



Children's Law Center
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**STATEMENT BEFORE THE SUBCOMMITTEE ON HUMAN
RESOURCES OF THE HOUSE WAYS AND MEANS
COMMITTEE --
HEARING TO EXAMINE CHILD WELFARE REFORM
PROPOSALS**

July, 2004

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by

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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.

As this committee has noted, 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 little or no 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 State 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.

Searching for solutions and new approaches is no easy task. The Children's Law Center of Los Angeles ("CLC") has committed itself to be part of that endeavor. CLC is a nonprofit, public interest law corporation created over a decade ago and funded by the Los Angeles County Superior Court to serve as appointed counsel for abused and neglected youth in one of the largest child welfare systems in the nation. We serve as the "voice" in the foster care system for the vast majority (over 80%) of the 30,000 children under the jurisdiction of the Los Angeles County dependency court.

CLC's dedicated and passionate 185-person staff represent children who are at risk of abuse or neglect in juvenile dependency proceedings and advocate for the critical services and support these children so desperately need. As court appointed counsel for the most vulnerable children in our community, we experience on a daily basis the tremendous challenges children and families involved with the child welfare system encounter. On a broader level, CLC strives to identify areas where systemic reforms are needed and to work to bring about those more far-reaching changes. Given our organization's status as the largest representative of foster youth in California, if not the nation, we are uniquely positioned to help propel innovation and change on a local, state, and national level.

There are a variety of areas where a new approach to our nation's longstanding and less than successful way of doing business could enhance our collective ability to address the needs of abused and neglected youth in foster care. Given the mandate for reform resulting from every State's failure to achieve expected standards set forth in the recently completed federal child welfare system reviews, the time is ripe for change. The most critical areas in need of attention are discussed below.

B. The Need for New Approaches

1. 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 the Title IV-E federal child welfare financing system 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, 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. Not until a child is seriously hurt, placed in grave danger, or the family's desperation otherwise



becomes apparent, does the child welfare system respond. 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 (*FOSTERING THE FUTURE: Safety, Permanence and Well-Being for Children in Foster Care*, May 18, 2004), 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.

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 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 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.

2. Promoting Relative Placements

When a child at risk cannot be safely maintained with a parent, it is preferable to place the child with a relative. While children placed with relatives should be no less protected than children placed in licensed foster homes, current regulations relating to approval of relative placements are unduly restrictive, can result in the placement of youth with costly private providers in lieu of relatives, and do not allow for a case-by-case analysis with flexibility to consider each child’s best interest.



It is well settled that foster children who are placed with relatives experience greater stability than foster youth placed in the care of strangers. According to an Urban Institute report, foster children raised by kin have been shown to have fewer behavioral and academic difficulties and better physical and mental health outcomes than children cared for by caregivers with whom they have no prior relationship. “[C]hildren in kinship foster care are significantly less likely than children in non-kin foster care to experience multiple placements.” (Green, *The Evolution of Kinship Care Policy and Practice* (2004) 14(1) *The Future of Children* 131, 143.) Children in relative care also maintain greater community connections, are placed with their siblings at higher levels than children with non-relatives, and “maintain family continuity” though greater contact with birth families. (*Ibid.*) It is critical that artificial barriers to relative caretakers not be erected. Losing relative placements because of a failure to jump a procedural hurdle serves no one’s interest, especially not a child in need of a stable and caring caretaker.

Federal law has created barriers to placement with relatives that do more harm than good. Specifically, the requirement that states use the same set of standards for relative approval as they do for foster care licensing of strangers has made placement with appropriate relatives difficult or impossible in many cases.

Allowing for a less rigid and more individualized approach to assessment of a relative’s suitability to care for a child will reduce the number of children in foster care, promote maintenance of children within their extended family, and further both the physical and emotional well-being of an already traumatized child. When a child must be removed from the care of a parent, placement with a relative rather than a stranger allows the child to cope with an already emotionally fraught situation in a familiar and comfortable setting. Moreover, relative placements often enable sibling groups to remain intact, thereby providing a critical anchor for displaced children.

The Pew Commission also proposed reform of current laws to promote permanence through legal guardianships when a close attachment exists between a child and a potential guardian. As the Commission recognized, establishing and supporting such guardianships can create a route for youth out of foster care and into safe, permanent families. While federal funds and incentives encourage families to adopt, inadequate support exists for guardianships. This is a critical impediment for relatives who may be reluctant to usurp a family member’s parental role, but who nonetheless are prepared to provide a permanent, safe home for their abused and neglected family members. As the Commission explained, “When guardians are also relatives, guardianship can promote healthy ties to a child’s extended family, home community, and culture.”

In sum, new approaches on a federal, state and local level are needed to craft improved mechanisms for keeping youth with relatives and supporting relative placements, whenever possible.

3. Adequate Support of the Dependency Judicial System

Priority must be given to initiatives designed to support and enhance the functioning of the dependency judicial system. Qualified hearing officers are an essential component of that system.



We need to adequately fund the third branch of government and support the recruitment and retention of the highest caliber bench officers.

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 (*VIEW FROM THE BENCH: Obstacles to Safety and Permanency for Children in Foster Care*) of over 2,200 judges who hear dependency cases 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 that enables 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 need to be explored and developed.

4. Adequate and Effective Legal Representation for Every Child

While recent changes to CAPTA 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. 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 some states has no 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.

The goal of assuring effective legal counsel for children cannot be achieved without minimum training, competency standards, and reasonable caseloads. 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

5. Attracting and Retaining Quality Lawyers

If we wish to attract the best and the brightest to what many believe is 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 county agencies will be far better able to attract the most qualified new lawyer. 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.

6. 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 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 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 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.

Federal funding should be tied to these requirements and should be provided at a level sufficient to support the time and expense associated with the building and reinforcement of these approaches.

7. Supporting the Child Welfare Workforce

Social workers cannot possibly be effective when they carry caseloads as high as two and three times the recommended standard. Without adequate time to assess a family, plan for the child's safety, and most importantly develop trusting relationships, even the most experienced and skilled social worker cannot ensure child safety.



A significant reduction in social worker caseloads is a critical component of any reform of the child welfare system. Caseload reduction can be accomplished, in part, through the implementation of the flexible funding recommendations discussed above. Consider the Illinois experience: using federally granted Title IV-E waiver authority Illinois dramatically reduced the number of children in the foster care system from 51,000 to 19,000 over five years. Social worker caseloads consequently fell from an average of 45 to 60 cases to 14 to 18 cases, enabling those on the front lines to focus on children and families most in need.

Caseload size, as well as caseworker education, all directly impact outcomes for children in care. The Pew Commission noted significant variation across the country in the level of training, education, and experience of caseworkers and supervisors. A concerted effort must be made to address these concerns.

8. Greater Support for the Educational Needs of Foster Youth

The educational progress and attainment of children in foster care is a crucial factor in ensuring that no child is denied the opportunity to reach his or her full potential. Attention paid to child safety must go beyond concern for and attention to the child's *physical* well being. Once we intervene to protect a child from abuse or neglect, we assume a duty to parent the whole child. Educational attainment is one of the essential responsibilities of parenting, but too often is overlooked or taken for granted during a child's time in care. While a quality education is a key component of every child's successful transition to adulthood, a sound educational foundation is especially crucial for children who spend long periods of their childhood in foster care.

A few States -- including California -- have begun to address some of the barriers and challenges inhibiting educational attainment for foster youth. Without the support of the Federal Government, however, the steps taken by isolated States will be inadequate and foster children throughout the country will continue to fall further and further behind.

For children experiencing placement changes, either due to the initial removal from their parents' care or due to disruptions in foster placement, federal law must reinforce the need to maintain school stability. Specifically, the law should enable these youth to continue in, and be transported to, their school of origin during the critical time in their life when they most need a stable school environment. The law should also provide for immediate enrollment of foster children in school when a change in school cannot be prevented, thereby avoiding the all too common occurrence of foster youth being out of school for days or even weeks at a time. These guarantees will provide long overdue opportunities for academic success for children in foster care.

Moreover, without enhanced accountability and tracking of school attainment by all parts of the foster care system there will be no ability to respond to changing educational needs of children in care. Improved mechanisms for collaboration and information sharing among all governmental bodies responsible for attending to these issues are critical. Unless we commit ourselves collectively to these new strategies and approaches, the unacceptable record of poor educational



performance for the youth we undertake to parent will remain unchanged and the cycle of abuse, neglect and despair will perpetuate.

9. Addressing the Mental Health Needs of Foster Children and Their Families

Not surprisingly, children in out-of-home placements disproportionately suffer from mental health disorders. Experts estimate that 30 to 85 percent of youngsters in out-of-home care suffer significant emotional disturbance and report that adolescents living with foster parents or in group homes have a four times higher rate of serious psychiatric disorders than youth living with their own families. (Ellen Battistelli, Child Welfare League of America, Factsheet: The Health of Children in Out-of-Home Care (May 17, 2001).)

The mental health needs of foster children are often overlooked until the child exhibits extreme and harmful behavior. Even then, the lack of coordination between the child welfare, mental health and school systems results in fragmented and disjointed provision of services. Children are not properly assessed, no one provider is given the clear responsibility of monitoring the mental health needs of these children, and when mental health services are finally made available, they are often either inadequate or too late to be of meaningful benefit to the child.

Until all foster children receive prompt assessment and individualized mental health services from the outset, we will continue to see children who are either overlooked by the child welfare system or who leave the dependency system more damaged than when they entered care. Constant placement disruptions, placements with well meaning but ill-equipped caregivers, and insufficient mental health services all exacerbate the problems and challenges faced by these already fragile children. With each failed placement and each delay in receiving treatment, the child requires a higher and more restrictive level of care. The resulting cost in both resources and human lives will continue to grow exponentially until *all* of the involved agencies develop meaningful ways to work together to address the mental health needs of children in foster care.

The current piecemeal approach to providing mental health services to children and their families is not working and must be reassessed. Many children would never have to be placed in foster care if the parents had access to supportive services from the outset. For those children who must be placed in foster care or with extended family, effective mental health treatment must include planning for the treatment needs of the parents as well as the child. It is uncommon, at best, to find a family where only the child or only the parent requires treatment. Certainly in those cases where reunification is possible the mental health needs of the family must be a priority, and any treatment plan should include not only crisis intervention, but also transition planning and aftercare as well.

10. Addressing the Needs of Teens Emancipating from Foster Care

While the goal of permanency for every child remains high on any priority list, it is imperative that the child welfare system not forget the thousands of older teens who remain in out of home care and will likely remain in the foster care system through emancipation. There are



several areas where new approaches and better services should be considered if these youth are to have a fighting chance for a stable and successful adult future.

Recent findings regarding adolescent brain development highlight the importance of paying attention to and recognizing the unique needs of adolescents. Without proper stimulation, experiential learning, direction, and guidance, these teens will experience far greater challenges in negotiating the adult world, exercising sound judgment, and planning for their future. The research makes clear that even the best-prepared teen is not ready to be completely self sufficient at age 18. Yet, throughout the country, foster children automatically exit from care on their 18th birthday or the day after high school graduation ill-equipped for successful emancipation. These youth often have no one to share Thanksgiving dinner with and no one to help them prepare for their first job interview or secure their first apartment. They commonly emancipate from foster care without any significant connection to a responsible adult, have no home, no one to provide them with desperately needed guidance, and no place to return to when they falter. It is no wonder that so many emancipated foster youth are either homeless or incarcerated within two years of exiting the system.

Moreover, services provided to dependent teens who are pregnant or become parents are woefully inadequate. There are too few placements available for these young parents and their children and the existing placements often do little to provide the guidance and support that any new parent needs. Similarly, targeted emancipation services for teen parents are virtually non-existent. Teens parents who were themselves abused and neglected present not only a great challenge to our child welfare agencies, but also a great opportunity. If we can work in partnership with them rather than merely waiting for them to fail, we can ensure that the next generation won't need our services and create a brighter future for these young families. Child welfare must rethink the business as usual approach taken when a child is born to a mother who is herself a dependent. Innovative approaches designed to reach the young parent in a language she can hear, and assigning to this caseload social workers adept at working with the unique needs of these clients, are essential components of any effort to improve outcomes for teen parents and their children.

C. Conclusion

Thank you for affording me the opportunity on behalf of the Children's Law Center and the thousands of young clients we represent to offer my perspectives in regard to ways our nation can better serve our neediest and most vulnerable children. These are the children of our community and our future. They deserve our very best efforts.

