

Journal Highlights

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Balancing Child's Best Interest and Right to Self-Expression

Articles 3 and 12 of the United Nations Convention on the Rights of the Child focus specifically on children's rights in "juridical or service delivery context." Article 3 focuses on the consideration of the child's best interests, and Article 12 deals with children's rights to express their feelings and wishes. Since the ratification of this Convention, countries have struggled with how to represent children's views in their court systems while also protecting their best interests.

The authors searched social care and law databases to review and compare models used by several English-speaking countries to appoint and organize child guardians-*ad-litem* and other child representatives in court proceedings. This article focuses only on public law cases. Models compared were from France, New Zealand, Australia, Germany, United States, Scotland, England, Wales, and Northern Ireland. A description along with the strengths and weaknesses of each model are presented.

The different models of child representation offered the following common themes. Children need representation, especially in public legal proceedings. However, unless attorneys receive specialized training, they cannot provide this type of child representation. The dominant view expressed was that a guardian has a dual responsibility to address best interest issues and to accurately convey the child's views, except in the case of older children who have the capacity to clearly articulate their own feelings and wishes. Many court settings tend to create an environment where listening to children's views is often secondary to the adults' views of what is in the best interest of a child. Although consideration of a child's needs and best interest should not be minimized, a more balanced approach is needed.

The authors conclude that a model that assigns an advocate for a child, whose only responsibility would be to represent the child's views, may enable better representation of the child's perspective in court proceedings and may be more in line with the purpose of Article 12. This would require a major change in judicial and child welfare systems and would present a challenge because it is difficult to predict its impact on the courts' decision making.

Bilson, A., & White, S. (2005). Representing children's views and best interests in court: An international comparison. *Child Abuse Review, 14*(4), 220-239.

Conflicting Goals of Child Welfare and Courts

This article reports the results of a two-stage qualitative study to investigate known effective and problematic child welfare judicial systems in Louisiana. In the first stage of the study, the researchers used systematic observation of courts that were identified as the most effective and least effective in each of the 10 regions of the Louisiana public child welfare system. A Court Observation Protocol was designed to record these observations. The information gathered was used during the second stage of study to guide interviews with judges, attorneys, and child welfare staff.

The researchers sought to answer several questions. The first three focused on the role of caseworkers in court hearings, professional communication, and the relationship between court and agency staff. The study found that relationships and communication between agency staff and court staff ranged from respect to disrespect and even antagonism. The fourth question sought to determine which factors impacted situations in which decisions by the court were either in line or not in line with agency case plans and recommendations. The findings indicated that decisions and congruency of case plans were impacted by the quality of information communicated by caseworkers to the courts, and issues of efficiency related to court processes and personnel.

The fifth research question addressed how court and agency interaction either facilitated or created barriers to timely and safe permanency for children. The study identified six factors that could either facilitate or hinder permanency: interest and responsiveness of legal representation; mutual focus on the needs of children; court rules, procedures, and courtroom decorum; the extent to which courts held parents accountable for making required changes; the degree of agency staff follow-through with court orders; and the clear communication of key information by agency staff. Additional factors affecting permanency attainment were obtained through interviews with key informants; these included beliefs and philosophy of participants, agency-court relationships, and the court's view of agency staff competence and diligence.

These study results highlight the considerable conflict between the goals and processes of child welfare agencies and courts. There appears to be a great imbalance in power and authority between two entities that were intended to partner to provide services to children and families. The authors suggest the creation of new legislation to improve the systems, including increasing funding for additional personnel to lower caseloads so caseworkers and judges



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can better address the needs of individual children and families. The child welfare system must work to increase the minimum qualifications of its workers in order to increase their competence and professionalism. The authors further suggest more content and skill-based legal training for child welfare staff, and training for judges and court staff in human behavior and issues of child maltreatment, such as separation and attachment and the value of therapeutic interventions.

Ellett, A. J., & Steib, S. D. (2005). Child welfare and the courts: A statewide study with implications for professional development, practice, and change. *Research on Social Work Practice, 15*(5), 339–352.

LGBT Youth Rights in State Care

All youth in state custody have legal rights guaranteed by federal and state law. The authors describe how, unfortunately, these rights are often violated for many lesbian, gay, bisexual, and transgender (LGBT) youth, leaving them unprotected against harassment and violence. At times LGBT youth are subjected to differential treatment and are denied needed services. It is important for child welfare and juvenile justice professionals to understand the significant federal constitutional rights of LGBT youth. Those rights include the right to safety, the right to freedom of speech and expression, and the right to equal protection. LGBT youth also have protections under state laws including nondiscrimination laws in some states.

This article was written by two attorneys and provides an overview of two successful claims made in federal court by youth in the child welfare and juvenile justice systems. In the first case (2003), a transgender young woman placed in an all-boys group home filed a claim against New York City Administration for Children's Services (ACS) because the group home would not allow her to express her female gender identity in her attire. In the second case (2005), three youth identified or perceived as LGBT in a youth correctional center sued the facility, in which they had experienced anti-LGBT abuse and harassment.

Under current laws, youth in child welfare and juvenile justice systems have the "right to safety," including in foster care, defined as the right to be protected against threats to their physical, mental, and emotional well-being. For LGBT youth in care, safety includes protection from harassment or mistreatment because of their sexual orientation or gender identity. To ensure such safety, placement decisions made by child welfare professionals must consider the unique needs of LGBT youth. In addition, LGBT youth have the right to services that help prevent psychological harm. The child welfare profession must work to avoid setting up services for LGBT youth that will expose them to inappropriate or unethical practices.

The authors contend that child welfare professionals must provide LGBT youth with appropriate monitoring, supervision, and case planning. LGBT youth are at higher risk for mistreatment due to prejudice and misinformation, and professionals should be prepared to be in regular contact with these youth to ensure their safety.

Estrada, R., & Marksamer, J. (2006). The legal rights of LGBT youth in state custody: What child welfare and juvenile justice professionals need to know. *Child Welfare, 85*(2), 171–194.



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Kin Care Grandparents Lack Access to Child Welfare Resources

This article describes a qualitative study whereby family life history interviews were conducted with 26 grandparent caregivers (19 with one grandparent and 7 with a married couple dyad) in Montana to explore how their experiences were framed within the context of child welfare law and policy. The authors reported that grandparents are currently raising an estimated 2.4 million children in the United States, primarily outside of the child welfare system. These grandparents are typically older, single, and less educated; have poor health; and live below the poverty level. This study intended to detail the legal and policy dilemmas encountered by these informal grandparent caregivers (IGCs).

After a brief review of policies impacting grandparent caregivers, the authors suggested that some policy efforts aimed at increasing the number of homes available to children have unintentionally resulted in differential treatment of kin and non-kin foster families, specifically leaving kin families without needed financial and service support. These issues were supported by the findings from this study.

Content analysis resulted in four specific legal or policy contexts emerging as barriers to IGCs. First, the lack of a kinship care navigation system left IGCs without information to effectively access needed financial and service resources for their grandchildren. Most grandparents reported having received the children as a result of family crisis. Second, there is a real lack of legal rights for IGCs. This restricted many grandparents from accessing institutions (e.g., health care, education) critical to meeting the children's needs. It also raised concerns that biological parents could retrieve their children at any time, regardless of what would be in their best interest. Third, IGCs expressed a fear and distrust of the child welfare system, believing they were always at risk of losing their

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grandchildren to the system. Finally, disparities between informal and formal kinship care policies have created a tiered system in which non-kin foster families have access to greater amounts of financial and service resources. Many IGCs have depleted their private resources to care for the grandchildren who came to them unexpectedly, and they, too, are in need of system support to ensure the well being of their grandchildren.

The authors conclude by making several policy recommendations, including further state adoption of Kinship Navigator systems, further passage of medical and educational consent laws, implementation of de facto custodian policies, further study to examine the feasibility of expanding subsidized guardianship programs, broadening definitions of foster care licensing standards, provision of child care assistance, respite care, and mental health services to grandparent caregivers.

Leticq, B. L., Bailey, S. J., & Porterfield, F. (2008). 'We have no rights, we get no help': The legal and policy dilemmas facing grandparent caregivers. *Journal of Family Issues*, 29(8), 995–1012.

Consumer Impressions of CASA Volunteers

This article reports the results of a mixed method exploratory study that sought to examine consumer satisfaction with CASA volunteers and determine any differences between three consumer groups: families, child welfare workers, and legal professionals (judges and attorneys). The researcher mailed a cross-sectional survey to 2,465 consumers from 17 different states; 742 of the surveys were returned for a 34% overall return rate. The parent return rate was the lowest at 22%; surveys were returned by 50% of the child welfare workers, and 55% of the judges.

Judges and attorneys expressed the most satisfaction with the work of CASA volunteers, while child welfare workers and families expressed the least satisfaction. Most of the mean scores were above 3.0 across groups. However, three items had an overall average score of 2.9 across participant groups: (1) Volunteer CASAs/GALs provide an objective opinion (all groups), (2) the volunteer CASA/GAL visits the children regularly (workers and parents only), and (3) the volunteer CASA/GAL understands the child welfare system (all groups). One survey finding suggested that some child welfare workers and parents believed that CASA volunteers are biased against parents and the child welfare system, which could account for the previous survey scores. The item "I understand the role of the CASA/GAL volunteer" consistently received the highest score, indicating that all groups understood the role of CASA volunteers.

The researcher suggested that the qualitative findings offer the most value gained from the study. These data provide information to CASA programs, such as examples of activities that CASA volunteers perform that make a difference to children. Overall, the author concluded that findings from this study point to the need for more evaluation of training for CASA volunteers and their need for a better understanding of the complexity of the issues related to work with children and their families.

Litzelfelner, P. (2008). Consumer satisfaction with CASAs (Court Appointed Special Advocates). *Children and Youth Services Review*, 30(2), 173–186.

Comparing Mandatory Reporting Laws of Three Countries

This article systematically reviewed and compared child protection mandatory reporting laws and policies of three countries. Legal analysis was conducted on each country's current legislation, obtained from official government online legislative databases. Although the authors noted that laws are often vague and open to reporter discretion, they also found common elements across the countries, four of which are detailed in their review: (1) designation of persons required to report, (2) types of abuse and neglect requiring a report, (3) degrees of harm required before the duty to report is triggered, and (4) stipulations around reporting only past abuse or neglect and whether reports are also required for suspected risk of future abuse or neglect.

Designated reporters typically include professionals most likely to have routine contact with children as a function of their work. This is the approach most often taken in the United States. An alternative approach, used in most of Canada and in 18 U.S. states, is to require all citizens to report abuse and neglect. Only Western Australia was found to have no mandated reporting legislation. Along with neglect, mandated reporting by most jurisdictions across countries included three primary categories of abuse: physical, sexual, and psychological abuse.

Laws differed in the extent of suspected harm required to trigger the duty to report neglect and types of abuse. U.S. laws varied among several approaches to physical abuse, and all countries generally mandate reporting any suspected sexual abuse. Similarly, psychological abuse typically requires there be substantial functional impairment before reporting, and some jurisdictions specify the types of injuries required to report. Terms surrounding



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mandated reporting of neglect were found “ambiguous” except for medical neglect. The authors found that poverty-based neglect is usually expressly excluded from mandated reporting in the United States. Finally, the review found clear differences across and within countries related to mandated reporting of past versus future abuse. Some jurisdictions require reporting only past abuse while others require both past and potential for future abuse. Although legislation within the United States often requires reporting of both, the authors again found that ambiguous language made it difficult to distinguish between obligations for reporting. The authors suggest that governments be aware of the different approaches to legislating mandated reporting, attempt to clarify language, and provide training to mandated reporters to ensure reporting requirements are understood and followed.

Matthews, B., & Kenny, M. C. (2008). Mandatory reporting legislation in the United States, Canada, and Australia: A cross-jurisdictional review of key features, differences, and issues. *Child Maltreatment, 13*(1), 50–63.

Self-Perceived Rights of Maltreated Children

Recent research about children’s thinking and understanding of their rights has primarily focused on children who have not been maltreated. The authors of this article contend that maltreated children’s conceptions of their rights may have enormous implications for their welfare and development. Their rights have already been violated in the maltreatment that brought them into care and they continue to be more vulnerable because of their living situations.

This study, conducted in Toronto, Canada, focused on the views and attitudes of 100 maltreated children about their rights to nurturance and self-determination. All children were 10 to 18 years old and in permanent state custody, residing either in foster homes or group homes. The researchers had two goals: (1) learn the children’s perceptions of rights to nurturance and self-determination and compare them with those of other children in previous studies, and (2) determine whether children’s experiences of maltreatment and placement in out-of-home care influenced their perceptions of their rights.

Each child participated in a 45-minute semi-structured individual interview divided into three segments. The study found that even though maltreated children living in state care have conceptions of rights that are similar to those held by children who have not been maltreated, their understanding of rights was informed by particular concerns and perspectives emanating from their individual circumstances. The rights they identified are not only those rights they have experienced but also those rights they desire to experience. Their conceptions of their rights also appeared to be shaped by their present rather than historical circumstances. The children in the study appeared to focus greatly on rights related to protection and access to basic needs, which indicates that these rights are still very relevant to them. The authors were encouraged by the findings, which suggest that educational materials relative to children’s rights have been made available to the children in their child welfare settings.

Peterson-Badali, M., Ruck, M. D., & Bone, J. (2008). Rights conceptions of maltreated children living in state care. *International Journal of Children’s Rights, 16*(1), 99–119.

Child Sexual Abuse Case Resolution Time Periods Don’t Meet Standards

Citing detrimental mental health effects of lengthy court experiences on children, this study sought to help fill a gap in knowledge related to the length of time it takes to prosecute child sexual abuse cases. The authors compared the length of prosecution time and explored potentially related predictive case characteristics for child sexual abuse cases among three sites within one metropolitan county. They additionally compared case resolution time with benchmarks set by the American Bar Association (ABA).

The study sample across all three sites included children of varying ages who were primarily female and white. A little over half of the children’s sexual offenders were family members. The majority of children in the sample had disclosed the incident, and most cases had additional evidence available. About half of the offenders were arrested initially, and the majority of all offenders were charged with aggravated sexual assault.

The findings indicated that after offenders were charged, it took 31 to 60 days to obtain an indictment in 60% of the cases, with 85% of the cases reaching indictment within 90 days. Resolution was obtained within 180 days in 20% of the cases, while it took over 2 years in 30% of the cases. Overall, total processing time (from charge to resolution) took over 2 years in 36% of the cases, with only one third of cases being completely processed within a year. The authors noted that these findings were grossly inconsistent with ABA standards and state statutes of 180 days and one year, respectively, for general felony criminal prosecution. The study found little relationship between case characteristics and time to resolution with one exception. In cases where an initial arrest had been made, case resolution was significantly faster.

The authors indicate that overall their findings for sexual abuse cases are similar to findings in other studies on child abuse. They express grave concern for the length of time it takes to resolve child abuse cases and suggest that the field give some priority to gathering relevant data to effect necessary policy changes. They further suggest that more research is needed to understand how the time to resolution impacts the well-being of children.

Walsh, W. A., Lippert, T., Cross, T. P., Maurice, D. M., & Davison, K. S. (2008). How long to prosecute child sexual abuse for a community using a children’s advocacy center and two comparison communities? *Child Maltreatment, 12*(1), 3–13.

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