

AMERICAN BAR ASSOCIATION
COMMISSION ON YOUTH AT RISK
CRIMINAL JUSTICE SECTION
SECTION OF STATE AND LOCAL GOVERNMENT LAW
COMMISSION ON DOMESTIC VIOLENCE
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
YOUNG LAWYERS DIVISION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges Congress to change laws, including
2 amendment of Titles IV-E and IV-B of the Social Security Act, to broaden federal review of the
3 disproportionate representation of racial and ethnic minority children in the child welfare system
4 and require and fund states to track, report, analyze, and take and report on corrective action.
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6 FURTHER RESOLVED, that the American Bar Association urges state, local, territorial and
7 tribal child welfare agencies, dependency courts and judges, and children's and parents'
8 advocates to help racial and ethnic minority families readily access needed services and to help
9 ensure that removal of children from their homes is based on objective child safety criteria so
10 that all families in the child welfare system are treated fairly and equitably.
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12 FURTHER RESOLVED, that the American Bar Association urges state, local, territorial and
13 tribal child welfare agencies, dependency courts and judges, government, parents' and children's
14 attorneys, guardians ad litem and court-appointed special advocates to receive training on
15 cultural competencies, institutional and unconscious biases, and avoidance of disparate treatment
16 of racial and ethnic minority children and families and to develop and promote practices that
17 encourage recruitment and retention of racially and ethnically diverse judges, attorneys, social
18 workers and other staff, volunteers and foster parents.
19

20 FURTHER RESOLVED, that the American Bar Association urges federal, state, local, territorial
21 and tribal governments to enact law and policy changes that will help decrease disproportionate
22 representation of racial and ethnic minority children in the child welfare system by offering
23 additional support to relative caregivers, including (a) providing partial federal reimbursement
24 for state costs of subsidized permanent guardianships; (b) providing relative caregivers with
25 financial assistance and support no less than that given to non-relative caretakers; (c) supporting
26 housing assistance for relative caregivers, including changing policies to ensure that kinship
27 support or guardianship payments are not considered income for Section 8 Housing Assistance
28 purposes; and (d) giving states flexibility in establishing separate approval or licensing standards
29 for kinship placements, while still addressing key placement safety factors.

REPORT

The ABA has long supported policy changes to improve the child welfare system. For example, in 1988, the Association approved a resolution that urged Congress to amend the Adoption Assistance and Child Welfare Act to require states to establish and provide reunification and preservation services to families in the child welfare system and child welfare agencies to report their family preservation efforts to the court. In 2005, the Association approved a resolution that called upon Congress, states, and territories to improve outcomes for children in foster care by using data-tracking systems, increasing communication and information sharing among agencies, developing more flexible child welfare funding mechanisms, and recruiting and training attorneys to work in child welfare proceedings.

It has also been a priority of the ABA to eliminate discrimination based on race. In 2003, the Association approved a policy calling upon states and local governments to address issues relating to the disproportionate representation and disparate treatment of racial and ethnic minority youth in the criminal and juvenile justice systems. This resolution encouraged the judiciary and lawyers to receive training on the disparate treatment of racial and ethnic minority youth and emphasized the need for tracking data on racial and ethnic minority youth contact with law enforcement. In 2004, the Association approved policy from the Justice Kennedy Commission that urged governments to “eliminate actual and perceived racial and ethnic bias in the criminal justice system” by, among other things, training law enforcement, collecting and analyzing data.

The Association has also approved policy that, in part, encourages law and policy change that research has shown decrease racial and ethnic minority youth contact with the child welfare system. For example, in 1999, the Association encouraged state and local governments to aggressively search for maternal and paternal kin and consider kinship placements as early as possible after a child becomes known to the child welfare agency and/or court. The policy also urged governments to adequately screen and financially support kinship care providers.

Background

Too many children in our nation’s foster care system are children of color, and too often their families have limited financial means, community resources and adequate housing options – factors that contribute to the lengthy involvement of these children in that system. When they have contact with the child welfare system, many of these families face institutional and individual prejudice and overt and unintended bias, which increase the likelihood that they will enter the system. Then, once involved in the child welfare system, they face biases that keep them in the system longer, increasing the possibility these children will later enter the juvenile and criminal justice systems.

Racial and ethnic minority children are overrepresented in the foster care system, despite the fact that studies have shown that children of all races are equally as likely to be abused or neglected.¹ Racial and ethnic minority children make up approximately 41 percent of all

¹ GOV’T. ACCOUNTABILITY OFFICE, GAO-07-816, AFRICAN AMERICAN CHILDREN IN FOSTER CARE: ADDITIONAL HHS ASSISTANCE NEEDED TO HELP STATES REDUCE THE PROPORTION IN CARE at 8 (Washington, D.C.: July 2007),

children in the United States. However, 2006 statistics from the U.S. Department of Health and Human Services (DHHS) show that over 54 percent of children living in foster care in 2006 were children of color.² In 2007, the Government Accountability Office (GAO) found that overrepresentation in child welfare occurs at a national and state level.³ For example, nationally, African Americans represent 32 percent of children in foster care, but only 15 percent of the United States child population. Native Americans represent two percent of the foster care population, but only one percent of the child population overall.⁴ Hispanic/Latinos and Asian Americans are underrepresented in the foster care system, nationally, but often make up a higher proportion of the foster care population in numerous localities.⁵ The 2007 GAO report further revealed that in 2004 African American children entered the foster care system at almost twice the rate of white children, and African American children remained in the system an average of nine months longer than white children.⁶ In addition, social science journals and law reviews have reported that, while in foster care, African American children and their families were less likely to receive health care and mental health services than their white counterparts.⁷

In response to these statistics, private foundations and state and county child welfare agencies have begun to conduct research and develop practices to reduce racial and ethnic minority representation in the child welfare system. A 2007 report prepared for the Casey-CSSP Alliance for Racial Equality assessed efforts in several jurisdictions to decrease racial and ethnic minority representation. Based on this assessment, the report suggests that communities track and use data to shape solutions and improve and expand services to reduce disproportionality.⁸ A 2007 report released by the Urban Institute reveals that many African American families struggle with inadequate housing, experience financial crises, and rely on welfare services,⁹ all of which contribute to their increased representation in child welfare system. In response, the Urban Institute calls for policy change that addresses disparities in the education, employment, and welfare service systems.¹⁰ The 2007 GAO national survey revealed, among other things, that bias and cultural incompetence, as well as a lack of access to services increase a child's chances of entering the child welfare system.¹¹ The report suggests that states use kinship care and recruit racially diverse staff members to help reduce the number of minority children in

available at www.gao.gov/cgi-bin/getrpt?GAO-07-816 (citing) Adoption and Foster Care Analysis and Reporting System, *The AFCARS Report: Preliminary FY 2005 Estimates as of September 2006*, available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report13.htm.

² Adoption and Foster Care Analysis and Reporting System, *The AFCARS Report: Preliminary FY 2006 Estimates as of January 2008*, available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report14.htm.

³ *Supra* note 1. (GAO).

⁴ *Supra* note 1.

⁵ *Supra* note 1 Hispanic youth make up 19 percent of overall population and 17 percent of foster care population; Asian American youth make up 4 percent of overall child population and 1 percent of the foster care population. However, in California, one county reported a Hispanic-youth population of 52 percent in the foster care system, but only 30 percent overall.

⁶ *Supra* note 1 at 1.

⁷ Sandra T. Azar & Phillip Atiba Goff, *Can Science Help Solomon? Child Maltreatment Cases and the Potential for Racial and Ethnic Bias in Decision Making*, 81 ST. JOHN'S L. REV. 533, 540-41 (2007).

⁸ Ernestine Jones, *Places To Watch: Promising Practices to Address Racial Disproportionality in Child Welfare Services* at 27 (The Casey-CSSP Alliance for Racial Equality, 2004).

⁹ See generally Margery Austin Turner, et al., *Racial Disparities and the New Federalism* (The Urban Institute, Oct. 2007), available at http://www.urban.org/UploadedPDF/411563_racial_disparities.pdf.

¹⁰ *Supra* note 9 at 35 (*Racial Disparities and the New Federalism*).

¹¹ *Supra* note 1, at 4.

foster care.¹² GAO also recommends that Congress amend federal law to allow subsidies for legal guardianships and that DHHS provide greater technical assistance to states in their efforts to address disproportionality.¹³

Fund and Encourage Tracking, Reporting, Analyzing and Taking Corrective Action Steps in Response to Data

The first part of this recommendation encourages the federal government to change laws so that states would be funded and required to track, analyze and take corrective action steps in response to data and outcomes on the disproportionate representation of racial and ethnic minority children in foster care. Data is a crucial part of identifying the scope of the disproportionality problem and assessing how to resolve it. The 2007 GAO report found that states consider the collection, analysis, and dissemination of data to be a “fundamental aspect” of addressing disparate treatment in the child welfare system.¹⁴ In fact, in several instances, data gathering has been the impetus for state initiatives to address the issue. In 2007, the Annie E. Casey foundation also listed data tracking among its key practices and polices for addressing disproportionality.¹⁵

Requiring states to track data and outcomes on disproportionate racial and ethnic minority representation in a child serving system is nothing new. For several years, to receive funding under the Juvenile Justice and Delinquency Prevention Act (JJDP), states have been required to collect data on disproportionate racial and ethnic minority contact with the juvenile justice system.¹⁶ The Act requires states to make efforts to “reduce the proportion of juveniles detained or confined in . . . correctional facilities . . . who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population.”¹⁷ To comply with this requirement, states must provide quantifiable documentation of the extent minority youth are disproportionately detained or confined in correctional facilities, as well as assess and explain differences in arrest, diversion, adjudication and incarceration rates between minority and non-minority youth. States are also required to develop intervention and diversion plans in response to data collected to reduce disproportionate minority contact with the system.¹⁸ As a result, states have been better able to identify where overrepresentation exists in the juvenile justice system and determine its causes.¹⁹ Learning and borrowing from the JJDP requirements, therefore, has been one suggested way of gathering information on disproportionate racial and ethnic minority representation in the child welfare system.²⁰

¹² *Supra* note 1, at 4-5.

¹³ *Supra* note 1, at 1.

¹⁴ *Supra* note 1, at 44.

¹⁵ Press Release, Kids Count, The Annie E. Casey Foundation Calls on Child Welfare Systems, Policymakers to Focus on the Needs of African-American Youth in Foster Care (July 25, 2007), *available at* http://www.kidscount.org/datacenter/db_07pdf/aa_news_release.pdf.

¹⁶ Juvenile Justice Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat 1122 (codified at 42 U.S.C. § 233(a)(12)).

¹⁷ 42 USC § 5633(a) (22).

¹⁸ 28 C.F.R. § 31.303.

¹⁹ GAO *supra* note 1, at 50.

²⁰ GAO *supra* note 1, at 50.

States receive the bulk of their federal funding for child welfare services under Titles IV-B and IV-E of the Social Security Act. These titles are administered by DHHS and support state efforts for child welfare, foster care, and adoption activities.²¹ Pursuant to these titles, states are required to participate in the Child and Family Service Review (CFSR) process by collecting and taking corrective action steps in response to state data relating to child well being, permanency and safety.²² When CFSR data reveals that a state needs to improve its practice in a particular area, the state must develop and submit a Program Improvement Plan to DHHS.²³ The 2007 GAO report found that half the states surveyed expressed a willingness and desire to collect information on disproportionality issues and include it in their CFSRs.²⁴ This recommendation, therefore, suggests modifying federal law, with a focus on Title IV-B and IV-E requirements, and expand the CFSR federal review process to ensure data tracking and needed corrective steps to address disproportionality in the child welfare context.

Some states have begun to track data without federal guidance. For example, the state of Washington recently passed legislation that required the state Department of Social and Health Services to convene an advisory committee to analyze disproportionate representation in the child welfare system. The new law requires this advisory committee to conduct a baseline analysis of data to determine the extent of disproportionality in the system. Minimally, data must be collected and analyzed on:²⁵

1. The level of involvement of children of color at each stage in the child welfare system, including points of entry and exit, and each point at which a treatment decision is made;
2. The number of children of color in low-income or single-parent families involved in the system;
3. The family structure of families involved in the state's child welfare system; and
4. The outcomes for children in the existing child welfare system.

To adequately address the complex universe of issues that increase disproportionality, in addition to the data points required in the Washington statute, data should also track provision of specific services, and the length of time to the initiation of services, accessed by racial and ethnic minority families, including resources dedicated to promoting family preservation and reunification. Studies recommend tracking services offered to minority families as a way to combat bias in the child welfare system.²⁶ This is because studies reveal that minority children and families in the child welfare system receive fewer services than non-minorities.²⁷ For

²¹ Child Welfare Information Gateway, *Fact Sheet: Major Federal Legislation Concerned with Child Protection, Child Welfare and Adoption*, 2008, available at: <http://www.childwelfare.gov/pubs/otherpubs/majorfedlegis.cfm>

²² GOV'T. ACCOUNTABILITY OFFICE, GAO-04-333, CHILD AND FAMILY SERVICES REVIEWS: BETTER USE OF DATA AND IMPROVED GUIDANCE COULD ENHANCE HHS'S OVERSIGHT OF STATE PERFORMANCE, at 1 (Washington, D.C.: Apr. 2004), available at <http://www.gao.gov/new.items/d04333.pdf>.

²³ *Supra* note 1, at 15.

²⁴ *Supra* note 1, at 49.

²⁵ Rev. Code Wash. § 74.13.096 (West 2008).

²⁶ King County Coal. on Racial Disproportionality, *Racial Disproportionality in the Child Welfare System in King County*, Washington at 52 (2004), available at <http://www.chs-wa.org/KingCountyReportonRacialDisproportionality.pdf>.

²⁷ See Robert B. Hill, Institutional Racism in Child Welfare, 7 RACE AND SOCIETY 17 (2004) (fewer services offerings to black families is a consequence of institutional racism that contributes to disparities in the child welfare system).

example, even though research has found that minority children may develop more severe physical and mental symptoms following abuse, they receive less mental and physical health care services when in foster care.²⁸

Tracking data on the quality of parent legal representation is another way states could help reduce disproportionality. A lawyer's inability to understand minority culture may further alienate parents from the process and increase the likelihood that children will enter and remain in foster care.²⁹ Courts should monitor attorneys and child welfare agencies and assess whether existing practices and policies to keep racial and ethnic minority children from being overrepresented are actually being employed. Judges and local dependency courts can:

1. Empirically study the quality of court-appointed legal representation provided to indigent parents, and in particular whether such assistance is provided on an equally helpful basis to all such parents;
2. Examine intake and other judicial procedures to determine if and how race/culture issues are affecting case intake and child placement decisions;
3. Determine whether, in the communities served by the court, fewer and poorer quality services, especially culturally-specific remedial services and services to help families ameliorate the impact of poverty, are readily available to families of color, and work with child welfare agencies and other community groups to enhance access to high-quality services that can help families avoid unnecessary child welfare and dependency court system interventions;
4. Explore whether or not families of color are treated equitably with other families in terms of family preservation and reunification decisions; and
5. Alert child welfare agency directors or appropriate program supervisors if encountering caseworkers or others who exhibit evidence of racial bias in their handling of child and family cases, or where their inaction may have particularly harmful consequences for families of color, such as a failure to seek involvement and support from children's fathers and other relatives.

Access Needed Services

This part of the recommendation urges child welfare agencies, courts and advocates to ensure racial and ethnic minority children and families access needed services. Studies reveal that racial and ethnic minority families in the child welfare system receive fewer services than non-minority families.³⁰ Moreover, providing adequate services is an important preventative measure to decrease the risk of racial and ethnic minority children entering the system.³¹ The 2007 GAO report found that racial and ethnic minority families often face greater challenges

²⁸ *Supra* note 7, at 540 (citing) Judith A. Cohen et al., The Importance of Culture in Treating Abused and Neglected Children: An Empirical Review, 6 CHILD MALTREATMENT 148, 149 (2001) (children's ethnicity may impact the severity of their symptoms following child abuse).

²⁹ Asha Barber et al., Collaborative and Empowering Practices with African American Families in Child Welfare, 11 MICHIGAN CHILD WELFARE L. J. 3, 12 (Winter 2007-2008).

³⁰ See Robert B. Hill, Institutional Racism in Child Welfare, 7 RACE AND SOCIETY 17 (2004) (fewer services offerings to black families is a consequence of institutional racism that contributes to disparities in the child welfare system).

³¹ See *supra* note 8.

than non-minorities when trying to access support services.³² As a result, the 2007 GAO report noted the importance of using services to reduce disproportionate minority representation in the child welfare system.³³ Half of states participating in the GAO study reported that offering more services, like mental health treatment, medical care, and housing assistance would reduce disproportionate minority representation in the child welfare system.³⁴

Alternative Response and Family Group Decision Making or Conferencing (“FGC”) are examples of approaches that can also help reduce the number of racial and ethnic minority children in foster care. FGC includes immediate and extended family in making important decisions about placement and services that affect the child in or about to enter care. A 2006 study in Texas revealed that 32 percent of African American families who engaged in FGC did not have their children removed from the home. In contrast, only 14 percent of families who did not engage in FGC avoided removal.³⁵ In addition, the Casey-CSSP report shows that all of the states included in the study successfully used some form of FGC to increase services to families and thereby reduce the need to remove children from their homes.³⁶ The 2007 GAO report revealed that all of the states surveyed included families in the decision-making process as a means of addressing disproportionality.³⁷ Because FGC promotes communication and cooperation between family members and child welfare agency staff, it has also proven to be a successful tool in identifying kin to act as caregivers, strengthening resources, and reducing caseworker bias by exposing them to the family’s culture.³⁸

Alternative response is also a promising strategy to address disproportionate racial and ethnic minority representation in foster care. Here, child welfare agencies respond to less serious allegations of abuse or neglect by offering assessments and services instead of investigating allegations.³⁹ Studies of alternative response have found that it increases cooperation between caseworkers and families and family’s access to support services, which in turn, can decrease minority contact with the system.⁴⁰

One of the ways children enter foster care is through their removal from home by law enforcement agencies or child protective services in situations considered to constitute emergencies. That is, a police officer or child protective caseworker believed there was not time to secure a prior court order authorizing removal, and the child was removed from home prior to the initiation of any formal court proceedings. It is not known how many children are first removed from home in this manner, or how often the initial removal decision is later reversed and the child returned home after a full court hearing at which all parties are present and represented. Federal law has, since 1980, required states to take “reasonable efforts” to prevent

³² *Supra* note 1, at 4.

³³ *Supra* note 1, at 39.

³⁴ *Supra* note 1, at 38.

³⁵ *Supra* note 1, at 35.

³⁶ *Supra* note 9, at 20.

³⁷ *Supra* note 1, at 40.

³⁸ *Supra* note 1, at 35.

³⁹ KATHY LEMON, ET AL., UNDERSTANDING AND ADDRESSING DISPROPORTIONALITY IN THE FRONT END OF THE CHILD WELFARE SYSTEM at 28 (Bay Area Social Services Consortium, July 2005), *available at* http://cssr.berkeley.edu/bassc/public/DISPRO_PDF.pdf.

⁴⁰ *Supra* note 3, at 40.

children's removal from home.⁴¹ However, since in many states it is a law enforcement agency, not a social service agency, that decides upon and effectuates initial removals, it is difficult to assure that those efforts are indeed being made.

One reason for the "reasonable efforts" provision is a child welfare operative philosophy that children should not be taken away from their parents, when child maltreatment is suspected, if services and supports to that family, within the home, can help assure the child's safety during the pendency of the case. Ideally, there should be an immediate and thoughtful assessment, before a child's removal, of not only the current risk to the child but also ways in which the child could be immediately made safe without removal from parents or family.

For example, if a caretaker is, due to a current infirmity or incapacity, or because of their current living environment, unable to keep the child safe, there may be another parent (for example, a non-custodial father) or relative who could provide such care without the necessity of any intrusive and formal child protective court proceedings. There may also be an abusive adult in the home whose removal would permit a parent to continue to safely care for their child without the need for court proceedings to be initiated against that protective parent.

Not considering placement with another parent or relative as a potential way of avoiding child welfare system intervention also may lead to foster care placement simply because the caretaker parent has been arrested. An analysis of National Survey of Child and Adolescent Well-Being data disclosed that 1 in 8 children subject to a child maltreatment investigation had a parent who had been recently arrested, and that this disproportionately affected African-American children.⁴² In addition, it has been suggested that a high rate of African-American infant removals from home may be due to mothers who, before or after the child's birth, tested positive for substance use but were not offered timely placement in a substance abuse treatment program and other services to prevent the necessity of child removal.⁴³

States should be encouraged to take a new, careful look at both their initial child removal criteria and the review of such decisions at initial child protective court hearings, since these are major system entry points at which disproportionate minority family representation may first be evidenced. Some state statutory language permits those making first response decisions concerning removal, such as the police, to remove a child where the danger to them is not necessarily determined to be severe or life-threatening.⁴⁴ Ideally, state law and policy would impose three criteria for child removal decisions: immediate and substantial risk of harm to the child; whether the child could be made safe within the home without removal; and consideration of the risk of harm to the child if and when they were removed from home. Precipitous removals

⁴¹ 42 USC § 671(a)(15).

⁴² Susan D. Phillips, Barbara J. Burns, H. Ryan Wagner, and Richard P. Barth, *Parental Arrest and Children Involved with Child Welfare Agencies*, 74(2) *American Journal of Orthopsychiatry* 174-186 (2004).

⁴³ Fred Wulczyn and Bridgette Lery, *Racial Disparity of Foster Care Admissions*, Chapin Hall Center for Children (2007)

⁴⁴ E.g., Mich. M.C.L.A. 712A.14 provides that police may take a child in custody (i.e., remove the child from home without prior court order) when the child's "surroundings are such as to endanger his health, morals, or welfare." Authority in Michigan for the court to order, prior to or at the first hearing, a child's removal from home merely adds a requirement that the court find that it is "contrary to the welfare of the child" to be at home. M.C.R. 3.963 and 3.965

from home should be based on best judgments of imminent danger of serious harm to a child that necessitates placement, and whether the child could be made safe without removal.

Provide Training and Encourage Recruitment and Retention of Racially and Ethnically Diverse System Players

The third part of this recommendation calls for improved training, as well as recruitment and retention practices aimed at expanding the diversity of child welfare personnel and thereby create increased awareness regarding issues and challenges that promote the disproportionate representation of racial and ethnic minority children in the child welfare system. A body of research and literature has found that unconscious bias, institutional prejudice, and lack of cultural competency in the child welfare and legal communities contribute to increased racial and ethnic minority youth representation in the system.⁴⁵

Provide Training

This part of the recommendation suggests that child welfare system players receive training on cultural competencies, institutional and unconscious biases and the avoidance of disparate treatment. Research has shown that decisions made by child welfare and legal professionals can be inherently biased, and may often be based on stereotypes.⁴⁶ In spite of best intentions, bias has played a part in child welfare decision-making processes, and often subtle forms of bias have had the biggest impact on decision making.⁴⁷ In a ten-state survey, the 2007 Casey-CSSP Alliance for Racial Equity report found that structural racism was present in the legal and child “helping services.”⁴⁸ The report found that these biases played a part in every point of contact that racial and ethnic minority families had with the child welfare system.⁴⁹ Bias led to decisions made without regard to children’s cultural backgrounds, which negatively impacted their wellbeing.⁵⁰ The study also showed that social workers often made important decisions about children based on the workers’ relationship with parents.⁵¹

Studies show that the use of cultural sensitivity training successfully reduces cultural biases that exist among professionals, and therefore reduces the negative effect biased decision making has on racial and ethnic minority youth in the child welfare system.⁵² Training decision makers, including lawyers and judges, in the child welfare system on racial and ethnic minority cultures and family dynamics within those cultures will help them make more appropriate decisions for families.⁵³ A 2007 statement of the Annie E. Casey Foundation supports this notion, suggesting that decision-making child welfare practitioners, including lawyers and

⁴⁵ See e.g., GAO Report *supra* note 1.

⁴⁶ *Supra* note 7, at 534.

⁴⁷ *Supra* note 7 at 535.

⁴⁸ *Supra* note 9, at 3.

⁴⁹ *Supra* note 9, at 6.

⁵⁰ *Supra* note 7, at 534.

⁵¹ *Supra* note 7, at 546.

⁵² *Supra* note 7, at 544-45.

⁵³ Asha Barber et al., Collaborative and Empowering Practices with African American Families in Child Welfare, 11 MICHIGAN CHILD WELFARE L. J. 3, 4 (Winter 2007-2008).

judges, receive high quality cultural competency training.⁵⁴ The foundation reasoned that because lawyers and judges are in positions to affect practice and policy, it is important they be able to understand how cultures affect minority family dynamics.⁵⁵

Recruit Diverse Staff

Recruiting judges, attorneys and social workers from diverse backgrounds to handle child welfare cases can promote an increased understanding of the unique and sometimes culturally-based issues and challenges facing families at risk. A 2004 study by the King County, Washington Coalition on Racial Disproportionality found that service providers who do not understand and relate to racial and ethnic minority family culture contribute to their disproportionate representation in the foster care system because they are more likely to misjudge or mischaracterize unfamiliar cultural norms.⁵⁶ Hiring ethnically and racially diverse staff is a promising step towards mitigating bias and cultural incompetence. In response to these findings, some states such as Connecticut, Iowa, and North Carolina have begun to recruit racially diverse staff in an effort to eradicate racial and cultural bias in their child welfare systems.⁵⁷ Furthermore, a 2006 study of disproportionate racial and ethnic minority representation in Michigan found that increasing staff diversity is an essential element in reducing the disparate impact on, and disproportionate representation of, families of color in the child welfare system.⁵⁸ The King County, Washington study conducted in 2004, also found that hiring diverse staff is one of the first steps towards building a child welfare system that treats all families equally.⁵⁹

Offer Additional Supports to Relative Caregivers

The last part of this recommendation calls for additional supports for relative caregivers because numerous studies have found that increasing resources to relatives helps decrease disproportionate racial and ethnic minority representation in the child welfare system.⁶⁰ A report published by the Race Matters Consortium in 2003 revealed a recent increase in formal and informal use of relative caregivers for all types of families.⁶¹ Social science research further

⁵⁴ Press Release, Kids Count, The Annie E. Casey Foundation Calls on Child Welfare Systems, Policymakers to Focus on the Needs of African-American Youth in Foster Care (July 25, 2007), *available at* http://www.kidscount.org/datacenter/db_07pdf/aa_news_release.pdf.

⁵⁵ *Supra* note 49, at 7.

⁵⁶ King County Coal. on Racial Disproportionality, *Racial Disproportionality in the Child Welfare System in King County*, Washington at 51 (2004), *available at* <http://www.chs-wa.org/KingCountyReportonRacialDisproportionality.pdf>.

⁵⁷ *Supra* note 56 at 11.

⁵⁸ Mich. Advisory Comm. on the Overrepresentation of Children of Color in Child Welfare, *Equity: Moving Towards Better Outcomes for All of Michigan's Children* at 16 (Mar. 2006), *available at* http://www.michigan.gov/documents/DHS-Child-Equity-Report_153952_7.pdf.

⁵⁹ *Supra* note 56, at 52.

⁶⁰ *Supra* note 1, at 6.

⁶¹ Madelyn Freundlich et al., *Kinship Care: Meeting the Needs of Families of Color* at 2 (The Race Matters Consortium, 2003) *available at* <http://www.racemattersconsortium.org/docs/whopaper5.pdf>. Informal kinship care refers to situations in which children are in the custody of relatives based on an agreement among the family without the court's involvement. Formal kinship care refers to situations in which the child is in the care of relatives as a result of judicial determination.

reveals that the use of relative caregivers is especially prevalent among racial and ethnic minority families.⁶² The Race Matters Consortium found that racial and ethnic minority families are more likely to engage in kinship care arrangements, including legal guardianships, but less likely to adopt children related to them. It also found that the use of relative caregivers preserves the extended family, allows the child to remain connected with siblings, and reduces the amount of trauma that children normally experience when separated from their parents.⁶³ Legal guardianship⁶⁴ with relatives is especially attractive to minority families because it provides the child with a permanent placement option while avoiding termination of parental rights, which may cause conflict within the family.⁶⁵ Importantly, the 2007 GAO report found that utilizing relative resources improves outcomes for racial and ethnic minority children, who if placed in non-relative foster care end up remaining in the system significantly longer than their non-minority counterparts.⁶⁶

Provide Federal Reimbursement

Research shows that children who reside with relative caregivers as part of a subsidized guardianship program fare better than those who are in the care of non-family.⁶⁷ For example, studies show that children in kinship care experience fewer placement disruptions than children placed in non-kin foster care, fewer school changes and have fewer behavioral problems in school and home.⁶⁸ This recommendation, therefore, calls for federal reimbursement to states for the costs associated with subsidized permanent guardianships. Existing federal funding schemes do not provide adequate support to relative caregivers and this lack of funding acts as a barrier and disincentive to relative caregivers.⁶⁹ Moreover, a lack of support often forces relatives to remain in the child welfare system simply due to a desire to receive critical financial support. For example, funds available under Temporary Assistance for Needy Families (TANF) and Title IV-E (which provides funding to foster parents) are temporary and not sufficient to provide necessary supports to relative legal guardians.⁷⁰ However, the proposed federal Kinship Caregiver Support Act would give states the option to use federal funds to help provide subsidized guardianship payments to relatives.⁷¹ These payments would help keep children in

⁶² *Supra* note 7, at 548.

⁶³ *Supra* note 61, at 6.

⁶⁴ Mark F. Testa, *When Children Cannot Return Home: Adoption and Guardianship*, 14 THE FUTURE OF CHILDREN 115, 121 (Winter 2004), available at http://www.futureofchildren.org/usr_doc/vol_14_no_1_no_photos.pdf.

In a legal guardianship, the guardian assumes limited financial responsibility over the child, parental rights do not have to be terminated, and the parents may choose to petition the court to end the guardianship if their situation improves substantially.

⁶⁵ *Supra* note 61, at 9 citing Rob Geen, *Finding Permanent Homes for Foster Children: Issues Raised by Kinship Care*, Urban Institute Paper, No. A-60 (Washington D.C., The Urban Institute 2003).

⁶⁶ *Supra* note 1, at 28.

⁶⁷ *Supra* note 64, at 121.

⁶⁸ *Supra* note 64; U.S. Department of Health and Human Services, Administration for Children and Families, *National Survey of Child and Adolescent Wellbeing CPS Sample Component Wave 1 Data Analysis Report*, Washington, D.C., April 2005.

⁶⁹ *Supra* note 61, at 6.

⁷⁰ *Supra* note 1, at 43.

⁷¹ QUESTIONS AND ANSWERS ABOUT THE KINSHIP CAREGIVER SUPPORT ACT (S.661/H.R. 2188), *Children's Defense Fund*, available at http://www.childrensdefense.org/site/DocServer/KCSA_2007_Q__A_updated2.pdf?docID=4742 (last visited Mar. 30, 2008).

the care of extended family by offering relatives the financial means necessary to become permanent placement options for children for whom they have been foster parents.⁷²

Offer Financial Assistance

The recommendation also calls for additional financial support to relative caregivers. Kinship care can provide stability to racial and ethnic minority children while keeping them out of traditional foster care placements.⁷³ However, relatives caring for racial and ethnic minority children are often impoverished and taking in relative children can exacerbate their already tenuous financial situation.⁷⁴ Many relative caregivers are only able to rely on welfare payments to help care for relative kin. In comparison, non-relative foster care providers are paid significantly more to care for foster children.⁷⁵ Although the federal government has stated a preference for placing foster children with kin, it does not direct states to offer resources and services to relatives to achieve this goal.⁷⁶ Therefore, this recommendation asks that relative caregivers receive financial assistance and other support equivalent to that of non-relative caregivers to help ensure children have more permanent connections with family and ultimately reduce disproportionate racial and ethnic minority representation in the child welfare system.

Support Housing Assistance

The next part of this recommendation urges policy change that will end practices that threaten relative caregiver's eligibility for federally funded housing. Many relative caregivers use public housing assistance under the Section 8 Housing Assistance Program. However, recently, there have been some federal policy proposals that would count kinship care payments as income when determining Section 8 eligibility. This would have a devastating effect on low-income relatives who are, or hope to become, placement options for children in the child welfare system.⁷⁷ The resulting increased rental payments would put children at risk of being returned to the foster care system and further increase racial and ethnic minority contact with the system.

Modify Relative Approval Standards

The recommendation also encourages giving states flexibility in licensing and approving relative caregivers as kinship providers. Under current law, states can receive federal support for placing children with relatives. Many of these families qualify only for TANF payments, however, which are much lower than payments given to non-relative foster parents. Relative caregivers may only receive equivalent financial support if they meet the same licensing

⁷² *Supra* note 61.

⁷³ *Supra* note 61, at 1.

⁷⁴ *Supra* note 61, at 5.

⁷⁵ ROBERT B. HILL, SYNTHESIS OF RESEARCH ON DISPROPORTIONALITY IN CHILD WELFARE: AN UPDATE at 29 (Casey-CSSP for Racial Equity in the Child Welfare System, Oct. 2006).
http://www.caseyfamilyservices.org/pdfs/0226_CC_BobHillPaper_FINAL.pdf.

⁷⁶ Rob Geen *The Evolution of Kinship Care Policy and Practice*, 14 THE FUTURE OF CHILDREN 131, 137 (Winter 2004), available at http://www.futureofchildren.org/usr_doc/vol_14_no_1_no_photos.pdf.

⁷⁷ Email from Miriam Krinsky, FACT SHEET: HUD DECIDES TO COUNT CALIFORNIA'S KIN-GAP PAYMENTS AS INCOME FOR FEDERALLY SUBSIDIZED HOUSING ELIGIBILITY, THREATENING TO DISPLACE FOSTER FAMILIES (Mar. 14, 2008) (on file with author).

standards required of non-relative foster parents.⁷⁸ Meeting these standards is often difficult. For example, many do not have the means to move into homes large enough to meet the living quarters requirements.⁷⁹ Moreover, this starting point fails to recognize the inherent family connection and bond that relatives provide to a child facing an already tumultuous circumstance. Giving states the option to set up separate licensing standards for relative and non-relative caregivers would give them better federal financial support for relative placements. This change in licensing can be done without compromising safety standards.⁸⁰ For example, the requirement that children sleep in separate bedrooms is less necessary when they live with a relative, where they may share a bedroom with a cousin or sibling.⁸¹ Additionally, general square footage requirements may not be as important for children who are living in close quarters with relatives as opposed to unrelated foster parents.⁸²

CONCLUSION

There have been numerous social science studies, reports and statistical analyses on a national and local level that clearly indicate a disproportionate representation of racial and ethnic minority children in the child welfare system. Practice and policy change, training and data collection can help eradicate this problem and result in better outcomes for racial and ethnic minority children and families. Through this resolution, the ABA will honor its ongoing commitment to improve the lives of children in the child welfare system and its strategic goals to eliminate bias and ensure justice and equality for all.

Sincerely,

William Gunn, Chair
American Bar Association
Commission on Youth at Risk
August 2008

⁷⁸ *Supra* note 61, at 5.

⁷⁹ *Supra* note 61, at 6.

⁸⁰ *Supra* note 71.

⁸¹ *Supra* note 71.

⁸² *Supra* note 71.