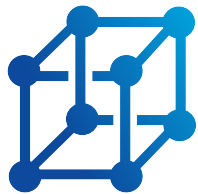


The National Association of Counsel for Children is dedicated to advancing the rights, well-being, and opportunities of children impacted by the child welfare system through high-quality legal representation.



YOUTH PERSPECTIVE

by Brigitte Jolliet

This Should Never Have Happened

My name is Brigitte — I’m a former foster youth from Florida and currently a third-year law student. I wrote this article in response to a memo written by Alan Abramowitz, the Executive Director of Florida’s Guardian ad Litem program. In his memo, Mr. Abramowitz responds to concerns about the state’s GAL program model and critiques other state models that provide direct legal representation to all foster youth. His reasoning presupposes that a child’s expressed wishes will be the controlling factor in a court’s rulings. He claims this will put foster youth at risk because, as he states, “most children want to return to their abuser.”¹ Stereotypes such as this are widely rejected by experts, and the federal government is advising all child welfare agencies to identify and challenge similar biases that exist within the system.² His statement contradicts extensive research showing foster youth expression and choice is paramount.³

His comments also do not reflect my traumatic experience in the child welfare system, which was characterized by constant instability, inappropriate housing placements, and a lack of transparency. These circumstances had a devastating effect on my mental health, rendering me particularly vulnerable to the psychological manipulation of a sex trafficker. I felt compelled to share my story and shed light on the reality experienced by many foster youth, who slip through the cracks and find themselves in America’s grim sex trafficking underworld.

The events leading up this part of my life could have been avoided if I were appointed a high-quality attorney. Unfortunately, I was never appointed an attorney to advocate for my expressed wishes, nor did I meet the guardian ad litem required by law to represent my best interest.

My Story

When I was 12 years old, my family began experiencing a series of tragedies and mental health challenges. As with many families who experience this kind of adversity, the result was a downward spiral of events. I was 15 years old and a sophomore in high school when I entered Florida’s foster care system.



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I remember the day clearly. My sister and I were called out of class and told that I was being placed in foster care. I had to leave with the two child welfare officials standing before us. My sister was not placed in foster care because she was 18 years old at the time. We were shocked and emotional. These officials were cold, never addressing me during the car ride or explaining what had just transpired.

I spent the first few nights sleeping on a cot at a Safe Place for toddlers. I was transported to school each day, but no one told me that this placement →

1. To view a copy of Alan Abramowitz’s email, see, *Robert Latham, A Reluctant Post About the Guardian ad Litem Program: Its Ethics, Efficacy, & Future*, June 28, 2019. [https://robertlathamesq.org/a-reluctant-post-about-the-guardian-ad-litem-program-its-ethics-efficacy-future?utm_medium=email&utm_source=govdelivery]

2. Children’s Bureau, *ACYF-CB-IM-19-03*, (Administration for Children and Families) (2019), pp. 7. [<https://www.acf.hhs.gov/sites/default/files/cb/im1903.pdf>]

3. See e.g., Andrea Khoury, *Seen and Heard: Involving Children in Dependency Court*, (ABA Child Law Practice) (2006), pp. 146-55. [https://guardianadlitem.org/wp-content/uploads/2014/12/cinc_article.pdf]

was temporary or explained what would happen next. One evening, a staff member informed me that I would be transferring to a shelter for adolescents. That night, I began living in a seven-bedroom co-ed facility housing about 20 teenagers. I was transported to and from the high school I attended with my sister. The only opportunity we had to see each other was during school hours. I assumed this was my permanent living arrangement and quickly began feeling stable there. Again, no one told me what would happen next.

I met my case manager for the first time while living at the shelter. I also remember this moment clearly. She informed me that I could no longer live there because the shelter was only intended to house youth for up to 90 days. She gave me two choices: live with a relative or live with a foster family. Contrary to Mr. Abramowitz's beliefs about giving youth a choice, I informed my case manager that I preferred to live with a foster family. However, she did not honor my wishes. Instead, she returned to the shelter days later and informed me that I would be moving in with a relative. This decision not to honor my request was a critical turning point in my life for several reasons.

First, my relatives and I had trouble coping with the fact that I had become a ward of the state, which created a lot of tension and resentment between us. I expressed this to my case manager and explained how uncomfortable I was with her decision. I simply did not want to live in the toxic environment that my family placement was for me. While data shows that familial arrangements offer many benefits,⁴ family dynamics vary among households. These

4. Heidi Epstein, *Kinship Care is Better for Children and Families*, (ABA Center on Children and the Law) (2017). [https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/]

differences increase the risk of multiple placement changes,⁵ which is why experts have been urging child welfare professionals to understand a youth's "definition of family" and evaluate these relationships when considering placement options.⁶

Second, my case manager's decision to override my wishes forced me to switch schools. I had been attending an A-rated school, was enrolled in honors courses, and was receiving a high-quality education. In less than two years, I lived with three different relatives and attended three different high schools. The third high school I attended was severely underfunded and located in a dangerous neighborhood. I witnessed several shootings, and the stabbing of my classmate during lunch. I became depressed and quickly gave up on school. My grades were poor, I barely attended class, and was often suspended for fighting.

Finally, after this negative experience with my housing placement, I no longer trusted adults, especially my case manager. I was irritable, anxious, and often had disturbing, graphic nightmares. The symptoms I experienced are consistent with research on the traumatic effect of chronic instability experienced by many foster youth.⁷

At my lowest point, a former classmate introduced me to a man who offered me things the system didn't. He described himself as a wealthy entrepreneur, partnering with exotic dancers to invest in real estate and start-up companies. He and his partners

5. Jeffrey Waid et al., *Foster Care Placement Change: The Role of Family Dynamics and Household Composition*, 68 (Children and Youth Services Review) (2016), pp. 44–50. [<https://www.sciencedirect.com/science/article/pii/S0190740916302018?via%3Dihub>]

6. ABA Commission on Youth at Risk, *Charting a Better Future for Transitioning Foster Youth*, (American Bar Association) (2011), pp. 19. [https://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/youth_at_risk/transitioning_foster_youth_report.authcheckdam.pdf]

7. Child Welfare Information Gateway, *Supporting Brain Development in Traumatized Children and Youth*, (Children's Bureau) (2017). [<https://www.childwelfare.gov/pubPDFs/braindevtrauma.pdf>]

lived together, and they were looking for an assistant to run errands for their businesses and help maintain their home. In exchange, I could live with them, he would purchase my high school diploma, send me to college and pay my tuition. He explained all of this while we sat by the pool at his large ranch-style home. I was a vulnerable and impressionable teenager. Without hesitation, I dropped out of high school, ran away, and moved in with them. I soon found myself living a life I thought existed only in movies and music videos. I was 17 when he began sex trafficking me. He forced me to live under a false identity and cut all communication with my friends and family. I was listed as a missing person, while living only 30 minutes away from the foster care agency. Florida's Department of Children and Families (DCF) never found me.

It took me several years to extricate myself from this situation. After leaving, my family and I mended our relationship and they helped me rebuild my life.

What a Lawyer Could Have Changed

Advocating for Appropriate and Stable Housing

"Too often, a child's placement is based on bed availability, rather than the most appropriate setting."⁸ Licensed attorneys have powerful tools they can use to challenge a client's living arrangements. They can file pleadings to ensure a supportive placement is arranged for the child and to oppose placements that will severely disrupt the child's life. An attorney could have advocated that I be placed in a facility with appropriate bedding, rather than a cot.

An attorney appointed to represent my expressed wishes would have challenged the court's decision →

8. Freitas et al., *Five Tips for Challenging Placement in a Residential Setting*, (ABA Children's Rights Litigation Committee) (2019). [<https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2019/five-tips-for-challenging-placement-in-a-residential-setting/>]

to move me to a relative placement that I knew was not a good fit.⁹ The federal government is urging child welfare professionals to solicit and use the youth's input when making decisions about their lives.¹⁰ "[Seeking youth input] is...a straightforward way to demonstrate respect."¹¹

Attending Court and Understanding the Process

I had a legal right to attend my court hearings and speak to the judge. Youth need to know that it is their right to be involved in the court process.¹² I never attended a court hearing because I was never told that I could. An attorney would have advocated for me to participate in the dependency proceedings. This would have felt empowering, and being heard by the court would have given me a sense of control over my life. Foster youth often have little control over when they are removed from a home and where they will be placed next.¹³ Their ability to make everyday decisions is taken away. Youth expression and choice is essential for adolescent brain development.¹⁴ It promotes self-dignity, critical thinking skills, and independence.¹⁵

I would have understood what was happening to me if I were appointed a high-quality attorney. Explaining the dependency process to youth

9. American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996). [https://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect_auth-checkdam.pdf]

10. ACYF-CB-IM-19-03, (2019), pp. 4. [<https://www.acf.hhs.gov/sites/default/files/cb/im1903.pdf>]

11. ACYF-CB-IM-19-03, (2019), pp. 3. [<https://www.acf.hhs.gov/sites/default/files/cb/im1903.pdf>]

12. *Charting a Better Future for Transitioning Foster Youth*, (2011), pp. 11, 60. [https://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/youth_at_risk/transitioning_foster_youth_report_authcheckdam.pdf]

13. *Seen and Heard: Involving Children in Dependency Court*, (2006), pp. 150. [https://guardianadlitem.org/wp-content/uploads/2014/12/cinc_article.pdf]

14. ACYF-CB-IM-19-03, (2019), pp. 3-4. [<https://www.acf.hhs.gov/sites/default/files/cb/im1903.pdf>]

15. Id.

facilitates trust.¹⁶ Attorneys are experts in the law. They are trained to articulate legal proceedings to laypeople. An attorney would have explained the dependency proceedings to me, which could have dramatically reduced the psychological distress I experienced. Studies show that lack of transparency and "not knowing" the dependency process is a significant source of trauma for foster youth.¹⁷

An attorney could have provided me legal advice, something a volunteer can't do. In many states, attorneys are assigned to a youth entering foster care within 24 hours, and should meet with the child before the initial dependency hearing to explain the process.¹⁸ There is evidence linking such early appointment of counsel to "improved case planning, expedited permanency, and cost savings to state governments."¹⁹

Finally, a youth's court engagement is critical.²⁰ At minimum, federal law requires that every child in foster care be assigned someone, either an attorney or a volunteer, who has obtained a "first-hand, a clear understanding of the situation and needs of the child."²¹ That did not happen for me. But more so than relaying a child's wishes, having their presence in court reminds everyone involved that they are making decisions about a human being. Older youth can be a valuable source of information for the judge. They can explain what is happening at school, in the home, and directly answer questions

16. *Seen and Heard: Involving Children in Dependency Court*, (2006), pp. 153. [https://guardianadlitem.org/wp-content/uploads/2014/12/cinc_article.pdf]

17. Children's Bureau, *ACYF-CB-IM-17-02*, (Administration for Children and Families) (2017), pp. 3. [<https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>]

18. See e.g., D.C. Code § 16-2311 ("a guardian ad litem shall be appointed to represent the child's best interest within 24 hours (excluding Sundays) of the child having been taken into custody").

19. ACYF-CB-IM-17-02, (2017), pp. 6. [<https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>]

20. ACYF-CB-IM-19-03, (2019), pp. 6-8. [<https://www.acf.hhs.gov/sites/default/files/cb/im1903.pdf>]

21. 42 U.S.C. § 5106a(b)(2)(B)(xiii)(I).

that are not explained in the case report. The federal Children's Bureau declared that "family and youth voice" should be "central in child welfare...improvement efforts."²² If dependency laws were created to safeguard the welfare of our children, the children should have an input in decisions that will change the trajectory of their lives.

Educational Stability

Educational stability for youth in foster care is critical.²³ A good attorney would have advocated for my educational stability and challenged my placement at the underfunded school I ultimately dropped out of. According to the American Bar Association, child welfare agencies should implement policies that assume a foster youth's educational outcome should be "equal to or better" than their peers who are not in foster care.²⁴ Attorneys with a thorough understanding of child welfare law are among the strongest educational advocates for a child in dependency.

Independent Living Resources and Support

A high-quality attorney would have informed me of the benefits to which I was entitled. Florida offers its foster youth a full tuition waiver to the state's higher education institutions, a monthly stipend of \$1,256 for living expenses to eligible adults between the ages of 18 and 22, health insurance, and other support necessary to become self-sufficient.²⁵ My case manager never informed me or my relatives that I qualified for these benefits. I was 20 years old →

22. ACYF-CB-IM-19-03, (2019), pp. 1. [<https://www.acf.hhs.gov/sites/default/files/cb/im1903.pdf>]

23. National Working Group on Foster Care and Education, *Foster Care and Education: Tools and Resources for Improving the Education Success of Children and Youth in Foster Care*. [<https://www.ncjfcj.org/sites/default/files/NationalEducationBrochure.pdf>]

24. *Charting a Better Future for Transitioning Foster Youth*, (2011), pp. 8. [https://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/youth_at_risk/transitioning_foster_youth_report_authcheckdam.pdf]

25. Fla. Stat. § 39.6251; Fla. Stat. § 409.1451.

when I received my GED and first learned of Florida's college tuition waiver. I was 24 years old when I learned of the monthly stipend that I could have used to cover my living expenses instead of working multiple jobs to make my way through school.

A high-quality attorney would have advocated for my successful transition out of foster care. Florida law requires DCF and its contracted providers to prepare all adolescent foster youth for independent living.²⁶ This includes utilizing the state's comprehensive independent living resources. Federal law also requires state welfare agencies to offer services that assist youth transitioning to independent living. Under Title IV-E of the Social Security Act, when a foster youth turns 16, the "courts must determine" which "services are needed to assist the child's transition from foster care to independence."²⁷ This may include assistance with educational and employment training.

Recommendations

There is widespread consensus that "children require legal representation in dependency proceedings."²⁸ After considering numerous studies on legal representation of foster youth, the federal Children's Bureau concluded that "the absence of legal representation for *any party at any stage* of child welfare proceedings is a significant impediment to a well-functioning child welfare system [emphasis added]."²⁹

Thirty-seven states (73%) have laws mandating attorney representation of all children in depen-

26. Fla. Stat. § 409.1451.

27. 42 U.S.C. § 675(5)(C).

28. ACYF-CB-IM-17-02, (2017), pp. 2-3. [<https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>]

29. ACYF-CB-IM-17-02, (2017), pp. 2. [<https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>]

dependency proceedings.³⁰ The remaining 14 states only offer legal counsel to foster youth on a discretionary basis or establish narrow exceptions, with restrictive procedures, before requiring court appointed representation.³¹ These states must amend their laws to broaden the scope of mandated attorney representation for children in dependency. States are responsible for protecting all children in their custody. They should take any steps necessary to ensure safe and appropriate decisions are made for every child. Title IV-E of the Social Security Act was recently amended to permit uncapped, guaranteed funding for states to support the representation of youth in foster care.³² The federal government is urging all states to take advantage of this opportunity.³³ Legislatures seeking to amend their state's dependency laws should use these federal funds. State lawmakers can refer to the ABA's *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* as guidance.³⁴

Conclusions

Sex trafficking in the U.S. disproportionately affects foster youth. For instance, in 2012, Connecticut identified 88 child sex trafficking victims, 86 of whom had a history in the foster care system.³⁵

30. For a list and description of all 37 state statutes, see, *A Child's Right to Counsel*, (First Star Institute & Children's Advocacy Institute) (2019). [https://docs.wixstatic.com/ugd/2b5285_aa4a099876dd40ee853d6861e8ba8b5b.pdf]

31. Alaska (AS § 47.10.010); Arizona (A.R.S. § 8-221); Florida (Fla. Stat. § 39.01305); Hawaii (HRS § 587A-17); Idaho (Idaho Code § 16-1614); Illinois (705 ILCS 405/1-5); Indiana (Burns Ind. Code Ann. § 31-32-4-2); Maine (22 M.R.S. § 4005); Montana (Mont. Code Anno., § 41-3-112); New Hampshire (RSA § 169-C:10); North Dakota (N.D. Cent. Code, § 27-20-26); Oregon (ORS § 419B.195); South Carolina (S.C. Code Ann. § 63-7-1620); Washington (Rev. Code Wash. § 13.34.100).

32. Family First Prevention Services Act, Pub. L. No. 115-123, 132 Stat. 232 (2018).

33. ACYF-CB-IM-19-03, (2019). [<https://www.acf.hhs.gov/sites/default/files/cb/im1903.pdf>]

34. ABA *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* (2011). [<http://www.improvechildrep.org/Portals/0/PDF/Model%20Act%20Representing%20Children%202011%20v-Resolution.pdf>]

35. Administration for Children, Youth and Families, *Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United*

The Institute of Medicine and National Research Council reported that "children in foster care should be considered at high risk for... sex trafficking."³⁶ Additional research shows that 50% to 80% of sex trafficking victims have some history in the child welfare system.³⁷ Many were still legally under their state's care when a trafficker began victimizing them.³⁸ This is because traffickers exploit the vulnerable conditions of foster youth whose needs are not being met.

A high-quality lawyer could have shielded me from the traumatic events related to my entrance into and time spent in the foster care system. The trauma I experienced from inappropriate housing placements and obscure court decisions had a profound impact on my mental health, causing me to make short-sighted decisions out of self-preservation. I became a predator's perfect target. Foster youth across the nation are facing similar and far worse circumstances because they lack attorney representation and a chance to be involved in decisions affecting their lives. This basic failure creates a perfect storm of disempowerment, uncertainty, and instability that will cause many of them to fall victim to traffickers like mine. ■

States, (U.S. Department of Health and Human Services) (2013) pp. 3. [https://www.acf.hhs.gov/sites/default/files/cb/acyf_human_trafficking_guidance.pdf]

36. Institute of Medicine and National Research Council, *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, (2013), pp. 88. [<https://www.nap.edu/catalog/18358/confronting-commercial-sexual-exploitation-and-sex-trafficking-of-minors-in-the-united-states>]

37. *Sex Trafficking And Exploitation In America: Child Welfare's Role In Prevention And Intervention*: Hearing Before the S. Comm. on Finance, 113th Cong. (2013). [<https://www.finance.senate.gov/imo/media/doc/89766.pdf>]

38. Casey Family Programs, *Addressing Child Sex Trafficking from a Child Welfare Perspective*, (2014). [<https://www.casey.org/media/child-sex-trafficking.pdf>]