Limiting Psychotropic Medication and Improving Mental Health Treatment for Children in Custody
by Linda Britton

Almost every week, a newspaper in some part of this country tells us about the upsurge in the number of children and youth who are prescribed psychotropic medications—those substances that act upon the brain to chemically alter mood, cognition and behavior. This increase is reported in the general population and in greater numbers among children and youth who are poor. The highest percentage of use is in children and youth who are in foster care, in residential group homes and treatment centers, and in juvenile detention facilities.

The Issues

Psychotropic medications are overprescribed for court-involved children.
Lawyers who represent children in the child welfare and/or juvenile justice systems should know that large numbers of children, often in the 30 percent range, are prescribed one or more of these medications without any of the procedures parents would insist upon for their children, and with minimal oversight by those charged with the duty to act in the best interest of the child.

Overuse of psychotropic medications in children creates health risks.
The psychotropic medications that are prescribed have not been tested in children and youth and so are often administered for “off-label” use, in amounts that exceed recommended dosages, and often in combination with other psychotropic medications, as a first resort instead of a last resort. Short-term side effects of these medications are many: increased heart rate and blood pressure, weight gain, sleepiness, sedation, tremor, anxiety, dizziness, confusion and changes in behavior, and seizures are just a few of the reported adverse effects. Long-term effects from these medications are completely unknown.

Children and youth repeatedly complain that psychotropic medications make them “feel like zombies”, unable to function in school and uninterested in outside activities. For example:

- Eleven-year-old Ke’onte from Texas indicated that he was on at least 12 different psychotropic medications while in foster care, up to four of them at the same time. The medications made him irritable and exhausted, caused a loss of appetite, and put him “in a lights-out mode fifteen minutes” after he had taken them.
- Fourteen-year-old Westley stated that he was prescribed five psychotropic medications. He would resist the pills because he did not like the way they made him feel.
- Mark, a former foster child from California, was also prescribed multiple psychotropic medications. He stated that he felt too “zoned out” to focus on high

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Juvenile homicide defendant filed motion to vacate life sentence and sought resentencing in light of the U.S. Supreme Court’s decision in Miller v. Alabama. The U.S. District Court resentedenced defendant to 600 months in prison and defendant appealed. The Eight Circuit Court of Appeals found the defendant’s sentence did not fall within Miller’s categorical ban on mandatory life-without-parole sentences for juvenile offenders and was not substantively unreasonable.

Defendant Jefferson joined a gang at age 16 and began participating in violent criminal activity. At age 22, after a lengthy trial, a federal jury convicted Jefferson of conspiracy to distribute cocaine and crack cocaine, drug trafficking, the firebombing murder of five young children when he was 16, and the drive-by shooting of a drug debtor and an innocent bystander when he was 17. Under the then-mandatory sentencing guidelines, the district court sentenced Jefferson to life in prison, which was upheld on appeal.

The Supreme Court in Miller v. Alabama, 132 S. Ct. 2455 (2012), later held “that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” As a result, Jefferson filed a petition urging that he be resentenced. His request was granted consistent with the principle that children were constitutionally different from adults for purposes of sentencing.

Jefferson showed he was amendable to rehabilitation as shown by his continuing education, work history, and positive disciplinary record while serving six years of a 600-month sentence.

The Circuit Court’s review found Miller did not hold the Eighth Amendment categorically prohibits imposing a sentence of life without parole on a juvenile offender. Instead, Miller found the mandatory penalty schemes at issue prevented the sentencing judge or jury from taking into account “the distinctive attributes of youth” that may diminish justifications for imposing the harshest sentences on juveniles, even when they commit horrible crimes. Miller reasoned that a judge or jury must have an opportunity to consider mitigating circumstances before imposing life without the possibility of parole on juveniles.

The Circuit Court found Jefferson’s 600-month sentence did not fall within Miller’s categorical ban on mandatory life-without-parole sentences. He was resentenced under now-advisory federal guidelines after a careful and thorough hearing that applied the principle that children were constitutionally different from adults for purposes of sentencing.

Alternatively, Jefferson also argued his 600-month sentence was substantively unreasonable. He argued the district court failed to properly consider evidence of his postconviction rehabilitation and failed to avoid unwarranted sentencing disparity because the juvenile who participated with him in the fire-bombing murders received a 60-month sentence.

Jefferson showed he was amenable to rehabilitation as shown by his continuing education, work history, and positive disciplinary record while serving six years of a 600-month sentence.

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and accordingly, should not be construed as representing the policy of the American Bar Association.
imprisoned. However, the district court properly weighed the extreme severity of his crimes, including the deaths of five young children. The court also properly considered that Jefferson had not accepted full responsibility for his actions.

Furthermore, the disparity between defendant’s 600-month sentence and the 60-month sentence for the juvenile who participated in the firebombing murders was not an abuse of discretion. The disparity was based on legitimate distinctions. The other juvenile was 13 years old at the time of the murders and pleaded to aggravated assault because he was too young to be tried as an adult.

Interstate Compact on Placement of Children Does Not Apply to Out-of-State Placement with Parent

In a matter of first impression, the Kansas Court of Appeals ruled the Interstate Compact on Placement of Children (ICPC) applies only to out-of-state placements of children in foster care or preliminary to a possible adoption, not to out-of-state placements with a parent. The trial court did not abuse its discretion when it released the child from the child welfare agency’s custody and placed her with her mother in Wisconsin.

S.R.C.-Q. was born in Wisconsin in 2012, where she and her mother lived with her maternal grandmother. Two years later, father’s paternity was confirmed through testing as part of a paternity case in Kansas. The mother and daughter traveled to Kansas multiple times to spend time with father and eventually relocated to reside with him.

Shortly after, father filed a petition for protection from abuse, alleging that mother hit him in the head with a

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SUPREME COURT NEWS

U.S. Supreme Court Rules Alabama Must Grant Full Faith and Credit to Georgia Decree

Allowing Adoption of Mother’s Biological Children by Same-Sex Partner
V. L. v. E. L., 2016 WL 854160 (S. Ct.).

In case addressing validity of adoption decree allowing mother’s same-sex partner to adopt mother’s biological children, the United States Supreme Court found that Georgia court had subject-matter jurisdiction to hear and decide the adoption petition, triggering Alabama courts’ full faith and credit obligation.

However, a state is not required to afford full faith and credit to a judgment if the rendering court did not have jurisdiction over the subject matter or the relevant parties. The court may make a limited inquiry into the jurisdictional basis of the other court’s decree; however, if the judgment on its face appears to be from a court of general jurisdiction, such jurisdiction over the cause and the parties is presumed unless disproved by extrinsic evidence or by the record itself.

In this case, the Georgia superior court had subject-matter jurisdiction to hear and decide the adoption petition, and the Alabama courts therefore had a full faith and credit obligation to honor the decree. Georgia statutes provide for the state’s superior courts to have exclusive jurisdiction in all matters of adoption, and there was nothing to rebut the resulting presumption that the superior court had jurisdiction.

The Georgia statute permitting third-party adoption of a child who has a living parent or guardian only if each such living parent or guardian voluntarily surrenders his or her rights to such child in writing was not jurisdictional, and no state court had interpreted it as jurisdictional. When deciding whether certain words in a statute are directed to jurisdiction or to merits, the Court noted that courts should be cautious in interpreting ambiguous words in a way that leaves judgments open to dispute.

Under Georgia law, the superior courts have exclusive jurisdiction in all matters of adoption. That statutory provision on its face gave the Georgia court subject-matter jurisdiction to hear and decide the adoption petition, which it resolved by entering a final judgment that made V. L. the legal adoptive parent of the children. Whatever the merits of that judgment, it was within the statutory grant of jurisdiction over all adoption matters and the Georgia court thus had the necessary adjudicatory authority to entitle its judgment to full faith and credit.

The Georgia judgment appears on its face to have been issued by a court with jurisdiction, and there is no established Georgia law to the contrary. The Alabama Supreme Court therefore erred in refusing to grant that judgment full faith and credit.
State Cases

Arizona

TERMINATION OF PARENTAL RIGHTS, INCARCERATION
Court addressing incarceration ground for termination of parental rights must consider designated length of sentence and may consider possibility of early release, but is not required to presume early release. Father’s two-and-one-half-year prison sentence would deprive two-year-old child of normal home, and caseworker testified about difficulty of nurturing relationship between young child and incarcerated parent. Mother’s rights had already been terminated, so mother could not parent child during father’s incarceration.

Arkansas

TERMINATION OF PARENTAL RIGHTS, PUTATIVE FATHERS
Emergency removal of twin son and daughter from mother was based on reports mother was mentally unstable. Trial court could not order termination of father’s parental rights, even though DNA test established paternity, because his three-hour-long visits with child did not sufficiently establish significant contacts such that his parental rights attached. Case was remanded for further proceedings to determine status of father’s parental rights.

California

Patricia W. v. Superior Court, 2016 WL 337220 (Cal. Ct. App.).
DEPENDENCY, REUNIFICATION SERVICES
When parent has mental illness or developmental disability, the condition must be starting point for family reunification plan, which should be tailored to accommodate parent’s unique needs. Child welfare agency could not cease reunification services and change permanency plan to adoption when there was no showing that agency identified mother’s mental health issues or provided services designed to enable mother to obtain appropriate medication and treatment. Evidence did not support finding that mother was provided adequate reunification services.

Florida

Dep’t of Children & Fam. v. Statewide Guardian ad Litem Prog., 2016 WL 869317 ( Fla. Dist. Ct. App.).
ADOPTION, PLACEMENT
Trial court improperly exceeded its jurisdiction by limiting child welfare agency’s consideration of prospective adoptive homes for sibling group of five minor children to particular family. Court could have compelled agency to quickly select adoptive family, but court lacked authority to make, in effect, selection of adoptive home.

Louisiana

TERMINATION OF PARENTAL RIGHTS, TIME IN CARE
Child welfare agency had authority to file petition to terminate mother’s parental rights to child who had been in care for 22 months. Statute required agency to file for termination if child had been in custody for 17 of last 22 months, unless compelling reason showed filing was not in best interest of child. Mother pled guilty to felony cruelty to juveniles, based on her failure to seek medical attention, which resulted in child’s pain or suffering. Court appointed special advocate (CASA) also supported terminating mother’s rights.

Massachusetts

ABUSE, BODILY INJURY
After joint jury-waived trial, defendant mother was convicted of wantonly or recklessly permitting another to commit assault and battery upon baby causing bodily injury, for which defendant boyfriend was convicted. Mother continued to allow boyfriend to care for infant knowing he had repeatedly and forcibly mishandled infant. He pushed one-month-old child’s knees into chest with such force she defecated, infant’s fractures were in various stages of healing, and mother’s statement that technique might have broken infant’s ribs was proof she knew maneuver exposed infant to bodily injury.

TERMINATION OF PARENTAL RIGHTS, EVIDENCE
Evidence supported terminating mother’s parental rights to two children three years of age or younger who had been out of her physical custody for 12 consecutive months. Mother never accepted responsibility for actions in death of younger child or assumed responsibility for removal of other children. She began relationship with individual with history of child abuse, refused entry for unscheduled visits to her apartment, and provided little or no financial assistance to children.

Kentucky

DEPENDENCY, IN-HOME SERVICES
Trial court’s finding that child was dependent, after conducting hearing and determining child was not neglected, was not error. Nothing in statute prohibited court from finding dependency as long as statutory requirements were met. Trial court’s refusal to order services for mother and child as less restrictive alternative to removal from home did not constitute error. Mother participated inconsistently in case plan, and caseworkers testified about mother’s parenting difficulties.
RIGHTS, VISITATION

Mother of six children, father of four, and father of other two children submitted written stipulations acknowledging unfitness and agreeing to decree terminating parental rights. When factual basis for termination is not contested, deferring entry of termination decree until completion of “best interests” hearing on issues such as adoption and visitation permits proceedings to be expedited, while preserving parent’s right to participate in hearing, and maintaining parent’s standing to challenge resulting adoption, visitation, or similar order on appeal.

Montana

In re E.O., 2016 WL 901863 (Mont.). TERMINATION OF PARENTAL RIGHTS, INDIAN CHILD WELFARE ACT

In termination of mother’s parental rights to two Indian children, trial court correctly assessed child welfare agency’s active efforts to keep family together. Active efforts standard was required by federal Indian Child Welfare Act, and courts had never combined federal active efforts and state reasonable efforts standards. Agency made concerted effort to encourage and facilitate mother’s need for trauma and addiction treatment and provided active monitoring and assistance until mother moved out of state. Agency’s efforts were timely, affirmative, and continued over two years.

New Jersey


In neglect proceeding against mother, trial court correctly found mother’s conduct was grossly negligent. Child was born with signs of physical distress caused by withdrawal from opioid addiction. Mother willfully withheld timely disclosure of information about medication she took during her pregnancy, and timely disclosure could have prevented three days of child’s suffering from withdrawal symptoms.

New York

In re Dyllyn, 2016 WL 634798 (N.Y. App. Div.). DEPENDENCY, NEGLECT

Determination of neglect of stepson by stepfather was supported by record. Grandmother’s statement that stepfather had pinned stepson on floor and put his arm around stepson’s neck, grandfather’s statement that stepfather was particularly abusive towards stepson and hit him on mouth or threw him to floor when he tried to talk, and grandfather’s statement about particular incident in which stepfather pinned stepson against wall and hit him showed imminent danger of harm or impairment sufficient to establish that stepson was neglected child.

In re Leslie J.D., 2016 WL 619012 (N.Y. App. Div.). DEPENDENCY, SPECIAL IMMIGRANT JUVENILE STATUS

Petitioner sought to be appointed guardian of child and moved to obtain order declaring child dependent, with specific findings that she was unmarried and under 21 years of age, reunification with one or both parents was not viable due to abandonment, and it would not be in her best interests to be returned to Belize, her previous country of nationality and last habitual residence, which would enable child to petition for special immigrant juvenile status (SIJS). The appellate court found that child was not abandoned by one or both of parents and thus did not qualify for SIJS, although guardianship petition was granted.

North Dakota

In re K.J.C., 2016 WL 1031759 (N.D.). TERMINATION OF PARENTAL RIGHTS, ABANDONMENT

Trial court correctly found that father abandoned child in terminating his parental rights without his consent and granting petition for stepparent adoption. Although mother may have refused to cooperate with father’s attempts at maintaining relationship with child, father did not continue to attempt to maintain relationship and did not provide financial support. Trial court’s error in stating that no person claiming to be child’s natural father appeared at termination hearing did not require reversal because decision was not based on that statement.

Oregon

In re M.L., 2016 WL 852885 (Ore.). DEPENDENCY, REPRESENTATION

Father appealed change of permanent plans for one child from reunification to guardianship and for another child from reunification to another planned permanent living arrangement (APPLA). Father could raise claim of inadequate assistance of counsel for the first time on appeal. When counsel has been appointed in permanency proceeding and change of plan is ordered, counsel must be adequate, with adequacy determined using standard of fundamental fairness.

Pennsylvania


Trial court’s denial of defendant’s motion in limine, precluding admission of complainant’s false sexual assault allegations, based on erroneous belief that such evidence was precluded by rape shield law, was reversible error. Prosecution of defendant, complainant’s adoptive mother, for endangering welfare of children was premised on her failure to act on complainant’s report of alleged sexual assault by her adoptive father. False sexual assault allegations were relevant to proving requisite intent, and by denying defendant’s motion before trial, decision to exclude evidence inherently affected defendant’s overall theory of defense and trial strategy, including her decision whether to testify.

Texas

In re R.D., 2016 WL 551906 (Tex. App.). DELINQUENCY, INTENT

Evidence in juvenile delinquency proceeding was sufficient to support finding that juvenile committed offense of exhibition of firearm on school property by threat. Juvenile intended to alarm campus police officer when he repeatedly stated he was going to “kill” and “shoot” him. Education code’s exhibition-of-firearms statute is similar to terrorist threat statute in that both require there be threat and intent to place another in disturbed state of mind.

Federal Cases

6th Circuit


In complex case involving multiple defendants, prosecution filed motions in limine to address rulings made at prior related trial. Appellate court found provision in statute criminalizing participation in “venture” required actual participation in venture involving sex trafficking. Prosecution may introduce evidence that defendants associated for purpose of furthering sex trafficking, but evidence they were in car together during unrelated traffic stops, or dined together, was irrelevant and properly excluded.
school and was so groggy that he was cut from his varsity basketball team.

Yolanda, a former foster child who was also involved in the California juvenile justice system, indicated that doctors prescribed her a series of powerful psychotropic medications to numb her pain from being physically and sexually abused and control her outbursts. She was “so medicated with psychotropic medications that she literally lost her ability to speak.”

Psychotropic medications mask children’s symptoms and offer a quick fix.
The reasons for the high level of psychotropic medication use among children in foster care or juvenile justice facilities lie in the trauma, neglect and abuse that they have suffered. State agencies and court systems avoid investing psychosocial treatments and therapies to treat children and youth. Instead they look to psychotropic medication as a quick solution to the emotional and behavioral disorders these children have and that make them difficult to place in foster care, residential group homes, or juvenile facilities. In many cases, these drugs are prescribed without a full medical history, a full evaluation and diagnosis, informed consent, monitoring and periodic reviews, and or treatment alternatives before or during the use of these meds. In other words, medical protocols and procedures that protect the rights of patients are absent.

Best Practice
Attorneys and judges working with children and youth in the child welfare and juvenile justice systems can take the following steps to address the issues relating to psychotropic medication use among the children they serve.

Leverage national practice guidelines and policy resolutions.
Several national organizations, including most recently the American Bar Association, have issued practice guidelines or policy resolutions to improve oversight and procedures in cases where children are prescribed psychotropic medication. These are useful resources for child advocates and can add weight to arguments raising concerns about psychotropic medication use in children.

The American Academy of Child and Adolescent Psychiatrists has issued best practice guidelines to improve the administration and oversight of psychotropic medication.2 Those guidelines include these recommendations:

■ No psychotropic medication should be prescribed without informed consent by the child, his/her parent, guardian and/or licensed caretaker. States should identify the parties in each case that are empowered to consent for treatment for youth who are under 14 years of age, and youth 14 years and older should provide informed consent on behalf of themselves.

■ No psychotropic medication should be prescribed without appropriate administration, oversight and regulation. Short and long term monitoring plans are essential to assess developments or increases in suicidal ideation, initial side effect and potential changes over time.

■ No psychotropic medication should be prescribed to a child in dosages that exceed recommended use, for off-label use or concomitant use, without secondary review.

■ Use of alternative therapies must precede or accompany use of psychotropic medications in children and youth in custody.

Resources
ABA Policy:
Psychotropic Medication Oversight of Children in State Custody

Related Resources:
AACP Position Statement on Oversight of Psychotropic Medication Use for Children in State Custody
https://www.aacap.org/App_Themes/AACAP/docs/clinical_practice_center/systems_of_care/FosterCare_BestPrinciples_FINAL.pdf

NCJFCJ Resolution Regarding Judicial Oversight of Psychotropic Medications for Children Under Court Jurisdiction
www.ncjfcj.org/sites/default/files/Fnl_PsychMedsResolution_071313.pdf

ABA Practice & Policy Brief: Psychotropic Medication and Children in Foster Care: Tips for Advocates and Judges
www.americanbar.org/content/dam/aba/administrative/child_law/PsychMed.authcheckdam.pdf

Training and Technical Assistance:
For information on training regarding the legal aspects of psychotropic medication use with children in state custody, contact:
■ Linda Britton, director, ABA Commission on Youth at Risk, linda.britton@americanbar.org
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(Cont’d from front page.)
The National Council of Juvenile and Family Court Judges passed a resolution in July, 2013, urging courts to improve supervision and oversight of medical and mental health issues, including the use of psychotropic medication, of children and youth under their jurisdiction.3

The American Bar Association, in February, 2016, approved a lengthy resolution on the overuse of psychotropic medication among children in state custody. The resolution was sponsored by the ABA Commission on Youth at Risk and five other ABA entities, and calls for these actions:

1. That all child welfare and juvenile justice agencies provide adequate resources to assess and treat emotional and behavioral disorders of children in their custody that include psychosocial and clinical interventions, recreational opportunities and supportive services that can reduce the need to prescribe psychotropic drugs;

2. That every child welfare and juvenile justice agency develop a comprehensive policy, in accordance with best practice guidelines from medical, mental health and disability experts and professional organizations to allow only medically appropriate use of psychotropic medications, and to ensure that these medications are not used solely to control behavior;

3. That every court in these systems develop oversight protocols administered by medical personnel to ensure that all policies are successfully implemented and continue, if needed, when a children transitions to another placement or out of the foster care or juvenile justice system;

4. That all lawyers and judges working in these systems become fully educated about the rights of children who are in state custody, including legal issues related to the use of psychotropic medication; and

5. That states report de-identified data to appropriate federal agencies on the ongoing use of psychotropic medication for children in foster care and in the juvenile justice system so that progress on this issue can be demonstrated.

Advocate for alternative treatments and supports.
Improved mental health for children and youth who are in foster care or in juvenile justice facilities, including residential care, group homes, residential treatment or secure detention, relies upon much more than decreased use of psychotropic medications.

. . . overuse of psychotropic medication among children and youth in state custody demands that lawyers for children and the courts ask questions . . .

States must provide adequate resources so that care is trauma-informed. Also key are timely assessments and treatments for emotional and behavioral disorders of children and youth in custody, including psychosocial and clinical interventions, recreational opportunities and supportive services that can reduce the need for prescribing psychotropic drugs.

Advocate for strengthened administration and oversight protocols.
In addition, states and administrative agencies that oversee child welfare cases and juvenile justice systems, must develop comprehensive policies to protect children in state custody from over-medication. Juvenile and dependency courts should implement administration and oversight protocols to manage and regulate psychotropic medication use among children in foster care and youth involved in the juvenile justice system.

Seek training and education.
Attorneys and judges need to be better educated and assist in providing training to each other and to other stakeholders about the use of psychotropic medication in children.6

Ask questions.
Attorneys and judges in the child welfare and juvenile justice systems have long accepted medications and the amount of medication for children and youth in their cases as normal, expected, and medically necessary. However, overuse of psychotropic medication among children and youth in state custody demands that lawyers for children and the courts ask questions—about the child’s diagnosis, recommended treatment and alternatives, and the qualifications of the medical professionals prescribing and administering psychotropic medication.

Lawyers for children and youth, as well as the courts that have jurisdiction over the cases, should ask, at a minimum:

- Why is this prescribed?
- Why is this amount necessary?
- Where can I learn more about this medication and its side effects?
- What are the possible long term consequences of use of this medication?“
- Who has informed consent on this decision and has he/she given consent?
- What other treatments and therapies exist for this diagnosis?
- How will this medication be monitored?

Conclusion
State agencies can work to improve mental health resources for children in foster care and in juvenile justice facilities and agencies. Court professionals and attorneys can follow the recommendations in the AACAP, NCJFCJ and ABA resolutions and take other proactive steps. When the systems and advocates serving children and youth work to improve oversight of
psychotropic medication, foster children and youth in the juvenile justice system will have the best opportunity for appropriate and comprehensive mental health treatment.

Linda Britton, JD, directs the ABA Commission on Youth at Risk, which focuses on how the law and legal system can support America’s at-risk youth. For more information on the project, visit: www.americanbar.org/groups/youth_at_risk.html

1 This article summarizes the report written to support the ABA resolution on the overuse of psychotropic medication among children in state custody, at: http://www.americanbar.org/groups/youth_at_risk.html

2 The AACAP guidelines can be found at: https://www.aacap.org/App_Themes/AACAP/docs/clinical_practice_center/systems_of_care/FosterCare_BestPrinciples_FINAL.pdf

3 The NCJFCJ resolution is at: http://www.ncjfcj.org/sites/default/files/Fnl_PsychMedsResolution_071313.pdf

4 See, http://www.americanbar.org/groups/youth_at_risk.html

5 The Commission on Youth at Risk served as the lead entity for the resolution. The co-sponsoring entities were the Commission on Homelessness and Poverty, the Health Law Section and the Section on Science and Technology, and the supporting entities were the Commission on Disability Rights and the Criminal Justice Section.

6 See, http://www.americanbar.org/groups/youth_at_risk.html

knife, threatened to harm herself, and was otherwise dangerous to herself and to the child. The trial court entered a temporary order of protection and placed S.R.C.-Q. in the father’s custody. The court entered a final order of protection from abuse protecting father from mother and ordered temporary custody of S.R.C.-Q. to continue with father pending a final plan in the paternity case.

However, temporary emergency orders later placed S.R.C.-Q. in the child welfare agency’s custody. Mother entered a plea in her criminal case and was sentenced to unsupervised probation. She then moved back to Wisconsin to reside with S.R.C.-Q.’s maternal grandmother.

Mother challenged the district court’s jurisdiction over S.R.C.-Q. under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Through the relevant processes, Wisconsin released jurisdiction to Kansas to determine all matters. The district court then ordered an expedited placement decision from Wisconsin under the provisions of the Interstate Compact on the Placement of Children (ICPC). The ICPC establishes uniform legal and administrative procedures governing the interstate placement of children by nonparents.

The Kansas court adjudicated S.R.C.-Q. dependent and agency custody was continued, with the child placed with the paternal grandparents in Kansas. Mother and father each entered into service plans to address mental health, domestic violence, housing, employment, and parenting skills. Mother complied with the requirements of her service plan except for missing two weekly parenting classes. Father did not complete the batterer’s intervention program as ordered.

In light of Wisconsin’s failure to respond to the district court’s request for a placement decision pursuant to the ICPC, mother asked the Kansas court to determine whether the ICPC applied to the placement of S.R.C.-Q. in Wisconsin. The court determined the ICPC did not apply when a court sends a child to reside with a parent in another state. Despite receiving Wisconsin’s assessment of mother’s home denying placement of S.R.C.-Q. with mother and citing concerns about her cohabitating boyfriend, the court released the agency’s custody and placed the child with the mother, granting father visitation every two weeks for a two-week period. The court required each parent to continue ongoing treatment and dismissed the case. Father and S.R.C.-Q.’s guardian ad litem appealed.

The guardian ad litem and father argued that under the ICPC, an adverse home study of mother’s home by Wisconsin barred the district court from awarding custody of the child to mother. While the terms of the ICPC as enacted in Kansas explicitly apply to out-of-state placements of children with foster parents or as a precursor to adoption, it does not explicitly apply to out-of-state placements of children with a parent. A state regulation, however, explicitly extends application of the ICPC to out-of-state placements of children with parents when a parent is not making the placement.

The GAL and father argued that because the ICPC is to be construed liberally to achieve its purposes and its primary purpose is to protect children, the ICPC should be construed broadly to include placements with a parent. While no Kansas appellate court has decided whether the ICPC applies to out-of-state placements of children with natural parents, courts in other states are divided in their views.

The Kansas version of the ICPC does not state that it applies to placements with parents. Also, the language in the regulation cited by the GAL and father impermissibly enlarges the application of the ICPC to out-of-state placements with parents beyond the plain language of the statute.

In addition, the Kansas court did not abuse its discretion in not following Wisconsin’s recommendation because the report contained only an allegation of unknown origin with no accompanying investigation. Mother correctly asserted she successfully completed the requirements of her case plan. Thus, the trial court did not abuse its discretion in placing S.R.C.-Q. with her mother in Wisconsin.
Youth Engagement Projects focusing on court participation improve outcomes for youth in foster care. In most court contexts, the rules strongly favor firsthand information. Yet when a foster youth’s life is discussed, often youth are not heard from directly. New data show that youth want to come to court and courts are able to make better decisions when they do.

State Court Assessments
Several U.S. jurisdictions have studied these issues. Many efforts were supported by state Court Improvement Programs. Evaluations included surveys of youth, attorneys, judges, and social workers, as well as court observations. In many cases, data was collected where states were making efforts to ensure and improve youth engagement, including:
- trainings and workshops providing youth and professionals guidance on engaging youth
- changes to court policies or procedures
- tools for youth, attorneys, and others

The data show many foster youth want to participate in decisions about their lives. Judges learn more about the youth coming before them and report having a better understanding of what youth need and want and why. Responses from caseworkers, CASAs, and GALs/attorneys also reflect positive benefits of youth participation.

The following themes and findings emerged from reviews of seven assessments completed in New Jersey, Washington, Delaware, Vermont, Kansas, and Colorado. (See sidebar for assessment details.)

Decision making improves when youth are in court.
New Jersey
- 33% of adults (judges, attorneys, caseworkers) said youth contributed new information to the court

Washington
- 40% of judges said the interviews with youth were quite useful;
- 25% said very useful; and
- 35% said a little useful

Kansas
- 81% of judges said youth presence impacted decisions
- 51% said they find out more information from the young person
- 54% said it helped them make decisions
- 64% observed things about the youth not reflected in records
- Youth believe the judges know enough to make fair decisions

Vermont
- 82% of youth think better decisions are made if they are there

Youth want to come to court.
New Jersey
- 99% of youth that came to court wanted to come back

Delaware
- 47% of youth said they ‘always’ attended their court hearings; 18% said they ‘almost always’ did;
- 21% said they have ‘a few times’
- Youth attended “To know what’s going on; know plans”; “Because it’s my life; I like to have a say; so I can talk to the judge”; “Because I should”

Vermont
- 71% of youth usually/often attended court hearings
- 77% believed it was very important to have the option to attend

Colorado
- Youth wanted judges to hear their voices, and to provide direct input about their situations and placements
- A majority of youth surveyed felt they didn’t have a voice and wished they had

Kansas
- Youth said they want to go to their hearings

Court is usually a positive experience for youth, even though they understand they will not always get what they want.

New Jersey
- Youth said the court experience was ‘very good’ (48%) or ‘good’ (33%) even though many of the same youth noted that they did not or might not always get what they wanted
- Open-ended comments reflected specific examples, such as not going home with a relative, as well as general statements about the uncertainties of court hearings

Vermont
- 62% said they usually/often felt listened to, whether or not they agreed with decisions

Washington
- 90% said they understood what happened in court
- 79% said the judge made a fair decision
- 77% were glad they came to court
- 63% said the judge knew enough to make decisions about them; court was what they thought it would be like; they knew when the next court hearing would be
### Involving Youth in Court: State Court Assessments

<table>
<thead>
<tr>
<th>State</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Jersey</td>
<td>3 counties, 600 professional surveys were completed, as well as 135 youth surveys. 66 surveys were completed regarding absent children/youth. 170 professionals also completed monthly surveys. <a href="http://www.americanbar.org/content/dam/aba/administrative/child_law/youthengagement/NJYouthin-CourtPilotSummary.authcheckdam.pdf">Link</a></td>
</tr>
<tr>
<td>Washington</td>
<td>Surveys were conducted in 2009/10 of 551 youth and 12 judicial officers in 4 jurisdictions about 1,357 hearings. [Link](<a href="http://www.courts.wa.gov/wsccr/pubs/DYIReady.pdf#search=dependent">http://www.courts.wa.gov/wsccr/pubs/DYIReady.pdf#search=dependent</a> youth interviews)</td>
</tr>
<tr>
<td>Vermont</td>
<td>The Vermont Court Improvement Program, Youth Development Program, and DCF-Family Services Division surveyed 74 youth, ages 13-18 about their experience in 2013. [Link](<a href="http://www.courts.wa.gov/wsccr/pubs/DYIReady.pdf#search=dependent">http://www.courts.wa.gov/wsccr/pubs/DYIReady.pdf#search=dependent</a> youth interviews)</td>
</tr>
<tr>
<td>Kansas</td>
<td>Data were derived from 31 judges’ surveys in 2013 and 44 in 2014; 28 court observations in 2013 and 32 in 2014 and 17 youth surveys in 2013.</td>
</tr>
</tbody>
</table>
| Colorado   | A: The Colorado Judicial Institute, Bridging the Gap (United Way), and Center for Research Strategies, 2007, conducted focus groups with 58 current and former foster youth, ages 14-26. [Link](http://www.coloradojudicialinstitute.org/index.php?s=41)  
B: February 2014, online survey with 258 GALs, county attorneys, parent attorneys, judicial officers, CASA directors, district court administrators, and others, by University of Denver, CO, Women’s College. [Link](http://www.coloradojudicialinstitute.org/index.php?s=41) |

#### Youth felt heard and understood.

**New Jersey**
- 89% youth said the judge heard and understood what they were trying to say

**Delaware**
- 56-63% strongly agreed the judge listened to them, cared about them, and they felt comfortable talking to them

**Vermont**
- 84% said the judge asked if they understood the decisions being made
- 75% said the judge asked questions about their life
- 74% said they understood what happened in court
- 64% reported the judge makes fair decisions
- 63% were glad to go to hearings
- 61% felt comfortable asking the judge questions

**Washington**
- 66% reported talking to the judge during the hearing
- 90% of those who talked to the judge felt the judge spoke directly to them, listened, and they felt ‘OK’ answering questions
- 64% of those said they told the judge things they didn’t want to say in front of everyone else
- 47% said it is not hard to talk to the judge in front of everyone

**Kansas**
- Youth said talking to the judge made them feel listened to, important, and comfortable

#### Youth often reported being concerned about placement, school, permanency, & visitation.

**New Jersey**
- 41% of youth were concerned about going to live with parents/relatives
- 62% of adults said the youth spoke during the hearing:
  - 56% talked about permanency plans
  - 41% about placements
  - 32% about school

**Washington**
- Judges said they learned more about placement (49%) and visitation (43%) during interviews with youth
■ Of the youth who asked for an interview with the judge, 64% told the judge things they didn’t want to say in front of everyone else.
  - 54% of the time it was about permanency
  - 53% about visits with family
  - 40% about school
  - 34% about safety/well-being

Kansas
■ Judges reported youth discussing matters important to them including:
  - Placements 64%
  - School 64%
  - Health 64%
  - Visitation 51%
  - Permanent connections 44%

Colorado
■ Youth reported that judges may have a lot of information, but not accurate or personal information about them, or the information from caseworkers was negative
■ Youth wished the judge would ask them directly about their wants and needs in placement; even privately or submitted in writing

Barriers to getting youth to court can be overcome.
New Jersey
■ 70% of the adults reported no barriers to getting children to court
■ And 65% of the time, when there were barriers, they were able to overcome them

Washington
■ 86% of youth had no transportation issues
■ 10% did because they lived or were traveling from out of town, or were incarcerated or receiving inpatient treatment

Policy & Practice Tips
The data support key practices that support youth engagement including:
■ Youth should be present at their dependency court hearings.
■ In limited cases it is acceptable for a youth to not attend her dependency court hearings (youth declines after being notified; judge determines it’s contrary to the child’s interests).
■ Lack of transportation should not be a reason to exclude the youth.
■ If the judge finds it is contrary to the youth’s interest to participate in person, she should consider alternatives before excluding the youth from the hearing, such as temporarily exclude the parent/guardian, have the youth attend a portion of the hearing, Talk to the judge in chambers, use video technology, letter and hearsay statements).
■ The judge should document whether the youth is present and if not, why. The judge should also specify whether the youth should be brought to the next hearing.
■ The judge should engage the youth and explain the proceeding and ruling in age-appropriate language.
■ A child-friendly hearing notice should be provided to the youth.
■ Hearings should occur without requiring an extended wait by the youth, should account for school schedules, be set for after school hours for school aged children, and every effort should be made to call cases involving youth who are present first so they can leave and get back to school.
■ The judge should allow the youth to bring a support person with her to the hearing.
■ The youth should be properly prepared before the hearing and debriefed after the hearing, as to who will be present and their roles, anticipated questions and topics, whether they’ll be able to speak to judge in chambers, and what she should wear and how she should act.
■ The judge should ensure the child has adequate representation. Even where representation is under a best interests model, as was true in some of the above states, youth direct involvement in their case supports good representation.

Conclusion
Foster youth want to be involved in decisions about their lives, especially about placements, permanency, school, and visitation. Youth and professionals agree that the firsthand information they can contribute allows courts to make better decisions. The data show the importance of the adage many youth have been telling policymakers for years – “Nothing about us without us.”

Endnotes
For a list of resources on children in court, view the full report online: www.americanbar.org/content/dam/aba/administrative/child_law/youthengagement/NationalAnalysisFinal.authcheckdam.pdf

Sharon G. Elstein, MS, is the research director at the ABA Center on Children and the Law.

Kristin Kelly, JD, directs the Youth Engagement Project at the ABA Center on Children and the Law.

Scott Trowbridge, JD, is a staff attorney working on several projects at the ABA Center on Children and the Law.

For more information about the Youth Engagement Project: www.americanbar.org/groups/child_law/what_we_do/projects/youth-engagementproject.html
Children with Disabilities and Sexual Abuse: Risk Factors and Best Practices

by Claire Chiamulera

Several factors increase the risk of sexual abuse for children with disabilities. Helping child advocates understand these factors, barriers to protecting these children, and prevention strategies was the goal of a webinar presentation on February 11, 2016 by Jennifer Casserly, M.Ed., a childhood education specialist with Prevent Child Abuse Vermont. The webinar was hosted by the Midwest Regional Child Advocacy Center with support from the Office of Juvenile Justice and Delinquency Prevention. Read on for highlights.

Q&A How is child with disability defined?
The federal Individuals with Disabilities Education Act defines a “child with a disability” as one who has been diagnosed as having an intellectual disability, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbances, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities AND who [because of the condition] needs special education and related resources.

It is clear from the definition that disability is not one-size fits all. There are cognitive, behavioral, and physical aspects that will vary in each child and create different vulnerabilities.

Q&A What are some common myths about children with disabilities?
The child’s disability makes the child undesirable to perpetrators. For a small subset of people, sexual offenses are about attraction. However, the majority of sexual offenses have nothing to do with attraction.

Sexual abuse of a child with a disability will not harm that child. Children with disabilities have sexual identities and sexuality and are just as likely to suffer harm as other children.

Giving children with disabilities information about sexuality will promote sexual behaviors. There is no evidence that giving children this information increases their sexual behaviors. The misconception reflects adults’ own fears and desires to protect children.

Q&A How is child sexuality defined?
Sexuality starts before we’re born. Some aspects are physical (anatomy and physiology) and some are behavioral (need for love, values and beliefs that inform how we behave, gender roles or expressions, feelings, and behaviors).

Q&A What is known about sexual abuse of children with disabilities?

- Children with disabilities are three times more likely to be victims of sexual abuse (deaf children experience especially high levels of sexual abuse).
- Children diagnosed with behavioral disorders are 5.5 times more likely to experience sexual abuse.
- Girls with language impairments are significantly more likely to experience sexual abuse.
- Developmental service providers are the largest group that perpetuates sexual offenses against children with disabilities.

What is known about sexual abuse of children with disabilities?

- Children placed in out-of-home placements with many different caregivers coming in and out of the home increases their risk of sexual abuse.

Physical vs. cognitive disability. The unique aspects of a child’s disability can increase their vulnerability to sexual abuse. For example, a child with a physical disability may require a lot of care, increasing the numbers of service providers who have access to them. A child with a cognitive disability may not be aware of what is appropriate or inappropriate sexual behavior by an adult.

Q&A How are children with disabilities vulnerable to sexual abuse?

Reporting (or lack of). How a person views the child can greatly impact whether or not they make a report. A child’s behavior changes may be attributed to a child’s disability diagnosis, rather than signs of sexual abuse.

Disclosure. Children with disabilities are less likely to disclose sexual abuse. Their disclosures are also less likely to be taken seriously. The fact that many children with disabilities have communication challenges influences their ability to disclose abuse. Placement. Children placed in out-of-home placements with many different caregivers coming in and out of the
What are some best practices in child sexual abuse prevention for children with disabilities?

*Develop training for child-serving professionals* that includes:

- Rules on maintaining healthy boundaries with children
- Sexuality education—children with disabilities have as much right to information as their peers
- Recognizing sexually appropriate and inappropriate expressions and how to redirect or discuss them
- Recognizing concerning or harmful sexual behaviors
- What abuse disclosures may sound or look like
- How to respond if abuse is suspected
- Sexual grooming signs and how to interrupt them
- Sexual abuse reporting laws and procedures

*Reduce child sexual abuse offending by service providers:*

- Advocate for policies that ensure continuous training of staff who work in agencies serving children with disabilities. One-time trainings are not enough.
- Ensure safe services for children that are committed to careful recruitment and strong policies around boundary violations.
- Ensure background screenings of service providers working with children.
- Ensure service providers design safety in services from the onset, such as requiring two adults per one child to help protect the child and increase adult accountability.
- Increase awareness of sexual abuse among children with disabilities.
- Educate others about the extent of sexual abuse for children with disabilities. If more people knew the scope of the problem, they might do more to protect these children.

**Q&A**

**What are some prevention strategies?**

- Avoid prevention approaches that place the onus on the child to refuse a request to do something sexual, walk away from sexual abuse and lures, and report abuse to a trusted adult.
- Use comprehensive, trauma-informed approaches that place responsibility for the sexual abuse on the adult.
- Foster empathetic responses to children and approaches that promote healthy relationships.
- Reduce risks to children by teaching them healthy sexuality, boundaries, and empathy using developmentally targeted approaches.
- Start educating children in early childhood so prevention skills do not have to be learned later but rather maintained.
- Start conversations early with parents and caregivers on healthy sexual development of their children.

*Children with Autism Spectrum Disorders (ASD)*

Children with ASD have a unique set of challenges and vulnerabilities. Recognize that sexualized behavior in these children does not mean sexual abuse has occurred. These behaviors can occur for many reasons and have also been found in children with ASD who have been physically abused.

**Factors to consider:**

- Social: Children with ASD have a need to be accepted socially, making them more open to forming a social relationship with an offender who poses as a friend.
- Sexual knowledge: Many children with ASD lack information about sexual education and an understanding of healthy sexuality, making it hard for them to recognize sexual abuse.
- Communication: Many children with ASD have trouble communicating verbally, which can compromise their sexual knowledge and understanding of healthy sexuality. A study found the more verbal a child was, the more information the family tended to give that child about healthy sexuality and development. Regardless of their ability to communicate, all children deserve to have information for their protection and to reduce the risk of developing sexually harmful behaviors.
- Disclosure: Children with ASD have a hard time disclosing abuse because of their communication challenges. Current assessments involve long interviews with verbal exchanges that are not sensitive to how children with ASD communicate and interact with others. Best practice requires assessments tailored for ASD children.

Claire Chiamulera, legal editor, ABA Center on Children and the Law, is CLP’s editor.

The webinar, “Overcoming Barriers to Protecting Children with Disabilities from Child Sexual Abuse,” was held February 11, 2016, 2-3:30 EST. Access the webinar recording at: [http://ojjdpdda.adobeconnect.com/p3kds6h-jol8i/](http://ojjdpdda.adobeconnect.com/p3kds6h-jol8i/)
Better Definition Needed for Reasonable Medical Certainty in Child Abuse Cases

Physicians use different definitions of “reasonable medical certainty” when testifying as expert witnesses in child abuse cases. The variability is troubling because it could result in flawed rulings, according to researchers at Penn State College of Medicine.

In court cases involving alleged child abuse, expert medical witnesses are asked to testify if abuse has occurred and when. Attorneys commonly ask expert witnesses to express their opinions in terms of reasonable medical certainty. However, there is no clear legal definition for the term.

In many cases, the threshold of probability that constitutes reasonable medical certainty is left to the discretion of the experts. And despite the court’s reliance on this opinion in reaching a verdict, experts are seldom asked to share this probability with the court during their testimony.

To better understand how experts define reasonable medical certainty in the context of court cases, Dr. Mark S. Dias, professor of neurosurgery and pediatrics, along with investigators at Penn State Hershey Medical Center and Penn State Dickinson School of Law, surveyed medical specialists who testify in cases of suspected abusive head trauma.

The 294 respondents to the email survey included child abuse pediatrics, forensic pathologists, pediatric neurosurgeons, pediatric ophthalmologists and other specialists from across the country.

Although 95 percent of respondents had testified in court, only 37 percent of them said they were comfortable with their definition of reasonable medical certainty.

About half of the respondents defined it as a probability greater than or equal to 90 percent. However, almost a third of respondents defined reasonable medical certainty as at least 50 percent probability, while 2 percent of the experts used an even lower threshold. The researchers published their results in Child Abuse and Neglect.

“The majority of respondents clumped around a certain range of probability for their definition of reasonable medical certainty, but there was significant variability,” Dias said. “On the one hand there were people who said they needed to be 99 percent sure that abuse had occurred, while people on the other end of the spectrum were comfortable with being 25 percent sure.”

Most of the study participants — 95 percent — said that child abuse had to be the most likely diagnosis to constitute reasonable medical certainty. However, 10 of the experts for whom the reasonable medical threshold was 70 percent or higher also said that child abuse did not have to be the most likely diagnosis to satisfy their threshold of reasonable medical certainty.

“They said, ‘I need to be 70 percent sure that abuse has occurred,’ and then they said that abuse could be the second or third – even fifth – most likely diagnosis,” Dias said. “That doesn’t really jive.”

Some respondents also shifted their reasonable medical threshold depending on the setting or charges. A significant minority of respondents — 27 percent — used a different interpretation of reasonable medical threshold for criminal court versus family court, and 9 percent reported using a different interpretation when the criminal charge was murder versus assault and battery.

This approach is inappropriate, according to the researchers. “If you’re testifying to a reasonable degree of medical certainty, it doesn’t matter what court you’re in or what the charges are,” Dias said. “The court requires you to use the same standard, although it won’t define it for you.”

The variability in definitions for reasonable medical threshold means that judges and jurors don’t know with what degree of certainty a witness is testifying. When expert witnesses testify for opposing sides, their opinions may not be based on the same threshold of certainty.

“The juries think that everybody’s testifying to the same degree of certainty, and that may not be true,” said Dias.

The researchers suggest that expert medical witnesses should state their threshold of reasonable medical certainty when they testify.

“Jurors are listening to the expert witnesses and they’re being told two different things by two different experts,” Dias said. “The jury then has to decide which of these experts is more believable. Knowing that one expert defines their degree of certainty as 98 percent and the other defines it as 50 percent would help the jury.”

Action from the legal community is also warranted, according to the researchers.

“If they’re not going to better define this term, they open up potential for injustice on both sides,” Dias said. “Guilty people may be let off and innocent people may go to jail. The stakes are too high for us to continue the way we’ve been doing it.”

The researchers are now conducting a study to determine how judges and attorneys understand and apply reasonable medical threshold in cases of suspected child abuse.

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How Will the Every Student Succeeds Act Support Students in Foster Care?

by the Legal Center for Foster Care and Education

**Q&A What is the Every Student Succeeds Act (ESSA)?**

On December 10, 2015, President Obama signed the Every Student Succeeds Act (ESSA), amending the Elementary and Secondary Education Act. For the first time, ESSA embeds in federal education law provisions that promote school stability and success for youth in care and collaboration between education and child welfare agencies to achieve these goals.

Additionally, school instability makes it difficult for children to develop supportive relationships with teachers or peers.

Under the ESSA, state education agencies must include in their state plans the steps the agencies will take to ensure—in collaboration with the state child welfare agencies—school stability for youth in care including assurances that children enroll or remain in their “school of origin” unless a determination is made that it not in their best interest. That determination must be based on all factors relating to the child’s best interest, including the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement. Federal child welfare law already requires child welfare agencies to collaborate with education agencies to ensure school stability when it is in the child’s best interest; this law creates reciprocal obligations on education agencies.

ESSA embeds in federal education law provisions that promote school stability and success for youth in care and collaboration between education and child welfare agencies to achieve these goals.

**Q&A Why are protections for students in foster care included in the ESSA?**

Children in foster care are some of the country’s most educationally disadvantaged students. Studies show students in foster care experience:

- school suspensions and expulsions at higher rates than their peers not in foster care,
- lower standardized test scores in reading and math,
- high levels of grade retention and drop-out, and
- far lower high school and college graduation rates.

**Q&A What are the specific protections for students in foster care contained in the ESSA?**

**Remain in the Same School When in the Child’s Best Interest**

Children in foster care frequently change schools—when they first enter foster care, when they move from one foster care living arrangement to another, or when they return home. Research shows children who change schools frequently make less academic progress than their peers and fall farther behind with each school change.

Some students in foster care need transportation to remain in the same school. By December 10, 2016, local education and child welfare agencies must collaborate, and the education agencies must include in their local plans, assurances that transportation for these students will be addressed. Plans must include clear written procedures governing how transportation to ensure school stability will be provided, arranged, and funded for the duration of the children’s time in foster care. Plans must show transportation will be provided in a cost effective manner according to child welfare law provisions permitting use of certain Title IV-E funds for school stability transportation.

**Point of Contact Designated Within State Educational Agency**

Under the new law, every state education agency must include in its state plan the steps it will take to ensure collaboration with the state child welfare agency, including designating an employee to serve as a point of contact for child welfare agencies and to oversee implementation of the foster care provisions of the ESSA. The point person should also identify best practices and ensure effective implementation at the local educational agency level and with public charter schools. The point
person must be someone other than the state’s McKinney-Vento Act Coordinator.

**Local Educational Agency (LEA) Point of Contact**

LEAs (typically a school district, but it could also be a charter school or other LEA) must include in their local plans assurances that they will collaborate with local child welfare agencies and that, when a child welfare agency notifies the LEA that it has a point of contact for the education of children in foster care, the LEA must designate a similar point of contact.

LEA and child welfare “points of contact” can streamline interagency communication, help implement the new law, and, if a school change is warranted, help connect students with their new school communities.

**Removal of “Awaiting Foster Care Placement” from the McKinney Vento Homeless Assistance Act**

Because of these new ESSA protections for students in foster care, and in recognition of the need for additional resources for students who are homeless, this law removes “awaiting foster care placement” from the definition of “homeless” for purposes of the McKinney Vento Act by December 10, 2016. (For Delaware and Nevada, which define “awaiting foster care placement” in statute, this provision will go into effect by December 10, 2017.)

**Required Data Collection and Reporting**

For the first time, state educational agencies will be required to report annually on student achievement and graduation rates for students in foster care. To implement this requirement, education and child welfare agencies will need to work together to ensure effective, appropriate, and confidential data and information sharing between systems.

**Charter Schools**

Any state entity (including a state educational agency, a state charter school board, a governor of a state, or a charter school support organization) receiving charter school grants under Title IV Part C of the new law must work with charter schools on recruitment and enrollment practices to promote inclusion of all students. This includes eliminating any barriers to enrollment for youth in foster care.

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**Q&A**

Where can I learn more about the ESSA and how to implement it in my jurisdiction?

ESSA marks an important step forward in supporting school stability and success for students in foster care. To ensure smooth implementation of the law, state and local child welfare and education agencies will need to work together. The Legal Center for Foster Care and Education looks forward to working to support successful implementation of these important provisions. To stay up-to-date with the latest news and receive updates and materials follow us on Twitter @FosterEdSuccess.

The Legal Center for Foster Care and Education is a project by the ABA Center on Children and the Law, the Education Law Center, and the Juvenile Law Center. It provides a national voice for the education of children in foster care, a clearinghouse of information on foster care and education, and training and technical assistance nationwide. Visit: [www.fostercareandeducation.org/](http://www.fostercareandeducation.org/)

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