

REPORT

Creating a Better Future for Our Most Vulnerable Children

"I was only six when I went into foster care. I remember vividly just sitting outside the courthouse...my birth mother crying. And then suddenly, I was living somewhere else, in some house I didn't know. No one told me anything. For five years, no one told me anything."

Luis, former foster child, "Voices From the Inside,"
the Pew Commission on Children in Foster Care.

A. INTRODUCTION

There are more than half a million children in foster care nationally, almost double the number from the 1980s. Some children remain under child welfare jurisdiction for only a few months while their parents get their lives back on track; thousands of others, however, cannot safely be returned home and "grow up" in foster care.

The Federal Government sends \$7 billion annually to the States to ensure that all of America's children are protected from abuse and neglect. Unfortunately, that financial investment in children and families often doesn't do enough to change for the better the young lives we undertake to protect and nurture. Because the largest source of federal child abuse prevention and treatment funds can only be accessed once a child is removed from the home and brought into foster care, child welfare has grossly inadequate resources to provide in-home or other preventive services that could keep more families intact. Instead, social workers are forced to either wait until a situation becomes serious enough to warrant removal, place children in foster care at great expense both to the child and the community, or do nothing and risk reading about any resulting tragedy on the front page.

Once the government does intervene, life for too many youth in foster care is characterized by movement from placement to placement, disruption of schooling, and the severing of ties with all that is familiar to the child, often including siblings and extended family. It is thus not surprising that foster youth find it difficult to keep up -- 75% of children in foster care are working below grade level in school, almost half do not complete high school, and as few as 15% attend college. Nor is it surprising that these troubled youth become troubled adults; within two to four years after young people emancipate from foster care, 51% are unemployed, 40% are on public assistance, 25% become homeless, and one in five are incarcerated.

Our courts are an integral part of attending to the needs of dependent children and youth we collectively undertake to "parent." Few children enter or leave foster care absent a court order. And every significant decision in between in the child's life is overseen by the court. Priority must be given to initiatives designed to support and enhance the functioning of the dependency judicial system.

The Pew Charitable Trusts launched an initiative in 2002 to help move children in foster care to safe, permanent families more quickly and to prevent the unnecessary placement of children in foster care when possible. The Pew “Home-At-Last” initiative addresses two interconnected issues that underlie many of the reasons children languish in foster care:

- (1) Federal child welfare financing incentives favor foster care over other services and options that help provide children with safe, permanent families, and
- (2) State and local courts face many challenges that hinder court oversight of child welfare cases and prolong children’s stays in foster care.

While addressing these two issues will not solve every problem facing the child welfare system, there is bipartisan agreement that current federal financing mechanisms can be improved to provide more effective incentives and support for child welfare system improvements. At the same time, major court and legal associations, including the ABA’s Center on Children and the Law, are grappling with how to improve the functioning of dependency court systems and management of child welfare cases. The ABA’s strong voice on these issues would provide a valuable contribution to this consideration of system reform.

Searching for solutions and new approaches is no easy task. But we also cannot afford to wait to undertake this task. Children continue to languish as our system struggles to turn the corner.

B. THE NEED FOR NEW APPROACHES

1. Reform of Court Processes

a. Support of Dependency Hearing Officers

Qualified hearing officers are an essential component of the child welfare system. We need to adequately fund the third branch of government and support the recruitment and retention of the highest caliber bench officers who, as much as possible, specialize in the handling of dependency cases.

Dependency court hearing officers can and should play a meaningful role in ensuring that children are not languishing in foster care, that case specific services are provided in a timely fashion, that families are reunited as quickly as possible, and that measurable outcomes and indicators of child well-being (such as academic performance) are tracked. Without this focused tracking of and attention to outcomes, there will never be either an acceptable standard of accountability or the types of outcomes these youth deserve.

Moreover, given the complex nature of the many issues children and families face, collaborative multidisciplinary training must be provided to hearing officers in conjunction with lawyers, social workers and other parts of the system. Yet, the recently released *Fostering*

Results survey of over 2,200 judges who hear dependency cases (VIEW FROM THE BENCH: Obstacles to Safety and Permanency for Children in Foster Care) found that barely half (49%) of all judges received any specialized training in child welfare issues prior to hearing child abuse or neglect cases. A dependency court judge must have mastery of a complicated set of federal and state laws, an awareness of available community resources, as well the ability to identify and rule on issues ranging from appropriate use of psychotropic medications to whether a child's sibling relationship should be severed in order to facilitate an adoption. Both substantive study areas and child welfare practice should be included in curriculum development.

Finally, bench officers must be armed with outcome-focused data tracking, performance measurement, and workload measurement tools that enable the court to manage their cases and meaningfully track the progress of children through the system. Communication networks that enable stakeholders and data systems to "talk" to each other also need to be explored and developed.

b. Adequate and Effective Legal Representation for Every Child

While changes to the federal Child Abuse Prevention and Treatment Act supported by the ABA requiring that each child be represented by either an attorney or a Guardian Ad Litem ("GAL") represent an important first step toward giving children a voice in court, these provisions fail to ensure that all foster children have an effective and capable voice in the legal process. Without adequate legal representation, the child is not on an equal footing with the other parties in a dependency case. The child welfare agency and parents – including the alleged perpetrator – are generally represented by attorneys. Yet in many states the child, if represented at all, is represented by a lay GAL. A GAL may or may not have special expertise or training in issues related to abuse and neglect. Although potentially helpful in many ways to the system-involved child, as a non-lawyer the GAL has little ability to use the process of the court to the child's advantage. The end result is that the child is relegated to second-class status. The agency, the non-offending parent, and the abuser have a legal voice in court, while the child in many states, has no legally-empowered voice at all and in others has only limited access to the legal process and protections.

In short, children brought into the dependency system should receive the benefit of effective legal counsel. This is why in February 1992 the ABA called upon states and territories to assure that in every dependency proceeding children be represented by court-appointed legal counsel. This Association policy was followed by the approval in February 1996 of standards of practice for attorneys representing children in these cases.

The goal of assuring effective legal counsel for children cannot be achieved without minimum training, competency standards, reasonable caseloads, and adequate compensation for attorneys undertaking this work. Appointed counsel in dependency cases should be expected to have a working knowledge not only of the relevant law, but also of related areas including child development, cultural competency, health, mental health and education laws. Without mandates as to training and reasonable caseload standards, the dedicated and passionate attorneys who choose this work will continue to swim upstream against an ever stronger current.

No matter how well trained, counsel who are forced to take on hundreds of cases, either due to overly burdensome staffing levels or because the rate paid per case is too low to afford an acceptable standard of living, cannot perform optimally or even effectively. Maximum caseload standards must be set by each jurisdiction within a framework which takes into consideration the geographic size of the area served, the type and quantity of support staff, and whether the attorney is a sole practitioner or works within an organization or agency. Federal funding should be used to reward and support jurisdictions that seek to put in place standards relating to reasonable caseloads, training, and minimum qualifications for dependency counsel.

c. Attracting and Retaining Quality Lawyers

If we wish to attract the best and the brightest to what many believe is some of the most important work done in our legal and judicial system, attorneys who choose this professional discipline must receive reasonable and adequate compensation; they must be valued and supported. Serving as legal counsel for abused and neglected children is without a doubt rewarding and fulfilling, but it is also emotionally, intellectually and physically draining, and at times completely overwhelming. Creating standards for compensation -- including salaried payments for lawyers in this practice area rather than the inherently problematic approach of payment per case -- should be encouraged. Unless and until attorneys are fairly compensated, this specialized practice will continue to be viewed as less important and less worthy than other areas of law.

Mechanisms including loan forgiveness for attracting and maintaining committed attorneys should be developed and encouraged. The benefit to be derived from such programs span many layers. Nonprofit organizations and state/county agencies will be far better able to attract the most qualified new lawyers. Moreover, there will be a greater willingness and motivation to devote the necessary time and resources to training when there is a greater likelihood of longevity of newly hired staff. It is critical that any loan forgiveness initiative include not just new attorneys entering this practice area, but also existing attorneys who have developed irreplaceable relationships with their clients and whose expertise over time should be supported and needs to be retained. The cost of high turnover can be measured not only in dollars and cents, but in human costs as well. For an abused or neglected child, building trusting relationships is no simple task. Often the child's lawyer is the only stable and consistent person in his or her life, the only person the child can confide in, and the one person he or she trusts. With each abandonment and each severed relationship the child finds it that much more difficult to trust again, to move beyond his or her victimization, and to develop healthy relationships in the future -- whether it be with a caregiver, family member, or his or her own child someday.

Cost saving measures that result in poorly compensated counsel and excessive caseloads will result in greater expense over time through poor quality representation, decreased efficiency, high turnover, and poor outcomes for children that will cost taxpayers far more in long-term spending for public assistance, social and medical services, and other expensive government programs.

d. Reinforcing and Empowering The Child's Voice in the System

Dependency court systems across the country need to redouble their efforts to ensure that the youth whose lives we seek to protect have the opportunity to attend and be part of court proceedings in their own cases. In too many jurisdictions, children are not made aware of or encouraged to attend court proceedings and all parties (including the bench officer) are stripped of the ability to hear from the youth whose interests are at the core of the decision making.

For many youth, being present at their dependency case proceedings enables them to understand and come to terms with decisions that will impact the rest of their life. Inconvenience, a desire to keep cases moving, and/or the view that we need to "protect" children from hearing about the very events that they have lived through, should not stand in the way of involving youth of a requisite age -- when they desire to be present -- in these court hearings. Even the most skilled judges and attorneys with the best intentions cannot and should not be making life changing decisions and recommendations about a child they have never met or a family they know only as a case number. Youth, particularly as they age and mature, should be afforded the respect and be granted the dignity of expressing their own views in regard to decisions that will alter their lives in the most significant and lasting ways imaginable.

Children have keen insight and deep understanding of their own families and their own challenges. Their view of the future is essential to the development of meaningful, effective and functional case planning. As the Pew Commission recognized, "children, parents, and caregivers all benefit when they have the opportunity to actively participate in court proceedings, as does the quality of decisions when judges hear from key parties." For all these reasons, federal law should not only recognize, but also encourage, the presence of children at their own hearings.

Similarly, advocates for children -- whether they be Court Appointed Special Advocates (CASAs), Guardians Ad Litem or court appointed counsel -- must meet with their young clients face to face and must do so with enough frequency to ensure that the advocate has current independent knowledge of the child's living situation, educational and mental health status, general well-being, and wishes and desires regarding the issues before the court at any given hearing.

e. Developing Effective Judicial and Bar Leadership and Statewide Collaborations

As the child welfare system currently operates, there is a conspicuous lack of cohesive and collaborative accountability. As a result, far too many problems are left unidentified or unresolved because the various arms of the government responsible for raising foster youth operate in silos, and no one takes overall responsibility for ensuring the well being and success of youth in foster care.

This disconnected approach is not the only model for attending to the needs of children. In Arizona, a groundbreaking Children's Cabinet ensures high-level leadership, visibility, and support to addressing the needs of that state's foster youth. The Children's Cabinet was created

with the express purpose of coordinating -- at a state leadership level -- all government agencies that provide services to abused and neglected children.

Similarly, the Minnesota Judiciary and Department of Human Services have come together to craft a more effective model for attending to the needs of foster youth. A joint effort known as the Children's Justice Initiative (CJI) bridges the gap between the judicial and child welfare leadership.

The Pew Commission's recent report also emphasized the importance of leadership from chief justices and other state court leaders in developing court systems to improve service to children, provide training for judges, and promote more effective standards for dependency courts, judges and attorneys. Encouragingly, the California Judicial Council, led by Chief Justice Ronald M. George, recently approved a resolution pledging that the state judicial branch "will work with state and local entities and community partners to realize the Commission goals, and urge Congress to act on the recommendations." The Conference of Chief Justices (CCJ) has similarly embraced these recommendations.

It is important for state and local bar leadership to be involved in these dependency court reform initiatives. The organized bar throughout the country, in such efforts as the Massachusetts Bar's "Unmet Legal Needs of Children" initiative and the Florida Bar's similar commission, has proven to be an important entity for identifying and helping achieve systemic legal and judicial reforms. Bench-Bar collaboration should be an important aspect of implementation of the reforms the Pew Commission has called for.

2. Flexible and Adequate Federal Funding and Reform of the "Front Door" of the System

Current restrictions on federal funding streams favor entry of children into foster care rather than the development of supportive prevention and diversion programs. In particular, under current Title IV-E federal child welfare financing there are inadequate resources devoted to programs and services aimed at maintaining children at risk, when appropriate, in the home. Indeed, there is a *disincentive* to serve children within their home under existing federal funding eligibility requirements that tie monetary allocations to the placement of children in out of home care and the length of time a child spends in care. Consequently, there are relatively few programs or child welfare services -- either long term or on an emergency basis -- that a social worker can access to provide immediate stabilization and maintenance of a child at risk within his or her family of origin, even when it might be safe and in the child's best interest, with outside support, to keep the family intact.

Under the current funding structure, the lack of resources available to children who would be best served within their existing family results in early warning signs being effectively ignored. At the time of a family's initial contact with child welfare agencies, the risk may not be serious enough to warrant the drastic step of removing the child from his or her family home. The lack of funding for in-home services or ongoing visitations by the social worker, coupled with long wait lists at community based agencies, ultimately places the child and family at greater risk for future abuse.

Child welfare officials should have the resources and ability to offer the kind of social services that could give troubled but still functioning families a fighting chance to stay together. Too often it is not until a child is seriously hurt, placed in grave danger, or the family's desperation otherwise becomes apparent, that the child welfare system responds. And at that point the response becomes in and of itself another in the long list of traumas that children are subjected to as they journey through the child welfare system. Once a child is removed from their family and placed in foster care, multiple placements, instability, school failures and significant mental health challenges become the norm.

Federal child welfare funding can and should be restructured in a manner that would enable local jurisdictions to fully fund child welfare services, whenever and wherever those services are needed. Specifically, as recommended in the recent report of the Pew Commission on Children in Foster Care, new approaches should be developed to release the current federal funding straitjacket and allow for use of the largest source of federal child welfare funds in a manner that better attends to the needs of children and families, without jeopardizing child safety.

At the same time, however, there must continue to be guaranteed levels of federal funding for child welfare under Title IV-E that respond to the changing demands on the child welfare system and continued increasing support from other federal funding programs supporting the child welfare system. Further, the many specific protections provided for children and their families by Titles IV-B and IV-E, as well as the Child Abuse Prevention and Treatment Act, must be maintained and strengthened.

A more flexible federal funding stream would allow for the creation of effective and comprehensive methods of diverting families from the foster care system, while also stimulating greater innovation aimed at supporting families. By allowing child welfare agencies to implement services aimed at serving families before tragedy strikes, the federal government will ultimately realize the ability to serve more families with greater success. Increased flexibility in the use of resources, without a diminishing of those resources, would allow counties and states to develop and access a wide variety of community resources to respond to the safety and permanency needs of all children and families in the most timely, effective, efficient and least intrusive manner. Such a restructuring of financing for child welfare services would enable counties to develop a more effective and fact-driven differential response at the front end of the foster care system, based on a rational assessment of both risk to the child and family strengths. This approach would also enable the more intensive court supervised interventions to be focused on children and families with the greatest need.

The Pew Commission recommended not simply greater flexibility in the use of federal dollars, but also that we allow states to "reinvest" federal dollars that would have been expended on foster care into other child welfare services, if those approaches safely reduce the use of foster care. States should be allowed to use federal funds proactively, without financial penalty, for services to keep children out of foster care or to leave foster care safely. The Commission also recommended that the federal government expand and streamline the child welfare waiver program, devote resources to training, evaluation, and sharing of best practices, and provide

bonuses to states that make workforce improvements and increase permanence for children in foster care. All of these approaches warrant serious consideration.

C. CONCLUSION

All of us in the legal community need to join together to promote dependency court reform. We must make a firm commitment to a juvenile court system staffed by respected and well-trained professionals who have sufficient resources, adequate information and enhanced accountability to move abused and neglected children swiftly out of foster care and into the safe and permanent homes they deserve. We must similarly support federal financing reforms aimed at facilitating new approaches to children and families in need.

One philosopher aptly described children as the “living message we send to a time we will not see.” For our country’s half a million children in foster care, the message that is penned is too often one of despair and neglect. We can, and must, do a better job together to provide for our most vulnerable and at-risk youth.

Submitted by: Los Angeles County Bar Association
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