

ABA Calls for Reform in Child Welfare/Delinquency “Crossover” Cases

by Howard A. Davidson

Close to a quarter of children in foster care are between the ages of 15 and 17. Given their histories of abuse, neglect, and many foster placements, it is not surprising that these youth often encounter law enforcement and the juvenile justice system. When “zero tolerance” policies are applied to minor delinquent acts, foster youth are often forced to leave their foster homes and are turned over to juvenile justice authorities.

Many foster youth face this potential dilemma, as researchers have long known of the link between a history of child maltreatment and later delinquency. The average juvenile delinquency rate for such youth is much higher than the general youth population, especially for those who have been in multiple foster and group homes.

Foster youth who are arrested and face juvenile court delinquency proceedings are commonly referred to as “crossover youth.” They are frequently “dumped” out of the child welfare system and ejected from foster care upon such juvenile justice system involvement. Because of this, in February 2008 the American Bar Association’s House of Delegates considered and approved a resolution, submitted by the ABA Commission on Youth at Risk, addressing this issue.

Dual Jurisdiction

The ABA recognizes that, for many of these youth, there will be simultaneous involvement of the child welfare agency, dependency court oversight, and juvenile delinquency proceedings. In such situations, the ABA calls for:

- use of juvenile diversion and similar interventions for minor criminal misbehavior by a foster youth;
- a legal preference for dependency cases to remain open in such situations and legal authority for dual dependency-delinquency

proceedings where necessary;

- one judge to address both postadjudication delinquency dispositions and the ongoing dependency case when feasible; and
- continuity of legal representation for youth in their two cases.

Caregiver Involvement

The resolution includes provisions that help those who care about the foster youth fully participate in crossover cases. These provisions call for:

- attendance by a youth’s caregivers at hearings in both the dependency and delinquency proceedings;
- active involvement by service providers and advocates after a foster youth’s arrest to ensure they are treated fairly in detention and other delinquency system decisions and actions;
- information sharing between dependency system and juvenile delinquency system authorities is encouraged, subject to confidentiality restrictions and not using information from a youth’s screening, assessment, or treatment against them in delinquency or criminal proceedings; and
- training of all juvenile defense counsel on foster care issues to familiarize them with the child welfare system and its federal and state statutory framework.

Continuing Child Welfare System Involvement

One of the worst things that could happen to foster youth, in view of their need for support while transitioning toward adult independence, would be for a child welfare system to abruptly end its care and custody because of a juvenile infraction. The new ABA policy proposes clear legal authority for continued child welfare agency support for youth and their families when there is a “crossover” to the juvenile delinquency court.

The policy also supports eliminating funding barriers that might inhibit multiple agency (e.g., child welfare and juvenile justice) support and services to crossover youth. To help assure the youth continues to receive protections afforded by federal child welfare law, such as periodic case review and permanency hearings, the ABA calls for youth placed in foster care or other nonpenal settings through delinquency or status offense proceedings to remain covered under Title IV-E of the Social Security Act.

To increase the odds that crossover youth are properly served, the ABA finally calls for full implementation of provisions of the federal Juvenile Justice and Delinquency Prevention Act and Child Abuse Prevention and Treatment Act that have been widely disregarded. These require:

- disclosing youths’ child welfare records to the juvenile delinquency court for effective treatment planning;
- providing effective treatment and services continuity when foster youth crossover to the juvenile justice system;
- ensuring youth placed in Title IV-E eligible placements receive full protections provided by federal law; and

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- collecting state data on all cross-over youth.

Youth facing the dependency and delinquency systems need assistance and are greatly at-risk. A court closing a dependency case, or a child welfare agency ending involvement, can shut off vital sources of support and protection, including adequate care, supervision, and housing. Whatever system a youth is in, their history of abuse and neglect, mental and emotional problems, and other family difficulties remain.

The ABA has stated, in the report accompanying its new policy, that law, court rules, and agency policies should provide for optimal flexibility that can help assure foster youth have the scholarship aid, mentorship assistance, community resources, housing opportunities, mental health and substance abuse services, and other care and treatment they need. The ABA is calling for laws and legal policies that look upon troubled youth holistically: these young people need help that is not limited by artificial or rigid barriers that merely focus on a youth possessing a specific legal or court "status."

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Visit the Grandfamilies State Law and Policy Resource Center

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

Grandparents often care for children, both within and outside the child welfare system. These caregiving arrangements raise legal questions, such as the requirements for grandparent adoption, eligibility for financial assistance, and the right to make decisions about a child's education. This new Web site seeks to answer these and other common legal questions. It provides an easy-to-use searchable database of laws and legislation that affect grandparents who care for children. Casey Family Programs, the ABA Center on Children and the Law, and Generations United have created this tool for advocates, policymakers, legislators, caregivers, and others to quickly find laws and legislation that address common legal questions surrounding grandparent caregiving. Database topics include:

- subsidized guardianship
- adoption
- care and custody
- housing
- kinship navigator programs
- financial assistance
- relative foster care
- national family caregivers support program
- education

Each topic is thoroughly analyzed and is accompanied by a story to illustrate key concepts, and a list of related resources to learn more. In the future, the site will expand to include state policies, regulations, and best practices. Stay tuned.

The screenshot shows the website's navigation menu with categories: TOPICS A-C, TOPICS D-I, TOPICS J-P, TOPICS O-Z, and RESOURCE LINKS. A search bar is visible with the text 'SEARCH STATE LAWS AND LEGISLATION DATABASE'. Below the search bar, a list of topics is shown, including 'Subsidized guardianship', 'Adoption', 'Care and Custody', 'Housing', 'Kinship navigator programs', 'Financial Assistance', 'Relative foster care', 'National Family Caregivers Support Program', 'Education', and 'Budget'. The main content area features a heading 'The Grandfamilies State Law and Policy Resource Center' and a detailed description of the center's mission and the database's content.

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