

ARE YOU CONFUSED YET?



Understanding Recent Changes in Child Welfare Law

ELIZABETH WARNER, J.D.



CHANGE IS HARD

and

CHANGE IS CONFUSING

but

CHANGE IS HERE

20th Century Law Changes

- **1939**

- **Michigan Juvenile Code**
 - ✦ **Agencies to Courts**

- **1974**

- **Child Abuse Prevention & Treatment Act (CAPTA)**
 - ✦ **Abuse Detection, Prevention & Treatment**

- **1980**

- **Adoption Assistance & Child Welfare Act (Title IV-E)**
 - ✦ **Removal Prevention & Court Managed Services**

20th Century Law Changes

- **1988**

- Michigan Coleman Laws
- Increase Terminations & Adoptions

- **1996**

- Michigan Binsfield Laws
- More Removals & Mandatory Terminations

- **1997**

- **Adoption & Safe Families Act (ASFA)**
 - ✦ Case processing deadlines
 - ✦ Timely adoptions
 - ✦ Serious cases: termination without services

2008 Fostering Connections to Success & Increasing Adoptions Act



- **Child Stability & Family Preservation**

- Education
- Siblings
- Guardianship
- Relative placement

Why is 2008- 2010 Different?



Sources of Change



1. Statutes
2. Federal Audits
3. Courts
4. Research & Reform Advocates



New Mission Statement



- Safety Only
- Families Make the Best Decisions
- Foster Care Hurts Children
- Adoption Is Not the Only Option
- Fathers and Families Are Important
- Children Should be Seen and Heard
- Judges Must Manage

Statutes: Federal (2 types)



- **Optional (Funding)**

- States adopt federally suggested child welfare laws
- Michigan enacts in statutes & court rules
- Enforced by federal audits, fines, and cancelled federal funds to state

Mandatory (Law)



- Americans with Disabilities Act (ADA)
- Health Insurance Portability Act of 1996 (Privacy Rule 2003)
- Drug Abuse Prevention, Treatment, and Rehabilitation Act
- Civil Rights Act, 42 U.S.C. 1983
- McKinney-Vento Homelessness Act

Preempt State Law: *In re Baby X*, 97 Mich App 111 (1980)

Statutes: State



- Termination reform to provide more discretion
- Visits after termination petition filed
- Duty to locate and notify relatives
- Abolish 12 month rule for termination decision and adopt federal rule 15/22 months
- State must prove termination is best option

Statutes: State cont.



- Judicial discretion to deny termination after time limit
- Voluntary terminations are not automatic future TPR
- Children must be consulted on permanency plan
- More permanency options if not reunifying:
 - Out-of-state placement
 - Juvenile guardianship
 - Permanent custody

Federal Audits (2 types)



- **Child and Family Services Review (CFSR)**

- 2009 random audit 3 counties
 - ✦ 2010 Michigan fined \$2.8 million
 - ✦ Fine suspended 2 years to improve

- **Title IV-E**

- Spring 2010 random audit of 80 cases
- If more than 4 error cases total between court/DHS = penalties

Courts: Federal (2 types)



- Individual

- Class Action

Both enforce constitutional rights under Civil Rights Act, 42 U.S.C. § 1983

Individual §1983 Case



<u>Plaintiff</u>	<u>Defendants</u>	<u>Goal</u>	<u>Remedy</u>
Parent Child	Social worker Police Officer Police Agency	Compensation	Damages

Violations: Removal without probable cause, order, or abuse emergency; inadequate investigation; no hearings prior to removal with parents present; false statements; medical exam of child without parent present

O'Donnell v Brown, 335 F. Supp. 2d 787 (W.D. Mich. 2004)

Class Action



<u>Plaintiffs</u>	<u>Defendants</u>	<u>Goal</u>	<u>Remedy</u>
Families	State officials	Reform	Orders

Violations: protective custody violations; systemic problems

Doe v Staples, 706 F.2d 985 (6th Cir. 1983) hearings for parents before removal of children

Federal Court Decree

Dwayne B. v. Granholm



Complaint: maltreatment, poor placement choices, DHS management and resources, lengthy foster care, delayed permanency, high number court wards without reunification or other permanent home

- Filed in 2006
- Settled 2008
- 14 states sued by Children's Rights group
- Class plaintiffs all Michigan foster care children
- State statutes control over decree
- Court monitor

Courts: State



Supreme Court

- **Leadership**
- **Training SCAO**
- **Court Improvement Program**
- **Foster Care Review Board**
- **Court Opinions**
 - **2009-2010 3 opinions + 2 orders**
 - **4 child welfare + 1 custody case**

2008-2009 Supreme Court Rulings



Theme: Courts must enforce the laws to Provide fair procedures and protect family rights.

- Involve both parents
- Right to counsel
- Pleas based on fair notice of consequences
- Follow statutes, court rules, DHS policies
- Service plans cooperative and relevant
- Financial problems are insufficient to lose children
- ICWA obligations require more help

2008-2010 Court of Appeal Rulings



Theme: The Constitution requires fair treatment of families in and out of court.

- ban private judicial interviews of children
- condemn deportation to win a case
- enforce right to an attorney for indigent parent
- support custody for fit non-custodial parent
- judge parent based on current fitness
- provide opportunity to prove success
- reverse premature terminations

Research & Reform Advocates

- Data and Studies
- Publications
- Private Foundations

Foster Care Outcomes



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The mission of Foster Care Alumni of America is to promote the alumni community and to influence policy and practice, ensuring opportunity for people in and from foster care.

"This book is a real must-read for anyone charged with the responsibility of ensuring the best interests of children in the foster care system. The authors provide valuable insights that can form the basis of a much-needed restructuring of the child welfare, juvenile justice and mental health systems. The question is, will the reports have the courage to come and act on the recommendations?"

Judge Jonathan Bigg, Chicago Youth Justice Court, New Orleans, Louisiana, former President of the National Child Abuse & Neglect Conference, President of the National Council of Juvenile and Family Court Judges

"This heart-wrenching and heart-warming story in this section book truly depicts the heart of the foster care experience and one's call to action for change. The authors provide an opportunity to envision success in the public sector, and as such, their message is a welcome addition to the literature of foster care."

Shari McElroy, Executive Director, Center for Innovation of America

"This book is the result of the evidence movement, grounded in clinical research and practitioners who comprise salient stakeholders. The authors are the ultimate experts on nurturing troubled children - they speak with the moral authority of having experienced both sides of the ongoing movement. These powerful insights mark the convergence of all credible science-oriented and evidence-based practice and policy."

Larry A. Boushka, Ph.D., President of the State of Georgia Institute of Child Development, former Director of the Georgia Department of Community Services, former Director of the Georgia Department of Juvenile Justice

"These real life experiences serve as a sobering reminder of the work that remains to be done to ensure children brought into the child welfare system are not only safe, but cared and nurtured in the way we wish for ourselves. The book details a critical and much-needed resource for policy makers and advocates who want to develop policy based on successful solutions rather than system failures."

Angela K. O'Neil, CEO, The Foster Care Foundation of Utah

"This book is a must-read for anyone involved in the foster care system. It provides a comprehensive overview of the challenges and opportunities in foster care, and offers practical solutions for addressing these challenges. The authors' ability to describe and analyze the system, both its strengths and its weaknesses, is a testament to their expertise and passion for this issue. This book is a valuable resource for anyone involved in foster care, and it is a must-read for anyone who cares about the well-being of children in foster care."

Dr. Gary A. Anderson, Professor and Director of the Center for Child Welfare, University of North Carolina, and former Child Welfare Director

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GROWING UP IN THE CARE OF STRANGERS

Growing Up in the Care of Strangers

The Experiences, Insights and Recommendations of Eleven Former Foster Kids



Wain K. Brown John R. Seita

**Child Protection and Child Outcomes:
Measuring the Effects of Foster Care**

By JOSEPH J. DOYLE, JR.*

Little is known about the effects of placing children who are abused or neglected into foster care. This paper uses the placement tendency of child protection investigators as an instrumental variable to identify causal effects of foster care on long-term outcomes—including juvenile delinquency, teen motherhood, and employment—among children in Illinois where a rotational assignment process effectively randomizes families to investigators. Large marginal treatment effect estimates suggest caution in the interpretation, but the results suggest that children on the margin of placement tend to have better outcomes when they remain at home, especially older children. (JEL H75, I38, J13)

The child welfare system aims to protect children thought to be abused or neglected by their parents. Over two million children are investigated for child abuse and neglect each year in the United States, and roughly half are found to have been abused (US Department of Health and Human Services 2004). Approximately 10 percent of these abused children will be placed in protective custody known as foster care. Although foster care is meant to be a temporary arrangement, children stay in care for an average of two years, and there are currently over 500,000 children in care (US Department of Health and Human Services 2005). Roughly 60 percent of foster children return home; 15 percent are adopted; and the remainder "age out" of foster care (Fred C. Wulczyn, Kristin Brunner Hildop, and Robert M. George 2000). Three-quarters of these children live with substitute

families, one-third of which are headed by relatives of the children. These families are paid a subsidy of approximately \$400 per month per child (Child Welfare League of America 1999), and states spend over \$20 billion each year to administer these child protective services (Roseanna Bens et al. 2002). Further, foster care policy directly targets children who appear to be at high risk of poor life outcomes. Abused children are three times more likely to die in childhood (Eugene E. Sabotta and Robert L. Davis 1992), with 1,400 child deaths each year directly attributed to child abuse (US Department of Health and Human Services 2004). Those placed in foster care are far more likely than other children to commit crimes, drop out of school, join welfare, experience substance abuse problems, or enter the homeless population (June M. Clussen et al. 1996; Mark E. Courtney and Irving Philips 1998; US Department of Health and Human Services 1999; Amy Dworczyk and Mark E. Courtney 2000; Bo Vinnerljung et al. 2006). In particular, nearly 90 percent of young prison inmates¹ and 28 percent of homeless individuals spent some time in foster care as a youth (Martha Burt et al. 1999). Mark E. Courtney, Sherri Terzo, and Noel Host (2004) surveyed children

*Sloan School of Management, Massachusetts Institute of Technology, 30 Memorial Drive, Cambridge, MA 02142 (e-mail: jdoyle@mit.edu). The financial support of the National Science Foundation under Grant SES-0541427 is gratefully acknowledged, as are the efforts of Michael Duggan, Michael Greenstone, Steve Levitt, Seth Sanders, Jeff Kling, Jim Potoski, Jon Gruber, Jack Tom Siskin, Roberto Rigobon, Tawnet Sui, Hong-Joo Lee, Lucy Mackey-Billette, Mark Terzo, and Robert George for helpful comments and discussions. I would also like to acknowledge the Chapin Hall Center for Children at the University of Chicago for the creation of the Integrated Database on Child and Family Programs in Illinois, which was used in this study. All findings, interpretations, and conclusions based on the use of the IDB are solely my responsibility and do not necessarily represent the views of the Chapin Hall Center for Children.

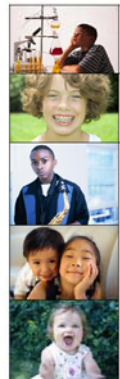
Agency Reports

**Improving Michigan's
Child Welfare System:
Our Children. Our
Future. Our
Responsibility.**

Prepared for
Imad Ahmad, Director
Michigan Department of Human Services

Prepared by:
Michigan Child Welfare Improvement Task Force
C. Patrick Blawieck, Co-Chair
Crist Olson, Co-Chair

April 2009



**Addressing the Educational Needs of
Children in Foster Care in Michigan**
Resources and Best Practices

State Court Administrative Office
Family Services
Department of Human Services
Governor's Task Force on Children's Justice
February 2007

Best Practices

Permanency Planning Mediation Pilot Program
Evaluation Final Report

Prepared by
Gary E. Anderson, PhD, MSW
Fogel Institute, MSW

for
Michigan
State Court Administrative Office

June 2008

UNIVERSITY OF MICHIGAN
SCHOOL OF SOCIAL WORK

Practice & Policy Brief

Visitation with Infants and Toddlers in Foster Care:
What Judges and Attorneys Need to Know

July 2007

Author
Margaret Smarip

ABA Advancing Quality
Promoting Justice
ABA Center on Children and the Law

ZERO TO THREE
POLICY CENTER

Best Practices

Michigan Absent Parent Protocol:

Identifying, Locating, and Notifying Absent Parents in Child Protective Proceedings

More about the Dads:

Exploring Associations between Nonresident Father Involvement and Child Welfare Case Outcomes

U.S. Department of Health and Human Services
Office of the Assistant Secretary for Planning and Evaluation
Office of Human Services Policy
and
Administration for Children and Families
Administration on Children, Youth, and Families
Children's Bureau

2008

Best Practices



Child Law Practice

Vol. 25 No. 10 December 2006
IN PRACTICE Helping Lawyers Help Kids

Seen and Heard: Involving Children in Dependency Court

by Andrew Khoury

All I ever wanted was to be heard and not just dismissed.

—Youth in foster care

Every significant decision in the child's life, from entry into until exit from foster care, is in the hands of the court. Yet in many parts of the country, these vulnerable children have only limited opportunity, if any, to participate in court proceedings that so profoundly affect their future.

—Mikaela Krinsky, Executive Director, Home At Last

Major national child welfare organizations agree that youth should participate to some extent in their child welfare hearings. However, little guidance exists to help professionals involve children in court proceedings in meaningful ways. This article addresses the following issues:

- How and to what extent should children participate.
- How attorneys, judges, and other child welfare professionals should encourage and facilitate children's participation.
- How the system, made up of courts, agencies, and other child welfare professionals, should change to make it possible for children to participate.
- How to make the child welfare legal system more meaningful to youth by involving them in court.

This article includes an overview of national policies addressing children's participation in court.

Policies of National Judicial and Bar Associations

National judicial and bar associations addressing this issue have uniformly emphasized the importance of youth appearing in court in child abuse and neglect cases. For example:

- The National Council of Juvenile and Family Court Judges published *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* in spring 1995. These *Guidelines*, which were also endorsed by the ABA and the Conference of Chief Justices, discuss who should and may be present during each major type of hearing in a child abuse and neglect case.

- The American Bar Association (ABA) approved standards for representing children in abuse and neglect cases that suggest children should be present at significant court hearings. For example, the commentary explains that having a youth in court emphasizes for the judge and all parties that this hearing is about a child.¹

- The National Association of Counsel for Children (NACC) adopted similar standards in 1999. Their standard for children's participation in court mirrors that of the ABA. At significant court hearings, children in most circumstances should be present.²

- The Pew Commission on Children in Foster Care report, *Ensuring the Future: Safety, Permanence and Well-Being for Children in Foster Care*, recommends that courts should be organized to enable children and parents to

(Continued next page)

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E-mail: childlawpractice@staff.abanet.org • Internet: <http://www.childlawpractice.org>

Critiques

Cycle of Failure

HOW MICHIGAN KEEPS "THROWING THE FIGHT" FOR CHILDREN — AND HOW TO MAKE THE STATE A CONTENDER AGAIN

Race Equity Review:
Findings from a Qualitative Analysis of Racial Disproportionality and Disparity for African American Children and Families in Michigan's Child Welfare System

The Center for the Study of Social Policy

January 16, 2009

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Critiques

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State Bar of Michigan Children's Law Section
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The Michigan Child Welfare Law Journal



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Spring 2007

Lost and Alone on Some Forgotten Highway: ASFA, Binsfeld, and the Law of Unintended Consequences

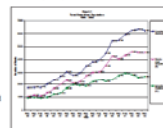
by Honorable Kenneth L. Tacoma, chief judge, Westford County Probate Court

There is a disadvantaged people group in our society that is expanding rapidly. It is composed of children and young people who have never known the joys and support that come from having a reliable family. I have seen the faces and studied the cases of some of these young people, and the loneliness and alienation that I have seen is heartbreaking. These people are the new generation of state-created orphans.¹

Between the late 1980s and mid-1990s, there was a growing awareness of the problems being children in foster care placement. The system itself failed to serve many of the needs of the children who were frequently shuffled from one foster home to another and left in limbo for unreasonable lengths of time with no family in their legal lives. The harm to children from these problems and the perceived need for stability and permanence led the Michigan legislature to attempt to address these issues by changes to the Michigan Juvenile Code.² Legislative changes were first enacted in 1985,³ and in 1990 massive amendments were made to both the juvenile code and related statutes dealing with child protection following the recommendations of the Binsfeld Commission. These changes became commonly known as the Binsfeld amendments.⁴

There has been an unprecedented increase in involuntary termination of parental rights by the state, with a secondary consequence that we now have more welfare children, children without any legal family ties, than we had in the entire child protection system before these laws.⁵

The following graph using data from the Michigan Department of Human Services (DHS) shows the trends in numbers and creation of children who have been state wards of the state.⁶



Using the data from this graph, we can derive the number of state wards who have been made orphans and are either unadoptable or are available for adoption, but without identified prospects.⁷

Finally, we can use these numbers to show directly the increase of state-created orphans in Michigan who are left without any family ties.

New Mission Statement

- Safety Only
- Families Make the Best Decisions
- Foster Care Hurts Children
- Adoption Is Not the Only Option
- Fathers and Families Are Important
- Children Should be Seen and Heard
- Judges Must Manage

QUESTIONS?



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