

**Thomas M. Susman**  
Director  
Governmental Affairs Office

**AMERICAN BAR ASSOCIATION**  
1050 Connecticut Avenue, NW - Suite 400  
Washington, DC 20036  
(202) 662-1760  
FAX: (202) 662-1762

January 16, 2014

The Honorable Dave Camp  
Chairman  
Committee on Ways and Means  
U. S. House of Representatives  
344 Cannon House Office Building  
Washington, DC 20515

The Honorable Sander Levin  
Ranking Member  
Committee on Ways and Means  
U. S. House of Representatives  
1236 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Camp and Ranking Member Levin:

I write on behalf of the American Bar Association in response to the Committee's request for comments regarding its draft legislation "Preventing Sex Trafficking and Improving Opportunities for Youth in Foster Care." The ABA has long been committed to improving the lives of our nation's most vulnerable children and families. We commend the Committee and are strongly supportive of its effort to advance meaningful legislation to address sex trafficking and foster youth. We also recommend amendments listed below to strengthen protections and support for youth affected by sex trafficking or involved with the child welfare system.

The ABA strongly supports explicit requirements that state and local child welfare agencies identify, document, and serve child victims of sex trafficking. We also support a federal mandate to assure prompt reporting of every child missing from agency care and expeditious efforts to locate and return those children to care. We believe that the Children's Bureau of the U.S. Department of Health and Human Services must play a stronger role in helping child welfare agencies better prevent and address child trafficking. Therefore, we recommend the following changes to strengthen and improve the sex trafficking section of the Discussion Draft.

1. In Section 101, adding to child welfare agency responsibilities, after "state action": "residential services, including safe and stable housing". This is because housing is so often a critical unmet need for trafficking victims.
2. In this same section, adding after "is a victim of sex trafficking": ", including undocumented, unaccompanied children and youth who may be receiving services under the Trafficking Victims Protection Act". We believe that child welfare agencies also have a responsibility towards these non-citizen child trafficking victims.

3. In Section 102, in the proposed child welfare state plan requirement (34)(A), adding after “a victim of sex trafficking”: “and offer data concerning the outcomes achieved for these children in the areas of permanency, placement stability, time in care, reason for discharge, positive development, and emotional well-being, as compared with other children under the State’s care and supervision.” It is important not only to document which children are sex-trafficked, but also to indicate what their case outcomes are and how they differ from other children in child welfare custody.
4. Also in Section 102’s proposed state plan requirement (34), adding “and the National Center for Missing and Exploited Children” after the reference to the National Crime Information Center.
5. In this same section, in (35) adding after “youth shelters”: “, transitional housing and other supportive housing”. As indicated above, we believe that it is important for states to document efforts to provide housing to trafficked children.
6. In Section 104, we believe that there are not only trafficking risks to children who run away or go missing from care, but also to children in State placements generally. Therefore, we suggest adding in (1): “characteristics of, and factors associated with, children who remain in placement who become victims of sex trafficking”.
7. Because many abused and neglected children never enter foster care, collecting data only on the number of foster children who are sex trafficked falls short of being the most effective tool possible. It is also important to know how many children found by child protective services to be maltreated, but who were not removed from their home, were trafficking victims. Therefore, where Section 301 adds a data-collection requirement for states to provide annual aggregate numbers of child trafficking victims who were in foster care, we suggest the addition of a requirement that states also submit aggregate annual data on the numbers of such victims “among children substantiated as victims of child abuse or neglect”.
8. Finally related to child sex trafficking, we suggest an additional data collection and reporting requirement for Section 301 that is based on our concern about youth who are already transitioned out of foster care. Specifically, we encourage the addition of a mandate for a new “outcome data element” in the National Youth in Transition Database (developed under the Foster Care Independence Act of 1999 [P.L. 106-169, amending section 477 of the Social Security Act in 42 U.S.C. § 677(f)], to track as an outcome of former foster youth: “youth who were victims of sex trafficking or a severe form of trafficking in persons.” We offer this recommendation because it is critical to identify how many youth *already out of* foster care and living on their own have been trafficking victims, not just the youth currently in foster care.

As to the other provisions of the Discussion Draft, we fully support efforts to improve “normalcy” for children in foster care, as well as limitations on the use of case plans of APPLA (Another Planned Permanent Living Arrangement), which too frequently have allowed inappropriate shortcuts to more aggressive permanency efforts on behalf of foster youth.

We encourage additional measures to further strengthen this part of the Discussion Draft:

1. In Section 201, we believe the reasonable and prudent standard should include not only extracurricular, enrichment, and social activities, but also “cultural” activities.
2. We believe that the bill’s requirement of additions to child welfare agency documentation is missing one critical element: assuring that that youth transitioning from foster care be reconnected with their adult siblings, many of whom can provide the “permanent connections” so vital to successful adulthood. Therefore, in Section 202(b), among the efforts that need to be documented related to seeking “family” placement of children, we encourage the addition of efforts “to reconnect the child with his/her adult siblings.”
3. Consistent with the theme of “permanent adult connections,” we suggest that Section 202 add a requirement that states document, at each permanency hearing, “the identification of at least one responsible adult with whom the child shall have a permanent, supportive connection.”
4. Also in Section 202, we suggest including that each permanency hearing held with respect to the child [as included in proposed Sec. 475(a)(3)] be held “not less frequently than every 6 months,” to ensure that the agency regularly reports the steps taken so that the youth has regular, ongoing opportunities to engage in age- or developmentally appropriate activities.
5. In over a dozen states, a youth who has remained in foster care for many years may, regrettably, lacks any court-appointed lawyer to protect his or her legal interests. The ABA considers it absolutely essential that every foster youth have independent legal counsel. In other states that do provide legal representation to foster children, the child may have a court-appointed lawyer or guardian ad litem, but that person may cease to be “active” after a youth has been residing in foster care. Section 203 [in both (a) and (b)] therefore presents an important opportunity to add a critical mandate for independent legal representation for older foster youth, and we urge this addition in the bill’s new case plan and transition plan requirements for foster youth 14 and over. Specifically, we recommend new language that all transition and case plans must also be developed with the consultation “of a court-appointed attorney for the youth”. We also suggest that “attorney representation” be added to the “List of Rights” in 203(d) that is required to be included in every case plan for foster youth 14 and older.
6. In this same section, where requirements are made for what a foster child must receive before his or her discharge from care, we would suggest adding “any health insurance cards and other relevant health care documents that the child may need to obtain continued health care coverage”. The issue of health care access for youth who exit foster care, of whatever age, is very important and has too often been neglected.
7. Finally, we believe that no youth should be discharged from foster care without having safe and secure housing; too many youth are discharged from foster care and then quickly become homeless. Therefore, we encourage adding the words “safe and secure housing” to the title of Section 204 and to the list of what a foster youth must have before being discharged from care.

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Thank you for your consideration of these comments. Should you have any questions or want additional information concerning our comments, please feel free to contact Bruce Nicholson, Senior Legislative Counsel (202-662-1769; [bruce.nicholson@americanbar.org](mailto:bruce.nicholson@americanbar.org)) or Howard Davidson, Director of the ABA Center for Children and the Law (202-662-1720; [howard.davidson@americanbar.org](mailto:howard.davidson@americanbar.org)).

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Susman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas M. Susman