



A PROGRAM OF THE AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION

ABA Center on Children
and the Law

Update on Laws and Policies Affecting Children and Families

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National Child Welfare Resource Center
on Legal and Judicial Issues

A SERVICE OF THE CHILDREN'S BUREAU

2006 NCANDS Data Should Tell CRPs

www.acf.dhhs.gov/programs/cb/pubs/cm06/index.htm

- That they must give special attention to **child neglect** (64.1% of *all* victims, *up* from last year)
- That **police** are often reporters (27% of all reports of neglect) & **first responders**: They need on-going training on working with CPS re. child safety/removal decisions
- That by far the biggest child victimization rate is for **children under age 1**
- To look at where *your state* stands in terms of **big NCANDS variations** in state data

Big State-to-State Variations in NCANDS Data Suggests:

1. Frequency of reports being *screened-in* or *screened-out* varies widely
2. Percentage of reports coming from *education personnel* (nationally, most common group of professional reporters) also varies widely
3. Reporting of *alternative response data* is often insufficient
4. *No* NCANDS data (MD) or *missing* major categories (AL, GA, IN, LA, MA, MI, NC, ND, NH, NJ, NY, OH, PA, PR, SD, TX, WV)

5. Problems in identifying child victims of *psychological maltreatment*
6. Variations in state's substantiating abuse or neglect of *youth ages 16 & 17*
7. Inadequacy in identifying maltreatment *victims with disabilities*
8. We're not doing enough to identify situations where perpetrators were *unmarried partners* of a child's parent

9. We need to better identify cases of child maltreatment where the perpetrators were *working within residential facilities*
10. We need to better identify situations where the perpetrators of abuse or neglect *victimized children in foster homes*
11. We need to better identify perpetrators in *child care or pre-school programs*

12. We must make sure that all “substantiated” child victims *receive post-investigation services* (many don’t)
13. We must assure that child victims of maltreatment are only removed from their homes *when necessary for their safety* (64% of all removals were for child neglect)
14. We must collect more accurate data on the percentage of substantiated child victims who have *court actions* involving them and their family

Observations from Newly Released 2006 AFCARS Data

- A full 40% of children in foster care are **ages 13 and above**
- 10% of all foster children are **in institutions** rather than foster or group homes
- 1 in 5 children exiting foster care have been in care **30 months or longer**

- **Almost half** of all “waiting for adoption” children have been in care 30 months or longer (almost half were “removed” when they were under five)
- Over a quarter of post-TPR kids **wait 18 months or more** before being adopted
- Foster parents **constitute almost 60%** of all those who adopt

Issues that May Arise with Potential Changes to AFCARS Reporting

(proposed January 2008)

States will likely have to collect more data (subject to \$ penalties if they don't) on:

- The timing, type, and circumstances of each placement, permanency decision, and exit from the system (including more on care providers)
- Non-IVE placements (e.g., juvenile justice settings, jails, psychiatric settings, hospitals) and placements in shelter care, group care, residential treatment, independent living

- Whether placements are in public or private facilities
- Children who are missing or have run away from care
- IV-E payments to post-18 youth still in care
- Child's disability type(s)-- (e.g., mental retardation / developmental disability, visual or hearing impairment, physical disability, anxiety disorder, ADHD, conduct disorder, learning disability, substance abuse disorder, HIV / AIDS)
- Immunizations provided for children in care

- Whether child has repeated a grade in school and whether child is in special education
- Failed prior adoptions
- Number of siblings living with child at time of removal and co-placement of siblings
- Minor parents in care
- Children in care receiving SSI, Medicaid, SCHIP
- Children in which child support or other payments are made to support care
- Parent problems & household composition at time of removal, TPR, and at exit

- Manner of child's removal (e.g., court-ordered; voluntary placement; other)
- Child status at removal (e.g., juvenile status offender; runaway from care)
- Specific type(s) of abuse/neglect related to the removal
- Children whose caretakers receive adoption or guardianship subsidies
- Whether placements are out-of-state or out-of-country
- Placements with maternal vs. paternal kin

Addressing Racial Disparities

(from Sept. 2007 Chapin Hall Report)

According to national data, roughly 37 percent of the children in foster care are African American despite the fact that African American children make up only 15 percent of the children living in the United States.

The ratio of the two percentages – 2.43 – reflects the fact that African American children are overrepresented in the nation's foster care system.

Both placement and disparity rates are *consistently higher for infants*. This is especially true for African American infants, whose risk of placement was nearly 3 times that of white infants in 2005.

Questions: 1) How can better non-custodial *father engagement* help prevent racial disparities in foster placement? 2) How does *maternal substance abuse* disclosed at birth, and *lack of accessible treatment*, affect racial disparities in foster placement?)

Racial disparities in the foster care placement rates of *urban teens* have been increasing over time. Why?

8/08 ABA Policy Calls For--

- States to track, report, analyze, and take/report on *corrective action steps* in response to data/information gathered on disproportionality of racial/ethnic minority children in system
- Child welfare agencies, courts/judges, and children's and parents' advocates to help racial/ethnic minority families *readily access needed services* so all families in system are treated fairly/equitably, & decisions on *removal* of children from home are *better focused* on objective child safety criteria

- Child welfare agencies, courts and judges, government, parents' and children's attorneys, guardians ad litem and court appointed special advocates to *receive training* on cultural competencies, institutional and unconscious biases, and avoidance of disparate treatment of racial and ethnic minority children and families-- and to develop and promote practices that encourage recruitment and retention of racially and ethnically diverse judges, attorneys, social workers and other staff, volunteers and foster parents.

- Law/policy change to provide additional support to *relative caregivers*, including:
 - (a) Partial federal reimbursement for state costs of subsidized permanent guardianships;
 - (b) Financial assistance and support to relative caregivers that is no less than that given to non-relatives;
 - (c) Housing assistance for relative caregivers; and
 - (d) Giving states flexibility in establishing separate approval or licensing standards for kinship placements, while still addressing key placement safety factors.

How Is Your State Doing in 2008 in Implementing 2006 Federal Laws?

Deficit Reduction Act of 2005 (Public Law 109-171)

- It added two new grant programs to improve how *courts* handle abuse/neglect cases (1. Improve timely actions through better data/coordination; 2. Train judges and attorneys, including cross-training with child welfare workers)
- States must show court-child welfare “substantial, on-going and meaningful collaboration”

Safe and Timely Interstate Placement of Foster Children Act (Public Law 109-239)

- States must complete home studies requested by another state in 60 days (with some exceptions)
- States must show effective use of out-of-state permanent placement resources
- Courts must consider whether agency made “reasonable efforts” in considering out-of-state permanent placements
- Kids in out-of-state placement must be visited at least every 6 months

- Courts must help expedite out-of-state placements and provide authority to get out-of-state testimony and other information without requiring interstate travel
- Courts must ensure foster parents, pre-adoptive parents, and relative caregivers *get notice* that says they have a right to be heard in any court proceeding involving child in their care
- Foster child health/education records must be kept updated & given free to every emancipating youth

Adam Walsh Child Protection & Safety Act (Public Law 109-248)

- Fingerprint-based nationwide (through FBI) criminal history checks must be done for all prospective foster/adoptive parents & not just for IV-E eligible kids (Prior “opt out” states – AZ, CA, ID, MA, NY, OH, OK, OR -- must comply by 1/1/09)
- Must also check another state’s central registry for entries on any adult living in prospective foster/adoptive home, for all states where applicant lived last 5 years
- States must cooperate in sharing central registry information

- Child welfare agencies (& contracted private agencies), after Governor's OK, now have right to fingerprint-based criminal history information *not only on* prospective foster and adoptive parents, but also on any adult in a home that is under "investigation relating to an incident of abuse or neglect of a minor"
- Such agencies can get access to both National Crime Information Center (NCIC) and Interstate Identification Index (III) and, after training, *direct terminal access*

Child and Family Services Improvement Act (Public Law 109-288)

States must develop/report to HHS standards for enhancing frequency of caseworker visits, leading to *at least monthly* visits (for 90% of foster children by October 2011) – possible new federal \$ to help

Other 2006 new agency mandates:

1) Must have a process for physician/medical professional consultation to facilitate assessments/treatment for foster children

2) State child welfare *disaster plan must* say how they will:

a) Identify, locate, and continue to provide services to children under state care or supervision displaced or adversely affected by a disaster;

b) Respond to new cases after disaster;

c) Keep in communication with caseworkers and other personnel;

d) Preserve essential records; and

e) Coordinate services and share information with other states

3) Federal Court Improvement State Grant Program extended to 2011

4) States must assure that every youth is **involved in decision-making** regarding their exit from the foster care system. At any administrative or judicial “hearing” related to a youth’s permanent placement or transition from foster care, they must be *consulted* in an age-appropriate manner regarding any proposed permanency or transitional plan

■ **Tax Relief and Health Care Act of 2006**

(Public Law 109-432)– 6/20/07 compliance

States must “verify” immigration/citizenship status for each child in foster child (but foster children whose placements are IV-E funded are exempt from the Act’s other citizen/nationality “documentation” requirements) – No reference to how this information will be used

Compliance to be examined at state’s CFSR

NOTE: *No* federal prohibition on state foster care to undocumented youth, using state \$

Howard's 7 Child Immigrant Principles for Child Welfare Agencies and Courts

1. The primary response to unaccompanied child immigrant cases (abuse, neglected, abandoned, and otherwise victimized) must be through a "child's best interest" focused child welfare system, not through the law enforcement, criminal justice, or delinquency system
2. We must not hesitate to initiate jurisdiction & services to immigrant children & families, regardless of immigration status, and we must promptly accept or order care and custody of those children when necessary for their safety and well-being

3. A critical child welfare agency function, *family reunification*, must include prompt and diligent efforts to find the immigrant child's missing parents and family members
4. We must assure prompt and well-informed decision-making regarding whether children would be safe and adequately cared for if they were repatriated to their country of origin, if such repatriation is determined appropriate.

5. We must provide culturally-sensitive support to immigrant children and family members, and we must be fully empowered to make binding decisions in accord with accepted family preservation and permanency planning principles.
6. Child welfare agency lawyers, children's lawyers & guardians ad litem, other child advocates, and juvenile court judges must ensure initiation of state judicial intervention to permit separated or unaccompanied immigrant children to remain in-country when necessary for their safety, permanency, and well-being.

7. We all must be knowledgeable about, and help child obtain, appropriate immigration relief to which they may be entitled and which will help them lawfully remain in the United States, such as:
 - Special Immigrant Juvenile Status (SIJS)
 - Immigration Relief for Victims of Domestic Violence (VAWA)
 - Immigration Relief for Victims of Trafficking or Other Crimes (T or U Visa)



STATE SECRECY AND CHILD DEATHS IN THE U.S.

An Evaluation of Public Disclosure Practices about Child Abuse or Neglect Fatalities or Near Fatalities, with State Rankings

A joint report of the Children's Advocacy Institute and First Star

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First Star

"F" Grade: GA,
MD, MT, NM, PA,
SD, TN, UT, VT

"A or A-" Grade:
CA, IN, IA, NV,
NH, OR,

Grades based on:
state policy on
disclosure, put in
law, ease of
access, broad
scope of info.,
open courts

www.firststar.org/documents/State_Secrecy_Report.pdf

Importance of Monitoring State Compliance with HHS Reporting

- April 18, 2008: HHS Program Instruction: ACYF-CB-PI-08-03 (Found at: www.acf.dhhs.gov/programs/cb/laws_policies/policy/pi/2008/pi0803.htm)
- Summarizes state child welfare agency actions required under IV-B, IV-E, CAPTA, Chafee Independent Living Program, and Education and Training Voucher Program -- and what states must report to HHS
- Says states must submit to HHS a copy of your CRP annual report & their response to it