

LEARNING CURVES

The Texas Blueprint— *A Model for Improving School Experiences for Children in Foster Care* by Claire Chiamulera

“Everyone can agree that good education is a key to success in life. Unlocking the doors that shut foster children out of educational opportunity is surely worthy of our best efforts.”

—Justice Harriet O’Neill, Supreme Court of Texas, May 2010

“The Texas Blueprint outlines a plan of how we can work together in our communities and schools to achieve better outcomes for the underserved foster-care population....The Supreme Court of Texas and the Children’s Commission want to send a resounding message to our foster youth that we care and believe they can achieve their fullest potential.”

—Hon. Eva M. Guzman, Supreme Court of Texas and Chair, Children’s Commission, May 2012

Supreme Court of Texas leaders heard the call to improve education outcomes for the approximately 30,000 children and youth in the state’s foster care system. They formed an education committee of the Permanent Judicial Commission for Children, Youth and Families in 2010 to identify improvement areas. This led to a plan—the “Texas Blueprint”—that outlined over 100 recommendations to improve school experiences for children in care.

The Texas Blueprint, the result of a two-year effort by the education committee, with support from the Legal Center for Foster Care and Education at the ABA Center on Children and the Law (ABA Legal Center) and Casey Family Programs, charted an

ambitious course.

The Texas Blueprint was modeled on the Blueprint for Change, a framework developed by the ABA Legal Center. Working with over 100 high-level court, education, and child welfare leaders in Texas, the education committee identified seven areas for improvement:

- judicial practices,
- data and information sharing,
- multidisciplinary training,
- school readiness,
- school stability and transitions,
- school experience,
- supports and advocacy, and
- postsecondary education.

The Texas Blueprint was released

in May 2012. An implementation task force was then created to prioritize and implement the recommendations

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JUVENILE JUSTICE UPDATE

Senate Judiciary Committee Approves Bill to Reauthorize Juvenile Justice Act

Displaying bipartisan concern for the urgent need to address juvenile justice issues, the Senate Judiciary Committee approved an ABA-supported bill by voice vote July 23 that would reauthorize and strengthen the Juvenile Justice and Delinquency Prevention Act (JJDP) for the first time in over a decade.

In approving S. 1169, the committee accepted a substitute amendment crafted by bill sponsor and committee chairman Charles E. Grassley (R-Iowa) and cosponsor Sen. Sheldon Whitehouse (D-R.I.).

ABA President William C. Hubbard expressed the association's support for the legislation in a July 20 letter to the committee.

"Since the last JJDP reauthorization was approved in 2002, there have been many developments in the field of juvenile justice that significantly impact the field," Hubbard said, adding that S. 1169 "recognizes and addresses many of these developments in several key ways." He said the ABA is specifically pleased with provisions that would:

- strengthen the Deinstitutionalization of Status Offenders (DSO) core requirement by calling on states to phase out use of the Valid Court Order Exception that currently causes youth to be jailed or securely confined for "status" offenses, which would not be crimes if committed by adults;
- extend the adult Jail Removal and Sight and Sound Separation core requirement to apply to all juveniles held pretrial, whether they are to be charged in juvenile or adult court;
- give states and localities clear direction to plan and implement data-driven approaches to ensure fairness and reduce racial and ethnic disparities, to set measurable objectives for reduction of disparities in the system, and to publicly report such efforts;
- encourage investment in community-based alternatives to detention; encourage family engagement in design and delivery of treatment and services; improve screening, diversion, assessment, and treatment for mental health and substance abuse needs; allow for easier transfer of education credits for youth involved in the system; and call for a focus on the particular needs of girls either in the system or at risk of entering the justice system;
- promote fairness by supporting state efforts to expand youth access to counsel and encouraging programs that inform youth of opportunities to seal or expunge juvenile records once they have gotten their lives back on track;
- encourage transparency, timeliness, public notice, and communication on the part of the Office of Juvenile Justice and Delinquency Prevention; and
- increase accountability to ensure effective use of resources, to provide greater oversight of grant programs, and to ensure state compliance with federal standards;

The substitute amendment also includes provisions supported by the ABA to place greater priority in federal funding for programs that are scientifically proven to work with at-risk juveniles and to encourage states to phase out the use of unreasonable restraints of juveniles in detention, including the shackling of pregnant girls.

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ABA Child Law PRACTICE

<http://www.childlawpractice.org>

ABA Child Law Practice (CLP)

provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

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CASE LAW UPDATE

Parents Entitled to Effective, Enforceable Assistance of Counsel in Termination Proceedings

J.B. v. Dep't of Children & Fam., 2015 WL 4112321 (Fla.).

In appeal of termination of her parental rights, mother claimed ineffective assistance of counsel. The right to counsel in termination of parental right proceedings includes right to effective assistance and requires means of enforcing that right. To overcome the presumption of effective counsel, parent must identify specific errors made by counsel that show deficiency of reasonable, professional judgment. Claims of ineffective assistance must be raised by the parent and ruled on by the trial court.

The trial court adjudicated teen-aged mother's child dependent based on petition alleging she violated a safety plan, was unstable, allowed the child to frequent unsafe locations, and left the child with strangers at a homeless shelter. The court set the goal as reunification.

The child welfare agency eventually filed a petition to terminate parental rights, alleging the mother, J.B., abandoned her child by failing to pro-

vide for him financially or emotionally and failing to exercise her parental duties and responsibilities.

The day before the adjudicatory hearing on the termination petition, mother's counsel filed a motion for continuance, which the judge denied as untimely and insufficient. Subsequently, the trial court entered a final judgment terminating both parents' rights. J.B. appealed, raising for the first time 10 claims of ineffective assistance of counsel regarding her counsel's performance in the termination proceedings.

In a case of first impression, the Florida Supreme Court expressly held the right of indigent parents to counsel under the Florida Constitution in termination of parental rights proceedings includes the right to effective assistance of counsel. An indigent parent is entitled to appointed counsel in termination cases in the trial and appellate court, but the parent is not entitled to appointed counsel in any trial court proceeding regarding a motion alleging ineffective assistance of counsel.

The court determined a challenge to counsel's effectiveness in a termination proceeding differs significantly from that in criminal cases. The interest in finality is substantially heightened by the child's interest in reaching permanency and the harm that results when permanency is unduly delayed. The parent must establish that the ineffective representation so prejudiced the outcome of the termination proceeding that but for counsel's deficient representation, the parent's rights would not have been terminated. This requires a showing of prejudice beyond the requirement that confidence in the outcome is undermined.

The Florida Supreme Court established an interim procedure for claims of ineffective assistance of counsel until a special committee creates a permanent process and issues rules. In this case, J.B.'s allegations of ineffective assistance are stated in conclusory fashion, with no showing of how she was prejudiced by counsel's deficient performance, and the court affirmed the termination of her parental rights.

Defense Counsel's Failure to Call Expert Created Probability the Error Affected Trial Outcome

People v. Ackley, 2015 WL 3949236 (Mich.).

Defendant was entitled to a new trial because his counsel failed to investigate adequately or attempt to secure appropriate expert assistance in preparing and presenting his defense, resulting in constitutionally ineffective assistance of counsel.

Defendant was convicted of first-degree felony murder and first-degree child abuse after his live-in girlfriend's three-year-old daughter died while in his care. The defendant stated the child was napping alone in her room before he found her lying unresponsive on the floor next to her bed. The prosecution alleged the defendant killed the child, either by blunt force trauma or nonaccidental shaking. The defendant denied hurting the child, and said she must have died from an accidental fall.

Defendant appealed, claiming he was denied effective assistance of counsel and the trial court granted him

a new trial. The Supreme Court of Michigan found that defense counsel's failure to engage a single expert witness to rebut the prosecution's expert testimony, or to attempt to consult an expert with the scientific training to support the defendant's theory of the case, fell below an objective standard of reasonableness and created a reasonable probability that this error affected the outcome of defendant's trial.

No eyewitness testimony or any other direct evidence was presented, and expert testimony was critical to determining whether the cause of death was intentional or accidental. The prosecution called five medical experts to testify at trial based on a Shaken Baby Syndrome/Abusive Head Trauma theory of the cause of death.

The defense, however, called no expert in support of its theory that the child's injuries resulted from an

accidental short fall, although funding for expert assistance was available. Defense counsel did not attempt to consult an expert on short falls even though one had been recommended to him, and this failure could not be merely attributed to case strategy. There was no explanation for the child's injuries beyond the theories presented by the experts, and the prosecution produced no witnesses that the defendant was ever abusive.

The defendant's own testimony and that of his lay character witnesses was extremely unlikely to counter the formidable expert testimony. The absence of expert assistance for the defendant prevented counsel from testing the soundness of the prosecution's experts' conclusions with his own expert testimony and with effective cross-examination.

STATE CASES**Alabama**

C.P.M. v. Shelby County Dep't of Human Res., 2015 WL 3821906 (Ala. Civ. App.). TERMINATION OF PARENTAL RIGHTS, TIMELINESS

Termination of mother's parental rights was not supported by clear and convincing evidence. Although child had been in child welfare agency custody three times, each removal appeared precautionary and not result of actual threats or allegations of abuse or neglect. Court's order terminating father's parental rights, entered 11 months after trial concluded, was not based on his current circumstances. Court's undue delay in entering judgment past 30-day statutory requirement required reversal.

Higdon v. State, 2015 WL 4162930 (Ala.). ABUSE, VICTIM AGE

In prosecution of 17-year-old defendant for first-degree rape or first-degree sodomy, determination whether sufficient evidence was presented to infer forcible compulsion by an implied threat should be viewed from perspective of child victim. Court may consider difference in age or maturity between defendant and child victim and defendant's position of authority or control over child as summer intern at child care facility from child victim's perspective.

Arizona

Louis C. v. Dep't of Child Safety, 2015 WL 3917382 (Ariz. Ct. App.). DEPENDENCY, JUSTIFICATION

Father claimed his use of force against 12-year-old son during disciplinary action for missed school assignments was justified and not viable basis for adjudication of dependency. Father struck child more than eight times on his back and buttocks, front and back of legs, and on hands, which child raised defensively. Father was not entitled to justification defense when he used inappropriate and unreasonable force in disciplining minor child.

Connecticut

In re Peter L., 2015 WL 3986144 (Conn. App. Ct.). TERMINATION OF PARENTAL RIGHTS, LEGAL REPRESENTATION

After divorce, father who once kidnapped mother at gunpoint made minimal efforts to maintain contact with son. Court granted mother's petition to terminate

father's parental rights, and he appealed. Evidence was sufficient to terminate rights based on abandonment. Father's claim of ineffective assistance of counsel was denied because there was no evidence his counsel's performance fell below standard of reasonable competency or that lack of competency contributed to termination of his rights.

Georgia

In re L.R.M., 2015 WL 4114073 (Ga. Ct. App.). DEPENDENCY, PLACEMENT
Trial court properly denied paternal grandmother's request for custody and visitation with dependent child despite mother's wish that child be placed with her. Conditions causing child welfare agency's involvement with family remained, and mother made little progress with case plan, continued to use drugs, and failed to attend drug treatment. Grandmother knew mother was not allowed unsupervised visitation with child, yet allowed mother such visitation while child was in her care.

In re M.R., 2015 WL 4139289 (Ga. App. Ct.). DEPENDENCY, EVIDENCE
Evidence supported finding that child was dependent. Mother was homeless, and father had only visited child three times in past year and had been unemployed for almost one year at time of hearing. Father relied on his mother for financial support and housing, and was not actively seeking employment. He refused to submit to required home evaluation, which included drug test.

In re R.E., 2015 WL 4174012 (Ga. App. Ct.). TERMINATION OF PARENTAL RIGHTS, EVIDENCE
Evidence of parents' polyamorous sexual practices was insufficient to support termination of mother's parental rights to four children, when no evidence suggested children had been exposed to such practices. Evidence that older children may have been sexually abused was also insufficient absent evidence that mother was responsible for or complicit in abuse. Mother quit full-time job and took two part-time jobs so she could fulfill visitation and counseling duties, and although her financial resources were limited, poverty does not justify termination of parental rights.

Idaho

In re Doe, 2015 WL 3879725 (Idaho).

TERMINATION OF PARENTAL RIGHTS, WILLFULNESS

Evidence supported finding that father neglected child because he failed or was unable to provide child with parental care necessary for her well-being. Father was incarcerated for part of child's life, had long history of drug addiction, repeatedly failed drug treatment, and had not maintained stable housing or employment. He claimed absence from child's life due to incarceration and drug treatment was not willful. Willfulness is not necessary to establish neglect in termination of parental rights case and its absence is not defense to neglect.

Illinois

In re L.B., 2015 WL 3875716 (Ill. App. Ct.). TERMINATION OF PARENTAL RIGHTS, FITNESS

Evidence supported finding that termination of mother's parental rights served best interests of child returned to her biological father as well as best interests of other child placed in foster care. Determination that one child's father was fit parent did not preclude termination of mother's rights based on her unfitness. Mother was unable to provide for children's basic needs, such as physical safety, welfare, shelter, health, and clothing. Child placed with father was identifying with father and stepmother and developing community ties.

Louisiana

State in re J.J.S., 2015 WL 4093925 (La. Ct. App.). TERMINATION OF PARENTAL RIGHTS, BEST INTERESTS

Child was born prematurely and exposed to drugs, but was initially returned to mother and provided services. Mother's parental rights were later terminated but father's were not. On appeal by child welfare agency, court terminated father's rights based on failure to provide significant contributions to child's care and support for six consecutive months. Child has profound interest, often at odds with those of parents, in terminating parental rights that prevent adoption and inhibit establishing secure and stable relationships.

Maine

In re Guardianship of Chamberlain, 2015 WL 3814360 (Maine). GUARDIANSHIP, DUE PROCESS

Children were in care of maternal

grandmother before and after death of their mother. Father appealed grandmother's appointment as guardian because statutory provision relied on lower standard of preponderance of evidence. By allowing lower standard, statute failed to adequately protect father's procedural due process rights. Order appointing guardian under statute can be entered only after court has made findings applying clear and convincing standard of proof.

Massachusetts

In re Adoption of Odetta, 2015 WL 3904599 (Mass. App. Ct.).
ADOPTION, RELIGION

In termination of parental rights proceeding against father convicted of killing child's mother, court properly found adoption by maternal aunt and uncle, who were not Muslim, rather than paternal uncle, who was Muslim, to be in child's best interests. Although child had been given Muslim name at birth and was formally recognized into Muslim faith, she was thriving under care of maternal aunt and uncle and all her essential needs were met. Paternal uncle was allowed visitation to continue child's exposure to Muslim faith and culture.

New Jersey

In re N.B., 2015 WL 4078555 (N.J.).
ABUSE, SEX OFFENSE REGISTRY
Juvenile offender, who pleaded guilty to sexual contact with child under age 13 to whom he was related, committed sole sex offense within scope of household/incest exception to requirement that he be included in internet sex offender registry. Juvenile committed offense against younger half-sister when they lived in same household, posed moderate risk of re-offense, and otherwise met requirements of exception.

New Mexico

In re Casey J., 2015 WL 3879548 (N.M. App. Ct.). TERMINATION OF PARENTAL RIGHTS, ICWA
In termination of parental rights proceeding involving Indian father and children, trial court had good cause to deviate from placement preferences under Indian Child Welfare Act (ICWA). Father appealed termination not to restore his rights but to require child welfare agency to place children with specific relative. ICWA qualified expert witness (QEW) stated she knew children's current placements did

not meet ICWA placement preferences, but ICWA-compliant placement had not yet been possible due to unwillingness or unavailability of relatives.

New York

In re Maximus K.B., 2015 WL 3756936 (N.Y. App. Div.). TERMINATION OF PARENTAL RIGHTS, SUSPENDED JUDGMENT
Preponderance of evidence supported determination that it was in best interests of children to terminate father's parental rights and free them for adoption by their foster parents rather than issue suspended judgment. Father had permanently neglected children by failing to maintain contact with them or plan for their return during almost two-year period following their placement into foster care.

In re Tayleese M.C., 2014 WL 5350447 (N.Y. App. Div.). DEPENDENCY, CORPORAL PUNISHMENT
Preponderance of evidence supported court's determination that mother neglected child by using excessive corporal punishment and committing acts of domestic violence against father while in child's presence. Her actions impaired, or created imminent danger of impairing, child's physical, mental, or emotional condition.

Oklahoma

Jensen v. Poindexter, 2015 WL 3886092 (Okla.). CUSTODY, REPRESENTATION
Attorney for father in proceeding to establish paternity and determine custody suspected child was being abused by mother, the legal parent, and her husband but failed to report allegations as required by statute. Attorney interviewed unrepresented child about abuse allegations without legal parent's consent. Court sustained mother's motion to disqualify father's attorney for making himself necessary witness to child's credibility and harming integrity of judicial process.

Oregon

Dep't of Human Servs. v. M.E.M., 2015 WL 3772675 (Or. Ct. App.). DEPENDENCY, DEFAULT
Mother was entitled to order setting aside default judgment that took jurisdiction over her child. Trial court entered default judgment as punitive measure for mother's failure to appear at status hearing in person, even though mother appeared via phone and counsel for mother was present.

Mother appeared in person at several prior hearings but mistook date of hearing in question and, although not physically present, participated by phone.

Rhode Island

In re Jah-nell B., 2015 WL 3771120 (R.I.). TERMINATION OF PARENTAL RIGHTS, WILLFUL NEGLECT
Child was brought into care based on mother's unstable behavior while father was incarcerated. Evidence was sufficient to support finding that father was unfit by reason of his willful neglect to provide proper care and maintenance of his son for at least one year while he was financially able to do so. Father had been repeatedly incarcerated and child never lived with him. He did not offer future plans should he be reunified with child.

Washington

In re D.L.B., 2015 WL 4205141 (Wash. App. Ct.). TERMINATION OF PARENTAL RIGHTS, INCARCERATION
Amended statute that listed three factors trial court must consider before terminating parental rights of incarcerated parent applied only when parent was incarcerated at time of termination hearing. Although mother was incarcerated during part of child's dependency, she was not incarcerated at time of termination proceeding. Child welfare agency made reasonable efforts to provide mother with all available services before and during her incarceration but she failed to follow through.

FEDERAL CASES

9th Circuit

Kirkpatrick v. County of Washoe, 2015 WL 4154039 (9th Cir.). DEPENDENCY, IMMUNITY
Father brought action against child welfare agency and three social workers under § 1983 alleging violations of Fourth and Fourteenth Amendment rights after social workers placed two-day-old child born to meth-addicted mother in foster care without first obtaining warrant. Agency's taking custody of child absent exigent circumstances and without judicial authorization did not violate father's substantive due process rights when at time state took custody of child, father had not yet established paternity.

(Cont'd from front page)

across these seven areas. The task force formed three workgroups focused on data and information sharing, school stability, and training and resource development.

The first phase of Texas Blueprint implementation ended in December 2014. According to the Texas Blueprint Implementation Task Force Final Report, released February 2015, 82% of the 130 recommendations are complete or significantly underway. The progress is impressive and shows

In a state as big and diverse as Texas, marshaling the people and resources to help students in foster care achieve better school outcomes is a monumental task.

the state's ownership of the issue and commitment of various systems to change and work together. In a state as big and diverse as Texas, marshaling the people and resources to help students in foster care achieve better school outcomes is a monumental task. The education committee and the implementation task force created a collaborative, multi-system framework to help encourage better educational outcomes for students in foster care in Texas.

Road to Reform

The implementation task force set about making these changes happen using a broad approach in several areas: legislation, training, new informational tools, improved data collection and exchange, and commitment of court and agency resources. While system reform will look different in every state, the Texas work offers ideas for other states working to improve educational outcomes for children and youth in foster care.

Legislation

Since the release of the Texas Blueprint, two legislative sessions, in 2013 and 2015, led to the passage of a number of bills which address educa-

tional needs of students in foster care:

- The Texas Education Agency was required to include a code in its data system identifying children in foster care. The change allows better tracking of students in foster care and data collection related to their school experiences and outcomes. Texas joins California as two of the first states with this requirement.
- Courts must consider educational needs and goals for children in foster care at permanency and place-

ment review hearings.

- Children's attorneys and guardians ad litem must know their clients' school needs and goals so they can advocate in court.
- New requirements clarify roles of the child's "education decision maker" (person authorized to make education decisions on behalf of a child in foster care) and require child welfare agencies and schools to identify and involve education decision makers in school decisions.
- Common school-related barriers for children in foster care were addressed through new requirements that:
 - streamline transfer of education records when students' schools change,
 - accommodate school absences due to a student's court involvement, and
 - provide supports to promote high school graduation.
- Expanded roles of recently created school-based foster care liaisons to include open-enrollment charter schools and require identification of the liaison to the state education

agency.

- A child in foster care has a right to remain in the same school regardless of whether the child enrolled in the school before or after entering foster care and the child is entitled to remain in that school through the highest grade offered even if the child exits foster care while enrolled.
- Texas' education agency, higher education coordinating board, and public institutions of higher education are each required to designate a liaison to support the success of students in and formerly in foster care.
- Texas higher education and child welfare agencies must collaborate to allow for improved data collection and information sharing.

Training

To create awareness of the Texas Blueprint's recommendations statewide, an Education Summit—co-hosted by the Texas Supreme Court, the Texas Department of Family and Protective Services, and the Texas Education Agency—brought over 200 court, child welfare, and education professionals together in February 2013. In addition to spreading awareness of the educational challenges facing children in foster care, the Education Summit strengthened state and local collaboration around educating students in care.

The summit was the beginning of a statewide focus on training. It led to multidisciplinary training on many education issues, from general overviews of school issues for students in care to more complex guidance on attorney advocacy strategies, roles of education decision makers, and judicial efforts to improve education outcomes, among others. These trainings targeted attorneys, judges, children's advocates, educators, child welfare staff, school liaisons, service providers, surrogate parents, and other stakeholders who work with children in care and whose buy-in and support would help realize the Texas Blueprint's goals.

Information Tools

Giving frontline professionals the tools to guide them through the child welfare and education systems and ensure accurate and consistent information across disciplines took shape through products geared to various stakeholders. Examples include:

Judges

- **Education Chapter in the Texas Child Protection Law Bench Book** (http://benchbook.texas-childrenscommission.gov/library_item/gov.texaschildrenscommission.benchbook/139)—A chapter in the Texas Child Protection Bench Book explains common school challenges for children in care in Texas and highlights federal and state legislation to improve school outcomes for children in care. It also gives judges a list of resources to guide their oversight of education-related issues in child welfare cases.
- **Judge's Education Checklist** (<http://texaschildrenscommission.gov/media/17149/Education%20Judicial%20Checklist.pdf>)—A one-page checklist guides judges through seven education issues for discussion during court hearings: school readiness, school stability, education decision makers, school enrollment, school placement/school success, postsecondary education, and special education.

Educators

- **Foster Care and Student Success Resource Guide** (<http://tea.texas.gov/FosterCareStudentSuccess/>)—A comprehensive guide explains how school staff can help children in care succeed in school. The guide shows the state education agency's commitment to ensuring school staff understand the unique experiences of children in care, the need to work with courts and child welfare agencies around education, and the steps they can take to promote positive school experiences for children in care.

Implementing the Texas Blueprint: Keys to Success

- ✓ Collaboration across court, education, and child welfare systems
- ✓ Leadership invested in issues and work
- ✓ Task force and committed staff to guide and keep momentum, through the leadership of the Children's Commission
- ✓ Workgroups to divide and conquer, with task force oversight
- ✓ Quarterly in-person meetings to inform decision makers, resolve roadblocks, and share accomplishments

Child welfare professionals

- **Education resources**—The Texas Department of Family Protective Services added an education page on its intranet for caseworkers and staff. It also prepared newsletters (<http://education.texaschildrenscommission.gov/resources.aspx>) outlining caregivers' roles in getting children in their care ready for school with special attention to addressing school records transfer and enrollment for children in care who change schools.

Advocates

- **Education Advocacy Toolkit** (<http://texascasa.org/learning-center/resources/educational-advocacy-toolkit/>)—Texas Court Appointed Special Advocates created the Educational Advocacy Toolkit, the first in a series of toolkits aimed at preparing advocates for the unique challenges facing children and youth in foster care. The toolkit provides guidance and tips on identifying and advocating for a child's educational needs.

Data Collection/Exchange

A cornerstone to Texas's education efforts is a new approach to collecting and sharing data between the state education and child welfare agencies. A much higher level of detail about educational outcomes of students in care is being gathered. This allows for richer baseline data and a better picture of how students fare educationally compared to their peers.

Examples of the kinds of detail

now being collected are:

- Numbers of children in care by grade
- Gender and ethnicity of students in care
- How many students in care receive special education and their primary disabilities
- Reasons why students in care leave school compared to their peers
- Percentage of students in care who follow the recommended graduation program
- Disciplinary outcomes of children in care (suspensions, expulsions, truancy)
- Breakdown of school moves by living arrangement (foster home, kinship placement, group home, residential treatment center, birth parents)

Information gathered from this data can inform schools and child welfare agencies about how to distribute resources and target interventions. Moving forward, the data also offers a baseline to measure progress.

Agency Resources

The people working behind the scenes to implement the recommendations in the Texas Blueprint are key to its success. Several agencies dedicated staff to work on implementation. For example:

- The Children's Commission hired a full-time attorney to work on improving school outcomes for

Resources

Texas Children's Commission

<http://texaschildrenscommission.gov/>

The Children's Commission education website includes links to the Texas Blueprint and the Implementation Task Force Final Report, a report highlighting the progress over the first two years implementing the Texas Blueprint recommendations.

Georgetown Conference on Improving Outcomes of Students in Foster Care

<http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/>

On May 27, 2015, Georgetown's Center on Poverty hosted a national conference on Improving the Outcomes of Students in Foster Care with partners National Center for Youth Law, the ABA Legal Center for Foster Care and Education, and the Children's Defense Fund. View a video of the conference featuring Rob Hofmann, Judge of the 452nd Judicial District Court of Texas and Chair of the Task Force. Judge Hofmann spoke about implementing the Texas Blueprint.

Legal Center for Foster Care and Education

<http://www.fostercareandeducation.org/>

The ABA Legal Center is a national organization working to improve school outcomes for children in foster care nationwide. The ABA Legal Center produced the Blueprint for Change, outlining eight reform areas to improve education for children in care. The Blueprint serves as a framework for states, such as Texas, to guide education reforms. The ABA Legal Center provides technical assistance and training to states and localities on these reforms, and shares resources on a variety of topics related to education and children and care.

students in foster care and implement the Texas Blueprint. The Assistant Director of the Children's Commission continues to dedicate significant time to education issues.

- The Texas Education Agency created a Foster Care Education and Policy Coordinator position to raise awareness among educators of the needs and challenges of students in care.
- The Department of Family Protective Services has 12 regional education specialists to support the education needs of children throughout the state and a division administrator for permanency, senior policy attorney, research and analytics team lead, and state education specialist each contribute

significant time to Texas Blueprint implementation initiatives.

- In addition, approximately 50 stakeholders throughout the state participated regularly in Texas Blueprint implementation during the past two years.
Agencies also changed policies and practices and incorporated better information and guidance for key audiences. For example:

The state child welfare agency:

- Changed a court report template used by caseworkers to require more detail about the education status of children in care;
- Added a new requirement to its policy and contracts with foster caregivers to promote faster school

record transfers when students change schools;

- Revised its education policy; and
- Created a new form to share information about the child's education decision maker and surrogate parent with courts and school staff.

The state education agency:

- Changed its student attendance policy to allow excused absences for students in care for court-ordered activities in child welfare cases;
- Added a lesson about students in foster care in the state online college and career readiness support center; and
- Included information on students in care in its data standards, student attendance handbook, agency correspondence, and its website.

Texas CASA:

- Held webinars and developed an education advocacy toolkit for CASA volunteers to prepare them to interact with schools and advocate for clients.

Next Steps

The first phase of the task force's work represents the less heralded "middle" of the project that leads to positive outcomes over time. As the effort moves to phase two of implementation, which includes creating a standing Foster Care and Education Committee of the Children's Commission, the infrastructure, personnel, relationships, and hard work during phase one offer a solid foundation for future work. Baseline data gathered through a highly sophisticated data collection system is already resulting in better tracking of students in foster care and their experiences. This data will help professionals across courts, child welfare, and education understand and better meet the needs of students in care.

Members of the statewide collaboration will work to implement the

remaining recommendations and keep momentum around those already completed or underway. It will also work to address recommended “next steps” drawn from its phase one efforts, including:

- **Broaden efforts to additional issues.** As implementation of the Texas Blueprint enters phase two, the work will continue in the priority areas identified in phase one. The task force also plans to expand its focus to areas that require deeper attention. These may include: higher education, school discipline, early childhood education, and special education.
- **Go local.** Implementation focused on the state-level during phase one. A goal in phase two is translating collaboration from the state-level to the local level, a challenge because of the size of Texas and its over 1,200 school districts. Linking the statewide effort to local collaborations and initiatives will be a goal for the work going forward.
- **Continue data and information sharing and analysis.** With quality data and increased sharing across agencies, the Data Workgroup now has more meaningful baseline data. As richer data continues to be collected, efforts can turn to analyzing data and translating it so courts, child welfare agencies, and schools can better meet needs of students in care.

Strong judicial leadership, cross-agency collaboration, and a commitment to working through challenges underlie the successful efforts to implement the Texas Blueprint.

Claire Chiamulera, legal editor at the ABA Center on Children and the Law, is *CLP's* editor.

SPOTLIGHT: IMMIGRATION

California’s Reunifying Immigrant Families Act: Placement with Undocumented Relatives *by the ABA Child Welfare and Immigration Project*

The nation’s first law addressing the reunification barriers faced by many immigrant families in the child welfare system is California’s Reuniting Immigrant Families Act (“SB 1064” or “the Act”), enacted September 30, 2012. This column highlights this law’s provisions. This summary shares information on the provision on placing children with undocumented relatives, and how child welfare agencies and courts must treat those individuals.

Placement of Children

The Act is clear that the immigration status alone of a parent or relative cannot be a barrier to placement of the child with that person, including:

- Release of the child to a parent, guardian, or responsible adult after the state takes temporary custody;¹
- Placement or custody with a non-custodial parent for a child removed in a dependency case;² and
- Placement in the care of a responsible relative for a child removed from the custody of his or her parents in a dependency case.³

Additionally, a child removed from the custody of his or her parents may be placed with a relative outside the United States if the court finds, upon clear and convincing evidence, that placement to be in the best interest of the child.⁴

Working with Undocumented Relatives

SB 1064 recognizes the great value to dependent children of maintaining children’s ties to their relatives, and includes provisions to facilitate the involvement of immigrant relatives.

- A relative’s request for the child to be placed with him or her is still due preferential consideration by the child welfare agency, regardless of the relative’s immigration status.
- The child welfare agency may use the relative’s foreign passport or consulate ID card as a valid form

of identification to initiate the criminal records check and fingerprint clearance check required for placement determinations.⁵

- The child welfare agency must give a relative caregiver information about the permanency options of guardianship and adoption, regardless of the caregiver’s immigration status. The information must be provided before legal guardianship is established or adoption is pursued, and must include the long-term benefits and consequences of each action.⁶

Other Custody Contexts

The Act’s prohibition against making caretaking determinations based solely on immigration status extends to state family and probate courts.

- In private custody cases, a person’s immigration status does not disqualify a person from receiving custody if the custody arrangement is otherwise in the child’s best interest.⁷
- A relative may be considered for guardianship of a child in probate court regardless of the relative’s immigration status.⁸

Endnotes

1. Cal. Welf. & Inst. §§ 309(a).
2. Cal. Welf. & Inst. § 361.2(e)(1).
3. Cal. Welf. & Inst. § 361.2(e)(2).
4. Cal. Welf. & Inst. § 361.2(f). This statutory amendment was added by AB 2209, Section 1, enacted July 17, 2012.
5. Cal. Welf. & Inst. §§ 309(d)(1), 361.4(b)(2).
6. Cal. Welf. & Inst. §§ 361.5(g)(2)(B), 366.25(b)(2)(B).
7. Cal. Fam. § 3040(b). 8 Cal. Prob. § 1510(a).
8. Cal. Prob. § 1510(a).

What You Should Know about the Justice for Victims of Trafficking Act of 2015

by Andrew Rhoden

Child trafficking is receiving significant attention in the United States and globally. The Global Freedom Center estimates that at least 26% of the 27 million victims of human trafficking are children under age 18. On May 29, 2015, President Barack Obama signed the Justice for Victims of Trafficking Act (JVTA) of 2015 (P.L. No 114-22). The Act is effective through September 30, 2019.

Q&A What is the purpose of the JVTA?

The JVTA provides restitution and justice for victims of human trafficking and child pornography by imposing fines and penalties against offenders. The money paid through fines will be placed into the Domestic Trafficking Victims Fund for grants to enhance programs that assist trafficking victims and provide services for victims of child pornography. The Act also provides law enforcement across the country with resources to establish or enhance task forces against human trafficking, fund prosecution, and create trafficking victim services. Moreover, producers of child pornography are now classified as human traffickers under the Act.

Q&A Which offenses are punishable under the JVTA?

- Debt servitude, slavery, and trafficking of people
- Sexual abuse
- Sexual exploitation and other abuse of children
- Production of child pornography
- Transportation for illegal sexual activity and related crimes: Under the JVTA, anyone who knowingly transports an individual with the intent to engage in prostitution or in any criminal sexual activity can

be charged with an offense. Any attempts to do these actions will result in a fine or imprisonment for no more than 10 years or both.

Q&A Why was child pornography included in the JVTA?

Producing and distributing child pornography continues to be a threat to children in the United States, largely due to the international and domestic criminal demand for this illegal material and the ease of distribution through the internet. As a result, criminal networks have a financial incentive to participate in such activities.

Q&A How much will offenders be fined?

The court will assess a fine of \$5,000 on any person or entity convicted of a trafficking offense. The fine is in addition to any restitution ordered by the court and any compensation owed to the victim resulting from the criminal conviction, which will be based on a special assessment by the court. The fine must be paid once the offender has satisfied all outstanding court-ordered fines, restitution, and any other compensation owed to victims.

Q&A How will the funds help deter child trafficking?

- **Anti-Trafficking Law**

Enforcement Units: Funding will help create or enhance anti-trafficking law enforcement units throughout the country to investigate child trafficking offenses and identify and provide services to victims.

- **Witness Protection:** Witnesses in child trafficking cases will be placed into programs that ensure safety, assistance, and relocation to promote cooperation with law enforcement investigations.
- **Locating Homeless and Run-away Youth:** Funding will help defray law enforcement expenses, such as salaries and associated costs to locate homeless and run-away youth.
- **Treatment Programs:** Funds will support treatment programs for identified victims of child trafficking such as:
 - Life Skills Training
 - Outpatient Treatment
 - Education
 - Family Support Services
 - Housing Placement
 - Vocational Training

Q&A How will the JVTA ensure a better response for victims of child sex trafficking?

Each state must certify that its child protection agency has in place a state plan to:

1. Identify and report children known or suspected to be victims of sex trafficking;
2. Establish training for child protection workers to identify, assess, and provide comprehensive services for victims of child trafficking;
3. Identify child victims of sex

trafficking as victims of child abuse and neglect, or sexual abuse.

In this way, the JVTAs promote the treatment of children who have been trafficked as victims rather than offenders and encourage states to approach the issue of child sex trafficking differently.

Q&A Who is eligible for a grant under the JVTAs?

An “eligible entity” is a state or local government agency that meets the following criteria:

1. Has significant criminal activity involving child trafficking;
2. Demonstrates cooperation with other law enforcement agencies;
3. Has a plan to combat child trafficking; and
4. Will not require a victim of child trafficking to collaborate with law enforcement to have access to services or shelter provided under the Act.

Q&A What is the grant application process?

An eligible entity must apply to the U.S. Attorney General to be considered for the grants. Applications must include the following:

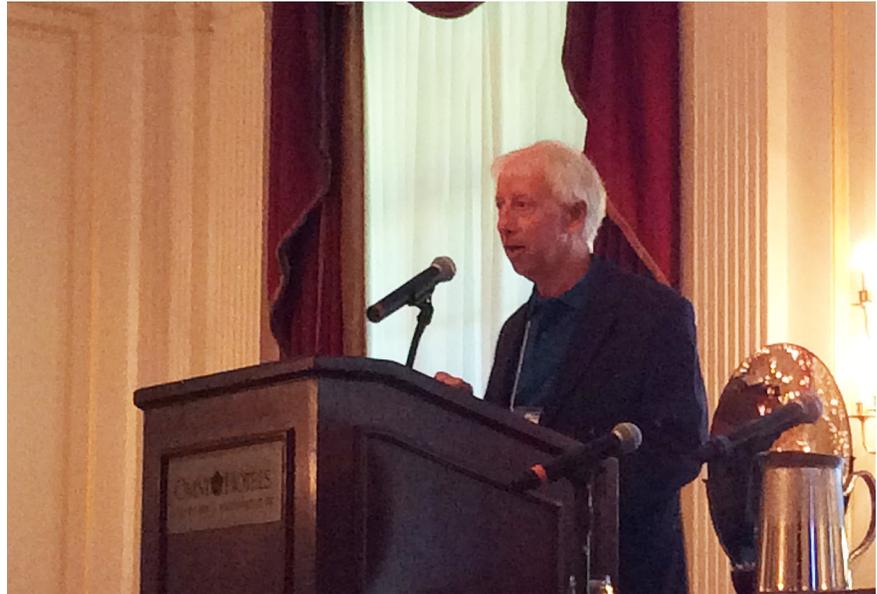
1. Activities for which assistance is sought;
2. A detailed plan using funds awarded under the grant;
3. Any additional information the attorney general deems necessary to ensure compliance; and
4. Disclosure of any other grant funding from the Department of Justice or from any other federal department or agency.

Andrew Rhoden is a law student at American University Washington College of Law. He is a legal intern for the ABA Center on Children and the Law, Lt. Governor of Diversity for the ABA Law Student Division’s 5th Circuit, and a liaison for the ABA Individual Rights and Responsibilities section.

CELEBRATIONS

Robert Schwartz Receives Mark Hardin Award

by Claire Chiamulera



Robert Schwartz, JD, received the Mark Hardin Award for Child Welfare Legal Scholarship and Systems Change at the 16th National Conference on Children and the Law in Washington, DC on July 17, 2015. The award kicked off the two-day biannual conference hosted by the ABA Center on Children and the Law.

Mimi Laver, director of legal education at the ABA Center on Children and the Law, described the award and its significance. “The award honors someone in the child law field who represents legal scholarship but also works on systems change—someone who’s written, who’s taught, who’s shared, and who has worked in child welfare and has been influential in changing the way we do our work,” said Laver. These traits embodied attorney Mark Hardin’s career at the Center on Children and the Law.

In 1975, Schwartz was one of the founders of the Juvenile Law Center (JLC) in Philadelphia, the oldest nonprofit public interest law firm for children in the country. He became JLC’s executive

director in 1982. Throughout his career, Schwartz has written many scholarly articles, trained and talked to people in over 30 states and many countries. He has supported the ABA Center on Children and the Law over the years and has been active in the greater ABA, serving for several years on the ABA Commission on Youth at Risk.

Laver, who introduced Schwartz and gave him the award, noted that he was her personal mentor. When she graduated law school in Philadelphia, Schwartz took her under his wing and introduced her to many influential child advocates in the city, deepening her commitment to child advocacy as a career.

“I am grateful to receive the Mark Hardin award,” said Schwartz. He described Hardin as “an oracle in the field” and noted that his work and the Juvenile Law Center was “shaped by Mark’s insights and prodigious output.” “Today’s award is a tribute I will treasure forever,” he said.

Claire Chiamulera, CLP editor.

Understanding the Adolescent Brain and Legal Culpability

by Morgan Tyler

Only 11 years old, Xavier McElrath-Bey joined a gang on the south side of Chicago. At age 13, Xavier was sentenced to 15 years in prison for a gang murder. He was released from jail at age 28 with a college degree and a desire to make a difference in the world. Xavier now advocates for youth rights and fair sentencing of juveniles for the Campaign for Fair Sentencing of Youth. Xavier has dedicated his life to preventing juveniles from traveling a similar path.

Xavier joined an expert panel at the ABA webinar, “Rethinking Juvenile Justice: Adolescent Brain Science and Legal Culpability,” on June 10, 2015. Experts highlighted how juveniles’ brains differ from adults’ and how those differences should be weighed when deciding their legal culpability for committing crimes. Experts included:

- Jennifer Woolard, associate professor of psychology at Georgetown University and co-director of the graduate program’s Human Development and Public Policy track;
- Robert Kinscherff, senior administrator and director of the concentration in Forensic Psychology in the doctoral clinical psychology program at William James College; and
- Marsha Levick, co-founder, deputy director and chief counsel of the Juvenile Law Center, America’s oldest public interest law firm for children.

How the Juvenile Brain Functions

While juveniles can be legally tried as adults, their brains are extremely different, said Kinscherff. One of the key differences between adult and adolescent brains, highlighted by Kinscherff,

is the lack of prefrontal cortex development in young brains. The prefrontal cortex controls humans’ ability to:

- delay and reflect (the lack of development limits the amount of time juveniles will think before they act);
- take all options into account (juveniles are extremely impulsive);
- contemplate risks and consequences (sensation seeking is at an all-time high at mid-adolescence);
- have social intelligence (juveniles have difficulty being empathetic and are susceptible to peer pressure).

Two other brain systems that are key for understanding the adolescent brain include the social-emotional system and the cognitive control system.

The **social-emotional system** includes the limbic midbrain system and the orbital frontal areas of the frontal lobe. It develops faster than the cognitive control system. The social-emotional system controls the emotional state of the brain. With the rapid development of this system teens have:

- increased need for a sense of rewards,
- increased sensation seeking,
- more reactive emotional responses to both positive and negative emotions,

- increased attentiveness to social cues.

The **cognitive control system** includes the dorsolateral area of the frontal lobe. This system provides a check to the social-emotional system, but takes longer to develop. As the cognitive control system matures through adolescence it provides:

- increased impulse control,
- better emotional regulation,
- more foresight and detection of options,
- better planning and anticipation of outcomes,
- greater resistance to stress and peer pressure.

With differences in development, the brain is essentially being given the “gas” of the social-emotional system without having mature “brakes” of the cognitive control system. This leads to these trends in the juvenile brain:

- Impulsivity declines with age.
- Sensation seeking declines with age.
- Susceptibility to peer influence declines with age.
- Time spent problem solving increases with age.
- Gratification delays increase with age.

Applying Neuroscience to Juvenile Culpability

Woolard highlighted how adolescent defendants may have less criminal culpability than their adult counterparts based on the latest neuroscience. The legal process is confusing no matter the age of the defendant. When polled, the percentage of people who thought admitting to a crime when questioned by the police was the right response

decreased from nearly 60% at age range 11-13 to less than 20% at age range 18-24. This data shows that a mere difference of seven years has a huge effect on the legal responses of a defendant. Woolard outlined three ways that including more information about adolescent brain development might affect legal practice when representing juveniles charged with committing crimes:

- Change assumptions about juveniles; they are different than adults and their behavior needs to be judged in the context of their development.
- Offer new information and findings to be considered in forensic evaluations, social histories, and presentence reports.
- Aid in explaining interactions and relationships between adolescents and other key players in the court system, probation offices, judges, etc. in order to help the defendant understand the legal process.

Court Application

Levick described four cases in which the United States Supreme Court has considered neuroscience research when sentencing youth who commit crimes:

- *Roper v. Simmons*, 543 U.S. 551, decided in 2005, dealt with a 17-year-old defendant sentenced to the death penalty in Missouri. The Court ruled that imposing the death penalty on juveniles who commit crimes when they are under age 18 violates the Eighth Amendment's prohibition against cruel and unusual punishment. The decision effectively banned the juvenile death penalty nationwide. The Court considered differences between juveniles and adults, finding that juveniles have less impulse control, increased susceptibility to peer influence, and lack of good reasoning making them less culpable than adults.

- *Graham v. Florida*, 560 U.S. 48, came before the Court in 2010. Sixteen-year-old Graham was convicted of attempted armed robbery and armed burglary. After his release, he violated his probation and was then sentenced to life without parole. The Court ruled that sentencing Graham to life without parole for committing a nonhomicide offense constituted cruel and unusual punishment for juveniles. The science supporting

13-year-old J.D.B was questioned by police and school administrators in his middle school about recent robberies. He was not read his Miranda rights or told that he was free to leave and eventually confessed to the robberies. The Court ruled that age is relevant in determining police custody for Miranda purposes and that children have a different perception of the legal system. Because they are easily influenced by their environ-

Greater awareness of the differences in adolescent brain development and how they affect juvenile's behaviors is increasingly being recognized.

this ruling builds off *Roper*, noting huge fundamental brain differences between adults and children. Juveniles' actions are less likely to demonstrate negative moral character, unlike adults, creating less possibility of repeated offenses and better rehabilitation outcomes.

- In 2012, the Court ruled in *Miller v. Alabama*, 132 S.Ct. 2455, that juveniles cannot be subjected to mandatory life without parole. Fifteen-year-old Miller committed a homicide and was given a life sentence without parole. The Court decided sentencing should be conducted on a case-by-case basis, taking factors such as the juvenile's developmental stage and education into account. Three scientific facts supported the Court's reasoning: children lack maturity, which can be seen in their increased impulsivity and risk-taking; children are more vulnerable to negative influences from their environment or peers; and children's moral character is not fully developed, proving that their actions are not necessarily "evidence of irrebuttable depravity." *Roper* 543 U.S., 569.
- In *J.D.B v. North Carolina*, 131 S.Ct. 2394, decided in 2011,

ments and peers, children do not understand the legal system and police custody in the same way that an adult would.

These rulings are changing the landscape for juvenile defendants throughout the country. Greater awareness of the differences in adolescent brain development and how they affect juvenile's behaviors is increasingly being recognized by the Court, helping to ensure children are adjudicated more fairly.

Conclusion

The convergence of adolescent brain science and the legal system is essential for fair and accurate trials and sentencing of juveniles. Juveniles' developmental context plays a huge role in their legal culpability and should be considered in court. The recent Supreme Court rulings have paved the way for using brain science in court in juvenile cases.

Morgan Tyler is student at the College of William & Mary and is participating in the D.C. Summer Leadership & Community Engagement Institute as an intern at the ABA Center on Children and the Law.

Umbilical Cord Now Key to Assessing Drug Exposure in Newborns

Every baby born arrives with an umbilical cord in tow. For babies born addicted to drugs, that umbilical cord is now a key connection—a hard to hide clue—for identifying what drugs are coursing through a newborn’s veins. The drug(s) detected will help physicians determine the best treatment and what withdrawal symptoms to expect.

“We may already know the mom has an opioid dependency at delivery because most women disclose this to avoid risking withdrawal, but we also need to know what else is she taking that might affect the baby’s central nervous system,” says Karen Buchi, MD, president, Primary Children’s Hospital Medical Staff and chief of the Division of General Pediatrics at the University of Utah.

Buchi points out these babies suffer from “drug exposure” as opposed to “addiction,” which is the behavior around drug dependency exhibited by the mother. As the baby is delivered—when a mother is suspected of being high risk for drug use—a member of the delivery team snips off six inches of the umbilical cord and sends it to ARUP Laboratories. Because

second most common drug class is opioids (e.g., heroin, prescription pain killers). Often there is a mix of illicit drugs and prescription drugs. According to a Utah Health Status Update released in July 2013, between 2009 and 2012, 1,476 Utah mothers were reported to have used illicit drugs. As a result, 29.5 percent of babies born to these mothers tested positive for illicit drugs at birth—approximately 109 babies per year. “Utah is right up there with the rest of the nation in the rate of drug exposure among newborns,” adds Buchi, citing that the University of Utah Hospital averages about one opioid-exposed newborn a month.

Each month, thousands of cord and meconium specimens arrive at ARUP from around the country. In Utah, the majority of cord specimens come from the Intermountain Medical Center while the University of Utah hospital still primarily sends ARUP meconium specimens. Though it varies based on the hospital, generally no consent from the mother is necessary for testing the infant if there is a medical reason to believe the child has been drug exposed in utero. Turning around results fast is crucial, because neonatal

drugs in the baby’s system and determine the best treatment.

“Sometimes babies are already in the throes of withdrawal symptoms but physicians can’t determine what drugs they are dealing with until test results are available,” says Gwen McMillin, PhD, DABCC, a medical director of the Clinical Toxicology Laboratories at ARUP.

The Rough Road of Withdrawals for Newborns

Known as neonatal abstinence syndrome, once the baby is born, and is no longer receiving drugs through the placenta from the mother, withdrawal symptoms begin. They can appear from one to 10 days after birth, ranging from diarrhea, excessive or high-pitched crying, fever, seizures, hypersensitivity to light, touch, and sound, rapid breathing, trembling, hyperactive reflexes, to name a few. Some infants will carry the effects of their mothers’ neonatal drug abuse for life, suffering long-term complications including brain damage and learning disabilities.

Like an addict that immediately stops drug intake, a baby experiences the same physiological impact on the body and brain. In the case of a baby being exposed to opiates, if the opiate is not replaced, the baby can die. Affected newborns will spend their first months in a newborn intensive care unit; it can take more than a year for the effects of some drugs to wear off. Evidence reveals that these babies are more susceptible to drug addiction issues later.

“Ten years ago we were seeing significant prenatal methamphetamine use, now it’s opioids; the difference is the babies exposed to opioids have longer lengths of stay in the hospital because they go through physiological withdrawal,” explains Buchi, who has helped set up a care process for the management of opioid-exposed

“This is also about getting mothers the care and support they need through rehab and social services so they can take care of their children.”

umbilical cord tissue can be sent for testing immediately after birth, this specimen type offers logistical advantages over meconium, the traditional specimen for detecting drug-exposed newborns.

As the second medical laboratory in the country to start offering cord testing (since August 2012), ARUP experts immediately begin analysis looking for more than 40 specific drugs and drug metabolites. The most common drug ARUP identifies is marijuana; the

specialists need to identify and treat the symptoms to mitigate suffering and even possible death from withdrawals, before the typical 48-hour window closes when healthy mothers and their infants leave the hospital. While cord tissue testing can take up to 72 hours, for babies who exhibit signs of withdrawals or have mothers considered high-risk for drug use, the baby is frequently monitored longer. In this period, the clinician can attain more information about the kinds of

newborns. “The symptoms of neonatal abstinence syndrome depend on the type of drug the mother used, how long it takes for the body to metabolize and eliminate the drug, how much of the drug she was taking and for how long,” explains McMillin, adding that whether the baby was born full-term or premature can vary.

Whether a baby is addicted to stimulants or “downers” will result in different withdrawal symptoms and require different treatment. The American Medical Association estimated that in the United States approximately one infant, suffering from neonatal abstinence syndrome, was born every hour in 2009. “The work we’re doing here is about the human condition; it is about the safety of children—as the risk of child abuse and neglect increas-

es in cases of maternal drug abuse,” emphasizes McMillin, who has visited some of the babies in NICU, as well as testified in court when called to present evidence.

“This is also about getting mothers the care and support they need through rehab and social services so they can take care of their children.” Why is the cord the best evidence of drug use? Traditionally meconium (an infant’s first stool) has been tested for detecting the presence of drugs, forming in the second trimester, and absorbing over time. However, waiting for this first stool to pass may waste valuable time, or the mother may try to dispose of it secretly, or it may pass during a difficult delivery, as happens in 10 percent of cases. The samples may be too small or sent too late for

viable testing. Hair was considered as a possible specimen, but many babies don’t have enough hair to provide a sizable enough sample.

“About six years ago, we started looking for alternative specimens,” recalls McMillin, considering the placenta, the vernix caseosa (a white, creamy, film covering the baby’s skin during the last trimester), and the umbilical cord. The cord became the specimen of choice because of its practical size, easy transportability, and accessibility. “Every child comes into this world with one and it can be sent the minute the baby is born,” points out McMillin. What makes the turn-around time quicker for the cord is there is no waiting to collect the specimen.

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Poverty’s Most Insidious Damage Is to a Child’s Brain

An alarming 22 percent of U.S. children live in poverty, which can have long-lasting negative consequences on brain development, emotional health, and academic achievement. A new study, published July 20 in *JAMA Pediatrics*, provides even more compelling evidence that growing up in poverty has detrimental effects on the brain.

In an accompanying editorial, child psychiatrist Joan L. Luby, MD, at Washington University School of Medicine in St. Louis, writes that “early childhood interventions to support a nurturing environment for these children must now become our top public health priority for the good of all.”

In her own research on young children living in poverty, Luby and her colleagues have identified changes in the brain’s architecture that can lead to lifelong problems with depression, learning difficulties, and limitations in the ability to cope with stress.

However, her work also shows that parents who are nurturing can offset some of the negative effects on brain anatomy seen in poor children. The findings suggest that teaching nurturing skills to parents—

particularly those who live below the poverty line—may provide a lifetime of benefit for children.

“Our research has shown that the effects of poverty on the developing brain, particularly in the hippocampus, are strongly influenced by parenting

Luby and her colleagues have identified changes in the brain’s architecture that can lead to lifelong problems with depression, learning difficulties and limitations in the ability to cope with stress.

and life stresses experienced by the children,” said Luby, the Samuel and Mae S. Ludwig Professor of Child Psychiatry and director of Washington University’s Early Emotional Development Program.

The study, published in *JAMA Pediatrics Online* on July 20, 2015, by a team of researchers at the University of Wisconsin-Madison, found that low-income children had irregular brain development and lower standardized test scores, with as much as an estimated 20 percent gap in achievement explained by developmental lags in the frontal and temporal lobes of the brain.

“In developmental science and medicine, it is not often that the cause and solution of a public health problem become so clearly elucidated,” Luby wrote in the editorial. “It is even less common that feasible and cost-effective solutions to such problems are

discovered and within reach.”

Based on this new research and what already is known about the damaging effects of poverty on brain development in children, as well as the benefits of nurturing during early childhood, “we have a rare roadmap to preserving and supporting our society’s most important legacy, the developing brain,” Luby writes. “This unassailable body of evidence taken as a whole is now actionable for public policy.”

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Education Amendment Asks States to Analyze Data for Homeless and Foster Youth

The United States Senate has approved a groundbreaking amendment to the Every Child Achieves Act, a bipartisan bill reauthorizing the Elementary and Secondary Education Act (ESEA). An amendment led by Senator Corey Booker (D-NJ) requires states, for the first time, to analyze data on the graduation rates of homeless students and students in foster care. The ESEA is a key federal law governing education, originally signed into law in 1965, and reauthorized as No Child Left Behind in 2002.

The amendment requires states to include foster youth and homeless youth as subgroups when disaggregating graduation data. The current version of ESEA requires the disaggregation of data for various subgroups including African Americans, English learners and special needs students. Disaggregating student data into subpopulations can help schools, districts and states see trends in graduation and use limited resources where they are needed most.

Including foster youth as a subgroup will document and make public,

for the first time, the extent of the foster youth achievement gap in this country. It will create an incentive for states to share data between their child welfare and education agencies, so that the education agency knows which students are in foster care.

It will create an incentive for states to share data between their child welfare and education agencies, so that the education agency knows which students are in foster care.

“Numerous studies have found the educational outcomes of students in foster care to be tragically poor, and recent studies in California show that foster youth perform significantly worse than all other disadvantaged groups,” said Jesse Hahnel, Director of FosterEd, an initiative of the National Center for Youth Law. “Disaggregating foster student data will allow states and districts to measure

the efficacy of policies and programs intended to close the foster youth achievement gap.”

“Senator Booker’s amendment is a tremendous step forward for foster youth and homeless youth—it’s also a smart investment for taxpayers,” said Katherine Burdick of the Juvenile Law Center.

Juvenile Law Center, The National Center for Youth Law, the ABA Center on Children and the Law, Education Law Center- PA and the National Working Group on Foster Care collaborated to help educate Senate staff on the importance of including provisions specific to homeless students and students in foster care. “We appreciate Senator Booker’s attention to this issue and look forward to continuing to work with him to ensure that students in foster care receive the supports they need to succeed in school,” said Hahnel.

The education amendment seeking disaggregated data had previously been included in the bill and was a priority of the advocates listed above.



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