RESOLVED, That the American Bar Association urges Congress to enact legislation, and the Department of Homeland Security to adopt policies, that:

a) Assure information pertaining to location and transfer either of immigration detainees who are parents, legal guardians or primary caregivers of minor children, or of the minor children themselves, or of changes of placement of those minor children, is shared among immigration authorities, state and local child welfare agencies, and state courts;

b) Assure the length of one’s status as an immigration detainee, or one’s removal or pending removal from the country, can not be the sole basis for a state not to provide legally mandated reasonable efforts to reunify children with their parent, legal guardian, or primary caretaker; and

c) Mandate the Department of Homeland Security to collect and report aggregate annual data on the number of U.S. citizen children impacted by the detention or deportation of a parent, legal guardian, or primary caregiver and resulting cost to child welfare agencies.
Citizenship issues are often complicated for children in immigrant families. Thirty percent of children in immigrant families have an unauthorized parent; of those, six percent are themselves unauthorized. However, more than half (58 percent) of children in immigrant families have at least one citizen parent, and a majority (88 percent) are themselves U.S. citizens.\(^1\) As of March 2009, an estimated 5.1 million children in the United States lived in households with at least one noncitizen parent. Of that total, 4 million were born in the U.S. and are citizens by birthright, and 1.1 million were born abroad and are noncitizens.\(^2\) A Department of Homeland Security (“DHS”) study conducted in 2009 estimated that between 1998 and 2007, the United States deported 2,199,138 noncitizens, including at least 108,434 parents of U.S.-born citizen children.\(^3\) A more recent report found: 1) more than 100,000 children were affected by parental deportation between 1997 and 2007; 2) at least 88,000 of these children were U.S. citizens; and 3) 217,000 other immediate family members were affected by the deportation of Lawful Permanent Resident (“LPR”)s.\(^4\)

“The arrest of an immigrant parent has severe consequences for the economic well-being of children and families because the family generally loses a breadwinner. Lost income triggers further economic hardships for families, including difficulty paying bills, housing instability, and food hardship.”\(^5\) In a study of 190 children whose parents were arrested, detained, or deported, the Urban Institute found that a majority of children experienced behavioral changes, including different eating or sleeping habits, aggression and crying, after a parent was arrested. Three out of five families in the study also reported difficulty “sometimes” or “frequently” after the arrest of a parent.\(^6\)

Sharing Information between Immigration Authorities, State and Local Child Welfare Agencies, and State Courts

Children of immigrant parents represent 8.6% of all children who come to the attention of the child welfare system; more than 80% of them are U.S.-born citizens.\(^7\) The ability of a noncitizen parent to reunify with his or her child is more difficult due to language and cultural barriers, limited access to services, and the complexity of immigration and child welfare systems. A public child welfare worker’s knowledge (or lack thereof) regarding potential immigration relief

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5 *Facing our Future: Children in the Aftermath of Immigration Enforcement*, (The Urban Institute), Feb. 2010 at 27.
6 Id. at 27-39. One in four of the families studied moved in with others to save housing costs.
options as well as the effects of and processes for detention and deportation can profoundly affect a child welfare case. Therefore, it is critical that federal immigration authorities and courts collaborate with state and local child welfare agencies to provide integral cultural/linguistic staff in order to assure that children are connected to, and where appropriate, safely transferred and reunited with, parents placed in detention or deported for immigration violations. Specifically, family court judges and child welfare personnel (under a confidentiality agreement) should be able to access basic information about a parent, legal guardian, or primary caregiver’s case status, detained location, and contact information. They should also be informed about immigration law and detention and deportation processes.

Status of a Parent, Legal Guardian, or Primary Caregiver’s Immigration Case or Detention Should Never Be The Sole Basis for Failure To Make Reasonable Efforts To Reunify

The status of a parent, legal guardian, or primary caregiver as an immigration detainee for a lengthy period of time, or as one who is being removed, subject to a detainer, or in removal proceedings, should not be the sole basis for failure to make reasonable efforts to reunify the child with the parent, legal guardian, or primary caregiver in a termination of parental rights case. The proper starting point for legal analysis when the state involves itself in family relations is always the fundamental constitutional rights of the parents. A court may not properly deprive a parent of the custody of his or her minor child unless the state affirmatively establishes that such parent is unfit to perform the duties imposed by the relationship, or has forfeited that right.

The Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States, adopted by the ABA in 2004, hereinafter the “2004 ABA Standards,” says that the undocumented status of a parent, other adult family member, or legal guardian should not be a bar to the custodial agency releasing an unaccompanied minor into that individual’s custody. The recent Nebraska Supreme Court decision, In re Interest of Angelica L., 767 N.W.2d 74 (2009), exemplifies this Resolution’s broader proposition that a parental status of being in immigration detention for a lengthy period of time, or of being deported, should never be the sole basis for termination of parental rights.

In Interest of Angelica L., the Nebraska Supreme Court held that a state cannot terminate parental rights where the parent establishes the ability to provide an appropriate living environment for his or her children. The court emphasized that the lengthy placement of a child outside the home should not provide the sole basis for the termination of parental rights. As long as “the parent is capable of providing for the children’s needs, what country the children will live in is not a controlling factor determining reunification.” Furthermore, the court noted that the fact that the state considers certain adoptive parents “better,” or another environment “better,” does not overcome the commanding presumption that reuniting children with their parent is in the children’s best interest—no matter what country the parent lives in.

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9 Id.
10 Id.
Mandating Collection and Reporting of Data on U.S. Citizen Impacted Children

The exact number of children impacted by immigration enforcement is unknown because the information is not collected in a consistent way by DHS or state and local welfare agencies. In 2009, there were about 16.9 million children age 17 and under with at least one noncitizen parent. This number accounted for 23.8 percent of the 70.9 million children age 17 and under in the United States. The 14.6 million second-generation children — those who were born in the United States to at least one noncitizen parent — accounted for 86.2 percent of all children with noncitizen parents. The remaining 13.8 percent (2.3 million) were children born outside the United States to noncitizen parents.11

A 2010 report issued jointly by the Migration and Child Welfare National Network and First Focus summarized many of the relevant studies on the impact of immigration on children. The joint report included a 2007 study by the Urban Institute which found that on average one child is impacted for every two adults apprehended for immigration violations, and a study performed by the University of California Berkeley School of Law and the University of California Davis School of Law, which found that nearly 88,000 United States children (over half of whom were under the age of five) were impacted by the deportation of a LPR from 1997 to 200712 The joint report recommended that “a comprehensive annual report should be developed which documents the impact of immigration enforcement activities on United States citizen children.”

These reports are particularly troublesome when combined with studies on the increasing numbers of noncitizens involved in ICE detention, processing, and deportation procedures, including (1) a January 2010 report for the DHS Security Inspector General’s Office which concluded that between 1997 and 2007 over 108,000 undocumented parents of United States citizen children were removed from the United States; and (2) the ICE Agreements of Cooperation in Communities to Enhance Safety and Security (“Secure Communities”) Initiative, which was created to identify, process and remove criminal aliens incarcerated in federal, state and local prisons and jails throughout the United States, but has instead detained thousands of immigrants for minor offenses and deported thousands, even though the goal of the program was to target the most serious criminals.13 In light of the increasing number of U.S. citizen children seriously impacted by immigration issues, this Resolution calls for mandated collection and reporting of aggregate annual data on citizen minor children impacted by detention and deportation of a parent, and data on repatriated unaccompanied and undocumented minor children. Data should include the number of children who enter the child welfare system as a result of immigration enforcement against parents, legal guardians, or primary caregivers, and the resulting costs to child welfare agencies.

103B

Respectfully submitted,

Laura Viviana Farber, Chair
Commission on Youth at Risk

August 2011
1. **Summary of Resolution(s).**

This resolution ("B") urges coordination between immigration authorities and state and local child welfare agencies and courts to provide notice of changes in detention or child placement. Additionally, the resolution urges amendment of federal law so that the status of a parent, legal guardian, or primary caregiver’s immigration case or detention can never be the sole basis for failure to make reasonable efforts to reunify. Finally, the resolution mandates collecting and reporting annual data on U.S. citizen minor children impacted by a parent’s detention or deportation.

2. **Approval by Submitting Entity.**

On May 9, 2011, the Commission on Youth at Risk approved this resolution.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

No.

4. **What existing Association policies are relevant to this resolution and how would they be affected by its adoption?**

There are two existing polices that are related but do not include the provisions in this resolution. In 2004 the House of Delegates adopted standards for the custody, care, and legal representation of unaccompanied immigrant children. Additionally, in 2006 the House of Delegates adopted policy opposing the detention of noncitizens in removal proceedings except in extraordinary circumstances. This recommendation builds on existing policies by providing guidelines of specific application to take into account the best interest of minor children affected by the immigration detention or removal of a parent, legal guardian, or primary caregiver.

5. **What urgency exists which requires action at this meeting of the House?**

As of March 2009, an estimated 5.1 million children in the United States live in households with at least one noncitizen parent; 1.1 million of those children were noncitizens. Almost 8,000 unaccompanied children enter the U.S. every year. Families are significantly affected every day by separation due to immigration enforcement including detention and removal proceedings. The Commission members believe this resolution can help guide revision and improvement of current U.S. Immigration and Customs Enforcement (ICE) detention polices as well as law and procedures related to immigration removal proceedings. In addition, Representative Lynn Woolsey introduced a relevant bill last session: the Humane Enforcement and Legal Protections (HELP) for Separated Children Act, and the Commissions believe this resolution will help
encourage and inform Congress of the importance of re-introducing and supporting Representative Woolsey’s bill.

6. **Status of Legislation.** (If applicable.)

Representative Woolsey’s bill, the HELP Separated Children Act, was introduced last session, and we understand it will be re-introduced soon in this session.

7. **Cost to the Association.** (Both direct and indirect costs.)

None.

8. **Disclosure of Interest.** (If applicable.)

There are no known conflicts of interest with this resolution.

9. **Referrals.**

This resolution is being circulated to Association entities and Affiliated Organizations including:

Commission on Immigration
Section of Administrative Law and Regulatory Practice
Criminal Justice Section
Commission on Domestic Violence
Section of Family Law
Government and Public Sector Lawyers Division
Section of Individual Rights and Responsibilities
Section of International Law
Judicial Division
Legal Services Division/Standing Committee on Pro Bono and Public Service
Council on Racial and Ethnic Justice
Commission on Law and National Security
Section of Litigation
Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Young Lawyers Division
American Immigration Lawyers Association (AILA)
National Legal Aid and Defender Association (NLADA)
State and Local Government Law
10. **Contact Person.** (Prior to the meeting.)

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11. **Contact Person.** (Who will present the report to the House)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution (“B”) urges coordination between immigration authorities and state and local child welfare agencies and courts to provide notice of changes in detention or child placement. Additionally, the resolution urges amendment of federal law so that the status of a parent, legal guardian, or primary caregiver’s immigration case or detention can never be the sole basis for failure to make reasonable efforts to reunify. Finally, the resolution mandates collecting and reporting annual data on U.S. citizen minor children impacted by a parent’s detention or deportation.

2. Summary of the Issue that the Resolution Addresses

This resolution (“B”) is the first of three proposed resolutions (118 B, C, and D) that address the impact on children of the detention and deportation of their parent, legal guardian, or primary caregiver. This resolution makes specific recommendations for improving the immigration laws and procedures to take into account the best interests of the children who are caught up in the system through no fault of their own. Current immigration laws and policies do not take into account the fundamental importance of family and the deleterious effects of a parent, legal guardian, or primary caregiver’s placement in detention or removal proceedings. Children of immigrant parents represent 8.6% of all children who come to the attention of the child welfare system; more than 80% of the children are U.S. born citizens. The ability of a noncitizen parent, legal guardian, or primary caregiver to reunify or even communicate with his or her child is made difficult due to detention, immigration proceedings, and child welfare procedures that can reinforce separation from parents. These difficulties are compounded by lack of access to counsel for the parents and failure of the immigration authorities and state and welfare agencies to coordinate. Even if the courts consider the intricacies of the situation, an immigration judge may be powerless under current law to provide remedies appropriate to the family situation.

3. Please Explain How the Proposed Policy Position will address the Issue

The ABA supports improvement of the custody, care, and legal representation of unaccompanied minor children and opposes the detention of noncitizens in removal proceedings except in extraordinary circumstances. This recommendation builds on existing policies by providing guidelines of specific application to detained parents, legal guardians, and primary caregivers of minor children; and requiring that immigration law and policy address the complex situation of detained parents that arises when immigrant parents are separated from their children.

4. Summary of Minority Views

None to date.