

IN PRACTICE

A New Focus on Reasonable Efforts to Reunify

by Amelia S. Watson

You represent Joannie who agrees that her bipolar mental illness put her children at risk. At the dispositional hearing, Joannie agrees that her children should remain in foster care and that she will undergo a mental health assessment and follow all recommendations.

Before the first review hearing, you learn the state is asking she be found noncompliant for her behaviors at visits. After speaking with Joannie, you realize she was on a waitlist for over a month to receive an evaluation from the mental health provider and now she is on a waitlist to receive the recommended treatment. You realize with frustration that Joannie's children have been in foster care for five months and she is not currently being provided any services to address her bipolar disorder.

The social worker for the state agency tells you there is nothing she can do. Budget cuts have left everyone with fewer treatment options. You wonder if the caseworker/agency is really working with your client toward reunification. How can Joannie ever have a chance to address her problems and get her children back if she can't get the critical services she needs?

Across the nation, a shift is occurring regarding reasonable efforts enforceability since the economic crisis has impacted child welfare funding streams. Debate has surrounded reasonable efforts requirements since they were introduced in the Adoption Assistance and Child Welfare Act of 1980 (AACWA) and refined by the Adoption and Safe Families Act of 1997 (ASFA). The current economic climate adds a new dimension to the debate.

As parent's counsel,¹ how do you ensure services are provided when referrals for services are delayed, waitlists grow, and claims of lack of

funding for services abound? The question is pronounced since child welfare cases typically involve poor parents and families who cannot afford services without state agency² support. What should be done when the state agency is not making reasonable efforts to reunify a family? Unfortunately, the problem of lack of reasonable efforts typically is contemplated at review hearings or termination trials, if at all. As such, attempts to address the problem routinely come too late in the life of a child welfare case and need to be addressed sooner. This article:

- discusses federal statutes and

regulations that can be used to help frame a reasonable efforts definition;

- provides strategies for reasonable efforts enforcement; and
- highlights how parent's counsel can investigate and respond to lack of funding claims at the initial stages of a family's involvement with the child welfare system.

Understanding Reasonable Efforts

To assure states offer preventive and rehabilitative services to parents in-

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CASE LAW UPDATE

Father Entitled to Custody Over Adoptive Parents *Adoptive Couple v. Baby Girl*, 2012 WL 3042287 (S.C.)

Trial court properly denied adoption petition and granted father custody where no active efforts were provided to place the child with the father and father did not validly consent to adoption. The potential short-term trauma of removing child from prospective adoptive parents did not overcome high standard of emotional harm under ICWA.

A child was born to parents who were engaged when the mother learned she was pregnant. The parents' relationship deteriorated before the child's birth. In text messages between the parents, the father indicated he would relinquish his rights. He testified later that he thought this only meant he would give up his rights to the mother.

The mother testified she planned to put the child up for adoption because she was struggling financially. She never informed the father she planned to seek adoption. She approached an adoption agency and helped select prospective adoptive parents. They had regular contact leading up to the birth and helped support the mother.

Before the birth, mother's attorney sent a letter to the Cherokee Nation of Oklahoma where the mother believed the father was enrolled. However, the letter had his name misspelled and an incorrect birth date. When the Nation indicated they could not verify his enrollment, the mother again confirmed with her attorney that she believed he was enrolled.

Four months later, the father was served with the adoption petition and a purported answer consenting to the adoption. The father quickly realized then that he was not being asked

to consent to relinquish his rights to the mother, but to another adoptive couple. He filed to stay the adoption proceedings and establish paternity, and sought custody a week later in Oklahoma.

Over the next several months, the courts established the father's paternity and jurisdiction in South Carolina. The Cherokee Nation also confirmed that he was a registered member and intervened in the case.

After a four-day hearing, the family court denied the adoption petition and ordered the child placed with the father. The prospective adoptive parents appealed to the South Carolina Supreme Court.

On appeal the adoptive parents argued that the father did not meet the definition of a 'parent' under the Indian Child Welfare Act (ICWA). They claimed that because the ICWA does not identify procedures for establishing paternity, state law governs. As an unwed father, he needed to prove more than biology to confer his status as a parent. The adoptive parents pointed out that he did not support the mother through her pregnancy or pay child support. The Supreme Court, however, agreed with the trial court that the ICWA gave greater protection to an unwed father, and the father's actions to establish paternity after learning of the adoption proceeding were sufficient to make him a legal parent.

The South Carolina Supreme Court affirmed, finding that the father had not voluntarily relinquished his rights. The paperwork purporting to provide an answer and consent for adoption given to him by the process server did not comply with South Carolina law that requires a signature of a judge and indication that the effects of

relinquishing parental rights were fully explained. Further, under ICWA, the father could revoke his consent, which his pleadings would have effectively done.

As to involuntary termination, the ICWA requires active efforts be provided to a parent and that those efforts fail before parental rights can be involuntarily terminated. In this case, the Supreme Court found no efforts were provided. The adoptive parents argued

that any efforts would be futile because the father did not actively intend to parent the child. The Court found this argument lacked merit. Though the father may have failed to assume parental responsibilities early on, his concerted efforts to pursue the case later showed sufficient commitment.

Under ICWA, the petitioner also must show that returning a child to the parent would result in serious physical or emotional damage. The trial court

heard from experts from the adoptive parents and the father. It concluded that although there may be short-term trauma in moving the child, the long-term prospects were good; the father had a safe home and a good relationship with an older daughter. The South Carolina Supreme Court agreed.

The Court further concluded that ICWA superseded state law regarding other termination grounds.

Youth's Confession Voluntary Despite Being Kept at Police Station for 55 Hours

Carter v. Thompson, 2012 WL 3290152 (7th Cir. 2012).

Trial court properly found youth's confession to murder was voluntary where, despite being kept in police station for 55 hours and not having a supportive adult present, she was not interrogated for all of that time, her initial confession was not given in response to police questioning, and she was only kept at the station for that length of time since she had nowhere to go.

Youth was picked up by the Chicago police after her roommate's body was found and she was one of the last people to be seen with her. While she was with the police, she told them she and the victim had been at a party the night before the victim's body was found and that she had last seen her leaving for her boyfriend's house. Believing she was only a witness, the officers released her to her father.

A few hours after her release, someone set fire to her apartment. She was again brought to the police station for questioning without receiving Miranda warnings. Her boyfriend, who was also at the station, corroborated her story and she was released.

The officers picked her up a third time after speaking with her father. He told them he believed she knew who killed her roommate and he was concerned for her safety.

Upon returning to the station, the

youth admitted that she lied about seeing her roommate's boyfriend. She agreed to take a polygraph test the next day. The officer gave conflicting testimony on the stand about whether youth remained at the station over night due to her father's concerns that she would run if released or because she asked to stay. While she stayed overnight at the station, she was mostly free to move about and slept in the interview room.

The next morning, officers recited Miranda rights to youth and administered a polygraph test. When the initial testing showed she was not being honest, she claimed she had helped her roommate's boyfriend cover up the murder. Her story began to change quickly after that including claims that her roommate stabbed herself and she punched her when they fought and that she stabbed her in self defense.

After considering the conflicting confessions and other circumstances, a jury convicted the youth of first degree murder and sentenced her to 30 years imprisonment. She appealed to the Illinois Court of Appeals, which affirmed the trial court. She then filed a petition for *habeas corpus* under 28 U.S.C. § 2254 in federal district court. The district court found no clear violation of

federal law, but certified the case for appeal due to the unusual circumstances of the interrogation.

The Seventh Circuit Court of Appeals affirmed, holding that the trial court's decision did not fall outside of the reasonable bounds of established federal law.

To determine whether a confession is voluntary, trial courts must look at the total circumstances. In the case of a juvenile, this includes the individual's "age, experience, education, background, and intelligence," the length of time they were interrogated, and the presence of a parent or other supportive adult.

Though the youth was in the police station overnight for a total of 55 hours, the record also showed she was free to move about the station, was only kept there because she had nowhere to go or because her father had concerns about her safety, and her initial confession was given spontaneously, rather than in response to a police question.

The Seventh Circuit Court of Appeals held that given those circumstances, it was not unreasonable for the trial court to conclude her confession was voluntary.

STATE CASES**Alaska**

Davison v. State, 2012 WL 3240111 (Alaska). CHILD ABUSE, HEARSAY
In criminal child sexual abuse trial, victim's statements were not admissible under hearsay exception for medical diagnosis or treatment because the circumstances would have led witness to believe exam was primarily for gathering evidence rather than medical purposes. Youth had already received medical treatment, state trooper and victim advocate were present during exam, trooper participated in questioning, and youth was old enough to understand the context.

Alabama

L.M.W. v. D.J., 2012 WL 3242093 (Ala. Civ. App.). TERMINATION OF PARENTAL RIGHTS, GROUNDS
In case where termination was based on mother's failure to visit and financial stability that adoption would provide, termination grounds were not proven. Grandparent caregivers denied visitation to mother despite child's and mother's request for visits and the benefit to the child of being on grandfather's insurance, if adopted, was not strong enough to warrant termination.

P.S. v. M.S., 2012 WL 3055521 (Ala. Civ. App.). DEPENDENCY, VISITATION
Where dependency jurisdiction was exercised initially due to mother's incarcerations and sustained by her mental health issues despite her release by the time of trial, the trial court erred in failing to allow the mother visitation. There was no indication that visitation would not be in the children's best interests especially given the relative caregiver's testimony recommending visits.

California

In re Christian P., 144 Cal. Rptr. 3d 533 (Ct. App.). DEPENDENCY, HEARSAY
Trial court did not err in admitting hearsay statements contained in agency social study because they were corroborated by other substantial evidence. Statements suggested mother abused methamphetamines and other evidence showed she was unemployed, transient, and failed drug tests.

Colorado

In re N.G., 2012 WL 3129019 (Colo. Ct. App.). DEPENDENCY, ADJUDICATION
Trial court erred in placing child in uncle's custody without first determining that father was unfit to parent child. Though father was out-of-state when child was removed from the mother and had not seen the child in some time, dependency adjudication requires finding that the child can not safely remain with either parent.

Connecticut

In re Jason B., 2012 WL 3047341 (Conn. App. Ct.). TERMINATION OF PARENTAL RIGHTS, TESTIMONY
Trial court's statement that since the mother did not testify "there was no evidence presented to contradict the representations" made by the state, was not an adverse inference about mother's choice not to testify. Record as a whole indicated that it made no such improper inference but credited the testimony and other evidence of the petitioner in terminating parental rights.

Delaware

Arnold v. State, 2012 WL 3090290 (Del.). DELINQUENCY, EXPUNGEMENT
Young man who incurred a number of delinquency offenses as a youth was correct that gubernatorial pardon mandated family court to expunge his juvenile record. Board of Pardons considered entire juvenile and adult record, and upon pardon being granted, court had discretion to expunge records.

Tourison v. Pepper, 2012 WL 3538732 (Del.). DEPENDENCY, GUARDIANSHIP
Trial court improperly based decision to deny mother's petition to rescind relative guardianship on child's best interests. Constitutional presumption that a parent is fit must be overcome by a third party showing of physical or long-term emotional harm.

Florida

A.T. v. State, 2012 WL 3101634 (Fla. Dist. Ct. App.). DELINQUENCY, GROUNDS
Court improperly found juvenile unlawfully resisted a police officer. Where officer

approached three youth and smelled marijuana in the general vicinity, that alone did not create reasonable suspicion needed to detain youth when he refused to provide identification and walked away.

C.W. v. State, 2012 WL 3054124 (Fla. Dist. Ct. App.). DELINQUENCY, REPRESENTATION
Trial court should have advised youth of her right to counsel and ensured she knowingly waived that right. Youth stated at arraignment that she had obtained an attorney, but the attorney did not appear at trial because she had failed to follow through with retaining him.

I.M. v. State, 2012 WL 3046351 (Fla. Dist. Ct. App.). DELINQUENCY, GROUNDS
Obstruction charge stemming from youth cursing at an officer who intervened in group of youth who were engaging in horseplay. Where officer repeatedly asked youth to leave, youth's words alone did not constitute offense. Obstruction generally requires more than verbal conduct.

V.M. v. Home at Last Adoption Agency, 2012 WL 3044277 (Fla. Dist. Ct. App.). TERMINATION OF PARENTAL RIGHTS, JURISDICTION
Where mother consented to adoption and placed child with adoption agency, but never informed father, trial court was correct in finding father had not abandoned child. However, trial court should have dismissed the case after making that finding since it lacked jurisdiction absent filing of another custody or dependency petition.

Illinois

In re A.W., 897 N.E. 2d 733 (Ill.). DEPENDENCY, ADJUDICATION
Circuit court did not err in finding children dependent based on father's angry outbursts where two involved physical violence and other threats of violence, even where most were outside the presence of the children. A nexus was shown between these behaviors and harm to child, including that child stated that he did not want to go home due to his father's outbursts.

In re Joshua S., 2012 WL 3010427 (Ill. App. Ct.). TERMINATION OF PARENTAL RIGHTS, SETTLEMENT AGREEMENT

Criminal charges were brought after mother left her newborn child under a tree. A settlement in the criminal trial, where the state agreed to not use the abandonment as a termination ground, was unenforceable because agreement violated child's right to protection and deprived court and guardian ad litem of ability to exercise their best interest duties.

In re K.B., 2012 WL 2928614 (Ill. App. Ct.). DEPENDENCY, SEX OFFENDERS
Trial court properly adjudicated child dependent where mother allowed daughter to be cared for by a convicted sex offender while she was incarcerated. Though mother contended that her boyfriend had completed sex offender treatment, she failed to provide evidence of this at trial sufficient to rebut the state's allegation that the child's safety was at risk.

In re Rico L., 2012 WL 3064647 (Ill. App. Ct.). DEPENDENCY, DISPOSITION
Trial court properly found mother was unable to care for child at dispositional hearing held after it had ordered protective supervision while child remained in her custody. Court retained dispositional authority over the case based on initial adjudication.

Indiana

In re M.A.J., 2012 WL 3265028 (Ind. Ct. App.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE
Trial court erred in terminating mother's parental rights for failing to remedy the conditions which led to removal. Court focused on the substance abuse issues and domestic violence at the time of removal, which while relevant, were not properly balanced with mother's progress since that time given that she provided 30 negative drug screens and had severed herself from any abusive relationships.

Montana

In re K.H., 2012 WL 3306558 (Mont.). DEPENDENCY, FAILURE TO PROTECT

Trial court correctly determined that children were not dependent in case where, despite it being ultimately revealed that mother's boyfriend caused the death of their infant by shaking, there was nothing to indicate to her before that incident that boyfriend was a threat to children and mother immediately took steps to protect them when safety risks were known.

New Jersey

Div. of Youth & Family Servs. v. M.G., 2012 WL 2974757 (N.J. Super. Ct. App. Div.). TERMINATION OF PARENTAL RIGHTS, DEFAULT
Father's continued homelessness and failure to comply with services were an improper basis for a default finding in termination proceedings. Default is appropriate for failures to defend a case such as absence from a hearing or failing to engage in discovery. A default for failing to comply with orders related to case plan effectively deprived the father of a meaningful trial on the merits.

New York

In re Bree W., 2012 WL 3104225 (N.Y. App. Div.). DEPENDENCY, VISITATION
Trial court abused its discretion in allowing daily hour-long unsupervised visits with mother before a full fact-finding hearing was conducted on allegations that three-month old had fractured ribs and parents were her sole caretakers.

Oregon

In re A.G., 2012 WL 3105580 (Or. Ct. App.). DEPENDENCY, HEARSAY
Though father only appealed case of his biological child, statements of his stepchildren were properly admitted under hearsay exception as party opponents. Argument that because stepchildren were not parties on appeal, they could not be party opponents failed because all five children's cases were heard together at trial. When trial court asked whether all cases would be heard together, father did not object.

Texas

In re D.J.H., 2012 WL 3104502 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE
Trial court properly terminated father's parental rights where he was repeatedly convicted of stealing and once for aggravated assault while child was in care. Father's repeated criminal activity prevented him from caring for his child.

Utah

In re J.H., 2012 WL 2924061 (Utah Ct. App.). DEPENDENCY, HEARSAY
Trial court did not err in awarding custody to grandmother in dependency case based in part on information from the grandmother's journal. Even assuming that court should have required grandmother to read from journal rather than entering the item under the hearsay rule, there was no support for mother's contention that outcome in trial would have differed given the other evidence of neglect.

Wyoming

In re KMO, 280 P.3d 1203 (Wyo. 2012). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE
Where parental rights were terminated on ground that mother failed to remedy the conditions that led to removal after her children were in care over 15 months, state was not required to file a petition to terminate parental rights within 60 days of judicial determination that reunification was no longer a viable goal where court did not rely on aggravated circumstances or specified crimes sections of statute.

In re KMO, 280 P.3d 1216 (Wyo. 2012). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE
Jury's verdict was supported by sufficient evidence that father was unable to safely parent children. Father failed to take steps to provide a home for the children despite having consistent employment and preferred to leave the children with the mother through numerous removals from her care.

(Cont'd from front page)

volved with the child welfare agency, the federal government requires that states make “reasonable efforts” to prevent or eliminate the need to remove the child from their home.³ If the child is removed, the state is required to make reasonable efforts to make it possible for a child to return home.⁴ Finally, the state is required to make reasonable efforts to finalize a permanent plan.⁵

The federal government did not define reasonable efforts. Federal law notes that when determining reasonable efforts the child’s health and safety shall be the top concern.⁶ The federal government has stated that a federal definition of reasonable ef-

foster care maintenance payments, thereby reducing the overall pool of money the state should receive from the federal government.⁹

A judicial finding that the state agency made reasonable efforts to finalize the permanent plan (for example, a permanent plan of reunification) is also necessary to receive IV-E foster care maintenance payments in a child’s case.¹⁰ However, while this may limit funds to the state agency during a period where there has been a finding that reasonable efforts were not made to finalize the permanent plan, the agency can cure the problem. The child’s case can again become IV-E eligible if there is a later finding that the state agency

the parent.¹³

Additionally, even if you succeed, the problem has already happened. The services were not offered early when the parent was potentially more trusting of the process, and more motivated to engage. The state loses funding and time is wasted at the expense of a child’s life. This delay in permanency may result in a feeling by some that the child has “waited long enough” for the parent to get it together despite the parent’s lack of opportunity to truly engage in services. The state may start termination proceedings even though the parent has had little time to make life changes, putting the parent at a disadvantage if the case goes to trial.

A New Reasonable Efforts Paradigm

Parents’ counsel should focus on and encourage other participants in a family’s case to think about reasonable efforts at the start of the case and continue the focus as the case progresses. Recognize that a basis for reunification must be built over the life of the case. What can you get today that will make reunification a more likely outcome in the future?

Meet with parents at the initial removal stage and consider whether advising a parent to contest removal or a lack of reasonable efforts to prevent removal is warranted. Has the state tried to stop the case from entering court, such as following the agreed safety plan and offering critical services? Has the parent made efforts to improve, such as staying sober or seeking services on their own despite no referrals?

Such factual findings might help the court see the parent is willing to engage in services and therefore make needed changes. This could humanize your client and set the stage for more favorable court rulings at this initial stage or in the future. It could also make a parent feel heard. Even if the judge rules against the parent following a contested hearing, the client

Judicial officers may be concerned that such a finding will result in reduced funding to the state agency and may view this reality as adding fuel to the fire.

forts would go against the intent that reasonable efforts be considered case-by-case or would be too broad to be effective.⁷

The common sense interpretation of reasonable efforts when contemplating reunification is that the state agency must help. For example, the agency must attempt to address the parent’s problems to prevent the need for removal. If removal is necessary, the state agency must attempt to address the parent’s problems so the child can return home. Like the invisible line where the parent is unfit such that removal is necessary, the state has a similar invisible reasonable efforts line that must be met to show they tried to prevent the removal and later tried to make it possible for the child to return home.

A judicial finding in a child’s case that such reasonable efforts were made to prevent removal is necessary for a state to be eligible to receive Title IV-E foster care maintenance payments for that child.⁸ When a court makes a judicial finding that the state agency made no reasonable efforts to prevent removal in a child’s case, that child is forever ineligible for IV-E

made reasonable efforts to finalize a permanent plan.¹¹

Finally, while reasonable efforts to ensure the child’s safe return home are required under federal law, they are not required to make the child IV-E eligible.¹² Rather, the court would need to make a judicial finding that the state agency did not make reasonable efforts to finalize the permanent plan of reunification to implicate IV-E eligibility; as stated above, the state agency can “fix the problem” and the child can become IV-E eligible.

After-the-Fact Reasonable Efforts Enforcement

One reality in advocating for a lack of reasonable efforts finding is that a court may view it as a nuclear option. Judicial officers may be concerned that such a finding will result in reduced funding to the state agency and may view this reality as adding fuel to the fire. You may have difficulty documenting what actually occurred after the fact as “he said, she said” sets in between the parent and the state agency. This may leave judicial officers feeling compelled to compare the efforts and good faith of the state agency to that of

often feels heard by the process, which can help the parent stay focused during the child welfare case.

After the initial removal hearing, meet with the parent to discuss needed services. Advise parents that their participation or lack of participation in services and visitation may color how the court and other case participants view them. Discuss how the parent can document participation in the case plan. For example, encourage the parent to keep a calendar of the case that can be offered to the court as evidence of the parent's participation, or send email updates to the state social worker. Advise parents to check in regularly to share any barriers to accessing services and progress in services.

Schedule a meeting with the parent and the state agency early in the case. Try to reach an understanding of what services will address the need for removal, and the timing of services. A negotiated case plan can make the parent and the state agency work more cooperatively as the case progresses. Make sure the plan makes sense and is thorough.

- Has the state agency identified the parent's deficiencies?
- Do the recommended services tie back to those deficiencies?
- Are there services that should be referred now rather than waiting until the next court hearing?
- Is your client going to be able to access the services?
- How will the state agency address obstacles to services such as waitlists, unavailability, or funding problems for services?
- Does this seem like a road map to reunification? If not, be clear about what services are necessary and propose an alternate plan.

If you have access to your own parent or defense social worker, consider having them help you create

a plan before meeting with the state agency. Alternatively, expert funds can be used for this purpose, if available. This is when your client is set up to succeed or fail.

If a written agreement cannot be reached, consider a contested fact finding and/or dispositional hearing on whether the state's plan will amount to reasonable efforts. Don't ask the court for a finding of lack of reasonable efforts now; ask the court to make a finding of whether the plan will amount to reasonable efforts in the future. Ask the court whether the department's plan makes sense and be prepared with an alternate plan if you believe the state agency plan will not work. This means that during the negotiation stage you know what concessions you will make. Be prepared to discuss services your client is willing to participate in to address the state's identified parental deficiencies. But steer clear of factual discussions of whether the parent concedes to having a parental deficiency.

Be prepared to make a record for the trial judge and, if necessary, an appeal. Document the need for the service, the availability and cost of the service, need for funding, parent's willingness to participate, and evidence of what the parent has already done. Compare those costs to the reality that not offering needed services timely will likely delay permanency for the child, cost the state and the court more, and will not be in the best interest of the child. Whether the court rules against you or in your favor, be prepared to revisit these arguments with the state agency and the court as the case progresses to the review hearing stage. To make this discussion fruitful, educate the court on what reasonable efforts means.

Evaluating Reasonable Efforts

In the absence of clearly egregious actions by the state agency, courts may be at a loss when defining reasonable efforts. However, some federal guid-

ance provides a roadmap to advocating for and evaluating reasonable efforts.

Questions for Courts When Analyzing Reasonable Efforts

First, the Children's Bureau's Child Welfare Policy manual suggests questions courts may consider when analyzing whether reasonable efforts were made based on the state agency's actions. Some of these include:

- Was the service plan customized to the individual needs of the family or was it a standard package of services?
- Did the agency provide services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent's ability to maintain the child safely at home?
- Do limitations exist regarding service availability, including transportation issues? If so, what efforts did the agency undertake to overcome these obstacles?¹⁴

The manual provides clear guidance on reasonable efforts. Services should be specialized to address the issue(s) that made removal necessary for the child(ren) to be safe. Most important during this time of economic difficulty, services should be accessible and courts should consider whether barriers to services were addressed by the state agency.

Principles Governing State Provision of Services

Additionally, 45 C.F.R. § 1355.25 Principles of Child and Family Services, lists principles to guide states in "developing, operating and improving" services for children and families. Some of these principles include that:

- Services are focused on the family as a whole; service providers work with families as partners in identifying and meeting individual and family needs; family strengths are identified, enhanced, respected, and mobilized to help

families solve the problems which compromise their functioning and well-being.

- Services are timely, flexible, coordinated, and accessible to families and individuals, principally delivered in the home or the community, and are delivered in a manner that respects and builds on the strengths of the community and cultural groups.
- Services are organized as a continuum, designed to achieve measurable outcomes, and are linked to a variety of supports and services that meet families' and children's needs, such as housing, substance abuse treatment, mental health, health, education, job training, child care, and informal support networks.
- A family or an individual does not need to be in crisis to receive services.¹⁵

These principles suggest services should be designed to engage families early, and be provided in a way that addresses the individual needs of a family on a continuum. The principles also suggest that basic needs of parents and concrete services should be addressed.

Practice tips:

- Advocate that the state agency allow the parent and parent's counsel to help create the case plan.
- Ask the state agency to explain how the services will address identified parental deficiencies.
- Have the court identify which services are priorities.
- Ask the court to order a timeline for offering services.
- Ask that the state agency be required to come back if the services are not offered due to unavailability, waitlists or lack of funding. Remind the court that for a permanent plan of reunification to be possible, a parent must be given the opportunity to participate in needed services.

- Have a clear understanding of what the parent is already doing so you can highlight your client's willingness to participate to the parties and the court.

State Plan Requirements for Time-limited Family Reunification Services

Finally, 42 U.S.C.A. § 629a (7) defines "time-limited family reunification services" to include services and activities that facilitate the safe and timely return of the child home that are offered within the first 15 months of the child entering foster care.¹⁶ State plans include the requirement that states assure they are providing time-limited family reunification services,¹⁷ which include:

- (i) Individual, group, and family counseling
- (ii) Inpatient, residential, or outpatient substance abuse treatment services
- (iii) Mental health services
- (iv) Assistance to address domestic violence
- (v) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries
- (vi) Peer-to-peer mentoring and support groups for parents and primary caregivers
- (vii) Services and activities designed to facilitate access to and visitation of children by parents and siblings
- (viii) Transportation to or from any of the services and activities described in this subparagraph¹⁸

State plans must include assurances that their child welfare programs will offer the above services and activities, including transportation. If you know that certain services are not available due to lack of transportation, waitlists, or lack of funding, advocate for the state agency to address these obstacles. Advocate that the case plan include timing for referrals and assurances about funding. If the state agency is unwilling, consider a contested dispositional hearing as discussed above.

Funding and Budget Basics

When facing state agency lack of funding claims, parent's counsel should be prepared to take the following steps:

- **Educate the court on the state agency's duty to provide services and what the state agency must prove to establish a lack of funding.** For example, in Washington State, indigent parents are entitled to services under state law. The court can order the state agency to provide such services where those services are for the "specific purpose of making reasonable efforts to remedy parental deficiencies identified in a dependency proceeding..."¹⁹ Parents are also entitled to priority access for such services and the state agency is required to notify the court if such services are not available.²⁰
- **Investigate what duties the state agency has to provide services and what the state must show when a duty exists.** A general concern that there are not enough funds will not suffice.²¹ Rather, the state agency must document a lack of funds, such as showing a change in legislative appropriations, how the change in appropriations has impacted its ability to carry out its statutory duty, and how it is prioritizing work.²²
- **Be prepared to argue that a statement from a state agency worker that the agency lacks funds is not evidence.** Such claims should not excuse the state agency from its responsibility to provide services. Make the court aware of any priority court-involved parents should be given to services under state law as compared to non-court involved parents. Advocate that the court find such refusals to provide services amount to a lack of reasonable efforts.²³ This lets the court put the agency on notice that it could lose

state funding if it does not provide court-ordered services.

- **Remind courts that not providing funding for services can delay permanency, costing the state more money due to delay, and is not in the child's best interest.** Point out that reasonable efforts by the court are a powerful tool to ensure families get needed services.²⁴ Argue that the court refuse to order evaluations that are not needed or services which are not evidence-based. This can save the state money that can be used on another case or for another needed service.
- **Learn the basics of funding appropriations for the state agency to educate the court about the state agency's budget.** Many states now have websites to inform citizens of the budget process.²⁵ Another avenue is making public disclosure requests for funding information. Either in conjunction or alternatively, you can also use the discovery process to demand depositions. This can include requesting managing agent depositions if you don't know who you need to depose but want to learn more about a specific issue, such as funding.

For example, what funding is restricted by the legislature for a specific purpose and what funding is discretionary? One difficulty in this approach may be that such investigations can result in a lot of financial information that may be specialized and difficult for you to digest.

However, some part of this approach may allow you to answer big questions like "Was the budget really cut in half?" For more nuanced issues, if you have access to expert funds, identifying a financial expert (such as a former supervisor of the child welfare agency) or an attorney with past experience in public disclosure requests may help get you up to

speed on how funding appropriations for the state agency work.

Road Map to Permanency and Reasonable Efforts

As suggested by Judge Leonard P. Edwards, trial counsel should "... treat each case as though it were an emergency"²⁶ and encourage the court and all other participants to have the same mindset. "It is difficult for participants in the juvenile court to remember that every case before the court is an emergency for the families involved. Children and families are in trauma as the result of social services and court intervention. The longer the process takes, the more extensive the trauma."²⁷

Often at initial meetings, parent clients will say, "I love my child. What can I do to get my child back?" Part of your job is to humanize the client for the court and case participants. Let them know your client was willing to make needed changes, but that such change is only possible if he or she receives the needed support to make those changes. At its heart, that is a reasonable efforts argument—a focus that needs to begin at the beginning of the case.

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Endnotes

¹ While this article focuses on steps parent's counsel can take to focus on reasonable efforts, other participants in child welfare cases may find that they can use these concepts as well.

² "State agency" refers to the governmental agency charged with managing child welfare cases based on my experience practicing in Washington State. Some states may have county agencies or more than one state agency that serve a similar role.

³ 42 U.S.C.A. 671(a)(15)(B)(i). For an in-depth critique of AACWA and ASFA Crossley, Will L., "Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation," *Boston University Public Interest Law Journal* 12, 2003, 259.

⁴ 42 U.S.C.A. 671(a)(15)(B)(ii).

⁵ 45 C.F.R. § 1356.21(b)(2).

⁶ 42 U.S.C.A. § 671 (a)(15)(A).

⁷ Administration for Children and Families, Child Welfare Policy Manual, Section 8.3C.4 Title IV-E. Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Reasonable Efforts. Available at: www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=59

⁸ 45 C.F.R. § 1356.21(b)(1).

⁹ Ibid.

¹⁰ 45 C.F.R. § 1356.21(b)(2).

¹¹ Ibid.

¹² 45 C.F.R. § 1356.21.

¹³ For a survey of state court reasoning trends in reasonable efforts cases, including cases looking at good faith on behalf of the state agency and on behalf of the parent, see: Bean, Kathleen S. "Reasonable Efforts: What State Courts Think." *University of Toledo Law Review* 36, 2005, 321.

¹⁴ Administration for Children and Families, Child Welfare Policy Manual, Section 8.3C.4 Title IV-E. Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Reasonable Efforts. Available at: www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=59.

¹⁵ 45 C.F.R. § 1355.25.

¹⁶ 42 U.S.C.A. § 629a.

¹⁷ 42 U.S.C.A. § 629b.

¹⁸ 42 U.S.C.A. § 629a.

¹⁹ RCW 13.34.025(d).

²⁰ Ibid.

²¹ See *Our Lady of Lourdes Hospital v. Franklin County*, 842 P.2d 956 (1993) and *Cunningham v. Community College Dist.* No.3, 489 P.2d 891 (1971).

²² *Hillis v. State Dep't of Ecology*, 932 P.2d 139 (1997).

²³ *Washington State Coalition for the Homeless et. al. v. Dep't of Social and Health Servs. et. al.*, 949 P.2d 1291 (1997).

²⁴ National Council of Juvenile and Family Court Judges. *Judicial Responsibility in a Budget Crisis Environment*, 2009. Available at www.ncjfcj.org/sites/default/files/policystatementbluefinal.pdf.

²⁵ See, e.g., Budget Division, Office of Financial Management, State of Washington, "Washington State Budget Process," June 2012.

²⁶ Edwards, Judge L.P. "Improving Juvenile Dependency Courts." *Juvenile and Family Court Journal* 48(4), November 1997, 1.

²⁷ Ibid. at 10. Internal endnote in quotation omitted.

Eight States Seek Child Welfare Waivers

The Department of Health and Human Services has posted the state applications for waivers of Title IV-E foster care funding. Eight states have applied for waivers. HHS has the authority to award up to 10 per year. All eight states requested a waiver of the Title IV-E eligibility requirements currently tied to the 1996 Aid to Families with Dependent Children standards.

All eight states would like to spend funds on service not allowed currently due to eligibility restrictions. States generally describe strategies that would use additional services to reduce the foster care population by reducing initial placements, shorten length of stays in care or support families outside of foster care.

Perhaps the boldest state request is Illinois' proposal to address the zero to three population of children in care with a goal to reduce length of stays and to reduce the number of reentries into foster care once a child has been reunified with his or her family.

Below are descriptions of the state proposals:

Arkansas focuses on three goals of preventing abuse and neglect and reentries into care, improving positive outcomes for families, and increasing permanency. They will implement evidenced-based screening practices of families, family team meetings, evidenced-based parenting programs and differential response. They will focus attention on better and increased recruitment of foster homes to reduce turnover, create better matches and placements of children in care, and strengthen family attachment.

To improve permanence they will use screening tools, better coordination between the foster and birth parents, evidenced-based parenting programs, permanency roundtables

and trauma-informed care. The waiver request is statewide with studies and outcome matching previous patterns to results from the waiver. They project neutrality based on what was previously spent compared to what the new approach will spend. They are seeking a waiver of the eligibility link between IV-E foster care and the AFDC program (de-link) and seeking IV-E funding to covered services not currently covered. The state is seeking a fixed allocation of funding.

Colorado would implement four practices that include the Colorado practice model, Permanency by Design, differential response, and trauma-informed systems of care. The Colorado practice model involves workforce development, including peer-to-peer mentoring, a collaborative management model across systems, and coordination between child welfare and mental health to implement systems of care for children in care. Permanency by Design will focus on older youth in care. The goal will be to reduce use of congregate and group care.

Differential response, now in five Colorado counties, would be expanded as part of the waiver. The final piece will be trauma-informed systems of care to better assess and address the needs of children and youth in care. This will involve better coordination of child welfare and behavioral health services based on evidence-based practices.

Like Arkansas, Colorado proposes to eliminate the AFDC eligibility link, and is asking to expand use of funds beyond foster care maintenance payments and the administrative costs. They are seeking a fixed allocation of funding. Evaluation will be based on comparisons between the first counties that implement the new practices and those counties that implement the practices later.

Illinois will focus on the zero-to-three population. The waiver will focus on children in the Cook County (Chicago) area. The state indicates that despite its progress in reducing placements and its success in reducing its removal rate, they are third highest in the length of stay in foster care and the third highest in the number of children who enter care between the age of zero through three. They highlight that 25 percent of the youth that age out of care had entered foster care before the age of five and that this infant population has a higher rate of re-entry into foster care.

They will use evidence-based interventions to identify children aged zero through three who enter foster care, with additional assessments for children exposed to trauma or loss. They will focus their initiative on intensive concurrent planning, parent training and support and therapeutic interventions where appropriate. They will test out the model in Cook County with comparisons to other non-waiver groups. They are requesting a waiver of IV-E AFDC eligibility and to more flexibly spend funding on services and therapies not currently covered.

Michigan seeks a waiver to extend funding to a collection of services that will target vulnerable families that have come to the attention of the child protective services system. They will focus efforts to try and prevent abuse and neglect and structure their prevention around secondary and tertiary prevention. Overall the state's goal is to prevent abuse and neglect, decrease entry into foster care, increase positive outcomes for families and improve child well-being. Each waiver family will be offered support services for 15 months.

The state will use a number of screening tools and assess and screen families for child trauma, domestic

violence, substance abuse and mental health needs. The target population will be those families with children under the age of five investigated by child protective services where there is evidence of abuse or neglect and the family is at high risk. The waiver will focus on Muskegon County in the west, Kalamazoo County in the south and Macomb County in the east. The state will evaluate its efforts by having control and experimental groups. The state is seeking a waiver of the IV-E AFDC eligibility and is seeking a waiver to allow funding to provide services not currently covered.

Pennsylvania will address the entire child welfare population but would limit the waiver to five counties in the state: Philadelphia, Allegheny, Dauphin, Lackawanna, and Venango. The state will use various evidence-based services and programs. The five counties may have services and approaches that are more targeted to that county's differences and challenges. The state hopes to see a 30 percent reduction in congregate placements and reduce the number of re-entries and total number of days spent in care.

They seek to increase measured positive outcomes in the areas of physical health, early learning, and academic skills. Some of the services to be used or expanded include family finding, Family Group Decision Making, group conferencing, team decision making, and family engagement. The state is requesting a waiver of Title IV-E AFDC eligibility link, and the ability to use funds for services in place of foster care placement costs. They are requesting a fixed allocation with adjusted increases over the course of the five-year demonstration.

Utah is seeking a waiver to increase the use of evidence-based child and family assessment tools, develop and implement caseworker training and tools, and increase community coordination and evidenced-based services. The state will phase-in services to the entire state over five years. In the first

year the state will focus on the Northern region of five regions. All children will be covered in the demonstration areas and the state may expand services to cover children and youth at risk of foster care placement through the juvenile justice system. They may also seek to expand services for post-reunification services.

Utah is seeking a waiver of the Title IV-E AFDC eligibility so the entire population can be covered and seeks to extend spending to services not currently covered. The state is requesting a capped annual allocation of funding. They will evaluate the waiver by comparing information and data before and after the waiver is implemented; examine outcome measures including data around child well being and foster care placements; and do a cost analysis with an evaluation of the increases in in-home services compared to out-of-home care costs.

Washington's waiver would expand its Family Assessment Response (FAR) program. FAR is a version of differential response/alternate response. They propose to focus their waiver on families coming to the attention of the child protective services (CPS) system except abuse and neglect cases involving physical or sexual abuse. The goals include permanence for children, positive outcomes, and child abuse and neglect prevention. FAR/DR attempts to create an alternate path for families that are reported for child abuse or neglect. Those families where the child is not endangered but the family needs basic services will not be substantiated for abuse and neglect and instead the worker will help the family address their needs.

As part of this effort the state will seek to expand its use of the family preservation model, Homebuilders. As a measure of success, the state will examine data on reducing referrals or re-referral for abuse and neglect, the number of placements and the number of removals. The state will also use a control and treatment group to assess the success of the waiver. Washington

seeks to waive the Title IV-E AFDC eligibility and expand the use of Title IV-E funds to services beyond just foster care maintenance payments. The state does not seek to waive the eligibility/requirements for youth in care over age 18.

Wisconsin is seeking a waiver to focus on reunification services. The state is asking for a waiver that would allow them to continue case management and services for families that have reunified. They will focus on the first 12 months post-reunification. The waiver will allow the state to screen those families that are being reunified and are at the greatest risk of failure.

As part of a package of services, they will focus on evidenced-based services such as Parent-child Interaction Therapy or Child-Parent Psychotherapy. As part of their plan, they will coordinate other reforms and services including health services planning to carry out various health screenings and services to address such challenges as the overuse of psychotropic medication.

The state is seeking a waiver to bypass the IV-E AFDC eligibility for the foster care population. They are also seeking a waiver to allow continued case management and services for 12 months after the child reunifies with the family. The state will start to implement the waiver by age group, starting first with the zero through five population. They will later expand to later age groups depending on the cost and ability to expand over the five-year period. They will evaluate by comparing those families that receive services and those that do not. They will also examine the re-occurrence of abuse and neglect, re-entries into care, placement stability, exposure to trauma, health outcomes and enrollment in Head Start and other education outcomes for K through 12.

Adapted with permission from Capitol View On Kids 1(19), August 20, 2012.

Understanding the Teen Brain When Judging Teens' Actions

Determining when a teenage brain becomes an adult brain is not an exact science but it's getting closer, according to an expert in adolescent developmental psychology, speaking at the American Psychological Association's 120th Annual Convention.

The Teen Brain

Important changes in adolescent brain anatomy and activity take place far later in development than previously thought, and those findings could impact how policymakers and the highest courts are treating teenagers, said Laurence Steinberg, PhD. "Explicit reference to the science of adolescent brain development is making its way into the national conversation," said Steinberg, a professor of psychology at Temple University.

He referred to the recent Supreme Court ruling in *Miller v. Alabama*, which cited APA's amicus brief explaining the current research. The ruling found that even in cases involving homicide, statutes that provide for mandatory life without parole for juveniles are unconstitutional. APA also filed amicus briefs in two prior Supreme Court cases in which the court ruled that the death penalty and life without parole in non-homicide cases are never constitutional where juveniles are involved.

"The Supreme Court decision that eliminated mandatory life without parole sentences for juveniles in homicide cases was certainly a step in the right direction but might have gone further as it is still possible for an adolescent to receive a sentence of life without parole, even though it isn't mandatory," Steinberg said.

Appreciating Teen Development

Many adolescents do not have the same control over their actions as mature adults and should be treated

differently, according to Steinberg. Specific structural changes occur in the brain during adolescence, as do tremendous changes in how the brain works, he said. For example, from adolescence into early adulthood, there is a strengthening of activity in brain systems involving self-regulation, and functional MRIs have shown that reward centers in the adolescent brain are activated more than in children or adults, he said.

"Heightened sensitivity to anticipated rewards motivates adolescents

Important changes in adolescent brain anatomy and activity take place far later in development than previously thought, and those findings could impact how policymakers and the highest courts are treating teenagers. . .

to engage in risky acts, such as unprotected sex, fast driving or drugs when the potential for pleasure is high. This hypersensitivity to reward is particularly pronounced when they're with their friends," he said.

Legal and Policy Considerations

Policymakers face the question of when teenagers are responsible for their actions or can make reasoned decisions, such as in medical situations. There is no simple answer because it is possible that an adolescent may be mature enough for some but not all decisions, according to Steinberg. The circumstances under which a 16 year old makes medical decisions or commits crimes are very different and place different demands on their brains and abilities, he said. Brain systems

implicated in basic cognitive processes reach adult levels of maturity by mid-adolescence, whereas those that are active in self-regulation do not fully mature until late adolescence or even early adulthood, he noted.

"In other words, adolescents mature intellectually before they mature socially or emotionally, a fact that helps explain why teenagers who are so smart in some respects sometimes do surprisingly dumb things," he said. "From a neuroscientific standpoint, it therefore makes perfect sense to have a lower age for autonomous medical decision making than for eligibility for capital punishment, because certain brain systems mature earlier than others."

How the research should be interpreted and applied by policymakers and the courts is an issue behavioral researchers and scientists are considering as their discipline becomes more prominently featured in top legal and policy arguments, Steinberg added.

"Some will use this evidence to argue in favor of restricting adolescents' rights, and others will use it to advocate for policies that protect adolescents from harm," he said. "In either case, scientists should welcome the opportunity to inform policy and legal discussions with the best available empirical evidence."

Source: These highlights were drawn from the presentation: "Should the Science of Adolescent Brain Development Influence Public Policy?" by Laurence Steinberg, PhD, at the American Psychological Association's Annual Convention, Friday, Aug. 3, 2012.

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Race Affects Perceptions about Sentencing and Culpability of Juvenile Offenders

Black juvenile offenders are viewed as more like adult offenders in their culpability than White juvenile offenders, according to a new study. The study also found Black juveniles face harsher sentencing because of this perception. The study results show how protections differ for juveniles in the criminal justice system when race is a factor. It also questions whether all juveniles receive the same basic protections that the juvenile justice system aims to provide.

The Study

Researchers from Stanford University looked at whether race influences the degree to which juveniles are viewed as less culpable than adults and influences punitive responses. They studied whether White Americans would perceive juvenile status as a mitigating factor to the same degree for Black versus White juvenile offenders. They hypothesized that priming study participants with information about whether juvenile offenders were Black versus White would affect their perceptions.

A nationally representative sample of 735 White Americans were included in the study; 347 were males and 388 were females. The mean age of participants was 50.5. Of the original sample, 658 participants were selected to participate in an online study.

Participants were provided factual information about the recent Supreme Court cases, *Miller v. Alabama* and *Jackson v. Hobbs*, which considered the constitutionality of life without parole for juvenile offenders. Participants read a case scenario, drawn from one of the two Supreme Court cases, about a 14-year-old male with 17 prior juvenile convictions who was sentenced to life in prison without parole for brutally raping an elderly woman. The researchers created two study conditions; in one the juvenile

was Black, in the other he was White. For both groups, the researchers assessed the level of participants' support for sentencing options, and their perceptions of the juveniles' culpability.

Participants were asked to complete two scales gauging their feelings toward Black versus White offenders; they were asked to rate both White and Black Americans on a scale of 0 (very cold or unfavorable) to 100 (very warm or favorable). They also measured political party affiliation: strong republican (1), strong democrat (7), and political ideology: extremely liberal (1), extremely conservative (7). A final question probed their memory of the defendant's race; those participants who did not accurately recall the race were excluded.

Results

Associating a crime with a Black juvenile, versus White, affects perceptions of juveniles' culpability relative to adults. Those participants who received information about the case involving a Black offender expressed far greater support for life without parole sentences for juvenile offenders in nonhomicide cases than those whose sample cases involved White offenders. Associating the crime with Black juveniles also caused participants to view the juvenile offenders as more blameworthy than White offenders.

Race affects support for life without parole sentences and juvenile's blameworthiness relative to adults. Participants whose cases involved a Black juvenile offender showed greater support for life without parole sentences. They also viewed juveniles' and adults' culpability as much more alike participants whose cases involved White juvenile offenders.

Feelings of warmth towards Blacks influenced views toward sentencing and culpability. Participants

in both the Black and White sample conditions rated themselves as feeling more warmly towards White than Black Americans. The researchers found that how warmly participants felt toward Black Americans correlated with their views about sentencing and culpability. Those with less positive feelings towards Black Americans tended to support life without parole sentences and viewed juveniles' culpability as similar to adults.' This did not carry over to the White control group, however, as warmth toward White Americans did not influence views about sentencing or culpability.

Political attitudes did not strongly affect participants' views. The researchers found the role of race in participants' views towards Black juvenile offenders functioned above and beyond any effects that political ideology and warmth toward Black Americans had. Further, the role of race in perceptions of juveniles' sentencing and blameworthiness was the same for liberal and more conservative participants.

Significance

The study shows that race can affect the protections given to juveniles who commit crimes. It suggests that race may result in unfair outcomes and policies for Black juveniles in the juvenile justice system. The researchers note that the legal protections associated with juvenile status may be more fragile than many think; while we tend to think of juveniles as a protected class deserving of special protections, that distinction may be undermined in cases involving Black juvenile offenders.

Source: "Race and the Fragility of the Legal Distinction between Juveniles and Adults." PLoS ONE 7(5), 2012, <www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0036680>

National Responses to Psychotropic Medication Use by Children in Child Welfare

by Eva J. Klain

Are children in foster care being overmedicated? The question is receiving a lot of attention lately. Legal professionals should be aware of recent national efforts to ensure appropriate psychotropic medication use among children in the child welfare system.

- The federal Administration on Children and Families (ACF) has released two Information Memoranda on promoting social and emotional well-being among children in the child welfare system (www.acf.hhs.gov/programs/cb/laws_policies/policy/im/2012/im1204.pdf) and oversight of psychotropic medication use with children in foster care (www.acf.hhs.gov/programs/cb/laws_policies/policy/im/2012/im1203.pdf).
- The federal Department of Health and Human Services convened an interagency working group to address emerging research and help states implement new statutory requirements addressing oversight of psychotropic medication in their Child and Family Service Plans through training and technical assistance (http://gucchdtacenter.georgetown.edu/child_welfare.html).
- ACF convened a summit, *Because Minds Matter: Collaborating to Strengthen Management of Psychotropic Medications for Children and Youth in Foster Care* (www.childwelfare.gov/systemwide/mentalhealth/effectiveness/mindsmatter.pdf) in August 2012 to help states create and implement required oversight protocols.
- The Children's Bureau recently released "Making Healthy Choices: A Guide on Psychotropic Medications for Youth in Foster Care" (www.nrcyd.ou.edu/publication-db/documents/psychmed-youthguide.pdf) to help youth understand when they need help, weigh options for medication use, ask questions about their diagnosis and treatment, and take medication safely.

To inform these efforts, researchers with ACF's Office of Planning, Research and Evaluation have released a new research brief, *Psychotropic Medication Use By Children in Child Welfare*. The researchers examined data from the National Survey of Child and Adolescent Well-Being (NSCAW) to identify:

- rates of psychotropic medication use by age among children in various placement settings;
- rates of antipsychotic use by preschoolers, school-aged children, and adolescents in child welfare; and
- types of behavioral services received by children in child welfare.

The findings show that children in out-of-home settings have higher rates of psychotropic medication use than children in in-home settings, and both are higher than rates in the general population. Factors associated with medication use include being male, race/ethnicity, and prior placement in an inpatient mental health setting. Four markers of potentially inappropriate medication use revealed:

- 3.5% of children under age six were taking one or more psychotropic medication;
- 3.1% of all children were taking three or more medications;
- 4.3% of all children were taking one or more antipsychotics while 2-6% of children under age six, depending on their placement, were on antipsychotics; and

- 9.4 % of children living out of home and 1.8% of children living at home used psychotropic medication without receiving any other mental health services.

The findings support the need to address children's unmet mental health needs—more than half of children living in-home or informally with kin as well as a third of children in foster care met a clinical threshold for mental health needs. Yet many did not receive any behavioral health services, whether pharmaceutical or psychosocial. The researchers identified this underuse of mental health services to be just as important as the potential overuse of medications.

The findings suggest that entering foster care is a gateway for children to access specialty mental health services from various settings. Once in care, their needs should be brought to the attention of the many professionals and individuals engaged in their lives, including caregivers, teachers and school staff, primary care providers, social workers, lawyers, and court system staff. Coordinating care for this vulnerable population and encouraging collaboration among the many professionals and agencies involved is essential to ensure these children receive appropriate and effective treatments to address their mental health needs.

Eva J. Klain, JD, directs the health projects at the ABA Center on Children and the Law.

Source: Stambaugh, L.F. et al. *Psychotropic Medication Use by Children in Child Welfare*. OPRE Report #2012-33, Washington, DC: Office of Planning, Research and Evaluation, ACF, U.S. DHHS, 2012. <www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/reports/psychotropic-meds/NSCAW-Psychotropic-Meds-Brief-No-17.pdf>

ABA Approves Three Policies Related to Children and Youth

by Howard Davidson

At the Annual Meeting of the American Bar Association's House of Delegates, on August 6-7, 2012, the ABA approved new policies related to three topics: extending criminal statutes of limitations in cases of child sexual abuse; improving identification of and responses to individuals with fetal alcohol spectrum disorders; and supporting enrollment in and successful completion of postsecondary education by youth who are or have been in foster care.

Child Sexual Abuse Criminal Statutes of Limitations

With media reporting on incidents of child abuse by adults committed many years earlier, there is renewed public policy attention to Statutes of Limitations (SOLs), state laws that prevent prosecutions and convictions where judicial proceedings are not brought timely.

The ABA Criminal Justice Section sponsored this approved resolution urging governments at all levels to review their criminal SOLs to determine whether special factors warrant extending them with child sex abuse crimes. The resolution states that this re-examination should occur despite several problems judicially pursuing long-ago offenses, such as faded memory and deterioration of evidence. It also urges examining special factors in this new legislative analysis, including victim age at time of offense, inability to report the offense, and the confusing abuse of trust that often inhibits such crimes from being disclosed.

The report accompanying the policy resolution discusses the unequal power between child victims and their adult perpetrators, special child victim vulnerabilities, and other factors inhibiting reporting of intrafamilial sex abuse. The report states that existing SOLs do not promote efficient justice

or fairness in these cases, and the public interest favors reforming these laws.

The report analyzes variations in state SOL reforms, and lists six states that permit prosecution of child sexual abuse at least 20 years after the victim's 18th birthday; 17 states have completely eliminated SOLs for sexual offenses against children. Although the new ABA policy does not take a position on how, or whether, SOLs should be eliminated or extended, it should help advocates hoping to prod changes in their state legislatures to better assure justice for child sexual abuse survivors.

Enhancing Knowledge of FASD and Its Impact on Children, Youth, and Adults

Fetal Alcohol Spectrum Disorders (FASD), a group of conditions that can occur in individuals whose mothers drank alcohol during pregnancy, can result in birth defects, growth and developmental deficits, cognitive and learning problems, executive functioning difficulties, and social/behavioral

problems in the legal and judicial response to those with FASD.

The resolution calls for better understanding of the impact of FASD on those in the child welfare, juvenile justice, and adult criminal justice systems. It calls for enhancing legal and judicial collaborations with experts on FASD within the medical, mental health, and disability community. In addition, asking bar associations and law schools to train on this issue, the resolution urges new laws and policies that acknowledge and treat the effects of prenatal alcohol exposure and assist children and adults living with FASD.

The report accompanying the resolution calls for increased access to FASD expert screening and assessment, special attention to the overabundance of FASD-affected people in the foster care system, delinquency cases, adult criminal proceedings, and correctional facilities. It encourages considering FASD in mitigation of sentencing and in alternatives to incarceration and execution. Overall, it "provides a road map, for legal professionals, lawmakers, and those in government who deal

One study of juvenile court-involved youth found that over 23% had an FASD diagnosis.

impediments. It affects from 2-5% of younger school children, with as many as 70% of foster children affected by prenatal alcohol exposure.

One study of juvenile court-involved youth found that over 23% had an FASD diagnosis. Because lawyers and judges are largely unaware of this disability and its impact, the ABA Commission on Youth at Risk, following its February 2012 half-day CLE program on FASD at the ABA's last Midyear Meeting, sponsored this policy resolution to promote improve-

with youth at risk, to increase awareness of FASD."

The ABA Center on Children and the Law has a special section of its web site with materials and links related to FASD legal issues, at: www.americanbar.org/groups/child_law/what_we_do/projects/child_and_adolescent_health/fasd.html

Supporting Post-Secondary Education by Youth In, and Who Have Exited, Foster Care

For many years, the ABA Center on

Children and the Law, through its Legal Center for Foster Care and Education, has led in educational policy reform related to children in the foster care system. That work has largely focused on elementary and

those in child welfare and education agencies, and legislators to support enrollment in and successful completion of higher education for these youth.

The ABA Commission on Youth at Risk sponsored this resolution with

- providing pre-college internship opportunities, as well as higher education and job fairs;
- offering foster youth-specific programs that will assist in filling out financial aid forms;
- offering year round on-campus housing;
- creating special tuition waiver/scholarship opportunities;
- assuring education programs are tailored to youths' needs, including those with disabilities; and
- helping these youth attain financial security while protecting them from predatory loan practices.

Finally, the report calls for improving data collection that tracks current and former foster youth success overall in higher education.

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

... since federal law provides financial assistance to states that keep youth in foster care through to age 21, aiding these youth in post high school college or vocational education has risen in importance.

secondary schools, and in particular on implementing federal requirements related to school stability when a child is removed from home due to abuse or neglect.

Now, since federal law provides financial assistance to states that keep youth in foster care through to age 21, aiding these youth in post high school college or vocational education has risen in importance. Because only an estimated 3-11% of foster youth graduate with a bachelor's degree, the resolution asks lawyers and judges,

the hope that new policies across the country will focus not only on two and four-year college degrees for these youth, but also the value of vocational training and other higher education programs for them. The report accompanying the resolution identifies several areas of focus:

- preparing foster youth while still in high school, or earlier, for college through special college immersion experience programs;

Save the Dates:

July 10-11, 2013: 3rd National Parent Attorney Conference

July 12-13, 2013: 15th National Conference on Children and the Law

www.americanbar.org/groups/child_law/conference2013.html



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