

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
AUGUST 3-4, 2020

RESOLUTION

RESOLVED, That the American Bar Association recognizes that effective reforms of legal systems that affect the fundamental rights of children and youth – including, but not limited to the child welfare, immigration, and juvenile justice legal systems – cannot be accomplished without active participation by individuals who experienced those systems as children and youth;

FURTHER RESOLVED, That the American Bar Association encourages attorneys, judges, advocates, legislators, bar associations, and law schools to promote effective, ongoing, and authentic engagement in legal system reform and advocacy efforts by individuals who have experienced those systems as children and youth;

FURTHER RESOLVED, That the American Bar Association encourages attorneys, judges, advocates, legislators, bar associations, and law schools to remove barriers to that engagement;

FURTHER RESOLVED, That the American Bar Association urges law schools, bar associations, law firms, and other professional organizations to create pathways for individuals with lived experience in legal systems that affect children and youth to pursue and succeed in legal and advocacy careers, both within youth-serving systems and more broadly in the legal profession; and

FURTHER RESOLVED, That the American Bar Association calls on organizations focused on improving legal systems that affect children and youth to incorporate individuals who experienced those systems as children into leadership positions, including recruiting them as staff members, managers, partners, or board members.

REPORT

Introduction

Effective reform of legal systems that affect children and youth cannot be accomplished without equal partnership by the very individuals whose lives have been shaped in those systems. The concept of engaging those most directly affected by a system in the process of reforming it is referred to as “human centered design”¹ and has been used widely in other public and private sector industries.² As applied to the children’s law field, this approach is both critical and challenging. This Resolution is designed to call on different members of the legal community—attorneys, judges, advocates, legislators, law schools and bar associations—to engage in this human centered design approach and to meet the challenges inherent in that process in the context of reforming legal systems that affect children and youth.

Specifically, this Resolution encourages members of the legal community to partner with organizations that have active youth engagement programs to ensure individuals with lived experiences in child and youth oriented legal systems have a supportive environment when working to effectuate system reform. The Resolution also encourages all members of the legal community to create pathways for individuals with lived experience to pursue and succeed in legal and advocacy careers in the legal profession. Finally, the Resolution encourages organizations focused on child welfare, juvenile justice and immigration reform to incorporate individuals who experienced those systems as children as part of their staff and board leadership.

Background

To inform this policy, the Commission on Youth at Risk sought input from organizations across the country who have successful youth engagement programs. Although these programs vary in substance and structure, several themes emerged as consistent components:

- a recognition that youth voice is expert voice;
- equal partnerships between youth and adults in shaping system reform;
- ongoing access to supportive services, including peer-to-peer support, for youth engaged in the process;
- trauma informed training for adults to work effectively with young people;
- education on the implications of sharing personal experiences publicly;
- regular reflection and program improvement informed by youth and adults;
- an understanding that youth engagement programs require risk-taking and open-minded leadership.

¹ Georgetown University Beeck Center, *Helping Policy Makers Put People First*, published May 11 by Alberty Rodriguez Alvarez, Dana Chisnell and Vivian Graubard available at <https://beeckcenter.georgetown.edu/helping-policy-makers-put-people-first-a-step-by-step-tool-for-user-centered-policy-making/>.

² See Code for America at <https://www.codeforamerica.org/practices/user-centered-design>.

This policy and report are not intended to create a roadmap for developing new youth engagement programs. Rather, this policy and report are designed to help the legal community – including attorneys, judges, legislators, bar associations, and law schools – understand the importance of working thoughtfully with organizations that have youth engagement expertise. When youth engagement is conducted informally without the support of experienced organizations, the risks of unintended consequences, such as misappropriation of story and tokenism, are high. These outcomes both harm the individuals involved and do not lead to effective system reform.

By way of example, during the research component of developing this policy, the Commission learned of a story where a young person who had been involved in the foster care system as a child was asked to share her personal story to help an organization fundraise after she interned there for the summer in a professional capacity. The individual had never authorized her story to be used in the organization’s advocacy or other materials and was surprised and hurt by the experience. This is a prime example of *misappropriation of story*. The Commission also learned about a young person who was asked to testify before a legislative body to “share his story” but then felt used when that story seemed to be only for the purpose of producing an emotional reaction but no legislative efforts toward system change resulted. This is a prime example of *tokenism*.

Programs that specialize in youth engagement understand how to prepare for and address risks of harm like tokenism and misappropriation of story. These organizations put “youth at the center of articulating policies and determining the best ways to get those priorities addressed” they do not simply “invit[e] a young person to speak to a group of practitioners or policy makers, or giv[e] youth a role in a pre-determined agenda.”³ Working with organizations that specialize in youth engagement also provides benefits for all participants who may need to trouble-shoot challenges in the process. For example, this expertise is valuable for youth if and when they have negative experiences and need outlets to reflect on the impact. This expertise is also valuable for adults who may need help understanding how to navigate boundaries in professional relationships with youth, how to have patience to do this work well, and how to ask for help and reassurance when they themselves feel like they need additional support.

This policy also provides guidance on how the legal community can improve its own efforts to support pathways for youth with legal system experience to pursue careers in the legal field. This requires commitment to addressing challenges in both the law school and bar admissions processes. Finally, the policy addresses longer-term engagement opportunities by encouraging organizations that focus on youth legal system reform to incorporate individuals who have experience in those systems as part of their staff, board, or other leadership teams.

³ Korwin Consulting. (2011, December). *Youth Voice as a Strategy for Systems Change: An Evaluation of the Zellerbach Family Foundation Youth Voice Initiative*. <https://zff.org/wp-content/uploads/2019/05/youth-voice.pdf>

I. Dual Benefits of Applying Human Centered Design

Minors and some young adults under legal system custody – including, but not limited to the child welfare, immigration, and juvenile justice systems – are required by law to rely on these systems to make major life decisions on their behalf related to place of residence, education, and health and mental health care. As youth approach adulthood, various state and federal laws require these systems to provide youth with opportunities to voice their own preferences in decision-making processes. However, it is the systems themselves that hold ultimate decision-making power, exerting tremendous control over the lives of children and youth. This dynamic often leads youth to feel powerless over their life trajectories. That sense of powerlessness only compounds when youth exit a legal system and find they are unable to share their viewpoints about how the system affected their lives. This lack of agency in effectuating system reform is harmful for the individuals involved. A lack of youth voice in legal system reform is also detrimental to the effectiveness of any reform efforts. As the National League of Cities has explained “[e]ven well-intentioned efforts to work for youth – by ‘protecting’ them from perceived threats of by ‘rescuing’ those who are already in jeopardy – can prevent us from recognizing the importance of working with youth to identify positive solutions and build stronger communities.”⁴

a. Youth Empowerment Benefits

In contrast to the disempowerment that young people often experience as a part of juvenile justice, immigration, or child welfare systems, “involving young people in the policy-making process can empower youth and build their strengths, help policymakers view youth as a resource to inform their decisions, and result in policies and priorities that are more relevant to the youths’ lives.”⁵ Youth engagement in system reform is good practice for the young people involved because it helps them process their own experiences and effectuate change for others.⁶ The process also helps young people learn skills to better advocate for themselves and their legal rights in these systems.⁷

b. System Reform Benefits

⁴ National League of Cities & Institute for Youth, Education, and Families. (2002). *Action Kit for Municipal Leaders: Promoting Youth Participation – Issue #3*. Washington, DC: National League of Cities. Retrieved online at <https://www.nlc.org/resource/promoting-youth-participation-action-kit>

⁵ Martin, S., Pittman, K., Ferber, T., McMahon, A. (2007, July). *Building Effective Youth Councils: A Practical Guide to Engaging Youth in Policy Making*. Washington, D.C.: The Forum for Youth Investment.

⁶ The U.S. Department of Health and Human Services (HHS) Administration for Children and Families (ACF) Information Memorandum [ACYF-CB-IM-19-03](#) (“Youth voice and engagement in planning and decision-making are widely regarded as best practices in meeting the developmental needs of young people in foster care.”)

⁷ Masseill, B., & Bergan, J. (2018). *The Role of Youth-Run Organizations in Improving Services and Systems for Youth and Young Adults: A Commentary on the State of the Science*. Portland, OR: Research and Training Center for Pathways to Positive Futures, Portland State University. (“Young people point to these roles and activities as a source of increased confidence and self-esteem, as well as an opportunity to learn new skills, including organizational skills, communication and group skills, and a variety of employment-related skills.”)

Similarly, youth engagement in system reform is good practice for policymakers, administrators, and systems themselves. Policymakers who have partnered with youth often express that they gained an expanded point of view on an issue by hearing youth input on how that system is perceived and understood from a young person's perspective. One organization that participated in the Commission's policy development process shared an example where youth were invited by a county to shape local foster care reform. Throughout the process, youth focused repeatedly on their concern about the community's "lack of a centralized, youth-orientated location," which made it difficult to access critical resources. In partnership with this group of youth advocates, the community secured a facility, crafted a unique name and mission statement, designed a program plan, and worked with county officials to identify funding for the site. Since its opening six years ago, this center has created community-wide change in the foster care system. As the organization that shared this story explained, the main concept in youth engagement is "do not assume to know what the young people in the community need in order to be successful; instead, ask them and then empower them to build a service delivery model that is tailored to their specific needs."

c. Model Human Centered Design Programs

System reform engagement can be conducted with youth who are currently involved in a legal system, youth with previous experience, or a combination of both. In California, state law mandates "the participation of current and former foster youth in the development of state foster care and child welfare policy" and directs the state to contract with California Youth Connection – a statewide nonprofit organization that trains and empowers youth and communities to "transform the foster care system." This public-private partnership model of youth engagement is effective and has been replicated and adapted in a number of other states, leading to the passage of dozens of state laws and practice reforms that improve outcomes for children in foster care.

Another example arose when Los Angeles County established its first Youth Commission, consisting of 15 participants aged 18 to 26 with lived experience in the child welfare and juvenile justice systems. The Commission will be responsible for overseeing county departments, providing policy and reform recommendations, producing an annual youth report card evaluating county performance, and having direct access to the Board of Supervisors. The Commission also has the power to audit county department budgets.

This Resolution encourages members of the legal community – including attorneys, judges, and legislators – who seek to advocate for legal system reform in areas that affect youth to consider incorporating similar legislative requirements for youth participation into their own state and local laws. While each jurisdiction may take different approaches to engaging individuals with lived experience in these systems, all will benefit from the value of doing so.

II. **Legal Community Roles Promoting Authentic Engagement**

The legal community can play an important role facilitating authentic youth engagement by ensuring individuals with experience in legal systems as youth are not asked to share their stories in a vacuum. Rather, when the legal community seeks to use personal stories to illustrate the importance of system reform it is critical to work with the owner of that story as a partner in the process. That partnership includes: preparation, training, and ongoing support.

a. Authentic Engagement Requires Preparation

The engagement process should allow individuals with lived experience to participate as equals, which requires all organizations seeking to engage youth in system change efforts to make an intentional commitment to that partnership before it begins. One organization describes this as “culture building” within an institution to create the necessary environment for genuine power-sharing in decision-making and agenda setting. The culture building approach requires commitment from staff and board members. As another contributing organization explained, that means preparing for conflict resolution between advocates and staff or board members who may not be trained on including youth in leadership roles.

When planning for meetings or presentations youth must be engaged in developing the program agenda and plans for structuring the event. When setting substantive goals for the agenda, members of the legal community should not reach out to youth engagement organizations asking for a young person who fits that pre-written script. That is not how genuine engagement works. Rather, the process of engagement requires partnership with the young person to shape an event's substance and plan for how to deliver key messages.

This issue came up in our own organization at the ABA recently when we were asked to help identify a young person who could speak about the experience of reunifying with her parent in the foster care system. We struggled with this request. Although there are many wonderful stories of reunification, we wanted to be sure to engage with a person who could help shape the intended message and who had the support that he or she needed to understand what was being asked and to make decisions as an agent of change not an anecdote. Ultimately, we learned of a young woman who had already been working on cultivating a message about her reunification experience to shape system reform in partnership with a legal services organization in New Jersey. Because of the trust she had in that organization to help her prepare, she was able to join a panel of judges in the Senate. She and the attorney worked with the judicial panelists in advance planning calls to set the agenda and presentation goals collectively.

Logistics are also important, including scheduling meetings at times that are flexible for youth and do not conflict with school or work. To facilitate a young person's ability to participate in a meeting or convening, an organization should anticipate paying for travel-related costs directly or in advance. Many young people with legal system experience are supporting themselves and therefore cannot be asked to pay their own way to attend a professional meeting. Facilitating access to childcare can also be important for some

youth and adults who are young parents and may have additional challenges participating in events but also additional perspectives to share about system impact.

When members of the legal community partner with organizations to engage youth voice in system reform efforts they should make a commitment to compensate youth as the subject matter experts they are. This kind of compensation needs to reflect the value of the individual's professional expertise. It is not correct, for example, to pay honorarium to some speakers while providing a small stipend like a gift card to youth speakers.

b. Authentic Engagement Requires Training

It is also critical to adequately train all participants for the experience of engaging youth in system reform efforts. For example, youth must be provided with background information to understand all the elements of the issue before deciding how they may want to use their personal experience to contextualize it for an audience of policymakers. One of our contributing organizations addresses this training need by providing “one-on-one research support” through weekly meetings so participating youth are sufficiently briefed on the policy issues they are being asked to weigh in on during their professional child welfare internships.

In addition to content preparation, it is important to train youth for how to share, or not share, their deeply personal stories. One contributing organization trains Youth Advocates how to “strategically and safely share their experiences” so that they know how to contribute their personal experiences to a conversation while also safeguarding their right to privacy. For another organization, this includes training youth on when to say they do not want to share their story.

It is equally important for adults involved in system reform efforts to receive training on how to engage youth authentically as professional partners. Youth should not be expected to do all the “heavy lifting” for engagement to be successful. Adults must make efforts to meet youth where they are and to understand how to help youth achieve their own advocacy goals. Adults also have a responsibility to focus on helping youth understand their own strengths and leadership potential through system reform efforts.

c. Authentic Engagement Requires Ongoing Support to Participants

Particularly when engagement is ongoing – for example through participation in an advisory body, commission, or internship – an ongoing support system must be established to help youth navigate the process. One organization schedules regular check-ins for participants with staff to assess progress in the program and to meet participants' needs during the course of the program. Another organization has established an “emergency fund” available for youth partners so that staff can help meet a young person's needs without significant delays when necessary. Example uses include purchasing birth certificates and state identification cards that youth needed to access public benefits and employment opportunities. An approach to youth engagement that incorporates ongoing support ensures youth feel supported and respected throughout the

process of engaging in system reform. Ongoing support is not limited only to youth participants. Organizations regularly facilitating authentic youth engagement note that some of the most difficult challenges in the process – which can be easily overlooked – often occur in supporting adult participants.

Finally, programs can continually enhance their effectiveness by providing youth and adult participants the opportunity to evaluate their experience and the program and to provide recommendations for how to improve the engagement process. It is important for staff running engagement programs to conduct self-assessments as well, including participant feedback and reflection to ensure they are fulfilling their own obligations in the partnership role.

III. Legal Community Roles Removing Barriers to Engagement in Legal System Reform

The legal community can also advocate to remove barriers to that engagement by: building trust with young people; and establishing accountability and legal standards that protect against misappropriation and tokenism.

a. Trust is A Barrier to Authentic Engagement

Prior experience and power differentials can create significant challenges in a young person's sense of trust working with lawyers to effectuate legal system reform. For example, young people express frustration that their attorneys were focused only on telling them how to maintain "compliance" with requirements in the system and did not serve as true advocates. The same arises in the context of youth who believed their public defenders may have pushed them into taking a deal they didn't understand or didn't want. In other instances, some child welfare attorneys are tasked with representing a youth's best interest which may be in conflict with the youth's express interest creating another tension. Moreover, due to the existing lack of diversity in the legal profession and the over-representation of Black, Latino, and Indigenous youth in child welfare, immigration and juvenile justice legal systems – youth are often represented by attorneys who do not look like them and do not come from their backgrounds.⁸ This tension in both over and under representation adds to the complexity of building a trusting relationship with shared goals of system reform.⁹

It is important to ground any engagement in an understanding that the individual experience of being represented by counsel may not have been a positive one. Similarly, it is important to ground the engagement in a recognition that an attorney's perspective about a young person's experience in a legal system is not comprehensive. To address

⁸The Children's Bureau, Racial Disproportionality and Disparity in Child Welfare
https://www.childwelfare.gov/pubpdfs/racial_disproportionality.pdf

⁹ American Bar Association, Diversity and Inclusion in the Law: Challenges and Initiatives
<https://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/>

this trust barrier in the context of system reform work, members of the legal community must be prepared to begin the process of youth engagement by rebuilding relationships of trust. This includes listening carefully to youth perspectives on how to improve legal representation.

b. Lack of Accountability Is A Barrier to Authentic Engagement

Several youth engagement programs across the country address risks of misappropriation of story or tokenism through legal means like contracts. For example, one contributing organization creates group agreements at the beginning of convenings to ensure youth participants have complete control and autonomy over how and whether to share their own stories. Another organization’s confidentiality policies were developed by youth themselves. Yet another organization ensures youth who participate in its advocacy program are fully briefed on image release policies and are not required to sign release forms to participate in the program.

A positive example of how these legal policies can protect against misappropriation comes from the Family Finding Project, which produced a video of a young man’s experience searching for the relatives from whom he was separated while in the foster care system in Hawaii. The video of his experience is publicly available on YouTube but includes an important disclaimer that others are not allowed to use the video, including for training purposes, without the express consent of the individual. Contact information for the Family Finding organization (not the individual) is included to facilitate that process.

In addition to preventing misappropriation of stories, several organizations have specific policies and standards for helping youth engage with media in ways they control. For example, one contributing organization prepares youth by practicing saying “I’d rather not answer that” to ensure they feel empowered to say no when asked something they do not want to discuss. Meanwhile, another organization has developed a set of policies and standards around media engagement for youth which can include vetting reporter questions in advance, debriefing with the young person after an engagement, following up with a reporter if necessary and serving as an intermediary so that the young person does not need to share her own contact information.

Tackling these barriers also requires a concerted effort by adults to question before, during and after a youth engagement experience whether they have upheld the standards to which they seek to be accountable. This can include such questions as “Did I misuse the person’s story?” or “Did I have permission to share those details?” This kind of self reflection can help help minimize the risk of inadvertent errors in the process.

III. Legal Community Efforts to Build Career Pathways for Individuals Who Experienced Legal Systems as Children or Youth

Individuals with lived experience in legal systems that affect children and youth—child welfare, juvenile delinquency, and immigration—are uniquely qualified to bring a realistic and humanized perspective to the law school classroom and legal profession. On the one

hand, these individuals understand on a personal level the massive responsibility and power the legal system can have on people's lives. On the other hand, racial and ethnic bias that result in disparate outcomes in these systems – including familial separation, entry into foster care, and harsher punishments in the juvenile delinquency system than similarly situated white youth and families – can all dissuade individuals from wanting to pursue a career in the legal field.¹⁰ For example, the legal professional may appear scary intimidating, and unappealing to those whose experiences have been traumatic. It is also challenging for youth who do not see themselves reflected in the attorney or judicial faces they encounter to visualize careers in the legal field.¹¹ Additionally, undocumented students, foster youth, and formerly incarcerated youth face additional barriers in their educational journeys, making high school and college graduation more difficult to attain and professional degrees like a J.D. especially challenging to attain.¹² These educational barriers can significantly impact accessibility to legal advocacy careers.

There are numerous steps that can effectuate the policies in this Resolution. The steps suggested below should be read, however, with an understanding that pipeline challenges present enormous hurdles and even after surpassing these hurdles individuals with legal system experience often face additional structural barriers to pursuing legal careers. It is incumbent on the legal profession to seek to address those structural barriers within our control.¹³

¹⁰ <https://www.burnsinstitute.org/what-is-red/>

¹¹For examples of recommendations to support for supporting system-involved youth and educations see John Burton Advocates for Youth's report, *Pipelines for Success: Supporting California Foster Youth from High School to Community College*, https://www.jbaforyouth.org/wp-content/uploads/2019/10/2019_ERP_Foster_Youth_Report-1.pdf; American Bar Association, Legal Center for Youth Justice and Education, *Blueprint for Change*, <https://jeducationblueprint.org/>

¹² Courtney, M.E., Dworsky, A., Ruth, G., Havlicek, J., Perez, A., & Keller, T. (2007). *Midwest evaluation of the adult functioning of former foster youth: outcomes at age 21*. Chicago: Chapin Hall Center for Children (Children and youth in the foster care system face lower rates of high school graduation, college attendance and college graduation than the general population).

¹³For examples of recommendations to support for supporting system-involved youth and educations see John Burton Advocates for Youth's report, *Pipelines for Success: Supporting California Foster Youth from High School to Community College*, https://www.jbaforyouth.org/wp-content/uploads/2019/10/2019_ERP_Foster_Youth_Report-1.pdf; American Bar Association, Legal Center for Youth Justice and Education, *Blueprint for Change*, <https://jeducationblueprint.org/>

a. Include “Lived Experience” in Diversity Statements

Law schools,¹⁴ the American Bar Association,¹⁵ State Bar Associations,¹⁶ and Law Firms make public commitments to diversity and inclusion. These commitments should extend to students and attorneys with lived experience. This is not only important in recruiting attorneys and advocates with lived experience, but also in retention. A study published in October 2016 by the American Psychological Association indicated that the manner in which a law firm communicated about its approach to diversity corresponded with attrition for attorneys in already underrepresented groups.¹⁷ Law schools, bar associations, and law firms should make the effort to have a much deeper understanding of diversity and inclusion issues and act to fulfill those public commitments.

b. Consider Changes to Law School Recruitment Applications

In order to implement diversity statements with fidelity, law schools should remove questions about prior system involvement from applications or provide much greater information and resources to help applicants with lived experience answer these questions and know that law school is still a viable option.

For example, the ABA’s admonition to law schools regarding standard 504(b),¹⁸ governing moral fitness to practice law, fosters a perception that allowing formerly juvenile justice system involved youth into law school may be a gamble because they may not pass moral character requirements when seeking to enter the profession.¹⁹ The way law schools inquire about system-involvement in their applications can also make it confusing as to whether individuals are required to disclose their history with the juvenile justice system, which can have a chilling effect on an individual’s decision to apply to law school.

¹⁴ See e.g. University of California Berkeley School of Law, *Faculty Admissions Policy*, <https://www.law.berkeley.edu/admissions/jd/applying-for-jd-degree/faculty-policy-regarding-admissions/>.

¹⁵ American Bar Association, *Commission on Racial and Ethnic Diversity in the Profession*, <https://www.americanbar.org/groups/diversity/DiversityCommission/>.

¹⁶ See e.g., State Bar of California, *Promoting Inclusion and Diversity*, <https://www.calbar.ca.gov/About-Us/Our-Mission/Promoting-Diversity>

¹⁷ Kathleen Natly, *Do Law Firm Communications about Diversity and Inclusion Efforts Affect Retention of Attorneys in Underrepresented Groups?*

<https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2017/spring2017-0517-do-law-firm-communications-about-diversity-efforts-affect-retention-of-attorneys-in-underrepresented-groups/>

¹⁸ American Bar Association, Section of Legal Education and Admission to the Bar, *Managing Director’s Guidance Memo Standard 504*,

https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_guidance_s504_bar_admissions_qualifications.pdf

¹⁹ Stanford Law School, *Unlocking The Bar: Expanding Access to the Legal Profession for People with Criminal Records in California*,

<https://www-cdn.law.stanford.edu/wp-content/uploads/2019/07/Unlocking-the-Bar-July-2019.pdf> (“[O]ne of the chief reasons law schools include moral character questions on their applications is that they are hoping to mirror state bars’ moral character requirements, and they are anticipating the particular information requests that state bar officials will make[...] In addition to anticipating state bars’ moral character requirements, admissions officers cited safety, liability concerns, and a desire to assess applicants’ judgment as reasons for asking about applicants’ criminal records”).

This can produce a significant barrier for youth interested pursuing system reform as lawyers.

Additionally, many law schools could improve pathways to legal careers by encouraging individuals who experienced legal systems as youth to apply to law school. For example, many schools ask applicants for admission if they would like to include an optional additional essay sometimes called a “Diversity Statement.” Schools often list characteristics should consider adding to the diversity of the class. Schools can consider adding “systems involvement,” or “legal status,” to the list of characteristics that might diversify their classes. Stanford Law asks applicants, if they would like the committee to consider how their “background, life and work experiences, advanced studies, extracurricular or community activities, culture, socio-economic status, sex, race, ethnicity, religion, sexual orientation, gender identity or expression, or other factors would contribute to the diversity of the entering class” they are invited to do so.²⁰

c. Adjust Bar Rules

Moral Character Determinations in of themselves create a barrier for some individuals with juvenile justice or immigration system involvement. For example, the California State Bar’s Moral Character application specifically requires disclosure of all convictions, including those that occurred in juvenile court.²¹ This is despite the fact that juveniles are adjudicated, not convicted. Law schools and bar associations can help address these barriers directly either through reforming character and fitness criteria or through providing greater clarity on the relevance of criminal history or the boundaries of what they do and do not need to share to diminish the chilling effect.

Lawyers can advocate for changes in their own State Bar, as has already happened in California, Florida, New York and New Jersey, to open their bars to DACA students.²² In the same vein, lawyers can also can also advocate that all questions on the Moral Character Determination Application asking about prior system juvenile legal system involvement or contact with law enforcement under the age of 18 be removed.

²⁰ Stanford Optional Diversity Statement: <https://law.stanford.edu/apply/how-to-apply/jd-application-process/> Columbia Law, provides “socioeconomic status, ethnic, religious, sexual orientation” as examples.

²¹ For a full analysis of the exclusionary impacts of the Moral Character Determination, see Stanford Law School, *Unlocking The Bar: Expanding Access to the Legal Profession for People with Criminal Records in California*, <https://www-cdn.law.stanford.edu/wp-content/uploads/2019/07/Unlocking-the-Bar-July-2019.pdf>

²² Pat Eaton-Robb, *AP News*, “Taking on the system: ‘Dreamers’ are getting law degrees,” <https://apnews.com/2e2c786b76b14ddab6d9a516b33654bf/Taking-on-the-system:-'Dreamers'-are-getting-law-degrees>

d. Volunteer with Organizations that Serve Youth with Lived Experience

Offering opportunities for job shadowing, mentoring, connections to potential employers, field experience, and professional development are all crucial in creating pathways to legal and advocacy careers for youth with lived experience. Many attorneys were able to get exposure to the legal profession before they began attending law school through their own personal network. For example, children of lawyers are 17 times more likely to become lawyers themselves.²³ Often, individuals with lived experience do not have access to these networks, and the only attorneys they have interacted with are the ones that have represented them in court. In this respect, attorneys who represent youth and judges who interact with youth could help identify broader legal community networks for mentorship.

The earlier that this mentorship can happen in these individual's lives, the more likely they can identify the legal and/or advocacy field as an area of interest and start trying to set themselves up for success. Some law schools already have programs to connect law students with high school students that might not otherwise have the exposure to the legal profession. For example, Loyola Law School of Los Angeles Young Lawyers provides mentoring that exposes youth to the benefits of continuing their education beyond high school. Law students are paired with high school students to provide one-on-one help with trial preparation and weekly homework, and to share their own experiences as undergraduate students and reasons for pursuing a legal career.²⁴

e. Establish Scholarships and Fellowships Dedicated to Individuals with Legal System Experience

Existing programs that assist individuals who are traditionally underrepresented at law schools can be used as a template for creating programs to support individuals with lived experience. For example, the Training and Recruitment Initiative for Admission to Leading Law Schools “Trails,” is a residential scholarship program that helps talented students of underrepresented backgrounds gain admission to the nation’s leading law schools.²⁵ Students receive support preparing for the LSAT as well as attending lectures at both NYU and Harvard Law School.²⁶

The Prison Reform and Education Project “PREP” Scholarship Fund at NYU Law that provides scholarships to students who have been directly impacted by their involvement with the criminal legal system, either through their own experience or that of a parent. It aims to encourage formerly incarcerated individuals—or those with a formerly or currently

²³Staci Zaretsky, Children Of Lawyers 17 Times More Likely To Become Lawyers, <https://abovethelaw.com/2019/04/children-of-lawyers-17-times-more-likely-to-become-lawyers/>

²⁴ Loyola Law School of Los Angeles, *Young Lawyers program*, <https://www.lls.edu/academics/experientiallearning/publicinterestprobonoservices/younglawyersprogram/>

²⁵Training and Recruitment Initiative for Admission to Leading Law Schools, <https://trials.atfoundation.org/>

²⁶ Training and Recruitment Initiative for Admission to Leading Law Schools <https://trials.atfoundation.org/program>

incarcerated parent—to apply to the Law School by making their attendance more financially feasible.²⁷

Additionally, scholarships and fellowships that specifically name lived experience as a factor in their eligibility criteria can help foster opportunities for individuals to enter the legal profession. For example, Soros Fellowships specifically state in their eligibility criteria they “especially welcome applications from individuals directly affected by, or with significant direct personal experience with, the policies, practices, and systems their projects seek to address.”²⁸ Equal Justice Works allows applicants to propose a fellowship project and as part of the application, asks applicants to write a personal statement detailing their “connection to the community” to which they will work.²⁹

f. Increase Peer Support and Supporting Establishment of Affinity Groups

A critical first step in addressing the obstacles that youth with lived experience face in becoming attorneys is to expand access to peer support. One example of this is the Underground Scholars Initiative. The Underground Scholars Initiative (USI) was created to support all prospective and current UC Berkeley students impacted by issues of mass incarceration, imprisonment, and detainment of any kind. “The goal of USI is to bridge the topic of mass incarceration that is highly popularized in academia with one that is grounded in the lived experiences of UC Berkeley students.”³⁰ There are three main components to the USI model: recruitment, retention, and policy advocacy. For example, USI utilizes the correspondence program with incarcerated students as part of its recruitment efforts and their retention program consists of hiring writing tutors to work specifically with USI’s student population. Additionally, USI’s policy work achievements included successfully getting the University of California to “Ban the Box” from the employment application.³¹

Another example of peer support, the recently formed California System Involved Bar Association, “CSBIA.” CSBIA aims to provide such support guidance and resources for prospective, current, and graduated law students from the perspective of individuals who are formerly incarcerated.³² CSBIA’s overarching mission is to diversify California’s legal profession by increasing access to legal education and California State Bar licensure for

²⁷ New York University Law School, PREP Scholarship, <https://www.law.nyu.edu/NYULawPREPScholarship>

²⁸ Open Society Foundation, Soros Justice Fellowships, <https://www.opensocietyfoundations.org/grants/soros-justice-fellowships>

²⁹ Equal Justice Works Fellowship Application Guide, <https://2cl03t2b1ka1nj21k1h04f3-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/EJW-applicant-guide-2020-03.17.20-WEB.pdf>

³⁰ University of California at Berkeley, *Underground Scholars*, <https://callink.berkeley.edu/organization/usi>, American Bar Association, Legal Center for Youth Justice and Education, Blueprint for Change, <https://jeducationblueprint.org/examples/underground-scholars-initiative>

³¹ Root and Rebound, *my education, my freedom: A Toolkit for Formerly Incarcerated and System-Impacted Students Pursuing Education in California*, <http://www.fullerton.edu/rebound/resources/pdfs/Root%20and%20Rebound%20Higher%20Ed%20Toolkit%202018.pdf>

³² For more information, please contact Frankie Guzman, Director of the Youth Justice Initiative at the National Center for Youth Law, at fguzman@youthlaw.org.

people who are formerly incarcerated or system involved. To deliver crucial supports in increasing representation of those with lived experience in the legal profession those organizations need support to operate. Funding such organizations would help create a more knowledgeable network for students with lived experience.

IV. Legal Community Roles in Hiring, Retaining and Promoting Individuals with Legal System Experience

This Resolution encourages legal organizations serving youth to hire, retain and promote individuals with lived experience. Of the organizations surveyed for this policy, most have staff, managers, directors and/or board members who have experienced the systems the organization seeks to improve. Given the complexities of the laws that affect those in the child welfare, juvenile justice and immigration systems, organizations can consider lived experience as enhancing an individual's academic or professional experience. As some advocates have suggested, skills can be learned on the job, but passion for the cause cannot be taught. That passion can come from serving those impacted by those systems, or it can come from being impacted by those systems themselves.

To enhance recruitment, job announcements must be posted where they will be seen by the target audience – foster youth newsletters, online communities, and advocacy organizations. Recruitment efforts can even encourage those with lived experience to apply.³³ Priority consideration could include allowing for some life experience in place of professional experience, accepting letters and character references from individuals other than supervisors, and assuring candidates that upon onboarding appropriate mentorship and other supports will be provided.

Once hired, staff with lived experience must be supported and retained with thoughtful attention to the additional challenges they may face in their roles. Professionals serving these populations have higher rates of secondary trauma, and those with lived experience are likely to at times face situations that may remind them of their own childhood experiences. Organizations are encouraged to support those with lived experience by having supportive medical/mental health services, supportive sick/paid time off policies, but also mentoring and quality trauma training. Organizations should provide training to staff, especially managers at identifying, and supporting those with secondary trauma. Organizations should also be mindful of ways to support those with lived experience in the workplace by valuing their personal expertise. Employers should also respect staff's comfort levels at sharing their story to avoid tokenizing staff or board members with lived experience. Finally, organizations should consider giving priority consideration for promotion to staff with lived experience when their expertise and skills are appropriate for the position. Having individuals with lived experience in leadership roles can help directly address pipeline challenges when youth do begin to see themselves reflected in the faces of those who are leading change in the fields that affect their own lives.

³³ See Employment Preference for Former Foster Youth https://www.dfps.state.tx.us/Child_Protection/Youth_and_Young_Adults/Transitional_Living/employment.asp.

For non-staff positions, many youth serving organizations have bylaws that require a certain number or percentage of their board to have personal experience in the legal system they work in. This Resolution encourages organizations to adopt and expand such policies. Organizations should also be careful to be deliberate about this process to ensure an individual with lived experience is not merely appointed in name but is able to actively engage in shaping the organization's direction. For example, if an individual with lived experience assumes a board or advisory role the organization should work to make sure meeting times and locations are accessible. Similarly, other board members and staff leadership should be trained on how to facilitate and support active engagement by all members to create space and access for new members to participate in ways that don't always conform with past practice.

Conclusion

As an association of legal professionals, the ABA has long-standing responsibilities to reform the many legal systems within which we work. This Resolution makes clear that effective reform of legal systems that affect children and youth cannot be accomplished without equal partnership in system reform by the very individuals whose lives have been shaped in those systems, including youth. The process of engaging youth in legal system reform requires expertise and careful efforts toward planning, training and ongoing reflection and support. Adoption of this Resolution will encourage members of the legal community to partner with organizations that have active youth engagement programs to ensure youth have this kind of supportive environment when working with the legal community to effectuate system reform. It will also encourage the legal system to create pathways for individuals with lived experience to pursue and succeed in legal and advocacy careers in the legal profession. Finally, it will encourage organizations focused on child welfare, juvenile justice and immigration reform to incorporate individuals who experienced those systems as children as part of their staff and board leadership.

Respectfully submitted,

Honorable Ernestine Gray
Chair, Commission on Youth at Risk
August 2020

GENERAL INFORMATION FORM

1. Submitting Entity: Commission on Youth
Section of Civil Rights and Social Justice
2. Submitted By: Hon. Ernestine Gray
3. Summary of the Resolution(s):

This Resolution recognizes that effective reforms of legal systems that affect the fundamental rights of children cannot be accomplished without active participation by individuals who experienced those systems as children and youth. It therefore encourages the legal community to promote effective, ongoing, and authentic engagement in legal system reform and advocacy efforts by individuals who have experienced those systems as children and youth and to address any barriers to that participation in reform and advocacy efforts. The Resolution also encourages legal organizations to incorporate authentic youth voice and lived experience in leadership positions, such as staff members, managers, partners, directors, and board members. And so that individuals with lived experience in legal systems that affect children and youth may pursue and succeed in legal and advocacy careers, the Resolution urges the legal community to create pathways for that to happen.

4. Approval by Submitting Entity:
Approved by Commission on Youth at Risk on May 25, 2020
Approved by Section of Civil Rights and Social Justice on May 25, 2020
5. Has this or a similar resolution been submitted to the House or Board previously? No
6. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? This Resolution complements another Youth at Risk Resolution submitted for House consideration in August 2020.
7. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A
8. Status of Legislation. (If applicable) N/A
9. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. If adopted, this ABA Resolution with Report will be shared among networks of attorneys, judges, youth-serving organizations, and individuals with lived experience in legal matters as children and youth. We will encourage the legal and advocacy community to adopt policies recommended in the Report and follow guidance highlighted here.
10. Cost to the Association. (Both direct and indirect costs) Adoption of this proposed Resolution would result in only minor indirect costs associated with Commission staff

time devoted to the policy subject matter as part of the staff members' overall substantive responsibilities.

11. Disclosure of Interest. (If applicable) None

12. Referrals. By copy of this form, the Report with Recommendation will be referred to the following entities:

- Center for Human Rights
- Coalition on Racial and Ethnic Justice
- Commission on Disability Rights
- Commission on Domestic and Sexual Violence
- Commission on Homelessness and Poverty
- Commission on Immigration
- Commission on Sexual Orientation and Gender Identity
- Criminal Justice Section
- Family Law Section
- Judicial Division
- Legal Services Division
- Litigation Section
- Section of Science and Technology
- Solo, Small Firm and General Practice Division
- Young Lawyers Division

13. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address).

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14. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting.

Hon. Ernestine Gray

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Orleans Parish Juvenile Court
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EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution recognizes that effective reforms of legal systems that affect the fundamental rights of children cannot be accomplished without active participation by individuals who experienced those systems as children and youth. It therefore encourages the legal community—attorneys, judges, advocates, legislators, law schools and bar associations—to promote effective, ongoing, and authentic engagement in legal system reform and advocacy efforts by individuals who have experienced those systems as children and youth and to address any barriers to that participation in reform and advocacy efforts. The Resolution also encourages legal organizations to incorporate authentic youth voice and lived experience in leadership positions, such as staff members, managers, partners, directors, and board members. So that individuals with lived experience in legal systems that affect children and youth may pursue and succeed in legal and advocacy careers, the Resolution urges the legal community to create pathways for that to happen.

2. Summary of the issue that the resolution addresses.

This Resolution the all-too-common absence of meaningful participation in system reform efforts by individuals with lived experience as children and youth in those systems. When youth engagement is conducted informally without the support of experienced organizations, the risks of unintended consequences, such as misappropriation of story and tokenism, are high.

3. Please explain how the proposed policy position will address the issue.

This Resolution and Report is designed to help the legal community – including attorneys, judges, legislators, bar associations, and law schools – understand the importance of working thoughtfully with organizations that have youth engagement expertise. It reflects recommendations and extensive input from several organizations across the country who have developed authentic youth engagement programs.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None have been identified.