AMERICAN BAR ASSOCIATION
YOUNG LAWYERS DIVISION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association reaffirms its policy, to support increased efforts that prevent, identify, and treat child abuse and neglect through the federal Child Abuse Prevention and Treatment Act, and also its policy to support the federal Adoption Assistance and Child Welfare Act with improvements, as adopted by the House of Delegates in both August 1980 and August 1988 (identified in Attachment A thereto).

FURTHER RESOLVED, that the American Bar Association reaffirms its commitment to legal system reform to help assure safe and permanent homes for abused, neglected, and abandoned children, including the protection of children within their nuclear or extended families, the reunification of families when safe, and quick placement in new, permanent homes, through such options as adoption or guardianship.

FURTHER RESOLVED, that the American Bar Association supports enactment of federal and state legislation to study and address barriers to permanency, including adoption, for abused, neglected, and abandoned children.
1. **House of Delegates Report No. 122**  
   August 1980

   Urges Congress to support extension of the Child Abuse and Treatment Act, Public Law 93-247, and supports legislation that provides child welfare services.

2. **House of Delegates Report No. 122C**  
   August 1988

REPORT

The American Bar Association's Historical Support for National Child Protection Reform

For almost twenty years, the American Bar Association has been at the forefront of advocating for legal and judicial reform to help assure the protection of the nation's abused, neglected, and abandoned children. In October 1978, the Young Lawyers Division established the Center on Children and the Law. That Center has published well over a hundred books, manuals, monographs, and journal articles on how the law can better protect children and their families. It continues to provide technical assistance and training to lawyers, judicial system personnel, and other professionals.

In August 1980, the House of Delegates approved a recommendation supporting two important pieces of federal legislation: the Child Abuse Prevention and Treatment Act of 1974 (42 U.S. Code §5101 et seq.) and the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272). The first statute is focused on efforts to prevent, identify, and treat child abuse and neglect. The second has provided important federal funding for child welfare and foster care services, mandated case reviews and concrete plans for children in foster care, encouraged states to provide families with services to prevent unnecessary out-of-home placements, provided a range of legal protections to children and parents, and created a federal adoption assistance program to expedite adoptive placement of children with special needs.

In August 1988, the House of Delegates approved a recommendation for enhancements of Public Law 96-272 to strengthen the role of the legal system in planning for children in foster care and ensuring better and more consistent services for such children. Most of the recommendations in that 1988 resolution have not been implemented by the Congress. Areas where amendments to the Act are still needed include provisions that would require:

a. States to establish a set of preventive and reunification services that would be provided on a consistent, statewide basis;

b. Child welfare agencies to provide detailed reports concerning preventive and reunification services available statewide;

c. Agencies to provide courts with written statements, in every case, describing their efforts to preserve the family;

d. Federal clarification that agencies may receive federal funds to help reimburse their costs of legal counsel involved in implementing Public Law 96-272;

e. State discretion in using federal funds for the administrative costs of citizen review boards not being administered by child welfare agencies; and

f. Fiscal incentives for courts that reduce or limit delays in foster care litigation and improve court rules governing foster care cases.
In 1993, the Association published *America's Children At Risk: A National Agenda for Legal Action*. Produced by the ABA entity now known as the Steering Committee on the Unmet Legal Needs of Children, this book included a recommended child welfare agenda for vulnerable families based upon the earlier House of Delegates policies and the work of various Association entities on child welfare reform issues. These recommendations included a call for:

a. Government funding of services that ensure the safety of children and strengthen families, and provide incentives for states to develop and expand such services;

b. Issuance and enforcement of Federal regulations related to Public Law 96-272's "Reasonable Efforts" provisions, including limits on the time between intake and assignment of case workers, and requirements that agencies provide specified essential services within a set period of time to families that need them;

c. Enactment of legislation to clarify that children are empowered to enforce their rights under Public Law 96-272 in court, in order to assure that they receive the services that child welfare agencies have determined they need; and

d. Action by the Association to work on developing new guidelines to govern interventions into families, for dissemination to all states, territories, and the District of Columbia.

The new proposed policy resolution reaffirms these earlier House of Delegates-approved policies and supports further reform consistent with the recommendations in *America's Children At Risk* and written child welfare system reform material -- referenced below -- published by the Center on Children and the Law.

The Need to Address Barriers to Permanency for Abused, Neglected, and Abandoned Children

In most cases of children who come to the attention of government child protective service agencies, agency work with their families will help assure that children are safe and that family units are preserved, or that children are safely reunified after a period of temporary foster placement. There has, however, been concern expressed among many child welfare experts that "reasonable efforts" provisions of both Public Law 96-272 and its state analogues occasionally have been interpreted to cause children to inappropriately remain at home or to be inappropriately reunited with their families in dangerous home situations.

When specifying states' obligations to prevent needless placements and reunify families, Congress used the term "reasonable efforts" to allow states wide discretion to develop their own policies and decide what is best in individual cases. It was not intended that children's safety would be compromised or that they would remain too long in foster care. However, to avoid possible misinterpretations of the "reasonable efforts requirements," a helpful step can be to amend statutory language to explicitly state:

a. The primacy of child safety in child welfare agency decision-making;

b. That sometimes reunification efforts are neither safe nor practical; and

c. That when reunification is not possible, "reasonable efforts" should be made to move children into permanent adoptive families or other legally-secure permanent placements.
A further part of Public Law 96-272 that could be improved through amendments is the "dispositional hearings" requirement of that legislation. This provision is intended to assure that no later than eighteen months after a child's placement in foster care a court makes a decision that will assure the child's permanent placement. However, in reality those hearings have not generally accomplished this, and many experts believe that such judicial decisions should be made no later than twelve, rather than eighteen, months after placement. Thus an amendment could make such hearings occur earlier and clarify relevant statutory language in order to specify that such hearings be structured to result, in most cases, in a decision to permanently place the child (e.g., return home, adoption, or guardianship).

Another barrier to permanency for children who clearly cannot safely be reunified with their families are gaps in state laws related to the involuntary termination of parental rights (TPR). State laws vary considerably in how the grounds for such termination are defined. Because this is a matter best left to individual states to study, action on amending state TPR legislation should occur without federal specifications or directives, but it is essential that every state clearly delineate grounds permitting termination without reunification efforts in certain cases. In particular, it is important for states to legislatively delineate the circumstances in which reunification services are not required.

At present, Federal financial support of state/county foster care costs is extensive, but there is no fiscal program that would tie increases in Federal support to the achievement of an abused, neglected, or abandoned child's case plan goal of a permanent, safe, placement. Thus, in addition to the above actions, existing barriers to permanency for children in foster care could be overcome through provision of workable outcome-based Federal financial incentives to child welfare agencies for successfully moving children from foster care into permanent homes through timely, safe family reunification, adoption, or guardianship.

The Importance of Enhanced Implementation of Current Federal and State Law

The above-mentioned August 1988 House of Delegates policy made a set of recommendations for amending Public Law 96-272. However, there is widespread consensus among child welfare system experts that children and families could be better served through

---

1 During the summer of 1996 the director of the Center on Children and the Law conducted research on ten elements of state laws related to freeing children for adoption through termination of parental rights. That study, entitled Considerations in State Law Reform to Free Foster Children for Adoption, concluded that most states had significant gaps in their legislative framework to legally free foster children for adoption.

2 The Center on Children and the Law has recently published a book on termination without reunification services, entitled Early Termination of Parental Rights: Developing Appropriate Statutory Grounds.
more diligent and complete implementation of existing requirements under that law and its state analogues.

One example is that the law requires that states provide services to prevent needless foster placements, reunify families of foster children, and arrange for the adoption of children who cannot safely be returned home. Well-organized programs of services, delivered promptly when needed, would go a long way to bring about timely permanent homes for children.¹

Another example is that the law requires that each foster care case be reviewed at least once every six months and that, within eighteen months after placement, there be a hearing to determine the permanent placement for the child. With improved court rules, reduced judicial caseloads, more effective judicial caseflow management, and enhanced representation of the parties, these hearings would become more effective.²

Measuring Success in Achieving Permanency for Children

One of the most perplexing problems in gauging how successful states are in providing safe, legal permanency for abused, neglected, and abandoned children is the absence of good data on how long it takes in securing permanent homes for foster children. One reform that would be especially helpful would be requirements for state and local government child welfare agencies to make available to the public information concerning their handling of foster care cases. Among other things, it would be helpful to provide comparative information (on a state and county basis) concerning the rate of foster care placement, the length of time from removal to family reunification, the length of time from removal to the child being legally freed for adoption, the proportion of children who are returned home, the rate of successful reunifications, the rate of reabuse after return home, and the time from being legally freed for adoption to adoption placement and finalization.

Utilizing the Range of Permanency Options

A final barrier to placing foster children in permanent homes has been limitations, based on both law and practice, on the utilization of stable, permanent placements other than traditional adoption. For example, in many states it is necessary to bring the case to a new court in order to appoint a guardian for a foster child. In addition, in many states guardianship does

---

¹ A Center on Children and the Law book on this topic is entitled Establishing a Core of Services to Families Subject to State Intervention: A Blueprint for Statutory and Regulatory Action.

² Center on Children and the Law publications on this topic include a book entitled Sample Court Rules to Achieve Permanency for Foster Children and an article entitled Permanency Planning Hearings That Work.

4
not provide sufficient legal protections for the child or for the new permanent caretakers of the child.

Also, in many states it is not possible to arrange an adoption in which parents maintain very limited rights to obtain information about a child or have occasional contacts with the child. This is not possible even when such an arrangement is in the child’s best interests, will avoid a bitter court case, and is agreed upon by all parties.

It is thus important to have careful federal and state studies of new legal options for permanent placement, as well as an examination of how best to use and improve existing legal alternatives for children’s permanency (e.g., adoption and guardianship).

Respectfully Submitted,

Jeffrey M. Paskert, Chair
ABA Young Lawyers Division
February 1997
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submitting Entity</td>
<td>ABA Young Lawyers Division</td>
</tr>
<tr>
<td>Submitted By</td>
<td>Jeffrey M. Paskert, Chair, ABA/YLD</td>
</tr>
<tr>
<td>2. Date of Approval by Submitting Entity</td>
<td>January 31, 1997</td>
</tr>
<tr>
<td>3. Has this or a similar recommendation been submitted to the Assembly or ABA previously?</td>
<td>No.</td>
</tr>
<tr>
<td>4. Are there any Division or ABA policies that are relevant to this recommendation and, if so, how would they be affected by its adoption?</td>
<td>There are many policies that address the identification, treatment and prevention of child abuse, but none would be adversely affected by adoption of this resolution.</td>
</tr>
<tr>
<td>5. Does this recommendation require immediate action at the next Assembly?</td>
<td>Yes. Child abuse continues to plague the country, and the ABA must speak out in favor of strengthened and continued efforts directed at prevention, identification, and treatment.</td>
</tr>
<tr>
<td>6. Status of Legislation (if applicable)</td>
<td>Not applicable;</td>
</tr>
<tr>
<td>7. Cost to the Association (both direct and indirect costs)</td>
<td>None.</td>
</tr>
<tr>
<td>8. Disclosure of Conflict of Interest (if applicable)</td>
<td>None.</td>
</tr>
<tr>
<td>9. Referrals</td>
<td>None.</td>
</tr>
<tr>
<td>10. Contact person prior to meeting</td>
<td>Bo Landrum, YLD Staff Director (312) 988-5608, or Howard Davidson, Director, ABA/YLD Center on Children and the Law (202) 662-1740;</td>
</tr>
<tr>
<td>11. Presenter at House of Delegates</td>
<td>To be determined.</td>
</tr>
</tbody>
</table>