to have witnessed serious violence with a knife or a gun; and were more likely to have received mental health care.

The research is the first population-based study to describe the lifetime prevalence of family homelessness among children and its association with health and health care. The findings were published in the August 2009 issue of the *American Journal of Public Health*.

“It was unexpected to see such a high prevalence of family homelessness in this sample of fifth-grade students, especially since this number only included children whose parents reported that they were literally homeless—staying in places like shelters, cars or on the streets,” said lead author Dr. Tumaini R. Coker, clinical instructor of pediatrics at Mattel Children's Hospital UCLA and an associate natural scientist at RAND. “Our results suggest that in a classroom of 28 fifth-graders, two students would have been homeless at some point in their lives.”

Researchers analyzed data from Healthy Passages, a multisite study of 5,147 fifth-grade students funded by the Centers for Disease Control and Prevention. Interviews of students and parents were conducted over the 2004-05 and 2005-06 school years and included children from Birmingham, AL.; Houston, Texas; and Los Angeles.

After controlling for sociodemographic factors, indicators of general child health were similar for children who had experienced homelessness (ever-homeless) and those who had never been homeless (never-homeless), but indicators of emotional, behavioral and developmental health were not.

“Ever-homeless children were significantly more likely to have a parent report that they had an emotional, behavioral, or developmental problem and to have received mental health-related services,” Coker said. “Our study is not able to say whether an experience of homelessness caused these problems. Further research will help us understand the relationship between the emotional, behavioral and developmental problems and the episodes of homelessness.”

The findings suggest the need for family advocates to identify family homelessness and its effects on families. Advocates can also play a role helping these families obtain housing services, as well as mental health and behavioral health services as needed.

Study Ranks States' Legal Representation of Children

Most U.S. states do not adequately protect the rights of abused and neglected children, according to a state-by-state study conducted by two national child advocacy organizations, First Star and the Children's Advocacy Institute (CAI).

The report graded each state and the District of Columbia based on how well they protect the legal rights of abused and neglected children in dependency court. Twenty-nine states earned C's or lower:

- Two states earned A+'s: CT and MA
- 9 states earned A's: IA, LA, MD, MS, NM, NY, OK, VT, and WV
- 11 states earned B's: CA, KS, NJ, NC, OH, OR, PA, RI, TN, TX, and WY
- 14 states earned C's: AL, AK, AR, CO, DC, MI, MN, MT, NE, NV, SC, UT, VA, and WI
- 8 states earned D's: AZ, GA, IL, KY, MO, NH, SD, and WA
- 7 states earned F's: DE, FL, HI, ID, IN, ME, and ND

"The level of legal protection these children receive should not vary depending on what state they call home," said Robert C. Fellmeth, CAI Executive Director. "The stakes in these cases are high for all involved, but especially for the child. Yet, in many states, not only have

they been betrayed and mistreated by their own parents, they have also been abandoned by the very system that is supposed to protect their rights and their lives."

The study is the second of its kind. The first report, issued in April 2007, prompted 17 states to adopt new legislation in the right to counsel arena. In addition, advocates in many states have proposed legislative reforms, filed litigation, or launched other efforts to ensure children's rights are protected. States with improved laws include: AL, AR, CA, CT, IA, LA, MA, NH, NY, OH, OK, OR, PA, RI, SC, VT and WY.

In addition, the federal government recently announced a five-year, \$5 million grant to research the benefits of providing counsel to children in these proceedings. Up to now, research has been scarce.

"The tide is turning," said Peter Samuelson, co-founder and Chairman of First Star. "Many jurisdictions are moving beyond the old legal paradigm that treated children as chattel, and are recognizing that their opinions are valuable in court proceedings that determine their futures. But there is still a long way to go before we create uniform, nationwide legal protections for these vulnerable children."

To build on this momentum, First Star and CAI recommend:

- an amendment to the federal Child Abuse Prevention and Treatment Act (CAPTA) that would require all abused and neglected foster children receive quality client-directed representation in dependency proceedings;
- passage by the American Bar Association of a Model Act that would serve as a prototype for states to establish uniform standards for representing children in dependency cases;
- implementation of a loan forgiveness program for child advocate attorneys, since compensation is prohibitively low;
- adoption of caseload limits of 100 clients so attorneys can focus enough attention on each case;
- support to ensure that abused and neglected children receive quality representation in all court proceedings that determine their futures.

To Learn More

The study, *A Child's Right to Counsel: A National Report Card on Legal Representation for Abused and Neglected Children*, is available at www.firststar.org, or www.caichildlaw.org.



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