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## CAI Comments on California Blue Ribbon Commission on Children in Foster Care Draft Recommendations

Children's Advocacy Institute, University of San Diego School of Law

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### COMMENTS OF THE CHILDREN'S ADVOCACY INSTITUTE ON THE DRAFT RECOMMENDATIONS OF THE CALIFORNIA BLUE RIBBON COMMISSION ON CHILDREN IN FOSTER CARE

*The Role of the Courts in Improving the Lives of Children and Families*

May 13, 2008

The Children's Advocacy Institute (CAI) is an academic center and statewide advocacy law firm for children based at the University of San Diego School of Law. Founded by Professor Robert C. Fellmeth in 1989, CAI trains law students in child advocacy skills and since 1992 has operated a clinic representing abused and neglected children in juvenile dependency court. CAI convenes the Children's Advocates Roundtable in Sacramento (which includes over three hundred organizations with an interest in child-related policy), sponsors proposed legislation, publishes the *California Children's Regulatory Law Reporter*, and conducts research and issues reports. Two of those studies over the last 18 months have focused on foster children (see *They Deserve a Family – Higher Rates for Family Foster Care Could Lead to Better Outcomes, Including More Adoptions for Foster Children* (May 2007) and *Expanding Transitional Services for Emancipating Foster Youth – An Investment in California's Tomorrow* (January 2007), both available at [www.caichildlaw.org](http://www.caichildlaw.org)). CAI currently has a grant from the Governor's Office of Emergency Services to train new dependency court attorneys for California under the federal Children's Justice Act. Professor Fellmeth is the author of the law text *Child Rights and Remedies* and serves as Vice-Chair of the National Association of Counsel for Children and as counsel to the Board of Voices for America's Children.

CAI endorses the proposed recommendations of the Blue Ribbon Commission. The four listed recommendations, including their respective subparts, are balanced, well-reasoned and supported by the evidence known to CAI concerning the status and needs of foster children. We ask that the following specific recommendations be added to the extent draft. These additions are commended by our own studies and experience in serving as counsel and advocates for the children who here are the subject of concern. Finally, we discuss a source of potential funding for some of the reforms as currently listed and as we would supplement.

#### **Main Recommendation 1: Reasonable Efforts to Prevent Removal and Achieve Permanence**

The Commission sensibly begins with issues surrounding removal and permanence. Child advocates generally support the Commission's hope for fewer removals (and perhaps more effective "family preservation" strategies) and share its clear preference of permanent new families for those who are removed and lose their original parents.

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The recommendations on these subjects have merit. But CAI would ask that some attention be paid to prevention at earlier points of intervention. We therefore suggest three underlying dynamics related to increased mandated child abuse/neglect reports that are not address by the Commission but may warrant consideration.

We also discuss below two major recommendations on achieving the permanence goal of the Commission, one commending direct support for a compensation design that produces increased family foster care supply and quality – the source of critical and successful adoptions and permanence for these children. And authority for courts to appoint “transition guardians” for children after they emancipate – guardianships not over the youth, but over a fund comparable to amounts given by private parents, to achieve self-sufficiency under a plan customized to and optimally assisting each child.

## **A. Prevention**

The recommendations begin with current foster child caseloads. Policies that might ameliorate current influx may appear to be beyond the jurisdiction of the court and this Commission. But the Greek definition of a “professional” implies a person who essentially seeks the elimination of the need for his services. And there are no services more desirably eliminated than those interposed for parental unfitness and child abuse and deprivation. Accordingly, we discuss briefly those addressable factors that relate to the inflow of foster children. Whether the Commission believes they fall within its jurisdiction or not, CAI believes that no examination of a continuing area of societal deficiency is complete without some discussion of cause and prevention. We identify three underlying factors appropriate for Commission comment and suggest specific recommendations for the Commission’s adoption.

### **1. Unwed Births**

The correlation between child neglect and (a) unintended children and (b) child poverty is inescapable for anyone familiar with the foster children of California. The correlation between both of these contributing demographics and unwed births is self-evident. The unwed birth rate has risen from 8% a generation ago to 30% during the 1990s, to 37% today. And the rate among the African-American and, increasingly, Hispanic communities is alarming, with 70% and 45% of these children suffering from the absence of secure, committed fathers and dependent on economically challenged mothers. Optimally, each child starts with two committed parents. Perhaps death or divorce at some point create a need for compelled contribution and outside help, but creating a child is the product of human volition. Can we not agree that a child has a right to an initial commitment – a right to at least be intended by two adults?

Both genders are to blame. Both eschew birth control. Both fail to make the more basic commitment warranted by the miracle of child creation and birth. We consistently see females becoming pregnant with a second child who will enter the system, then a third, then a fourth, then a fifth. We had a case this month with one woman contributing eight sequential children. Do we not have, at some point, an obligation to do something? Nor are these births immaculate conceptions. Indeed, males are particularly deficient in commitment and responsibility. The fate of their

abandoned children is one of common poverty, and often extreme poverty as welfare reform has limited public support for single mothers. At one time, AFDC-FG paid to the federal poverty line for such families. Currently, the successor Temporary Aid for Needy Families (TANF) pays less than half of that poverty line, and has been in decline for 15 years. And that is a poverty line that is deficient in amount, particularly for a high-rent state such as California. The children living in single parent female headed households do not enjoy 80% of the family income in married-couple households, not 50% — but about 20%. And child support collection from absent biological fathers does not reach \$65 per month per child – less than 10% of out-of-pocket costs.<sup>1</sup>

It is well past time to begin the detailed study and open discussion of this factor, and of the corollary exacerbation of our society's hypocritical attitude toward birth control, the failure of child support collection, and the collapsing public safety net for children. Therefore, CAI respectfully requests the Commission add a recommendation that:

- ★ *The Judicial Council and the state Department of Social Services work together to urge Congress, the state Legislature, and state and local agencies to engage in detailed study of the correlation between unwed births and child maltreatment. Any such study should include a close look at birth control, child support collection, and the collapsing public safety net for children.*

## **2. Parenting Education**

One of the models for child abuse/neglect prevention long championed by child advocates is the “Hawaii Model.” Under its provisions, births are screened for likely parental neglect or skills shortfall – and the social workers or nurses are then dispatched into the homes of new parents to help teach them basic parenting skills. This strategy has won strong support from child advocates and has been adapted to other jurisdictions. The Commission has adopted some of the movement toward what is termed “family preservation” where rather than removing children, problem families are assisted in situ. In fact, we commend the Commission’s recommendation that “the Judicial Council work with state and federal leaders to allow greater flexibility in the use of federal funding for preventive services” (Draft Recommendation 1A).

However, as currently employed, the family preservation model is limited and costly. There is a reason why “home visits” are not a part of common medical service delivery. The question is thusly properly posed: most children will become parents, why are they not instructed in the basics when we have them all in front of us – in public schools? Why is knowledge about child birth, child development and effective parenting not a part of our educational commitment to future generations? How is it less important than Trigonometry? Should not our future parents know about everything from how to prevent child conception to the impact of prenatal contamination of the fetus, to prevention of SIDS, the weakness of infant necks and shaken baby danger, to the danger of leaving kids sitting in car seats with sun heating consequences, to their nutritional needs at various ages, to the obligation of biological fathers to provide 18 years of child support? Are these not the most

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<sup>1</sup> For detailed citations to existing literature concerning unwed births and child poverty, see Fellmeth, *California Children's Budget 2004-05*, Chapter 2 at [www.caichildlaw.org](http://www.caichildlaw.org).

important lessons we can teach our children? Such lessons need not be a discrete course, and should not be confined to girls (as “home economics high school courses were traditionally), but presented in “modules”, or short lessons repeated and reinforced from 9th through 12th grades

Based on the key role an appropriate education can play in preventing child abuse (as is evidenced by the number of parenting education classes ordered in reunification plans), CAI respectfully requests the Commission add a recommendation that:

- ★ *The Judicial Council and the state Department of Social Services work together to engage the appropriate stakeholders in California’s educational system to integrate parenting education in the 9th through 12th grade curriculum.*

### **3. Substance Abuse**

Any participant in dependency court proceedings finds a stark and pervasive relationship between parental unfitness and substance abuse. Although alcohol and various drugs commonly present problems, the methamphetamine epidemic has been a particular scourge for children. It is not merely the usual “dealing and scrounging for money” that demarks other illicit drugs. It acts to energize its victims and accentuates personality defects. It tends to mute or eliminate the most basic maternal and paternal instincts that we all assume parents possess. The courts have responded with “drug courts” and creative techniques to allow parental reunification with their children. CAI does not pretend to gauge how successful various strategies have been in salvaging these families, but outcome measurement is important and should be institutionalized as a part of court proceedings. Such measurement should include longitudinal studies of families where reunification was authorized. Such failures require repeat removals and additional disruption for affected children. Additionally, the courts must engage with the treating physicians in the area. There needs to be clear collaboration between the courts and drug treatment facilities to fully understand what can and should be expected of a parent that has been using methamphetamine for one, five, or fifteen years. It is only through an open dialogue that justice can be served to the ultimate victims of this drug — the children. Therefore, CAI respectfully recommends the Commission add recommendations that:

- ★ *The Judicial Council adopt specific performance measures that assess the efficacy of reunification including longitudinal studies of families where reunification was authorized.*
- ★ *The courts and partnering agencies examine current medical evidence regarding the treatment of drug dependence and how medical treatment supports reunification practices.*

### **B. Permanence**

Beyond reasonable efforts not to remove is the Commission’s worthy focus on permanence. CAI would add several important elements along two aspects.

(1) CAI would add to the Commission’s recommendations to assure more adoptions through state outreach for family foster care providers, increased training in community colleges, and – most

critically – fair and lawful compensation. We all know that ending foster care drift and achieving a permanent parental anchor for each child is our goal. And far better that such an anchor be a parent or guardian with a clear commitment to the child – rather than an institution. Permanence for a child is best achieved through a personal parent or guardian. The Commission should properly address the current root causes of its alarmingly diminishing supply – and the decline in adoptions and prevalence of expensive and regrettable group home placements.

(2) The fate of foster children upon emancipation at 18 years of age is a source of shame for their parents. And the courts are the parents. The extension of foster care to age 21, as suggested by the Commission, has merit. But a much more effective, less expensive, and customized option should be embraced by the Commission – the commitment to each foster child of the median support post-18 given to children by private parents, and its caring and customized administration by a court appointed transition guardian.

### **1. Family Foster Care Supply**

CAI appreciates that the draft recommendations offered by the Commission aim to create a plan to achieve the goal of providing all California children with a safe, nurturing, and permanent family where they can grow up and learn to become productive adults. CAI shares this goal in much of its advocacy. As the Commission is no doubt aware, in any given day in California, there are approximately 80,000 children in foster care, but less than half of these children are living in the most preferred types of placements (with relatives or foster families).<sup>2</sup> This means two things: First, less children are given a meaningful chance of finding an adoptive family since most adoptions by non-family members come from foster parent providers. Second, if foster children are not placed in foster family homes, they are placed in alternatives such as foster family agency homes (FFAs) and group homes that are far more expensive to the taxpayer. For example, group homes receive anywhere from \$857 to \$5,946 more in compensation (depending on the age of the child and the intensity of the group home) for caring for foster children than do foster families.

Some of the traditional recommendations that have been implemented in recent years – more flexibility in guardianships (including Kin-Gap payments) and cutting red tape to facilitate adoption – have had some success. But California’s adoption rate has not continued to rise from its increase of five or six years ago – following adoption facilitation efforts in Los Angeles and elsewhere. We believe that the most advantageous strategy to meet the Commission’s laudable goal rests with increasing the supply and quality of family foster care providers. These families should be so numerous that even for disabled teens we ideally would have competition over “who gets to adopt him or her.” Ideally, we would have a state DSS with an office assigned the task of increasing supply – of coordinating with community colleges to increase the number of foster care providers trained in special needs provision, of coordinating statewide recruiting and advertising via a respectable PSA budget. Instead, we have declining supply, little interest in most foster children above 2 or 3 years of age, and relegation to group homes for too many foster children.

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<sup>2</sup> *No Family, No Future*, a policy report by the California Welfare Directors and Legal Advocates for Permanent Parents, May 2007, available at <http://www.cwda.org/downloads/FamCarePolicyRep.pdf>, p. 3, citing Needell, B., Webster, D., Armijo, M., Lee, S., Cuccaro-Alamin, S., Shaw, T., Dawson, W., Piccus, W., Magruder, J., Exel, M., Smith, J., Dunn, A., Frerer, K., Putnam Hornstein, E., Ataie, Y., Atkinson, L., & Lee, S.H. (2007). *Child Welfare Services Reports for California*. Retrieved from University of California at Berkeley Center for Social Services Research website. URL: <http://cssr.berkeley.edu/CWSCMSreports/>.

Aside from the need for a dedicated office for these purposes at the state level, a major reason for this diminution over the last half-decade partly relates to compensation paid to foster families. It averages just over \$530 per month, contrasting with the much higher rates paid to group homes. CAI believes it is imperative that the final recommendations include a specific mandate that the Judicial Council and the state Department of Social Services work together to urge Congress, the state Legislature, and state and local agencies to increase funding for foster family homes – that the federal standard of meeting out-of-pocket costs enjoy compliance. Family foster care rates have been increased only 10% since 2001, and they were well below out-of-pocket costs under federal mandates then. A recent national study of family foster care rates by the University of Maryland find our state’s rates to be more than 40% below cost. Accordingly, CAI has challenged them in federal district court, in a case now pending in federal district court (*California Family Foster Care Association v. Wagner* (N.D. California)). The defendants’ Rule 12-b-6 motion to dismiss has been denied and the case is scheduled for trial within the next 9 months.

According to a recent report published by the California Welfare Directors Association, 77% of California counties surveyed reported a loss in licensed foster family homes since the 2001 increase in foster home rate, with an average statewide loss of 30% since that date. To stress: this is an average. One county saw a 60% reduction; another 50%.<sup>3</sup> Counties surveyed indicated that a primary reason they are unable to retain foster family homes is the low reimbursement rates received by foster parents.<sup>4</sup>

The Commission needs to come on board, knowing that the lower middle class and even the middle class simply cannot afford to open up their homes to a foster child where it means the sacrifice of pensions, college funds for other children, or other personal sacrifices. Any market economist will tell you, if you want to increase supply of a service, increase its compensation. That does not mean adoptions will be driven by money, it means that enough people will be financially able to give foster care a go, and the more choices for us to pick from, the better. Bonding and falling in love with the child who becomes your charge will commonly transform that economically affected opportunity into the permanence properly sought.

These data regarding the sharp decrease in the availability of foster parents is particularly troubling because, when there are no foster homes available, children are often, “housed” in a group home setting where they simply do not fare as well with staff members working in shifts and frequently changing jobs. Studies show that children in group homes are often unable to form a consistent relationship with a caregiver and are a serious risk for developmental problems and long-term personality disorders.<sup>5</sup> Furthermore, these children are less likely to be connected to family, more likely to transition out of foster care alone, and are more likely to experience poorer

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<sup>3</sup> *Id.*, at p. 3 citing *Survey of Licensed Foster Family Home Decline Among California Counties*, County Welfare Directors Association of California (May 2007).

<sup>4</sup> *Id.*

<sup>5</sup> North America Council on Adoptable Children, *There is a Better Way — Executive Summary* (available at [http://www.nacac.org/exec\\_summaries/better\\_way.html](http://www.nacac.org/exec_summaries/better_way.html)).

outcomes as adults.<sup>6</sup> Research also indicates that adults who were placed in group homes as adolescents have lower educational attainment and lower employment probabilities than similar adults raised in foster family homes.<sup>7</sup>

Based on the important role family foster care providers can play in providing permanence to children who are not able to return to their biological families, CAI respectfully urges the Commission to adopt a recommendation that:

- ★ *State and local child welfare agencies actively engage in recruiting and supporting foster family homes, that a separate office within the state Department of Social Services be committed to supply and quality increase, and that family foster care rates be increased no less than 40% immediately to comply with federal law and enable reasonable supply restoration for reasonable adoption opportunity.*

## **2. A Fair Chance – Transition to Adulthood**

Over the past three years, CAI has been engaged in a project the goal of which is to improve outcomes for youth who emancipate from California’s child welfare system. The Blue Ribbon Commission report addresses a number of issues youth face when they emancipate from California’s system and it provides sound recommendations for improving outcomes for these vulnerable youth. The commission should, however, expand upon these recommendations to include more innovative and varied approaches to assist youth who emancipate from California’s foster care system.

The Commission properly recommends that child welfare systems should improve protocols for finding family members (Draft Recommendation 1B). Even if they are unable to adopt or act as guardians, family members can provide stability in the life of a youth transitioning into adult life. Further, the Commission recommends that the courts and child welfare agencies “ensure that foster children maintain a relationship with all family members and other important people in their lives” (Draft Recommendation 1B). To achieve the intended impact of these stated goals and recommendations, the Commission should encourage child welfare systems to improve protocols, not only for finding family members, but also for finding and encouraging adults who will act as mentors, and will be a consistent, caring presence in the life of foster youth, even where adoption may not be possible. Stability is an important component of permanence. It becomes particularly important as youth prepare to emancipate from the foster care system.<sup>8</sup> A consistent, caring adult, whether or not that adult is a relative, can provide this invaluable stability.

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<sup>6</sup> *Id.*

<sup>7</sup> Brian Duncan, Laura Argys, *Economic Incentives and Foster Care Placement*, Department of Economics, University of Colorado at Denver, available at <http://econ.cudenver.edu/bduncan/Fostercare.pdf>.

<sup>8</sup> Samuels, Gina Miranda. *A Reason, A Season, or A Lifetime: Relational Permanence Among Young Adults with Foster Care Backgrounds*. Chapin Hall Center for Children at the University of Chicago (2008) at 9. Scholarship on youth aging out of care, as well as research focusing on other ‘at-risk’ populations, has consistently recognized the importance of nonparental adults in the lives of young people and their positive development (Massinga & Pecora, 2004; Perry, 2006; Propp et al., 2003). Feeling connected to an adult has been found to have positive effects not only on general well-being and socio-economic health (Messinga & Pecora, 2004), but also can buffer some of the negative outcomes this population is reported to face (Perry, 2006).” See Also: Perry, B.L. (2006) *Understanding social network disruption: the case of youth in foster care. Social Problems*, 53(3), 371–91.

The Commission recommends the extension of foster care emancipation to 21 years of age. We agree with that recommendation, and support federal legislation now pending that would actualize it. Such an alternative should attract Title IV-E federal funds under current law to finance approximately half of its cost. However, to the extent the Commission wishes to rely on continued foster care coverage beyond age 18, it should make aid available to age 25 – given the problems of this population and the demographic fact of common self-sufficiency attainment at age 26.<sup>9</sup> Law and policy in California relating to emancipated foster youth should reflect this reality.

The change would apply to those children who choose to remain under the jurisdiction of the court, this important because some youth may have a desire to be free from the system of which they have been a part for years, in some cases. Further, if the court terminates jurisdiction prior to a youth's 21<sup>st</sup> (or 25<sup>th</sup>) birthday, the youth should have the right to reinstate jurisdiction and services. It is quite common for youth transitioning into adult life to find it necessary to return home, as many parents can attest. Former foster youth must be given the same option. Accordingly, CAI supports these recommendations.

The Commission should further recommend that California take steps to avoid completely abandoning these youth once the court has terminated jurisdiction, whether this happens at age 18, at age 21, or at age 25. California should offer options to foster youth who emancipate from the system. For many, existing Transitional Housing Placement Plus (THP-Plus) programs may provide services the youth needs to transition successfully into adulthood. To that end, the commission should recommend that California ensure that existing THP-Plus programs sustain a level of funding sufficient to maintain and expand program capacity to meet the demonstrated need of youth emancipating from the foster care system.

However, after substantial study of this subject, we propose an alternative (or supplemental) plan: the commitment of monies approximating what private parents give their children post-18 (\$45,000), and the guidance of those youth into self-sufficiency through a court reviewed plan administered by a “transition guardian.” That guardian would be someone familiar to the child, and would have jurisdiction over the fund, not the child. Such an alternative is close to what a normal parent provides to his or her child. It allows a customized plan of support and guidance – rather than various aid programs for a narrow purpose administered by agencies in a fragmented pattern.

The advantage of the “transition guardian” method over the current THP Plus program, or simply extending foster care coverage to age 21 are many. The former substantially rely on several years of additional housing in group homes – sometimes with some ancillary services, but suffering from the same deficiencies as the group home system generally exhibits. Second, that option is not customized to a youth's optimum needs for self sufficiency. Third, assistance stops at or before age 21. But the average youth does not achieve self-sufficiency until age 26. In contrast, the transition

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<sup>9</sup> Ammerman, S.D.; Ensign, J.; Meininger, E.T.; Tornabene, M.; Warf, C.W.; Zerger, S.; Post, P. (2004) *Homeless Young Adults Ages 18–24: Examining Service Delivery Adaptions*. Nashville: National Health Care for the Homeless Council. Bahney, A. (April 20, 2006) The Bank of Mom and Dad. *The New York Times*, G2 p. 1. Bennett, C.M. and Biard, A.A. Anatomical Changes in the Emerging Adult Brain: A Voxel-Based Morphometry Study. Available online at [www.theteenbrain.com/about/publications/pdfs/2005-Bennett-VBM.pdf](http://www.theteenbrain.com/about/publications/pdfs/2005-Bennett-VBM.pdf). Bower, B. (May 4, 2004). Teen Brains on Trial. *Science News*, 165. P. 299. Shirk, M. And Stangler, G. (2004). *On Their Own: What Happens to Kids When They Age Out of the Foster Care System*. Jim Casey Youth Opportunities Initiative.

guardian option allows individualized help for three, four or five years, as the youth needs. Fourth, the transaction cost of foster care continuation or THP Plus is high. The \$3,000 to \$6,000 more per month per youth includes the overhead and profit margin of a group home establishment. In contrast, the transition guardian proposal is administered not by a bureaucrat or profit-oriented establishment, but by a person known to the youth for minimal compensation – under 10% of disbursed monies. Fifth, and of special importance to this Commission, the court remains connected. Unlike the current option of regrettable and common abandonment of the court’s children to the streets, the court retains jurisdiction over the funds going to the youth – just as a parent contributing to a child’s transition does. And that connection is something all responsible courts want to maintain. For these courts have been the parent to the child. They maintain files and details. They have made decisions that have determined their basic course in life. And rather than abandon their charges at the moment of greatest vulnerability, they properly seek to finish the job.

The court’s continued connection under this option may be accomplished with a minimum of cost. It does not continue all of the costs of foster care coverage and review, but only the semi-annual reviews of the “self-sufficiency” plan of the person they have appointed as guardian over the funds. They delegate to a direct appointee the administration of monies to be certain they have finished the job. And it does not depend upon youth consent to continued foster care status – a position many of the older foster children bridle at based on the regrettable reality of their lives in foster care. Rather, the “transition guardian” option does not require continued foster care jurisdiction. But the court retains jurisdiction over a substantial fund available to the youth. And receipt of that help is unlikely to be eschewed by many youth – certainly not after encountering their first difficulties on the street. The end result is likely to be radically preferable to the current state of affairs – a population disproportionately unemployed, undereducated, disabled, incarcerated, and now making up close to 40% of the state’s homeless shelter population.

Every parent wants to see her children succeed when they venture out on their own. The Commission should urge California to act in accordance with the parental role it has assumed and implement real and substantive changes to help its children succeed after leaving its care. To that end, CAI recommends that:

- ★ *The Judicial Council work with federal and state leaders to support or sponsor legislation to extend the age when children receive foster care assistance from age 18 to age 25. This change should apply to those children who at age 18 cannot be returned home safely, who are not in a permanent home, and who choose to remain under the jurisdiction of the court. If the court terminates jurisdiction prior to a youth’s 25th birthday, the youth should have the right to reinstatement of jurisdiction and services until he/she reaches age 25.*
- ★ *Child welfare agencies actively engage in finding and encouraging adults to act as mentors for foster youth who are not able to be reunited with their family.*
- ★ *The Judicial Council and the state Department of Social Services work together to urge Congress, the state Legislature, and state and local agencies to ensure that existing THP-Plus programs sustain a level of funding sufficient to maintain and expand program capacity to meet the demonstrated need of youth emancipating from the foster care system.*

- ★ *The Judicial Council and the state Department of Social Services work together to urge the state Legislature to adopt a transition guardian program or other method allowing supervision of funds to be allocated and customization to the needs of individual youth.*

## **Main Recommendation 2: Court Reforms**

### **A. Caseloads**

The instant proposal notes that priority is properly given to dependency courts in the allocation of judicial resources. That proposition is undeniable. These children are literally and legally the children of the state. The courts are their parents. You provide for your own children first and foremost. You decide what they need, and then you allocate the remainder. That is the ethically defensible posture for court budgeting. Under what circumstance is any expenditure deserving of higher priority than the care of the court's own children, for whom they are legally and morally responsible?

Notwithstanding this compelling posture, current caseloads of social workers are excessive, and current budget proposals would exacerbate them – reversing the modest improvement of the 2007 budget.

Attorney caseloads are not only excessive, but are Constitutionally infirm. The *Kenny A.* case posits caseloads of 100 as the outer limit in 6th Amendment compliance (*Kenny A. v. Sonny Purdue* (2005) 356 F.Supp. 2d 1353). The federal Constitution applies to California. The rather generous standard promulgated by the Judicial Council study would limit caseloads to 188 “where adequate support exists.” CAI agrees that if every attorney in dependency court has a social worker investigator, a caseload of from 120–150 may be justifiable. We would respectfully suggest that 188 is excessive. But in contrast to these numbers, the average caseload in the state is 273, with many jurisdictions lacking ancillary attorney support. San Diego's number is above 300. Orange County is reportedly above 500. Such caseloads inhibit proper client representation and in the view of CAI, violate the 6th Amendment rights of the children for whom these same courts serve as parents.

Excessive caseloads are reflected in the abject failure to represent children on appeal, where the final decision is often effectively made. Compromise legislation and rulemaking theoretically allow attorneys to be appointed for the appellate stage of dependency court proceedings where the county or parents appeal or seek writ review, but CAI questions its efficacy. Under the current scheme, appellate representation requires special permission. In contrast, the Rules of Professional Conduct properly bar the abandonment of a client in the middle of a case — as perhaps the final decision is about to be made. San Diego routinely appoints such counsel. Other districts do not. That disparity appears to continue. Why? Under what theory of representation does the person whose rights and future are being dispositively adjudicated not have attorney representation? In many cases, that representation may involve simply joining in the argument and position of one of the two other parties, but such deferral is not always the case. A parent properly wants to hear from his or her child before making a major decision about his or her future. Thus, CAI requests that the Commission adopt the following recommendation:

- ★ *The Judicial Council shall work to ensure that child representation at the appellate level is automatic and presumed.*

Finally, the courts themselves are overburdened. Courts have more than 1,000 cases each. How competent would you be as a parent with 1,000 children? Those caseloads should be no more than 300, and certainly are properly reduced to a maximum of 500. Such judicial caseload calculation properly recognizes the profound difference between other courts and this very unique judicial function. In other departments the court properly assumes a relatively passive role. Counsel brings a case, defendants or respondents appear and respond, and the case is joined. But the juvenile dependency court is closer to the European model of the “tribune” court. This court assumes direct “jurisdiction” over a person. This judge serves as a parent, and has ancillary jurisdiction under law to bring before him or her school officials and others. This is an entirely different kind of responsibility.

CAI respectfully urges the Commission to add the following recommendations:

- ★ *The Judicial Council shall work with the AOC to adopt Rules of Court requiring that each child’s attorney handle no more than 188 cases at a time.*
- ★ *The Judicial Council shall work with the AOC to agree to a ceiling of no more than 500 cases for juvenile dependency court judges – given their special responsibilities as the parents of the children within their respective case loads. The AOC should study the caseloads of Juvenile Court Judges handling dependency cases to determine if some number under 500 is an appropriate standard.*

In the alternative to the adoption of the specific recommendations above, CAI would suggest that state legislation be pursued to establish maximums as discussed in the preceding paragraphs. This issue as to counsel has been discussed and studied for most of the past decade. The time to talk and write has passed.

## **B. Transition to Adulthood**

### **1. Participation in Hearings**

The Commission recommends that “local court practices should facilitate the attendance of children, parents, and caregivers in hearings (Draft Recommendation 2C). CAI strongly agrees and stresses the importance of attendance for children at hearings long before the hearing pursuant to Welf. & Inst. Code §391 to terminate jurisdiction. These children should be well informed about their case and have a voice in the process so that they will be better prepared for emancipation. To that end, their presence in court is vital.

### **2. Performance Measures**

The Commission properly stresses the importance of implementing a comprehensive set of court performance measures as required by state law. These measures track children’s progress, and identify sources of delay and other areas of reform needed in juvenile dependency court. Likewise, the Commission should urge the state to develop appropriate performance and outcome measures

to track the progress of youth who emancipate from California's foster care system until they are at least 25 years old, or for at least 5 years after they leave the system. The measures would help to identify problem areas as well as areas of success in the foster care system as a whole.

Currently, the law does not require any measures for former foster youth outside of reporting on THP-Plus and Chafee funded programs. However, reliable outcome data, on a large scale, for former foster youth would be an extraordinarily valuable resource for advocates, policy makers, and service providers because it would provide the information necessary to improve outcomes for these youth. The measures may need to be voluntary for the former foster youth to respect their privacy. The ultimate measure of the system's success is how these youth fair once they emancipate from it.

Accordingly, CAI respectfully urges the Commission to adopt a recommendation that:

- ★ *The Judicial Council work with the Child Welfare Council as well as local courts and agencies to adopt performance measures that track the progress of youth who emancipate from California's foster care system until they are 25 years old.*

### **Main Recommendation 3**

#### **Collaboration Between Courts and Partnering Agencies**

#### **Fatality Data**

CAI appreciates that the draft recommendations offered by the Commission aim to create a plan to achieve the goal of providing all California children with a safe, nurturing, and permanent family where they can grow up and learn to become productive adults. CAI has spent the last several years looking very closely at the safety of California's children by scrutinizing public records pertaining to deaths of children in foster care and fatalities due to child abuse and neglect.

For the years 2004–07, CAI made requests for public records regarding the deaths of children in foster care. The only information subject to public disclosure regarding foster children who have died is their name, date of birth and date of death.<sup>10</sup> While we have continued gathering this data, it is clear that it does not provide much useful information. It reveals some statistics regarding the age of children who die while in our care, but not much else.

In recent years, legislation and rulemaking have made more data pertaining to child abuse or neglect deaths available to the public. In 2006, the California Department of Social Services released All County Letter (ACL) No. 06-24. Pursuant to this ACL, CAI requested the Child Fatality/Near Fatality Questionnaires for every child who died or experienced a near fatality in California from July 21, 2006 through the end of 2006.<sup>11</sup> While still providing an incomplete picture

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<sup>10</sup> Pursuant to SB 39 (Migden) (Chapter 468, Statutes of 2007), and as discussed in the following footnote, if it is suspected or concluded that a foster child has died due specifically to child abuse and neglect, more information is now subjected to public disclosure.

<sup>11</sup> CAI is currently gathering and analyzing the data for 2007. The data set will again change for 2008 due to the implementation of SB 39, which provides that when there is a reasonable suspicion that a child fatality was a result of abuse or neglect, a county must release to the public, upon request, the age and gender of the child, the date of the fatality, whether the child was in foster care or in the home of his or her parent or guardian at the time of the fatality, and whether an investigation is being conducted by Law Enforcement or CWS/Probation. Once an investigation concludes that the child

of exactly what is happening to California's most vulnerable children, CAI did make a key finding that is pertinent to the mandates of the Commission. We found stark inconsistencies in what the respective 58 counties chose to disclose.

The Commission's third recommendation appropriately recognizes the importance of collaboration between courts and partnering agencies. While the current focus of the recommendation is on the specific services that are provided to children and families, CAI believes the focus of this recommendation is appropriately broadened. The courts and partnering agencies work together to protect children who are removed from their parents due to child abuse and neglect. These agencies should also work together to protect those children who are at risk of abuse and neglect but who have not yet been removed. Our research of the fatalities due to child abuse or neglect in California from July 21, 2006 through December 31, 2006 shows that nearly 80% of the children who died from abuse or neglect had a prior history of CPS reports. Even more disturbing, more than half of the children who were the subject of abuse death reports died from the very cause that was the subject of previous reports.

This Commission is well familiar with the checks properly provided to prevent error in the inappropriate removal of children from fit parents. The psychological cost of error in the direction of unjustified removal on the entire family can be traumatic and those checks have a basis in due process and common sense. They include a "reasonable efforts" mandate not to remove a child. This is followed by a detention hearing in front of a neutral court, with counsel appointed (and paid) for each parent who may lose parental rights, followed by a jurisdictional and dispositional hearing, with relative placement favored, and with a "reasonable efforts" to reunify statutory mandate. After these steps to check improvident removals, the state carries the burden to prove by "clear and convincing" evidence that parents are unfit. This Commission properly ponders the converse error – the failure to remove a child who needs protection. What is the check here? The only clear check is knowledge of adverse consequences where such omissions occur. The finding that the majority of state deaths from abuse and neglect are previously known to CPS underlines the need for reporting and transparency.

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fatality occurred as a result of abuse or neglect, the county must release to the public, upon request, the above information and the emergency response referral information form and the emergency response notice of referral disposition form completed by CWS/Probation relating to the abuse/neglect that resulted in the fatality, any cross reports by CWS/Probation to Law Enforcement relating to the deceased child, all risk and safety assessments completed by CWS/Probation relating to the deceased child, all health records of the deceased child (excluding mental health records) related to the child's death and previous injuries reflective of a pattern of abuse/neglect, and copies of police reports about the person against whom the child abuse or neglect was substantiated. For cases where the fatality occurred in the home of a parent or guardian, the county must also release all previous referrals of abuse or neglect of the deceased child while living with that parent or guardian. For cases where the fatality occurred in foster care, the county must also release all records pertaining to the foster parent's initial licensing, renewals, and type of license(s) held, if in the case file, all reported licensing violations, including notices of action, if in the case file, and records of training completed by the foster parents, if in the case file. While in general the legislative trend in California appears to be toward releasing more information regarding these cases, we anticipate that many of the issues we have encountered so far will continue. Therefore, our comment will focus on the state of information that we have received from the State and counties to date.

While a recent survey of child abuse death reporting scored California as substantially improving from previous years,<sup>12</sup> it appears that there is no clear understanding by each of the 58 counties regarding exactly what data should be reported. For example, some counties released data on a fatality “due to child abuse and neglect” when the child died after being born prematurely due to drug exposure. However, not all counties reported this as a death due to child abuse and neglect. (In one of the largest counties in the state, no such death was reported and this simply defies all logic.) The most recent All County Letter on this subject, ACL 08-13, while outlining the changes to reporting policies pursuant to SB 39, does nothing to help clarify exactly what is to be considered by counties as a fatality “caused by abuse or neglect”. Based on the important role accurate data can provide, coupled with the important role both the courts and partnering agencies play in protecting vulnerable children, CAI respectfully requests the Commission add a recommendation that:

- ★ *The Judicial Council work together with the state Department of Social Services and local county agencies to promote the sharing and public disclosure of accurate and consistent information pertaining to child fatalities in foster care and child fatalities and near fatalities due to child abuse or neglect.*

#### **Main Recommendation 4 Resources and Funding**

CAI supports the Commission’s recommendation that the Judicial Council, Congress, the Legislature, the courts, and partnering agencies should give priority to foster children and their families in the allocation and administration of resources, including public funding- federal, state, and local – and private funds from foundations that support children’s issues. CAI would respectfully argue that requiring foster children to compete with monied interests will not yield proper prioritization. In a world of term limits and 1,200 registered lobbyists, a group without vote, campaign finance assets or influential lobbyists, will not obtain their proper share on the merits – assuming such merits are ethically informed. The correct posture for the state is to allocate what these children need in a special fund kind of structure, and then allocate politically remaining funds. The rationale for such a distinction is basic. We are the parents of these children. And this is what parents do. Such a procedure is the real test of family values commitment: How you treat your own children. These are not children who are “ours” in the sense they are Californians or Americans – these are children over whom we have legal jurisdiction. It is quite a different animal. They are literally “our” children. You provide for them first. You divide up what is left. They, not prison guards or the education of non-state children, or yacht tax loopholes, or the conduct of a primary election at \$75 million in February when one is already scheduled and budgeted four months later, all properly recede behind the import of providing for our own children. This Commission needs to say so, in no uncertain terms. And it needs to supplement that call with a willingness to subject its spending to the discipline and check of independent outcome measure. Finally, it needs to look hard at the funds available and properly allocated to foster children above all – especially as they emancipate – from the more than \$1.4 billion annually collected from Proposition 63’s Mental Health Services Act.

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<sup>12</sup> See Emily Reinig, *State Secrecy and Child Deaths in the U.S.*, Children’s Advocacy Institute (April 2008), available at [www.caichildlaw.org](http://www.caichildlaw.org).

## A. Family Foster Care Supply

The Commission appropriately recognizes that it is important for funding to be allocated to evidence-based practices that lead to improved outcomes for foster children (Draft Recommendation 4A). A recommendation calling on the Judicial Council and the state Department of Social Services to work together to urge Congress, the state Legislature, and state and local agencies to increase funding and support for foster family homes is just the evidence-based type of improvement that should be specifically outlined by the Commission.

A recommendation to increase funding and support for foster family homes will not only improve the lives of foster children, but, it is a fiscally prudent recommendation as well. As discussed at length above, placements in group home placements are typically more expensive than those in foster family homes. Therefore, if the reimbursement rate paid to foster parents is not increased to enable more Californians to become foster parents, the state may expend funds unnecessarily simply because there is an insufficient supply of foster family homes.<sup>13</sup> There will also, then, be less funds to adequately train, monitor, and supervise foster parents who are already providing families for children in the foster care system.<sup>14</sup>

Based on the better outcomes for California's children along with the fiscally responsible nature of the proposal, CAI urges the Commission to add the following specific recommendation:

- ★ *The Judicial Council and the state Department of Social Services work together to urge Congress, the state Legislature, and state and local agencies to increase funding and support for foster family homes by 40% immediately, and to arrange appropriate study of the immediate savings attributable to placing fewer children in group homes, and the long-term effects of adoptions and permanence.*

## B. Transition to Adulthood Funding: Proposition 63

Budgetary constraints seriously affect public spending for 2008-09 and state fiscal policy suggests a structural deficit that will likely recur. However, CAI notes that recently enacted Proposition 63 (the Mental Health Services Act (MHSA))<sup>15</sup> produces substantial revenue. Over \$2 billion in positive balance exists, with over \$1.4 billion in new revenue annually, almost double initial projections. This fund is part of an Act that includes "antisupplantation" provisions, meaning that it must be directed at new spending, not diverted into pre-existing mental health related spending. In addition, the Act delineated two priorities, prevention of mental health infirmity, and assistance into self-sufficiency of transition age youth (TAY). Of all of the populations eligible for such broad-based prevention/self-sufficiency funding from age 18 to 26, no population more

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<sup>13</sup> Jenna Leyton, *They Deserve a Family — Higher Foster Family Home Rates Could Lead to Better Outcomes, Including More Adoptions, for California's Foster Children*, Children's Advocacy Institute (May 2007), available at [www.caichildlaw.org](http://www.caichildlaw.org), at p. 2, citing Dara Colwell, "Foster Freeze," *Metro* (October 12-18, 2000), available at <http://www.metroactive.com/papers/metro/10.12.00/fosterparents-0041.html>.

<sup>14</sup> *Id.*, at 2.

<sup>15</sup> Proposition 63 (2004), codified at Welf. & Inst. Code § 5813 *et seq.*

warrants investment beyond emancipating foster youth. First, they have a mental health profile of clear vulnerability. They have lost their parents. Many are subject to foster care drift. They have been abused/neglected. The incidence of Post Traumatic Stress Disorder among emancipating foster youth exceeds any veteran group demographic.<sup>16</sup> Second, these are the children of the state, and their mental health and future warrants the highest priority for MHSA spending.

An 8% set-aside of this fund would provide the \$45,000 median provided by private parents for their children post-18. CAI is studying the allocation decisions for MHSA funding at present. However, initial findings suggest that emancipating foster youth are receiving a very small portion of the Fund, and it is not committed to self-sufficiency funding for this most vulnerable group. The state commission allocates only a limited portion of this Fund and, although it has responded generously with many millions for higher education mental health in response to the Virginia Tech shooting publicity, it has not prioritized the state's own children. Most of this funding is allocated by commissions at the county level, where the existing mental health establishment has presence and voice, while foster care children do not.

CAI agrees with the Commission that “The Judicial Council, along with other branches of federal, state, and local courts, government, businesses, foundations, and community service organizations, should work together to establish a fund to provide foster youth with the money and resources they need to participate in extracurricular activities and programs to help make positive transitions to adulthood” (Draft Recommendation 4C).

CAI urges the Commission to clarify that this fund should also be available to foster youth after emancipation from the foster care system to help the youth make a positive transition to adulthood. The optimum solution for this Commission to embrace and advocate for is (a) a demand for an appropriate share of Proposition 63 MHSA funds by way of allocated statewide set-aside, and (b) the creation of a transition guardian mechanism – subject to a self-sufficiency plan and periodic court review. As explained at length above, the court would appoint such a guardian when the child turns 16, to prepare a plan approved by the court to take effect upon emancipation. This consistent, caring adult mentor would be answerable to the court and would administer and monitor the fund to help the youth transition to a successful and productive adult life. That guardian fund would include the \$45,000 to \$55,000 generic MHSA fund properly allocated to each emancipating foster child, plus funds from other sources (SSI, Guardian Scholar benefits, and other sources) to fold into a plan individualized by youth – and thus replicating closely what a responsible parent does to assure the fruitful future for a child.<sup>17</sup>

★ *The Judicial Council should request the State Commission on Proposition 63 to sponsor a legislative set-aside of 8% of the MHSA revenue for a fund for each*

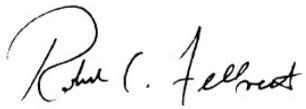
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<sup>16</sup> See detailed documentation in *Expanding Transitional Services for Emancipating Foster Youth — An Investment in California's Tomorrow*, Children's Advocacy Institute (Jan. 2007), available at [www.caichildlaw.org](http://www.caichildlaw.org).

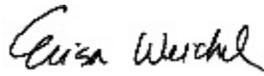
<sup>17</sup> Current programs for emancipating foster youth (THP-Plus and federal Chafee money) amount to under \$12,000 per child, for those youth receiving these benefits. A set-aside of 8% of MHSA funds would produce about \$120 million annually. Added to the current THP Plus \$40 million would total \$160 million. The total to reach the median private parents contribute is \$220 million per annum. Another \$60 million could be found from other sources, including possible federal contribution where foster children choose the continued foster care coverage post-18.

*emancipating child. That fund will comport with the Proposition 63 stated priorities of prevention of mental illness and the achievement of self-sufficiency for youth from age 18 to 24. It will be customized by youth to best accomplish mental health and transition to adulthood among the clearly most vulnerable population in the state under its stated priorities. And the Judicial Council should announce not only its support of such a commitment, but its own commitment to appoint transition guardians to administer such funds, and to supervise their proper administration.*

We appreciate the opportunity to present our comments to the California Blue Ribbon Commission on Children in Foster Care, and we look forward to working with the Commission toward improving our state's foster care system.



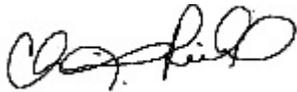
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