



# Child Law Practice

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Helping Lawyers Help Kids

## IN PRACTICE

### Finding Family Connections for Foster Youth

by Kelly Lynn Beck

with Judge Leonard Edwards (ret.), David Meyers & Jennifer Walter

**“The typical American child living in out-of-home care has 100 to 300 living relatives.”<sup>1</sup>**

As professionals are we doing all we can to find and maintain family connections for youth in our care? If we can tap into family resources for every child and family we work with, many more permanency<sup>2</sup> options become available. This brings many benefits to children and families.<sup>3</sup>

Recognizing the need for permanent lifelong connections for all youth, the California Permanency for Youth Project<sup>4</sup> (CPYP) began pilot projects in six California counties.<sup>5</sup> The projects aimed to enhance permanency options for youth by using Family Search and Engagement strategies (FSE).<sup>6</sup> The most commonly used processes for FSE include the following:

- *Talking with youth* directly, using tools designed to gather family tree/histories<sup>7</sup> (See *Engaging Youth in Finding Connections* for sample questions).
- *Case mining*—Looking through the entire case file, from day case first started to the present, writing down names and contact information of anyone that ever came to court, visited the youth, called about the youth, and in any way expressed an interest.

- *Internet searches*—Using a company that specializes in finding relatives to the third degree or higher and providing contact information for those relatives, such as telephone numbers, addresses, previous addresses<sup>8</sup> or purchasing search software to set up countywide search procedures.<sup>9</sup>
- *Reinterviewing family members*—This could be in a mediation or group<sup>10</sup> setting, if necessary, and include family members that were otherwise previously ruled out as a placement or contact.<sup>11</sup>
- *Using volunteer, retired social workers, investigators or interns* to accomplish any or all of the above processes at the initial startup of a county FSE program.

In 2004, the California Administrative Office of the Courts’ Center for Families, Children & the Courts began judicial officer trainings and county collaborative workshops in several counties throughout California. These workshops were brought directly to the local county stakeholder groups in an effort to incorporate permanency strategies, including FSE into daily court practice.<sup>12</sup> Many of the counties visited by the AOC and all CPYP counties

have implemented some form of FSE, resulting in more relative involvement and placements. These counties have also realized additional benefits of FSE such as an overall shift in belief by stakeholder participants, that every youth potentially has at least one appropriate family member willing to stay connected.<sup>13</sup>

If FSE is viewed and incorporated as a responsibility shared by judicial officers and attorneys and all child welfare professionals, youth will benefit in many ways. This article highlights these benefits and shares tips for judicial officers and attorneys representing parents, child welfare agencies, and children on how to incorporate FSE strategies in daily practice.

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## **ABA Child Law PRACTICE**

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## **CASE LAW UPDATE**

### **Limiting Parents' Right to Home School Dependent Children is Constitutional**

*Jonathan L. v. Superior Court*, 81 Cal. Rptr. 3d (Ct. App. 2008).

Two children were adjudicated dependent based on abuse and neglect of their siblings. The children were returned to the parents' custody on the condition that the parents cooperate in the case.

The attorney who represented the children sought an order that the children, who had been home schooled by their mother, be sent to a private or public school. He argued that the family had a long history of abuse and neglect and the children should attend school where they would have regular contact with mandated child abuse reporters. The dependency court declined to issue the order, reasoning that parents have an absolute constitutional right to home school their children.

The children's attorney filed a petition for an extraordinary writ challenging the trial court's refusal to order the children to attend public or private school to protect their safety. The California Court of Appeals granted the petition on the basis that California statute does not allow home schooling, and the prohibition against home schooling does not violate the U.S. Constitution.

The appellate court granted a request by the children's father for a rehearing to examine other statutes that affect home schooling, and provisions of the California Constitution. While the California legislature expressly permitted home schooling in 1903 when it enacted the compulsory education law, home schooling was amended out of the law in 1929 and children who were not educated in public or private school could only be taught privately by a credentialed tutor. Case law interpreting the law held that home schools could not be viewed as private

schools.

However, more recent legislative developments suggested the legislature was aware that home schooling was occurring in California and that parents were home schooling their

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. . . a child's safety is a compelling government interest and restricting home schooling is narrowly tailored to protect that interest.

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children by calling their homes private schools. In addition, more recent statutory enactments reflected legislative approval of home schooling and exempted home schools from requirements applied to private schools. The court interpreted California's earlier statutes in light of the later ones and concluded that home schools are permissible in California when conducted as private schools.

Its review did not stop there, however. California statute also allows dependency courts to limit parents' rights, including their right to direct their children's education, if the limitation is necessary to protect the child. The court concluded that a child's safety is a compelling government interest and restricting home schooling is narrowly tailored to protect that interest. Restricting home schooling and requiring that the children have contact with mandated reporters would be the least restrictive way to protect the children without removing them from their parents' custody.

The court therefore granted the writ and remanded the case to the trial court to reconsider the need to place the children in a public or private school to protect their safety.

## Investigators Are Entitled to Qualified Immunity for Fourth Amendment Violations

*Gates v. Texas Dep't of Protective & Regulatory Servs.*, 2008 WL 2875378 (5<sup>th</sup> Cir.).

A family brought an action challenging the constitutionality of a child abuse investigation involving the family's 13 children. The investigation involved warrantless entry into the family's home by child protection workers and police officers, interviews of the children without the parents' consent, and removal of the children. All three investigations were eventually closed and the children were returned home.

After four and one-half years of lengthy proceedings, the United States District Court for the Southern District of Texas awarded summary judgment in favor of the defendants. The family appealed, reasserting their claims against the Texas child protection agency and its employees and the county and its employees.

The United States Court of Appeals for the Fifth Circuit affirmed. Defendants claimed they were entitled to qualified immunity. This placed the burden on the family to show defendants' conduct violated clearly established law, and that genuine issues of material fact existed concerning the reasonableness of the officials' conduct.

The family claimed the defendants' entry into their home violated the Fourth Amendment. The defendants countered that their entry into the home was permissible because the family's housekeeper had given consent, they were compelled by exigent circumstances, and they met the reasonableness standard of the "special needs" doctrine.

The court found a fact issue concerning whether consent was given to allow defendants to enter the family's home. The parties disputed whether the housekeeper actually gave consent. Some defendants believed she let them enter while others could not remember what was said. The housekeeper said she did not intend to let defendants enter, although she told them they could interview the children

when they returned home from school. The court found these facts presented a close call, but concluded they created a fact issue.

Defendants next claimed exigent circumstances existed to support entering the home based on a report of alleged child abuse made by the children's school and information obtained through interviews with three of the children. They explained they had a statutory duty to promptly investigate the child abuse allegations. The family countered that these circumstances did not constitute exigent circumstances and that defendants failed to show they lacked enough time to obtain a court order before entering the home.

The court agreed that there were no exigent circumstances when defendants entered the home. The father, who was the subject of the abuse allegations, was not home so there was no immediate threat to the children. When they entered the home, the investigators only had information alleging the father used unusual discipline practices, not that he had actually abused the children. Further, the questions the investigators asked the children were routine, not emergency-related interview questions. The court found these facts did not present an "immediate danger" to support a warrantless entry into the family's home.

The "special needs" doctrine allows warrantless searches for a need outside the state's interest in law enforcement. The court found no special need in this case since the investigation of possible child abuse was closely tied with law enforcement. In fact, law enforcement officers participated in the investigation of the home.

The court concluded that Fourth Amendment standards of a court order, consent, or exigent circumstances applied in this case and that defendants were not entitled to summary judgment regarding any of these standards. Thus, the family es-

tablished defendants' entry into their home violated clearly established law.

However, the court found plaintiffs were unable to establish the second element of the qualified immunity analysis – whether the defendants' actions were reasonable at the time they entered the home. Although the law regarding consent and exigent circumstances had long been established, the court found the law on the special needs exception was not clearly established at the time of the investigation. Therefore, it was reasonable for the defendants in this case to conclude that protecting children from abuse went beyond a general interest in law enforcement. Further, the requirement that the special need be separate from the state's interest in law enforcement did not become effective until after the defendants' investigation. Therefore, it was reasonable for defendants to believe the special needs doctrine applied and they were entitled to summary judgment based on qualified immunity.

The court also found defendants' in-home interviews and removal of the children from the home were reasonable under the exigent circumstances standard and they were also entitled to summary judgment on those claims.

### Child Welfare Teleconferences

The National Resource Center on Organizational Improvement is sponsoring the following fall teleconferences:

- **10/23/08:** Bringing Prevention to the Table: Strategies for Improving Outcomes
- **11/13/08:** Addressing Disproportionality and Disparity in Child Welfare Systems
- **12/4/08:** Recruitment and Retention of a Qualified Workforce: Lessons Learned

For more information visit:  
[www.nrcoi.org/tele.htm](http://www.nrcoi.org/tele.htm)



**Alabama**

*Campbell v. Davison*, 2008 WL 3582689 (Ala. Civ. App.). SUPPORT, TERMINATION OF PARENTAL RIGHTS  
Trial court properly held father's obligation to pay future child support was extinguished by termination of his parental rights; termination severs all parental rights and responsibilities.

**Alaska**

*Smith v. Stafford*, 189 P.3d 1065 (Alaska 2008). LIABILITY, CASEWORKERS  
Summary judgment in favor of caseworker was inappropriate in father's action asserting defamation and false light claims; allegation that caseworker arranged beer bottles and garbage at father's house to create appearance he was unfit, if true, would support claims and show bad faith sufficient to overcome qualified immunity.

**California**

*In re A.B.*, 79 Cal. Rptr. 3d 580 (Ct. App. 2008). TERMINATION OF PARENTAL RIGHTS, ICWA  
Violation of requirement to obtain written confirmation that parent had no Indian ancestry under state Indian Child Welfare Act did not require reversal of termination of parental rights order where mother indicated she had no such ancestry orally in shelter hearing and in writing in a sibling's case; while appellate court would not normally augment record with evidence from an unrelated sibling case, a mere technical violation that does not affect the substantive merits of the termination is insufficient grounds for reversal in light of the child's right to timely permanency.

*In re Esperanza C.*, 81 Cal. Rptr. 3d 556 (Ct. App. 2008). DEPENDENCY, CRIMINAL CONVICTION

Where dependent child's placement with great-uncle was denied due to record of criminal conviction under statutory section that includes sex offenses, agency could not infer uncle was sex offender based on incomplete record; statutory section also includes charges for contributing to the delinquency of minors, supporting uncle's claim he was convicted for supplying alcohol to his underage brother.

*In re Kristen B.*, 78 Cal. Rptr.3d 495 (Ct. App. 2008). DEPENDENCY, REPRESENTATION  
Child's lawyer did not provide ineffective assistance of counsel by advocating for child's removal from home based on sexual abuse even though children recanted her statements, or by calling child to testify as witness even though lawyer disagreed with child's position to return home; lawyer informed court of conflict between child's position and her view of child's best interests, and there was no evidence that lawyer called child to testify to impeach her or for any other improper reason.

**Connecticut**

*In re Stephen M.*, 953 A.2d 668 (Conn. App. Ct. 2008). TERMINATION OF PARENTAL RIGHTS, PARENT-CHILD RELATIONSHIP  
Trial court improperly found lack of parent-child relationship was agency's fault and denied agency's petition to terminate parental rights; father's actions in sexually abusing son and refusing to participate in abuse counseling required agency to refuse to allow father to visit child.

**District of Columbia**

*In re A.B.*, 2008 WL 3861660 (D.C.). TERMINATION OF PARENTAL RIGHTS, RELATIVE PRESUMPTION  
Trial court properly found relative preference was overcome by other factors in termination of parental rights proceeding; cousin's inability to verify his income and his prior drug convictions, and his failure to arrange for sufficient space in his apartment for child supported court's finding that another home was appropriate.

**Florida**

*Justice Administrative Commission v. Peterson*, 2008 WL 2811999 (Fla. Dist. Ct. App.). GRANDPARENTS, REPRESENTATION  
Indigent grandfather lacked statutory right to representation by counsel in dependency proceeding, even though he had cared for child for most of child's life and served as de facto parent; only indigent parents have statutory right to representation.

**Georgia**

*In re A.G.*, 2008 WL 3877174 (Ga. Ct.

App.). TERMINATION OF PARENTAL RIGHTS, TIME IN CARE

In termination proceeding, court could consider impact of children's extended stay in foster care when deciding if deprivation was likely to continue, for purposes of deciding children's best interests; children were of an age where they needed permanent, stable home and could suffer harm if allowed to linger in foster care.

**Illinois**

*In re Y.A.*, 890 N.E. 2d 710 (Ill. Ct. App. 2008). DEPENDENCY, FALSE ALLEGATIONS

Agency's neglect petition incorrectly alleged father had been found unfit in a previous dependency hearing when in fact mother was found unfit but child was not placed with father because he lived with her; however, error did not prejudice father because it was timely corrected and sanctions against caseworker were not warranted because he could reasonably have concluded the allegation was correct.

**Indiana**

*In re L.B.*, 889 N.E.2d 326 (Ind. Ct. App. 2008). TERMINATION OF PARENTAL RIGHTS, RES JUDICATA

Child welfare agency's second petition to terminate father's parental rights was not barred by *res judicata* since dismissal of agency's first termination petition based on agency's failure to comply with statutory notice requirement was not a "judgment on the merits" that barred second termination petition; further, issues raised in first petition had not been finally determined, and first case was not dismissed with prejudice.

**Iowa**

*In re I.P.*, 2008 WL 3370431 (Iowa Ct. App.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO PROGRESS  
Mother and father were unable to correct the conditions that led to their child's removal where both parents were offered services but failed to participate consistently, were unable to control their finances, lacked stable employment, and struggled with mental health issues and domestic violence; parents' failure to progress demonstrated inability to make child a priority and was clear and convincing evidence to support terminating their parental rights.

## Kansas

*In re Adoption of G.L.V.*, 2008 WL 3875995 (Kan.). ADOPTION, CONSENT  
Statutory amendment requiring courts to consider best interests of child in stepparent adoptions did not permit court to override longstanding statutory requirement mandating consent of natural parent who has assumed parental responsibilities; best interest consideration was always implicitly required and amendment merely gave court added discretionary authority to consider the child's best interests in denying a stepparent adoption, even when the biological parent has not assumed parental responsibilities.

## Massachusetts

*Adoption of Nicola*, 2008 WL 2901821 (Mass. Ct. App.). DEPENDENCY, PRIOR FINDINGS  
Trial judge properly relied on mother's history with three other children in determining her fitness to raise fourth child; mother's 14-year substance abuse problem caused her to neglect three other children, all of whom suffered medical complications resulting from drug exposure, and mother's failure to obtain prenatal care and her routine heroin and cocaine use during pregnancy established neglect of fourth child.

## Montana

*In re D.B.*, 2008 WL 2973135 (Mont.). TERMINATION OF PARENTAL RIGHTS, TREATMENT PLAN  
In appeal of order terminating mother's parental rights, evidence did not support mother's claim that her treatment plan was inappropriate because it failed to recognize her specific needs; although treatment plan was not updated in writing after mother's cognitive problems were diagnosed, counselors knew of diagnoses and changed their approaches to accommodate them.

## New Jersey

*Dep't of Children & Families v. S.P.*, 953 A.2d 790 (N.J. Super. Ct. App. Div. 2008). ABUSE, CORRECTIVE ACTION  
Where child welfare agency determined teachers' actions in lightly hitting children who were behaving aggressively were inappropriate but did not constitute abuse, agency had authority to issue recommendations to school district but could not require specific corrective action.

## New York

*Amato v. Amato*, 2008 WL 1902107 (N.Y. App. Div.). CUSTODY, REPRESENTATION  
Family court should have appointed law guardian for child in custody proceeding in which father, mother and paternal grandmother each sought custody since substantial questions were raised about fitness of parents, interest of witnesses in outcome of proceedings, and lack of forensic evaluation and home study; failure to appoint law guardian deprived child of advocate to further investigate parents and present interests beyond those offered by parties.

*In re Eric L.*, 2008 WL 1915182 (N.Y. App. Div.). TERMINATION OF PARENTAL RIGHTS, INCARCERATION  
Child welfare agency made diligent efforts to strengthen incarcerated father's parental rights with child before his incarceration by devising plan that permitted supervised visits, counseling, parenting classes and attending child's medical appointments, but father failed to fully participate in plan; agency was relieved of duty to make reasonable efforts to support reunification once father was incarcerated because father failed to cooperate.

## North Carolina

*In re M.H.B.*, 664 S.E. 2d 583 (N.C. Ct. App. 2008). DEPENDENCY, COMPETENCY  
Trial court abused discretion in dependency hearing by failing to determine whether father was competent and should be appointed a guardian ad litem because there was a reasonable basis to show he was incompetent or had diminished capacity; father was suffering from posttraumatic stress disorder, bipolar disorder, expressed suicidal thoughts, and appeared confused about purpose of hearing.

*Christmas v. Cabarrus County Dep't of Social Servs.*, 664 S.E.2d 649 (N.C. Ct. App. 2008). LIABILITY, CHILD WELFARE AGENCIES  
Trial court properly denied child welfare agency's motion to dismiss in case in which child died after agency responded to physical abuse allegation and allowed child to return home without the worker performing an investigation; immunity

was waived by fact that agency obtained liability insurance and because public duty doctrine did not shield agency since protective services are not meant to protect the public as a whole but specific individuals.

## Pennsylvania

*B.T.W. v. P.J.L.*, 2008 WL 3917825 (Pa. Super. Ct.). ABUSE, PROTECTION ORDER  
Protection order against stepmother was warranted based on finding that stepmother abused child by administering corporal punishment; evidence showed stepmother hit child with belt causing bruising and marks, pulled child's hair, and drove child in car without a driver's license.

## South Dakota

*In re J.B.*, 2008 WL 3128481 (S.D.). TERMINATION OF PARENTAL RIGHTS, CHILD WITNESSES  
Trial court's error in not finding child's hearsay statements about alleged abuse were reliable before admitting them into evidence in termination proceeding was harmless; record showed statements were reliable based on testimony about child's understanding of concept of truthfulness, his age, and particulars, timing, and repetition of statement.

## Utah

*State ex rel. G.C.*, 2008 WL 2761312 (Utah Ct. App.). TERMINATION OF PARENTAL RIGHTS, PRIOR ACTS  
Trial court properly found father's history of violence and sexual deviancy was relevant and admissible in deciding father's fitness and child's best interests in termination proceeding; court's consideration of father's past actions did not prejudice father.

## Virginia

*T.S.G. v. B.A.S.*, 2008 WL 40000810 (Va. Ct. App.). ADOPTION, CONSENT  
In proceeding in which grandmother sought to adopt grandchild, mother was unable to show grandmother committed fraud or duress relating to obtaining mother's written consent to adoption and therefore did not effectively revoke her consent to adoption.

## Why is FSE Important in Child Welfare Proceedings?

### *Maintains Family Connections*

In most child welfare cases, removing a child from his home severs family ties. Children are separated from the people they have come to rely upon for support. Once uprooted from all that is familiar, being placed in foster care “mean[s] separation not only from their parents, but often from other family members and friends.”<sup>14</sup>

If a child is unable to return home, there is high probability that the child will be placed and/or adopted by unrelated foster parents. With this likelihood comes the reality that those children will lose connections to their birth families. Information that we take for granted is unavailable for foster youth, perhaps for their entire lives, including answers to questions such as:

1. “What happened to my family?”
2. “What happened in my family to cause me to be away from them?”
3. “Who do I look like?” “Who do I take after?”
4. “Does my family miss me?”
5. “Does my family ever think about me?”
6. “Did they give up on me?”

These questions can **only** be answered by the family members themselves. Our answers, although true, will be viewed with skepticism since we are part of the “system” that removed them from their family.

“Since connections to family and friends contribute to feelings of security for most children and adults, it is not surprising to hear youth describe how disruptive and difficult it is to be removed from these support networks.” Having a family connection is as urgent as the need for safety.<sup>15</sup> At every stage of the dependency proceedings, if

FSE has not been pursued and the youth lacks a support network of family members, FSE should be initiated.

Daily courtroom practice includes advocacy for youth’s rights including educational, placement, health, and visitation issues. No matter how well we advocate for those rights, unless we also advocate maintaining the youth’s connection to the family, a void will forever exist within that youth.

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“In all of us there is a hunger, marrow-deep, to know our heritage—to know who we are and where we have come from. Without this enriching knowledge, there is a hollow yearning. No matter what our attainments in life, there is still . . . emptiness, and the most disquieting loneliness.”

—Alex Haley, Author of *Roots*

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### *Protects Rights of Children and Families*

A child has an interest in growing up with her family. A child’s family is a birthright and arguably a legal right. The United State Supreme Court has held that the child’s parent has a legal interest in her child.<sup>16</sup> The California Supreme Court has described the child’s interest in his or her family as comparable to the parent’s interest, stating that “children have a fundamental independent interest in belonging to a family unit.”<sup>17</sup> Consequently, children share the parent’s interest “in avoiding erroneous termination [of the family unit].”<sup>18</sup> One California Court of Appeals decision went as far as finding that children have a liberty interest in their family relationship.<sup>19</sup> FSE allows us to protect these interests.

### *Promotes Permanency*

Typically, if family members make contact with the social worker, attend the court hearing, or secure counsel,

we look to them for placement alternatives. What about when a father<sup>20</sup> does not come forward—is the youth automatically cut off from his paternal relatives? What happens when the mother’s family does not make contact with the social worker or come to court?

Historically we did not look beyond the family that appeared at court, was contacted by the social worker, or was identified by a parent. The notion that “if they haven’t come forward, they don’t really care” was common. Now we know that families were not coming forward for several reasons: Children had been lost to family members due to broken family connections, multiple placements, or multiple family moves. Some families feared child welfare system involvement and felt powerless to advocate for family. Sometimes family members didn’t know the children were in foster care or simply could not find their lost children.<sup>21</sup>

With the help of FSE, not only is there the likelihood of maintaining family connections for the youth, there is always the possibility of mending broken connections with estranged family members. These connections can lead to permanent placement options that did not previously exist. Permanent placements with family are known to offer many benefits. Recent research<sup>22</sup> suggests:

- Children in relative foster care tend to be just as safe as or safer than children placed with nonrelative families.
- Relative foster placements tend to be more stable than placements with unrelated foster families.
- Siblings are less likely to be separated when placed in relative foster care.
- Children in relative foster care maintain community connections, such as continuing to live in their own neighborhoods, continue in their original schools, church,



The Fostering Connections to Success and Increasing Adoptions Act (H.R. 6893) contains several provisions that support family finding and strengthen the role of relatives in child welfare proceedings. See p.126 for a summary of these provisions.

extracurricular activities and maintaining neighborhood and school friendships.

- Relatives are a valuable resource for providing temporary foster care and as permanent families (adoptive parents or permanent guardians) when reunification is not possible.<sup>23</sup>

#### *Promotes Positive Outcomes for Transitioning Youth*

Statistics for youth aging out of the foster care system are troubling:

- In 2005, more than 24,000 youth left foster care in the United States at age 18 without a family of their own.<sup>24</sup>
- One in four youth will be incarcerated within the first two years after they leave the system.<sup>25</sup>
- Over one-fifth will become homeless at some time after age 18.<sup>26</sup>
- Approximately 58 percent had a high school degree at age 19, compared to 87 percent of a national comparison group of non-foster youth.<sup>27</sup>
- Of youth who aged out of foster care and were over age 25, less than three percent earned their college degrees,<sup>28</sup> compared with 28 percent of the general population.<sup>29</sup>

Youth who have aged out of the system tell us that the single most important thing they needed was someone they could count on, someone who cared about what happened to them and who would always be there for them when they had questions. Once leaving foster care, most youth are discharged to no one but themselves.<sup>30</sup> Maintaining important connections with family members while the case is open provides youth a support network after the case closes.

#### **How Does FSE Arise in Child Welfare Litigation?**

Usually a social worker, probation

officer, attorney or even the judicial officer will ask at the first hearing whether other relatives want to be involved. If no additional relative information is obtained, the issue, if raised at all, is usually dropped and approached later, if at all. This is usually due to the other, time-consuming and important tasks at hand (i.e., where the child will be placed, advisement of rights, visitation schedules, etc).

A wait-and-see approach is usually taken: *Let's wait and see who shows up next at the hearings or who will call the social worker.* This approach hampers early permanency for youth and enforces the family's belief that the system does not care. If we look, investigate, and overturn every stone at the beginning of the case, outcomes for youth improve.

Throughout California, FSE is being used as a proactive or aggressive approach to locate and engage family members. Each county uses a model specifically tailored to that jurisdiction. California counties are incorporating FSE as early as the initial response or initial investigation in an effort to find respite or temporary placements and as late as postpermanency hearings where a youth is ready to age out. Most agree that best practice is to use FSE early and often, usually until family is identified and engaged to stay connected.

FSE is an ongoing process. Those who incorporate FSE strategies into their professional practice see real and tangible benefits in the following areas:

1. *Lifelong connections*—When youth exit the foster care system, they leave with a lifelong connection to a caring adult. Whether the youth is in direct contact (i.e., placement, visits, outings or continual telephone contact) or indirect contact (i.e., letters or periodic phone contact), just having family contact information and knowing there is someone

who cares about them can make all the difference when leaving foster care.

2. *Placement with parents*—If family members are identified, are appropriate, and can assist with respite and/or child care, they can play an important role during the reunification process and after. With family support, parents are able to attend treatment-related appointments, and maintain their employment and educational commitments.
3. *Placement with family members*—If identified and engaged in the process, family can provide both temporary and/or permanent placement alternatives. Placement and/or visitation with siblings increases when other family members have a relationship with siblings or actually have them in their care.
4. *Visitation*—Appropriate family members can help provide safe, more frequent, and better quality visitation time for parents and siblings, thus enhancing the opportunity to reunify.
5. *Permanency planning and concurrent planning*—Once identified and engaged, family members can participate in the permanency planning process by attending mediations, team decision making meetings, family group conferences and other meetings where permanency issues are discussed. They can provide support for parents, insight for social workers, and

several alternatives so that youth never return to foster care once the initial permanent plan is in place.

6. *Family histories*—Once identified, even if placement or contact is not an option at this time family members provide a wealth of information about other family members, including social and medical histories, heritage, and additional contact information.

### How Can Judicial Officers and Lawyers Use FSE?

Everyone has a duty to identify family connections for children in the child welfare system. Once family members are found, efforts must begin to engage them so children do not exit the system with a void, but rather a sense of belonging, hope, and future. Steps that judicial officers and attorneys can take to meet this responsibility are discussed below.

#### Judicial Officers

The judicial officer sets the tone for all child protection proceedings, whether he knows it or not. When the judicial officer announces that identifying relatives is a high priority, asks questions about finding extended family members, arranges for trainings so everyone can learn about FSE, and makes “no reasonable efforts” findings when family-finding efforts have not been made, the message to all participants in the court process is clear: **FSE is important and everyone should work to identify and engage family early in all aspects of permanency planning.**

One of the most difficult issues facing a judicial officer in child protection proceedings is finding the right placement for a child. With the knowledge that children should stay connected to family members whenever possible, the judicial officer finds herself in a challenging position when family members have not

been identified and foster care becomes a necessary fallback position. Judicial officers in dependency court can make a tremendous difference in these situations. They need to know about FSE and encourage the child protection system to make it part of everyday practice.

Steps judicial officers can take to support FSE include:

#### Be aggressive in identifying, locating, and engaging fathers.

Many in the child protection system prefer to work with mothers and ignore fathers.<sup>31</sup> Yet fathers can be a significant resource for the child and for the court. The father may be a possible placement. The father’s side of the family also, on average, consists of one-half of the child’s relatives.

The judicial officer should ask about the father, questioning anyone in a position to know who the father, or any potential father, is (i.e., social worker, probation officer, mother, other family, youth if appropriate). Even a possible name, possible last known address, or possible age could result in a successful Internet search. (See a sample judicial parentage/paternity determination form at <http://www.abanet.org/child/clp/weblink.html>)

#### Insist that family members are identified.

Judicial officers can ask at the first hearing and every subsequent hearing if FSE is being pursued. If there is not a formal FSE process in place, the judicial officer can ask all court participants what efforts are being pursued to locate and identify relatives. The judicial officer can then insist that FSE begin, if it has not already, and then identify who will be responsible for providing that information to the social worker for follow-up. Many tools are available to assist practitioners identify family members and connections for youth (see the box, *Identifying Connections for Youth*, for one tool used in California).

**Invite all family members to come to court proceedings.** This can be accomplished by announcing at the first hearing that all family is invited to participate in the court proceedings and then reminding parents to provide the court and the social worker with contact information. Also, when family does appear at court, reassure the family members that they are welcome to come to the next hearing. Last, relay to the dependency court system participants that this invitation will be a routine practice in the courtroom.

This ensures family members are identified, their wishes are made known, and the possibility of placement or continued contact is explored. The earlier this happens with follow-up engagement of those family members, the more likely the family will respond and stay involved.

#### Encourage the agency to offer group decision-making alternatives.

These include family group conferencing, team decision making, family team meetings<sup>32</sup> and mediation.<sup>33</sup> These meetings engage family members, significant people in the child’s life, and professionals to help solve problems the child is facing and plan for the child’s future.

#### Be prepared to make a “no reasonable efforts” finding.

The no reasonable efforts finding should be made if the agency refuses or otherwise prevents taking immediate action to:

- identify fathers or other extended family members<sup>34</sup> to prevent or eliminate the need for removal;<sup>35</sup>
- seek to place a child with nonoffending parent;
- finalize a permanent placement with family rather than remaining in a long-term foster care setting; or
- seek timely permanence.<sup>36</sup>



This form can be used by any member of the dependency court system. It is used as a reminder of all of the people who could be an important connection for youth.

	Located	Name of Person	Contacted	Interviewed	Placement	If no placement provide reason	Does child wish to maintain contact?
<b>PARENTAGE</b>							
Mother							
Presumed Father							
Alleged Father(s)							
Stepparent							
Guardian							
Other							
<b>MATERNAL RELATIVES</b>							
Grandmother							
Grandfather							
Aunt(s)							
Uncle(s)							
Siblings							
Extended Family Member							
<b>PATERNAL RELATIVES</b>							
Grandmother							
Grandfather							
Aunt(s)							
Uncle(s)							
Siblings							
Extended Family Member							
<b>RELATIONSHIPS</b>							
Godparent							
Neighbor							
Neighbor							
Prior Foster Parent							
Teacher							
Teacher							
Coach							
Friend's Parents							
Other							

**Attorneys**

With each new day and each new case, child welfare attorneys have an opportunity to directly impact the lives of children and their families. Lawyers must always be conscious of the powerful impact their words and actions have on those around them. Most importantly, they must

always be aware of the adage that “effective advocacy for your client begins the moment you are handed the case, and never stops.”<sup>37</sup> It is against this backdrop that lawyers must view their role in FSE. FSE is a critical element of effective attorney advocacy, regardless of whom a lawyer represents. Each time an

attorney engages with someone related to a case provides an opportunity to engage in FSE.

*Parent attorney tips:*

**Be upfront about the roles of family if parental rights are severed.** Parent attorneys often tell their clients within moments of meeting

them that the reason they are meeting is because the parent's rights may be severed forever. Although reunification is always "Plan A," parent attorneys must always consider that the circumstances which led a parent into the child welfare system—along with many unforeseen possibilities—may be too dire to lead them out with custody of their children.

In certain circumstances, sometimes the only service a parent attorney can provide (along with honest advice and some emotional support) is to ensure a parent can have some contact or knowledge of a child's whereabouts after rights are terminated ("Plan B"). Parent attorneys who are thinking about FSE can ask their clients questions such as, "Who would you want to raise your child if you were injured in a car accident?" or "Do you want someone other than yourself choosing who will raise your children?"

**Help parents work through feelings that limit them from exploring family connections for their children.** Parent clients often feel ashamed of losing their children. Parent attorneys can convey to parents that the alternative is for their child to be raised by unrelated foster parents when willing and appropriate relatives and extended family members may be available to raise the child.

Parents may not know how many willing and able family members might exist. For parents who have become estranged from their families (usually for the same reasons which led to a child's removal), parent attorneys may need to help them work through any feelings surrounding the estrangement. In discussions with the parent, it may help to remind the parent that "You have bigger things to worry about than your relationship with your family now. It's time to mend those fences to preserve your ability to have contact with your children."

**"Reasonable efforts is the most underargued issue in child welfare cases."**<sup>38</sup> At every initial hearing which involves the removal of a child from parental (guardian) custody, the court must make a finding that the agency made reasonable efforts to prevent or eliminate the need for removal. In some cases, such as those where housing, transportation or day care are key issues, identifying and engaging extended family can eliminate these challenges.

The parent attorney's knowledge of available family resources can be a powerful advocacy tool to ensure clients are provided reasonable services. As described above, even in cases where placement is not the key issue, family members can be vital supports in a parent's efforts to reunify. Parent attorneys can ensure that appropriate case plans are developed and that previously identified barriers to return have been removed or mitigated. For example, parents who work during business hours may not be able to avail themselves of agency-funded visitation, but they can spend nights and weekends with their children in a family-member's home or visit with the agency's participation in other public places.

Engaging these relatives outside of court and explaining the process and how they can assist can make a tremendous difference in the outcomes. This strategy can avoid a lack of reasonable efforts finding, or ensure one is made if the agency fails to follow through.

*Agency attorney tips:*

**Ensure your clients follow the law.**

Ensure that your client is making reasonable efforts to prevent or eliminate the need for removal by identifying relatives from the start of the case. When the child has been removed from the home, the agency should promptly identify and notify relatives of their right to participate in a child's care and placement.<sup>39</sup>

The agency should be engaging in concurrent planning to identify a permanent placement if reunification is not possible. Although this work can be overwhelming, it can be done quickly and effectively. If done properly from the beginning, it will save work later in the case.

**Be aware of your responsibility to help build a child's support network.** At each contact with your client, ask the worker what steps are being taken to build the child's support network. This will help ensure the child is raised in a loving, supportive and nurturing environment, regardless of who ultimately maintains physical custody. This is also at the core of concurrent planning, and agency attorneys must be aware that their work is to create connections, not placements. Agency attorneys can help build a child's support network by supporting visitation with interested people, and encouraging the agency to facilitate unsupervised contact with appropriate people as often as possible. Attorneys should ask that a CASA be appointed for the child and that referrals are made to other appropriate mentor services.

**Engage clients and families in the FSE process.** An ounce of prevention is worth a pound of cure. Agency attorneys find their jobs become much easier when FSE strategies are used early and throughout the case. In addition, when agency attorneys engage children and families, improved advocacy and better case analysis invariably follows. This means that agency attorneys should speak directly with family members before and after court proceedings. In addition, agency attorneys are encouraged to ask opposing counsel for permission to accompany them when speaking with children and parents. Many agency attorneys have a great deal of experience in

*(Continued on page 124)*

This tool can be used by all participants in the child welfare case as part of a case-mining exercise, before interviewing a youth or family member about permanency options, or as a reminder to each participant of key FSE follow-up areas. It was first drafted for judicial officers to use when information was not forthcoming at review hearings, but it can be easily adapted for county/court-specific use.

### Questions for Social Workers, Attorneys, CASAs, Service Providers:

- Identify and record all parentage and connections.
- Is there anyone to add to the list?
- Has the social worker reviewed the entire case record, including outside agency reports?
- Has the social worker re-explored permanency options?
- Who has expressed interest in maintaining contact or caring for the child?
- Who has called and asked about the child?
- Who has visited the child?
- Who has inquired about the child in any way? Even one time?
- Who calls the child?
- Who does the child ask to call?
- Who visits the child?
- Whom does the child go to?
- Where does the child go when she runs away?
- If child goes to friends, how can we involve friend's parents?
- Has the child identified people from the past whom they want to keep in touch with?
- Who is presently in their lives with whom they have connections?
- Whom do they want in their lives when they are adults?
- Have caregivers been asked the same types of questions about people who have contacted or visited the child? (foster parent, group home, etc.)
- Have caregivers been asked whether they are willing to be lifelong connections for the child and do they know of others who are also willing?

### Preparing Child to Consider Adoption

- Does the child know other children or adults who have been adopted and have an open adoption?
- Does the child understand open adoption and how it would apply in his or her case?
- Has the child had an opportunity to meet prospective adoptive parents who are interested in adopting an adolescent?
- Have you discussed with the child what it means to him or her to be adopted?
  - The child may respond differently if asked where he wants to belong versus if he wants to be adopted
  - The child may want to discuss how one can choose adoption and not betray one's birth family

### Questions for Child

- Where do you feel most comfortable living now? Or ever?
- With whom do you feel most comfortable? Most at home?
- Who do you trust?
- Is there someone you look to help you make future plans?
- Is there someone you would like to see more? be in your life now, next year? In five years?
- When something good happens to you, who do you call or would like to call?
- When something bad happens, who do you call or would like to call?
- What are some of the things you like to do with the adults in your life?
- Who really listens to you and is there for you when you need someone?

- Who do you feel has cared for you the most in your life?
- Who in your life do you most respect and listen to?
- Who in your life do you consider family?

### Ask Social Worker/Others to Follow-up on Issues Identified Above:

- Identify and contact individuals identified by child.
- How do these individuals see themselves in relationship to the child?
- Are they willing to play an important role in the child's life?
- What role is that? What commitment will they make to the child?
- Will they make a commitment to being a lifelong connection for the child?
- Are they willing to help plan for the child's future?
- Do they know other people who have or have had a special relationship with the child?

### Planning for Permanent Future Family Connections

- Is the plan youth-driven?
- Has the child identified the people and topics for the planning meeting in advance?
- Has the child identified their goals for the future?
- What do they want to achieve?
- Where do they want to be in five years?



(Continued from p. 122)

these cases (and many were former parents' and children's attorneys themselves); therefore, these conversations can offer additional support, encouragement, and perspective for parties involved in these cases.

**Do not underestimate the power of face-to-face contact.** For agency attorneys who represent the same group of social workers in all of their cases, regularly scheduled case staffing meetings are essential to good practice. Having these meetings will improve their client's preparedness and allow the attorney to reinforce FSE concepts throughout the case. Agency attorneys who are assigned to courtrooms (rather than social work units) could consider holding "office hours" for their clients and encourage all workers who have upcoming hearings pending to visit at least monthly before the hearings.

#### *Children's attorney tips:*

Children placed in foster care often want to go home. They want to live with or see their brothers and sisters. They want to see their aunts and uncles, regardless of whether they are related by blood. If they have grown up in foster care, more often than not they will exit only to return to the families from whom the child welfare system has taken them.

Steps children's attorneys can take to incorporate FSE in their representation are:

**Help the child explore family connections.** Establish and maintain an adequate and professional attorney-client relationship by listening, building trust and engaging the child in age-appropriate ways to learn his desires, needs, and interests. Those desires, interests, and needs relate to family. For Native American children, they can uncover tribal connections. Ask the child specific questions about family

connections to identify potential family resources. (For sample questions, see *Engaging Youth in Finding Connections*.) These questions will lead to a sense of urgency for child clients and will compel advocacy for FSE.

**Thoroughly investigate family connections.** Investigate those connections identified by the child. Also conduct independent investigations to identify extended family and potential lifelong connections for each child.

**Advocate for FSE in and outside court.** Understand time through a child's eyes and urgently advocate, both inside and outside of court, to establish and maintain family relationships, including the sibling relationship. This involves advocating for follow-up once family is identified, appropriate placements, and visitation.

#### **Contest reasonable efforts at child welfare hearings.**

At the *shelter care (emergency removal) hearing*, contest reasonable efforts if the social worker or probation officer has not made efforts to find and engage the family. At *case review hearings and the permanency hearing*, contest reasonable efforts if the agency has not complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child, and those efforts include FSE and engagement. At *post-permanency hearings*, contest the agency's efforts if it has not complied with the case plan by making reasonable efforts, to finalize the permanent placement for the child, including family finding and engagement.

**Seek court orders requiring FSE if necessary.** Regardless of whether the agency provides reasonable services or whether the parent takes

active steps to reunify, the child's attorney has the power to ensure the child is thriving to the greatest extent possible within the child welfare system. This begins with building and maintaining the child's support network. Ensuring that the child is connected to family is one of the first steps to ensure the child's physical and emotional needs are met. Children's attorneys must seek court orders which benefit their clients on a number of fronts (education, physical, mental health, etc.), and have the power to seek a wide range of court orders for nearly everything. Using this power to ensure healthy connections are established and maintained is one of the most critical aspects of a child's attorney's job.

#### **Conclusion**

*"Take the first step in faith. You don't have to see the whole staircase. Just take the first step."*

—Dr. Martin Luther King, Jr.

One of the most important strategies attorneys and judicial officers can incorporate into daily court practice is FSE. Start by shifting your focus toward permanency strategies and believing that family finding is associated with safety and permanency. Changing how we think about permanency is crucial.

Try using some of the tools or strategies mentioned in this article—most of them can be easily incorporated in daily practice. Then seek to align local goals and practice to include FSE by forming local partnerships, setting up collaborative trainings and FSE workshops. Work with bordering counties that have either already implemented FSE or are starting the implementation process. Most counties that use FSE are eager to share their methods and data.

As advocates for children and families, we can ensure FSE becomes routine, begins early, and continues until extended family members and family connections are

found for all children entering care. These efforts will improve permanency and related outcomes for all foster youth.

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## Endnotes

<sup>1</sup> Campbell, Kevin, et al. "Lighting the Fire of Urgency: Families Lost and Found in America's Child Welfare System." *Permanency Planning Today*, Newsletter of the National Resource Center for Foster Care & Permanency Planning at Hunter College of Social Work, Fall 2003.

<sup>2</sup> The permanency definition used for the AOC, CFCC Permanency Project workshops incorporates definitions from the California Permanency Youth Project ([www.cpy.org](http://www.cpy.org)): *Permanency is not a plan, a process or a placement. It is a committed relationship to a caring adult intended to last a lifetime.*

<sup>3</sup> Kids are Waiting. "Support Relatives in Providing Foster Care and Permanent Families for Children, Executive Summary," 2007, available at <http://www.kidsarewaiting.org/tools/reports/files/0004.pdf>

<sup>4</sup> California Permanency for Youth Project, [www.cpy.org](http://www.cpy.org)

<sup>5</sup> There are now 14 CPYP counties. [www.cpy.org](http://www.cpy.org)

<sup>6</sup> See [www.cpy.org](http://www.cpy.org); Training Academy for Northern California, <http://humanservices.ucdavis.edu/academy/>, Stanislaus Model FSE; Flaherty, Kristina Horton. "Turning Around the Tragedy of Foster Care." *California Bar Journal*, February 2008.

<sup>7</sup> See Lewis, Bob. "Remembered People Chart" and "Ecomap," available at [www.rglewis.com](http://www.rglewis.com); see Eastfield Ming Quong (EMQ), available at

[www.emq.org](http://www.emq.org); Connectedness Map Training-PPT, available at [www.cpy.org](http://www.cpy.org)—Resources; Emancipated Youth and Connections Project. Final Report and Tool Kit, 2008; "Family Tree Chart," Fresno County Probation Department, Independent Living Skills, [www.co.fresno.ca.us](http://www.co.fresno.ca.us); charts also available through the Center for Families, Children & the Courts, *Court Adoption and Permanency Resource Guide*, 2006 & 2007 Supplement, [www.courtinfo.ca.gov/programs/cfcc/programs/descriptions/jrta-PemResource.htm](http://www.courtinfo.ca.gov/programs/cfcc/programs/descriptions/jrta-PemResource.htm)

<sup>8</sup> See, e.g., US Search, [www.ussearch.com](http://www.ussearch.com).

<sup>9</sup> See e.g., Accurint or Ancestry.com

<sup>10</sup> National Council of Juvenile and Family Court Judges, Permanency Planning Department.

Mediation in Child Protection Cases: An Evaluation of the Washington, D.C. Family Court Child Protection Mediation Program, April, 2005; National Council of Juvenile and Family Court Judges. Introduction to Child Permanency Mediation in New York State: Planning and Implementing Multi-State Pilot Project, January 2006.

<sup>11</sup> See Casey Foundation's Family to Family Models, [www.aecf.org](http://www.aecf.org)

<sup>12</sup> The California AOC CFCC have incorporated FSE and engagement into two projects which provide county collaborative workshops. For more information, visit [www.courtinfo.ca.gov/programs/cfcc/programs/description/jrta-perm](http://www.courtinfo.ca.gov/programs/cfcc/programs/description/jrta-perm) and [www.courtinfo.ca.gov/programs/cfcc/programs/description/DRAFT](http://www.courtinfo.ca.gov/programs/cfcc/programs/description/DRAFT).

<sup>13</sup> Lulchuk, Ilene. "Me Lonely? Not Now, Thanks to the 'FSE' Search." *San Francisco Gate*, Wednesday, May 2, 2007, [www.sfgate.com](http://www.sfgate.com); Martha Shirk. "Hunting for Grandma, FSE Strategy Connects Foster Kids with Relatives and Permanent Homes." *Youth Today*, February 2, 2006, [www.youthtoday.org](http://www.youthtoday.org); Flaherty, *California Bar Journal*, February, 2008; Leonard Edwards. "Finding Foster Kids' Families Must Become our Mandate." *San Jose Mercury News*, April 14, 2005.

<sup>14</sup> Kids are Waiting, Fix Foster Care Now & Jim Casey Youth Opportunities Initiative. Time for Reform: Aging Out and On their Own, 2007. [www.kidsarewaiting.org](http://www.kidsarewaiting.org)

<sup>15</sup> Louisell, Mardith J. *Six Steps to Find a Family: A Practice Guide to Family Search and Engagement* (FSE). National Resource Center for Family-Centered Practice and Permanency Planning and California Permanency for Youth Project, available at [www.hunter.cuny.edu/socwork/nrcfcpp/downloads/SixSteps.pdf](http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/SixSteps.pdf)

<sup>16</sup> *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). "[T]he child and his parents have a vital interest in parenting erroneous termination of their natural relationship."

<sup>17</sup> *In re Marilyn H.*, 851 P.2d 826, 833 (Cal. 1993) (citing *Adoption of Kay C.*, 278 Cal. Rptr. 907, 911 (1991)).

<sup>18</sup> *Santosky v. Kramer*, 455 U.S. at 765.

<sup>19</sup> See *Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir. 1987).

<sup>20</sup> Malm, K., J. Murray & R. Geen. *What About the Dads? Child Welfare Agencies' Efforts to Identify, Locate and Involve Nonresident Fathers*. Washington, DC: The U.S. Department of Health

and Human Services, Office of the Assistant Secretary of Planning and Evaluation, 2006, 166-168, available at <http://aspe.hhs.gov/hsp/06/cw-involve-dads/report.pdf>

<sup>21</sup> Campbell, Kevin et al. "Lighting the Fire of Urgency...Families Lost and Found in America's Child Welfare System." Family Finding Presentation, available at <http://centerforchildwelfare.fmhi.usf.edu/kb/RelCarPrgmPrac/Lighting%20the%20Fire%20of%20Urgency.pdf>

<sup>22</sup> Kids are Waiting & Generations United. Time for Reform: Support Relatives in Providing Foster Care and Permanent Families for Children, 2007.

<sup>23</sup> *Ibid.*

<sup>24</sup> Kids are Waiting, 2007.

<sup>25</sup> Courtney, M.E. & Sworsky, A. *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19*. Chicago: Chapin Hall Center for Children, 2005.

<sup>26</sup> Casey Family Programs. Northwest Foster Care Alumni Study, 1998.

<sup>27</sup> Courtney & Sworsky, 2005.

<sup>28</sup> Pecora, P.J. et al. *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study*. Seattle, WA: Casey Family Programs, 2005.

<sup>29</sup> National Census Bureau. "Educational Attainment in the United States: 2004." Accessed April 12, 2007, <http://www.census.gov/Press-Release/www/releases/archives/04eductableA.xls>

<sup>30</sup> O'Brien, Pat. "Preventing Homelessness Through Relationship," available at [www.yougottabelieve.org](http://www.yougottabelieve.org).

<sup>31</sup> Harris, L. "Involving Nonresident Fathers in Dependency Cases: New Efforts, New Problems, New Solutions," *Journal of Law & Family Studies* 9(2), 2007; Malm et. al., 2006, ix, 85-86.

<sup>32</sup> Edwards, L. & I. Sagatun. "The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families." *Juvenile and Family Court Journal* 58(1), Winter, 2007.

<sup>33</sup> National Council of Juvenile and Family Court Judges, Permanency Planning Department. "Mediation in Child Protection Cases: An Evaluation of the Washington, D.C. Family Court Child Protection Mediation Program," April, 2005; National Council of Juvenile and Family Court Judges. "Introduction to Child Permanency Mediation in New York State: Planning and Implementing Multi-State Pilot Project," January 2006.

<sup>34</sup> Edwards, L. "Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980." *Juvenile and Family Court Journal* 45(3), 1994, 3-28 at 19-21.

<sup>35</sup> 42 U.S.C. §§671(a)(15), 672(a)(1); 45 C.F.R. §1356.21(b)(1)

<sup>36</sup> 42 U.S.C. §§675(5)(C)(F); 45 C.F.R. §1355.20

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<sup>39</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008 (HR 6893).

## Significant Federal Child Welfare Law Will Affect State Practice

by Howard Davidson, JD, Director, ABA Center on Children and the Law

The Fostering Connections to Success and Increasing Adoptions Act (H.R. 6893) has, at the time of this article, passed both Houses of Congress and is awaiting the expected signature of President Bush. Some have referred to this as the most significant new piece of federal child welfare legislation in over 10 years. Many advocates across the country may know little or nothing about it because of the speed in which it passed both the House and Senate in September 2008.

Here, for legal advocates, are highlights of H.R. 6893 with some suggestions for applying them in the legal arena. Future *CLP* issues will explore how this law will affect your legal practice (e.g., the expected impact of the law's making Indian Tribes IV-E eligible for the first time, new IV-E funded training opportunities for lawyers, judges, and other advocates, new co-sibling placement requirements, and new provisions to help assure school stability and appropriate health care for all children in care).

### Working With Older Youth in Foster Care

There is a new financial incentive for older youth who remain in care. States will have the option to continue to receive federal Title IV-E financial assistance to support foster care and related services for youth who are ages 18, 19, and 20. That will permit continued transitional support services beyond the age of majority. It also suggests a challenge for advocates: to assure that these youth continue to have good legal advocacy, to encourage states to use the option, and then to work towards having state juvenile dependency continue jurisdiction to help

implement post-18 services. Note that the federal program of Adoption Incentive Payments to states has been extended, and awards to states who find adoptive homes for older foster youth have doubled.

If you are involved in a case where a youth, after turning 16, exited from foster care to an adoptive placement or a permanent guardianship, the law also extends eligibility to these youth, although they are no longer in child welfare agency care, to independent living services and education and training vouchers. If the state accepts IV-E payments for children age 18 or older, those children also are now eligible for federally-supported adoption subsidies and the new federally subsidized permanent guardianship subsidies provided to relatives.

Finally, but of no lesser importance, states must now, within 90 days of the expected "emancipation from foster care" date of every IV-E eligible youth (whether at 18 or later), complete a Transition Plan that is "personalized at the direction of the child." That plan must be "as detailed as the child may direct" and must include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services. This provides a new roadmap for having far more meaningful plans for foster youth who are leaving the child welfare system as independent adults.

### Working With Relatives

As referred to earlier, this law creates a new federal program of guardianship assistance payments for relatives who agree to become permanent caretakers of foster children. States that have developed, with solely their own funding,

similar programs of aid will now have significant federal financial support for them. Child welfare agencies (hopefully supported by the courts) have new obligations to promptly (within 30 days) notify a child's relatives (noncustodial fathers, grandparents, etc.), subject to "exceptions due to family or domestic violence," as soon as a child is taken into foster care. Relatives must be informed of the child's removal and their rights to participate in the child's case and provide foster care, and of their potential eligibility for the new federally subsidized permanent guardianship program. Whether advocating in court for the child, parent, or agency, all lawyers should help assure that these notification requirements are fulfilled.

The Children's Bureau is also authorized to support new "kinship navigator" and "family finding" programs to help connect children living with relatives, both in and out of care (and the Federal Parent Locator Service, so useful in child support enforcement collections, is now to be available for use by child welfare agencies). Once identified, the next challenge for advocates will be to get qualified relative caregivers the supportive services and other assistance they require as contemplated by this new law. Finally, to promote more widespread use of relative placements, states are now explicitly permitted to waive nonsafety related licensing standards for relatives taking in children, on a case-by-case basis.

To view the full text of this act, visit [www.govtrack.us/congress/bill.xpd?bill=h110-6893](http://www.govtrack.us/congress/bill.xpd?bill=h110-6893)



## ABA Approves New Child-Focused Policies

by Howard Davidson, JD, Director, ABA Center on Children and the Law

In August 2008, the American Bar Association's House of Delegates approved several policies related to child welfare systems. One focuses on the overrepresentation of children of color in the child welfare system. The other policy addresses foreign child welfare system enhancements, including reaffirming the ABA's support for sound intercountry adoption practices.

### Racial Disparities in Foster Care

Racial and ethnic minority children are overrepresented in the foster care system, even though children of all races are equally as likely to be abused or neglected.<sup>1</sup> Racial and ethnic minority children make up approximately 41% of all U.S. children. However, 2006 statistics from the U.S. Department of Health and Human Services show that over 54% of children living in foster care in 2006 were children of color.<sup>2</sup> In 2007, the federal Government Accountability Office found African Americans represented 32% of children in foster care, but only 15% of the country's child population, and Native Americans represented 2% of the foster care population, but only 1% of the nation's child population overall.<sup>3</sup>

The ABA recommends Congress change laws, including amending Titles IV-E and IV-B of the Social Security Act, to broaden federal reviews so they analyze disproportionate representation of racial and ethnic minority children in the child welfare system. The ABA also urges requiring (and providing funding to) states to identify and address such disparities.

Another ABA recommendation is that child welfare agencies, dependency courts and judges, and children's and parents' advocates help racial and ethnic minority families access services to help them leave the child welfare system. To avoid families coming into the "system" unnecessarily in the

first place, this policy calls for amending state laws and practices to ensure removal of children from their homes is based on objective child safety criteria. This ensures all families in the child welfare system are treated fairly.

The Association further recognizes that all child welfare professionals need training on cultural competency, institutional and unconscious bias, and strategies to avoid disparate treatment of racial and ethnic minority children and families. It supports new practices to recruit and retain racially and ethnically diverse judges, attorneys, social workers and other staff, volunteers and foster parents.

Finally, the ABA calls for changes in law and policy to provide more support to relative caregivers. Several of these recommendations have been incorporated into the new federal child welfare law (H.R. 6893) described on p. 126 of this issue (i.e., partial federal reimbursement for state costs of subsidized permanent guardianships; giving states flexibility in establishing separate approval or licensing standards for kinship placements, while still addressing key placement safety factors). The ABA supports providing relative caregivers financial assistance equal to that given to nonrelative caretakers. It also urges special housing assistance for relative caregivers while ensuring that kinship support or guardianship payments are not considered "income" for Section 8 Housing Assistance eligibility purposes.

### Enhancing Child Welfare Systems Globally

On April 1, 2008 the U.S. began fully implementing the Hague Convention on intercountry adoption, to which our country is a party.<sup>4</sup> The new ABA policy supports U.S. implementation of the Convention. It also asks all nations of the world to use international adoption to help address the worldwide

problem of children who lack permanent homes. It promotes ethical and legal international adoption practices and policies that make the adoption process less burdensome, time intensive, and expensive.

The ABA's recommendations go further, calling for nations to provide financial assistance and services to parents to help keep families together, and resources for relatives caring for children. The U.S. is urged to provide resources and technical assistance to support global family preservation and kinship care efforts. Countries are further urged to develop foster care systems for children pending permanent placement, thereby avoiding institutional placements that harm young children's development. As for adoption options, the ABA affirms its support for in-country adoption, permanent guardianship, and other permanent nurturing placement options as a preference over intercountry permanent placements.

Finally, the Association urges the U.S., states and localities, bar associations, and nongovernmental organizations to promote policies to improve child welfare systems and enhance international adoption opportunities within the United States and throughout the world.

### Endnotes

<sup>1</sup>*African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care at 8*, GAO-07-816. Washington, D.C.: Government Accountability Office, July 2007, available at [www.gao.gov/cgi-bin/getrpt?GAO-07-816](http://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*.

<sup>2</sup> *Adoption and Foster Care Analysis and Reporting System. The AFCARS Report: Preliminary FY 2006 Estimates as of January 2008*, available at: [www.acf.hhs.gov/programs/cb/stats\\_research/afcars/tar/report14.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report14.htm).

<sup>3</sup> Government Accountability Office, 2007.

<sup>4</sup> The full title of this is the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

## RESEARCH IN BRIEF

### Children's Advocacy Centers Improve Response to Child Abuse Victims

As communities continue to search for ways to improve sexual abuse investigations, research from the University of New Hampshire's Crimes against Children Research Center finds that the Children's Advocacy Center model, a growing and innovative program, can help communities succeed in this goal.

The UNH research findings are detailed in a new report, "Evaluating Children's Advocacy Centers' Response to Child Sexual Abuse," by the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP).

Children's Advocacy Centers (CACs) are designed to make child abuse investigations more child friendly, increase professional coordination, and improve investigation outcomes. The first CAC was developed in 1985. In 2007 more than 450 accredited CACs existed and more than 235,000 children received services at a CAC last year. UNH researchers have been studying child abuse investigations for more than eight years, examining ways to improve the quality of child abuse investigations.

"The findings from our research

support the multidisciplinary approach of the CAC model," said Lisa Jones, an author of the report and researcher at the Crimes against Children Research Center (CCRC). "CACs increase communication among professionals involved with child abuse victims and focus on the needs of the child and family. They can help improve attention to gaps in service or response for these children."

UNH conducted a multi-site evaluation of Children's Advocacy Centers. Researchers collected data on investigations from 10 communities across the country and compared investigations in communities with a CAC to those without a CAC. The UNH researchers are continuing research with CACs nationally and in New Hampshire.

Key research findings include:

- Communities with CACs had greater law enforcement involvement in child sexual abuse investigations and more evidence of coordinated investigations.
- CAC cases resulted in better child access to medical exams.
- CACs documented a higher rate of referrals for child mental health

treatment, although children accessed mental health treatment at similar rates across all communities.

- Caregivers at CACs expressed greater satisfaction with the investigative process.
- CACs and comparison communities had similar rates of prosecution and conviction of offenders. However, one CAC filed more criminal charges than the community it was compared with, and another sentenced offenders to longer jail terms.

"While our study and our work with CACs identify areas in which they have been successful, our research highlights other areas where CACs could strive even further to help improve the response to victims," Jones said.

Jones noted that CACs are in a good position to improve communication between professionals and families, help children access mental health services with proven effectiveness, and advocate for shortening the time child abuse cases languish in the criminal justice system.

Find this study at [www.unh.edu/ccrc/](http://www.unh.edu/ccrc/)



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