



# AMERICAN BAR ASSOCIATION

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## **STATEMENT**

**of**

**KAREN J. MATHIS  
IMMEDIATE PAST PRESIDENT  
AMERICAN BAR ASSOCIATION**

**before the**

**CALIFORNIA BLUE RIBBON COMMISSION ON CHILDREN IN FOSTER CARE**

**for the hearing  
on**

**“The Draft Recommendations of the California Blue Ribbon Commission on Children in  
Foster Care”**

**San Francisco, CA  
May 14, 2008**

Good morning Chair Moreno and members of the Commission:

My name is Karen J. Mathis. I am the Immediate Past-President of the American Bar Association and a partner in the Denver, Colorado office of McElroy, Deutsch, Mulvaney and Carpenter, LLP. I am pleased to appear today on behalf of the ABA at the request of the current ABA President William H. Neukom. The American Bar Association is the world's largest voluntary professional organization with a membership of hundreds of thousands of lawyers, judges, and law students worldwide, including a broad cross-section of family law practitioners, lawyers practicing in juvenile and dependency courts, and judges. As it has done throughout its 130-year existence, the ABA strives continually to improve the American system of justice and to advance the rule of law throughout the world. Thank you for the opportunity to share the views of the ABA on foster care policy.

During the 2006–2007 ABA year I was privileged to serve as the Association's President. I made it my highest priority to focus the ABA's attention on the often-overlooked problems of vulnerable youth in our society. A special ABA Presidential Youth at Risk Initiative was undertaken and has continued beyond my year as President. It has addressed several important issues related to the work of this Commission: helping foster children aging out of the foster care system; addressing the need to better hear the voices of youth in court proceedings affecting them; aiding teenage youth who may first come into care due to juvenile status offense behaviors or who may cross over into the delinquency system; enhancing legal representation of youth through control of attorney caseload sizes; enhancing data and information that will enable

effective responses to racial disparities in the child welfare system; and improving supports for kinship caretakers.

### **Extended Support for Transitioning Youth**

The ABA House of Delegates, our policy-making body, adopted a comprehensive policy recommendation in August 2007 regarding youth aging out of foster care. The ABA recommendations strongly support the recommendation the Commission is considering to “urge Congress and the state Legislature to extend the age for children to receive foster care from 18 to 21.” This policy, and the other policies I will mention in my statement, is attached as “Appendix: ABA Policy.”

We support amendments to federal law that expand services to youth who age out of foster care, including support after they reach age 18, more aid to transitioning youth living with relatives, and enhanced health and educational opportunities that assist these youth. We want local, state, federal, and territorial jurisdictions to support law and practice reforms that expand services to youth aging out of foster care, including allowing youth who have exited the foster care system to opt back in to it. We also want state and local bar associations and attorneys to provide better support for young adults transitioning from foster care by addressing education, employment, and credit issues among this population and by helping enhance the role of courts in assisting youth leaving foster care for adult independence.

California currently has a foster care population of approximately 80,000 of the more than half a million children nationwide in foster care at any given time in a year. About 17% of the California foster children are at age 16-18, whose eligibility for foster care support will generally come to an end beyond age 18. Since 1985, federal law has recognized that older youth in foster care deserve special attention and programming. In that year, the Independent Living Program was added to the Social Security Act. In 1999, the law was further amended by the Chafee Foster Care Independence Act (FCIA) to respond to the limitations and perceived ineffectiveness of the Independent Living Program. Of the approximately 20,000 youth who age out of foster care each year, many are not prepared to live independently: often youth are discharged from care without attaining basic education goals or learning critical life skills and, as a result, many become unemployed, homeless, and dependent on public assistance.

Most youth who leave the foster care system do not receive adequate preparation and support for their transition to independent living. Compared to other youth, foster children are more likely to be homeless, incarcerated, unemployed, and unskilled. They are also more likely to experience physical, developmental, behavioral and mental health challenges. It is critical that these young people be adequately supported and served, and the ABA encourages lawmaking bodies to amend relevant laws, and agencies and courts to alter practices so that current and former youth are prepared for a successful adulthood. There is a growing consensus that allowing youth to remain in foster care voluntarily after age 18 is critical to ensuring positive outcomes for these young adults.

The ABA urges state and territorial legislatures to permit the extension of jurisdiction of dependency courts over youth transitioning from foster care until age 21, when appropriate, to ensure that youth have access to the court, and to legal and social services through the court and to fully implement the provisions of the federal Foster Care Independence Act.

We further support amending federal and state law to mandate provision of comprehensive post-majority child welfare services to transitioning and former foster youth until age 21 or older, with the option for renewal of support after exit from foster care.

While some states only allow foster youth to remain in care if they are enrolled in an educational activity (such as finishing high school or attending a postsecondary institution) or have a special need or disability, states should follow the lead of Arizona, Idaho and Illinois, which allow youth to remain in care without any conditions. Even where full post-majority services are offered, some transitioning youth may choose not to accept those services but may later find themselves needing support. Therefore, it is important that states also implement a “return policy” for youth who leave foster care at age 18, which allows transitioning youth to receive foster care services after initially rejecting them.

### **Youth Participation at Hearings and in Transition Planning**

The final report of the Pew Commission on Foster Care noted a common failure of juvenile and family courts to assure that dependent youth play a meaningful role in the judicial proceedings that can affect their entire lives, as it is not uncommon to find their active in-court participation

discouraged. We have been examining how significant involvement of teen clients in all hearings affecting them can be promoted, so that court proceedings become a positive participatory experience for vulnerable youth. We are eager to promote best practices, model programs, and innovative legislation that helps assure a far greater degree of participation of young people in the court proceedings affecting them.

The ABA urges legislative bodies and courts to ensure that youth transitioning from foster care are afforded a meaningful opportunity to participate in the court hearings that will chart their adult path. Courts should conduct hearings that specifically address a youth's transition out of care before discharge. Later this month, we will be participating in an invitational conclave, sponsored by the Association of Family and Conciliation Courts, to identify ways that youth can also be more involved in alternative dispute resolution processes, including mediation sessions and other settings that affect their transitional assistance. The ABA has long supported and encouraged the participation of youth in their court proceedings. In our August 2007-adopted recommendations, we endorse the principle that the law and courts should "provide all youth with the ability and right to attend and fully participate in all hearings related to their cases." Their voices need to be heard throughout the judicial process, through the assistance of competent attorneys, and as directly as possible. Youth should be included in discussions of what may happen in court, the consequences of court actions, and the resolution of intra-familial problems that relate to their court involvement. Specifically, our policy urges: "Judges, lawyers, social workers, and other professionals responsible for cases involving a youth's well-being should develop alternative ways of hearing his/her voice, such as providing youth with an

alternative way to communicate orally or in writing with the court and/or emphasizing the importance of youth-guided representation.”

We have called for all dependent youth to be on an equal footing with other parties in the dependency proceeding and that they be given the right to quality legal representation, not simply an appointed lay guardian ad litem or lay volunteer advocate with no legal training, acting on their behalf in this court process.

We believe that states should attract and retain effective, trained, and qualified lawyers in the dependency practice area through: development and implementation of reasonable compensation for dependency counsel, that is not tied to the volume of cases or clients a lawyer represents; establishment of loan forgiveness programs for attorneys who enter or currently practice in this area; development and implementation of national protocols and standards for reasonable attorney caseloads; federal and state support for attorney training; and development, implementation of, and funding for, qualification and training standards for dependency counsel.

### **Youth Who Initially Come into Care as Teenagers**

The ABA House of Delegates has approved recommendations brought forward by the Youth at Risk Commission that call for juvenile status offenders, including youth who are out-of-control in their homes, runaways, and chronic truants, to be diverted from the court process through targeted early intervention and pre-court services. We know that many of these youth enter the dependency process and foster care system, but we believe that with effective services many of these young people could be successfully maintained or reunited with their families. With the

number of female status offenders increasing, there is a particular need for gender-specific services.

We also know that many of these older youth are at high risk of becoming what we call “crossover” or dual jurisdiction youth. They may have both dependency and delinquency proceedings facing them. This past February the House of Delegates approved a recommendation that calls for diversion of dependent youth from the juvenile justice process for lower level offenses. It also calls for elimination of any statutory prohibitions on use of dual jurisdiction, while favoring the dependency case remaining open and calling for continued child welfare services even if the youth is adjudicated delinquent.

### **Caseloads**

The ABA has not addressed specific caseload guidelines but has more broadly addressed issues related to the Commission’s recommendation that “The Judicial Council should advocate reasonable judicial, attorney, and social worker caseloads. Our House of Delegates adopted the following recommendation in August 2005, consistent with the national bipartisan May 2004 Pew Commission on Children in Foster Care, for improving outcomes for abused and neglected children under dependency court jurisdiction: “Greater federal and state resources should be provided for this part of the court system. Policies and resources should be developed to ensure that dependency courts have enhanced and high quality training; outcome-focused data tracking and performance measurement capabilities; stronger case management capacities; and workload measurement tools that enable bench officers to effectively manage cases, meaningfully track

children’s progress through the system, fully implement federal and state foster care mandates, and implement best practices.” The ABA, through its Center on Children and the Law located in Washington, DC, has extensively examined dependency case workload issues and case management tools. We continue to offer the Center’s assistance to help your state address these critical issues.

### **Data Access and Information Sharing**

The ABA supports the Commission recommendation that provides that “The Judicial Council should support the courts and all partners in the child welfare system in eliminating barriers to the exchange of essential information and data about the children and families they serve.” Our House of Delegates adopted the following recommendation in August 2005, consistent with the national bipartisan May 2004 Pew Commission on Children in Foster Care, for improving outcomes for abused and neglected children under dependency court jurisdiction:

“Communication and information-sharing barriers that preclude different data networks and the child welfare, judicial, mental health, criminal justice, education, and other systems from sharing information when necessary for the safety, permanency, and well being of abused and neglected children need to be identified and addressed through changes in laws or practice. For example, child welfare agencies and education systems should be able to share information to ensure appropriate care and education for a child while also protecting the privacy of the child and family.”

The ABA Commission has recently been examining the important issue of racial disparities in the child welfare system, from initial reporting of child maltreatment, to removals of children from their homes, through the final permanent placement process. The ABA House of Delegates this August will consider a set of recommendations addressing disproportionate minority children's involvement in foster care, beginning with a call for laws and policies to mandate the state-by-state collection of data, its analysis, and then the development of an action plan to address the findings of this study within each state.

### **Kinship Care Support**

The ABA supports the proposed recommendation under consideration by the Blue Ribbon Commission that child welfare agencies should engage family members earlier and the Judicial Council should work with state and federal leaders to develop greater flexibility in approving relative placements where necessary. The ABA House of Delegates adopted a policy recommendation in February 1999 urging courts, child welfare agencies, and participating attorneys, to establish guidelines to follow when abused, neglected, and abandoned children are placed in kinship care, and for use in provision of services to kinship providers for such children. Among these recommended guidelines are: (1) conducting an aggressive search for maternal and paternal kin and consideration of kinship placements as early as possible after the child becomes known to the child welfare agency and/or court; (2) carefully screening potential kinship providers before any kinship placement, just as agencies do with potential foster parents; (3) providing notice to and the opportunity for kinship providers to participate in the legal/judicial process, and helping them to obtain legal representation; (4) providing financial support, child health and mental health care coverage, other government assistance, and other resources to

kinship providers throughout the term of the placement, including aid and services after a permanent placement is legally finalized; and (5) encouraging state, local, and territorial governments to enact medical consent, standby guardianship, subsidized permanent guardianship, and open (cooperative) adoption laws that would further facilitate permanent kinship care.

In closing, let me thank the Commission again for the opportunity to present the views of the American Bar Association. For further information about ABA policy regarding foster care issues, please contact Bruce Nicholson, Legislative Counsel, in our Washington office at [nicholsonb@staff.abanet.org](mailto:nicholsonb@staff.abanet.org). I would be happy to answer any questions you may have.

## APPENDIX: ABA POLICY

### **YOUTH TRANSITIONING FROM FOSTER CARE Approved by the ABA House of Delegates, August 2007**

RESOLVED, That the American Bar Association encourages bar associations, judges, and attorneys to lead and promote efforts to create comprehensive support and services for youth who age out of foster care (“transitioning youth”) and other former foster youth until at least age 21, and urges amendment of applicable law, and court and child welfare practices, to:

1. Mandate provision of comprehensive post-majority child welfare services to transitioning and former foster youth until age 21 or older, with the option for renewal of support after exit from care;
2. Ensure each transitioning youth has a permanent, significant connection to an appropriate adult;
3. Provide all youth with the ability and right to attend and fully participate in all hearings related to their cases;
4. Mandate a court review hearing and judicial findings specifically setting forth a transition plan before the case of any transitioning youth is legally terminated;
5. Ensure that participation in school and extracurricular activities are actively promoted and ensure a youth’s participation in child welfare case and court activities does not result in academic penalties;
6. Ensure all foster youth are afforded the same rights to and support of educational attainment – including enrollment, educational stability, and school continuity – as homeless youth under federal law;
7. Mandate the maintenance, appropriate sharing, and timely transfer of all necessary education records relating to school progress, attendance and placement by all agencies, including providing a copy of records to transitioning youth;
8. Assist youth with accessing and completing postsecondary education and receiving financial assistance;
9. Ensure availability of a continuum of housing options for transitioning and former foster youth;
10. Assist transitioning and former foster youth in attaining financial health and stability; address barriers to obtaining proper identification, clean credit histories, needed transportation and participation in age-appropriate activities; and
11. Provide educational and vocational assistance and support for all transitioning and former foster youth over age 16 and promote incentives to encourage the employment of current and former foster youth.

FURTHER RESOLVED, That the American Bar Association urges Congress to amend federal law to expand services and support for transitioning youth by:

1. Amending Title IV-E of the Social Security Act to allow states to be reimbursed for care and services provided to current and former foster youth after their 19<sup>th</sup> birthday;
2. Providing clear and broad definitions in federal law regarding financial aid pertaining to “ward/dependent of the court” and “emancipation” to ensure that youth may receive financial aid without the requirement of a parental signature or parental income information;
3. Amending Subtitle VII-B of the McKinney-Vento Homeless Assistance Act to cover all children in out-of-home care.
4. Clarifying the Family Educational Rights and Privacy Act as it pertains to sharing health and education information among agencies, judges and advocates involved with the care and education of and legal proceedings involving foster youth; and
5. Implementing requirements to preserve every foster youth’s Social Security Act entitlements and other financial assets for use directly by that youth.

**YOUTH TRANSITIONING FROM FOSTER CARE (EXTENSION TO AGE 21) Approved by  
the ABA House of Delegates, August 2002**

RESOLVED, that the American Bar Association urges Congress and state and territorial legislatures to enact laws that provide youth in foster care full access, up to 21, to independent and transitional living services and health care, and

FURTHER RESOLVED, that the American Bar Association urges state and territorial legislatures to permit the extension of jurisdiction of dependency courts over youth transitioning from foster care until age 21, when appropriate, to ensure that youth have access to the court, and to legal and social services through the court, and to fully implement the provisions of the federal Foster Care Independence Act, including implementation of the Medicaid expansion option, and

FURTHER RESOLVED, that the American Bar Association work to ensure that youth transitioning out of foster care have access to competent counsel who can advocate for necessary services and safeguards.

**FOSTER CARE REFORM  
Approved by the ABA House of Delegates, August 2005**

RESOLVED, that the American Bar Association urges Congress, the States and territories to enact and/or adopt the following laws and policies, consistent with recommendations of the national bipartisan May 2004 Pew Commission on Children In Foster Care, for improving outcomes for abused and neglected children under dependency court jurisdiction:

- (a) All dependent youth should be on equal footing with other parties in the dependency proceeding and have the right to quality legal representation, not simply an appointed lay guardian ad litem or lay volunteer advocate with no legal training, acting on their behalf in this court process;
- (b) Foster youth should be notified of and afforded the opportunity to participate in the proceedings in their own dependency case;
- (c) States should attract and retain effective, trained, and qualified lawyers in the dependency practice area by:
  - (i) Development and implementation of reasonable compensation for dependency counsel, that isn't tied to the volume of cases or clients a lawyer represents;
  - (ii) Establishment of loan forgiveness programs for attorneys who enter or currently practice in this area;
  - (iii) Development and implementation of national protocols and standards for reasonable attorney caseloads;
  - (iv) Federal and state support for attorney training; and
  - (v) Development, implementation of, and funding for, qualification and training standards for dependency counsel;
- (d) Greater federal and state resources should be provided for this part of the court system. Policies and resources should be developed to ensure that dependency courts have enhanced and high quality training; outcome-focused data tracking and performance measurement capabilities; stronger case management capacities; and workload measurement tools that enable bench officers to effectively manage cases, meaningfully track children's progress through the system, fully implement federal and state foster care mandates, and implement best practices;
- (e) Communication and information-sharing barriers that preclude different data networks and the child welfare, judicial, mental health, criminal justice, education, and other systems from sharing information when necessary for the safety, permanency, and well being of abused and neglected children need to be identified and addressed through changes in laws or practice. For example, child welfare

agencies and education systems should be able to share information to ensure appropriate care and education for a child while also protecting the privacy of the child and family;

(f) Recruitment and long-term retention of committed, qualified, and trained bench officers who oversee the needs of abused and neglected children in dedicated dependency courts should be ensured; efforts should also be made to recognize and underscore the importance of the work done by dependency court judges throughout the country;

(g) The Judiciary should, working with bar leadership, facilitate meaningful reforms in, and provide needed support and oversight of, dependency courts, and serve as champions for abused and neglected children in the court system; and

(h) Effective collaboration between court and child welfare agency leaders should be established and formalized at a state level to create a vehicle for identifying existing barriers and crafting feasible solutions to meeting the needs of children in foster care.

BE IT FURTHER RESOLVED that the American Bar Association urges Congress, and the state and territorial legislatures, to maintain commitments for adequate resources, and enact laws and implement policies to increase resources and maintain flexibility in use of those resources, that support the needs of children and families at risk regardless of whether an abused or neglected child is removed from home, and without limiting the protections, support, and rights of children in foster care or their families.

BE IT FURTHER RESOLVED that state and local Bar Associations are urged to actively support the development and implementation of these laws and policies.

### **JUVENILE STATUS OFFENDERS** **Approved by the ABA House of Delegates, August 2007**

RESOLVED, that the American Bar Association urges state, local, territorial, and tribal jurisdictions to pass laws and support policies and programs that divert alleged juvenile status offenders from court jurisdiction that:

- (1) Mandate the development and implementation of targeted evidence-based programs that provide juvenile, family-focused, and strength-based early intervention and pre-court prevention services and treatment to alleged juvenile status offenders and their families; and
- (2) Promote the development of gender-responsive programs, treatment, and services for alleged juvenile status offenders.

FURTHER RESOLVED, that the American Bar Association urges Congress to make the availability of federal funds contingent on compliance with the following requirements related to juvenile status offenders:

- (1) Articulate minimum guidelines with which states, territories, and tribal jurisdictions must comply in implementing early intervention and diversion programs for alleged juvenile status offenders. These programs should be evidence-based, gender-responsive, family and youth-focused and attempt to exhaust voluntary treatment and services to avoid court involvement and out-of-home placement;
- (2) Expand and support the ability of state, local, territorial, and tribal youth-serving social service agencies to be a timely first responder to situations involving juvenile status offenders and provide effective services and treatment to both alleged and adjudicated juvenile status offenders; and
- (3) Promote community-based services to alleged and adjudicated status offenders and families in their homes, communities, or in respite, foster, group, or staff-secure settings, if necessary for the protection and safety of the juvenile.

**DUAL JURISDICTION YOUTH**  
**Approved by the ABA House of Delegates, February 2008**

Resolved, that the American Bar Association urges the federal, state, territorial, and tribal governments to revise laws, court rules, policies, and practices related to “dual jurisdiction” youth (abused and neglected youth with juvenile “dependency” cases who are charged with acts of delinquency) to:

1. Use diversion and intervention services for minor or low level acts of misbehavior committed while a youth is in foster care;
2. Eliminate statutory and legal restrictions inhibiting dual jurisdiction;
3. Create a legal preference enabling youth to have their dependency proceedings remain open with continued child and family support;
4. Provide, when feasible, that a single judge hear post-adjudication dispositional matters involving dual jurisdiction cases and that continuity of legal representation for the child in both court proceedings be secured;
5. Promote training for all juvenile defense counsel on foster care issues;
6. Ensure that an adult responsible for the youth attend hearings in both proceedings to address issues related to the child and family;
7. Encourage information-sharing among dependency and delinquency courts and agencies, establish confidentiality protections for all child welfare information shared, and restrict the use of information gathered from foster youth as part of screening, assessment, or treatment in the pending or future delinquency or criminal proceedings;
8. Promote the prompt post-arrest involvement of providers, caseworkers, or advocates acting on the youth’s behalf; ensure fair treatment of foster youth in juvenile detention, incarceration, or probation decisions; and eliminate practices that result in detention or prolonged incarceration of youth due to foster care status or an absence of suitable placement options;
9. Provide clear authority for continued social services/child welfare support for children and families when youth cross from dependency to delinquency court/juvenile justice, and eliminate funding barriers that inhibit multiple agency support of these youth and their families;
10. Apply protections afforded foster youth under Titles IV-E of the Social Security Act to youth placed through delinquency or status offense proceedings, in foster care or other non-penal settings, under court authority or under the auspices of juvenile justice agencies; and
11. Fully implement 2002 and 2003 amendments to the Juvenile Justice and Delinquency Prevention Act and the Child Abuse Prevention and Treatment Act to: a) make youths’ child welfare records known to the juvenile court for effective treatment planning; b) provide effective treatment and service continuity when youth transition between child welfare and juvenile justice systems; c) assure that when youth are placed in settings funded through Title IV-E of the Social Security Act they receive full protections afforded under that law; and d) collect state data on all youth transferred from one system to another.