

Racial Disparities in the Child Welfare System: Reversing Trends

by Howard A. Davidson

In most states, clear data¹ show that minorities² are disparately involved in child protective court proceedings. Poverty, inadequate housing within poor neighborhoods served by urban juvenile courts, and racism are often claimed to be likely causes.

Intrusive child protective agency scrutiny and interventions are often fueled by negative beliefs about concentrated poverty, environmentally distressed racially segregated neighborhoods, and cultural stereotypes of at-risk families. What can be done?

Promote safe alternatives to removal.

The legal profession should encourage nonadversarial “differential (a.k.a. alternative) response systems” and “family group decision-making processes”³ that help provide at-risk children and parents resources to avoid court intervention while addressing important familial issues they face. Rapidly implementing 2008 federal law reforms that promote state-subsidized placement with relatives (in lieu of foster care), when parents cannot provide proper care, should also be promoted.⁴

Removal decisions must focus on objective child safety criteria.⁵ Judges should ask those seeking removal about safe alternatives, such as placement with family friends, relatives, or neighbors, use of arrest powers or restraining orders to get abusive adults out of a home, or use of immediate in-home, emergency child care, and respite services.

Ensure access to quality services for parents and children.

Judges and lawyers should advocate for prompt access to key services

In a 2008 policy resolution,⁶ the ABA urged judges, and children’s and parents’ advocates, to ensure racial and ethnic minority families are *able to readily access needed services*.

for inner-city parents to reduce the impact of poverty, including:

- child care
- voluntary mental health and substance abuse treatment
- housing assistance
- culturally-specific temporary remedial aid, including respite care for children

As community leaders, judges should work with child welfare, the local TANF agency, and community groups to enhance access to high quality services that can help impoverished and troubled families avoid unnecessary dependency court system interventions.

Apply federal reasonable efforts requirements to prevent unnecessary placements.

In a 2008 policy resolution,⁶ the ABA urged judges, and children’s and parents’ advocates, to ensure racial and ethnic minority families are *able to readily access needed services*. Judges and lawyers can do

this by using the 1980 federal law requirement of “reasonable efforts” to prevent placement. They can also ask what reasonable steps have, or have not, been taken to keep families out of the court system.

“Reasonable efforts” judicial scrutiny should encompass timely review of emergency or *ex parte* child welfare agency or police requests for removing children from home. Where preremoval judicial scrutiny is required, those authorized to remove children should know how to contact a judge 24/7. Legislatures in states not requiring preremoval judicial review should compel it.

Appoint parent attorneys before court petitions are filed.

Well-trained parent attorneys should be quickly appointed, and this should occur through action by the court as soon as it is informed of a request to remove a child from a home. The parent attorney should advocate for prompt service delivery to prevent a child’s placement before a court petition is filed if a child removal decision appears imminent.⁷

Increase awareness and understanding.

The ABA has joined others in calling for legal/judicial training on: cultural competency; identifying institutional and unconscious biases; and avoiding disparate treatment of racial and ethnic minority children and families. It also urges recruiting and retaining racially and ethnically diverse child welfare judges and attorneys. Judges are also called upon to alert child welfare directors or supervisors if they witness racial bias in a child welfare professional’s

handling of cases, or when inaction harms families of color, such as failing to identify and seek involvement by children's fathers and other maternal and paternal relatives.

Collect data to shape responses to racial disproportionality.

Courts must compile *their own* racial disparity data for all key decision points to set benchmarks, monitor progress, and ensure racially fair treatment and outcomes. The ABA calls upon courts to track, report, analyze, and report on corrective actions to respond to information gathered on racial disparities. This should occur at local and statewide levels. The Court Improvement Program and Child and Family Services Review/Program Improvement Plan process within states should both carefully examine racial disparity data and explore systemic responses to reduce high rates of disproportionality.

Change the way federal funds are used to support state and local child welfare agency work.

In 1992, Mark Hardin wrote *Establishing a Core of Services for Families Subject to State Intervention: A Blueprint for Statutory and Regulatory Action*.⁸ This book noted that if a family needs a service to remain intact, agencies rarely have a clear legal obligation to provide it, even if *essential* to preserve the family. Hardin offered a framework for state legislation and agency policy change to help assure needed services become readily accessible.

To implement that proposal, Congress must change the formula for state matching funds to child welfare agencies, so that services to preserve and strengthen families and address family crises are federally supported at equal or higher rates than for out-of-home child placement. Ideally, greater funding would support services located within

Resources

In addition to the resources cited in the endnotes, readers may be interested in the following:

- United States Government Accountability Office. *African American Children in Foster Care: HHS and Congressional Actions Could Help Reduce Proportion in Care*. Statement of Kay Brown, Director Education, Workforce, and Income Security, July 31, 2008. www.gao.gov/new.items/d081064t.pdf
- Casey Family Programs. "Disproportionality in the Child Welfare System," June 2006. www.ncsl.org/print/cyf/fostercarecolor.pdf
- Robert B. Hill. *Synthesis of Research on Disproportionality in Child Welfare: An Update*. Casey-CSSP Alliance for Racial Equity in the Child Welfare System, October 2006. www.racemattersconsortium.org/docs/BobHillPaper_FINAL.pdf
- "Places to Watch: Promising Practices to Address Racial Disproportionality in Child Welfare Services." Undated paper by the Casey-CSSP Alliance for Racial Equity. www.cssp.org/uploadFiles/Promising_Practices_to_Address_Racial_Disproportionality.pdf
- Fred Wulczyn and Bridgette Lery. *Racial Disparity in Foster Care Admissions*. Chicago: Chapin Hall at the University of Chicago, 2007. www.chapinhall.org/research/report/racial-disparity-foster-care-admissions

neighborhoods with the highest percentages of children living in poverty. Advocates should support this congressional policy change.

No single evidence-based practice is known to reduce child welfare system racial disparities. However, the actions above should help courts and attorneys more effectively address the problem.

Howard A. Davidson, JD, is the director of the ABA Center on Children and the Law, Washington, DC.

Endnotes

¹ See analysis of data by Center for the Study of Social Policy at: www.cssp.org/major_initiatives/racialEquity.html

² African-American families and in some areas, Latino and Native American families.

³ See: www.americanhumane.org/protecting-children/programs/differential-response and

www.americanhumane.org/protecting-children/programs/family-group-decision-making for more information on these reforms.

⁴ Public Law 110-351 (October 2008), the Fostering Connections to Success and Increasing Adoptions Act of 2008. See www.abanet.org/child/ for detailed information on the Act.

⁵ Theresa Roe Lund and Jennifer Renne. *Child Safety: A Guide for Judges and Attorneys*. Washington, DC: National Child Welfare Resource Center on Legal and Judicial Issues, 2009.

⁶ The full text of the resolution can be found at: www.abanet.org/youthatrisk/racialdisparitypolicy.html.

⁷ There is a new ABA program to improve representation of parents in dependency proceedings. See www.abanet.org/child/parentrepresentation

⁸ For information on ordering this or other Center publications, see: www.abanet.org/child/catalogfebruary2009.pdf.