

REPORT

Child Welfare Financing Reform: Strengthening Families and Ending the Overuse of Foster Care

“What you have now is an incentive to initially remove the child and an incentive to adopt them out. I think when you put these two together, there is a problem.”

David Sanders, former head of Los Angeles County Department of Children and Family Services and current Executive Vice President of Systems Improvement at Casey Family Programs, speaking about child welfare financing.¹

A. INTRODUCTION

The federal financing structure for our child welfare systems across the country disproportionately funds out-of-home care. This creates an incentive for states to place children at risk of abuse or neglect into foster care, rather than provide other interventions and services to help keep children and families safely together. At the moment when families are most in need of services and support to stay together – they are broken-up by a system, based in law, but too often having limited options to readily help families, outside of placing their children in foster care.

There are over 500,000 children in foster care nationwide.² Of these children, almost half will never reunify with their families, despite legal mandates that child welfare agencies make “reasonable efforts” to do so.³ Thousands of these children will not find permanent homes and will grow up in foster care placements.⁴ Many of these children could go home, or would not have been removed in the first place, if their families had prompt access to quality prevention, reunification and post-reunification services.⁵ These services are too often not available to families, in large part, because of the way the child welfare infrastructure is financed.

There has long been a consensus among child welfare experts that the current child welfare financing structure creates a financial incentive for states to place children at risk of abuse or neglect into foster care rather than provide other interventions and services that can help keep children and families safely together.⁶ The vast majority of federal funding available for

¹ Troy Anderson, *Government Bonuses Accelerate Adoptions*, L.A. DAILY NEWS, Dec. 8, 2003, at N8.

² CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., THE AFCARS REPORT: PRELIMINARY FY 2006 ESTIMATES AS OF JANUARY 2008 (14), at 1 (2008), available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report14.pdf.

³ *Id.*

⁴ *Id.*

⁵ As early as 1992, California’s Little Hoover Commission estimated that 35 percent to 70 percent of foster children in California should never have been removed from their families in the first place. LITTLE HOOVER COMM’N, REPORT NO. 115, FOR THE SAKE OF THE CHILDREN: RESTRUCTURING FOSTER CARE IN CALIFORNIA (1992) available at <http://www.lhc.ca.gov/earlyreports/115rp.html>.

See also N. AM. COUNCIL ON ADOPTABLE CHILDREN, SUCCESS FOR CHILDREN & FAMILIES: IT’S TIME TO BUILD ON WHAT WORKS 1 (2007).

⁶ See, e.g., CASEY FAMILY PROGRAMS, ENDING OUR NATION’S OVERRELIANCE ON FOSTER CARE: EXECUTIVE SUMMARY (2009); P’SHIP TO PROTECT CHILDREN & STRENGTHEN FAMILIES ET AL., CHANGES NEEDED IN FEDERAL

child welfare purposes is not available to the states until a child enters foster care. This does not mean that states make money by placing children in foster care. They do not. However, because of the federal funds states receive to maintain children in foster care, placing children in foster care costs states less than providing services to families to keep children out of foster care.

Over-reliance on foster care exacts tremendous costs on children, families, and public resources. Foster care is expensive – each year costing billions in federal, state and local dollars.⁷ Foster care placement can be traumatic for children and families. Losing parental rights to one’s child has been described as the “civil death penalty.”⁸

Children in foster care often experience multiple placements, school instability, and are disconnected from their families. In one study, twenty-one percent of foster care alumni reported that they experienced maltreatment (defined as physical abuse, sexual abuse, neglect, emotional maltreatment or a combination thereof) while in foster care.⁹ Not surprisingly, children who age-out of foster care are more likely to experience homelessness, poverty, incarceration, and poor education outcomes.¹⁰ At least one recent study found that children allowed to remain at home with their parents, even when their parents had once met the statutory definition of abusive or neglectful, had better life outcomes than children who were placed in foster care.¹¹

In May 2003, the Pew Charitable Trusts convened a nonpartisan commission (the Pew Commission on Children in Foster Care) to develop recommendations to improve outcomes for children in the foster care system. The commission was made up of many of the nation’s child welfare experts, including two former United States Congressmen, agency administrators, judges, social workers, a state legislator, and former foster youth. In 2004, the Pew Commission released its recommendations in the report “Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care.” Recognizing that the federal foster care financing structure, as specified in current federal law, leads to the overuse of foster care as a child welfare intervention, the recommendations in the report focused on financing reform as well as on strengthening the child welfare court system.

CHILD WELFARE LAW TO BETTER PROTECT CHILDREN AND ENSURE THEM NURTURING FAMILIES (2008), *available at* www.clasp.org/admin/site/publications/files/0359.pdf; RUTLEDGE Q. HUTSON, CTR. FOR LAW & SOC. POLICY, PROTECTING CHILDREN AND STRENGTHENING FAMILIES (2008), *available at* http://www.clasp.org/issues/topic?type=child_welfare&topic=0001; PEW COMM’N ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE (2004); U.S. DEP’T OF HEALTH & HUMAN SERVS., FEDERAL FOSTER CARE FINANCING: HOW AND WHY THE CURRENT FUNDING STRUCTURE FAILS TO MEET THE NEEDS OF THE CHILD WELFARE FIELD (2005).

⁷ KERRY DEVOOGHT ET AL., CHILD TRENDS, FEDERAL, STATE, AND LOCAL SPENDING TO ADDRESS CHILD ABUSE AND NEGLECT IN SFY 2006, at iv (2008).

⁸ *Drury v. Lang*, 776 P.2d 843, 845 (Nev. 1989).

⁹ PETER J. PECORA ET AL., CASEY FAMILY PROGRAMS, ASSESSING THE EFFECTS OF FOSTER CARE: EARLY RESULTS FROM THE CASEY NATIONAL ALUMNI STUDY 18 (2003).

¹⁰ *E.g.*, PATRICK FOWLER & PAUL TORO, YOUTH AGING OUT OF FOSTER CARE IN SOUTHEAST MICHIGAN: A FOLLOW-UP STUDY FINAL REPORT (2006).

¹¹ Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 (5) *Am. Econ. Rev.* 1583, 41-42 (2007).

B. PAST AMERICAN BAR ASSOCIATION RELEVANT POLICY

The ABA has a long history of adopting policies that address the financing of some of our nation's most important services, authorized by law, that impact the lives of vulnerable adults and families.¹² The ABA also has been a strong and consistent voice, through policies approved by the House of Delegates, in working toward improvements in the lives of our nation's most vulnerable children.¹³

In 2005, the ABA adopted policy based on a number of the Pew Commission recommendations linked to improving the court systems, the child welfare workforce and increasing resources available to children and families. This recommendation adopts and builds on the recommendations of the Pew Commission for child welfare financing reform and the 2005 ABA policy that focused on improving the child welfare system more generally.

Adopting this recommendation is the next important step for the ABA to take to help improve the lives of the many thousands of children and families involved with government child welfare agencies, and related court proceedings, each year. Legislators are now looking at ways to improve outcomes for children and families by providing up-front prevention services, quality reunification services and post permanency services to families in need.¹⁴ It is important that the ABA continues to be a strong voice for children and families in this process.

C. CHILD WELFARE FINANCING: THE NEED FOR CHANGE

¹² See, e.g., ABA Policy O3A121 (opposing legislation to repeal the federal Section 8 low-income housing voucher program); ABA Policy 2/97 (opposing any structural or financial changes in the Medicaid program that would weaken the current entitlement nature of the program); ABA Policy 2/80 (urging the federal government to establish uniform procedures for administering its benefit program for the elderly); ABA Policy 8/92 (supporting increased funding and development of well-managed, secure public and federally-assisted housing); ABA Policy 04M116 (urging federal, state and local governments to increase funding for public mental health systems so that adults and juveniles with mental illness can obtain the support necessary to live independently in the community and avoid contact with the criminal justice system).

¹³ See, e.g., ABA Policy 05A10B (urging Congress, the states, and territories to pass laws consistent with the recommendations of the Pew Commission on Children in Foster Care); ABA Policy 08A107 (urging Congress to change laws to broaden federal review of the disproportionate representation of racial and ethnic minority children in the child welfare system); ABA Policy 06A10A (urging federal, state, territorial, tribal, and local governments to assure that adequate and appropriate services are available to at-risk youth and their caretakers); ABA Policy 02A106 (urging Congress, and state and territorial legislatures, to enact laws to provide youth in foster care full access to independent and transitional living services and healthcare up to age 21).

¹⁴ See, e.g., Education Begins at Home Act, H.R. 2205, 111th Cong. (2009); Education Begins at Home Act, S. 244, 111th Cong. (2009); Early Support for Families Act, H.R. 2667, 111th Cong. (2009); Evidence-Based Home Visitation Act, S. 1267, 111th Cong. (2009); Hearing on Implementation of the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351) Before the Subcomm. on Income Security and Family Support of the H. Ways and Means Comm., 111th Cong. (2009) (testimony of Erwin McEwen, Illinois Director of Children and Family Services).

Money matters in the child welfare system. In 2006, states spent \$25.7 billion in federal, state, and local funds on child welfare services and administrative costs.¹⁵ Approximately half (48%) of money spent on child welfare came from federal funds.¹⁶ States rely on federal funding to finance most child welfare services.

States receive federal child welfare funds from a range of sources. Titles IV-B and IV-E of the Social Security Act authorize the largest federal programs/funding streams dedicated to child welfare services. Additional federal funding comes from a number of programs designed for broader purposes that can be used for some child welfare services – these programs include TANF (Temporary Assistance for Needy Families), Social Services Block Grant, Medicaid and Social Security Income/Benefits.

The problem with the current child welfare financing structure is that the bulk of dedicated child welfare funding (Title IV-E) is available to states only after a child enters foster care. Funding available to provide a range of services aimed at preventing the need to remove children from their parents or successfully reuniting and stabilizing families is very limited and is not reliably available from year to year. Consequently, there are relatively few programs or child welfare services that a social worker can consistently and readily access to help stabilize a family in need of services or to help parents address the problems that brought their child into the child welfare system.

Dedicated Child Welfare Funds

Title IV-E funds represent the largest source of federal funding to the states dedicated for child welfare services. Title IV-E guarantees federal reimbursement to states for a portion of the costs associated with foster care, the adoption assistance program and the Chafee Foster Care Independence Program. These funds are used specifically for foster care maintenance payments for eligible children, adoption assistance payments, and life skills training programs and education vouchers for older youth aging out of the foster care system, plus administrative costs and training associated with the foster care and adoption assistance programs.

Title IV-E funds available for the foster care and adoption assistance programs are an open-ended entitlement to the states and are not subject to the yearly congressional appropriations process.¹⁷ These funds are allocated to specific purposes and are not available to states until after a child has been removed from his or her family and placed in foster care and/or for adoption. In 2006, Title IV-E funds accounted for 48% of federal spending for child welfare services.¹⁸ States spent approximately \$4 billion in Title IV-E funds on the foster care program,

¹⁵ KERRY DEVOOGHT ET AL., CHILD TRENDS, FEDERAL, STATE, AND LOCAL SPENDING TO ADDRESS CHILD ABUSE AND NEGLECT IN SFY 2006, at iv (2008).

¹⁶ *Id* at v. (“In SFY 2006, states spent \$12.4 billion in federal dollars, \$10.7 billion in state dollars, and \$2.6 billion in local dollars”).

¹⁷ Title IV-E funds available under the Chafee Foster Care Independence Program are a capped entitlement to the states.

¹⁸ KERRY DEVOOGHT ET AL., CHILD TRENDS, FEDERAL, STATE, AND LOCAL SPENDING TO ADDRESS CHILD ABUSE AND NEGLECT IN SFY 2006, at 8 (2008).

\$1.8 billion on the adoption assistance program, and \$166 million on the Chafee Foster Care Independence Program.¹⁹

Unlike Title IV-E funds, which cannot be accessed by the states until a child enters foster care, Title IV-B funds are available for a broad range of child welfare services, including prevention and family preservation services, reunification services and post-permanency services. There are two components of Title IV-B – Subpart 1 (Child Welfare Services), which is a discretionary grant program, and Subpart 2 (Promoting Safe and Stable Families), which has a capped entitlement and discretionary grant component. Because Title IV-B funds are subject to the yearly appropriations process, they may fluctuate significantly from year to year. Title IV-B expenditures comprise a very small percentage of federal child welfare spending. In 2006, states spent \$637 million of Title IV-B funds, approximately 5% of all federal spending for child welfare services.²⁰

Non-dedicated Child Welfare Funds

The principal federal sources of non-dedicated child welfare funding are Temporary Assistance for Needy Children (TANF), Social Services Block Grant, Medicaid and Social Security Income/Benefits. Non-dedicated child welfare funding accounted for approximately 44% of federal funds spent on child welfare services.²¹

Usually, these funds can be used with little restriction, but unfortunately only a small portion of this money is used to fund services that prevent child maltreatment and reduce foster care placement.²²

This funding is not reliable because its availability is not guaranteed and is subject to changing federal, state, and local priorities. For example, access to TANF funds for child welfare purposes is subject to change with each reauthorization of the program.²³ Relying on non-dedicated funding means child welfare systems must compete with other budget priorities for the same limited pool of money. There are no guarantees that child welfare agencies will receive TANF funding at levels that were received in the past, particularly when states face budget shortfalls.

Overarching Principle: Greater and more flexible funding is needed for family preservation, reunification and post-permanency services.

Laws governing child welfare financing should encourage keeping or reunifying children safely with their birth families by increasing the amount and flexibility of funding available for a

¹⁹ *Id.* at 11, 13, 15.

²⁰ *Id.* at 8.

²¹ *Id.* at 8.

²² *See, e.g.*, ADMIN. FOR CHILDREN & FAMILIES, FACT SHEET RE: SOCIAL SERVICES BLOCK GRANT (2009), available at <http://www.acf.hhs.gov/programs/ocs/ssbg/about/factsheets.htm>; *see also* CASEY FAMILY PROGRAMS, ENDING OUR NATION'S OVERRELIANCE ON FOSTER CARE: EXECUTIVE SUMMARY 4 (2009).

²³ N. AM. COUNCIL ON ADOPTABLE CHILDREN, CHILD WELFARE FINANCING 101, at 3 (2007), available at <http://www.nacac.org/policy/financing101.pdf>.

full range of child welfare services, including child abuse and neglect prevention, family preservation and support, family reunification, and post-permanency support. Foster care is not ideal for any child, although it is necessary for some. Federal law recognizes this, requiring state child welfare agencies to use “reasonable efforts” to keep families safely together, if possible.²⁴ If a child is removed from his family, federal law prioritizes reunification with parents as the top permanency option for children in foster care and again requires “reasonable efforts” to reach this goal.²⁵ Unfortunately, the structure of foster care financing limits states’ ability to provide these necessary services – the lack of dedicated federal funds puts prevention strategies and quality reunification and post-permanency services at a clear disadvantage in state and local budgets.²⁶

Children are most often placed in foster care because of allegations of neglect.²⁷ For many children and families involved in the child welfare system, poverty related conditions such as lack of housing and lack of money for food, clothing and medical care can easily be confused with neglect.²⁸ Neglect combined with housing problems is the principal reason that many children enter foster care and stay in foster care.²⁹ One study found that at least 30% of children in foster care could return home if their parents had access to housing.³⁰

Often poverty, substance abuse and mental health issues are interconnected.³¹ Parents cannot get the help they need because treatment services are not available, waiting lists are long, or treatment programs require in-patient stays that keep children away from their families. One study by the U.S. Department of Health and Human Services concluded that there is a “chronically short supply” of substance abuse treatment programs tailored to parents with children.³² The same study noted that only ten percent of child welfare agencies reported being able to find substance abuse treatment programs for clients who need treatment.³³ Mental health services for parents are similarly scarce.³⁴ When adequate services are not available, the only

²⁴ Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2116.

²⁵ *Id.*

²⁶ CASEY FAMILY PROGRAMS, ENDING OUR NATION’S OVERRELIANCE ON FOSTER CARE: EXECUTIVE SUMMARY 4 (2009).

²⁷ KIDS ARE WAITING, FIX FOSTER CARE NOW, THE PEW CHARITABLE TRUSTS, TIME FOR REFORM: INVESTING IN PREVENTION: KEEPING CHILDREN SAFE AT HOME 5 (2007).

²⁸ NAT’L COAL. FOR CHILD PROTECTION REFORM, ISSUE PAPER 5: WHO IS IN “THE SYSTEM” –AND WHY, *available at* <http://www.nccpr.org/newissues/5.html>; *see also* Troy Anderson, *Foster Care Cash Cow*, L.A. DAILY NEWS, Dec. 6, 2003, at N1; Eric Turcios, *Remaining vs. Removal: Preventing Premature Removal when Poverty is Confused with Neglect*, MICH. CHILD WELFARE L. J., Summer 2009, at 23 (noting that in 2005, 95.5% of “endangered children” came from families whose income was less than \$15,000 per year).

²⁹ KIDS ARE WAITING, FIX FOSTER CARE NOW, THE PEW CHARITABLE TRUSTS, TIME FOR REFORM: INVESTING IN PREVENTION: KEEPING CHILDREN SAFE AT HOME 5 (2007).

³⁰ CATHOLIC CHARITIES USA ET AL., HELPING HOMELESS FAMILIES: THE ROLE OF THE CHILD WELFARE SYSTEM, *available at* <http://npach.org/facts-housing.pdf>.

³¹ DEP’T OF HEALTH & HUMAN SERVS., BLENDING PERSPECTIVES AND BUILDING COMMON GROUND, A REPORT TO CONGRESS ON SUBSTANCE ABUSE AND CHILD PROTECTION 7 (1999).

³² *Id.* at 56.

³³ *Id.* at 57.

³⁴ OLIVIA GOLDEN, REFORMING CHILD WELFARE, 232 (2009). Mental health services for children and youth are also not readily available for families. A study of families entering the foster care system in Virginia found that 1 in 4 foster children came into foster care because their parents could not access affordable mental health services for

option for the children may be foster care.³⁵ This is not acceptable – the child welfare system can and should do better for children and families.

Accordingly, this recommendation advocates reforming current law and policy to promote greater and more flexible funding for a range of services that can help children and families. Such services should include access or connection to programs for affordable housing, transportation, anti-poverty supports, substance abuse and mental health treatment, aid in addressing domestic violence, parenting instruction and peer parent support programs, and quality parent representation programs.³⁶ Consistent with this overarching principle, the recommendation sets forth a non-exhaustive list of a number of reforms that can help maximize funding streams for these much needed services.

Specific Proposal: Allow states, if they safely reduce the number of children in foster care, to reinvest federal foster care funds that would have been expended on such placements into other child welfare services aimed at further reducing the need for foster care.

As discussed above, the current federal financing system for child welfare, which disproportionately funds out-of-home-care, leads to the over-use of foster care as a child welfare service. Because the bulk of federal dollars are tied to the number of children in foster care, there is a disincentive for states and local child welfare agencies to invest in programs and innovations that lead to reduced foster care use. Under the current system, if states reduce their foster care expenditures, they lose the federal share of savings tied to that reduction. Safely reducing the need for foster care can require substantial investment in a range of child welfare services, including up-front assessments, community based mental health and drug treatment programs, transportation to and from needed services, and housing vouchers, to name a few.³⁷ The current system discourages this investment.

The Pew Commission on Children in Foster Care recommended not only giving states greater flexibility in the use of federal dollars, but also allowing states to reinvest federal dollars that would have been expended on foster care into other child welfare services, if those approaches safely reduce the need for foster care. The Pew Commission recommended allowing individual states to project their foster care expenditures for a given year. If states were able to reduce foster care expenditures from what was projected, the amount saved could then be re-

them. Chris L. Jenkins, *Mental Illness Sends Many to Foster Care: Medical Costs Overwhelm Va. Parents*, WASH. POST, Nov. 29, 2004, at B01.

³⁵ The director of the Los Angeles County Department of Children and Family Services said that experts estimate that 50% of the 75,000 children in the foster care system and adoptive homes in Los Angeles could have been left in their parents care if their parents had received appropriate services. Troy Anderson, *Money Motive in Foster Care*, LONG BEACH PRESS TELEGRAM, Dec. 6, 2003, at PT NEWS.

³⁶ Quality legal representation for parents has been shown to lead to improved outcomes for children and families in the child welfare system – reducing the amount of time children spend in foster care, increasing the rate of family reunifications and decreasing the rate of return home failures. *See, e.g.*, CTR. FOR FAMILY REPRESENTATION, *Brining Innovative Legal Services to Scale*, http://www.cfrny.org/new_legal.asp#catl. (last visited Dec. 9, 2009); NW. INST. FOR CHILDREN & FAMILIES, *DEPENDENCY AND TERMINATION PARENTS' REPRESENTATION PROGRAM EVALUATION REPORT 2005* (2005), available at <http://www.opd.wa.gov/Reports/DT-Reports.htm>. *See also*, ABA Policy O6A114 (Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases).

³⁷ PEW COMM'N ON CHILDREN IN FOSTER CARE, *FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE* 25 (2004).

invested into other child welfare services. To ensure that states maintain their spending on child welfare services, the Pew Commission suggested that states be required to match the federal savings for reinvestment.

This recommendation helps to eliminate the current, and most likely unintended, disincentive for states to invest in programs and services that reduce the need for foster care. Implementing this recommendation will also help align federal and state foster care funding with the goals of child welfare – to keep children safely at home when possible and to hasten permanency (including reunification) so that children do not languish in foster care.

Specific Proposal: Reauthorize and expand the child welfare waiver program and simplify the waiver application process to encourage state use of federal funds in testing innovative approaches to delivering child welfare services with the goal of strengthening families.

One way to help ensure that there is funding available for state and local child welfare agencies to provide needed services to families is to reauthorize and expand the child welfare waiver program and simplify the waiver application process. In 1994, Congress passed Public Law 103-432, which provided the Secretary of Health and Human Services the authority to approve state demonstration projects involving the waiver of certain requirements of Title IV-E and IV-B. The waiver program allows states flexibility in the use federal child welfare funds for alternative services and supports that promote safety, permanency and well-being for children and families.³⁸ The Adoption and Safe Families Act expanded the program, authorizing the Secretary of Health and Human Services to grant waivers to up to ten states per year. The program expired as of March 31, 2006.³⁹

Many waiver programs that focused on preventing out-of-home placements and expediting permanency have been successful.⁴⁰ One example of this success can be seen in California. In 2007, California began implementing the Title IV-E waiver program. Under the program, California distributes the waiver funds to participating counties and the counties choose how to re-invest the funds into a range of services, including early intervention services, crisis intervention services, intensive child welfare services and services that expedite permanency.⁴¹ Foster care savings that occur as a result of the demonstration project are reinvested into child

³⁸ Social Security Act § 1130, 42 U.S.C. § 1320a-9 (2009).

³⁹ Federal legislative authority to approve new title IV-E waivers expired on March 31, 2006. States with projects approved before that date may continue to implement them, and requests to extend demonstrations beyond their original period of approval may also be considered and approved at the Secretary's discretion.

⁴⁰ Florida implemented a waiver program and shifted its use of federal child welfare funds from foster care to providing in-home counseling, therapy for children and cash aid to help families stay intact. In less than three years, they have reduced the number of children in foster care by 32%. Erik Eckholm, *Florida Shifts Child-Welfare System's Focus to Saving Families*, N.Y. TIMES, July 24, 2009, at A12. Illinois' waiver program used federal funds to provide subsidy payments to relatives and/or foster parents who became legal guardians to children in care. As a result of the program, Illinois saw a 6.1% increase in overall permanency for foster youth, with less children aging out of foster care and fewer children experiencing re-abuse. MARK F. TESTA, LESLIE COHEN, GRACE SMITH, ILLINOIS SUBSIDIZED GUARDIANSHIP WAIVER DEMONSTRATION, FINAL EVALUATION REPORT, 2-4 (2003).

⁴¹ CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., PROFILES OF THE TITLE IV-E CHILD WELFARE WAIVER DEMONSTRATION PROJECTS: CALIFORNIA, (2008), available at http://www.acf.hhs.gov/programs/cb/programs_fund/cwwaiver/2008/california1.htm.

welfare services. The five year program has been implemented in Alameda and Los Angeles Counties.

Alameda County

With the flexible funds available through the waiver program, Alameda County expanded its alternative response program, which helps prevent child neglect and abuse by offering parents the up-front community services they need to raise families safely and successfully.⁴² Alameda County also implemented a family finding program, which makes it more likely that children can live with grandparents, aunts and uncles soon after being removed from their parents' home. These relatives are also expected to be involved with helping parents successfully reunite with their children.

In Alameda County, in the twelve month period from November 30, 2007 to November 30, 2008, foster care exits exceeded entries, children entering foster care for the first time decreased by 13.2 percent, and children reunified with their families within twelve months after a first entry increased by 9.5 percent.⁴³ There was also a 10.4 percent decrease in the total number of children in foster care.⁴⁴

Los Angeles County

Los Angeles County has seen similar success by using the flexible funds to invest in up-front community based assessments and services for families at risk of entering the child welfare system, and by creating a special youth permanency unit focused on finding family members to provide connections and support to youth who have been in the foster care system for years.⁴⁵ In the first 18 months that Los Angeles County used flexible funding to invest in strategic reforms, the total number of children in foster care went down 17.7 percent, from 20,302 in June 2007 to 16,710 in December 2008.⁴⁶

This recommendation advocates reauthorizing and expanding the child welfare waiver program and simplifying the application process so that innovative practices that improve outcomes for children and families can continue to be funded and supported. There is broad support in the child welfare community for this recommendation.⁴⁷

⁴² CASEY FAMILY PROGRAMS, A CASE STUDY: CALIFORNIA AND FLEXIBLE FUNDING 1 (2009), available at <http://www.casey.org/Resources/Publications/pdf/CaliforniaFlexibleFunding.pdf>.

⁴³ CHILDREN & FAMILY SERVS. DIV., CA DEP'T OF SOC. SERVS, ALAMEDA COUNTY TITLE IV-E WAIVER DASHBOARD 4 (2009), available at http://www.dss.cahwnet.gov/cfsweb/res/pdf/SemiAnnual_AppendixA-March2009.pdf.

⁴⁴ *Id.*

⁴⁵ CASEY FAMILY PROGRAMS, STORIES OF PRACTICE CHANGE: WHAT FLEXIBLE FUNDING MEANS TO THE CHILDREN AND FAMILIES OF LOS ANGELES COUNTY 4-29 (2009), available at <http://www.casey.org/Resources/Publications/pdf/WhatFlexibleFundingMeans.pdf>.

⁴⁶ CASEY FAMILY PROGRAMS, A CASE STUDY: CALIFORNIA AND FLEXIBLE FUNDING 1 (2009), available at <http://www.casey.org/Resources/Publications/pdf/CaliforniaFlexibleFunding.pdf>.

⁴⁷ See, e.g., PEW COMM'N ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE (2004); CASEY FAMILY PROGRAMS, ENDING OUR NATION'S OVERRELIANCE ON FOSTER CARE: EXECUTIVE SUMMARY (2009); AM. PUB. HUMAN SERVS. ASS'N, CROSSROADS: NEW DIRECTIONS IN SOCIAL POLICY 10, 21 (2001).

Specific Proposal: Evaluate policies and formulas for funding distribution and ensure adequate federal and state funding for services to children and families at risk of becoming involved in the child welfare system, so that these services are readily available in neighborhoods with high rates of poverty, child abuse and neglect, and placements of children in foster care.

For some children, where they live may place them at greater risk of growing up in foster care. Children living in large urban communities are more likely to enter foster care and less likely to reunify with their families, than children in non-urban communities. Reviewing nine years of caseload data, from 1990 through 1999, and comparing placement rates and length of foster care stays for children in large urban counties (areas with the largest child welfare system in a given state) as compared to children in non-urban counties, researchers found that children in large urban counties have a higher rate of entry into foster care and stay in foster care longer.⁴⁸ Moreover, children in large urban communities are less likely to reunify with their families and more likely to be adopted.⁴⁹ These disparities are even greater when race is considered. Noting that admission rates to foster care and time spent in foster care are greatest for African American children who live in large urban areas and citing the racial and economic segregation that characterizes large U.S. cities, researchers see a clear need to build service capacity in low-income neighborhoods.⁵⁰

Los Angeles County successfully reduced the number of children in its child welfare system by providing up-front community based services to families, targeting services in neighborhoods with a high rate of calls to the child abuse hotline.⁵¹ Services implemented in individual neighborhoods are designed by families in the neighborhood, including families who are or who have previously been involved with the child welfare system. The focus of services varies in each neighborhood, ranging from job training, to providing parent advocates to families at risk of having their children removed, to offering legal support for housing, employment and immigration issues. Anecdotally, social workers and families see a change for the better in their communities.⁵² Through its work focused on prevention in individual neighborhoods, and through other reforms (including implementation of the child welfare waiver program discussed above), Los Angeles County has reduced the number of children in foster care from a one-time

⁴⁸ FRED WULCZYN & KRISTEN BRUNNER HISLOP, CHAPIN HALL CTR. FOR CHILDREN FOSTER CARE AT THE UNIV. OF CHICAGO, DYNAMICS IN URBAN AND NON-URBAN COUNTIES, 12, 18, 19 (2003).

⁴⁹ *Id.* at 26.

⁵⁰ *Id.* at 32. *See also* CTR. FOR THE STUDY OF SOC. POLICY, 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, at iii (2009) (noting that African American children are disproportionately represented in the child welfare system, researchers found "a lack of basic resources in [African American] communities and problematic allocation of existing resources by county and state leaders").

⁵¹ CASEY FAMILY PROGRAMS, STORIES OF PREVENTION IN LOS ANGELES COUNTY: DCFS AND COMMUNITY AGENCIES JOIN HANDS TO SUPPORT FAMILIES AND CHILDREN, 8 (2009); *see also* CASEY FAMILY PROGRAMS, STORIES OF PRACTICE CHANGE: WHAT FLEXIBLE FUNDING MEANS TO THE CHILDREN AND FAMILIES OF LOS ANGELES COUNTY 7 (2009).

⁵² *See e.g.*, CASEY FAMILY PROGRAMS, STORIES OF PREVENTION IN LOS ANGELES COUNTY: DCFS AND COMMUNITY AGENCIES JOIN HANDS TO SUPPORT FAMILIES AND CHILDREN 11, 28 (2009).

high of 50,000 children in foster care (ten years ago) to 16,000 children in foster care in April 2009.⁵³

Research suggests that interventions at the neighborhood level can help prevent child abuse and neglect.⁵⁴ This recommendation asks that funding streams be evaluated to ensure that adequate supports and services are available to children, families and communities most in need.

D. ALIGNING CHILD WELFARE FINANCING AND CHILD WELFARE POLICY GOALS: REUNIFICATION AND GUARDIANSHIP INCENTIVES

In 1997, the federal Adoption and Safe Families Act (ASFA) was enacted, making safety, permanency and well being the primary focus of child welfare policy.⁵⁵ The law set forth several clearly defined permanency goals for children – the first goal being reunification with family, followed by adoption and legal guardianship.

ASFA also created an adoption incentive program, which authorizes incentive funds to states if they increase the number of adoptions of children from foster care over a baseline number. In 2008, under the federal Fostering Connections to Success and Increasing Adoptions Act, the adoption incentive program was revamped to provide stronger incentives for states to find adoptive homes for children in foster care, especially older children and children with special needs.⁵⁶ Now, under the adoption incentive program, states receive \$4,000 for every child adopted from foster care over their 2007 baseline, plus a payment of \$8,000 for every child over age nine adopted and \$4,000 for every special needs child adopted over the respective baseline number. Additionally, states receive \$1,000 for every child adopted over the state's highest foster care adoption levels for previous years. The money earned by states through the adoption incentive program must be reinvested into services for children and families.

As stated at the beginning of this report – money matters in child welfare. The adoption incentive program has been successful and the number of children adopted from foster care has almost doubled since 2006.⁵⁷ In 2009, the federal government granted 38 states and Puerto Rico \$35 million for increasing the number of children adopted from foster care.⁵⁸

This recommendation advocates creating a new federal permanency incentive program that rewards states for increasing their rates of safe and stable parental reunifications and

⁵³ *Id.* at 29.

⁵⁴ Deborah Daro & Kenneth Dodge, *Creating Community Responsibility for Child Protection: Possibilities and Challenges*, FUTURE OF CHILDREN, Fall 2009, at 67, 71.

⁵⁵ DEBRA RATTERMAN BAKER ET AL., MAKING SENSE OF THE ASFA REGULATIONS: A ROADMAP FOR EFFECTIVE IMPLEMENTATION 3 (Diane Boyd Rauber, ed., American Bar Association, 2001).

⁵⁶ Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 401, 122 Stat 3949, 3973-75 (2008).

⁵⁷ See CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., ADOPTIONS OF CHILDREN WITH PUBLIC CHILD WELFARE AGENCY INVOLVEMENT BY STATE, FY 1995-2006, at 2 (2008), available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/adoptchild06.htm.

⁵⁸ U.S. DEP'T OF HEALTH & HUMAN SERVS, NEWS RELEASE: HHS AWARDS \$35 MILLION TO STATES FOR INCREASING ADOPTIONS (Sept. 14, 2009), available at <http://www.hhs.gov/news/press/2009pres/09/20090914a.html>.

guardianships, as well as for adoptions. In most child welfare cases, the goal for the family is to safely reunify children and parents. However, while there has been a large increase in the number of children reaching permanence through adoption, there has been little progress made over the last decade in improving the timeliness or safety of children reunifying with their families.⁵⁹ This recommendation aligns child welfare funding incentives with child welfare policy goals – when a child’s need for safety and well-being can be met in the parents’ home, reunification should be encouraged and supported. If reunification and adoption are not available to a child, guardianship can be an effective way to secure permanency and also should be encouraged.

Safely reunifying children with their families requires work and investment from state and local child welfare agencies. As discussed above, state resources to help families with quality reunification services are limited in large part because of the way child welfare funds are distributed. Helping children achieve permanence through guardianship also involves time and investment from states. This recommendation envisions an independent incentive program for each permanency goal – reunification, adoption and guardianship.

Under this plan, similar to the current adoption incentive program, states would receive a one time payment for each child reunified with his family over a baseline set on historical reunification rates. This incentive payment would only be awarded for “safe and stable reunifications” – states would receive the incentive payment for reunifying families, provided that the children did not experience re-abuse and that the reunification did not disrupt for a set amount of time. Similarly, states would receive a one time payment for each child achieving permanency through guardianship over a baseline guardianship rate. Money awarded to states under the enhanced incentive program would have to be reinvested into child welfare services aimed at achieving greater permanence and stability for children and families.

Each year, over 25,000 youth age-out or “emancipate” from foster care.⁶⁰ Additionally, approximately 126,000 children in foster care are waiting to be adopted.⁶¹ Children “waiting to be adopted” are defined as children (excluding children over 16 years old whose permanency goal has been changed to emancipation) whose parental rights have been terminated and who have a permanency goal of adoption.⁶² Thousands of these children will never be adopted and will end up emancipating from foster care. For many of these children, reunification or guardianship could have given them a chance at a safe and loving permanent home. Creating three independent incentive programs to encourage all permanency goals will help encourage and enable state and county child welfare agencies to actively work toward and invest in each valuable and important option for children and families.

⁵⁹ OLIVIA GOLDEN, REFORMING CHILD WELFARE, 246 (2009).

⁶⁰ See, e.g., CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., THE AFCARS REPORT: PRELIMINARY FY 2006 ESTIMATES AS OF JANUARY 2008 (14), at 4 (2008), available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report14.pdf.

⁶¹ CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILDREN IN PUBLIC FOSTER CARE WAITING TO BE ADOPTED: FY 1999 thru FY 2003, at 2 (2005), available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/waiting2003.pdf.

⁶² CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILDREN IN PUBLIC FOSTER CARE WAITING TO BE ADOPTED: FY 1999 thru FY 2003, at 2 (2005), available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/waiting2003.pdf.

E. CONCLUSION

Federal financing for our child welfare systems across the country disproportionately funds out-of-home care. This creates an incentive for states to place children at risk of abuse or neglect into foster care, rather than provide other interventions and services to help keep children and families safely together. This structure also limits state and local child welfare agencies' ability to provide needed and quality family reunification and post-permanency services. This is not good for children or families. This recommendation asks for much needed and widely supported reforms to help better serve our nation's most vulnerable children and families. By adopting this recommendation, the ABA can continue its long history of law and policy leadership on behalf of children and families in need.

Respectfully Submitted,

Laura Farber, Chair
Commission on Youth at Risk
February 2010

GENERAL INFORMATION FORM

Submitting Entity: The Commission on Youth at Risk

Submitted By: Laura Farber, Chair

1. Summary of Recommendation(s).

This recommendation encourages the federal government, states, counties, tribes and territories to enact child welfare financing laws and policies that reform the child welfare financing structure to end the current fiscal incentives for states to place children in foster care at the expense of providing services that could keep children and families safely together. Specifically, this recommendation encourages them to do so by: (1) increasing the amount and flexibility of funds available for child abuse and neglect prevention, family preservation, family reunification, and post-permanency support services; and (2) maximizing access to county, state, and federal revenue streams to enhance the availability of the aforementioned services by (a) reauthorizing and expanding the child welfare waiver program, (b) allowing states to reinvest federal foster care funds saved by reducing the number of children in foster care into other child welfare services, and (c) evaluating formulas for funding distribution to ensure that adequate funding is readily available for services to children and families most at risk of becoming involved in the child welfare system. Additionally, this recommendation proposes creating an enhanced federal permanency encouragement initiative that rewards states for increasing their rates of safe and stable reunifications and relative guardianships, as well as for adoptions.

2. Approval by Submitting Entity.

The Commission on Youth at Risk voted to approve this recommendation on November 17, 2009 at its Fall meeting.

3. Has this or a similar recommendation been submitted to the House or Board previously?

This recommendation has not been previously submitted to the House or Board. In 2005 the House adopted a policy based on the recommendation of the Pew Commission on Children in Foster Care that called for increasing resources available to children and families. This recommendation adopts and builds on the recommendation of the 2005 ABA policy (ABA policy 05A10B).

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

There are no existing Association policies that would be affected by this recommendation. However, there are several existing ABA policies that are complimentary to this recommendation and address issues related to ensuring that adequate child welfare and related services are available to children, youth and families.

Additionally, the ABA has a long history of adopting policies that address the financing of some of our nation's most important services that impact the lives of vulnerable adults and families.

ABA Policy 05A10B

Support and reaffirm the (1) rights of children in foster care homes to be protected from abuse, physical violence, and sexual assault while in foster custody; (2) the obligation of relevant state and local officials to provide for the continued safety of the foster care environment; and (3) the legal responsibility and liability of state and local governments and their agents for injury and abuse caused to children in foster care custody when they exhibit gross negligence or reckless disregard in failing to respond or affirmatively protect children from such dangers. Call upon legislatures, members of the bar and child advocates everywhere to seek to strengthen recognition and implementation of this interest in children in safe foster care.

Urges Congress, the states and territories to enact and/or adopt laws and policies consistent with the recommendations of the national bipartisan May 2004 Pew Commission on Children in Foster Care for improving the outcomes for abused and neglected children under dependency court jurisdiction. Urges Congress, and the state and territorial legislatures, to maintain commitments for adequate resources, and enact laws and implement policies to increase resources and maintain flexibility in the use of those resources, that support the needs of children and families at risk regardless of whether an abused or neglected child is removed from home, and without limiting the protections, support, and rights of children in foster care or their families. Urges state and local bars to actively support the development and implementation of these laws and policies.

ABA Policy 06A10A

Urges federal, state, territorial, tribal, and local governments to assure that adequate and appropriate services are made readily available to at-risk youth and their caretakers by ensuring that: (1) community mental health systems serving youth are reinvigorated and significantly expanded to provide greater access to troubled youth and their caretakers; (2) stronger support is given to expanding availability of evidence-based programs for youth and greater investment is made in research to identify additional evidence-based programs worthy of replication and use for at-risk youth; (3) a positive youth development perspective is incorporated into services and programs, including opportunities that support young people in developing a sense of competence, usefulness, belonging, and empowerment, through access to developmental services and activities facilitating positive connections among youth and with adults, and also offering young people valuable information and learning experiences to help them choose healthy lifestyles; and (4) needed services and/or treatment should be provided to youth in need of such services by appropriate juvenile justice and child welfare intervention systems without the necessity or requirement of courts exercising jurisdiction over or adjudicating them.

ABA Policy 08A107

Urges Congress to change laws to broaden federal review of the disproportionate representation of racial and ethnic minority children in the child welfare system and require and fund states to track, report, analyze and take and report corrective action.

ABA Policy 03A121

Opposes legislation to repeal the federal Section 8 low-income housing voucher program or similar legislative proposals that would eliminate the present funding structure based on actual costs for the number of vouchers used and replace it with a state-administered block grant system. Urges state, local and territorial bar associations to promote better understanding of the Section 8 low-income housing voucher program and to ensure fair administration and access to the program for those entitled to participate.

ABA Policy 04M116

Urges Congress to enact legislation that would address the complex problem presented by the large number of adults with mental illness and juveniles with mental or emotional disorders who come into contact with the criminal and juvenile justice systems. Urges federal, state, local and territorial governments to: (1) increase funding for public mental health systems so that adults with mental illness and juveniles with mental or emotional disorders can obtain the support necessary to enable them to live independently in the community, and to avoid contact with the criminal and juvenile justice systems; and (2) improve their response to these adults and juveniles who come into contact with the criminal and juvenile justice systems by developing and promoting appropriate programs, policies and laws.

5. What urgency exists which requires action at this meeting of the House?

Children continue to languish within the foster care system unnecessarily because federal child welfare financing incentives favor foster care over other services that can help keep children and families safely together and reunify families quickly and safely, if foster care is necessary. There is wide consensus among the child welfare community that the current child welfare financing structure needs to be reformed. Adopting this recommendation is an important step for the ABA to take to help improve the lives of the many thousands of children and families involved in the child welfare system every year.

6. Status of Legislation. (If applicable.)

Legislators are currently looking at ways to improve outcomes for children and families by providing up-front prevention services, quality reunification services and post permanency services to families in need. For example, in June 2009, Senator Rockefeller introduced a bill proposing an amendment to Title IVE of the Social Security Act to

allow foster care maintenance payments to be made to residential treatment facilities that enable parents and their children to live together in a safe environment while parents receive on-site substance abuse treatment services. In addition, there is support in Congress and within the Obama administration for federal funding for home visitation services to provide low-income pregnant women and low-income families with young children with hands-on parenting education and support through a home-visit program. It is anticipated that there will be continued support for legislation aimed at strengthening families and reducing the need for foster care.

7. Cost to the Association. (Both direct and indirect costs.)

There are no direct or indirect costs.

8. Disclosure of Interest. (If applicable.)

Not applicable.

9. Referrals.

Commission on Homelessness and Poverty
 Commission on Domestic Violence
 Commission on Mental and Physical Disabilities Law
 Standing Committee on Substance Abuse
 Section of Individual Rights and Responsibilities
 Section on State and Local Government Law
 Government and Public Sector Lawyers Division
 Section of Litigation
 Young Lawyers Division
 Council on Racial and Ethnic Justice

10. Contact Person. (Prior to the meeting.)

Elizabeth Thornton, Staff Attorney, ABA Center on Children and the Law
 Office: 202-662-1758; Cell: 415-828-0622; Email: thorntoe@staff.abanet.org

11. Contact Person. (Who will present the report to the House.)

Laura Farber, Chair Commission on Youth at Risk
 Office: 626-796-9123; Cell: 818-516-8621; Email: lfarber@hahnlawyers.com

EXECUTIVE SUMMARY

1. Summary of Recommendation

This recommendation urges Congress, state, territorial, tribal, and local governments to enact child welfare financing laws and/or implement policies to reform the child welfare financing structure to end the current fiscal incentives to place children in foster care.

2. Summary of the Issue that the Resolution Addresses

Today, there are over 500,000 children in foster care nationwide. Many of these children could go home, or would not have been removed in the first place, if their families had prompt access to quality prevention, reunification and post-reunification services. Too often, these services are not available to families because of the way the child welfare infrastructure is financed. States rely on federal money to help pay for a range of child welfare services. However, federal money for our child welfare systems across the country disproportionately funds out-of-home care. This creates an incentive for states to place children at risk of abuse or neglect into foster care, rather than provide other interventions and services to help keep children and families safely together. This structure also limits state and local child welfare agencies' ability to provide needed and quality family reunification and post-permanency services. This is not good for children or families.

3. Please Explain How the Proposed Policy will Address the Issue

This recommendation encourages the federal government, states, counties, tribes and territories to enact child welfare financing laws and policies that reform the child welfare financing structure to end the current fiscal incentives for states to place children in foster care at the expense of providing services that can help keep children and families safely together. Specifically, this recommendation proposes: (1) increasing the amount and flexibility of funds available for child abuse and neglect prevention, family preservation, family reunification, and post-permanency support services; and (2) maximizing access to county, state, and federal revenue streams to enhance the availability of the aforementioned services. Additionally, this recommendation urges adopting a federal permanency encouragement initiative that rewards states for increasing their rates of safe and stable parental reunifications and relative guardianships, as well as for adoptions. The proposals in this recommendation align child welfare financing with the goals of child welfare law – to keep children and families safely together, if possible.

4. Summary of Minority Views

No opposition to this recommendation has been identified.