

The Guardian

The Guardian is a quarterly law journal published by the National Association of Counsel for Children exclusively for its members.



The Overrepresentation of Youth of Color and LGBTQ+ Youth Amongst Homeless Youth: Causes, Solutions, and a Path Forward

by Michelle Basham, MPA, JD

Overview

Each year, 4.2 million young people will experience homelessness.¹ Among youth aged 13–17 years old, one in thirty will experience homelessness in a 12-month period.² Among youth aged 18–25 years old, one in ten will experience homelessness in a 12-month period.³ While recognition of the epidemic of youth homelessness has improved dramatically over the last 25 years (a time period when advocates began successfully passing policies and creating programs across the country to recognize homeless youth), there are still only enough shelter beds to serve about 15% of these young people.⁴ For the young people who cannot find shelter and other safe assistance, their options are limited and dangerous. Homeless youth often end up on the streets after grappling with poverty, abuse, and violence in their families of origin. Once

1 Morton, M.H., Dworsky, A., & Samuels, G.M. "Missed opportunities: Youth homelessness in America. National estimates." Chicago, IL: Chapin Hall at the University of Chicago. (2017). Available at: <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>.

2 *Id.*

3 *Id.*

4 The U.S. Department of Housing and Urban Development. "The 2018 Annual Homeless Assessment Report (AHAR) to Congress. Part 1: Point-in-Time Estimates of Homelessness" (December 2018). Available at: <https://www.huduser.gov/portal/sites/default/files/pdf/2018-AHAR-Part-1.pdf>.

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on the streets, they face a range of dangers and obstacles as they try to survive. This article explores the epidemic of youth homelessness and more specifically, the overrepresentation of youth of color and LGBTQ+ youth among youth experiencing homelessness.

Alone and At-Risk:

The reasons why youth become homeless are varied but some of the most cited reasons include:⁵

1. Family experiencing extreme financial hardship and challenges arising from poverty.
2. Extreme family conflict including abuse and abandonment.
3. Youth aging out of foster care without proper transition planning.
4. Family rejected them and forced them out of the home due to their identification as LGBTQ+ or because of pregnancy.
5. Lack of proper transition planning when youth exit juvenile correctional systems.

Without support and proper interventions, their outcomes and futures are diminished at best — and completely eradicated at worst.

Regardless of the underlying reasons, the results are the same: young people are alone, without the skills and resources necessary to care for themselves. As a result, they quickly fall prey to predators, violence, drugs, gangs, and worse. Without support and proper interventions, their outcomes and futures are diminished at best — and completely eradicated at worst.

Disproportionality Among Youth Experiencing Homelessness:

Among youth experiencing homelessness, there are a disproportionate number of youth who identify as lesbian, gay, bisexual, transgender, queer/questioning (LGBTQ+) and/or youth who are Black, Indigenous, and/or People of Color (BIPOC). According to the National Network of Youth, Black or African American youth are 83% higher risk than their White peers for homelessness and Non-White Hispanic youth are 33% higher risk for homelessness than their White peers. Among homeless students, 63.7% were youth of color.⁶ According to a study completed by SPARC (Supporting Partnerships for Anti-Racist Communities), among youth aged 18–24 experiencing homelessness, 82.6% are people of color.⁷ These youth face even starker realities and higher risks of exploitation and violence than other homeless youth.

Although estimates range, according to one study completed by the True Colors Fund, more than 33% of homeless youth identified as LGBTQ+.⁸ Similar to the findings in other studies, youth of color were overrepresented among these youth, with 47% of homeless youth who

5 National Network for Youth. "Runaway and Homeless Youth Act Fact Sheet." (2013). Available at: <https://www.nn4youth.org/wp-content/uploads/NN4Y-RHYA-Fact-Sheet-2013.pdf>.

6 Youth Homelessness – National Network for Youth (<https://nn4youth.org/learn/youth-homelessness/>)

7 SPARC Center for Social Innovation. "Phase One Study Findings." (March 2018). Available at: <https://c4innovates.com/wp-content/uploads/2019/03/SPARC-Phase-1-Findings-March-2018.pdf>.

8 Choi, S.K., Wilson, B.D.M., Shelton, J., & Gates, G. "Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness." Los Angeles: The Williams Institute with True Colors Fund. (2015). Available at: <https://escholarship.org/uc/item/1pd9886n>.



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identified as LGBTQ+ also being people of color.⁹ While many of the underlying reasons for homelessness for LGBTQ+ youth were found to be similar to other youth in this study, LGBTQ+ youth, did on average, experience homelessness for longer periods of time. In addition, young people who identified as transgender were more likely to be exposed to violence while homeless – particularly if they were African American.¹⁰ The primary reasons cited for homelessness amongst homeless LGBTQ+ youth include:¹¹

1. Forced out because of sexual orientation and/or gender expression.
2. Family issues including conflict, abuse, poverty, addiction, etc.
3. Forced out by parents for reasons other than sexual orientation or gender expression.
4. The youth aged out of the foster care system.
5. Untreated mental health illness of youth.
6. Substance abuse by youth.

Whatever the reason, young people who are LGBTQ+ experience higher rates of homelessness than their peers — including LGBTQ+ youth who are also Black, Indigenous, or persons of color. LGBTQ+ youth are at 120% greater risk of homelessness than youth in the general population.¹² Young people who are homeless and parenting (also disproportionately BIPOC)

bear a 200% greater risk of homelessness compared to other youth.¹³

Perhaps even more alarming, LGBTQ+ youth have twice the rate of early death compared to other homeless youth.¹⁴

For youth who are both LGBTQ+ and BIPOC, the path to homelessness and sexual exploitation, violence, and sometimes death, can be drawn and predicted by far too many studies and heartbreaking stories to tell. Broadly stated, generations of explicit and implicit discrimination have had a direct cause-and-effect relationship on the overrepresentation of LGBTQ+ youth and youth of color amongst homeless youth.

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Systemic Failures Impacting LGBTQ+ Youth and Youth of Color:

Youth who are LGBTQ+ and/or BIPOC are dramatically overrepresented amongst the homeless youth population. In general, families are crumbling under the weight of hundreds of years of systemic racism.¹⁵ Unfortunately, youth homelessness by itself is only one consequence of a long story of systemic discrimination carving a path between intersecting legal and social discrimination: racism and homophobia.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See, *supra*, Missed opportunities: LGBTQ youth homelessness in America, footnote 1.

¹³ See, *supra*, The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness, footnote 8.

¹⁴ See, *supra*, Missed opportunities: LGBTQ youth homelessness in America, footnote 1.

¹⁵ Bassuk Center, Supporting Partnerships for Anti-Racist Communities (SPARC): <https://bassukcenter.org/sparc/>.



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Underlying these disparities are years of perhaps well-intentioned social services policies that continue to fail communities of color. In its March 2018 study analyzing the overrepresentation of people of color among people experiencing homelessness, SPARC identified five major areas driving this systemic failure:¹⁶

1. **Economic Mobility:** Lack of inter-generational wealth and access to capital within social networks exacerbating people's ability to move out of poverty or homelessness.
2. **Housing:** Lack of access to safe, affordable housing leading to ongoing cycles of poverty and homelessness.
3. **Criminal Justice:** Involvement in the criminal justice system resulting in ongoing barriers to higher-earning employment and many occupations leading to cycles of poverty that cannot be broken.
4. **Behavioral Health:** People of color experience high rates of chronic and traumatic stress but have limited access to mental health resources. In addition, there are limited mental health resources well-positioned to respond in a culturally-inclusive manner to the cultural needs of people of color.
5. **Family Stabilization:** Multi-generational engagement with child welfare and foster care systems leading to the breakup of families, lack of natural supports, and homelessness.

Some of the policies intended to help homeless people are in many ways hurting homeless youth and BIPOC youth.

As the number of youth experiencing homelessness has continued to rise, so have the growing disparities and intersectionality between youth of color and youth who identify as LGBTQ+. Some of the policies intended to help homeless people are in many ways hurting homeless youth and BIPOC youth. In particular:

1. **United States Department of Housing and Urban Development (HUD) Homelessness Priorities and Homelessness Definition:** HUD policies control a great deal of the funding and policy prioritization for responding to homelessness nationwide. Although HUD has expanded its definitions of "homeless" to include four categories of homeless (literally homeless, imminently at risk of homelessness, homeless under other federal statutes, and fleeing or attempting to flee domestic abuse), HUD also has required its homeless assistance program grantees to prioritize "chronically homeless" individuals for HUD homelessness funding.¹⁷ HUD defines a chronically homeless individual as: (1) a homeless individual with a disability as defined in Section 401(9) of the McKinney-Vento Assistance Act (42 U.S.C. 11360(9)) and who lives in a place not meant for human habitation and has been homeless at least 12 months; (2) an individual residing in an institutional setting who met the above criteria before entering the facility; or (3) a family with an adult head of household who

¹⁶ See, *supra*, SPARC Center for Social Innovation, Phase One Study Findings, footnote 7.

¹⁷ HUD Exchange, Chronic Homelessness Definition: <https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-esg-homeless-eligibility/definition-of-chronic-homelessness/>.

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meets all of the above criteria.¹⁸ The challenge is that this narrow definition is extremely difficult for homeless youth to meet and by extension, the programs serving them. As a result, the number of HUD-funded youth homelessness resources continues to shrink.

2. **McKinney-Vento Homelessness Assistance Act of 1987 (McKinney-Vento):** McKinney-Vento is a federal law providing a range of supports for students experiencing homelessness. While the intentions of the legislation are laudable and, in many respects, the law has helped homeless students, it has also been criticized for falling short regarding BIPOC students. Three primary criticisms have emerged. First, that McKinney-Vento's definition of homeless based on where the student is currently living can be particularly problematic for BIPOC students because they tend to be highly mobile.¹⁹ In addition, the act should but does not currently, require every staff in every school district/school to have ongoing training on structural racism. Finally, outcomes data under the act needs to be disaggregated based on race and ethnicity.²⁰

As activist and attorney Michelle Page points out in her law review article: “when a minority sexual orientation is compounded with a minority race, youth have a higher risk of becoming homeless and staying homeless for longer periods. State legislative strategies combating youth homelessness must account for the relevant intersection of race and sexuality or else legislative blindness will perpetuate LGBTQ youth homelessness.”²¹

Solutions:

We need to address the sad but growing epidemic of youth homelessness in a more focused and sustained manner. More specifically, we also need to address the intersectionality between the disproportionate number of homeless youth who are BIPOC and LGBTQ+. There are some steps we can begin taking immediately:

1. **Amend the Federal Runaway and Homeless Youth Act (RHYA):** The current language of the RHYA needs to be amended to recognize homeless LGBTQ+ BIPOC youth and intersectionality between youth homelessness, racism, and homophobia. While the RHYA does a great deal to help homeless youth, the RHYA could better serve LGBTQ+ and youth of color if the Act required programs funded under the Act to provide staff training about working with LGBTQ+ and BIPOC youth and to create tailored programming specifically for these youth.²²
2. **Analyze and Resolve Systems Barriers to BIPOC and LGBTQ+ Youth:** The federal homeless coordinated entry process (individual assessment of eligibility for services) and other

¹⁸ *Id.*

¹⁹ Edwards, Earl J. “Young, Black, successful, and homeless: examining the unique academic challenges of Black students who experienced homelessness,” *Journal of Children and Poverty*, 26:2, 125-149 (2020). Available at: <https://www.tandfonline.com/doi/full/10.1080/10796126.2020.1776688>.

²⁰ *Id.*

²¹ Page, Michelle. “Forgotten Youth: Homeless LGBT Youth of Color and the Runaway and Homeless Youth Act,” 12 *Nw. J. L. & Soc. Pol’y*, 17 (2017). Available at: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1150&context=njlsp>.

²² “Runaway and Homeless Youth Program Authorizing Legislation,” 34 U.S.C. §11201, et. seq. Available at: <https://www.acf.hhs.gov/fysb/law-regulation/runaway-and-homeless-youth-program-authorizing-legislation>; see also National Network for Youth. “Fact Sheet: The Runaway and Homeless Youth + Trafficking Prevention Act.” (2021). Available at: https://nn4youth.org/wp-content/uploads/2.2021_RHYTPA-Fact-Sheet-2.pdf.

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HUD policies have faced multiple criticisms. One such criticism is that the assessment process is biased against people and youth of color and fails to recognize youth who are at substantial risk and may be engaging in “survival sex” (sex for a place to live) as meeting the definition of homeless. Because BIPOC LGBTQ+ youth are at much greater risk of both homelessness and sexual exploitation, this system places them at a grave disadvantage and needs to be re-assessed and revised. Further, HUD policies prioritize homeless individuals who meet their definition of chronically homeless, and because homeless youth are often sporadically homeless, it is difficult for them to be able to document 12 months of chronic homelessness to be prioritized for services. In order to receive services, homeless individuals, including youth, must be assessed through the coordinated entry (CE) process which prioritizes individuals who are chronically homeless and higher risk (as demonstrated by measures including drug and alcohol use and several mental health issues). As a result, youth are often screened out as they are judged to not meet the definition of chronically homeless or having severe enough needs to qualify for homelessness services.

3. **Develop Culturally-Responsive/LGBTQ+ Inclusive Programming:** BIPOC and LGBTQ+ homeless youth can often feel isolated, harassed, and not supported in traditional youth programs. Development of programs tailored to their unique needs and intended to be inclusive and supportive of them can result in better outcomes for these young people.

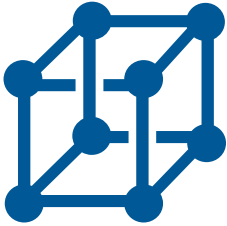
Conclusion:

There are too many homeless youth, an overwhelming percentage of whom are LGBTQ+ and/or BIPOC. In addition to homelessness, these youth battle bias, discrimination, and homophobia daily. Our child welfare and homeless youth response systems can and should do better for all youth. ■

ABOUT THE AUTHOR:



Michelle Basham has been a leader in the field of youth homelessness and sexual exploitation since 1993 when (at 19 years old) she started Avenues for Youth, one of the first programs for homeless youth in Minnesota. Since then, she has led progressively larger organizations advocating for young people and families experiencing homelessness, sexual assault, sexual exploitation, racism, and homophobia. In addition to her professional experience, she holds a Master’s in Public Administration and Juris Doctorate degrees. For her, youth homelessness is much more than a job as Michelle has lived experience herself having moved out at 15 years old and being declared independent in Hennepin Juvenile Court at 16 years old. She currently serves as the Interim Executive Director for YouthLink and as an Adjunct Professor at Mitchell Hamline School of Law.



YOUTH PERSPECTIVE

Every Youth Deserves a Good-Quality Education!

by Duane Price

Do you feel that the current way we are educating children in schools is thoroughly preparing them for the needs of the 21st century? Naturally, we would want to answer YES, but realistically the answer is probably NO.

Education is a systematic process through which a child or an adult gains knowledgeable information, experience, skill, and a good attitude. It makes an individual civilized, refined, cultured, and educated. Its goal is to create a unique individual. Every society gives importance to education because it is a cure-all for all evils.

The education that's being taught in most public and charter schools is deplorable. The quality of education has gradually improved throughout the years, but it's still not enough to help prepare some children to succeed today.

Unfortunately, for many youth in the child welfare system, access to fair, equal, and quality education isn't available to them. If they were home or back in their community, they may have the option to choose which school they attended. Youth in the child welfare system are essentially separated from the rest of the world.

The problem is so much worse than what the outside eye sees. Entering the child welfare system can be traumatic itself, and when a youth is being removed from their home, community, and school, it causes disorganization. Leaving a familiar place and being around strangers who they aren't used to can take a huge emotional and physical toll on youth. The transition process is like an emotional roller coaster of feelings that range from happiness, sadness, anxiety, and more. The transition is slow and takes lots of patience that many youth don't have because they're not used to it. And it's not their fault. Everything is new; it's a new moment in their life that they are not adapted to and don't know what to expect next. The ideal goal is to help youth feel comfortable with as much awareness as possible.

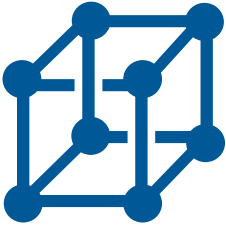
If the youth isn't placed back with their family or close friends, they probably head to foster homes, juvenile detention centers, congregate care/residential treatment facilities, etc. Youth



ABOUT THE AUTHOR:

Duane Price is a student at Community College of Philadelphia and a member of NACC's National Advisory Council for Children's Legal Representation. Price also serves as a youth advocate for Youth Fostering Change in the Youth Advocacy Program at Juvenile Law Center. He hopes to continue to use his personal experience to advocate for foster youth and help make policy changes to improve the way professionals interact and work with youth and families in the foster care and juvenile justice system.

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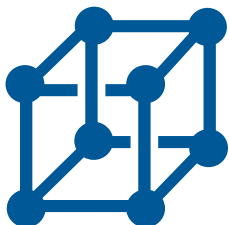
then must attend either an on-ground school or an outside school that's not of their choice and one they are not familiar with. This can create social-emotional problems that youth have to deal with alone or with limited support. Youth may also have learning and attention issues that can lead to short or long-term consequences, including disproportionate disciplinary rates, a likelihood of skipping school, social isolation, dropping out, and becoming involved with the juvenile/criminal justice system. In the child welfare system, all of this is being documented. It's a paper trail that will either follow them throughout their time in the system or for the rest of their lives, affecting their chances at success. Being in the system may already make youth feel alone and disconnected from everyone else and knowing that no one is paying attention makes it worse. Those working with youth need more training on how to build connections with youth, offer them emotional and mental support, and identify specific behaviors or moments that lead to them being disengaged from learning.

There is a big difference between living in foster homes and congregate care. In foster homes, youth have the option to attend a school that would most likely be in the neighborhood. They'll be with other youth who aren't in foster homes, and they'll also be in the correct grade. Now, for youth attending an on-ground school through a group home, juvenile detention center, and congregate care/residential treatment facility, it's a different experience. These schools aren't in their neighborhood or close to their homes, and youth are around other youth who are involved in the system. The education that's being taught is very low-quality and disorganized. This can affect the chances of youth pursuing higher education because they might be intimidated by the work they're being handed.

I can speak about this from my own experience. I remember being in middle and high school, in classes with kids ages 12–18. I went to multiple on-ground schools for years. I wasn't getting work that was even on my grade level. It would either be above my grade level or below but never precisely on target. I felt lost and confused about many things as I got older. I didn't understand how to solve a problem or comprehend certain things when someone was teaching differently for the very first time. When I was in the classroom with my classmates, I knew that I wasn't the only one who would have a hard time understanding the work given to us. In a way, I felt abandoned by the system, that no one cared for me regarding my education. It felt like it didn't matter how much I reached out for support throughout the years. The support seemed very mediocre, just like the education and tutoring. It seemed like many adults didn't want to do their jobs correctly. I won't say that I didn't receive any support during these difficult times, but the type of support I was receiving seemed like a slap in the face. It's like the people I asked or looked up to for good support services didn't see what true potential I had. So, they gave me the poorest possible version of the support I could receive. They automatically believed that I couldn't handle a good educational challenge to help me reach my full potential. Honestly, I think I was just another "youth" in the system. No youth should ever go through these types of issues.

When a youth goes back to their community or home, the system hasn't prepared them to go back to a regular public school. It is sending them back to fail or get lost. The Covid-19 pandemic showed how the child welfare system worried more about money than the quality

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of education. Even though the quality was already bad, it probably got even worse. Youth in the child welfare system face this problem every day. These outcomes are unacceptable. The child welfare system should help youth meet education goals, not set them back. Being in the system shouldn't mean youth receive inadequate or no education. Every youth has a right to receive an education, and we care about our educational success and our peers' success. We want to help improve these outcomes for ourselves and youth like us facing these challenges. Here are some recommendations to reduce educational barriers for youth with experience in the child welfare system and ensure they earn and receive their high school diploma without delay:

- 1. Help youth assess their educational strengths and needs**
- 2. Provide guidance about and assistance with accessing higher education and career opportunities**
- 3. Involve youth in extracurricular activities**

Many youth in the child welfare system do not have the opportunity to participate in extracurricular activities at school, or their participation is disrupted when a young person changes schools. Involvement in these activities gives youth in care the opportunity to have an average school experience.

- 4. Advocate for services to address educational needs such as tutoring, special education, or credit recovery**
- 5. Invest back into the community**

Investing back into the community encourages the growth of community-based supports and reduces the number of African American and Latinx youth entering the child welfare system.

I wish many of these factors were around when I was in the system, but I understand these factors will make a big difference in youth's lives. I know my experience was not ideal or perfect, but something beautiful came out of it. Today I'm in college hoping to become a Legal Child Advocate lawyer to help youth like myself have a better life. Every child and youth is the future of this world; and, we must make every effort to ensure that they have the best education while in care that will carry them into adulthood. ■



Visit NACC's Title IV-E Funding for Legal Representation Resource Hub

LEADERSHIP MESSAGE

December 2021



Kim Dvorchak
Executive Director



Leslie Starr Heimov
Board President

New NACC Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings

On December 13, 2021, the NACC Board of Directors voted unanimously to approve new NACC Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings (NACC Recommendations). Their adoption replaces and rescinds the 2001 NACC Recommendations for Representation of Children in Abuse and Neglect Cases and the 1996/1999 amended NACC Revised ABA Standards for Lawyers who Represent Children in Abuse and Neglect Cases.

This action marks another milestone in NACC's journey to develop a child and youth-centered legal profession, advance the highest-quality of legal representation, and assist jurisdictions seeking to establish and improve attorney representation. The 2021 NACC Recommendations were co-designed by young people with lived experience in the child welfare system, NACC's National Advisory Council on Children's Legal Representation. We are deeply grateful for their contributions, as well as the many attorneys, individuals with lived expertise, and organizational partners who participated in this two-year process. The feedback we received during two comment periods was invaluable.

The NACC Recommendations establish 10 primary duties of attorneys for children and youth which reflect our overall vision for effective, high-quality legal representation:

1. **Establish an Attorney-Client Relationship:** Attorneys for children and youth should adhere to an expressed interest model of legal representation.
2. **Support the Attorney-Client Relationship:** Attorneys for children and youth should maintain frequent contact and intentional communication, tailored to the client's individual circumstances.
3. **Offer Legal Counsel and Advice:** Attorneys for children and youth have an ongoing, affirmative duty to advise clients of their rights, educate them about the legal process, inform them of their options, and counsel their decision-making.
4. **Ensure Opportunity for Full Participation:** Attorneys for children and youth should proactively ensure opportunity for meaningful participation in court hearings and other case events.
5. **Provide Competent Legal Representation:** Attorneys for children and youth should provide competent legal representation.
6. **Provide Loyal and Independent Legal Representation:** Attorneys for children and youth should guarantee loyalty and independence throughout their legal representation.
7. **Maintain Confidentiality:** Attorneys for children and youth should adhere to the same confidentiality and privilege rules as they do for adult clients, consistent with state law.

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8. **Advance Equity in Legal Representation:** Attorneys for children and youth should engage in culturally humble representation and actively challenge inequitable treatment.
9. **Provide 360 Advocacy:** Attorneys for children and youth should seek to understand their clients as whole people, inside and outside the context of the legal proceedings, and provide holistic advocacy.
10. **Preserve Continuity of Legal Representation:** Attorneys for children and youth should endeavor to provide uninterrupted legal representation.

We urge you to read this document in full, but here are a few highlights:

- Enhanced emphasis on client-centered attorney practice with greater time investment in out-of-court communication and zealous advocacy.
- NACC's prior recommended caseload cap of 100 has been reduced to 40-60 clients, to allow for the more robust level of engagement that research shows makes a difference.
- While the prior Recommendations took a neutral position on models of child representation, these explicitly endorse client-directed representation, consistent with NACC policy which preceded and followed the 2001 Recommendations.¹
- Overall, you will find a significant expansion of content, to provide more specificity to practitioners at this critical juncture in our field.

The NACC Recommendations were not designed to reflect the current national landscape of legal services for children. They envision the future of children's justice. NACC is aware that state statutes, funding and practice norms may currently restrict practitioners from implementing these Recommendations in full. In these instances, we encourage practitioners to follow the NACC Recommendations as closely as possible.

Since our founding nearly 45 years ago, NACC's purpose has been two-fold: to lead and support. To lead the development and advancement of the profession of children's legal representation and to support the lawyers and organizations representing children with training, tools, informational resources, and networking opportunities. NACC will continue to partner with, support, train, and serve children's attorneys working in all jurisdictions and models, as well as attorneys representing parents and social service agencies. Alongside practitioners, the ultimate beneficiaries of NACC's programs are the children, youth, and families our community serves because it is through client-centered zealous advocacy that children, youth, and families can access justice in dependency court.

Thank you for being a part of this journey and for all your personal and professional contributions to the development of the field of children's law. From a cause to a profession, to a movement, we are NACC. Together we are Promoting Excellence, Building Community, Advancing Justice. ■

¹ See, National Association of Counsel for Children (1996). *NACC Revised ABA Standards of Practice*. https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/Standards/ABA_Standards_NACC_Revised.pdf; NACC amicus briefs: *In re M.S.R. and T.S.R.* (Washington 2011), *In re M.C.D.P.* (Washington 2013), *In re Felicity S.* (California 2014), *In re K.P.T.* (Washington 2015), *In re L.B.M.* (Pennsylvania 2016), *In re T.S. and E.S.* (Pennsylvania 2017), *In re S.K.-P.* (Washington 2018), *In re S.B.* (Nevada 2020); National Association of Counsel for Children. (2019). *NACC endorsement of the ABA Model Act, Standards of Practice*. <https://www.naccchildlaw.org/general/custom.asp?page=StandardsOfPractice>.



Thank You for Your Support!

The National Association of Counsel for Children advances the rights, well-being, and opportunities of children impacted by the child welfare system through access to high-quality legal representation. Over the last year, NACC **launched new programs, built exciting partnerships, and expanded capacity** to meet the urgent needs of children, families, and the field. In 2022, NACC will celebrate its 45th anniversary championing children's justice and developing the field of children's law from a cause to a profession, and now — a movement.

Learn more about all the ways NACC has expanded our work in [NACC's 2021 Impact Report](#).

NACC'S 2021 Results at-a-Glance

- **Launched** Counsel for Kids national campaign and website CounselforKids.org. Children in court needs lawyers of their own, we're working to make sure they have them.
- **Launched** Race Equity Resource Hub and included race equity and constituent voice across our programs
- **Trained** over 5000 attorneys, judges and child welfare professionals
- **Distributed** 675 *Child Welfare Law & Practice* "Red Books"
- **Expanded** State Coordinator program to 32 states / jurisdictions
- **Convened** National Youth Advisory Board, now named the National Advisory Council on Children's Legal Representation
- **Filed** 4 amicus briefs in state and federal courts
- **Recruited** 4 new Board Members, growing diversity and expertise
- **Grew** staff from 7 to 12, increasing diversity and lived expertise



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Active Efforts and The Futility Doctrine

by Judge Leonard Edwards (ret.)

Active efforts is a concept created by Congress with the passage of the Indian Child Welfare Act in 1978 (the ICWA).¹ It refers to the obligation of social workers to provide services and support for Native American families who come to the attention of child protection authorities because of suspected child neglect or abuse. The law states, in part, that the state must use active efforts to prevent removal of an Indian child from parental care and to reunite an Indian child with parents should that child be removed.² Active efforts has received significant attention in 2021. In *Brackeen v Haaland*,³ the Fifth Circuit court, *en banc*, ruled that parts of the ICWA were constitutional and parts were unconstitutional.

The decision in the *Brackeen* case is very complex. Sixteen federal judges participated in the 325-page opinion. Neither of the principal opinions garnered a majority on all issues. A seven-page addendum summarizes the various positions taken by different judges, the issues they agreed on, and those that they reversed. The justices agreed that three provisions in the ICWA are unconstitutional: active efforts, (§ 1912(d)), expert witness, (§1912(e)), and recordkeeping requirements (§1915(e)). Several of the participating parties have already filed petitions in the United States Supreme Court to accept review of the case. Whether the Supreme Court will hear the appeal remains to be seen.

Until 2021, few state supreme courts have addressed the active efforts issue.⁴ In 2021, state supreme courts in South Dakota and Washington issued opinions on the active efforts issue. Both decisions emphasized the importance of the active efforts mandate contained in the ICWA. In South Dakota, in *People in the Interest of C.H.*,⁵ C.H., an Indian child, was removed from her home due to allegations of substance abuse and hazardous conditions in the home. At the end of 2019, the Department announced that it would seek to terminate the mother's

1 See 25 C.F.R. § 2.23 for the federal definition of active efforts.

2 25 U.S.C. 1912(d).

3 994 F.3d 249 (2021)

4 For a review of appellate caselaw addressing active efforts, see Edwards, L., "Defining Active Efforts in the Indian Child Welfare Act," *The Guardian*, Jan/Feb 2019, at pp 1-8.

5 962 N.W.2d 632, 2021 S.D. 41 (2021).



ABOUT THE AUTHOR:

Judge Edwards is a retired judge from Santa Clara County, California, where he served for 26 years, primarily in the juvenile court. He now works as a consultant. His writings can be seen on his website: judgeleonardedwards.com.

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QUESTIONS JUDGES AND ATTORNEYS SHOULD ASK SOCIAL WORKERS ABOUT ACTIVE EFFORTS

1. What steps did you take to determine whether the child is an Indian child within the meaning of the Indian Child Welfare Act?
2. When did you meet each of the biological parents?
3. If a parent was missing, what steps did you take to locate them?
4. What tribe(s) are the parents connected to?
5. What is their status regarding their tribe? Are they members of their tribe?
6. What do you know about the parents' tribal culture?
7. Have you met with the Tribal Representative?
8. What is their name?
9. Is the child eligible for membership?
10. Have you discussed tribal culture with any other members of the tribe?
11. What steps have you taken to create a case plan for each parent?
12. Was each parent present when you created that plan?
13. What steps did you take to develop the services that are a part of the case plan for each parent?

parental rights, due to a lack of progress in treatment services. The Department also stated that they would give the mother several months to show that she could be successful. The court issued seemingly inconsistent orders: that “reasonable and active efforts will be made to reunite the family” and that “no further efforts be made by the Department of Social Services to reunite [C.H.] with” the mother or father.⁶

After this hearing it is undisputed that the Department made no further efforts to reunify the mother and C.H. The termination of parental rights hearing took place in December of 2020. The court terminated the mother’s parental rights and found, beyond a reasonable doubt, that the State “made reasonable and active efforts to provide remedial services designed to prevent the breakup of the family and those rehabilitative programs have been unsuccessful.”⁷

The South Dakota Supreme Court reversed the trial court’s findings. It found that the state did not prove beyond a reasonable doubt that active efforts had been provided.⁸ The court found that the record was clear that the Department ceased providing any efforts towards reunification after the December 2019 hearing.⁹ The Supreme Court noted that the Department cannot simply give a parent a case plan and wait for the parent to complete the plan. “Rather, active efforts require that DSS take the parent through the steps of the case plan to prepare the parent for reunification.”¹⁰ The Supreme Court returned the case to the trial court for further proceedings consistent with South Dakota law and ordered the trial court to appoint an attorney for the child.¹¹

The Washington Supreme Court also addressed the active efforts issue in the case of *In the Matter of the Dependency of G.J.A., A.R.A., S.S.A., J.J.A., and V.A.*¹² In this case, five children (confirmed to be Indian children for the purposes of the ICWA and the WICWA) were removed from their mother. At the dispositional hearing, the court ordered the Department to provide services to the mother, including a parenting assessment, family therapy, a chemical dependency assessment, mental health treatment, pain management, and domestic violence services. The court also ordered the Department to provide visitation and establish a visitation schedule.¹³

Throughout the reunification period, there were communication difficulties between the social worker and the mother. The mother requested a referral to a detox facility, which the social worker did not provide — and the worker also declined to drive the mother to

⁶ *Id.* at 636.

⁷ *Id.* at 639.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 640; see also 25 C.F.R. § 23.2, which parallels what the Supreme Court wrote.

¹¹ *People in the Interest of C.H.*, 962 N.W.2d 632 at 643.

¹² 197 Wash.2d 868, 489 P.3d 631 (2021).

¹³ *Id.* at 876-877.

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14. Did you actively connect the parents with the substantive services identified in the case plan?
15. Have you documented the active efforts you have provided?
16. Have you determined what the prevailing social and cultural conditions and way of life of the Indian child's Tribe are?
17. Will the case plan include a partnership with the Indian child, the parents, extended family members, Indian custodians, and Tribe?
18. Have you conducted a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal?
19. What services have you identified that will help the parents overcome barriers they may face?
20. Have you actively assisted the parents in obtaining such services?
21. Have you identified, notified, and invited representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family?
22. Have you held a family team meeting?
23. Who participated in that meeting?

the facility. The mother admitted herself to the hospital, completed a detox program, and entered a sober living facility, which she had to leave because of the cost of rent.¹⁴

The social worker submitted a referral for family therapy four months after she first communicated with the mother. The therapist did not meet with the children, said he was not a specialist, would only meet with the mother and one child at a time, and had no experience working with Native American clients.¹⁵ The social worker also requested that any visitation be therapeutic.¹⁶

The mother submitted a declaration to the court that the Department had not provided active efforts. The trial court found that the Department had provided active efforts. The trial court also accepted the Futility Doctrine — that even if the services had been delivered in a timely fashion, the mother would not have been able to be successful in her reunification efforts.¹⁷

The Washington Supreme Court reversed the trial court's findings. It pointed out that the ICWA and the WICWA provide a number of heightened protections for Indian families.¹⁸ These include, at a minimum, culturally appropriate engagement with the Indian family and deference to the tribe at each step of the dependency process.¹⁹

The court noted that active efforts must be “affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family” and consistent and culturally appropriate.²⁰ The court noted that “the Department cannot simply provide a referral and leave the parent to engage with providers and complete services on their own.”²¹

The Washington Supreme Court held that the Department failed to provide active efforts. “The Department did little more than provide referrals for court-ordered services, and even then, the referrals were untimely and inadequate...Yet, the Department did not make any referrals for visitations and prevented [the mother] from seeing her children for over five months.”²²

Even though the trial court recognized that there were communication problems and suggested that the Department provide the mother with a cell phone, the Department took no steps to do so.²³ The Washington Supreme Court also stated that the trial court did not fulfill its responsibility and stated that “the abusive actions of social workers would largely be nullified if more judges were themselves knowledgeable about Indian life.”²⁴

14 *Id.* at 880.

15 *Id.*

16 *Id.* at 878-879.

17 *Id.* at 883-884.

18 *Id.* at 887.

19 *Id.*; see also 25 C.F.R. § 23.2.

20 *In re G.J.A.*, 197 Wash.2d 868 at 875; see also 25 C.F.R. § 23.2.

21 *In re G.J.A.*, 197 Wash.2d 868 at 891-892.

22 *Id.* at 894.

23 *Id.* at 898.

24 *Id.* at 902 (quoting H.R. REP. NO. 95-1386, at 11 (1978)).

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24. Have you consulted with the parents and tribal members on the resolution of placement issues?
25. Have you conducted or caused to be conducted a diligent search for the Indian child's extended family members?
26. Did this search include Family Finding?
27. Have you contacted and consulted with extended family members to provide family structure and support for the Indian child and the Indian child's parents?
28. Have you offered and employed all available and culturally appropriate family preservation strategies and facilitated the use of remedial and rehabilitative services provided by the child's tribe?
29. Have you taken steps to keep siblings together?
30. Have you set up regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits for the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child?

The Washington Supreme Court ruled that the Futility Doctrine is inapplicable to child welfare cases involving Indian children.²⁵ The Futility Doctrine provides that even if the Department had provided timely and effective services, the mother would not have successfully been able to provide a safe home for her child. The Washington Supreme Court noted, however, that the law states that in all cases involving Indian families, the Department “shall satisfy the court that *active efforts* have been made...and that these efforts *have proved unsuccessful*.”²⁶ The court added that the Futility Doctrine is speculative, and such speculation is not permitted under the plain language of the ICWA and the WICWA.²⁷ At the outset of many dependency cases the parents appear to be unable to rehabilitate and provide a safe home for their child. But the law is clear that as hopeless as the situation may appear, the parents are entitled to participate in reunification efforts.²⁸

The Washington Supreme Court concluded that the dependency trial court failed its responsibility under the ICWA and the WICWA. When the trial court stated it “is not the court’s role” to “critique how social workers could do better in every case,” the Washington Supreme Court replied: “That is incorrect. It is precisely the court’s role to assess whether the Department meets its burden to provide active efforts.”²⁹

The Washington Supreme Court reversed the dependency court’s finding that the Department provided active efforts and remanded the case to the trial court with instructions to order the Department to provide active efforts in accordance with the Supreme Court’s ruling. Also, it ordered the dependency court not to proceed to hear the termination petitions until the Department has provided active efforts.³⁰

The two state supreme court cases have much in common. They stress the importance of social workers actively working with an Indian client. Each court points out that active efforts are not simply handing the client a series of referrals and leaving the client to figure out how to engage in the services on her own. Both supreme courts criticized the trial courts for not providing oversight of social worker actions. In the South Dakota case, the social worker stopped providing services and the trial court indicated there would be no further services and that the client was on her own.³¹ In the Washington case, the social worker provided no

25 *Id.* at 903.

26 *Id.* (emphasis in original).

27 *Id.*

28 The author when sitting as a dependency judge often heard cases that many thought were ‘hopeless’, but that ended with successful reunification.

29 *In re G.J.A.*, 197 Wash.2d 868 at 908.

30 *Id.* at 913-914.

31 The South Dakota Supreme Court went further and discussed issues not raised in the appeal, stating that “there are glaring defects involving ICWA mandates in the underlying proceeding that we cannot ignore.” It wrote that an attorney should have been appointed for the child throughout the proceedings. Then the Court cited 25 U.S.C. § 1912(f), “[n]o termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in *serious emotional or physical damage* to the child.” (emphasis in original). “Here, however, the ICWA expert called by the State opined only that continued custody could be “detrimental” to C.H., and like DSS, he was not basing his opinion on Mother’s current circumstances.” Finally, it wrote that termination of Mother’s parental rights was not the “least restrictive alternative commensurate with C.H.’s best interests.” *People in the Interest of C.H.*, 962 N.W.2d 632 at 641-42.

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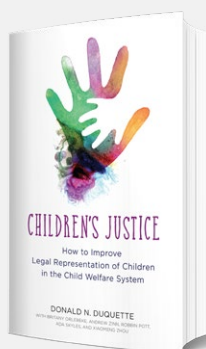
31. Have you identified community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisted the Indian child's parents, or, when appropriate, the child's family, in utilizing and accessing those resources?
32. Have you determined that the services outlined in the case plan are available and accessible immediately by the parents? For example, what substance abuse services are available for the parents that are available and accessible?
33. Have you had regular contact with the parents?
34. Have you monitored parental progress and participation in services?
35. Have you considered alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available?
36. Have you provided post-reunification services and monitoring?
37. Considering all of the services and supports offered by the social worker, would you conclude they were affirmative, active, thorough, and timely?

services for over five months. Yet the trial court adopted boilerplate language in its orders finding that active efforts had been provided. The Washington Supreme Court disagreed with that procedure, writing that “the dependency court must make a clear record of those efforts underlying such a finding.”³²

These two cases provide important guidance for social workers dealing with Native American parents when the state files child welfare proceedings in dependency court. Active efforts is a critical part of the ICWA. Social workers must provide a heightened level of services and support to Native American families, and trial courts must hold social workers accountable for that level of services and support.

Parents' and children's attorneys should be prepared to ask the social worker questions about compliance with the ICWA and active efforts, in particular. Below are questions attorneys should consider asking social workers. Judges should also consider these questions to determine if the social worker has provided services consistent with the ICWA. Additionally, attorneys and judges should be aware of the detailed definition of active efforts written by Justice William Thorne (retired) and the lengthy description of the proper role of a social worker working with a Native American parent, both found in *Reasonable Efforts: A Judicial Perspective 2nd Edition*. ■

32. *In re G.J.A.*, 197 Wash.2d 868 at 909 (citing 25 C.F.R. §23.120(b)).



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The National Association of Black Social Workers (NABSW) Calls for the Repeal of the Multi-Ethnic Placement Act (MEPA) and Inter-Ethnic Placement Act (IEPA)

PREAMBLE

The fundamental challenges related to the Multi-Ethnic Placement Act (MEPA) and the Inter-Ethnic Placement Act (IEPA) are a part of a broader and longstanding pattern of systemic racism and its influence on the policy and practice foundations of this nation's child welfare system. The power of the government to legally take children from their families, with relatively few safeguards in place to protect the rights of most parents (especially Black parents) from the subjective and frequently racialized biases of child welfare professionals, cannot be overstated in terms of its impact on the stability and decision-making power held by Black families.

The child welfare system must begin with the understanding of and commitment to the fundamental importance of the family, in whatever form the family takes. Children and families should be provided the services and support needed to keep families together. This investment in families is an investment in the strength of society, and must be available to all people, regardless of race or culture. Such provisions eliminate the need for removal of children and policing and regulating of families.

WHAT IS MEPA?

MEPA is federal legislation passed in 1994 to regulate child foster care adoption decisions based on race. In a 2007 Child Welfare League of America (CWLA) briefing¹, the American Bar Association's summarization of MEPA requirements was stated as follows:

¹ United States Commission on Civil Rights. "Briefing The Multiethnic Placement Act: Minority Children in State Foster Care and Adoption." Available at: <https://www.cwla.org/briefing-the-multiethnic-placement-act-minority-children-in-state-foster-care-and-adoption/>

ABOUT THE ORGANIZATION:



The National Association of Black Social Workers, Inc., comprised of people of African ancestry, is committed to enhancing the quality of life and empowering people of African ancestry through advocacy, human services delivery, and research. NABSW will work to create a world in which people of African ancestry will live free from racial domination, economic exploitation, and cultural oppression. In collaboration with national, international, and other appropriate groups, NABSW will continue to leverage its collective expertise to strategically develop capacity of people of African ancestry to sustain and flourish. NABSW's vision is guided by the Principles of the Nguzo Saba, which are Unity, Self-determination, Collective Work and Responsibility, Cooperative Economics, Purpose, Creativity, and Faith, and the Seven Cardinal Virtues of Ma'at, which are Right, Truth, Justice, Order, Reciprocity, Balance, and Harmony.

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1. It prohibits states and other entities that are involved in foster care or adoption placements, and that receive federal financial assistance under title IV-E, title IV-B, or any other federal program, from delaying or denying a child's foster care or adoptive placement *solely* on the basis of the child's or the prospective parent's race, color, or national origin.
2. It prohibits these states and entities from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or the child's race, color, or national origin; and
3. It requires that, to remain eligible for federal assistance for their child welfare programs, states must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes.

In 1996, IEPA was enacted to strengthen MEPA by deleting the word *solely* and stating that placement decisions could “not deny to any person the opportunity to become an adoptive or a foster parent, on the basis of race, color, or national origin of the person, or the child, involved[.]”² IEPA reiterated that agencies must recruit foster and adoptive parents that reflect the ethnic and racial diversity of the children in care and imposed financial penalties on states that did not comply.

WHY SHOULD MEPA/IEPA BE REPEALED?

MEPA/IEPA are flawed and failed legislation. They are *flawed* because they were based on the incorrect assumption that African American children were disproportionately represented in the child welfare system because their adoptions were being delayed and denied because white people were being denied transracial placements. They are *failed* pieces of legislation because not once in its 25-year history has disproportionality of Black children decreased.³ In fact, Black children continue to be disproportionately represented in the foster care and adoption systems, are more likely to experience foster care drift, continue to wait the longest for permanent placement, and are less likely than their white counterparts to be adopted or to achieve any permanency outcome.

- Black families are more likely to be investigated than any other ethnic group and when investigated, their children are more likely to be removed while white families are more likely to receive in-home services.⁴
- Black children are more likely to be removed from their families for neglect than abuse. This neglect is more related to poverty than the intention to do harm.⁵
- At every stage of the system, Black families are disproportionately scrutinized with resulting outcomes that dismantle their families rather than strengthen them.⁶

2 “Removal of Barriers to Interethnic Adoption,” Section 1808 of the Small Business Job Protection Act of 1996

3 Kalisher, A., Spielfogel, J., Shenk, M., & Eduoard, K. *U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning & Education*. “The Multiethnic Placement Act 25 Years Later: Diligent Recruitment Plans.” (August 2020). Available at: <https://aspe.hhs.gov/system/files/pdf/264526/MEPA-Diligent-recruitment-report.pdf>; *Child Welfare Information Gateway*. “Child Welfare Practice to Address Racial Disproportionality and Disparity.” (April 2021). Available at: https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf.

4 Lurie, Julia. *Mother Jones*. “Child Protective Services Investigates Half of all Black Children in California.” (April 26, 2021). Available at: <https://www.motherjones.com/crime-justice/2021/04/child-protective-services-investigates-half-of-all-black-children-in-california/>; Roberts, Dorothy. “Shattered Bonds: The Color of the Child Welfare System,” Part 1. Basic Books (2002).

5 Keddell E. “Current Debates on Variability in Child Welfare Decision-Making: A Selected Literature Review.” *Social Sciences*. 2014; 3(4):916-940. Available at: <https://www.mdpi.com/2076-0760/3/4/916>; *First Symposium Issue for the Columbia Journal of Race and Law's Seventh Annual Symposium*. “Strengthened Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well Being” (July 2021). Available at: <https://journals.library.columbia.edu/index.php/cjrl/issue/view/789/188>; Movement for Family Power. “The Problem.” Available at: <https://www.movementforfamilypower.org/new-page-2>.

6 NYS Office of Children & Family Services. “The OCFS Initiative to Address Racial Disproportionality in Child Welfare and Juvenile Child Welfare and Juvenile Justice.” (January 2011). Available at: <https://www2.nycourts.gov/sites/default/files/document/files/2018-09/ocfs-disproportionality.pdf>.

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- Once in foster care, Black children are least likely to return home, more likely to have their parents' parental rights terminated, and less likely to be adopted.⁷
- An intended outcome of MEPA was to reduce the number of children who wait the longest to achieve adoption. However, research reveals that adoption occurs largely for children aged 6 and under.⁸
- There is also opposition to MEPA based on religious preference.⁹
- Although MEPA and IEPA state that agencies should recruit in all areas in their state, especially those communities where the majority of the children in foster care come from, there is no mention of the research that shows that minority families are interested in adopting through agencies but are often arbitrarily screened out of the process or discouraged from applying due to discrimination, the policies and procedures of child welfare agencies, and other systemic issues. For example, research done by the North American Council on Adoptable Children entitled, "Barriers to Same Race Placements Research Brief #2,"¹⁰ showed that agencies specializing in the placement of minority children were able to place 94% of their legally free African American children in African American families and 66% of Hispanic children in Hispanic homes. In addition, the majority of the children placed were older children and children with special needs. A conclusion of this study stated: "The experience of agencies specializing in placement of minority children shows clearly that families of color adopt in significant numbers when barriers are removed." The study also said that ongoing, consistent recruitment needed to be done in minority communities. This research, which compared placement data from public, private, and specialized adoption agencies, was conducted in twenty-five (25) states in 1990 and was published in April 1991. This research was supported by funds from the Children's Bureau, Administration for Children, Youth and Families, and the U.S. Department of Health and Human Services.

FAILURES OF MEPA/IEPA:

- MEPA and IEPA are white privilege legislated. As a result, transracial adoptions have increased which was the true intention of the legislation. Same race placements decreased.¹¹
- Cases have been brought before the Office of Civil Rights when it was alleged that white families were not allowed to adopt a Black child. It is not known if any review has been made regarding discrimination against Black or kinship families.¹²

7 Roberts, Dorothy. *The Scholar & Feminist Online*. "How the Child Welfare System Polices Black Mothers." Issue 15.3 (2019). Available at: <https://sfoonline.barnard.edu/unraveling-criminalizing-webs-building-police-free-futures/how-the-child-welfare-system-polices-black-mothers/>; Roberts, Dorothy. "Shattered Bonds: The Color of the Child Welfare System," Part 1. Basic Books (2002).

8 Malm, Karin, Vandivere, Sharon, & McKlindon, Amy. U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning & Education. "Children Adopted from Foster Care: Child and Family Characteristics, Adoption Motivation, and Well-Being." (May 2011). Available at: <https://aspe.hhs.gov/basic-report/children-adopted-foster-care-child-and-family-characteristics-adoption-motivation-and-well-being>.

9 Krause, Steve. *Jewish Children's Adoption Network Newsletter*. "Multi-Ethnic Placement Act." (Summer 2008). Available at: <https://qrco.de/bcCoPn>.

10 Gilles, Tom & Kroll, Joe. *North American Council on Adoptable Children*. "Barriers to Same Race Placements Research Brief #2." (April 1991). Available at: <https://files.eric.ed.gov/fulltext/ED342486.pdf>.

11 U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning & Education. "Transracial Adoption from Foster Care in the U.S." (December 2020). Available at: <https://aspe.hhs.gov/sites/default/files/private/pdf/264526/MEPA-Graphical-Factsheet.pdf>; U.S. Department of Health and Human Services, Office for Civil Rights. "OCR and HHS Administration on Children disseminate self-assessment tool to facilitate non-discrimination on the basis of race in foster care and adoption." Available at: <https://www.hhs.gov/civil-rights/for-individuals/special-topics/adoption/internal-evaluation-instrument/index.html>.

12 Kalisher et al., supra note 3; U.S. Department of Health and Human Services, Office for Civil Rights, supra note 11; U.S. Department of Health and Human Services, Administration for Children and Families, and Office for Civil Rights. "ENSURING THE BEST INTERESTS OF CHILDREN Through Compliance with The Multiethnic Placement Act of 1994, as amended, and Title VI of the Civil Rights Act of 1964." Available at: <https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/specialtopics/adoption/mepatraingppt.pdf>.

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- No penalties have been imposed on states that did not recruit a racially/ethnically diverse pool of adoptive and foster parents reflective of the children in care.¹³
- Reviews of diligent recruitment plans (DRP) do not require any documentation of the diversity of families recruited, only that recruitment efforts were conducted. Recent research documented that 69% of DRPs “need improvement” without indicating what improvement was needed.¹⁴
- There are no provisions for Black families seeking to foster, adopt, or become a legal guardian to appeal discriminatory decisions. In fact, Black families consistently indicate they are not provided with information on their right to appeal when they are denied the ability to adopt or foster or become a legal guardian.¹⁵

NABSW GUIDING PRINCIPLES:

- Children deserve to be raised within the context of their birth family network.
- Families who are in need of services and supports to adequately care for their children should readily receive them.
- When there is cause for children not to be with their current caretaker(s), the placement priority should be with kin and fictive kin.¹⁶
- Children who cannot be given a permanent placement with kin or fictive kin should be adoptively placed with families of their same race and ethnicity.
- Foster care is not a framework in which to raise children.¹⁷
- The current federal funding structure that provides the lion’s share of funds for IV-E (out-of-home) services should be reversed so that the bulk of funding is allocated to IV-B (preventive and in-home) services.
- NABSW continues to uphold its 2003 position statement on kinship care.¹⁸
- NABSW believes the Adoption and Safe Families Act (ASFA) should be repealed as it fast-tracks termination of parental rights when the desired out-of-home placement option is kinship care. Instead of knee-jerk approaches to dismember families, families should be provided with in-home services and supports identical to those currently provided to strangers providing foster care and adoption services.
- Priority should be given to family preservation goals, programs, and practices with adequate services, resources and supports.
- Expand kinship care as a priority service with legal and appropriate wrap-around support.¹⁹
- Accountability, transparency, and racial equity assessments and training should be incorporated into the proposed transformation of family preservation, kinship care, and guardianship services.²⁰

¹³ Kalisher et al., *supra* note 3.

¹⁴ *Id.*; https://www.aspe.hhs.gov/sites/default/files/migrated_legacy_files/197696/MEPA-Diligent-recruitment-report.pdf; U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning & Education, “ASPE Research Summary: The Multiethnic Placement Act 25 Years Later” (December 2020). Available at: <https://aspe.hhs.gov/sites/default/files/private/pdf/264526/MEPA-Research-summary.pdf>; CWLA: *Children’s Monitor*, “The Multiethnic Placement Act (MEPA) and Transracial Adoption 25 Years Later.” (December 2020). Available at: <https://www.cwla.org/wp-content/uploads/2020/12/Monitor-CWLA-2020-December-21.pdf>.

¹⁵ Hill, Robert B. “The Strengths of African American Families: Twenty-five Years Later.” Lanham, MD: University Press of America. (1999).

¹⁶ Child Focus, “Children in Kinship Care Experience Improved Placement Stability, Higher Levels of Permanency, and Decreased Behavioral Problems: Findings from the Literature.” Available at: <https://www.grandfamilies.org/Portals/0/Documents/4-%20Kinship%20Outcomes%20Review%20Handout.pdf>.

¹⁷ Ellis, Niquel Terry, CNN, “The foster care system is failing Black children and the death of Ma’Khia Bryant is one example, experts and attorney say.” (May 6, 2021). Available at: <https://www.cnn.com/2021/05/06/us/makhia-bryant-foster-care/index.html>.

¹⁸ National Association of Black Social Workers, “Kinship Care Position Paper.” (January 10, 2003). Available at: https://cdn.ymaws.com/www.nabsw.org/resource/collection/E1582D77-E4CD-4104-996A-D42D08F9CA7D/Kinship_Care_Position_Paper.pdf.

¹⁹ *Id.*; *Fostering Connections to Success and Increasing Adoptions Act of 2008*, 110 P.L. 351; 122 Stat. 3949. Available at: <https://www.govinfo.gov/content/pkg/PLAW-110publ351/pdf/PLAW-110publ351.pdf>.

²⁰ *Children’s Bureau*, “Children’s Bureau Grantee Synthesis: Kinship Navigator Programs.” Available at: <https://www.childwelfare.gov/pubPDFs/kinshipnavigator.pdf>.

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In conclusion, it is the ongoing position of NABSW that none of the stated goals of MEPA/IEPA have been achieved in the 25 years of existence of the legislation. Instead, the single achievement has been in its unstated but intentional goal of increasing transracial adoptions. As this paper reveals, disproportionality and disparate services continue to exist at every stage of foster care and adoption services. Black children disproportionately continue to be the target of investigations and when investigated, are less likely to receive in-home services and are more likely than any other racial/ethnic group to be removed from their families and placed into foster care. Once in foster care they are less likely to be reunified with their birth families and less likely to receive a permanent outcome via adoption. Black children are also more likely to be “emancipated” from foster care as legal orphans, having had their parents’ parental rights terminated based on the provision of the Adoption and Safe Families Act that requires termination of parental rights be initiated when a child has been in foster care for “15 of the last 22 months.”²¹

Further confirmation of the intent of the legislation is the fact that the “requirement” to document recruitment of foster and adoptive parents who reflect the race, culture, or ethnicity of the children in care has never been enforced. This legislation must address the decisions made at every point from entry to exit that impede positive permanent outcomes for Black children. MEPA/IEPA should be repealed, based on its ineffectiveness and failure to achieve its stated outcomes. Family preservation with wrap-around services must become the primary focus of the child welfare system, so that fewer children will come into foster care, and all families will obtain the support that they need. ■

21 *Adoption and Safe Families Act of 1997*, P.L. 105-89; 111 STAT. 2115. Available at: <https://www.congress.gov/105/plaws/publ89/PLAW-105publ89.pdf>.



NACC LAUNCHES RACE EQUITY HUB

NACC announces a new Hub on its website with resources that support race equity, one of NACC’s core values. NACC encourages advocates and practitioners to resist racism, bias, poverty, and the trauma of family separation by demonstrating cultural humility, pursuing antiracist practices, confronting personal privilege and bias, utilizing a race equity lens when making decisions, and promoting diversity and inclusion.

Who is Benefitting from Your Clients' Benefits?

Preserving the Social Security Disability and Survivor Benefits of Youth in Foster Care

INTRODUCTION

You may have represented or been involved in a case with a child or youth who was eligible for and may have been receiving federal disability or survivor benefits. Chances are that neither you, your client, the judge, nor even the agency attorney knew these benefits had been applied for, paid out — and to whom or for what purpose. And chances are that nary a dollar of those benefits were ever used as required by law to address the individual needs and best interests of your client or conserved on their behalf.

*Tristen Hunter was 16 and preparing to leave foster care in Juneau, Alaska, when a social worker mentioned that the state agency responsible for protecting him had been taking his money for years. Hunter's mother died when he was little, and his father later went to prison, court records show, leaving him in a foster home. In the years that followed, he was owed nearly \$700 a month in federal survivor benefits, an amount based on Social Security contributions from his mother's paychecks. "It's really messed up to steal money from kids who grew up in foster care," said Hunter, now 21, who says he is struggling to afford college, rent and car payments. "We get out and we don't have anybody or anything. This is exactly what survivor benefits are for."*¹

This scenario is not anomalous, but standard practice from coast to coast — so entrenched in our child welfare system it has gone largely unnoticed and unchallenged for decades. How is it possible that several sources of federal entitlement benefits, as well as the savings and assets of youth in foster care, are being regularly intercepted and pocketed by another public agency — without notice, due process, or accountability?

¹ Hager, Eli & Shapiro, Joseph. "State Foster Care Agencies Take Millions Of Dollars Owed To Children In Their Care." *NPR*, (April 22, 2021). Available at: <https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca>.

ABOUT THE AUTHOR:



Amy Harfeld serves as the National Policy Director at the Children's Advocacy Institute. She has been a passionate advocate, educator, and public interest attorney for 25 years. Amy obtained her BA from the University of Michigan and her JD from City University of New York School of Law. She brings a uniquely balanced perspective to her advocacy, having represented the state agency, dependent children, and incarcerated parents in New York City. Launching her career in public service as a Teach For America corps member in Los Angeles, she has also coordinated the National Coalition to End Child Abuse Deaths, served as Executive Director of First Star, directed the Children's Leadership Council, and led the American Bar Association's Commission on Youth at Risk. Amy serves on NACC's Board of Directors.

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Fortunately, change is afoot due to courageous storytelling by youth, bold legislative action in states such as Maryland and Texas, thoughtful rulings by judges from North Carolina to Alaska, and powerful high-profile media coverage. This article will outline the issue and the related law, review successful reform to date as well as pending opportunities for policy change at the state and federal levels, and recommend avenues for practitioners to better protect their clients, hold agencies accountable, and ensure that their clients' benefits are actually benefitting their client.

THE ISSUE

A child may be eligible for Supplemental Security Income (SSI) benefits due to a physical or mental disability. In addition, a child may have entered care due to the disability or death of a parent who worked and contributed payroll taxes to Social Security, or one who served in the U.S. military. When this happens, these earned death benefits, Old-Age, Survivors, and Disability Insurance (OASDI) or Veteran's Affairs (VA), are in most cases paid to a parent's surviving children until they turn eighteen.

Disability benefits are intended to make up for the lost income of a deceased parent or to pay for special services, equipment, or therapy related to the child's disability. A child deemed eligible for benefits is required to have a representative payee to receive and manage the funds in their best interest.² When a child is at home or with family, the parent or guardian is first priority to serve in this fiduciary role.³

When a child enters foster care, however, a very different process is set in motion. State and county agencies in nearly every jurisdiction in the country routinely screen (or as some have characterized the process, "mine") every incoming youth for disability and death benefits.⁴ This mining is often conducted by private for-profit revenue-generating corporations which essentially serve to "shake down" incoming youth to assess their financial worth with an eye on minimizing the state's financial obligations for the child.⁵ If a child is deemed eligible for any of these benefits, the agency often automatically applies for the benefits and to serve as the representative payee.⁶ This happens without notice or any effort to identify another representative payee (a relative, family friend, community leader) who could manage the funds in the child's best interest, as required by law. The Social Security Administration (SSA) clearly states

2 Social Security Administration. "Frequently Asked Questions (FAQs) for Representative Payees." Available at: <https://www.ssa.gov/payee/faqrep.htm?tl=7>.

3 Social Security Administration. "GN 00502.105 Preferred Representative Payee Order of Selection Charts." *Program Operations Manual System (POMS)*. Available at: <https://secure.ssa.gov/poms.NSF/lrx/0200502105>.

4 Hatcher, Daniel. "Stop Foster Care Agencies from Taking Children's Resources." *Florida Law Review Forum*. Vol. 71(1) (2019). Available at: http://www.floridalawreview.com/wp-content/uploads/Hatcher_Publish.pdf ("agencies are monetizing vulnerable children. In Florida, a contract describes 'data mining techniques' to 'score' and 'triage' foster children to maximize revenue. In Maryland, an assessment report by MAXIMUS, Inc. describes foster children as a 'revenue generating mechanism.'")

5 White, Gillian B. "When Poverty is Profitable." *The Atlantic*. (June 22, 2016). Available at: <https://www.theatlantic.com/business/archive/2016/06/poverty-industry/487958/>.

6 See Boyer, Bruce & Matthews, Martha. "Should Agencies Apply for and Receive SSI on Behalf of Foster Children?" *Youth Law News*, Vol. XX No. 6 (Nov-Dec 1999); U.S. Government Accountability Office. "Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries." (June 3, 2021). Available at: <https://www.gao.gov/products/gao-21-441r>.

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in their policy directives that the state agency is the last of seven options on their preference list and is the payee of last resort after all other resources are ruled out.⁷

*Do not routinely appoint the foster care agency as payee for a child in foster care. Gather all pertinent information and make a thoughtful and careful choice and decide each case on its own merit. Your primary concern must be that the person, agency or organization you select as payee will best serve the interest of the child.*⁸

This is not consistent with state practice nationwide, as reported recently by the Government Accountability Office.⁹ Once the benefit checks start arriving to the agency (they can range up to more than \$800/month), the agency payee deposits the entire check into state accounts — sometimes general child welfare accounts, sometimes general accounts unrelated to child welfare.¹⁰ Rarely are the funds attached to spending for that beneficiary.¹¹ The money is neither used for individualized services for the child, nor conserved for their future use. And if a youth in foster care is eligible for benefits and also has money saved from a job, a gift, a bequest, or high-value asset such as a car, the agency may move to seize all their assets beyond \$2,000 — purportedly to maintain the child's eligibility for these means-tested benefits — and then pockets those assets too. Not only does this violate basic premises of ethics and common sense, it violates federal law which specifically requires agencies to “help prepare youth emancipating from the foster care system for self-sufficiency and independent living.”¹²

Approximately 10% of children in foster care receive SSI benefits.¹³ Research indicates that closer to 20% of children in care have conditions that would likely qualify them for SSI¹⁴, which translates to 40,000-120,000 impacted children in any given year.¹⁵ Disability benefits can total about \$9,200 annually per child. The Congressional Research Service estimates that states intercept roughly \$258 million in Social Security benefits of foster children each year.¹⁶ In spite of federal legislation in 2018¹⁷ requiring data collection and sharing, the Administration for Children and Families (ACF) has failed to collaborate with the Social Security Administration to produce reliable national data on this practice. A 2021 GAO report sampling data on 11 states identified over 5,500 errors in appointment of a representative payee.¹⁸

7 Social Security Administration. “GN 00502.105 Preferred Representative Payee Order of Selection Charts.” *Program Operations Manual System (POMS)*. Available at: <https://secure.ssa.gov/poms.nsf/lnx/0200502105>.

8 Social Security Administration. “GN 00502.159 Additional Considerations When Foster Care Agency is Involved.” *Program Operations Manual System (POMS)*. Available at: <https://secure.ssa.gov/poms.nsf/lnx/0200502159>.

9 See, *supra*, footnote 6, available at: <https://www.gao.gov/products/gao-21-441r>.

10 Hatcher, Daniel. “Foster Children Paying for Foster Care.” 27 Cardozo L. Rev. 1797 (2006). Available at: https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1293&context=all_fac.

11 *Id.*

12 45 C.F.R. §1355.25 (c).

13 See, *supra*, footnote 1, available at: <https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca>.

14 Moulta-Ali, Umar, Fernandes-Alcantara, Adrienne L., & Stoltzfus, Emilie. “Child Welfare: Social Security and Supplemental Security Income (SSI) Benefits for Children in Foster Care.” *Congressional Research Service*. (September 28, 2012). Available at: https://greenbook-waysandmeans.house.gov/sites/greenbook-waysandmeans.house.gov/files/2012/documents/RL33855_%20v3_gb_0.pdf.

15 U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. “Adoption and Foster Care Analysis and Reporting System (AFCARS) FY2019 data.” No. 27. Available at: <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf>.

16 See, *supra*, footnote 14, available at: https://greenbook-waysandmeans.house.gov/sites/greenbook-waysandmeans.house.gov/files/2012/documents/RL33855_%20v3_gb_0.pdf.

17 Pub. L. No. 115-165. Available at: <https://www.congress.gov/bills/115th-congress/house-bill/4547>.

18 See, *supra*, footnote 6, available at: <https://www.gao.gov/products/gao-21-441r>.

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The disability and death benefits of youth in foster care across the country are being applied for, received, and spent by child welfare agencies without any notice to the child or their attorney, without any due process or opportunity to intervene, without an accounting for the funds, and with no regard for the particular current or future best interest of the individual beneficiary.

WHY DOES THIS HAPPEN?

As sinister as the practice sounds, it is in most instances not a deliberate coordinated effort to defraud youth in foster care. It is, however, an insidious long-standing revenue maximization strategy for states, who in most instances understand that they may not “double-dip” into both IV-E and SSI benefits, and that SSI provides more money to states without requiring state matching.¹⁹ But, of course, states are legally obligated to pay for foster care for every child that comes into care²⁰, so choosing to supplant IV-E with SSI to pay for state costs related to foster care is from the outset an unlawful proposition. The state does not have authority to determine which categories of children coming into care they will and will not support. It seems plain that charging certain classes of foster youth for their own care while paying the full cost for the remainder of children in care creates equal protection issues.

Yet states, desperate to find ways to fill out their anemic budgets, understand how valuable these benefits are, and have grown accustomed to this practice, though it ultimately constitutes only about 1% of their budgets.²¹ Agencies argue that their role in screening foster children for benefits is valuable to the child’s present and future well-being and that they may not be sufficiently motivated to continue screening without recouping their investment.²² Agencies further argue that because most of these benefits are means-tested, precluding the accumulation of assets beyond modest caps, they are doing youth a favor by obtaining and preserving eligibility for benefits even if those dollars are not benefitting them now.

Because there is no notice or due process in most instances, and neither attorneys nor youth nor even judges are aware this is happening, there has been little pushback and few challenges to the practice. In the absence of legislation or caselaw prohibiting the practice, states surmise that it is allowable and it continues largely unabated across the country.²³

WHAT DOES THE LAW SAY?

There is no federal legislation expressly permitting or prohibiting the practice of states’ interception of foster youth benefits. Three bills have been introduced in Congress since 2007,²⁴

19 See, *supra*, footnote 10, available at: https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1293&context=all_fac.

20 Federal law under Title IV-E requires states to cover “foster care maintenance payments” for each child removed into care using state funds. 42 U.S. Code § 6729(a). The structure is intended so that states pay foster care maintenance with state funds, and may then claim a IV-E federal match for eligible children.

21 Shapiro, Joseph. “Consultants Help States Find And Keep Money That Should Go To Foster Kids.” *NPR*. (April 28, 2021). Available at: <https://www.npr.org/2021/04/28/991503850/consultants-help-states-find-and-keep-money-that-should-go-to-foster-kids>.

22 See, *supra*, footnote 4, available at: http://www.floridalawreview.com/wp-content/uploads/Hatcher_Publish.pdf.

23 There are a few exceptions to this. Florida has established clear notice provisions through their Master Trust program. Allegheny County states that its agency does not screen incoming foster youth for benefits, and thus does not apply for appointment as representative payee. Cook County, IL is under a continuing consent decree requiring notice in these cases. See, *supra*, footnote 6, available at: <https://www.gao.gov/products/gao-21-441r>.

24 H.R. 1104 (110th): Foster Children Self-Support Act. Available at: <https://www.govtrack.us/congress/bills/110/hr1104/cosponsors>.

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most recently the Protecting Foster Youth Resources to Promote Self-Sufficiency Act of 2016,²⁵ which would not only require proper notice and due process to all children and their legal representatives, but prohibit states from using the funds to supplant their own fiscal obligations. Champions in Congress plan to reintroduce the bill. To date, Maryland is the only state to pass legislation limiting the practice. The 2018 Protecting the Resources of Children in State Custody Act²⁶ was championed by then Maryland state Senator and now U.S. Representative Jaime Raskin who stated to NPR, “This is like confiscating someone’s Social Security benefits because they availed themselves of the fire department.”²⁷ In 2021, Texas introduced similar legislation.²⁸ Nebraska is gearing up to be next.²⁹

In 2003, the U.S. Supreme Court heard *Washington State Dep’t of Social and Health Services v. Keffeler*³⁰ — a case widely misconstrued to justify this continued practice. In *Keffeler*, the Supreme Court held that Washington State did not violate the anti-attachment provision of the Social Security Act by using children’s Social Security benefits for foster care costs.³¹ The Court concluded that state agencies could not be deemed creditors to children in care³², which seems an obvious conclusion given that foster children owe no debt for the cost of their care. The Court explicitly declined to address claims related to due process, breach of fiduciary duties, and other claims, encouraging these claims to be brought to the Social Security Administration or via subsequent litigation:

Respondents also go beyond the § 407(a) [anti-attachment provision] issue to argue that the department violates § 405(j) itself, by, for example, failing to exercise discretion in how it uses benefits, periodically “sweeping” beneficiaries’ accounts to pay for past care, and “double dipping” by using benefits to reimburse the State for costs previously recouped from other sources. These allegations, and respondents’ § 405(j) stand-alone arguments more generally, are far afield of the question on which we granted certiorari.... Accordingly, we decline to reach respondents’ § 405(j) arguments here, except insofar as they relate to the proper interpretation of § 407(a). Respondents are free to press their stand-alone § 405(j) arguments before the Commissioner, who bears responsibility for overseeing representative payees, or elsewhere as appropriate.³³

Challenges in state courts, however, have resulted in orders questioning the constitutionality of the practice or directing at least a portion of children’s benefits for actual current or future needs of the child. The North Carolina Court of Appeals affirmed a judge’s order that a portion of a transition aged youth’s benefits be used to pay the mortgage on the house left to him by

25 H.R.5737: Protecting Foster Youth Resources to Promote Self-Sufficiency Act. Available: <https://www.congress.gov/bills/114/congress/house-bill/5737/text>.

26 Md. Code Ann., Fam. Law § 5-527. Available at: <https://casetext.com/statute/code-of-maryland/article-family-law/title-5-children/subtitle-5-child-care-foster-care/part-iii-child-welfare-services-foster-care/section-5-5271-protection-of-resources-of-child-in-state-custody>.

27 See, *supra*, footnote 1, available at: <https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca>.

28 Texas House Bill 4244. Available at: <https://legiscan.com/TX/text/HB4244/2021>.

29 “Editorial: Nebraska must stop seizing foster children’s Social Security benefits.” *Omaha World-Herald*. (June 8, 2021). Available at: https://omaha.com/opinion/editorial/editorial-nebraska-must-stop-seizing-foster-childrens-social-security-benefits/article_40bfd176-c555-11eb-a7fa-0763a5843df4.html?utm_medium=email&utm_source=govdelivery.

30 537 U.S. 371 (2003).

31 *Id.* at 372.

32 *Id.* at 382.

33 *Id.* at 389, fn.12.

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his adoptive father, which was on the verge of going into foreclosure.³⁴ In Maryland, a court concluded that the state violated a youth's constitutional due process rights by applying for and taking his benefits without notifying him or his lawyer.³⁵ An Alaska court recently enjoined the state from violating the due process rights of children in foster care by applying to receive their disability and survivor benefits without proper notice and opportunity to intervene.³⁶

WHAT'S THE ANSWER?

Practices shrouded in secrecy are most compromised by sunlight. By becoming aware of this practice, knowing the law, sharing that knowledge, counseling your clients on their rights and options, and raising the matter in court, you can play a role in stemming this injustice. Ultimately, state legislatures, courts, and Congress must act to explicitly prohibit this unethical and illegal practice. In the meantime, attorneys on the ground and stakeholders across the field have a meaningful opportunity to make an impact case by case.

BE INFORMED AND ROUTINELY ASK QUESTIONS IN COURT

- The most direct and impactful opportunity for attorneys and court-involved child welfare professionals is also the simplest: ASK. Ask the agency:
 - ✓ Has the agency screened your client for any of these benefits?
 - ✓ Has the child or youth qualified for one of these classes of benefits?
 - ✓ Has the agency applied to serve as representative payee?
 - ✓ Has the agency provided notice as required?
 - ✓ Has the agency documented their efforts to identify another representative payee (a natural or adoptive parent, relative, close friend) higher up on the preference list?³⁷
 - ✓ Has the agency properly fulfilled their obligations as fiduciaries? Can they document use of the child's benefits in their best interests, according to their individual and future needs?³⁸

REVIEW CASELOADS AND ENGAGE YOUR CLIENTS

- Assess your caseload and determine the extent to which this issue impacts your clients. Propose that your colleagues do the same.
- Counsel your clients and empower them with information about their rights, the law, and options to hold agencies accountable and prevent future harm.

³⁴ *In re J.G.*, 186 N.C.App. 496, 512, 652 S.E.2d 266 (2007).

³⁵ *In re Ryan W.*, 434 Md. 577, 76 A.3d 1049 (2013). See also Hatcher, Daniel, "How Maryland robs its most vulnerable children." The Baltimore Sun. (October 14, 2013). Available at: <https://www.baltimoresun.com/opinion/op-ed/bs-ed-foster-care-maryland-20131013-story.html>.

³⁶ *Z.C. v. State*, Case No. 3AN-14-07961 CI (Alaska Super Ct. Oct. 22, 2021) (unpublished opinion) (pending appeal); see also Verge, Beth, "Court finds state improperly managed foster kids' money," Alaska's News Source. (September 4, 2019). Available at: <https://www.alaskasnewsresource.com/content/news/Court-finds-OCS-Alaska-foster-kids-Social-Security-monies-559405261.html>.

³⁷ For the enumerated list of SSA payee preferences, see Social Security Administration, "GN 00502.105 Preferred Representative Payee Order of Selection Charts," *Program Operations Manual System (POMS)*. Available at: <https://secure.ssa.gov/poms.NSF/lrx/0200502105>.

³⁸ For the duties of a representative payee, see Social Security Administration, "GN 00502.159 Additional Considerations When Foster Care Agency is Involved," *Program Operations Manual System (POMS)*. Available at: <https://secure.ssa.gov/poms.NSF/lrx/0200502159>.

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- Work with your client to identify a family member or trusted friend who may be willing to serve as the representative payee and apply for a change of payee. Counsel your client and any new payee on use, records, and accountability for the funds.
- If no other payee can be identified, document how current or conserved benefits could actually serve your client's best interest by providing support for ongoing physical or mental health needs, educational plans, or basic needs when they exit care and advocate for orders directing such use of the funds.
- Encourage youth who want to share their stories and advocate for change.

MEDIA MATTERS

- In 2021, National Public Radio and the Marshall Project partnered on a multi-part investigative series on the interception of foster children's federal benefits. The first piece³⁹ provides an excellent overview of the practice as a whole and highlights the impact on several young people in Alaska. The second piece⁴⁰ outlines how young people are recouping some of their intercepted benefits, and the third article⁴¹ covers how private for-profit companies are mining children for benefits.
- Work with impacted clients interested in highlighting egregious cases to your local media outlets. Nothing increases public awareness and political pressure like a good investigative report.

TAKE IT TO COURT

- This issue is ripe for litigation at all levels. Some attorneys have successfully had their clients' benefits restored to them. Others such as the recent case in Alaska, have involved certified class actions against the state as a whole.
- Litigators and advocates suggest that claims could focus on anything from due process to theft to conversion to takings to fraud and beyond. Carefully pick a strong case, consult with a law firm that engages in pro-bono public interest practice, and check in with experts in legal reform through the courts.

CLEAR THE PATH FOR SPECIALIZED ACCOUNTS

- Financial vehicles exist to preserve eligibility for youth and conserve their benefits. The use of Individual Development Accounts (IDAs), for example, provide a mechanism to set aside some or all of a foster youth's benefits without that money being considered as income or resources used to determine or preserve benefits.⁴²

39 See, *supra*, footnote 1, available at: <https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca>.

40 Shapiro, Joseph. "Movement Grows for States to Give Back Federal Funds Owed to Foster Children." *NPR*. (May 3, 2021). Available at: <https://www.npr.org/2021/05/03/992993650/movement-grows-for-states-to-give-back-federal-funds-owed-to-foster-children>.

41 See, *supra*, footnote 21, available at: <https://www.npr.org/2021/04/28/991503850/consultants-help-states-find-and-keep-money-that-should-go-to-foster-kids>.

42 Social Security Administration. Spotlight on Individual Development Accounts – 2021. Available at: <https://www.ssa.gov/ssi/spotlights/spot-individual-development.htm>.

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- Many states have their own variety of these accounts such as Special Needs Trusts,⁴³ Master Trusts,⁴⁴ or other vehicles established which allow benefits to be held in trust for or used for a beneficiary without impacting eligibility.
- Advocate in your county/state for easy access to specialized accounts to conserve benefits and technical assistance to maintain them.

BE A CHANGEMAKER

- Advocates in many states are already or may be interested in addressing this through policy changes, regulations, or state legislation. Check in with allies who have succeeded in other states. Appeal to veterans' rights champions by highlighting the impact of this practice on surviving children of U.S. servicemembers.
- Incorporate these questions and interventions into your and your office's practice and maintain ongoing recordkeeping of the numbers of impacted clients.
- Contact your member of Congress to flag egregious experiences of their constituents and express support for legislative change. Agencies should be required to continue screening children for benefits and offer to serve as the representative payee when there is no one higher up on the list able to serve. But the benefits should be used as required in the child's, not the agency's, best interest.

CONCLUSION

Children and youth coming into foster care with a physical or mental disability, or after having lost a parent have more than enough challenges facing them. Federal disability and survivor benefits are intended to assist them with their immediate needs or be conserved to ensure a modicum of stability in the absence of a parent. They are for the benefit of the child, not the state. Rooting out this unscrupulous practice will rectify a long-standing injustice, pave the way for greater economic stability for this population of youth in foster care, and move us further towards a child welfare system worthy of the children it serves. ■

43 Maryland Department of Human Services. "Protecting the Resources of Children in Custody." SSA/CW #19-6. (October 1, 2018). Available at: <https://dhs.maryland.gov/documents/SSA%20Policy%20Directives/Child%20Welfare/SSA%2019-06%20CW%20Protecting%20Resources%20of%20Children%20in%20Custody.pdf>.

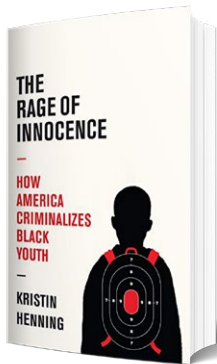
44 "Master Trust Issues for Children and Youth in Foster Care." Available at: http://www.qpiflorida.org/webshow/episodes/s3/handouts/ep9-Ch19_Master_Trust_Issues_for_Children_and_Youth_in_Foster_Care.pdf.



RESOURCE SPOTLIGHT

What Counsel for Children Need to Know About the Traumatic Effects of Policing

In her new book, *The Rage of Innocence: How America Criminalizes Black Youth*, Kristin Henning draws from her 25 years of experience as a defense attorney and the latest social science research to explore the criminalization of Black adolescence. In this resource spotlight, Kris focuses on the traumatic effects of over-policing on Black youth.



Young people across the country have experienced unprecedented loss, depression, economic hardship, and social isolation over the last 18 months. In June, the CDC reported that the proportion of emergency room visits for suspected suicide attempts among youth aged 12–17 increased by 31% during the pandemic.¹ For youth of color, the mental and physical consequences of the pandemic have been exacerbated by a wave of racial tension sparked by the killing of George Floyd.

Youth of color feel the effects of racism in every aspect of their lives — at school, at work, in the community, in health care, in recreation, and more. Researchers in a 2020 study found that Black youth aged 13–17 in Washington, DC faced an average of five racially discriminatory experiences per day.² Racism in all of its forms has a significant impact on the mental and physical health of children and adolescents.³ More than twenty-five years of research has documented a strong link between experiences of racism, depression, and poor academic achievement in Black youth.⁴

- 1 Ellen Yard et al., *Emergency Department Visits for Suspected Suicide Attempts Among Persons Aged 12–25 Years Before and During the COVID-19 Pandemic—United States, January 2019 – May 2021*, Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, June 18, 2021.
- 2 Devin English et al., *Daily Multidimensional Racial Discrimination Among Black U.S. American Adolescents*, 66 J. Applied Dev. Psychol. (2020).
- 3 Aprile D. Benner et al., *Racial/Ethnic Discrimination and Well-being During Adolescence: A Meta-analytic Review*, 73(7) Am. Psychol. 855–883 (2018).
- 4 English et al., *supra* note 2.; Devin English et al., *Adding to the Education Debt: Depressive Symptoms Mediate the Association Between Racial Discrimination and Academic Performance in African American Adolescents*, 57 J. of School Psychol. 29–40 (2016).

ABOUT THE AUTHOR:



Kristin Henning is a nationally recognized advocate, author, trainer, and consultant on the intersection of race, adolescence, and policing. Henning serves as the Blume Professor of Law and Director of the Juvenile Justice Clinic and Initiative at Georgetown Law and was previously the Lead Attorney of the Juvenile Unit at the D.C. Public Defender Service. Henning is the co-founder of a number of initiatives to combat racial injustice in the juvenile legal system, including the Ambassadors for Racial Justice program and a Racial Justice Toolkit for youth defenders.

► **Need to Know** from previous page

Police encounters are a significant source of racial trauma for Black youth, especially those who live in heavily-surveilled communities.⁵ Research shows that Black and Latino youth who have experienced or witnessed frequent or aggressive stops by police are more likely to report high rates of emotional distress, including fear, anger, and feeling unsafe.⁶

The emotional distress associated with police encounters can impact a young person's:

- **Sleep**
Youth who have experienced or witnessed police stops exhibit significantly greater odds of sleep deprivation and low sleep quality.⁷ Poor sleep quality, of course, affects a child's ability to focus and excel in school.
- **Likelihood of engaging in delinquent behavior in the future**
Black and Latino boys who were stopped by police reported more frequent engagement in delinquent behavior six, twelve, and eighteen months later compared to boys who were not stopped by the police (even if they had not previously engaged in delinquent behavior).⁸
- **Feelings about school**
Police stops that occur at school are especially distressing and stigmatizing.⁹
- **Perceptions about the fairness and legitimacy of the legal system**
When teenagers feel they are treated unfairly by police, they may lose trust in the legitimacy of law enforcement or the legal system as a whole.¹⁰

Many of the Black and brown youth you serve in the child welfare system will have experienced emotional distress from direct or vicarious encounters with police, even if they are not involved in the delinquency system.

Many youth of color will view and experience contact with CPS investigators in the same distressing ways they experience police encounters, as both represent a state intrusion into their lives and a threat of removal from their families.

As an attorney, you can:

- **Educate decision-makers on the impact of racial trauma**
 - Experts researching the impact of police encounters on the health of Black youth have advocated for better assessment tools that account for individual and systemic racial discrimination, such as a culturally-informed adverse childhood experiences framework (C-ACE).¹¹

5 Amanda Geller, *Youth-Police Contact: Burdens and Inequities in an Adverse Childhood Experience, 2014-2017*, 111 Am. J. Public Health 1300 (2021); Dylan B. Jackson et al., *Unpacking Racial/Ethnic Disparities in Emotional Distress Among Adolescents During Witnessed Police Stops*, 69(2) J. Adolescent Health 183 (2021).

6 Dylan B. Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 J. Adolescent Health 627 (2019).

7 Dylan B. Jackson et al., *Police Stops and Sleep Behaviors Among At-Risk Youth*, J. Nat. Sleep Foundation (2020).

8 Juan Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys*, 116 PNAS, 8261 (2019).

9 Jackson et al., *supra* note 6.

10 Amanda Geller and Jeffrey Fagan, *Police Contact and the Legal Socialization of Urban Teens*, RSF: The Russell Sage Foundation Journal of the Sciences 5, no.1 (Feb. 2019): 26-49.

11 Dylan B. Jackson, *The Case for Conceptualizing Youth-Police Contact as a Racialized Adverse Childhood Experience*, 111 Am. J. Public Health 1189 (2021); Donte L. Bernard et al., *Making the "C-ACE" for a Culturally-Informed Adverse Childhood Experiences Framework to Understand the Pervasive Mental Health Impact of Racism on Black Youth*, Journal of Child & Adolescent Trauma (2020).

► **Need to Know** from previous page

- **Insist that Black youth have access to culturally-responsive treatment to heal and build resilience**
 - Black youth are significantly less likely than white youth to seek, receive, and complete treatment for depression and other mental health disorders.¹² Some youth avoid or leave treatment early because they don't trust health care providers or are afraid of the stigma associated with treatment.¹³ Others do not feel they can reach out to a teacher or counselor if they need help.
 - Black teens often talk about their symptoms as headaches, stomachaches, and insomnia without explicitly connecting them to depression or other mental health problems, making it less likely they will get the help they need.¹⁴
 - Many receive inadequate treatment due to conscious and unconscious racism by treatment providers or are denied treatment altogether because they don't have the money or insurance to pay.¹⁵
- **Ensure that your client's behaviors are evaluated from a trauma-informed lens that takes into account racial trauma**
 - Youth who have experienced racial discrimination may be particularly suspicious of social institutions, including the delinquency or child welfare systems, and become emotionally detached or defensive when they feel disrespected or shamed.
 - Some youth will find it difficult to pay attention in court and engage respectfully with attorneys, judges, social workers, and other systems' actors they believe are part of a racially discriminatory system.
 - For more information, please read *Seeing What's Underneath: A Resource for Understanding Behavior & Using Language in Juvenile Court* available at <https://www.defendracialjustice.org/community-education/>. ■

12 The Congressional Black Caucus Emergency Taskforce on Black Youth Suicide and Mental Health, *Ring the Alarm: The Crisis of Black Youth Suicide in America, A Report to Congress* (2019).

13 *Id.*

14 The Congressional Black Caucus, *Ring the Alarm*, at 17; English et al., *supra* note 2, at 5.

15 The Congressional Black Caucus, *Ring the Alarm*, 16–18.



Case Digests

*In response to member feedback, select issues of the Guardian will feature summaries of key federal and state appellate cases, pertinent to child welfare, that were issued in the last year. These digests are **not** a substitute for a practitioner's responsibility to conduct independent case research and analysis; where possible, we have provided links to the cases to assist you in doing so. If you have a case from your jurisdiction you think would be a relevant addition to the Guardian Case Digest, please email the case cite and details to Christina.Lewis@NACCchildlaw.org.*

Dep't of Human Servs. v. W.M. (In re A.M.), 310 Or.App. 594, 485 P.3d 316 (2021) (no reasonable efforts to reunify during pandemic)

Parents appealed a permanency judgment that changed the permanency plan from reunification to guardianship. They argued that the Department of Human Services (DHS) did not make reasonable efforts to reunify in that the parents, due to COVID-19, were unable to participate in in-person training to address their daughter's feeding disorder.

The Oregon Court of Appeals explained that to change a permanency plan from reunification, the juvenile court must find that DHS made reasonable efforts to reunify the family and that, despite those efforts, "parents have not made sufficient progress to permit reunification." The court defined "reasonable efforts" as those which "focus on ameliorating the adjudicated bases for jurisdiction, and that give 'parents a reasonable opportunity to demonstrate their ability to adjust their conduct and become minimally adequate parents.'" Because pandemic restrictions prevented the parents from receiving required in-person training, the court found that DHS's efforts leading up to the permanency hearing did not allow the parents a reasonable opportunity to learn how to manage their daughter's complicated feeding disorder. **Reversed.**

People in Interest of C.R.W., S.D. 42, 962 N.W.2d 730 (2021) (expressed wishes vs. best interest representation)

The Oglala Sioux Tribe (The Tribe) intervened in the abuse and neglect proceeding involving an Indian child (C.R.W.) and subsequently moved for the disqualification of C.R.W.'s attorney, stating that the attorney recommended that the State file for termination of parental rights instead of advocating for C.R.W.'s expressed wishes, i.e., to return home to her parents. The Tribe argued that a conflict of interest "deprived C.R.W. of her due process and statutory right to counsel"; therefore, "a GAL must be appointed to represent the child's best interest so [C.R.W.'s] attorney can advocate as directed by the child." The circuit court denied the motion; the Tribe re-argued the motion prior to the termination hearing.



► **Case Digests** from previous page

During the termination hearing, C.R.W. stated that she now desired for her parents' rights to be terminated. Her mother and the Tribe orally moved to transfer the case to tribal court. After denying the motion to disqualify C.R.W.'s attorney and the motions to transfer jurisdiction, the circuit court terminated the parents' rights. The mother appealed the denial of the motion to transfer, and the Tribe appealed the denial of the motion to disqualify.

At the outset, the South Dakota Supreme Court found that the Tribe had standing to seek the disqualification of C.R.W.'s attorney. The supreme court explained that the "child's attorney appointed pursuant to the statute is required to advocate for the child's best interest. However, when the attorney's determination of what constitutes the child's best interest conflicts with the child's expressed wishes, the ethical obligations of the attorney require consultation with the child to insure that the child's objectives are presented to the court, along with the basis for the attorney's determination of the child's best interest." Citing the plain language of the statute, the supreme court found no error in the circuit court's finding that C.R.W.'s attorney must represent the child's best interests; nor did it find that the circuit court abused its discretion in denying the motion to disqualify. Additionally, the supreme court found that the circuit court did not abuse its discretion in denying the mother's motion to transfer as good cause existed to deny the motion; the mother moved for transfer at an advanced stage of the termination proceedings despite being advised of this right a year earlier. **Affirmed.**

***In re Caden C.*, 11 Cal.5th 614, 278 Cal.Rptr.3d 872, 486 P.3d 1096 (2021)**
(establishing an exception to termination of parental rights)

After a hearing under Welfare and Institutions Code section 366.26 (section 366.26 hearing), the trial court found that the mother established the parental-benefit exception which precluded the trial court from terminating her parental rights. The San Francisco Human Services Agency (the Agency) appealed. The Court of Appeals reversed, finding that the mother did not make progress in addressing the issues which led to the child's dependency. The Supreme Court of California granted review.

The Supreme Court declared that to invoke the parental-benefit exception, the parent must "establish, by a preponderance of the evidence, ...that the parent has regularly visited with the child, that the child would benefit from continuing the relationship, and that terminating the relationship would be detrimental to the child." In determining whether the child would benefit from the continuation of the relationship, the Supreme Court listed factors that may be considered: "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, ...the child's particular needs", how the child feels or talks about the parent, and information from experts based on their observations and others' observations of the child and parent. The Supreme Court explained that when deter-



► **Case Digests** from previous page

mining whether termination would be detrimental to the child, the trial court must ask “whether losing the relationship with the parent would harm the child to an extent not outweighed, on balance, by the security of a new, adoptive home.” The Supreme Court further explained that if the parent meets their burden, the trial court must select a permanent plan other than adoption.

While the Supreme Court held that parents can establish the exception even if they have not “made sufficient progress in addressing the problems that led to dependency”, it acknowledged that “issues such as those that led to dependency often prove relevant to the application of the exception”, namely “would the child benefit from continuing the relationship and be harmed, on balance, by losing it?” With regard to the appropriate standard of review for this exception, the Supreme Court declared that “a substantial evidence standard of review applies to the first two elements” since they are factual determinations. However, whether termination would be detrimental to the child “is discretionary and properly reviewed for abuse of discretion.” Applying the substantial evidence standard, the Supreme Court ruled that “the Court of Appeal’s holding that no reasonable court could apply the parental-benefit exception given Mother’s substance abuse and mental health issues was error.” The Supreme Court further held that the mother “was not required, in order to establish that the parental-benefit exception applied, to put evidence in at the section 366.26 hearing that she had recently attempted to maintain her sobriety or seek treatment for her addiction or mental health issues.” **Reversed and remanded with instructions.** ■



Visit NACC’s COVID-19 Resource Hub

During this pandemic, NACC is collecting and sharing resources to keep our community informed and prepared to safeguard the rights and well-being of young people.





REPORT EXCERPT

Away From Home: Youth Experiences of Institutional Placement in Foster Care

by Sarah Fathallah and Sarah Sullivan

Each year, over 43,000 young people in foster care, or 10% of foster youth nationwide, are sent to live not with families, but in group homes or institutional placements. While there is a growing body of research and a movement calling for the reduction and elimination of institutional placements in foster care, missing from this conversation was a deep, nuanced understanding of the experiences and mental models of young people who have recently lived in these places.

Think of Us, a national systems change non-profit founded by Sixto Cancel, embarked on a journey to fill that gap.

In the fall of 2020, Think of Us, in close partnership with the Annie E. Casey Foundation and Casey Family Programs, led a team of researchers to understand the experiences of young people who had recently lived in institutional placements while in foster care. The research team engaged 78 young people ages 18–25 with lived experiences through interviews and cultural probes.

Think of Us recently published the findings and recommendations of this work in: *Away From Home: Youth Experiences of Institutional Placement in Foster Care* (“*Away From Home*”). *Away From Home* includes the direct quotes, stories, artwork, and poems of young people. Based on the experiences of the 78 study participants, *Away From Home* draws six Big Picture Conclusions about institutional placements in foster care:

ABOUT THE AUTHORS:



Sarah Fathallah (they/she) is the Senior Director of Research and a co-founder of the Center for Lived Experience at Think of Us. They specialize in applying participatory research approaches to the social sector, and care deeply about shifting how we engage system-impacted communities and people with lived experience in research in ways that are less extractive, harmful, and paternalistic. They are the research lead and co-author of *Away From Home*.



Sarah Sullivan (she/hers) is the Senior Director of Programs at Think of Us. Sarah specializes in transforming the implementation of government services and is currently working with states to reduce or eliminate their use of institutions in foster care. She cares deeply about understanding how foster youth perceive trauma and pathways to healing. She is the project lead and co-author of *Away From Home*.

▶ **Report Excerpt** from previous page**1. Institutional placements fail to meet the mandate of child welfare**

Child welfare is mandated to ensure the safety, permanency, and well-being of foster youth. Yet, many participants revealed that they experienced discrimination or emotional, physical, mental, or sexual abuse while living in institutions, that institutions did not play a meaningful role in establishing permanency, and that institutional living did not promote their general well-being.

“(I was) sexually abused by 3 male staff as they put me in a restraint.”

— Former foster youth

2. Institutional placements are carceral

Youth used carceral language to describe their experiences in institutional placements. They likened these placements to “prison,” “jail,” or “juvie,” referred to the letters they received as “jail mail,” and believed they had “to do their time.” Youth reported controlling, restrictive, punitive, and surveilling practices at those institutions, including not having freedom of movement, not being able to leave the premises, and being locked inside high-security facilities with staff present 24/7.

“It almost feels like a jail. Too much structure and not enough freedom. It is not a normal life.”

— Former foster youth

3. Institutional placements are punitive

Youth highlighted failures of the child welfare system including a lack of time and investments to identify fit and willing kinship placements, lack of training and recruitment of foster parents prepared to care for children and adolescents, and lack of post-care support for reunified and adopted adolescents that result in disrupted adoptions and subsequent reentry into care. Despite these system failures, youth felt like they were the ones being punished by being sent to an institution — where they were punished, treated as criminals, and made to bear the consequences of the failures of child welfare.

“We were patted down every time we got back to the facility like we were criminals.”

— Former foster youth

4. Institutional placements are traumatic and unfit for healthy child and adolescent development

Though foster care is meant to remove youth from traumatic situations, institutions exposed many youth to new traumatic events that they might not have otherwise experienced. Research, conventional wisdom, and youth themselves state that children and adolescents need love and care, supportive and dependable relationships, autonomy and opportunities to fail healthily, safety and stabilization, and adequate opportunities for

▶ **Report Excerpt** from previous page

emotional and social learning. Yet, youth in this study indicated that institutional placements provide none of those elements reliably. Instead, youth reported witnessing and experiencing humiliation, emotional distress, physical harm, sexual harassment and assault, unmet basic needs such as nutritional and medical needs, and more.

“When I was at (group home) I watched my best friend commit suicide. I remember running through the dorm hall up the cottage stairs to get help, by then it was too late. I ended up restrained because suddenly I couldn’t handle my emotions, meanwhile other staff and emergency responders couldn’t get past the barricade (my friend) put in front of her door. She was only 12 years old and I was 11.”

— Former foster youth

5. Institutional placements shield youth from building relationships

For a myriad of reasons, youth indicated that institutional placements shielded them from having, building, and nurturing relationships. These relationships often play a critical role in helping foster youth to reestablish permanency or get out of institutions.

“I was barred from seeing any family.”

— Former foster youth

6. Institutional placements make youth feel like they don’t have a way out

Young people reported that the longer they remained in institutional placements, the more they believed that they were there because there were no foster homes for them or that foster homes did not want them because of their behavior or needs. Having no alternatives to the institutional placements is how youth rationalized their presence in those settings and developed a strong belief that “there was no other way” besides ending up on the streets, homeless.

“My case worker put me in North Star hospital cuz I had nowhere else to go.”

— Former foster youth

Away From Home calls for the end to institutional placements in foster care and replacing them with family-based alternatives that youth identified. Young people recommend focusing on true prevention services so that youth do not unnecessarily end up in foster care, expanding the definition of kin and improving licensing and support for kinship placements, and making foster family placements more stable and culturally appropriate.

Read [Away From Home](#) for the full findings, recommendations, and methodology; use the [Discussion Guide](#) to start a conversation with your colleagues and community; check out the [Digital Museum](#) showcasing youth’s art; or [purchase the book](#). ■

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LAW OFFICE

The Road from Attorney Panel to State-Run Program — Wyoming's GAL Program History

by Stacey Obrecht, JD, CWLS and Joe Belcher, JD

The History

Before 2005, each county in Wyoming was responsible for interviewing, hiring, reimbursing, and supervising any attorney *Guardian Ad Litem* (GAL) representing children in their county's juvenile court. This duty was left to many different individuals and varied from county to county. In some counties, the judge was responsible, while in others, the responsibility belonged to the county clerk.

What is historically apparent was the lack of standardization across the state.

- The quality of representation a child received in juvenile court depended mainly upon the child's county.
- Similarly, as an attorney GAL, the rate of pay and worthiness of the GAL work depended largely on the county in which the attorney practiced. In some counties, an attorney was paid over \$100.00 per hour, but they weren't paid at all in others. In some instances, a GAL was given a flat rate of \$250.00 for the life of a case even when it would last many, many years.
- Some GALs were trained in the specialty of children's law and juvenile court; others were not.
- Some GALs met with their clients; others did not.
- Some GALs had relatively few clients; others had over 200 clients.

The list goes on. And on.

To address the disparities in representation and pay throughout Wyoming, the Legislature created the GAL Program in 2005, which was tasked with representing child clients in juvenile court and in termination of parental rights (TPR) or appellate proceedings arising from these juvenile court actions. The Legislature first placed the GAL Program at the Wyoming Supreme Court.

Upon creating the GAL Program on July 1, 2005, the Wyoming Supreme Court set up a reimbursement program for the Wyoming counties. The program maintained a list of qualified GALs each county could choose from when appointing a GAL for a juvenile court action in that county. If the county used a GAL from the approved list, the county could bill the Supreme Court for 75% of the costs of those GAL legal services. The supreme court adopted Rule 106 to the District Court Rules, which defined basic standards of practice, qualifications for being placed on the qualified list of GALs, and caseload maximums. At that time, the caseload maximum was 65 cases per part-time attorney.

The GAL Program had many improvements while residing at the Supreme Court and was successful in standards, caseload maximums, qualifications, pay standardization (\$100.00 per hour), and increased training.

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However, there were still concerns that needed to be addressed. Counties and judges chose not to bill the program for the state match so that they could continue to appoint GALs who did not meet the qualifications outlined in Rule 106. Furthermore, GALs were not supervised, so there was no way to ensure that GALs were fulfilling the job requirements or consistently meeting client expectations. There was no complaint process for children or other stakeholders to report concerns with the GAL's representation. Additionally, there were still GALs above the caseload maximum and others who were overcharging for their services.

As a result, and at the request of the Supreme Court, the Wyoming legislature moved the GAL Program to the Office of the Public Defender (OPD), effective July 1, 2008.

Among the many changes made when the OPD took over the administration of the GAL Program was hiring an attorney to run and oversee the program. The program was able to supervise the GALs and provide robust case resources and assistance. The OPD adopted rules, through the Administrative Procedure Act's (APA) rules process, to govern the program and the GALs, and overhauled policies and the reimbursement method.

Beginning July 1, 2008, all GALs who represented children in juvenile court had to contract with the OPD instead of the counties in which they practiced. The GAL was paid directly via the GAL Program, and the program billed the counties for the 25% match. This allowed a greater connection between the state dollars and the legal representation, and it also gave the GAL Program a different role with attorney GALs. Other significant changes made at this time included changing the caseload standards, increasing the specificity of the representation standards in the rules, and taking over the case appointment process to ensure that qualified and appropriate attorneys were assigned, caseloads were suitable, and those attorneys were appointed promptly.

These changes were not without their challenges. Being a rural and frontier state, finding attorneys to represent children in all cities and counties was challenging. The GAL Program also started with over 100 attorneys to manage, train, and supervise, which was a lot for a small state agency. From 2008 through 2013, the program's primary focus areas included:

1. Training and support for all attorney GALs to improve the quality of representation.
2. Implementing policies and rules to increase the foundational standards of practice (i.e., bringing children to court and meeting with clients outside of the courtroom).
3. Reducing the number of attorneys to a manageable load, including increasing the number of full-time practicing attorney GALs.
4. Moving more positions from panel attorneys to state employees to increase longevity and focus and professionalize the practice.
5. Setting up and hiring supervisors in each district to provide more timely support and better local representation.

Getting attorneys in all the counties was not easy, so the program got creative and found ways to fill the need. It found attorneys willing to drive from their home county to the neighboring county when they couldn't find enough attorneys in that area. The program also had supervisors who would cover when

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cases increased in a place they supervised. Finally, it bought a handful of old cars from state surplus that the attorneys were given to drive the long distances between courthouses.

There was a four-year period that the program was not able to operate in one of the counties due to the inability to find attorneys who would comply with the base foundation of rules and policies. While challenging, this was a strong message about the changes in practice and professionalizing the field. They ultimately came back within the program, and since 2014, all counties in our rural, frontier state have been covered, even with the shortage of attorneys to do this work.

Current Day

The Wyoming GAL Program continues to adapt and change to discharge its duties to zealously advocate for its clients across Wyoming. One change the GAL Program has been fighting for it to become an independent state agency. After moving to the OPD, it was apparent that conflicts arose when our GALs were representing children involved in abuse and neglect cases while OPD attorneys were sitting at the defense table representing the alleged abusive or neglectful parent(s).

Senate File 0120 proposed to eliminate that conflict by moving the GAL Program out from under the OPD and creating The Office of Guardian *ad Litem* — an independent, stand-alone state agency to be led by a director appointed by the governor. Through a lot of hard work, testimony, and passion, on March 9, 2020, the Wyoming State Legislature passed Senate File 0120 which was then signed by the Governor on March 17, 2020. On July 1, 2020, the GAL Program became the Wyoming Office of Guardian *ad Litem*.¹

In addition to the name change, the structure of the Office of GAL adjusted. We still have attorneys driving many miles to other counties to represent clients, more contract GAL attorneys than full-time GALs, and supervising attorneys providing support and timely oversight. Now the Office of GAL has increased caseload maximums to 80 for full-time GALs, a permanency attorney to represent clients in TPRs and appeals, and a director to oversee it all. However, one thing that does not change is that it is a labor of love for the attorneys currently (and historically) working with the Office of GAL.

The Office of GAL's goal is to provide high quality legal representation for its clients, which is accomplished in many ways. One, by having experienced and dedicated GALs, some of whom have been practicing child welfare for over 15 years. In fact, it is common that in the life of a juvenile abuse and neglect case, the GAL is often the most stable, longest tenured person in the case.

Second, the Office of GAL followed NACC's best practices guidelines for installing a Child Welfare Law Office (CWLO).² The Office of GAL employs 7 full-time staff attorneys,⁴ full-time contract attorneys, and 19 part-time contract attorneys. In addition to their expertise in child welfare law, our GALs possess expertise in state and federal substantive law, trial advocacy and dispute resolution, collateral proceedings, community

¹ Wyo. Stat. Ann. 14-12-101 – 104

² Child Welfare Law Office Guidebook, *Best Practice Guidelines for Organizational Legal Representation of Children in Abuse, Neglect, and Dependency Cases*, National Association of Counsel for Children (2006).

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resources and services, family dynamics, education law, and child maltreatment and development. The Office of GAL understands the importance of trainings and partners with a number of child welfare stakeholders to host, attend, or present on numerous topics.

Third, in utilizing now available IV-E funds, the Office of GAL expanded its interdisciplinary representation by employing a person with lived experience and hopes to hire a social worker soon. Lastly, the Office of GAL continues to work with our local law school to solicit interns and externs with an eye to increase service, improve practice, and encourage good lawyers to engage in child advocacy.

Closing

With a lot of hard work and perseverance, the Wyoming Office of Guardian *ad Litem* is in its best position to zealously advocate for our juvenile clients. However, we cannot rest on our laurels and must strive to make the child welfare system better and more efficient and work to be the best GALs that we can be. The children of Wyoming deserve that. ■

ABOUT THE AUTHORS:



Since 2020, **Stacey Obrecht, JD, CWLS, PMP**, has been the CEO and President of Public Knowledge.[®] Stacey is responsible for providing overall direction and leadership for Public Knowledge, with 20 years of experience working within governmental agencies, educational institutions, and non-profit organizations. She also has extensive experience in training development and implementation; leadership assessments and coaching; organizational change management; and organizational development. Stacey received her juris doctorate from the University of Wyoming and is a certified child welfare law specialist (CWLS) and Project Management Institute (PMI) project management professional (PMP).



Joe Belcher was appointed the first director of the Wyoming Office of Guardian Ad Litem in August 2020. Prior to being named director, in over 10 years of experience within the Office of GAL, he served as Chief Trial and Appellate Counsel and Supervising Attorney for the First, Second and Eighth Judicial Districts and as Supervisory Attorney in the Sixth Judicial District. Joe holds Bachelor of Arts, Bachelor of Science and Juris Doctor degrees from the University of Wyoming. Prior to his time as a GAL he worked in the Office of General Counsel at Colorado State University and the University of Wyoming.



READER PANEL

Quality Family Time Around the Holidays

We know that quality family time contributes to positive outcomes and increased engagement for children and parents involved in the child welfare system — and that such time is especially important around holidays and family traditions.

What advocacy strategies do you use and recommend to ensure that families can spend meaningful time together around important holidays?

Stacy L. Miller, JD, CWLS

**Assistant District Attorney General | Juvenile Court Team Leader
20th Judicial District of Tennessee**

As we all know, some of our youth have both juvenile justice and child welfare involvement with the system. It is important to remember these kids as well. If you represent a youth in a detention center, please request a release hearing if services can be set up for them in the home. If not, make yourself and the family aware of the visiting hours and advocate for a family visit. That family contact will help them get through this time more successfully.

Lynda D. McGhee, JD, CWLS

**Co-Executive Director | Michigan Children's Law Center
NACC State Coordinator for Michigan**

Three days before Thanksgiving, a foster parent reached out to me to let me know that the visitation schedule had changed for my two little clients and their father. I thought she was going to say that the children would be on an extended visit for Thanksgiving. However, she was calling to let me know that the normal visit that occurs on Tuesdays from 5–7 would take place on Tuesday from 2–4 instead. I asked about Thanksgiving, and she had been told that there would not be a Thanksgiving visit between my two young clients and their father because they would have already spent time with him on the previous Tuesday. As the LGAL, I contacted all supervisors for the agencies on the case and the Thanksgiving visit occurred.

I am sharing this experience with readers because had there not been consistent communication between the foster parent and I, there would not have been a holiday visit because she wouldn't have thought about contacting me. As advocates, it is imperative to build relationships with all parties and participants in the cases so that the lines of communication remain open. I would have assumed that this important family visit was taking place because it is what we all

JOIN THE PANEL!

Guardian readers are invited to join our Reader Panel. You'll receive an email asking for your responses to questions about child welfare legal practice. Selected responses will be featured in The Guardian. Please send an email to Kristen.Pisani-Jacques@NACCchildlaw.org letting us know you are interested in joining the panel.

► **Reader Panel** from previous page



agreed to in a Family Team Meeting two weeks prior to Thanksgiving. I believe that the best way to ensure that families spend meaningful time together during the holidays is to call them and try to help remove any barriers that would prevent visitation. It is also common in our jurisdiction to ask that extended visits during the holidays be placed in the court orders.; that is a very helpful strategy.

David J. Lansner, JD
Lansner & Kubitschek
New York, New York

Make a motion to obtain a home visit on Christmas Eve and Christmas Day. Home is where children should spend the holidays. Demand a hearing and present the parents to testify. Make the children's attorney ask them their position. You might not succeed, but you will at least make the judge think. In your closing argument, you can say: "Your honor, there are many people in this courtroom. You, and the agency workers, and attorneys, have children. Those children will spend Christmas with their families. It is only the children of color who will spend it with strangers."

Aliyah Zeien
Registered Social Worker | State Youth Ambassador
Vice President, Louisiana State Youth Advisory Board
Member of NACC's National Advisory Council for Children's Legal Representation

As a former foster youth and current child welfare professional, my honest suggestion would be that any social worker, attorney, CASA worker, etc., advocate for intentional involvement and visitation for the child with people that are important to them such as parents (when applicable), fictive kin, biological relatives, and extended family. This is anyone that can keep the child connected to their roots, history, culture, and traditions so that they don't lose that while navigating through the system as many youth often do. I was not able to visit any family members while in the system for numerous reasons and it definitely had a negative effect on my emotional growth and well-being. Youth are surrounded at school and in life by people who are with people they care about during the holidays, making this a difficult time for many. As advocates the least we can do, and what I always aim to do, is to ensure our children and teens have meaningful connections so they feel loved and included during special occasions. Even though I was in a placement that had a large family unit, I often felt lonely and hurt knowing my family was somewhere continuing family traditions I could no longer be a part of. Advocacy strategies can include recommending longer visitation times and having supervised outings or visits outside the DCFS setting around the holidays so that children can feel that bond and relationship during a time that can become very lonely for some. Hopefully agencies are doing family searches, especially for youth placed in residential facilities, so that they can be around people they care about and learn about their family. Allowing youth to keep these connections while in care also helps bridge the gap for permanent connections as they become older and really need that support. Just because they're in a system where things are unfamiliar doesn't mean they have to lose the connections that bring them peace and happiness. ■



Natalece Washington,
JD, CWLS
Policy Counsel
Natalece.Washington@NACCchildlaw.org



NACC Launches New Campaign to Ensure Attorneys for Children in Foster Care

With over 673,000 children navigating America's child welfare courts every year and enduring concerns about unequal access to justice, in October NACC officially launched a new campaign, Counsel for Kids, dedicated to ensuring that children in foster care receive lawyers of their own. Counsel for Kids will equip advocates with the skills, tools, and training to amplify the voices of children and youth as key decisions are made about their families and their futures.

No federal law or protection guarantees that children in foster care receive attorneys of their own, and right now 14 states leave youth to navigate complex child welfare proceedings without legal assistance. This campaign launches at a pivotal moment, as Congress considers landmark legislation that would ensure legal counsel for children and parents in these cases." Absent legal counsel, courts and agencies risk making vital decisions about a child's home, family, and future without their input.

Counsel for Kids is working to change that by mobilizing advocates and legal professionals to change the law in states that do not currently guarantee legal representation for kids in court. The campaign provides technical assistance to advocates and organizations around drafting and proposing legislation, building coalitions, strategic policy advocacy, and communications. It will also focus on increasing the number of attorneys representing children and ensuring those lawyers receive the specialized training they need.

Children in court need lawyers of their own. We're working to make sure they have them. Join the campaign, share your support ([#Counsel4Kids](https://twitter.com/Counsel4Kids)), and see the advocacy toolkit at CounselforKids.org.

...And We'll Keep on Fighting 'til the End

Spotlighting Legislative Champions of Counsel for Kids

Right to counsel policy reform depends on the leadership and support of legislative champions to flourish. When a learned and respected politician guides a bill through the lawmaking process, it builds targeted support among influential legislators, coalesces agreement among committee staffers, and eventually helps secure the votes needed to pass a bill into law.

Legislative advocacy may be confusing and unfamiliar terrain for child welfare practitioners pursuing right to counsel policy reform in their state. The expertise of a skilled legislative champion is invaluable to developing a large, bipartisan coalition in support of a right to counsel bill. The coalition must include more than other legislators; in many states, the high turnover of elected officials means that staffers have significant influence in the crafting and passage of legislation. Navigating this political minefield

Children in court need lawyers of their own. *We're working to make sure they have them.*

requires the guidance and collaboration of a leader — a champion — who understands both the policy issue and the dynamics of the statehouse.

In this issue of *The Guardian*, we spotlight legislative champions from Arizona, Washington, and Florida who championed children's right to counsel in 2021.

Arizona



In Arizona, Sen. Nancy Barto sponsored [Senate Bill 1391 \(2021\)](#). The bill shifts the state's dependency child legal representation system from a best interest model to a model guaranteeing client-directed legal counsel to every child and permits the appointment of a guardian *ad litem* that must be an attorney. The bill was signed into law by Governor Ducey in April 2021. To achieve this victory, Sen. Barto ensured the bill stayed on track and scheduled for committees, while educating and galvanizing her peers to vote in favor of children's right to counsel. She says,

"As some of the most vulnerable within our purview, the rights of dependent children should no longer be overlooked. They deserve to have their rights protected, especially within the agency whose stated goal is achieving their best interest and outcome — but that is literally impossible if they are denied the protection and advocacy professional legal representation can provide on their behalf."

Washington

In Washington State, Rep. Noel Frame championed [House Bill 1219 \(2021\)](#), which requires the appointment of client-directed legal counsel for children aged eight and older, and was signed into law by Governor Inslee in May 2021. The provisions requiring appointment of attorneys will be phased in on a county-by-county basis over a six-year period, with full implementation by January 1, 2027. The legislation also mandates the convening of a children's legal representation standards workgroup to update standards of practice, generate training guidelines, and establish caseload limits. Additionally, the workgroup must submit recommendations to the legislature on research and best practices regarding the legal representation of children under eight years of age. Rep. Frame worked with lawmakers and coalitions of experts with lived experience to explicate details of the bill to lawmakers unfamiliar with child welfare practice, challenge problematic amendments, and develop extraordinary bipartisan support.

Florida



In Florida, Sen. Lauren Book, sponsored [Senate Bill 1920 \(2021\)](#) requiring the appointment of client-directed counsel for children in licensed foster care. The right to legal counsel for youth involved in the child welfare system has been a topic of significant, historical debate in Florida. Sen. Book met individually with many committee members to help them understand the critical need for children's legal representation. With Sen. Book's leadership, this proposal enjoyed unprecedented support in each

Children in court need lawyers of their own. ***We're working to make sure they have them.***

Senate sub-committee before it reached Senate appropriations, where time ran out before a vote occurred. Though SB 1920 never reached Florida's House of Representatives for consideration, the issue of right to counsel was examined in a [House workshop](#) on children's legal representation where legislators explored the issue with input from child welfare experts.

When asked how she garnered support to move the legislation through committees, Sen. Book explains several key steps, including:

- "Addressing issues raised by my constituents and current and former foster youth and incorporating them into the bill;
- Arranging for presentations and public testimony on relevant issues, such as the various roles of an attorney versus a guardian ad litem in dependency proceedings;
- Ensuring that members understand the provisions and the benefits of the legislation;
- Engaging in dialogue with the members to address any of their comments and concerns; and
- Amending the legislation throughout the process to address such concerns and to produce the best version of the bill."

Sen. Book is the sponsor of [Senate Bill 948](#) in the 2022 legislative session. Like SB 1920 [2021], this bill proposes a guaranteed right to counsel for youth placed in licensed out-of-home care. Senator Book continues to lead the charge for children's right to counsel in Florida.

Conclusion

The progress of the 2021 class of right to counsel bills is due in large part to the strategic efforts of these legislators who recognize the value of children's representation and the urgency of this long overdue reform. These champions armed themselves with empirical [research on improved outcomes with legal representation](#) to show the difference child attorneys make for children and the child welfare system. They partnered with lived experience experts to educate legislative committees on what attorneys mean to young people experiencing foster care. They shared information and resources on various models of representation and the additional [Title IV-E funding](#) opportunities to reimburse some of the costs for legal representation. Finally, they made themselves available to answer the questions of their peers, visiting them in their offices or taking their phone calls.

What does this mean for state advocates looking to ensure [Counsel for Kids](#) in their jurisdiction?

Identification of a legislative champion who is ready and willing to sponsor a bill must be an important part of advocacy planning. Ongoing collaboration between right to counsel advocates, allies and the sponsoring legislator creates the ideal environment for a bill to end its journey on the governor's desk for signature. 

Children in court need lawyers of their own. *We're working to make sure they have them.*

NACC Policy News and Amicus Updates



POLICY NEWS

NACC Submits Formal Comment on Alaska's Children in Need of Aid Rules

In response to proposed changes to Alaska's Children in Need of Aid Rules, [NACC submitted a formal comment](#) to the Alaska Court System urging the state to expand the right to legal counsel for youth, as well implement best practices regarding notice and court participation for youth in foster care.



Allison Green, JD, CWLS
Legal Director
[Allison.Green](#)
[@NACCchildlaw.org](#)

NACC Supports Simplified Child Tax Credit Filing Process

NACC [signed a letter](#) asking Treasury Secretary Janet Yellen to recommend that the Internal Revenue Service continue the practice of providing families a simplified filing tool to access the Child Tax Credit and other key benefits in 2022 and future years.

NACC Urges Congress to Fund Full-Service Community Schools Program

NACC and partner organizations sent [a letter to congressional leadership](#) urging approval of \$443 million for the Full-Service Community Schools Program. The program will help schools and communities recover from the pandemic and utilize a “whole-child” approach to public education.



Cristal Ramirez, MS
Youth Engagement Manager
[Cristal.Ramirez](#)
[@NACCchildlaw.org](#)

NACC Signs Letter to President Biden Regarding Care of Unaccompanied Children

NACC signed on to a [letter that asks President Biden](#) to alter his plans of moving forward with regulations regarding the care of unaccompanied immigrant children drafted during the Trump administration that ignore the *Flores* settlement agreement — which should be the basis for new regulations.

Helping Foster and Homeless Youth Achieve Act

NACC signed on in support of [proposed legislation](#) that would require colleges to waive application fees for young people who have experienced the foster care system.

National Runaway Prevention Month Resolution

NACC [endorsed](#) the National Runaway Prevention Month resolution that calls for increased awareness of and solutions to address youth homelessness.

Reduction of Policing, Restraints, and Corporal Punishment in Schools

A trio of bills under consideration by Congress would prohibit funding for police in schools and fund alternatives, eliminate seclusion, limit restraints, and end corporal punishment in

► **Policy News and Amicus Updates** from previous page



schools. NACC joined the Federal School Discipline and School Climate Coalition's [letter in support of this legislation](#).

NACC Signs on in Support of Sentencing Reform

NACC [joined a letter](#) urging Senators Chuck Schumer (D-NY) and Mitch McConnell (R-KY) to pass three pieces of criminal justice reform legislation: the Safer Detention Act of 2021 (S. 312), the First Step Implementation Act of 2021 (S. 1014), and the Prohibiting Punishment of Acquitted Conduct Act of 2021 (S. 601). NACC especially supports the provision in the First Step Implementation Act that addresses juvenile life without parole.

NACC Urges Congress to Address Barriers to Foster Parent Recruitment

NACC [signed on](#) to a [set of recommendations](#) urging members of Congress to address long-standing barriers to effective foster parent recruitment and retention. The four research-based recommendations include: requiring child welfare agencies to make a core set of support services available to foster families, creating a federal grant program to accelerate the elimination of congregate care, using data-driven approaches to evaluate support and recruitment progress, and directing the Department of Health and Human services to publish annual data on foster families.

NACC joins push to #ReUpChafee & Thanks Congressional Leaders for Commitment to Older Youth

NACC [signed on](#) and supported coalition efforts to extend pandemic-related support to youth experiencing foster care. Unfortunately, the legislation did not pass Congress before protections expired on September 30, 2021. However, [Representatives](#) Danny Davis (D-IL) and Jackie Walorski (R-IN) and [Senators](#) Chuck Grassley (R-IA) and Debbie Stabenow (D-MI) proposed legislation to address this. If passed, the *Continued State Flexibility to Assist Older Foster Youth Act* would extend supports and flexibility for transition-age youth during the pandemic.

NACC Signs on in Support of Housing Mobility Vouchers

NACC [joined a letter](#) urging congressional leadership to fund vouchers to support housing stability and upward mobility for half a million families with young children. This strategy can lead to better educational outcomes, fewer interactions with the criminal justice system, improved health and food security, and other positive outcomes for youth and families.

NACC Supports the Elimination of Juvenile Fees and Fines

Fees and fines courts imposed on youth involved in the juvenile justice system are a regressive and racially discriminatory cost to low-income communities and communities of color. NACC continues to call for the [elimination of these fines](#).

NACC Urges Congress to Prioritize Investments in Children

NACC signed on to a [letter to President Biden](#) and congressional leadership organized by the Children's Budget Coalition that urges the federal government to prioritize children in budget

► **Policy News and Amicus Updates** from previous page

reconciliation discussions. This includes policies like child-friendly tax credits, paid family and medical leave, support for early learning, increased food security and child nutrition, improved children's health and well-being, more affordable housing and education infrastructure, a path to citizenship for immigrant children, families, and others.



AMICUS UPDATES

NACC Joins Amicus Brief in Defense of Indian Child Welfare Act

On October 8, NACC joined Casey Family Programs and partners in an [amicus brief](#) to the U.S. Supreme Court in the case of *Brackeen v. Haaland* to defend the Indian Child Welfare Act.

NACC Urges Supreme Court to Clarify Abstention Doctrine

On October 21, NACC joined partners in [this amicus brief](#) urging the Supreme Court to clarify the use of the abstention doctrine by federal courts. The case arises out of an Indiana class action suit that raised children's right to counsel, among other issues.

NACC Files Amicus Brief in Appeal for Youth in West Virginia

NACC joined partners in filing an [amicus brief](#) in the Fourth Circuit Court of appeals. The case, which originates from a class action lawsuit on behalf of youth in West Virginia's foster care system, argues against the improper and overbroad use of the abstention doctrine to foreclose federal courts as a forum for youth to seek redress.

NACC and Partners ask Supreme Court of Ohio to Clarify Right to Counsel for Children

On September 17, NACC joined the National Coalition for a Civil Right to Counsel, the Family and Youth Law Center at Capital University Law School, and other partners in [this amicus brief](#) urging the Supreme Court of Ohio to clarify when a child is entitled to independent counsel in dependency proceedings. The court accepted jurisdiction of the case and now NACC and partners will move forward to briefing on the merits. ■



Amicus Request: The NACC Amicus Curiae Program promotes the legal interests of children through the filing of amicus curiae (friend of the court) briefs in state and federal appellate courts. We submit our own briefs and participate as co-amici in cases of particular importance to the development of law for children. To submit a request for NACC to participate as amicus curiae in a case you are working on, please download and complete [NACC's Amicus Curiae Request Form](#).



Emily Dufour
Membership and
Office Assistant
Emily.Dufour@NACCchildlaw.org

Membership Matters

Monthly Member Orientation and Discussion Forum

Whether you're new to NACC or a long-time member, you are invited to join NACC's Executive Director Kim Dvorchak and Membership Assistant Emily Dufour for a brief orientation to learn more about the updated services, products, networks, and resources available to you as a member of NACC. Then stay for an open forum to discuss issues impacting child welfare practice and our profession. Every third Thursday at 4:00 pm ET. View the schedule of upcoming orientations and register [here](#)!

NACC National and State Listservs: Your Gateway to our Child Welfare Community

The NACC Member Listserv is a forum to seek advice from other members, share important child welfare news, promote current reform efforts, and engage in meaningful dialogue. Join the discussion! Subscribe to NACC's national listserv by emailing nacc+subscribe@groups.io. If you are a child welfare practitioner who would like to join your respective state listserv, please email Emily.Dufour@NACCchildlaw.org.

Updated NACC Member Resource Page

To better serve your practice, NACC is continuously updating our [Member Resources webpages](#). When was the last time you took a look? Check out the new Conference Library for access to all NACC conference materials over the last 10 years, updated Member Listserv instructions, the *Loyola Children's Legal Rights Journal*, prior issues of *The Advocate* and *The Guardian*, and Amicus Request forms.

Expanding the NACC State Coordinator Network!

NACC's State Coordinator program now expands across 32 states and jurisdictions. Is your state holding an event? Want to get in touch with your NACC State Coordinator? Contact Policy@NACCchildlaw.org.

Profile Update Reminder:

If you haven't done so recently, please check your NACC Membership Profile and update it with your latest information and preferences. We have many NACC members and website visitors searching our directory looking for experts and networking opportunities.

Would you like to share something with the NACC Membership? [Send it to us!](#)

Forgot your username or password? It happens! Contact Membership@NACCchildlaw.org for a reset.

**PLATINUM
LIFETIME**
National Association
of Counsel for Children

MEMBER
NACC

Consider Elevating Your Support with a Platinum Lifetime Membership

When you [join or renew](#) your membership at the Platinum level, you receive all NACC member benefits for life! No notices, no renewals, just continued uninterrupted benefits. Lifetime Platinum Memberships cost \$2,500 and may qualify in whole or in part as a business deduction or charitable contribution (please see your tax advisor for more information). Help build NACC's platform with a [Platinum Membership](#).



Thank you to our Platinum Lifetime, Gold, and Silver Members!

PLATINUM LIFETIME

Candace Barr	Amanda Donnelly	Donna Furth	Kathleen McCaffrey	Cynthia Spencer
Catherine Begaye	Idalis Edgren	Gerard Glynn	Henry Plum	John Stuemky
Donald Bross	Leonard Edwards	Seth Goldstein	Allison Schmidt	Smith Williams
Irma Carrera	John D. "Jay" Elliott	Yali Lincroft	Janet Sherwood	Christopher Wu
John Ciccolella	Amanda Engen	Charles Masner	Yve Solbrekken	

GOLD

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Meredith Carpenter	Erica LeMon	Chelsea Peters	Jacqueline Williams
Stephanie Charter	Rachel Levitt	Alexis Pollock	LaShawn Young
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Jonathan Conant	Jonathan Mason	Deborah Reece	

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Robert Ackley	Rochelle Doyle	Alondra Geneva Johnson	Alison Pauk
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Donald Delaney	Gregory Jacomet	Jane Okrasinski	Danella Wozniak
Salihah Denman	Tyler Jansen	Brenee Orozco	Steven Yonan



Child Welfare Law Specialist Certification

Congratulations to our newest child welfare law specialists!

Erica Bashaw, JD, CWLS

Children's Law Center of California
MONTEREY PARK, CA

Christina Bazak, JD, CWLS

Children's Law Center of California
MONTEREY PARK, CA

Renee Duval, JD, CWLS

Gonser & Gonser/Delaware Office
of the Child Advocate
DOVER, DE

Rebecca Henderson, JD, CWLS

MHAS/Child Advocacy Program
MANDEVILLE, LA

Angelika Oliver, JD, CWLS

Children's Legal Services of San Diego
SAN DIEGO, CA

Michael Ono, JD, CWLS

Children's Law Center of California
MONTEREY PARK, CA

Peter Piper, JD, CWLS

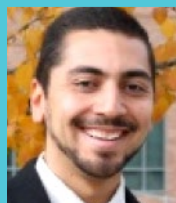
Children's Law Center of California
SACRAMENTO, CA

Julia Schooler, JD, CWLS

Children's Legal Services of San Diego
SAN DIEGO, CA

Alexandria Woodin, JD, CWLS

Children's Law Center of California
MONTEREY PARK, CA



Daniel Trujillo

Director of Certification,
Sales, and Technology

Daniel.Trujillo@NACCchildlaw.org



Ginger Burton

Certification Administrator
& Technical Writer

Ginger.Burton@NACCchildlaw.org

One Step Closer to Specialty Certification in Ohio!

At the urging of NACC and our Ohio partners, the Supreme Court of Ohio has adopted an amendment recognizing child welfare law as a specialty subject to attorney certification. Official recognition of the specialty is a required first step in a process that will hopefully result in NACC being able to certify Ohio attorneys as Child Welfare Law Specialists.

NACC currently has the authority to certify CWLS in 43 states and the District of Columbia — but not yet in Ohio. Recognition of the specialty gets us one step closer. NACC can now apply to the *Ohio Commission on Certification of Attorneys as Specialists* for accreditation as the certifying organization for the newly recognized child welfare law specialty. The accreditation process can be complex. We intend to submit our application in the coming weeks and then work with the *Commission* over the coming months as they review and deliberate. If all goes smoothly, NACC may be able to open CWLS certification in Ohio during the second part of 2022!

Time is running out! Have you submitted your 2021 annual report or recertification yet?

If not, please visit NACC's [Recertification and Annual Reporting webpage](#) for instructions on logging into our new online certification platform (Certemy) where you can submit your 2021 requirements. Once you've logged in and "accepted" your CWLS credential, the system will tell you whether you need to submit an annual report or a 5-year recertification application this year. Step-by-step instructions for using Certemy are included in the Certemy FAQs and Quick Guide found at the link above. ■



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**August 22 – 24,
2022**

PRE-CONFERENCE AUG 21

Baltimore Marriott
Waterfront
Baltimore MD

**ONLINE
CONFERENCE**



**September 21 – 23,
2022**

The Comfort of Your
Home or Office

ANNOUNCING THE 45TH NATIONAL CHILD WELFARE LAW CONFERENCES

Call for Abstracts



The National Association of Counsel for Children seeks abstract submissions for its 45th National Child Welfare Law Conference. NACC's vision is that every child and family involved with the court system is well-represented by a lawyer who works to ensure that every child is raised by a nurturing family and has positive life opportunities. The annual conference is an opportunity for us to bring together professionals from child welfare and other intersecting fields and further the goals in NACC's strategic plan through the exchange of ideas, information, and collective efforts.

The theme of this year's conference is *Bridging Theory to Practice: Learning & Unlearning to Drive Effective Advocacy*. NACC seeks abstract submissions that translate bold, innovative ideas into action and convey concrete tips and skills for all attorneys and professionals to integrate into their daily practice. The conference will highlight and elevate the voices of youth and parents with lived expertise and those disproportionately impacted by systems involvement, particularly Black and Indigenous families.

NACC will host the 45th National Child Welfare Conference in a dual-format: in-person at the Baltimore Marriott Waterfront in August, and online in September. NACC seeks abstract submissions from presenters willing to present in-person, virtually, or in both formats.

CLICK FOR [Details & Abstract Submission](#) [Abstract FAQs](#)

Abstracts are due Tuesday, February 1, 2022. No late submissions will be considered.

NACC strongly encourages and will evaluate diversity in abstract submissions, which includes diversity in faculty, topic areas, and geographic representation. NACC also encourages multidisciplinary faculty panels, presentations that include youth and parents formerly involved in the child welfare system, and presentations by Child Welfare Law Specialists.

Sponsor, Exhibit, Advertise

NACC is now accepting applications for 2022 Conference Sponsors, Exhibitors, and Advertisers. [Learn more.](#)

BALTIMORE2022

2021 CONFERENCE *to go*

This is the final month to purchase ConferenceToGo!

ConferenceToGo gives you access to NACC's conference app and all session recordings and materials from the 2021 online conference. As a CTG registrant, you can watch/listen to recordings at your leisure, download conference materials, and connect with your colleagues on NACC's Conference app through July 2022. (All prior Denver and online conference registrants also continue to have access through July 2022). You can access the recordings and materials on your computer, tablet, or smartphone; in your office, home, or on the go! [Click for recorded conference session descriptions.](#)

CTG Registration Rates

CWLS:	\$ 225
Individual Member:	\$ 250
Organizational Member:	\$ 250
Non-Member:	\$ 400 Join NACC Now!

Get ConferenceToGo

Note: Please allow 2 working days to receive confirmation and access instructions. NACC did not seek CLE accreditation for on-demand viewing of recordings in any jurisdiction. If you plan to seek CLE credit for on-demand viewing, please check with your jurisdiction to determine if they will accept your individual application for CLE credit.



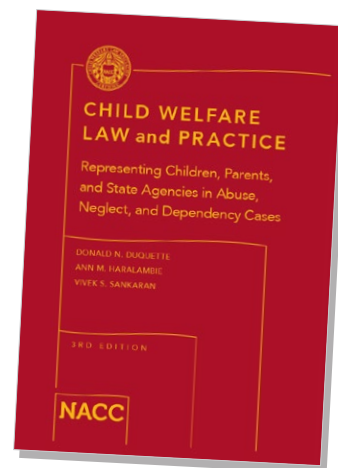
BALTIMORE2022



Training

Announcing NACC's Online Red Book Training Course 2022 Dates!

In 2022, you will have three chances to attend NACC's signature online, seven-week Red Book Training Course! The Red Book Training Course is an exciting opportunity for practitioners to brush up on their knowledge of federal child welfare law and learn tips to enhance their representation of children, parents, or the agency. The course covers major dependency practice competency areas and includes exam preparation strategies and tools for those intending to become certified Child Welfare Law Specialists. The material covered in the course is drawn from *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases* (3rd Edition).



Kristen Pisani-Jacques,
JD, CWLS
Training Director
Kristen.Pisani-Jacques@NACCchildlaw.org



Christina Lewis, JD
Staff Attorney
Christina.Lewis@NACCchildlaw.org

All sessions are on Thursdays and start at 3:00PM MT

Spring: March 3 – April 14

Summer: May 19 – June 30

Fall: September 8 – October 27 (no session on September 22)

Presenter: Betsy Fordyce, JD, CWLS,

Executive Director, Rocky Mountain Children's Law Center

The registration fee is \$200 per person for groups and NACC members (\$100 for CWLS; \$275 for nonmembers) and includes access to live sessions, recordings, the electronic Red Book, and the RBTC workbook! Registration will be opened soon.

[Click for more information and to view the course syllabus!](#)

Do you have questions about the use of psychiatric medication in your cases? The doctor is in!

Dr. Martin Irwin has generously made himself available to NACC members to consult on case questions surrounding the use of psychiatric medication on children. To contact Dr. Irwin to set up a consultation, please email him at martin.irwin@nyulangone.org.

► **Training** from previous page

Save the Date for NACC's 2022 Member Webinars — Registration Information Coming Soon!



January NACC Member Webinar: NACC's Child Welfare Law Year in Review: 2021

January 19, 2022 | 12:30–2:00PM ET / 10:30AM–12:00PM MT

Presenters:

Allison Green, JD, CWLS | NACC Legal Director

Christina Lewis, JD | NACC Staff Attorney

Kristen Pisani-Jacques, JD, CWLS | NACC Training Director



February NACC Member Webinar: Congregate Care & Civil Rights

Thursday, February 24, 2022 | 3:00–4:30PM ET / 1:00–2:30PM MT

The U.S. Department of Justice (DOJ) enforces the rights of children placed in congregate care settings (e.g., group homes, residential treatment facilities, secure detention) through the child welfare and juvenile justice systems. Participants in this session will learn about DOJ's enforcement of federal civil rights protections, including the community integration mandate of the Americans with Disabilities Act, and statutes that protect the rights of incarcerated persons and prohibit a pattern or practice of unconstitutional conduct in juvenile justice systems and facilities. The presenters will discuss the use of concepts from federal civil rights and child welfare laws in individual cases and will consider the leadership role that advocates can play in achieving systemic reform.

Presenters:

Richard Goemann, JD, LLM | Trial Attorney, US Department of Justice, Civil Rights Division

Beth Kurtz, JD | Trial Attorney, US Department of Justice, Civil Rights Division

NACC member webinars are **FREE** for NACC Members when logged in with your member ID to register. Each webinar is \$45 for non-members. Non-member webinar registrants will receive access to a 90-day trial NACC membership. ■

Interested in Presenting at an NACC Member Webinar?

NACC is accepting submissions for its 2022 monthly member webinars. NACC's monthly member webinars help us to Promote Excellence in the child welfare field by providing quality and comprehensive trainings to attorneys, judges, and other stakeholders who work with children and families. Such ongoing training enables NACC to support our members and ensure that all children, parents, and families in the child welfare system receive high-quality legal representation.

Throughout its training offerings, NACC seeks to increase the diversity of presenters and presentation topics. NACC is committed to highlighting and elevating the voices of those individuals most impacted by the child welfare and delinquency systems, including youth, parents, and kin with lived expertise and those disproportionately impacted by systems involvement, particularly Black and Indigenous families. Webinar submissions will be reviewed on a rolling basis. If your webinar is selected, NACC staff will contact you to discuss your submission further. If you have any questions, please contact Kristen Pisani-Jacques, NACC's Training Director: Kristen.Pisani-Jacques@NACCchildlaw.org. **Click to view a list of preferred topics, requirements, and submit your proposal.**

► **Training** from previous page

Past Webinars Available to NACC Members

* THESE WEBINARS ARE OPEN TO MEMBERS AND NON-MEMBERS

Accredited for
CLE in Colorado

[Click here to access all webinars and CLE documents](#)

Drug Testing in Child Welfare Cases: Understanding the Chemistry, Methodology, and Legal Implications

Presenters: Jerry Bruce, JD • Darice Good, JD, CWLS • Diana Rugh Johnson, JD, CWLS

2
HOURS

COVID-19-Related Challenges & Barriers to Reunification in Dependency Court

Presenters: Ashley Chase, JD, CWLS • Hon. Aurora Martinez Jones, CWLS • Ellen Ramsey-Kacena, JD, CWLS

2
HOURS

The Interstate Compact on the Placement of Children (ICPC): An Essential Tool to Providing Permanency

Presenters: Robyn Kane, JD, MSW • Lynn Pavalon, JD

2
HOURS

Breaking Stigma and Changing the Narrative: Strategies for Supporting Expectant and Parenting Youth in Foster Care

Presenters: TyAsia Nicholson • Lisa Mishraky-Javier, LMSW • Sando Zou-Capuzzi

2
HOURS

Adolescent Brain Science: What is it, and How Can it be Effectively Used to Advocate for and Engage Youth

Presenters: Cristal Ramirez, MS • Ashley Ratliff, JD, MSW

2
HOURS

Call to Action for Attorneys: Urgent Advocacy to Harness the Consolidated Appropriations Act for Older Youth*

Presenters: Aubrey Edwards-Luce, JD, MSW • Zoe Jones-Walton • Tom Welshonce, JD • Gillian Ruddy Wilcox, JD

2
HOURS

Use of Psychiatric Medication in Foster Children: What Lawyers Need to Know

Presenter: Martin Irwin, MD

3
HOURS

Crossover Youth: The Criminalization of Trauma

Presenters: Brittany Mobley, JD • Naïké Savain, JD • Veena Subramanian, JD

2
HOURS

2020 in Hindsight: NACC's Child Welfare Law Year in Review

Presenters: Allison Green, JD, CWLS • Kristen Pisani-Jacques, JD, CWLS

2
HOURS

Ethical Obligations for Children's Attorneys: Setting Professional Boundaries, Addressing Bias, and the Model Rules

Presenters: Jill Malat, JD, CWLS • Erin McKinney, MSW, LICSW, CMHS

2
HOURS

Inclusive of
1.8 ethics hours

Clearing the Path to Access Benefits for Transition-Aged Youth

Presenters: LilCrystal Dernier, MS, MNM • Amy Harfeld, JD • Dan Hatcher, JD • Jasmine Snell, BS • Ruth White, MSSA

2
HOURS

Understanding Racial Trauma and Institutional Racism to Improve Cultural Responsiveness, Race Equity, and Implicit Bias in Child Welfare Cases *

Presenters: The Honorable Aurora Martinez Jones, JD, CWLS • Tanya Rollins, MSW, CPS

—

Trauma-Responsive Skills for Lawyers – Part 2: Working with Clients in Crisis

Presenter: Cynthia Bowkley, JD, CPPM, SE Advanced Student

2
HOURS

Meaningful Youth Engagement in a Virtual Legal World *

Presenters: Shobha Lakshmi Mahadev, JD • Robert Latham, JD • Dani Townsend

2
HOURS

Don't Minimize the Moment: Truth, Reparatory Justice, and Healing for Black Families who are Descendants of Captive and Enslaved Africans in the U.S. *

Presenter: Stephanie S. Franklin, JD

2
HOURS



**Click to
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ballot
now!**

NACC Board of Directors Election!

Under the NACC's bylaws, members of the Board of Directors are elected and re-elected by the NACC membership. For this election, there is one current board member up for re-election. Login is required to verify membership status, but your ballot is still anonymously cast. Voting closes December 31, 2021.

CURRENT BOARD MEMBER CANDIDATE FOR RENEWAL OF TERM



Gerry Glynn, JD, MS, LLM

Chief Legal Officer | Embrace Families | Orlando, FL

RELEVANT BACKGROUND/BIO: Gerry Glynn is the Chief Legal Officer for Embrace Families, a non-profit serving foster children and their families and other at-risk families. Prior to joining the agency, Gerry enjoyed a career representing children and families as an attorney for more than 25 years. Additionally, Gerry was the founding Executive Director of Florida's Children First. Throughout his career, Gerry has led several organizations through strategic planning processes and provided guidance to leadership on fundraising, risk management and policy development. As a law professor for more than two decades, Gerry taught at Georgetown, Florida State, University of Arkansas at Little Rock and Barry University. As a clinical law professor, he led major reforms in several law school skills programs. Finally, he is a nationally renowned lecturer on children's law topics and has published several articles and chapters of books. Gerry received his undergraduate degree in 1985 from St. Louis University, St. Louis, MO, and his law degree in 1989 from American University, Washington College of Law, Washington, DC where he graduated cum laude. In 1991, he received his Masters in Justice also from American University, and in 1993 he received his Masters in Legal Advocacy from Georgetown University Law Center. Gerry is admitted to practice law in Florida, District of Columbia, Maryland and Arkansas.

WHY THE NACC BOARD? Gerry Glynn has spent his entire career encouraging law students and lawyers to dedicate their careers to juvenile law. He has promoted laws to improve the quality of representation to children and families. His desire to have quality representation for all children and families aligns with the primary missions of the NACC

SKILLS/REPRESENTATION: Gerry Glynn has experience with legislative strategy, training, and strategic planning.

TERM GOAL: Support the success of the Counsel for Kids campaign. ■

A TRIBUTE TO BOB SCHWARTZ



Bob is leaving the NACC Board of Directors after six years of service.

Bob the Builder

by Gerry Glynn and Kim Dvorchak

Bob Schwartz is a founder of the field of children's legal representation. At every major development of the field over the past 50 years, Bob was there providing wisdom and strategic leadership. The NACC has been a lucky beneficiary of his guidance.

Bob started his career representing children in dependency and delinquency matters. He had the audacity to champion the rights of children and youth — in trial court, on appeal, in class action litigation, in Congress, in major law reform efforts, and internationally. From co-founding the Juvenile Law Center in 1975, to serving on numerous committees and commissions, publishing articles and books, to today, his impact on the field of child law is immeasurable. We cannot do justice to his distinguished career here but hope you will read his bio on the Juvenile Law Center [website](#).

Bob joined the NACC Board in 2016 after stepping down from his 40-year leadership of the Juvenile Law Center. NACC could not have been more fortunate to receive his guidance and expertise at a pivotal moment in NACC's organizational development. His service on the NACC Board has included guiding us through a leadership search, chairing the Nominating Committee, chairing the Strategic Planning Committee, serving on the Policy Committee, and serving as Treasurer.

Bob's notable achievements include leading a board recruitment process that accelerated the advent of the most diverse board in NACC's history. He helped procure funding and co-led an extensive strategic planning process that resulted in NACC's 2019-2023 Strategic Plan which charted a course that has more than doubled the organization's staff, impact, and revenue in just a few years. An expert in organizational development, his participation has been instrumental to NACC's growth and vitality (including recruiting NACC's current executive director).

An active participant of NACC's Policy Committee, Bob has shared his years of wisdom, insights, strategic vision, and policy expertise. During Bob's tenure shaping the implementation of NACC's Strategic Plan, NACC engaged in robust amicus practice, updated seminal products, such as NACC's Recommendations on Legal Representation of Children, and established a larger role and voice in federal policy advocacy. His serious engagement in these matters also comes with a quick wit and endearing laugh that makes him a pleasure to work with (go Phillies!).

On a more personal note, Bob has been a mentor to both of us and to so many of the current and future professionals in our field. As a mentor and coach, he readily gives his support and guidance, helping propel the leadership and achievements of others in the field.

Bob steps down from NACC's Board after serving a monumental term of service — this tribute is exactly what Bob would ask us not to do, but we cannot let him go without a little fanfare. Bob, we will miss you dearly in our meetings but know that you are only a phone call away — and yes, we will be calling! With our deepest gratitude, thank you for your service. ■

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ARLINGTON, VA

NACC Staff

Kim Dvorchak, JD

Executive Director
Kim.Dvorchak@NACCchildlaw.org

Justin Black

Communications Assistant
Justin.Black@NACCchildlaw.org

Ginger Burton

Certification Administrator
& Technical Writer
Ginger.Burton@NACCchildlaw.org

Emily Dufour

Membership and
Office Assistant
Emily.Dufour@NACCchildlaw.org

Allison Green, JD, CWLS

Legal Director
Allison.Green@NACCchildlaw.org

Christina Lewis, JD

Staff Attorney
Christina.Lewis@NACCchildlaw.org

Evan Molinari

Communications Manager
Evan.Molinari@NACCchildlaw.org

Kristen Pisani-Jacques, JD, CWLS

Training Director
Kristen.Pisani-Jacques@NACCchildlaw.org

Cristal Ramirez, MS

Youth Engagement Manager
Cristal.Ramirez@NACCchildlaw.org

Daniel Trujillo

Director of Certification,
Sales, and Technology
Daniel.Trujillo@NACCchildlaw.org

Natalece Washington, JD, CWLS

Policy Counsel
Natalece.Washington@NACCchildlaw.org

Sara Willis, MA

Business and
Conference Manager
Sara.Willis@NACCchildlaw.org

NACC Departments

Certification@NACCchildlaw.org

Comms@NACCchildlaw.org

Conference@NACCchildlaw.org

Membership@NACCchildlaw.org

Policy@NACCchildlaw.org

Training@NACCchildlaw.org

Youth@NACCchildlaw.org

The Guardian is an NACC publication.
Kristen Pisani-Jacques, Editor

**National Association
of Counsel for Children**
899 N Logan Street · Suite 208
Denver, CO 80203

303-864-5320

TOGETHER WE ARE NACC

The National Association of Counsel for Children is dedicated to advancing the rights, well-being, and opportunities of children impacted by the child welfare system through high-quality legal representation.

Promoting Excellence # Building Community # Advancing Justice

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